

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE BENCH, CHENNAI
APPEAL NO. 18 OF 2020 (SZ)**

IN THE MATTER OF:

Sridevi Datla

... Appellant

Versus

Union of India and Others

... Respondents

INDEX

S.No	Particulars	Page Nos.
1.	FINAL WRITTEN SUBMISSION ON BEHALF OF THE APPELLANT	1-17

Filed by



Ritwick Dutta



**G. Stanly Hebzon Singh
Advocates for the Appellant**

Dated: 04.08.2021

Place: New Delhi/Chennai

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE BENCH, CHENNAI
APPEAL NO. 18 OF 2020 (SZ)**

IN THE MATTER OF:

Sridevi Datla	Versus	... Appellant
Union of India and Others		... Respondents

FINAL WRITTEN SUBMISSION ON BEHALF OF THE APPELLANT

MOST RESPECTFULLY SHOWETH:

1. That the present Appeal has been filed before this Hon'ble Tribunal challenging the Environmental Clearance dated 14.08.2017 granted by the Ministry of Environment, Forest and Climate Change to M/s Bhogapuram International Airport Corporation Ltd. for the development of Phase I of the Greenfield International Airport at Tehsil Bhogapuram, District Vizianagaram, Andhra Pradesh.
2. That the process that should be followed while considering a project under the EIA Notification, 2006 has been elaborately dealt by the Hon'ble Supreme Court in ***Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401 : 2019 SCC OnLine SC 441 at page 438*** wherein it was held:

"157. The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive."

ILLEGALITY IMPROPRIETY IN THE SCOPING STAGE:

3. As per EIA Notification 2006 "Scoping": refers to the process to determine detailed and comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environmental Impact Assessment (EIA) Report in respect of project or activity for which environmental clearance is sought. Standard TOR developed by the Ministry in consultation with the sector specific Expert Appraisal Committee shall be the deemed approval TOR for the projects or activities. The standard Terms of Reference are displayed on the website of the Ministry of Environment, Forest and Climate Change.
4. In ***Hanuman Laxman Aroskar v. Union of India*** (*Supra*) it has been held:

"72. The disclosure in Form 1 constitutes the very foundation of the process which is initiated on the basis of the information supplied by the project proponent. Following the disclosure in Form 1, ToR are formulated, and this leads to the preparation of the EIA report. A duty is cast upon the project proponent to make a full, complete and candid disclosure of all aspects bearing upon the environment in the area of study. The project proponent cannot profess an ignorance about the environment in the study area. The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1."
5. In terms of scoping exercise Form 1 was submitted in which it is clear that the project proponents have concealed vital information which is necessary for proper scoping of the project to understand impact of proposed activity. The project proponent is required to exercise utmost due diligence while filling up the Form 1 and giving undertaking that all the data and information given is true and correct and that if any information is found to be false or misleading at any stage the project is liable to be rejected at the risk and cost of the project proponent.**(Last page of Form I at Page 78 of the Appeal).**

6. This discloser is important given the fact that scoping stage does not automatically mean that terms of reference for and EIA report will be granted as a matter of right rather the EAC has the discretion to reject a proposal at the scoping stage itself. This is clearly stated in the EIA Notification 2006, "Application for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation on the EAC or SEAC concerned at this stage itself". This aspect was emphasized by the Hon'ble Supreme Court in the matter of ***Hanuman Laxman Aroskar Vs. Union of India, (Supra)*** wherein it is held:

"82. The failure on part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 Notification has a cascading effect on the salient objective which underlies the 2006 Notification. The 2006 Notification represents an independent code with the avowed objective of balancing the development agenda with the protection of the environment. An applicant cannot claim an EC, under the 2006 Notification, based on substantial or proportionate compliance with the terms stipulated in the notification. The terms of the notification lay down strict standards that must be complied with by an applicant seeking an EC for a proposed project. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on the part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law. There can be no gambles with the environment : a "heads I win, tails you lose" approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law."

