

**BEFORE THE NATIONAL GREEN TRIBUNAL SITTING
AT CHENNAI
MEMORANDUM OF APPLICATION
(Under Section 18(1) read with Section 14, 15, of National Green
Tribal Act, 2010)**

I.A.No. 57 of 2022

In

Application No. 172 of 2020

Between:

. Association of Deep Sea Going Artisanal Fishermen
Represented by its Vice President, Mr. Selveriyun. A
Shark Street, College Road,
Thoothoor - 629176,
Kanyakumari District,
Tamil Nadu.

...Applicant in O.A.No.172/2020

Vs.

1. The Union of India
Rep, by its Secretary
Ministry of Environment and Forest
Department of Environment and Forest and wild life
Paryavaran Bhavan
Jor Hagh Road, New Delhi 110 003
Email: Sacymoet@nic.in
2. The State of Tamilnadu,
Rep. by its Principal Secretary,
Public Work Department,
St. George Fort,
Email: sec@tn.gov.in
3. State of Tamil Nadu,
Rep by Principal Secretary,
Dept., of Environment and Forest,
St. George Fort, Chennai.
4. Engineer in Chief (Water Resources Organization)
And Chief Engineer (General),
Public Works Dept.,
Chepauk , Chennai.

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Email: eicwrtdn@gmail.com

5. District Collector,
Nagercoil,
Kanyakumari District – 629 001.
Email: collrkkm@nic.in

6. Member Secretary,
State Coastal Zone Management Authority (SCZMA)
No. 1 Jeenis Road, Panagal Building,
Ground Floor, Saidapet,
Chennai – 600 015.
Email: tnoc@tn.nic.in

7. Executive Engineer,
Public Works Dept., (WRO)
Kodiyaru Irrigation system,
Nagercoil – 629 001.
Email: eewrokodnagercoil@yahoo.in

... Respondents 1-7
in O.A.No.172/2020

8. B. Paulraj,
S/o. Baskaran,
No. 6/179A, Pulimaru Vila Veedu,
Vilavancode, Kaniampuram Post,
Kanyakumari District.

... 8th Respondent
impleaded vide order dated
05.04.2022 in I.A. No. 57/2022

REPLY STATEMENT FILED BY THE 8th RESPONDENT

1. It is humbly submitted that the Applicant herein has filed the present Original Application, seeking the following relief;

*“i) Direct the 2nd, 3rd, 5th and 7th respondents not to construct the checkdam at Parakani at 8*15*10.6"N 77 09'44.3"E, which falls under CRZ-III (NDZ) of the Coastal Zone Management Plan, Map No.TN11*

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*Sheet No.C43*3/SE in blatant violation of the provisions of the Coastal Regulation Zone Notification 2011 (CR2), Environment Impact Assessment Notification, 2006 (EIA) and Coastal Regulation Zone Notification 2019(CRZ).*

ii) Direct the respondents to restore the river to its original condition demolishing and removing the partially constructed illegal checkdam.”

2. It is humbly submitted that the said application is not only dubious but also unnecessary, as it clearly demonstrates anti public interest. The check dam which is being built right now is clearly built for the welfare of the environment, as well as public. The main purpose of the said dam is to stop the sea water from entering and polluting the Thamirabarani River. Lakhs and lakhs of people are dependent on the said water for drinking and other purposes.

3. The Thamirabarani River is a major lifeline for the people of Kanyakumari District. The part in dispute flows from Thirparappu - Kuzhithurai - Thengapattanam and finally joins the Arabian Sea. From Mangadu to Thengapattanam, there are 7 villages and thousands of families, which rely upon the river for drinking and agricultural purposes. Due to saline water intrusion from the sea, both the ground water as well

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as river water got polluted and is rendered unfit for drinking and agricultural activities. It is further causing other environmental hazards.

4. It is humbly submitted that I had filed a Public Interest Litigation in W.P.No.7069/2019, before the Hon'ble High Court of Madras, seeking a direction to construct a Checkdam in the Parakkani Area (Irayumanthurai) at Vilavancode Taluk in Kanyakumari District. The said PIL was filed with a very genuine intention, so as to enable the general public to access the benefits of Thamirabarani River. As already stated, the wellness of the said river is very much essential for the survival of the people dependent of it.

5. It is humbly submitted that the Hon'ble Division Bench, after hearing the elaborate arguments, was pleased to allow the Writ Petition and directed the authorities concerned to immediately construct the Check dam, so as to stop further damages to the eco system. The order passed by the Hon'ble Division Bench has become final and the Applicant herein had not preferred any Special Leave Petition to set-aside the order, before the Hon'ble Apex Court.

