

BEFORE THE NATIONAL GREEN TRIBUNAL SITING AT CHENNAI
MEMORANDUM OF APPLICATION
UNDER SECTION 18(1) R/W SECTIONS 16 OF NATIONAL GREEN
TRIBUNAL ACT 2010

Appeal No. 39 of 2022

IN THE MATTER OF:

Telangana State Pollution Control Board,
Represented by its Member Secretary,
Paryavaran Bhavan, A-III, Industrial Estate,
Sanath Nagar, Hyderabad – 500 018.
Tel: 040-2381 5630
E-mail id: ms-tspcb@telangana.gov.in

...Appellant

AND

1. 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
2. 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
3. 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.

... Respondents



For AADESHWAR AGGREGATES PVT. LTD.

D.S.K. Reddy
DIRECTOR

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COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENT No. 1

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 1st 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 1st 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 approached the Tribunal with unclean hands; therefore, the appellant is not entitled to any equitable indulgence from this Hon'ble Tribunal.
4. The appellant has tried to show 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 has failed to explain under what circumstances this respondent had approached the Appellate Authority. By suppressing the said fact, the appellant willfully and deliberately suppressed crucial facts in so far as it's inaction to act on this respondent's application for Consent for Establishment (CFE) and Consent for Operation (CFO). It also grossly suppressed the fact that it has granted CFE and CFO to four other units in the same vicinity.
7. On one hand the Pollution Control Board sits idle without granting CFE & CFO to this respondent's unit, thereby making the respondent's unit suffocate & suffer financial losses. On the other hand it picks and chooses certain units for grant of CFE & CFO in the same vicinity of Vattinagulapally and Puppalaguda villages. Thus, this respondent is a victim of the partisan attitude shown by the appellate board. During this period, this respondent initially approached this Hon'ble NGT Tribunal seeking CFE & CFO and filed Appeal No. 25/2020. This Hon'ble Tribunal relegated this respondent to approach the Hon'ble High Court of Telangana State because the appellate authority was not constituted at that time.
8. Owing to the said direction of this NGT, this respondent filed W.P No: 17554/2020 in the Hon'ble High Court of Telangana, seeking the direction to the TSPCB to issue CFE/CFO. The said petition was disposed of only after the constitution of the appellate tribunal, once again relegating this respondent to approach the newly constituted appellate tribunal. While disposing off the said writ petition, this respondent was directed to make a fresh application to Telangana State Pollution Control Board appellant and the appellant was directed to



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consider all the respondent's applications for grant of CFE & CFO on its own merits.

9. The Telangana State Pollution Control Board (appellant) finally received this respondent application and took another four months for rejecting the said application. Aggrieved by the said rejection this respondent approached the Appellate Authority and filed Appeal No. 35 of 2022, and the same was allowed on 12/05/2022. The appellant and private respondent are parties in the appeal before the Appellate Authority. Both of them put-forth their defense and arguments opposing the grant of CFE& CFO to this respondent.
10. The appellate Authority found only one reason given by the TSPCB for rejecting CFE/CFO to this respondent's unit. That reason was GO.Ms No: 111 Dt. 08.03.1996, which was in operation and it stated that no industry can be located in the 10 Kms radius of both the lakes.
11. By the time the appeal was heard and considered by the Appellate Authority, the said G.O.Ms No. 111 dt.08/03/1996, had been modified by removing the restrictions in para-III of the said G.O.Ms No. 111 whereunder the restrictions imposed in 84 notified villages stood removed by virtue of new policy under G.O.Ms 69 (MA&UD (Plg-I(1)) dt.12/04/2022. In the said G.O.Ms 69 dt.12/04/2022, Telangana State appointed a Committee with the following Terms of Reference (ToR)
 - a) To suggest measures for protection and preventions of pollution to these two reservoirs.



