

**BEFORE THE NATIONAL GREEN TRIBUNAL,  
(SOUTHERN ZONE), SITTING AT CHENNAI**

**Appeal No. 14 of 2020**

**IN THE MATTER OF:**

**Yelahanka Puttenahalli Lake and  
Bird Conservation Trust (Regd.)**

**....APPELLANT**

**VERSUS**

**Ministry of Environment, Forests and  
Climate Change, Union of India & Ors.**

**...RESPONDENTS**

**INDEX**

<b>Sl. Nos.</b>	<b>Particulars</b>	<b>Page Nos.</b>
1.	Rejoinder-affidavit on behalf of the Appellant to the Reply Statement dated 27.07.2021 filed by the Respondent No. 2/SEIAA.	<b>1 - 30</b>
2.	Proof of service	<b>31</b>

**APPELLANT**

Through



Place: Chennai  
Date: 16.08.2021

**ABDUL AZEEM KALEBUDDE**  
Advocate for the Appellant  
Tower No. 7, Flat No. 1402, 14<sup>th</sup> Floor,  
Sunworld Vanalika, Sector 107,  
NOIDA- 201 301 (U.P.)  
Delhi NCR  
Ph: 9899474399  
Email: kalebudde.azeem@gmail.com

BEFORE THE NATIONAL GREEN TRIBUNAL,  
(SOUTHERN ZONE), SITTING AT CHENNAI

Appeal No. 14 of 2020

IN THE MATTER OF:

Yelahanka Puttenahalli Lake and  
Bird Conservation Trust (Regd.)

....APPELLANT

VERSUS

Ministry of Environment, Forests and  
Climate Change, Union of India & Ors.

...RESPONDENTS

**REJOINDER-AFFIDAVIT ON BEHALF OF THE APPELLANT  
TO THE REPLY STATEMENT DATED 27.07.2021 FILED BY  
THE RESPONDENT NO. 2 SEIAA**

I, Dr. K. S. Sangunni, Chairman, Yelahanka Puttenahalli Lake and Bird Conservation Trust (Regd.), Reg No. BNG(U)YLNK/BKIV/13/2013-2014 #9, 1<sup>st</sup> Mani, Vinayaka Layout, Puttenahalli, Yelahanka, Bengaluru- 560064, KARNATAKA, do hereby solemnly affirm and state on oath as follows:-

1. That I am the Chairman of Yelahanka Puttenahalli Lake and Bird Conservation Trust (Regd.), the Appellant herein and as such I am aware of the facts and circumstances of the case and hence competent to swear to this rejoinder-affidavit.
2. That the Appellant has filed the above mentioned appeal before this Hon'ble Tribunal under section 18 of the National Green



Tribunal Act, 2010 (hereinafter referred as “the Act”), herein the situation has arisen giving rise to the substantial questions relating to the environment, as referred to in section 14 of the Act, and the same requires adjudication by this Hon’ble Tribunal. Further, there is damaged caused to the environment by the activities of the Respondents and the same requires the restitution of the environment, as contemplated under section 15 of the Act. And further, the present appeal seeks the cancellation of the prior Environment Clearance dated 01.09.2015 granted to the Respondent No. 4 herein dehors the applicable Notifications and statutory provisions, as contemplated under section 16 of the Act. For the sake of brevity and conciseness the averments of the said appeal are not reproduced herein and the same may be treated as part and parcel of the present rejoinder-affidavit.

3. That the Respondent No. 2 (Karnataka State Level Environment Impact Assessment Authority-SEIAA) has filed the Reply Statement dated 27.07.2021 in the above mentioned appeal. It is submitted that the answering Respondent No. 2 has mechanically filed the said Reply statement without



application of mind. Hence, it is submitted that the averments and allegations mentioned in the said reply statement of the Respondent No. 2 are denied in toto unless it is specifically admitted or reiterated hereunder and no part of the same may be deemed to have been admitted otherwise.

4. It is submitted that the answering Respondent No. 2, in granting the Environment Clearance dated 01.09.2015 has not taken into consideration that the Puttenahalli Lake is declared as the 'Bird Conservation Reserve'. It may be noted that any area or lake to become a habitat for flora and fauna would take years. And only when the area/lake become an established habitat for flora and fauna, then attempts are made to conserve the same by declaring it as a protected area or sanctuary or national parks and not vice versa. It is submitted that in light of the establishment of the "Gas based Power Plant" by the project proponent Respondent No. 4, within the close vicinity of the Puttenahalli Lake and the same would result in the destruction of the lake eco-system. Further the environmental clearance dated 01.09.2015 is void ab initio and is a nullity since it has been issued without taking into consideration the fact of the 'protect area'. And moreover, that the Respondent No. 4 has concealed the prior knowledge it had about the



A handwritten signature in blue ink, appearing to be the name "G. Achaya".

intention of the Government of Karnataka in declaring the area/lake as 'Bird Conservation Reserve'. Further the establishment of the said "Gas based Combined Cycle Power Plant" would cause grave and irreparable damage to the environment and the lives of the people residing in its vicinity.

