

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI
MEMORANDUM OF APPLICATION
(Under Section 18 (1) read with Section 14,15 of the National Green
Tribunal Act, 2010)

Original Application No. 130 of 2020

G.Joseph

... Applicant

Vs.

The Union of India & anr

... Respondents

Memo filed on behalf of the applicant in response to the report filed by
the MoEF &CC

The applicant submits as follows :

1. The "report" filed by the MoEF & CC in the present matter does not address the contentions raised in the application and is neither a merits review or procedural review of the impugned clearance. The report merely quotes the project proponent's reply and then provides a table of EC conditions compliance. Both of which are irrelevant to the present application.
2. The merit of the grant of the impugned clearance, the EIA reports etc are subject matter of Appeal 144 of 2016. The contentions raised in the application with elaborate supporting documents, studies, research papers, judgments etc go to prove that the MoEF &CC has failed to apply its mind, "appraise" the project as mandated under the EIA Notification, 2006 and has failed to notice the shortcomings and illegalities in the EIA reports filed by the project proponent and the MoEF &CC has subverted the process of the EIA Notification, 2006 in issuing environmental clearance to the project. Elaborate hearings have been completed in Appeal No. 144 of 2016 which has been

reserved for orders and this applicant has filed detailed written submissions which may be read as part and parcel of this affidavit.

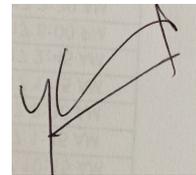
3. This Hon'ble Tribunal in its order dated 31.07.2020 directed the MoEF & CC to visit the project site, consider the merits in the averments in the application etc while filing its report.
4. However, in the report that has been filed by the MoEF & CC - THERE HAS BEEN NO CONSIDERATION OF THE AVERMENTS IN THE APPLICATION BY THE MoEF&CC. The MoEF states they visited the project site on "10.09.2020 and the **"project proponent furnished a para wise reply to the allegation made in the application as follows:" and proceeds to state the project proponent's reply from para 3 (a) to 3 (f).**
5. It is submitted that the MoEF & CC has failed to note blatant suppression of facts by the project proponent in the EIA reports , filing of false information in the form I , EIA reports and obtaining the impugned EC by fraud, all of which imposes an obligation on the MoEF & CC to revoke the clearance as mandated by clause 8(vi) of the EIA Notification, 2006 and condition No. 9 of the impugned clearance.
6. It is submitted that the project proponent's reply to averments made by the applicant ought not to form part of the MoEF&CC's report as what was sought from the MoEF&CC is its application of mind to the averments raised and reply to the same. There is no purpose served in simply producing the project proponent's reply in the report and this in fact goes to show how the project proponent and the MOEF &CC are acting collusively, contrary to the MoEF&CC's statutory role to act as the regulator.
7. It is submitted that detailed response to the "replies" given by the project proponent are part of the written submissions filed in Appeal 144 of 2016 and the same may be read as part and parcel of the present reply. In short,
 - (i) 3(a) - Change of coal is illegal and contrary to the EC and to the modelling in the EIA report

- (ii) 3(b) - The EIA and EMP reports suppresses presence of endangered species like dugong, dolphins, turtles, , suppresses the biodiversity of the palk bay region including avi fauna diversity by suppressing the fact that more than 130 species of birds have been reported. It is no response to say that EIA reports were submitted. It is the veracity of the content that is assailed.
 - (iii) FGD not included in the EIA Report - source fo limestone, pollution from transport of limestone, milling of limestone, storage of lime, transport of gypsum , storage of gypsum etc not mentioned or studied in the EIA report.
 - (iv) Mercury emission from coal is an established universal fact and enough studies by the MoEF itself are evidence. The EIA ought to have studied this aspect.
 - (v) The EIA report is silent and has not a single word on the impact of climate change. A reading of the EIA report would show this.
 - (vi) It is a fact that the EAC was informed that maximum mast height of boats was 6 m and facts are contrary to it as the mast height is above 14 meters. The Fact that now mast height is stated to be higher and the height of the bridge is sought to be raised to 10 m for a short span itself is proof that the project proponent has lied and misrepresented.
8. This report also exposes the futility of expecting MoEF & CC to file "reports" in cases such as the present. If the MoEF & CC were honestly to apply the law and appraise the project and consider the contentions raised in the application, then they would have to agree that they erred in the clearance granting process. At the very least, they should revisit the entire process and substantiate that the law was properly followed. This exercise has not been done in the instant report.
9. It is also futile to expect the authorities who have been alleged to have violated the law to file a report admitting that they have violated the law.
- The duty of the Tribunal to conduct a judicial review and merits**

review of clearances has been recognised and held by the Hon'ble Supreme Court in Hanuman Laxman Arsokar Vs Union of India (2019 SCOnline SC 441).

10. It is submitted that most of those conditions are designed to become relevant only when the plant becomes operational. In so far as the violation of the conditions of the EC that pertain to construction phase, the applicant has not filed the present application for those violations and reserves the right to file appropriate proceedings and they are not part of the present application. As such the second part of the report dealing with conditions and their alleged compliance is irrelevant. It is submitted that the outcome of appeal 144 of 2016 will impact this application and the same may be considered after the judgment in appeal 144 of 2016.

Dated this the 8th day of January, 2021 at Chennai



Counsel for the applicant