

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI

OA No. 28 of 2023

National Environment Care Federation (Registered)

Rep. by its General secretary H. Shashidar Shetty,

...Applicant

Versus

Chief Secretary to the Government of Karnataka and 12 others

...Respondents

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FILED BY

S. MOHANAPRIYA

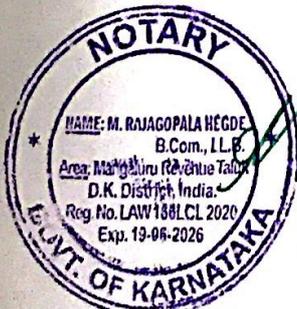
Advocate for the Applicant

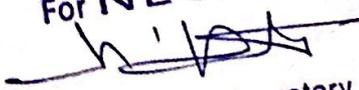
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**REJOINDER FILED BY THE APPLICANT TO THE REPLY FILED BY
RESPONDENT No.7 (ASSISTANT CONSERVATOR OF FORESTS,
MANGALORE SUBDIVISION) DATE OF REPORT ON 31.08.2023**

The Applicant submits as follows.

1. The Present Application filed Under sec. 18(1) read with Sec. 14 and 15 of National Green Tribunal Act 2010 against the Meeting for granting permission to felling of trees between Nandi Gudda and Marnamikkatte as per the annual scheme Ma.Na.Pa./Taravu No.42/2017-18 dated 29.06.2017 and the latest meeting on 08.09.2022 for road widening process by felling of trees at Mangalore.
2. It is submitted at the outset that all contents of the Reply filed by Respondent No.7 are wrong and denied unless expressly admitted hereunder.
3. It is submitted the statement mentioned in paragraph 3 may be true, but it was not revealed/made known publicly, regarding the exact application dated 19.04.2022 by the Mangalore Smart City Ltd to the Forest officer until the reply filed by this 7th respondent, even in the public meeting. The document Annexure R1 stated as true copy in the reply and the same is denied by this applicant that the authenticity of the document is not known it is just a translated copy. The Original Kannada version is not filed by the 7th Respondent and the entire set of documents not available, if there is Road sketch involved with the document as per the translation copy filed by the 7th respondent.
4. It is submitted that the applicant denying the statement as stated in paragraph 4 of the reply is totally false that if its so true, as mentioned in para 4 and the document in Annexure R2, it was nevertheless discussed in the public meeting on the part neither the Mangalore Smart City Ltd nor the Range officer/Tree officer of the Department of Forest. It seems the predated document of Annexure R2 created for the purpose of reply to be filed for this case to cover up failure to perform their duty on time. The applicant denying



For NECF (R)

President / Secretary

the document Annexure R2 (the report of Range Forest Officer) since, it seems a typed copy no signature of the authority, no seals of concerned department, not even a translated copy filed by the 7th respondent and also the applicant vehemently denied the contents of the Annexure R2 there is mentioned 2 deodar trees 15 Timber, trees are waste. but its provide habitats for birds, insects, and other animals. They are also essential to produce oxygen, which is vital for life on Earth. The applicant vehemently denied the content that "17 trees of cherry species are useless" infact the banyan trees are valuable gifts given by old generation to the earth forever. Its scientifically proved that Banyan trees are providing several health benefits to us and other lives.

5. It is submitted that the applicant aggrieved with paragraph No.5 One Sri. Daniel Tauro along with 5 other people strongly condemned and objected to the proposal of Mangalore Smart City Ltd to fell the 34 trees and there is no need to widen the said road there is not much traffic plying on the concerned road and it is true as mentioned in Reply at the same time this applicant denying the paragraph No. 6 that they requested if any trees are found to be danger to the people or for traffic that may be considered for trimming or felling the case may be after consulting the concerned people and environmentalists of Mangalore city. Paragraph No. 5 and 6 statements are totally contradiction in the eye of Law.

