

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN BENCH AT CHENNAI**

**Appeal No.18 of 2020**

**IN THE MATTER OF:**

SrideviDatla  
W/o. DRSS Kumar Varma  
R/o Door No.10-37-11  
Ramnagar, Visakhapatnam - 530002  
Andhra Pradesh.

**... APPLICANT**

**VERSUS**

- 1. Union of India**  
Through the Secretary  
Ministry of Environment Forest  
and Climate Change  
Indira Paryavaran Bhawan,  
JorBagh, New Delhi – 110003
- 2. State of Andhra Pradesh**  
Through the Chief Secretary  
Secretariat Buildings  
Hyderabad.
- 3. Andhra Pradesh Pollution Control Board**  
Through the Member Secretary  
D.No.33-26-14/D2, Near Sunrise Hospital  
Pushpa Hotel Center, Chalamvari Street,  
Kasturibaipet, Vijayawada – 520008.
- 4. The M/s.Bhogapuram International  
Airport Corporation Ltd.,**  
Through the Managing Director  
1<sup>st</sup> Floor, FDC Complex  
AC Guards, Hyderabad – 500 028.
- 5. GMR Visakhapatnam International Airports Limited**  
Through Authorised Signatory  
Mr. Manomay Rai, Registered Office  
10-1-43, Flat No.202, Second Floor  
Siripuram Fort, Siripuram  
Visakhapatnam – 530 003.  
Andhra Pradesh

**... RESPONDENTS**

**BRIEF GIST OF ARGUMENTS BY ATMARAM NS NADKARNI, SENIOR ADVOCATE**  
**ON BEHALF OF RESPONDENT NOS. 2, 3 & 4**

**PRELUDE:**

1. This is a matter wherein Environmental Clearance granted to the Bhogapuram International Airport project (proposed) is under challenge.
2. There is no doubt that the burden is on the project proponent to satisfy the Hon'ble Tribunal that the EIA contains the material required in terms of the Airport manual and that study indeed has been carried out as required by the Airport Guidance Manual.
3. So however, it is not as if that any person can come and take an exception to the Environmental Clearance granted by the MoEF without setting up proper relevant and sustainable grounds.
4. In the present case, Appellant in the Appeal memo has averred that an area of about 15,000 acres is sought to be acquired and that an airport project is about 15,000 acres and that it has all interlinked projects without specifying any details thereof. For this purpose the Appellant has relied upon the newspaper reports and has produced no material whatsoever in support of its vague and unfounded conclusion.
5. It is trite law, that a newspaper report cannot be relied upon nor can form the basis for making an averment in a Court litigation.
6. In the present case, what is pleaded by the Appellant in the Appeal Memo, grounds raised in the Appeal Memo, and what is sought to be argued across the bar in the oral submissions made, as well as written submissions filed at the closure of the arguments in the matter, while re-joining to the Respondents Arguments are all diametrically opposite and show only an improvement over the arguments without properly pleading the points urged and without even affording ample opportunity to deal with the same.
7. In terms of the NGT Act, certain requirements in terms of Appeal or an Application or for the purpose of making out a case are absolutely essential, all of which are lacking in this particular case.
8. There is no doubt that as held in the case of Hanuman Laxman Aroskar and the subsequent Supreme Court Judgement in Rajiv Suri, the NGT is required to undertake a merit review of the EC granted by the MoEF. This has now been explained in the *Rajiv Suri Judgment*, that the merit review is in terms of the provisions of the NGT Act, namely Section 20 which requires the Hon'ble Tribunal to follow the principles of preventing pollution, sustainable development and polluter pays principle.
9. In the present case, the State Government of Andhra Pradesh has, made certain important averments in the Counter Affidavit and Additional Counter Affidavits filed by and on behalf of the State of Andhra Pradesh. Further, the Project Proponent

namely the Bhogapuram International Airport Corporation Limited, has also made certain averments in the Counter Affidavit filed in this matter.

10. Some of the important averments made, by the State are as under all of which are very material for the purpose of dealing with the EC granted in the present project:
  - a. That the project proponent had conducted feasibility study before filing the Form 1 with the MoEF and that the Form 1 contained the feasibility study report.
  - b. That apart from Form 1 which was filed online, there was a prior feasibility study undertaken which was annexed to Form 1 and there was a presentation done to the EAC dealing with the terms of reference. All this has been averred and presented before this Hon'ble Tribunal.
  - c. That the area mentioned for the airport project, all in all, is 2004.52 acres, which is equivalent to 811.20 ha, in so far as the airport project is concerned. 119 acres, for the approach road. This figure of 119 acres and the airport project area being 2004.52 Acres, have been consistently mentioned in the Form 1, prefeasibility study, EIA Report as well as countersfiled by the State.
  - d. The State has categorically averred and assured that the total land for the project including Phase 2, is not more than 2004.52 acres.
  - e. The State has also filed an Affidavit of the Special Chief Secretary of the State of Andhra Pradesh to bring on record and assure this Hon'ble Tribunal that apart from the four water reservoirs, the Babu Jagjivanram Uttar Andhra Sujala Sravanthi project contemplated to lift 63.2 TMC of water from Polavaram left main canal, is already on its way of completion and that the water requirements of the entire area can be more than adequately met from these multiple sources.
  - f. The EIA report categorically has undertaken a study not only of the 10 kms radius but has also undertaken and carried out 15 kms study as is required and in terms of the Airport Guidance Manual. The primary and secondary data of the respective areas has also been carried out in the EIA report.
  - g. The EIA report has dealt with not only the impact analysis study of various parameters but has also dealt with mitigation measures by undertaking and conducting the impact at various stages namely the construction stage as well as the operation stage and each one of this has been divided separately and outlined separately in the EIA report.
  - h. The EIA report was presented for public hearing, the comments and suggestions received were all uploaded together with the response of the project proponent and were sent to the MOEF well in advance.
  - i. The requirement of sending this well in advance is to ensure that the MoEF, circulates to all the EAC members the material, data and the reports well in advance of the EAC meeting. As is revealed in the present case being the practice of the MoEF and as stated by the UOI the material and reports were submitted in advance to the members, the EAC which comprises of experts are

deemed to have perused the same before discussing the project in the EAC meeting.