5. It is submitted that the Respondent No. 2 (SEIAA), has not taken into consideration the fact that the Power Plant of the Respondent No. 4, falls within 10 kms radius of the protected area "Puttenahalli Bird Conservation Reserve". Thus, by virtue of EIA Notification of 2006, the Category 'B' project without considered as Category 'A' project and, in such situation it is only and only the MoEF has the authority and power to grant the Environment Clearance and not the Respondent No. 2/SEIAA. Thus, only on this count alone the impugned EC dated 01.09.2015 is void ab initio and deserves to be quashed.

6. Herein, a reference may be made to the Terms of Reference dated 19.01.2015 issued by the State Level Expert Appraisal Committee (SEAC), Karnataka *vide* a Letter dated 19.01.2015 addressed to Chief Engineer, Karnataka Power Corporation Ltd., whereby the former prescribes the Terms of Reference (ToRs) for preparing draft EIA Report for the said Gas based Combined



Cycle Power Plant. The relevant Terms of Reference are as follows:-

*“4. The study should cover an area of 10 kms radius around the proposed plant site.”*

xxxxxx

*“28. If ecologically sensitive attributes fall within a 10 km radius of the project boundary, proponent shall describe the sensitivity (distance, area and significance) and propose the additional points based on significance for review and acceptance by the State Appraisal Committee (SEAC). A map marking the location of such areas (existing or proposed) duly authenticated by the Chief Wildlife Warden. Ecological sensitive attributes include:*

- *National Parks.*
- *Wildlife Sanctuaries Game Reserve.*
- *Tiger Reserve/ Elephant Reserve.*
- *Breeding Grounds.*
- *Habitat for migratory birds.*
- *Area with threatened (rare, vulnerable, endangered) flora/ fauna.*
- *Wetlands.*
- *Zoological Gardens.*
- *Reserved forests/ Protected Forests.*



- *Any other closed/ protected area under the Wildlife (Protection) Act, 1972, any other locally applicable.”*

(emphasis supplied)

(see pages 408 to 413 of Appeal paper-book)

7. From the above it is clear that said Terms of Reference categorically mentioned that “**proposed or existing**” Ecological sensitive attributes, which includes the ‘protected area’ (herein the Bird Conservation Reserve). A further, reference may be made to the Questionnaire dated 23.07.2015 submitted by the Respondent No. 4. Though the Respondent No. 4 had the knowledge about the proposed Puttenahalli lake being declared as Bird Conservation Reserve, but for the reasons best known to itself, has deliberately suppressed the said fact. It is further submitted that the data and information given in the Questionnaire for Environmental Appraisal dated 23.07.2015 by the KPCL, regarding the existence of the National Parks/ Wildlife Sanctuaries is false and misleading. The relevant portion of the Questionnaire for Environmental Appraisal appended to the EIA Report submitted by the Respondent No. 4/ KPCL is as follows:-



"VI. Whether any of the following exist within 7 km. of the periphery of the project site. If so, please indicate aerial distance and the name of the eco-system as given under the Table.

S. No.		Name	Area falling within 7 km periphery of project (ha.)	Aerial Distance km.
1.	National Park/ Wildlife Sanctuary	None		
xxx	Xxx	xxxx	xxxx	xxx

(see pages 428 to 442 of the Appeal paper-book)

Thus, from the above it is crystal clear that the Respondent No. 2/SEIAA has mechanically granted the impugned EC dated 01.09.2015, which goes to the root of the grant of Environmental Clearance. Only on this count alone, the present EC dated 01.09.2015 deserves to be quashed in the interest of justice.

