

Sl No. 45P/26 *
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BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONAL BENCH, KOLKATA, WEST BENGAL
FINANCE CENTRE, 3RD FLOOR, NEW TOWN

MEMORANDUM OF APPLICATION

[Under Section 18 (1) read with sections 14, of the National Green Tribunal Act,
2010]

Original Application No. 182 of 2023

Sushovan Shaw

..... Applicant

AND

MOEF & ORS

..... Respondent

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Paushali Banerjee
Paushali Banerjee

Advocate



X

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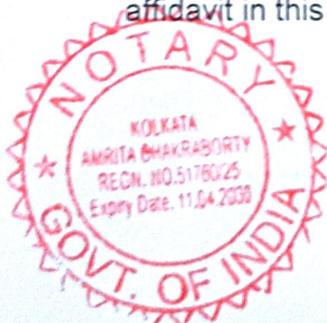
MOEF & ORS

..... Respondent

REJOINDER TO THE SUPPLIMENTARY AFFIDAVIT OF RESPONDENT NO.3:

I, Sushovan Sow, Son of Sudhamai Shaw, aged about 26 years residing at Village-Gopedanga, PO- Amdahi, Laudoha Faridpur, Amdahi, Burdwan, PIN-713381, by occupation Social Service, do hereby solemnly affirm and say as follows:

1. I am the Applicant in this herein and as such I am fully conversant with the fact and circumstances of the case, as such I am competent to affirm this affidavit in this instant matter.

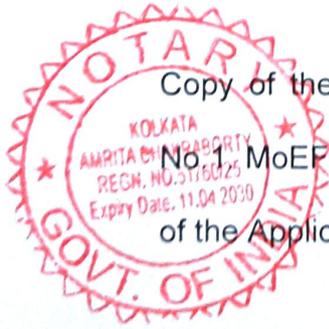


2. I say that before dealing with the Affidavit, the Applicant seek liberty to place on record certain preliminary objections that are crucial for a holistic adjudication of the present matter.

(a) I say that it is a clear case that found that respondent no.3 have encroached 8.59 acres of forest land , or approximately 3.53 ha of forest land in violation of the Forest Conservation Act, 1980 and the Orders of and the Hon'ble Supreme Court and this Hon'ble Tribunal. That on 24.08.2023, the report of the DFO inter alia affirmed that -

- i. JL No.51, Plot No. 473 is Notified Forest Land (Protected Forest);
- ii. The Land is recorded in favour of DFO Durgapur and classification is jungle (forest)
- iii. The survey report of the land department, Government of West Bengal has stated that the user agency has encroached upon 8.73 acre of forest land and a big RCC construction has been undertaken over an area of 1.17acre (0.74 ha).
- iv. During inspection it was found that endangered/unique species of flora and fauna such as wild boar. Indian jackle, Bengal fox, wolf, jungle cat, pangolin, porcupine, rock python, cobra, Russell's viper etc. in the nearest forest areas under this diversion proposal.

Copy of the Report as obtained from the Parivesh Portal of Respondent No.1 MoEF & CC is marked and annexed as Annexure A/1 with the rejoinder of the Applicant to Respondent no.2.



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3. That thereafter, the Enquiry report dated 12.09.2023 of Superintendent Police, 991

Jamuria Police Station has also categorically informed that Respondent No. 3 has encroached upon 8.73 acres (which is 3.53 ha) of forest land with an RCC structure on 0.79 ha of forest land.

4. That post the inquiry by the Superintendent of Police, the Respondent No. 4 (office In Charge of the Police Station) has stated that the Investigating Officer (IO) has submitted the charge sheet against one Bajranglal Agarwal, (designation in the company) and one Alok Kumar Mishra (designation in the company under section 26, 30, 32, 33 and 63 of Indian Forest Act, 1927 and Section 4C of West Bengal Land Reform Act, 1955, before the Court of the Learned Chief Judicial Magistrate, Court, District: Paschim

5. That during the pendency of the abovementioned encroachment case before the Ld. Chief Judicial Magistrate, the Respondent No. 3 applied for In-Principle Approval for 0.47 ha of forest land on 27.08.2023. It is pertinent to note that in its application for Forest Clearance, Respondent No. 3 has stated that only 0.47 ha of forest land has been encroached, despite the submission of the Forest Department that 3.53 ha has been encroached upon. The copy of the parivesh application of the Respondent No. 3 is marked and annexed as Annexure A/2 with the rejoinder of the Applicant to Respondent no.2. It is also stated that the encroachment of forest land was done by the Respondent



no.3 in 2011. A copy of Satellite Map ~~X~~ of 2011 marking the encroachment 992
annexed as Annexure A to the reply of the Applicant .

6. That thereafter, during the processing of the application for In Principle approval, the DFO has raised the query and submitted that there is a clear encroachment of 3.48 ha or 8.73 acres of forest land. Copy of the DFO response to EDS is marked and annexed as Annexure A/3 with the rejoinder of the Applicant to Respondent no.2.