6. Furthermore, the Applicant had made a submission before this Hon'ble Tribunal, that the environmental issues involved the present



situation, were not properly addressed before the Hon'ble High Court. The Applicant herein, could have very well filed a Review Petition atleast, challenging the said order. Thus, the order passed in the Writ petition filed by the 8th Respondent herein, is final and when it is in force, a contradicting order cannot be passed by this Hon'ble Tribunal, as it would result in unnecessary legal complications.

7. If this Hon'ble Tribunal proceeds to demolish the check dam, it will render all the protests and efforts made by the Public, for clean water, useless. The Government has constructed the dam, only after a direction from the Hon'ble High Court of Madras. The Hon'ble Court has issued the direction, only with the intention of alleviating the struggle faced by the public. As already stated earlier, the just and necessary adjudication against the said order of the High Court, can be done only by either filing a Review Petition before the Hon'ble High Court itself, or challenging the said order before the Hon'ble Supreme Court. Without doing the same, the Applicant Association has chosen to suppress the existence of the order passed by the High Court, and proceeded to file a case before this Hon'ble Court.

8. It is further submitted that, if the Government had chosen to not comply with the order passed by the Hon'ble High Court of Madras, it

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would have ended up facing Contempt of Court. Thus, the Respondent pleads before this Hon'ble Tribunal, to take a lenient view with regard to the Environmental regulations involved, as demolishing the check dam at this juncture, would result in loss of several crore rupees of public money and massive sea – water intrusion into Thamirabarani River, which would affect thousands of people who rely on the said river, for survival.

9. It is further submitted that, almost 90 percent of the work is already done and any interference by this Hon'ble Tribunal would cause huge loss to the Government and general public. If all the constructive works undertaken by the government are unnecessarily interfered by this Hon'ble Tribunal, then no public work undertaking would take place at all. All Government projects will have their own positive and negative aspects, and it should only be seen by the courts as to whether the positive aspects outshine the negative ones.

10. It is further submitted that, any technical point raised by the Applicant, at this juncture of time is superfluous, as the works are almost complete. Even the State Government had initiated this project only after multiple protests and fight from the common public, to construct the Check dam as soon as possible. If this Hon'ble Tribunal adjudicates the present Original Application at this stage of construction and passes an

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adverse order, it would cause unbearable loss and agony to the large number of people who depend upon the river, for day to day necessities. It would also render the humungous efforts of the public, merely useless.

11. The Applicant herein, has made baseless allegations regarding the construction of the check dam. The fishermen are in no way affected by the construction of the said dam, as the same is being constructed 800 m away from the mouth of the river. The flow of the river water will not be affected in any way due to the construction of check dam. Furthermore, the river bed is clearly 3.25m lower than the Mean Sea Level (MSL) and hence, a check dam is very much essential for the prevention of Sea Water Intrusion.

12. It is further submitted that, in order to develop the livelihood of the fishermen, the Government has formulated a new Fishing Harbour at Thengapattinam. For which, the Public Works Department vide CE letter No : TS/DO.III/C.9747/06 dated 04.07.2006 have given its consent to transfer of poromboke land for the formation of the said Fishing Harbour project at Thengapattinam subject to the following conditions:

i) The entire length of bar mouth may be left as it is in order to allow the entire flood water of the Kuzhithurayarriver (Kanniyakumari District) in to



the Arabian Sea and the proposed infrastructural facilities located at the bar mouth for the Fishing Harbour Project can be relocated at the right bank of the river.

ii) One check dam across the river well within the distance of 1.00 km from Thengapattinam in the upstream side of the river shall be provided in order to avoid sea water intrusion during high tides.

13. Therefore, the said Fishing Harbour Project was made possible, based on the above said conditions only.

14. It is further submitted that, during the monsoon season, due to littoral effect of sea tides, the river mouth at the estuary of river used to get closed by sand sediment, which acted as natural barrier for preventing back water entry and prevented the mixing of saline water with river water which had been the natural phenomenon. Whenever there is water flow in the river, the sand bar gets opened and the flow of water gets discharged into the sea and when water recedes, the sand bar gets formed automatically and prevents the sea water intrusion. Due to the construction of Fishing Harbour, the river mouth was widened and deepened for vessel movement which caused the sea water to enter into the river. The salinity which happened due to the Harbour works is very adversely affecting the

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ground water in the adjoining aquifers, openwells, borewells and as a result, it is becoming increasingly difficult to utilise the water from the said sources for domestic and agricultural purposes. The Applicant herein, who was very much silent during the construction of the Fishing Harbour, even when the sandy mouth of the river was widened for the purpose of bringing in huge vessels, is suddenly very much caring about the environment, when the construction of check dam was initiated. As a result of this, the salty water has spread around more than 48 villages in the upstream side, for a length of 13.00 Km, affecting the population of around 2.00 lakhs.

