

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI**

Appeal No. 21 of 2020

**IN THE MATTER OF:**

SWATHY R

.....APPELLANT

VERSUS

UNION OF INDIA & ORS

.....RESPONDENTS

**COUNTER AFFIDAVIT ON BEHALF OF THE MINISTRY OF  
ENVIRONMENT, FOREST AND CLIMATE CHANGE  
(RESPONDENT No.1)**

**MOST RESPECTFULLY SHOWETH:**

I, Dr. S. Prabhu , S/o Late K. Subramani, aged about 39 years currently working as Scientist 'C' in the Ministry of Environment, Forest and Climate Change (MoEF&CC), Integrated Regional Office, Bengaluru, do hereby solemnly affirm and state as under:



1. That I, in my official capacity of in the Ministry Environment, Forest and Climate Change, Bengaluru i.e., Respondent No.1 in the above mentioned matter, am authorised to swear this affidavit.
2. It is submitted at the very outset that the Respondent No.1 denies each averment and/or submission made in the application that is contrary to and is 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.
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 application as and when required.
4. That the appellant has challenged the impugned Environmental Clearance (“EC”) dated 14<sup>th</sup> October, 2019 issued to Arun Varghese (Managing partner of M/s. Tasna Mines) i.e., Respondent No. 7 by Respondent No. 4 i.e., The Administrator, State Environment Impact Assessment Authority, Kerala (“SEIAA”).



5. That the impugned EC has been challenged on several grounds like the administrator having no role in grant of EC as per the Environment Impact Assessment (“EIA”) Notification, 2006; failure on part of Respondent No. 3 i.e., State Expert Appraisal Committee (“SEAC”), Kerala to conduct the proper appraisal of the project of Respondent No. 7; non-consideration of existence of mines in the landslide prone area; discrepancy of facts in Environment Management Plan (“EMP”) & Form-I; absence of hydrogeological study; violation of ambient noise limit; no proper environment impact assessment being carried out etc.
6. That the appellant has prayed for stay of the EC by way of an interim-relief & has further prayed for setting aside of the impugned EC.
7. That the Respondent Ministry has issued the EIA Notification dated 14<sup>th</sup> September, 2006 under the provisions of the Environment (Protection) Act, 1986. The EIA Notification, 2006 requires certain projects to obtain prior EC before any construction work in case of new projects or expansion and modernization of existing projects or activities. The Schedule to the Notification



details the categories, projects or activities, which require prior EC. Further, the projects and activities are broadly categorized into Category 'A' and Category 'B', based on the spatial extent of potential impacts on human health, natural and man-made resources.

8. That all projects or activities included as Category 'A' in the Schedule shall require prior Environment Clearances from the Central Government in Ministry of Environment, Forests and Climate Change ("MoEF&CC") on the recommendations of the Expert Appraisal Committee ("EAC") to be constituted by the Central Government. Whereas projects or activities included as Category 'B' shall require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority ("SEIAA") based on the recommendations of the State or Union territory level Expert Appraisal Committee ("SEAC"). In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project.
9. That it is humbly submitted that as per provisions of EIA Notification 2006, Appraisal means the detailed scrutiny by the



Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance.

10. That it is also humbly submitted that the appraisal of all projects or activities which are not required to undergo public consultation, or submit an Environment Impact Assessment report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable, any other relevant validated information available and the site visit wherever the same is considered as necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

11. 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.

12. That the Respondent Ministry vide S.O. 637 (E) dated 28<sup>th</sup> February, 2014 delegates the powers vested in it under Section 5 of the Environment Protection Act, 1986 to all the State & Union Territory Environment Impact Assessment Authorities to issue show cause notice & to issue directions to the project proponents in case of violation of EC conditions & for keeping such EC(s) in abeyance or withdrawing them, if required. A copy of the Notification dated 28<sup>th</sup> February, 2014 is marked & annexed as **Annexure-R1/1.**

13. That it is submitted that the Respondent Ministry had earlier issued *Sustainable Sand Mining Management Guidelines, 2016* ("SSMG-2016") to ensure *inter-alia* that sand and gravel mining is done in environmentally sustainable and socially responsible manner, ensure conservation of the river equilibrium and its natural environment by protection and restoration of the ecological system, to ensure that rivers are protected from bank and bed erosion beyond its stable profile.



