

**BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA**

Original Application No. 93/2024/EZ

Ashish Kothari

...Applicant

VERSUS

The Ministry of Environment, Forests
and Climate Change & Ors.

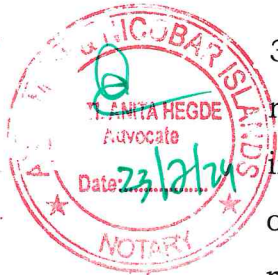
Respondents

COUNTER AFFIDAVIT

**IN TERMS OF ORDER DATED May 14, 2024 PASSED BY
HON'BLE NATIONAL GREEN TRIBUNAL, EASTERN ZONE
AT KOLKATA ON BEHALF OF THE RESPONDENT NO. 2**

I, Mohammed Pervaiz, son of Shri C. Mohammed, aged about 55 years, by faith – Muslim, by occupation – Service, working for gain at Andaman & Nicobar Islands Integrated Development Corporation Limited (ANIIDCO), do hereby solemnly affirm and say as follows:

1. I am the General Manager (Projects) of ANIIDCO, being the Respondent No. 2 in the present application. I am well conversant with the facts and circumstances of the instant case. I am competent to and am authorised to sign and affirm this affidavit on behalf of the Respondent No. 2.
2. I say that an order passed by Hon'ble National Green Tribunal, Eastern Zone, Kolkata directing the respondent herein to file its counter affidavit.
3. I say that on 15th May 2024 by e-mail the answering respondent had received the copy of the original application filed in the instant matter by the appellant alongwith the copy of the order dated May 14, 2024. Upon receiving the same the respondent had gone through the contents of the application



Mohammed Pervaiz

SI No. 1010

Date. 23/7/24

filed by the applicant and say that the said application is not at all maintainable, vexatious and devoid of merit.

4. I say that the instant application is liable to be dismissed with cost.

5. I say that the respondent filed the instant application even without taking pain to understand the documents on which he is relying on, just in order to gain publicity and to create hindrance towards public work which is of great importance as such work includes development of national, defense and strategic importance.

6. It is respectfully submitted that Government of India considering the strategic importance of Great Nicobar Island situated in the southernmost point of the country which is about 40 km from the major international sea route passing through Malacca Strait conceived the project for holistic development of Great Nicobar Island. The holistic development of Great Nicobar Island project is a project of national importance in view of the security, socio economic benefit and strategic location. The prestigious project of holistic development of Great Nicobar Island will transform the archipelago. There is pressing urgency and this great project of national importance may not be held up on the basis of mere unsubstantiated and unfounded apprehension.

7. I say while implementing the project, the respondent will give upmost priority to the directions of this Hon'ble Tribunal in its earlier order dated 03.04.2023 in Appeal No. 32 of 2022.

8. I say that by way of the Original Application No.93 of 2024, the applicant has alleged violation of CRZ Notification, 2019 by the Respondents for establishment of :



SI No. 1010
Date: 23/2/24

Powari

- a. International Container Transshipment Terminal (ICTT) –
14.2 Million TEU
- b. Township and Area Development
- c. 450 MVA Gas and Solar based Power Plant
- d. Airport (Civilian and Defence Use)

Over an extent of 16610 hectares in the Great Nicobar Islands (GNI)

9. I say that the Applicant has further alleged failure of the Respondent 1 to exclude areas classified as the CRZ-IA (ecologically sensitive areas) in the approved CZMP from the project areas sought by the Respondent 2/R2.

10. I say that further, pursuant to the order of the National Green Tribunal (NGT) in Original Appeal 29 -32 of 2022 dated 03.04.2023, Respondent 1 has constituted High Powered Committee (HPC) vide Office Memorandum No.IA3-3/9/2023-IA.III(pt.) dated 13.04.2023 headed by the Secretary (MoEF&CC) to address certain unanswered deficiencies raised by the Appellants. The operative para 33 of the judgment is stated as follows.

“33. However, there are some unanswered deficiencies pointed out by the appellants which need to be addressed. By way of instance, it is pointed out that out of 20668 coral colonies, 16150 are proposed to be translocated without any mention of threat to remaining 4518 coral colonies. It is pointed out that ICRZ Regulations prohibits destruction of corals. Further, data collected for impact assessment study is only of one season as against the requirement of three seasons. It is also shown that part of the project is in CRZ IA area where Port is prohibited. These aspects may call for revisiting the EC by a High Powered Committee (HPC) which we propose to constitute. The same will be headed by Chief Secretary, Andaman & Nicobar Island, Zoological



SI No. 1010
Date: 23/7/24

Rewari

Survey of India, Botanical Survey of India, Central Pollution Control Board, nominee of Vice Chairman of Niti Aayog, nominee of Secretary, Ministry of Shipping and Director, Wildlife Institute of India, Secretary, MoEF&CC may appoint a Nodal Officer, not below the rank of Joint Secretary for facilitating the functioning of the Committee. The Committee may meet within two weeks from today and finalise its proceedings within two months. It will be open to the Committee to associate any other institution/expert. In the light of report of the Committee, the EC or its conditions may be re-looked into by the competent authority. Till then further work in pursuance of impugned EC may not proceed except for the work which may not be of irreversible nature”.

