

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE**

Original Application No. 107/2021(WZ)

**IN THE MATTER OF:**

**Manoj Markendeyrao Wahane**

Plot No. 794 JuniMangalwari,  
Near PintuDhaba,  
Nagpur - 440 008.

.....Applicant(s)

Versus

- 1. Maharashtra Bamboo Development Board**  
Through its Managing Director,  
Besides Katol Road Toll Naka,  
Katol Road, Makardhokda,  
Nagpur - 440 013.
- 2. Integrated Regional Office, Ministry of Environment,  
Forest & Climate Change**  
Through its Deputy Director General of Forests (Central),  
Ground Floor, East Wing  
New Secretariat Building, Civil Lines,  
Nagpur-440 001.
- 3. Maharashtra Pollution Control Board**  
Through its Member Secretary,  
Kalpataru Point, 3<sup>rd</sup> and 4<sup>th</sup> Floor,  
Sion Circle, Mumbai- 400 022.
- 4. State of Maharashtra**  
Through its Secretary,  
Environment Department,  
Room No. 217, Mantralaya Annex,  
Mumbai – 400 022.
- 5. Forest Department, State of Maharashtra**  
Through its Principal Chief Conservator of Forest,  
First Floor, B Wing, Van Bhavan,  
Civil Lines, Nagpur – 440 001.
- 6. Ministry of Environment, Forest and Climate Change,  
Government of India**  
Through the Secretary,  
Indira Paryavaran Bhawan, Jor Bagh,  
New Delhi-110 003.

.....Respondent(s)

**Counsel for the Applicant(s):**

Appellant(s) : Mr. Rahul Choudhary, Advocate

**Counsel for the Respondent(s):**

Respondent(s) : Mr. Kartik N. Shukul, Advocate for R-1  
Mr. D. M. Gupte, Advocate for R-2 & 6 (MoEF&CC)  
Mr. Aniruddha Kulkarni, Advocate for R-3(MPCB)

**PRESENT:**

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

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**Reserved on : 24.08.2022**

**Pronounced on : 19.09.2022**

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**JUDGMENT**

1. This Original Application has been moved with the prayer that Respondent No. 1/Maharashtra Bamboo Development Board be directed to close the industrial unit constructed in forest land in violation of Forest (Conservation) Act, 1980 and also to restore the area to its original position and that the Respondent Nos. 2 & 3 (MoEF&CC and MPCB) be directed to ensure that the entire forest areas and water streams polluted due to the activities of Respondent No.1, be restored to their original condition.

2. It is further prayed that a committee be constituted to calculate the damage caused to the environment due to the said illegal setting up of an operation of bamboo processing plant. The facts in brief are as follows:-

(i). The Respondent No. 1/Maharashtra Bamboo Development Board was established by the Government of Maharashtra in 2016 with a view to oversee the plantation of bamboo in the State of Maharashtra. The Respondent No. 1 had set up a Chemical Treatment Plant for Bamboo Processing within the Gorewada Reserve Forest, Nagpur, Maharashtra without Forest Clearance within the Reserve Forest areas. The Section 2 of the Forest (Conservation) Act, 1980 prohibits unauthorized use of forest land for any non-forest purpose without prior approval from the Central Government. The treatment of bamboo is not ancillary to forest conservation for the purpose of Section 2 of Forest (Conservation) Act, 1980 and therefore, is not covered under the exception to the definition of 'non-forest use'. The Respondent No. 1 has failed to obtain Consent to Establish and Consent to Operate from the MPCB for establishing and operating the impugned plant, as per the provisions of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as well as Section 21 of the Air (Prevention and Control of Pollution) Act, 1981. The Respondent No. 3/MPCB issued a closure notice to Respondent No. 1/MBDB on 23.11.2020 but had not taken action against Respondent No. 1. The impugned plant includes 'Pressure Vessel' which requires installation of mandated safeguards as per the Maharashtra Factories Rules, 1963. The 'Pressure Vessels' installed for the chemical treatment of bamboo did not confirm to ISI specification laid

