

S.L. No. 54/25

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH AT KOLKATA
(Under Section 18(1) read with Section 16 of the National Green
Tribunal Act, 2010)
Appeal No. 14 of 2024/EZ

In the matter of:

S.T.P. LIMITED

... Appellant

-Versus-

**MINISTRY OF ENVIRONMENT FORESTS AND CLIMATE CHANGE
AND OTHERS**

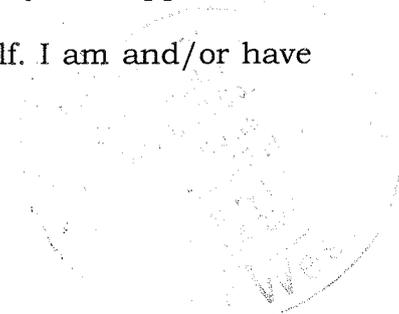
... Respondents

**AFFIDAVIT-IN-REPLY OF THE APPELLANT TO THE COUNTER
AFFIDAVIT FILED ON BEHALF OF THE RESPONDENT NO.3 IN
RESPONSE TO THE APPELLANT'S APPEAL UNDER SECTION 18(1)
READ WITH SECTION 16(g) OF THE NATIONAL GREEN TRIBUNAL
ACT, 2010.**

I, Amit Kumar Shaw, son of Prakash Chandra Shaw, aged about 44 years, by faith Hindu, and working for gain at 129, Park Street, Kolkata-700017, West Bengal, do hereby solemnly affirm and state as follows:

1. I am the authorized representative of the Appellant abovenamed. I have been duly authorized by the Appellant to file the instant affidavit for and on its behalf. I am and/or have

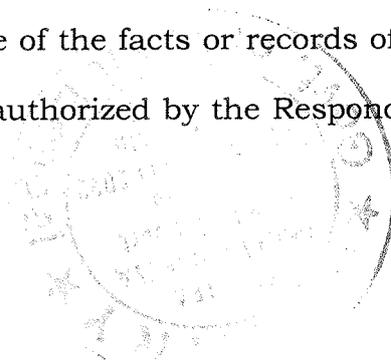
05 MAR 2025



made myself fully conversant with the facts and circumstances of the instant case, and as such, I am competent to make and affirm the instant affidavit for and on behalf of the Appellant.

2. The Appellant has been served with a Counter Affidavit filed on behalf of Respondent No.3 in response to the Appellant's Appeal under Section 18(1) read with Section 16(g) of the National Green Tribunal Act, 2010 [hereinafter referred to as the 'NGT Act']. The said Counter Affidavit has been affirmed by one Dinesh Chandra on 24 January 2025. I have been advised to deal with only such statements made in the said Counter Affidavit, which are relevant for the purposes of adjudication of the present proceeding. I do hereby clarify that save and except what are matters of record or what may be gleaned therefrom and save specific admissions made by me hereinafter, all other statements and/or allegations made in the said Counter Affidavit should be deemed to have been denied and disputed as if the same has been set out herein and traversed in seriatim.

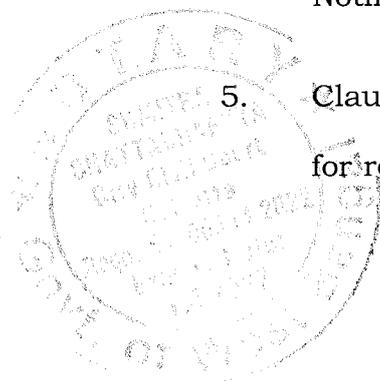
3. With reference to paragraphs 1, 2 and 3 of the said Counter Affidavit, save and except what are matters of record or what may be gleaned therefrom, all other allegations made in the paragraphs under reference are denied and disputed. I deny that the deponent is aware of the facts or records of the instant case or that he has been authorized by the Respondent No.3 or



that he is competent to make or affirm the said Counter Affidavit. It is denied that the deponent is a law abiding citizen of India.

4. With reference to paragraphs 4(i) to 4(v) of the said Counter Affidavit, save and except what are matters of record or what may be gleaned therefrom, all other allegations made in the paragraphs under reference are denied and disputed. The contents of the Notification dated 29 March 2012 and the impugned order dated 10 October 2012 are matters of record. The extent of the Dalma Wildlife Sanctuary and the wildlife species that inhabit the said sanctuary are matters of record and the Appellant refrains from making any comment with regard thereto. Likewise, the entire exercise of declaration of eco fragile zones around National Parks and Sanctuaries and purpose/importance of creating such eco-sensitive zones are again matters of record. The Appellant is primarily aggrieved with the attempt of the respondents to apply the Notification dated 29 March 2012 to the Appellant's factory at Dimna Road, Mirzadih, Jamshedpur and to make the same binding and enforceable against the Appellant. The contents of the Notification dated 29 March 2012 are matters of record.

