

## BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

## EASTERN ZONE BENCH AT KOLKATA

Original Application No. 38/2022/EZ

IN THE MATTER OF:

Dr. Bina Basnett

... Applicant

Versus

State of Sikkim and Ors.

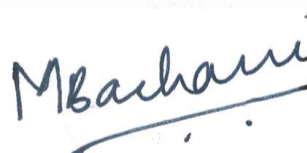
.... Respondents

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DATE: 16.01.2025

PLACE: KOLKATA



## DRAWN AND FILED BY:

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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL****EASTERN ZONE BENCH KOLKATA****Original Application no. 38/2022/EZ****IN THE MATTER OF:**

Dr. Bina Basnett

Applicant

**-Versus-**

State of Sikkim and Ors.

Respondents

**SUR REJOINDER ON BEHALF OF THE RESPONDENT NO. 6, SIKKIM POLLUTION CONTROL BOARD, TO THE COMPOSITE REJOINDER DATED 11.11.2024 FILED ON BEHALF OF THE APPLICANT**

I, Bindey Kr. Chettri S/o Shri Late Tika Chandra Chettri presently posted as Principal Chief Scientific Officer, State Pollution Control Board-Sikkim at office having Address at Deorali, Gangtok, 737102 do hereby solemnly affirm and state as under:-

1. That I am well conversant with the facts and circumstances of the case based on the knowledge derived from the records as maintained by the Respondent No.6, Sikkim State Pollution



Control Board, and have been authorized to swear the present affidavit on behalf of Respondent No.6, Sikkim State Pollution Control Board.

- i. That I have read the contents of the above mentioned Composite Rejoinder dated 11.11.2024 filed by the Applicant in O.A. No. 38 of 2022/EZ and have understood the same and in reply thereto I say and submit as under:
- ii. That I say and submit that save and except those, which are matters of record, all averments, statements and submissions made by the Applicant in the above-mentioned Composite Rejoinder dated 11.11.2024 are disputed and denied as if traversed seriatim unless specifically admitted herein and therefore no part of the Affidavit should be deemed to be admitted for want of specific denial.
- iii. That the contents of the Counter Affidavit dated 15.03.2024 filed on behalf of the Respondent No. 6 herein to the Original Application may be read as a part of this Sur Rejoinder and the submissions made therein are reiterated and have not been repeated herein to avoid repetition and for the sake of brevity.
- iv. That I crave leave of this Hon'ble Tribunal to file a further response in the present matter, if necessary, and I say that I



have replied to the averments specifically alleged against the Respondent No.6, Sikkim State Pollution Control Board.

## **2. PRELIMINARY SUBMISSIONS**

- I. That the answering Respondent No. 6, Sikkim Pollution Control Board has considered and granted all permissions to the Respondent No. 12 as per applicable law. Specifically, the below permissions have been accorded for the subject project of the Respondent No. 12:
  - a. No Objection Certificate (NOC) dated 17.09.2021 (Pg. 686) to the Urban Development Department (UDD), Government of Sikkim for demolition/ dismantling of an old facility comprising a three storeyed parking facility and its ancillary construction located at Old West Point School, Gangtok. The said NOC was made subject to certain conditions for mitigating any possible impacts of environmental pollution, including a requirement to ensure compliance with the Construction and Demolition Waste Management Rules, 2016.
  - b. Consent to Establish (CTE) was granted for eleven floors on 24.02.2022 (Pg. 688 to 689) under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 for construction of



Multilevel Car Parking-cum-Shopping Hub at Old West Point School area.

- c. Provisional Consent to Establish dated 17.10.2023 (Pg. 693 to 694) granted under Section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 for a fourteen (4G+7+3) storeyed Integrated Commercial cum Multi Level Car Parking Complex. This Provisional Consent dated 17.10.2023 has been made subject to the fulfilment of 25 conditions, including a technical examination from the Central Building Research Institute, Roorkee.
- d. Consent to Establish dated 18.01.2024 (Pg. 695 to 696) for vertical expansion of fourteen storeyed (4G+7+3) Integrated Commercial cum Multi Level Car Parking Complex at MG Marg, Gangtok.
- II. That the answering Respondent has conducted multiple inspections of the Respondent No. 12's multi-level car parking cum commercial development project to check its compliance with the general and specific conditions imposed through the Consent to Establish dated 24.02.2022. The same include periodic inspections conducted on 24.05.2022, 01.09.2022, 13.12.2022, 22.02.2022 and 31.05.2023. In this regard, it is humbly submitted that no adverse observation was made and no non-compliance was observed during the above



inspections, as can be noted from a perusal of the latest inspection report dated 31.05.2023 (Pg. 690 to 692).

- III. That the answering Respondent granted the modified Consent to Establish dated 18.01.2024 after ascertaining compliance with all the conditions prescribed through the Provisional Consent dated 17.10.2023. Further, the answering Respondent is conducting periodic inspections to monitor compliance of its Consent to Establish dated 18.01.2024.