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- b) To suggest broad guidelines for zoning including earmarking of green zones.
- c) To suggest modalities for development of trunk infrastructure in this area.
- d) To suggest various means of resource mobilisation for taking up truck infrastructure i.e., Roads, Major Drains, STPs, Diversion Drains etc.,
- e) To suggest appropriate institutional frame work to take up the infrastructure and regulate the development in this area.
- f) To suggest necessary regulatory measures to be insisted while granting any layout/building permission in this area.

12. In the said G.O.Ms 69 dt.12/04/2022, it was observed that water in both the lakes /reservoirs shall be taken for improvement of water quality by taking up the following activities

- 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.

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13. From the reading of the above mentioned, water quality measures in both the lakes and the terms of reference made to the committee, it is clear that the prohibition for establishment of an industry in Vattinagulapally village with which we are concerned, and based on which this respondent application was rejected is completely removed. Thus there is no statutory prohibition for establishing and running this respondent's unit in Sy Nos. 246/1 and 246/2 of Vattinagulapally Village.
14. Considering the above said change in scenario in so far as the statutory prohibition for establishing the respondent's unit in the above said village and survey numbers are concerned, the sole reason cited by the Telangana State Pollution Control Board for denying CFE & CFO for this respondent's unit was removed.
15. Considering the above said change in circumstances the Appellate Authority set aside the impugned order passed by Telangana State Pollution Control Board and directed Telangana State Pollution Control Board to consider this respondent's application for CFE & CFO afresh. The appellant (Telangana State Pollution Control Board) herein without considering this respondent's application filed the present appeal by distorting the actual facts.
16. This respondent is a law abiding citizen and has always complied with the law in the following manner:-
 - a. It applied for CFE & CFO vide its application dt.27/12/2019

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- b. The said application was rejected by the cryptic one line order after one year of the date of its application and posted web site on their without actual intimation to this respondent.
- c. On coming to know of the said rejection this respondent approached this Hon'ble Tribunal (SZ) and filed appeal No. 25 of 2020.
- d. This NGT relegated me to the Hon'ble High Court of Telangana State on 28/09/2020.
- e. This respondent filed WP No. 17554/2020, and the same was disposed of on 23/11/2021, relegating them to a newly constituted Appellate Authority, while disposing the said WP this respondent was directed to make afresh application to Telangana State Pollution Control Board.
- f. Accordingly this respondent made a fresh application on 10/12/2021.
- g. The appellant Telangana State Pollution Control Board took 4 months to reject that application dt.09/03/2022.
- h. Aggrieved by this rejection the respondent approached the Appellate Authority on 28/03/2022.
- i. Telangana State removed the restrictions imposed in G.O.Ms No. 111 dt.08/03/1996 and G.O.Ms No. 69 dt.12/04/2022.



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- j. In WP No. 21582/2022 filed before Telangana State High Court the Special Chief Secretary to government MA &UD filed a counter affidavit stating that the government had considered the EPTRI report and determined that Sy Nos. 246/1 and 246/2 and other survey numbers to be falling under non-catchment areas. Therefore, the Division Bench of the Hon'ble High Court of Telangana State passed a judgment dt.28/04/2022 upholding the EPTRI expert opinion that the subject survey numbers in Vattinagulapally village are not falling under catchment area of both the lakes.
- k. The specific activity of this respondent is eco-friendly recycling activity, which does not burden the environment, nor it will cause any ecological imbalance.
- l. This respondent's unit is also seeking parity on a par with existing unit to whom the appellant (Telangana State Pollution Control Board) granted CFE & CFO in the same vicinity.
- m. This respondent's unit has also sort for ex-post-facto permission /consideration on a par with the existing running units.
- n. Considering all these facts and circumstances, it is evident that injustice has been caused to this respondent's unit, the Appellate Authority remitted back the matter to Telangana State Pollution Control Board for fresh consideration and in meantime ex-post-facto permission was granted to this respondent to enable the Telangana State Pollution Control Board to ascertain the alleged



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pollution that may be caused by this respondent's unit. The Appellate Authority also gave its reasoning vividly in the order stating that the so called alleged pollution can be ascertained only during the operation of the unit.

