

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI
(Under Section 18 (1) read with Sections 14, 15 of the
National Green Tribunal Act, 2010)

ORIGINAL APPLICATION No. 89 of 2022 (SZ)

M-4 LBP Systemised Irrigation Council
Rep. by its President P.Periavellappan,
Erode – 638107 and others

...Applicants

Vs.

Union of India
Rep. by its Secretary,
The Ministry of Environment, Forests
New Delhi and others

...Respondents

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respective originals.

Dated at Chennai on this the 10th day of May, 2023.



Counsel of 7th Respondent

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI

APPLICATION No. 89 of 2022 (SZ)

- 1.M-4 LBP Systemised Irrigation Council
Rep. by its President P.Periavellappan,
1, Malappalayam, Mullampatti Post,
Nasiyanur Via,
Erode District – 638 107.
- 2.M-13 LBP Systemised Irrigation Council
Rep. by its Secretary V.M.Krishnamoorthy,
5, Vemandam Palayam,
Attavanai Anumanpalli,
Arachalur Via, Modakuruchi Tk,
Erode -638 101.
- 3.U8A LBP Systemised Irrigation Council
Rep. by its President B.C.Senkottaiyan,
Sathy Main Road,
Kavundapadi-638 455,
Erode District.
- 4.U.9 LBP Systemised Irrigation Council
Rep. by its President D.Kalaivanan,
Thingalur Road,
Nallampatti-638 057,
Erode District.

...Applicants

Vs.

- 1.Union of India
Rep. by its Secretary,
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and Climate Change,
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Thamilaga Vivasagal Sangam

T. Senthil

Erode District Secretary

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Rep. by the Principal Secretary to Government,
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- 4.The State of Tamil Nadu
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- 5.The Tamil Nadu Water Resources,
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- 6.The Engineer in Chief,
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7. Tamizhaga Vivasayigal Sangam,
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Rep. by its Secretary
T.Muthusamy @ Subbu,
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Erode-638011.
Cell : 9443907585
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...Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF THE 7th RESPONDENT

I, T.Muthusamy @ Subbu, son of late Thulasimani, Hindu, aged about 53 years, the district Secretary of the Tamizhaga Vivasayikal Sangam, having office at No.602/487, Perundurai Road, Erode-638011, now temporarily come to Chennai, do hereby solemnly affirm and sincerely state as follows:

1. I am the District Secretary of the 7th respondent herein. I am aware of the facts of the case. I am authorised to file this counter affidavit on behalf of the 7th respondent herein.

2. I submit that the contents of the Original Application have been read over and explained to me in Tamil and I beg to deny each and every one of the averment contained therein, except those that are specifically admitted by me herein and put the applicants to strict proof of the same.

3. I submit that before traversing into the averments contained in the above original application filed by the applicants, it is relevant to place certain facts relating to the Lower Bhavani irrigation system for better appreciation of the issues involved in this application.

Tamizhaga Vivasayigal Sangam

T. Muthusamy

Erode District Secretary

4. I submit that the Bhavani River is one of the main tributaries of Cauvery River in the State of Tamil Nadu. It originates from the rear slopes of Western Ghats in Nilgiris District in Tamil Nadu. Later it joins the Sirumugai River and then it enters in Coimbatore District. Lower down, Kundah river joins with river Bhavani and flows towards Mettupalayam. A few miles further down the Moyar river confluences with Bhavani River at Bhavanisagar. Then the Bhavani River takes its course and confluences with Cauvery River at Bhavani in Erode District.

5. I submit that with a view to harness the waters of Bhavani river for the purpose of bringing prosperity to the backward and drought prone areas, an anicut by name "Kalingarayan anicut" was constructed near Bhavani Town in Erode District. This is an old anicut system in which an ayacut of 12,000 acres in Erode District was brought under irrigation.

6. I submit that subsequently, with a view to extent the supply of water to more extent of lands and for the benefit of more people, another anicut by name "Kodivery anicut" was constructed at Kodivery village, near Gobichettipalayam in Erode District, upstream of Kalingarayan anaicut and two channels were formed from the said anicut, one branching off on the right side of the anicut is called "Thadapalli Channel" and the other that branching off from the left side of the anicut is called as "Arakkankottai Channel" and an extent of 19,700 acres were brought under cultivation.

7. I submit that later, finding that major parts of Karur, Tirupur and Erode districts were backward and drought prone areas and that there

was sufficient water available in the Bhavani river, the Government, constructed a Reservoir known as "Bhavanisagar Reservoir" across the Bhavani river between Mettupalayam and Sathyamangalam and upstream of Kodivery anicut in between 1948 and 1954 and a project called "Lower Bhavani Project (LBP)" was commissioned in the year 1954, for providing irrigation facilities to an extent of 2,07,000 acres. The LBP project is unique of its kind and it is the 1st major irrigation project executed in the country after independence.

