

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONE AT CHENNAI
ORIGINAL APPLICATION NO.62 OF 2020**

Environment Protection and
Anti Pollution Group Trust

...Applicant

Versus

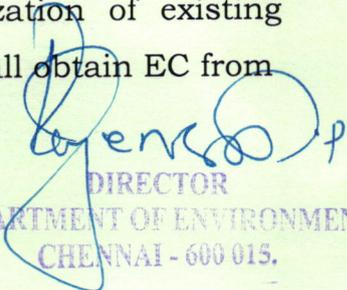
Union of India and ors

... Respondents

**COUNTER AFFIDAVIT FILED ON BEHALF OF FIFTH RESPONDENT-
SEIAA-TAMIL NADU**

I, Tmt.Rajeswari.P, I.F.S., Director, Department of Environment, Government of Tamil Nadu having office at, Ground Floor, Panagal Maaligai, No1,Jeenis Road, Saidapet, Chennai-600015, do here by solemnly affirm and state as follows;

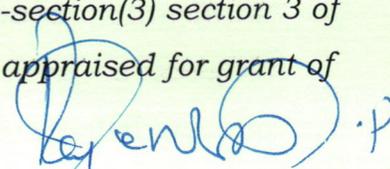
1. I respectfully submit that as per the G.O.(Ms)No:260 Environment and Forests (EC.3) dated: 15.12.2012 the Directorate of Environment is nominated to the function as the secretariat for the State Level Environment Impact Assessment Authority and State Level Expert Appraisal Committee from the date of issue of the order.
2. I respectfully submit that as per the Ministry of Environment, Forests and Climate Change, New Delhi Notification S.O.No.5651 (E), dated: 05.11.2018, the tenure of State Level Expert Appraisal Committee and State Level Environment Impact Assessment Authority – Tamil Nadu expired on 04.11.2021 on completion of three years. Also, MoEF&CC is yet to reconstitute SEAC/SEIAA in Tamil Nadu.
3. I respectfully submit that I am filing counter affidavit on behalf of 3rd Respondent herein and as such I am well acquainted with the facts and the circumstances of the case from the records available in this office.
4. I respectfully submit that at the outset, I deny the averments stated in the application as false except those that are specifically admitted hereunder and put the applicant to strict proof of the same.
5. I respectfully submit that, the Environmental Impact Assessment Notification, 2006 mandates prior Environmental Clearance (EC) for new projects or activities including expansion, or modernization of existing projects listed in its Schedule. The Category 'A' projects shall obtain EC from


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the Central Government and Category 'B' projects from the concerned State Level Environment Impact Assessment Authority (SEIAA)/Union Territory Environment Impact Assessment Authority (SEIAA). The proposal will be placed before the State Expert Appraisal Committee (SEAC) for screening, scoping and appraisal, Based on the recommendations of SEAC, the proposal is placed before the State Environment Impact Assessment Authority (SEIAA) for the consideration of issue of Environmental Clearance. After detailed discussion and based on the documents furnished, Environmental Clearance is issued by the Authority.

6. I respectfully submit that, as per EIA Notification 2006, Building and Construction projects 8(a) - (≥ 20000 sq.mtrs and $< 1,50,000$ sq.mtrs. of total built-up area) falls under category 'B' which requires prior Environmental Clearance from State Environment Impact Assessment Authority & Built-up Area more than 150000 sq. Mtrs which requires prior Environmental Clearance from SEIAA.
7. I respectfully submit that, the Ministry of Environment, Forest and Climate Change has vide Gazette Notification No. S.O. 3252 (E) dated 22.12.2014 provides exemption to buildings of educational institutions including universities from obtaining prior Environment Clearance under the provisions of the EIA Notification, 2006 subject to sustainable environmental Management. In case of medical universities/institutes the component of Hospitals will continue to require prior Environment Clearance.
8. I respectfully submit that the Ministry of Environment, Forest and Climate Change (MoEF&CC) Notification S.O. 804 (E) dated 14.03.2017 has stated that the cases of violations will be dealt strictly as per the procedure specified in the following manner

"In case the project or activities requiring prior Environmental Clearance under EIA Notification 2006 from the concerned Regulatory Authority are brought for Environmental Clearance after starting the construction work, or have undertaken expansion, modernization and change in product-mix without prior EC, these projects shall be treated as cases of violations and in such cases, even Category B projects which are granted Environmental Clearance by the SEIAA constituted under sub-section(3) section 3 of the Environment (Protection) Act 1986 shall be appraised for grant of


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Environmental Clearance only by the Expert Appraisal Committee and Environmental Clearance will be granted at the Central Level”.

