

**BEFORE THE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE,  
CHENNAI**

**OA.NO.168 OF 2021**

**BETWEEN:**

B.Madan Kumar Reddy

...Applicant

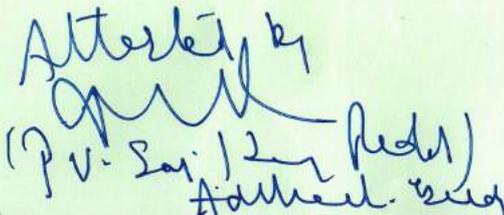
**AND**

The Union of India, Rep. by its Director,  
Ministry of Environment and Forest & 7 others.

...Respondents

**COUNTER FILED ON BEHALF OF THE 6<sup>TH</sup> RESPONDENT.**

1. The petition is neither just nor maintainable either at law or on facts.
2. The respondent denies all the allegations except those that are specifically admitted herein to be true and puts the applicant to strict proof of the same.
3. Before advertng to the various allegations made in support of the application, it is submitted that the applicant herein has earlier filed appeal No.19/2020 questioning the order of Environmental Clearance Order No.F.No.23-238/2018-1A.II(5) dated 16.04.2020 passed by the 1<sup>st</sup> respondent in favour of the 2<sup>nd</sup> respondent herein. The said OA was heard and orders are reserved. It is submitted that the present OA is filed seeking a direction to the respondents in the OA not to allow this respondent to conduct the mining operations without payment of compensation amount for the illegal mining conducted by the 6<sup>th</sup> respondent from 1995 to 2015 as per the judgment of the Hon'ble Supreme Court passed in Common Cause Vs. Union of India and as per the conditions imposed in the Environmental Clearance Order. It is submitted that once the main proceedings are challenged and pending before this Hon'ble Court, the present OA filed by the applicant itself is not maintainable. Hence it is respectfully submitted that the present OA is liable to be dismissed on this ground alone.
4. It is submitted that this Tribunal has got power to entertain the application in terms of section 14 of the Act. It is respectfully submitted that a reading of the prayer in the application, it is clear that the applicant is seeking a relief in the nature of injunction and the said relief does not fall within any of the parameters mentioned in section 14 of the Act. Hence it is

Attested by  
  
(P.V. Sai) (Madan Reddy)  
Attested by

For Sri Kumaraswamy Silica Mines

  
VEMAREDDY KUMAR  
Managing Partner

respectfully submitted that the OA filed by the applicant is not maintainable.

5. It is submitted that earlier in respect of the quarrying operations done by this respondent and others, an application No.96/2015 was filed before this Hon'ble Tribunal and this Hon'ble Tribunal has passed an order on 07.09.2015. Before the disposal of the OA, this respondent made an application for Environmental Clearance and the said application was considered by the 1<sup>st</sup> respondent and also dealt with the violation category proposals in terms of the notification issued by the Union of India in S.O.804(E) dated 14.03.2017. The said notification was issued by the 1<sup>st</sup> respondent in exercise of the powers conferred by sub-section 1 and sub-clause (a) of clause (i) and clause (V) of subsection 2 of section 3 of the Environment (Protection) Act, 1986 R/w clause D of Sub-rule 3 of Rule 5 of the Environment (Protection) Rules 1986. It is submitted that the said rules provide the procedure for violation of the Environment Impact Assessment Notification 2006. It is submitted that the 1<sup>st</sup> respondent has considered the same and issued directions. It is submitted that the judgment of the Hon'ble Supreme Court which is referred to in condition No. 11 of the proceedings dated 16.11.2020 has no application to the case of the petitioner and in the said judgment the notification issued by the 1<sup>st</sup> respondent in S.O.804(E) dated 14.03.2017 was not brought to the notice of the Hon'ble Supreme Court. It is submitted that the field of violation of Environment Impact Assessment Notification 2006 is covered by the statutory rules and the judgment cannot be made applicable.