11. I say that assessing the matter in detail and based on the facts of the case and the submissions made by the respective Parties, this Hon'ble Tribunal, vide Final Order and Judgment dated 03.04.2023 upheld the validity of the grant of the Environment and CRZ Clearance and recorded, “... Thus, by and large the project is compliant and EC does not call for interference.”

Further, as also previously state in Para 9 of this counter affidavit, as per the direction of Tribunal, Respondent 1 has constituted a High Powered Committee headed by Secretary (MoEF&CC), including other members as Chief Secretary, Andaman & Nicobar, Zoological Survey of India, Botanical Survey of India, Central Pollution Control Board, nominee of Vice Chairman of Niti Aayog, nominee of Secretary, Ministry of Shipping and Director, Wildlife Institute of India and directed the answering Respondent to review the contentions raised by the Applicant in the aforesaid appeal.



SI No. 1010
Date: 23/7/24

Penney

12. I say that so far as the contention of the Applicant in OA 93/2024 regarding violation of the ICRZ Notification, 2019 is concerned, the Respondent 1 imposed the specific and general conditions on the Respondent 2, emphasis is laid on the other specific condition No.IX i.e., *“Construction activity shall be carried out strictly according to the provisions of the ICRZ Notification, 2019. No construction works other than those permitted in Coastal Regulation Zone shall be carried out in Coastal Regulation Zone area”*.

13. It is humbly submitted that during the entire EIA process, the Respondent 1 ensured that there is no violation of the EIA Notification, ICRZ Notification and other Environmental Laws in force while undertaking the project in question. It goes without saying that the answering respondent/Respondent 2-(R2) will carry out the project in terms of EC & CRZ Clearance granted by Respondent No. 1

14. It is humbly submitted that the Respondent 1 has prepared the following terms of reference for the High Power Committee to address the issues raised by this Tribunal at para 33 of the judgement:-

- a. *That out of 20668 coral colonies, 16150 are proposed to be translocated without any mention of threat to remaining 4518 coral colonies and ICRZ Regulations prohibit destruction of corals.*
- b. *That data collected for impact assessment is of only one season as against requirement of three seasons*
- c. *That part of the project is shown to be in CRZ IA area where Port is prohibited.*

15. It is humbly submitted that the HPC, under the Chairmanship of the Secretary, EF&CC convened three meetings on 18.04.2023, 02.05.2023 and 04.07.2023, respectively where the above terms of reference were deliberated

SI No. 1010

Date. 23/7/24



Pewi

upon, while also taking into account the reports submitted by the Zoological Survey of India and National Centre for Sustainable Coastal Management.

16. It is humbly submitted that in order to evaluate whether a part of the project is falling inside the CRZ IA area, the concerned agency, i.e., the National Centre for Sustainable Coastal Management (hereinafter referred to as "NCSCM") visited the project site and its nearby areas for conducting the ground truthing exercise. Thereafter, taking into consideration the factual position, layout of the project prepared by Andaman & Nicobar Islands Integrated Development Corporation Limited (ANIIDCO) (herein after refer to as "answering respondent/R2"), observation made during the ground truthing exercise and in terms of the response received by the Forest Department of UT Administration and Project Proponent, the NCSCM observed that the construction of the Port is not a permissible activity under CRZ IA area but under CRZ IB area. The NCSCM, hence, concluded that no part of the project area is falling under CRZ IA area. Moreover, it was also clarified by ANIIDCO that in conformity with Specific and General conditions of the EC dated 11.11.2022, no activity is proposed within ICRZ-IA area.

17. I say that the point wise conclusion of the HPC is mentioned below as follows:-

- a. In respect of the 1st issue regarding the translocation of the 16150 out of 20668 coral colonies and threat to the remaining 4518 coral colonies, the HPC agreed with the recommendations of ZSI, which stated that keeping in view the construction and operationalization of the activities related to the project, 16150 corals need to be translocated. However, the remaining 4518 colonies would need to be continuously observed from 15 – 30 metres of depth to analyse the sedimentation load and



SI No. 10/10
Date 23/7/24

[Handwritten signature]

rate of sedimentation before any decision any decision on translocation or otherwise is taken regarding them.

