BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE BENCH AT CHENNAI

ORIGINAL APPLICATION NO. 263 OF 2020 (SZ)

IN THE MATTER OF:

MEENAVA THANTHAI K.R. SELVARAJ
KUMAR MEENAVAR NALA SANGAM …APPLICANT

VERSUS

UNION OF INDIA & ORS. …RESPONDENTS

S.NO	PARTICULARS	PAGE NOS.
1.	WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT	1-14

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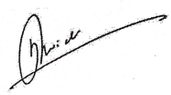

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Dated:- 09.02.2022

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MOST RESPECTFULLY SHOWETH:

1. The present Application has been filed under Section 14 of the National Green Tribunal Act, 2010 challenging the amendment notification dated 16.01.2020 ("impugned notification") issued by the Ministry of Environment Forest and Climate Change to the limited extent that it re-categorizes "Onshore and offshore exploration of oil and gas" activity as 'B2' from 'A' under the EIA Notification, 2006 and granting certain exemptions to the offshore and onshore Oil and Gas exploration projects.
2. That the Original Application under Section 14 of the National Green Tribunal Act, 2010 challenges the vires of the Notification dated 16.01.2020 raising the following substantial questions relating to environment:-
    I. Whether the impugned notification is in contravention of the parent legislation, i.e. Section 3 of the Environment (Protection) Act, 1986 and therefore is bad in law and is liable to be struck down?

II. Whether the re-categorisation of Oil and Gas exploration projects from Category A to Category B2 would be a "measure to protect and improve the environment"?

III. Whether the MoEFCC could have exempted the requirement of conducting EIA study as well as public consultation for exploration projects and seismic surveys for oil and gas merely on the basis of "references" and without giving any other reasons?

IV. Whether the impugned notification is bad in law as it has been issued without consideration of relevant and material factors?

V. Whether any public interest is served by exempting public consultation?

VI. Whether the impugned notification is contrary to the established principles of international environmental law including the Precautionary Principle?

VII. Whether the impugned notification is contrary to the principle of non-regression which has been referred to by this Hon'ble Tribunal in the judgment dated 8.12.2017 in Society for Protection of Environment and Biodiversity (SPENBIO) v. Union of India (OA No. 660 of 2016)?

Copy of the impugned notification dated 16.01.2020 is annexed with the Original Application as **Annexure A-1 (Pages 25 to 30)**

3. That in the Original Application the Applicant has primarily taken, inter-alia, the following issues/grounds of challenge:

(i) Impugned notification does not take into consideration relevant factors

(ii) Impugned Notification exempts EIA Studies and Public Consultation for Exploration of Oil and Gas

(iii) Impugned notification is in violation of the provisions of the parent act, i.e. environment (protection) act, 1986

(iv) No reasons given in impugned Notification

(i) IMPUGNED NOTIFICATION DOES NOT TAKE INTO CONSIDERATION RELEVANT FACTORS

i. The Notification does not take into consideration the environmental impact of exploratory activities for oil and gas.

ii. There are several activities involved during offshore and onshore exploration of oil and gas.

iii. Seismic surveys as well as exploratory activities involve several activities including clearing of land, installation of drilling rigs, construction of ancillary facilities, etc and thus would have large scale impacts on the onshore or offshore environment, ecology and biodiversity.

iv. Such activities are sources of pollutants in the form of liquid effluents, gaseous emissions as well as solid wastes.

v. The Seismic surveys and drilling in marine environments should be assessed. Seismic surveys have large-scale environmental impacts. In respect of offshore seismic surveys, it entails ships that trail an array of air guns that explode underwater. These explosions are among the loudest noises in the marine environment and would definitely have a immediate as well long term impacts. Thus, it is absolutely necessary that such impacts are first assessed before allowing any seismic surveys for exploration of oil and gas. ***(Technical EIA Guidance Manual for offshore and onshore oil and gas***

exploration, production and development (August 2010) annexed as Annexure A-2.(pages 31 to 86) and Original Application (paras 10 i to v)

(ii) IMPUGNED NOTIFICATION EXEMPTS EIA STUDIES AND PUBLIC CONSULTATION FOR EXPLORATION OF OIL AND GAS

4. That it is submitted that by categorizing oil and gas exploration activities as B2, the requirement of undertaking scoping and EIA studies is exempted as per EIA Notification. Further, the requirement of public consultation gets exempted as per Para & (III) (i) (e) of the EIA Notification. Such a dilution is completely contrary to the very objective of the EIA Notification and settled law.