- j. Indeed, after the first round of presentation the EAC pointed out certain aspects of the matter, all of which were clarified in the detailed presentation which was done before the EAC, and the EAC on the first day pointed out that the response of the project proponent to certain matters raised at the public hearing was not satisfactory. This only shows that the EAC applied its mind to what was being discussed. A better response to the matters raised at the public hearing was thereafter presented before the EAC at the next day. Thereafter the matter was considered by the EAC and the EC came to be finally granted with specific and general conditions.
- k. EC granted has certain conditions about not only the pending litigation, but special conditions on water running into 12 conditions, conditions on noise levels, conditions as regards harvesting of water, and conservation of water as also several other conditions. The very fact that the EAC has laid down 12 conditions of water including harvesting and conservation of water itself shows proper and judicious application of mind to the project in question.
- l. Appellants have alleged that the EIA Report is grossly inadequate, Form 1 suffers from suppression the appellants have gone to the extent of attacking the EIA consultant which is otherwise unheard of in such matters and has attempted, in vain, to find fault with anything and everything under Form 1 and EIA.
- m. In law the Appellant is required to raise certain sustainable points, sustainable not only from the point of view of environment but also legal points which can throw a real challenge to the EC granted. Mere showing some typographical errors or some inadvertent errors as regards dates, figures, or the name of the PCB all of which are completely irrelevant and only shows that there are no substantial points raised in this appeal. An appellant before the Hon'ble Tribunal is required to raise certain grounds as available in law, which while considering the merit review assessment of the EC must go to the root of some ecological matters, and not some technical and hyper technical points, showing errors in the EIA.
- n. All the points which have been raised, in the Appeal memo as well as during the course of the arguments across the bar have been amply replied to and dealt with in the arguments of Respondents Nos. 2 – 4.
- o. Indeed, the Appellant has filed after the arguments of the respondent were over, fresh submissions raising factual and new aspects in rejoinder which is impermissible in law. The respondents Nos. 2 – 4 have separately filed written submissions on the same however, these are points which cannot be considered as germane to the appeal and rejoinder is essentially to be to a raise a point of law and not raise any new points.

- p. Whatever has been argued and pleaded in the appeal has been sufficiently dealt with and replied while repelling the contentions raised by the Appellant, in the subsequent paragraphs of these written submissions. Answering the same point wise thereto.
- q. The subject project site chosen for the purpose of establishing an international airport, was chosen after conducting appropriate studies and assessment, and is suitable from all ecological angles and requirements in as much as even within 15 kms of the aerial distance from the aerodrome reference point there is no ecological sensitive zone, or any protected areas, in deed even the population surrounding within 10 kms is hardly 2.9 % so it is very sparse, the area is not thickly populated, it is surrounded by barren / agricultural lands, there are no river bodies, or any sensitive water bodies around and the site is therefore most appropriate from the ecological point of view, from the socio economic point of view and the development perspective having regard to the operational stage of the airport.
- r. The project in question in this matter is a public infrastructure project and its whole purpose is providing state of the art facilities to the people of Andhra Pradesh and other persons visiting the state. This public infrastructure project is essential for the all-round development of the State and it is important that such infrastructural projects subserve the process of development, help build tourism, change the socio economic strata of the people, boost international connectivity and trades, and at the same time ensure a proper and sustainable development. This is not a case where in an environmentally sensitive area, a hazardous industry or other refinery or some other project likely to cause ecological disturbance is being set up or undertaken for example. The parameters and the impact analysis in a matter where a highly polluting industry is set or where the mining works are undertaken are completely different , because those projects by their own nature are harmful to environment and ecology, as also are a gross source of large scale pollution. Unlike such harmful projects, a project of airport has at the highest construction of runway, aerodrome facilities, ATC towers, building facilities for terminal, passenger arrival and departures, and certain other incidental and auxiliary facilities, and does not involve any kind of highly polluting or hazardous or irreversible effects on environment. Indeed, at an airport, apart from the noise generated by the aircraft at the time of landing and take-off, the only highest noise which can be found at the airport is that of diesel generator whose , values have already been recorded and shown and the impact is localised and even the aircraft at point N2 and N6 assumes the height of 1000 to 1200 mtrs after which the noise cannot have any impact on the surrounding areas.
- s. The fact that the Airport Project is an integral part of the sustainable development part of the project is no more *res integra* either from the point of

view of its permissibility or its accessibility, in as much as experience has shown that an airport can exist within urban areas, city area, and even in rural areas. Like in the case of a polluting industry whereby, certain buffer zone is required to be maintained and the residential and other localities prefer to stay away from such industrial zones, in so far as the airport is concerned, the studies and the experience reveals to the contrary, in as much as it is seen that in and around the airport in India and globally, the cities develop which is the common ground for India as well as other global overseas examples. This is precisely the reason why an approach road of 119 acres which is a 6 lane road is required to be planned and executed for an international airport.

11. The Appellant had challenged the Environmental Clearance (EC) dated 14.08.2017 granted to M/s Bhogapuram International Airport Corporation Ltd (APADCL) for Phase-1 development of Greenfield International Airport at Tehsil Bhogapuram, District Vizianagaram, Andhra Pradesh. The present appeal memo simply deserves to be rejected *in-limine* as it is devoid of any correct facts and rather is full of averments based on newspaper reports. It is humbly submitted that newspaper reports and bald allegations cannot be a basis for any challenge for adjudication of a matter before the court of law or tribunal. The Appellant has made incorrect averments about concealment, project area, its location and the allegation regarding interlinking of projects amongst other grounds. The same are dealt with in seriatim herein below:

**SUBMISSIONS ON MERITS:**

**ISSUES RAISED BY THE APPELLANT IN ITS APPEAL & APPELLANTS WRITTEN SUBMISSIONS FILED ON 04.08.2021; 06.08.2021; 07.08.2021 & AMENDMENT APPLICATION ON 09.08.2021 -**

**A. FORM I - Incomplete and incorrect disclosure in Form I by Project Proponent**

- i. It is submitted that Form I is a preliminary stage activity before which a Pre-Feasibility Report (**PFR**) is carried out and thereafter the Project Proponent is required to make a presentation before the EAC. Form 1 is not a standalone document. Form 1 is preceded by a pre-feasibility study, it is accompanied by a prefeasibility study report as also other documents and thereafter, there is a presentation in support of form 1 for getting the ToR. This presentation is done to the EAC dealing with TOR for the project.
- ii. In present case also a presentation was made and the Form I was submitted along with the PFR and other supporting documents. Hence, all the relevant information was detailed out before the EAC during the presentation for the

Terms of Reference (TOR). Thus, nothing was concealed as alleged by the Appellant.