8. I submit that the Bhavanisagar Reservoir is a composite earthen dam, provided with spillways, river sluices, penstock and canal sluices in masonry portion and with the earth dam on either flank extending to merge with the high ground and the total length of the dam, is about 8.8 k.m. Only one canal, called L.B.P canal, off takes from the masonry dam in the right flank and is aligned throughout on a falling contour. The main LBP canal runs for a total length of about 200 k.m. There are 159 branch canals off taking from the 20 distributaries with a total length of 322.23 Km. There are 75 head sluices and 118 direct irrigation sluices have been provided in the LBP canal to facilitate irrigation to an extent of 2,07,000 acres. I submit that the carrying capacity of the LBP main canal at the head reach was designed for 2300 cusecs.

9. I submit that the LBP main canal runs mostly through the full embankment or partial embankment. I submit that considering the economy in cost and due to non-availability of modern earth moving

machineries and non-availability of suitable earth in the nearby areas, the canal bund was formed mostly using the available earth from the command area itself. I submit that due to the usage of the mother earth, which is porous in nature and due to long usage of over 65 years, the earthen canal has lost its original standards and the bunds have become leaky, with the result the transmission loss has become very huge. That apart, due to long service, most of the cross masonry and cross drainage structures are also in a dilapidated condition.

10. I submit that the inner slopes of the canal bund in the embankment reach are fully covered with light jungle growth, which obstructs the free flow of water in the LBP main canal. The outer slope is also covered with light jungle growth, with the result formation of cavities and rat holes in the bund could not be identified and that because of this breaches occur in the main canal frequently. I submit that because of these factors the slopes of the canal have also lost its original standards due to erosion.

11. I submit that the height of the bund has also been reduced considerably due to the frequent movement of vehicles carrying agricultural produces over the bund. I submit that since the canal was formed using mother earth alone and has served for more than 65 years, the same is susceptible to continuous water pressures. I submit that the full supply depth could not be maintained in most reaches. In view of all these factors stated above, the canal is not able to cater the needs of its ayacudars satisfactorily and that all the tail ends of main canal,

distributaries, branches and sub branches, are receiving inadequate supply of water at the required time. Moreover, except for annual maintenance, no major improvement or renovation works have been carried out to the canal system for the past 65 years.

12. I submit that based on the experiments conducted in the LBP canal, it was estimated that there will be 33 1/3 % of seepage and percolation losses in the L.B.P canal in the initial stages. I submit that now the canal has lost its original standards and the bunds have become leaky, with the result, the transmission loss has become heavy. Most of the cross masonry structures are also found to be weak and leaking in various places. I submit that due to the present condition of the canal, the seepage and percolation loss has increased to more than 55 %, resulting in inadequate supply of water to the tail ends. I submit that sometimes the tail ends get less than 50 % of the supply.

13. I submit that every time of breakage of the bunds, because of its poor standards, the supply of water from the dam has to be stopped at the Reservoir and that if the supply is released after carrying out the repair works, it takes at least a week to reach the tail end again. That apart, because of the breakage of the canal, the water flows into the nearby villages, which causes danger to the life of inhabitants of the villages, their houses and also their cattle and agricultural crops. In order to prevent the breakage and increase the flow and carrying capacity of the canal, the most essential requirement is to line the bed and the sides.

14. It is relevant to point out here that during the last irrigation season commenced on and from 15th August, 2022 by the supply of water for cultivation of wet crops in an extent of 1,03,500 acres, breakages have occurred in the L.B.P main channel for more than three time and because of the same water was stopped in the Bhavanisagar reservoir for nearly 30 days, resulting in damage to the crops raised and loss of productivity.

15. I submit that in the meantime as fresh dispute arose between States of Tamil Nadu and Karnataka, based on the directions of the Hon'ble Supreme Court, the Central Government constituted the 'Cauvery Water Disputes Tribunal' to decide the dispute regarding the sharing of the waters of inter-state river Cauvery among the different riparian States, namely Tamil Nadu, Karnataka, Kerala and the Union Territory of Pondicherry.

16. I submit that by considering the claims of the party States, the Tribunal passed the final orders on 05.02.2007. As per the said final orders the permitted quantity of water for the irrigation systems in Bhavani sub basin is as below :-

S.No	Name of the Irrigation system	Permitted quantity of water in TMC		
		Wet Crop	Dry Crop	Total
1.	Lower Bhavani Canal	18.93	9.02	27.95
2.	Kodiveri Anicut canals	4.48	0.17	4.65
3.	Kalingarayan Anicut Canal	2.56	0.92	3.48

17. I submit that while accepting the total extent of 2,07,000 acres under LBP scheme in toto, the Tribunal has erred in assessing the total water requirement for LBP scheme as 27.95 TMC, as against 36 TMC of water permitted by the Government under the G.O.Ms.No.2367 Revenue dated 21.09.1964.

