

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE,
CHENNAI**

O.A No. 64 of 2022

Meerakani

.....Applicant

v.

Union of India & Ors.

....Respondents

**REJOINDER OF THE APPLICANT TO THE COUNTER AFFIDAVIT FILED BY
THE 2ND RESPONDENT**

I, Meerakani, S/o Resavu Mohideen, aged about 55 years, residing at No. 6/1/93, Achanputhur, Kadayanallur Taluk, Thenkasi District solemnly affirm and sincerely state as follows:

1. I have read the contents of the Counter Affidavit dated 07.2022 and deny the contents of the same except to the extent expressly admitted hereunder. Without prejudice to the generality of the above denial, the following reply is tendered.
2. At the outset it is necessary to state that the 2nd Respondent NHAI has not responded to the pleaded case of the Applicant in the Original Application and has vide the Affidavit under reply only attempted to state that they do not require Environmental Clearance under the EIA Notification, under the Amendment dated 22.08.2013, since the section from Rajapalayam to Shengottai is less than 100km and hence no clearance is required.
3. The contentions in the Original Application are not repeated for the sake of brevity and may be read as part of the present reply. The contents of Para 1 and 2 do not call for any reply from the Applicant.

4. The contents of Para 3 are denied. They are not germane to the present issue. It is denied that the least environmentally deleterious alignment has been chosen as admittedly no environmental impact assessment studies or studies to assess alternatives have been conducted. The approvals mentioned in Para 3 are internal and for NHAI's purpose and do not have a bearing on the question of environmental clearance.
5. The contents of Para 4, 5, 6, 7 and 8 are denied as false. The contents of these paragraphs are also not relevant to the present issue. This Applicant is not seeking the consideration of any alignment proposed by them but rather raises the questions stemming from the attempt of the 2nd Respondent to implement the project without mandatory environmental clearance. Choosing and finalising an alignment ought to be based on detailed assessment and studies on the environmental impact of all proposed alignments, so that the least deleterious alignment can be chosen. The processes mentioned in these paragraphs are administrative and do not pertain to the issue at hand. In Para 8, the Respondent has also admitted that the revised DPR is still under finalisation.
6. The contents of Para 9 and 10 are denied as false and it is submitted that the Respondent is attempting to portray as though the entire NH 744 project is only relating to Rapalayam section having a length of 68.28 kms. Elaborate submissions have been made in the Application about the illegal segmentation strategy being adopted by the 2nd Respondent. Firstly, the exemption in the EIA Notification, introduced vide Amendment dated 22.08.2013 applies only to highways that have obtained Environmental Clearance. Moreover, the present NH 744 "expansion project" is being undertaken for the entire highway and the attempt of the Respondent to state that the segment between Rajapalayam to Shegottai is less than 100km and thus, does not require Environmental Clearance is without merit.

7. The contents of Para 11, 12, 13, 14 are denied as false and it is submitted that mere declaration of a road as a highway under Section 2 of the National Highways Act, 1956 does not automatically make the said road an existing National Highway in terms of the EIA Notification, 2006. The 2nd Respondent fails to disclose that identical contentions raised in earlier cases (pertaining to NH 45A project) have been rejected by courts. In Para 11, the Respondent has admitted that in the segment between Rajapalayam to Shengottai - a length of 68.28 kms, bypass i.e new alignment is for 62.68 kms and the existing road is sought to be widened only for 5.5 kms. The Respondent has failed to see that Clause 7(2) of the EIA Notification clearly mentions the requirement of prior environmental clearance and the subject road which was admittedly notified as a National highway does not possess environmental clearance. Detailed submissions in this regard have been made in the Original Application and may be read as part of these submissions.

8. In so far as the contentions in Para 13 and 14 is concerned, it is submitted that the Respondent is clearly viewing the environmental clearance process as an impediment and is attempting by hook or crook to circumvent the same. Speedy implementation of a project is neither linked to nor can it justify artificial segmenting of a project into smaller segments of each less than 100 kms, with a view to circumvent the EIA notification. This issue is no longer *res integra* in light of the judgement in NHAI v. Padarinathan Govindarajulu. NHAI has to obtain environmental clearance for the project as a whole – they can split it into how many ever contracts they want for speedy implementation. These are separate issues.

9. The contents of Para 15 are denied. In Para 15, the Respondent has admitted to the fact that the existing road (the notified NH) is only 7-10 M wide and that it is to be made into a 4 lane highway. It is evident that the footprint of the existing road and the proposed road are entirely different.

