

Amit Kishore And Ors vs Uttar Pradesh Pollution Control Board on 22 December, 2023

Item No.1

(Court No. 2)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPALBENCH, NEW DELHI.

(Through Physical Hearing with Hybrid V.C. Option)

Original Application No. 287/2022
(I.A. No. 278/2022, I.A. No. 619/2023 & I.A No. 705/2023)

Amit Kishore & Ors.

...Applicants

Versus

Uttar Pradesh State Pollution Control Board & Ors.

...Respondents

Reserved on: 27.09.2023
Pronounced on: 22.12.2023

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER.
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER.

For Applicant: Mr. Abhinav Agarwal and Mr. Mayank Arora,
Advocates for applicant.

For Respondents: Mr. Pradeep Misra and Mr. Daleep Dhyani Advocates
for Respondent no. 1-UPPCB
Mr. Vibhav Mishra Advocate for Respondent no. 2-
Ghaziabad Nagar Nigam.
Ms. Veera Kaul Singh and Ms. Vibha Bhat Advocates
for Respondent no.-3-UPAEVP.
Mr. Bhanwar Pal Singh Jadon, Advocate for
Respondents no.- 4 & 5-DM, Ghaziabad and Irrigation
& Water Resource Department.
Mr. Manish Raghav and Mr. Rohit Gour, Advocates for
Respondents no. - 7 to 48.

Application is registered based on a complaint received by Email

ORDER

1. The applicants have filed the present interlocutory application registered as I.A. No. 619/2023 for summoning for cross examination the following respondents/officers of the respondents:-

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"(i) Aman Tyagi, S/O Anil Kumar Tyagi, Executive Engineer, C.D. Ghaziabad-1, U.P. Avastha Vikas Parishad, Vasundhara, Ghaziabad, Uttar Pradesh;

(ii) Mahender Singh Tawar, S/O Om Prakash Singh Tawar, Municipal Commissioner at Ghaziabad, Uttar Pradesh;

(iii) Dr. Nitin Gaur, Municipal Commissioner of Ghaziabad Nagar Nigam, Office at Nagar Nigam Ghaziabad, Navyug Market, Opposite Old Bus Stand, Ghaziabad, Uttar Pradesh;

and

(iv) Divisional Director, Social Forestry Division, Ghaziabad."

2. Briefly stated I.A. No. 619/2023 has been filed on the averments that the present OA is pending consideration before this Tribunal and the same was fixed for further consideration on 19.05.2023. Vide Order dated 19.05.2023, this Tribunal directed the matter to be listed for arguments on 10.07.2023 granting liberty to the Ld. Counsels for submitting their written arguments. Over the last few dates of hearings several affidavits/ arguments have been placed on record without leave of this Tribunal. Affidavit dated 16.05.2023 was filed by Respondent No.2/Ghaziabad Nagar Nigam pursuant to this Tribunal's order dated 21.02.2023. However, the Short Synopsis dated 24.11.2022 was filed by Respondent No. 3/U.P. Avastha Vikas Parishad without any order or leave of the Tribunal. Further another additional affidavit was filed by Respondent no. 2 on 16.05.2023 without the leave of this Tribunal. The contents of the above-stated Affidavits reveal that there are multiple contradictions in the stands taken by the Respondents in their other affidavits filed before this Tribunal. In each subsequent submission made by the Respondents they have taken a prevaricating stand with respect to this matter. Therefore, the Original O. A. No. 287/2022 Amit Kishor & Ors. Vs. UPPCB & Ors.

