

IN THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE
BENCH, CHENNAI

ORIGINAL APPLICATION NO. 137 of 2021

IN THE MATTER OF: -

Gutha Gunasekhar and Ors.

.... Applicant

Versus

Union of India and Others

.... Respondent(s)

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Place:
Dated:

Filed by

Advocate for MoEF&CC

Mob. No.
Email Id:

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**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1,
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE**

MOST RESPECTFULLY SHOWETH: -

I, Dr. Suresh Babu Pasupuleti, S/o Bhaskara Rao Pasupuleti, aged about 35 years working as Scientist 'D' in the Ministry of Environment, Forest and Climate Change, having an office located Integrated Regional Office (IRO), Green House Complex, Gopala Reddy Road, Vijayawada – 520010, Andhra Pradesh do hereby solemnly affirm on oath and state as under:

1. It is submitted that I am working as Scientist 'D' in the office of the Ministry of Environment, Forest and Climate Change, Integrated Regional Office (IRO), Green House Complex, Gopala Reddy Road, Vijayawada – 520010 and as such am well acquainted with the facts and circumstances of the case on the basis of the records available in my office and am thus duly authorized to file this Affidavit on behalf of the Respondent No. 1 herein, i.e. the Ministry of Environment, Forest & Climate Change (hereinafter referred as answering Respondent). Specifically admitted hereunder:
2. It is submitted that the present Original Application has been filed alleging that the State of Andhra Pradesh initiated several reservoirs and a Lift Irrigation Scheme under Galeru Nagari Sujala Sravanthi (hereinafter referred to as 'GNSS') and Handri Neeva Sujala Sravanthi (hereinafter referred to as 'HNSS') vide G.O.Rt. No. 444 dated 26.08.2020 and G.O.Rt. 461 dated



02.09.2020, which depends on water drawn from the Rayalaseema Lift Irrigation Scheme/Telugu Ganga project, without prior Environmental Clearance.

Further, it is also alleged in the application that the State of Andhra Pradesh has proposed to have 3 more Reservoirs namely, (1) Mudiveedu Formation of balancing reservoir near Mudiveedu Village in Kurabalakota (M) (2) Nethigunrapalli Balancing Reservoir and (3) Avulapalli Balancing Reservoir all in Chittoor District which is being implemented without getting any prior environmental clearance and without conducting Environment Impact Assessment (EIA) which is against the purport of the order passed by this Tribunal in O.A. No. 71 of 2020 (SZ) in respect of such projects.

3. It is submitted that the present application has been filed by the applicant seeking the following reliefs:

- i. *To restrain the State of Andhra Pradesh from taking up the Lift Irrigation projects and balancing reservoirs under G.O. Rt. 444 dated 26.08.2020 and G.O.Rt. 461 dated 02.09.2020 without prior environment, forest clearance and other mandatory clearances from Respondents No. 1, 2, 5 & 6 according to EIA Notification, 2006 and guidelines of CWC.*
- ii. *To direct Respondent No. 3 & 4 not to dispossess the Applicants and other similarly situated project affected persons.*
- iii. *To direct the Joint Committee appointed in OA No. 71 of 2020 (SZ) to conduct a comprehensive study on the Lift Irrigation Projects and balancing reservoirs proposed under G.O.Rt. 444 dated 26.08.2020 and G.O. Rt 461 dated 02.09.2020 by the State of Andhra Pradesh.*



iv. *To initiate appropriate action against the officials of Andhra Pradesh for continuously violating the EIA Notification, 2006, Environment Protection Act, 1986 and for misleading this Hon'ble Tribunal in the name of executing the Lift Irrigation Projects such as Rayalaseema Lift Irrigation Scheme, Lift Irrigation Projects on GNSS & HNSS, balancing reservoirs, etc. without prior Environmental Clearance.*

4. That the Hon'ble Tribunal vide order dated 29.11.2021 has directed to file a counter-affidavit, answering the issues raised in the matter which also covers the aspects highlighted by the Hon'ble Tribunal vide its order dated 29.11.2021 which are reproduced below:

"...3. The MoEF&CC is the authority to come with a reply statement regarding the action of the State of Andhra Pradesh, whether it is proper or not, in view of the allegations made by the applicant.

4. The Tribunal is also having its own doubt as to whether even for preparing a DPR for a changed project, whether that will amount to preparation for the project, for which, prior Environmental Clearance (EC) is required and if there is any modification of the project that has been covered by the Environmental Clearance (EC) already granted including the change of scope of the project, whether the party can proceed with the project without getting further clearance.

