

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH AT KOLKATA
ORIGINAL APPLICATION NO. 60 OF 2021**

IN THE MATTER OF:

KANKANA DAS

...APPLICANT

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

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THROUGH

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PLACE: KOLKATA/DELHI

DATE: 10.03.2022

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**JOINT REJOINDER ON BEHALF OF THE APPLICANT TO THE REPLIES
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MOST RESPECTFULLY SHOWETH:

1. The above mentioned Application was filed by the Applicant before this Hon'ble Tribunal under Section 14 and Section 20 of the National Green Tribunal Act, 2010 ("**NGT Act**") raising a substantial question of the environment regarding failure of Central Pollution Control Board and State Pollution Control Boards of West Bengal, Odisha, Bihar and Jharkhand in formulating 'Preliminary State Action Plan for Air Pollution for all 23 States' by 2020 as envisaged in the National Clean Air Programme (NCAP). NCAP is a statutorily mandated nation-wide programme aimed at preventing and controlling air pollution, and failure of State Governments, State Pollution Control Boards and Central Pollution Control Board in adhering to the timelines or directions contained therein amounts to a violation of Section 16(2)(b), Section 17(1)(a) and Section 18(1)(a)(b) of the Air (Prevention and Control of Pollution) Act, 1981. That the NCAP is a national-level strategy launched by the Ministry of Environment, Forests, and Climate Change ('MoEFCC') in 2019 was formulated with the goal to improve the air quality at both regional and urban scale in India. NCAP emphasizes on comprehensive mitigation strategies, as well as envisages augmenting and strengthening an effective ambient air quality monitory network across the

country. Furthermore, NCAP states the mitigation actions and their stringent implementation for prevention, control and abatement of air pollution. One such action is the collaborative and participatory approach involving State Governments, Local bodies, relevant Central Ministries and other Stakeholder forming the crux of the programme, and accordingly, mandates that CPCB along with MoEFCC is to formulate guidelines for the preparation of State Action Plans ('SAP') by 2019 and thereafter each State Pollution Control Board and State Government is to formulate and implement 'SAP' by 2020. That despite these stated objectives, CPCB, MoEFCC, SPCBs as well as every State Governments have failed in formulating and implementing the SAP within the stipulated timeframes, i.e., by 2019 and 2020 respectively.

2. That the instant Rejoinder is being filed in response to the affidavits filed by Respondent No. 2, 5 and 7 i.e., Central Pollution Control Board, Odisha State Pollution Control Board and Bihar State Pollution Control Board. At the outset, the Applicant denies various statements which have been made and nothing should be assumed to be admitted unless specifically admitted or is part of the record. The Applicant reiterates all the facts and submissions made in the Application to be true and correct and the same may be read as part of the instant rejoinder and are not all being repeated for the sake of brevity.

REJOINDER TO THE REPLY FILED BY R-2, CENTRAL POLLUTION CONTROL BOARD:

3. That the averments made under Para 11 of the Reply Affidavit dated 04.10.2021 filed by the Central Pollution Control Board states that CPCB has shared an indicative template for the preparation of the State action Plan and has also conducted a meeting with National Knowledge Network to discuss the said template for the preparation of the State action Plan. That this submission of CPCB clearly shows that till date no State action Plan has been formulated in clear non-compliance which was mandated under NCAP

with a specified timeframe of 2019. Further, it is also submitted by CPCB in its reply that the delay in the formulation of Guidelines for the preparation of the State Action Plan was due to the Covid-19 pandemic situation in the country which is completely vague and false. The guideline for preparation of the State Action Plan was to be prepared by CPCB by 2019 and the COVID -19 Pandemic had hit the country in 2020, with the first Covid 19 case hit in Kerala on January 27, 2020 and the official initiation of lock down started with a Janta Curfew (a voluntary approach) on 22nd March, 2020. Hence the argument of Covid -19 Pandemic is erroneous should not be accepted while it is coming from CPCB, who was supposed to formulate the guidelines for the preparation of State Action Plans by 2019 as specified in NCAP.