8. It is humbly submitted that the Puttenahalli Lake is located in Bengaluru North Taluk, Yelahanka Hobli. It is a part of Yelamallappa Chetty series of lakes in Bengaluru. This series of

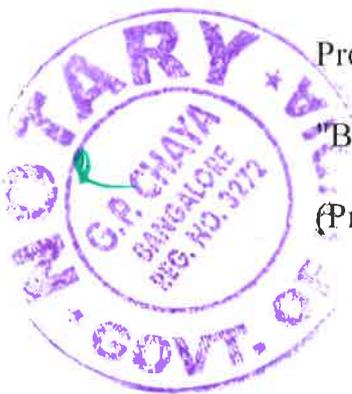


lakes flow eastward and joins Dakshina Pinakini River, which ultimately joins the Cauvery River. Yelahanka-Puttenahalli Lake is spread in an area of about 13.77 hectares and is world renowned for being home to over 120 species of birds including migratory and endangered species viz., Northern Pintail (*Anas Acuta*), White Stork (*Ciconia Ciconia*), Northern Shoveler (*AnasClypeata*), Garganey (*Anas Querquedula*) and Glossy Ibis (*Plegadis Falcinellus*) etc. The said lakes are an abode for resident, colonial nesting water Birds, migratory Birds, Butterflies and moths. Its avi-fauna includes endangered and migratory birds from the Northern Himalayas, Siberia, countries from Europe, Africa etc. Birds which are listed under threatened categories of International Union for Conservation of Nature (IUCN) and find it as a favourite abode during breeding season. Around 120 species of Birds spotted therein are Darters, varieties of Ducks such as Northern pintail, Garganey, Painted storks, varieties of Herons, Varieties of Egrets, Glossy Ibis etc. are spotted. Some of these birds fall under Schedule I or Schedule IV of the Wildlife (Protection) Act, 1972. The number of birds during season goes beyond 7000. Hence, the lakes have found place as worth mentioning even in several concerned foreign



journals. That the “Proposal for Declaration of Puttenahalli Tank Area as Bird Conservation Reserve as per Section 36A of Wildlife Protection act, 1972” submitted by Deputy Conservator of Forests, Bangalore Urban Division, Bangalore highlights the importance of the Puttenahalli Lake. It states that the area is presently under the ownership and possession with the Forest Department of the State Government of Karnataka. The site is maintained as part of nursery by the Karnataka State Forest Department and is a veritable bird paradise, the like of which has not been recorded during nearly 200 year ornithological history of Bangalore.

9. It is submitted that the protected area is located in the vicinity of a project site, would attract the General Conditions of the EIA Notification, 2006. Thus, it is clear that though a project may be categorized as ‘Category B Project’ under the EIA Notification, 2006, if it falls within 10 kms radius from a ‘protected area’ under the Wildlife (Protection) Act, 1972, then it has to be appraised at the Central Level by the MoEF as though it is a ‘Category A Project’. It is submitted that the Puttenahalli lake is declared as a “Bird Conservation Reserve” under Section 36 -A of the Wildlife (Protection) Act, 1972 by the Government of Karnataka on



29.04.2015 Thus, the present environmental clearance granted is bad in law.

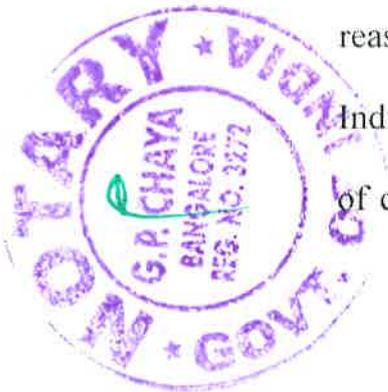
10. It is further submitted that the "Gas based Combined Cycle Power Plant" is a declared polluting activity, since it has been classified as RED category industry (industries with pollution score of over 60) even according to the 2016 reclassification of industries by the CPCB. All power generating units except wind, solar and mini-hydel projects have been classified as RED category industries as seen from serial number 9 of the list of Red Category Industries. It is submitted that the establishment of such a plant would effectively destroy the lake eco-system completely. It is therefore clear that the present project proponent cannot be allowed to establish the "Gas based Combined Cycle Power Plant" in this protected area of Yellahanka-Puttenahalli Lake.
11. It is submitted that the MoEFCC has issued guidelines dated 09.02.2011 which states that the necessity for eco-sensitive zones, which are to act as shock absorbers and transitional zones for the protected areas, which otherwise would be forced to grapple with the environmental pollution and stress caused by establishments in its vicinity. The Guidelines provides a list of prohibited, regulated and permissible activity and the subject



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line and a vertical stroke.

"Gas based Combined Cycle Power Plant", which is a Red Category Industry and an activity of great environmental footprint covered under the EIA Notification, 2006 is prohibited from being set up in the vicinity of the protected area. Serial No. 4 of annexure 1 to the guidelines prohibits the establishment of polluting industries and Serial No. 23 prohibits the release of effluents into water bodies. Thus, the present project would come within the teeth of the said Guidelines dated 09.02.2011 and hence, is prima facie illegal.