18. I submit that the Bhavani Sub-Basin is part of Cauvery Basin in Tamil Nadu and as such it is bound by the stipulations seen in the Final Order of the Cauvery Water Disputes Tribunal. I submit that the Tribunal has held that we must at least aim at 65 % efficiency in the irrigation systems not only in the sub-basins but in the entire Cauvery Basin in Tamil Nadu. I submit that in order to make up the loss of about 8 TMC in the LBP project, after the Cauvery Tribunal's Award, it is absolutely necessary that the efficiency of the irrigation system has to be necessarily improved, which can be achieved only by way of renovation and modernization of the old canals. That apart, the Government of Tamil Nadu have also assured before the Cauvery Tribunal that steps are being taken for improvement of the system efficiency by way of modernization of projects and better management of the irrigation water.

19. I submit that in order to improve the system efficiency and for modernization of the LBP main and branch canals, which were in a dilapidated condition and were rendered inefficient to cater the needs of the ayacutdars, particularly tail end ayacutdars, repeated requests were made by the registered ayacutdars to the Government to modernise the LBP canal.

20. I submit that considering the requests of the registered ayacutdars, the Government of Tamil Nadu, vide its G.O.Ms.No.198, Public Works (S1) Department dated 11.09.2009, constituted 7 members Expert Committee under the Chairmanship of Prof.A.Mohanakrishnan, the then Advisor to Government (Water Resources) and Chairman Cauvery Technical Cell-cum-Inter Waters Wing. After a detailed study and after obtaining the views of the ayacutdars and stakeholders, the Expert Committee submitted its Report to the Government on 12.05.2010. I submit that after a lot of deliberations the Committee decided, among others, that that only the LBP main canal may be lined in the modernisation programme in order to reduce the seepage and to carry the water to the tail end faster.

21. It is relevant to point out here that while dealing with the objective of the modernization scheme, the said Expert Committee in its report at para 3.31 has observed as follows :

"3.31 We are conscious that the Bhavani sub-basin is part of Cauvery basin in Tamil Nadu and is bound by the stipulations seen in the Final Order of the CWDT in which process, the Tribunal has held that we must at least aim at 65% efficiency in the irrigation systems not only in this sub-basin but in the entire Cauvery basin in Tamil Nadu. This means that we may have to cut down water use in the L.B. Project Irrigation System from the present entitlement of 36 TMC, which entitlement we took for granted when planning for this irrigation system. The CWDT allots only 28 TMC for this system for both turns.

This would mean that we may have to think in terms of saving at least 8 TMC in an year from its present use."

22. I submit that later the Government vide its G.O.Ms.No.215, Public Works (S1) Department dated 19.07.2010 accorded in principle acceptance of the Report of the Committee to formulate a scheme for modernisation of main and branch canals, including lining of L.B.P canal. Under the said G.O, the Government also directed the Chief Engineer, Water Resources Department, to prepare detailed estimates for the works and send them to the Government for approval.

23. I submit that later the Government vide its G.O(4D)Ms.No.66, Public Works (W1) Department dated 17.08.2020 accorded permission to the Tamil Nadu Water Resources Conservation and River Restoration Corporation Department, the 5th respondent herein to apply to NABARD Infrastructure Development Assistance (NIDA) seeking loan assistance for the work of Extension, Renovation and Modernisation of Lower Bhavani Project System at an estimated total cost of Rs.933.10 Crores.

24. I submit that that the Chief Engineer, Water Resources Department, Coimbatore, in his letter dated 31.10.2020, has requested orders from the Government of Tamil Nadu for executing the works into Six Packages, as detailed below :-

Package No	Name of the Package	Estimate amount (In Crores)
I	Extension, Renovation and Modernisation of Lower Bhavani Project canal from Mile	194.15

	0-0-373 to 18-1-375 in Erode District	
II	Extension, Renovation and Modernisation of Lower Bhavani Project canal from Mile 18-1-375 to 39-0-000 in Erode District	127.65
III	Extension, Renovation and Modernisation of Lower Bhavani Project canal from Mile 39-0-000 to 63-0-560 in Erode District	198.25
IV	Extension, Renovation and Modernisation of Lower Bhavani Project canal from Mile 63-0-560 to 124-2-560 in Erode, Tiruppur and Karur Districts	189.55
V	Extension, Renovation and Modernisation of Kalingarayan Channel from Mile 15-4.5-195 to 56-5.5-328 in Erode District	76.80
VI	Extension, Renovation and Modernisation of Thadapalli Channel and Arakkankottai Canal in Kodivery Anicut Systems in Erode District	146.70
	Total	933.10

25. I submit that as per the request of the Chief Engineer, Water Resources Department, Coimbatore Region, the Principal Secretary to Government, Water Resources Department, the 3rd respondent herein has accorded sanction to entrust the work to the Chief Engineer, Water Resources Department, Coimbatore Region, for execution, by splitting up of the Extension, Renovation and Mordernisation of Lower Bhavani Sub-Basin Project System works into Six Packages as detailed above, vide, its G.O.Ms.No.276 Public Works (W1) Department dated 09.11.2020.