..... (3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.

(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para (4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment.

(7) The project proponent will be required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority and the bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after the recommendation by regional office of the Ministry, Expert Appraisal Committee and approval of the Regulatory Authority.

14. The projects or activities which are in violation as on date of this notification only will be eligible to apply for environmental clearance

[Signature]
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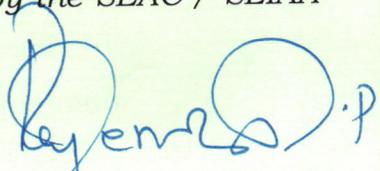
under this notification and the project proponents can apply for environmental clearance under this notification only within six months from the date of this notification."

9. I respectfully submit that the MoEF&CC Notification S.O.1030 (E) dated 08.03.2018 has stated that

" the cases of violations projects or activities covered under category A of the Schedule to the EIA Notification, 2006, including expansion and modernization of existing projects or activities and change in product mix, shall be appraised for grant of Environmental Clearance by the EAC in the Ministry and the Environmental Clearance shall be granted at Central level, and for category B projects, the appraisal and approval thereof shall vest with the State or Union territory level Expert Appraisal Committees and State or Union territory Environment Impact Assessment Authorities in different States and Union territories, constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986."

10. I respectfully submit that the MoEF&CC office memorandum No. F.No.Z-11013/22/2017-IA.II(M) dated: 15.03.2018 have issued the following guidelines regarding implementation of Notification S.O.1030 (E).

- a) *The proposals received up to 13th September, 2017 on the Ministry's portal, shall be considered by the EAC or the SEAC / SEIAA in the respective States / UTs, as the case may be, in order of their submission.*
- b) *All the proposals of category 'B' projects / activities pertaining to different sectors, received within six months only i.e. up to 13th September, 2017 on the Ministry's portal, but yet not considered by the EAC in the Ministry, shall be transferred online to the SEAC / SEIAAs in the respective States / UTs.*
- c) *The proposals submitted directly for considering of EC (in place of ToR), shall also be considered on the same lines, in order of their submission on the Ministry's portal.*
- d) *All the projects of category 'B' pertaining of different sectors, although considered by the EAC in the Ministry and accorded ToR, shall be appraised for grant of EC by the SEAC / SEIAA in the respective States / UTs.*


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11. I respectfully submit that the MoEF & CC Office Memorandum F. No. Z-11013/22/2017-IA.II (M) dated: 16.03.2018 have issued compliance of the order dated 14th March 2018 of Hon'ble High Court of Judicature at Madras in WMP Nos. 3361 and 3362 of 2018 and WMP No. 3721 of 2018 in WP No. 11189 of 2017 which held as follows.

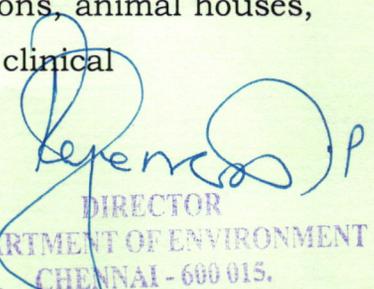
"In this view of the matter, considering that sub - clause (i) (d0) of Stage III of paragraph 7 (i) of parent notification as contained in item No. 8 (a) of the Schedule being housing projects, we deem it necessary to clarify that projects and project proponents falling under category alone shall be governed by the "public consultation" clause in the parent notification.