12. It is further submitted that the present environment clearance dated 01.09.2015 is issued by the SEIAA without conducting mandatory public hearing. It is submitted that the EIA Notification, 2006 mandates public hearing for all projects covered in the schedule to the Notification, unless specifically exempted. It is submitted that exemption has been envisaged under the Notification, 2006 to small scale projects that are located inside industrial estates that have obtained permission under entry 7 (c) of the EIA Notification, 2006. The logic or reasoning behind this is that project so located inside the Industrial Estate would be subjected to public hearing at the time of conducting public hearing for the industrial estate itself and



since its location and capacity etc., should be part of the EIA of the industrial estate. However, the SEIAA has failed to take note of this fact in granting environment clearance to the present "Gas based Combined Cycle Power Plant". It is further submitted that the MoEFCC has also issued OM dated 04.04.2016, further clarifying that projects such as "Gas based Combined Cycle Power Plants" would require environmental clearance even if located inside industrial estates on account of their environmental footprint.

13. That the Government of India, Ministry of Environment, Forest and Climate Change issued the Office Memorandum F.No.J-11013/41/2006-IA-II(part) dated 20.08.2014, inter alia, states as follows:-

*"This Ministry vide Circular No.L-11011/7/2004-IA.II(I) (Part) dated 27.02.2007 and Office Memorandum (OM) No. J-11013/41/2006-IA.II(I) dated 02.12.2009 clarified procedure for consideration of developmental projects located within 10 km of 'Protected Areas' (PAs), i.e., National Parks and Wild-life Sanctuaries and also involving wild-life habitat, for grant of environmental clearance (EC) under EIA Notification, 2006. The aforesaid Circular/ OM were inter alia issued pursuant to*



*Supreme Court Order dated 04.12.2006 in W.P.(C) No. 460 of 2004.....”*

14. It is submitted that the Environmental Impact Assessment Notification, 2006 (“EIA, 2006) issued by the Respondent No. 1, places the "Gas based Combined Cycle Power Plant” under the category 1(d) and further that as its configuration is of 350 (+/- 20) MW and is less than 500 MW, it is classified as a “Category B” Project, and the said project would *prima facie* falls within the jurisdiction of State-level Environment Impact Assessment Authority (SEIAA) for the purpose of granting clearances. However, in respect of the instant "Gas based Combined Cycle Power Plant”, is situated at a distance of just around 500 metres from the Puttenahalli Bird Conservation Reserve. Further that the Power Plant is surrounded by the Yelahanka Puttenahalli Lake which is a declared and notified "Bird Conservation Reserve" under the provisions of Section 36-A of the Wildlife (Protection) Amendment Act, 2006 and thus, due to this extra-ordinary situation of the region being eco-sensitive, the conditions mentioned in the ‘General Conditions’ of the EIA Notification, 2006 are attracted and as such, the SEIAA loses its jurisdiction to deal with the proposal and the proposal can only be dealt with



and cleared at the Central Level by the Ministry of Environment, Forest and Climate Change (MoEFCC)/ Respondent No. 1 herein and not otherwise.

15. It is clear from a reading of the EIA Notification, 2006 that though a project may be categorized as 'Category B' project under the EIA Notification, 2006, if it falls within 10 kms distance from a protected area, so declared, under the Wildlife (Protection) Act, 1972, then it has to be appraised at the Central Level by the MoEF as though it is a 'Category A' project. Hence, it is apparent that the Environmental Clearance issued by the SEIAA has been issued without jurisdiction and is non-*est* in the eyes of law.
16. It is submitted that the Yelahanka Puttenahalli Lake is a declared "Bird Conservation Reserve" and it is a protected area under the Wildlife (Protection) Act, 1972. The present Gas based Power Plant falls at about 500 meters from the Protected Area/ Bird Conservation Reserve, and hence, the general conditions to the EIA Notification, 2006 would apply and the project becomes a 'Category A' project, and over which the MoEF alone has the jurisdiction to appraise and issue environmental clearances. This is mandated so as to ensure that special attention is paid to the



unique issues that require to be addressed regarding the impact of an activity on a 'protected area' under the Wildlife Protection Act, 1972 so that floral and faunal diversity is not adversely affected and that the habitat of protected species is not destroyed as a result of the proposed activity. For the said reasons, certain projects including the present "Gas based Combined Cycle Power Plant" are prohibited from being set up within 10 kilometres radius of the 'protected area' and only the MoEF is empowered to deal with the issue regarding grant of environment clearance.

