

29.
D.L. NO
BEFORE THE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

APPEAL NO. 20/2023/EZ



IN THE MATTER OF:

NTPC, PAKRI-BARWADIH COAL MINING PROJECT ...**APPLICANT**

VS.

THE STATE OF JHARKHAND & ORS.

...**RESPONDENT**

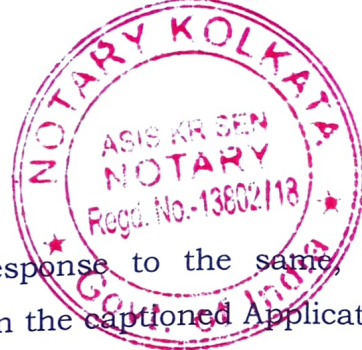
REJOINDER ON BEHALF OF THE APPLICANT TO THE COUNTER

AFFIDAVIT FILED BY THE RESPONDENT NO. 6 (DFO, HAZARIBAGH,

JHARKHAND)

MOST RESPECTFULLY SHOWETH:

1. That the captioned Application has been filed by the Applicant challenging the imposition of penalty in light of technical aspects in the Forest Clearance issued by the State Authorities while completely overlooking the fact that the Applicant has religiously complied with and conducted appropriate environment restoration and ensured appropriate green belt for betterment of environment and green belt, aiming for sustainable development.
2. That all the statements made and contentions raised in the Counter Affidavit filed by the Respondent No. 6, unless specifically admitted herein below, are hereby denied in toto and nothing shall be deemed to be admitted unless specifically averred herein below.
3. It is specifically submitted that the averments under the Counter Affidavit are mere reflection of the factual matrix given under the captioned Appeal. The Respondent no.6 has failed to bring on record any material/document to contradict the submissions made by the



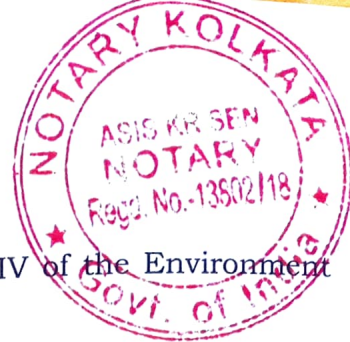
Appellant in the captioned Appeal. In response to the same, the Appellant submits that the grounds raised in the captioned Application may be read as part and parcel of the present Rejoinder, the contents of which are not repeated herein for the sake of brevity.

4. That the para-wise Rejoinder to the averments made by the Respondent No.6 in its Counter Affidavit is provided in the following manner:

1-4 That the contents of para 1-4 of the Counter Affidavit are a matter of record and hence needs no reply. However, anything contained therein contrary to the contentions made by the Applicant herein are completely denied in toto.

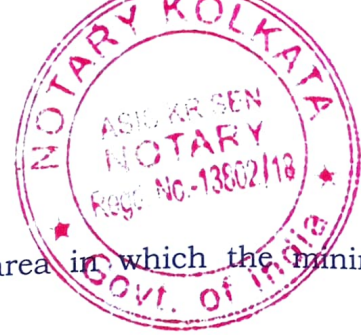
5-14 That the contents of para 5 of the Counter Affidavit are false, frivolous and hence vehemently denied. It is submitted that the averments made by the Respondent No.6 in its Counter Affidavit are mere reflection/reiteration of the factual description given by the Applicant in the captioned Application. The Respondent no.6 has failed to contradict the contentions raised by the Applicant by way of the captioned Application keeping in mind that the very same facts have been challenged by the Applicant via captioned Application. In view thereof, the Applicant submits that the contents of the captioned Application may be read as part and parcel of the present Rejoinder, the contents of which are not repeated herein for the sake of brevity. That in furtherance thereof, following submissions are made in response to the averments made by the Respondent No. 6 in para 5 of the Counter Affidavit:

A. That no violation has been committed by the Applicant as the diversion of Do Muhani Nallah has been done as per the approved



mine plan and as per specific condition no. IV of the Environment Clearance (EC).

