

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE BENCH AT CHENNAI
APPEAL No. 19 of 2020**

IN THE MATTER OF:-

B. Madan Kumar Reddy

..... Appellant

-Vs-

Ministry of Environment, Forest
and Climate Change & Ors

..... Respondents

**COUNTER AFFIDAVIT ON BEHALF OF MINISTRY OF ENVIRONMENT,
FOREST AND CLIMATE CHANGE i.e. RESPONDENT NO. 1**

MOST RESPECTFULLY SHOWETH:

I, Dr.C.Palpandi S/o P.Chendurpandi aged about 38 years, presently working as Scientist "C" in the Regional Office of Ministry of Environment, Forest & Climate Change (MoEF&CC), at Chennai, do hereby solemnly affirm and declare as under

1. I am working as Scientist 'C', Integrated Regional Office, Ministry of Environment, Forest and Climate Change, Government of India, (hereinafter referred to as 'MoEF&CC' for brevity) and in my official capacity and as such well acquainted with the facts deposed hereunder and I am also authorized to file this Counter Affidavit on behalf of the Respondent No.1
2. It is submitted at the very outset that the Respondent No. 1 denies each averment and/or submission made in the application which is contrary to and inconsistent with the averments made and facts stated in the present reply. It is submitted that the nothing stated in the application may be deemed to have been admitted by the Respondent No. 1 unless and until the same is expressly admitted in the present reply:

C. Palpandi
Dr. C. Palpandi
Scientist 'C'
Government of India
MOEF&CC, Regional Office (SEZ),
No. 34, 1st and 2nd floor, HEPC Building,
Cathedral Garden Road, Nungambakkam,
Chennai-600 034.

3. That a short affidavit is being filed by the answering respondent at this stage and craves leave and liberty to file a detailed Counter Affidavit to the aforesaid Petition, as and when required.
4. That in the present matter applicant is challenging the legality and correctness of the Environmental Clearance dated 16.04.2020 granted to M/s Sri Kumaraswamy Silica Mines i.e Respondent No.7 by the answering respondent for the proposed production capacity of 340000 TPA of Silica Sand from mine lease area of 128.866 Ha. located at Sy. No. 695/22, Village Momidi, MandaiChillakur, District S.P.S.R Nellore, Andhra Pradesh. It is further alleged by the applicant that the Environmental Clearance granted to the Respondent No.7 is in contravention to existing norms and statutory regulations pertaining to Public Consultation and proper conduction of Public Hearing process as well as submission of false information in application and prefeasibility report. Further, it is also alleged by the applicant that the respondent No.7 had done mining activity without obtaining Environmental Clearance.
5. Further, petitioner had sought relief that (i) set aside the Environmental Clearance Order No. F.No. 23-238/2018-IA.II(V) dated 16.04.2020 passed by the 1st Respondent in favor of the 7th Respondent for its Silica Sand Mine with the proposed production capacity of 340000 TPA of Silica Sand from mine lease area of 129.866 Ha. located at Sy. No. 695/22, Village Momidi, MandaiChillakur, District S.P.S.R Nellore and.(ii) direct Respondent No.3 to 6 to take action against the violations committed by the 7th Respondent in the interest of justices and pass such other order or orders as this Hon'ble Tribunal deems fit and proper in the circumstances of the case.
6. It is submitted that answering Respondent (i.e Ministry of Environment, Forests and Climate Change) issued the Environment Impact Assessment Notification, dated 14.09.2006 under the provisions of the Environment (Protection) Act, 1986 (*hereinafter referred to as 'the EIA Notification, 2006'*). The EIA Notification, 2006 requires certain projects to obtain prior Environmental Clearance ("EC") before any construction work in case of new projects or expansion and modernization of existing projects or activities. The Schedule to the EIA Notification, 2006 details the categories or projects or activities which

C. J. M. M. S.
Dr. C. Patpandi
 Scientist 'C'
 Government of India
 MOEF&CC, Regional Office (SEZ),
 No. 34, 1st and 2nd floor, HEPC Building,
 Cathedral Garden Road, Nungambakkam,
 Chennai-600 034.

require prior environmental clearances. Under the EIA Notification, 2006 all projects and activities are broadly categorized into two categories - Category "A" and Category "B", based on the spatial extent of potential impacts and potential impacts on human health and natural and man-made resources.