17. It is submitted that the said "Gas based Combined Cycle Power Plant" is located within 500 meters from the Yelahanka-Puttenahalli Lake. Further, it is submitted that instead of approaching the Ministry of Environment, Forests and Climate Change (MoEFCC), the Respondent No. 4/ KPCL has approached the Karnataka State Environmental Impact Assessment Authority (SEIAA) for the grant of environmental clearance. The SEIAA, without taking into consideration that it does not have the jurisdiction to consider the said application, and without any application of mind, issued environmental clearance on 01.09.2015. Thus, the grant of environmental



clearance to the Gas Based Power Plant Projects by the SEIAA is illegal as per the guideline mentioned in EIA Notification, 2006. It is therefore submitted that the clearance dated 01.09.2015 is void *ab initio* and is a nullity, with no validity in law

18. Further, it is submitted that the Public hearing has not been conducted as required by the EIA Notification, 2006. Hence, the Environment Clearance dated 01.09.2015 has been granted in violation of the EIA Notification 2006. The MoEFCC *vide* its Office Memorandum dated 04.04.2016 has clarified as follows:-

“6. ....So a Thermal Power Plant, Cement Plant or Integrated Steel Plant even if located in notified Industrial Regions/ Zones cannot be granted exemption from the public consultation, as that is not the intent of the EIA Notification, 2006.

7. It is accordingly clarified that the category of projects and activities mentioned in the Annexure of this O.M. will require Public consultation in the process of Environment Impact Assessment and environmental clearance irrespective of its location in or outside a notified industrial area/ estate/ region.”

(see page 213 of the Appeal paper-book)





Supreme Court in *S.B. Bhattacharjee vs. S.D. Majumdar and Ors.* [ (2007) 10 SCC 513] has laid down the law as follows:-

*“The clarification being explanatory and/or clarificatory, in our opinion, will have a retrospective effect.”*

21. Further, the Hon’ble Supreme Court in *S.S. Grewal v. State of Punjab and Ors.* [1993 Supp( 3 )SCC 234], has laid down the law as follows:-

*“...In this context it may be stated that according to the principles of statutory construction a statute which is explanatory or clarificatory of the earlier enactment is usually held to be retrospective. (See: Craies on Statute Law, 7th Edn., p. 58).....”*

22. Yet again in *Commissioner of Income-Tax, Bombay and Ors. v. Podar Cement Pvt. Ltd. and Ors.* [( 1997 ) 5 SCC 482], the Hon’ble Supreme Court, after referring to a large number of authorities including that of G.P. Singh's Principles of Statutory Interpretation', has held as follows:-

*“...An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the*



*principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law.”*

23. It is submitted that the Respondent No. 4 (KPCL) has deliberately concealed and/or submitted a false and misleading information to the State Level Environment Impact Assessment Authority- Karnataka (SEIAA) and thereby illegally obtained the present Environmental Clearance dated 01.09.2015. It is stated that an Application for Environmental Clearances in prescribed Form No. 1 is submitted by the Respondent No. 4/ Karnataka Power Corporation Ltd. to the Karnataka State Environment Impact Assessment Authority on 20.12.2014. Therein, the Respondent No. 4 deliberately gives misleading information, they are as follows (**only relevant Serial Nos. are mentioned**):-

**Form-1**

**I) Basic Information:**

<b><u>S. No.</u></b>	<b><u>Item</u></b>	<b><u>Details</u></b>
xx	xx	xx
6.	Category of Project i.e., 'A' or 'B'	"B" (Gas based power plant of les then 500 MW capacity)
7.	Does it attract the general condition? If yes, please specify.	No



8.	Does it attract the specific condition? If yes, please specify	No
xxx	xxxxx	xxxx
21.	Whether the proposal involves approval/ clearance under: a) The Forest(Conservation) Act, 1980. b) The Wildlife (Protection) Act, 1972 c) The CRZ Notification, 1991	No
xxxx	xxxxx	xxxx
23.	Forest Land involved (hectares)	Establishment of the plant and facilities does not involve forest land. However, KPCL, has sought transfer of approx. 6 hectares of forest land, located adjacent to the site, for plantation purpose.

xxxxxxx

III) Environmental Sensitivity:

<u>S. No.</u>	<u>Areas</u>	<u>Name/ Identity</u>	<u>Aerial distance (within 15 kms) from proposed project location boundary</u>
1.	xx	xx	xx



