

**BEFORE THE NATIONAL GREEN TRIBUNAL, SOUTH ZONE AT
CHENNAI**

Original Application No. 159 of 2024 (SZ)

V. Ramesh

...Applicant

...VS...

The District Collector & Others



....Respondents

COUNTER STATEMENT FILED BY THE 5TH RESPONDENT

The 5th Respondent viz., Chittoor Thachur Highway Private Limited begs to submit as follows:-

(1) The address for service of all process and notices on the 5th Respondent is that of their Counsel M/S. J. KANNAN & S. GOKUL, having their office at Old Door No. 128, New No. 260, Mubarak Plaza, First Floor, Angappa Naicken Street, Chennai - 600 001.

(2) The 5th Respondent denies each and every one of the allegation set out against them in the above application save those that are admitted herein and puts the Applicant for the strict proof regarding the allegations raised against the 5th respondent. The 5th respondent further advised to submit that

the above Application is neither maintainable in Law nor on Facts and as such the same is liable to be dismissed in limini. The 5th Respondent reserves its right to file Additional Counter Statement if so necessary or advised.

(3) The 5th Respondent respectfully submits that it a Private Limited Company, duly registered under the Companies Act having its Registered Office at 11th Floor/1101, Hiranandani Knowledge Park, Technology Street, Powai, Mumbai, Maharashtra, India, 400 076 and it is a Subsidiary Company of IRB Infrastructure Developers Ltd.;

(4) The 5th Respondent most respectfully submits that the Applicant herein in the above application has claimed that he is a farmer but he deliberately failed to produce any relevant documents to support his stance.

(5) The 5th Respondent further humbly submits that The National Highways Authority of India Limited (NHAI in Short) has awarded the work of **“Six Laning Chittoor - Thachur road from Km. 96.040 (Pondavakkam) to Km.116.100 (Kannigaipair) on Hybrid Annuity mode under Bharatmala priyojona in the State of TamilNadu (Package -IV)”** to the 5th Respondent herein




by duly entering into a Concessionaire Agreement dated 21/12/2021 Thereafter, 5th Respondent has entered into contract dated 6/4/2022 with IRB Infrastructure Developers Limited for implementation of the project. IRB Infrastructure Developers Limited, which is the parent company of the 5th respondent, has Sub-Contracted the said project to Modern Road Makers Pvt. Ltd. vide Sub-Contract Agreement dated 6/4/2022. The said Sub-Contractor Modern Road Makers Pvt. Ltd., in turn, again Sub-Contracted the said project to the 4th Respondent (M/s SS Constructions) herein vide Contract Agreement dated 14/07/2022.

(6) The 5th Respondent further submits that in order to execute the above mentioned project, the 5th respondent on behalf of the 4th respondent, by its letter dated 5/5/2023, sought the permission of the District Collector of Thiruvallur District, who is the First Respondent herein to Grant borrow earth permission in the name of the 4th Respondent, from the Designated Govt. Borrow areas near the project site

(7) The 5th respondent further submits that the 4th respondent herein also in compliance with the request made by the 5th respondent for borrowing ordinary earth soil, by its

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Application dated 15/9/22, submitted to the first respondent herein sought Lease permit under the Tamil Nadu Minor and Minerals Concession Rules, 1959, to borrow 20,000/ cubic metres ordinary soil from the Perittivakkam Lake (Water Resources Department Lake) located in Survey No. 163, Perittivakkam Village, Uthukottai Taluk, Thiruvallur District, for the above mentioned project.

(8) The 5th Respondent further submits that after receipt of the application from the 4th respondent for borrowing of ordinary sand, the authority affixed (A Notice) public notice in the local VAO office regarding the borrowing of earth in the concerned lake and through the said public notice, the General public was asked to give their objections, if any, for borrowing the ordinary sand. However, no objections were received from the general public. The Applicant herein who claimed to be the permanent resident of local area, also never raised any objection in this regard at the relevant point of time. As there was no objection from any quarters, The Revenue Divisional Officer, visited the Concerned lake and in his report dated 5/7/23, he categorically held that there are no residential building within a 500m circumference from the site and there are no Ancient Symbols, Graveyard,

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Costly Trees, Place of Worship, High and Low Tension Electric Posts are also not found in the concerned lake and as such he recommended to grant permission for borrow of ordinary sand to the 4th respondent.

(9) The 5th respondent further submits that the Executive Engineer, Araniyar Basin Kottam, Chennai-5, in his letter dated 30/6/23, also recommended to grant permission to the 4th respondent for borrow of ordinary sand. The Director and Assistant Geologist of the Department of Geology and Mining made their joint site Audit and in their report dated 27/07/23, they also recommended to grant permission to the 4th respondent for borrow of ordinary sand in the said lake.

(10) The 5th respondent further submits that the First respondent herein after considering all the Technical reports and recommendations of the Concerned Officers and also after considering various materials produced before him in this regard, duly applied his mind and passed a detailed order dated 6/2/24, and thereby granted permission to the 4th respondent herein to quarry 20,000 cubic meter of ordinary sand in the area of 247 meter in length, 90 m in width and 90 m in depth from the Water resources lake perittivakkam village comprised in Survey No.

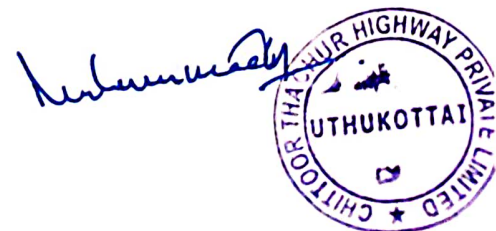
Subramanian



163, Uthukottai Taluk, Thiruvallur Taluk, by imposing General and Specific Conditions, for the project work of the 4th respondent.

