

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI
IN
ORIGINAL APPLICATION NO 242 OF 2021

IN THE MATTER OF:

Tejah & Ors

... Applicant

Vs.

Ministry of Environment, Forest & Climate Change

& Ors.

... Respondent

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S.no	Particulars	Sno.
1.	Counter Affidavit on behalf of Respondent No.1	



24 FEB 2022

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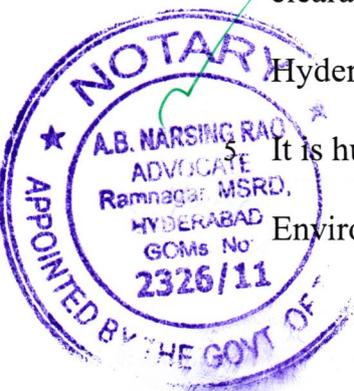
**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.1 MINISTRY
OF ENVIRONMENT FOREST AND CLIMATE CHANGE**

1. I, Dr.E.Arockia Lenin s/o Shri Emanuvel aged about 34 years, presently working as Scientist C in the Ministry of Environment, Forest & Climate Change (hereinafter referred to as MoEFCC), at Hyderabad do hereby, in my official capacity, solemnly affirm and state on oath as follows-
2. That I am acquainted with the facts and circumstances of the instant case and duly competent 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. It is humbly submitted that the applicant has prayed before the hon'ble tribunal to declare that the stretch of NH 163 between Hyderabad and Manneguda should not be widened and that 1036 old Banyan trees and 9000 other trees along the road should not be felled and direct the respondent no.2 to obtain the Environmental clearance under 7(f) of the EIA Notification, 2006 for the proposed project between Hyderabad and Manneguda.

It is humbly submitted that under the Environment (Protection) Act, 1986 read with Environment (Protection) Rules, 1986, the Ministry has issued a notification

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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.

6. 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.
7. 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	
	(2)	(3)	(4)	(5)
		Physical Infrastructure including Environmental Services		

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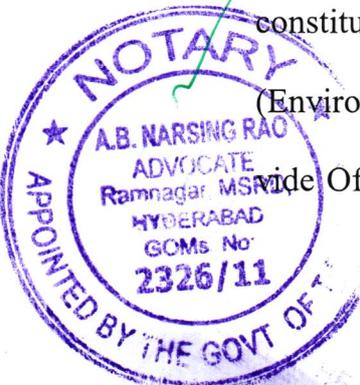
7(f)	Highways	i) New National Highways; and ii) Expansion of National Highways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition and passing through more than one State.	i) All New State Highways projects; ii) State Highway expansion projects in hilly terrain (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 Government of India in the Ministry of Environment and Forests had constituted a High Level Committee under the Chairmanship of Member (Environment and Forests and Science and Technology), Planning Commission,

vide Office Memorandum No.21-270/2008-IA.III dated the 11th December, 2012



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to review the provisions of Environmental Impact Assessment Notification, 2006 relating to granting Environmental Clearances for Roads, Buildings and Special Economic Zone projects.

11. That the committee inter-alia recommended that the expansion of National Highway projects upto 100 km involving additional right of way/land acquisition upto 40 m on existing alignments and upto 60 m on re-alignments/by-passes may not be insisted for prior environmental clearance under the Environment Impact Assessment Notification, 2006 in view of the spatial linearity of the project.
12. It is humbly submitted that the Ministry accepted the recommendations of the Committee and 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. That Ministry has issued this amendment in order to make the Environmental Clearance process more objective. It is further submitted that the members of the committee constituted are Experts /domain experts in various fields and have examined the matter in detail.



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15. 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”.

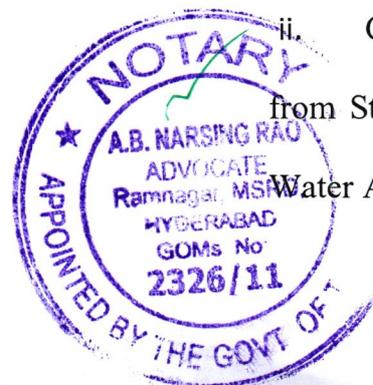
16. That Ministry vide OM No. F. No. 3-65/2020-IA.III dated 15th March, 2021 has constituted the said Committee. The Committee will submit its report by 31st March, 2022.

17. 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:

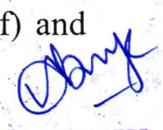
- i. RC-104-1988 Guidelines for Environmental Impact
- ii. IRC -SP-2009 : Guidelines on Landscaping and Tree Plantation(IRC:SP-21-2009)
- iii. MoRTH – Environment Management Framework - A Guidance Document to deal with Environmental Issues during Planning, Design and Construction of Roads Under the Project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

18. It is humbly submitted that the projects which does 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);



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- 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 form 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

19. 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

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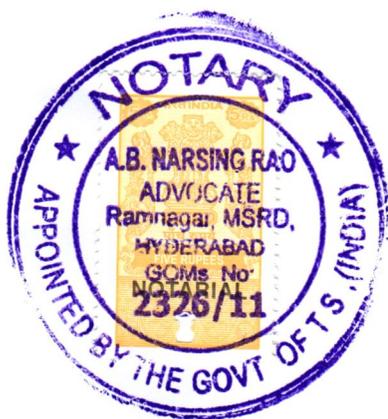


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VERIFICATION

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 Hyderabad on this 24th day of February, 2022.



ATTESTED
(Signature)
A.B. NARSING RAO
B.Sc.,LL.F
ADVOCATE & NOTARY
No. 1-7-631/2/E, Gemini Colony,
Ramnagar, Musheerabad,
Hyderabad-48 T.S. India

(Signature)
DEPONENT
Dr. E. AROCKIA LENIN
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