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Erode District Secretary

26. I submit that subsequently the Government of Tamil Nadu issued Tenders for the six packages separately in the month of December, 2020. I submit that after finalizing the tender process, the works were entrusted to the respective successful bidders in the year 2021. I submit that the work was to be carried out in three irrigation systems viz., LBP canal System, Kalingarayan anicut system and Kodiveri anicut system in six packages. I submit that out of the Six Packages, the first four packages relate to Lower Bhavani Project canal and the fifth and sixth packages relate to Kalingarayan Channel and Thadapalli Channel and Arakkankottai canal in Kodiveri Anicut System, respectively.

27. I submit that when the work was going on in April, 2021 in the four Packages in LBP canal, one M.Ravi filed a writ petition in W.P.No.10419 of 2021 before the Hon'ble High Court, Madras, praying for issuance of Writ of Mandamus to forbear the respondents, their subordinates and contractors from sealing the seepage water sources under the guise of executing the work of renovation and modernization of the LBP canal as per G.O.Ms.No.276, dated 09.11.2020 passed by the 3rd respondent, by depriving the riparian rights of the non-Ayacutdars and drinking water sources of the villagers located on either side of the LBP canal which runs through Erode, Tiruppur and Karur Districts.

28. I submit that by its orders dated 28.04.2021 the Hon'ble High Court, Madras, was pleased to dispose of the said writ petition by observing as follows :

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Erode District Secretary

"5. Accordingly, without examining the merits of the matter, the petitioner is permitted to carry a fresh representation to the first respondent within a period of two weeks from the date of receipt of a copy of this order. Upon receipt thereof, the first respondent is directed to consider and dispose of such representation by a reasoned order, which should be communicated to the petitioner within a period of eight weeks from the date of receipt of such representation."

29. I submit that the petitioner in the said writ petition appears to have submitted a fresh representation to the 3rd respondent requesting him to stop the concrete lining work in the LBP canal. I submit that by his detailed and considered order dated 28.02.2022, the 3rd respondent has rejected the said representation, holding that it is absolutely necessary to renovate and modernize the LBP canal, which was in use from 1955, for improving its efficiency and preserving it for future generations.

30. I submit that the issue relating to the implementation of the Extension, Renovation and Modernisation work has been considered by the Division Bench of the Hon'ble High Court and also by the Principal Secretary to Government, the 3rd respondent herein as stated above and the same was reached finality, as the said order of the 3rd respondent has not been challenged either by the petitioner in the above said writ petition or by anyone. In these circumstances there is no impediment in continuing the work of Renovation and Modernisation of the L.B.P canal as per

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T. Srinivasan

Erode District Secretary

G.O.Ms.No.276 Public Works (W1) Department dated 09.11.2020, issued by the 3rd respondent.

31. I submit that I sought for information regarding the details of the works carried out in respect of the Four Packages in the LBP canal under the Right to Information Act from the Public Information Officer/Assistant Executive Engineer, W.R.D, Lower Bhavani-Basin Division, Erode. By his letter dated 08.06.2022, the Public Information Officer has furnished the details regarding the date of commencement of the work, the scheduled date of completion of the work and the present stage of the work in the Packages I to IV as per G.O.(Ms).No.267, Public Works (W1) Department dated 09.11.2020. It is seen from the said information that the work was commenced on 03.05.2021 in Package-I and on 25.02.2022 in Packages II to IV and that the scheduled date of completion is on 02.05.2023 for the Package-I and 24.02.2023 is for the Packages II to IV.

32. It is relevant to point out here that in respect of the other two anicut systems, namely Kodiveri Anicut and Kalingarayan Anicut, the work was also commenced during April, 2021, as per the very same G.O.Ms.No.276 Public Works (W1) Department dated 09.11.2020 and that the entire renovation and modernization works in Kodiveri Anicut and Kalingarayan Anicut had already been completed.

33. As stated above, the LBP canal is running for more than 65 years and lost its conveyance efficiency considerably due to seepage losses

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Timothy

Erode District Secretary

and that most of masonry structures are in dilapidated condition. I submit that since the canal is not able to cater the needs of its ayacutdars satisfactorily and that all the tail ends of main canal, distributaries, branches and sub branches are receiving inadequate supply of water at the required time, the Government thought it fit to renovate and modernise the LBP canal based on the recommendations of the Technical and Expert Committee at total cost of Rs.709.60 crores. I submit that the main aim of the project is to ensure that the water is used judiciously and reach the tail-end ayacutdars.

34. I submit that the averments contained in para 1 of the original application that the proposed construction activity falls under clause 8 (a), substituted by S.O.3252(E) dated 22.12.2014 to the Notification dated 14.09.2006 in S.O.No.1533(E), is incorrect and false and apart from misleading. I submit that Item 8 (a) of the Notification does not relate to any irrigation system and on the other hand it relates to building and construction projects only. I submit that since there is no building construction activity involved in the present project the said amendment is not at all applicable to the case on hand.

