

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

**O A.No.07 of 2022**

Meenava Thanthai K.R.Selvaraj kumar  
Meenavar Nala sangam  
Rep by its President  
M.R.Thiyagarajan  
At No.15/8, A J Colony  
Royapuram, Chennai-600 013

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Applicant

-Vs-

Tamil Nadu State Environment Impact Assessment Authorities  
Through the Chairman  
3<sup>rd</sup> floor, Panagal Maligai  
No.1, Jeenis Road, Saidapet, Chennai-600 015  
Tamil Nadu and 3 others

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Respondents

**REPLY BY 4<sup>TH</sup> RESPONDENT TO COUNTER AFFIDAVIT OF  
1 ST RESPONDENT DATED 06-02-2023.**

**M/s B. RADHAKRISHNAN  
COUNSEL FOR 4<sup>TH</sup> RESPONDENT**

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**

**SOUTHERN ZONE BENCH AT CHENNAI**

**Original Application No. 07 of 2022 (SZ)**

**Meenava Thanthai K.R.Selvaraj kumar**

**Meenavar nala sangam**

Represented by its President,  
M. R.Thiyagarajan,  
Slo Late C. Rajalingam,  
Office at No.15/8, A.J. Colony,  
Royapuram, Chennai-600 013.

...Applicant

Vs

1. Tamil Nadu State Environment Impact Assessment Authority  
Through the Chairman  
3'd Floor, Pangal Maligai,  
No.1 Jeenis Road, Saidapet, Chennai-600 015.

2. Tamil Nadu Pollution Control Board,  
Rep by its Chairman,  
76, Mount Salai, Guindy,  
Chennai - 600 032

3.The District Collector,  
Thiruvallur District,  
Master Plan Complex NH 205,  
Chennai - Tiruttani Highway,  
Thiruvallur -602001.

4. ACS Medical College and Hospital  
Through the President,  
Numbal Village,  
Ponnamallee Taluk,  
Thiruvallur Disttiict- 600077.

...Respondents

**REPLY FILED ON BEHALF OF THE 4<sup>TH</sup> RESPONDENT AGAINST  
COUNTER AFFIDAVIT OF 1<sup>ST</sup> RESPONDENT DATED 06-02-2023.**

The 4<sup>th</sup> Respondent is A.C.S. Medical College & Hospital, Rep. by its Registrar, Dr.C.B.Palanivelu having office at Noombal Village, Velappanchavadi, Chennai – 600 077.

*x c. B. Palanivelu*

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On behalf of the 4<sup>th</sup> Respondent submitted this Reply to counter filed by the 1<sup>st</sup> respondent as follows:

1. At the outset the 4<sup>th</sup> Respondent denies all the averments in the Counter Affidavit filed on behalf of SEIAA-TN, the first Respondent dated 06-03-2023 except those that are specifically admitted hereunder.

2. It is submitted that as far as para 3 of the counter affidavit that it is denied that the 4<sup>th</sup> respondent only applied for Terms of reference TOR to first respondent during the year 2017. In fact this respondent obtained consent to establish on 14-02-2008 and applied for environmental clearance as early as on 25-03-2009 itself before commencing the operation of the college and hospital. The copy of said application is filed as document No.5 in the typed set would establishes the same. The same is pending originally before the central authority and subsequently state authority as per change and amendment of notifications of MOEF or as per instructions issued. The said facts establishes from the documents of various communications and notifications filed as documents No.6 to 11 and 14 to 16 in the Annexure Typed set- I by this respondent.

