

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTH BENCH AT CHENNAI

APPEAL NO 29 OF 2020



S.K.VIJAYAKUMAR

...APPELLANT

Vs

Karnataka State Environment Impact Assessment Authority

and 6 others

... Respondents

COUNTER STATEMENT FILED BY THE 2ND RESPONDENT

I, Tushar Balkrishna Gore, Son of Balkrishna Ramchandra Gore, aged about 48, the Director, having office at Plot No. 8C & 9A KIADB Industrial Area, Bashettihalli, Doddaballapur Taluk, Bangalore Rural District 561203, do hereby solemnly affirm and sincerely state as follows:

1. I, In my official capacity of Director am fully conversant with the facts and circumstances of the present case and as such am competent to swear this short counter affidavit on behalf of Respondent No. 2.

2. That I have read and understood the present Original Application before filling of the present short counter affidavit.

3. That, the present Original Application has been filed by the Applicants under section 16h read with section 18 of the National Green Tribunal, Act, 2010 (hereinafter referred to as 'NGT Act') and the Answering Respondent craves liberty of this Hon'ble Tribunal to raise further detailed submissions or to file additional/ detailed affidavit at a later stage.

4. That the 2nd Respondent herein, shall place on record essential facts and circumstances leading to the present dispute, which are germane for proper adjudication by this Hon'ble Tribunal. The 2nd Respondent is placing on record its preliminary submissions and legal objections to the Original Application filed by the Applicants. The fact that the Answering Respondent may not have separately

For Resonance Laboratories Pvt. Ltd.

Director

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denied each such allegation, assertion, averment and/or statement should not be read as an admission of the contents of the Original Application in any manner whatsoever, unless anything specific has been admitted herein under.

5. That, present Original Application deserves to be dismissed and the Answering Respondent herein wants to put preliminary submissions/ legal objections as well as brief facts before this Hon'ble Tribunal.

6. I submit that the appellant has not substantiated any material to prove the fact that he is affected by the project of the second respondent and therefore has no locus standi to file this appeal. The second respondent craves leave of this Honorable Court to produce additional document /affidavit in this regard.

7. I submit that the allegation of the appellant that the second respondent has concealed material information and undertook change in plant area is baseless and unmindful of the fact, that the second respondent has applied and obtained the Consent To Establish and Consent To Operate and the same was submitted to the official respondents along with the application for Environmental Clearance applied by the second respondent.

8. I submit that the second respondent has been operating in Karnataka State for more than 35 years. Its operations started at Yelahanka in 1984, and, from 1992, in Doddaballapur in the Bashettihalli Industrial Area set up by Karnataka Industrial Areas Development Board (KIADB) and it is incorrect to state that the second respondent project was established in the year 1985 and in fact the project was started in the present site, only in the year 1992, after the Consent To Establish, Operate, and Proper Environmental clearance. The initial land for the project was obtained on lease from 5th respondent (and subsequently purchased) and thereafter the second respondent acquired lands adjacent to the project area from the 5th respondent and private parties with the specific land denomination as industrial land as sanctioned by the local authority. The second respondent, at present, has 7.62 acres land by valid purchases. In the EIA report, total land area was reported as 8 acres (and its equivalent in sq.mt.). This difference of less than 5% arose due to errors in converting land areas into different units.

9. The 2nd respondent operates in the area of bulk drugs and intermediates. The 2nd respondent's strengths are in complex multi-step chemistry and niche products – some of its products are manufactured by only 2-3 other manufacturers worldwide. Over the years, the 2nd respondent has

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provided employment for several individuals from the neighbouring area and enjoys a positive reputation in the local area as a company that supports its employees and community education initiatives. The 2nd respondent, either directly or through the Directors, has supported development of the Government High School at nearby Bashetihalli village with initiatives such as new bathrooms, new furniture for classrooms, and new auditorium for school functions.

10. I submit that one Dr. K. N. Subbaswami, Director, started the operations in Bangalore in 1984. He has a Ph.D in Chemical Technology from the National Chemical Laboratory (NCL), Pune, and post-doctoral experience at Vanderbilt University. Earlier, he worked at multinationals such as SmithKline & French (now GlaxoSmithKline) and Astra IDL (now AstraZeneca).

11. The deponent/signatory to this affidavit, a Director of the 2nd respondent, is a B.Tech. from IIT-Bombay who graduated at the top of his class in Chemical Engineering and subsequently completed his Ph.D. at the University of Minnesota. He worked at McKinsey & Company and Novo Nordisk before joining the 2nd respondent. He is also a columnist at Indian Express and has contributed expert analysis on COVID-19 trends. Vineet Luhariwala joined the 2nd respondent as President and is responsible for daily operations. He is a B.Tech. in Chemical Engineering from IIT(BHU)-Varanasi with subsequent work experience in many leading Indian Pharmaceutical companies such as Piramal Healthcare and IPCA.

