

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI
IN
ORIGINAL APPLICATION NO 241 OF 2020

IN THE MATTER OF:

Mohammed Jishar&Ors

... Applicant

Vs.

Union of India & Ors.

... Respondent

INDEX

S.no	Particulars	Pg. no.
1.	Counter Affidavit on behalf of Respondent No.1	2-8

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COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.1

MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE

1. I, Dr. S. Prabhu, presently working as Scientist "D" in the Ministry of Environment, Forest & Climate Change (hereinafter referred to as MoEFCC), Integrated Regional Office at Bengaluru do hereby, solemnly affirm and state as follows:-
2. That I am authorised to swear the present affidavit on behalf of the MoEFCC on the basis of the official records maintained therein.
3. It is humbly submitted that the contents stated in the instant petition are denied unless specifically admitted in this counter affidavit. I crave leave to file further additional affidavit, if and when required.
4. That it has been alleged in the petition that the project is of widening of National Highway 66 in the Kapplrikkad-Edappally section in Ernakulam and Malappuram District. The Section is part of the Ramanattukara-Edapally



section covering a stretch of 167 km involving land acquisition and with additional right of way greater than 45 meters.

5. It is humbly submitted that the applicant has prayed before the hon'ble tribunal to declare obtaining of prior Environmental Clearance from the first respondent is a pre-requisite for the construction/ development/ widening of the National Highway-66 from Ramnattukara to Edappally.
6. It is humbly submitted that under the Environment (Protection) Act, 1986 read with Environment (Protection) Rules, 1986, the Ministry has issued a notification number S.O. 1533(E) dated 14.09.2006 (hereinafter referred to as the "EIA Notification, 2006"), in suppression of the notification number S.O.60 (E) dated 27th January, 1994.
7. It is humbly submitted that under the provision of the EIA Notification, 2006, all new projects or activities listed in the Schedule to the EIA Notification 2006 or the expansion or modernization of existing projects or activities listed in the Schedule to the EIA Notification 2006 with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization or any change in product –mix in an existing manufacturing unit included in Schedule beyond the specified range, shall be undertaken in any part of India, as applicable, only after receipt of the prior environment clearance from the Central Government or by the State Level Environment Impact Assessment Authority ("SEIAA"), as the case may be. It is submitted



that, the Central Government under sub Section (3) of section 3 of the Environment Protection Act, 1986 in accordance with the procedure specified in the EIA Notification, 2006, duly constitutes SEIAA in the States.

8. It is humbly submitted that under the provisions of EIA Notification, 2006, Highways are covered under entry 7(f) of the Schedule to the EIA Notification, 2006. The entry 7(f) of the Schedule of EIA Notification 2006 (as it existed up to 22/8/2013); provided as follows:

	Project or Activity	Category with threshold limit		Conditions if any
		A	B	
(1)	(2)	(3)	(4)	(5)
		Physical Infrastructure including Environmental Services		
7(f)	Highways	i) New National Highways; and ii) Expansion of National Highways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition and passing through more than one State.	i) All New State Highways projects; ii) State Highway expansion projects in hilly terrain (above 1000 m AMSL) and/or ecologically sensitive areas	General Condition shall Apply Note: Highways include Expressways

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8. It is humbly submitted that under the provisions of the EIA Notification, 2006 (as it existed up to 22/8/2013);, New National Highways and expansion of National Highways greater than 30km, involving additional right of way or land acquisition greater than 20m involving land acquisition or passing through more than one state was listed in the Schedule 7 (f) of the EIA Notification, 2006, and such a project were required be undertaken only after prior Environment Clearance from the Central Government.
9. That, the New National Highway/State Highways, irrespective of its length, width of right of way or land acquisition, requires prior Environment Clearance from the Central Government/State Government, as the case may be.
10. That the Ministry issued an amendment Notification S.O. 2559(E) dated 22.08.2013. The amended provision reads as follows.

“b) In the Schedule, against sub-item (f) of item 7, in column (3), for the entry (ii) the following entry shall be substituted namely: -

(ii) Expansion of National Highways greater than 100 Km involving additional right of way or land acquisition greater than 40m on existing alignments and 60m on re-alignments or by-passes.”