2.	Areas which are important or sensitive for ecological reasons: wetlands, watercourses or other water bodies, coastal zones, biosphere, mountains, forests	None	Not Applicable
3.	Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting over wintering, migration.	None	Not Applicable
XX	XXX	XXX	XXX

(see page 391 to 407 of Appeal paper-book)

24. It is further submitted that the data and information given in the Questionnaire for Environmental Appraisal dated 23.07.2015 by the KPCL, regarding the existence of the National Parks/ Wildlife Sanctuaries is false and misleading. The relevant portion of the Questionnaire for Environmental Appraisal appended to the EIA Report submitted by the Respondent No. 4/ KPCL is as follows:-



“VI. Whether any of the following exist within 7 km. of the periphery of the project site. If so, please indicate aerial distance and the name of the eco-system as given under the Table.

S. No.		Name	Area falling within 7 km periphery of project (ha.)	Aerial Distance km.
1.	National Park/ Wildlife Sanctuary	None		
xxx	Xxx	xxxx	xxxx	xxx

(see pages 428 to 442 of the Appeal paper-book)

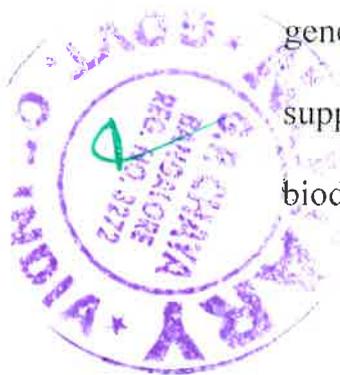
**In re: Power Plant is a polluting activity and cannot be set-up in eco-sensitive zone:-**

25. It is further submitted that the present environment clearance dated 01.09.2015 is issued by the SEIAA without conducting mandatory public hearing. It is submitted that the EIA Notification, 2006 mandates public hearing for all projects covered in the schedule to the Notification, unless specifically exempted. It is submitted that exemption has been envisaged



under the Notification, 2006 to small scale projects that are located inside industrial estates that have obtained permission under entry 7 (c) of the EIA Notification, 2006. The logic or reasoning behind this is that project so located inside the Industrial Estate would be subjected to public hearing at the time of conducting public hearing for the industrial estate itself and since its location and capacity etc., should be part of the EIA of the industrial estate. However, the SEIAA has failed to take note of this fact in granting environment clearance to the present "Gas based Combined Cycle Power Plant". It is further submitted that the MoEFCC has also issued OM dated 04.04.2016, further clarifying that projects such as "Gas based Combined Cycle Power Plants" would require environmental clearance even if located inside industrial estates on account of their environmental footprint.

26. That this Hon'ble Tribunal and the Hon'ble Supreme Court has consistently held that lakes and such other eco-sensitive zones must be protected for the benefit of current and future generations, and to build water security for all and also in supporting traditional livelihoods and the conservation of biodiversity. That the draining of effluents is prohibited under the



A handwritten signature in blue ink, appearing to be "S. P. Singh".

Wetland (Conservation and Management) Rules, 2010 enacted by the Ministry of Environment and Forests under the Environment Protection Act, 1986. The action of the Respondent is in blatant violation of the principles of Intergenerational Equity which this Hon'ble Court has incorporated into the India legal jurisprudence in the case of *A. P. Pollution Control Board vs. Prof. M. V. Nayudu and Ors.*, [1999 (2) SCC 718]. Further, by virtue of the Public Trust Doctrine and the Principle of Intergenerational Equity, the Respondents are duty bound to conserve and protect the Yellahanka-Puttenahalli Lake and all other lakes. Thus, it is submitted that the mandatory public hearing to be held, in order to give an opportunity to all affected persons to voice their concerns which are to be addressed by the project proponents, has not been complied with in terms of EIA Notification, 2006 and the principles of natural justice.

27. That this Hon'ble Tribunal and the Hon'ble Supreme Court has consistently held that lakes and such other eco-sensitive zones must be protected for the benefit of current and future generations, and to build water security for all and also in supporting traditional livelihoods and the conservation of biodiversity. That the draining of effluents is prohibited under the



A handwritten signature in blue ink, appearing to be "G. A. Chayan".

