

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH, AT PUNE
ORIGINAL APPLICATION NO. 06 OF 2020(WZ)**

IN THE MATTER OF:

Shankarlal Gopalbhai PatelApplicant

Versus

Union of India & OrsRespondents

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NDoH: 18.08.2021

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Date: 17.08.2021

Place: Pune

DRAWN & FILED BY:



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**REJOINDER TO THE COUNTER AFFIDAVIT OF
RESPONDENT NO. 1, MINISTRY OF ENVIRONMENT,
FOREST & CLIMATE CHANGE IN O.A.NO. 06/2020(WZ)**

1. That this Hon'ble Tribunal is currently seized of the above-mentioned Original Application filed for bringing to notice the damage caused to the flora, fauna and ecology of the Kutch region particularly in Sanganara village, due to rampant illegal felling of trees for construction of wind farms by Respondent M/s Green Infra Wind Ltd. and at least seven other such Wind Energy Companies. Such constructions will lead to the building of more than 40 windmills, in the absence of any criteria for identification of forests in the State of Gujarat in utter violation of the orders of the Hon'ble Supreme Court dated 12.12.1996 and 28.03.2008 passed in *T.N. Godavarman Thirumulpad v. Union of India* W.P.(C) No. 202 of 1995.
2. That the instant Rejoinder is being filed by the Applicant in the afore-mentioned matter to refute the averments made by the Respondent No. 1, MoEF & CC in its Counter Affidavit.

PRELIMINARY OBJECTIONS:

3. That at the outset, the Applicant submits that the Respondent No.1, MoEF&CC, as the Central Nodal agency, has failed in its duty to ensure the protection of the forests and wildlife of unique eco-regions/bio-geographic zones of this country such as the last remaining scrub thorn forests of Sanganara. More specifically, the said Respondent has failed in its obligation to ensure the objective of the Forest (Conservation) Act, 1980 by not ensuring that the State of Gujarat formulates its parameters for identification of forests, thereby precluding the prior Central Government approval for carrying out non-forestry activities. This non-identification of forests in the Sanganara village of Gujarat, among others, has given impetus to the private Respondents to carry out deforestation for constructing wind farms by escaping the rigours of the FCA.
4. That it is further submitted that areas in and around Sanganara village, allotted to the various private Respondents for erecting wind farms have a large number of trees, such that it would be identified as a 'deemed forest' had the Respondent No.2, State of Gujarat complied with the orders of the Hon'ble Supreme Court dated 12.12.1996, wherein States have been directed to determine the parameters for identifying forest according to the dictionary meaning irrespective of ownership.
5. Furthermore, it is important to emphasize that the records of the Respondent No. 1, MoEF&CC, especially the letter dated 18.09.2014 along with the Minutes dated 25.08.2014 show that

the Government of Gujarat has not formulated the parameters to classify the areas as a deemed forest. As per the said Minutes, an Expert Committee has identified 192.24 sq km as Forest as per the dictionary meaning. The Minutes also record that the Expert Committee was of the opinion that the total area would be much more, but the same has not been reported by the respective departments so far. It is submitted that the said area is deemed forest land, and any activity would only be permitted to take place only after the permission was obtained from the Central Government for diversion of forest/forestland for non-forest purpose and payment of Net Present Value (NPV) along with Compensatory Afforestation. However, in this case, such areas ought to have been protected as they are the last remaining scrub thorn forests in the Kutch region which is essential for both water and biodiversity conservation of the region.

That before responding to the statements made in the abovementioned Counter Affidavit, the Original Applicant reiterates the submissions made in the O.A No.06/2020 and the IA No. 44 of 2020 for additional documents, which are not being repeated herein for the sake of brevity.

REJOINDER TO PARA-WISE REPLY:

1. That the contents of the corresponding parameritno response. The contents of the corresponding para in the OA are reiterated as true and correct.