13. In view of above, it is submitted that as per extant provisions prior EC is required if, the proposed expansion involves more than 100 km of length and additional right of way (RoW) or land acquisition greater than 40m on existing alignments and 60m on re-alignments or by-passes. It is further submitted that



as EIA Notification, 2006 and subsequent amendment on 22.08.2013, only such project which meets both the conditions, i.e., threshold length of the highway and envisaged expansion width (RoW or land acquisition) of the highway, would require a prior EC.

14. It is humbly submitted that apart from the regulatory provisions of the MoEFCC, the project proponent has to follow the guidelines prescribed by the Ministry of Road Transport & Highways (MoRTH)/IRC from time to time. Following are some references:

- i. RC-104-1988 Guidelines for Environmental Impact
- ii. IRC -SP-2009 : Guidelines on Landscaping and Tree Plantation (IRC:SP-21-2009)
- iii. MoRTH – Environment Management Framework - A Guidance Document to deal with Environmental Issues during Planning, Design and Construction of Roads Under the Project - 30/11/2019 (Draft).

15. It is humbly submitted that the projects which do not fall under the purview of the EIA Notification, 2006 and its amendments, also need to obtain clearances from various departments.

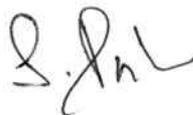
- i. Tree cutting permission from appropriate authority for forest and non-forest area as per prevailing laws;
- ii. Consent to Establish and Consent to Operate for construction



Machineries from State Pollution Control Board under Air Act, 1981 (amended thereof) and Water Act, 1974 (amended thereof);

- iii. NOC from appropriate authority for setting up the construction camps;
- iv. Permission from ground water authority for withdrawing / abstracting any ground water;
- v. Permission from the Irrigation dept. for abstraction of water from surface sources;
- vi. Permission from mining dept. / appropriate authority for procurement of aggregates, sands and borrow area;
- vii. Clearance for diversion forest land under Forest Conservation Act, 1980;
- viii. Wildlife clearance for stretches passing through protected areas under wildlife Protection Act, 1972;
- ix. Permission from State Board of Wildlife (SBWL) and National Board of Wildlife (NBWL) for crossing any tiger corridor notified in section 38 O(1g) under Wildlife Conservation Act, 1972;
- x. Permission from SBWL and NBWL for crossing conservation reserve notified under Wildlife Protection Act, 1972;
- xi. CRZ clearance for CRZ area falling in the project alignment;
- xii. social Impact Assessment Study as per applicable provisions of LARR, 2013.

16. It is humbly submitted that in the matter SLP (C) No. 8665 - 8667 of 2020 titled as "The National Highways Authority of India Vs. Pandarinathan



Govindarajulu & Others, before the Hon'ble Supreme Court of India, the Hon'ble Court has directed MoEFCC to constitute an Expert Committee to examine "whether segmentation is permissible for National Highway projects beyond a distance of 100 kms and, if permissible, under what circumstances".

17. That Ministry vide OM No. F. No. 3-65/2020-IA.III dated 15th March, 2021 has constituted the said Committee. The Report is under finalization.

18. It is submitted that the present counter affidavit may kindly be taken on record and into consideration and the Hon'ble Court may pass appropriate Order(s), direction(s) as deemed fit and proper under the facts and circumstances of the present case.


DEPONENT

Dr. S. Prabhu
Scientist 'D'
Ministry of Environment Forest & Climate Change
Integrated Regional Office
Kendriya Sadan, 4th Floor, Koramangala
Bangalore - 560 034

VERIFICATION

I, the above named Deponent, do hereby verify that the contents of the above affidavit are true and correct to my knowledge as per the records of the answering respondents. No part of it is false and nothing material has been concealed there from.

Verified at Bengaluru on this 31st day of March, 2022.


DEPONENT

Dr. S. Prabhu
Scientist 'D'
Ministry of Environment Forest & Climate Change
Integrated Regional Office
Kendriya Sadan, 4th Floor, Koramangala
Bangalore - 560 034