down by the Bureau of Indian Standards. The safety norms were severely compromised as the plant was being run without any license from the Directorate of Industrial Safety and Health. Reference is also made of a newspaper article in 'Times of India' dated October 2020 detailing the violations of Respondent No. 1 leading to explosion and Navbharat Times Article dated December 2020 regarding closure notice sent to the Respondent No. 1. The said explosion led to discharge of toxic chemical effluents into nearby water streams and river sources leading to severe degradation of marine eco-system and pollution of water resources. Due to the said explosion, the Directorate of Industrial Safety and Health had carried out site visit on 16.10.2020 and accordingly, issued a Show Cause Notice dated 26.10.2020 to the Respondent No. 1 for contravening the mandatory safety rules as per the Maharashtra Factories Rules, 1963. No action was taken by the Authority despite complaints made by the Applicant and many vigilant citizens of the locality. Therefore, above mentioned prayers are made.

3. The stand of Respondent No. 1 through affidavit dated 30.03.2020 is as follows:-

- (i). Due to availability of large scale bamboo clusters near Sakoli, Maharashtra, the Research Centre along with the Vacuum Pressure Impregnation Machinery (VPI) has now been shifted to Sakoli for logistical convenience on 04.10.2021 which

would prove beneficial to the Respondent No. 1, fiscally and logistically. The Respondent No. 3/Maharashtra Pollution Control Board (MPCB) in its report dated 15.10.2020 has specifically stated that there is no discharge of any effluents in the said premises at Gorewada to the stream nor is there any damage to the local eco-system or water streams. It is also clear that there is no pollution/harm/damage caused due to the said research activities.

- (ii). Further, it is submitted that Forest (Conservation) Act, 1980, provides for an exemption for activities that are ancillary and incidental to conservation, development and management of forest and wildlife including the establishment of check-post, fire lines, wireless communication and construction of fencing, bridges and culverts, waterholes, trench marks, boundary marks, pipelines or other like purposes. The Respondent No.1 had only established the said research operation to increase the life of the bamboo logs.
- (iii). Further, it is submitted that since there was no effluent being discharged from the said plant, there was no necessity under the Air Act and Water Act to take 'Consent to Establish' and 'Consent to Operate' and no violation under those laws would be taken to have been made out.
- (iv). Further, it is submitted that the Respondent No. 1 had appointed one Bamboo Expert namely Mr. Halde on 31.01.2019 to handle the said VPI machine and maintain

records of the research done at the said Research Centre, but was later on removed from the job on 01.09.2020. During the internal enquiry, it was revealed that at the time of the incident of 13.10.2020, Mr. Halde was present near the said VPI machine and was operating the same without any authority and that an explanation was called from Mr. Halde regarding his unauthorized presence at the time of the incident. That Respondent No. 1 conducted its internal enquiry regarding the incident to take appropriate action in accordance with law against the person/(s) responsible for the said incident. Although, the said incident was not a major incident as it happened only due to minor malfunctioning of the VPI machine may be, due to unauthorized operation of the said machine. The research activities undertaken by the Respondent No. 1 increased efficiency of the use of bamboo in the State to encourage its cultivation and use for various human activities and even to replace Hard Timber, wherever possible. The Respondent No.1 worked under the Chairmanship of Hon'ble Minister of Forests to the Government of Maharashtra, who vide letter dated 12.12.2005, had taken a decision to establish an International Standard Zoo & Bio-park on 1914 ha. of forest land at Gorewada, Nagpur and vide letter dated 29.11.2011, accorded permission for establishing the said Bio-park through Forest Development Corporation of Maharashtra Limited, Nagpur. The Executive Committee headed by the

Principal Chief Conservator of Forest (HoEF), in its meeting dated 25.03.2019 had decided to allot 31.50 Ha. of project land, adjoining Katol Road Naka, extending till the existing Nursery, to Maharashtra Bamboo Development Board for bamboo plantation. The Principal Chief Conservator of Forest (P&M) vide letter dated 12.12.2019 had given NOC for allotment of the said land to Respondent No.1 and a 'Memorandum of Understanding' was also executed between the Forest Development Corporation of Maharashtra and the Respondent No.1.