CONCEALMENT OF MATERIAL INFORMATION:

7. Concealment of information with regard to pending litigation:

In basic information Serial No. 24 of Form I :

24.	Whether there is any litigation pending against the project and /or land in which the project is proposed to be set up?	No
	(a) Name of the Court	N/A
	(b) Name of the Sub court	N/A
	(c) Case No.	N/A
	(d) Orders/ directions of the court, if any and relevance with the proposed project	N/A

(Form I at Page 78 of the Appeal)

8. The project proponent concealed the information that not only case against the project was pending before the High Court OF Andhra Pradesh and Telangana, there was also stay order granted by the Hon'ble High Court on with respect to acquisition of land on 25.1.2016 **(Annexure A-3 at page 67 of the Appeal)**

9. That in Counter Affidavit filed by Respondent No. 4, Bhogapuram Intentional Airport Corporation Ltd. dated 08.07.2021, it is stated as follows:

"44. I further state that a presentation was made to the Hon'ble Expert Appraisal Committee (Infra-2) before fixing the terms of reference. I state that it was at this stage, it was clearly mentioned that while dealing with land documents, the pendency of the matters including WP No. 4768/2012; WPMP NO. 11695 in WP No. 9250/212, as also the Orders passed by the Hon'ble High Court of Andhra Pradesh were all brought to the notice of the EAC

including in the land documents. I state that as mentioned earlier, while submitting Form 1, this information was not available with the official at the desk dealing with submission of the said form, however, when the presentation was made for the ToR this fact was clearly mentioned. It is after going through this presentation that the EAC has incorporated additional conditions pertaining to the very same aspect as regards pending litigations. A copy of the presentation dated 28.3.2016, made by the Answering Respondent to the EAC is annexed hereto and marked as Annexure R-8."

10. The contention of Respondent No. 4 is without any basis. It is submitted that the Respondent No. 4, project proponent has clearly indulged in concealment of information. This is evident from the following:

- (i) The Form 1 was submitted on 27.02.2016 by the project proponent. This form as stated above did not mention about any pending litigation.
- (ii) The Hon'ble High Court of Andhra Pradesh and Telangana on 25.01.2016 had granted a stay on dispossession of land. Thus, despite the High Court order preceding the submission of Form 1 by one month, the project proponent for the reason best known to him decided not to disclose the details of the litigation in Form 1.
- (iii) The submission of the project proponent in Counter Affidavit that the details of the pending litigation was disclosed during the presentation before the EAC on 28-29.03.2016 is a false statement since, a perusal of the presentation (**Annexure R-8 at page 343 of Counter Affidavit of Respondent No. 4**) clearly shows that no such information was provided to the EAC. The only information with regard to litigation is in page no. 359 of Counter Affidavit of Respondent No.4 wherein a land document dated 31.08.2015 has been annexed/referred to. Thus, the project

proponent never disclosed the order passed by the Hon'ble High Court on 25.01.2016 while this presentation was made in 28.03.2016. Thus, the project proponent misled the EAC by showing a document of 2015 **(at page 359 of Counter Affidavit of Respondent No. 4)** of Secretary to the Government and not disclosing the order passed in 25.01.2016 by the Hon'ble High Court.

11. The very fact that the EAC was not informed by the project proponent about the pending litigation and the stay order is evident from the minutes of the meeting of the EAC dated 28-29.03.2016 wherein the EAC prescribed additional TOR wherein at Serial No. (xv) the following information was required to be furnished as part of EIA Report "Any litigation pending against the project and/or any direction/order passed by any Court of Law against the project, if so, details thereof shall also be included." **(at page 82 of the Appeal)**

12. It is thus evident that the act of the project proponent attracts para 8 sub-clause (vi) of the EIA Notification, 2006 which states as follows:

"Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

13. In ***Hanuman Laxman Aroskar v. Union of India (Supra)*** it has been held:

“126. Deliberate concealment or the submission of false or misleading information or data material for screening, scoping, appraisal or decision on the application makes it liable for rejection. That the project proponent must submit all information and data without concealing relevant features is a basic hypothesis and expectation of the 2006 Notification.”

