

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

Original Application No. 148 of 2021

IN THE MATTER OF

D. Chandramouleswara Reddy,
and 8 others.

... Applicants/Applicants

-Vs-

Union of India
Represented by its Secretary, Ministry of Jal Shakti, Shram Shakti
and 5 others

... Respondents/Respondents

**REPLY STATEMENT OF THE APPLICANTS
TO THE COUNTER AFFIDAVIT OF R-5**

THROUGH
Gautam S.Raman
(Enrol.No. 1583/2013)
Advocate
Counsel for Applicant
No.89 Kasturi Avenue,
M.R.C Nagar Chennai 600028

gautamraman@gmail.com

9940071160

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTH ZONE: CHENNAI

O.A.No.148 of 2021

D.CAHANDRAMOULESWARA REDDY .. APPLICANTS
AND 8 OTHERS

-VS-

UNION OF INDIA AND 5 OTHERS ..RESPONDENTS

**REPLY STATEMENT OF THE APPLICANTS TO THE
COUNTER AFFIDAVIT OF R-5**

The Applicants above named beg to submit as under:

1. The Applicants have perused the contents of the 5th Respondent's Counter and deny each and every averment set forth therein save those that are expressly admitted herein.
2. The contentions of the 5th Respondent's Counter can be summed up as under:-
 - a. That the present application is barred by limitation (paras 4 to 10);
 - b. That the Applicants' have approached this Hon'ble Tribunal with unclean hands and backed by persons with vested interests to stop the PRLIS project; (paras 11 & 12)
 - c. That the project in its current phase is only for providing drinking water and does not contain any component of an irrigation project, which will only come under the 2nd Phase for which Environmental Clearance is pending with the concerned authorities; (paras 13 to 22)

- d. That the project does not fall in the core, buffer or ecologically sensitive zone of the Amrabad Tiger Reserve; (paras 23 & 24)
 - e. That MoEF&CC had fully studied and issued forest clearance for PRLIS, for Stage-I and Stage-II vide proceeding No.G.I/MoEF&CC/F No.8-43/2017- F.C. Dated 03.04.2018 and MoEF&CC /F 8-43/2017-F-C dated 25.01.2019; (paras 25 to 27)
3. The Applicants submit that the above allegations are all incorrect and the same are denied by the Applicants herein. The Applicants crave leave to treat the contents of their application and documents filed in support therein as part and parcel of the present reply.
 4. Before addressing the averments stated in the 5th Respondent's Counter it is submitted that the Joint Committee Constituted by this Hon'ble Tribunal had furnished their report dated 30.09.2021 before this Hon'ble Tribunal. The Committee was pleased to conclude as follows:
 - a. That the present construction includes eight pumps of discharge capacity of 85 cusecs which is equivalent of 2.07 TMC of water per day amounting to 120 TMC of water in 60 days as opposed to 90 TMC as represented by the 5th Respondent;
 - b. Muck from the excavated sites is dumped without any environmental management plan and this is the situation Sri-Sailam, Yedula, Vattam, Karivena and Uddandapur;
 - c. That drinking water requirement is only 7.15 TMC for the enroute villages and the remaining is for irrigation;

d. The construction is going on a full-scale basis which is contrary to the TOR dated 11.10.2017 which is only for pre-construction activities;

e. That the existing construction does indeed require prior environmental clearance;

f. that the project proponent has not confined themselves only to drinking water project;

g. That the rocks/excavated materials are being dumped at various locations. That the dumps are not carried out properly at the riverside;

The 5th Respondent in their own Counter have been blowing hot and cold as to what is the actual construction that is ongoing at the project site. In their Counter Affidavit it is mentioned that it is only a drinking water project that is ongoing and that only foundation for the irrigation project is underway. It is submitted that the conclusions of the Joint Committee substantially support the contentions of the Applicants and reveals a deception of the grandest scale played by the 6th Respondents before this Hon'ble Tribunal. In the circumstances all the averments in the 5th Respondent's Counter stand vitiated and the present Application ought to be allowed. The damage done to the ecology and the environment seems to be significant warrant strictures on the erring officials and reparations to the victims of this injustice.

