

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

(Under Sections 14 and 15 read with Section 18(1) of the NGT Act, 2010)

OA No. 262 of 2024

Tejah Balantrapu and Ors.

...Applicants

v.

Union of India and Anr.

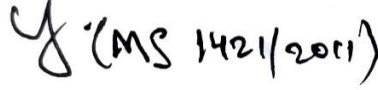
...Respondents

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Certified to be true copies of the respective originals.
Dated at Chennai on this the 13th day of December, 2024

Through



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BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

MEMORANDUM OF APPLICATION

(Under Sections 14 and 15 read with Section 18(1) of the NGT Act, 2010)

Original Application No. 262 of 2024

Tejah Balantrapu & Ors. ... Applicants

v.

MoEF&CC & Anr. .. Respondents

COMMON REJOINER FILED BY THE APPLICANT TO THE COUNTERS DATED 11.11.2024 AND 11.12.2024 FILED BY THE 2ND AND 1ST RESPONDENTS RESPECTIVELY

The Applicants submit as follows:

1. The Applicants have read the reply of the 2nd Respondent dated 11.11.2024 filed on 25.11.2024, and the Counter Affidavit of the 1st Respondent dated 11.12.2024 and served on 12.12.2024, and are filing the present rejoinder in response to the averments made in these pleadings.
2. At the outset, the Applicants deny the entire contents of the affidavits under reply, except to the extent expressly admitted hereunder. Without prejudice to the above denial, it is submitted as follows.

Reply to counter of 1st Respondent MoEFCC

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3. It is submitted that the 1st Respondent has only narrated the sequence of events that transpired according to them, and even a reading of the counter makes it clear that the MoEFCC and EAC have accepted the 2nd Respondent NHAI's statements as gospel truth, which has culminated in the subject proceedings.
4. The contents of paras 1 to 3 are for the information of this Hon'ble Tribunal, and call for no reply.
5. In paras 4 and 5, the MoEFCC has attempted to paraphrase the application filed by the Applicants herein. However, there appears to be a recognition of the fact that the subject banyan trees constitute a precious heritage.
6. The contents of para 6 appear to be a narration of the history of the EIA Notification, and call for no specific reply, subject to accuracy and relevance.
7. In para 11, para 63 of the judgment of this Hon'ble Tribunal dated 06.11.2023 have been extracted.
8. It is seen from the averments of para 12 of the affidavit under reply that the 2nd Respondent filed an application dated 02.01.2024 for the subject project, and it was considered by the 1st Respondent under entry 7(f) of the Schedule to the EIA Notification, 2006, i.e. category A.
9. In para 13, reference has been made to the clearance obtained by NHAI under the erstwhile Forest Conservation Act, 1980 (today the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980). This has no relevance to the present issue.
10. It is seen from the contents of paras 14 to 18 that the EAC was of the opinion that more trees could be saved, and therefore constituted a sub-committee, inter alia to find out possible changes in the alignment, and that

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the Ministry thereafter issued terms of reference (ToR), which included the conduct of public hearing as a condition.

11. It is seen from the averments in paras 19 to 22 that the 1st Respondent exempted the public hearing requirement based on the request of the NHAI. It is submitted that many of the issues that require the attention of the EAC could have been pointed out, and materials placed for consideration, if a public hearing had been conducted.
12. However, by dispensing with the public hearing requirement, the 1st Respondent effectively reduced the appraisal process to an engagement with only the project proponent, which has not surprisingly resulted in acceptance of NHAI's statements at face value.
13. The MoEFCC has failed to even notice that the EIA report submitted by NHAI does not comply with the ToR issued.
14. It is submitted that the 1st Respondent does not have any plenary power to dispense with public hearing as it deems fit. The EIA Notification, 2006 under clause 7(i)(III)(i) has a list of projects that do not require public consultation. The Respondents are attempting to falsely contend that the present project does not involve additional acquisition of land, and thus would fall under clause 7(i)(III)(i)(c) of the Notification. However, the Respondents have suppressed the fact that they have earlier acquired land for the present project in fact, is the reason stated by the 2nd respondent for their steadfast refusal to consider even the idea of alternate alignment, let alone actual merit review of alternate alignments.
15. It is seen from the averments in paras 23 to 28 that the MoEFCC has blindly accepted the statements made by NHAI. In fact, the language in the counter affidavit mirrors the language in the minutes of the EAC meetings. While in para 24, reference is made to the EAC sub committee's recommendations,