12. The 2nd respondent operates at small scales, in niche products, and therefore, flexibility is key to sustainability of the company. The present approval sought is for total capacity of 10.29 Tonnes per Annum (TPA); it amounts to about 28 kg/day. Actual manufacturing is currently at 30-40% of the capacity – equaling about 10-12 kg/day.

13. I submit that the 7.62 acres owned by the second respondent and even the surrounding lands are designated as industrial lands. I submit that the product numbers and the quantity did vary from time to time and the second respondent applied and obtained appropriate Consent to Operate/Establish for the details of the products. The second respondent obtained Consent To Establish for increased product number up to 19 products in the year 2015 and subsequently applied for Environmental Clearance for these same 19 products. The reference to reduction in production capacity in CTO relates to the year 2001 and the same was maintained the same until the year 2012.

14. I submit that the second respondent applied for environmental

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clearance to the Central Government, Ministry of Environment, Forest and Climate Change, New Delhi on 20.6.2017 within the cutoff time of six month period as per the notification of the Central Government dated 14.3.2017, however the application was not considered in lieu of stay of review of such projects throughout the country, and, subsequently, the second respondent was asked to apply to the State - to the first respondent in 2018 - as noted in the minutes of the 198th SEAC meeting held on 18.5.2018 to grant terms of reference to the applicants.

15. I submit that all the conditions stipulated for one time Window for Regularisation of Violations proposed by the Ministry of Environment, Forest and Climate Change by notification dated 14.3.2017 were scrupulously and meticulously followed and complied by the second respondent and all necessary documents of compliance were enclosed along with the application seeking for Regularisation. The compliance of the second respondent includes Ecological Damage Assessment, Remediation Plan and Natural and Community Resource Augmentation plan. The terms of reference includes all these above requirements including the requirement of bank guarantee; all of these to be finalized and recommended by the authorities after an assessment of impact.

16. I submit that the second respondent has produced the assessment of ecological damage in the EIA report based on impact on environmental attributes taking into consideration the preventive measures adopted by the second respondent as prescribed in the Consent to Operate. Baseline EIA data were also considered to understand whether any impact was reflected in the data collected on the surrounding environment. All assessments were conducted by appropriately accredited laboratories and consultants. The second respondent has also furnished the environment management plan and the bank guarantee as quantified by the first respondent and same was deposited by the second respondent and only thereafter the environmental clearance was issued to the second respondent.

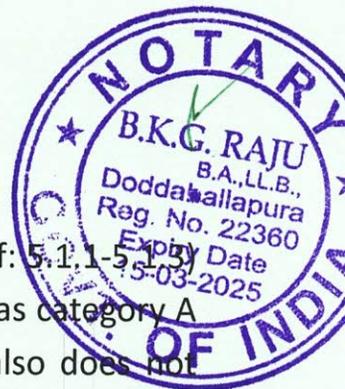
17. It is pertinent to note that the product mix changes that the second respondent undertook are now permissible without fresh Environmental Clearance as per the decision of the Central Government. The Ministry of Environment, Forest and Climate Change directive by its Office Memorandum dated 28.12.2021 permits granting Environmental Clearance for bulk drug/pharmaceutical units without limiting to specific products.

18. I submit that SEIAA by its letter 24.11.2020 to this Hon'ble court, now

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For Resonance Laboratories Pvt. Ltd.


Director



available in the website has categorically held in its deliberations (ref: 5.1.1-5.1.3) that TGR notification does not affect the categorization of a project as category A or category B in Zone-1 as General Condition does not apply. It also does not prohibit the establishment of industries other than mining and quarrying in Zone-1. Furthermore, it held that the EIA notification is the relevant guideline to follow and not the KSPCB siting guidelines. Therefore, TGR notification and KSPCB siting guidelines are not relevant in assessing this project.

19. I submit that the project of the second respondent is clearly category B project and by no stretch of imagination the same could be shifted to category A and the second respondent industry has not violated any of the provision of the General Condition of the EIA notification 2006 to shift the category from category B to category A. The manufacturing area has not expanded beyond the notified Industrial area and no part of the project land of the second respondent's industry falls outside the notified Industrial lands or is within any of the protected area as specified in the General Conditions.

