

IN THE HON'BLE NATIONAL GREEN TRIBUNAL**PRINCIPAL BENCH, NEW DELHI****APPEAL NO. 28 OF 2024****IN THE MATTERS OF:****NTPC Ltd., Unchahar****..... Appellant****VERSUS****State of Uttar Pradesh & Ors.****..... Respondents****INDEX**

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Place: Delhi

Dated: 18, October, 2024

**SOMESH CHANDRA JHA
(Advocate for the Respondent No. 03 & 04)**

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IN THE HON'BLE NATIONAL GREEN TRIBUNAL**PRINCIPAL BENCH, NEW DELHI****APPEAL NO. 28 OF 2024****IN THE MATTERS OF:**

NTPC Ltd., Unchahar



..... Appellant

VERSUS

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..... Respondents

Affidavit on Behalf of National Board for Wild Life (Respondent No. 3)
and Union of India, through Ministry of Environment, Forest and Climate
Change, through its Secretary (Respondent No. 4).

MOST RESPECTFULLY SHOWETH:

1. I, Dr Sudheer Chintalapati, aged about 40 years, working as Scientist 'E' in Ministry of Environment, Forest and Climate Change, New Delhi (hereinafter 'MoEFCC') do hereby solemnly affirm and State as under:
2. That I am duly authorized to swear this affidavit and as such I am conversant with the facts of the present case and competent to swear the present affidavit.
3. That I have read and understood the contents of the accompanying reply and state that the same has been drafted under my instructions based on the official records.

Sudheer
 (डॉ. सुधीर चिंतलपति)
 (Dr. SUDHIR CHINTALAPATI)
 वैज्ञानिक 'ई' / Scientist 'E'
 पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
 Min. of Environment, Forest and Climate Change
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 Govt. of India, New Delhi

STATEMENT OF FACTS:

4. It is humbly submitted that the present Appeal has been filed with a prayer to set aside the Demand Notice dated 26.03.2024 directing the Appellant to deposit 2% of the project cost and declare that the EC dated 10.05.2013 issued by the MoEFCC will not cease to be valid and further prayed to declare that the Appellant's plant at Rai Bareilly, UP does not fall in the Eco Sensitive Zone (ESZ).

REPLY TO FACTS OF THE CASE:

5. It is submitted that Section 5A of the Wild Life (Protection) Act, 1972 (hereinafter as 'the Act') states the provisions relating to the Constitution of the National Board for Wild Life and Section 5B of the Act states about the Standing Committee of the National Board (SCNBWL).
6. It is submitted that, Hon'ble Supreme Court in its order dated 4 December 2006 in W.P. (C) 460 of 2004 had directed as follows:

"The Ministry is directed to give a final opportunity to all States/Union Territories to respond to its letter dated 27th May, 2005. The State of Goa also is permitted to give appropriate proposal in addition to what is said to have already been sent to the Central Government. The communication sent to the States/Union Territories shall make it clear that if the proposals are not sent even now within a period of four weeks of receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21st January, 2002, namely, notification of the areas within 10 km. of the boundaries of the sanctuaries and National Parks as eco-sensitive areas with a view

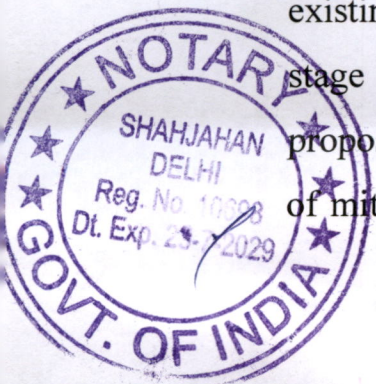


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to conserve the forest, wildlife and environment, and having regard to the precautionary principles. If the States/Union Territories now fail to respond, they would do so at their own risk and peril.

The MoEF would also refer to the Standing Committee of the National Board for Wildlife, under Sections 5 (b) and 5 (c) (ii) of the Wild Life (Protection) Act, the cases where environment clearance has already been granted where activities are within 10 km. zone.”

