

**BEFORE THE NATIONAL GREEN TRIBUNAL**  
**EASTERN ZONE BENCH KOLKATA**  
**ORIGINAL APPLICATION NO. 05/2022/EZ**

**IN THE MATTER OF:**

DR. BINA BASNETT

...APPLICANT

VERSUS

STATE OF SIKKIM AND ORS.

...RESPONDENTS

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**DATE 18.02.2022**

**PLACE: KOLKATA**

**FILED BY:**



**Salik Shafique**

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BEFORE THE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH KOLKATA

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IN THE MATTER OF:

Dr. Bina Basnett

Applicant

-Versus-

State of Sikkim and Ors.

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**COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT NO.6,  
SIKKIM STATE POLLUTION CONTROL BOARD TO THE ORIGINAL  
APPLICATION**

I, Thomas Chandy S/o Mr. A.M.Chandy aged about 62 years, presently posted as Chairman State Pollution Control Board, Sikkim at office having Address Block 'C' Forest Secretariat, Deorali, Gangtok, Sikkim-737102 do hereby solemnly affirm and state as under:-

1. That I am well conversant with the facts and circumstances of the case based on the knowledge derived from the records as maintained by the Respondent No.6 and have been authorized to swear the present affidavit on behalf of Respondent No.6.
  - i. That I have read the contents of the above mentioned Original Application No. 05 of 2022/EZ and have understood the same and in reply thereto I say and submit as under:
  - ii. That I say and submit that save and except those, which are matters of record, all averments, statements and submissions made by Applicant in the above-mentioned Original Application



are disputed and denied as if traversed seriatim unless specifically admitted herein and therefore no part of the Affidavit should be deemed to be admitted for want of specific denial.

- iii. That I crave leave of this Hon'ble Tribunal to file a further affidavit-in-reply in the present matter, if necessary, and I say that I have replied to the averments specifically alleged against the Respondent No.6.

## **2. PRELIMINARY SUBMISSIONS**

- I. That the Respondent No. 6, the Sikkim State Pollution Control Board (SPCB) was set up as an autonomous body through Government of Sikkim Notification in the year 2008 under the provision of Sub-Section (1) of Section 4 of the Water (Prevention & Control of Pollution) Act, 1974. The main function of SPCB-Sikkim is to act as a regulatory and an advisory body. Under the advisory function, Respondent No.6, SPCB-Sikkim advises the State Government in terms of measures to be taken for prevention, control and abatement of pollution. Under the regulatory function, the said Respondent is bestowed with the power of implementation of different Acts and Rules pertaining to Environment Pollution Control. It is also pertinent to mention that the State of Sikkim has been declared as an Air Pollution Control Area under Gazette Notification No. 506 dated 08.09.2011.
- II. That the Project Proponent MESASO Infrastructure Private Ltd on 19.08.2021 applied for obtaining Consent to Establish offline. That



the SPCB as per the policy directed the project proponent to apply for NOC through the online portal.

That it is submitted that the Secretary, Urban Development Department, Government of Sikkim (UDD) vide letter dated 08.09.2021, requested for issuance of a 'No-Objection Certificate' for demolition/ dismantling of the old facility comprising a three storeyed parking facility and its ancillary construction located at Old West Point School, Gangtok. The SPCB considered the request of UDD and vide letter dated 17.09.2021, granted the No Objection Certificate subject to the following conditions:

- Project Proponent carries out the dismantling/demolition work without causing any environment pollution by duly installing pollution control measures such as suppression of dust and fugitive emissions, noise controlling measures by erecting barriers and limiting work during day time only. It also mandates proper management of demolition waste within premises, and states that any such dismantling/ demolition shall ensure foundational security of the area in question.
- Demolition waste shall be managed and disposed in accordance with the provisions of the Construction and Demolition Rules, 2016.
- Project Proponent shall construct temporary labour camps duly providing proper sanitation and solid waste management within the premises in accordance with the Solid Waste Management Rules, 2016.
- Project Proponent shall also obtain any other NOC required under the law.



True copy of the letter dated 17.09.2021 is marked and appended herewith as **ANNEXURE R/1**.

