

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE BENCH AT CHENNAI

APPEAL NO. 33 OF 2022

IN THE MATTER OF:

MEENAVA THANTHAI K.R.SELVARAJ KUMAR

MEENAVAR NALA SANGAM

Represented by its President,

..APPELLANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO.5

I, Joy, aged about 52 years, Factory Manager of M/s Sun Pharmaceutical Industries Ltd, having its factory at survey no. 90/2, 90/3, 90/4, 99/1, 99/2, 99/3, 99/4, 99/5, 100/2A, 100/2B, 100/3, Sathammai Village, Karunkuzhi Po, Madhuranthagam TK, Chengalpattu Dist., do hereby solemnly affirm and sincerely state as follows:

For SUN PHARMACEUTICAL INDUSTRIES LTD

M.A. JOY
Sr. General Manager Operations

1. I am the Factory Manager of the 5th Respondent Company and as such I am well acquainted with the facts and circumstances of the case, and I am authorised to swear to this affidavit.
2. On the present Appeal of the Apellant, we would like to bring the following facts before this Hon'ble Tribunal.

REPLY ON MERITS:-

3. As regards to para (A) we humbly submit as follows:-

- (A) It would be incorrect to say that the answering respondent has concealed/ misrepresented any information with regard to its location from the Bird Sanctuary. The answering respondent also mentioned in FORM -1 under the heading of Environmental Sensitivity the said project is located 3.72 Km from the Vedanthangal lake Bird Sanctuary. Annexure 1.
- (B) The respondent while making the application to the MOEF has relied upon the details of bird sanctuary mentioned on the official website of the Tamil Nadu Forest Department, wherein the lake area is mentioned as 73 Acres or 30 Hectares. The answering respondent further relied upon the observations of Joint committee formed by NGT in OA no. 88 of 2020. The said committee in para 4 of its report dated 20.08.2020, has

mentioned the distance of the Unit as 3.72 Km from the Vendanthangal Bird Sanctuary/lake and various other evidences indicating that the sanctuary is limited up to the lake. Annexure – 2.

- (C) To the best understanding of the answering respondent, the 73.06 Acres area in survey no. 220 is a lake and the 5 km surrounding area is buffer zone. There is no core and buffer zone demarcations in the Vedanthangal Sanctuary Notification issued vide G.O.Ms.No.199, E&F Dept. dated 03-07-1998. Hence it is clear that the bird sanctuary is only lake.
- (D) Further the Vedanthangal lake bird sanctuary is located in survey no. 220 in Vedanthangal village, but the respondent unit is located in Sathammai village in survey no. 90 etc. Hence it further makes clear that the bird sanctuary is only lake. Annexure - 3
- (E) Section 18 (II) of the wildlife protection act 1972 requires that the sanctuary area needs to be specify as nearly as possible by way of mentioning the nearby roads, rivers, ridges and

other well-known boundaries. Section 27 of the said act further require putting restrictions on the sanctuary and only authorized person are allowed to enter in the sanctuary area. The provisions with regard to allowing entry to the sanctuary are provided in section 28 of the Act. The procedure as is being followed by the Wildlife Authorities of this Sanctuary, entry passes are issued at the entry point constructed adjacent to the Vendanthangal Lake, in compliance to the provisions made in section 28. As per the procedure being followed by Forest Dept, also indicates that the bird sanctuary is limited up to the lake only.

- (F) Further the official website of the Department of Forests, Government of Tamil Nadu mentions the Vedanthangal Sanctuary Area as 73.06 acres, emphasis supplied. Hence it is clear that the bird sanctuary is only lake. Refer Annexure -2.

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- (G) It is humbly submitted that, in the Topographical map no. D44T14 of Survey of India shows that Vedanthangal Bird Sanctuary is only lake. Annexure - 4
- (H) Further the respondent while making the application to the MOEF has attached the google map wherein the distance of 3.72 km from the lake was clearly shown and was also mentioned in the FORM I and PFR. Annexure - 5
- (I) Basis above it can be construed that the sanctuary is only the lake and the remaining 5 km is kept as a buffer zone, without clear cut boundary demarcations. This has also not been mentioned in the records of Revenue Dept as well.
- (J) It is humbly submitted that the reply affidavit of MoEF dated 11.08.2022 has mentioned in the para 26, the projects located inside the wildlife sanctuaries notified under the Wildlife (Protection) Act, 1972 or located in the notified Eco-Sensitive Zone (herein after referred to as ESZ) around the wildlife sanctuary or within 10 Km of wildlife sanctuary (if it is not

notified), require clearance from the Standing Committee of National Board for Wild Life (herein after referred to as SCNBWL). The Eco- Sensitive Zone around the Vedanthangal lake Bird Sanctuary is yet to be notified.