3. It is submitted that when the buildup area of project of educational institutions buildings consists of college, hostel etc as admitted is come under the purview of the MOEF notification SO 3252 (E) dated 22-12-2014, the building project under schedule 8(a) of Environment Impact assessment Notification under the environment Protection Act of >20,000 Sq.mtr and < 1,50,000 Sq.mtre of Educational building of school, college, hostel etc is exempted from getting prior environmental clearance but shall ensure sustainable environmental management. **(Copy of notification SO 3252 (E) dated 22-12-2014 is filed as Document No.1 in Typed set-II)** Though a medical college cannot be establish without a hospital however by MOEF office memorandum dated 9-06-2015 clarified that hospital component building has to get prior environmental clearance. However the original

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MOEF Notification SO.1533 dated 14-09-2006 prescribes for getting environmental clearance for building and constructions was further substituted by subsequent Notification SO (E) 5736 dated 15-11-2018 in which the building project under schedule 8(a) of Environment Impact assessment Notification 2006 under the environment Protection Act, the exemption to get prior environment clearance is granted to Educational institution building of college, hostel, and Hospital having built up area of >50,000 Sq.mtr and < 1,50,000 Sq.mtr. **(copy of the notification SO (E) 5736 dated 15-11-2018 is filed as document No.2 in Typed set-II)** The above said notifications are only an amendment (substitute) to original notification of Environment impact assessment Notification S O 1533 dated 14-09-2006. Therefore the said notification has retrospective validity from the year 2006 and the same has to be considered by the authorities of SEIAA and SEAC and Pollution control board towards the project of this respondent.

4. It is submitted that the term "Educational Institutions and Hospitals are defined in the rules 2(e),(f) of The Noise Pollution (Regulation and control) Rules 2000 and as per Office Memorandum of MOEF dated 19-5-2022 as follows. **(Copy of said Office Memorandum of MOEF dated 19-5-2022 is marked as document No.3 in Typed set -II)**

"Educational Institution" means a school, seminary, college, university, professional academies, training institutes or other educational establishment, not necessarily a chartered institution and includes not only buildings ,but also all ground necessary for the accomplishment of the full scope of educational instruction, including those things essential to mental, moral and physical development".

"Hospital" means an institution for the reception and care of sick, wounded, inform or aged persons and includes government or private hospitals, nursing homes and clinics;

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5. It is submitted that without considering the above said exemption notifications prevailing to this respondent educational institutions of college, hostels, nursing, university and hospital, the application submitted for environmental clearance /Consent to Operate had treated under violation category only from 2017 (Copy of letter of 1<sup>st</sup> respondent dated 28-3-2018 to submit application under violation category is filed as document 16 of Typed set-I) as per Notification SO(E) 804 dated 14-03-2017 and S.O.(E) 1030 dated 8-03-2018 and not followed under exemption category for the reasons best known to them. This respondent is put to very hardships and compelled to apply and treated under violation category and for Terms of Reference TOR during the year 2018.**(copy of application dated 6-7-2018 submitted again under violation category is filed as Document No.17 in typed set-I)**

6. It is submitted that the submission of first respondent is contrary and as admitted fact to the para 4 of the counter that 4<sup>th</sup> respondent initially applied for EC during 2013 and even for the same is utter false and denied.

7. It is submitted for para 4 to 8 of the counter that the proposal was considered in the 130 th SEAC meeting on 11-06-2019 as violation category of educational institutional building project under schedule 8 b of EIA notification without following the exemption notification of MOEF&CC dated 22-12-2014 and 15-11-2018 as on the date of meeting as misconstrued the facts.

8. It is submitted that however the application of this respondent is considered only under notification dated 19-06-2017 and 8-3-2018 for violation category alone is not acceptable. Again on 24-08-2020 in 171 th meeting of SEAC; 400 th meeting of SEAC on 28-09-2020; 410 th meeting of SEAC dated 11-11-2020 this respondent project was considered as violation category and for Terms for Reference (TOR) and decided to prescribe specific

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terms of reference of remedial measures of ecological damage, remediation plan and natural and community resource augmentation plan which were not applicable to the exempted category as entitled to this respondent.