- (v). Further, it is submitted that Respondent No. 1 is established for promoting the bamboo sector, which includes promotional development and research in bamboo plantation, nursery, handicraft, furniture, waste management, edibles, oils, charcoal, etc. and the VPI machine in question was installed only for research purpose. The Respondent No. 1 is not indulging in any commercial activities, it is only for research work and that no provision of the Forest Conservation Act, 1980 would be applicable. There is no industry operating in the premises nor is there any chemical treatment plant.
- (vi). It is further submitted that Respondent No. 1 was consulting the Laxminarayan Institute of Technology, Nagpur for various research projects and is also conducting other research projects like Charcoal Kiln and Fast Pyrolysis Plant which are

being developed in association with LIT and NEERI, Nagpur to promote the bamboo industry.

- (vii). Further, it is submitted that the Respondent No. 3 had visited the site of incident on 23.11.2020 and issued a closure notice to the answering Respondent, stating that the necessary permissions were not obtained. In compliance with the said closure notice, the answering Respondent had stopped the use of said VPI plant and intimated this fact to the Respondent No 3 vide letter dated 03.12.2020.
- (viii). It is further submitted that VPI plant was a pilot project for research purposes and no activities of commercial nature was undertaken at that site and only a single VPI plant was set up as the said project was still under development. The Respondent No. 1 had conducted testing of pressure vessel from the competent person i.e. M/s. M.D. Safety Consultants Pvt. Ltd on 21.10.2020, by carrying out ultrasonic test and hydraulic test with thorough visual inspection of all parts of the vessel.
- (ix). It is further submitted that Respondent No. 1 had stopped using the said VPI plant for its research purpose from the date of incident. Therefore, the Applicant has miserably failed to point out any patent illegality committed by the Respondent No. 1. Accordingly, the application should be dismissed.



4. The Respondent No. 1/PP through additional written submission dated 25.08.2022 has submitted that the size of the Vacuum Pressure Impregnation Machine is 7.30 m x 2.20 m. The shed prepared for functioning of VPI Machine was 6 m x 12 m tin shed, open from all sides. The Respondent No. 1 has taken extra precaution by constructing a lagoon measuring 7.20 mt x 2 mt in size.

5. Further, it is reiterated that no Chemical Treatment Plant operates at the said premises and only a pilot project of VPI machine was operational for research work for increasing the life of bamboo and that approximately 150-175 bamboos per cycle were the production capacity of the said unit and one cycle could be completed in a day. The plant was not operational on regular basis as it was closed down due to COVID-19 pandemic and it again started operating in September, 2020 and has completed only few cycles, before it was again shut down. Since thereafter, it is permanently removed on 04.10.2021.

6. The stand of the Respondent Nos. 2 & 6/Ministry of Environment, Forest & Climate Change (MoEF&CC) is as follows:-

- (i). The activity of the Chemical treatment plant for Bamboo processing would fall in non-forest activity. There is no application moved either from the side of Respondent No. 5/State Forest Department or from the side of Respondent No. 1/PP, seeking any permission for diversion of the use of land which is 'Reserved Forest land', as it requires permission from the Central Government. The land within the Reserved

Forest can be used for non-forest activity only after such permission in writing is granted by the Central Government. The activity of the Respondent No. 1 as alleged by the Application is bamboo processing by chemical treatment which is non-forest activity and requires prior permission from the Central Government. The said activity is not exempted for the reason that the same is not ancillary to conservation, development and management of forest. The said activity can be performed outside the forest area in any permissible unit.

