

BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT CHENNAI

MEMORANDUM OF APPLICATION

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

Original Application No. **08** of 2022 (SZ)

Between:

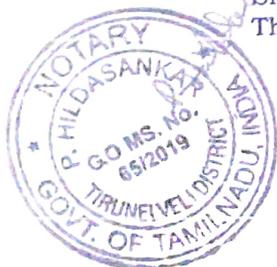
M.S.Raja,
4/1, Saraswathi Amman Kovil Street,
Puthukudi - 628 621,
Srivaikundam,
Thoothukudi District.

... Applicant

And

1. Union of India Rep. by the Secretary of Government,
Ministry of Environment and Forests and Climate Change,
Government of India,
Paryavaran Bhavan,
New Delhi-110003.
2. The Member Secretary,
State level Environment Impact Assessment Authority,
Panagal Maligai,
Chennai 600 015.
3. The State of Tamil Nadu Rep: by the Secretary to Government,
Department of Environment,
Government of Tamil Nadu;
Fort St. George, Chennai- 600003.
4. The Chairman
Tamil Nadu Pollution Control Board,
76, Mount Salai, Guindy,
Chennai-- 600032.
5. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Thoothukudi 628 002.
6. V.V. Titanium Pigments Pvt Ltd
Rep: by: its Managing Director,
Sipcot Industrial Complex,
Thoothukudi - 628002.

... Respondents



P. HILDASANKAR, M.A.B.L., PH.D.,
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Cell : 9715291079

s. V.V. Titanium Pigments Private Limited
Chariman / Director

COUNTER AFFIDAVIT FILED BY THE 6TH RESPONDENT

I, S. Vaikundarajan, son of S. Subbiah Nadar, Hindu, aged about 66 years, residing at 17C, Keeraikaranthattu, Tisayanvilai, Tirunelveli District, do hereby solemnly affirm and sincerely state as follows: -

1. I am the Managing Director of the 6th respondent. I am well conversant with the facts and circumstances of this case. I am authorized to file this counter on behalf of the 6th respondent. I have perused the application and in response, I am filing this counter.
2. At the outset, I deny each and every averment and allegation contained herein except those that are specifically admitted herein. The present application is malafide, prima facie bad and liable to be dismissed for the only reason that the applicant is not before this Hon'ble Tribunal with clean hands and also on the ground, the application is devoid of merits.
3. The applicant is not a social activist but an employee of one Mr. Chenthilrajan. The applicant resides approximately 40 kms away from the 6th respondent's factory. Mr. Chenthilrajan is my nephew and my younger brother, Mr. Jegatheesan's son. It is pertinent to state dispute arose due between the members of the family. This was due to misappropriation of funds by Mr. Jegatheesan. The same led to partition of properties at the request of Mr. Jegatheesan. Mr. Ganesan, our elder step brother acted as a mediator. Accordingly, following the customs in the business community, Mr. Jegatheesan divided the properties into A and C schedules and I chose C schedule. The result of the mediation and the consequent division is reflected in the *Kaithadi Baga Pirivinai Pathiram* (hereinafter



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referred to as KBPP).The settlement agreement was signed by all the parties in the presence of Mr. Ganesan and dated 31.12.2018. A mediation award was passed on 02.01.2019 by recording the facts leading to signing of the KBPP.

4. Subsequently, Mr. Jegatheesan and his family began disputing the award. All the proceedings initiated till the Supreme Court were dismissed. Mr. Jegatheesan and his family are making their best efforts to harass and torment my family in every possible way. False complaints through employees, teardown of the properties belonging to me, rampant, looting of machineries etc. have been indulged by my brother and his children. The present application is also one such attempt and holds no truth.

FACTUAL MATRIX

5. Initially, the 6th respondent applied on 12.02.2016 for establishing a 6-Megawatt Captive Power Plant project proposal at SEIAA-TN along with project summary. This proposal was withdrawn vide letter dated 16.10.2017. Thereafter, the 6th respondent decided to establish 4.5 MW Captive Power Plant. Accordingly, the 6th respondent submitted fresh Consent to Establish (hereinafter referred to as CTE) application for establishment and operation of 4.5MW CPP and obtained CTE and Consent to Operate (CTO) vide order dated 27.06.2019.

PARA-WISE REPLY

6. In so far as Paragraph 1 is concerned, it is true that the 6th respondent, initially applied for 6 MW Captive Power Plant project proposal at SEIAA-TN along with project summary. The same was



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withdraw vide letter dated 16.10.2017 and it was acknowledged by the monitoring cell on 23.10.2017.