Applicants crave the leave of this Tribunal to cross examine a few witnesses in light of the falsities and misrepresentations made by the Respondents in their subsequent affidavits. The applicants have referred in detail to falsehoods of different maps placed on the record by the respondents-regarding map placed on record by respondent no-3 and map placed on record by respondents no. 7-48 and material contradictions in the stand taken by the respondents on oath in their affidavits (which are not extracted in detail in this order for sake of brevity). The applicants have submitted that in view of such material contradictions/variations disputed questions of facts as evident from the submissions made in the application need adjudication by this Tribunal. This Tribunal is empowered to examine witnesses and allow cross-examination of any person/authority under Section 19 of the National Green Tribunal Act, 2010 (NGT Act). In view of the material contradictions and prevarication stands taken by several respondents on the issue at hand the applicants may be granted opportunity to cross-examine the Respondents and authorities mentioned in the application (referred above) to prevent a miscarriage of justice. No prejudice will

be caused to the Respondents but great prejudice will be caused to the Applicants in case the application is denied. Allowing this Application is critical to reveal the true and correct facts before this Tribunal and a denial of the same shall fracture the interests of justice.

3. The applicants have prayed that I.A.No.619/2023 may be allowed and the above mentioned witnesses may be summoned for cross examination.

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4. The application has been opposed by the Respondents. Reply to the application has been filed by respondents 2-GNN and No.3-UPAVP. No reply has been filed by other respondents.

5. In its reply respondent No.2 GNN has submitted that the applicants have filed the application for cross- examination of Shri Mahendra Singh Tanwar, S/o Om Prakash Singh Tanwar (the then Municipal Commissioner, Ghaziabad), presently posted as District Magistrate- District Sant Kabir Nagar and Dr. Nitin Gaur (the then Municipal Commissioner, Ghaziabad) presently posted as Vice-Chairman, Hapur Development Authority. The petitioner has not made out any ground as to why above two former officers posted at the Ghaziabad Nagar Nigam are required to be summoned by this Tribunal for cross-examination specially considering the facts that the matter is now listed for final arguments and all the materials on the record/reports as desired by this Tribunal in the requisite format has already been placed before this Tribunal. The applicants have attempted to mislead this Tribunal in para 10 of the application where the applicants have attempted to misinterpret the maps furnished by the Ghaziabad Nagar Nigam and also submitted by the Uttar Pradesh Awas Vikas Parishad and are attempting to make the original application an adversarial litigation between the parties just to settle personal scores. Section 19 of the NGT Act confers power on this Tribunal only and does not give power to the applicant for cross-examination of the officers of the respondent. Before the applicants get to cross-examine the officers of the opposite parties the applicants will have to lead their evidence. After the examination in chief and cross examination of the applicants is over then only the evidence of respondents will start and thereafter only the cross examination can be done. The application is arbitrary, ill-conceived and O. A. No. 287/2022 Amit Kishor & Ors. Vs. UPPCB & Ors.

unknown to either civil or criminal jurisprudence and may be dismissed with costs.

6. In its reply respondent No.3 UPAVP has submitted that written Synopsis was filed by respondent No.3 for the convenience of this Tribunal subsequent to the reservation of judgement. The allegations that there are multiple contradictions in the affidavits filed by the Respondents are not true qua Respondent No. 3. Respondent No. 3 has been clear about its stand taken throughout the various affidavits filed before this Tribunal. Respondent No. 3 has handed over the said Vasundhara Awas Yojana to Ghaziabad Nagar Nigam on 30.10.2002. The maps placed before this Tribunal are true and correct copies of the maps signed by the respective authorities and the onus to explain whether or not there has been an encroachment on the green belt lies on the applicants. The status of the Green Belt subsequent to the handover can be explained by Ghaziabad Nagar Nigam acting in capacity of the maintaining authority. Respondent No. 3 in its affidavit dated 05.09.2022 had stated

that the encroachment upon the green belt must be removed by the Respondent no. 2. However, it is not the position or prerogative of Respondent No. 3 to verify or testify whether or not the Green Belt was encroached upon or destroyed by setting up the vending zone. Whether or not such encroachment or destruction of Green Belt had actually taken place had to be explained by Respondent No. 2 in capacity of the maintaining authority and in case such encroachment had taken place Respondent No. 2 was indeed duty bound to remove the said encroachment. The stand taken by Respondent No. 3 in its affidavit dated 18.11.2022 to the effect that "as per the terms and conditions of the handover contract dated 30.10.2002, the Ghaziabad Nagar Nigam could not have made any changes to the basic structure, use, façade and service O. A. No. 287/2022 Amit Kishor & Ors. Vs. UPPCB & Ors.

