

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Original Application No. 171 of 2020 (SZ)

IN THE MATTER OF:

Dr. Sarvabhoun Bagali

...Applicant

Vs.

State of Karnataka & Ors.

...Respondents

**COUNTER AFFIDAVIT ON BEHALF OF THE MINISTRY OF
ENVIRONMENT, FOREST AND CLIMATE CHANGE (RESPONDENT
No. 2)**

MOST RESPECTFULLY SHOWETH:

I, E.Thirunavukkarasu, currently working as Scientist 'E' in the Ministry of Environment, Forest and Climate Change (MoEF&CC), Integrated Regional Office, Bengaluru, do hereby solemnly affirm and state as under:-

1. That I am authorized by the Competent Authority of in the Ministry of Environment, Forest and Climate Change (MoEF&CC), New Delhi to swear this affidavit on behalf of Respondent No.2.
2. It is submitted at the very outset that the Respondent No. 2 denies each averment and/or submission made in the application that is contrary to and is inconsistent with the averments made and facts stated in the present Application. It is submitted that the nothing stated in the application may be

deemed to have been admitted by the Respondent No. 2 unless and until the same is expressly admitted in the present reply.

3. That a short affidavit is being filed by the answering respondent at this stage and craves leave and liberty to file a detailed Counter Affidavit to the aforesaid application, as and when required.
4. That the applicant is aggrieved by the alleged large scale illegal sand mining at two different sites on the Krishna Riverbed in village Joldahadgi, Taluka Devadurga, District Raichur, Karnataka has been conducted by using Pokhland /JCB machines. Further, it is also alleged by the applicant that due to illegal and unscientific sand mining a death of a teenage girl has been occurred in a sand mining pit on 14.03.2020. It is also stated by the applicant that he had already filed an Application bearing M.A No. 33/2020, 32/2020 and 39/2020 in O.A No. 366/2015 wherein, it is seeking direction against the large scale illegal sand mining on the above said location and compensation for death of teenage girl.
5. That the applicant in the present matter has inter-alia prayed for (i) Hold and declare that use of machinery in ordinary sand mining is not permissible as per EIA Notification.(ii) Direct the Deputy Commissioner, Raichur District to immediately stop all sand mining using mechanized devices like on riverbed of Krishna river (iii) Direct the Deputy Commissioner, Raichur District to bring on record the recent (ongoing) environmental clearances, mining plans, contractor details etc. and file affidavit of compliance of Rule

31R(3) of the Karnataka Minor Mineral Concession Rules, 1994 (iv) Direct the Department of Mines to submit an affidavit detailing the format for quarrying lease used for ordinary sand in entire District (v) Direct MoEF& CC to constitute a Committee for issuing “Guideline on enquiry and payment of compensation in cases of loss of life connected to sand mining (vi) direct the State authorities to conduct the enquiry in the death of minor girl (vii) direct the State authorities to provide compensation (viii) Direct prosecution of the concerned sand mining contractors, government officials involved for their lapse and violation.

6. That it is stated that Applicant had filed an Application bearing M.A No. 33/2020, 32/2020 and 39/2020 in O.A No. 366/2015 wherein, it is seeking direction against the large scale illegal sand mining on the above said location and compensation for death of teenage girl. In regard to the status of the applications, it is submitted that as per the record available on official website of Hon’ble National Green Tribunal it appears that the vide order 17.08.2020 the applications had been withdrawn by the Applicant.
7. That the Respondent Ministry has issued the EIA Notification, 2006 having S.O. 1533(E) dated 14thSeptember, 2006 under the provisions of the Environment (Protection) Act, 1986. The EIA Notification, 2006 requires certain projects to obtain prior Environmental Clearance (herein after referred as EC) before any construction work in case of new projects or expansion and modernization of existing projects or activities. The Schedule to the Notification details the categories, projects or activities, which require

prior EC. Further, the projects and activities are broadly categorized into Category “A” and Category “B”, based on the spatial extent of potential impacts on human health, natural and man-made resources.

8. That it is further submitted that all projects and activities are broadly categorized into two categories - Category “A” and Category “B”, based on the potential impacts on spatial extent and human health and natural and man-made resources. All projects or activities included as Category ‘A’ in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, require prior environmental clearance from the Central Government in the Ministry of Environment, Forest and Climate Change (MoEF&CC) and all projects or activities included as Category ‘B’ in the Schedule require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). In the absence of a duly constituted SEIAA or SEAC, a Category ‘B’ project shall be treated as a Category ‘B’ project.
9. It is most respectfully stated that as per the provision of Sustainable Sand Management Guidelines, 2016 (SSMG-2016) the mining activity shall be done manually and No in-stream shall be allowed. The relevant para of the said guideline is reproduced herein below for ready reference:

“(a) The mining activity shall be done manually. The depth of mining shall be restricted to 3 m / water level, whichever is less.

(b) For carrying out mining in proximity to any bridge and / or embankment, appropriate safety zone shall be worked out on case to case basis to the satisfaction of SEAC / SEIAA, taking into account the structural parameters, locational aspects, flow rate etc., and no mining shall be carried out in the safety zone so worked out. No in-stream mining shall be allowed.”

10. That in compliance of direction passed by Hon’ble National Green Tribunal in its order dated 04.09.2018 in O.A. 173/2018 in the matter of Sudarsan Das vs. State of West Bengal & Ors, answering respondent has formulated the new guidelines i.e. “Enforcement & Monitoring Guidelines for Sand Mining” (EMGSM-2020) supplemental to the existing guidelines i.e. Sustainable Sand Management Guidelines 2016 (SSMG-2016), which focus on the effective monitoring of the sand mining since from the identification of sand mineral sources to its dispatch and end-use by consumers and the general public. Further, this document will serve as a guideline for collection of critical information for enforcement of the regulatory provision(s) and also highlights the essential infrastructural requirements necessary for effective monitoring for Sustainable Sand Mining.
11. That the Respondent Ministry vide S.O. 637 (E) dated 28th February, 2014 delegates the powers vested in it under Section 5 of the Environment Protection) Act, 1986 to all the State & Union Territory Environment Impact Assessment Authorities to issue show cause notice & to issue directions to the project proponents in case of violation of EC conditions & for keeping such EC(s) in abeyance or withdrawing them, if required.

12. It is submitted that the EC for the project under consideration has been granted by Karnataka, State Environment Impact Assessment Authority.
13. That it is respectfully submitted that State Department of Mines and Geology is the nodal authority in the State for dealing with the allotment of mining leases under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and is entrusted with the enforcement and regulation of mining operations in a State including illegal mining. Further, the State Government is empowered under Section 23 C of the Mines and Minerals (Development and Regulation) Act 1957 (MMDR Act) to make rules for prevention of illegal mining, transportation and storage of minerals and the State Government is entrusted with the enforcement and regulation of mining operations in a state.
14. That in view of the aforementioned facts and circumstances, this Hon'ble Tribunal may kindly be pleased to pass appropriate order(s).

VERIFICATION

Verified at Bengaluru on this 22nd day of February, 2022 that the contents of this affidavit based on official record(s) maintained and information available in the office are true and correct, no part of it is false and nothing has been concealed there from.



DEPONENT

श्री तिरुनावुक्करसु
Shri E. Thirunavukkarasu
वैज्ञानिक "E"
Scientist "E"

भारत सरकार/Government of India
पर्यावरण वन एवं जलवायु परिवर्तन मंत्रालय
Ministry of Environment, Forest & Climate Change
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