- B. That the Forest Clearance for the mining was accorded for Stage I and Stage II vide Letters No. F.No.8-56/2009-FC dated 11.05.2010 and F.No.8-56/2009-FC dated 17.09.2010. The condition no. 8 of the Stage II of the Forest Clearance ("FC") envisaged that the user will ensure 50 m green belt along the sides of Pakwa Nallah and Do Muhani Nallahs.
- C. It is pertinent to mention that there are three Nallah that appear in the Mining Plan of the Applicant namely, Pakwa, Do Muhani and Khora. While Pakwa and Khora are in the peripheral region and as such their geographical location in the overall topography of the mining area, would not hamper the mining operations of the Applicant, insofar as Do Muhani Nallah is concerned, the same flows in the very centre of the mining area, where mining operations are to take place. The aforesaid position was clear to the authorities which issue FC Certificate and it appears that by mistake, instead of mentioning Khora Nallah, the name of Do Muhani Nallah was mentioned.
- D. Be that as it may, the Applicant took appropriate steps to create a green belt in the 50m along sides of Khora and Pakwa Nallahs and realizing the infeasibility of doing likewise in the area around Do Muhani Nallah, it could not undertake creation of green belt in respect thereof. A bare perusal of the site plan (attached along with the Application) would show that the green belt near Do Muhani Nallah was not only impractical, but would have frustrated the entire mining operations, for which EC and FC granted after due



examination of the topography of the area in which the mining operation was to be carried out.

- E. That in order to achieve the meaningful and substantial compliance of EC Specific condition no. (iv), the Applicant got a study conducted by Central Water and Power Research Station and technical report no. 4813 was submitted by CWPRS. Based on the report of Central Water and Power Research Station, Office of Chief Engineer, Project monitoring and planning, water Resource Department accorded NOC for realignment of Do Muhani Nallah vide Letter no. 2/PMC/ND-171/2012-224 dated 19.03.2013.
- F. That it is pertinent to mention that half-yearly Environmental Monitoring Report of EC for Pakri-Barwadih Project (October 2012-March 2013) was submitted by the Applicant to the Additional Principal Conservator of Forest vide Letter no. 7010/GM/2013/ dated 26.04.2013. It is submitted that in half-yearly Environmental Monitoring Report of EC, the Applicant in its response to the compliance of the conditions imposed under the Clearance Certificates categorically pointed out the requirement for the diversion /Realignment of Do Muhani Nallah.
- G. That admittedly from 2010 to 2016, no mining activities could be started on account of issues relating to land acquisition as well as law and order problems. As a matter of fact, the contract to Mining Development Operator could be awarded in the year 2015 only. Hence, in the absence of any construction activity, the occasion to divert Do Muhani Nallah, did not arise, nor was there any occasion to develop the green belt in the 50m along the sides of the same Nallahs.



- H. That the intimation notice regarding opening of Pakri - Baryvadih mine was given to Director General of Mines Safety, Dhanbad, Jharkhand in Form 1 as per clause 3(2) of Coal Mines Regulation Act, 1957 vide Letter no. 7010/PBCMP/MIN/16/02 dated 17.05.2016. That pursuant to the above, the Applicant commenced the creation of green belt around Khora and Pakwa Nallahs, which was feasible and possible while continuing with the mining operations, and at the same time ensured that the mining plan is not violated. As of today, the Applicant has planted around 12,550 trees to create green belt around Pakwa Nallah and around 25,725 trees around Khora Nallah to create green belt. The Applicant is committed and continues to further enhance the green belt while carrying out its mining operations smoothly, as per the approved mining plan.
- I. That upon commencement of the mining activities and diversion of Nallahs, the Applicant consciously wrote a Letter bearing Letter No 1040/PBCMP/EMG/2018/F-28/31748 dated 09.10.2018, requesting the Director General of Forest (FC Division), MoEF & CC to amend condition 8 of stage II of FC approval and Condition 7 of Stage I of FC approval, with respect to the creation of green belt around Pakwa and Khora Nallahs, foreseeing that creation of green belt around Do Muhani Nallah would be infeasible and thus, the same would frustrate the proposed mining operations. In pursuance of the Letter dated 09.10.2018, a Letter dated 29.01.2019 was issued by Assistant IG Forest (FC) to the Principal Secretary, Forest Division, Government of Jharkhand for furnishing comments on the aforementioned Letter dated 09.10.2018.
- J. That to the utter dismay of the Applicant, the Respondent Authority even after realising the fact that without diverting/realigning the Nallah, the mining will not be viable, has granted approval for



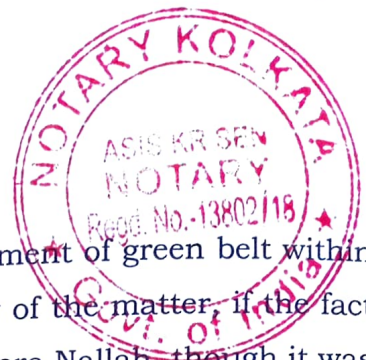
modification of condition no. 8 of the Stage-II FC approval. Shockingly, in the same breath, it has recommended levy of penalty on entire diverted forest land of (1026.438 ha). It is pertinent to mention at this juncture that the application for amendment in condition was made vide letter dated 09.10.2018 which is much prior to the violation reported by Forest Dept.