5. The Hon'ble Supreme Court in ***Lafarge Umiam Mining Pvt. Ltd. v. Union of India and Ors (2011) 7 SCC 338*** emphasized on the importance and mandatory nature of public consultation:-

> "122.
>
> …
>
> (*xiv*) The public consultation or public hearing as it is commonly known, is a mandatory requirement of the environment clearance process and provides an effective forum for any person aggrieved by any aspect of any project to register and seek redressal of his/her grievances.*"*
>
> …

6. Further, in the matter of ***Electrotherm (India) Ltd. v. Patel Vipulkumar Ramjibhai*****,** reported in **(2016) 9 SCC 300**, has categorically laid down that public hearing must not be exempted from decision making process–

> *"**19.** In terms of the principles as laid down by this Court in Lafarge [Lafarge Umiam Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338] , we find **that the decision-making process in doing away with or in granting exemption from public consultation/public hearing, was not based on correct principles and as such the decision was invalid and improper.***

> ***20.*** *… In our considered view,* ***the interest of justice would be subserved if that part of the decision exempting public consultation/public hearing is set aside and the matter is relegated back to the authorities concerned to effectuate public consultation/public hearing****. However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court. If the public consultation/public hearing results in a negative mandate against the expansion of the project, the authorities would do well to direct and ensure scaling down of the activities to the level that was permitted by environmental clearance dated 20-2-2008. If public consultation/public hearing reflects in favour of the expansion of the project, environmental clearance dated 27-1-2010 would hold good and be fully operative."*
>
> (Emphasis supplied)

(Para 10 II. and grounds G to I of the Original Application may be perused in this regard)

7. Similar emphasis on importance of Public consultation has been provided in **Hanuman Laxman Aroskar v. Union of India** reported in **(2019) 15 SCC 401** where the Hon'ble Supreme Court has held:-

> **110.** The importance of public consultation is underscored by the 2006 Notification. Public consultation, as it states, is "the process by which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to take into account all the material concerns in the project or activity design as appropriate". This postulates two elements. They have both, an intrinsic and an instrumental character. The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity. Public consultation is a process which is designed to hear the voices of those communities which would be affected by the activity. They may be affected in terms of the air which they breathe, the water which they drink or use to irrigate their lands, the disruption of local habitats, and the denudation of environmental ecosystems which define their existence and sustain their livelihoods.
>
> **111.** Public consultation involves a process of confidence building by giving an important role to those who have a

plausible stake. It also recognises that apart from the knowledge which is provided by science and technology, local communities have an innate knowledge of the environment. The knowledge of local communities is transmitted by aural and visual traditions through generations. By recognising that they are significant stakeholders, the consultation process seeks to preserve participation as an important facet of governance based on the rule of law. Participation protects the intrinsic value of inclusion.

113. Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders, is to account for all the material concerns in the design of the proposed project or activity. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA. Each of these elements is crucial to the design features of the 2006 Notification. A breach will render the process vulnerable to challenge on the ground that:

(*i*) significant environmental concerns have not been taken into account;

(*ii*) there was an absence of a full disclosure when the EIA report was put up for consultation; and

(*iii*) concerns which have been expressed by persons affected by the project have not been adequately dealt with or analysed.