- (K) The Ministry of Environment & Forest, Government of India, while framing the ESZ guidelines in 2011, had asked each state to forward their respective proposals to notify ESZ around the National Parks/Wildlife sanctuaries in their states. To the best knowledge of the answering respondent State of Tamil Nadu had not forwarded any proposal to have ESZ around Vedanthngal Bird sanctuary, realizing that the 5 Kms around the Lake is only an ESZ. Rather the state vide its proposal dated 10.01.2020, requested MOEF to reduce this 5 Kms surrounding area to 3 Kms. Hence it is clear that the bird sanctuary is limited up to lake only. Annexure - 6

- (L) As confirmed in para 27 of the reply affidavit of MoEF dated 11.08.2022, the answering respondent (MOEF) vide office memorandum 22-43/2018-IA.III dated 8th August 2019 issued

procedure for consideration of development projects located within 10 Km National Park/ Wildlife Sanctuary seeking Environmental Clearance under the provision of Environment Impact Notification, 2006 (herein referred to as EIA Notification, 2006) wherein at Sl.No 4(iii) it has been mentioned that:

Proposals involving developmental activity/ project located within 10 Km of National Park/ Wildlife Sanctuary wherein final ESZ notification is not mentioned (or) ESZ notification is in draft stage, prior clearance from Standing Committee of the National Board for Wildlife (SCNBWL) is mandatory. In such cases, the project proponent shall submit the application simultaneously for grant of Terms of Reference/environmental clearance as well as wildlife clearance. Annexure - 7

- (M) The custodian of Wildlife Protection Act, i.e., MoEF had already formulated the procedures for consideration of development projects as mentioned above.

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(N) In concurrence to the procedures of MoEF, it is humbly submitted that the answering respondent had already submitted its application dated 30.05.2020 to SWLB for the NBWL clearance, which is under process. Annexure - 8.

4. As regards to para (P) we humbly submit as follows:-

“The EIA notification 1994, page no. 20 of para 8 under the heading “EXPLANATORY NOTE REGARDING THE IMPACT ASSESSMENT NOTIFICATION DATED 27TH JANUARY 1994”, that under the heading of “Exemptions for projects already initiated” for projects listed in schedule I to the notification in respect to which required land has been acquired and all relevant clearances of state government including NOC from the respective state pollution control boards have been obtained before 27th January 1994, a project proponent will not be required to seek environmental clearance from the IAA. However, those units who have not as yet commenced production will inform the IAA”.

Annexure - 9

For SUN PHARMACEUTICAL INDUSTRIES LTD

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(a) It is humbly submitted that the respondent plant started its operation in 1992-93 vide CTO No. 6219 & 8850 dated 07.04.1992 and 02.06.1992 were issued by the State Pollution Control Board for manufacturing of 3 products with a total production capacity of 38T/M prior to EIA notification 1994.

Annexure - 10

(b) In the same said notification in page no. 20 under the heading of the "EXPLANATORY NOTE REGARDING THE IMPACT ASSESSMENT NOTIFICATION DATED 27TH JANUARY 1994", of point no.1 Expansion and modernization of existing projects provides that a project proponent is required to seek environmental clearance for a proposed expansion/ modernization activity if the resultant pollution load is exceeding the existing levels. A project proponent may approach the concerned state pollution control board (SPCB) for certifying whether proposed modernization/ expansion activity as listed in Schedule – I to the notification is likely to exceed the existing pollution load or not. If it is certified that no increase is likely to occur in the existing pollution load due to the proposed expansion or modernization, the project proponent will not be required to seek environmental

clearance, but a copy a of such certificate issue by the SPCB will have to be submitted to the Impact Assessment Agency (IAA) for information. The IAA will however reserve right to review such cases in the public interest if material facts justifying the need for such review come to right.

Annexure - 11

(c) This fact of requiring EC has also been clarified by the MOEF in para 7 of their reply affidavit dated 11th August 2022 in this case and at para 6&7 of their reply affidavit dated 13th July 2022 in OA 88/2020, involving the same parties.

Annexure – 12

Thereafter the respondent Unit obtained CTE in 2005 with respect to M/s Sun Pharmaceutical Industries Ltd to manufacture 10 products with total production capacity 25.5 T/M. in line with the provisions made in the EIA notification 1994, referred in the above para, in the year 2005 the Respondent Unit had conducted Environmental Viability Study for the 10 products through Centre for Environmental Studies (CES), Anna University, Chennai (herein after referred as CES). CES evaluated the ten products and prepared Environmental Viability Report based on the waste

generated by the products. The total production capacity and waste generated by the proposed products were less than the permitted amount of waste generation by the existing 3 products hence there was no requirement of EC for change in product mix in the same category Schedule I of 8 as per provision of EIA 1994 and the requirement of same was mandated by EIA 2006. Annexure - 13

“As per the EIA notification of 14th September 2006, the change in product mix may be allowed without prior environmental clearance by the state pollution control board provided such changes in the quantities or products are in the same category and are within the previously granted overall total limits”. Annexure – 14.

(d) Unit had applied for change in Product mix to TNPCB along with environment viability study report carried out by Anna University, Chennai, as recommended by the TNPCB. The Unit were issued Consent to Establishment in the year 2005 by TNPCB and subsequently Unit has applied Consent to Operate and same were issued to the Unit in the year 2006. Annexure – 15.

