

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE  
APPLICATION No. 43/2013(WZ)**

**CORAM:**

**Hon'ble Mr. Justice V.R. Kingaonkar  
(Judicial Member)  
Hon'ble Dr. Ajay A. Deshpande  
(Expert Member)**

**B E T W E E N:**

- 1. Mr. Asim Sarode**  
Aged : 41, Occ : Advocate
- 2. Mr. Vikas Shinde,**  
Aged 27 Yrs., Occn : Advocate
- 3. Mrs. Neha Pathak-Khati,**  
Age 27 yrs., Occn : Advocate,
- 4. Mrs. Vinda Vilas Raut-Mahajan,**  
Age 29 yrs. Occn. Advocate,  
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- 5. Mrs. Smita Singalkar-Sarode,**  
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- 6. Mr. Santosh Sangolkar,**  
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Jalgaon.

- 7. Ms. Roshani Wanode,**  
Age 28 yrs., Occn : Advocate,  
R/at. Indira chowk, Babulgaon,  
District : Yavatmal.
- 8. Mr. Mahesh Bhosale,**  
Age 30 Yrs. Occn : Advocate  
At Aurangabad, R/at. Pargaon,  
Tal. Patoda, Distt : Beed.
- 9. Ms. Savita Khotre,**  
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- 10. Mr. Rahul Mali,**  
Age 33 yrs. Occn : Advocate,  
R/at. Asta, Tal. Islampur,  
Distt: Sangli,
- 11. Ms. Hema Katkar,**  
Age 31 yrs., Occn : Advocate,  
R/at. Post : Hupari, Distt :  
Kolhapur.
- 12. Ms. Namrata Biradkar,**  
Age 25 Yrs. Occn : Advocate,  
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Sadguru Hardev Nagar,  
Opp. Kalyani Industries, MIDC  
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- 13. Ms. Sarojani Tamshetti,**  
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**14. Mr. Amit Shinde,**

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**....Applicants**

**A N D**

**1. Maharashtra Pollution Control Board,**

Through : Chairman,  
Kalpataru Point, 2<sup>nd</sup>, 4<sup>th</sup> floor,  
Opp. Cine Planet, Near Sion Circle,  
Sion (East), Mumbai 400 022.

**2. State of Maharashtra,**

Through : Chief Secretary,  
Maharashtra State, Mantralaya,  
Mumbai 400 032.

**3. State of Maharashtra,**

Through : Its Secretary,  
Environment Department,  
Mantralaya, Mumbai 400 032.

**...Respondents**

**Counsel for Applicants :**

Mr. Asim Sarode,  
Mr. Vikas Shinde,

**Counsel for Respondents :**

Mr. D.M. Gupte,  
Ms. Supriya Dangare,

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**DATE : 6th September, 2014**

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## J U D G M E N T

1. The Applicants have filed instant Application U/s. 14(1)(2) and 15 of National Green Tribunal Act, 2010 raising questions relating to unauthorized and unscientific burning of tyres which emit smoke containing toxic gases and pollutants affecting the environment and human life. The Applicants submit that the burning of tyres has now become a regular feature in any social and political agitation resulting in pollution and environment damage. The Applicants claim that though they are not willing to blame any individual party or group, but urge that such tyre burning, which is environmentally unsafe activity, needs to be banned immediately. The Applicants further submit that through this Application, they want to raise the need of urgent actions to be taken up by the regulatory agencies which have been impleaded as Respondents, by framing suitable Rules and regulations and also prepare mechanism for enforcing the same. The Applicants further submit that with the increasing awareness on the environmental pollution and its adverse effect on the human health, it is necessary that such steps are taken on priority. The Applicants also draws the attention that there are specific regulations for re-use and re-cycling of used tyres, in most of the advanced countries and also,

some developed countries and therefore, plead that India being signatory to various International Environmental Treaties, suitable regulations in this context are urgently required. It is the case of the Applicants that though the Environment (Protection) Act, 1986 and Air (Prevention and Control of Pollution) Act 1981 has given such powers to the regulating agencies, no specific rules or guidelines have been formulated by the Respondents. The Applicants, therefore, seek following reliefs:

- i. The Respondents may be directed to adopt some scientific and advanced way by framing Rules regarding bar coding which will help to trace the used tyres and prevent the misuse of the old ones.*
- ii. The Respondents may be directed to frame some Rules to regulate the industry relating to remolding of tyres in a more eco-friendly way, as other countries have in order to control the misuse of tyres.*
- iii. The Respondent No.1-MPCB may kindly be directed to furnish details regarding number of industrial set up throughout Maharashtra State who are into business of remolding tyres, list of license holders who have been given permission to operate by the MPCB, incidences when MPCB taken actions against such industries for breaking environmental*