6. It is submitted that, in keeping with the spirit of the order of Hon'ble Supreme Court, proposals pertaining to developmental activities within Eco-sensitive Zones (ESZ) around National Parks and Sanctuaries or within 10 km from the boundaries of these protected area where ESZs have not been finally notified, are considered by the Standing Committee of the National Board for Wild Life.
7. It is submitted that, such proposals are forwarded by State Governments to the Ministry of Environment, Forest and Climate Change for placing before the Standing Committee of the National Board for Wild Life after thorough scrutiny by the State/ Union Territory Governments/Administrators and the State Boards for Wild Life headed by the respective Chief Ministers/Administrators. Incomplete proposals are returned to the States/Union Territories. The SCNBWL, which also includes eminent ecologists, conservationists and environmentalists, takes informed decisions on the proposals placed for its consideration.
8. It is submitted that the SCNBWL in its 32nd Meeting held on 21st January, 2015, considered the instant proposal for expansion of the existing coal-based power project by adding one unit 500 MW under stage IV of NTPC Ltd Feroz Gandhi Unchahar, Uttar Pradesh. The proposal was recommended by the SCNBWL subject to implementation of mitigation measures and the conditions stipulated by the CWLW and



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Environment Clearance obtained under the Environment (Protection) Act, 1986 and EIA Notification 2006.

9. It is submitted that one of the conditions stipulated by the CWLW was that a sum equivalent to 2% of the project cost would be deposited by the User Agency. It is further submitted that this condition formed an integral part of the approval, binding *ex lege* upon the User Agency.
10. It is submitted that, in the 32nd meeting, the SCNBWL unequivocally stated that the implementation of mitigation measures, as well as adherence to the CWLW's conditions, was a precondition for the commencement of the expansion project. The User Agency, however, contravened this mandate by commencing construction without fulfilling these obligations, thereby *prima facie* committing a gross violation of the conditions set forth by the SCNBWL, which constitutes a breach of *bona fides* and *ultra vires* acts by the agency.
11. It is further submitted that the User Agency sought an *ex post facto* amendment to the minutes of the 32nd meeting, held on 21st January 2015, regarding the clearance of the expansion project, which is situated within 10 km of the Samaspur Bird Sanctuary, a notified Eco-Sensitive Zone (ESZ). This request for amendment was deliberated upon by the SCNBWL during the 73rd meeting held on 17th July 2023. After thorough discussion, the Standing Committee decided to defer the proposal for further examination.
12. It is submitted that upon further examination by the Ministry, it was ascertained that the User Agency had completed the project without complying the stipulated conditions, *ipso facto* establishing a clear violation of the SCNBWL's recommendations.
13. It is submitted that, in its 74th meeting held on 29th August 2023, the SCNBWL decided not to accept the request of the NTPC and that action



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for violation of the conditions imposed by the SCNBWL shall be taken by the Regional Office.

14. It is respectfully submitted that the notification of the Eco-Sensitive Zone (ESZ) does not have retrospective effect. Prior to final notification 10 km zone around National Parks and Sanctuaries is considered as default ESZ as per the order of Hon'ble Supreme Court of India dated 4.8.2006 cited above. Hence, *ex post facto* amendments to the conditions imposed by the SCNBWL cannot be made after the notification of the ESZ surrounding the Samaspur Bird Sanctuary more so when the project has been executed without compliance of the conditions thus constituting violation.

15. In light of the foregoing submissions, it is respectfully prayed that this Honourable Tribunal be pleased to dismiss the appeal and issue such orders, directives, or relief as it may deem appropriate and just under the circumstances of the present case.

Sc/He
I Identify the Deponent who has Signed in my Presence

VERIFICATION

14 OCT 2024
14 OCT 2024

Verified at New Delhi on this 08th day of October, 2024 that the contents of the above affidavit are true and correct to the best of my knowledge based on records and no part of it is false and nothing material has been concealed therefrom.

Sudheer
DEPONENT
(डॉ. सुधीर चिंतलपति)
(Dr. SUDHIR CHINTALAPATI)
वैज्ञानिक 'ई'/Scientist 'E'
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CERTIFIED THAT THE DEPONENT
Shri/Smt. *Sudheer*
S/o/W/o *Sudheer*
Identified by Shri *Sudheer*
has solemnly affirmed before me at Delhi
on *14 OCT 2024* that the contents of the affidavit which
have been read & explained to me are
true and correct to this & knowledge
50
Notary Public

Sudheer
DEPONENT
(डॉ. सुधीर चिंतलपति)
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