7. It is most respectfully stated that in accordance to the EIA, Notification, 2006 the process involved for grant of Environmental Clearance are as followed:
- a) Stage (1) - Screening
 - b) Stage (2) - Scoping – i.e. prescribing Terms of Reference (TOR) for undertaking detailed Environment Impact assessment studies.
 - c) Stage (3) - Public Consultation – to be conducted by the respective State/UT Pollution Control Board/Committee.
 - d) Stage (4) - Appraisal – by EAC.
8. That in accordance with the provisions prescribed in the EIA Notification, 2006, the EIA Report is prepared by the project proponent based on the Terms of Reference.
9. That, the Ministry has constituted the Expert Appraisal Committee (EAC)/ State Expert Appraisal Committee (SEAC)/ District Expert Appraisal Committee (DEAC) by the answering respondent in pursuance to the EIA Notification, 2006. That the EAC/SEAC follows due procedure contained in the EIA Notification, 2006 while appraising a developmental project requiring prior environmental clearance and making appropriate recommendations.
10. That it is humbly submitted that during appraisal of a project proposal, the Environment Impact Assessment Report, declaration made in Form-I, Pre-Feasibility Report and presentation made before the Committee etc. form the basis for appraisal and making appropriate recommendations. That the EAC/SEAC/DEAC makes appropriate recommendations based on the facts submitted and their presentation before the Committee by the project proponent.

C. Palpandi

Dr. C. Palpandi
 Scientist 'C'
 Government of India
 MOEF&CC, Regional Office (SEZ),
 No. 34, 1st and 2nd floor, BEPC Building,
 Cathedral Garden Road, Nungambakkam,
 Chennai-600 034.

11. That the time lines have been prescribed under the EIA Notification, 2006. Accordingly ToR shall be conveyed by the EAC/SEIAA within thirty days of the receipt of Form-I to the Project Proponent. Thereafter, as per the ToR issued, the project proponents are required to comply with the terms and conditions mentioned in the ToR which inter-alia includes (i) monitoring of base-line data for one season (Three months), (ii) Approved mine plan, (iii) conducting the public consultations, and (iv) submission of final EIA/EMP Reports to the Ministry along with all the relevant documents.
12. That on submission of final EIA/EMP report, the project is appraised by the EAC/SEAC in a transparent manner in a proceeding to which the Proponent is invited for furnishing necessary clarification in person or through an authorized representative. Thereafter, the EAC/SEAC will recommend/reject the proposals and the competent authority is to take the final decision to accord the Environmental Clearance as per the EIA Notification, 2006. This decision is conveyed to the Proponent within 45 days of the receipt of the recommendations of EAC/SEAC. In other words, the decision shall be conveyed within 105 days from the receipt of the final EIA/EMP Report/requisite documents.
13. That it is pertinent to submit here that a detailed procedure has been prescribed under the EIA Notification 2006 for appraisal and grant of EC and that application can be considered only as per the prescribed procedure. It is also mentioned that as per the provisions of the EIA Notification, 2006 as amended from time to time, EC is required for mining of minerals irrespective of the size of the mine lease area and types of minerals
14. It is most respectfully submitted that in exercise of the powers conferred by sub-section (1) and sub clause (a) of clause (i) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986; the Central Government hereby directs that the projects or activities or the expansion or modernisation of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 entailing capacity addition with change in process or technology or both

C. Palpandi
Dr. C. Palpandi
 Scientist 'C'
 Government of India
 MOEF&CC, Regional Office (SEZ),
 No. 34, 1st and 2nd floor, HEPC Building,
 Cathedral Garden Road, Nungambakkam,
 Chennai-600 034.

undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Level Environment Impact Assessment Authority, as the case may be, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, shall be considered a case of violation of the Environment Impact Assessment Notification, 2006 and will be dealt strictly as per the procedure specified in Notification dated 14.03.2017 having S.O. 804(E). The copy of the Notification having S.O. 804 (E) dated 14.03.2017 is annexed herein and marked as **ANNEXURE R1/1**.

