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Dt. 08/02/24

**BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA**

NATIONAL GREEN TRIBUNAL
EZB, KOLKATA
DY. No.: 219/2024/B2
DATE: 09/02/24
Sign. of receiving Officer.....

O.A. NO. 112 OF 2023

IN THE MATTER OF

Ram Ekbal Rai.

....APPLICANT

VERSUS

The State of Bihar & Ors.

.... RESPONDENTS

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Date: 08.02.2024

Place: New Delhi

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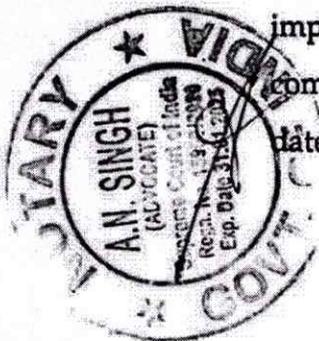
.... RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT NOS.

43 - 46 IN THE ORIGINAL APPLICATION NO. 112 OF 2023

I, Rita Sinha, W/o Rameshwar Prasad Singh, Age - 46, Proprietor of M/s Asha Plywood and Veneer Udyog, at Senduari, Kalyanpur, Harauna, Anchal - Motipur, Dist. - Muzaffarpur, Bihar 843153, at New Delhi, do hereby state on solemn affirmation as under:

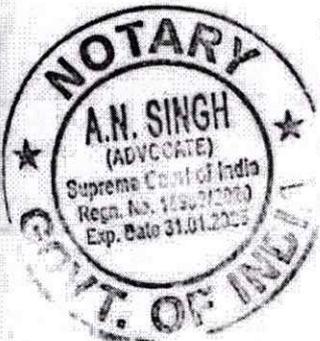
1. That I am the respondent No. 44 in the abovenoted case and as such I am fully conversant with the facts and circumstances of this case and thus competent to swear this Affidavit on behalf of Respondent Nos. 43-46.
2. That the relevant facts in this matter have already been stated in the I.A. No. 53/2023/EZ, I.A. No. 54/2023/EZ, I.A. No. 55/2023/EZ & I.A. No. 56/2023/EZ and are not being repeated herein for sake of brevity. The petitioner craves leave of this Hon'ble Tribunal to refer to and rely upon the same for the purposes of the present counter affidavit as well.
3. That this Hon'ble Tribunal vide order dated 11.10.2023 allowed to impleaded in the array of Respondents as Respondent Nos. 43-46 in compliance to the direction passed by the Hon'ble Supreme Court order dated 13.02.2023 in Civil Appeal No. 1050 of 2023; wherein, the



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Respondent No. 44 is permitted to approach the NGT and place its grievance before the NGT.

4. That the Respondent Nos. 43-46 are aggrieved against the impugned order dated 13.10.2022 passed by this Hon'ble National Green Tribunal, Principal Bench at New Delhi in Original Application No. 399 of 2023; whereby the State PCB is directed by Hon'ble National Green Tribunal, Principal Bench at New Delhi to take further action by following due process of law and file its Action Taken Report with requisite details. In its report the State PCB shall also mention as to whether any prosecution has been launched against the persons involved in running of the units illegally. The Action Taken Report is to be filed by the State PCB within two months.
5. The Respondents respectfully state and submit that the following important questions of law arise for consideration of this Hon'ble Tribunal in the instant counter affidavit: -
 - a. Whether the Impugned Order passed by the Hon'ble National Green Tribunal is a violation of the Principles of Natural Justice?
 - b. Whether the Ld. NGT exercised its judicial powers, it could not have ignored the principles of natural justice, which, even under Section 19(1) of the NGT Act, it is bound to follow?
 - c. Whether the Impugned Order passed by the Hon'ble National Green Tribunal is against the spirit of Article 19 (1) (g) of Constitution of India?
 - d. Whether the action of Respondent State and its agencies is arbitrary, harsh, abuse of law and in blatant violation of Article-14 and Article - 21 of the Constitution of India?
6. That this Hon'ble Tribunal ought to appreciate that the Order passed is in violation of *audi alteram partem* i.e the Principles of Natural Justice as the Respondent Nos. 43-46 has neither been heard nor allowed to represent his/her case and yet adverse order has been passed against the Respondents herein.



7. That this Hon'ble Tribunal while exercising its judicial powers ought not to have ignored the principles of natural justice, which, even under Section 19(1) of the NGT Act, it is bound to follow as under: -

Section 19 in The National Green Tribunal Act, 2010 is as follows:

19 Procedure and powers of Tribunal. -

(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.

8. That the Hon'ble Apex Court in *Municipal Corporation of Greater Mumbai vs. Ankita Sinha and Others; 2021 SCC OnLine SC 897* has observed that, "It must also be said that the exercise of suo motu jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders."

