

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,

SOUTHERN ZONE BENCH, CHENNAI

O.A. No. 102 of 2020

IN THE MATTER OF:

Nishanth Gopal

.....Applicant

Vs

Union of India & Ors

.....Respondents

**COUNTER AFFIDAVIT ON BEHALF OF THE MINISTRY OF
ENVIRONMENT, FOREST AND CLIMATE CHANGE (RESPONDENT No.
1)**

MOST RESPECTFULLY SHOWETH:

I, Dr. S. PRABHU s/o Shri Late K. SUBRAMANI, aged about 39 years, presently working as Scientist - C in the Ministry of Environment, Forest & Climate Change (hereinafter referred to as MoEFCC), Integrated Regional Office (SZ), Bangalore do hereby, in my official capacity, solemnly affirm and state on oath as follows-

1. That I am authorized to swear the present affidavit on behalf of the MoEFCC on the basis of the official records maintained therein.
2. It is submitted at the very outset that the Respondent No. 1 denies each averment and/or submission made in the application which is contrary to and inconsistent with the averments made and facts stated in the present reply. It is submitted that the nothing stated in the application may be deemed to have been admitted by the



Respondent No. 1 unless and until the same is expressly admitted in the present reply.

3. That a short affidavit is being filed by the answering respondent at this stage and craves leave and liberty to file a detailed Counter Affidavit to the aforesaid application, as and when required.
4. That the applicant has challenged the illegal mining and transportation of mineral sand (major mineral) from Thottappally Estuary/Pozhi mouth located at Alappuzha District, Kerala. The applicant has further alleged that the Respondent No. 7 i.e. Kerala Minerals & Metals Ltd. & Respondent No. 8 i.e. The Assistant Manager (Kerala Minerals & Metals Ltd.) has been extracting 2 lakh metric tone of mineral sand in violation of Environment Impact Assessment Notification, 2006 ("EIA") & without obtaining any requisite permissions & licenses.
5. The applicant inter-alia has prayed for prohibitory directions for Respondent No. 7 & 8 thereby stopping them from carrying out any extraction and transportation of mineral sand without obtaining the requisite permissions and licenses.
6. That the applicant has not sought any direct relief from the answering Respondent in the case in the prayer clause.
7. That the Respondent Ministry has issued the EIA Notification dated 14thSeptember, 2006 under the provisions of the Environment (Protection) Act, 1986. The EIA Notification, 2006 requires certain projects to obtain prior Environment Clearance ("EC") before any construction work in case of new projects or expansion and modernization of existing projects or activities. The Schedule to the Notification details the categories, projects or activities, which



require prior EC. Further, the projects and activities are broadly categorized into Category "A" and Category "B", based on the spatial extent of potential impacts on human health, natural and man-made resources.

8. That that all projects or activities included as Category 'A' in the Schedule shall require prior EC from the Central Government in MoEF&CC on the recommendations of an Expert Appraisal Committee ("EAC") to be constituted by the Central Government. Whereas projects or activities included as Category 'B' shall require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority ("SEIAA") based on the recommendations of a State or Union territory level Expert Appraisal Committee ("SEAC"). In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project.
9. That the process for grant of EC involves the EACs at the Central Government, SEACs at the State or Union territory level to screen, scope and appraise projects or activity in Category 'A' & 'B' respectively. Further, while according the EC, the EAC stipulates the necessary conditions for safeguarding the environment. The EC is a process which involves 4 (four) stages which are: Stage (1) - Screening; Stage (2) - Scoping i.e. prescribing Terms of Reference ("TOR") for undertaking detailed Environment Impact Assessment Studies; Stage (3) - Public Consultation to be conducted by the respective State /UT Pollution Control Board/Committee and Stage (4) - Appraisal by the EAC as per the provisions prescribed in the



EIA Notification, 2006 notified under Environment (Protection) Act, 1986.

10. That it is humbly submitted the Respondent Ministry has formulated the new guidelines i.e. "Enforcement & Monitoring Guidelines for Sand Mining" (EMGSM-2020) supplemental to the existing guidelines i.e. Sustainable Sand Management Guidelines 2016 (SSMG-2016), which focus on the effective monitoring of the sand mining since from the identification of sand mineral sources to its dispatch and end-use by consumers and the general public. Further, this document will serve as a guideline for collection of critical information for enforcement of the regulatory provision(s) and also highlights the essential infrastructural requirements necessary for effective monitoring for Sustainable Sand Mining.
11. That as per the Coastal Zone Regulation ("CRZ") Notification, 2011, para 3(x), mining of sand, rocks and other sub-strata materials are prohibited in the CRZ areas.
12. That it is humbly submitted that for the purpose of implementation and enforcement of the provisions of the CRZ Notification, 2011 and compliance with the conditions stipulated there under, the powers either original or delegated area are available under the Environment Protection Act, 1986 with the State Government and the State Coastal Zone Management Authorities (SCZMAs). The composition, tenure, mandate of State/UT CZMAs, have been notified from time to time by the Ministry. The main function of these Authorities include amongst others, to enquire into the case of alleged violation of the provisions of the CRZ Notification, 2011 and



take appropriate action under Section 5, 10 & 19 of the Environment (Protection) Act, 1986.

13. That the comprehensive management of the coastal areas of the country is provided through the Coastal Zone Management Plan (CZMPs) in accordance with the provisions and regulations of the CRZ Notification.
14. It is humbly submitted that State Governments are empowered under Section 23C of the Mines and Minerals (Development and Regulation) Act, 1957 [MMDR Act, 1957] (as amended till date) to make Rules for prevention of illegal mining, transportation and storage of minerals. Further, it may also take decisions for regulation, management and development of mineral reserves in a state. Furthermore, it is submitted that the State Department of Mines and Geology is the nodal authority entrusted with the enforcement and regulation of mining operations in a State including illegal mining.
15. That it is humbly submitted that State Pollution Control Board is the nodal authority in the State for dealing with cases related to pollution or environment management coming under the purview of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act 1986.
16. That in view of the aforementioned facts and circumstances, this Hon'ble Tribunal may kindly be pleased to pass appropriate order(s).


DEPONENT

VERIFICATION

Verified at Bangalore on this 12th day of October 2020 that the contents of this affidavit based on official record(s) maintained and information available in the office are true and correct, no part of it is false and nothing has been concealed there from.



DEPONENT

Dr. S. PRABHU
Scientist 'C'

Ministry of Environment, Forest and Climate Change,
Regional Office, South Zone,
Kendriya Sadan, 4th Floor, Koramangala
Bangalore-560 034.

Attested by
Ch. Murali Krishna

Dr. Murali Krishna Chmata
Scientist "D"
Ministry of Environment, Forest & Climate Change
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