

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

ORIGINAL / APPELLATE SIDE

OA No. 190 of 2021 (SZ)

Between: S. Sakthivel

...Applicant

VERSUS

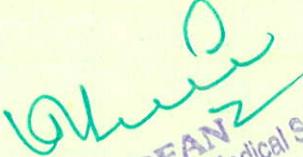
Ministry of Environment, Forest & Climate Change and Others ...Respondents

I, Prathima Institute of Medical Sciences, Nagunuru, Karimnagar-505417,
Telangana state, reply its Dean, Dr. Achanta VivekanandRespondent No. 20

In the above Appeal petition do hereby appoint and retain

G. LAKSHMI
ADVOCATE

Advocates/s for the High Court to appear for me us in the above Appeal / Petition and to conduct and prosecuted (or defend) the same and all proceedings that may be taken respect to any application connected with the same or any decree or order passed therein including all application for return documents or the receipt of any money that may be payable to me / us in the said Appeal / Petition and also appeal in all application under Clause XV of the Letters pattern and in all application for review and for leave to the Supreme Court of India and in all application review of Judgement.


DEAN
Prathima Institute of Medical Sciences
Nagunuru, Karimnagar.

I certify that the contents of this VAKALAT were read dut and explained in (.....) in any presence to the executant of executants who appeared perfectly to undersigned same and made his/he/ their signature in my presence.

Executed before me this ...14..... Day of March, 2022.


Advocate
పి. సుగుణాకర్ రావు
అడ్వకేట్
ఇ.నెం. 2-10-1503, వైకన్యపురి, నాగూరు
ఫోన్ : 2255661, 98497-77899



BEFORE THE NATIONAL GREEN
TRIBUNAL
SOUTHERN ZONE, CHENNAI

ORIGINAL / APPELLATE SIDE

OP No. 190 of 2021 (SZ)

VAKALAT

ACCEPTED

Date: 14-03-2022

G.LAKSHMI
ADVOCATE

Counsel for Respondent No. 20

Address for Service:

Cell: 9959301113
: 8121135792

Flat No. A-207, SVC Treewalk,
Lane Opp to Vijetha Super Market,
Botanical Garden Road,
Kondapur, Near Masjid Bunda,
Hyderabad-500084.

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONE, CHENNAI

ORIGINAL APPLICATION NO. 190 OF 2021 (SZ)

BETWEEN :

S. Sakthivel,
Environmental Protection & Anti-Pollution Group
S/o PK Subramaniam
Alagu Vinayakar Kovil Street
Fairlands, Salem – 636016
e-mail Id : bindusakthi@yahoo.com, ph. 7449213709

....APPLICANT

AND

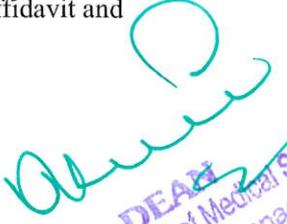
1. MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE (MOEF&CC)
Rep. by its Secretary to Government, Union of India,
Indira Paryavaran Bhavan
Jor Bagh Road, New Delhi – 110 003 and Ors.

...RESPONDENTS

REPLY AFFIDAVIT FILED BY THE RESPONDENT NO. 20

I, Dr. Achanta Vivekanand, S/o. A.Seshachalapati Rao, aged about 66 years,
Occupation: Dean of Prathima Institute of Medical Sciences, having Medical College at
Nagunuru, Karimnagar – 505417, Telangana State, do hereby solemnly affirm and sincerely
state on oath as follows:

1. I am the Dean of Prathima Institute of Medical Sciences (for short "PIMS"), the
Respondent No. 20 herein and as such am authorized to swear to this reply affidavit and
I am well acquainted with the facts of the case and the applicable law.


DEAN
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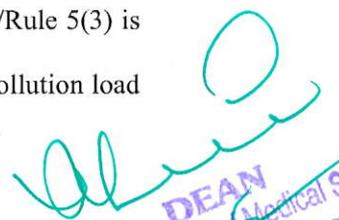

పి. సుబ్రహ్మణ్యం రావు
అధ్యక్షుడు

2. I deny all the material allegations made against this Respondent except those that are admitted here under. The Application No. 190 of 2021 was filed by the Applicant alleging violations under the Environment Protection Act,1986 by the respondents, without any proof and particularly no specific allegations are made against respondent No.20 with regard to violations of Environment Protection Act, or its rules, except making vague and wild allegations under misconception of law. It is clear that no evidence has been or could be by the Petitioner with regard to alleged violations of the EIA Act, since EIA is not at all applicable to this Respondent-20 in its facts, and this petition is filed with untenable and unsustainable grounds being solely based on assumptions, presumptions and surmises.