20. I submit that the damage assessment in the environmental impact assessment report was based on impact of company activity on several environmental attributes (such as Air, Surface and Ground Water, Noise, Soil/Land Cover among others). The detailed assessment factored into its review that appropriate preventive measures were adopted by the second respondent to counter the impact of the activity on above attributes. These measures were in-line with those prescribed in the Consent to Operate. The assessment also considered the baseline Environmental Impact Assessment study data that showed that local environmental attributes such as water and soil to be contaminant free. The language used to describe the violation as "only a regulatory lapse" is written as a note to indicate that the industry followed the prescribed norms for effluent treatment to control any adverse impact to the environment. Subsequent to this assessment, the assessment committee required the second respondent to conduct damage assessment as per the Kyoto Protocol and the calculation - resulting in an estimate of Rs.10 Lakhs - was submitted to respondent one. Respondent one determined Rs.15 Lakhs as the amount for Remediation plan and Natural and Community Resource Augmentation Plan and the 2nd respondent submitted the required Bank Guarantee and relevant details prior to issuance of the Environmental Clearance.

21. I submit that in accordance with the environment clearance, Zero Liquid Discharge treatment is under implementation for the expanded effluent limits.

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The Project is still within the old limits of effluent generation as per the 2016 Consent to Operate. The project is not discharging any effluent and the same is being treated appropriately at site and at authorised common effluent treatment plants.

22. It is submitted that the Allegation of the appellant that the project of the second respondent is illegally operating inside an unauthorised industrial area is beyond the scope and Ambit of the the act and notifications; the project of the second respondent is a continuous project authorised and cleared by environment clearance from the year 1992 onwards and therefore continuously operating on production of the licensed products for the past three decades without any other allegation against the second respondent.

23. It is submitted that the attempt of the appellant to shift the category of industry of the second respondent from category B to category A is itself a clear misconception of both law and facts, and the Appeal is liable to be dismissed on this ground itself, as both SEAC AND SEIAA are the jurisdictional authority under the environmental clearance law and other notifications.

24. It is submitted that authorities have considered the objections given in the public meeting and the written objection given by the appellant following the principles of balancing both development and safeguarding the environment and it is important to note here that out of 13 persons who attended the meeting, except the appellant, all the remaining 12 have favoured the continuation of the project keeping in mind the second respondent's commitment to development of the locality and that no harm had been committed in the past history of approximately 30 years.

25. It is submitted the allegation of the appellant that SEAC did not apply its mind on the objection is oblivious of the fact that the environmental certificate now under challenge is well considered and a 10 page order referring to all the parameters and objections.

26. I submit that the Honorable High Court in 2017 SCC online Madras page 7056 in Puducherry Environment Protection Association Vs The union of india have held that,..

``If the legislation is viewed and construed from that perspective, as indeed it is imperative that we do, we find no difficulty in interpreting "permission" to mean "permission", previous or subsequent, and we find no justification whatsoever for limiting the expression "permission" to "previous previous" only.

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similarly in the same judgement, the court have held that,

“There can be no doubt that the need to comply with the requirement to obtain environmental clearance is non-negotiable. Environmental clearance ensures compliance of environmental laws. A project can be set up or allowed to expand subject to compliance of the requisite norms. The environmental clearance is subject to the satisfaction of the existence of necessary infrastructural facilities and equipment for compliance of environmental norms”.

and also held that,

“The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance, even though the establishment may not otherwise be violating pollution laws or the pollution, if any, can conveniently and effectively be checked. The answer necessarily has to be in the negative,,.

and in para 33 had held that,

“The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior environmental clearance before a project is commenced. Such prior environmental clearance is necessarily granted upon examining the project from the angle of environmental pollution. However, one time relaxation and that too only in cases where the projects are otherwise in compliance with or can be made to comply with the pollution norms is, in my view, not impermissible”.

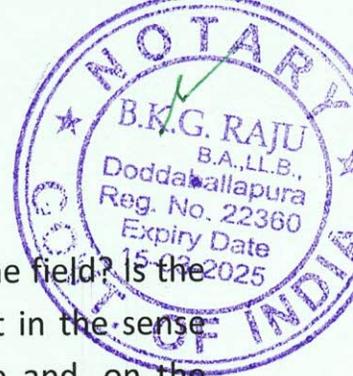
27. I submit that the Hon'ble Supreme Court in Lafarge Umiam Mining Private Limited v. Union of India 2011 7 SCC 338 have in para 119 held that,

“ The time has come for us to apply the constitutional “doctrine of proportionality” to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well- recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance

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with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play."