(11) The 5th Respondent further submits that it is pertinent to mention here that the project proponent viz., NHAI, had already obtained Environmental clearance on 21/12/2022, from the Government of India, Ministry of Environment, Forest and Climate Change (Impact Assessment Division) for the above mentioned project of Construction of "Six Laning Chittoor - Thachur road from Km. 96.040 (Pondavakkam) to Km.116.100 (Kannigaipair) on Hybrid Annuity mode under Bharatmala priyोजना in the State of Tamil Nadu (Package -IV)". In the said Environment Clearance, clause xvii of the Standard Condition categorically mentioned that necessary clearance/approval shall be obtained for extraction of sand from the rivers. Thus, it has become quite clear that no separate E.C. is required for extraction of sand for the project work.

(12) The 5th respondent further submits that for the reasons best known to the Applicant herein, he did not chose to Challenge the Order dated 6/2/24, passed by the First Respondent District Collector herein in Na.Ka.No.



98/2023/Mineral.2., and as such the order of the District Collector is in force without any legal handicap. The crux of the allegation of the applicant is that the 4th respondent is extracting sand from the lake without obtaining any separate E.C. from the concerned Department. The applicant in his pleadings further mentioned that the exemption provided by the MOEF & CC for mining of minerals for linear projects vide amendments dated 28/03/20 and 30/08/23, has been struck down by the Hon'ble Supreme Court in its judgment dated 21/3/2024 made in **Nobel m. paikada vs Union of India in Civil Appeal Nos. 1628-1629 of 2021**. The Categorical stance of the Applicant is that once the exemption is struck off by the Supreme Court, the 4th and 5th respondent ought to have obtain separate E.C., for the extraction of sand, as held in various judicial pronouncements.

(13) The 5th Respondent further submits that after the pronouncement of the order in the above said case, the project proponent viz., NHAI has filed an application for clarification in I.A. NO. 114110/2024, with Diary No. 2177/24 in C.A. Nos. 1628-1629/2021. In the said application, the Hon'ble Supreme Court by an order dated 15/5/2024, was pleased to clarify that in respect of the projects for the Work Order issued by NHAI prior



to 21st March will remain *unaffected* by its judgment dated 21st March 2024 made in NOBEL M. PAIKADA VS UNION OF INDIA. The relevant portion of the said clarification Order dated 15/5/24 is extracted hereunder for better appreciation

"for the time being, we clarify that the projects for which work orders were issued by the applicant-NHAI prior to 21st March, 2024, will remain unaffected by the judgment dated 21st March, 2024."

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"We clarify that the work orders which were issued prior to 28th March 2020 required Environment Clearance and therefore, the clarification which we have issued under this order will not apply to such work orders."

Thus, as per the clarification order passed by the Supreme Court, the Work Order issued between 28th March 2020 to 21st March 2024, is entitled for the benefit accorded by the exemption conferred in amendments dated 28/3/2020 and 30/08/23.

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CHITTOOR THACHUR HIGHWAY PRIVATE LIMITED
★ UTHUKOTTAI ★

(14) The 5th Respondent further submits that in our case the project proponent NHAI had issued work order on 21/12/2021 by executing the Concession Agreement with this respondent for laying Six Laning Chittoor-Thatchur road and in respect of this project the first respondent by his order dated 6/2/2024, granted permission for the 4th respondent to extract ordinary soil from the Perattivakkam lake. Thus, the date on which the work order/Concession Agreement is issued and as well as the order of the first respondent herein is well within the ambit of the period prescribed by the Supreme Court and as such the 5th Respondent is entitled for the benefit accorded by the Supreme Court in its clarification order dated 15/5/2024.

(15) The 5th Respondent further submits that as per the clarification order issued by the Supreme Court on 15/5/24, the contesting respondents herein are entitled for the benefit accorded in the Exemption amendments dated 28/03/2020 and 30/8/23 and as such for all practical purpose no separate E.C. is required for linear project viz., extracting sand from Perrittivakkam lake Thus the above application is misconceived and as such the same is liable to be dismissed.

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(16) The 5th respondent further submits that the action of the 4th and 5th respondent regarding the extraction of ordinary soil is not violative of Article 14, 21 48A of the constitution of India and the Environment (Protection) Act and the same has been done in accordance with law.

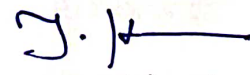
(17) The 5th Respondent states that the project of Six Laning Chittoor-Thatchur highway is a project of national importance. The 5th Respondent has made huge investment and has incurred heavy cost in constructing the project by borrowing monies from banks. In the event if 5th Respondent is prevented from executing the Six laning Project work then grave harm and loss will be caused to the 5th Respondent and as well as to the General Public. Hence, the present application is misconceived and same should not be entertained.

In the above said circumstances, the 5th respondent prays that this Hon'ble Tribunal may be pleased to dismiss the above application with costs and thus render justice.

Dated at Chennai on this the 21st day of September 2024.


5th Respondent




S. Chand

Counsel for 5th Respondent

Verification

I, Yerrababu Gari Mohammad Saffee, the Chief General Manager of the 5th respondent, do hereby sincerely state that what are all stated in the above paragraphs are true and correct to the best of my knowledge and belief.

Verified at Chennai on this the 21st day of September 2024.



5th Respondent



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COUNTER STATEMENT FILED
BY THE 5TH RESPONDENT

M/s J. KANNAN (73/1999)
S. GOKUL (1512/2022)

Counsel For 5th Respondent

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