It was further held that :

“82. The failure on part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 Notification has a cascading effect on the salient objective which underlies the 2006 Notification. The 2006 Notification represents an independent code with the avowed objective of balancing the development agenda with the protection of the environment. An applicant cannot claim an EC, under the 2006 Notification, based on substantial or proportionate compliance with the terms stipulated in the notification. The terms of the notification lay down strict standards that must be complied with by an applicant seeking an EC for a proposed project. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on the part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law. There can be no gambles with the environment : a “heads I win, tails you lose” approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law.”

MISLEADING INFORMATION WITH REGARD TO ENVIRONMENTAL SENSITIVITY:-

14. In *Hanuman Laxman Aroskar v. Union of India (Supra)* it has been held that :

“91. The purpose and object of the EIA report is to map areas, understand their vulnerabilities, and conduct a study on a scientific basis of the impact of the proposed project on an ecologically sensitive terrain. The EIA report fails to meet a classical requirement of administrative law : to take into account a relevant consideration, namely, that within the study area which has to be considered, there is the presence of ESZs.”

15. The project proponent has undermined the ecological sensitivity of the area by providing wrong and misleading information.

(i) At Serial No. 1 of Section (III) Environmental Sensitivity of Form 1, the project proponent submitted that there is no area within 15 kilometre which are protected under International Convention, National or Local Legislation for their ecological, landscape, cultural or other related values. **(Form I at Page 77 of the Appeal).**

(ii) At Serial No. 10 of Section (III) Environmental Sensitivity of Form 1, the project proponent submitted that there is no areas containing important, high quality or scarce resources (ground water resources, surface water resources, forestry, agriculture, fisheries, tourism, mineral). **(Form I at Page 78 of the Appeal).**

However, mere perusal of Section 3.4.2 of the EIA Report shows presence of 5 Reserve Forest and 9 Water Bodies are within 15 kilometre of the project site. **(Page No. 89 of the Appeal)**

(iii) At Serial No. 8 of Section (III) Environmental Sensitivity of Form 1, the question that is asked is whether there is any ‘densely populated or built up area’ within 15 kilometre of the project site. The answer to the same could have been either ‘Yes’ or ‘No’ and

with details including distance. The project proponent however chose not to answer this query despite the fact that there are several densely populated or built up area such as Pallipallu, Ravada, Bhogapuram which are within 15 kilometers. Rather than mentioning these areas with high human density the project proponent has responded by stating as follows:

“no metropolitan city is there within the study area.”

It is clear that the question was not whether there is metropolitan city or not. The project proponent gave a misleading answer with the aim of concealing the presence of densely populated areas near the proposed airport with the intention of undermining the possible impacts due to presence of such densely populated area. It is submitted that presence of human population is of critical importance in location of airports because of likely disturbance as well as risk due to bird hit on aircrafts. In ***Hanuman Laxman Aroskar Vs. Union of India (Supra)*** the Hon'ble Supreme Court had highlighted the necessity to undertake avifaunal studies while locating airports and the fact that such studies must take into account the impact of airport operation on birds and impact of birds on airport.

- (iv) At Serial No. 9 of Section (III) Environmental Sensitivity of Form 1, the question that is asked whether there is any area occupied by sensitive man-made land uses (hospitals, schools, place of worship, community facilities). The answer to the same could have been either 'Yes' or 'No' and details there also including distance. The project proponent however chose not to give any details despite the fact there is one 920 bedded Super Specialty Hospital, 14 dispensaries/hospitals, 104 schools and 11 higher educational

institutions located within 10 kilometre radius of the project site. The project proponent has concealed this information with an intention to undermine the possible impacts of operational airports on patients/students.