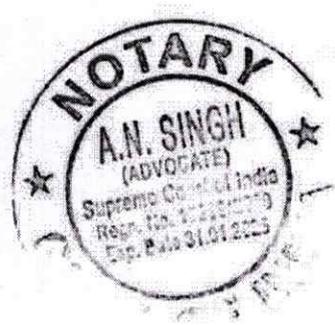
9. That this Hon'ble Tribunal has not appreciated that the passing such direction without hearing the Respondent Nos. 43-46 herein violates the principal of natural justice. That the learned NGT erred in passing orders which have vitally affected the rights of the citizens who were already granted provisional license/license and were operating in accordance with law. The order impugned is totally in breach of the principles of natural justice.

10. That in State of *U.P. v. Sudhir Kumar Singh and Others; (2020) SCC Online SC 847*, this Court has observed that as under:-

"39. An analysis of the aforesaid judgments thus reveals:

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(Emphasis supplied)



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11. That the scope of judicial review has been succinctly explained by this court in the case of *Tata Cellular vs. Union of India*; (1994) 6 SCC 651, which has been consistently followed in a catena of cases. This Court, in the said case, observed thus:

"77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- 1. *Whether a decision-making authority exceeded its powers?*
- 2. *Committed an error of law,*
- 3. *committed a breach of the rules of natural justice,*
- 4. *reached a decision which no reasonable tribunal would have reached*
or,
- 5. *abused its powers."*

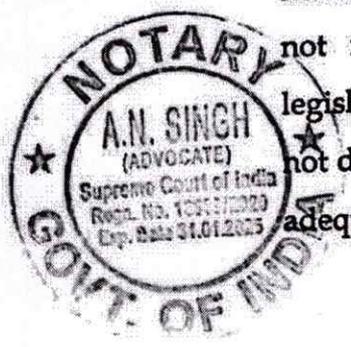
(Emphasis supplied)

12. That applying the aforesaid principle to the present case, it could be said that the decision-making process has been vitiated either on account of illegality, irrationality or procedural impropriety.

13. That this Tribunal ought to appreciate that the Order passed has adversely effected the right to business guaranteed under the Article 19 (1) (g) of Constitution of India.

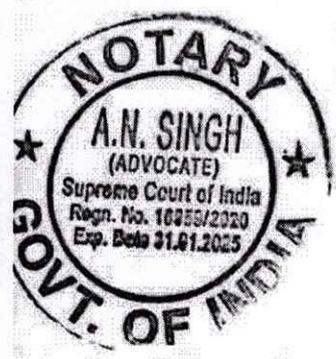
14. That the action of Respondent State and its agencies in demolishing and seizing the manufacturing units of the Respondent Nos. 43-46 herein without due notice and any opportunity to produce documents valid licenses etc. is arbitrary, harsh, abuse of law and in blatant violation of Article-14 and Article - 21 of the Constitution of India.

15. That it is a settled legal proposition that Article 14 of the Constitution strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. This doctrine of arbitrariness is not restricted only to executive actions, but also applies to the legislature. Thus, a party has to satisfy that the action was reasonable, not done in unreasonable manner or capriciously or at pleasure without adequate determining principle, rational, and has been done according



to reason or judgment, and certainly does not depend on the will alone. See *A.P. Dairy Development Corpn. Federation vs. B. Narasimha Reddy and others*; (2011) 9 SCC 286.

- 16. That under Article 21 Right to livelihood is an integral part of the Right to life. If one's Right to livelihood would be deprived, then it means that we are taking that person's Right to life. In *Narendra Kumar Chandla v. State of Haryana* the Supreme Court held that the Article 21 protected the Right to livelihood as an integral facet of Right to life. See *Narendra Kumar Chandla vs. State of Haryana and others* (1994) 4SCC460.
- 17. That the findings recorded or conclusions drawn are either contrary to the evidence or without there being any evidence in support thereof. The Respondent Nos. 43-46 who have been granted provisional license/license for plywood Industries from Bihar State Pollution Control Board and having other requisite license to operate, haven't been served notice from this Tribunal, from the Committee appointed by this Tribunal and as well from the law enforcement agency before sealing/demolishing the unit.
- 18. That the State Government decided to exempt 10 different categories of Wood Based Industries (WBIs). The requirement of raw material for different categories of WBIs is different. It is submitted that this Tribunal has grossly erred in considering all categories of WBIs together and erred in passing the order against licenses granted to all of them.
- 19. That it is submitted that the original applicant before this Hon'ble Tribunal is not bona-fide litigant. That there are reasons to believe that the proceedings were initiated at the instance of letter written to this Tribunal in reference to settle local politics for not getting votes in election.
- 20. That before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the



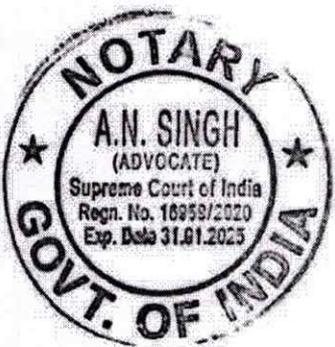
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interests of the farmers; the credentials and bonafides of the applicants must be tested.

