

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, ZONAL

BENCH, AT CHENNAI

Original Application (OA) No.102 of 2020

Nishant Gopal

:

Applicant

vs.

Union of India & Others

:

Respondents

COUNTER AFFIDAVIT FILED BY THE 4TH RESPONDENT AND 5TH

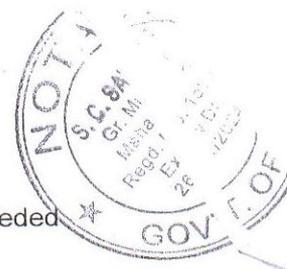
RESPONDENT

I, Shri. Shekhar V. Chavan S/o Vishnu N. Chavan aged about fifty-seven years, working as Under Secretary, Department of Atomic Energy (DAE), Anushakti Bhavan, C.S.M. Marg, Mumbai, do hereby solemnly state and sincerely affirm as under:

2. I am the Under Secretary(I & M) in the Department of Atomic Energy, Govt. of India, the 4th Respondent in the present writ petition. I am conversant with the facts and circumstances of the case as disclosed from the files. I am competent to swear this affidavit on behalf of the 4th and 5th Respondents having been authorised to do so. All the averments contained in the Original Application, except to the extent expressly admitted hereunder, are incorrect, untrue and hence denied. At the very outset, it is most respectfully submitted that the above application is not maintainable either in law or on facts.

3. It is respectfully submitted that this affidavit is being filed for the limited purpose of clarifying on the applicability of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred as **MMDR Act**)

Shekhar V. Chavan
24/11/2024



and the Rules there under in the present facts and circumstances. If needed the respondents reserve the right to file a detailed Counter in the matter.

4. It is submitted that the above original application has been filed inter-alia for direction to the Respondent No. 7 not to proceed with the work of mechanized loading and transportation of mineral sand from Thottappally Pozhi mouth on the premise that the activity being carried out is mining and transportation of mineral sand to which the MMDR Act and the Atomic Minerals Concession Rules, 2016 (herein after referred as AMCR, 2016) apply.

5. It is submitted that from the given background it is seen that G.O.(Rt) 385/2019/WRD dated 31.05.2019 has been issued by Respondent No. 3, Government of Kerala in favour of Respondent No. 7, Kerala Minerals and Metals Ltd. (KMML), for removal of mineral sand from "Thottappally Spillway Channel and Spillway mouth" to deepen and widen the Spillway and to remove the sand in the leading channel to facilitate free flow of water to ensure the safety of the people and to avoid any flooding in Kuttanadu area as a disaster management. The work essentially entails removal of sand deposited on the mouth of the 'Pozhy', which happens to contain atomic minerals. Removal of these minerals by the Respondent No.7, a State Public Sector Undertaking, so as to ensure that no minerals in the sand are wasted or frittered away does not fall within the meaning of Section 3 (d) of the MMDR Act which defines "mining operations" as operations undertaken for the purpose of winning any mineral. It is reiterated that the issuance of Government order dated 31.05.2019 is not for the purpose of winning any mineral but as safety measure to control seasonal flooding in the low-lying areas as per the recommendation of Swaminathan Report. Such specialized operations of flood control taken up in the interest of public safety and to safeguard the national property on need basis do not come under the ambit of the MMDR Act or the Rules made there under and hence,

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18/12/2021
har V. Chavan
Secretary
Department of Atomic Energy

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23/8/2021
Officer
B. BOSE
Director
Department of Atomic Energy
Shakti Bhavan,
Mumbai - 400 001.

Chavan
23/8/2021

8. Hon'ble High Court of Kerala in W.P. No. 11060/2020 vide order dated 15.06.2020 has made the observation that:

"..... the present activity in the area cannot be said to be an activity involving mining or quarrying as understood in the MMDR Act and the Rules framed there under. Further that, both the 2nd respondent KMML and the IREL have valid licence in that regard to deal with such minerals, issued by the competent authority of the AERB....."

Same was also perused by Hon'ble NGT in its order dated 15.07.2020.

9. It is further submitted that as per the MoEF & CC, Govt. of India, notification dated 28.03.2020, under Clause 7 of Appendix 9 "dredging and desilting of dams, reservoirs, weirs, barrages, rivers and canals for the purpose of their maintenance, upkeep and disaster management" are exempted from the requirement of environmental clearance.

10. In the light of the above facts and circumstances, the petitioner is not entitled for any of the reliefs sought for in the Original Application and the Original Application is liable to be dismissed with costs.

11. All the facts stated above are true and correct to the best of my information, knowledge and belief.

Dated this the 23rd day of August, 2021

ORIG. PAN CARD / AADHAR CARD / DRIVING LICENCE
VOTERS ID No.....SEEN & RETURNED

J.P. 959, Dept of Atomic Energy

Chavan
शेखर वी. चव्हाण / Shekhar V. Chavan
अपर सचिव / Under Secretary
परमाणु ऊर्जा विभाग / Department of Atomic Energy

Solemnly affirmed and signed before me by the deponent, who is

personally known to me on this the 23rd day of August, 2021 in my office at

Mumbai.

BEFORE ME

शेखर वी. चव्हाण

S. C. SAWANT
B.Com., L.L.B.
NOTARY GOVT. OF INDIA
Regd. No. 15639
101, Visaria Chambers, 1st Floor,
74, Janmabhoomi, Fort, Mumbai-1.

Bose
23/8/2021
Attesting Officer

एस. बी. बोस / S. B. BOSE
निदेशक / Director

भारत सरकार / Government of India
परमाणु ऊर्जा विभाग / Department of Atomic Energy
अणुशक्ति भवन / Anushakti Bhavan,
छ.शि.म. मार्ग, मुंबई / C.S.M. Marg, Mumbai - 400 001.

Noted & Registered

Reg. No. 14
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Date 23/8/2021