the MoEFCC has failed to see that these recommendations have not been complied. For example, the sub committee repeatedly directs the NHAI to consider bypasses and alternative alignments, to leave the banyans in the centre and realign the road etc. However, none of these recommendations have been complied. The failure of the MoEFCC to even notice this is demonstrative of the lack of application of mind. It is submitted that translocation is not a solution. The entire exercise was reduced to a formality. It is submitted that neither the MoEFCC nor the EAC have even discussed the EIA report. The entire proceedings are vitiated, and the 1st Respondent's claim that they have acted diligently is disproved by the records, and the manner in which the present proposal has been considered and accepted.

Response to counter of 2nd Respondent NHAI

16. It is submitted that the counter affidavit of the 2nd Respondent dated 11.11.2024 is largely a reiteration of the counter dated 28.10.2024 that was filed along with the EIA report. The counter affidavit does not respond to the concerns raised in the present application regarding the non-compliance with the judgment of this Hon'ble Tribunal in OA No. 242 of 2021.
17. The contents of paras (i) and (ii) are procedural, and do not warrant any response.
18. The 2nd Respondent's averments in para (iii) of their counter that the present Application is barred by res judicata, deserve to be rejected. The present Application was filed challenging the non-compliance of the order of this Hon'ble Tribunal in OA No. 242 of 2021, as stated above, and the complete and wanton failure of the 2nd Respondent to subject the project to the rigour of the EIA process, inclusive of public hearing, and the failure to consider the impact of with the unique ecosystem presented by the banyans.

19. The contents of paras A to F are denied as false. The paras pertain to NHAI's perceptions about infrastructure projects and the events that transpired until the issuance of ToR. NHAI appears to be under a misconception that it is impossible to construct a highway without destroying unique ecosystems like the present one. It is necessary that alternatives to the felling of banyans are available. However, NHAI has refused to consider any such alternative. It is submitted that self-serving statements of NHAI do not accurately describe either the recommendations of the said sub-committee or NHAI's compliance. Save the empty rhetoric, the records indicate that no efforts have been taken to save the banyans, and no real efforts or options have been considered. Section 5.3.4 of the EIA report on tree transplantation is proof of the fact that the subject banyan trees cannot be transplanted and are disqualified from the parameters specified in the 2nd Respondent's EIA report. The averments demonstrate a complete lack of understanding and appreciation for the subject ecosystem. At the risk of repetition, it is stated that translocation does not mean that the entire tree is magically transported to another location. Only the stump and root ball are moved to a new location, and the outgrowth of the banyans, inclusive of branches and aerial roots, are lopped off. In any case, as submitted above, the translocation plan is inapplicable to the subject banyans, and the bogey of transplantation is being invoked to divert this Hon'ble Tribunal from the issue of destruction of the subject ecosystem. It is surprising that NHAI, after such deep thought and consideration, has still not understood that the most simple and efficient way to save the banyans would be to leave them alone. Maybe the fact that this option does not include extensive measures to save the banyans at the expense of several crore rupees made this an unappealing proposition. The NHAI's own admission that the bypasses at Chevella and Moinabad have resulted in saving banyans is an indicator of the effectiveness of laying the road by bypassing the banyans. In fine, giving the banyans the same consideration as a built up area (such as Chevella and Moinabad above) would give quietus to the present issue.

20. Insofar as the contentions of para G are concerned, it is beyond comprehension how NHAI can rely on the alleged conclusions of a committee of its own officers to buttress their opinion that no other alternatives exist.