- 21. That the only distinction between the prohibited trees and non-prohibited trees is that the non-prohibited trees can be felled without permission, whereas prohibited trees can be felled only in certain circumstances and only after the requisite permission is granted.
- 22. That if the WBIs are permitted to run or regularized as per the guidelines, it would result in more farmers going in for Agro Forestry in the State, which, in turn, will increase the forest cover. It is submitted that said 150 units are likely to give employment to around 70000 (25 thousand women) people.
- 23. That it is necessary that, while protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck. That closing the manufacturing units belonging to the Respondent Nos. 43-46 herein despite having valid license is an abuse of process of law and against the settled principles of sustainable development.
- 24. That this Hon'ble Court in *the State of Uttar Pradesh & Ors. Etc. Etc. vs. Uday Education and Welfare Trust and Anr. Etc. Etc. vide C.A. Nos. 2407-2412 of 2021*, observed that:

"101. (a)

(b) *In the case of Essar Oil Ltd. vs. Halar Utkarsh Samiti and others; (2004) 2 SCC 392, this Court discussed the need for a balance between the economic and social needs and development on the one hand and environment considerations on the other. It was observed that laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. In this regard, the observations of this Court in the case of Indian Council for Enviro-Legal Action vs. Union of India and others; (1996) 5 SCC 281, were quoted as under:*



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"While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment."

(c) In the case of Maharashtra Land Development Corporation and others vs. State of Maharashtra and another; (2011) 15 SCC 616, reference was made to Glanrock Estate Private Limited vs. State of Tamil Nadu; (2010) 10 SCC 96, wherein it was observed as under:

"27. Forests in India are an important part of the environment. They constitute [a] national asset. In various judgments of this Court delivered by the Forest Bench of this Court in T.N. Godavarman Thirumulpad v. Union of India (Writ Petition No. 202 of 1995), it has been held that 'intergenerational equity' is part of Article 21 of the Constitution.

28. What is intergenerational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then intergenerational equity would stand violated.

29. The doctrine of sustainable development also forms part of Article 21 of the Constitution. The 'precautionary principle' and the 'polluter pays principle' flow from the core value in Article 21.

30. The important point to be noted is that in this case we are concerned with vesting of forests in the State. When we talk about intergenerational equity and sustainable development, we



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are elevating an ordinary principle of equality to the level of overarching principle."

- 25. That the Respondent Nos. 43-46 are of the humble view that the state is directed to act in just and fair manner to ensure the sustainable development of State by outlaying the positive policy and regularise the concerned wood based industry.
- 26. That having stated the above, it is apparent that there is no merit in the applicant case; hence the present petition should be dismissed with costs.
- 27. This affidavit is made bona fide and in the interest of justice.

ASHA PLYWOOD AND VENEER UDYOG
 रीता शीन्हा
 DEPONENT
 Proprietor

Dis
 I identify the deponent who has Signed/Put T.I. in my presence

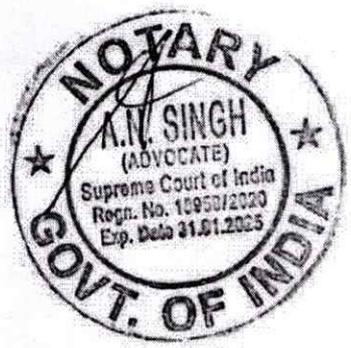
VERIFICATION

I, the deponent above named, do hereby verify that the contents of paras 1 to 27 of my above Counter affidavit are true to my knowledge and belief. No part of it is false and nothing material has been concealed there from.

VERIFIED AT NEW DELHI ON THIS THE 06TH DAY OF FEBRUARY, 2024.

06 FEB 2024

रीता शीन्हा
 ASHA PLYWOOD AND VENEER UDYOG
 DEPONENT
 Proprietor



ATTESTED
[Signature]
 A.N. Singh, Adv.
 Notary Public
 Govt. of India, New Delhi

06 FEB 2024

Nikhil Bandy
 Certified that the above Named Deponent identify by Shri/Smt..... Solemnly affirmed before me at Delhi S No..... The contents of the affidavit which have been read & explained to me are true and correct
 Notary