16. In ***Hanuman Laxman Aroskar Vs. Union of India (Supra)*** it was held that:

“73. There can be no manner of doubt that Form 1 is an important ingredient in the entire process envisaged under the 2006 Notification. Hence, clause (v) of Para 8 of the 2006 Notification provides that deliberate concealment or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection and lead to the cancellation of a prior EC granted on that basis. The declaration which is required of the project proponent is to a similar effect.”

CASUAL MANNER OF FILLING UP THE FORM

17. In Serial No. 9.3 of Form 1, it is mentioned that:-

S. No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities / rates, wherever possible) with source of information data
9.3	Set a precedent for later developments	Yes	Contribute to the maximum possible extent for developing Kurnool as a tourism district.

It is stated that the response given by the project proponent as above clearly shows a case of copy and paste. The response 'Contribute to the maximum possible extent for developing Kurnool as a tourism district' has no relevance with the case in hand since the present site for development of Green Field International Airport at Bhogapuram which is in district Vizianagaram, Andhra Pradesh. Kurnool in Andhra Pradesh is more than 600 km in distance from the site of the proposed airport. This shows the casual manner of filling up the Form-1. **(Form I at Page 77 of the Appeal).**

WRONG STATEMENT ABOUT TOTAL LAND INVOLVED IN THE PROJECT

18. The project proponent has disclosed several figures with regard to total area of the proposed project. Based on the information submitted by project proponent at Serial No. 3 of Form 1 **(at Page 69 of the Appeal)**, the total project area is 3690.52 acre. The information submitted is given below:

“2004.52 Acre for Phase-1 along with approach road of 119 Acre. 1567 Acre area also will be utilized for commercial area development.”

19. The project proponent while making presentation before EAC on 28.03.2016 in one slide mentioned that the total area of the proposed project is 4068.55 acre **(Annexure R-8 at page 344 of Counter Affidavit of Respondent No. 4)** but further in another slide they mentioned total project area is 2123.54 acre which includes 2004.54 acre as project site and 119 acre for approach road **(Annexure R-8 at page 346 of Counter Affidavit of Respondent No. 4)**.

20. In para 0.3.1 of the EIA Report (Page No. 0-3) the consultant considered only 2004.54 acre as project area to assess the environmental impact.

NO MENTION OF INTERLINKED PROJECT (SERIAL NO. 17)

21. At Serial No. 17 of Form 1 **(at Page 70 of the Appeal)** project proponent mentioned that the proposed project is not part of the any interlinked projects. However, in para 16 of the Counter Affidavit filed by the Respondent No. 2 they admitted that after the functioning of proposed airport the facilities like maintenance, repair and overall (MRO) and an aviation academy will come up in the second phase **(Counter Affidavit filed by the Respondent No. 2-paras 16 at Page Nos. 25-26 dated 07.07.2021)**.

NO MENTION OF CUMULATIVE IMPACT DUE TO 4000 ACRE OF LAND

22. In the Counter Affidavit filed by Respondent No. 2, it has been clearly mentioned that:

“16.... The said facilities i.e. MRO and the Academy are however to be developed only at the instance of the project proponent and also in the second phase of development.

...

Secondly, the airport city and aerotropolis models of development are being encouraged to generate commercial development at and around India's airports to foster economic development, increase their non-aeronautical revenues, and further boost passenger and cargo flows. India boasts of many such Aerotropolis airports with all such facilities, such as Kempegowda International Airport (KIA), Bengaluru, Delhi International Airport etc. Such airports encourage and help to develop the economy. The State of AP also decided to construct and develop such an airport with a view to boost the state's economy and also to generate employment opportunities and income while adhering to the environmental and other conditions prescribed by the relevant authorities.” **(Counter Affidavit filed by the Respondent No. 2-paras 16 at Page Nos. 25-26 dated 07.07.2021).**

23. In Serial No. 9.4 of Form 1 **(at Page No. 77 of the Appeal)** it is mentioned that:

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities / rates, wherever possible) with source of information data
9.4	Have cumulative effects due to proximity to other existing or planned projects with similar effects	No	Not Applicable

24. The above information is contradictory to the Counter Affidavit filed by the Respondent No. 2 at para 16 where they admitted that after the functioning of proposed airport the facilities like maintenance, repair and overall (MRO) and an aviation academy will come up in the second phase (**Counter Affidavit filed by the Respondent No. 2-para 16 at Page Nos. 25-26 dated 07.07.2021**) which is a planned activity.