- iii. Subsequently, the TOR were issued after considering all the issues and considering all the relevant documents on record at the relevant time. The process of scoping was carried out diligently. Even in *Hanuman Aroskar judgment* the EC was not quashed. In the said case there were various lapses as was observed by the Hon'ble Supreme Court and wrong information relating to environmentally sensitive areas was furnished, which is not the case here before this Hon'ble Tribunal.

#### **B. No disclosure about pending litigations**

- i. At the relevant time of filling up and submitting Form I, there is a possibility that information about the writ petitions pending in HC were not known. The Order passed in the writ petitions is dated 25.01.2016 and Form I was submitted on 27.02.2017. R-4 might have been aware about the 25.01.2016 order but same may not have been in knowledge of the department of the Project Proponent filling up the Form I. However, said defect was cured subsequently -once the facts about the said writ petitions were disclosed in the presentation to the EAC TOR.
- ii. The fact about the pendency of litigation was brought to the notice of the EAC on 28.03.2017 while a presentation was made by the R4 before the EAC. **Para 44-45 @ Pg 22 of R-4 Counter**. The fact about the pending litigation is mentioned in the EIA Report as well **@ Pg 258, Chapter 10 (Conclusion)**. Indeed, it is in view of this, that the ToR requires a full detailed disclosure of all the pending litigations which was accordingly done.
- iii. Further it may be noted that the EC is conditional – it was made subject to the outcome of the pending litigation writ petitions before the High Court. The said EC specifically states about the 2015 pending litigation. **Pg 37 of Appeal – specific condition (i)**.
- iv. It may be noted that out of 457 petitioners 354 petitioners have accepted the compensation and have handed over the possession of their respective pieces of land to the State of AP. **Pg 27 Para 18 of R2 Counter**.
- v. Further, out of 1332.52 acres of land 1243.52 Acres i.e. approx. 93.32 % of private land has been acquired by State on account of the said settlement between the parties to the said writ petitions and only 89 Acres land (in respect of the said litigation) remains in dispute. **Pg 27 Para 17 and 18 of R2 Counter**. Further as on date, only 37 Acres of land is subject matter of the pending Writ Petition.

- vi. That till date, the State Government has spent around 848 crores, towards land acquisition and resettlement and rehabilitation.
- vii. While issuing the TOR also the fact about the pending litigation was known to the EAC; specific clause was added in the TOR – Refer – S. No. (xv) of **TOR @ Page 82 of Appeal**. Therefore, it cannot be said that there was any deliberate suppression. Appellant failed to establish the yardstick for “deliberate” concealment in Form-I in view of the *Hanuman Aroskar* judgment.
- viii. Pertinently, the EAC, after detailed deliberations in meeting conducted on 13.04.2017, recommended the environmental clearance for the Project, however the same was subject to final order of the various writ petitions pending before the Hon’ble High Court of Judicature at Hyderabad.

**C. Wrongly stated not an Interlinked project – Cumulative Impact Assessment not done**

- ix. The Project is a stand-alone project and not an interlinked project. It may be noted that MRO and Aviation academy are part and parcel of an airport – as quoted from EIA Notification [Refer – **Para 29 @ Pg 14 of Additional affidavit read with**] and thus the same have been mentioned in the EIA report also. The same has been duly intimated and also mentioned in the EIA Report [Refer – **map @ Page 2-2 (running page 53) of EIA Report**].
- x. However, the construction of the same would be at the discretion of the Concessionaire in Phase II and for which a fresh EC would be taken, as and when it is decided to be undertaken. No further area would be required for the said facilities. The the total area required forthe airport project is 2004.52 Acres, including the MRO and academy, if any along with 119 Acres of approach with and 80 Acres for ancillary facilities.(**@ Para 23,24 & 27 @ Pgs 15 & 16 of R-4’s Additional Affidavit**).
- xi. An Office Memorandum MoEF&CC dt. 24.12.2010 [**Page 48 of Additional Affidavit**] states that ‘inter-sectoral’ project’s EIA has to be done in its entirety. The said notification describes various industries such as cement/coke plant, Oil & Gas transportation etc as multi-sectoral. There is no mention of Airport industry as there is no inter-sectoral or interlinking element involved.The judgment of the Supreme Court *Rajiv Suri v. Delhi Development Authority & Ors.* (**2021 SCC OnLine SC 7**) (Central Vista Issue) **Para (473, 476,477)**.
- xii. There are 2 types of MRO – Basic repair and major repair by the manufacturer. The basic maintenance is done in hanger and that is available at all airports for the

minor repairs of the aircraft. Line Maintenance will be done from inception in hangers but the base maintenance will be in future.

- xiii. Documents relating to MRO filed on 24.8.21 referred to – **Page 1- Foreword; Scope@ Page 4; Table @ Page 6; Annex 2 @ Page 7; List @ Page 9 and Appendix B.**
- xiv. Since this MRO and Academy is projected to come up in future, though at discretion of Concessionaire, same has been disclosed initially only and the impact study of the same has also been carried out. Refer – **Page 2-12 (running page 53) EIA report -Map shown with MRO and Academy shown in the Legend.** Hangers to be referred at – **Page 2-13 Para 2.4.2.8 of EIA.** Said clause also refers 'same as/type of MRO'.
- xv. No requirement of a separate EIA Report for the MRO and the Academy. All disclosed and impact study done at this initial stage only. **R4 Additional Affidavit –Para 17 @ Page 30&Para 32 @ Page 19.**