7. The stand of the Respondent No. 3/Maharashtra Pollution Control Board (MPCB) is as follows:-

(i). The Respondent No. 1 has not obtained prior Forest Clearance and Consent to Establish and Consent to Operate from the Respondent No. 3/MPCB. Its official had visited the Respondent No. 1-industry on 15.10.2020 and following observations were made:-

- i). The Respondent No.1-Industry was using vacuum pressure impregnation cylinder (plant) for strengthening of Bamboo. They used Copper chrome boron with water in VPI cylinder.*
- ii). The authority of the Respondent No.1-Industry reported that the accident occurred on 13.10.2020 at 3.00 pm since safety valve was not opened / worked, thereby causing opening of the lid by thrust by breaking nut bolts. No casualty and injury was occurred to the workers.*
- iii). During the visit it was observed that no any effluent was discharged outside the industry premises. No effluent collection & treatment facility was provided.*
- iv). Concrete tank was provided for bath of treated bamboo. JVS from tank was collected. Kuchcha lagoon constructed to collect Bamboo bath effluent.*

- v). *During the visit, the unit was not in operation.*
  - vi). *The representative of the Respondent No.1-Industry informed that it is only research and development centre of bamboo. Treatment of bamboo is carried out whenever required.*
  - vii). *The unit was operating without obtaining Consent to Establish and Operate from the Respondent -Board.*
- ii). It is further submitted that the visit showed that most of the parameters of water sample from the bath are within limit except total Chromium i.e. 1.18 mg/l and exceeding the standards of 0.2 mg/l and that for the above non-compliances, the Respondent-Board had issued Closure directions under section 33A of the Water (Prevention & Control of Pollution ) Act, 1974 and under Section 31A of the Air (Prevention & Control of Pollution) Act, 1981 to Respondent No.1-Industry for failure to provide adequate pollution control system for the treatment of effluent generated from R & D Centre. The officials of the Respondent-Board at Nagpur visited to the Respondent No. 1-Industry on 09.02.2022 and observed that the Maharashtra State Electricity Distribution Company Limited (MSEDCL) has disconnected electricity connection of the said Industry and Respondent No. 1- Industry has removed and shifted all the machineries of both the Vacuum Pressure Impregnation Plant and Pyrolysis Plant from the above-said premises completely.
- iii). Vide supplementary affidavit of Respondent No. 3/MPCB dated 12.08.2022, it is submitted that Central Pollution Control Board (CPCB) had communicated the Modified

Directions vide letter dated 07.03.2016 to all the State Pollution Control Boards regarding Harmonization of Classification of Industrial Sectors under Red/Orange/Green /White Categories. As per the said Modified Directions, the aforesaid activity carried out by the Respondent No. 1 is covered under the 'Green Category' at Serial No. 61 which is 'seasoning of wood in steam heated chamber'. Therefore, Respondent No. 1 was required to obtain Consent to Establish and Consent to Operate for running the said industry.

8. Heard the arguments of the Learned Counsel of both the parties.

The seminal question to be decided in the present matter is-

(i). Whether the activity undertaken by the Respondent No. 1 of research by setting up a chemical treatment plant for bamboo processing which was being done by the use of VPI machine, falls in the category of non-forest purpose or forest purpose and whether it would exempt from seeking permission from the Central Government for running the said plant as per Section 2 of the Forest Conservation Act, 1980?

(ii). To what relief, if any, the Applicant is entitled?

9. From the pleadings mentioned above as well as in the light of arguments, we render our reasoning and findings as below:-

(i). Finding on Point No. (i):- The Learned Counsel for the Respondent No. 1 has argued that Section 2 of the Forest (Conservation) Act, 1980 does not necessitate for seeking

permission from Central Government for running a chemical plant for bamboo processing because in the explanation, the word “non-forest purpose” is said to mean breaking up or clearing of any forest land or portion thereof for -

- (a) the cultivation of tea, coffee, spices, rubber, palms, oil bearing plants, horticultural crops or medicinal plants;
- (b) any purpose other than re-afforestation;

10. For the sake of convenience, Section 2 of the Forest (Conservation) Act, 1980 is reproduced herein below

**“2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose-** *Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—*

- (i). that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;*
- (ii). that any forest land or any portion thereof may be used for any non-forest purpose;*
- (iii). that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;*
- (iv). that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for re-afforestation.*

*[Explanation- For the purposes of this section “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for—*