3. In reply to paras 1 to 4 no reply is needed. It is submitted PIMS is in existence for the last two decades from the year 2000 with all applicable licenses, permits, registrations, and compliances under various laws and is duly recognised and permitted by the Medical Council of India / Central Government. The Environmental Impact Assessment Notification, dated 27/01/1994 is prescribed by Notification published in Gazette by Central Government in exercise of its powers conferred by clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 states that the Central Government may by publication of the Notification impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area. Therefore, any restrictions u/Rule 5(3) shall be imposed thro' a notification published in the Gazette. That is, only a Notification issued u/Rule 5(3) is binding on anybody carrying on of any process or operation in an area if pollution load


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is to exceed the existing one or new project listed in Schedule I to the Notification. Hence, without there being a Notification, any other communications are not binding and are unenforceable on anybody. It is further submitted that it is applicable only for new projects or expansion or modernization commenced from the date of notification but not to a project in existence prior to the notification. Whereas PIMS is in existence from 2000 and its teaching hospital was executed to full size from the year 2001 and medical college was started in the year 2002. Thereafter, no new project or modernization or expansion is undertaken in relation to teaching hospital falling within the parameters of the Notification. This fact has been confirmed by the Telangana SEIAA in their report to Hon'ble Tribunal and that Prathima Hospitals holding all the valid and current permissions.

4. In reply to para 5, the allegation that respondent are violated the rules as laid down under the Environment protection (Protection) Act, 1986 is baseless. It is further submitted that EIA Notification presently is in vogue was published vide New Delhi 14th September, 2006 under sub rule(3) of Rule 5 of the Environment (protection)Rules,1986 and sub section (1) and clause (v) of sub section (2) of section 3 of Environment Protection Act 1986, in supersession of 1994 Notification directed that on and from the date of Publication, the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the schedule there to the notification requiring Prior Environmental Clearance from Central Government. The List contains Project / Activity from 1(a) to 8(b). **It does not contain the activity of medical college which is an educational institution.**



వి. సత్యనారాయణ్ రావు

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జి.నెం. 2-10-1503, వైకన్యపురి, కరీంనగర్
పిన్ : 505002. 20-10-2014



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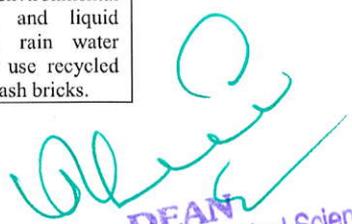
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5. In reply to paras 6 to 11 briefs about the Enactments needs no reply. In reply to para 12 and 13, it is submitted that that no Medical College shall be established except after obtaining the prior permission of Central Government [Regulation 3 of Establishment of Medical College Regulations, 1999]. That Prathima Medical College before commencement consists of Medical College and Hospital of not less than 300 beds with necessary infrastructural facilities capable of being developed into teaching institution in the unitary campus of the proposed medical college. Thus, the Hospital in the Medical College is a Teaching Hospital after commencement of medical college and it is part of the medical college. In other words, the College and Teaching Hospital constitute unitary campus of the Medical College, an educational institution. The EIA Notification of 2006 referred to in Para 6 above is amended thro' various Notifications and vide Notification No. **S.O. 3252(E)** dated 22nd December, 2014 Sl.No.8(a) and 8(b) of the Schedule is amended as noted by the Hon'ble Tribunal in Para 3 of the interim Order dated 01-12-2021 which reads as follows :

LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR ENVIRONMENTAL CLEARANCE

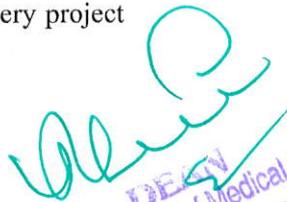
Project Or Activity		Category with threshold limit		Conditions if any
1	2	3	4	5
8(a)	Building and Construction projects		>20000 sq.mtrs and < 1,50,000 sq. mtrs. of built up area	The term "built up area" for the purpose of this notification the built up or covered area on all floors put together, including its basement and other service areas, which are proposed in the building or construction projects. Note 1.- The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks.