25. In para 39 at page 18 of the Counter Affidavit filed by Respondent No. 4 on 08.07.2021 it is mentioned that other facilities which are part and parcel of a greenfield i.e. MRO and an aviation academy would also be developed subsequently in the 2nd and 3rd phase once the air traffic/number of air planes etc. increase.

26. That this Hon'ble Tribunal observed the meaning and scope of the term Cumulative Impact Assessment Study in its Judgment dated 10th November, 2014 in Appeal no. 50 of 2012 in **T. Muruganandam & Ors. vs. Ministry of Environment & Forests & Ors.** as follows:-

"41.....This Cumulative Impact as the term indicates is not the impact of any project in isolation but it is a total impact resulting from the interaction of the project with other project activities around it- past, present and those to come up in the future. It is a comprehensive view of the impacts resulting from all the projects- past, present or planned ones, on the environment. Cumulative Impact may be same or different and those arising out of individual activities and tend to be larger, long lasting and spread over a greater area within the individual impact. Such studies are therefore commonly expected to:

- i. Assess effects over a larger area that may cross jurisdiction boundaries.*
- ii. Assess effects during a longer period of time into the past and future.*
- iii. Consider effects on other eco-system components due to interactions with other actions, and not just the effect of the single action under review.*
- iv. Include other past, existing and future (reasonably foreseeable) action, and*
- v. Evaluate significant effect in consideration of other than just local and direct effects."*

27. In **Vimal Bhai v. Ministry of Environment &, 2011 SCC OnLine NGT 16**

which was an Appeal filed against the forest clearance granted for diversion 80.507 ha of forest land for the construction of a 65m dam across the river

Alakhnanda in Uttarakhand, the Hon'ble NGT delved into detail and to what would cumulative effects would entail. It has stated that cumulative effects are those that -

"(i) are caused by the aggregate of past, present, and future actions; (ii) are the total effect, including both direct and indirect effects, on a given resource, ecosystem, and human community of all actions taken, no matter who has taken the actions; (iii) need to be analysed in terms of the specific resource, ecosystem, and human community being affected; (iv) cannot be practically analysed beyond a reasonable boundary; the list of environmental effects must focus on those that are meaningful; (v) rarely correspond to political or administrative boundaries; (vi) may result from the accumulation of similar effects or the synergistic interaction of different effects; (vii) may last for many years beyond the life of the project that caused the effects; and (viii) should be assessed in terms of the capacity of the affected resource, ecosystem, and/or human community to accommodate additional effects."

28. In its Judgment dated 27.05.2021 in ***Appeal No. 46 of 2016 (SZ) titled Uma Maheshwar Dahagama vs Union of India & Ors.***, this Hon'ble Tribunal has observed in its para 29 as follows:-

"29. This Tribunal had considered the necessity of Cumulative Impact Assessment Study and observed as follows:

....Our effort in this case is to understand what Cumulative Impact Assessment Study is. An enquiring mind would start with the existing law as well as scientific literature and it might be found in persuasive precedents available in the domestic law/literature on closely related topics and at a time in persuasive foreign decision/literature which may show how other jurisdiction have resolved the problem. The value of foreign judgment depends upon the persuasive force of their reasoning. Principles of sustainable development and the precautionary principle as envisaged in the Section 20 of NGT Act, 2010 have been developed in international law but have been domesticated into national laws throughout the world and so in India. Thus the

knowledge on the subject can be borrowed with rather a free disregard for political boundaries and jurisdictional boundaries i.e. from all sources Indian or Foreign for bettering our understanding.