6. It is submitted that as mentioned in paragraph No.7 of the reply, the meeting on 03.09.2022 was held or not it's unknown to the public there were no proper notice or publication issued by the authority. It's true that on 08.09.2022 the meeting was held as mentioned in the same paragraph and the minutes of the meeting 03.09.2022 in Annexure R3 is only a translated version filed, there is no proper document filed by this respondent to prove his case. It is submitted that as per sec. 8(4) of Karnataka Trees preservation Act 1976 "***The Tree Officer shall make all possible endeavour to dispose off the application received under this section within a period of three months from the date of its receipt***".



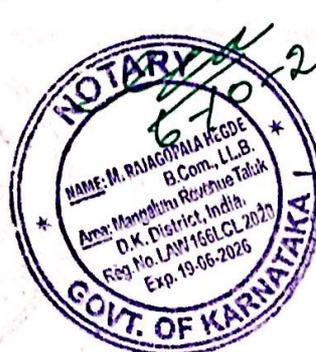
For NECF (R)

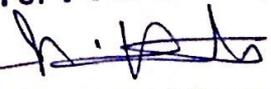
—President / Secretary

Hence, as per the statement in paragraph No.3 of Reply by the Respondent No.7 the application made by the Mangalore Smart City Ltd to the Forest officer was on 19.04.2022 the same should be disposed off within the three months as per the Act. Instead of that after the public objection to the application of Mangalore smart City Ltd, the 7th respondent's actions on the application appear to have been sluggish and unconcerned with the value of saving trees.

7. It is submitted that this applicant denies all the averment stated in paragraph No.8 and the supporting document in Annexure R4 that some public residents requested to cut off the 34 trees which are hindrance to them as well as to road widening works. The same is unacceptable and unsustainable statement made by them. In-fact the applicant made this application for the welfare of the public includes who want to cut those trees and for future generations for good Air and other natural life. The document contains only 4 persons names and details among the 147 local residences, in the request letter. That is also not a true version of the signed letter provided to the authenticity of the translated document.

8. It is submitted that it is true that as mentioned in paragraph No. 9 the applicant made representation on 09.09.2022 to reject the application made by Mangalore Smart City Ltd to cut off the trees. It is gratifying that in the light of the meeting held regarding this matter, it was decided by the 7th respondent not to grant permission to cut the trees. At the same time the decision also might be disclosed to the applicant and other people who were attended the meeting held on 08.09.2022. In-fact, without knowing the actual decision made on 09.09.2022 itself by the 7th Respondent, the applicant made a representation to the 7th respondent on 12.09.2022 and a letter dated 22.09.2022 to conduct the second meeting regarding the issue, since they have applied RTI for some details. For those letters also this applicant didn't get any reply about the decision. This attitude of the 7th respondent makes the applicant panic about the reliability of the results.



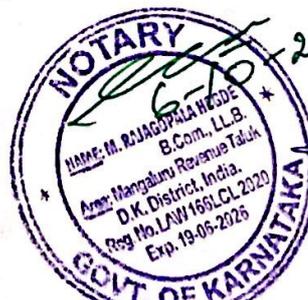
For NECF (R)

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9. It is further gratifying that this decision has been conveyed to Mangalore Smart City Limited by issuing an order to modify or revise the project plan permitted to improve the above road without removing any existing trees, as mentioned in paragraph no.10 of the reply. It is regrettable that the aforesaid document in Annexure R5 (the letter of direction to Mangalore Smart City Limited to modify the project) is a required content typed in a letter head, but it does not have any signature or seal for the validity of the document.

10. It is submitted that the applicant denying statement in paragraph No.11 all averments made in reply and supporting documents are vexatious and untenable in law. It appears that all the documents are at this stage created for the purpose of the case even though a decision has been taken in favour of the petitioner as mentioned in the reply. The authenticity of any document provided by the respondent has not been proven and not confirmed.

11. It is submitted that the applicant denying the paragraph No.12 that there is no such proviso (vii) of sec. 8(3) in **"The Karnataka Preservation of Trees Act 1976"** the act as stated in the reply of 7th respondent. The sec. 8(3) contains only up to (vi) proviso. Even the revised plan provided by Mangalore Smart City Ltd for Road development in future, alternate remedy would be chosen without removing or felling of trees and considering the environment, nature, and lives. The trees to be preserved as per sec 12 of **"The Karnataka Preservation of Trees Act 1976"** sec. 12 of the Act says,

"Notwithstanding anything contained in this Act or in any other law for the time being in force, the Tree Authority may, subject to such terms and conditions as it may specify in that behalf, permit any individual, body corporate or institution to adopt any tree for such period as may be specified therein and during such period the said individual, body corporate or institution shall be responsible for the maintenance and preservation of the said tree."



