

BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH, PUNE)

APPEAL No. 11 of 2020 (WZ)

AFFIDAVIT IN REPLY IN BEHALF OF STATE
ENVIRONMENT IMPACT ASSESSMENT AUTHORITY-
RESPONDENT NO. 3

I, Dr. K. Ramesh, IFS, adult, having my office at Paryavaran Bhavan, Sector 10A, Gandhinagar 382 010 in the State of Gujarat, do hereby solemnly affirm and state on oath as under:

1. I am presently serving as Member Secretary, Gujarat State Environment Impact Assessment Authority – respondent no. 3 in the appeal. I have perused the memo of appeal filed by the appellant along with application for condonation of delay in filing the appeal, the record pertaining to the case as available in my office and am conversant with the facts of the case. I am authorised to swear the present affidavit on behalf of the Gujarat State Environment Impact Assessment Authority (hereinafter referred to as "the Authority") and am otherwise competent to make the present affidavit.
2. I am filing this short affidavit-in-reply opposing the admission of the present appeal. I say that all the averments made and contentions raised in the appeal are denied. No pleading in the appeal shall be deemed to have been admitted unless it is specifically admitted by the deponent in the reply. I crave liberty to file a detailed paragraph-wise reply to the appeal, if the need so arises.
3. The appellant has filed the appeal praying for the following reliefs:

[Handwritten signature]

- "B. *That this Hon'ble Tribunal may be pleased to pass an order setting aside order dated 04.11.2019 passed by the State Level Environment Impact Assessment Authority cancelling the Environment Clearance granted to the Applicant;*
- C. *That his Hon'ble Tribunal may be pleased to direct the State Level Environment Impact Assessment Authority to comply and follow strictly the Environmental Standards stipulated in Sustainable Sand Mining Management Guidelines 2016 and Gujarat Minor Mineral Concession Rules 2017;"*

I submit that the appeal praying for these reliefs is misconceived, both in law and on facts, and deserves to be dismissed by the Hon'ble Tribunal.

4. I submit that an impression is created or gathered from a plain reading of the prayer clause that the appellant was granted Environment Clearance by the Authority at some point of time in the past and that the Authority has thereafter cancelled the said Environment Clearance, and such action of the Authority is challenged by way of present appeal. I state that no Environment Clearance has ever been granted to the appellant by the Authority. I state that the application of the appellant for obtaining Environment Clearance for conducting mining of china clay has been rejected by the Authority.
5. I say that the State Expert Appraisal Committee and the State Level Impact Assessment Authority considered the application of the appellant for grant of Environment Clearance for china clay mining from land bearing Survey Nos. 130/1paiki, 130/2paiki, 133/1paiki, 133/2paiki and 325/1paiki of Village Nadapa, Taluka Bhuj in Kutch district of State of Gujarat. The Committee and the Authority found that the lease area where mining activity is proposed to be undertaken by the appellant is located within 500 meters from the nearest human habitation. The distance of the lease area from nearest human habitation, even as mentioned by the appellant in the application, is 360 meters. For this reason, the Committee did not recommend grant of Environment Clearance. The Authority, after

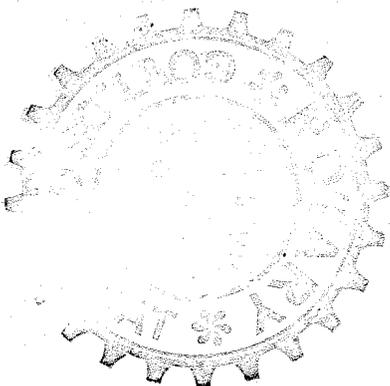


[Handwritten signature]

independent examination of the application, concurred with the recommendation of the Committee, and accordingly rejected the application. Such decision of the Authority in rejecting the application for grant of Environment Clearance to conduct mining activity in an area located within 500 meters of human habitation is just and proper and in consonance with law.

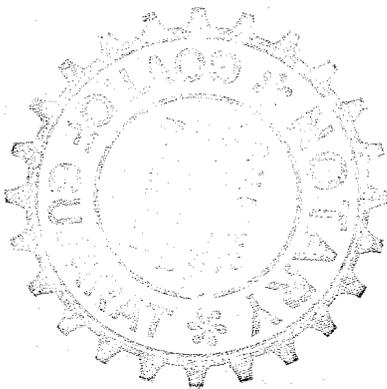
6. The Hon'ble Supreme Court of India in the case of *Mohammed Haroon Ansari and another Vs. District Collector, Ranga Reddy District, A.P.*, reported in (2004) 1 SCC 491, while dealing with pollution caused by blasting and crushing of granite for concrete metal in some areas of State of Andhra Pradesh, in paragraph 8 of the judgment, held as under:

"8. We may, at once, notice that the High Court was persuaded by public interest involved in the matter in initiating proceedings on the basis of a letter sent to it. The anxiety of the High Court was further exhibited by its concern in the matter in constituting an Expert Committee and although that Expert Committee stated that a distance of 1 km is a safe distance between the site under quarry lease and the residential locality or GLSR, but in order to be safer than what the Expert Committee observed, the High Court increased the distance by another 1 km. Particularly when the assessment made by the Centre of Mining Environment, Indian School of Mines, Dhanbad, concluded that there is no impact by the quarry operations carried on by the appellants before us on GLSR or Osmansagar lake or nearby residential locality, it is unnecessary to impose condition that the distance of 1 km for carrying out the quarry activities should be converted to 2 km. The affidavit of the Pollution Control Board indicates that if proper safeguards are adopted as indicated in the said affidavit, it will not cause any air, water or noise pollution, much less dust particles which affect the water supply system in GLSR or Osmansagar lake. We, therefore, direct that the order made by the High Court is modified by directing that the distance of 1 km is a safe distance between the site of the quarry leases and the residential localities or GLSR or Osmansagar



[Handwritten signature]

lake. The guidelines issued by the Andhra Pradesh Pollution Control Board specified 1 km to be a safe distance between crusher and human habitation from 17-1-1997. Prior to that it was only 500 metres away from the national highway and 100 metres away from the State highway, major district roads and other roads. That is why this Court granted an interim order earlier and directed that no mining and stone-crushing operations shall be carried on within a distance of 1 km from the lake or reservoir and 500 metres from human habitations. This order will hold good in respect of all such mining leases which have been granted prior to 17-12-1996. It is not necessary to advert to any other details or arguments raised in the petitions filed before the High Court or in appeals before this Court. Suffice it to observe that the impugned order of the High Court shall stand modified only to the extent indicated by us and all other terms set out by the High Court in regard to the safeguards to be adopted in maintenance of the environment shall remain intact. Further, it is certainly necessary that the appellants before carrying on any of the mining and stone-crushing activities obtain necessary clearance from the Pollution Control Board and must comply with such conditions as may be imposed by the Pollution Control Board. It is open to the Pollution Control Board to take such action as may be necessary to enforce the conditions imposed by them under the relevant statutes."



A plain reading of the judgment and particularly the operative directions suggests that the direction issued by the Hon'ble Supreme Court in the proceeding was generic and not restricted just to stone crushing operations. It concerned all mining operations and clearly mandated that "no mining" shall be carried out within 500 meters of human habitation.

7. In the case of *Yakubhai Sharifbhai Aagodiya v. Collector and District Magistrate*, Writ Petition (PIL) No. 70 of 2011, the Hon'ble High Court of Gujarat was dealing with the issue of environment pollution caused by stone crushing (quarry) units. The Division Bench of the Hon'ble Court heard all the parties, including the Geology Department of the State

Government and Gujarat Pollution Control Board, and considered the provisions of the Gujarat Minor Minerals Rules, 1966 (as replaced by the Rules of 2010) on the aspect of prescription of minimum distance of stone crushing units from residential area. The Rules of 1966 and 2010 prescribed minimum distance of 200 meters. The High Court in paragraph 10 of the judgment observed as under:

"..... We may only say at this stage that the Rules, 1966 are now replaced by the Rules, 2010. Even while enacting the Rules, 2010, it appears that the State Government has overlooked the decision of the Supreme Court in the case of *Mohammed Haroon (supra)* so far as the distance part is concerned".

Again in paragraph 11, the High Court observed as under:

"However, what is important once again is the distance at which the unit is being operated from the residential locality. It is an undisputed fact that the distance between the unit and the residential locality of the petitioners is about 645 metres i.e. for sure, less than 1 km. We are not able to understand as to why the Gujarat Pollution Control Board has ignored this aspect while granting consent, more particularly, when there is a decision of the Supreme Court in the case of *Mohammed Haroon (supra)* that a safe distance between a crushing unit and residential locality should be 1 km. The judgment of the Supreme Court would be the law of the land within Article 141 of the Constitution of India and the Gujarat Pollution Control Board could not have overlooked the judgment and granted necessary consent or permission to start the unit."

I say that the Gujarat Pollution Control Board, in terms of the directive issued by the High Court, has published guidelines prescribing 1 kilometre distance from residential area for stone crushing units, in sync with the directive issued by the Supreme Court of India.

8. I submit that considering the general directions issued by the Hon'ble Supreme Court of India, the observations made by the Hon'ble High Court of Gujarat and the guidelines issued by the Gujarat Pollution Control Board of prescribing 1 kilometre distance criteria for stone crushing units, the



State Environment Impact Assessment Authority has taken a decision to grant Environment Clearances to sand mining leases which are beyond 500m from human habitation in line with the directive of the Supreme Court. This practice has been and is being followed, without exception, by the Authority while granting approvals and clearances for sand mining leases since the year 2014.