15. That various facts necessary for the adjudication of the present case in stated herein below:-

- 8.1 That the proposal of M/s Sri Kumaraswamy Silica Mine i.e Respondent No.7 is for production from 340000 TPA of Silica Sand from mine lease area of 129 866 ha at Survey No. 695/22, Village Momidi, Mandal Chillakur, District S.P.S.R Nellore, Andhra Pradesh.
- 11.2 That the project is covered under category 'A' of the item 1(a) mining of Mineral of the EIA schedule to the EIA Notification, 2006 and requires prior EC from the MoEF&CC as the lease area of the project is greater than 100 Ha.
- 11.3 That previously, the respondent no.7 applied for grant of Environmental Clearance for 136.944 Ha on 23.11.2013. Terms of Reference was issued by answering respondent vide Lr No. J-11015/19/2014-IA 11 (M) dated 10.08.2015. Thereafter respondent No.7 submitted that the Public Hearing (PH) was conducted on 23.04.2016. The proposal was then considered in EAC meeting held during May 23-24, 2016 wherein the committee recommended for Environment Clearance. The proposal was then examined in the Ministry and it has found that it is a violation category proposal. It is further submitted that to deal with the violation category proposals, the answering respondent has issued the Notification S.O. 804(E) dated 14 March 2017.
- 11.4 Accordingly, the respondent No.7 submitted a new proposal vide proposal No. IA/AP/MIN/74145/2018 dated 11.04.2018 under violation category and submitted Form-1 and PFR. Thereafter, the proposal was considered by the Expert Appraisal Committee (Violation

C. Palpandi
Dr. C. Palpandi
 Scientist 'C'
 Government of India
 MoEF&CC, Regional Office (SEZ),
 No. 34, 1st and 2nd floor, HEPC Building,
 Cathedral Garden Road, Nungambakkam,
 Chennai-600 034.

Sector) in its 13th meeting held during 28- 29 August, 2018; wherein the EAC recommended the proposal for grant of Additional & Standard Terms of Reference (ToR).

- 11.5 That the Respondent no.7 submitted that initially the mining lease was granted in favour of Sri V. Ramachandra Reddy vide G.O.MS.No.563 of Industries & commerce (Mines-III) Dept., dated 24.5.1975 over an extent of 512.01 Acres, in Sy No.695/22,696 of Momidi Village, ChikilakurMandal, Nellore District. Further, it is also submitted by the Respondent No.7 that the Mining Lease was executed on 04.09.1975 for a period of 20 years. The lease was subsequently transferred in favor of M/s Sri Kumaraswamy Silica Mines, a partnership firm of which Sn V. Ramachandra Reddy, vide G.O. Ms No.190, dated 11.4.1985 and executed on 01.07.1985.
- 11.6 Further, the Respondent no.7 submitted that the Government of Andhra Pradesh vide GO M No 263 of Industries & commerce (M-1) Dept dated 30.07.1998, has sanctioned 1st renewal of Mining Lease for silica sand, for the reduced extent of 338.39 Acres in S No. 695/22 and 696 of Momidi Village, ChillakurMandal Nellore District for a period of 20 years from 04.09.1995 to 3.09.2015 in favour of M/s Sri Kumaraswamy Silica Mines i.e Respondent No.
- 11.7 Further, Respondent No.7 submitted that the mining lease is under operation since 04.09.1975 to 03.09.2015. It is also submitted that the Department of Mines & Geology, Ibrahimpatham vide Notice No. 6111/R3-1/2016 dated 03.02 2017 has decided in principal to grant a 2nd renewal of quarry lease over an extent of 338.39 acres for 20 years with effect from 04.09.2015. The Respondent No.7 submitted that he has surrendered an area of 17.49 Acres in Sy 696 and was accepted by Government of Andhra Pradesh vide Proceeding No. 6111/R3-1/2016 dated 29.06.2017. Further, Respondent No.7 submitted that Letter No 6111/R3-1/2016 dated 19.09.2018 issued by Director of Mines & Geology wherein a time period of one year is provided for Submission of AMP, EC, CFE& CFO.
- 11.8 It is most respectfully submitted that the Respondent No.7 had also filed an application having Application No. 187 of 2017 before this Hon'ble Tribunal for a direction against MoEF& CC to consider the