For NECF (R)

-President / Secretary

The Applicant denying that the wildlife Protection Act 1972 does not find a mention in Schedule I of National Green Tribunal Act and hence National green Tribunal does not have Jurisdiction. Sec. 2(C) of the Act defines **"environment" includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism, and property;"**

And also sec. 14 of the National green tribunal Act contains jurisdiction of the Tribunal.

"Sec 14. Tribunal to settle disputes. — (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon"

The schedule I of NGT act contains The Environment protection Act such as the Forest Conservation Act 1980 this means that the NGT can hear and dispose of the cases involving a wide range of activities that may harm wildlife. **"Sec. 2(15) of Wildlife Protection Act defines 'habitat' includes land, water or vegetation which is the natural home of any wild animal [or specified plant]" and**

"Sec. 2(37) of Wildlife Protection Act defines 'wildlife' includes any animal, aquatic or land, Vegetation which forms part of habitat".

The wildlife (protection Act of 1972 also provides a legal framework for the protection of various species of wild animals, birds and plants, management of their habitats, regulation. Trees provide important habitat for many wildlife species, including mammals, birds, reptiles, amphibians, and insects. Which trees are felled, this habitat is destroyed, forcing wildlife to find new homes or move to other areas. Mangalore has several wildlife sanctuaries in the vicinity, such as Nagar hole, Badra wildlife sanctuary, Bandipur and Mudumalai and Sammilan Shetty's Butterfly Park at Belvai village, Mangalore. If the trees are destroyed, the wildlife of several birds, insects, mammals, Squirrels will be affected. Section 35 of the wildlife protection Act prohibits the cutting, felling or removal of any tree in a protected area without the



For **NECF (R)**
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permission of a Chief wildlife Warden. A protected area is any are that has been notified under Wildlife protection Act for the purpose of conserving wildlife.

12. It is gratifying that the 7th Respondent following the **Constitution of India** and completed the compliance to their Constitutional duties by conducting public meetings for the opinion of the Road widening project by felling of Trees. It is pleasure to know that the branches of the tree alone tried to cut which obstruction on the roadside, but the tree remains still. Annexure R7 is a translated version of Kannada and the original version not provided by the 7th respondent for the authenticity of the document. It is fair that no permission has been granted to felling of trees as on date, since no such condition to the trees as described in sec. 8 (3) of the Karnataka preservation of Trees Act, 1976 as stated in paragraph Nos.12,13,14,15,16 of the reply.

13. It is submitted that for the good self, in future also the permission should not be granted felling of trees regarding the subject matter, instead of that the trees to be preserved by adoption of Trees as per Section 12 of the Act and the application may be allowed as prayed for.

Mangalore on 6th October
Dated at ~~Chennai~~ on this ~~6~~ day of ~~September~~ 2023

For **NECF (R)**

[Signature]
President / Secretary
Applicant

[Signature]
Counsel for Applicant

VERIFICATION

I, Shashidhar Shetty aged about 43 years, General Secretary of National Environment Care Federation, having office at D.No.I-N 302568/4, Sasta Creations Building, Ashoknagar, Mangalore -575 006, do hereby verify that the contents of the above paragraphs are on my instructions, true and correct to the best of my knowledge and belief.

Verified at Mangalore on this *6th October* day of ~~September~~ 2023
Sworn and Signed before the
this *6th October 2023* day of ~~September~~ 2023

NOTARIAL REG. NO. 6168
6-10-2023

Errors/Corrections Etc. *(5) Five only*

Applicant
For **NECF (R)**

[Signature]
President / Secretary

J. Shashidhar Shetty

*Identified by Photo in I-t-Pan card
bearing No AXWPS1028F*

*M.L. Rajagopala Hegde
B.Com., LL.B. 6-10-2023
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