14. That the SSMG-2016 incorporates the '*Standard Environmental Conditions for Sand Mining*' which includes the impact category & the environmental conditions to be imposed based on the impact category. Further, one of the environmental condition imposed on the management of instability & erosion category specifically states that there shall be no extraction of stone / boulder / sand in landslide prone areas.

15. That it is submitted that the Respondent Ministry has further formulated the new guidelines i.e., *Enforcement & Monitoring Guidelines for Sand Mining 2020* ("EMGSM-2020") supplemental to the existing guidelines *Sustainable Sand Management Guidelines, 2016*, ("SSMG-2016") which focus on the effective monitoring of the sand mining since from the identification of sand mineral sources to its dispatch and end-use by consumers and the general public. Further, this document shall serve as a guideline for collection of critical information for enforcement of the regulatory provision(s). The EMGSM-2020 also highlights the essential infrastructural requirements necessary for effective monitoring for sustainable sand mining.



16. It is further submitted that the objective of the guidelines *inter-alia* include the identification and quantification of mineral resource and its optimal utilization, use of IT-enabled services, latest technologies for surveillance of the sand mining at each step, setting up the procedure for replenishment study of sand, post-environmental clearance monitoring and procedure for environmental audit.
17. That it is submitted that the EMGSM-2020 and SSMG-2016 shall be read and implemented in sync with each other. In case, any ambiguity or variation between the provisions of both these documents arises, the provision made in *Enforcement & Monitoring Guidelines for Sand Mining, 2020* shall prevail.
18. That it is submitted that the EC under consideration has been granted by Kerala State Environment Impact Assessment Authority.
19. That in view of the aforementioned facts and circumstances, this Hon'ble Tribunal may kindly be pleased to pass appropriate order(s).



DEPONENT

**Dr. S. PRABHU**  
Scientist 'C'

Ministry of Environment, Forest and Climate Change,  
Regional Office, South Zone,  
Kendriya Sahan, 4th Floor, Koramangala  
Bangalore-560 034.

VERIFICATION

Verified at Bengaluru on this the 9<sup>th</sup> day of November, 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.



**DEPONENT**

**Dr. S. PRABHU**  
Scientist 'C'

Ministry of Environment, Forest and Climate Change,  
Regional Office, South Zone,  
Kendriya Sahan, 4th Floor, Koramangala  
Bangalore-560 034.



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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पर्यावरण और वन मंत्रालय

अधिसूचना

नई दिल्ली, 28 फरवरी, 2014

का.आ. 637(अ).—केन्द्रीय सरकार, पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 23 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम की धारा 5 के अधीन इसमें निहित शक्तियों को पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उप-धारा (3) के अधीन केंद्रीय सरकार द्वारा गठित किए गए सभी राज्य और संघराज्यक्षेत्र पर्यावरण समाघात प्राधिकरणों (जिन्हें इसमें इसके पश्चात् उक्त प्राधिकरण कहा गया है) को उक्त प्राधिकरणों द्वारा अपनी अधिकारिता के भीतर परियोजनाओं या क्रिया कलापों को जारी पर्यावरण अनापत्तियों की शर्तों के अतिक्रमण की दशा में परियोजना प्रस्तावकों को कारण बताओ नोटिस जारी करने तथा इस शर्त के अधीन कि केंद्रीय सरकार शक्तियों के ऐसे प्रत्यायोजन का प्रतिसंहरण कर सकेगी या उक्त अधिनियम की धारा 5 के उपबंधों को स्वयं अवलंब ले सकेगी, यदि केंद्रीय सरकार की राय में लोक हित में ऐसी कार्यवाही आवश्यक है, यदि अपेक्षित हो तो अतिक्रमणों के लिए उक्त परियोजना प्रस्तावकों को ऐसी पर्यावरण अनापत्तियों को उन्हें प्रार्थगित रखने या वापस लिए जाने हेतु निदेश जारी करने की शक्तियों का प्रत्यायोजन करती है।

