

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**

**SOUTHERN ZONE BENCH AT CHENNAI**

**ORIGINAL APPLICATION NO. 196 OF 2021**

**IN THE MATTER OF:**

T.M. UMASHANKAR

...APPLICANT

VERSUS

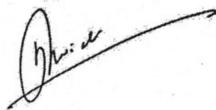
UNION OF INDIA AND OTHERS

...RESPONDENTS

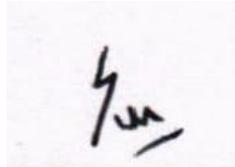
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THROUGH



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**Place: Chennai**

**Date: 16. 10.2022**

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**REJOINDER ON BEHALF OF THE APPLICANT TO THE COUNTER AFFIDAVIT OF  
THE RESPONDENT NO. 5, M/S RAMKY ENVIRO ENGINEERS LTD:**

**MOST RESPECTFULLY SHOWETH:**

1. The Applicant had filed the present Application under Sections 14, 15 and 20 of the National Green Tribunal Act, 2010 raising a substantial question relating to the environment arising out of blatant and gross violation caused by Respondent No. 5 by running the Red Category Hazardous Facility i.e., Integrated Common Hazardous Waste Treatment Storage and Disposal Facility (hereinafter referred as **ICHWTSDF**) of Karnataka Waste Management Project illegally without obtaining any prior Environment Clearance. The ICHWTSDF is spread in an area of 93.18 acres at Plot No. 7, 8, 9, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84 and 85 of Dobaspet Industrial Area, Pemmanahalli and Thimmanayakanahalli Village, Taluka Nelamangala, District Bangalore Rural which is running with Secured Landfill Facility of capacity 40,000 TPA and with Hazardous Waste Incineration Facility of capacity 5.5 Million kcal/hr.
2. That the instant Rejoinder is being filed in response to the counter affidavit filed by Respondent No. 5, M/s Ramky Enviro Engineers Ltd. At the outset, the Applicant denies various statements which have been made and nothing should be assumed to be admitted unless specifically admitted or is part of the record. The Applicant reiterates all the facts and submissions made in the Application to be true and

correct and the same may be read as part of the instant rejoinder and are not all being repeated for the sake of brevity.

### 3. PRELIMINARY SUBMISSIONS:

- i. That the ICHWTSDF is running in complete violation of the EIA Notification, 2006. As laid down in 7(d) of the Schedule of the EIA Notification, 2006, all ICHWTSDF having incineration and landfill or incineration alone or landfill alone shall obtain prior Environmental Clearance at the Central Level. That till date the ICHWTSDF is operating without obtaining any prior EC and thus causing gross and blatant violation of the EIA Notification, 2006. In this regard, it is pertinent to note that the observation of EAC that '*the Ministry had endorsed the existence of the landfill site along with the proposal of incinerator*' cannot be accepted and is completely in contravention to the EIA Notification 2006 as well as the directions of the Hon'ble Tribunal vide order dated 26.09.2019 where the Tribunal specifically directed that the TSDF must comply with the law and the requisite EC may be obtained. Hence, the EC granted for the incinerator can certainly not be considered as the EC for the landfill.
- ii. The Hon'ble Tribunal held that the project of TSDF requires Environment Clearance and passed the direction to obtain a fresh EC and to apply for the same within two months. That the specific direction of this Tribunal that the TSDF must comply with the law and the requisite EC may be obtained is in itself evidentiary enough to show the necessity and the importance to obtain the Environmental Clearance by a facility before establishing. However, even after Even after passing of almost two years since this Hon'ble Tribunal has held that the facility of Respondent No. 5 requires Environment Clearance, the same is operating without obtaining any Environment Clearance.
- iii. That the Central Pollution Control Board has issued guidance document for setting up of TSDF in 2001. Para 2.0 of the document states that a landfill site shall be at least 500 m from a notified habitat area and a zone of 500

