

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SOUTH
ZONE)
AT CHENNAI
Original Application No. 129/2021

IN THE MATTER OF

Daniel Sukumardas

.....Applicant

Vs.

Union of India and
Others

...Respondent(s)

AFFIDAVIT ON BEHALF OF UNION OF INDIA THROUGH MINISTRY
OF ENVIRONMENT, FOREST AND CLIMATE CHANGE (RESPONDENT
NO.1 and 2)

1. I R. Padmawathe D/o G. Ramakrishnan aged 44 years working as Deputy Inspector General of Forests (Central) in Ministry of Environment, Forest and Climate Change (hereinafter referred as 'MoEF&CC'), and as such I am fully aware of the facts and circumstances of the case from the relevant records available in this office. I further state that the present affidavit is being filed after perusing the office records, which to my knowledge are true and correct, and I am authorized to file this affidavit on behalf of the Respondent No. 1 (MoEF&CC).

Padma

2. That I have perused the contents of the petition filed by the petitioner and I am duly authorized to depose by way of the present affidavit. At the outset, I deny all the averments by the petitioner except those that are specifically admitted here in.
3. It is humbly submitted that in case the Hon'ble Tribunal desires technical/specialized information, an expert from the Ministry can be produced subject to the direction of the Hon'ble Tribunal.

Statement of Facts

1. It is humbly submitted that the 'land' is a subject matter of State Government. The forest areas and the legal boundaries thereof are determined and maintained by the concerned State Government. That, *inter-alia*, being the repository of land records, State Government has the primary responsibility to determine status of any parcel of land, giving due regards to gazette notifications, provisions under State and Central Acts and concerned judgements and directions of the Hon'ble Supreme Court.
2. That to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto, the Parliament in the Thirty-

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First Year of the Republic of India enacted the Forest(Conservation) Act, 1980 ("FC Act", for short). FC Act came into force on 25th October, 1980.

3. That section 2 of the Forest (Conservation) Act, 1980 ('FC Act', for short) provides that;

"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 organisation 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 reforestation.

4. It is submitted that the Hon'ble Supreme Court vide interim order dated 12.12.1996 in W.P.No.202/95 has issued explicit directions for cessation of all non-forestry activities going on in forest area without prior approval of Central Government. The Apex Court vide order referred to above has stated that the word "Forest" must be understood according to its dictionary meaning and also the term 'forest land' occurring in Section '2' of Forest (Conservation) Act, 1980 will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the Government records irrespective of ownership or classification thereof.

Parawise Reply to the Facts

1. That in response to the contents of Para No.1 & 2, this answering respondent has no comments to offer.
2. In reply to the contents of Para No.3, it is submitted that as per Sub Rule 4 (a) of Rule 6 (4) of Forest (Conservation) Rule, 2003 (as amended in 2017), proposal involving forest land up to forty hectares and all proposals related to linear projects irrespective of the area of forest land involved, shall be forwarded by the concerned State Government or the Union Territory

Administration, as the case may be along with its recommendations to the concerned Regional Office.

Further, as per Sub Rule 2 (c) & 2 (d) of Rule 7 of Forest (Conservation) Rule, Regional office shall refer all proposals involving forest land above 5 hectares and up to forty hectares, proposals relating to mining, encroachments, and hydel projects involving forest land up to 5 hectares, and all proposals related to linear projects which are complete in all respect, including site inspection report, wherever required, to the Regional Empowered Committee within ten days of receipt from the State Government or the United Territory Administration, as the case may be. The Regional Empowered Committee shall within a period of thirty days examine the proposal referred to it and after such further enquiry as it may consider necessary, grant in-principle approval to the proposals other than proposals relating to mining, encroachment and hydel projects subject to fulfillment of stipulated conditions, or reject the same and the Regional Office shall communicate the decision of the Regional Empowered Committee to the concerned State Government or the United Territory Administration, as the case may be, within next five working days.