#### **D. Wrong measurement of the area for the airport mentioned**

- i. The allegation by the Appellant in the appeal is that the Project is in 15000 acres and thereafter in its written submissions, the said area is mentioned as 4000 acres. It may be noted that there is no concrete proof/base for the said allegations – allegations based on newspaper clippings.
- ii. Form I -in Basic Information category at S. No.3 discloses an area of 2004.52 acres for the airport along with 119 Acres for the Approach Road, which is always separate for any airport project. The initial proposal for the airport was for about 4000 acres but the same has since Form 1 been restricted to 2004.52 acres for the airport along with 119 acres for the approach road.
- iii. The fig of 3645.79 acres in Form I – **S. No. 1.1 @ Pg 71 of Appeal** – was inclusive the figure of 1567 acres of land for commercial development as mentioned at **S. No. 3 of Form I.** However, the said area *ad-measuring* 1567 acres has been given up and it is now the State's prerogative to utilise the said area for any development outside the airport. @ **Para 27, Pg 15 of R-4 Additional Affidavit.**
- iv. EIA Report, on the following pages, show that the total area upon which the airport will be developed is 2004.52 Acres:

- a. **Page 0-1 – Project background** shows the area of the airport as 2004.52 acres
- b. **Page 0-2 – Land and Location** shows that area of 2004.52 acres earmarked for the airport (Aerodrome reference code 4F)
- c. **Page 1-2 – Salient feature of the project** – area of 2004.52 acres earmarked for Bhogapuram International Airport Phase I and the airport to be developed in 2 phases (last line of the para)
- d. **Page 2-2 – Map (running page 53)** –legend shows the airport Phase I development land of 2004.52 acres + approach road of 119 acres
- e. **Page 2- 13 – Boundary Wall/operational Fence (Para 2.4.3.3)** - area required for phase I is 2004.52 acres
- f. **Page 2- 13 – Land (Para 2.5)** – Land use breakup of the project site also states that the land ad-measuring 2004.52 acres earmarked for the airport – this to be read with map at **Page 53 of EIA Report**
- g. **Page 3-7 – Topography (Para 3.6.1)** – area covered by airport is 2004.52 acres.
- h. **Page 1 of Chapter 10 of EIA Report - Conclusion (running page 259)** – land required will be 2004.52 acres
- v. In the pleadings – **Para 7 @ Page 4** and **Para 20 @ Pg 9** of R-4 counter – total area required for the airport is 2004.52 acres. Further, the area of 80 acres (Para 20 of R-4 Counter) is state land for all public infrastructure facilities like drainage, lay-down areas for material storage, other ancillary facilities etc., none of which require an EC, but are meant for facilitating public commuting through or via the Bhogapuram Airport. This area is not for the airport – Refer – **Para 23 @ Page 13 of additional affidavit by R-4**. No further land required to be acquired for the airport. Thus, no suppression or wrong information about the area required for the airport mentioned in Form I.

#### **E. Density of population/ metropolitan cities in Form I**

- i. All relevant information was provided in the Form-I. It is imperative that Form I be read with the PFR. PFR contained all the relevant details as per the last available census data. In fact, there are no densely populated areas in the study area.

- ii. Relevant information also given to EAC in the presentation for TOR – like details of built-up area have been shown for 10 km (as built-up area) and 15 km radius (as settlements).
- iii. The built-up area is about 2.9 % of total area in 10 km radius. Similar disclosures were made in the PFR and the EIA Report. Thus, no suppression or wrong information has been furnished.
- iv. In any case the said information has not changed the complexion of information at the stage of determination of TOR or subsequently. Please refer to the term “Appraisal” under EIA Notification. Refer – **Para 14(b) @ page 9 of Additional Affidavit by R4.**

**F. No details regarding eco-sensitive sites/areas such as schools, educational institutions, places of worship etc. within study area of 10 Kms.**

- i. The PFR was attached with Form I – Refer – **Clause IV -Proposed TOR for EIA studies @ Page 78 of Appeal.** The PFR discloses the details of all the hospitals, schools, educational institutions etc. PFR contains the relevant details pertaining to the sensitive man-made land uses.
- ii. Data required to be provided as per census data available. The EIA Manual states that the baseline data is collected from various secondary sources such as Census statistics etc. – Refer – **Para 4.7 @ Page 261 (EIA Manual) of R4 Counter.** Thus, information in PFR and EIA Report provided as per the last available Census data available.
- iii. Information given in EIA Report [Refer- **Table 3-43 and Table 3-33 @ Page 3-39 of EIA Report**] details out all the hospitals, schools etc. The information therein is as per the then available census figures. Also the **Table 3-3 (@ Page 3-10 of EIA Report)** - Social Infrastructure in Villages of Proposed Project indicates all such details. Thus, it cannot be said no details regarding various eco-sensitive sites given or any information was suppressed/concealed or was incorrect
- iv. The additional Affidavit filed by the Appellant details out the dispensaries, a 980-bed hospital etc. but the same does not disclose the year of their respective establishment. Hence, no material information thus suppressed or concealed.

**G. Wrong details in Form I about Environment Sensitive Information /areas sensitive for ecological reasons**

- i. There has been complete and candid disclosure of the relevant information in Form I. Project Proponent has made bona fide disclosures in Form I. It may be noted that relevant information about the villages and population were detailed

out in the PFR and the same forms a part of Form I – Refer – **S.No.1 under Head (IV) – Proposed TOR for EIA Reference @ Pg 78 of Appeal**

- ii. In the presentation made by the Project Proponent/R-4 on 28.03.2016 before the EAC Meeting during its meeting for determination of TOR, all the relevant information and facts were again detailed out. Infact the information relating to Environmental Sensitive Information required in Form 1 was clarified in the TOR meeting of the EAC with the top-sheet of 10 km and 15 km.
- iii. Minutes of Meeting dated 28.03.2016 of EAC for determination of the TOR, categorically records - *“It is reported that no ecologically sensitive area/ National Park/wildlife sanctuary is located within 10 km distance. No forest land is involved.”*- Refer – **Page 81 of Appeal.**
- iv. Information relating to Environmental Sensitive Information required in Form 1 was clarified in the TOR meeting. Thus, information in Form 1 duly supplemented with information in PFR and TOR presentation.