5. The allegations in paragraph Nos 4 to 10 that the present application is barred by limitation tainted with malice, suppression of facts, with an oblique motive and against the interest of the people of Telangana is denied. It is respectfully submitted that the allegations are misconceived and are

incorrect both legally and factually. The present application is indeed filed within limitation.

6. It is submitted that this contention raised by the 5th Respondent is incorrect and inapplicable to the facts of the present case since the ongoing construction activity discloses a continuing cause of action. It is submitted that a special law of limitation is only for the purposes of section 3 of the Limitation Act. The provisions of sections 4 to 22 of the limitation act are not specifically excluded in the National Green Tribunal act, 2010 (NGT, Act). Therefore, by reason of section 29(2) of the limitation act, section 22 in so far as continuous breach or wrong is concerned, analogously can be read into NGT act, 2010. Each day the 5th Respondent state continues the present construction activity in the absence of Environmental Clearance causing environmental degradation the limitation period starts afresh. Therefore, as will be elaborated in the subsequent paragraphs the present applications filed under section 14 and 15 of the NGT Act is within the period of limitation.

7. The allegation in para 7 that the Applicants ought to have approached this Hon'ble Tribunal since the PRLIS had garnered much media coverage in the years 2015 and 2016 is not relevant since at that relevant point in time the PRLIS scheme was not purportedly bifurcated into two Phases and was a composite project which included lift irrigation schemes for drinking water, industrial purposes and irrigation. It is submitted that the construction activity at that time was also without obtaining prior environmental clearance and this was anyway challenged before this Hon'ble Tribunal in O.A.No.273 of 2016 filed by B. Harsha Vardhan. It is respectfully submitted that this Hon'ble Tribunal was inclined to agree with

the Applicants contentions when an undertaking was given by the 5th Respondent state that they would restrict the work only for the drinking water component and not proceed further with the irrigation project. It is submitted that the issue whether the construction activity for Phase-I of PRLIS required Environmental Clearance or not was never discussed since this was subsequent to the filing of the Application and after the undertaking. It is further submitted that the Applicant, Mr. Harsha Vardhan had thereafter in 2019 for reasons best known to him had given up the litigation and the Application came to be dismissed vide order dated 22.07.2019.

8. The 5th Respondent pending O.A.No.273 of 2016 had applied for a new TOR bifurcating the PRLIS scheme into two phases with Phase I as drinking water and Phase-II as the irrigation component for which environmental clearance is pending.
9. It is submitted that the Applicants are all farmers and assumed that construction would be done in accordance with law however upon noticing the large-scale work as evidenced in the photographs filed along with the Application would show that the work being done is too large for a mere drinking water project of around 8TMC as was represented by the 5th Respondent in the TOR.
10. It is submitted at present the ongoing work as evidenced in the Report is in violation of the undertaking before this Hon'ble Tribunal vide proceedings dated 17.02.2017. it is further submitted that despite directions from the Krishna River Management Board and the Ministry of Jal Shakti not to proceed further with the PRLIS until a Detailed Project Report is submitted as set out in the minutes dated 16.06.2020 and

22.10.2020, the 5th Respondent continues with the construction of PRLIS.

11. It is most respectfully submitted that construction of an irrigation project under the guise of a drinking water project without a prior environmental clearance is indeed a violation of the EIA notification and one that this Hon'ble Tribunal would certainly not condone. The gamut of facts discloses a continuing violation of environmental laws and therefore is a continuous cause of action and therefore the present application is well within the period of limitation and the contention raised by the 5th Respondent that the application is time barred and hence ought to be dismissed is incorrect.