21. Insofar as para H of the affidavit under reply is concerned, NHAI's contention that public hearing was conducted at the time of the pre-feasibility study, and hence was not required, is ultra vires the EIA Notification, 2006 and factually inaccurate. Chapter 7.7 of the feasibility report titled "public information and consultations" is presumably what NHAI is referring to. A reading of this chapter shows that these are surveys conducted by their consultants in 2017. The photograph of the so-called public consultation at Chevella, with temple priest at Mirzaguda, with R&B etc., describes the rigour, efficiency and meticulousness of the same. Contending that this exercise is a substitute for the public hearing process under the EIA Notification, 2006 is to make a mockery of the law. The concluding remark of the chapter is quoted below:

"As per the observation of social scientist, widening of the existing road should be considered in this area, since its impact on structures will be not very severe." (sic)

22. Thus, to contend that this exercise constitutes public hearing militates against logic, facts and the law.

23. The fact that the so-called EIA report has been accepted by the 1st Respondent is demonstrative of their lack of application of mind. NHAI, while mentioning the at-grade junction at km 26+300, resulting in the saving of 50 banyan trees, has failed to mention why the suggestions of the sub-committee to altogether avoid these banyans was never considered or addressed.

24. Insofar as the contentions in paras I and J are concerned, it is submitted that the contention that the EIA study has resulted in saving 393 trees is false, as even the EIA study makes no such claim. Though the document is titled an "Environment Impact Assessment report", it neither describes the environment, nor does it assess impact. The geo-tagging of banyans for the proposed green belt are not matters which justify the decision to alter this unique heritage.
25. Insofar as the contents of paras (i) to (iii) at pg. 9 are concerned, it is submitted that it is not known how NHAI can claim that the present Application is barred by res judicata when they have completely failed to comply with the law, the judgment of this Hon'ble Tribunal in OA No. 242 of 2021, and the very purpose of conducting EIAs. It is trite that a claim of res judicata cannot be made without reference to specific pleadings, a consideration by court, and the specific finding qua the issue claimed to be hit by the doctrine. It needs no elaboration that the principle of sub-silentio militates against sweeping attempts like the present to claim immunity from examination and adjudication by the courts. The present Application is not barred by res judicata as contended, and NHAI has miserably failed to establish the basis of their claim.
26. The contents of the affidavit under reply under the head "para-wise reply" are repetitive. Insofar as the contents of paras 1 to 11 are concerned, the contentions therein are denied, and it is submitted that NHAI's attempts to obfuscate the issue by vague references to "various technical reasons", "legal issues", "comprehensive technical studies" etc. leaves the fact that the NHAI has failed to comply even with the sub-committee's recommendations. The fact remains that NHAI proposed this project and acquired lands without considering the subject banyans, and is now attempting to justify its decision by referring to "technical, practical and expert-based considerations".

- 27.If NHAI had complied with the sub-committee's recommendations to find alternate routes and bypasses where clusters of banyans are found, both the highway and the banyans could co-exist. However, NHAI seems steadfast in its refusal to consider any simple solution to the present impasse.
- 28.The contents of paras 12 and 13 are denied, and it is submitted that the acquisition of land prior to the EIA to study permissibility and suitability ought not to be used as a justification by project proponents. Circulars issued by the union Ministry of Road Transport and Highways (MoRTH) make it abundantly clear that while planning highways, the proposal itself should be for widening on one side, so that all the standing trees on one side can be left untouched. In the present case, the very planning of the highway is a violation of these circulars.
- 29.Insofar as the contents of paras 14 to 19 are concerned, it is submitted that nobody is saying that NHAI should not lay the subject road and that accidents as claimed ought to continue. It is reiterated that the highway and the banyans can co-exist. In fact, earlier this month, a standing banyan tree saved the lives of 50 persons at Aloor Gate, Chevella. News report of this incident published in The Times of India is annexed as **Annexure A15**. The Applicant is not responding to the academic discussion on transplantation, NHAI's idea of sustainable development etc., as NHAI's own reports prove that the measures discussed are inapplicable. Suffice to say that the principles of sustainable development does not mean that heritage trees forming a unique ecosystem have to be sacrificed at the altar of perceived development, while numerous alternatives exist to simply bypass the banyans. NHAI's attempt to project as though no other alternative is available is untenable, as the area along the subject road is largely unbuilt and dominated by agricultural fields.