provided by the Answering Respondent No. 3 without a prior written permission" is true and is being reiterated. The zonal map as mentioned by the Applicant in para 8 is only a layout map for the entire zone being developed by the Respondent No.3. The Tribunal in its order dated February 22, 2023, directed Respondent No.3 to specifically mention whether land in front of the CWR overhead tank is part of the green belt. Hence a detailed map of Sector 15 was filed. The green belt is interjected by the CWR boundary as shown in the detailed map. The first map was a layout map of the entire area being developed and the latter was a detailed map only of Sector 15. The larger map perhaps does not reflect detailed area and hence inadvertently the entire belt was regarded as a green belt as the map did not show/reflect each sector in a detailed manner. Nevertheless, it has not affected the stand taken by respondent No.3 to the effect that all the existing area of green belt with respect to the present case is free from all encumbrances as on date. Consequently, the affidavit submitted by the officer Sh. Aman Tyagi neither misrepresents anything nor there is any kind of concealment as would be evident from the averments made therein. Moreover, the concerned officer has filed the said affidavit with utmost diligence and sincerity and despite that if there is any inadvertent error on his part, he tenders his unconditional apology to this Tribunal for inconvenience caused, if any. A perusal of the affidavit dated 24.11.2022 would show that there has been no diversion in the stand taken by Respondent No. 3 from its earlier stand as has been alleged by the Applicants. In fact, it has been stated in the said Short Synopsis that so far as the exact location of the Green Belt is concerned, it would be for the concerned authorities to show the exact location. It was also stated that the Ghaziabad Nagar Nigam is the authority to maintain civic amenities in the O. A. No. 287/2022 Amit Kishor & Ors. Vs. UPPCB & Ors.

said area and that it is not the prerogative of Respondent No. 3 either to set up a kiosk or to demolish it. Respondent No. 3 has stated the factual status as per law. Neither any incorrect statement has been made nor anything has been concealed by Respondent No. 3. However, it is very strange that despite everything being clarified by the respective authorities of the Government and appropriate action being taken in this regard, the Applicants are once again trying to mislead and confuse this Tribunal by bringing up issues which are not relevant for the purpose of deciding what has been prayed for as per prayer (a) and (b) of the Original Application. There has been no contradiction in the stand taken by Respondent No. 3 in its affidavit dated 17.04.2023. The said affidavit was filed subsequent to order of this Tribunal dated 21.02.2023 whereby this Tribunal posed a specific question to Respondent No. 3 inquiring whether the land in front of the C.W.R. is a green belt or not. The said affidavit was filed in view of the same clearly stating therein the actual

position at that relevant point of time i.e., that there was no green belt on the CWR boundary. However, the green belt continues on both sides of the CWR interjected by the 18-meter- wide road on the left side of the CWR. There has been no deviation or contradiction in the stance of Respondent No. 3. The attempt of Respondent No. 3 has been to ably assist this Tribunal and in view of the same various affidavits apprising this Tribunal of the status quo have been filed. A collective perusal of the affidavits filed by respondent No. 3 would show that no such contradictions, as has been alleged by the Applicants, surface. However, if this Tribunal finds and deems it fit that for the purpose of adjudication of the present Original Application the issuance of summons to the officer of Respondent No. 3 for the purpose of cross- examination by the Applicants is required and warranted, the Respondent O. A. No. 287/2022 Amit Kishor & Ors. Vs. UPPCB & Ors.