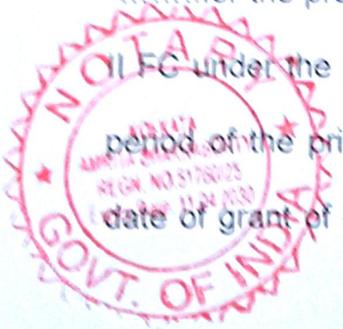
7. That a final site inspection was conducted by the ADFO, Beat officer, Forest Guard and Ban Sahayak on 23.11.2023. It is pertinent to note that the site inspection notes that construction was carried out over 0.47 ha of land by the Project Proponent/Respondent No. 3. Out of 3.53 ha, In principle approval is sought for 0.47 ha and for the balance encroached forest land amounting to 3.0629 ha, soil filling has been undertaken by the Respondent No.3. Copy of the Site Inspection Report is annexed at Annexure A/4 with the rejoinder of the Applicant to Respondent no.2. Clearly, the encroachment is established with such non forestry activity which violates the FCA, 1980 and therefore not only such forest land should be resumed back to the Forest Department but even the Environment clearance should be held as void ab initio



8. I now propose to deal with each of the allegations contained in the Affidavit of respondent no. 1 in seriatim(hereinafter referred to as the said Affidavit). Save and except what are matters of record and/or specifically admitted by the Applicant hereinafter all other allegations contained in the said Application shall be deemed to have been denied by the Applicant. I have been advised to traverse only those portions of the said application which are material for the purpose of disposal of the said Application

9. That now dealing with the said Affidavit I say with regard to paragraphs 1,2,3,4,5,6, 7, 8,& 9 are matter of record.). Save and except what are matters of record and/or specifically admitted by the Applicant hereinafter all other allegations contained in the said paragraphs shall be deemed to have been denied by the Applicant. I say that nothing new is brought in record by respondent no.3 by filling the said Affidavit. The Hon'ble Supreme Court judgment in W.P (C) No. 202 of 1995 in the Lafarge case pronounced inter-alia that the EC in respect of projects involving forest land will only be granted after the project proponent obtains Stage-I Forest Clearance (FC) in respect of the forest land involved in the project. Ministry of Environment, Forest and Climate Change in office Memorandum dated 11th April, 2022 have directed that,

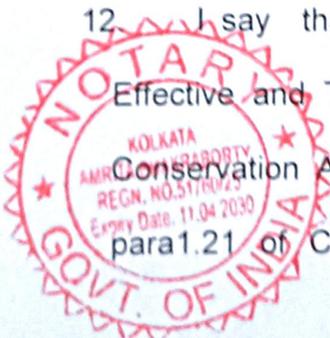
".....for the projects which involve forest land and require Stage-I and Stage-II FC under the provisions of the Forest (Conservation) Act, 1980, the validity period of the prior EC granted [after stage-I FC], shall be reckoned from the date of grant of Stage-II FC, or a maximum period of two years, whichever is



less." Copy of the MOEF Memorandum dated 11/04/22 is annexed herewith ⁹⁹⁴ and marked as Annexure A1 to this Reply.

11. That with regard to paragraph 10, 11,12, 13 , 14 ,15, 16,17,18,19,20,21,22,23,24,25,26,27,28 to 39 Save and except what are matters of record and/or specifically admitted by the Applicant hereinafter all other allegations contained in the said paragraphs shall be deemed to have been denied by the Applicant. It is submitted that the subsequent Handbook of Guidelines for Effective and Transparent Implementation of the Provisions of the Forest Conservation Act, 1980', (Hereinafter referred as the 'Handbook') clarify in para1.21 of Chapter I of Court Orders and General Clarifications that proposals seeking ex post facto approval from the Central Government under the Forest Conservation Act, 1980 are normally not to be entertained. The Central Government will accord its approval "only in exceptional circumstances", which may justify condonation. Annexure I of the said Affidavit is the site inspection report which clearly states that 8.73 acres of forest land is encroached and construction is carried out by the respondent in 0.47 hectares of encroached land out of the total 8.73 acres of encroached forest land.

12. I say that I repeat that the subsequent Handbook of Guidelines for Effective and Transparent Implementation of the Provisions of the Forest Conservation Act, 1980', (Hereinafter referred as the 'Handbook') clarify in para1.21 of Chapter I of Court Orders and General Clarifications that



proposals seeking ex post facto approval from the Central Government under the Forest Conservation Act, 1980 are normally not to be entertained. Para 1.16 categorically states that ex post facto are normally not to be entertained except in in exceptional circumstances and not as a matter of rule, however with regard to the respondent no.3 Stage I clearance is granted in violation of the law, without any reason, there is no exceptional circumstance in the matter of respondent no.3 except that already 8.73 acres of forest land is encroached and construction is started on 0.47 hectares of forest land by respondent no.3 and the land is required by the respondent no.3. Therefore the Stage I clearance granted to respondent no.3 is bad in law and void ab initio.