m around a landfill boundary should be declared a non-development buffer-zone after the landfill location is finalized. That in this regard, an Office Memorandum, F.No.23-122/2016-HSMD is also issued by Ministry of Environment, Forest & Climate Change dated 29.08.2016 which speaks about the distance criteria for setting up of Treatment Storage and Disposal Facility (TSDF). The OM further speaks about the CPCB Guidance Document i.e., "Criteria for Hazardous Waste Landfill of 2001" which prescribes the locational criteria in terms of distance of location of TSDF from lake/pond, river, flood plain, highways, Public Park, habitations etc. The Joint Committee report also observed and accepted the fact that "500 m around the landfill boundary is not declared as non-development buffer zone after landfill location finalization till date", thereby brazenly flouted the CPCB Guidelines of 2001. It is further submitted by the Applicant that there are two villages i.e., Thimanayakanhalli Village which is situated 200 meters from the unit and the Pemmanahalli Village which is situated 150 meters from the unit. Furthermore, the Google Earth images taken by the Applicant clearly shows the presence of human habitation within 500 meters of northeast and northwest corner of the unit which clearly shows the unit is operating in complete violation of the 2001 guidance document.

- iv. That the setting up of the ICHWTSDF at present site is in violation of the Notification No. FEE 215 ENV 2000 dated 18.11.2003 known as the Tippagondanahalli Reservoir Notification issued by the State of Karnataka. The TGR is built at the confluence of Arkavathi and Kumudvathi Rivers and is an important source of drinking water to the city of Bengaluru. That there are various zones provided under the Notification. The notification prescribes a graded approach towards protection of the reservoir. To ensure this, the entire 1453 km<sup>2</sup> of the catchment area around the reservoir has been declared as an eco-sensitive area and the activities are regulated to ensure that the quality and quantity of the water in the reservoir are not adversely affected. It is submitted that the unit of Respondent No. 5 falls in

Zone 1 of the TGR Catchment Area and that the site in question is located in the catchment area of TGR at Somapura, Nelamangala Taluka, District Bengaluru Rural, where unscientific disposal of solid as well as liquid waste is restricted. Since, the unit has not obtained prior EC, it is operating in an unscientific manner and causing gross violation to the 2003 Notification.

4. The main contentions of the Respondent No. 5 which are raised in its reply and which needs to be re-joined are as follows: -

- i. The Application is not maintainable and tenable in law as it is barred by the Principle of Res judicata by virtue of Section 11 of the Code of Civil Procedure, 1908;
- ii. The Application deserves to be dismissed as it is barred by limitation as the period of limitation has to be calculated from the date of Environment Clearance i.e., 19.09.2014;
- iii. The Application stands to get dismissed as it is beyond the directions and liberty granted by the Hon'ble Supreme Court;
- iv. The litigations are vexatious, frivolous and spurious and have been filed unnecessarily to harass the Answering Respondent.

**The contention that the Application is not maintainable and tenable in law as it is barred by the Principle of Res judicata is incorrect:**

5. The contentions raised in Para 31 by Respondent No. 5, the Project Proponent, that the Application is not maintainable as it is barred by the Principle of Res judicata are denied in entirety.

- i. The Applicant here submits that a W.P. No. 19927/2007 was filed before the Hon'ble High Court of Karnataka at Bengaluru dated 14.12.2007 where the grievance was raised against the ongoing establishment of a TSDF at Dobaspet despite the widespread opposition of the local population in contrary to the directions of the Hon'ble Supreme Court in Research Foundation for Science Technology and National Resource Policy vs. Union of India and is also violative of Article 14 and 21 of the Constitution. That

after considering the contentions and the fact that the facility had already been established, the public interest petition was disposed of vide order dated 12.08 2009, the Hon'ble Court directed to point out the violations to the competent authorities and in such an event, the competent authorities were directed to take the appropriate actions.