4. That the Reply Affidavit only focuses on the "City Specific Clean Air Action Plans" that have been prepared and rolled out for implementation in 124 non-attainment cities. They simply stated that the National Clean Air Programme ('NCAP') is being implemented in 124 non-attainment cities through the City Specific Action Plan. The Applicant here submits that the contentions raised by the CPCB is not relevant at all as it does not justify the inaction by the CPCB to formulate the guidelines for the preparation of the State Action Plan by 2019. The NCAP Timeline as in Appendix VI, Para 1.13, specifically requires the following:

1.13.1 - A 'Preliminary State Action Plan for air pollution' to be formulated for all the 23 states, which harbour 102 non-attainment cities by 2020 by SPCBs, CPCB and MoEFCC;

1.13.2 - State action plan for air pollution to be taken up for implementation by the state government and city administration by 2020 by State Governments;

1.13.3 – The guidelines for the preparation of the state action plan to be formulated by 2019 by MoEFCC and CPCB.

That as per the above mentioned provisions, the 'Preliminary State Action Plan' under Para 1.13.1 is to be formulated by the relevant State Pollution

Control Boards along with Central Pollution Control Board and Ministry of Environment, Forest and Climate Change by 2020, while implementation thereof envisioned in Para 1.13.2 is to be undertaken by State Governments by 2020 and under Para 1.13.3 the guidelines for the preparation of the 'State Action Plan' is to be formulated by the Central Pollution Control Board along with Ministry of Environment, Forest and Climate Change by 2019. However, the Central Pollution Control Board and the Ministry of Environment, Forest and Climate Change have clearly failed in formulating the guidelines for the preparation of the 'State Action Plan' within the specified timeframe i.e., 2019. Thus, it is submitted that the reply dated 04.10.2021 filed by the CPCB clearly makes every possible attempt to shift the focus of this Hon'ble Tribunal from its failure to prepare the State Action Plan to the City Specific Action Plan, which are two completely different plans mandated under the NCAP.

REJOINDER TO THE REPLY FILED BY R-5, ODISHA STATE POLLUTION CONTROL BOARD:

5. The Reply Affidavit dated 23.09.2021 filed by the Odisha State Pollution Control Board referred to Clause 6.5 of the NCAP as a guideline prepared by the MoEFCC for the preparation of State Action Plan for clean air in the non-attainment cities. This contention raised by R-5 is completely wrong. The Applicant in this regard submits that a detailed reading of the clause 6.5 will clarify that it does not talk about 'State Action Plan', rather it has detailed out the overall approach for implementation of the NCAP programme. That specifically, Clause 6.5 elaborates the scope of integrating and mainstreaming the existing policies and programmes of the National Action Plan on Climate Change (NAPCC) and other initiatives of Government of India in reference to climate changes and scope of integrating the smart city framework with NCAP which overlaps in these two programmes. It is pertinent to note that the contention raised by R-5 that Clause 6.5 of the

NCAP talks about the guidelines prepared by MoEFCC is inaccurate as Appendix VI, Para 1.13 clearly highlights that MoEFCC and CPCB are mandated to formulate the guidelines for the preparation of State Action Plan by 2019, which they have failed to comply with.

6. Further, Para 4 of the Reply filed by the Odisha State Pollution Control Board states that Appendix VI Point No. 1.3 of the NCAP speaks about SPCBs to prepare a preliminary action plan for air pollution in their States. This contention raised is absolutely incorrect as Point No. 1.3 of Appendix VI deals with the need for clean technology and associated support through required R&D, pilot scale demonstration and field scale implementation. It seems that the R-5 has not even made an effort to read the NCAP document and its associated Appendix cautiously.
7. That Para 4 of the Reply also states that the details of how the action plan is to be prepared are explained in Chapter 7 of the NCAP. In this regard, it has referred to Clause 7.1, which talks about the stringent enforcement through three-tier mechanism of review of monitoring, assessment and inspection. It is submitted that Clause 7.1 of Chapter 7 of the NCAP does not specify anything with respect to the State Action Plan per se. Rather it highlights the need for regular monitoring and inspection of the entire programme, as it feels from the past experience that lack of regular monitoring and inspection are the reason for all non-compliance. The contentions raised by R-5 clearly shows that they have simply evaded their duties due to their lackadaisical approach and wrongful interpretation of the provisions of NCAP.
8. That Para 6 of the reply states that 'Odisha State Action Plan for Clean Air' has been prepared in the form of 'Comprehensive Action Plan for Non-Attainment Cities of Odisha'. That submission from the Odisha State pollution Control Board clearly shows their nonchalant and apathetic approach towards the NCAP formulated by the MoEFCC. It is pertinent to note that under Chapter 7, Para 7.6 specifically mandates the formulation of