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				Note 2.- “General Conditions” shall not apply.
8(b)	Townships and Area Development Projects		Covering an area of > 50 ha and or built up area > 1,50,000 sq. mtrs	A project of Township and Area Development Projects covered under this item shall require an Environment Assessment report and be appraised as Category ‘B1’ Project. Note.- “General Conditions” shall not apply.

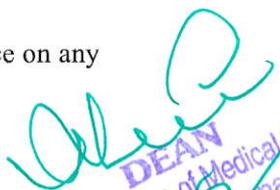
From the above Notification referred to in Para 8 above, (i) it is clear that the same shall be applicable only to building and construction **projects** with above 20000 sq.mtrs (215278.21 sq. ft.) but less than 1,50,000 sq.mtrs. (1614586.56 sq. ft.) of building and construction in the project and it is also **prospectively**. (ii) Area development Projects of 50 hectares (or 123.55 acres) and above or 1,50,000 sq. meters (or 21,52,782 sq. ft or above) **prospectively**, (iii) it is also made clear by inserting Note-1 under Sl.No. 8(a) that the same is **not** to applicable to projects of school, college, hostel for educational institution etc., (iv) with the insertion of Note-1 under Sl. No. 8(a), the applicability of Sl.No.8(b) –Townships and Area Development Projects to projects of school, college, hostel for educational institution etc., is excluded, (v) the amendment is w.e.f. 22-12-2014 and is not **retrospective but prospective** and hence shall not be applicable to any date prior to 22-12-2014, (vi) it is not applicable to any project under 8(a) executed prior to 22-12-2014, and (vii) further, it is applicable only to the projects with the minimum extent of building and construction activity stated in 8(a) and as a corollary not applicable to every project with extent below specified extents.


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ప్రతిమి ఇన్స్టిట్యూట్ ఆఫ్ మెడికల్ సైన్సెస్
నాగునూరు, కరీంనగర్
జి.నెం. 2-10-1503, కరీంనగర్

6. As submitted above PIMS is a College (medical college with teaching hospital, which is a pre-condition for establishment of Medical College). It is not a commercial hospital but a teaching hospital serving the poor and needy under various schemes designed to benefit the poor and established as a Charitable Institution registered u/sec.12AA of the Income tax Act, 1961.
7. We submit that Rule 5(3) of the Environment (Protection) Rules 1986 read with Rule 31 requires or mandates that any amendment to Rule 5(3) read with Notification issued thereunder shall be thro' a Notification published in Gazette after following the due procedure of draft publication, calling objections and publishing the final notification. This is mandatory since the proposed Notification amends the provisions of the Rule by empowering the amendment of existing Notification. Sec.3 of the Environment (Protection) Act, 1986 read with Rule 5(3) of the Environment (Protection) Rules 1986 clearly provides for imposing the restrictions only thro' a notification and not otherwise. That is, any amendment to the Notification can be only by issue of another Notification and not otherwise. Any other means of letters or Question / Answer series will not amend the Notification nor impact the extant Notification it is purported to clarify nor amend the provisions of Rule 5(3) and the law holds good. The letters or Question / Answer series or guidelines can only clarify the procedural formalities of the amendment in the Notification and cannot under any circumstances amend the Notification nor can impose any new restrictions that are not found in the extant Notification. Therefore, the Office Memorandum dated June 9, 2015 (page 98) will not advance the case of the Applicant and is *void ab initio* and is *non-est*qua the Notification of 22-12-2014. The Application in the case is ill-founded and bad in law and is liable to be thrashed at the threshold itself since it does not place reliance on any

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ಇ.ನಂ. 2-10-1503, ಪ್ರತಿಮಾ ನಗರ, ಕಾರ್ನಾಟಕ
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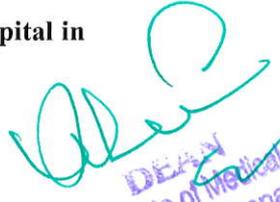

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Notification in support but places heavy reliance on clarifications that have no effect and invalid nor amend the Notification issued validly under the provisions.