Wetland (Conservation and Management) Rules, 2010 enacted by the Ministry of Environment and Forests under the Environment Protection Act, 1986. The action of the Respondent is in blatant violation of the principles of Intergenerational Equity which this Hon'ble Court has incorporated into the India legal jurisprudence in the case of *A. P. Pollution Control Board vs. Prof. M. V. Nayudu and Ors.*, [1999 (2) SCC 718]. Further, by virtue of the Public Trust Doctrine and the Principle of Intergenerational Equity, the Respondents are duty bound to conserve and protect the Yellahanka-Puttenahalli Lake and all other lakes. Thus, it is submitted that the mandatory public hearing to be held, in order to give an opportunity to all affected persons to voice their concerns which are to be addressed by the project proponents, has not been complied with in terms of EIA Notification, 2006 and the principles of natural justice. That despite having repeatedly approached the Respondents in respect of the illegal and void environmental clearance granted to the Respondent No. 4, and the grave harms and dangers of the thermal power project, the Ministry of Environment, Forests and Climate Change has failed to even consider the representation submitted by the Appellant/Trust. This calls for the interference



A handwritten signature in blue ink, consisting of stylized initials and a surname.

by this Hon'ble Court with the impugned order passed by the SEIAA in the interest of justice, equity and good conscience.

28. That the Hon'ble High Court of Bombay in the case of *Gram Panchayat Navlakh Umbre v/s. Union of India and Ors.* [PIL No. 115/2010 etc Judgement dated 28.06.2012], has laid down the procedure to be followed in granting EC and has held as follows:-

*"24. ....The scheme of the notification dated 14 September 2006 contemplates an application by the project proponent, the finalization of comprehensive terms of reference by the SEAC and the conduct of EIA studies by the project proponent on the basis of the terms of reference approved by the SEAC. Thereupon a draft EIA report has to be prepared on the basis of the EIA studies. A public consultation is to take place on the basis of the draft EIA report. The final EIA report is prepared on the basis of a compliance of the grievances that are raised during the course of the public consultation. Thereupon a final EIA report has to be submitted to the SEAC. The SEAC in turn conducts a detailed scrutiny of the final EIA report, the report of the public consultation and the application and has to address environmental and other concerns... ..The SEAC is primarily a body consisting of experts. The importance which the notification attributes to the SEAC is evident from the fact that under clause 4(iii), the SEIAA is required to base its decision on the recommendations of the SEAC. Moreover, under Clause 8(ii) the SEIAA is to normally accept the recommendations of the SEAC and where it differs from those recommendations to furnish reasons for the disagreement,*



while requesting reconsideration by the SEAC. The process of screening, scoping and appraisal by the SEAC is of utmost importance and is a vital element in the ultimate process of decision making leading upto the grant or rejection of an environmental clearance. The notification indicates time lines for the performance of various tasks which are assigned to the SEAC. Initially when it screens a proposal, the SEAC has to determine whether or not the project or activity requires further environmental studies for the preparation of an EIA report. In the stage of scoping the SEAC, before it formulates comprehensive terms of reference has to address all relevant environmental concerns for the preparation of an EIA report in respect of the project or activity for which clearance is sought. The notification envisages that, where it considers necessary, the SEAC can even conduct a site visit. Once the terms of reference are formulated and finalized by the SEAC, the next stage involves the conducting of EIA studies. The Terms of Reference provide the analytical framework on the basis of which EIA studies are conducted. The preparation of the Terms of Reference is not a meaningless formality. They contain a framework of identifying environmental concerns with reference to which EIA studies are conducted. The notification requires public consultation not only with locally affected persons but all other persons having even a plausible stake in the environmental aspects of the project. Finally, when it comes to the stage of appraisal, the SEAC has to conduct the process in a transparent manner on the basis of the application and other documents such as the final EIA report, the report of public consultation and other relevant material.

25. In the present case, it is evident that the SEAC has acted in a casual manner without understanding either the vital implications of the function which is assigned to it under the notification or the consequences of its decision



*making process. The Court in the exercise of its power of judicial review is cognizant of the fact that the SEAC is drawn from experts in the field. Even so, it is necessary that the SEAC discharges its duties with a high degree of accountability and responsiveness having regard to the fact that it is an institution which is created with a view to facilitate environmental governance. Environmental governance requires decision makers to bear in mind the principles of sustainable development. The principles of sustainable development require a balance to be drawn between the need for development on the one hand and the protection of the environment on the other. In taking into account the principles of sustainable development, an authority such as the SEAC must bring its attention to bear on relevant factors such as the need to preserve the natural resources for the benefit of future generations, the sustainable prudent or rationale use of natural resources, the equitable engagement of natural resources and the need to ensure that environmental considerations are integrated into economic and development plans, programmes and processes. Among the fundamental principles of environmental governance are principles that foster access to information; access to justice to the community which is liable to be affected and governance based on rule of law. Access to information, particularly to impoverished and marginalised communities, which populate our rural land scape is of vital importance. Communities must have access to all information in order to be satisfied that a proposed project meets standards of safety; that the site upon which the project is to be located is environmentally conducive and that the project will not result in a destruction of the natural habitat. Denial of information is the surest way to deprive rural communities of human rights and leads to a sense of alienation. Access to information is a source empowerment. Participatory decision making must hence be an ingredient of*



A handwritten signature in blue ink, appearing to be 'G.P. Chaya'.