9. It is submitted that even on 23-11-2020 TOR was issued and forced to fulfill the terms only as violation category which is not at all attracted when the project of this respondent is under exempted category to get prior environment Clearance and to issue the Environmental clearance and Consent to Operate. ( **copy of TOR issued dated 23-11-2020 is filed as Document No.24 in Typed set-I**)

10. It is submitted that even after fulfill all the conditions including the contour study in respect of rain water harvesting through Anna University and Performance study of the STP ,ETP and Medical waste disposal system by Anna University ,Department of CES, its report submitted in a detailed EIA report based on the TOR granted in the year 2020 and appraised in 247 and 320 th meeting of SEAC, as fulfilled the substantial environmental measures the exemption notifications to get prior environment clearance for the project are not at all considered.

11. It is submitted that though this respondent project consists of Educational institution of both college, hostel, staff quarters, canteen and Auditorium, university building as one part of building project having built up area of 55,927 Sq.mtrs and Hospital building of Hospital block, Dental block, Nurses quarters, Mortuary, etc of 24,186 Sq.mtrs and the total buildup area of 78,103 sq.mtrs. The said approved building area is inspected and noted by the committee constituted by the SEAC and considered in its 320 th meeting dated 13-10-2022 by SEAC. ( **Copy of the minutes of meeting dated 13-10-2022 is filed as Document No. 4 in the Typed set -II of this respondent.**)

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12. It is pertinent to submit that the 1<sup>st</sup> respondent conveniently evaded the subsequent developments to issue Environmental clearance to this respondent. The agenda of the 247 th meeting of SEAC held on 18-2-2022 only decided to constitute a sub committee for onsite inspection and based on that the subject will be taken up for consideration .(copy of minutes of 247 th meeting of SEAC dated 18-2-2022 is filed as document no. 33 in Typed set-I) In 320 th meeting of SEAC on 13-10-2022 the appointed sub committee after inspection filed its report and based on the said report the observations of subcommittee relating to total built up area of college and hospital of 78103.58 sq.mtr and its construction , environment management facilities like STP,ETP, rain water harvesting handling of Bio medical waste etc and recommended for Terms of Reference as per notification 804 dated 14-7-2017 and 1030 dated 8-3-2018 as violation category. The SEAC assessed for various remedial measures plans in the name of protecting and improving the environmental pollution such as ecological damage, Remediation plan and Natural & community resource plan and Corporate Environment Responsibility (CER) as if the project is a violation category alone and as a industrial project .

13. It is submitted that interestingly on the 565 th meeting of SEIAA-TN ,the first respondent on 31-10-2022 in agenda 2 stated that based on the recommendations of SEAC in its 320 th meeting held on 13-10-2022 after detailed discussion decided to request the Member Secretary to inform the project proponent to furnish the following

a) Amount prescribed for Ecological remediation of Rs 35.86 lakhs; Natural resource augmentation for Rs 14.344 lakhs & community resource augmentation for Rs 21.516 lakhs totalling 71.72 lakhs as a bank Guarantee to TNPCB .

b) Proposed Corporate Environment Responsibility (CER) amount of Rs 121.72 lakhs shall be spent as committed before issue of EC

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c) Submit a proof of the action taken by the state government/ TNPCB against the project proponent under the provisions of Section -19 of the environment protection act 1986 and as per the EIA notifications dated 4-3-2017 and 8-3-2018.

On receipt of the above details the Member secretary is requested to place the proposal before the authority for further course of action.

**(Copy of minutes of 565 th meeting of SEIAA dated 31-10-2022 is filed as Document No.5 in the Typed set- II).**

14. It is submitted that in fact Standard Operating Procedure SOP for identification and handling of violation cases under EIA Notification 2006 in the case of prior environmental clearance applicable projects was issued in office memorandum dated 7-07-2021. In the said SOP issued in the case of project activity is otherwise permissible and the applicability of damage plans and levying costs for the same and the penalty for such violations are laid down. Also prescribed for action under Sec 19 of Environment Protection Act 1986 **(Copy of OM dated 07-07-2021 is filed as Document No.6 in the Typed set II)**

15. It is submitted that the said office memorandum for SOP dated 7-7-2021 is challenged before the Hon'ble High Court of Madras, Madurai Bench in WP No.11757 of 2021 and the Hon'ble High Court of Madras stayed the said SOP in WMP No. 9241 of 2021 dated 15-07-2021 and the same is pending. **(copy of order of Hon'ble High court of Madras is filed as Document No.7 in Typet set-II)**