6. It is submitted that no doubt there was condition in E.C. to comply the said judgment and take up the mining activities. There was another clause in the said condition is that the mining authorities in case if the imposed any compensation the same is to be paid by this respondent. Therefore the both the conditions has to BE read together and cannot be read in isolation land separating them to understand true spirit of the intention of the condition. Thus the question of payment of compensation does not arise in the absence of demand notice.

7. It is submitted that the judgment of the Hon'ble Supreme Court nowhere stated the applicability of it, without following the procedure for the rest of the country in para 227. They made it clear that the expert committee is required to be appointed by the Supreme Court to find out the

Attended by  
[Signature]  
P. V. Suresh Kumar Reddy Gundy

For Sri Kumaraswamy Silica Mines

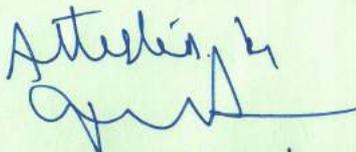
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VEMAREDDY KUMAR  
Managing Partner

lapses and to identify the same. Before passing judgment in common cause case on the base of report of central empowered committee leading to passing of the said judgment. Therefore in the absence of the report of the committee, suggested by the Supreme Court question of compliance and non compliance does not arise.

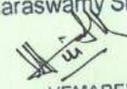
8. It is submitted that the reasons for submitting the affidavit, as directed by the 1<sup>st</sup> respondent without it they refused to grant E.C. They informed that by way abundant caution they obtained it out of compulsion and made it as a condition. Irrespective of the fact whether such condition is sustainable or not it is necessary to bring it to the notice of the Hon'ble Tribunal the following facts which are very much relevant to decide issue involved in this case.

9. It is submitted that though a notification was issued in the year 1994 for obtaining E.Cs the same is required for this respondent is from 01.12.2009. The same was made it clear in the order of the Hon'ble Tribunal in OA.No.96/2015. Further the Government of India issued a statutory notification on 14.03.2017 to deal with violation cases. This respondent applied under the said notification. The 1<sup>st</sup> respondent in pursuance of it directed this respondent to pay Rs.65,00,000/- towards the remedial plan and natural augmentation plan. Accordingly this respondent gave bank guarantee for the said sum. The purpose and intend behind collecting the said sum on the basis of the polluter prays principle. Before fixing the said sum of the 1<sup>st</sup> respondent taken all the above said facts into consideration along with the satellite pictures and fixed it. Therefore the 1<sup>st</sup> respondent acted in accordance with the said notification. Further it is relevant to mention when the 6<sup>th</sup> respondent gave bank guarantee as compensation for the damages. So question of paying the same again and cannot be punished twice for the same act. More so this respondent already prosecuted under section 19 of Environmental Act and paid fine of Rs.1,00,000/- imposed by the Hon'ble Judicial Magistrate of 1<sup>st</sup> Class, Nellore. Therefore viewed from any angle that this respondent complied requirements of statutory laws.

10. It is submitted that the statutory notification of the Government of India was not brought to the notice of the Hon'ble Supreme Court while rendering judgment. The same set of fact of statutory notification was issued, so the same cannot be ignored. More so when the authorities acted

Attested by  
  
P.V. Suresh Reddy  
Suresh

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Managing Partner

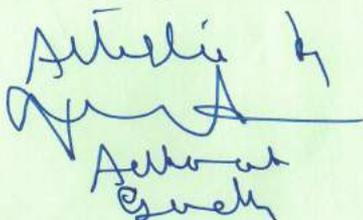
in pursuance of it and issued E.C put a condition without direction from the Hon'ble Supreme Court.

11. It is submitted that the respondents No.3 to 5 already brought to the notice of the Hon'ble Tribunal the factual position of not complying the judgment of Hon'ble Supreme Court.

