

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI
IN
ORIGINAL APPLICATION No. 205 of 2021**

IN THE MATTER OF: -

**ENVIRONMENTAL PROTECTION & RESEARCH
COUNCIL A PUBLIC TRUST, THIRUVANANTHAPURAM**

...APPLICANT (s)

VERSUS

**MOEF&CC THROUGH ITS SECRETARY,
NEW DELHI AND ORS**

...RESPONDENT(s)

REPLY ON BEHALF OF RESPONDENT NO. 1 MINISTRY OF
ENVIRONMENT, FOREST, AND CLIMATE CHANGE

MOST RESPECTFULLY SHOWETH: -

I, **Dr. Murali Krishna**, working as **Scientist- 'E'** in the Ministry of Environment, Forest and Climate Change (MoEF&CC), Integrated Regional Office, Bangalore, he deponent herein do hereby solemnly affirm and state on oath as under: -

1. That, I am competent to swear the present counter affidavit on behalf of MoEF&CC and I am aware of the facts and circumstances of the case based on record.
2. That, I have perused the contents of the above captioned application filed by the application and I am duly authorized to depose by way of the present affidavit.
3. That, the Answering Respondent is not replying to the present application in para-wise manner, however, the Answering Respondent craves leave to file a detailed affidavit as and when necessary and required by this Hon'ble Tribunal.

Ch. Murali Krishna
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4. That, the application has been filed regarding the construction of Building complex by 6th respondent developer in survey no. 483/14, 448/7,485/1, Thrikkakara Grama Panchayat, Kakkanad village, Kanayanur Taluk and Ernakulam District in violation of the provision of the EIA Notification, 2006.

5. In this regard, it is submitted that the answering respondent has issued an Environmental Impact Assessment Notification number S.O. 1533 E dated September 14th , 2006 superseding the Environmental Impact Assessment Notification 1994. The EIA Notification, 2006 regulates developmental projects in different parts of the country.

6. That, EIA Notification, 2006 covers 39 project/activities in its Schedule which inter-alia, includes different types of Infrastructure Projects viz. Airports, Ports, Highways, Building & Construction Projects etc. as specified and categorized in the said Schedule.

7. That, it is submitted that under the provisions of the EIA Notification, 2006, Environment Clearance for Building and Construction Projects & Township and Area Development Projects are covered under entry 8 (a) & (b) of the Schedule to the EIA Notification, 2006. The entry 8(a) and 8(b) of the Schedule of EIA Notification 2006 provides as follows.

“8(a): Building and Construction projects - ≥ 20000 sq. mtrs and < 150000 sq. mtrs of built-up area require EC.

8(b): Townships and Area Development projects - Covering an area ≥ 50 ha. and or built-up area >150000 sq. mtrs – require EC. (All projects under Item 8(b) shall be appraised as Category B1).

Ch. P. Prudhvi Krishna

8. That, the aforementioned entries under item 8(a) and 8(b) are qualified as category 'B' projects under the EIA Notification, 2006 and require appraisal by the State Level Expert Appraisal Committees (SEACs) and approval by the State Level Environment Impact Assessment Authorities (SEIAAs). Further, that as per the EIA Notification, 2006, in the absence of a duly constituted SEIAA/SEAC, a category 'B' Project shall be considered at the Central Level as category 'B' project.

9. It is also submitted that the projects or activities of the Project Proponent is falling under category 'B', and it requires prior environmental clearance from the concerned Regulatory Authority i.e. State Level Expert Appraisal Committees (SEACs) and State Level Environment Impact Assessment Authorities (SEIAAs).

10. That, as per the EIA Notification, 2006, the following projects or activities shall require prior Environmental Clearance from the concerned Regulatory Authority, which shall, hereinafter, be referred to as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- a) All new projects or activities listed in the Schedule to this notification.
- b) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization.
- c) Any change in product - mix in an existing Manufacturing Unit included in Schedule beyond the specified range.

Ch. P. Pratikrishna

11. That, the EIA Notification, 2006 also specifies that a SEIAA shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of three Members including a Chairman and a Member Secretary; to be nominated by the State Government or the Union Territory Administration concerned. The Member-Secretary shall be a serving officer of the concerned State Government or Union Territory administration familiar with environmental laws.