- K. That it is noteworthy that the Applicant has made necessary deposition in ADHOC CAMPA account for the diversion of 1026.438 ha of land for non- forest purpose for which certain compliances were to be met. The land where Do Muhani Nallah exists, is a part of the mining lease and also a part of the diverted forest land of 1026.438 ha and the Applicants have already deposited Rs. 93,02,53,964/- (Rupees Ninety-three crore two lakhs fifty-three thousand nine hundred sixty-four only) and Rs. 2,20,39,921.73 (Rupees Two crore Twenty Lac Thirty-Nine Thousand Nine Hundred Twenty-One and Seventy-Three paisa only) for NPV amount for Safety Zone area 11.212 ha pertaining to NTPC Pakri-Barwadih Coal Mining Project. Apart from these payments, the Applicant has also deposited an amount of Rs. 1,25,67,32,412/- for management of Wildlife.
- L. That Regional Executive Director, NTPC Ltd also wrote a request Letter (Letter no RED (CM) Sect./PBCMP/EMG/2023/475) dated 02.06.2023 to Principal Chief Conservator of Forest, regarding delinking of Stage II FC approval of Pakri - Barwadih (North-West) with the deposit of penal NPV, that the area pertaining to the perceived violation, may be changed to 37.20 ha from 1026.438 ha and stretch of perceived violation area may be changed from 31 km to 3.1 km, that the width of green belt development may be changed from 50 m to 15 m and that the penalty levied upon the Applicant is



exorbitantly high and hence, may be reviewed in terms of Clause no. 1.21(iii)(a) of Chapter-1 of Part B of Forest Handbook.

- M. That it is pertinent to mention that the mining plan describes existence of three Nallahs i.e. Khora, Pakwah and Do Muhani Nallah and the EC was accorded for diversion / realignment of Nallah flowing across the mining lease after obtaining approval of State Government. That the DFO vide Impugned Demand Order demanded a deposit of penal NPV amounting to Rs 857,52,85,944.32.
- N. It is of utmost importance to note that under the FC, Nallahs are mentioned as the mining lease area containing 3 Nallahs – Khora Nallah, Pakwah Nallah and Do Muhani Nallah. However, inadvertently /erroneously the name of Pakwah and Do Muhani Nallahs have been mentioned instead of Pakwah and Khora Nallah. Realising the said fact, approval for modification of Condition 8 of FC clearance stage II was granted but to the utter dismay, the Respondent authorities have levied the high penalty on the Total diverted forest Land i.e. 1026.438 ha.
- O. That it is a natural corollary of the Letter dated 25.05.2023 issued by the MoEF & CC that the effect of the permission to divert Do Muhani Nallah, would reflect on the FC approval dated 17.09.2010 retrospectively for the reason that it is no more in doubt that any attempt to develop green belt around the same, would have been a wastage of the natural resources, keeping in view that the Nallah has to be diverted in order to clear the area and make it conducive for mining activities.
- P. It may be noted that the subsequently approved Revised Mining plan on 17.03.2016 automatically takes away and extinguishes the



element of mandate as regards the development of green belt within 50m of Do Muhani Nallah and in that view of the matter, if the fact the Applicant duly proceeded to develop Khora Nallah, though it was not specifically mentioned in the said condition no. 8, ought to be construed as deemed compliance to the full extent on the part of the Applicant and this aspect ought to have been considered by the Competent Authority in its decision-making process, which resulted in the decision to hold the Applicant as non-compliant as regards condition no. 8.

- Q. It has to be appreciated that issues of Environment Preservation, cannot be evaluated in isolation of the ground realities in the coal belts and since the availability of coal is a natural phenomenon, which decides the earmarking of the mining area, any pre-condition in the nature of creating a green belt, cannot be treated as a violation in the event of non-compliance, if it is clear from the record that the greening activity was practically infeasible in the originally earmarked area and that the project proponent has already taken remedial steps to undertake the greening activity in another area within the project peripheries, where it was actually feasible to do the same and that such an act, having been done voluntarily, should have been taken as a redeeming act and that the only reasonable finding, in such a situation, was that the Applicant was not only in substantial compliance of condition no. 8, but in full compliance of condition no. 8 of the said FC approval.
- R. In view of the above, the Applicant submits that the finding of violation of condition no. 8 of Stage II of the FC approval as well as the penalty imposed on the basis of the same, are fundamentally flawed.



