

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTH BENCH AT CHENNAI**

(Under Sections 16 read with Section 18 of the National Green Tribunal Act,
2010)

APPEAL NO: 52 OF 2021

IN THE MATTER OF:

TEJAS S RAO

...APPELLANT

VERSUS

STATE OF KARNATAKA AND ORS

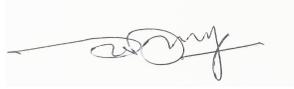
...RESPONDENTS

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THROUGH



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PLACE:CHENNAI

DATE: 18.01.2022

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(Under Sections 16 read with Section 18 of the National Green Tribunal Act,
2010)

APPEAL NO: 52 OF 2021**IN THE MATTER OF:-****TEJAS S RAO**

Son of B.Shankar Rao

Aged about 23 years,

Residing at

No.2, Janaki Nilaya,

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...APPELLANT**Vs****STATE OF KARNATAKA**

Through the Chief Secretary,

Room No: 110,

Gate II,

M S Building,

Ambedkar Veedhi,

Bengaluru,

Karnataka 560001 and Ors

....RESPONDENTS

REJOINDER ON BEHALF OF THE APPELLANT TO THE COUNTER
AFFIDAVIT OF RESPONDENT NO.2

MOST RESPECTFULLY SHOWETH:-

1. The Appellant has filed the above captioned appeal challenging the order dated 17.06.2021 passed by the Respondent No.2 on the application of the Appellant for the establishment of fuel station in an extent of 1 acre at Survey No.4/23, Varthur Village, Thaverekere hobli, Bangalore south Taluk, Karnataka. In this regard, it is submit that the Respondent No.2 has rejected the application of the appellant solely on the wrongful interpretation of the provisions of TGR notification and has failed to understand the real intent and the subsequent amendments made in the Thippagondanahalli Reservoir Notification issued under Sec.5 of the Environmental Protection Act by the Government of Karnataka, Department of Forest, Ecology and Environment.
2. At the outset, it is respectfully submitted that the contents of the counter affidavit filed by the Respondent No.2, Magadi Planning authority to the above tilted appeal are wholly misleading and the Appellant denies all averments made by the Respondent No.2 therein specifically admitted or are of matter of record. The Appellant herein reserves the right to rebut any specific averment if put on record by Respondent no.2.
3. That in the memorandum of Appeal the Appellant has primarily taken, interalia, the following grounds of Challenge:-
 - i. Order dated 17.06.2021 passed by the Respondent No.2 was merely on the wrong interpretation of the contents of the TGR

Notification issued by the Government of Karnataka under Sec.5 of the Environmental Protection Act.

- ii. Order dated 17.06.2021 passed by the Respondent No.2 under the power conferred under the Sec.5 of the Environmental protection act.
- iii. Order dated 17.06.2021 passed by the Respondent No.2 was on the basis of the original notification not with the subsequent amendments made in the TGR notification and also failed to look into the slew of directions issued by the Hon'ble Supreme court in the case of Mantri Technoze Pvt. Ltd. vs Forward Foundation.
- iv. Impugned order passed by the Respondent No.2 is arbitrary, irrational and without affording an opportunity of hearing to the appellant to put forth his submission prior to passing an order.
- v. Order under challenge is on a ground of inconsistent to the provisions and the enactments of NGT Act

The contents of the memorandum of appeal are not being repeated for the sake of brevity. The Appellant is relying upon on the grounds are taken by it in the appeal and the same regarded as part and parcel of this Rejoinder.

Para-wise reply to the contentions raised by the Respondent No.2 in the counter- Affidavit

4. That the averment in Para.1 to 7 of the counter affidavit of Respondent No.2, are a matter of record and therefore does not require response.
5. With respect to the averment in Para.8 of the counter affidavit of Respondent No.2, it is submitted that the order under challenge before this Hon'ble Tribunal is an order passed by the Respondent No.2 and not

the order of the Deputy commissioner, Bengaluru urban District and thus, it is crystal clear that the Respondent No.2 has failed to understand the prime issues/grounds raised in the present appeal.

6. That the averments in Para. 9 and 10 of the counter affidavit of Respondent No.2 are denied as false. It is submitted that the TGR Notification has been implemented by the Government of Karnataka under Sec.5 of the Environmental Protection Act for the abatement of water pollution in the vicinity and does not restrict any commercial activities in the permissible area of the said notification. In this regard, the Appellant would like to extract the relevant portion of Zone-3 of TGR Notification for the convenience of this Hon'ble Tribunal:-

3	Area covered within 1 km distance from the river banks of Arkavathy (only upto Hesarghatta tank from TGR) and Kumudvathi	No person shall carry on activities <u>other than Agriculture</u> or Agriculture related activities <u>without prior permission</u>	<ol style="list-style-type: none"> 1. Department of Urban Development. 2. BMRDA 3. Nelamangala planning Authority. 4. Bangalore Development Authority. 5. Directorate of Municipal Administration. 6. Bangalore Water Supply and Sewage Board.
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From the above tabular column it is apparently clear that the said notification relied upon by the Respondent No.2 states that the commercial activities other than agricultural activity are allowed with the permission of the authorities who have been delegated power under the said notification and thus, the averments raised by the Respondent no.2 that only agriculture

activity is permissible is untenable and without understanding the contents of the said notification.

