

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

Original Application No. 194 of 2020 (SZ)

IN THE MATTER OF:

Dr. SARVABHOUM BAGALI

.....APPLICANT

VS

STATE OF KARNATAKA & OTHERS

.....RESPONDENTS

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Place:

Date:

Through Counsel

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
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Dr. SARVABHOUM BAGALIAPPLICANT
VS
STATE OF KARNATAKA & OTHERSRESPONDENTS

**COUNTER AFFIDAVIT ON BEHALF OF THE STATE LEVEL
ENVIRONMENT IMPACT ASSESSMENT AUTHORITY,
KARNATAKA (RESPONDENT No. 1)**

MOST RESPECTFULLY SHOWETH:

I, Kiran Kumar B.S, currently working as Scientific Officer in the SEIAA, Karnataka, Bengaluru, do hereby solemnly affirm and state as under:-

1. That I, in my official capacity of in the SEIAA, Karnataka Bengaluru i.e. Respondent No. 1 in the above mentioned matter, am conversant with the facts and circumstances of the case on the basis of official records, and as such authorized and competent to swear this affidavit.

2. It is submitted at the very outset that the Respondent No. 1

denies each averment and/or submission made in the

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application which is contrary to and inconsistent with the averments made and facts stated in the present reply. It is submitted that the nothing stated in the application may be deemed to have been admitted by the Respondent No. 1 unless and until the same is expressly admitted in the present reply.

3. That a short affidavit is being filed by the answering respondent at this stage and craves leave and liberty to file a detailed Counter Affidavit to the aforesaid application, as and when required.
4. That the applicant in the present matter has alleged regarding the unscientific conditions imposed by the District Environment Impact Assessment Authority (DEIAA) while granting Environmental Clearance for river sand mining in violations of the Sustainable Sand Mining Policy issued by the Ministry of Environment, Forests and Climate Change (MoEF & CC) and there is no monitoring mechanism that is being adopted by the Ministry of Environment, Forests and Climate Change (MoEF & CC) in respect of compliance of directions issued by them from time to time in respect of river sand mining.



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5. That the applicant has inter-alia prayed for that the Hon'ble Tribunal please to (a) Direct the Respondent No. 1 to review all the Environmental Clearances for B-2 category projects of mining of minor minerals issued by DEIAAS in the entire State in respect of their environmental impact and compliance of Sustainable Sand Mining Guidelines, 2016 and thereafter, submit a report before this Hon'ble Tribunal.(b) Direct the Respondent No. 1 to withdraw all proposals of B2 category projects pending before DEIAAs and transfer them to itself for grant of ECs in accordance with the EIA Notification, 2006.
6. That it is further submitted that MoEF& CC, New Delhi has issued EIA Notification dated 14th September 2006 which requires certain projects to obtain prior Environmental Clearance ("EC") before any construction work in case of new projects or expansion and modernization of existing projects or activities. The Schedule to the Notification details the categories or projects or activities which require prior Environmental Clearance.



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7. That it is further submitted that all projects and activities are broadly categorized into two categories - Category "A" and Category "B", based on the potential impacts on spatial extent and human health and natural and man-made resources. All projects or activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment, Forest and Climate Change (MoEF&CC) and all projects or activities included as Category 'B' in the Schedule will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project.

8. That it is submitted that the MoEF& CC, New Delhi further came up with the notification having S.O. 141 (E) dated 15th January, 2016 which stipulates that 'B2' Category projects pertaining to mining of minor mineral of lease area less than or

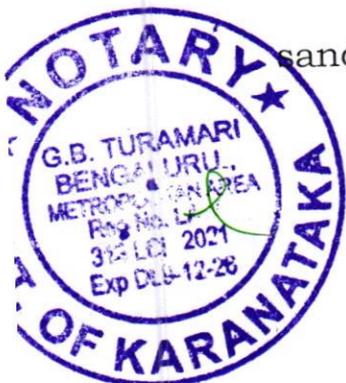


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equal to five hectares shall require prior environmental clearance from DEIAA (District Environment Assessment Authority). The DEIAA shall base its decision on the recommendations of DEAC (District level Expert Appraisal Committee), as constituted for this notification.

9. That it is respectfully submitted that the Environmental Clearances were issued to the alleged mining areas by the District Level Environment Impact Assessment Authority, Gadag, Raichur and Kalaburgi.
10. It is most respectfully stated that in compliance of direction passed by Hon'ble National Green Tribunal in its order dated 04.09.2018 in O.A. 173/2018 in the matter of Sudarsan Das vs. State of West Bengal &Ors, MoEF& CC, New Delhi has formulated the new guidelines i.e. "Enforcement & Monitoring Guidelines for Sand Mining" (EMGSM-2020) supplemental to the existing guidelines i.e. Sustainable Sand Management Guidelines 2016 (SSMG-2016), which focus on the effective monitoring of the sand mining since from the identification of sand mineral sources to its dispatch and end-use by consumers



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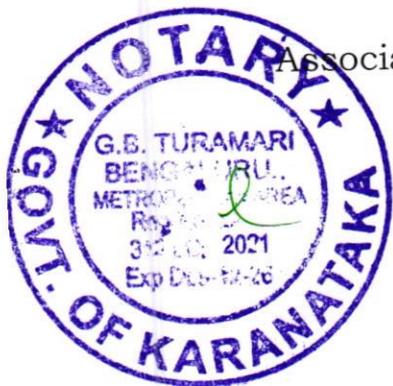
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and the general public. Further, this document will serve as a guideline for collection of critical information for enforcement of the regulatory provision(s) and also highlights the essential infrastructural requirements necessary for effective monitoring for Sustainable Sand Mining.