C. Palpandi
Dr. C. Palpandi
 Scientist 'C'
 Government of India
 MOEF&CC, Regional Office (SEZ),
 No. 34, 1st and 2nd floor, HEPC Building,
 Cathedral Garden Road, Nungambakkam,
 Chennai-600 034.

application of the applicant i.e Respondent No. 7 dated 23.11.2013 for grant of Environment Clearance (EC) based on the Terms of Reference (ToR) issued by the answering respondent dated 10.08.2015 and also on the recommendations of the EAC made in its 6th Meeting held on 23-24th May, 2016 to carry on mining activities in respect of mining of silica sand over an extent of 320.90 acres in Survey No.695/22 of Momidi Village, ChillakurMandal, SPSR Nellore District after taking into account the surrender of 17.49 acres in Survey No.696.

- 11.9 Further, it is also submitted that the application filed by the respondent no. 7 had been disposed of vide order dated 19.09.2017; wherein, Hon'ble tribunal had recorded that the Respondent no. 7 submitted *"that in so far as it relates to 17.49 acres of land in Survey No.696 which was stated to form part of the forest area, the applicant has already surrendered the same to the State Government and in fact based on the same, the State Government has already passed orders accepting the surrender on 29.06.2017 in the Proceedings No.6111/R3-1/2016 of the Director of Mines and Geology, Andhra Pradesh, Ibrahimpatnam."*

Accordingly, this Hon'ble Tribunal had passed a direction

"On considering the compliance of the requirements as referred to above, it is for the MoEF& CC to examine and send the matter afresh to EAC and the EAC shall pass appropriate recommendation to the Regulatory Authority to enable to pass appropriate orders. Needless to state that based on the recommendation, it is for the MoEF& CC to pass appropriate orders in the manner known to law expeditiously and such order shall be subject to the outcome of the decision in the PIL pending before the Hon'ble High Court." The copy of the order dated 19.09.2017 is attached herein and marked as **ANNEXURE R1/2**.

- 8.10 That the Respondent No.7 submitted that the Mining Plan was approved by Department of Mines & Geology (DDM&G) Guntur vide LR. No. 2004/MMP/NR/2016 dated 01.07.2017. Further, it was also submitted by the Respondent No.7 that the method of mining shall be opencast. As the Silica Sand is a soft mineral hence the drawing and blasting is not required. The Respondent No.7 submitted that bench height will be maintained 15 meters and width will be maintained more

C. Palpandi
Dr. C. Palpandi
 Scientist 'C'
 Government of India
 MOEF&CC, Regional Office (SEZ),
 No. 34, 1st and 2nd floor, HEPC Building,
 Cathedral Garden Road, Nungambakkam,
 Chennai-600 034.

than bench height. And also submitted that the water table in the area is 3.6m to the intact the depth mine will go up to 2.5 m only.

