

BEFORE THE NATIONAL GREEN TRIBUNAL SITING AT CHENNAI

Appeal No. 37 of 2022

IN THE MATTER OF:

Mr. P.V. Subramanya Varma
S/o. P. Atchutha Rama Raju,
Age about 45 years,
Occ: Journalist, R/o H.No: 8-3-762/1/A
Flat No. 3, Sai Sri Maruthi Apartments,
Jaya Prakash Nagar, Behind RBI Quarters,
Sri Nagar Colony, Khairtabad, Hyderabad-500 073

...Appellant

AND

1. The State of Telangana
Represented by its Chief Secretary to
Government EFS & T department,
Secretariat, Hyderabad.
Tel: 040-23453111
Email id: prlsecy_efst@telangana.gov.in
2. Telangana State Pollution Control Board,
Represented by its Member Secretary
Sanathnagar, Hyderabad – 500 022.
Phone No. 040-23455340.
Ext-2562, Email ID cs@telangana.gov.in
3. M/s. Aadeshwar Aggregates Pvt. Ltd,
Sy.No.246/1, 246/2, Vattinagulapalli (V)
Gandipet Mandal, Rangareddy District.
Rep by its Authorized Signatory,
Sri D. Sumanth, S/o. D Subrahmanyam Reddy,
aged about 30 Years, Designation: Director;
R/o. Villa No. 21, Vessella Villas, Sri Ram Nagar,
Block C, Kondapur, Kothaguda Post,
Hyderabad – 500 084, Cell No. 9652973456
Email ID - sumanthreddy1989@gmail.com

... Respondents

For AADESHWAR AGGREGATES PVT. LTD.

D.S.K. Reddy
DIRECTOR



COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENT No. 3

I, Sri D. Sumanth, S/o. D Subrahmanyam Reddy, aged about 30 Years, designation: Director, R/o. Villa No. 21, Vessella Villas, Sri Ram Nagar, Block C, Kondapur, Kothaguda Post, Hyderabad – 500 084, do hereby sincerely and solemnly state on oath as follow:-

1. I am the authorized representative of 3rd respondent company in the present appeal and I am well acquainted with the facts of the case and I am authorized to file the present counter on behalf of the 3rd respondent company.
2. The appellant filed the present appeal in gross suppression of facts and also filed the same with distorted facts and false version.
3. The appellant has approached the Tribunal with unclean hands; therefore, the appellant is not entitled for any equitable indulgence from this Hon'ble Tribunal.
4. The appellant has tried to this respondent in bad light as if this respondent is a violator of law and as if this respondent has no respect to the rule of law.
5. The present appeal is filed challenging the Appellate order passed by the Appellate Authority under Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.



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6. The appellant failed to explain under what circumstances this respondent had approached the Appellate Authority. Thus the appeal filed by this third party interloper is motivated and a sponsored litigation at the behest of rival stone quarrying and crushing units.
7. The appellant filed this appeal without any locus as he is a complete stranger and a third party, who initiated this Appellate proceeding. He did not plead or establish his locus to interdict this respondent's constitutional and statutory rights. Therefore, the present Appeal is devoid of any merit and the same deserves to be dismissed by this Hon'ble Tribunal.
8. The principles for entertaining an appeal by a third party are well settled. The present proceedings before this Tribunal are in second appeal. This appellant is not a party before the primary authority. He intervened himself in the first appellate proceedings before the appellate authority. The appellate authority also without going into the Locus issue mechanically allowed his impleadment without any reasoned order. Taking advantage of such non-reasoned order of impleading him as party respondent, the present appeal came to be filed by the appellant as if he is one of the aggrieved party. As against the appellate order, the second respondent TSPCB has already filed appeal number 39/2022 before this Hon'ble Tribunal. Therefore the statutory board is agitating the alleged cause of the board. This third party interloper's presence is unwarranted.
9. It may also be pertinent to note that, this is an Appellate forum and the present proceedings are Statutory Appellate proceedings, and not the original proceedings, and this respondent's grievance is statutory in nature. This cannot be opposed by any third parties. The only question that is falling for consideration is whether I am entitled for Consent for



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Establishment (CFE) and Consent for Operation (CFO) to run my eco-friendly recycling unit.