2&3. That the contents of the corresponding paras are matters of record. The contents of paras 3, 4 and 5 of the Preliminary Objections of the instant Rejoinder are reiterated as true and correct and may be read as part of the response to this para.

4-13. That the contents of the corresponding paras merit no response. However, the contents of the OA with regard to the corresponding paras are reiterated as true and correct. It is also submitted that the Respondent No.1, MoEF&CC has failed in its statutory responsibility to check the rampant increase in construction of windmills on lands that are deemed forests, and therefore has violated the provisions of the Forest (Conservation) Act, 1980.

14-15. That the contents of the corresponding paras are matter of record. Be that as it may, it is submitted that prima facie even the conditions in the lease orders granted to the private Respondents including the lease order granted to Respondent No.7 M/s Green Infra Wind Ltd. dated 05.07.2019 places great importance on the protection of trees as well as the care taken towards works undertaken on forest land vis-à-vis the permission required from the Central Government under the Forest (Conservation) Act, 1980 for its diversion for non-forest purposes in case an area where work is to be undertaken, is found to be a forest area. These conditions are in consonance with the Hon'ble Supreme Court's order dated 12.12.1996 in the *TN Godavarman* case. Furthermore, the reasoning behind the orders dated 12.12.1996 and 28.03.2008 of the Hon'ble Supreme Court and the subsequent conditions in the

lease order as mentioned at points 9 and 10 is to balance the dichotomy between economic development and environment protection. It is submitted that the objective, is to ensure that deforestation is controlled by granting power to the Respondent No. 1, MoEF&CC to decide whether permission should or should not be granted to the project proponent, for diversion of forest land for non-forest purpose, after ensuring that the project proponent will plant twice the number of trees cut down and also pay NPV for the land so diverted.

16-21. That the contents of the corresponding paras merit no response. Further, the contents of the corresponding paras in the OA are reiterated as true and correct.

22-48. That in response to the following paragraphs, it is submitted that the Respondent No.1, MoEF&CC has failed to understand the intent of filing the present Original Application. It is the case of the Applicant that owing to the complete failure of both the Central and State machinery, windmills have cropped up in the length and breadth of the Kutch region, and have not been made liable to obtain approvals under the law. The response of the Respondent No.1, MoEF& CC conveys the message that the said Respondent has closed its eyes to the illegalities and sheer environment destruction on the ground of the same being the State's responsibility. This Hon'ble Court may take a strict note of this dereliction of duties by the Respondent No.1, MoEF&CC and order accordingly.

REJOINDER TO STATEMENT OF FACTS:

1. That the contents of Para 1 merit no response, and are reiterated as true and correct.

2. That the contents of Paras 2 to 5 merit no response save for what are matters of record. The Respondent No.1, MoEFCC seems to be perplexed on the principle issue in the present O.A. Be that as it may, it is submitted that the grant of Stage I or Stage II Forest Clearance for diversion of forest areas for non-forest purposes, as mandated by law, by the Respondent No.1 in areas outside Sangarais not being called into question in the present O.A. The present O.A aims to highlight the following:

a) That the exercise of demarcation of 'deemed forest' areas by the Respondent No.2, State of Gujarat has not been undertaken, in compliance of the Order dated 12.12.1996 of the Hon'ble Supreme Court in W.P(C) 202 of 1995, for which the Respondent No. 1 is nodally responsible.

b) That due to the absence of demarcation of 'deemed forest' areas, large scale diversion of 'deemed forest' areas are being conducted without the need for obtaining Forest Clearance under the Forest (Conservation) Act, 1980.

c) That due to the absence of criteria for identifying deemed forest in Gujarat, large scale diversion of deemed forest land occurred especially in the village Sangarais and in particular by Respondent No. 7, Green Infra Wind Energy Ltd, who escaped the penal liability under the Forest (Conservation) Act, 1980

despite having felled substantial number of trees in deemed forest area.

d) That within Sanganara village, wind farms are being built beyond the carrying capacity of the said area. It is pertinent to submit that Wind Farms/WTGs are not isolated structures, and are accompanied with transmission lines and other infrastructure support. The excess establishment of windfarms (more than 40), with their large number of power lines would lead to habitat fragmentation, thereby causing ecosystem degradation. The adverse impact of such degradation is visible by virtue of the large number of peafowl deaths that have been regularly occurring in the area.