#### **PARAWISE REPLY TO THE PRELIMINARY OBJECTIONS**

1. That in response to the contents of Para 1 of the Composite Rejoinder dated 11.11.2024 regarding compliance as per the Environmental Rule of Law, the answering Respondent humbly submits that the Project of the Respondent No. 12 is being assessed and examined in accordance with the law. Further, all permissions are being granted by the answering Respondent only after being satisfied of the compliance of prescribed conditions, as imposed from time to time.
2. That the contents of Para 2 to 4 do not pertain to the answering Respondent and hence need no reply.
3. That the Original Applicant, in Para 5, has incorrectly alleged that unlawful permissions have been granted to the Respondent No. 12.



In this regard, the answering Respondent humbly submits that the requisite Consent to Establish dated 24.02.2022 and 18.01.2024 have been granted in accordance with the law.

4. That the contents of Para 6 to 16 do not pertain to the answering Respondent and hence need no reply.
5. That the contents of Para 17 are denied insofar as it pertains to compliance with the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as well as the Construction and Demolition Waste Management Rules, 2016 under the Environment (Protection) Act, 1986. Such compliance has been assessed through periodic inspections of the project site of the Respondent No. 12 by the answering Respondent herein from time to time.
6. That the contents of Para 18 do not pertain to the answering Respondent and hence need no reply.
7. That the averments made by the Original Applicant in Para 19 of its Composite Rejoinder is denied as false, misleading and devoid of any merit. The Original Applicant incorrectly avers that the CTE granted to the Respondent No. 12 is not proper and the Applicant has failed to put on record any evidence to substantiate the same. It is reiterated that the answering Respondent granted the No Objection Certificate (NOC) on 17.09.2021 (Pg. 686) to the UDD for demolition/ dismantling of an old facility comprising a three storeyed parking facility and its ancillary construction located at Old West



Point School, Gangtok. The said NOC was made subject to certain conditions for mitigating any possible impacts of environmental pollution, including a requirement to ensure compliance with the Construction and Demolition Rules, 2016. Thereafter, the Consent to Establish was granted on 24.02.2022 post which the work for the construction of the Multi Level Car Parking cum Commercial Development Project was commenced. Further, with respect to the allegation of ex-post facto grant of Environmental Clearance, because an ex post facto Environmental Clearance cannot be granted. In this regard, the answering Respondent humbly submits that the "Environmental Clearance" was obtained under the Environment Impact Assessment Notification, 2006 and a "Consent" was obtained under the Water Act, 1974 and the Air Act, 1981 are wholly distinct statutory mandates, with each operating in terms of its own regulatory mechanism governed by different legislations. The Consents to Establish dated 24.02.2022, 17.10.2023 and 18.01.2024 were only granted from time after appropriately assessing the compliance of the project with applicable environmental norms and in compliance with the Water (Prevention and Control of Pollution) Act, 1974 and Air( Prevention and Control of Pollution) Act, 1981.

8. That the contents of Para 20 to 23 do not pertain to the answering Respondent and hence need no reply.
9. That the contents of Para 24, insofar as they pertain to the permissions granted by the answering Respondent herein, are vehemently denied as false, misleading and devoid of any merit. It is humbly submitted that the answering Respondent ensures that all

buildings which are being constructed are compliant with the requisite environmental statutes, including air, water, noise, among other parameters to ensure there is no adverse impact from their establishment. In fact, environmental mitigation measures are generally incorporated into the project design of construction projects executed in the State of Sikkim.



10. That the contents of Para 25 to 31 do not pertain to the answering Respondent and hence warrant no reply.

11. That, as admitted in Para B/Pg. 2264 of the Composite Rejoinder filed by the Original Applicant, Para 1 to 145 (Pg. 2281 to 2344) of the same are specific to the submissions made by the Respondent No. 12 and the same do not pertain to the answering Respondent herein. However, the answering Respondent denies all averments made by the Original Applicant so long as they are inconsistent with the submissions made by the answering Respondent herein. Further, it is also humbly submitted that the answering Respondent has been regularly monitoring the compliance with the conditions of the Consent to Establish granted to the Respondent No. 12 and will take action in accordance with the law in the event of any violation of such conditions. In fact, no air, water and noise pollution will be caused if prescribed containment measures in the CTE are in place and compliance is accordingly observed with the parameters

mentioned in the Air Act, 1981, Water Act, 1974 and Noise Pollution Rules, 2000.

*[Handwritten Signature]*  
DEPONENT



**VERIFICATION**

I, the above-named deponent do hereby verify and say that the statements made at aforementioned paragraphs of the present Sur Rejoinder are true to the best of my knowledge and the rest are my respectful submissions before this Hon'ble Tribunal.

Affirmed on this the 28<sup>th</sup> day of JANUARY 2025 at Gangtok, East Sikkim.

Identified by *[Handwritten Signature]*  
23/1/2025

Solemnly affirmed before me on this the 23<sup>rd</sup> day of January, 2025 by Shri/Smt/Kri Yangji Sherpa Bhandari, Chelli of Deorai, Gangtok, Sikkim who is known and identified by Shri/Smt/Kri Passang Yangji of Chonggy, Gangtok

*[Handwritten Signature]*  
DEPONENT

12.

*[Handwritten Signature]*  
Mr. Kusan Limboo 23/01/2025  
Oath Commissioner  
Gangtok District  
High Court of Sikkim  
Vide Notification No. 22/HCS/13/05/2024