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In view of the aforementioned provision the proposals under question herein have been considered by the Regional Empowered Committee (REC) of Integrated Regional Office, Bangalore and as per the recommendations and approval of REC, this answering respondent had accorded in-principle approvals (Stage-I) for the following projects vide letter dated 04.02.2021:

1. *Diversion of 1.9089 ha of forest land for Kulem–Madgaon Railway Doubling Track under South Goa Forest Division in favour of (South Western Railway) Rail Vikas Nigam Ltd.*
2. *Diversion of 15.6077 ha of forest land for Kulem–Madgaon Railway Doubling Track under Wildlife & Eco-Tourism (North) and North Goa Forest Division in favour of (South Western Railway) Rail Vikas Nigam Ltd.*
3. *Diversion of 120.875 ha of forest land for Castlerock to Kulem Railway Doubling Track under Wildlife & Eco-Tourism (North) and North Goa Forest Division in favour of (South Western Railway) Rail Vikas Nigam Ltd.*
4. *Diversion of 10.45 ha of forest land in Devalli, Kalambuli and Konashet villages in Kyasalaraka Hobli, Joida Taluk, Uttara Kannada District (Haliyal Forest Division and Kali Tiger Reserve) for doubling of Tinaighat-Castlerock-Carzon Railway Lane (Southern Western Railways) in favour of Chief Engineer (Construction), Club Road, Keshwapur, Hubballi, Dharwad District.*

The action taken by this answering respondent is based on the delegation of power conferred in FC Rule 2003 as mentioned above.

It is further submitted that though three different proposals were submitted by the Government of Goa and one proposal by Government of Karnataka,

these proposals were considered in its entirety during the Regional Empowered Committee meeting held on 25.02.2020 and 27.01.2021.

Also, as per para 11.2 of Comprehensive guidelines issued by this answering respondent, consequent to grant of Stage-I approval in respect of linear projects such as laying of new roads, widening of existing highways, transmission lines, water supply lines, optic fiber cabling, railway lines etc. by the Central Government under FCA, the State Government or a Senior Officer not below the Rank of a Divisional Forest Officer, having jurisdiction over the forest land proposed to be diverted, duly authorized in this behalf by the State Government can pass an order for tree cutting and commencement of work of a linear project in forest land for a period of one year subject to full realization of funds for compensatory afforestation, Net Present Value (NPV), wildlife conservation plan, plantation of dwarf species of medicinal plants, and all such other compensatory levies, specified in the Stage-I (in-principle) approval from the User Agency, and wherever applicable, transfer and mutation of non-forest/ revenue forest land in favour of State Forest Department.


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In view of the above, the trees felling can be carried with permission of the designated officer authorised by the State Government and with the fulfilment of the conditions stated above.

3. That in response to the contents of Para No. 4 to 6 this answering respondent has no comments to offer.
4. That in response to the contents of Para No. 7, as stated in para No. 3 above, the respondent No.5 can commence the work only with the permission / order issued by the designated officer as authorised by the State Government. If the respondent No. 5 commences the work without required permission from the concerned authority, he will be liable for prosecution under the relevant State Act and Rules.
5. No comments to offer to the contents of Para No. 8 as the para is incomplete.
6. That in response to the contents of Para No. 9, it is further submitted that though three different proposals were submitted by the Government of Goa and one proposal by Government of Karnataka, these proposals were considered in its entirety during the Regional Empowered Committee

meeting held on 25.02.2020 and 27.01.2021. Accordingly, Stage-I approvals have been accorded to the afore-mentioned proposals on 04.02.2021.

7. In reply to the contents of Para No. 10, the Regional Empowered Committee in its meeting dated 27.01.2021 noted that the existing Railway line is more than 100 years old and is in need of upgradation not only from Railway's perspective to cater to emerging needs, but also to incorporate needs of wildlife passage. Therefore, while approving the projects, REC has stipulated following additional conditions;