**H. Casual approach by the R-4 while filling up Form I – information in Form has no relevance to the Project in question but to Kurnool airport - Form I filled up with EIC Consultant assistance – mostly cut-copy-paste job done**

- i. Appellant has alleged the Project Proponent has adopted a casual approach while filling up the Form I; mostly adopted a cut-copy-paste approach while filling up the said Form I.
- ii. Appellant referred to **S. No.II under Head (II) – Activity [Clause 6.3] @ Pg 75 of Appeal** and alleged that the information filled in was same as Kurnool airport despite the fact that the present form was for Bhogapuram Airport.
- iii. Information is anticipated/expected to be the same based on ‘**noise level of the plane**’ and is not a factor / contingent upon size of the runway. Therefore, without appreciating the significance of the question and the context, Appellant has summarily alleged the same to be ‘copy-paste’ without understanding nuances of operation and management of the airport. Refer – **Paras 16-18 of Additional Affidavit by R4 @ Page 13-14.**
- iv. Appellant then showed **S. No. 9.3 under Head II - Activity [Clause 9.3] @ Page 77 of Appeal.** Alleged that information about Kurnool airport has been copy pasted.
- v. Details sought in the said question is ‘set a precedent to later development’ and thus the reference to Kurnool was given. The answer provides that the setting up

of the Bhogapuram Airport Project will give boost to the development of the Kurnool Airport and this was the intent captured in the response in Form 1 – Refer - **Paras 19 of Additional Affidavit by R4 @ Page 14.**

**I. Baseline Studies conducted before the TOR granted**

- i. The Appellant has alleged that the EIA Report is vitiated as before the issuance of the TOR the baseline study had commenced and any information/ material before the TOR is issued cannot be taken into account. Reliance placed upon the EIA Notification SO 1533(E) dated 14.09.2006
- ii. Form submitted on 27.02.2016 and TOR issued on 04.05.2016. Baseline study conducted by consultant for months of March-May 2016 – Refer- **Paras 8 – 12 @ Pages 6 – 8 of Appeal.**
- iii. EIA has to be prepared in compliance with the Rules. No allegation that the study was done before 27.02.2016.
- iv. It is pertinent to note that Para 7 of the EIA Notification of 2006 was amended in terms of GO 996(E) dated 10.04.2015 – whereby baseline study could commence upon the successful submission of Form I as there is deemed approval of standard TOR. – Refer **Pg 340 of R2 Counter AND Page 223 of R4 Counter**
- v. Further refer – **Paras 19-21 @ Pg 28-29 of R2 Counter; Paras 48 – 52 @ Pages 23-24 of R4 Counter.**

**J. Inadequate & Faulty EIA - EAC asked to do the study in the Study Area of 10 Kms studied instead of 15 Kms as required in Airport manual and the TOR**

- i. EAC is an expert committee and knows what it has been mandated to do and the same are in accordance with the set rules in the manual.
- ii. All required information has been duly filled up in Form I and also presented before the EAC at the time of TOR presentation
  - a. Refer – **Page 343 of R4 Counter** -TOR presentation  
**Page 363 of R4 Counter** – Site photo  
**Page 364 of R4 Counter** – Land use pattern – Legend  
 shows the 10Km buffer;  
 Also shows that only 2.9% is the built-up/occupied area near the airport  
**Page 365 of R4 Counter** – Environment Sensitive  
 Locations on the map – Shows

15 Kms buffer in the Legend

**Page 266 of R4 Counter – Drainage Pattern - Legend**

shows the 10Km buffer

**Page 370 of R54 Counter – Air Monitoring Locations - Legend**

shows the 10Km buffer

- iii. After requisite information and its analysis and in addition to standard TOR additional study was directed to be carried out. Refer – **Page 81 Pt (ii)**
- iv. The EIA Report has been prepared in accordance with the terms of the TOR as well as additional TOR. Further, the Study Area of 10 Kms was required to be done for Impact analysis/impact study for parameters like water, air, plantation etc. Refer – **Page 3-1 Para 3.2 of EIA Report (running page 77).**
- v. Study Area of 15 Kms – required for collecting secondary data to identify, study and analyse the environment sensitive areas Refer – **Page 3-5 Para 3.4.2 of EIA Report (running page 82) along with map on following page (running Page 83) showing Land Buffer of 15Kms.**
- vi. **Page 3-5 Para 3.4.2 of EIA Report (running page 82)** shows no forest area in the funnel area; all forest area is in East and West directions- seen with map on Running **Page 85 of EIA Report – Shows 10Kms buffer.**
- vii. It is pertinent to note that all the said information was before the EAC for consideration.
- viii. **Table 3-4 @ Page 3-3 of EIA Report (running page 84)** shows built-up area is only 2.9%; thus the site selected was perfect as it avoided the thickly/densely populated area.
- ix. Requirement under the EIA Guidance Manual clearly explains 10Kms study area and 15Kms from the study area for environment sensitive areas as secondary data. Refer – **Page 251 of R4 Counter (manual starting @Page 224).**
- x. Study area of 10 Kms and 15 Kms again explained in the Manual – Refer – **Para 4.1 @ Page 256 of R4 Counter** read with **Clause 2.0 -Topographical Area @ Page 305** and **Clause 4.0- Description of Environment @ Page 306 of R4 Counter**, Refer – **Paras 54 and 55 @ Page 25 of R4 Counter.**
- xi. Thus, in accordance with the requirements and specifications of the EIA Manual – Impact study for all parameters like water, air, noise etc was in fact carried out

within 10 Kms area; and identification, study and analysis in the environment sensitive areas done in the 15Kms area.

**K. Inadequate Noise Impact Study - Noise Impact Study done once during the period as opposed to 7 continuous days; CPCB conditions**

- i. Airports are held accountable and liable to comply with far higher standards than CPCB Guidelines under Civil Aviation Requirements ('**CAR**') issued by Director General Civil Aviation ('**DGCA**'). All the airport and airlines activities are being regulated by the DGCA under the governance of International Civil Aviation Organization ("ICAO") requirements, which comprises of Standard and Recommended Practice of 19 Annex. **Annex 16** covers Environmental Protection.
- ii. The detailed noise impact study in the EIA report reveals that the present noise level is not exceeding the standard level stipulated in the Noise Pollution (Regulation and Control) Rules, 2000. The 'Leq' was recorded in the range of 52.81 dB(A) at Gollapalem, N6, to 56.61dB(A) near Bhogapuram, N3, during daytime and 35.06 dB(A) at Mukkam, N7, to 37.55 dB(A) near NH-5, N1, during night time. Clearly, noise impact study was carried out in terms of the existing applicable norms, unit of measurement and the noise levels in the study area are well within the prescribed limits. Refer – **Clause 3.10 @ Page 3-21 - 3-22 of EIA Report**
- iii. Thus, noise impact study carried out as per requirement.