*laws, level of toxic elements of the smoke coming out from these industries, measurements related to height of Chimneys at this various industries involved in remolding tyre work in Maharashtra.*

**2.** The Maharashtra Pollution Control Board (MPCB), which is the Regulatory Authority, implementing Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act 1981 is Respondent No.1. Chief Secretary, State of Maharashtra is Respondent No.2 and Secretary, Environment Department; Government of Maharashtra is Respondent No.3. Only Respondent No.1 has filed Affidavit. Though the notices were served upon Respondent Nos. 2 and 3, they have not filed any affidavit and therefore, considering while noting their absence and non-participation in the Tribunal proceedings, Affidavit of MPCB alone has been taken into account in the present adjudication.

**3.** The Respondent-1, MPCB has filed two (2) Affidavits through Shri V.M. Motghare, Joint Director. In the Affidavit dated 4<sup>th</sup> May 2014, MPCB informed that they have constituted a Committee to propose suitable guidelines/regulations for tyre re-treading and tyre recycling Industries. Through the Affidavit dated 11<sup>th</sup> July

2014, MPCB has placed on record the report of the said Committee. MPCB submits that after sampling and analysis of tyre burning on laboratory scale basis, it has been concluded that the tyre burning in open atmosphere generates highly toxic, mutagenic and hazardous emissions, primarily owing to incomplete oxidation and therefore, MPCB has recommended the State Government, in exercise of the provisions of Sub-section 5 of Section 19 of the Air (Prevention and Control of Pollution) Act 1981, to issue a Notification prohibiting burning of tyres in the Air Pollution Control Area. MPCB has further suggested that the Law and Order enforcement Agencies i.e. Police and District Administration shall also be directed to take appropriate action against such tyre burning under the Bombay Police Act, Criminal Procedure Code etc. The MPCB's Affidavit further emphasize that the proper solution for minimizing such incidents of burning of tyres can be achieved only through creating and implementing a system for re-cycling, re-treading and re-using of used tyres, more particularly, by adopting "Life Cycle Approach" by encouraging and facilitating re-use and re-cycle of tyres. The report goes on to discuss various options to re-use and re-cycle in the International Scenario. The Communication

of MPCB dated 8<sup>th</sup> July 2014, to the Environment Department in this regard is placed on record.

**4.** Considering the submissions made by the parties, and also documents placed on record, we are of the considered opinion that following issues need to be adjudicated in the present Application.

I. Whether the tyre burning cause air pollution and pose a threat to human health?

II. Whether the present Used Tyre Management practices can be termed as environmentally sound and complying the regulations?

III. Whether the Respondents can be directed to enforce environmental regulation in Used Tyre Management under the present Regulatory framework?

**5.** The MPCB i.e. Respondent No.1 in its Affidavit dated 11<sup>th</sup> July 2014 has submitted, after sampling and analysis, that tyre burning in open atmosphere generates highly toxic, mutagenic and hazardous emissions. However, the MPCB Affidavit has not dealt with health impact of such tyre burning. The scrap tyres represent both a disposal problem and also, resource opportunity (For example e.g. as a fuel material replacement, and in other Application). The open tyre burning has been reported in the literature to be more toxic and mutagenic. The open tyre burning emissions includes “criteria” pollutants such as particulates, carbon monoxide (CO),



sulfur oxides (SO<sub>2</sub>), oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOCs). They also include “non-criteria” hazardous air pollutants (HAPs), such as polynuclear aromatic hydrocarbons (PAHs), dioxins, furans, hydrogen chloride, benzene, polychlorinated biphenyls (PCBs), and metals such as arsenic, cadmium, nickel, zinc, mercury, chromium, and vanadium. Both criteria and HAP emissions from an open tyre fire can represent significant acute (short-term) and chronic (long-term) health hazards to nearby residents. Depending on the length and degree of exposure, these health impacts could include irritation of the skin, eyes, and mucous membranes, respiratory effects, central nervous system depression, and cancer.

**6.** The piled used tyres can also be a health hazard as they become breeding grounds for diseases causing pests and can even catch fire. Considering all these aspects, we have no hesitation to answer the Issue No.I in the Affirmative.