12. It is submitted that para 3 of EIA Notification provides procedure for constitution of SEIAA at the State level. Para 3 is reproduced herein as under:

“3. State Level Environment Impact Assessment Authority: - (1) A State Level Environment Impact Assessment Authority hereinafter referred to as the SEIAA shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of three Members including a Chairman and a Member Secretary to be nominated by the State Government or the Union territory Administration concerned.

(2) The Member Secretary shall be a serving officer of the concerned State Government or Union territory administration familiar with environmental laws.

(3) The Chairman shall be an expert in terms of eligibility criteria given in Appendix VI in one of the Specified fields, with sufficient experience in environmental policy or management.

(4) The member shall be an expert fulfilling the eligibility criteria given in Appendix VI in one of the Specified fields.

Ch. P. Praveen Krishna

(5) The State Government or Union territory Administration shall forward the names of the Members and the Chairman referred in sub- paragraph 3 to 4 above to the Central Government and the Central Government shall constitute the SEIAA as an authority for the purposes of this notification within thirty days of the date of receipt of the names.

(6) The non-official Member and the Chairman shall have a fixed term of three years (from the date of the publication of the notification by the Central Government constituting the authority).

(7) All decisions of the SEIAA shall be unanimous and taken in a meeting.”

13. It is submitted that this Answering Respondent constitutes only SEIAA in respective States/UTs under the provisions of the EIA Notification, 2006 as amended from time to time, which functions as an autonomous body.

14. It is also submitted that the M/s Jain Housing and construction Ltd. was accorded Environmental Clearance by the answering Respondent vide letter no. 21-59/2010-IA-III dated 24.05.2011 for construction of a group housing project on a plot area of 35084.62 sq.m with a total built up area of 1,39,885.78 sq.m.

15. That, as per the allegation made by the applicant in the aforesaid application, the answering respondent vide its letter dated 22.11.2021 directed the Regional Office, Bangalore to carry out the inspection of the Project in question i.e. M/s Jain Housing and Construction Ltd. **Letter dated 22.11.2021 is annexed at Annexure-1.**

16. In this regard, the Regional office, Bangalore has stated that a Joint Committee comprising representatives of Kerala State Pollution Control Board (KSPCB) and Kerala SEIAA has conducted a site inspection on 19.02.2020. **The Report of the**

Joint Committee is annexed as Annexure-2. The Conclusion of the Joint Committee are as follows:

- i. The project Authorities have not complied with most of the EC conditions and the status of compliance is highly unsatisfactory.
- ii. It is also to note that one of the 4 buildings that were demolished in January 12, 2020 in Kochi for violation of Coastal Regulation Zone (CRZ), included the 55-meter high Jain Coral Cove, of the same Construction Group, Jain Housing and Construction Pvt. Ltd.
- iii. Based on the factual status report submitted by the committee, the Ministry may take an appropriate decision in this matter.

17. That based on conclusion (iii) of the Joint Inspection Report, the answering respondent has already issued a letter dated 18.01.2022 (**copy annexed as Annexure-3**) to the State Government to take action appropriate action against the project proponent under the provision of section 19 of the Environment (Protection) Act, 1986.

18. It is submitted that this Answering Respondent constitutes SEIAA in respective States/UTs under the provisions of the EIA Notification, 2006 as amended from time to time. Further, that as per the EIA Notification, 2006, in the absence of a duly constituted SEIAA/SEAC, a category 'B' project shall be considered at the Central Level as category 'B' project.

Further, it is pertinent to mention that this Answering respondent has delegated the power to SEIAA for grant of EC to category B project, and the Ministry has no relevance with regard to the contention raised by the applicant as this comes under the purview of SEIAA, Kerala.

Ch. P. Anjali Krishna

19. It is submitted that the present counter affidavit may kindly be taken on record and into consideration and the Hon'ble Tribunal may pass appropriate Order(s), direction(s) as deemed fit and proper under the facts and circumstances of the present case.

20. That other/ancillary issues raised in the application under reply do not pertain to the answering respondent. The Answering Respondent seeks leave to make additional submissions, if required, during the course of the proceedings.

VERIFICATION

Verified at Bangalore on 21st day of January 2022 that the contents of the above affidavit are correct to my knowledge and belief based on official records and nothing material has been concealed therefrom.

Ch. Murali Krishna

DEPONENT

Dr. Murali Krishna Chimata

Scientist "E"

Ministry of Environment, Forest & Climate Change

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