10. I submit that, the appellant who filed this appeal boasts on oath before this Tribunal that he is a journalist, but not even a single paper is filed to establish his credentials. He also pleaded on oath that he runs a NGO but the details and documents pertaining to his alleged philanthropic work are also not appended to the appeal. He also pleaded that he has done lot of activities in protection of environment, but this pleading is also not substantiated by any cogent evidence or by any other form of evidence. Therefore it is apparently clear that the Applicant's so-called projection about himself to be an environmentalist is false. He also went on to plead by making an omnibus pleading that the citizens of Rangareddy & Sangareddy Districts approached him complaining about the Air Pollution being caused by stone crushing units. This pleading is also not substantiated by stating who are those citizens and what their particulars are. When such proof is not coming forth, it is evident that all these false pleadings are made only for the purpose of this frivolous litigation.
11. The Appellant had given list of dates and events and mentioned about WP (PIL) No: 233/2020 and other proceedings before the High Court and as well as before TSPCB. How did the Applicant come to know about those writ petitions and orders that are filed and relied by him is not disclosed in the appeal. Obviously this establishes that this is a sponsored litigation. The Applicant's *bonafides* and *locus* are seriously disputed by me. The agenda and purpose behind this litigation is also seriously questionable. The special inquisitorial jurisdiction of this Tribunal cannot be allowed to be misused and abused by people with adversarial background. This Tribunal's jurisdiction cannot be used for taking revenge against an



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adversarial rival businessman. On all the above stated grounds the present Appeal is liable to be dismissed only on lack of bonafides. Therefore, this Applicant's *locus* and presence before this Hon'ble Tribunal will pollute the stream of justice. Therefore, the applicant with such questionable background, shall be booted out from this Tribunal, as he is apparently a busy body.

12. To substantiate that this appellant is a stooge in the hands of rival stone quarrying crusher units, I may bring it to the knowledge of this Appellate Tribunal, one incident which establishes the said nexus is as follows. On 9th May 2022, one Mr. Koushik Reddy, and One. Mr. P. M. Kumar who run rival stone quarrying crushing units came to my Unit and the said Koushik Reddy stated that he is authorized by this busy body to represent him. From this it is apparently clear that this busy body applicant is a stooge in the hands of rival stone crushing unit owners.
13. When government departments visited our unit pursuant to the order passed by this NGT, they were accompanied by one Mr. Koushik Reddy. When we asked them why and how he is coming along with official Joint Action committee, one government official mentioned that Koushik Reddy is given permission by the petitioner Subrahmanya Varma to represent him. This is one more evidence that there is nexus. Koushik Reddy called Mr. Sumanth telling he was given Authorization by petitioner and also claimed that all government department people who are part of JAC are aware of it, the said recording is filed as an electronic evidence along with this counter. We got the entire illegal trespassing activity recorded. The statements given by the said Koushik Reddy is recorded. From the bare perusal and hearing of the said audio statement made by the rival crusher owners, it becomes clearly established that the



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appellant Subrahmanya Varma antecedents and Locus are questionable and they are not Bonafide, and it is a sponsored litigation and all the averments made in this application are exaggerated and far from truth.

14. Simply because the Appellant being an applicant before the NGT in OA 06/2022 will not give him a right to get a locus or right to file the present appeal. Therefore, the present appeal is devoid of any merit and the same is liable to be dismissed in the interest of justice.

Rebuttal to the pleadings in the Appeal

15. The facts narrated in para numbers III, IV & V are mostly distorted facts. Not even a single piece of paper is filed to substantiate the locus of the Applicant as stated herein above. When the locus is not established and when the appellant's integrity is highly questionable, this appellate tribunal entrusted with the job of determining the rights of the parties cannot be allowed to exercise its jurisdiction at the behest of a busybody like the appellant herein. Therefore the present appeal is to be thrown out only on this ground.
16. It may be pertinent to mention that this very same appellant approached this NGT and filed O.A 06/2022. This respondent filed a detailed counter exposing the lack of bonafides and lack of locus and also establishing the nexus with the rival business people. The Appellant herein changes and modifies its stand and pleadings from that of OA 06/2022. The Appellant is being used as a stooge by the rival businessman with a single point agenda to see to it that this respondent's unit is not granted CFE/CFO by the 2nd respondent TSPCB. Since the rival business persons cannot directly oppose my CFE and CFO, they have chosen this modus operandi to oppose my applications under the garb of Public Interest. Until and



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unless this mask is removed by this Appellate Tribunal the stream of justice will be polluted by this type of busy body appellants. Therefore this present appeal is liable to be dismissed.