41. The European Commission in its guidelines for Assessment of indirect and Cumulative impacts as well as impact interactions defines Cumulative Impact as "Impacts that result from incremental changes caused by other past, present or reasonably foreseeable actions together with the project". CEAA guidelines give similar definition of Cumulative effects: these are changes to the environment that are caused by an action in combination with other past, present and future human actions. The U.S Environmental Protection Agency defines it as "the combined incremental effect on human activity". These definitions are in no way conflicting with the concept of Cumulative Impact Assessment Study, the Project Proponent holds to be correct, as revealed from its submissions. Thus, the Cumulative Impact as the term indicates is not the impact of any project in isolation but it is a total impact resulting from the interaction of the project with other project activities around it- past, present and those to come up in future. It is a comprehensive view of the impacts resulting from all the projects- past, present or planned ones on the environment. Cumulative Impact may be same or different and those arising out of individual activities and tend to be larger, long lasting and spread over a greater area within the individual impact. Such studies are therefore commonly expected to:

- 1. Assess effects over a larger area that may cross jurisdiction boundaries;*
- 2. Assess effects during a longer period of time into the past and future;*

3. Consider effects on other eco-system components due to interactions with other actions, and not just the effect of the single action under review ;

4. Include other past, existing and future (reasonably foreseeable) action; and

5. Evaluate significant effect in consideration of other than just local and direct effects.

42. In the cases, *Bombay Dyeing & Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Ors.* (AIR 2006 SC1489) and *T.N. Godavarman Thirumulpad Vs. Union of India and Ors.* (2008(2) SCC 222) the Hon“ble Apex Court referred to the Principle of sustainable development and precautionary principle and stipulated the need to balance environmental concerns with those of developmental requirements. In no way the Hon“ble Apex Court discouraged the Cumulative Impact Assessment Study. This Tribunal in fact saw the need for Cumulative Impact Assessment Study in the areas where numerous projects were found located. Importance of Cumulative Impact Assessment Study was thus expressed by the Tribunal in *Sarpanch, Grampanchayat case (Sarpanch, Grampanchayat Tiroda vs. MoEF: Appeal No. 3 of 2011)* vide order dated 12.09.2011 in following words;

"Unfortunately, the cumulative effect of these four proposed projects was not considered to be of significance in causing environmental pollution in a small area. It appears an impression is sought to be created that there was only one application of Tiroda mine and at that time the Redi mine was not in operation. When number of mines are sought to be considered in a small area of Sawantwadi Taluk, the EAC was 34 expected to examine various aspects such as the cumulative impact of Air, Water, Noise, Flora Fauna and socio-economic aspects in view of large

number of transport vehicles, plants and machinery etc. that would be operating in the area. It would have been appropriate, if a cumulative impact study was undertaken to take care of all existing/proposed mines within 10 km of the present project site apart from Redi mine, if any. Therefore, we are of the opinion that these aspects were not properly assessed and examined scientifically and, therefor, the EIA report requires to be re-examined afresh”.

29. This Hon'ble Tribunal in this Judgment further directed on the issue of Cumulative Impact Assessment as under:-

“The project proponent shall be directed to conduct cumulative impact assessment of ambient air quality modelling for a radius of 15 km from the project area by collecting primary data regarding air quality for another season other than the winter season during the relevant period and also taking more number of locations within 15 kms radius selecting the probable polluting industries situated and the impact of the present as proposed projects in those areas as such directed by the National Green Tribunal in T. Muruganandam & Ors. Vs. Union of India & Ors Appeal No. 50 of 2012.”

It is stated that in view of the above facts, circumstances and submissions the prayer in the Appeal may be allowed.

Ritwick Dutta

**G. Stanly Hebzon Singh
Advocates for the Appellant**