

**BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI**

**MEMORANDUM OF APPLICATION**

(Under Section 18(1) read with Sections 14, 15 of National Green Tribunal Act  
2010)

**Application No. 66 of 2017 (SZ)**

**Between:**

Vallapureddy Gari Govardhan Reddy,  
S/o. Vallapureddy Gari Ramakrishna Reddy,  
H.No:1-6B, Kondajuturu Village,  
Panyam Mandal, Polur Post, Kurnool Dist.,  
Andhra Pradesh, India-518511 & Ors

... Applicants

Vs

The Union of India  
Rep by its Secretary to the Government,  
The Ministry of Environment, Forests and Climate Change,  
Paaryavaran Bhavan, Jor Bagh, New Delhi, India & Ors ... Respondents

**Memo filed on behalf of the Applicants**

The applicants submit as follows:

1. It is submitted that the 1st respondent MoEF & CC has filed an affidavit dated 05.08.2021 along with minutes of an EAC (IA-Policy) meeting. It is submitted that the 1st respondent has failed to consider both the available scientific literature on nano-particles and the regulation of such activity in other jurisdictions. The 1st respondent has failed to appreciate the purpose of the EIA Notification, 2006 and the EAC has not provided any reasons to justify their decision. The decision of the EAC is contrary to the purpose of the EIA Notification, 2006, the precautionary principle and scientific evidence.

2. Firstly, it is submitted that the 1st respondent had earlier held a meeting on 12.07.2017 on this subject, where the Director of the Indian Institute of Toxicology research had clearly stated that EIA studies should be conducted for manufacture of nano particles and also recommended risk and life cycle assessment. The present affidavit of the MoEF makes no reference to this at all.
3. Secondly, in the above meeting, the EAC also decided to collect data on the impact of nano particles, especially in the context of large scale manufacturing.
4. Thirdly, an elaborate rejoinder has been filed by the applicant along with several studies on the impact of nano particles on the environment and health and the need for impact assessment studies. None of these aspects have been considered by the EAC before arriving at its conclusion.
5. Fourthly, the EAC while inviting the industry in question, has failed to provide any opportunity to the applicant to place evidence before the committee. Further, the Committee is predominantly populated by staff of the MoEF & CC, who are not subject matter experts.
6. The MoEF & CC has completely failed to appreciate the fact that Mineral Beneficiation is covered under the EIA Notification, 2006 under Entry 2(b). It is submitted that the Fourth Respondent industry's process admittedly is the Beneficiation of Calcium Carbonate. At Para 33 of the Fourth Respondent's Counter Affidavit, it has been stated that the factory will use limestone as raw material for manufacturing Precipitated Calcium Carbonate and Nano Precipitated Calcium Carbonate and in the process impurities are removed and the beneficiation of Calcium Carbonate is done upto 99 percent. It is beyond dispute that Calcium is a mineral. The EIA Notification under Entry 2(b) mandates environmental clearance from the MoEF & CC for mineral beneficiation greater than 0.5 million TPA and from the SEIAA for units less than 0.5 million TPA. The Fourth Respondent admittedly proposes to beneficiate and manufacture 700

TPD, which translates to 2,55,500 TPA, requiring prior environmental clearance from the SEIAA.

7. The contents of the application and the rejoinder filed by the applicant may be read as part of this memo and are not being repeated for the sake of brevity. It is submitted that the requirement of prior impact assessment was incorporated into our law from conventions and international law principles and they demand that any activity that has an impact on the environment be preceded by exhaustive assessment studies and subjected to decision of an expert body.
8. It is submitted that the entire edifice of environmental good governance is built on the premise that any activity that alters the status quo, has to be preceded by an exhaustive environment impact assessment study and be subjected to clearance process by a body of experts. India's environmental law has developed from international instruments which codified these requirements and our Courts have also recognised this aspect.
9. It is submitted that the UN general assembly adopted the **World Charter for Nature (1982A/RES/37/7)** on 28 October at the 48th plenary meeting inter alia recalling the need for appropriate measures at the national and international levels to protect nature and promote international co-operation in that field. The charter at clause 11 provides,

"11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular:

(a) Activities which are likely to cause irreversible damage to nature shall be avoided;

(b) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate

that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed;

(c) Activities which may disturb nature shall be preceded by assessment of their consequences, and environmental impact studies of development projects shall be conducted sufficiently in advance, and if they are to be undertaken, such activities shall be planned and carried out so as to minimize potential adverse effects;"

10. Subsequently, in 1987, the UNEP adopted "**Goals and principles of Environmental Impact assessment**". It is submitted that the UNEP has defined an EIA in the following terms " In the context of the identified goals and principles, an assessment of the impact of the planned activity on the environment is referred to as an environment impact assessment".

11. Principle 1 of the same states, "States (Including their competent authorities) should not undertake or authorise activities without prior consideration, at an early stage, of their environmental effects. Where the extent, nature or location of a proposed activity is that it is likely to significantly affect the environment, a comprehensive environmental impact assessment (EIA) should be undertaken in accordance with the following principles".

12. The **Rio declaration on Environment and Development** in 1992 mandated in no uncertain terms that prior environmental clearance is mandatory. Principle 17 states, "Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment are subject to a decision of a competent national authority.". Principle 15 of the Rio declaration mandates that precautionary approach shall be widely applied. These obligations have been accepted by our country and there can be no derogation from these obligations.

13. After the Bhopal tragedy, the inadequacy in our environmental law regime

was recognised and the Environment (Protection) Act, 1986 was enacted to regulate and protect the environment. The preamble of the Act reads thus, "An Act to provide for the protection and improvement of environment and for matters connected therewith.

Whereas the decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;

And Whereas it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;"

14. In light of the international obligation and the fact that EIA requirement had become Jus cogens, the first Notification mandating environmental clearance (60(E)) was issued on 27/01/1994 by the 1st respondent, which was then replaced by the Notification issued on 14/09/2006, which continues to govern the field till date.

15. The 1st respondent has failed to see that manufacture of nano particles has been recognised to have impact on the environment and hence, applying the precautionary principle and in line with the above mandate, the same should be included in the EIA Notification, 2006 specifically.

16. It is submitted that a perusal of the studies submitted along with the application and the rejoinder makes it clear beyond doubt that the impact of manufacturing nano particles has to be subjected to an exhaustive prior EIA process, which will aid an informed decision making process.

17. The 1st respondent's affidavit and the minutes of the meeting show an abject failure to notice that an impact of an industry or activity has to be considered not just when it is functioning normally but during upset conditions and failure of pollution control systems. Merely stating that ZLD system is proposed does not take away the propensity of the industry to

impact the environment and the health of the people and the environment.

18. It is submitted that this Hon'ble Tribunal has the powers under the NGT Act to direct the 1st respondent to specifically include manufacturing of nano particles in the schedule of the EIA Notification, 2006, considering the unique challenges and concerns posed by the manufacture of nanoparticles.
19. The decision of the EAC as stated in the affidavit under reply is contrary to science and law and the CTE has been issued by the PCB without any impact assessment studies and without any idea of the impact that a nano particle industry might have. Even assuming for the sake of argument, that there is lack of scientific certainty of impact due to such industries, the same is no ground for the refusal to subject these industries to EIA studies and appraisal as precautionary principle governs the field and the EAC & MoEF&CC have failed to consider these aspects and the affidavit under reply is liable to be rejected.

Dated this the 10th day of February, 2021 at Chennai



Counsel for the Applicant