17. In the pleadings made by the appellants he extracted the order of the High Court in W.P (PIL) No: 233/2020 and also extracted the pleadings made by him in OA 06/2022. Therefore the order and other pleadings being a matter of record doesn't require any rebuttal. Hence the pleadings from page numbers 8 to 12 are specifically denied in so far as specific overt allegations are made as against this respondent.
18. The averments in para IV at page 13 regarding the interim orders passed by this Tribunal in OA Number 06/2022 to be considered by this Appellate Tribunal is untenable. The cause and prayer in OA 06/2022 are omnibus in nature. Therefore those pleadings or orders cannot be considered by this tribunal in the present case.
19. The averments in para V at page 13 are pleadings regarding the appellate proceedings before appellate authority appointed by the Government of Telangana, under Water and Air Act. It is further averred in this paragraph that the appellate authority on assumptions and presumptions came to a wrong conclusion and allowed our appeal contrary to the provisions of Water and Air Act. It is also averred that the said order is contrary to the siting guidelines of the CPCB. These averments are very omnibus in nature. The appellant did not specify what provision of law under Water and Air Act was not considered by the Appellate Authority.



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20. The further pleading in the same paragraph is the reasoning given by the Appellate Authority which is a genuine and legal reasoning for granting Ex-Post Facto permission to our unit so as to enable TSPCB to ascertain if any pollution is really caused by our unit as being alleged by TSPCB or this appellant or any other persons. The Appellate Authority has also taken cognizance of the fact that our unit to be an eco-friendly, recycling unit. While considering this the Appellate Authority directed TSPCB to suggest and guide this respondent as to how and what measures will curb the dust pollution if any. This direction was made by the Appellate Authority based on equitable principles to be followed by any statutory or Quasi-Judicial Body while considering any fundamental right in so far as it is connected to livelihood and right to carry on business or trade. In other words the Appellate Authority had taken the said approach to avoid injustice being meted out to my unit by the pedantic approach taken by 2nd respondent (TSPCB).
21. The single parroted version of 2nd response (TSPCB) is that it cannot entertain our unit application for CFE and CFO for the single reason that “GO MS 111 is operating in that area”, where establishment of industries is prohibited in the 84 notified villages. When the High Court in W.P No 17554/2020 directed the 2nd respondent (TSPCB) to accept our physical application and directed it to pass a reasoned order, once again the TSPCB harps upon GO.MS No 111 and mechanically rejects our application.
22. This impugned order was challenged before Appellate Authority and by the time the said appeal came up for consideration/hearing, the sole reason for rejection i.e., prohibition contained in GO MS No: 111 were



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taken off. And GO MS: 69 came to be passed for a specific reason cited in the said GO which are as follows.

- a. Installation of decentralized Sewerage Treatments Plants (STPs) at various locations
 - b. Construction of diversion channels for carrying the treated water without letting it into these two reservoirs.
 - c. Maintenance of Ground Water quality.
 - d. Minimisation of pollution through agricultural surface run-off into these two reservoirs.
 - e. Any other measures as deemed appropriate to ensure the quality of water.
23. Later on the Government of Telangana took up a policy decision to implement the EPTRI Expert committee report whereunder certain Survey number falling on the right side of the ridge of Vattinagulapalli Village are determined to be outside the catchment area of Osman Sagar lake, and therefore the subject survey Numbers 246/1 and 246/2 of Vattinagulapalli village in which this respondent's unit, is located stood outside the purview of GOMs. No: 111 and GO. Ms. No: 69.
24. Therefore the Appellate Authority realizing that there is no statutory or legal embargo in so far as location of this respondent unit in survey numbers 246/1 and 246/2, rightly granted Ex-Post Facto permission to establish and operate our unit, and this specific permission was also granted to enable the 2nd respondent (TSPCB) to ascertain the plausible dust pollution if any. This reasoned order cannot be found fault by the Appellant herein or by the 2nd respondent TSPCB.