- IV. That the Project Proponent, M/s Mesaso Infrastructure Private Ltd, on 15.02.2022 applied online for obtaining Consent to Establish (CTE) under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 for construction of Multilevel Car Parking-cum-Shopping Hub at Old West Point School area.
- V. That the project of Multilevel Car Parking-cum-Shopping Hub having built up area of 33,801.25 sq. mtrs fall under Orange Category as per the CPCB Uniform Categorization of Industries and the CTE application is at present being considered before the Board in accordance with the law.

#### **PARAWISE REPLY**

1. I submit that the contents of paragraph 1 of the said Original Application with regard to antecedents of the applicant needs no comment and her work in the field of environment is not known to the answering respondent and hence no comment is warranted. Further, it is submitted that the said Project is being assessed and examined in accordance with the law by the Respondent No.6 Board and a decision shall be made after such assessments are thoroughly completed, keeping in mind the environment aspects of the project.



That the contents of paragraph 2 of the Original Application are matters of record and anything contrary to the records are denied by the answering respondent.

3. That the contents of paragraph 3 of the said Original Application are matters of record and anything contrary to the records are denied by the answering respondent.
4. That with reference to the contents of paragraph 4.1 of the said Original Application, it is humbly submitted that the matter does not pertain to the answering respondent and needs no reply.
5. That with reference to the contents of paragraph 4.2 of the said Original Application, it is humbly submitted that the matter does not pertain to the answering respondent and needs no reply.
6. That with reference to the contents of paragraph 4.3. of the said Original Application, it is denied that air, water and noise pollution will be caused if prescribed containment measures are put in place.
7. That with reference to the contents of paragraph 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10 of the said Original Application, it is humbly submitted that the matter does not pertain to the answering respondent and needs no reply
8. That with reference to the contents of paragraph 4.11 of the said Original Application, it is humbly submitted that air, water and noise pollution will not be caused if prescribed containment measures are followed in accordance with the parameters as mentioned in Environment Protection Rules, 1986 and Noise Rules, 2000.
9. That with reference to the contents of paragraph 4.12 of the said Original Application, it is humbly submitted that the matter does not pertain to the answering respondent and needs no reply.



10. That the contents of paragraph 4.13 A-(i) to (v) of the said Original Application need no comments and anything contrary to the records are denied by the answering respondent.
11. That with reference to the contents of paragraph 4.13 A(vi) of the said Original Application, the Respondent No. 6 submits that environment pollution monitoring is being carried out on a regular basis and rest of the content needs no comment from the answering respondent.
12. That the contents of paragraph 4.13 A(vii) and (viii) of the said Original Application need no comments and anything contrary to the records are denied by the answering respondent.
13. That with reference to the contents of paragraph 4.13 B, C and D of the said Original Application, it is humbly submitted that the matter does not pertain to the answering respondent and needs no reply and further it needs no comment, however, anything contrary to the records are denied by the answering respondent.
14. That with reference to the contents of paragraph 5, needs no comment.
15. That with reference to the contents of paragraphs 6.1 to 6.4 of the said Original Application, need no comment and anything contrary to the records are denied by the answering respondent. It is however submitted that any pollution caused by the construction of the said project would be strictly regulated by the concerned authority in accordance with the law.
16. That with reference to the contents of paragraph 6.5 of the said Original Application, it need no comment and anything contrary to the records are denied by the answering respondent.



That with reference to the contents of paragraph 6.6, Para 6.7, Para 6.8 & Para 6.9 of the said Original Application, it is humbly submitted that the content does not pertain to the answering respondent and needs no reply.

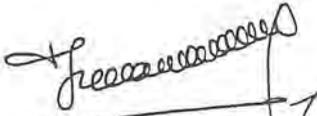
18. That with regard to the contents of paragraph 6.10 of the said Original Application, it is humbly submitted that the matter does not pertain to the answering respondent and needs no reply.

19. That with reference to the contents of paragraph 6.11 it is humbly submitted that environmental mitigation measures are generally incorporated into the project design of construction projects executed in the State of Sikkim. As regards the allegation that the construction of said project would lead to air, land and noise pollution, it is humbly submitted before this Hon'ble Tribunal that the consent conditions as and when if given would ensure strict compliance of the Air Act, 1981 and the Water Act, 1974.

20. That with reference to the contents of paragraph 6.12 & 6.13, it is humbly submitted that the matter does not pertain to the answering respondent and needs no reply.