- b. Regarding the 2nd issue of collection of the baseline data, the HPC, with the assistance of the EAC (Infra -1 sector) concluded that the EIA Notification, 2006 do not prescribe either Rapid or Comprehensive EIA studies. The Environmental Impact Assessment Guidance Manual for Ports and Harbours prepared by Administrative College of India (ASCI) mentions that "One Season data should be monitored other than monsoon as per CPCB norms".
- c. In view of the 3rd issue, i.e., part of the project being in CRZ IA area where Port is prohibited, the HPC came to the conclusion that in the Report submitted by the NCSCM, it has been determined that construction of port is permissible in ICRZ-IB area but not permissible in ICRZ-IA. The NCSCM, concluded that no part of the project area is falling under CRZ-IA area.

18. It is humbly submitted that the General and Project Specific Conditions have been laid down in the Environment and CRZ Clearance dated 11.11.2022 by taking all the Environmental Aspects into account and providing safeguards as well as mitigation measures for the protection of Great Nicobar Islands. By way of the deliberations held during the HPC meeting and its findings as elaborated earlier in Para 14 of this counter affidavit, it may be seen that the unanswered deficiencies were properly addressed. The High Powered Committee has emphasized on the need for implementation of the institutional framework by answering respondent/R2 as envisaged in the EC letter by providing any technical as well as logistical and financial assistance to the concerned authorities/institutions, such as Wildlife Institute of India, Zoological Survey of India, Botanical Survey of India, Salim Ali



SI No. 1010
Date 23/12/24

[Handwritten signature]

Centre for Ornithology and Natural History (SACON) etc and development of necessary infrastructure in order to undertake research and monitoring activities by them.

19. I say that moreover, in conformity with the EC conditions, the HPC also recommended answering respondent/R-2 for formation of three committees namely (i) Committee to Oversee Biodiversity related matters and (ii) Committee to Oversee Pollution Related Matters and (iii) Committee to Oversee welfare and issues related to Shompen and Nicobarese and all requisite logistic and financial support be provided to all the related Organizations who have been assigned responsibilities in the aforesaid Committees. Joint meetings of the three Monitoring committees were held on 31.03.2023 and 30.04.2024.

20. I say that pursuant to the conclusion and recommendations made by the HPC, it has been determined that there is no requirement to exclude areas classified as the CRZ IA in the approved CZMP as the General and Specific Conditions stipulated in the EC letter were self sufficient and dealt with all the environmental concerns that were raised by the Applicant herein in Appeal No. 32/2022.

21. I say that all the allegations made against the answering respondent in the paragraph nos. 1 to 8 of the application including the grounds and prayer made therein are denied and disputed and the application is put to strict proof of such allegations. I say that the matter requires no interim order to be passed by this Hon'ble tribunal as no such violation of direction of this Hon'ble court is made.

22. That as far as the prayer of the Applicant is concerned regarding production of the minutes of the HPC meetings, the answering respondent/R-2 humbly submits that the integrated project pertains to defence and strategic objectives and



[Handwritten signature]

Sl No. 10/0
Date: 23/7/24

therefore, the minutes of the meetings are construed to be confidential in nature and out of public domain.

23. In view of the above submissions made by the answering respondent/R-2 it is prayed that this Hon'ble Tribunal may take on record and consider above submissions and dismiss the present Application or pass any other appropriate order, which the answering respondent/R-2 shall duly comply with and thus render justice.

24. The answering respondent/R-2 craves liberty to file additional information if any, till *pendent lite*


DEPONENT

महाप्रबंधक (परियोजनाएं)
General Manager (Projects)
अनिइको लिमिटेड
ANIIDCO LTD, PORT BLAIR

VERIFICATION

I, the aforementioned Deponent do hereby declare on this 23rd day July 2024 at Port Blair that the statements contained in paragraphs 1 to 8 of the foregoing affidavit are true to my knowledge, and the statements contained in paragraphs 9 to 24 of the foregoing affidavit are my respectful submissions before this Hon'ble Tribunal


(Mohammed Pervaiz)

General Manager (Projects),
ANIIDCO
DEPONENT

SI No..... 1010
Date..... 23/7/24




SMTI. ANITA HEGDE
Advocate &
Notary Public
Port Blair
23/7/24

Affirmed before me after the contents were read over & explained in Simple Hindi / English / Tamil language


SMTI. ANITA HEGDE
Advocate
Port Blair
23/7/24