7. With regard to Paragraph 2 to 5 of the application, the proposal along with the project summary for 6MW CPP was withdrawn and the same was acknowledged by the authorities as stated supra.
8. With regard to Paragraph 6 to 8 of the application, the 5th respondent issued a show cause notice and the 6th respondent replied to the same stating that they have completely stopped the work. Subsequently, the 6th respondent received a direction from TNPCB not to do any work for 6 MW CPP. To reiterate, the 6th respondent withdrew the project proposal for 6MW CPP.
9. In so far as Paragraph 9 and 10, such allegations are unsubstantiated and therefore, untenable. The 6-Megawatt Captive Power Plant was and has not been ever established or operated. After the withdrawal of the proposal, the 6th respondent is only installed 4.5-Megawatt Captive Power Plant and approval for establishment and operation of the same was granted by TNPCB vide order no. 1904122069377 and 1904222069377 dated 27.06.2019. Therefore, this application concerning the 6-Megawatt Captive Power Plant is nothing but an abuse of process of law and is without merits and infructuous.

REPLY TO GROUNDS

10. I state that the accusations made in Paragraph (a) and (b) is baseless. I reiterate that the application for establishment of 6-MW CPP was withdrawn on 16.10.2017 and acknowledged on 23.10.2017. Even before it was withdrawn, it was not established by the 6th respondent nor was it was operated. Therefore, the 6th



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 Chairman / Director

respondent has not violated any laws. Thereafter, the 6th respondent applied for establishment and operation of 4.5 MW CPP. The application was submitted in compliance with the statutory requirements. Consent was granted vide Consent Order dated 29.10.2018. After establishment of the same and after getting other statutory approvals, the 6th respondent applied for consent to operate and after inspection by the authorities, TNPCB, granted consent to operate vide order dated 27.06.2019. Further, as the capacity is 4.5 MW which is below 5MW, no EIA approval is necessary. A 4.5 MW CPP does not attract Environmental clearance as per EIA Notification, 2006.

11. The 6th respondent's withdrawal of EC application for 6MW CPP proposal is reflected in the SEIAA website as Serial No.90. Therefore, the application has become infructuous. The same is filed along with this counter.
12. In so far as Paragraph (c) and (d) of the grounds, with respect to the inspection conducted by the Assistant Environmental Engineer, TNPCB, Tuticorin it was a regular inspection of M/s. V.V. Titanium Pigments Pvt Ltd (Main Plant) on 28.07.2016. During regular inspection, AEE noticed the fabrication work done for the proposed 6MW power plant and submitted a report on 30.07.2016.
13. In Paragraph 14 of the report, it was stated that with regard to violation its *"Generally nil. A power plant was under construction without obtaining CTE"* and orally advised not to do any work. Thereafter, the 6th respondent received a show cause notice. It was duly responded. We informed the authorities that we have already stopped the work for establishment of 6 MW power plant. The 6th



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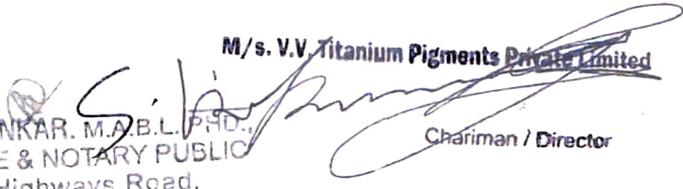
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Chariman / Director

respondent has always complied with the statutory requirements and directions. The proposal for establishment of 6MW Captive Power Plant application has been withdrawn and the same was acknowledged by the authorities. Further, no thermal power plant with 6MW capacity was designed and purchased from M/s. Bharat Heavy Electricals Limited, Chennai.

14. Subsequent to the inspection, SCN No. DEE/TTN/F.NA/W/2016 dated 04.08.2016 under Water Act and SCN No. DEE/TTN/F.NA/A/2016 dated 04.08.2016 under Air Act were issued to the 6th respondent by the District Environmental Engineer, TNPCB, Thoothukudi. A reply to was given to SCN on 12.08.2016 stating that only fabrication work was carried out, however, the entire work was stopped even before inspection and no work has been carried out thereafter.
15. Consequent to the reply given by the 6th respondent's to SCN, the TNPCB Chairman (FAC) vide Proceedings No. T12 / TNPCB / F.27038 / W&A/ Comp! / TTN/2016-1 dated 05.12.2016, issued directions to the 6th respondent not to establish the proposed 6MW CPP without obtaining EC. Since there was much delay in conducting the public hearing for EC and simultaneously there was an urgent requirement to establish a Captive Power Plant to compensate the insufficient and interrupted power supply to the main plant, the 6th respondent with drew the proposal for establishment for 6MW CPP. The ToR application was cancelled on 23.10.2017 and deleted vide CTE application No.3657199 for 6MW CPP from OCMMS on 30.11.2017.