(iii) IMPUGNED NOTIFICATION IS IN VIOLATION OF THE PROVISIONS OF THE PARENT ACT, I.E. ENVIRONMENT (PROTECTION) ACT, 1986

8. That the instant notification has been purportedly issued by the Respondent No.1 by virtue of the powers conferred under Section 3 (1) and (2) (v) of the Environment (Protection) Act, 1986 and Rule 5 of Environment Protection Rules, 1986. A bare reading of the said provisions make it clear that the provisions only permit restrictions/ prohibition on activities for the protection and improvement of the environment. Section 3 (2) (v) reads as follows:-

> *"3. Power of Central Government to take* ***measures to protect and improve environment.-***
> *(1) Subject to the provisions of this Act, the Central Government,* ***shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.***
> *(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--*
> *...*
> *(v)* ***restriction of areas*** *in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;"*
>
> (Emphasis Supplied)

9. It is clear that the power granted to the Central Government under Section 3 of the Environment (Protection) Act, 1986 is only for measure to protect and improve the environment. The impugned notification clearly fails to show how re-categorisation of exploration of oil and gas from Category A to Category B2 would be a measure for protection and improvement of the environment.

10. In ***Alembic Pharmaceuticals (P) Ltd. v. Rohit Prajapati & Ors.*** reported in 2020 SCC OnLine SC 347 it has held as follows in relation to any measure of the Central Government under Section 3 of the Environment (Protection) Act, 1986:-

> *"24. ...****For an action of the Central government to be treated as a measure referable to Section 3 it must satisfy the statutory requirement of being necessary or expedient "for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environment pollution".*** *The circular dated 14 May 2002 in fact does quite the contrary. It purported to allow an extension of time for industrial units to comply with the requirement of an EC. The EIA notification dated 27 January 1994 mandated that an EC has to be obtained before embarking on a new project or expanding or modernising an existing one.* ***The EIA notification of 1994 has been issued under the provisions of the Environment Protection Act 1986 and the Environment Protection Rules 1986, with the object of imposing restrictions and prohibitions on setting up of new projects or expansion or modernisation of existing project. The measures are based on the precautionary principle and aim to protect the interests of the environment.*** *The circular dated 14 May*

> *2002 allowed defaulting industrial units who had commenced activities without an EC to cure the default by an ex post facto clearance.* ***Being an administrative decision, it is beyond the scope of Section 3 and cannot be said to be a measure for the purpose of protecting and improving the quality of the environment****"*
>
> (Emphasis supplied)

11. That it is submitted that the impugned notification completely disregards the object of the Section 3 (2) (v). It is submitted that a delegated legislation has to be struck down if it is violative of the provisions of the enabling Act. (***Secretary, Ministry of Chemicals & Fertilisers v. Cipla Ltd.***)

12. The Hon'ble Supreme Court in the matter ***of Jt. Reg., Co-op Societies v. Rajagopal*** reported in **(1970) 1 SCC 753** has held that even though an authority may act in its subjective satisfaction, there must be cogent material on which the Authority has to form its opinion.

13. Further, in the matter of ***Indian Railways Construction Co. Ltd. v. Ajay Kumar*** reported in **(2003) 4 SCC 579,** the Hon'ble Supreme Court has held that an Authority "*must act in good faith, must have regard to all relevant considerations, must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter and to the spirit of the legislation that gives it power to act and must not act arbitrarily or capriciously"*

14. The power provided by the 1986 Act as well as the Rules made thereunder is to enact stringent measures for the purpose of protection and improvement of the environment. Nowhere do they grant the power of diluting or relaxing existing restrictions and prohibitions which were put in place in order to improve the environment.

(Para 10 III -pages 12 to 14 the Original Application may be perused in this regard)

(iv) NO REASONS GIVEN IN IMPUGNED NOTIFICATION

15. That it is submitted that as per Rule 5 (3) (b) of the Environment (Protection) Rules, 1986, the Central Government must specify reasons for any measure undertaken as per Section 3 and Rule 5. However, in the present case, no reasons whatsoever have been given by the Ministry while issuing such an amendment.

16. There is no mention of what process was undertaken by the Ministry after receiving such request and how the Ministry came to the conclusion that exemption of oil and gas exploration activities would be a "measure to protect and improve environment"

17. That the Sole Respondent has filed it's Additional Affidavit dated 14.06.2021. In it's Additional Affidavit the Sole Respondent has stated as follows:

> "6. It is most respectfully submitted that, in exercise of the powers conferred by Sub-Section (1) and Clause (v) of Sub-Section (2) of Section 3 of the Environment (Protection) Act, 1986, the Central Government is empowered to re-categorize the off-shore and onshore oil and gas exploration projects to be granted EC under the provision of B2 category of the EIA Notification 2006, because exploration drilling is a temporary' activity lasting only 3-4 months without having any permanent establishment or setup."