With regard to the prayer of MoEF for extension of time for submission of proposals by project proponents, we are of the view that it will serve the ends of justice if time is extended by 30 (thirty) days from the date of delivery of this order in open court"

12. I respectfully submit that, the Government of India, Ministry of Environment, Forest and Climate Change, Impact Assessment Division vide its office Memorandum F. No. 22-10/2019-1A.111 dated 09.09.2019 stated the relevant portion as below:

- A. It is possible that there may be certain category B proposals which were submitted at SEIAA during or prior to the violation window period but not under violation category and later during the appraisal by State Level Expert Appraisal committee (SEAC) identified as violation proposals.
- B. Now, a decision has been taken in the Ministry that such proposals as mentioned in para (8) above, may be considered in terms of provisions of Ministry's Notification dated 14.03.2017 & 08.03.2018 by the SEIAA. It is clarified that only those proposals may be taken up for consideration under this provision which had been submitted to SEAC during the window or prior to it as detailed above.

13. I respectfully submit that the Bio Medical Waste Management Rules, 2016 shall apply to all persons who generate, collect, receive, store, transport, treat, dispose, or handle bio medical waste in any form including hospitals, nursing homes, clinics dispensaries, veterinary institutions, animal houses, pathological laboratories, blood banks, Avush hospitals, clinical

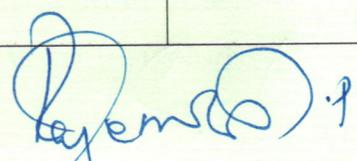

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establishments, research or educational institutions, health camps, medical or surgical camps, vaccination camps, blood donation camps, first aid rooms of schools, forensic laboratories and research labs & the prescribed authority for implementation of the provisions of the Bio-Medical Waste Management Rules, 2016 shall be the State Pollution Control Boards in respect of States and Pollution Control Committees in respect of Union territories.

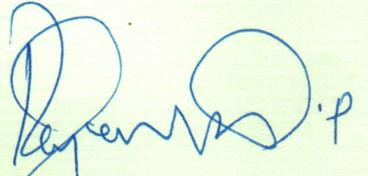
14.I respectfully submit that CPCB issued Guidelines for Imposition of Environmental Compensation Charges against Healthcare Facilities and Common Biomedical Waste Treatment Facilities, as per Hon'ble National Green Tribunal's Order dated 12.03.2019 in the matter of O.A. 710 of 2017.

15.I respectfully submit that, adhering to the para no. 8 to 12, SEIAA-TN has issued Terms of Reference (ToR) & Environmental Clearance (EC) under Violation category issued by Ministry of Environment, Forest and Climate Change (MoEF&CC) Notification S.O. 804 (E) dated 14.03.2017, as amended under Building and Construction projects 8(a) as per EIA Notification 2006 as amended and the following details are submitted:

Project Proponent	Date of application for Environmental Clearance & Proponents request based on	Total Built-up area (Sq.m)	Terms of Reference (TOR) issued under Violation category	Environmental Clearance (EC) issued under Violation category
M/s. Vinayaka Missions Kirupananda Variyar Medical College & Hospitals, S.No.88/1B1B, 1B2B, etc in Veerapandi village, S.No.90/1, 2A, 2B, etc in Nalrayanpatti Village, S.No.37/2C, 2E, etc in Chinnaseeragapadi Village,Salem Taluk, Salem District.	16.10.2014 & 26.02.2020	85734.58	23.11.2020	30.10.2021
M/s. Annapoorana Medical College & Hospital at S.F.No.37/5, etc of Kombadi Patti village, S. No. 1/1A, etc at Rakkipatti Village S.No. .etc at Kadathru AgraharamVillage, Salem Taluk, Salem District.	13.09.2017 & 25.09.2019	103374.1 7 Sqm	06.11.2019	27.04.2021