30. From pg. 17 to 20, under the head "reply to grounds", NHAI has from paras A to J repeated their earlier contentions. In the interest of brevity, the above submissions may be reply to these paragraphs as well. It is however necessary to reiterate that the sub-committee of the Expert Appraisal Committee (EAC) did not at any point state that "altering the alignment was deemed impractical".
31. Insofar as paras 20 and 21 are concerned, the contention of NHAI that exemption from public hearing was granted because public hearing was conducted during the land acquisition process is incorrect, as
- no public hearing is conducted during the land acquisition process
 - the Ministry has themselves not adduced this reason while exempting the NHAI from the need to conduct public hearing
 - the judgments cited by NHAI in these paragraphs are not relevant to the present case
32. The judgment in *Sterlite* (no citation provided) appears to refer to the legal regime under the EIA Notification, 1994 prior to the amendment in 1997 that made public hearing mandatory. The reference to *Lafarge* also appears to be out of context, and irrelevant to the present case. NHAI's reliance on these judgments to support its inference that MoEFCC exempted public hearing since "MoEF&CC had a clear understanding of the public hearing conducted during the land acquisition process and, as a result, granted an exemption from conducting a separate public hearing," boggles the imagination, and needless to state, is contrary to the record.
33. It is therefore submitted that the very objective of doing an EIA study and subjecting the project to appraisal has been defeated by the conduct of the Respondents, and the mechanical manner in which the 1st Respondent has accepted the EIA report and recommended grant of EC for the project.

It is therefore prayed that this Hon'ble Tribunal may be pleased to allow the application as prayed for, and thus render justice.



// ATTESTED //

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APPLICANT

VERIFICATION

I, Tejah Balantrapu, the 1st applicant herein, do hereby verify that the contents in the above paragraphs are true to the best of my knowledge and based on legal advice and that I have not suppressed any material fact. I state that I have been authorized by the 2nd and 3rd applicants herein to affirm the contents of the above paragraphs.

Date : 12/11/24

Place : Hyderabad

B.V. Tejah
X

Signature of the Applicant



// ATTESTED //

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12 DEC 2024

Chevalla crash: Huge tree saves many lives

Dec 3, 2024, 12:30 AM IST

Hyderabad: If not for the huge banyan tree on the roadside, the death toll in the accident at Aloor Gate, Chevella, would have been much higher, said eyewitnesses. The truck that killed four and injured many others crashed into this banyan tree and came to a halt.

On the other side of the tree were at least 50 more people, including vendors and buyers, locals said. "We heard a loud thud and saw the tree's branches falling, not knowing what was happening. Only after a few minutes did we realise that a truck had crashed into the tree.

If the vehicle had gone skidding away from the tree or did not crash into the tree, we too would be dead by now," said a vendor.

Bright career cut short

Meanwhile, one of the victims,, 22-year-old Damaragidda Krishna had gone to the market to drop off tomato crates for a friend when tragedy struck. The youngest of three sons in the family of farm labourers Yadamma and Jangaiah, he had completed ITI and recently appeared for an entrance exam for a railway job. Krishna was expecting the results soon.

His maternal uncle Satyanarayana, said Krishna was hopeful of landing a railway job and be able to take good care of his parents. "As his two older brothers are doing small jobs, he decided to secure a job and build a good future for the whole family. Unfortunately, this incident has cut short a bright career and dashed all hopes of his parents," said Satyanarayana.