8. The Applicant heavily relied on the Office Memorandum dated 9th June, 2015, i.e clarification regarding Gazette Notification No. S.O.3252 (E) dated 22/12.2014 on applicability of Environmental Clearance,(at page 98)which has no legal validity at all. All the paras of the Affidavit from 1 to 17 are based on the misconception of law and placing wrong reliance on an invalid clarification *non est* and *void ab initio*. It is submitted that Clarification cannot impose any restrictions that are not found otherwise in the Notification.
9. The Applicant has wrongly described in para 5 &18, the Respondent 20 as Medical University in operation in Union Territory whereas in fact the Respondent 20 is a Medical College duly affiliated to the KNR University of Medical Sciences, Warangal, Telangana and is operating in the State of Telangana. This is a clear mistake of fact and understanding on the part of the Applicant and it goes to the root of the case and makes his application invalid since the Application has to be with reference to facts and not the hypothesis or assumptions or presumptions of the Applicant.
10. Assuming for a moment without accepting that the EIA Notification 14th September, 2006, Notification S.O. 1533as amended on 22-12-2014 (page 96 of Application) read with Office Memorandum (page 98 of application) is applicable, the 14-09-2006 Notification clearly provides that the Central Government directs that **on and from the date of its publication** the required construction of **new projects or activities or the expansion or modernization of existing projects or activities, Teaching Hospital in**


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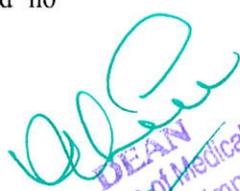
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ఫోన్ : 2255661; 98497121899


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Respondent -20 case, listed in the Schedule to this notification entailing **capacity addition with change in process and or technology** shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification. It provided without any second thought that it is prospectively applicable from 09-06-2015 for all new projects or expansion of capacity only **and not otherwise**. **Whereas the fact is that the PIMS has not carried out any new project of building or construction project or expansion of existing project on or after that date falling within the parameters specified in the Notification of 22-12-2014 (at page 96)** read with the impugned clarification of 09-06-2015. The Application being inconsonance with the provisions in proper perspective and is without understanding the application of Notification properly, because it is not applicable for the existing buildings, hence the Application is not maintainable. The mis-construction on the part of the Applicant arises due to the preoccupation of ulterior motives. **The Applicant has not placed any facts on record in support of his Application about capacity installation or expansion resulting in a new project of prescribed extent after the date of Notification i.e., after date of Office Memorandum of 09-06-2015.** It is just a wild allegation and no facts are placed on record. Thus also, the Application fails and deserves to be thrashed at the threshold. The SEIAA, Telangana, correctly filed the status of the Applicant as noted by the Hon'ble Tribunal in its order dated 01-12-2021, this respondent No.20 that the Teaching Hospital was executed in 2001 and no expansion attracting EIA was taken up thereafter.


పి. సుగుణాకర్ రావు
జూనియర్ కలెక్టర్

స.నెం. 2-10-1503. వైద్యశాల, కర్నూలు


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11. PIMS is a legal compliant and law abiding institution following the Bio Medical Waste (Management and Handling) Rules, 1998, the Water (Prevention and Control of Pollution) Act, 1974, the Water (Prevention and Control of Pollution) Cess Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986 etc., in true letter and spirit including timely submission of the renewal application and data to the State Pollution Control Board in addition to payment of fees.
12. The Applicant is disputing a matter in respect of PIMS which is located in Telangana and based on irrelevant information secured under RTI Act, 2005 and on mis-construction of law and provisions thereof and based on wrong test. Till date, no such complaint is made against PIMS by any person from the area where PIMS operates. This speaks volumes of the oblique or ulterior motive or purpose or intentions of Applicant to inconvenience or harass the respondents for oblique purposes and deserves no merit of consideration.
13. Strictly put, bad faith invalidates the exercise of rights being colourable exercise or fraud on legal rights conferred as the bad faith overlaps the motives, passions and satisfactions as it is used to attain the ends beyond the sanctioned purposes by simulation or pretention of gaining a legitimate goal. The action is bad since the true object is to reach an end different from the one for which the right is entrusted and since the actions are goaded by extraneous considerations irrelevant to the rights to be achieved. It is to submit that the Application is devoid of merits, made up of wild allegations and conjectures, is arising on mis-construction of the Act and the applicable