- 11.11 That the Respondent No.7 submitted that there shall be no top soil overburden and any waste generation from the mine and there will be 0.50 m³/day waste generation from domestic consumption. Further, it was also submitted by the Respondent No.7 that total water requirement will be 2 m³ /day which will be sourced from hand pump located within the mining lease or will be purchased. Further, it was submitted by the Respondent No.7 that during plan period an area of 0.45 Ha and during Conceptual period 5.24 Ha shall be developed as greenbelt and the total 7800 plants of Casuarina (750 plants during 1-5 years at 0.50 Ha, 1500 plants during 5-10 years at 1.00 Ha, 3000 plants during 10-15 years at 2:00 Ha, S250 plants during 15-20 years at 3.50 H) will be planted.
- 11.12 That the Respondent no.7 submitted that there is no wildlife sanctuaries, national parks, elephant/tiger reserves within 10 km radius of the study area. Further, it is also submitted by respondent no.7 that the total mining lease area is Government wasteland and no forest land is involved and the mining activity will be carried out in an area of 85.30 HA for the current plan period and 110.356 He will be broken for production of Silica Sand during conceptual period.
- 11.13 That the Respondent no.7 submitted the past production details from 1986-87 to 2015-2016. PP also submitted an undertaking by the way of affidavit to comply with all the statutory requirements and judgment of Hon'ble Supreme Court Order dated the 2nd August, 2017 in Writ Petition (Civil) No. 114 of 2014 in the matter of Common Cause versus Union of India and Ors.
- 11.14 That the respondent no.7 submitted that total mineable reserve is 69, 11,000 T. It is also submitted by Respondent No.7 that the life of mine will be 20 years at production rate of 3,40,000 TPA.
- 11.15 The matter was examined in the Ministry in light to the Notification S.O. 804(E) dated 14th march, 2017 and the proposal submitted by the Respondent No.7 vide proposal no. IA/AP/MIN/74145/2018 dated 11.04.2018 under violation category and submitted Form-I and PFR. Thereafter the proposal was considered by the EAC (Violation Sector)

C. Palpandi

Dr. C. Palpandi
Scientist 'C'

Government of India
MOEF&CC, Regional Office (SEZ),
No. 34, 1st and 2nd floor, HEPC Building,
Cathedral Garden Road, Nungambakkam,
Chennai-600 034.

- in its 13th Meeting held during 28-29 August, 2018; wherein, the Committee recommended for grant of ToR. Accordingly, the ToR was issued by the Ministry vide letter no. 23-238/2018-IA.III(V) dated 15th November, 2018 for preparation of EIA/EMP Report as per the provisions of Ministry Notification S.O. 804(E) dated 14 March, 2017.
- 11.16 Thereafter, the Respondent no.7 applied online vide proposal No. IA/AP/MIN/89769/2018 for grant of EC on 27.12.2018 and submitted the EIA/EMP Report. The proposal was placed in 19th EAC (Violation) meeting held on 25th -26" February, 2019; wherein, the Committee **deferred** the proposal for want of additional information. The copy of the relevant Minutes of Meeting held on 25th -26" February, 2019 is attached herein and marked as **ANNEXURE R1/3**.
- 11.17 Accordingly, the respondent no.7 submitted the information online on 27.03.2019 and the proposal was placed in EAC (Violation) Meeting held on 15th -16" April, 2019; wherein, the Committee recommended for grant of environmental clearance under the provisions of Ministry Notification S.O. 804(E) dated 14 March, 2017. The copy of the relevant Minutes of Meeting held on 15th -16 April, 2019 is attached herein and marked as **ANNEXURE R1/4**.
- 11.18 It is most respectfully stated that based on the discussion held and document submitted by the Respondent no.7 before the Expert Appraisal Committee (Violation) and the proposal of the Respondent No.7 has been recommended by the EAC (Violation) for "Production of 340000 TPA of Silica Sand mine by M/s Sri Kumaraswamy Silica Mine having mining lease area of 129.866 Ha at Sy. No. 695/22, Village Momidi, MandaiChillakur, District S.P.S.R Nellore, Andhra Pradesh".
- 11.19 Further, it is also pertinent to mention here that the answering respondent has examined the proposal in accordance with the Environmental Impact Assessment Notification 2006 and further amendments thereto and Notification vide S.O. 804(E) dated 14 03.2017 and as the Respondent no.7 submitted the Bank Guarantee Rs. 63.64 lakhs/- to Rajasthan State Pollution Control Board, the answering respondent accorded the Environmental Clearance under the provisions thereof to the above mentioned proposal of M/s Sri