[सं. जे-11013/2/2013-आई ए (आई)]

अजय त्यागी, संयुक्त सचिव

MINISTRY OF ENVIRONMENT AND FORESTS

NOTIFICATION

New Delhi, the 28th February, 2014

S.O. 637(E).—In exercise of the powers conferred by section 23 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby delegates the powers vested in it under section 5 of the said Act to all the State and Union Territory Environment Impact Assessment Authorities (Hereinafter referred to as the said Authorities) constituted by the Central Government under sub-section (3) of section 3 of Environment (Protection) Act, 1986, to issue show cause notice to project proponents in case of violation of the conditions of the environment clearances issued by the said Authorities to projects or activities within their jurisdiction and to issue directions to the said project proponents for keeping such environment clearances in abeyance or withdrawing them, if required, for violations, subject to the condition that the Central Government may revoke such delegations of powers or may itself invoke the provisions of section 5 of the said Act, if in the opinion of the Central Government such a Course of action is necessary in the public interest.

[No. J-11013/2/2013-IA. (I)]

AJAY TYAGI, Jt. Secy.

## अधिसूचना

नई दिल्ली, 28 फरवरी, 2014

**का.आ. 638(अ).**—केंद्रीय सरकार, पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 19 के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त की धारा के प्रयोजन के लिए इसमें उपाबद्ध उस सारणी के स्तंभ (3) में उनमें से प्रत्येक के सामने उल्लिखित अधिकारिता के साथ उस सारणी के स्तंभ (2) में उल्लिखित प्राधिकरण या अधिकारी का प्रातिकृत करती है:

## सारणी

क्रम संख्यांक	प्राधिकरण/अधिकारी	अधिकारिता
(1)	(2)	(3)
1.	पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उपधारा (3) के अधीन केंद्रीय सरकार द्वारा गठित राज्य या संघ राज्यक्षेत्र स्तर पर्यावरण समाघात प्राधिकरण (एस.ई.आई.ए.ए.)	संपूर्ण राज्य या संघ राज्यक्षेत्र
2.	पर्यावरण और वन मंत्रालय (एम.ओ.ई.एफ.) के किन्हीं प्रादेशिक कार्यालयों में तैनात कोई निदेशक, वन संरक्षक या अपर प्रधान मुख्य वन संरक्षक	पर्यावरण और वन मंत्रालय द्वारा यथा- विनिश्चित प्रादेशिक कार्यालय की अधिकारिता

[सं. जे-11013/2/2013-आई ए (आई)]

अजय त्यागी, संयुक्त सचिव

## NOTIFICATION

New Delhi, the 28th February, 2014

**S.O. 638(E).**—In exercise of the powers conferred by clause (a) of section 19 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby authorises the Authority or officer mentioned in column (2) of the Table hereto for the purpose of the said section with the jurisdiction mentioned against each of them in column (3) of that Table:

## TABLE

S. No.	Authority/Officer	Jurisdiction
(1)	(2)	(3)
1.	State or Union Territory level Environment Impact Assessment Authority (SEIAA) constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986.	Whole of State or Union Territory
2.	Any Director, Conservator of Forests or Additional Principal Chief Conservator of Forests Posted in any of the Regional Offices of the Ministry of Environment and Forests (MoEF).	Jurisdiction of the Regional Office as decided by the Ministry of Environment and Forests

[No. J-11013/2/2013-IA. (I)]

AJAY TYAGI, Jt. Secy.