9. I submit that there is no denial of the fact that the Sustainable Sand Management Guidelines 2016 and 2020 are silent on the minimum distance of the mining area from human habitation. The Gujarat Minor Mineral Rules make a vague reference to the distance criteria. However, as observed by the Gujarat High Court the Rules of 2010 are not in consonance with the directions issued by the Supreme Court of India. Under the circumstances, keeping in mind the direction issued by the Hon'ble Supreme Court of India that "no mining" shall be carried out within 500 meters of human habitation and the observations of the Hon'ble High Court of Gujarat, the Authority has been uniformly adopting the criteria of 500 meters' distance from human habitation while considering the projects of sand mining for grant of clearance.
10. I say that the Central Pollution Control Board has suggested minimum distance of 200 meters from human habitation. Therefore, the State Authority cannot under any circumstances grant permission or clearance for sand mining operation in an area which is less than 200 meters from human habitation. There is no denial of the legal position that the State Government or State Authorities do not possess power in law to relax the criteria or conditions prescribed by the Central Government or the Central Authority (Central Pollution Control Board). However, the State Authority is not precluded from prescribing a more stringent criterion, that is say, adopt a standard which is stricter than the one advised by the Central Authority. In the present case, the State Authority has chosen to adopt the distance criteria prescribed by the Supreme Court of India of minimum distance of 500 meters. I submit that no fault can be found with the decision of the Authority to adopt a rather stringent criteria, more

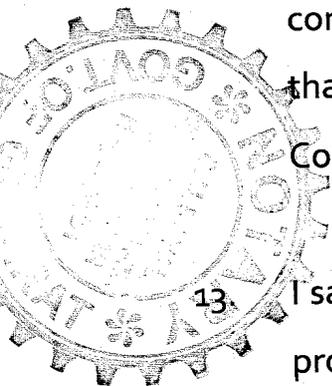


particularly when such criteria has its base or foundation on the observations made by the Hon'ble Supreme Court of India and the Hon'ble High Court of Gujarat.

11. I submit that it is an indisputable fact that sand and other minor minerals mining causes air pollution. Several orders have been passed by this Hon'ble Tribunal and the Constitutional Courts upholding the powers of the authorities to regulate the sand mining operations, considering that they are a source of environment pollution. I say that the State Authority has chosen to adopt the criteria of minimum distance as prescribed by the Hon'ble Supreme Court of India. Such policy decision of the State Authority cannot be faulted, either in fact or in law.

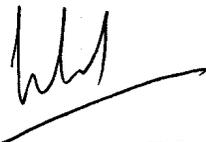
12. I submit that contention of appellant that different standards are being adopted by the State Authority on the issue of adherence to minimum distance from human habitation is incorrect and denied. I say that the Authority, since the year 2014, has consistently maintained that it shall not grant Environment Clearance to any sand mining project which is within distance of 500 meters from human habitation. There may have been cases where permissions may have been granted on basis of incorrect or incomplete information to units operating within 500 meters of human habitation. I say that on becoming aware of the correct facts appropriate corrective actions has been and is being taken by the Authority. I submit that there is no concept of negative equality under Article 14 of the Constitution of India, 1950.

13. I say that it is a matter of record, and rather an admitted fact, that area of proposed mining operation is at a distance only 360 metres from the nearest human habitation of Nadapa village. Under the circumstances, the decision of the Authority to reject the application and not grant Environment Clearance to the project proponent – appellant, does not suffer from any infirmity in law. The said decision, impugned in the present appeal, is legal and does not call for any interference by this Hon'ble Tribunal.



[Handwritten signature]

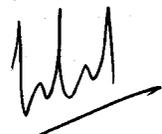
14. I submit that for these and other reasons that may be argued at the time of hearing the present appeal deserves to be dismissed. I, therefore, pray that the Hon'ble Tribunal may be pleased to dismiss the appeal with costs.

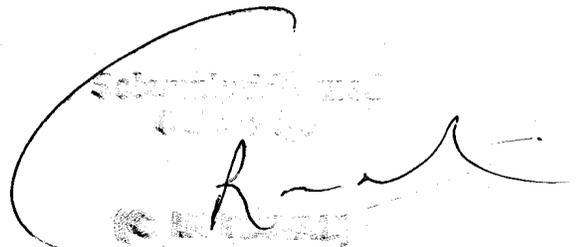

DEPONENT

VERIFICATION

Verified at Gandhinagar on this 18 day of December, 2020 that the contents of the above affidavit are true and correct, nothing stated therein is false and nothing material has been concealed therefrom.

that the Hon'ble


DEPONENT


18 DEC 2020