C. Palpandi
Dr. C. Palpandi
 Scientist 'C'
 Government of India
 MOEF&CC, Regional Office (SEZ),
 No. 34, 1st and 2nd floor, HEPC Building,
 Cathedral Garden Road, Nungambakkam,
 Chennai-600 034.

Kumaraswamy Silica Mines with the proposed Production capacity of 340000 TPA of Silica Sand from mine lease area of 129.866 Ha. The mine lease area is located at Sy. No. 695/22, Village Momidi, MandaiChillakur, District S.P.S.R Nellore, Andhra Pradesh subject to compliance of the terms and conditions as mentioned in the said EC dated 16.04.2020.

16. It is most respectfully submitted that the answering respondent granted the Environmental Clearance to the project in question based on the deliberations held by the Expert Appraisal Committee comprising domain area experts, constituted for considering the violation cases as per the provisions of the EIA Notification, 2006 as amended and relying upon the documents/details submitted by the project proponent. It is humbly submitted that the answering respondent in its Office Memorandum dated 05.10.2011 categorically mentioned that the onus of submitting the correct and factual information/data contained in the EIA report lies with the project proponent. The said para no. 2 of the Office Memorandum dated 05.10.2011 is reproduced herein below for ready reference:-

2. Instances have, however, been brought to the notice of this Ministry, wherein the EIA reports prepared by the Environmental Consultants contain information/data copied from other reports. As it may be time consuming for the Ministry and or the EACs to compare the contents of one report with the other to check for copied data/information, the onus of submitting the correct and

17. factual information/data contained in the EIA report lies with the project proponent.

The copy of Office Memorandum dated 05.10.2011 is attached herein and marked as **ANNEXURE R1/5**.

18. That it is respectfully submitted that State Department of Mines and Geology is the nodal authority in the State for dealing with the allotment of mining leases under the Mines and Minerals (Development and Regulation) Act (MMDR Act) and is entrusted with the enforcement and regulation of mining operations in a State including illegal mining and Respondent Ministry has no role to play with regard to the same. Further, the State Government is empowered under

C. Palpandi

Dr. C. Palpandi
Scientist 'C'

Government of India
MOEF&CC, Regional Office (SEZ),
No. 34, 1st and 2nd floor, HEPC Building,
Cathedral Garden Road, Nungambakkam,
Chennai-600 034.

Section 23 C of the Mines and Minerals (Development and Regulation) Act 1957(MMDR Act) to make rules for prevention of illegal mining, transportation and storage of minerals and the State Department of Mines & Geology is the nodal authority in the state for dealing with the allotment of mining leases under the MMDR Act and is entrusted with the enforcement and regulation of mining operations in a state

19. That in view of the aforementioned facts and circumstances, this Hon'ble Tribunal may kindly be pleased to pass appropriate order(s).

C. Palpandi

Dr. C. Palpandi
Scientist 'C'
Government of India
MOEF&CC, Regional Office (SEZ),
No. 34, 1st and 2nd floor, HEPC Building,
Cathedral Garden Road, Nungambakkam,
DEPONENT

VERIFICATION

Verified at Chennai on this 9th day of 2020 that the contents of this affidavit based on official record(s) maintained and information available in the office are true and correct, no part of it is false and nothing has been concealed there from.

C. Palpandi

Dr. C. Palpandi
Scientist 'C'
Government of India
MOEF&CC, Regional Office (SEZ),
No. 34, 1st and 2nd floor, HEPC Building,
Cathedral Garden Road, Nungambakkam,
Chennai-600 034.
DEPONENT