No. 3 shall be duty bound to obey the orders and directions of the Hon'ble Tribunal in letter and spirit.

7. We have heard arguments addressed by learned Counsel for the parties and gone through the material on record carefully.

8. While referring to the factual averments made and alleged contradictions pointed out in detail in I.A. No. 619/2023 Mr. Abhinav Agarwal and Mr. Mayank Arora, learned Counsel for the Applicants have argued that disputed questions of facts arise from the submissions made in the original application and replies filed to the same which have to be adjudicated upon by this Tribunal. Affidavits were filed by Mr. Aman Tyagi, Executive Engineer, UPAVP, Mr. Mahender Singh Tawar and Dr. Nitin Gaur, the then Municipal Commissioner of Ghaziabad Nagar Nigam which have to be treated to be the affidavits in evidence. This Tribunal is empowered to allow cross-examination of any person/authority under Section 19 of the NGT Act. In view of the material contradictions and prevarications in stands taken by respondents no. 2 and 3 on the issues involved in the case, the applicants may be granted opportunity to cross- examine Mr. Aman Tyagi, Executive Engineer, UPAVP, Mr. Mahender Singh Tawar and Dr. Nitin Gaur, the then Municipal Commissioner of Ghaziabad Nagar Nigam and Divisional Director, Social Forestry Division, Ghaziabad. In support of his arguments learned Counsel for the Applicants have placed reliance on the observations in order dated 17.04.2023 passed in O.A No. 652/2022 titled as R.D. Singh Bandral Vs. U.O.I., Standard Chartered Bank Vs. Supreme Infratech Pvt. Ltd., 2023 online Del 807, A. V. T., 2018 SCC online Del 9395, O.A No. 73/2014 titled as All Dimasa Students Union Dima Hasao District Committee Vs. State of O. A. No. 287/2022 Amit Kishor & Ors. Vs. UPPCB & Ors.

Meghalaya, Shramjeevi Cooperative Housing Society Ltd. Vs. Dinesh Joshi & Ors. AIR 2023 SC 1558, State of Uttar Pradesh & Ors. Vs. Uday Education and Welfare Trust and Ors., MANU/SC/1376/2022 and Madhya Pradesh High Court Advocates Bar Association and Ors. Vs. Union of India & Ors., AIR2022SC2713.

9. Mr. Vibhav Mishra, learned counsel for Respondent no. 2- Ghaziabad Nagar Nigam has argued that the applicants have not made out any ground as to why Shri Mahendra Singh Tanwar and Dr. Nitin Gaur, the then Municipal Commissioner, Ghaziabad are required to be summoned by this Tribunal for cross-examination specially when the matter is now listed for final arguments and all

the materials on the record/reports as desired by this Tribunal in the requisite format has already been placed before this Tribunal. The applicants have attempted to mislead this Tribunal and attempted to misinterpret the maps furnished by the Ghaziabad Nagar Nigam and Uttar Pradesh Awas Vikas Parishad and are attempting to make the original application an adversarial litigation between the parties just to settle personal scores. Before the applicants get to cross-examine the officers of the opposite parties the applicants will have to lead their evidence which has not been done. The application has been filed mala fide to delay disposal of the case and the same may be dismissed.

10. Ms. Veera Kaul Singh and Ms. Vibha Bhat learned Counsel for Respondent no.-3-UPAEVP have argued that written Synopsis was filed by respondent No.3 for the convenience of this Tribunal subsequent to the reservation of judgement. The allegations that there are multiple contradictions in the affidavits filed by the Respondents are not true qua O. A. No. 287/2022 Amit Kishor & Ors. Vs. UPPCB & Ors.