5. Clause-3 of the said notification dated March 29, 2012 provided for regulation of activities in the eco sensitive zone. The relevant



provisions, for the purposes of the instant appeal, read as follows:-

"3. Prohibited, regulated and permitted activities in Ecosensitive Zone—

Subject to the provisions of this paragraph, the activities in the Eco-sensitive Zone shall be regulated in accordance with Annexure 3 to this notification.

(1) Industrial Units:

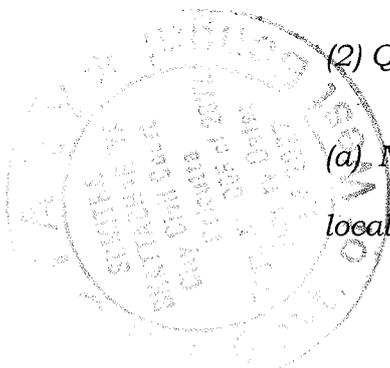
(a) On or after the publication of this notification in the Official Gazette, no new polluting industries shall be allowed to be setup within the Eco-sensitive Zone;

(b) any non-polluting, non-hazardous, small-scale and service industry, agriculture, floriculture, horticulture or agro-based industry producing products from indigenous goods from the Eco-sensitive Zone, and which do not cause any adverse impact on environment, may be permitted in the Eco-sensitive Zone;

(c) no establishment of new wood based industry shall be permitted within the limits of Eco-sensitive Zone.

(2) Quarrying and Mining:

(a) No mining activity except for bona-fide domestic use of the local residents shall be allowed within the of Eco-sensitive Zone.



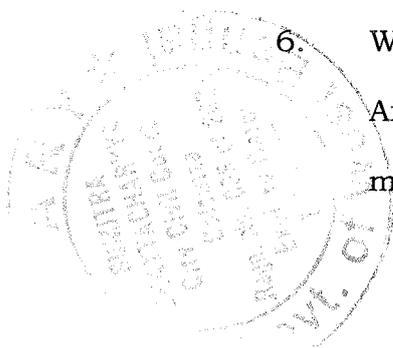
(b) No crushing activity shall be allowed within the Eco sensitive Zone.

(3) Construction Activities:

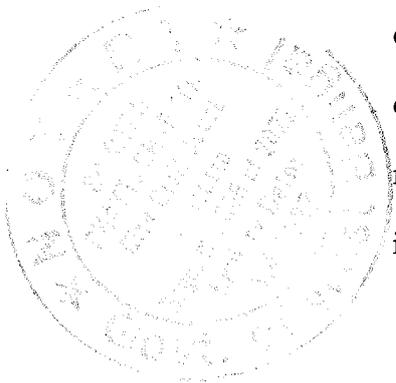
No new construction of any kind shall be allowed in the area falling within a distance of three hundred meters from the boundary of the Dalma Wildlife Sanctuary.”

It is clear from a plain reading of the said Notification that the same unambiguously prohibits setting up of only new polluting industry. Pending preparation of the Zonal Master Plan and its approval by the Central Government, only new activities could be allowed after the proposals were scrutinized and approved by the Monitoring Committee. The intention of the framers of the Notification was thus clear to the extent that the Notification, by no stretch of imagination, could be given any retrospective effect. The Notification does not make a mention that the same is to be given retrospective effect, and hence its effect will be from the date of its issuance. Therefore, the subject Notification can only be prospectively effective. Save as aforesaid, all other allegations are denied and disputed.

6. With reference to paragraphs 4(vi) to 4(x) of the said Counter Affidavit, save and except what are matters of record or what may be gleaned therefrom, all other allegations made in the