10. The contents of Para 16 and 17 are denied as false. In Para 16, the 2nd Respondent has once again repeated the submission about the segment from Rajapalyam to Sengottai being less than 100 km and hence not requiring clearance. In Para 17, the Respondent has admitted that the NH 744 project has been split into different segments by them. The fact that they have awarded tender or not called for tender for a certain stretch does not make the highway project separate projects. They ought not to have segmented the project into smaller pieces to avoid the EIA Notification. The project is one – it is being implemented by the respondent by dividing it into “segments” and this cannot become an excuse or a strategy to circumvent the law. The purpose of the EIA Notification is to achieve sustainable development – the 2nd Respondent’s insistence to implement the project without impact assessment studies and clearances flies in the face of this principle.

11. In Para 18, the Respondent has admitted that the land acquisition for this project is more than 40 m and 60 m i.e exceeding the limits specified under the EIA Notification i.e by the amendment dated 22.08.2013. The Respondent cannot claim that they are at liberty to acquire extra land for toll plaza etc. This issue was also decided in the NHAI vs. Pandarinathan Case and it is clear that all such infrastructure has to be accommodated within the limits specified – even for expansion projects. NHAI has acquired land far in excess of the stipulation in the amendment dated 22.08.2013 – apart from the locations specified in the OA, at KM 75.11, 89.75, 96.4, 106.2, 112.9, 127.5, 130.4, 133.87, 138.9 etc they have acquired more than the prescription in the Notification and they cannot claim any exemption from obtaining EC under this pretext.

12. The contents of para 19 are denied as false. It is submitted that

- a. The subject NH 744 widening project is a NEW Highway project for the purposes of the EIA Notification, 2006 since the existing road is not a

Highway that has obtained environmental clearance and is not an "expansion" project under the EIA Notification, 2006.

- b. The subject NH 744 project is for the four laning of a 7-10 m wide road – the footprint of the roads are entirely different and this cannot be called a mere expansion project. For the first time, a 4 highway built according to IRC standards is going to be established.
 - c. The subject NH 744 project's alignment runs extensively on virgin lands i.e where realignment and bypasses are being constructed and it is not as if the existing road is being widened for the entire distance. The NHAI is using this widening excuse to circumvent the law.
 - d. The subject project is thus not an expansion project but a new project.
 - e. Even if the project is considered an expansion project, the length of the project is greater than 100 KM and it has been segmented into smaller segments of less than 100 KM in order to escape the law.
 - f. The land acquisition is greater than 40 m and 60 M admittedly and hence the exemption provided for expansion projects cannot be claimed for the subject project.
13. It is submitted that the Respondent is only concentrating on the illegally segmented stretch of NH 744 highway from Rajapalayam to Sengottai and the present case is not limited to this stretch. The Respondent has not responded to the above submissions in the Application and it is clear that they have no reply to offer. It is submitted that obtaining EC will only aid in the proper implementation of the project in an environmentally sustainable manner and would cause no prejudice to the Respondent. Such attempts to repeatedly violate the law ought to be deprecated. The contentions of the Respondent are devoid of merit and are liable to be rejected.

It is therefore prayed that this Hon'ble Tribunal may be pleased to allow this application as prayed for and thus render justice.

Dated this the 19th day of July, 2022



S.
19.07.22
S. MARIKUTTY B.Com,B.L.,
Advocate & Notary
199/1, M.A.K. Building
Mela Bazaar
SENGOTTAI - 627 809.

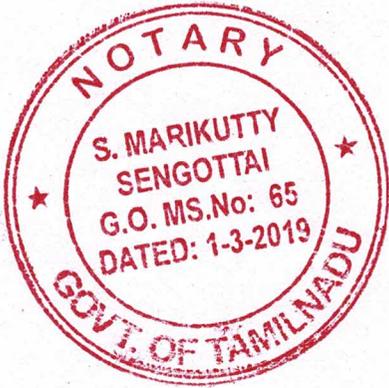
R. Meerakani
Applicant

VERIFICATION

I, Meerakani, the Applicant herein, hereby verify that the contents in the above paragraphs are true to the best of my knowledge and based on legal advice and that I have not suppressed any material fact.

Date: 19.07.2022

Place: *Sengottai*



S.
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S. MARIKUTTY B.Com,B.L.,
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