Respondent No. 3. Respondent No. 3 has been clear about its stand taken throughout the various affidavits filed before this Tribunal. Respondent No. 3 has handed over the said Vasundhara Awas Yojana to Ghaziabad Nagar Nigam on 30.10.2002. The maps placed before this Tribunal are true and correct copies of the maps signed by the respective authorities. The affidavit submitted by the officer Sh. Aman Tyagi neither misrepresents anything nor there is any kind of concealment as would be evident from the averments made therein. There has been no diversion in the stand taken by Respondent No. 3 from its earlier stand as has been alleged by the Applicants. The relevant Material has been placed before the Tribunal as directed in the course of hearing of the case and the issues involved in the case can be adjudicated upon on the basis thereof. No ground for allowing the applicants to cross examine Sh. Aman Tyagi officer of respondent No.3 is made out. The application has been filed to delay disposal of the original application and I.A. No. may be dismissed.

11. Mr. Pradeep Misra and Mr. Daleep Dhyani learned Counsel for Respondent no. 1- UPPCB and Mr. Bhanwar Pal Singh Jadon, learned Counsel for Respondents no.- 4 & 5-DM, Ghaziabad and Irrigation & Water Resource Department and Mr. Manish Raghav and Mr. Rohit Gour, learned Counsel for Respondents no. - 7 to 48 have argued that the issues involved in the case can be adjudicated upon on the basis of the documents produced on record of the case. This Tribunal is not bound to follow the procedure for trial of Civil Suits. The application has been filed to delay disposal of the original application and I.A. No. may be dismissed.

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12. On due consideration of the material on record and submissions made by the learned Counsel for the parties we are of the view that the application as framed is liable to be dismissed for the reasons hereinafter discussed.

13. In the present case the applicants have filed this original application seeking the following reliefs:

a) Direct the respondents to remove all encroachment like Iron Shops, concretized platform on the green belt of Sector 15 Vasundhara, and restore the green belt to its original form as it was before the encroachment.

b) Direct the respondents to review and restore the 5,50,145 square meters (Five Lakh Fifty Thousand One Hundred and Fourty Five Square Meter) of Green Belt of Vasundhara Yojna as mentioned in the letter of Awas Vikas Parishad to Nagar Nigam Ghaziabad.

c) And pass such order or further order or orders as to your Lordships may seem fit and proper.

14. The application has been opposed by the respondents and in view of the pleadings of the parties following issues arise for adjudication:-

1. Whether green belt was provided in the layout plan and developed by respondent no. 3-UPAVP in Sector - 15, Vasundhara, Ghaziabad which was subsequently handed over to respondent no.

2-GNN as claimed by the applicants?

2. Whether the part of the green belt in question was encroached upon and destroyed by respondent no. 2-GNN by constructing concretized platform and allowing placing of iron shops/kiosks on the same as alleged by the applicants?

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3. If issues no. 2 and 3 are decided in the affirmative, what further remedial measures are required to be taken for restoration of the green belt?

4. Whether some of the iron shops/kiosks were placed on road side land in question which was not part of green belt as claimed by respondents no. 7 to 48?

5. If issue no. 4 is decided in the affirmative then whether any remedial order for restoration of status quo ante is required to be passed by this Tribunal?

15. Section 19 of the NGT Act which specifies the procedure and powers of this Tribunal reads as under:-

"19. Procedure and powers of Tribunal.---(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.

(3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872 (1 of 1872).

(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:--

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

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(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decision;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it

ex parte;

(i) pass an interim order (including granting an injunction or

stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;

(j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;

(k) any other matter which may be prescribed.

(5) All proceedings before the Tribunal shall be deemed to be

the judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

16. It is evident from a bare perusal of the above quoted provision that this Tribunal is not bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) and by the rules of evidence contained in the Indian Evidence Act, 1872 (1 of 1872) and this Tribunal has the power to regulate its own procedure. However exercise of the said power is subject to the provisions of the NGT Act and has to be guided by the principles of natural justice.

17. In the case of Shramievi Cooperative Housing Society Ltd. v. Dinesh Joshi & Ors., AIR 2023 SC 1558, the Hon'ble Supreme Court observed as under :-

"18. A plain reading of Section 19 clarifies that though not bound by the Code of Civil Procedure, the NGT is nevertheless bound by principles of natural justice...."