- *The mitigation measures as proposed by Wildlife Institute of India (WII) in Tinaighat to Caranzol stretch of the forests needs to be strictly adhered to.*
- *The mitigation measures as proposed by CES, IISc in Caranzol to Kulem stretch of the railway track must be implemented for safe passage of animals.*
- *Suitable soil moisture conservation works needs to be taken up on either side of the track, wherever vulnerable.*
- *To address the apprehensions of the people as well as to prevent spillage of ore, coal, etc., all the rakes of the freight trains shall have a spill proof sealed cover, while being transported .*
- *The Management Plan of the National Park and Wildlife Sanctuary, which is under preparation, shall include the implementation and monitoring of the mitigation measures suggested by the CES, IISc, Wildlife Institute of India and CWLW based on which approval of NBWL has been accorded.*
- *Further, provision for long term monitoring of the impact of the project, the effectiveness of the mitigation measures undertaken and analysis of course-corrections required if any should be part of the Management Plan to ensure long time well-being of the forests & wildlife.*
- *The Railway authorities shall issue standing instructions to its staff and officers concerned to closely co-ordinate and co-operate with the local State Forest Department officials during and after the project implementation.*

8. In reply to the contents of Para No. 11, it is submitted that the Standing Committee of NBWL in its 56th meeting held on 17.12.2019 had recommended the proposal for doubling of Railway passes through Bhagavan Mahaveer Wildlife Sanctuary and National Park subject to certain conditions. Further, the 60th meeting of Standing Committee of NBWL held on 05.01.2021 has recommended the Railway doubling project passes through Kali Tiger Reserve subject to certain conditions.
9. In reply to the contents of Para No. 12, it is submitted that the Regional Empowered Committee has stipulated additional mitigation measure including soil moisture conservation on either side of the track, wherever vulnerable to minimize negative impacts on hydrology of the area.
10. In reply to the contents of Para No. 13, it is submitted that in pursuant to the direction of Hon'ble NGT dated 15.2.2016 in MA No. 1167 of 2015 (I.A. No. 3620/2013) this respondent had constituted a Committee vide O.M. No. 11/04/2016-RE-ESZ dated 15.09.2017 to conduct a comprehensive study to assess the carrying capacity of the Western Ghat Region in the State of Karnataka to sustain the projects proposed in the region. Accordingly, Committee has conducted the study and submitted its report to the respondents for further action.

11. That in response to the contents of Para No. 14 & 15 this answering respondent has no comments to offer.
12. In reply to the contents of Para No. 16 & 17, that while issuing the Stage-I approval, this answering respondent has stipulated that suitable mitigation measures to be undertaken in vulnerable areas on either side of the track.
13. In reply to the contents of Para No. 18 to 20, it is submitted that as per the EIA notification 2006, Railway Projects are exempted from requirement of Environmental Clearance. It is also submitted that construction of Railway line/ upgradation is not prohibited as per the notification dated 13.11.2013 issued by this answering respondent.
14. In reply to the contents of Para No. 21, it is submitted that the Standing Committee of National Board for Wildlife (SC-NBWL) in its meeting held on 5th October, 2020 has considered the recommendations made by NTCA and based on the recommendation of NTCA, SC-NBWL has decided to request Director WII to conduct a detailed study for prescribing mitigation measures in the terrain. Accordingly, WII has conducted a study and proposed certain mitigation measures which is part of the condition stipulated while according Stage-I approval.

15. In reply to the contents of Para No. 22 it is submitted that the custodian of forest land is concerned State Governments. Government of Karnataka and Government of Goa had submitted proposals under F(C) Act, 1980 in respect of Railway line passing through forest areas for its doubling. Accordingly, the said proposals were considered and accorded Stage-I approvals.
16. In reply to the contents of Para No. 23 & 24, it is submitted that as per the proposals submitted for forest diversion, total number of trees enumerated in the forest in Karnataka portion is 5639 (3542 trees in area proposed for diversion and 2097 trees existing of Right Way of the present Railway line) and in Goa portion it is 22,882. The averment herein is not based on the facts.
17. In reply to the contents of Para No. 25, it is submitted that as per the tree enumeration carried by the State Forest Departments number of trees existing in the project area is 28,521 only.
18. That in response to the contents of Para No. 26, this answering respondent has no comments to offer.