- o. The Telangana State Pollution Control Board instead of ascertaining the pollution, approached this Tribunal in post haste manner at the behest of rival stone quarrying and crushing units.
17. This respondent's business is to crush the stone boulder excavated from the construction site and manufacture rob sand, gravel & chips to be reused in the construction industry. Therefore, this respondent's activity being an eco-friendly and recycling activity is to be encouraged by Government and Pollution Control Boards. The usage of recycled products is recognized worldwide as the need of the hour. The U.N. environmental program 2022 titled as 'Sand & Sustainability-10 strategic recommendations to avert a crisis', supports this respondent's recycling activities. Therefore, the attempt of the appellant to portray this respondent's in bad light and state that this respondent's unit is operating without CFE & CFO is futile attempt to divert merits of this respondent's case, hence the said pleadings made by the appellant shall be ignored.
18. I further submits that the Hon'ble Apex Court while considering the Principles of ex-post-facto environmental clearance held as follows in 'Electro Steels Ltd Vs. Union of India reported in 2021 SCC Online SC 1247 at para 82 to 84



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“82 The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down for the technical irregularity of shifting its site without prior environmental clearance, without opportunity to the establishment to regularize its operation by obtaining the requisite clearances and permissions, even though the establishment may not otherwise be violating pollution laws, or the pollution, if any, can conveniently and effectively be checked. The answer has to be in the negative.

83. The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior Environmental Clearance before a project is commenced. Such prior Environmental Clearance is necessarily granted upon examining the impact of the project on the environment. Ex-Post facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of Notifications under the 1986 Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of a running steel plant.

84. The 1986 Act does not prohibit ex post facto Environmental Clearance. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in over view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms”.

In the light of the settled law stated above, this respondent's unit's operation may be considered as ex-post facto operation.



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Rebuttal of the appellant's pleadings

19. The averment that G.O.Ms 69 dt.12/04/2022 has not operationalized as to how the developmental activities in the area notified under G.O.Ms 111 dt.08/03/1996, are to be regulated. It will become operational only after the recommendations are made by the committee appointed under the said GO and the said committee did not submit its recommendations till date. Therefore, the averment that this respondent cannot place reliance on the present G.O.Ms 69 is a false pleading. In fact this respondent is partially placing reliance on the said GO as it removed the restrictions for establishing the industry in notified villages under GOMs 111, dt.08/03/1996. The respondent state had accepted an expert EPTRI report, which delineated certain survey numbers to be falling outside the catchment area and informed the Hon'ble High Court for the State of Telangana, that the subject Sy Nos. 246/1 and 246/2, in which this respondent's unit is situated, is falling in the non- catchment area of the lakes, therefore the areas falling in non-catchment area need not wait for the 3 months and passing of other regulations to be formulated by newly framed committee under GOMs 69. Suppressing this policy decision of the State in accepting EPTRI report and declaring the subject survey numbers to be in non-catchment area they approached this Tribunal and mislead this Tribunal and obtained ex-parte order.
20. The second ground raised by the appellant TSPCB, that no industry can operate without obtaining consent's from the regulatory authority is true, but the appellant forgot about the ex-post facto principal while making objections to our recycling activity. This respondent is not asking for waiver of any of the statutory provisions, nor is asking that their unit to



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be permitted to operate without CFE & CFO. The appellant instead of considering this respondent's application afresh as directed by Appellate Authority, approached this Tribunal in a post haste manner, with all false facts.

21. The other averments made by the appellant that this respondent's industry did not comply with other environmental norms and that it is causing pollution to lakes and that this respondent's industry is in eco-sensitive critical zone that is in the close proximity of 1.89 KM from FTL of Osman Sagar Lake, and that it is operating without proper pollution control mechanism are all false allegations and hereby denied. In fact the same appellant herein is treating us differently from the others for obvious reasons well known to it. The following are the units in the same vicinity that were granted permissions.