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18. In State of Uttar Pradesh & Ors. v. Uday Education and Welfare Trust & Ors., MANU/SC/1376/2022, the Hon'ble Supreme Court observed as under:-

"It is more than a settled law that the principles of natural justice are required to be followed even in administrative actions when such actions adversely affected the rights of the citizens. When the learned NGT exercised its judicial powers, it could not have ignored the principles of natural justice, which, even Under Section 19(1) of the NGT Act, it is bound to follow...."

19. In the matter of Madhya Pradesh High Court Advocates Bar Association & Ors. v. Union of India & Ors., AIR 2022 SC 2713, the Hon'ble Supreme Court held that-

"The specialized forum was also made free from the Rules of evidence applicable to normal courts and was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts etc., with specific mandate to observe the principles of natural justice...."

20. For the purposes of discharging its functions under the NGT Act, this Tribunal has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the matters specified in Sub Section (4) of Section 19 of the NGT Act. This Tribunal has the power of the Civil Court for (i) requiring the discovery and production of documents; (ii) requisitioning any public record or document or copy of such record or document from any office subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872); (iii) receiving evidence on affidavits; (iv) summoning and enforcing the attendance of any person and examining him on oath O. A. No. 287/2022 Amit Kishor & Ors. Vs. UPPCB & Ors.

and (v) issuing commissions for the examination of witnesses or documents.

21. In O.A. No. 652/2022 titled as R D Singh Bandral vs UOI where such adjudication was called upon, this Hon'ble tribunal vide order dated 17.04.2023 summoned the witnesses and allowed their examination and cross-examination.

22. In o.A. No. 73 of 2014 titled as All Dimasa Students Union Dima Hasao District Committee v. State of Meghalaya, Eastern Zone Bench of this Tribunal observed as under:-

"Since the Tribunal is exercising the jurisdiction vested in it under Section 14 and 15 of the NGT Act, 2010 and in accordance with the provision of the Section 19 of the Act read with ATG7' Practice Rules. It would be necessary to follow a procedure that is in consonance with principle of natural justice and parties be given due hearing. Consequently, we grant liberty to all the parties/applicants to file the list of witnesses which they wish to examine in support of their case within two weeks from today with advance copy to all the counsel appearing in the case. Along with the list they shall also file affidavit of the witnesses which they wish to examine unless and until they wish to summon these witnesses through trial process of the Tribunal. Liberty is granted to summon such witnesses as well. The witnesses whose affidavit are filed by the respective parties shall be present for examination/ cross examination before the Tribunal on the next date of hearing."

23. Section 135 of the Indian Evidence Act, 1872 lays down that the order in which witnesses are to be produced shall be regulated by the law and practice for the time being relating to Civil and Criminal Procedure respectively. The order of examination of witnesses involves two things:

(1) which party is to examine his witnesses first and (2) in what order the witnesses are to be examined by a party. Order XVIII of C.P.C and the Chapters XVIII, XX, XXI, XXII and XXVIII of Cr.P.C deal with the manners of the examination of witnesses. In civil cases the party who has O. A. No. 287/2022 Amit Kishor & Ors. Vs. UPPCB & Ors.

the right to begin, i.e., on whom the burden of proof lies examines his witnesses first. In criminal cases the prosecution has to examine its witnesses first. A witness summoned in civil case has to be examined first by the party summoning him and such examination by the party is called his examination-in-chief and after examination-in-chief the witness is to be subjected to cross-examination and in appropriate case the witness can be re-examined. After the party calling a witness has finished his examination-in-chief or tendered his affidavit in evidence, the opposite party has a right to cross-examine the witness. Cross- examination, if properly conducted, is one of the most useful and efficacious means of discovering the truth.