19. That in reply to the contents of Para No. 27, it is submitted that the Forest (Conservation) Rule notified by Ministry on 14.03.2014 has been further amended vide notifications dated 10.10.2014 and 06.03.2017. As per Sub Rule 4 (a) of Rule 6 (4) of Forest (Conservation) Rule, 2003 (as amended in 2017), proposal involving forest land up to forty hectares and all proposals related to linear projects irrespective of the area of forest land involved, shall be forwarded by the concerned State Government or the Union Territory Administration, as the case may be along with its recommendations to the concerned Regional Office.

Further, as per Sub Rule 2 (c) & 2 (d) of Rule 7 of Forest Conservation Rule as amended upto March, 2017, Regional Office shall refer all proposals involving forest land above 5 hectares and up to forty hectares, proposals relating to mining, encroachments, and hydel projects involving forest land up to 5 hectares, and all proposals related to linear projects which are complete in all respect, including site inspection report, wherever required, to the Regional Empowered Committee within ten days of receipt from the State Government or the United Territory Administration, as the case may be.

The Regional Empowered Committee shall within a period of thirty days examine the proposal referred to it and after such further enquiry as it may consider necessary, grant in-principle approval to the proposals other than proposals relating to mining, encroachment and hydel projects subject to fulfilment of stipulated conditions, or reject the same and the Regional Office shall communicate the decision of the Regional Empowered Committee to the concerned State Government or the United Territory Administration, as the case may be, within next five working days.

In view of the aforementioned provision, the proposals under question have been considered by the Regional Empowered Committee (REC) of Integrated Regional Office, Bangalore and as per the recommendations and approval of REC, this respondent has accorded in- principles approvals (Stage-I) for the said projects vide letter dated 04.02.2021. The action taken by this answering respondent is based on the delegation of power conferred in FC Rule 2003 as mentioned above.

The provision quoted by the petitioner that - The Regional Office shall however seek prior clearance of the Ministry of Environment, Forests and Climate Change whenever the proposal involves clear-felling of forest land having crown density above forty per cent irrespective of the area involved,

or clear-felling of forest area of size more than twenty hectares in the plains and ten hectares in the hilly region, irrespective of density pertains to clear felling of trees in forest land for using it for re-afforestation as per section 2 (iv) of Forest (Conservation) Act, 1980. The above clause does not relate to diversion of forest land under section 2 (ii) of Forest (Conservation) Act 1980.

20. It is submitted that the contents of Para No. 28 are not true, hence denied. The REC is empowered to approve linear projects irrespective of area to be diverted as per Forest (Conservation) Second Amendment Rules, 2014. These are further amended in 2017 vide notifications dated 06.03.2017.
21. In reply to the contents of Para No. 29 & 30, it is submitted that the user agency has submitted Cost-Benefit analysis report in respect of proposals pertaining to diversion of 10.45 ha of forest land in Uttara Kannada district and diversion of 120.875 ha of forest land in North Goa Forest Division.

Reply to the grounds:

22. All the proposals received for diversion of forest land under Forest (Conservation) Act, 1980 for railway doubling project of Hospet-Tinaighat-

Castlerock-Kulem-Vasco proposals have considered in its entirety by the Regional Empowered Committee (REC) of Integrated Regional Office, Bangalore and as per the recommendations and approval of REC, this answering respondent has accorded in- principle approvals (Stage-I) for the said projects vide letter dated 04.02.2021. The action taken by this respondent is based on the delegation of power conferred in Forest (Conservation) Rule, 2003.

23. That, the answering respondent reserves the right to file additional information before the Hon'ble Tribunal, if required till *Pendent elite*.
24. Thus in light of the above submissions, it is most humbly prayed that this Hon'ble Tribunal may kindly dismiss the instant application or pass such order(s) as deemed fit and proper in the facts and circumstances of the case.


DEPONENT

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VERIFICATION:

I, the above named deponent do hereby verify that the contents of the above affidavit are true and correct to my knowledge and are based on official records and nothing material is concealed therein.

Verified at Bengaluru on this 13th Day of September 2021.


DEPONENT

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