16. It is submitted that therefore based on the exemption category of building projects of educational institutions of college, hostel, etc and Hospital as per EIA Notification 2006 and even otherwise since the SOP dated 7-7-2021 under notification SO 804 (E) dated 14-3-2017 is stayed by

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the Hon'ble High Court of madras on 15-7-2021, the assessment of remedial measures of Ecological remediation of Rs 35.86 lakhs; Natural resource augmentation for Rs 14.344 lakhs & community resource augmentation for Rs 21.516 lakhs totalling 71.72 lakhs as a bank Guarantee to TNPCB cannot be suggested and imposed against this respondent project.

17. It is submitted that as far as second condition imposed of Corporate Environment Responsibility, CER is applicable to companies under the Companies Act and rules as per office memorandum of MOEF dated 1<sup>st</sup> May 2018. However CER also assessed towards this respondent of the Educational institutions building and hospital, university run by the Trust is not at all applicable . **(Copy of OM of MoEF dated 1-5-2018 is filed as Document No.8 in the Typed set-II)**

18. It is submitted as far as third condition that the project proponent shall submit proof of the action taken by state Government /TNPCB against project proponent of this respondent under section 19 of the Environmental Protection Act 1986 and as per EIA notification dated 14-3-2017 and 8-3-2018 cannot be complied by this respondent since there is no action taken by concerned authorities against this respondent and this respondent unable to comply the said condition.

In this regard this respondent submit that as per judgment of the Honble High court of Jharkand dated 28-11-2014 as far as action under violation - Held that " action for alleged violation would be an independent and separate proceeding and therefore consideration of proposal for environment clearance cannot await initiation of action against the project proponent" even for the violation under prior environment clearance.

19. It is submitted that however this respondent project of building for educational institutions and hospital though comes under exempted

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category for getting prior environmental clearance as explained supra, the third condition of SEIAA- submit a proof of the action taken by the state government/ TNPCB against the project proponent under the provisions of Section -19 of the environment protection act 1986 is not correct and not acceptable.

20. It is submitted that after receipt of the above said minuets of the meeting of SEIAA dated 31-10-22, this respondent submitted a representation dated 31-01-2023 for considering the EC/consent to operate under exemption category of the following:

1.The project proponent of ACS Medical college & Hospital of Educational institutions, hostels, hospital and university does not require to obtain prior environmental clearance under item 8[a] to the schedule to the MOEF&CC notifications as per Notification S.5736 [E]of MOEF&CC dated 15-11-2018 which is having retrospective operation and therefore cannot be treated as violation category as specified and not even to obtain EIA report. Therefore the request to comply towards remedial measures of Ecological Remediation, Natural Resource Augmentation, Community Resource Augmentation plans does not arise at all to the present project proponent.

2. As far as the levy of CER -Corporate Environment Responsibility concerned as per MOEF &CC office Memorandum dated 1<sup>st</sup> May 2018 the concept of CER as provided for in the Companies Act 2013 and covered under the [Companies Corporate Social responsibility Policy] Rules 2014 comes into effect only in the case of companies that require prior environmental clearance and having operating projects under the companies Act and Rules. Project proponents' educational institutions run by the Dr.MGR Educational Research and Institute Trust, Deemed to be university does not require an prior environmental clearance is entirely different and

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not come under the Companies Act and Rules. The project proponent presently before the SEIAA does not attract for CER and therefore the claim under CER also not applicable to the project proponent of this respondent .

3. Pertinently third item of compliance to give proof for the action taken by the State Government /TNPCB against us not at all binding on us. So far no action taken by the authorities against us even after sending the show cause notice during the year 2019 by TNPCB and the reply send by the proponent herein stating that since it is pending before SEIAA, the authorities concerned not taken action under Section 19 of the Environment(Protection) Act 1986 and no fault on our side and it is unwarranted. Thus the project proponent has no proof for the action taken by state Government or TNPCB to submit under section 19 of the Act. In that case we are unable to give proof for the same. **(Copy of representation dated 31-01-2023 is filed as Document No. 9 in the Typed set-II )**.