12. It is submitted that Matters before the National Green Tribunal are not adversarial in nature and are always viewed keeping the safety of the environment as paramount. It is therefore submitted without prejudice to the Applicant's contention that the Application is not barred by limitation, it is submitted that when matters of environmental degradation are concerned, this Hon'ble Tribunal would not dismiss an application at the threshold on account of limitation and would always examine the issue first from the perspective of damage to the Ecology and flouting of environmental laws rather than strict compliance with rules and procedure. Furthermore, in several judgements both by the Hon'ble Supreme Court as well as by this Hon'ble Tribunal that if the issue raises an important question of law and environment the Tribunal will examine the same. In the present case the issue involved is whether the 5th Respondent is actually proceeding with a drinking water project or is actually constructing an irrigation project, contrary to their

undertaking and the TOR is one that necessarily deserves scrutiny by this Hon'ble Tribunal. The present case raises several issues which does indeed affect both the Environment and Environmental laws which necessarily ought to be examined by this Hon'ble Tribunal.

13. The allegations in paragraphs 11 and 12 that the application is an abuse of process of law and the applicant has not approached this Hon'ble Tribunal with clean hand and this is also one of many cases filed by individuals with vested interests to act against the State of Telangana and the Citizenry of Hyderabad not to get the benefit of water and is an abuse of process of law with an intent to delay the progress of the project are denied. The applicants take strong objections to these highly insulting allegations. The applicants are bonafide litigant whose villages and livelihood are under risk. It is an admitted position that several hectares of the land stands to be inundated and thousands of villagers stand to be displaced. Therefore, baseless allegations of malice and that the applicants have approached this Tribunal with unclean hands is strongly denied and it is unfortunate that the Government of Telangana would stoop to such a low level and make such baseless allegations when issues of environment and public interest are involved.

14. Addressing the allegations in paras 13 to 22, that the present phase of PRLIS is only to provide drinking water and hence the issue of Environmental Clearance does not arise is denied. It is submitted that a perusal of these paragraphs as well the documents submitted by the 5th Respondent state before various authorities will clearly show the fallacy of this contention.

15. It is submitted that the Executive Summary for the PRLIS project by the 5th Respondent, states that Phase-I of PRLIS involves construction of series of approach channels, open canals (50.490 km), tunnels (61.577 km), five pump houses, 6 reservoirs with a total storage capacity of 67.97 TMC for lifting water to various stages of lift and storing it for consumptive use in drinking water, industrial uses and irrigation. It is submitted that in their very own executive summary the 6th Respondent has clearly admitted that the infrastructure needed for the irrigation project will come under Phase-I itself.

16. The averments in the Counter that Phase-I will consist of lifting water in 5 stages to provide drinking water is not in dispute. As per the Respondent's own admission the aim of the PRLIS project is to lift 90TMC of flood water in 5 stages from Srisailam Reservoir which will thereafter be used to provide water for drinking, industrial and Irrigation purposes. The averments in the 5th Respondent's counter are that at present what is under construction is only to supply water for drinking and industrial purposes and later for irrigation, however the averments in paras 16,17,18 and 21 disclose that the entire foundation for the irrigation component is presently being built in Phase-I itself. It is submitted that the same five stages of lifting water by using pump houses, reservoirs, open canals etc. will later be used for irrigation purposes. The Counter Affidavit in para 21 affirms this contention by stating as follows:

"I submit that it should also be noted that, the ultimate object of PRLIS is to implement an Irrigation Infrastructure in phase-II on foundation of the presently envisaged drinking water components under phase-I."

17. Further it is submitted that in para 17 of the Counter-Affidavit it is stated that the tunnels and canals under construction will be used to provide drinking water and water for industrial use. Thereafter in para 21 of the same counter-affidavit the 5th Respondent denies that Phase-I is an irrigation project since no network of canals to take water to surrounding villages are being built. It is relevant to mention that the very same 5 stages of lifting 90 TMC of water from the various reservoirs will be used for both drinking, industrial and irrigation purposes. The basic contention of the 5th Respondent is that prior environmental clearance will not be necessary since what is being built is only the foundation for a project which would require prior environmental clearance is patently illegal. Prior Environmental clearance is necessary before any project commences, certainly one cannot flout this requirement by simply stating that what is under construction is only the foundation and not the actual project. The Tribunal would appreciate that this contention is akin to a builder who has not obtained statutory Approvals from the Corporation but defends his actions by stating what is currently being constructed is only the foundation for the building which is awaiting clearance.