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5. Para 1 to 3 needs no comments

6. As regards to para 4 we humbly submit as follows:-

It is incorrect to say that the replying respondent has filed its application before MoEF & CC on 30.12.2021, with any malafide intention. In fact, as per the notifications issued by the Government of India the expansion proposals for API manufacturing plants submitted between 27th March 2020 to 31st December 2021 was to be considered in category B-2 by State Environment Impact Assessment Authority (SEIAA). Under the said provisions the replying respondent submitted its application dated 30.05.2020, which remained pending before SEIAA Tamil Nadu till 05th November 2021. On 5th November 2021, SEIAA Tamil Nadu Completed its Tenure.

As per the provision made in EIA notification 2006, when the SEIAA is not in existence in the state and the proposal also attracted the general conditions the EC applications are to be appraised to the MOEF & CC, accordingly the replying respondent appraised its application to MOEF & CC on 30.12.2021. The fact of considering application in category B-

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2 has also been referred in para 20 & 21 of the reply affidavit by MOEF. Annexure - 16

7. The contents of Para 5 are repetitive and have been replied in preceding paras

8. As regards to para 6 we humbly submit as follows:-

The MOEF has rightly considered the application of the replying respondent in line with the procedure in place and as is mentioned in their reply affidavit at para 27 & 28. Since neither it is notified Eco Sensitive Zone (ESZ) nor ESZ notification is in draft mode for this sanctuary, the provisions of OM F.NO.22-43 /2018-IA.III dated 8th Aug 2019, subjected as “to consider the projects located within 10 km of National Park/Wildlife Sanctuary seeking Environmental Clearance under the provisions of the Environmental Impact Assessment (EIA) notification, 2006 regarding” are applicable and falls in para 4 (II) of the said OM. Annexure - 17

9. Para 7 needs no comments

10. As regards to para 8 we humbly submit as follows:-

The due procedure as required in the OM dated 8th August 2019 and EIA notifications has been followed by the EAC and

the replying respondent has submitted the wildlife conservation plan as well, as required in the OM.

Para 4 (III) of the said OM requires prior clearance of NBWL in the cases located within notified ESZ. Without prejudice to the fact this is not a notified ESZ, still even if the 5 km buffer zone is considered at par with the ESZ the replying respondent is required to obtain prior NBWL clearance. Meaning thereby that before starting the expansion activity the replying respondent has to take NBWL clearance. This very condition is specifically mentioned in the EC granted to the replying respondent and the respondent has already submitted its application dated 30.05.2020 to SWLB for the NBWL clearance, which is under process. Refer Annexure - 8

11. Para 9 to 11 needs no comments

12. As regards to para 12 we humbly submit as follows:-

As per records available, this circular was not received, and we are not aware about such communication. To the best of knowledge and circumstantial evidences of the Respondent no.5, the claims has not been settled, as number of habitable and commercial units are existing in the so-called sanctuary.

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13. Para 13 no comments

14. As regards to para 14 we humbly submit as follows:-

As is evident from the NGT committee report, that the migratory birds visiting to the lake and nesting here, usually leave the nest in the morning and return in the evening, they go farther locations mostly and few bird species prefer surrounding 1 or 2 km area. This might be the reason that the government of Tamil Nadu had considered to reduce the buffer zone to 3 km from 5 km.

Tamil Nadu Government had proposed to reduce buffer zone from 5 to 3 km based on letter no. WL5/38261/2012 dated 10.01.2020. A Government can propose to reduce the buffer zone based on various factors but not the sanctuary itself. It clearly states that bird sanctuary is only lake. However, unable to say under what circumstances Government had withdrawn these proposals, which may get more clarity if the letter no. WL5/38261/2012 dated 10.01.2020 is brought on the record and a clear background in this regard is submitted by the Government.

15. Reply to Para 15 to 17 has been provided in preceding paras and is not being repeated.

16. Para 18 requires no comments, being matter of record.
17. The averments made in para 19 are incorrect and the Joint Committee's report is on the basis of facts and ground realities.
18. We carve leave of this Tribunal to raise additional facts and figures that may be available to us apart from this reply.
19. This respondent submits that the interim order of Status quo passed by this Hon'ble Tribunal dated 23/05/22 is causing great hardship and irreparable loss. The present Appeal is filed on grounds which are devoid of merits. Therefore, it is therefore just and necessary for this Hon'ble Court to vacate the status quo order, pending disposal of the Appeal. By vacating the interim Status quo order, the Applicant will not be put to any loss or hardship.

In view of the above facts and circumstances it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the Appeal and pass such or other orders as this Hon'ble Tribunal may deem fit and necessary and thus render justice.

For SUN PHARMACEUTICAL INDUSTRIES LTD

M.A. JOY
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Solemnly affirmed at Chennai

Before me

This 12th Day of October 2022

N. Subha

MS. 2766/08

(N. SUBHA)

Advocate, Chennai

No. 294, New Addl law chamber,

High Court Buildings

Chennai - 104.