12. Furthermore no wherein the common cause judgment it is stated that no E.C will be granted unless its judgment is complied. More so did not say of putting of any condition for grant of E.C. But the authorities for the reasons best known to them put a condition in the absence of direction from the Hon'ble Supreme Court. This respondent learnt no such affidavit was obtained to comply the judgment of Hon'ble Supreme Court from other P.P. by S.E. A.C. while granting E.C under the same notification of 14.03.2017. The copy of the same is herewith enclosed. Therefore it is clear case discrimination. Moreover if the applicant is more interest in getting revenue or proctor of Environments, he should brought it to the notice of Hon'ble Tribunal questioning non imposing of condition to comply judgment. None of the Mine owners who obtained E.C under S.E. A.C. contains said clause. As the petitioner is hand in glove with them and he himself is dealer (DL enclosed) and he is perusing the case not in public interest but with only with personal interest.

13. It is submitted that in pursuance of common cause case a demand notice was issued and the same was challenged before Hon'ble High Court of Jharkhand and demand notice issued there under was stayed. Number of substantial questions was raised including the objections raised by this respondent in the forgoing paras. More over the alleged violations of the Environmental Laws it is to be dealt with only there under not with any other enactment.

14. It is submitted that it is one more notification was issued on 07.07.2021 with regard to same subject matter to deal with the cases of violation, in pursuance of principle notification. Therefore the subsequent and later notifications which were issued in exercise of statutory powers by referring common cause cases in the said notifications the clear procedure was contemplated with adequate safe guards.

  
Akhil  
Srivastava

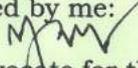
For Sri Kumaraswamy Silica Mines  
  
VEMAREDDY KUMAR  
Managing Partner

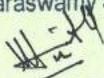
15. It is submitted that subsequent judgment of common cause cases there are other judgments on the same point and take different view than that of said case. The subsequent Alembic Pharmaceuticals Ltd., Vs. Rohit Prajapati and others (C.A.1526 of 2016) by the order dated 01.04.2020 has held that the principle of proportionality should be followed and the court must take a balance approach. In the said case the court adopted a different approach than the one that was adopted in the common cause case. The principle underline in the said judgment is the stoppage of activities is not the solution for the running industries without E.C. with the said direction the Hon'ble Supreme Court imposed some amount as compensation. Therefore stopping of mining activities undertaken by this respondent under the clause is untenable, further this respondent waited 5 ½ years for getting E.C. Therefore under the guise of the non-compliance of clause which is not possible for the above said reasons cannot be issue direction for stoppage of mining operations as sought for by the petitioner.

16. Under the above said circumstances, we have been penalize under section 19 of the Environmental Act 1986 and we have also given bank guarantee as a compensation for the violations under the statutory notification of 14.03.2017. The common cause judgment is lessee specific, territory specific and product specific and they have to appoint a committee before taking any action as per the common cause judgment. Hence the common cause judgment in the present forum cannot be applied for the petitioner for the above said fact.

It is therefore prayed that the Hon'ble Tribunal may be pleased to dismiss the OA with costs.

For Sri Kumaraswamy Silica Mines

Filed by me:  
  
Advocate for the  
6<sup>th</sup> Respondent

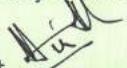
  
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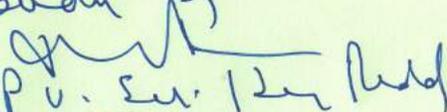
6<sup>th</sup> Respondent

I, the 6<sup>th</sup> respondent herein, do hereby declare that the facts stated above are true to the best of my knowledge, information and belief.

For Sri Kumaraswamy Silica Mines

Chennai,  
Dated: /9/2021

6<sup>th</sup> Respondent  
  
VEMAREDDY KUMAR  
Managing Partner

Attorney at Law  
Sudhakar  
  
P.V. Srinivas Reddy  
Attab.

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OF THE 6<sup>TH</sup> RESPONDENT.**

**Address for service:**

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Advocate, Gudur,  
SPSR Nellore District. A.P.