It is stated that the Sole Respondent has purposely not filed a para-wise Reply to the Original Application and limited it's Reply to just the above contention which actually does not answer the detailed issues/grounds taken up by the Applicant in it's Original Application as mentioned above.

(Para 10 x-pages 14 of the Original Application may be perused in this regard)

NEITHER THE EXPERT COMMITTEE NOR THE OM NO. J-11013/12/2013-IA-II(I) DATED 30.01.2013, TALKS ABOUT CATEGORIZATION OF "ONSHORE AND OFFSHORE EXPLORATION OF OIL AND GAS" ACTIVITY AS 'B2' FROM 'A' UNDER THE EIA NOTIFICATION, 2006.

18. That it is stated that the EIA Notification, 2006 prescribes that Category 'B' projects are further categorized as category 'B1' and 'B2' (except for Township and Area Development Projects) for which the Ministry of Environment & Forests (MoEF) have to issue appropriate guidelines from time to time as per para 7.1 Stage(1)-Screening'. The projects categorized as B1 will require EIA Report for appraisal and to undergo public consultation process (as applicable). Projects categorized as 'B2' will be appraised based on the application in Form-I accompanied with the Pre-feasibility Report and any other documents.
19. That by an Office Memorandum dated 24th December, 2013 of the Ministry of Environment and Forests came out with the guidelines for consideration of proposals for grant of Environmental Clearance, Environmental Impact Assessment (EIA) Notification and its amendments with respect to categorization of Category 'B' projects/activities into Category 'B1' & 'B2'.
20. That Office Memorandum dated 24th December, 2013 states that vide O.M No. J-11013/12/2013-IA-II(I) dated 30.01.2013, the MoEF constituted, an Expert Committee, under the Chairmanship of Director, NEERI, Nagpur. The Committee submitted it's report. The recommendations of the Committee had been examined by MOEF and certain activities of Category 'B' projects/activities have been categorized into Category 'B1' & 'B2' listed in the Schedule of EIA Notification, 2006 and its amendments like Mining of Minerals, Thermal Power Plants, Mineral Beneficiation, Metallurgical Industries(ferrous & non-ferrous), Cement Plants, Chlor Alkali Industry, Leather/Skin/Hide

Processing Industry, Chemical Fertilizers, Manmade Fibers Manufacturing, Aerial Ropeways.

21. That it is stated that neither the Expert Committee nor the OM above cited talks about categorization of "Onshore and offshore exploration of oil and gas" activity as 'B2' from 'A' under the EIA Notification, 2006. Copy of the Office Memorandum dated 24th December, 2013 of the Ministry of Environment and Forests is annexed as **Annexure-A5 (pages 5 to 8 of the Rejoinder).**

IT IS WELL SETTLED THAT THE NGT'S JURISDICTION TO DEAL WITH ENVIRONMENTAL ISSUES IS VERY WIDE

22. That in ***Vanashakti & Anr. vs. Union of India & Ors., PIL No. 28 of 2021*** which was a case in which the Petitioner, a public trust registered under Bombay Public Trust Act, 1950 challenged a notification bearing no. G.S.R 37 (E) dated January 18, 2019 issued by the Ministry of Environment, Forest and Climate Change. The impugned notification in this case purported to supersede the Coastal Regulation Zone Notification 2011 which was challenged on the ground that some of its provisions were arbitrary and violative of Article 14 of the Constitution, as well violated the right to live in a healthy environment, and consequently violated the right to life of citizens protected by Article 21. The Bombay High Court while dismissing the Writ Petition gave liberty to the Petitioner to pursue their remedy before the Ld. NGT. By it's Order dated 08th October, 2021 the Bombay High Court in the case of ***Vanashakti (Supra)*** held that:-

> 25. We would preface our discussion while dealing with this contention by referring to the decision of the Supreme Court in **Mantri Techzone (P) Ltd. vs. Forward Foundation**, reported in (2019) 18 SCC 494. This decision is not only relevant for the contention under consideration but also as regards interpretation of the several provisions of the NGT Act resulting in conferment of wide and extensive powers on the Tribunal in relation to environmental issues (paragraphs 40 to 46). The Court, upon recording that the NGT Act is a beneficial legislation held that:

> "46. *** An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction."