35. I submit that the further averments that besides the further amendment to the 2006 Notification dated 14.08.2018 specifically defined the irrigation projects involving more than 50,000 hectares as major irrigation project under 'A' category, requiring Environmental Clearance from the 1st respondent and that the project is being proceeded without

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T. Prabhakar

Erode District Secretary

following the mandatory requirements of public consultation, environmental impact assessment and without obtaining any Environmental Clearance, are all incorrect and false. The project proposed under the impugned G.O.Ms.No.276, Public Works (W1) Department dated 09.11.2020 is not a new project, which require public consultation and environmental clearance from the 1st respondent.

36. It is relevant to point out here that as per Clause 2 of the E.I.A Notification dated 14.09.2006, the Environmental Clearance is required only for the following projects, before any construction work, or preparation of land by the project management, is started on the project or activity :

- (i) All new projects or activities listed in the Schedule to this notification;
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification **with addition of capacity beyond the limits specified for the concerned sector**, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
- (iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range.

37. I submit that in the E.I.A Notification in S.O.1533(E) dated 14.09.2006 and in its Schedule, containing the list of projects or activities requiring prior environmental clearance, the irrigation projects are not

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T. Srinivas

Erode District Secretary

included. Only in the subsequent amendment issued under S.O.3977 (E) dated 14.08.2018 to the E.I.A Notification in S.O.1533(E) dated 14.09.2006, the irrigation projects have been included in Item 1 (c) as 1 (c) (ii) to the Schedule and that too in case the capacity is **beyond the limits specified therein.**

38. I submit that the present project is not a new project. There is no increase in either the distance of the LBP canal or in the culturable command areas in the LBP irrigation project or in the dam height and submergence. The project envisaged under G.O.Ms.No.276, Public Works (W1) Department dated 09.11.2020 is only for renovation and modernization of the existing LBP canal, without any addition either in the canal distance or in the area of irrigation. As such, as per clause 2 of the Notification in S.O.No.1533(E) dated 14.09.2006 and as per Item 1 (c) (ii) substituted by S.O.No.3977(E) dated 14.08.2018 to the Schedule to the original EIA Notification in S.O.No.1533(E) dated 14.09.2006 issued by the Ministry of Environment and Forests, Union of India, no prior environmental clearance or public consultation is not at all required for the present project. I submit that the contra averments contained in para 1 of the application are incorrect and false and the applicants are put to strict proof of the same.

39. I submit that the members of the applicants are all head reach farmers and their lands are included in the LBP ayacut. They also enjoy the seepage because of the location of their lands. Their lands are getting

supply of water directly through the branch canals of LBP main channel and would not get affected by the implementation of the present project. From the averments made by them in this application, identical to the averments made in the application in O.A.No.61 of 2022 (SZ) filed at the instance of non-ayacutdars, it is clear that this application has also been filed, under the cover of systemized irrigation councils, by the applicants only at the instance of the non-ayacutdars and for personal benefit.

40. I submit that the apprehension of the applicants are a only a misconception of fact and that the present application is their desperate attempt to stall the project which is being implemented based on the recommendation of the Technical and Expert Committee, made after a detailed study and after hearing the stakeholders, in order to help the non-ayacutdars.

41. I submit that the further averments made in para 1 of the application that the proposed project leads to removal of large tract of social forest decade old trees to the stretch of 200 kilometres and that the failure of the authorities to assess and study the impact on the environment prone to cause irreparable damages to the environment and that this application raises the substantial question of environmental issue, are all incorrect and false and the applicants are put to strict proof of the same. I submit that there is no removal of decade old trees to a stretch of 200 kilometres and that too in a social forest. I submit that there is no social forest involved in the present project and there is no removal of decade old trees in social forest.

42. It is relevant to point out here that subsequent to the filing of this application pursuant to the approval granted by the Tiruppur District Green Committee in its meeting held on 29.04.2022, the District Collector, Tiruppur district vide his proceedings dated 13.10.2022 has granted permission to cut 8750 trees, which are obstructing the free flow of water and damaging the existing canal and masonry structures. Similarly, pursuant to the resolution passed by the Erode District Green Committee in its meeting held on 28.10.2022, the District Collector, Tiruppur district vide his proceedings dated 06.03.2023 has granted permission to cut 6877 trees, which are obstructing the free flow of water and damaging the existing canal and masonry structures. The total numbers trees to be cut and removed in both Tiruppur and Erode districts for the purpose of modernization of the LBP channel in its entire stretch of 200 kilometres are only 15,637 and not 4 lakh trees as falsely claimed by the applicants.

43. I submit that the averments contained in para 2 of the application are matters of record, about which detailed references have been made supra.