It is therefore prayed that this Hon'ble Tribunal may direct the Respondent No.1, MoEF&CC to produce documents with regard to the project of the private respondents in the Sanganara village.

3. That the contents of Para 6 merit no response, save for that are matters of record.

4. That the contents of Para 7 and 8 are denied and disputed, save for what are matters of record. It is humbly reiterated that Respondent No.1, MoEF&CC is duty bound to ensure that the criteria and identification of 'deemed forest' is conducted and completed by the Respondent No.2, State of Gujarat which they have completely failed to perform. The Respondent No.1, MoEF&CC has also failed to take preventive policy measures to restrain large scale establishment of wind farms in a small area,

which is beyond the carrying capacity, and which has caused habitat fragmentation and harmed the ecology of the area. Hence, it is humbly prayed that the Respondent No.1 is a necessary party for the effective adjudication of the present dispute and it is imperative that the said Respondent not be deleted from the array of parties.

Date: 17.08.2021

Place: Pune

DRAWN & FILED BY:



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.....Applicant

Versus

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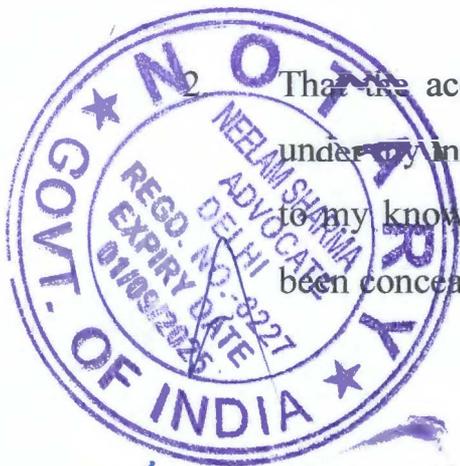
.....Respondents

AFFIDAVIT

I, Shankarlal Gopalbhai Patel, S/o, Shri Gopalbhai Patel, aged about 52 years, R/o,Sanganara, Nakhatrana, Kachchh, Gujarat - 370675 presently atNew Delhi, do hereby solemnly affirm and declare as under:

1. That in my capacity as Original Applicant in the abovementioned matter I am fully conversant with the facts and circumstances of the case, as such I am competent to swear to this affidavit.

2. That the accompanying Rejoinder has been drafted by the Counsel under my instructions and the contents of the same are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.



hiz

Identify the Deponent who has signed/out in my presence
Verification:

Verified at New Delhi on this day of.....2021 that the contents of the above affidavit are true and correct to the best of my knowledge and no part of it is false and nothing material has been concealed therefrom.

शिवराम शर्मा

17 AUG 2021

DEPONENT

ATTESTED

NOTARY (Govt. of India)
Neelam Sharma
Advocate
Ch. No. 165A, Gate No. No. 19,
Palasia House Courts,
New Delhi-110001
(M: 9899408301)

शिवराम शर्मा

DEPONENT

17 AUG 2021



Service in Shankarlal Gopalbhai Patel OA. No. 06 of 2020/WZ (Rejoinder on behalf of the Applicant, to the Counter Affidavit filed by Respondent No. 1)

1 message

ELDF <eldflegal@gmail.com>

Tue, Aug 17, 2021 at 11:29 AM

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Respected Sir/Ma'am

Places find the attestation of the in OA. No. 06 of 2020/WZ (Rejoinder on behalf of the Applicant, to the Counter Affidavit filed by Respondent No. 1 MOEF)

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Sameer

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 **Rejoinder.pdf**

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