15-16 That the contents of para 15 does not concern the Applicant and hence needs no reply.

5. That in view of the above, it is clear that the submissions made by the Respondent No.6 by way of its reply are clearly bereft of merits and a clear reiteration of facts pleaded by the Applicant in the captioned Application. The averments made under the Counter Affidavit are not in relevance to the present context and are highly extraneous, hence specifically denied in *toto*. The Respondent has failed to bring on record anything contrary to the submissions made by the Applicant in the captioned Application.
6. The Applicant reserves its right to file a more detailed reply as and when required depending upon the circumstances of the present case subject to the leave of this Hon'ble Tribunal.
7. That in terms as stated hereinabove, it is most humbly requested that the present Rejoinder be taken on record and this Hon'ble Court be pleased to allow the captioned Application, as prayed for therein.

Navin Kumar
 नवीन कुमार / NAVIN KUMAR
 उप महाप्रबन्धक (पर्यावरण प्रबंधन) / DGM (ENVT. MGMT.)
 एनटीपीसी लिमिटेड, NTPC Limited
 कोयला खनन परियोजनाएँ / COAL MINING PROJECTS
 हजारीबाग, Hazaribag



**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
APPEAL NO. 20/2023/EZ**

IN THE MATTER OF:

NTPC, PAKRI-BARWADIH COAL MINING PROJECT

...APPLICANT

VS.

THE STATE OF JHARKHAND & ORS.

...RESPONDENT

AFFIDAVIT

I, Navin Kumar, S/o Sh. Narendra Kumar Yadav, aged about 47 years, working as Dy. General Manager in the office of NTPC Limited, Pakri - Barwadih Coal Mining Project, Site Office Sikri, Post Office and Police Station- Barkagaon, District- Hazaribagh, Jharkhand-825311, do hereby solemnly affirm and state as under:

1. I am the Dy. General Manager (Env. Mgmt.) of the Applicant company and am fully acquainted with the facts and circumstances of the case. I am also duly authorised and competent to affirm this affidavit and accordingly I depose to the same.
2. I say that I have read the contents of the above Rejoinder filed by the Applicant in replication of the Counter Affidavit filed by the Respondent No.6 and I have understood the contents of the same.
3. I say that the contents of the above Rejoinder filed by the Applicant are based on the information available with the appellant, in the normal course of business and believed by me to be true.

Identified by me

Uttam Kumar Mandal
Uttam Kumar Mandal
Advocate

10, Old Post Office Street,
Room No. 110/1
Kolkata - 700 001
(M): 9830424536/8777688137
advuttamkumar63@gmail.com

Navin Kumar

DEPONENT

नवीन कुमार / NAVIN KUMAR
उप महाप्रबंधक (पर्यावरण प्रबंधन) / DGM (ENV. MGMT.)
एनटीपीसी लिमिटेड / NTPC Limited
कोयला खनन परियोजनाएं / COAL MINING PROJECTS
हजारीबाग / Hazaribag

Solemnly affirm and declare
before me an identification

ASIS KUMAR SEN

ASIS KUMAR SEN
City Civil Court, Kolkata
Notary
Reg. No. 13802/18

09 JAN 2024

**VERIFICATION**

I, Navin Kumar, S/o Sh. Narendra Kumar Yadav, aged about 47 years, working as Dy. General Manager in the office of NTPC Limited, Pakri - Barwadih Coal Mining Project, Site Office Sikri, Post Office and Police Station- Barkagaon, District- Hazaribagh, Jharkhand-825311, do hereby verify the contents of the above affidavit to be true to the best of my knowledge, no part of it is false and nothing material has been concealed there from.

Verified at Kolkata on this 9th day of January, 2024.

Navin Kumar

DEPONENT

नवीन कुमार / NAVIN KUMAR
उप महाप्रबंधक (पर्यावरण प्रबंधन) / DGM (ENVT. MGMT.)
एनटीपीसी लिमिटेड / NTPC Limited
कोयला खनन परियोजनाएँ / COAL MINING PROJECTS
हजारीबाग / Hazaribag