15. It is respectfully submitted that the Hon'ble Supreme Court in ***Pahwa Plastics Private Limited and Another -vs- Dastak Ngo And Others in (2022) SCC Online Sc 362*** and in ***Electrosteel Steels Limited vs Union Of India***, has held that the National Green Tribunals must not overlook the larger public interest involved, as well as the welfare of the numerous employees employed in a concern, just because proper Environmental Clearance was not obtained by the concern. It was further reiterated by the Hon'ble Supreme Court, in the said Judgments that Ex-Post Facto clearance can be granted, especially when there is larger public



interest, and the National Green Tribunal shall not stand on technicalities and regulations, and must see the overall public interest involved in a case.

16. Since, the public at large is suffering due to the salty ground water, they started protesting to restore the river water to its previous position. Hence the State Government had passed the G.O., in G.O.(3D). No.26 dated 24.08.2018, to construct a Check Dam with the height of 4.25m from the bed of river upto the top the existing stagnated water level during high tide period which will resist the sea water into the river. The need for construction of Check Dam at this place became essential due to the removal of sand bar for the construction of fishing harbour at the estuary of river, hence, it will only bring the earlier situation before the construction of Fishing Harbour. Furthermore, the Govt., passed the said G.O. only in accordance with the C.R.Z notification dated 6th January 2011. As the G.O. was passed in the year 2018, the G.O. as well as the subsequent proceedings will have to be done only in accordance with the 2011 C.R.Z notification. Subsequently, a new notification was passed by the Central Govt., in the year 2019 and this new notification cannot have retrospective effect. The C.R.Z notification dated 6th January 2011 specifically grants exception to projects such as check dams and other projects to ensure environmental regulations. The relevant portion of the

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C.R.Z notification dated 6th January 2011, is extracted here under for the convenience of this Hon'ble Tribunal: -

“(iv) Land reclamation, bunding or disturbing the natural course of seawater except those,-

(a) required for setting up, construction or modernisation or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sealink, road on stilts, and such as meant for defence and security purpose and for other facilities that are essential for activities permissible under the notification;

(b) measures for control of erosion, based on scientific including Environmental Impact Assessment (hereinafter referred to as the EIA) studies

(c) maintenance or clearing of waterways, channels and ports, based on EIA studies;

(d) measures to prevent sand bars, installation of tidal regulators, laying of storm water drains or for structures for prevention of salinity ingress and freshwater recharge based on carried out by any agency to be specified by MoEF.”

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17. I further beg to submit that the CRZ (Coastal Regulation Zone) clearance maybe significant, but even the said technical compliance cannot be made mandatory in the present issue, as the necessity of the check dam to prevent further damage to the water bodies, supersedes the technical requirement mandated by the Central Government. Furthermore, almost 90 percent of the said construction was completed already and any disturbance at this juncture would be critical to the river. The Hon'ble National Green Tribunal was constituted with a precious object of maintaining the ecosystem, without disturbing the welfare of the public at large. Such an authority with a commendable objective cannot be taken advantage of, by the 1st respondent herein. It is pertinent to state that the larger public interest is much more important than the interest of a particular community.

18. It is further submitted that, this Hon'ble Tribunal, which is meant for preserving the environment, ecosystem and general public in harmony, may not be misled by the Applicant into passing any order, which may adversely affect the livelihood and survival of the thousands of families involved.

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Therefore, for the reasons mentioned above, this Hon'ble Tribunal may be pleased to dismiss the O.A. in Original Application No.172/ 2020, preferred by the Applicant herein, with costs and thus render justice.



Dated at Chennai on this the 4th day of May. 2022.



Counsel for the 8th Respondent

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15, of National Green Tribal Act, 2010)

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In

Application No. 172 of 2020

REPLY STATEMENT FILED BY
THE 8th RESPONDENT

**M/s. V.L.Akshai Sajin Kumar
V.Adith Narayan
K. Ganesh Kumar
Counsel for the 8th Respondent
Contact : 8300174333**