**Issue No.II :**

**7.** Used tyres can be disposed of for various end-uses such as fuel in the Industries, burning for heating purpose, resource recovery through distillation or pyrolysis process etc. With the increasing number of Motor

Vehicles, there is rapid increase in the amount of scrap tyres. The large quantity of scrap tyres is posing a serious environmental concern for their environmentally sound disposal. The main reason for this problem is that used tyres are not easily biodegradable. Admittedly, there is no system or specific regulations, which will ensure the environmentally sound management of the used tyres, tracking its journey from generation to the final disposal. In the absence of such system, no records are placed before this Tribunal about number of used tyres generated and its end-use wise disposal. The Counsel for MPCB fairly submits that with the growing awareness about the environmental impact of such used material, there is a need for some regulations considering the Life Cycle Approach for such used tyre management. He, however, pleads that such a mechanism needs to be developed at National level, similar to Battery rules and also E-waste rules which have been notified under Environment (Protection) Act, 1986 by the MoEF.

**8.** Considering all the above aspects, we are of the opinion that there is a need to have a systemic approach to deal with the problem of used tyre disposal. This is more evident from the submissions of the MPCB that out of 162 tyre remolding industries, only 55 tyres were registered

with MPCB which shows that everything is not well in the used tyre management. Further, there is no data or even approximation account available about total number of used tyres generated and end uses thereof. Simultaneously, we may also note that the CPCB is encouraging use of tyres as fuel for co-processing in cement/power/steel Industry subject to provisions of necessary Air Pollution Control Systems. Though, the used tyre is an opportunity in term of its contents and calorific value, there is need to systematically deal with the entire issue in a holistic manner based on “Life Cycle Approach”, considering the pollution potential, tyre generation data, technology options, techno-economic viability and social implications. We are of the considered opinion that in order to formulate such regulation or notifying certain approach, it is incumbent that the MPCB shall conduct a scientific study about the used tyre generation, technologies, viability and its Life Cycle Assessment in order to form its strategy on a long-term basis. Therefore, while noting that the present system of used tyre management is not environmentally sound, we are of the opinion that there is a need of placing an elaborate and well defined system in place for environmentally sound tyre

disposal practices for used/scrapped tyres. The Issue-II is accordingly answered in the Affirmative.

**Issue No.III :**

**9.** The Environment (Protection) Act, 1986 has given powers to the Central Government to take measures to protect and improve the environment, under Section 3 of the said Act, which is reproduced below:

**3. Power of Central Government to take measures to protect and improve environment—**

*(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.*

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**10.** The Authorities are also given powers to give Direction under Section 5 of the said Act to effectively deal with environment degradation and protection concerns.

The said Section is reproduced below :

**5. Power to give directions --** *Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its*

*functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.*

*Explanation -- For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—*

*(a) the closure, prohibition or regulation of any industry, operation or process; or*

*(b) Stoppage or regulation of the supply of electricity or water or any other service.*

**11.** Air (P&CP) Act, 1981 also defines functions of the Central and State Pollution Boards in Section 16 and 17 respectively. The main function of Central Board shall be to improve the quality of Air and to prevent, control or abate pollution in the country. The Air (Prevention and Control of Pollution) Act 1981 also gives powers to declare Air Pollution Control areas to the State Government and Sub section 3 and 5 gives specific powers to control the use of fuel and also restricting burning of any material. The same are reproduced below :

**19. Power to declare air pollution control areas.—**

*(1) The State Government may, after consultation with the State Board, by notification in the Official Gazette, declare in such manner as may be prescribed, any area or areas within the*

*State as air pollution control area or areas for the purposes of this Act.*

(2) ---

(3) *If the State Government, after consultation with the State Board, is of opinion that the use of any fuel, other than an approved fuel, in any air pollution control area or part thereof, may cause or is likely to cause air pollution, it may, by notification in the official Gazette, prohibit the use of such fuel in such area or part thereof with effect from such date (being not less than three months from the date of publication of the notification) as may be specified in the notification.*

(4) ----

(5) *If the State Government, after consultation with the State Board, is of opinion that the burning of any material (not being fuel) in any air pollution control area or part thereof may cause or is likely to cause air pollution, it may, by notification in the Official Gazette, prohibit the burning of such material in such area or part thereof.*

**12.** We have been informed by the learned counsel of MPCB that entire State of Maharashtra has already been declared as Air Pollution area U/s. 19(1) of the Air Act. The Boards have powers to give directions U/s. 31(A) which are reproduced below :

**31 (A) Power to give directions.**--*Notwithstanding anything contained to any other law, but subject to*

*the provisions of this Act and to any directions that the Central Government may give in this behalf a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.*

*Explanation—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—*

- (a) the closure, prohibition or regulation of any industry, operation or process; or*
- (b) the stoppage or regulation of supply of electricity, water or any other service.*

**13.** Considering all these legal provisions, it is abundantly clear that the provisions of the Environment Protection Act and also the Air (Prevention and Control of Pollution) Act 1981 give sufficient powers to the MoEF, CPCB, State Department of Environment and MPCB to deal with this issue.