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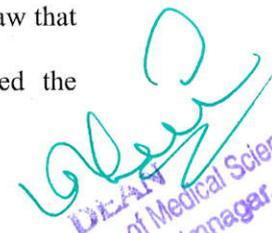

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rules read with the Notifications issued there under modifying or complying with the law. Hence, the Application is to be thrashed with exemplary costs at the threshold itself.

14. In reply to paras 14 to 19, that the provisions of EIA made under the Environment (Protection) Act, 1986, read with sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 and the Notifications issued thereunder vide S.O. 1533 read with SCHEDULE thereto (See paragraph 2 and 7) and the Notification No. **S.O. 3252(E)** dated 22nd December, 2014 read with Sl.No.8(a) and 8(b) of the Schedule to the Notification and the said notifications are not applicable to educational institutions or colleges etc. The Applicant heavily relies on Office Memorandum dated June 9, 2015(at page 98) to support his case but not on any Notification issued in this regard. It is submitted that EIA is prescribed for any project thro' Notification u/Rule 5(3) of Environment (Protection) Rules, 1986 and with modification Notifications from time to time. Hence, as the law demands, the Notification u/Rule 5(3) can be modified only by another Notification. Any Office Memorandum will not advance the case of the Applicant and is *void ab initio* and is *non-est qua* the Notification No. **S.O. 3252(E)** dated 22nd December, 2014. The Application is ill-founded, bad in law and is arising due to mis-construction law and is therefore liable to be thrashed at the threshold itself since no clarification office memorandum can add or delete or replace to in law. The Respondent 20 is a Medical College only and is operating in the State of Telangana and is not a university existing in union territory or Kerala State. The Applicant obtained RTI Information as on 21-05-2021 from the SEIAA, Telangana in respect of a law that is not applicable to educational institutions. The Applicant repeatedly cited the


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ఫోన్ : 2255661, 98497477899


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Respondent no. 20 as a medical university which is contrary to the facts. EIA is project specific and there is no project executed by the Respondent-20 during the period meeting the parameters prescribed in the Notification. The Applicant is pre-judging and making all baseless demands from the Hon'ble NGT (SZ).

15. It is clear that the Applicant firstly, miserably failed to prove or place on record any violation by the Respondent-20 under the alleged Acts / Rules and the report of the Telangana SEIAA denied Applicant's version, secondly, the Applicant exhibited haste in making the application for the sake of gaining illegally, acted in bad faith, to suit to his designs, mis-conceived the law, on the pretention of gaining a legitimate goal, thirdly, the Applicant has no knowledge of respondents activities particularly this Respondent No.20 who is in Telangana State having a good reputation in running educational institutions follows rules and regulations strictly, and there is no locus standi for the applicant for his grievance or claim as per this application ,fourthly, the Applicant also fails to understand why Sec.14(3) of the NGT Act, 2010 shall not apply and the limitation prescribed thereunder is not applicable thereby ousting the jurisdiction of the Hon'ble Tribunal. Hence, all the above grounds individually and cumulatively speaks that the Application is liable to be rejected with costs under Rule 23 of the NGT Act, 2010 and other applicable laws/rules.


(Dr. Achanta Vivekanand)
DEAN, PIMS
Respondent No.20.

DEAN
Prathima Institute of Medical Sciences
Nagunur, Karimnagar.

Verified by me .


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NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

ORIGINAL / APPELLATE SIDE

OP NO. 190 OF 2021 (SZ)

ENVIRONMENTAL
PROTECTION & ANTI-
POLLUTION GROUP

...**APPLICANT**

AND

MINISTRY OF ENVIRONMENT,
FOREST & CLIMATE CHANGE
(MOEF&CC) ...**RESPONDENT**

REPLY AFFIDAVIT
FILED ON BEHALF OF
RESPONDENT NO. 20

FILED ON : 14-03-2022

FILED BY:

G.LAKSHMI
ADVOCATE
CELL: 9959301113