44. I submit that the averments contained in paras 4 and 5 of the application do not reflect the true and correct facts and the applicants are bound to prove the same. The averment that for the last several decades the farmers and villagers who own their lands on either side of LBP canal to the distance of about 234 kms, are enjoying the benefit from the seepage water either directly or indirectly, are not true and correct. The averment

that for the last several decades the farmers and villagers who own their lands on either side of the LBP canal to the distance of 234 Kms, starting from the Bhavani Sagar dam to the tail end at Mangalapatti at Karur district are enjoying the benefit from the seepage water either directly or indirectly, are incorrect and false. I submit that only the farmers who own their land on the left side of the LBP canal are registered ayacutdars and have a right in the LBP canal water. I submit that the farmers who own their land on the right side of the LBP canal have no right in the LBP canal water, since they are not registered ayacutdars.

45. I submit that several farmers who own their land on the right side of the LBP canal have dug wells and bore wells illegally within the prohibited distance from the LBP canal and taking the water to several miles to irrigate their lands. Similarly, some of the persons have purchased few cents of land on the right side of the LBP canal only for the purpose of digging wells or bore wells illegally and taking the water to several miles to irrigate their coconut farms and other lands. We reliably learn that only at the instigation of those kind of corporate farmers, the applicants have filed this application for their personal benefit, even though they are registered ayacutdars under LBP project.

46. I submit that the averments contained in para 6 of the original application are incorrect, false and imaginary and the applicants are put to strict proof of the same.

47. As stated above, due to the present condition of the canal, the seepage and percolation loss has increased to more than 55 %, as against the initial estimate of 33 ½ % when the project was commissioned in the year 1954, resulting in inadequate supply of water to the tail ends. Sometimes the tail ends get less than 50 % of the water supply. As such the averment that the long years of experience and experiment by the farmers show and prove that the greater part of the water which was expected to be lost is not really lost, is incorrect and false.

48. I submit that the averments contained in para 7 of the original application are fully correct. I submit that assuming that there has been a reduction in irrigation command area due to conversion of agricultural lands into commercial, residential and industrial purposes, the same will not affect the rights of the members of the applicant councils, as they are registered ayacutdars and they have got assured supply of water from the LBP canal. I submit that the further averments relating to the alleged agitation by the farmers are irrelevant to the reliefs prayed for in this application.

49. I submit that the averments contained in para 8 of the original application are absolutely false and incorrect. The allegation that LBP canal lining have to be done by uprooting around 4 lakh trees is incorrect, false and baseless. As stated above, the Government has planned to remove only 15,637 trees, which have naturally grown inside the side slopes of the canal, obstructing the free flow of water and damaging the existing canal

and masonry structures. The further allegation that the ancestors have planted the trees and grown it up for decades together is also absolutely false and the applicants are put to strict proof of the same. I submit that the further averments that it is the obvious reason for which the project proponent has suppressed the factum of existing natural resources to be destroyed and that if the natural resources have been disclosed in the project proposals or orders, it is mandatory to obtain Environmental Clearance, but the project proponent wants to avoid it and circumvent the law and the nature, are all incorrect and false the applicants are put to strict proof of the same. I submit that there is no natural resources and that only the tree and jungle growth, which are obstructing the free flow of water in the LBP canal and damaging the existing canal and masonry structures, are to be removed.

50. I submit that the averments contained in para 9 of the original application are absolutely false and incorrect. Neither Article 48A or nor 51A (g) of the Constitution of India is applicable to the facts on hand. I submit that improving the efficiency of the irrigation canal, by renovation and modernization of the canals, is also the duty of the State. I submit that the Government, based on the recommendations of the Expert Committee is doing the work of renovation and modernization of the LBP canal, by removing the jungle growth and trees, which are obstructing the free flow of water in the LBP canal and damaging the existing canal and which cannot be find fault.

Thamilaga Vivasagal Sangam

T. Murthy

Erode District Secretary

51. I submit that the averments contained in para 10 of the original application are absolutely false and incorrect. I submit that Art.48A of the Constitution of India is not at all applicable to the facts and circumstances of the present case. The claim of the applicants that the project proponent has proposed to cut and uproot around 4 lakh trees in an arbitrary and illegal manner without obtaining environmental clearance, without conducting Environmental Impact Assessment Study by holding public hearings, are all incorrect and false. First of all the project proponent has not proposed to cut and uproot around 4 lakh trees as claimed by the applicants and that only 15,637 trees, which are obstructing the free flow of water, are proposed to be cut in the entire stretch of 200 kms of LBP canal for implementation of the renovation and modernization project. The further averment that the project was twice proposed and after the agitations and scientific studies it has been dropped is absolutely false and incorrect. As a matter of fact, as early as in the year 1999, pursuant to the request made by the then Member of Legislative Assembly of Modakkurichi constituency, for renovation of the LBP canal, the Government vide, G.O.Ms.No.38, Public Works (S1) Department, dated 11.01.1999, constituted a High Level Committee, consisting of official from three departments, namely, Public Works Department, Agricultural Department and Revenue Department.