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25. The grounds raised in support of the present appeal, from ground Number A to D are untenable. Mere extraction of the statutory provisions contained in Water Act and Air Act will not suffice without citing as to how the relevant statutory provisions are violated.
26. Another untenable ground cited is that this respondent unit is operating contrary to the directions passed by the High Court in W.P PIL No: 233/2020 and W.P Number 12022/2020. The orders in the said Writ Petition are not applicable to the facts and circumstances of this respondent. Therefore citing those orders are untenable.
27. The further ground number E that the Appellate Authority failed to consider GO. MS 470 (MAUD) dated 19/07/2008 that no industry can be located within the one Kms belt on either side of ORR Growth Corridor is also untenable for the simple reason that the said GO is contravening the CPCB and TSPCB citing guideline whereunder any unit like that of the respondent can be established. In so far as a subject which is falling under the concurrent list III, of the seventh schedule of the constitution of India, if both the state and as well as Central Government make any law or pass any rule, the central rule will prevail over the state rule. Therefore the criteria under GO. MS 470 (State rule) is contravening CPCB siting guidelines in so far as establishing an industry is concerned. Thus the siting guideline of 100 Meters prescribed by the CPCB (When blasting is not involved) and 200 Meters (When Blasting is involved) shall prevail over the 1 Kms stipulation imposed by the state rule. of ORR. In any case blasting/mining/quarrying is not involved in respondent case. We are involved in Recycling the waste debris by crushing them and reusing them as rocksand and Gravel to be used in the construction industry. This



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activity is recognized as recycling activity which is encouraged by all countries including India as this activity reduces burden on exploiting Natural resources and sustain ecological balance as recommended by United Nations Environment Programme on “Sand & Sustainability”. Whereunder the subject matter experts and environmentalists from United Nations and other reputed organizations opined that recycling units like respondent units shall be located close to the construction activity to avoid burning of fossil fuels and to reduce the wear and tear on the public roads. It is also suggested by the experts that if this recycling units are asked to set up far away from the vicinity of the developing areas, the cost of transportation would increase and the same would discourage setting up such units. Keeping all the above said positive aspects of recycling units, United Nations has recommended all the governments world over to encourage setting up of this type of Ecofriendly units. The Appellant herein without doing minimum homework and without even delving into the environment subject, proclaims himself to be a journalist and initiates this frivolous litigation to implement the agenda of rival businessman.

28. In so far as the allegations that our unit is violating CPCB guidelines and that it is located within 800 Meters of Human Habitation (GAR Tower), is false. In fact the said GAR tower is beyond one KM in distance from our unit. We are filing the relevant proof via Google Earth Images showing the distance to debunk this contention of the Appellant.
29. The other averment is that our unit is located 250 meters from the ORR. In fact the CPCB cited by the Appellant Himself that the unit shall be beyond 500 meters from national highway. But the ORR is not a notified



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National Highway. Therefore this criteria is not applicable to this respondent unit.

30. The other averment is that any unit shall be located beyond 100 meters from state highway, Major District Road and other roads. Admittedly ORR is not a state Highway nor MDR. It falls under the other road category. Admittedly it is beyond 100 meters as prescribed by CPCB. Therefore there is no prohibition in establishing the respondent's unit. Thus these grounds raised under serial number F are untenable.
31. The next ground that has been raised is about GO MS 69 dated 12/04/2022 mandating the appointment of committee and committee's recommendations are yet to be received and therefore the stalemate should continue and that we cannot rely on GO. MS 69. As stated herein above, after GO MS 69, the state government as a matter of policy accepted the expert environmental committee report named as EPTRI report whereunder the subject Sy Numbers 246 in which this respondent unit is setup had been delineated as non-catchment area and declared as not falling under GO MS 111 and GO MS 69. Hence this ground has also become untenable.
32. In ground number H it has been alleged that our unit is allowed to operate without proper CFE and CFO. This allegation is untenable for the simple reason that the appeal itself is filed in Appellate Authority by this respondent seeking CFE and CFO. Considering the attitude of the 2nd respondent TSPCB in preemptively declaring this respondent's unit to be causing pollution without any proper scientific data or evidence with them, the Appellate Authority permitted our unit to be operated