*environmental governance in a true sense of the term. Merely observing the forms of participation without the substance is to negate fundamental human rights. When expert bodies are conferred with statutory duties which are envisaged in the public interest, particularly having regard to the need to protect sensitive interests such as those of the environment, it is necessary that those duties must be performed scrupulously keeping in mind the safeguards which are provided by enacting legal provisions.....”*

61. Thus, in view of the above submissions, it is most humbly prayed that the Hon'ble Tribunal may be pleased to allow the present appeal and thereby:-

1. Declare the Environmental Clearance *vide* SEIAA 20 IND 2014 dated 01.09.2015 granted by the Karnataka State Environment Impact Assessment Authority (Respondent No. 2) to the Karnataka Power Corporation Ltd. (Respondent No. 4 herein) as null and void as being contrary to the provisions of Environmental Impact Assessment Notification of 2006, and hence cancel the same, and
2. Direct the Karnataka Power Corporation Ltd. (Respondent No. 4 herein) not to put up the Gas-based Combined Cycle Power Plant at the present site in the vicinity of the



A handwritten signature in blue ink, appearing to be 'G.P. Chavla'.

Puttenahalli Bird Conservation Reserve and thereby restore the damage done the Puttenahalli-Yelahanka Lakes by illegal encroachments on the lake areas, and

- 3. Issue an order directing the Respondent No. 4 for restitution of environment and to ensure protection of bio-diversity of the Puttenahalli and Yelahanka Lakes and to ensure protection of aquatic life, flora and fauna.

DEPONENT

Yelahanka Puttenahalli  
Lake & Bird Conservation Trust (Regd)

**VERIFICATION:**

I, Dr. K. S. Sangunni, on this 16<sup>th</sup> of August, 2021 at Bangalore, do hereby verify that the contents of the above rejoinder-affidavit in paras 1 to 61 are true to my personal knowledge and belief, and I believe the same to be true and correct and I have not suppressed any material facts.



SWORN TO BEFORE MF  
*Chaya*

G.P. CHAYA, B.Com., LL.B.  
ADVOCATE & NOTARY  
GOVT. OF INDIA  
No. 6, 3rd Cross, Muddamma Garden,  
Benken Town Post, Bangalore - 560 046

16 AUG 2021

DEPONENT

Yelahanka Puttenahalli  
Lake & Bird Conservation Trust (Regd)



**PROOF OF SERVICE**

abdul azeem Kalebudde &lt;kalebudde.azeem@gmail.com&gt;

**NGT Chennai- Appeal No. 14/2020**

1 message

abdul azeem Kalebudde &lt;kalebudde.azeem@gmail.com&gt;

16 August 2021 at 16:53

To: krishnan-mrgk@krslegal.in, darpan.advocate@gmail.com, tvsekar12@rediffmail.com, sns2358@yahoo.co.in, vasanthhk72@gmail.com, Ajay Nandalike &lt;ajay@pragatilaw.in&gt;, Tanya John &lt;tanya@pragatilaw.in&gt;

Respected Sir/Madam,

**Sub: Yelahanka Puttenahalli Lake and Bird Conservation Trust (R) v/s. Ministry of Environment and Forest and Climate Change and Ors.**

**Appeal No. 14/2020****Before the Hon'ble National Green Tribunal, (SZ) Chennai**

Kindly find attached herewith the complete set of the Rejoinder Affidavit to the Reply Statement dated 27.07.2021 filed by the Respondent No. 2/SEIAA.

Kindly acknowledge the receipt of the same.

Thanking you,  
Yours faithfully,

Abdul Azeem Kalebudde  
Advocate-on-Record  
Supreme Court of India  
Advocate for the Appellant  
Flat No. 1402, Tower No. 7, 14th Floor,  
Sunworld Vanalika, Sector 107,  
NOIDA-201301. (Delhi NCR)  
Ph: 9899474399

---

 **NGT-Rejoinder to R2.pdf**  
2035K