52. I submit that the said High Level Committee, after conducting scientific study of the LBP canal and obtaining the views of the stakeholders and ayacutdars of all the three irrigation systems, namely, LBP canal

system, Kalingarayan anicut system and Kodiveri anicut system, recommended to renovate all the systems and also recommended to the Government to allot a sum of Rs.625 crores for the same. Though the High Level Committee recommended for renovation and modernization of the Cauvery sub-basin irrigation systems, namely, L.B.P canal system, Kodiveri anicut system and Kalingarayan anicut system, it was not taken up for execution only for want of funds at that point of time and not because of the alleged agitations as claimed by the applicants.

53. I submit that the averments contained in para 11 of the original application, are not known to me and the applicants are bound to prove the same.

54. I submit that the grounds raised in the above original application are nothing but a repetition of the facts, which are incorrect and false. I submit that the sum and substance of the objections raised in the above application are as follows :-

- i. The project proponent has not obtained Environmental Clearance by holding public hearings, since it is a major irrigation project involving more than 50000 hectares, which require environmental clearance as per the EIA Notifications.
- ii. The destruction of 4 lakh trees would lead to environmental degradation and damage to the ecology.
- iii. The proposed concrete lining of the LBP canal would affect their right to get seepage water and affects the livelihood of the agriculturists

and villagers and offend their right to get water for drinking and agricultural purposes.

- iv. The actions of the project proponent are in violation of the National Forest Policy, 1988.
- v. The project proponents have failed to bear in mind the duty cast upon them under Art.48A and 51A(g) of the Constitution of India.

55. Regarding the objections raised by the applicants I submit as follows :

- i. There is no increase in the irrigation command area of the LBP ayacut even after the implementation of the project. Similarly there is no increase in the distance of the LBP canal. The proposed project is not a new project and the impugned G.O has been issued only to renovate and modernize the existing 65 years old LBP canal. Hence, the project does require public hearing and environmental clearance as per the provisions of EIA Notifications of the Central Government.
- ii. There is no social forestry involved in the project and that there is no destruction of 4 lakh trees as claimed by the applicants. Only 15,637 trees, which are obstructing the free flow of water and posing danger to the 65 year old canal, are proposed to be cut in the entire stretch of 200 kms of LBP canal for implementation of the renovation and modernization project and that too after obtaining due permission from the concerned authorities.
- iii. The project involves selective concrete lining of the side slopes of the LBP canal to an extent of less than 1/3rd of the total length of

200 kms, with an objective to arrest the seepage in the canal bunds. Bed concrete lining is proposed in the project only for a length of 23.84 k.ms in the upstream and downstream side of the drainage culverts in the main LBP canal, out of the total length of 200 kms. Hence, there is no question of sealing the seepage of water in the LBP canal. More over the applicants cannot oppose the project since they are also beneficiaries of the project and registered ayacutdars.

iv. The proposed project relates to renovation and modernization of the LBP canal and there is no forest, much less social forest, involved in the proposed project. Hence, there is no violation of any of the provisions of the National Forest Policy, 1988.

v. The project relates to renovation and modernization of the LBP canal, for the purpose of improving the system efficiency in order to ensure the tail end ayacutdars are getting their rightful share of water. They are not destroying any forest and as such the provisions Art.48A and 51A (g) of the Constitution of India are not at all applicable to the case on hand.

56. I respectfully submit that under the guise of protecting the environment the applicants, instigated by non-ayacutdars and vested interests, are attempting to stall the project of modernization and renovation of the LBP canal, which is in dilapidated condition and thereby preventing the tail end ayacutdares, from getting their rightful and legitimate share of LBP canal water.

57. That apart the main application filed under Section 14 of the NGT Act by the applicants was hopelessly barred by limitation. I submit that since the main application itself is barred by limitation the question of limitation may be taken up first for consideration.

58. I submit that this Hon'ble Tribunal has powers to adjudicate the disputes as enunciated under Sec.14 of the NGT Act, which reads as under :

"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.
3. No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Thamilaga Vivasaijal Sangam

T. Mustaj

Erode District Secretary

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days".

59. I submit that in view of Sec.14 (3) of the NGT Act, 2010, no application for adjudication of dispute under this section shall be entertained by this Hon'ble Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose. The proviso to the said section states that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

60. I submit that the reliefs sought for in the main application are as follows :

- i) Declare all the actions of the State of Tamil Nadu in implementing the proposed project as per G.O.Ms.276, Public Works Department dated 09.11.2020 for concrete lining of Lower Bhavani Project canal by uprooting the 4 Lakh trees, in the name of Extension, Renovation and Modernisation of Lower Bhavani Sub Basin Project System, without obtaining prior Environmental Clearance and permissions, as illegal and violative of the Environment (Protection) Act, 1986 and 2006 Notification as amended,
- ii) Direct the respondents 1 and 2 to undertake detailed environmental study on the proposed project as per G.O.Ms.276,

Public Works Department dated 09.11.2020 by holding Public consultation, Environmental Impact Assessment Study and

iii) Restrain the project proponent from carrying on any construction activities in the entire stretch of the LBP canal, until the 3rd respondent obtains necessary Environmental Clearance from the appropriate authority in the manner know to law.