While considering section 33, it was held as follows:

> "47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporations Act, 1976 (the KMC Act); and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or RMP."

26. **In view of the pronouncement that the NGT Act would override State legislations, any planning law has to yield to the former.** Equally, section 24 of the Environment Act provides that the provisions thereof and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act. The MRTP Act, if it contains any provision inconsistent with the Environment Act, must yield to the latter. **Even otherwise, if there is direct violation of a specific statutory environmental obligation by a person affecting the community at large or likely to affect such community, the Tribunal may step in and pass such order as is warranted for settling the dispute.**

27. We now propose to assign our own reasons as to why the contention under consideration does not appeal to us to be acceptable.

28. The Tribunal's jurisdiction to deal with environmental issues is so wide and expansive that literally speaking, `everything under the sun' raising substantial question relating to environment can be dealt with by it. It would matter little that in its pursuit to further the objects for which the Tribunal has been brought into existence as well as to ensure protection of environment and conservation of forests and other natural resources including enforcement of any legal right relating to environment, any other enactment is required to be considered. **So long as the basic question remains the same, i.e, the Tribunal is either approached or is duty bound to secure proper implementation of the enactments specified in Schedule I of the NGT Act and a substantial question in relation thereto arises, and the**

decision of the Tribunal on such question would beneficially impact the environment, merely because in the process of decision making the Tribunal may be required to consider provisions of any other enactment would not denude it of its fundamental and predominant task of taking decisions that would advance the object of the Schedule I enactments as also to secure the ends of justice in any particular case. We may refer in this connection to rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 framed by the Central Government.

29. There is one final reason for which we are not persuaded to accept the contention of Mr. Dhond. There could be a situation that the impugned notification is also under challenge before the Tribunal on the first two contentions raised by the petitioners, as noted above, in an application under section 14 of the NGT Act. If this writ petition were entertained, which raises the fourth contention also, as noted above, the Court would be tasked to decide the first two and the fourth contentions on its own merits. The Tribunal also being in *seisin* of the first two contentions, there would always be a possibility of conflicting opinions being rendered by this Court and the NGT in respect of the same subject matter of challenge which, in our opinion, would be absolutely undesirable.

30. Regard being had to the wide contours of the Tribunal's powers to address all concerns pertaining to environment, it would not be appropriate for us to entertain this writ petition on the specious ground that issues relating to the MRTP Act may also incidentally arise for consideration of the Tribunal. If such issue arises, the Tribunal has to decide the same bearing in mind that it being a creature of the NGT Act, environmental interest is of paramount consideration and it has to decide accordingly.

31. We are also minded to observe that no Court ought to interfere in respect of matters over which the Tribunal has jurisdiction, or else the very purpose for enactment of the NGT Act would stand defeated. The Tribunal, having regard to its constitution, would be better equipped to deal with all points of law and facts, which could be intricate, with the expert assistance that is available at its level.

32. The discussion must end by quoting paragraph 40 of the decision of the Supreme Court in **Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India**, reported in (2012) 8 SCC 326, reading as follows:

> "40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT").

> Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned."
>
> (Emphasis supplied)
>
> 33. We, therefore, reject this contention too."

23. That therefore, it is well settled in view of the above Judgment that this Hon'ble Tribunal's jurisdiction to deal with environmental issues is very wide. So it is within the Tribunal's power to Quash and set aside the impugned notification dated 16.01.2020 to the extent it re-categorizes the onshore and offshore exploration of oil and gas projects from Category A to Category B2. It is prayed accordingly.

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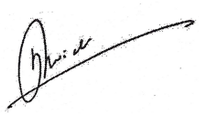

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