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16. In so far as Paragraph (d) of the grounds, the 6th respondent never established 6 MW Power plant. After withdrawing the proposal of 6MW with SEIAA-TN on 16.10.2017, the 6th respondent filed a fresh CTE application through online in OCMMS for 4.5 MW CPP on 01.11.2017. CTE was granted for 4.5MW CPP on 29.10.2018. Thereafter, the 6th respondent applied online for CTO on 14.03.2019 and the same was granted on 27.06.2019. Subsequently, the construction work was carried out, a 4.5 MW CPP plant was established. The plant came into operation on 19.11.2020. Due to escalation in coal price, the operation of the plant was stopped on 15.05.2021. The same position continues till date.

17. In so far as Paragraph (e), on the date of complaint lodged by applicant i.e., 06.08.2021, the 4.5MW Captive Power Plant was already established and commenced operation. It was after obtaining CTE and CTO approval from TNPCB besides an approval from the Chief Electrical Inspector to Government(A/C), Chennai. Even the EC application towards the application for 6MW CPP proposal was withdrawn vide letter dated 16.10.2017 to SEIAA, Chennai. Pursuant to which the 6th respondent received an e-mail from SEIAA acknowledging the request of withdrawal of ToR application on 23.10.2017. Further, the 6th respondent deleted the online application of 6MW CPP in OCMMS on 30.11.2017. All these transpired nearly three years prior to the complaint lodged by the applicant.

18. In so far as Paragraph (f), (g) and (h) of the grounds, the proposal for establishment of 6MW CPP and everything regarding the said plant has been withdrawn. The 6MW CPP was never established and



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the construction was not completely. Be it as it may, any defect was cured by withdrawal of the proposal and a complaint lodged with regard to 6MW CPP after the establishment and operation of 4.5 MW CPP is nothing but vain allegation.

19. With regard to allegation in Paragraph (i), it is pertinent to state that there is no violation of EIA notification as alleged. The 6th respondent has acted well within the purview of EIA notification 2006. This is evident from the CTE Inspection report, CTE approval, CTO approval, approval of Chief Electrical Inspector to Government, Chennai, approval of the Director of Industrial Safety and Health, Chennai and Fire Licence from TN Fire & Rescue Services.

20. In so far as Paragraph (j) is concerned, the 6th respondent site is located well within the SIPCOT Industrial Complex, Thoothukudi. The power plants within SIPCOT are M/s. Sterlite Power Plant and M/s. V.V. Titanium Pigments Pvt Ltd 4.5MW Captive Power Plant. Among these two, M/s. Sterlite Power Plant is not in operation and the 6th respondent's 4.5MW Captive power plant has not been operating. The operation of the plant depends on the coal price. Even if the plant is put to use in the near future, as has been doing so, the 6th respondent, will comply with the standards prescribed and abide by rules and regulations. It is pertinent to note that within a radius of 700 meters, there is no habitation from the power plant. Moreover, it is situated within the SIPCOT Industrial complex. In and near Tuticorin, there are several numbers of mega thermal power plants and mini power plants with capacity of 25 MW. However, the petitioner claiming to be a social activist has not



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lodged any complaint against them, which proves that he has a personal agenda towards the 6th respondent.

21. To conclude, the present application is infructuous. All the applications regarding 6MW CPP were withdrawn and proposal for establishment and operation of 4.5 MW CPP was granted. A complaint thereafter by the application with regard to 6MW CPP is not only baseless but also bad in law. This Hon'ble Tribunal ought to dismiss the present application, with exemplary and penal costs, as the applicant has wilfully and intentionally concealed the above facts with a modus operandi.

It is therefore prayed that this Hon'ble Court may be pleased to DISMISS the present application with cost and thus render justice.

M/s. V.V. Titanium Pigments Private Ltd

Chairman / Director

BEFORE ME

Solemnly affirmed at Tisaiyanvilai

this the 30th day of March, 2022

and signed his name in my presence

ADVOCATE P. HILDASANKAR, Tisaiyanvilai



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RESPONDENT

M/s. KINGSLY SOLOMON J
K. ARAVINTHA BHARATHI
JOHNSY GREETA J
JENIFFER SNEHA ANJELLA M
K. HEMANATHAN

COUNSEL FOR 6th RESPONDENT

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