5. The counsel for the MoEF&CC is directed to instruct the MoEF&CC to come with a detailed reply statement, answering these aspects as well, after perusing the copy of the counter statement filed by the State of Andhra Pradesh in this regard, as they are the person under the EIA Notification to mention what are all the prerequisite conditions to be fulfilled by the project proponent while proceeding with the project..."



“...8. The MoEF&CC is also expected to clear the doubt as to whether even if it is mentioned that five years for starting of construction, whether that will override the provisions of the amended Notification of Clause 9 of the EIA Notification, 2006 regarding the validity of the Environmental Clearance (EC) granted which includes the river valley projects as well...”

5. That the answering Respondent has accorded Environmental Clearance to HNSS Project and GNSS Project vide letter no. J-12011/10/2000-IA-I and J-12011/18/2006-IA. I on 08.05.2006 and 21.06.2006 respectively as per the provision of Environmental Impact Assessment Notification, 1994 (hereinafter referred to as EIA, Notification, 1994) subject to the strict compliance of the environmental safeguards provided in the above said environmental clearances.

Copy of Environmental Clearance to HNSS Project and GNSS Project granted on 08.05.2006 and 21.06.2006 is annexed as **Annexure R-1** and **Annexure R-2** respectively.

6. It is submitted that as per project details submitted by the project proponent the said projects envisaged lifting of water from Krishna river for providing irrigation to 2.438 ha under the HNSS Project and 1.052 lakh ha. under the GNSS Project and to supply drinking water to the chronically drought-affected areas of Rayalaseema region. The HNSS Project consists of eight balancing reservoirs and the GNSS Project consists of eleven balancing reservoirs. These balancing reservoirs are:

S No.	Galeru Nagari Sujala Sravanthi (GNSS) Project	Handri Niva Sujala Sravanthi (HNSS) Project
	Balancing Reservoir	Balancing Reservoir

1	Gandikota Reservoir	Krishnagiri Reservoir
2	Vamikondasagar Reservoir	Pattikonda Reservoir
3	Sarvarajasagar Reservoir	Jeedipalli Reservoir
4	Uddimadugu Reservoir	Gollapalli Reservoir
5	Mallemadugu Reservoir	Marala Reservoir
6	Sri Balaji Reservoir	Cherlopalli Reservoir
7	Padmasagar Reservoir	Srinivasapuram Reservoir
8	Srinivasagar Reservoir	Adivipalli Reservoir
9	Venugopallasagar Reservoir	
10	Vepaguntasagar Reservoir	
11	Adavikotturu Reservoir	
Total no. of Reservoirs: 19		

7. It is submitted that the environmental clearances dated 08.05.2006 and 21.06.2006 to HNSS and GNSS Projects respectively, were granted for a validity period of five years from the date of issuance of their respective environmental clearances for '*commencement of construction work*'.

Here it is pertinent to mention that as per the EIA Notification, 1994 vide Notification No. S.O. 60(E) dated 27.01.1994 in cases where the irrigation projects commenced their construction work within the validity period, the grant of the environmental clearance to the said projects continues to be valid. The relevant extract of EIA Notification, 1994 in this regard is reproduced below:

"The clearance granted shall be valid for a period of five years for commencement of the construction or operation of the project."

It is worthwhile to mention that the EIA Notification, 1994 covering the aspect of *any further modification with respect to the existing project inter-alia* states that:

“.....I(a) Any person who desires to undertake any new project in any part of India or the expansion or modernization of any existing industry or project listed in the Schedule-I shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.....”

8. That the provisions of EIA Notification, 1994 were superseded vide notification S.O. 1533(E) dated 14.09.2006, issued by the answering Respondent namely, Environment Impact Assessment (EIA) Notification, 2006 (hereinafter referred to as EIA, Notification, 2006). The preamble of the EIA Notification, 2006 clearly states about the requirement of prior Environmental Clearance (“EC”) before the start of any construction work in case of new projects or expansion and modernization of existing projects or activities. The operative part in this regard is provided hereunder:

“Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification number S.O. 60 (E) dated the 27th January, 1994, except in respect of things done or omitted to be done before such super-session, the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification

entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification.”

The Para 2 of the EIA Notification, 2006 further categorizes the projects/activities which require prior environmental clearance from the MoEF&CC or SEIAA, as the case may be. The relevant part of the Para 2 of the EIA Notification, 2006, is reproduced as under:

“.....(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 the addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which crosses the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in the product - mix in an existing manufacturing unit included in Schedule beyond the specified range.....”