61. I submit that in this case the Principal Secretary to Government, Water Resources Department, the 3rd respondent herein has accorded sanction to entrust the work to the Chief Engineer, Water Resources Department, Coimbatore Region, for execution of the Extension, Renovation and Mordernisation of Lower Bhavani Sub-Basin Project System works, vide, its G.O.Ms.No.276 Public Works (W1) Department dated 09.11.2020.

62. I submit that subsequently the Government of Tamil Nadu issued Tenders for the six packages separately in the month of December, 2020. I submit that after finalizing the tender process, the works were entrusted to the successful bidders in January, 2021. I submit that from the information dated 08.06.2022 furnished by the Public Information Officer/Assistant Executive Engineer, W.R.D, Lower Bhavani Basin Division, Erode, the work was first commenced as early as on 25.02.2021.

63. I submit that the cause of action for filing the main application arose first in this case on 09.11.2020, when the G.O.Ms.No.276 Public Works (W1) Department was issued. I submit that even the

commencement of the work was taken into account as the starting point of cause of action, the cause of action was first arose on 25.02.2021. But then, the above application was filed only on 29.08.2022. I submit that from either dates (09.11.2020 or 25.02.2021) the main application was filed after the period of more than one year. I submit that submit that from the said facts it would be quite clear that the application filed by the applicants was hopelessly barred by time.

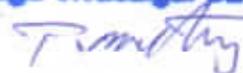
64. I submit that the applicants are well aware that the application is not within the period of limitation. In respect of the aspect of limitation, the applicants have tried to explain the same by averring that the cause of action is a recurring one and continues till date since the respondents are continuing to proceed to cut/uproot the trees in detriment to the environment each and every day and the application is well within limitation. I submit that for the purpose of reckoning the limitation of Section 14 (3) of the Act, the averments made by the applicants as above are wholly irrelevant and of no consequence since the concept of continuing or recurring cause of action is foreign to the expressed provisions of the statute of limitation engrafted under Section 14 (3) of the Act. I submit that the NGT Act is a special enactment and hence, there is statutory prescription of the special period of limitation under Section 14 (3) of the Act, which excludes the general law of limitation.

65. I submit that the concept of recurring cause of action cannot be made applicable to the present factual position and that too when there

is a specific bar against entertaining the application, if it is not within a period of limitation prescribed under Section 14(1) of the NGT Act. I submit that the words "first arose" in Section 14 (1) which are indicators of the unambiguous legislative intent and that while the expressed provisions of the statute of provision under Section 14 (1) of the NGT Act is so clear, the concept of recurring cause of action as put forth by the applicants has no application at all and hence the main application is hopelessly barred by limitation.

66. It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the above original application with exemplary cost and pass other necessary and just order as may be deemed fit and proper in the circumstance of the case and render justice.

Solemnly affirmed at Chennai on this 27th day of March, 2023, the contents of this affidavit have been read over and explained to the deponent in Tamil who being unacquainted with English and appeared to have understood the same and signed his name in my presence.

Thamizha Vasaigal Sangam

Erode District Secretary

Before me

 NIVEDITA S MENON
 [31/23/2017]
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O.A.No.89 of 2022 - Counter affidavit filed by the 7th respondent

1 message

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To: anbarasanassociates@gmail.com, sahnk@ong.gov.in, Shanmuganathan Dharmarajan <dshanmuganathan@outlook.com>

Mon, Mar 27, 2023 at 6:11 PM

To

1. M/s A.Praveen Kumar
M.Meenatchi, Advocates,
Counsel for Applicants in O.A.No.89/2022

2. Union of India,

Rep by its Secretary, Ministry of Environment, Forests and Climate Change,
New Delhi.

Respondent No.1 in O.A.No.89/2022

3. Dr.D.Shanmuganathan, Advocate

Standing Counsel for Respondents 2 to 6 in O.A.No.89/2022

Sirs

Ref : O.A.No.89/2022 - NGT (SZ) Chennai

Please find attached herewith the counter affidavit filed on behalf of the 7th respondent in O.A.No.89/2022. This is for your kind information.

Thanking you.

S.Thangavel,
Advocate

Counsel for 7th Respondent
Mobile No. 94440 23314

 Counter affidavit filed by 7th respondent.pdf
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BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL (SZ) CHENNAI
(Under Section 18(1) read with Sections 14,
15 of the National Green Tribunal Act,
2010)

ORL. APPLN. No. 89 of 2022 (SZ)

M-4 LBP Systemised Irrigation Council
Rep. by its President P.Periavellappan,
and others

...Applicants

Vs.

Union of India
Rep. by its Secretary,
The Ministry of Environment, Forests
New Delhi and others

...Respondents

**COUNTER AFFIDAVIT FILED BY THE
7TH RESPONDENT**

Mr. S.THANGAVEL (E.No.69/1991)

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