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- 16.I respectfully submit that, the M/s. Vinayaka Missions Kirupananda Variyar Medical College & Hospitals submitted bank guarantee for Ecological Remediation, Natural Resource Augmentation & Community Resource Augmentation vide BG of CSB Bank Ltd, Salem BG No.0083/FBG/2021/1 dated: 28.09.2021 for an amount of Rs.66.52 lakhs (Sixty Six Lakhs and fifty two thousand only) submitted to TNPCB on 01.10.2021. Also, the TNPCB filed a case under the provisions of Section 19 of Environment (Protection) Act, 1986 in the court of Judicial Magistrate Court, Salem, CNR No: TNSA04-001509-2014, 01.10.2014 (CC Reg.No.1900148/2014)
- 17.I respectfully submit that the M/s. Annapoorana Medical College & Hospital submitted bank guarantee for Ecological Remediation, Natural Resource Augmentation & Community Resource Augmentation vide(BG No.6119NDDG00000921, ICICI Bank dated 06.08.2020for an amount of Rs.118.41 lakhs to TNPCB. Also, the TNPCB filed a case against us under the provisions of Section 19 of Environment (Protection) Act, 1986 in the court No.19-Judicial Magistrate, Salem vide Registration No.66/2021 dated 15.02.2021(CNR No.TNSA-040006162021)as informed by the project proponent Dt:07.08.2020.
18. I respectfully submit that from the Inspection report of Regional office, MoEF &CC, Chennai following healthcare facilities M/s. Vinayaka Missions Sankarachariya Dental College, Veerapandi, Salem, M/s. Penang International Dental College/ Vinayaka Missions Reasearch Foundation, Veerapandi, Salem,M/s. Vinayaka Missions Homeopathi Medical College, Veerapandi, Salem, M/s. Sivaraj Homeopathi Medical College & Research Institute, Thumbathulipaatty, Salem, M/s. Sivaraj Siddha Medical College, Thumbathulipaatty, Salem, & M/s. Naturopathy and Yoga Medical College, Thumbathulipaatty, Salem built-up area is less than 20,000 Sq.m, which does not required prior Environmental clearance as per EIA Notification 2006 as amended. Further, it is submit to inform that such health care facility of building and construction projects having Built-up area < 20,000 Sq.m, CPCB vide CPCB/IPC-VI/ROGW dated : 12.01.2021 has categorized the building and construction projects with Built-up area up to 20,000 Sq.m & waste water generation upto 50 KLD & 100 KLD as Orange & Red Categories accordingly on the following criteria
- i. Waste water is generated due to domestic use.


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- ii. Projects having overall waste water generation of 50 KLD or more are considered for categorization. However, projects having waste water generation <50 KLD are also required to treat/manage sewage with appropriate systems such as soak pit, septic tank, STP etc. or direct discharge into sewer connected with terminal STP etc., as per the prescribed guidelines/norms.
- iii. If the discharge \geq 100 KLD, it will have the normalized score (pollution index) of 75 and hence, be categorized as Red.

19. I respectfully submit that the Ministry of Environment Forest and Climate Change (MoEF&CC), New Delhi, GoI vide Office Memorandum (O.M) dated 07.07.2021, issued Standard Operating Procedure (SOP) for Identification and handling of violation cases under EIA Notification 2006 in compliance to order of Hon'ble National Green Tribunal in O.A. No.34/2020 WZ.

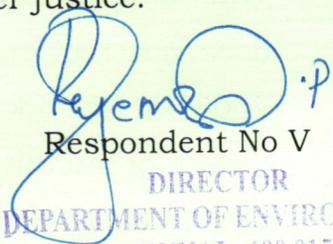
20. I respectfully submit that, the Hon'ble Madurai Bench of Madras High Court of WP(MD) No. 11757/2021 & WMP (MD) No. 9239/2021 vide order Dt: 15.07.2021 has issued interim stay on the MoEF&CC OM dated 07.07.2021.

21. I respectfully submit that as per the G.O.(Ms).No.29 dated:21.03.2020 issued by Environment and Forests (EC.3) Department has informed that:

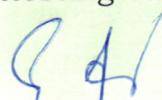
".....10. The Government, after careful examination, accept the proposal of the Chairman, Tamil Nadu Pollution Control Board and empower the Tamil Nadu Pollution Control Board to monitor the compliances of the Environmental Clearance conditions further issuance of the compliance Certificate relating to Category "B" projects issued by the State Level Environment Impact Assessment Authority....."

In view of the above mentioned facts, it is therefore humbly prayed that this Hon'ble Tribunal may be pleased to record and pass such order (or) any other orders as this Hon'ble Tribunal may deem to fit and proper in light of the facts and circumstances of this case and thus render justice.

Solemnly affirmed at Chennai
On this 22nd day of December 2021
& signed his name in my presence


Respondent No V
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Attesting Officer


Assistant Environmental Engineer
State Level Environment Impact Assessment Authority-Tamilnadu
Third Floor, Panagal Maligai
Saidapet, Chennai - 600 015