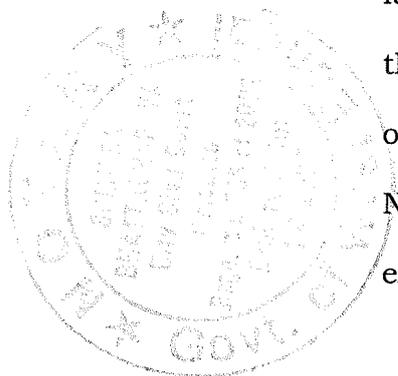


paragraphs under reference are denied and disputed. The appellant has been a pioneer in manufacturing construction chemicals, bitumen and coal tar products in India for over 85 years. Its product line includes diverse fields of operation, such as, water proofing road surfacing, flooring, manufacture of primers, admixtures, grouts, protective/ anti-corrosion coatings, coal tar products etc. The Jamshedpur factory of the appellant was established in the year 1986 and has been operational since then. The Appellant's factory unit is an existing unit, which was in existence as on the date of the publication of the Notification dated 29 March 2012. The prohibition contained in Clause 3(1)(a) of the said Notification applies to the setting up of new polluting industries within the eco sensitive zone and as such the Appellant's factory unit does not fall within the ambit of the prohibition contained in Clause-3. It is completely denied that the Appellant's factory unit is a polluting industry or that it emits out pollutants or gases or heat, which is detrimental to the eco system of wild animals of Dalma Wildlife Sanctuary. It is denied that the industry of the Appellant is illegal or that the respondents were justified in ordering the close down of the Appellant's factory or that such order is legal or valid or just or proper or in the interest of the nation. It is denied that the instant appeal should be rejected. It is denied that the prayers made in the said Appeal are devoid of



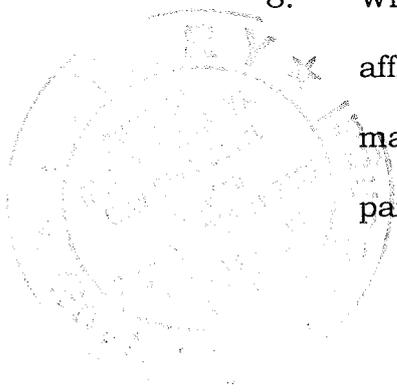
any merit in law or in facts or should be dismissed. It is denied that the said order has been issued in compliance of the Notification dated 29 March 2012. Save as aforesaid, all other allegations are denied and disputed.

7. With reference to paragraphs 5, 6, 7 and 8 of the said counter affidavit, save and except what are matters of record or what may be gleaned therefrom, all other allegations made in the paragraphs under reference are denied and disputed. In this connection, I rely upon paragraphs 1 to 11 of the Appeal. It is denied that the order dated 10 October 2012 is legal or valid in the eye of law or has been issued in compliance with the Notification dated 29 March 2012. In fact, the order dated 10 October 2012 is based on an erroneous interpretation of the Notification dated 29 March 2012. The prohibitions of the said Notification clearly do not apply to existing industries even if the same are located within the eco sensitive zone around the Dalma Wildlife Sanctuary. The facts of the case in *Rohit Chowdhury vs. Union of India*, wherein the order dated 7 September 2012 has been passed, are entirely different from the facts of the present case. The subject matter of the said case is the setting up of stone crushers, brick kilns, tea estates and other miscellaneous units within the NDZ around the Kaziranga National Park after publication of a notification prohibiting expansion of industrial areas, term-sheets, infrastructural

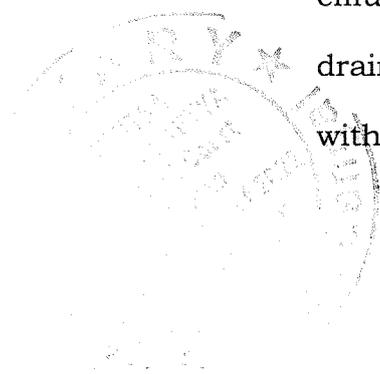


facilities or other activities, which would lead to pollution and congestion within the 'No Development Zone'. Such industrial units were set up without proper approval and/or sanctions and/or permissions and/or clearances. In such case, the offending units were established in contravention of the Subject Notification. Moreover, unlike the Notification dated 29 March 2012, the language of the 1996 Notification also did not specifically prohibit only setting up of new industrial units. In this case, the Appellant's industrial unit is not a polluting industry and the same has been clearly stated in the Appellant's Appeal. It is denied that the Appellant's contention with regard to the legality of the issuance of the Notification dated 29 March 2012 or the inclusion of Village- Mirzadih within the ambit of such Notification is not maintainable in the eyes of environmental law, as alleged or at all. The Jharkhand State Pollution Control Board, Ranchi is neither a necessary party nor a proper party in the instant proceeding, and hence, the question of impleading the said Authority in the present proceeding does not and cannot arise at all. Save as aforesaid, all other allegations are denied and disputed.