- a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;*
- b) any purpose other than re-afforestation,*

*but does not include any work relating or ancillary to conservation, development and management of forests and wild-*

*life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams waterholes, trench marks, boundary marks, pipelines or other like purposes.]*

*(i) Where the conditions are not satisfied, mines situated within the protected forest must be closed forthwith and mines situated partly within and partly outside the protected forest should also be closed forthwith insofar as they fall within the protected forest. Thus the grant of lease/licence is illegal; Tarun Bhagat Singh v. Union of India, 1993 Supp (3) SCC 115.*

*(ii) Section 2 applies to any forest land irrespective of the fact that it has been declared as reserved forest or not; Uttar Pradesh Gandhi Ismark Nidhi, Vijayasthapak v. State of Uttar Pradesh (1988) 2 Reports (All) 327.*

**2A. Appeal to National Green Tribunal-** *Any person aggrieved, by an order or decision of the State Government or other authority made under section 2, on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.*

11. Therefore, it is apparent that the chemical treatment of bamboo processing would not be covered under the said definition rather the activity which he has undertaken, is for strengthening the bamboo which would be used for construction of fencing, bridges and culverts etc. which is not included in the definition of 'non-forest purpose'.

12. On the other hand, from the side of Applicant as well as remaining Respondents, it is vehemently argued that the said activity requires permission from the Central Government because it is covered under non-forest purpose as the chemicals are being used for treating the bamboos to make them strengthened and not only this, it is being done on large scale, therefore, it cannot be held to be research activity and no exemption can be granted from seeking permission from the Government of India, more so, in the reserve forest area. For the

research purposes, if the said activity was to be done, the same could have been done outside the forest area.

13. During the arguments, we had given opportunity to the Learned Counsel for the Respondent No. 1 to make it clear as to how big in the facility/plant so that we can make out as to whether the same was being used for only research purposes or could have been exploited commercially.

14. In the additional affidavit dated 25.08.2020, it has been clearly stated by the Respondent No. 1 that 152-175 bamboos per cycle was the production capacity of the said plant and one cycle would be completed in a day. The size of cement tank and the size of Vacuum Pressure Impregnation Machine is also mentioned. We find that if the said details be taken into consideration, it would show that the treatment of 150-175 bamboos per day per one cycle would not by any stretch of imagination, be treated to be for the research work because such huge number of bamboos were being treated, they certainly would have been/could have been used at some place for commercial use.

15. In the affidavit by the Respondent Nos. 2 & 6/MoEF&CC, it has been very clearly stated that the said plant would require permission from the Central Government because the same was established in reserved forest and that no permission was sought for diversion of the use of land, therefore, this is a clear violation.

16. The Respondent No. 3/MPCB has also clearly stated that the Consent to Establish and Consent to Operate were very much required as earlier in the past also, an accident has happened pursuant to which it is being stated by the Respondent No. 1 that the said machine has been shifted to some other place and that now, no bamboo processing is going on since 04.10.2021.

17. We are of the opinion that the Respondent No. 1 will be treated to have committed violation of Section 2 of Forest Conservation Act by not taking permission from the Central Government for use of any part of the land in question which was given to them for the purpose of plantation for being used for research purpose. They have used the said place for the purpose of running a plant for conducting chemical processing of bamboo without having any valid Consent to Establish and Consent to Operate from the MPCB and also without having any permission from the Central Government to use the said piece of land for the said facility. We decide that the facility of chemical treatment of bamboo plant will fall in the category of non-forest activity which will require permission to be taken from the Central Government. Issue No. 1 decided accordingly. Therefore, we allow this application and direct the Respondent No. 3/MPCB to make calculation of compensation amount in accordance with rules and proceed to realize the same within a period of two 02(months) after giving opportunity of hearing to the Respondent No. 1 and ensuring that the said place is restored to its original condition.



18. We, therefore, decide the issue no. (ii) to the effect that the application deserves to be allowed and accordingly allowed.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

September 19, 2022  
Original Application No. 107/2021(WZ)  
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