City Specific Air Quality Management Plan for 102 non-attainment cities and Para 7.7 categorically mandates the formulation of State Action Plan for Air Pollution, which are two distinctive plans. It is difficult to decipher that how and on what basis the terminology and concept of 'State Action Plan' got converted into 'Comprehensive Action Plan for Non-Attainment Cities of Odisha'. This simply highlights the limited familiarity of the Odisha State Pollution Control Board in understanding the NCAP envisaged by MoEFCC. Thus, the Applicant here submits that the contentions raised by the OSPCB is not relevant at all as it does not justify the inaction by the them in formulating the Preliminary State Action Plan for all 23 States by 2020 as mandated under NCAP.

REJOINDER TO THE REPLY FILED BY R-7, BIHAR STATE POLLUTION CONTROL BOARD:

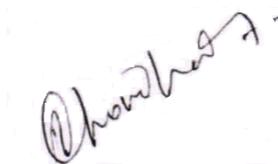
9. The Reply Affidavit dated 06.10.2021 filed by the Bihar State Pollution Control Board in Para 4 only focuses on the "City Specific Clean Air Action Plans" that have been prepared and rolled out for implementation in 124 non-attainment cities. Thus, it is submitted that the reply filed by the Bihar State Pollution Control Board clearly makes every possible attempt to shift the focus of this Hon'ble Tribunal from its failure to prepare the State Action Plan to the City Specific Action Plan, which are two distinctive plans mandated under the NCAP in Para 7.6 and 7.7. This simply highlights the inadequate awareness of the Bihar State Pollution Control Board in understanding the NCAP envisaged by MoEFCC.
10. That the PCB of Bihar in Para 5 has stated about the directions passed by this Hon'ble Tribunal which expressed the need for preparation of District Environment Plan, State Environment Plan and finally a National Environment Plan and directed to prepare them. It had further reiterated about their idea for one model District Environment Plan and its replication for the entire states. Further from Para 6 to Para 8, the reply of the Bihar

PCB elaborated about their preparation for district environment plan for 38 districts of the state and subsequent preparation of the State environment Plan, in compliance with the directions issued in O.A No.360 of 2018 (Shree Nath Sharma Vs. Union of India & Ors.) It is submitted by the Applicant that the submissions are completely irrelevant, as this does not justify the inaction by the Bihar PCB, as to why they have not formulated the State Action Plan. That the formulation of the State Action Plan as mandated under the NCAP comes under the statutory mandate and hence the PCB is legally bounded to prepare the same. Further, the District Environment Plan will deal with local level pollution issues whereas State Action Plan is intended to focus on all sources of pollution. The NCAP itself states "*Since collaborative and participatory approach involving State Governments, Local Bodies, relevant Central Ministries and other stakeholder with focus on all sources of pollution form the crux of the programme, the success of NCAP is depending upon the active involvement of State Governments*". Hence formulation of District Environment Plan cannot be a replacement for State Action Plan.

11. Thus, in light of the above, the prayers in the Original Application shall be allowed.

THROUGH

RITWICK DUTTA



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AFFIDAVIT

I, Kankana Das, D/o Mr. Aditya Kumar Das, aged about 38 years, R/o H No. BB-90, Sector-I, Salt Lake, Kolkata – 700064, do hereby solemnly affirm and state as under:

1. I am the Applicant in the above titled Original Application and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.

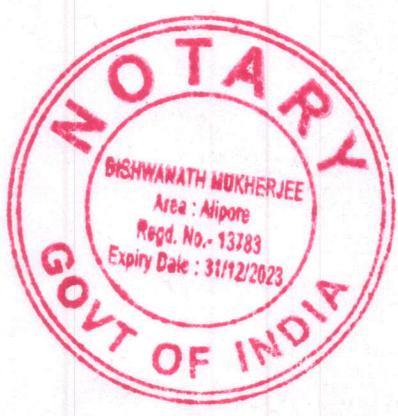
[Handwritten Signature]
BISHWANATH MUKHERJEE
 NOTARY
 Govt. of India
 Regd. No. 13783

09 MAR 2022

Kankana Das
DEPONENT

VERIFICATION

Verified on this ___ day of _____, 2022 that the contents of the above-mentioned Affidavit are true and correct and nothing material has been concealed therefrom.



09 MAR 2022

Kankana Das
DEPONENT