7. In response to the averment in Para.11 to 13 raised by the respondent No.2, the Appellant would like to recapitulate that the order under challenge before this Hon'ble Tribunal is an order dated 17.06.2021 passed by the Respondent no.2 in rejection of the Appellant's application solely on the basis of the TGR notification. Further, it is to submit that in Para.4 of the counter affidavit filed by the Respondent No.2 states that the Magadi planning authority, the Respondent No.2 herein is a sole planning authority who grants permissions within the jurisdiction of Magadi area and as such the Appellant has preferred an appeal before this Hon'ble Tribunal for an order passed under the ambit of TGR notification by the Respondent No.2.
8. In addition to the above, it is to submit that the order dated 17.06.2021 cannot be named now as a letter/communication to the Appellant. Assuming but not conceding the fact that the Deputy Commissioner, Bangalore rural district is an authority to decide the proposal of the Appellant's Application, then the letter/Communication as named by the Respondent No.2 should have not been issued to the appellant on his proposal unless the application has been decided by the Deputy Commissioner. Therefore, it is to state that the Respondent No.2 is an authority to decide and grant NOC under the provisions of TGR Notification and the same is admitted by the Respondent no.2 in Para.4 of the counter affidavit.

9. In response to the averments in Para.14 it is to submit that the Appellant has not suppressed any material facts before this Hon'ble Tribunal and has produced all the documents that are necessary for the present appeal and therefore, the allegation in respect of suppression on the hands of appellant is unsustainable.
10. With respect to the averments in Para.15 and 16 of the counter affidavit filed by the Respondent No.2 are misleading and denied as false. The Appellant submits that the order passed by the Respondent No.2 is solely on the basis of distance criteria as enumerated under the provisions of original TGR Notification and not on the provision of KTCP Act. The said notification act as a parent notification and any directions/orders issued under the basis of the notification is an appealable order under sec.5 of the Environmental Protection Act.
11. In response to the contention in Para.17 of Respondent No.2, it is to submit that the said respondent has admitted in the counter affidavit in Para .4 that the Respondent No.2 is a planning authority within the jurisdiction of the Magadi area. Therefore, the order passed by the Respondent No.2 is an appealable order under the sec.16 of the NGT Act.
12. With respect to the averment in Para.18, it is to submit that the order under challenge is an order passed by Respondent No.2 not the order of Deputy Commissioner, Bengaluru rural District and hence, there is no requirement to array the Deputy Commissioner as a party in the present appeal.
13. The averment in Para.19 of the counter affidavit of the Respondent No.2 is illogical and untenable on the ground that it cannot be termed now as letter which was rejected the proposal of appellant's application for the Establishment of petrol bunk. Therefore, the rejection of any order of

communication would cause a grave prejudice to the appellant and thus, the appellant prefers an appeal before this Hon'ble Tribunal.

14. In response to Para.20 to 21, it is to submit that the impugned order issued under the provisions of TGR notification and the said notification was issued by the Government of Karnataka under Sec.5 of the Environmental Protection Act. Therefore, this Hon'ble NGT has a wide jurisdiction over the order/directions issued under the provisions of TGR Notification not any other courts/tribunals. In this regard, it is vital to submit that there are several appeals and applications are pending before this Hon'ble Tribunal for the violation of the TGR notification and therefore, any clarification/directions/orders issued under the said notification is a jurisdiction of this Hon'ble Tribunal.

In the case of **Mantri Technoze Pvt. Ltd. vs Forward Foundation**, the Hon'ble Supreme Court held that

47. [Section 33](#) of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning regulations under these statutes or the RMP.

From the bare reading of the above judgment it is emphasized that this Hon'ble Tribunal has a power of overriding effect on the other

laws/enactments that are inconsistent to the provisions of the NGT Act. In the Present case, after issuance of the directions by the Hon'ble Supreme court in the case of Mantri Technozone vs Foward foundation, the Respondent no.2 has failed to understand that 30m from the edge of water bodies needs to earmark as buffer zone not 500meters.

15. The Appellant submits that Para.22 of the Counter affidavit does not need any response on the ground that the Respondent No.2 has not dealt with the issues/grounds of the present appeal in proper perspective instead transferring the bestowed duty and responsibilities to the other authority.
16. With respect to Para.23 of counter affidavit of Respondent No.2, it is to submit that the TGR notification does not prohibit any commercial activities in the permitted area of TGR notification. The Respondent No.2 failed to understand the real intent of the notification wherein it states that activities other than agricultural are allowed with prior permissions. The aforesaid crucial fact of the notification was intentionally ignored by the Respondent No.2.
17. The Averment in para.25 of the counter affidavit filed by the Respondent No.2 is contrary to the earlier paras of the counter affidavit filed by the Respondent No.2. The impugned Para would apparently reveal the fact that the respondent no.2 is an authority grants NOC under the provisions of TGR Notification. Therefore, the Impugned order may be quashed in toto on this ground alone.

With the above submissions it is humbly prayed that this Hon'ble Tribunal may be pleased to allow the present appeal and pass such further or other order as this Hon'ble Tribunal deems fit in the facts and circumstances of the case and thus, render justice.

Dated at Chennai on this 18th day of January,2022



APPELLANT

THROUGH



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