**L. No noise monitoring carried out in the Funnel Area; monitoring was limited to the runway only**

- i. Appellant placed reliance on the Notification being SO 1589 (E) issued by the Central Government and has vaguely alleged that no noise monitoring has been done in the funnel area in the present project.
- ii. Said Notification SO 1589 (E) has been superseded vide Notification No. SO 84 (E) dated 14.01.2010, which has further been superseded by Notification No. GSR No. 751 (E) dated 30.09.2015. Thus, reliance misplaced. Refer – **Para 41 @ Page 22 of R4 Additional Affidavit read with Page 50 of said Affidavit**
- iii. Importantly, said Notification SO 1589 (E) only relates to the obstacles limitation requirements for the safety of the aircraft operations and construction of buildings and is not related to noise impact study. Refer – **Para 42 @ Page 23 of R4 Additional Affidavit**

- iv. Appellant then placed reliance on drawing of funnel area @ **Page 30 of Written Submission dated 09.08.2021 by Appellant** – alleging that noise impact done at points N2 and N6 at ends of runway and not done in funnel area – Refer – **Para 5 @ Page 2 of Written Submission dated 09.08.2021 by Appellant**
- v. Drawing shown is of Kurnool airport, which actually is not an EIA map of Kurnool Airport, unlike Fig 4-11 in EIA Report for Bhogapuram. Said map/drawing is prepared by AAI in terms of GSR 751(E). Said map made by AAI only when construction is in advance stage and operations stage is likely to begin.
- vi. Said map is undertaken to mark all installations/buildings in and around airport for obstruction limitation requirements to suit the pilot's convenience. This is also an intimation to other authorities to not give permissions for any other high-rise buildings in the said area surrounding the airport. Here EIA finalised for Kurnool airport in 2017 and it became functional in March 2021. Map at Page 30 prepared on 03.07.2019 when airport construction was in its advance stage
- vii. Funnel Area described – Refer – **Paras 44 and 45 of R4 Additional Affidavit @ Page 23 read with Page 99 of said Affidavit.**
- viii. Impact of the proposed airport operations on noise environment extends till the aircraft gains a height of 1000 ft. – where maximum noise is generated during take-off. This position is confirmed in *Hanuman Laxman Aroskars* case in paras 44.4-47 and 54.
- ix. Impact of the proposed airport operations on noise environment will generally extend till the aircraft gains a height of 1000 ft. EIA Airport Guidance Manual - emissions from aircraft at a height below 1,000ft. above the ground will be there (typically around 3km from departure or, for arrivals, around 6km from touchdown) Refer – **Para 43 @ Page 24 of R4 Counter read with Clause 4.4 @ Page 258 of R-4 Counter - Airport Guidance Manual.**
- x. Admittedly, N2 and N6 -points where noise impact study done are within the funnel area and beyond the runway at the boundary of the airport on which points the aircraft gains a height of 1000 – 1200 ft. Refer - **map (given on page between 3-21 and 3-22 of the EIA Report- MAP 1)**. Said 2 points are in the funnel area in the facts of the present case. Refer – **Superimposed image @ Page 99 of R4 Counter**
- xi. Runway in the present matter – 3800 meters – Refer **Page 0-2 of EIA Report (running page 20)**.

xii. Monitoring points N2 and N6 fully comply with TOR requirements to monitor the noise levels in the funnel area as stipulated in the EIA Report between **Pages 3-21 and 3-22**. Further, refer - **Paras 40 – 49 @ Pages 22 - 25 of R4 Counter**

**M. No noise Impact study on the population near the airport area in the EIA - No proper assessment of noise levels**

- i. Noise Impact analysis done on the surroundings areas, **refer map @ Pg 149 of the EIA Report.**
- ii. Noise Environment and impact during the construction and operations phase duly assessed and requisite mitigation measures are also provided for in the EIA Report. Refer - **Clause 4.5 – Noise Environment @ Page 4-18 (running page 147) of EIA Report ; Table 4-16 and 4-17 @ Page 4-18 and 4021 respectively.**
- iii. Appellant alleged that noise impact prediction models are entirely misplaced. Prediction model in **Fig 4.11 @ Page 4-20 (running page 149)-** EIA Report fails to include predicted levels on increase in noise level due to aircrafts. Refer – **Para 13(ii) of Appeal @ Page 10 of Appeal and Para 6 of Written Submissions dated 09.08.21 by Appellant.**
- iv. Impact analysis is done for the impact of noise on the surroundings and near the aircraft. **Fig 4.10 @ Page 4-20 (running page 149)-** EIA Report depicts the predicted noise contours from aircraft operation. **Fig 4.11 @ Page 4-20 (running page 149)-** EIA Report depicts the predicted noise level. Near runway the noise level fig shown is 65db as when aircraft is in middle of runway- its predicted that noise is less.
- v. **Fig 4.11 @ Page 4-20 (running page 149) –** depicts the noise level of DG sets at the airport and surrounding areas during operations stage, which has been presented by an isophones map with 5 dBA intervals (explains the circular map and not an elongated one). The said figure shown in 3 different colours.
- vi. Noise at the airport can be that of passengers, vehicular movement etc., but highest noise level near the airport will that be of the DG sets. The noise levels at the airport has nothing to do with the noise of the aircrafts. There is difference between Fig. 4.10 and 4.11 – Fig. 4.11 has nothing to do with noise of the aircraft. Only Fig. 4.10 deals with noise of aircrafts.
- vii. Argument by Appellant that how Fig. 4-11 shows noise level as 77db when in Fig. 4-10 shows aircraft noise as 65db.

