

**BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI****I.A.178 of 2022****in****Appeal No. 14 of 2022**

P.Arjunan

.... Applicants/Third-parties

Vs.

M.Yuvadeepan

.... Respondents

And Others

**Counter Affidavit filed by the Appellant**

I, M. Yuvadeeban, s/o Maragret Lawrence, aged about 26 years, B2, Ramaniyam Marvel, Seshadripuram, 1<sup>st</sup> main road, Velacherry, Chennai 42 do hereby solemnly affirm and sincerely state as follows:

1. I am the Appellant herein and aware of the facts and circumstances of the case and competent to swear the present affidavit. I have read the applicant under reply and deny the contents as false, except to the extent expressly admitted hereunder.
2. I submit that the present proceedings are a statutory appeal filed under Section 16 of the NGT Act, 2010 challenging the environmental clearance issued by the SEIAA to the fisheries department. It is not an Original Application under Section 14. There is a well-defined order under challenge and a project proponent who has obtained the order. I am advised to submit that no relief is sought against the party seeking impleadment. The petitioner seeking impleadment cannot sustain the validity of the EC. Impleading them in a matter challenging an order issued by the SIEAA would result in an anomalous situation where the author of the order or the beneficiary might accept the verdict of the Court, but a third party may not.



3. It is submitted that the Impleading Respondent has no vested right to implead in a statutory challenge to the environmental clearance issued by the Clearance granting authority, i.e. SIEAA. In the present case, both the SIEAA as well as the project proponent Fisheries Department are party Respondents and it is only for them to defend the clearance. The parties seeking impleadment are strangers to the clearance process – they are not the project proponents. All persons, ostensibly for whose benefit a project is envisaged, do not become necessary parties to a proceeding of the present nature. No person has a vested right to demand that a project be established at a specific site – the siting of a project is subject to the laws of the land. The persons seeking impleadment are strangers to the impugned clearance – their interest or right in the issue is limited to their making a request, if any, to the state for the establishment of a fishing harbour. The location, the legality of the process etc. have to be tested within the confines of the law and these parties cannot add to the case of the fisheries department.
4. For illustration, the parties seeking impleadment will not be able to file an appeal challenging the rejection of the proposal of the project proponent for environmental clearance, similarly, they cannot sustain the environmental clearance. The clearance has to live or die on its own merit. Impleading such parties will only result in project proponents sponsoring people to rally in their support and derail the entire proceedings.
5. The right to challenge the grant of environment clearance stems from the right to a clean environment and the right to participate in environmental decision making. Whereas the right to challenge the rejection of environmental clearance, is not a public right and is a right that is limited to the party whose application is rejected.
6. I am advised to submit that in the case of Vedanta Ltd Vs. State of tamil Nadu and Ors., the Hon'ble High Court vide order dated 12.06.2019 only allowed the impleadment of those parties who were sustaining the order of

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closure of industry and not those private entitled who were supporting the industry's case for re-opening and assailing the closure order.

7. I submit that the submissions made in the affidavit filed by the party seeking impleadment are without merit, contrary to law, self- serving and are liable to be rejected. I reserve my right to file a detailed reply on the merits of the submissions made in the affidavits if the need arises.
8. In so far as para 1-4 are concerned, the present appeal does not pertain to whether a harbor is necessary or not but concerns the legality of the of the clearance issued, siting etc. It is not for the applicant seeking impleadment to justify either the need for a project nor the legality of the clearance obtained by the fisheries department. From the statement in para 1, it is evident that the Government had taken the decision to set up harbours at these locations in 06.02.2020 itself – much prior the environmental clearance or the assessment of impact. The consideration of alternative sites in the EIA report is thus only a formality.
9. The contents of paragraphs 1-8 under “grounds” are denied as false. The contents of para 1 are irrelevant to the adjudication of issues involved in the appeal.
10. The contents of para 2 and 8 are denied. There is no truth in the allegation that the appeal is instigated by a local resort. It has become fashionable for such publicity seeking busybodies to make such allegations against litigants seeking to protect the environmental rule of law and a precious heritage that will be destroyed. The applicant has not bothered to produce any evidence of his allegation that the appeal was instigated by a resort. If the resort is indulging in any illegal activities, the applicant seeking impleadment ought to have initiated proceedings against them as a law abiding responsible citizen. Courts in several cases have deprecated this practice of casting aspersions on litigants. The applicant is evidently ignorant of the importance of the subject area from an ecological standpoint and the need to protect biodiversity habitats.

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11. The contents of para 3 and 4 are not germane to the present appeal. These do not make the applicant a necessary or a proper party. The contents of para 5 to 8 are demonstrative of the lack of understanding and awareness of the applicant seeking impleadment. The joint committee report has been suitably responded to with evidence – in fact, the report is contrary to official records and suffers from various infirmities. The statements in the joint committee report does not make the applicant seeking impleadment a necessary or a proper party. It is before this Hon'ble Tribunal and will be considered without the interference of the applicant. It is reiterated that the only necessary party to such a statutory appeal are the clearance granting authority and the project proponent who has obtained the clearance. Parties like the applicant do not have any vested interest to participate in these proceedings. Filing such applications at this belated stage is only a tool to delay the adjudication of the appeal.

12. It is therefore prayed that this Hon'ble Court may be pleased to dismiss the petition seeking impleadment and thus render justice.

Solemnly affirmed on this the  
12th day of November, 2022 and  
signed his name in my presence

*M. Yuvraj*  
Before me, *Nivedita*  
*31/12/17*  
*No. 27/1/2017*  
*Sub. to*  
*W.P. No. 90*

Advocate, Chennai