**14.** The end-use of such used tyres can be broadly classified in three categories.

1. Open burning, which is generally incidental, like agitations, warming/heating purpose etc, mostly unorganized use.
2. Use as a fuel in the Industry, and in brick kilns.
3. Use for resource recovery i.e. chemical recovery through distillation or pyrolysis or some other use like used tyre based products i.e. mats, footwear etc..

**15.** MPCB has already placed on record the recommendations submitted to the department of Environment U/s. 19(5) of Air Act, to ban burning of tyres in open places and to direct the Law and Order enforcement agencies to deal with the issues vide their letter dated 8-7-2014. No information has been placed on record about the status of this proposal at end of the Environment Department. We are of the opinion that in order to deal with the Used Tyre use in category 1, as mentioned above, such proposal needs to be expeditiously considered and decision needs to be taken in this regard by the State Environment Department. We expect the Secretary, Department of Environment, Maharashtra to take a decision on this proposal expeditiously.

**16.** As regards Used Tyre category 2, we notice that the MPCB is competent to restrict such use of used tyres as an industrial fuel through its consent management process. However, as far as unorganized Industrial sectors like brick kiln, small and tiny units are concerned, MPCB and the Department of environment have necessary the powers conferred upon them under Section 19(3) of the Air (Prevention and Control of Pollution) Act 1981 to restrict use of used tyre as fuel by issuing necessary Notification.



Unrestricted use of third category of used tyre can also be controlled by the MPCB through the Consent Management. However, in order to encourage and facilitate the use of used tyres either in category 2 and 3, it is necessary to frame suitable guidelines and/or regulations as described in above paras.

**17.** We, therefore, are of the considered opinion that there is an urgent need to regulate the used tyre disposal to avoid the environmental problems, on the principles of Sustainable development and pre-cautionary principles. And therefore, the MPCB need to undertake a scientific study for Life Cycle Assessment of Used tyres in Maharashtra adopting the scientific and analytical tools to deal this issue in a holistic manner. Several innovative approaches like Extended Producers Responsibility (EPR), Advanced Recycling charges (ARC), common facilities, use of bar coding etc can be adopted to ensure effective collection and disposal of used tyres. We, therefore, direct the MPCB to undertake such study in next six (6) months and finding shall be shared with the MoEF/CPCB.

**18.** We also expect that the MoEF and CPCB shall also take a note of this environmental concern and explore the need and possibility of framing separate regulations on the

lines of battery rules and e-waste Rules in next six (6) months.

**19.** In view of the above, the Application is partly allowed in following terms, under the powers conferred upon the Tribunal under Section 19 read with section 20 of NGT Act, 2010.

**1)** Department of Environment, State of Maharashtra shall take a decision on recommendations made by the MPCB vide letter dated 1-7-2014 within eight (8) weeks and issue necessary Notification in two (2) weeks thereafter.

**2)** There will be prohibition on burning of tyres in open areas and at public places, in the localities surrounded by the residential areas, public places, schools, hospitals, offices etc. in view of the potential air pollution and health hazards. The Police authorities, District Administration and urban local bodies shall ensure the compliance of this prohibition with immediate effect. In case of defiance it be treated as offence U/s. 188 of the I.P. Code.

**3)** The Department of Environment, State of Maharashtra and MPCB shall conduct a scientific study on the Life Cycle Assessment of used tyres and frame suitable guidelines/regulations to ensure environmentally sound

disposal practices of the used tyres in next eight (8) months.

- 4) The reuse of used tyres as fuel in industries, including brick-kilns etc. without specific permission of MPCB and also, provision of necessary area Pollution Control Systems is prohibited with immediate effect.
- 5) These directions and environmental effects of open burning of tyres shall be brought to the notice of all the concerned agencies by MPCB and state environment department and be given wide publicity for public information and awareness, in next two (2) weeks.

Accordingly, the Application is disposed of. No costs.

.....,JM  
(Justice V. R. Kingaonkar)

....., EM  
(Dr. Ajay. A. Deshpande)

**Date : 6<sup>th</sup> September, 2014**