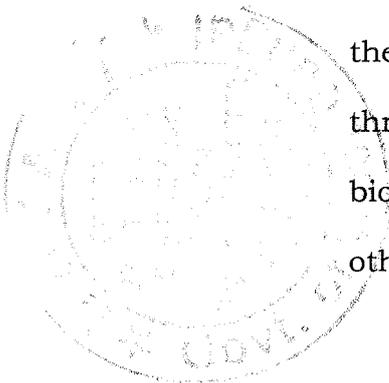
8. With reference to paragraphs 9 and 10 of the said counter affidavit, save and except what are matters of record or what may be gleaned therefrom, all other allegations made in the paragraphs under reference are denied and disputed. In this



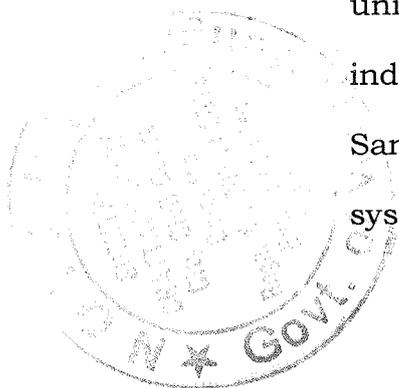
connection, I rely upon paragraphs 12 to 15 of the Appeal. It is denied that the Appellant has made a wrong interpretation of the Notification dated 29 March 2012 or that the same should be given retrospective effect. It is denied that the industry of the Appellant is a polluting industry or that it cannot be allowed to run in view of the alleged prohibitions contained in the said Notification. The genuineness and the contents of the alleged complaint made by the villagers of Khadia Busti are denied and disputed. It is denied that the factory is creating pollution or discharging salvage or other products in the drains or that the drains are filled with muck from the factory, which is purportedly creating health hazard. It is denied that the aquatic animals and wild animals are dying or that the contaminated fishes are being consumed by the Avian Fauna. It is denied that the manufacturing unit is at the boundary of Dalma Wildlife Sanctuary or that the alleged polluted water is being consumed by wild elephants, which is purportedly creating serious threat to wild animals. It is also denied that the said manufacturing unit emits waste in Dimna Nalah, which is polluting the ground water and the soil of the Sanctuary. In this connection, it is stated that there is no discharge of untreated or industrial effluents by the factory into any water body or land or nalah or drain. The factory has an effluent treatment plant in place within its premises which is functioning. Therefore, there arises



no question of untreated wastewater or sewage being disposed of into the water body from where the elephants drink water. The solid waste of the factory is also not disposed of by the eco sensitive zone and the bio-degradable materials are recycled. There is no inhabitation around the factory and no wild animal visits the area around the factory, which implies that the factory does not pose any threat to wild lives. The factory does not use plastic carry bags and disposal of plastic articles, if any, is not done within the eco-sensitive zone. It is denied that the wild animals of Dalma Wildlife Sanctuary are facing any threat from the Appellant's factory unit or that the Appellant is causing any sort of danger to the houses of the wild animals. The Appellant has no quarrel with the position of law as enunciated in *T.N. Gondaverman Thirumulpad vs. Union of India* in which the Hon'ble Supreme Court has laid stress on ecocentrism over anthropocentrism. However, the Appellant humbly submits that the Appellant's factory unit at Mirzadih cannot be prohibited from operating on the basis of the Notification dated 29 March 2012, which clearly does not prohibit existing industrial units within the eco-sensitive zone from operating. It is denied that the Appellant's manufacturing unit has posed any form of threat to the environment, the forest, the vegetation, biodiversity, flora and fauna or the Indian Elephants or any other endangered species. The Appellant reserves it right to

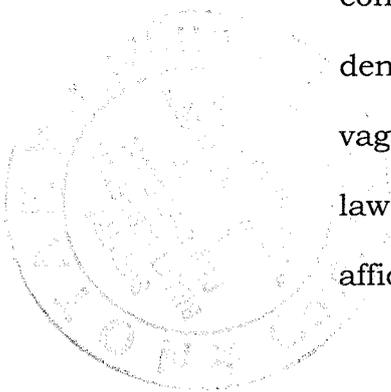


make appropriate submissions in the case of National Green Tribunal Vs. Union of India at the time of hearing. It is denied that the manufacturing unit of the Appellant is inside the Dalma Wildlife Sanctuary and the various activities carried out at the said Unit has led to unwanted or toxic elements being introduced into the lives of the wild animals of the surrounding area of Dalma Wildlife Sanctuary. It is also denied that the Appellant's industry is a polluting industry or is illegal. I dispute that any draft notification was published or any alleged objections or suggestions were allegedly invited from persons. It is also denied that after considering the purported objections and suggestions, the Subject Notification dated 29 March 2012 was notified. In any event, the Appellant cannot be called a person affected by the draft notification, since the same did not make any provisions with regard to the existing Units within the eco-sensitive zone. The contents of the Subject Notification are matters of record and reading of the same clarifies that what the said notification seeks to prohibit is setting up of any new polluting industry within the eco-sensitive zone. There is no provision in the said notification with regard to any existing unit. It is denied that the Appellant's industry is a polluting industry or that it is affecting the wild animals of Dalma Wildlife Sanctuary or is destroying or destructing the habitat or eco-system of the surrounding areas. It is denied that the impugned