24. The provision of cross-examination is not merely a technical rule of evidence; it is a rule of essential justice. It serves to prevent surprise at the trial and miscarriage of justice because it gives notice to the other side of the actual case that is going to be made when the turn of the party, on

whose behalf the cross-examination is being made, comes to give and lead evidence by producing witnesses. The right to cross-examine is an integral part of principles of natural justice and also a very valuable and inalienable right of a party before the Civil Court as held in *Standard Chartered Bank v. Supreme 1 Infratech Pvt. Ltd.*, 2023 SCC OnLine Del 807 and *A. P. T.*, 2018 SCC OnLine Del 9395 and the same cannot be denied or allowed to be defeated. Therefore, a party has to be given a fair chance to cross-examine the witnesses of the opposing party.

25. The question of cross-examination of a witness arises only after his examination by the party summoning/tendering him by recording of his O. A. No. 287/2022 Amit Kishor & Ors. Vs. UPPCB & Ors.

examination-in-chief or tendering of his affidavit in evidence and the question of summoning of any person, not examined as witness by recording of his examination-in-chief or tendering of his affidavit in evidence, for cross examination does not arise. There is no provision in Indian Evidence Act, 1872 for permitting a witness to be tendered for cross-examination without his examination-in-chief or tendering of his affidavit in evidence and practice of tendering or summoning any person for cross-examination without his examination-in-chief or tendering of his affidavit in evidence will be violative of the provisions of the Indian Evidence Act, 1872.

26. It may also be observed here that the practice of calling the defendant as witness to give evidence on behalf of plaintiff has been deprecated/condemned by the courts. Reference in this regard may be made to judgments in *Kishori Lal Vs. Chuni Lal* (31 ALL 116) (PC) and *W.P. No. 1673/2011* titled as *Suresh Sahebrao Tawale Vs. Uttam Shankar Ghadge* decided on 06.08.2012 (Bombay High Court),

27. It follows that the right to cross examine cannot be exercised to question any opponent or person who is not summoned for examination as witness and examination of such person as a witness is condition precedent to exercise of right of cross examination.

28. In the present case no affidavit was filed by the Divisional Director, Social Forestry Division, Ghaziabad. Even though in the present case affidavit dated 05.09.2022 was filed by Mr. Aman Tyagi, Executive Engineer, C.D. Ghaziabad-I, U.P. Avas Evam Vikas Parishad, Vasundhara, Ghaziabad, affidavit dated 26.07.2022 was filed by Mr. Mehender Singh Tawar, the then Commissioner, Ghaziabad Nagar Nigam O. A. No. 287/2022 Amit Kishor & Ors. Vs. UPPCB & Ors.

and affidavit dated 19.11.2022 was filed by Dr. Nitin Gaur, the then Commissioner, Ghaziabad Nagar Nigam but said affidavits were not tendered in evidence for the simple reason that the parties were not called upon to produce evidence. The affidavits filed by them by way of replies at the preliminary stage cannot be treated to have been tendered in evidence and the deponents thereof cannot be treated to have been examined as witnesses. Therefore, the above said persons cannot be summoned for their cross-examination as sought by the applicants.

29. In view of the above discussion I.A, No.619/2023 filed by the applicants for summoning the officers named in the application for cross examination is dismissed.

30. Since this Tribunal is exercising the jurisdiction vested in it under Sections 14 and 15 of the NGT Act and in accordance with the provisions of the Section 19 of the NGT Act and is mandated to follow a procedure that is in consonance with principles of natural justice and parties have to be given due hearing, the parties are granted liberty to produce evidence in support of their respective pleadings and are directed to file the list of witnesses which they wish to examine and list of documents which they want to produce in support of their respective pleadings on or before 05.01.2024 with advance copy to other Counsel appearing in the case.

31. List on 10.01.2024 for further proceedings.

Arun Kumar Tyagi, JM Dr. Afroz Ahmad, EM December 22nd 2023 ag