VERIFICATION

That the statements made in paragraphs are true to my knowledge and information and I believe nothing material have been concealed there form .

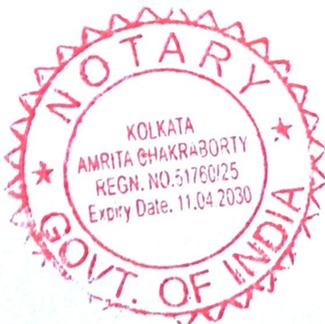
Prepared in my office

Ranbir Ray
[Advocate]

Sushovan Shau
The deponent is known to me

Clerk to Mr.

Advocate



solemnly Affirm & Declared Before on Identification of Ld. Advocate

Amrita Chakraborty
AMRITA CHAKRABORTY
NOTARY GOVT. OF INDIA
REGN. NO. 51760/25
J.M COURT, CALCUTTA, WB

13 JAN 2026

Identified by
Soma Dutta
Soma Dutta
Advocate
J.M Court, Kolkata

Amuro - A

F.No. IA3-22/10/2022-IA.III [E 177258]

Government of India
 Ministry of Environment, Forest and Climate Change
 (Impact Assessment Division)

Indira Paryavaran Bhawan
 Jor Bagh Road, Aliganj
 New Delhi - 110003

Dates: 11th April, 2022**OFFICE MEMORANDUM**

Sub.: Clarification on calculating the validity of prior Environmental Clearance (EC) granted under the provisions of EIA Notification 2006, which involve forest land - Regarding.

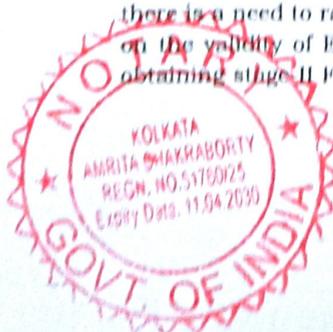
The Ministry has been making continuous efforts to streamline the procedure to be followed for consideration of projects involving forest land, for prior EC, by issuing various OMAs from time to time.

2. The Hon'ble Supreme Court judgment in W.P (C) No. 202 of 1995 in the Lafarge case pronounced inter alia that the EC in respect of projects involving forest land will only be granted after the project proponent obtains Stage-I Forest Clearance (FC) in respect of the forest land involved in the project, so that *fait accompli* situation does not arise. In line with the directions of the Hon'ble Supreme Court, the Ministry grants EC only after the grant of Stage I FC, even while the projects/activities get appraised in anticipation of grant of FC.

3. As per the provisions of the Forest (Conservation) Act, 1980, the FC for the forest land is granted in two stages i.e., (a) In-principle or Stage-I approval, and (b) Stage II approval on compliance of the conditions of Stage-I approval. The project proponent can start the work at site only after getting the Stage-II FC in addition to the other statutory permissions/ approvals under the various Acts/Rules.

4. In this regard, especially in the context of large projects such as hydro power projects which involve large forest areas considerable time may get consumed in obtaining Stage-II FC and the project proponent may be unable to implement the project/activity within the validity period of the EC and may be constrained to approach the Ministry for extension of the validity of EC, and in some cases may be even compelled to start the EC process *de novo*.

5. The matter has been examined in the Ministry and it has been observed that there is a need to rationalise the impact of the time taken in obtaining Stage-II FC, on the validity of EC. In this context, it has been decided that the time taken for obtaining stage-II FC, after the grant of EC, may not be considered as a part of the



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EC validity up to a maximum period of two years, so as not to compromise with the environmental safeguards.

6. In this regard, it is hereby directed that, for the projects which involve forest land and require Stage-I and Stage-II FC under the provisions of the Forest (Conservation) Act, 1980, the validity period of the prior EC granted [after stage-I FC], shall be reckoned from the date of grant of Stage-II FC, or a maximum period of two years, whichever is less.

7. This is issued with the approval of the Competent Authority.

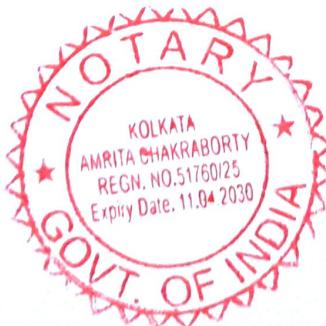

 (A.K. Agrawal)
 Director

To

1. Chairman / Member Secretary Central Pollution Control Board
2. Chairperson/ Member Secretaries of all Expert Appraisal Committees
3. Chairperson/Member Secretaries of all SEIAAs/SEACs
4. Chairperson/Member Secretaries of all State / UT Pollution Control Boards
5. All Officers of IA Division

Copy for information to:

1. PS to Hon'ble MEF&CC
2. PS to Hon'ble MoS, EF&CC
3. PPS to Secretary, EF&CC
4. PPS to DGF&SS, EF&CC
5. PPS to AS (TK)/JS (SKB)
6. Website, MoEF&CC /Guard file



~~10-10-10~~

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