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considering the Equitable principle of Ex-Post Facto. Parallely the Appellate Authority directed the TSPCB to ascertain the pollution levels while we are operating. Therefore the Appellate Authority's reason for permitting us to operate is legal and valid and is based on sound legal principles.

33. The next ground number I that the order of the Appellate Authority is contra to the orders passed by this Tribunal in Appeal numbers 106 to 112 of 2016 (SZ) is also untenable for the simple reason that this respondent is not party to the above said proceedings. Any generic order also cannot be caused by this Hon'ble Tribunal effecting the fundamental rights of this respondent. Therefore this ground is also untenable. In fact the common order in Appeal 106 to 112 of 2016 (SZ) whereunder TSPCB had rushed to this NGT on a remittal order passed by the Appellate Authority directing the TSPCB to consider the case afresh and decide the same on merits. This NGT did not find fault with the remittal order and directed the parties to approach the TSPCB instead of wasting the time of this NGT. The said order will inure to our benefit. Therefore the same analogy and principle adopted by this NGT in Appeal 106 to 112 of 2016 shall be considered and passed in our favor.
34. The last and final ground is about the jurisdiction of the Appellate Tribunal to entertain our appeal, based on the TNPCB vs Sterlite Industries judgment. In fact the impugned order of the TSPCB rejecting our CFE and CFO was under the Air Act and not a composite order under both Water Act and Air Act. Therefore the principle that has been enunciated in the sterlite case that if an composite order is passed by the TSPCB, then the said order ought to have been challenged before this



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NGT. In any case when this respondent earlier approached this NGT and filed an appeal against the rejection order of the TSPCB, this NGT relegated this respondent back to the Appellate Authority. Therefore this ground is also untenable.

35. I further submit that merely because Appellant filed OA 06/2022 before this NGT and arrayed this respondent as one of the respondent of the said case will not in any way create fetters on the rights of this respondent to establish and run this unit.
36. The ex-parte interim order passed by this Hon'ble Tribunal on 04/07/2022 shall be vacated in the interest of justice and consequentially the present appeal may be dismissed.
37. The Appellant fundamentally lacking locus and bonafides and the appellant being a third party and unconnected to the present case is not entitled for any reliefs that have been prayed for in the present appeal. On this ground and as well as all other grounds that have been raised in the counter affidavit in defense of this respondent, the present appeal shall be liable to be dismissed as devoid of any merits by imposing exemplary costs of Rs.1,00,00,000/- (Rupees One Crore only) for interdicting our right to carry on trade and business.

Sworn and signed before me
On this ___ day of July, 2022 at Hyderabad

For AADESHWAR AGGREGATES PVT. LTD.

D.S.K. Reddy

Deponent^R

Notary



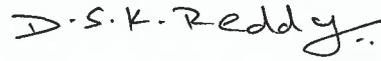
VERIFICATION

I, D. Sumanth son of D Subrahmanyam Reddy, aged about 30 Years, Occupation: Business, R/o. Villa No. 21, Vessella Villas, Sri Ram Nagar, Block C, Kondapur Kothaguda Post, Hyderabad – 500 084; do hereby verify and state that the contents stated in the above Para Nos. 1 to 35 are true and correct to the best of my knowledge and Para Nos.36 and 37 are verified on legal advice, hence verified on this ___ day of July, 2022 at Hyderabad.



Counsel for the Respondent No.3

For AADESHWAR AGGREGATES PVT. LTD.



DIRECTOR
Deponent



ATTESTED

SAILAJA OGIRALA
ADVOCATE & NOTARY
B.H.E.L, MIG-1110, R.C.Puram,
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**COUNTER AFFIDAVIT FILED
ON BEHALF OF
RESPONDENT No. 3**

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