Thus, in view of the aforementioned Preamble as well as the Para 2 of EIA Notification, 2006 it is submitted that any modification of the existing project to which EC was granted under EIA Notification, 1994, cannot proceed with the project without getting fresh EC.



9. Further, it is submitted that the answering Respondent vide letter dated 09.12.2021 had directed Integrated Regional Office, Vijayawada to conduct a project site visit forthwith, in light of the issues raised in the present application and thereafter, submit a factual status report to the answering Respondent.

Accordingly, Integrated Regional Office (IRO), Vijayawada MoEF&CC conducted site inspection of Mudiveedu balancing reservoir, Nethiguntapalli balancing reservoir and Avulapalli balancing reservoir in Chittoor District on 26.12.2021. The factual status report (site Inspection report) was submitted to the MoEF&CC vide letter dated 07.01.2022 wherein it was observed that "*no constructional activities or project implementation activities were being taken up by the project proponent*". The relevant extract is reproduced below:

"As per the observations made during site inspection, discussions held and information provided by Project Proponent, the following conclusions were made:

- i. *The proposed scheme of Interlinking of HNSS & GNSS Projects by Lift scheme is under planning and DPR preparation stage.*
- ii. *The allegations made by applicant in O.A. No. 137 of 2021 (SZ) were the drilling activities for testing of soil strength which is a part for preparation of Detailed Project Report (DPR) of each reservoir.*
- iii. *As per the discussions held, it has been observed that the activities taken up at Avulapalli balancing reservoir are for preparation of DPR and during the day of inspection, no sign of any construction activities were observed.*

iv. No constructional activities/project implementation activities are being taken up by the project proponent.

The copy of Site Inspection Report dated 07.01.2022 is annexed as **Annexure R-3**.

Thus, keeping in view the allegations made by the applicant as well as the aforementioned conclusions drawn in the Site Visit Report (**Annexure R-3**), there was no ongoing construction activity. The proposed Scheme of Interlinking of HNSS & GNSS Projects by Lift scheme is under planning and DPR preparation stage.

10. It is submitted that the Hon'ble Tribunal vide Para no. 8 of the order dated 29.11.2021 had stated that although the EC validity period was of five years for starting the construction, "*...whether that will override the provisions of the amended Notification of Clause 9 of the EIA Notification, 2006 regarding the validity of the Environmental Clearance (EC) granted...*".

In this regard it is worthwhile to mention that the EC granted under EIA Notification, 1994 continues to remain valid as no construction of proposed balancing reservoirs is being undertaken as per the Site Inspection Report of the IRO, Vijayawada (**Annexure R-3**). Further, looking to the fact the Government of Andhra Pradesh vide G. O. Rt. No. 444 WR (Projects III) Dept., dated 26.08.2020 has accorded administrative approval for Rs. 5036.00 Crores for the work "Investigation and Construction of Lift Schemes to lift water from GNSS to HNSS", advisory is being issued to the Government of Andhra Pradesh to seek all necessary clearances as may be

applicable under the Environmental Laws/Rules/Notification before changing the scope of the work as approved in the previously granted EC.

11. Thus, in view of above, the detailed affidavit may kindly be taken on record and into consideration. It is submitted that the Hon'ble Tribunal may pass appropriate Order(s), direction(s) as deemed fit and proper under the facts and circumstances of the present case.

12. That other/ancillary issues raised in the application under reply do not pertain to the answering respondent. The Answering Respondent seeks leave to make additional submissions, if required, during the course of the proceedings.


18/01/2022

DEPONENT

(डॉ. सुरेश बाबु पसुपुलेटी)
(Dr. SURESH BABU PASUPULETI)

वैज्ञानिक 'डी' / SCIENTIST 'D'

भारत, सरकार / Govt. of India

मलवायु परिवर्तन मंत्रालय / Min. of Env. Forest & CC

एकीकृत क्षेत्रीय कार्यालय / Integrated Regional Office

विजयवाडा / VIJAYAWADA.

VERIFICATION

I, the above-named deponent do hereby solemnly affirm and state that the contents of the aforesaid affidavit are true and correct to my personal knowledge and have been derived from the official records maintained by the Respondent. No part of it is false nor has anything material been concealed therefrom.

Verified at Vijayawada on this 18 day of January, 2022.


18/01/2022

DEPONENT

(डॉ. सुरेश बाबु पसुपुलेटी)

(Dr. SURESH BABU PASUPULETI)

वैज्ञानिक 'डी' / SCIENTIST 'D'

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विजयवाडा / VIJAYAWADA.