(a) M/s. Srirama Engineering company is operating its stone crushers in Sy No. 141 of Vattinagulapally village and this survey number is falling in catchment area. The appellant granted CFE & CFO to this unit and the same is denied to this respondent's unit herein.

(b) Another unit by name GMR Stone crusher in sy Nos. 270 and 271 of vattinagulapalli village, this unit also falling in catchment area of Gandipet lake, but the appellant has granted CFE & CFO to the said stone crusher. But the said CFE & CFO was withheld to this respondent's unit even though it is falling in the non-catchment area.



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(c) Another unit by name Hyma Developers Pvt Ltd is permitted to carry out stone crushing activity in Sy No. 239 and 240 of Kokapet village and the above is also falling in catchment area, but the appellant herein granted CFE & CFO to the said unit and due said unit is in vicinity of 1 KM from the Gandipet lake. But the said CFE/CFO was withheld to this respondent's unit even through it is falling in non-catchment area.

(d) Another unit by name Sri Srinivasa and Company is also granted CFE & CFO to operate its stone crusher, which is also falling under the catchment area of Gandipet village and the above is also falling in catchment area, but the appellant herein granted CFE & CFO to the said unit and due said unit is in vicinity of 1 KM from the Gandipet lake. But the said CFE/CFO was withheld to this respondent's unit even through it is falling in non-catchment area.

22. The allegation in regard to our unit causing pollution to the lakes is an unsubstantiated allegation, the said allegation is omnibus and bold.
23. The averment that this respondent's unit is falling in eco-sensitive and critical zone and that it is within 1.89 KM from the FTL of Osman Sagar lake is also unsubstantiated, omnibus and false pleading. The appellant did not explain how these parameters apply to our unit and not to the other units permitted by it.

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24. The averment that our unit is a polluting industry is hereby denied. At the cost of repetition it is once again submitted that this respondent's unit is recycling and eco-friendly unit which is aiding to a better environment.
25. For all the above stated reasons this Hon'ble Tribunal may be pleased to vacate the interim order granted dt.04/07/2022 in Appeal No. 39 of 2022 by this Hon'ble Tribunal in the interest of justice.
26. It is further humbly prayed that the main appeal by the Telangana State Pollution Control Board may be dismissed as devoid of any merits, and Consequentially, direct the appellant to grant CFE & CFO to this respondent's unit on par with the other four existing units in the same vicinity. It is further prayed that CFE & CFO may be granted to this respondent in the light of delineation of the subject Sy Nos. 246/1 and 246/2 of Vattinagulapally village, to be falling under non-catchment area of Osman Sagar lake, based on EPTRI report accepted by the Telangana State in the interest of justice.

For AADESHWAR AGGREGATES PVT. LTD.

D. S. K. Reddy

DIRECTOR

Deponent

Sworn and signed before me
On this 9th day of July, 2022 at Hyderabad

Notary



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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 24 are true and correct to the best of my knowledge and Para Nos.25 and 26 are verified on legal advice, hence verified on this 21 day of July, 2022 at Hyderabad.



Counsel for the Respondent No.1

For AADESHWAR AGGREGATES PVT. LTD.

D.S.K. Reddy
Deponent
DIRECTOR



ATTESTED

SAILAJA OGIRALA
ADVOCATE & NOTARY
B.H.E.L, MIG-1110, R.C.Puram,
Hyderabad-502032. T.S. Cell. 9948292606

**BEFORE THE NATIONAL
GREEN TRIBUNAL SITING
AT CHENNAI**

Appeal No. 39 of 2022

IN THE MATTER OF:

Telangana State Pollution Control
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... Respondents

**COUNTER AFFIDAVIT FILED
ON BEHALF OF
RESPONDENT No. 1**

M/S. UNNAM LAW FIRM

Rep by its Partners and its
associates

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