- viii. **R4 Reply** - Fig. 4-11 depicts the noise level around the buildings and not that of the aircraft. Reference given of **Table 4-17 @ Page 4-21 of EIA Report (running page 150)**. This shows the major impact during operations phase.
- ix. Hence it may be noted that impact analysis done for impact of noise levels of aircraft and effect thereof on surrounding areas and people present in the said surroundings. No analysis required on people near aircraft as no people are allowed to stand near the aircraft or on the runway. Prediction done correctly on the points where people would be present in the surroundings, where such people could get affected.

**N. Incorrect Water balance diagram in the EIA Report:**

- i. The EAC evaluated the EIA report for issuance of the EC – the issue of the various alleged discrepancies in the Water Balance Diagram were duly addressed before the technical expert committee namely EAC. Indeed, the said water balance diagram with corrected figures was presented at the EIA presentation.
- ii. In the EAC meeting - presentation was made and the water balance diagram was duly rectified with respect to the waste water from flights issue as well as excess treated water issue (as was seen in Fig 2.5 of EIA Report). All the discrepancies were removed. – Refer – **Page 24 of the Appraisal presentation** (filed by MoEF)
- iii. This itself shows that not only was the EAC aware of everything that was done in the EIA report but there was complete and proper application of a judicious mind while examining the EIA report.
- iv. EAC saw defects, raised objections and sought responses. The same were duly addressed and all the necessary rectifications were made.
- v. Out of the total 647 KLD of water requirement -153 KLD is required from municipality and remaining 437 KLD is recycled water. Out of this 153 KLD, only 30.8 KLD is required for airport and the rest is recycled.
- vi. This is a Zero-discharge airport and water will be saved out of precipitation. During the construction phase – water harvesting is required to be done. Refer – **Para 2.10 @ Page 2-20 (running page 71) of EIA Report alongwith Table 2-8 and 2-9**
- vii. Refer – **Paras 53 – 69 @ Pages 27 – 32 of Additional Affidavit.**

**O. Water Requirement - No analysis of availability of water and impact analysis on Vizianagram Municipality lines done**

- Total demand of Vizianagram Town – 20 MLD
  - Available water for being supplied to Municipality – 26 MLD
  - Water requirement for Airport – 153 KLD i.e. 0.1 MLD
- i. Thus, the requirement for water is only a miniscule percentage of the water available after the requirement for the Vizianagram town is met. No problem relating to any water issue at present
  - ii. Despite the same- about 12 conditions imposed in the TOR to be complied with- thus keeping all necessary precautions in mind
  - iii. Present Situation of water availability in State of AP
    - ⇒ Govt. now has 4 reservoirs in the adjoining areas – 2 out of which are complete and functional and other 2 are under construction
    - ⇒ As per National Water Policy – priority is drinking water and same is earmarked
    - ⇒ Another development is Babu Jagjeevanram Uttar Andhra Sujala Sravanthi water scheme under which it has been planned that 62TMC water from Godavari River would be made available to irrigate 8 Lakh acres of Land
  - iv. Thus, there will be abundance of water. Water requirement for airport being only 0.1 MLD at the operational stage causes no distress.

***Refer to Additional Affidavit of R-4 filed on 25.08.2021 on water impact***

- v. Impact Analysis on Municipality
  - Demand of water in year 2024 is estimated to be 34 MLD
  - Gosthani and Champavati Rivers – yield from these 2 rivers sufficient for Vizianagram district and airport. However, incase of requirement for extra water – same can be sourced from Godavari River.
  - For the construction phase water would be supplied to the airport site through private tankers

**P. No rehabilitation and resettlement plan in EIA**

- i. Right to Fair Compensation and Transparency in Land Acquisition and Resettlement Act, 2013 in existence to give compensation to affected families.

Infact the Land Acquisition Act also an act promoting resettlement and rehabilitation

- ii. **Para 24 @ Page 31 and Para 34 @ Page 37 of R2-Counter by State** referred to show actions taken by state towards rehabilitation and resettlement
- iii. Orders dated 22.07.2020 and 12.08.2020 of developing 2 villages – Polipalliand and Gudepuvalasa with all necessary infrastructure to rehabilitate the displaced shown - **Refer Para 34 @ Page 37 of R2 Counter read with Pages 70 and 74 of R2 Counter**
- iv. Amount of 848 crores paid to District Collector, Vizianagram towards land acquisition and resettlement and rehabilitation – **Refer Para 77 @ Page 33 of R4 Counter**
- v. EIA Report also deals with the provisions of resettlement and rehabilitation in an extensive way- **Refer Pages 7-37 to 7-40 (running pages 224 to 227)**
- vi. Thus, all provisions have been considered and made in the EIA Report.

**Q. Airbus A-380 production discontinued, thus purpose of the Bhogapuram airport design is no more required/MoEF to reconsider the EC issued.**

- i. The above submission of the Appellant is misleading that airport designed to accommodate only A-380 aircraft and since its production is discontinued, the airport construction needs consideration – this is a misnomer
- ii. Bhogapuram airport is an international airport – ICAO deals with the construction, maintenance, operations and environmental conditions are all code specified. Airports designed by Codes and built on the basis of classification of aircrafts
- iii. 3 largest aircrafts – with largest wingspans, in the world today all fall under Code F of ICAO. Runway is designed accordingly as per international standards and the code
- iv. EIA report categorically states that the Bhogapuram airport is set to be designed for A-380 and equivalent aircrafts [Refer - **Pg 1-2 @ Para 1.3.1 of EIA Report**]– thus discontinuation of the production of A-380 has no relevance
- v. Even the EC dated 14.08.2017 states proposal for phase I of airport where airstrip will be developed to cater for operation of Airbus A-380 type of aircraft – Refer – **Point 3(ii) of EC @Page 35 of Appeal**. Thus, airport not specifically for A-380 aircrafts only.