18. It is further submitted that the TOR was filed by the 5th Respondent on the same date as their undertaking not to proceed with the irrigation component of PRLIS before this Hon'ble Tribunal. It is submitted that the TOR does not make any reference to phase-I or Phase II of the project and merely states the PRLIS proposes to lift 90 TMC of flood water in five stages. The TOR also states that water will be lifted in 5 stages to be used for Irrigation and drinking water component. Therefore, from a reading of the averments in the Counter

regarding the distinction between phase I and II, the executive summary and the TOR would show that the intention of the 5th Respondent is to clandestinely build the purported 2nd Phase of PRLIS in the 1st stage itself contrary to their undertaking before this Hon'ble Tribunal. Further the TOR granted to the 5th Respondent State for PRLIS is only to carry out pre-construction activities and not for full-fledged construction as in currently underway. It is pertinent to mention that had the intention of the EAC been to allow construction of Phase-I the EAC would have expressly stated construction activity for Phase-I and pre-construction for Phase-II is permitted however this is not the case since the EAC has permitted only pre-construction activities for the whole project. It is further submitted that a perusal of the Additional TOR clearly refers to some specific issues for Phase I, which indicates that TOR is for both purported phases of the project. Therefore, it is incorrect for the Respondent to aver that Phase I does not require prior Environmental Clearance. The Report filed before this Hon'ble Tribunal clearly vitiates this contention.

19. It is submitted that the PRLIS Scheme is creating a new Ayyacut therefore it is a project that indeed requires prior Environmental Clearance. It is submitted that this Hon'ble Tribunal has on earlier circumstances lifted the Corporate Veil of project proponents to determine the real nature of the project and in O.A.No.71 of 2020 had directed the Rayalaseema Lift Irrigation Scheme to be suspended until a detailed project report (DPR) is furnished. It is relevant to mention that Rayalaseema Lift Irrigation Scheme did not contemplate creation of a new Ayyacut, yet this Hon'ble Tribunal was pleased to note that it was a project that required prior environmental clearance and was pleased to suspend construction activities. The present PRLIS Scheme is

on a worse footing than the Rayalaseema Lift Irrigation Scheme. Therefore, it is respectfully submitted that the present case would also surely warrant similar orders to be passed and this Hon'ble Tribunal would further appreciate that the Chairman of the 4th Respondent as well as the 2nd Respondent had called upon the 5th Respondent to suspend the project until a DPR is furnished however the 5th Respondent has paid no heed to these directions and continues unabashedly with the project.

20. It is submitted that the ongoing PRLIS construction which is ongoing is contrary to the undertaking given to this Hon'ble Tribunal since the existing construction works also included irrigation components. The plea that the prior environmental clearance is under process before the MoEF is simply to serve as a *fait accompli* to the existing illegal construction activities. It is submitted that the report dated 30.09.2021 filed before this Hon'ble Tribunal by the Joint Committee constituted by this Hon'ble Tribunal does indeed confirm that the present construction includes an irrigation component, therefore it is respectfully submitted that the present construction does indeed require environmental clearance and the 5th Respondent ought to be restrained further from continuing with the said project.

21. The allegations in para 22 wherein the 5th Respondents has cited a paragraph from the judgment of the Hon'ble Supreme Court in *Narmada Bachao Andolan* reported in 2000 (10) SCC 664 pertaining to the importance of drinking water to Indian Citizens, the said paragraph is taken out of context and its reliance is misplaced.