- ii. Thereafter, the matter was once again raised before Hon'ble High Court of Karnataka at Bengaluru for consideration where the Applicants had filed a Writ Petition No. 51509 of 2016 and 52176-52179/2016 dated 24.09.2016 titled as Sri. T.M. Umashankar & Ors. vs. Union of India & Ors. on the following grounds:

a) Establishment of TSDF without EC;

b) The TSDF has not taken post establishment remedial steps to comply with the requirement of Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986;

c) The TSDF has not established the Super Fund, Residual Liability Fund and Environment Relief Fund as mandated under the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016.

That the Hon'ble High Court of Karnataka upon hearing the submissions and request made by the Respondent No. 3 (KSPCB) *vide* order dated 10.01.2019 transferred the said writ petitions before the Principal Bench of this Hon'ble Tribunal.

- iii. The Writ Petition No. 51509 of 2016 transferred before this Hon'ble Tribunal was numbered as Original Application No. 654 of 2019. That the Hon'ble Tribunal *vide* order dated 22.04.2019 constituted a Joint Committee comprising the representatives of the Ministry of Environmental, Forest & Climate Change, Central Pollution Control Board and Karnataka State Pollution Control Board. The joint committee *vide* its report dated 07.08.2019 had submitted that the EC was taken for incinerator and the

same was being treated as EC for the TSDF. However, the Hon'ble NGT did not accept this contention of CPCB and by way of the impugned order dated 26.09.2019, directed the TSDF to comply with the law and to apply for obtaining the requisite EC within two months. Thus, the direction to obtain a fresh EC by the Tribunal is in itself evidentiary enough to show the necessity and the importance to obtain the Environmental Clearance by a facility before establishing.

- iv. The Applicant herein aggrieved by the impugned order dated 26.09.2019 passed by the Hon'ble Tribunal in OA 654 of 2019, filed a Civil Appeal (Diary) No. 522 of 2020 dated 6.01.2020 under Section 22 of the National Green Tribunal Act, 2010. That the Hon'ble Supreme Court vide order dated 17.12.2020 refused to interfere in the order of Hon'ble NGT however, stated that applicants are free to knock at the doors of whichever forum in public interest.
- v. It is pertinent to note that the Hon'ble NGT by its order dated 26.09.2019 has given the finding that the TSDF facility require Environment Clearance as required under EIA Notification, 2006. The TSDF facility submitted an application for obtaining Environment Clearance on 08.01.2020. The application was considered by the Expert Appraisal Committee of the MoEF in 48th meeting on 28-29.01.2020. However, the project was delisted on 30.05.2020 from the site of the MoEF and was again relisted on 21.07.2020. Further, the timeline available on the website of Ministry shows that the project was finally delisted on 11.11.2020 and has never been considered again. In effect, on this day the project is operating without valid Environment Clearance as mandated under EIA Notification, 2006 and also as directed in the order dated 26.09.2019 by this Hon'ble Tribunal. In the present situation such a hazardous industry cannot be allowed to be operated without valid Environment Clearance. Even after passing of almost two years since this Hon'ble Tribunal has held that the facility of Respondent No. 5 requires Environment Clearance, the same is operating without

obtaining any Environment Clearance. Hence, the Application has been filed before this Hon'ble Tribunal.

6. Thus, it is completely incorrect to state that the Application is not maintainable as it is barred by the Principle of Res judicata are because each time a different cause of action is challenged. Primarily, the grievance was regarding the ongoing establishment of the TSDF, thereafter the establishment of TSDF without obtaining EC was challenged where the matter was transferred before the Hon'ble Tribunal where specific direction was passed stating that requisite EC to be obtained. The direction of the Tribunal to obtain ex-post facto EC was then challenged before the Hon'ble Supreme Court, where the Apex Court directed to knock the door of whichever forum for public interest. The present Application is filed with a prayer of imposing Environmental Compensation on Respondent No. 5 under Section 15 of the National Green Tribunal Act, 2010 for causing grave and irreversible continuous damage to the environment and ecology in that vicinity. Hence, every time a different cause of action arose and subsequently that has been challenged.