- vi. Bhogapuram airport is Code 4F International airport– if airport designed to accommodate aircrafts with larger wingspans, it can easily accommodate all other smaller aircrafts with smaller wingspans. However, convers of the same is not possible
- vii. Refer - **Additional Affidavit by R-4 – Paras 93 – 99**

**R. Allegations against EIA Consultant and EIA Co-ordinator**

- i. Appellant's contention that there is nothing on record to show presence of 'Specialist' in the aviation sector or those with special knowledge were involved in the preparation of the EIA seeks to raise allegations against Greencindia and Mr. Rahul Singh when neither are present before this Hon'ble Tribunal.
- ii. Mr. Rahul Singh, Greencindia and even QCI are not parties to the present proceeding and the Appellant is levelling allegations behind the back of Greencindia and Mr. Rahul Singh.
- iii. These allegations against Greencindia and Mr. Rahul Singh have no relation whatsoever with respect to the EC and its validity.
- iv. Refer to **paras 84-89 of Additional Affidavit of R-4**

**S. The EIA Consultant GreenCindia not accredited and thus not qualified to carry out the requisite investigation for preparation of the EAC Report.**

- i. GreenCindia selected from amongst 5 empanelled bidders after following a bidding process by RITES. RITES had done the technical feasibility and sub-contracted the Environment Impact assessment/study to Greencindia.
- ii. GreenCindia is an ISO 9001 Certified at the relevant time and even as on date and has always been accredited by QCI - NABET.
- iii. Greencindia is an environmental consultancy organization - accredited by Quality Council of India - National Accreditation Board For Education and Training ("QCI" and "NABET", respectively), as an EIA consultancy organization for the preparation and presentation of Environmental Impact Assessment to the EAC members for each EIA Sectors
- iv. QCI granted re-accreditation to GreenCindia, for 3 years, from 19.02.2014 to 18.02.2017. In the present case, GreenCindia completed EIA Report and public hearing by January 2017. Refer -**Annexure 11.3 to EIA Report@ Page 371-374 running page.**

- v. List of airport projects carried out by GreenCindia – Refer **Page 100-101 of Additional Affidavit by R4**
- vi. GreenCindia duly accredited and thus qualified to carry out the impact study and thereafter compiling the EIA Report.

**T. Non-application of mind by EAC/Public hearing issues not responded**

- i. The number of applications / projects considered are not such that EAC does not have time to apply mind to facts of each case. The EAC receives details of projects in advance. The EAC reviews and deliberates projects from 10 AM till about 5 PM. After the project has been deliberated, individual members provide their inputs and the Chairperson confirms the minutes subsequently.
- ii. It is misleading and mischaracterization of proceedings before the EAC that only few minutes are spent for each project and that the minutes are summarily prepared. It is submitted that the review of the decision-making process by the EAC has been considered by the Hon'ble Supreme Court in *Rajeev Suri Judgment*.
- iii. the Minutes of the Meeting of EAC specifically notes that issues raised during public hearing were not satisfactorily responded to by the Project Proponent. Project Proponent thereafter submitted revised point-wise response to public hearing and only thereafter, EAC considered the same. Therefore, it is wrong to suggest that there has been no application of mind by EAC.
- iv. In this regard, it is submitted that apart from the principles laid down in *Rajiv Suri v. Delhi Development Authority & Ors.*, (supra), the fact that EAC had raised questions makes it clear that there was application of mind.
- v. It is submitted that based on the EIA Report and presentation by the Project Proponent, EAC in their expert opinion, based on material before them, have fully applied their mind and has stipulated conditions with regard to various parameters in the EC, additionally, to ensure that there are no adverse impacts due to the water supply for the Project (**Refer to running pages 178,179-187 of the EIA Report**).

**U. Violation of Greenfield Policy – no greenfield airport allowed within 150 Kms of existing airport.**

- i. The Greenfield Policy relates to a civilian airport. Present airport at Vishakhapatnam is a naval base airport – thus clause not applicable in present case
- ii. There is no absolute bar on having an airport - facts and circumstances in each case to be evaluated
- iii. Central Government also accorded its approval to the airport after thorough examination. Airport necessitated to cater to growing number and needs of passengers, air traffic etc. Also Refer – **Pg 1-8 of EIA Report @ Para 1.5 – Need for the Project**
- iv. In the present case, the current airport being a defence airport – various restrictions on commercial operations. Refer – **Paras 28 -32 @ Pages 33-37 of R2 Counter ; Also Paras 93 – 96 @ Pages 40-41 of R4 Counter**
- v. In accordance with Clause 8.1(b) – Policy is to ensure no negative impact on an existing civilian airport and as such there is no bar. Impact on existing airport examined, which is a naval base airport anyways, and only thereafter development has been allowed.
- vi. Greenfield Policy – **Pg 343 of R-2 Counter @ Pg 349 – Clause 8**, further refer **(Pages 33 – 37 of R-2 Counter)**.

#### **W Rejoinder Arguments of Appellant beyond its pleadings**

- i. It is submitted that that time and again, the Respondents had prayed before this Tribunal that the Appellant may argue all its grounds of appeal in its entirety and thereafter the Respondents will argue their case. But unfortunately at the absolute end of the hearing on 03.09.2021, the Appellant sought to argue and present new grounds by filing yet another set of written submissions. Appellant further relied on an expert opinion of one Dr. Rakesh Kumar Singh, rather asked him to explain certain issues which were anyways not part of the appeal grounds.
- ii. Such practices of calling upon experts at the rejoinder argument stage along with new grounds is absolutely unheard of and shall be discouraged so that the precious time of this Hon'ble Tribunal is not squandered.

- Thus, in the aforesaid circumstances, the project in question is a environmentally sustainable project for which the EC has been obtained after complying with and following the due process of law and for which a proper Environment Impact Assessment study has been undertaken and carried out. The project in question is a project in public interest. Allegations and the object of the Appellant on the contrary is purely a private interest as her lands are acquired for the project. Between the private interest of the Appellant and the public interest of the State and the general public at large, it is the former which much yield to the latter. And even from this point of view no interference is called for in this Appeal.
- The Project Proponent has obtained the Environmental Clearance after properly undertaking prefeasibility study, making applications in accordance with law, have undertaken the required study from environment point of view and the EC has been granted by the EAC after examining the matter in requisite detail and applying its proper and judicious mind to the matter. It is therefore, prayed that this appeal be dismissed and the grant of Environmental Clearance by the MOEF be upheld.

**Dated at Chennai on this the 8<sup>th</sup> day of September 2021**

**Atmaram N.S Nadkarni**  
**Senior Advocate**



**M/S. MADHURI DONTI REDDY**  
**BASU.K.BALAIYANANTHAM**  
**COUNSEL FOR RESPONDENT 2 TO 4**