22. The allegation in the counter of the 5th Respondent in paragraphs 23 and 24 that the Project does not lie in either the Core Zone, Buffer Zone or Eco-Sensitive Zone of Amarabad Tiger Reserve is denied. As already stated in the application the location of the project does indeed run through the Tiger Reserve and the Wildlife Sanctuaries therein are home to Tigers, Leopards, Birds, Bears, Peacocks, whose existence would be devastated by the ongoing project. The line diagram showing stages 1 to 5 of the project (Annexure 21) and the location of the Tiger Reserve clearly shows that the project runs through the Reserve Area. The communications exchanged between the Chief Engineer PRLIS to and the PCCS Telangana are clearly done at the behest of the Government without proper application of mind. In any event, even if the proposed project is not within the 10 kms. Areas of the Tiger Reserve nor the proposed Eco-Sensitive Zone as averred by the 5th Respondent in their counter the said averment is inconsequential since in the Respondent's executive summary states that 16 mammalian species belonging to Schedule I of the Wildlife Protection Act, 1972, 50 species of birds, 5 species of herpetofauna and 15 species of fish are found in the submergence and influenced zones both up stream and downstream in the existing area of the project. On hand it is the case that the project will not affect the Wildlife while in their own Executive Summary it states that several endangered species of animals are within the location of the project. It is relevant to mention that Herpetofauna refers to amphibian and reptilian species that are rare and under threat of extinction they are listed by International Union for Conservation of Nature in their Red list as a threatened species. Therefore, definitely the 5th Respondent has to show how the ongoing project will not harm these animals. It is submitted that the additional TOR states that clearance from Standing Committee of Wild Life

Board is to be taken wherever applicable. Therefore, the onus falls on the 5th Respondent State to make a submission before EAC and state whether it is applicable or not. Ultimately it is the EAC committee which examines whether clearance from the Standing Committee for Wild Life is required. The 5th Respondent cannot on their own volition declare that the project site is not in an ecologically sensitive area and obtain clearance from their own State bodies and proceed with construction in the absence of statutory clearances.

23. In matters relating to Environment and Pollution the Courts will always exercise the '*The precautionary principles*' the onus falls on the proponent who is proposing the project which would cause such adverse effects on environment to prove that risks to the environment and ecology would not arise. In the present case apart from bare denials, no proof or material is furnished in respect of these issues raised by the Applicant. The allegations in para 25 that MoEF and PCC had studied and issued forest clearance for Stage I and II vide Proceedings dated 3rd April, 2018 and 25th Jan.2019 is partly denied since it is only an in principle approval and does not permit the applicants to proceed with the construction of the project and in any event, the in principle approval does not consider the environment impact of the project as mentioned in the application as well as in the present rejoinder and the same ought not to have been granted.

24. The allegations in para 26 relating to the Communication from PCC of Hyderabad dated 20th December, 2016 that the project does not fall within the sensitized zone of the Amrabad Tiger Reserve is denied since the PCC has evidently not appreciated the facts correctly. The allegation relating to the Counter Affidavit filed by PCC in O.A.No.273 of 2016

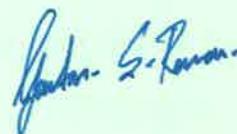
reiterating that project does not fall within the sensitized zone of the Amrabad Tiger Reserve is also incorrect and suffers from non-application of mind. It is submitted that when the polluter is the State Government this Hon'ble Tribunal would not view the documents as the measure of proof of whether the concerned project/scheme does indeed run afoul of environmental norms and would go by the actual working of the project and the reports of independent experts in determining the real facts relating to the environmental impact of the project.

25. The allegations in paras 28 and 29 are denied. The same has been already dealt with in the earlier paragraphs of this Reply. The allegations in para 32 are incorrect since apart from averments in the application relating to allocation of water, several other issues pertaining to the environment are raised by the Applicants herein.

26. The allegations in para 33 have already been dealt with in the application and hence there is no necessity to repeat the same by way of a reply. The allegations that the prayers are not maintainable are denied.

It is therefore it is prayed this this Hon'ble Tribunal may be pleased to allow the application as prayed for.

Dated at Chennai this the 4th day of October, 2021



Counsel for Applicant

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

Original Application No. 148 of 2021

IN THE MATTER OF

D. Chandramouleswara Reddy,
and 8 others.

... Applicants/Applicants

-Vs-

Union of India
Represented by its Secretary, Ministry of
Jal Shakti, Shram Shakti
and 5 others

... Respondents/Respondents

**REPLY STATEMENT OF THE
APPLICANTS TO THE COUNTER
AFFIDAVIT OF R-5**

THROUGH
Gautam S.Raman
(Enrol.No. 1583/2013)
Advocate
Counsel for Applicant
No.89 Kasturi Avenue,
M.R.C Nagar Chennai 600028

gautamraman@gmail.com

9940071160