11. It is submitted that the EMGSM-2020 & SSMG-2016 shall be read and implemented in sync with each other. In case, any ambiguity or variation between the provisions of both these document arises, the provision made in "Enforcement & Monitoring Guidelines for Sand Mining-2020" shall prevail. Further, it is submitted that the Hon'ble National Green Tribunal, New Delhi in O.A No. 8 of 2018 (CZ) titled as Suraj Pagare & Anr. Vs State of M.P vide order dated 11.06.2020 directed the Principle Secretary, Mines; Director, Mines and State of Madhya Pradesh to follow the guidelines issued by MoEF in January, 2020 i.e EMGSM- 2020.

12. It is most respectfully submitted that the Hon'ble Tribunal vide order dated 26.02.2021 passed in the matter of Original Application No. 360/2015 titled as National Green Tribunal Bar

Association versus Virender Singh (State of Gujarat) directed all




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the States/UTs to strictly follow the SSMG-2016 read with EMGSM-2020 reinforced by mechanism for preparation of DSRs, Environment Management Plans, replenishment studies, mine closure plans, grant of EC supra), assessment and recovery of compensation, seizure and release of vehicles involved in illegal mining, other safeguards against violations, grievance redressal, accountability of the designated officers and periodical review at higher levels (in terms of the order refereed by the Hon'ble tribunal in the order).

13. It is most respectfully submitted that the Regional Office, MoEF & CC is authorized to monitor the implementation of the stipulated conditions and environmental safeguards contained in the Environmental Clearance vide Circular No. J-11013/30/2009-IA.II (I) dated 3rd June 2009 issued by MoEF. The copy of the Circular is enclosed at **ANNEXURE -1**

14. It is most respectfully submitted that the Joint Committee is of the view that imposing such non-relevant conditions in the Environmental Clearance has led to such non-compliances and hence MoEFCC / SEIAA may relook into such conditions while according Environmental Clearance as some of the conditions

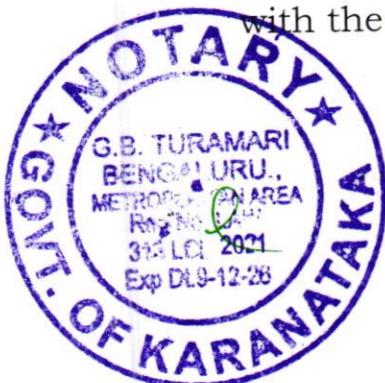


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are practically not-feasible for implementation by small sand mining leases. The Standard Environmental Clearance conditions have been prepared by MoEF& CC for expediting the process of Environmental Clearance without compromising environmental norms and the rigor of environment impact assessment. Accordingly, said conditions have been imposed in the Environmental Clearances accorded by DEIAA/SEIAA.

15. That it is respectfully submitted that State Department of Mines and Geology is the nodal authority in the State for dealing with the allotment of mining leases under the Mines and Minerals (Development and Regulation) Act (MMDR Act) and is entrusted with the enforcement and regulation of mining operations in a State including illegal mining.

16. That it is further most respectfully submitted that during upcoming Authority meeting, SEIAA will review the situation and take appropriate action in this regard, whether to issue show cause notice to project proponents in case of violation of the conditions of the environment clearances in accordance with the Notification No. 637 (E), 28th February, 2014.




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17. That in view of the submissions made herein above, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to pass any order (s) as deemed fit and proper in the fact and circumstances of the matter.



Deponent

VERIFICATION

Verified on this day 14th of March, 2022 at Bengaluru, that the contents of the above affidavit are true and correct and as verifiable from official records and nothing material has been concealed there from.



Deponent

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Place: Bengaluru.

Date : 14^e 03.2022.



SWORN TO BEFORE ME

14/3/22
G.B. TURAMARI
ADVOCATE & NOTARY
46/1, Behind Binny Mill
1st Main Road, Ganganagar Extn
BENGALURU 560 032

No. J-11013/30/2009-IA.II(I)
Government of India
Ministry of Environment & Forests

Paryavaran Bhavan,
 C.G.O. Complex, Lodi Road,
 New Delhi-110003.
 Telefax: 24362434

Dated the 3rd June, 2009

CIRCULAR

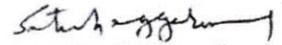
Sub: Mandate / Guidelines of Monitoring to be followed by the Regional Offices of the Ministry of Environment and Forests – Instructions – Regarding.

Some instances have been brought to the notice of the Ministry of Environment & Forests where Scientists or Officials of the Regional Offices of this Ministry have been directly interacting with various other Statutory and Regulatory Authorities on behalf of the project proponents on matters concerning the EIA Notification, 2006; such as exemption from public hearing, approval for change of technologies etc.

2. It may be noted that the Regional Offices are to monitor the implementation of the stipulated conditions and environmental safeguards contained in the Environmental Clearance letters, obviously after the project has been granted environmental clearance. Sometimes the Regional Offices are formally requested by the Ministry to provide any specific information as may be requisite for appraisal of any particular project.

3. In view of the above role, it has, therefore, been reiterated that the Regional Offices should not take up issues of any project proponent with various Statutory Authorities directly. Such cases should be invariably referred to the Ministry for advice and guidance, henceforth.

This issues with the approval of the Competent Authority.


 (S.K. Aggarwal)
 Director

To

1. All the Regional Offices of MoEF
2. Member Secretaries of all the SEIAAs/SEACs

Copy to:-

1. PPS to AS(JMM)
2. Advisor (GKP)
3. Advisor (NB)
4. Director (SVA), Monitoring Cell, IA Division.

 R.S.