21. It is submitted that the above facts of exempted category of this respondent's project and applicability of retrospective effect of amendment notification to the original notification etc have been put forth by this respondent before this Hon'ble Tribunal on 17 th May of 2023 hearing and after hearing all parties, this Hon'ble Tribunal passed an order of direction directing the first respondent to consider and pass orders on environmental clearance based on this respondent's representation dated 31-01-2023 .

22. It is submitted that this respondent on 17-5-2023 submitted a further representation to SEIAA enclosing all relevant documents and judgments in support of the claim as submitted before this Hon'ble Tribunal. **(Copy of representation dated 17-5-2023 is filed as Document No.10 in the Typed set-II )**. Subsequently on 622 th meeting dated 26-05-2023 of the

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SEIAA, first respondent request the State Environment Assessment Authority, SEAC to clarify the points raised by this respondent's representation. Based on the same SEAC convene 383 rd meeting on 15-6-2023 to consider EC to this respondent. On 15-6-2023 this respondent participated the meeting at put forth the factual and legal aspects for issuing EC under exempted category to this respondent and submitted detailed written submissions with relevant documents of evidences to support the claim of this respondent. On the said meeting dated 15-6-2023 and as per the minutes of the meeting, the SEAC recorded the this respondent's representation dated 31-01-2023 and 17-05-2023 decided to defer the proposal and take up for discussion in the ensuing meeting. **(Copy of minutes of meeting dated 15-06-2023 of SEAC is filed as Document No. 11 in the Typed set-II)**

23. it is submitted that thereafter this respondent was further called to attend further 385th meeting on 22-6-2023 as per agenda issued and after hearing all facts and submissions in its minutes dated 22-6-2023 SEAC not considered our claim on exemption with retrospective effect saying the same is stayed by Hon'ble Delhi High Court and referring a non applicable judgment for retrospective operation. **(The 385 th minutes of SEAC meeting dated 22-6-2023 is fled as document 12 in the Typed set-II)** and the said minutes was accepted by SEIAA in its 635 th minutes of meeting and the same is communicated to this respondent vide letter dated 12-7-2023 which is received on 15-7-2023. **(The minutes of 635 th meeting of SEIAA dated 5-7-2023 and letter dated 12-7-2023 are enclosed as document 13&14 in the Typed set-II)** Against the same this respondent submitted a further representation dated 17-7-2023 in justifying the genuine claim with valid reasons to the first respondent SEIAA for consideration. **(This respondent's Representation to SEIAA dated 17-7-2023 is filed as Document No.15 in the Typed set-II)**

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23. It is submitted that after filing of the above OA and after the interim order to ascertain the genuiness of the allegations made in the OA and appointed a joint committee to inspect and submit a report, the 1 and 2 respondents not comforward to disclose the exempted category of the project of Educational institutions and Hospital of this respondent. The respondents 1to2 filed incorrect report with regard to obtaining of environmental clearance without following the MOEFF &CC's exemption notifications as explained in the above paragraphs and also suggested for levy of environmental compensation which is not at all attracted to this respondent. Further this respondent submitted reply in OA and a separate objections dated 30-07-2022 on the joint committee report dated 24-01-2022 and the same has to be treated as part and parcel of this reply.

It is therefore humbly prayed that this Hon'ble Tribunal may be pleased to consider the above submissions and dismiss the above OA with costs and Direct the 1<sup>st</sup> and 2<sup>nd</sup> respondent to issue the Environmental clearance/Consent to Operate as exempted category as applicable and Consent to Operate to this respondent project of Educational institution of Medical college and its building and its Hospital buildings and pass such order /s as this Hon'ble Tribunal may deem fit and proper in this case and thus render justice.

Dated at Chennai on this 12<sup>th</sup> day of August 2023.



Counsel for 4 th Respondent

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