

**IN THE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONE BENCH, CHENNAI
ORIGINAL APPLICATION No. 232 of 2020**

IN THE MATTER OF:-

A.K.S. Vijayan

... Applicant

Versus

Union of India and Ors.

... Respondents

**COUNTER AFFIDAVIT ON BEHALF OF THE
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE
CHANGE, RESPONDENT NOs.1**

GM.SYED NURULLAH SHERRIF

Counsel FOR MoEF&CC

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONE BENCH, CHENNAI
ORIGINAL APPLICATION NO. 232 OF 2020 (SZ)**

IN THE MATTER OF:

AKS Vijayan

... Applicant

Versus

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**AFFIDAVIT ON BEHALF OF RESPONDENT NO.1 [UNION OF INDIA,
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE]**

1. I, M.T. Karuppiah S/o Shri. Masilamani aged about 49 years, presently working as Scientist "E" in the Regional Office (Southern Eastern zone) of the Ministry of Environment, Forests and Climate Changes (hereinafter referred to as MoEF&CC) at Chennai do hereby solemnly affirm and state as under:-

2. That I am Scientist "E" in the Ministry of Environment, Forest & Climate Change, Government of India Indira Paryavaran Bhawan, Jor Bagh Road, New Delhi, and as such I am conversant with the facts and circumstances of the case and I have been authorized to file the affidavit on behalf of Union of India as Respondent No.1 herein.

3. That it is submitted that I have read and understood the content of the Application under reply and I deny each and every averment made therein except those which are admitted expressly by the deponent. The averment which are not denied or traversed may not be treated as an admission and may be treated as denied by the deponent.


Dr. M.T. KARUPPIAH,
Scientist 'E'
Ministry of Environment Forests and Climate Change
Government of India
Regional Office - Chennai

4. The Present Application has been filed alleging that the State of Tamil Nadu has taken up the 'Mettur-Sarabanga Lift Irrigation Project' to irrigate 4,238 acres of land and that the said scheme proposes to move Cauvery River water from the Mettur Dam without obtaining the prior Environmental Clearance from the Ministry of Environment, Forest and Climate Change (MoEF&CC) as this scheme significantly damages the environment and river valley system as well as the potential reduction in available water sources for farmers and residents in the Cauvery Delta Region.

5. It is submitted that about 214 Cusecs of water is proposed to be pumped for 30 days. Hence, 555 mcftt of flood surplus water of the Mettur Reservoir is proposed to be diverted for Mettur-Sarabanga Lift Irrigation Project.

6. It is submitted that the Hon'ble Tribunal vide orders dated 03rd November, 2020 has directed to constitute a Joint Committee to examine the scheme and submit a report as to whether the required clearances/permissions/recommendations have been obtained by the State of Tamil Nadu for the purpose of launching the scheme. Further, the Hon'ble Tribunal directed the Ministry to submit their views as to whether the present project requires any prior Environmental Clearance before the same is put to execution.

7. It is submitted that answering Respondent issued the Environmental Impact Assessment Notification dated 14.09.2006 under the provisions of the Environment (Protection) Act, 1986 (hereinafter referred to as 'the EIA Notification, 2006'). The EIA Notification, 2006 requires certain projects to obtain prior Environmental Clearance ("EC") before any construction work in case of new projects or expansion and modernization of existing projects or activities. The Schedule to the EIA Notification, 2006 details the categories or projects or activities which require prior environmental clearance. Under the EIA Notification, 2006 all projects and activities are broadly categorized into two categories - Category "A" and Category "B", based on the spatial extent of potential impacts and potential impacts on human health and natural and man-made resources.


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8. It is most respectfully submitted that in accordance to the EIA, Notification, 2006 the process involved for grant of Environmental Clearance is as following:

- a) Stage (1) - Screening
- b) Stage (2) - Scoping – i.e. prescribing Terms of Reference (TOR) for undertaking detailed Environment Impact assessment studies.
- c) Stage (3) - Public Consultation – to be conducted by the respective State Pollution Control Board/UT Pollution Control Committee.
- d) Stage (4) - Appraisal – by Experts Appraisal Committee (EAC).