order dated 10 October 2012 has been issued under the provisions contained in the notification dated 29 March 2012 or that the same is as per law or in the interest of justice. I emphatically deny that the Appellant is running the business in violation of any law or without requisite or valid mandatory licence, permit or clearance as per law. It is denied that the Appellant's factory generates any form of heat or polluting gases or that the eco-system of the eco-sensitive zone or the movement and living of wild animals is impaired. It is also denied that polluting gases are emitted from the factory of the Appellant. It is denied that the Appellant's activities are polluting or deleterious or is prohibited in terms of the Subject Notification. It is denied that the Appellant should be made to close down its manufacturing activities. Save as aforesaid, all other allegations are denied and disputed.

9. With reference to paragraphs 11 to 15 of the said counter affidavit, save and except what are matters of record or what may be gleaned therefrom, all other allegations made in the paragraphs under reference are denied and disputed. In this connection, I rely upon paragraphs 16 to 21 of the Appeal. It is denied that the grounds mentioned in the appeal are baseless or vague or without any legal stand or is devoid of merits both in law or facts. It is completely denied that the said counter affidavit is filed bona fide or in the interest of justice or that this



Hon'ble Tribunal should take the same in its records. It is denied that the Respondent No.3 should be given any form of liberty to file any further affidavit. I deny that any of the statements made in the said affidavit are true to the deponent's knowledge or are true to his information which have allegedly been derived from the official records of the case.

10. I say that the contents of the said counter affidavit are absolutely false, frivolous, without any material particulars, misconceived and devoid of any substance. This Hon'ble Tribunal may be pleased to reject the contentions thereof.
11. Statements contained in paragraphs 1 to 9 of the foregoing rejoinder are true to my knowledge or are matters of record and the rest are my respectful submissions before this Hon'ble Tribunal.



VERIFICATION

I, Amit Kumar Shaw, son of Prakash Chandra Shaw, aged about 44 years, by faith Hindu, by occupation service and working for gain at 129, Park Street, Kolkata- 700017, West Bengal, India being the Authorised Signatory of the Appellant company herein do hereby verify and state that the statements contained in paragraphs 1 to 9 are true to my own knowledge based on record and the rest of the statements are my respectful submissions before this Hon'ble Court.

Amit Kumar Shaw

Deponent

Date: 5 March 2025

Place: Kolkata, West Bengal.

Identified by me

Aditya Sarkar

Advocate

F/1330/1192/2021

Before me

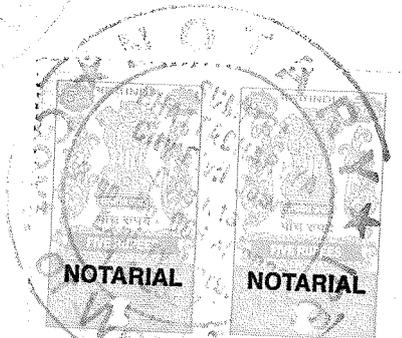
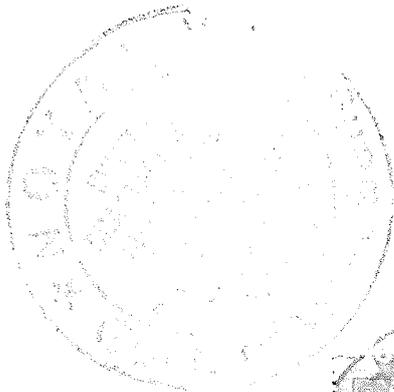
Notary

Solemnly Affirmed and
Declared before me
U/S 139 CPC (C)

Notary

Sumit Bhattacharya
Sumit Bhattacharya
Notary, Regd. No. 1088
Regd. No. 1088 of 1988
City Civil Court, Calcutta

05 MAR 2025



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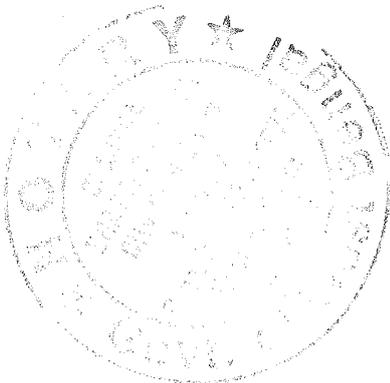
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