**The contention that the Application is barred by limitation as the period of limitation has to be calculated from the date of Environment Clearance i.e., 19.09.2014 is improper:**

7. The contentions raised in Para 32 by Respondent No. 5 that the Application deserves to be dismissed as the period of limitation has to be calculated from when EC was granted to the answering respondent i.e., 19.09.2014 is denied in its entirety. It is completely incorrect to state that the period of limitation has to be calculated from 2014 as the Applicant is nowhere challenging the EC issued for the incinerator. That the Para 7(d) of the EIA Notification, 2006 clearly states that all integrated facilities having incineration and landfill or incineration alone shall obtain prior EC. Also, the Tribunal in its order dated 26.09.2019, directed the TSDF to comply with the law and to apply for obtaining the requisite EC within two months. That this direction to obtain a fresh EC by the Tribunal is in itself evidentiary enough to show the necessity and the importance to obtain the

Environmental Clearance by a facility before establishing. However, even after passing of almost two years since this Hon'ble Tribunal has held that the facility of Respondent No. 5 requires Environment Clearance, the same is operating without obtaining any Environment Clearance. In this regard, the Applicant submits that every day the statutory norms and Orders of the Hon'ble Tribunal are not complied with, a fresh cause of action is created in light of the Order of this Hon'ble Tribunal dated 7.05.2015 in O.A. 222 of 2014 Forward Foundation and Ors. v State of Karnataka and Ors. and the same constitutes a continuing cause of action. Thus, the present Application is being filed within the period of limitation as prescribed under the National Green Tribunal Act, 2010.

**The contention that the Application stands to get dismissed as it is beyond the directions and liberty granted by the Hon'ble Supreme Court is wrong:**

8. The contention raised in Para 33 by the Respondent No. 5 that the Applicant in the present matter has failed to make any case for environmental compensation is completely incorrect and is denied in its entirety. The Applicant here submits that the Hon'ble Supreme Court specifically stated that insofar as compensation is concerned, the Appellants are free to knock at the doors of whichever forum in order to seek the aforesaid in public interest if so payable in law. Hence, the Applicant in the present Application has precisely prayed for imposing Environmental Compensation on Respondent No. 5 under Section 15 of the National Green Tribunal Act, 2010 for causing grave, irreversible and continuous damage to the environment and ecology in that vicinity by running the ICHWTSDF without obtaining any EC despite specific direction of the Hon'ble Tribunal. Hence, the Respondent No. 5 is improper in saying that the Applicant has failed to make any case for environmental compensation.

**The contention that present litigation is vexatious, frivolous and spurious and have been filed unnecessarily to harass the Answering Respondent is inappropriate:**

9. The contention raised in Para 34 by Respondent No. 5 that various vexatious matters has been filed by the Applicant is completely wrong and denied in its entirety. The Respondent in its counter has listed out various cases filed by the Applicant in Para 34-point b. In this regard, the Applicant submits that he was not party to O.A. No. 117 of 2018 and W.P. No. 7798/2020 as specified by Respondent No. 5. That with regard to the filing of the other matters by the Applicant, the same has been addressed in details in Para 5 Point No. i – iv and same shall not be repeated for the sake of brevity.
10. Thus, in light of the above discussions, the prayers in the Original Application should be allowed.

**APPLICANT**

THROUGH

**RITWICK DUTTA**

**RAHUL CHOUDHARY**

**STANLY HEBZON SINGH**

**ADVOCATES**

COUNSELS FOR THE APPLICANT

**VERIFICATION**

I, T. M. Umashankar, S/o Late Marulasiddappa, aged about 66 years, R/o Somapur (Dobaspet) - 562 111, Nelamangala Taluk, Bangalore Rural District, do hereby verify that the contents of paragraphs 1 to 10 are true to the best of my knowledge and I have not suppressed any material fact.

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