28. Similarly, the Hon'ble Supreme court in *Electrotherm (India) Limited v. Patel Vipulkumar Ramjibhai* (2016 9 SCC page 300) have held that,

"If the public consultation/public hearing results in a negative mandate against the expansion of the project, the authorities would do well to direct and ensure scaling down of the activities to the level that was permitted by environmental clearance dated 20-2-2008. If public consultation/public hearing reflects in favour of the expansion of the project, environmental clearance dated 27-1-2010 would hold good and be fully operative. In other words, at this length of time when the expansion has already been undertaken, in the peculiar facts of this case and in order to meet ends of justice, we deem it appropriate to change the nature of requirement of public consultation/public hearing from pre-decisional to post-decisional."

29. It is pertinent to note here that the SEAC while considering the proposal of the second respondent in its online meeting held on 7.5.2020 have categorically held that,

"it is an existing project falls, under category B , but as per Ministry of Environment Forest and Climate Change Notification dated 14.3.2017 Even category B projects shall be appraised for grant of environmental clearance only by the expert appraisal committee and environmental clearance will be granted by the Ministry of environment forest and climate change, the file was uploaded to Ministry of environment forest portal wide proposal No. IA/KA/IND2/66842/2017 DATED 20.6.2017.

Now as per MOEF & CC gazette notification No S.O. 804 (E) dated 14th march 2017 and its subsequent amended notification nos.S.O.1030(E) dated 8th march 2018 and OM F No.Z.11013/22/2017.IA II M dated 15th march 2018 and 16th march 2018, MOEF directed to appraise in SEAC/SEIAA

Now, Resonance laboratories is applying under category B".

For Resonance Laboratories Pvt. Ltd.

Director

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30. The Second respondent craves leave of the Honorable Court to permit to file additional counter affidavit, if any, after the perusal of the counter statements to be filed by the remaining respondents.

For Resonance Laboratories Pvt. Ltd.



Director

DEPONENT

VERIFICATION

I, Tushar Balkrishna Gore, Son of Balkrishna Ramchandra Gore, the abovenamed deponent, verify that the contents of this affidavit are true to the best of my knowledge and nothing material has been concealed therefrom.

For Resonance Laboratories Pvt. Ltd.

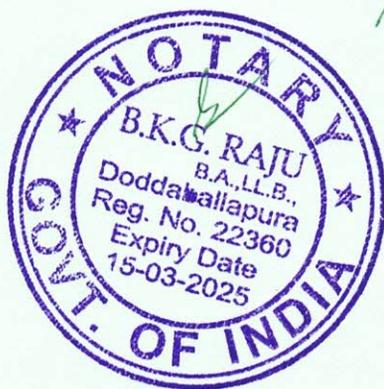


Director

DEPONENT

Verified at 30th of this day of March 2021

No. of Corrections.....*Nil*



ATTESTED BY ME



B.K.G. RAJU, B.A. LL.B.,
ADVOCATE & NOTARY PUBLIC
GOVT. OF INDIA
No. 1620, Shivasadana, Karenehalli,
11th Division, Doddaballapura
Bangalore Rural, Karnataka

**BEFORE THE NATIONAL GREEN
TRIBUNAL**

SOUTH BENCH AT CHENNAI

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

APPEAL NO. 29 OF 2020

IN THE MATTER OF:-

S.K.VIJAYKUMAR ...Appellant

Versus

KARNATAKA STATE ENVIRONMENT
IMPACTASSESSMENT AUTHORITY
AND 6 Ors ...Respondents

COUNTER FILED BY THE 2ND
RESPONDENT

M/s. K.M.VIJAYAN ASSOCIATES

Counsel for 2nd Respondent

Email: kmvijayanassociates@gmail.com

Cell No: 9444194861

we are enclosing the counter affidavit of the 2nd respondent in Appeal No.29 of 2020

2 messages

kmvijayanassociates lalaw <kmvijayanassociates@gmail.com>

Tue, Mar 30, 2021 at 5:39 PM

To: kumar_suvi@yahoo.co.in, msseiaakarnataka@gmail.com, memsecy@kspcb.gov.in, cs@karnataka.gov.in, ceoem@kiadb.in, deo.bangalroer3@gmail.com, secy-moef@nic.in

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K. M. VIJAYAN ASSOCIATES

No.6, Third floor,
The Southern India Chamber of Commerce and Industry,
Esplanade,
CHENNAI - 600 108.

**Counter Affidavit of the 2nd Respondet in Appl No.29 of 2020.pdf**

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Action: failed

Status: 5.1.1

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Subject: we are enclosing the counter affidavit of the 2nd respondent in Appeal No.29 of 2020

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