9. It is submitted that, the Ministry has constituted the Expert Appraisal Committee (EAC)/ State Expert Appraisal Committee (SEAC)/ in pursuance of the EIA Notification, 2006. That the EAC/SEAC follows due procedure contained in the EIA Notification, 2006 while appraising a developmental project requiring prior environmental clearance and making appropriate recommendations.

10. It is submitted that as per provisions of EIA Notification, 2006 “Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance”. The EAC/SEAC makes appropriate recommendations based on the facts submitted and their presentation before the Committee by the project proponent.

11. It is submitted that on submission of final EIA/EMP report, the project is appraised by the EAC/SEAC in a transparent manner in a proceeding to which the Proponent is invited for furnishing necessary clarification in person or through an authorized representative. Thereafter, the EAC/SEAC recommend/reject the proposals and the Competent Authority is to take the final decision to accord the Environmental Clearance as per the EIA


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Notification, 2006. This decision is conveyed to the Proponent on the receipt of the recommendations of EAC/SEAC.

12. It is submitted that any project or activity specified in Category 'B' will be appraised at the Central Level as Category 'A', if located in whole or in part within 5 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972 (53 of 1972); (ii) Critically Polluted areas as identified by the Central Pollution Control Board constituted under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) from time to time; (iii) Eco-sensitive areas as notified under sub-section (2) of section 3 of the Environment (Protection) Act, 1986, and (iv) inter-State boundaries and international boundaries; provided that for River Valley Projects specified in item 1(c), the appraisal shall be made at Central Level even if located within 10 km.

Provided further that the requirement regarding distance of 5 km or 10 km, as the case may be, of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or the Union Territories sharing the common boundary in case the activity does not fall within 5 km or 10 km, as the case may be of the areas mentioned at item (i), (ii) and (iii) above.

13. It is submitted that a detailed procedure has been prescribed under the EIA Notification 2006 and as amended thereof or appraisal and grant of EC and that application is considered only as per the prescribed procedure. It is submitted that Ministry considers the grant of Environmental Clearance to the River Valley & Hydroelectric Projects as per the provisions contained in the Notification S.O No. 3977 dated 14/08/2018 which is an amended notification of EIA Notification, 2006.

The relevant clause i.e. 1(c) of the Notification S. O No. 3977 dated 14.08.2018 is reproduced below


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Project Activity		Category with threshold limit		Conditions, if any	
		A	B		
(1)	(2)	(3)	(4)	(5)	
1 (c)	(i) River Valley Projects (ii) Irrigation Projects	(i) ≥ 50 MW hydroelectric power generation; (ii) $\geq 50,000$ ha. of culturable command area	(i) ≥ 25 MW and < 50 MW Hydroelectric Power Generation (ii) $> 2,000$ ha and $< 50,000$ ha of culturable command area.	General Condition shall apply. Note: - Category 'B' river valley projects falling in more than one state shall be appraised at the central Government Level. Change in irrigation technology having environmental benefits (e.g. From flood irrigation to Drip irrigation, etc.) by an existing project, leading to increase in Cultural Command Area but without increase in dam height and submergence, will not require amendment/ revision of EC.	
			Irrigation System		Requirement of EC
			(a) Minor Irrigation system (≤ 2000 ha)		Exempted
			Medium irrigation system (>2000 and $<10,000$ ha) Major irrigation system (a) ($\geq 10,000$ to $< 50,000$ ha.)	Requirement to prepare EMP and to be dealt at State Level (B ₂ Category) Required to prepare EIA/EMP and to be dealt at State Level (B ₁ Category)	

14. In view of the above mentioned facts, this Hon'ble Tribunal is graciously requested to pass any orders as may deem fit in the interest of justice. The Answering Respondent prays accordingly.

VERIFICATION

I, the above named deponent do hereby solemnly affirm and state that the contents of above mentioned are true and correct to the best of my knowledge and based on record and I have not suppressed any material fact.

Verified at New Delhi on this the 12th day of February, 2021



Deponent
Dr. M.T. KARUPPIAH,
Scientist 'C'

Ministry of Environment Forests and Climate Change
Government of India
Regional Office - Chennai



Deponent
Dr. M.T. KARUPPIAH,
Scientist 'C'

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