21. That the contents of paragraph 6.14 and 6.15 of the said Original Application need no comments.

22. The contents of Ground A to Z are summarily denied.

  
DEPONENT

#### VERIFICATION

I, the above-named deponent do hereby verify and say that the statements made at aforementioned paragraphs of the Counter affidavit is



True to my knowledge rest are my respectful submissions before this Hon'ble Tribunal. The documents filed herewith as annexures are true copies of respective originals.

Affirmed on this the Eighteenth day of February 2022 at Gangtok, East Sikkim.

  
18/02/22

IDENTIFIED BY  
Shamer Raj Kenung  
Lawyer of Arithang

  
DEPONENT

Solemnly affirmed before me on this the  
18<sup>th</sup> day of Feb 2022 by Shri/Smt/  
Miss. Thomas Chandy of  
Dezali Gogal who is known to me!  
Identified by Shri/Smt/Miss. Shamer  
Raj Kenung of Lawyer Arithang

  
18/02/22

Ms. Phu Doma Bhutia  
Oath Commission (East)  
Enl. No. 769 of 2014  
High Court of Sikkim  
Vide Notification No. 38/HCS/30/09/2021



**STATE POLLUTION CONTROL BOARD-SIKKIM**

FOREST & ENVIRONMENT DEPARTMENT

GOVERNMENT OF SIKKIM

DEORALI, GANGTOK - 737102

F. No. 102/SPCB/3215

Dated: 17/09/2021

To,

The Secretary,  
Urban Development Department,  
Government of Sikkim,  
Gangtok-737101.

**Sub: No Objection Certificate.**

In consideration of your letter no. 250/UDD/Secy dated 08/09/2021, this is to inform you that the State Pollution Control Board-Sikkim does not have any objection for dismantling/demolition of the existing facility located at Old West Point School, Gangtok, East Sikkim subject to the following conditions:

1. That, you shall ensure that the project proponent carries out the dismantling/demolition work without causing any environmental pollution duly installing pollution control measures such as suppression of dust/fugitive emission, noise controlling measures in the premises by erecting barriers & limiting work during day time only and proper management of demolition waste within the premises, further, that any such dismantling/demolition shall ensure foundational security of the area in question;
2. That, all forms of Demolition waste shall be managed and disposed in accordance with the provisions of the Construction & Demolition Waste Rules, 2016;
3. That, the project proponent shall construct temporary labour camp duly providing proper sanitation & solid waste management facility within the premises in accordance to the Solid Waste Management Rules, 2016;
4. That, you shall obtain any other NOC, wherever required before taking up the demolition work.

  
Member Secretary  
State Pollution Control Board-Sikkim  
Dr. Gopal Pradhan  
Member Secretary  
State Pollution Control Board  
Forest Env. & W/L Mangt. Deptt.  
Govt. of Sikkim, Gangtok



- / True Copy / -

IN THE NATIONAL GREEN TRIBUNAL  
EASTERN BENCH, KOLKATA

O.A. No. 5 OF 2022/EZ



IN THE MATTER OF:

Dr. Bina Basnett

Petitioner (s)  
Appellant (s)

-VERSUS -

State of Sikkim & Ors

Respondent (s)  
Defendant (s)

VAKALATNAMA

CHAIRMAN STATE POLLUTION CONTROL BOARD SIKKIM

I .....DEFENDANT / RESPONDENT/ PETITIONER / OPPOSITE PARTY, in the above application/ suit/appeal/petition/ reference do hereby appoint and return Salik Shafique, Advocate of the National Green Tribunal, to act and appear for me/us in the above application/ suit/petition/appeal reference and on my/our behalf to conduct and prosecute or defend or with draw the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for Review to file and obtain return of documents and to deposit and receive money on my / our behalf in the Application/Suit/Petition/Appeal reference and application for Review, and to represent me/us and to take all necessary steps on my/our behalf in the above matter. I/We agree to ratify all act done by the aforesaid advocate, in pursuance of this authority.

Dated this the Seventeenth day of February 2022

Accepted Identified By

S. Aiy  
Advocate,

[Signature]  
(Petitioner (s) / Appellant (s)  
Respondent (s) / Defendant(s) / Opposite Party

MEMO OF APPEARANCE

To,

The Registrar,  
National Green Tribunal  
Eastern Bench,  
Kolkata.



Sir,

Kindly enter my appearance in the above matter on behalf of the Petitioner / Appellant / Respondent.

Dated ..... 20



[Signature]  
Salik Shafique

Advocate for the  
Petitioner(s)/Appellant(s)/Respondent(s)