

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH AT PUNE**

IN

Original Application No. 20 of 2020 (WZ)

IN THE MATTER OF:-

Tanaji Balasaheb Gambhire

....Applicant

VERSUS

Union of India & Others

....Respondents

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO.1, MINISTRY OF

ENVIRONMENT, FOREST AND CLIMATE CHANGE

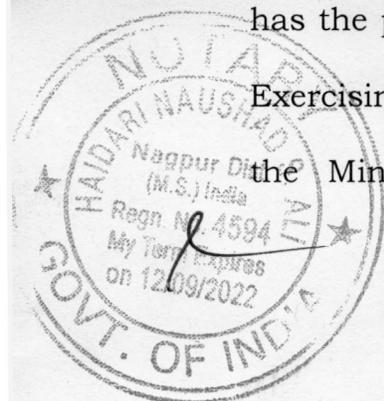
MOST RESPECTFULLY SHOWETH:-

I, Suresh Kumar Adapa, working as Scientist 'D' in the Regional Office at Nagpur to the Ministry of Environment, Forest and Climate Change (MoEF&CC), Government of India, at New Delhi, the deponent herein do hereby solemnly affirm and state on oath as under:-

1. That I am competent to swear the present counter affidavit on behalf of MoEF&CC and I am aware of the facts and circumstances of the case based on record.
2. At the outset, I say and submit that I have gone through the record pertaining to the present case and I have read the contents of the present Appeal, and therefore, I am competent to depose what is stated herein below.
3. That the contents of the application, unless specifically admitted, are denied to the extent that they are inconsistent with submissions made hereinafter.
4. That under sub section (1) clause (v) of sub section (2) of Section-3 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government has the power to make rules for carrying out the purposes of the said Act.

Exercising the powers conferred by the Environment (Protection) Act, 1986, the Ministry had issued the Environment Impact Assessment (EIA)

A. Suresh Kumar



Notification vide S.O.60(E) dated 27th January, 1994 mandating 32 categories of projects listed in the Schedule-I to obtain prior environmental clearance based on the investment criteria (originally it was Rs 50 crores, which was enhanced to Rs 100 crores). It is further submitted that the Environmental Impact Assessment (EIA) was made a statutory requirement for certain category of construction and development activities through amendment dated 7th July, 2004 in the EIA Notification, 1994.

5. That under the Environment (Protection) Act, 1986 read with Environment (Protection) Rules, 1986, the Answering Respondent has issued a notification number S.O. 1533(E) dated 14th September, 2006 (hereinafter referred to as the "EIA Notification, 2006"), in suppression of the notification number S.O.60(E) dated 27th January, 1994. It is pertinent to mentioned herein that old parliament building was constructed and operationalized well before the year of 1994. Hence, it did not attract the provisions of EIA 1994 and its subsequent amendments.
6. That as per the EIA Notification, 2006, the following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:
 - a. All new projects or activities listed in the Schedule to this notification;
 - b. Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;



A. Surash Kumar

- c. Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range.

7. That the EIA Notification, 2006 also specifies that a SEIAA shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of three Members including a Chairman and a Member – Secretary; to be nominated by the State Government or the Union Territory Administration concerned. The Member-Secretary shall be a serving officer of the concerned State Government or Union Territory administration familiar with environmental laws.

8. **Categorization of Projects and activities: -**

- a. All projects and activities are broadly categorized into two categories- Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man-made resources.
- b. All projects and activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment, Forest and Climate Change (MoEFCC) on the recommendations of an Expert Appraisal Committee (EAC) constituted by the Central Government for the purpose of this notification;
- c. All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2 of the EIA Notification, 2006, or change in product mix as specified in sub paragraph (iii) of paragraph 2 of EIA Notification, 2006, but excluding those which fulfil the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union Territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision



A. Surash/Cm

on the recommendations of a State or Union Territory Level Expert Appraisal Committee (SEAC) as to be constituted for in this notification.

9. That the Notification also states that in the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be considered at the Central Level as a category 'B' Project.
10. That the EIA Notification, 2006 in Paragraph 7, stipulates four stages in the process of obtaining Environmental Clearance.

1. Stage (1) is Screening wherein the State Expert Appraisal Committee (SEAC) takes the decision whether or not the project or activity requires further environmental studies for preparation of Environmental Impact Assessment (EIA) report for its appraisal prior to grant of environmental clearance depending upon the nature and location specificity of the project. **The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report.**

2. Stage (2) is Scoping wherein the Expert Appraisal Committee for category 'A' projects and the State Level Expert Appraisal Committee for category 'B' projects determines detailed and comprehensive Terms of Reference(ToR) addressing all relevant environmental concern for the preparation of an EIA Report in respect of the proposed project or activity for which the prior environmental clearance is sought.

3. Stage (3) relates to Public Consultation and has two components- i) a Public Hearing at the site or in its close proximity- district wise, to be carried out in the manner prescribed in Appendix IV of the EIA Notification 2006, for ascertaining concerns of local affected persons; ii) Obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.



A. Suresh Kumar

4. Stage (4) relates to Appraisal of the Project wherein the detailed scrutiny by the EAC or the SEAC of the application and other documents like the Final EIA Report and outcome of public consultations including public hearing proceedings, submitted by the Project Proponent to regulatory authority concerned for grant of environment clearance. The EAC or SEAC concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance.

11. It is submitted that under the provisions of the EIA Notification, 2006, Environment Clearance for Building and Construction Projects & Township and Area Development Projects are covered under entry 8 (a) & (b) of the Schedule to the EIA Notification, 2006. The entry 8(a) and 8(b) of the Schedule of EIA Notification 2006 provides as follows;

1. **8(a):** *Building and Construction projects - ≥ 20000 sq. mtrs and < 150000 sq. mtrs of built-up area - (built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)*
2. **8(b):** *Townships and Area Development projects - Covering an area ≥ 50 ha. and or built up area >150000 sq. mtrs - (All projects under Item 8(b) shall be appraised as Category B1)."*

12. That the aforementioned entries under item 8(a) and 8(b) are qualified as category 'B' projects under the EIA Notification, 2006 and requires appraisal by the State Level Expert Appraisal Committees (SEACs) and approved by the State Level Environment Impact Assessment Authorities (SEIAAs). It is further submitted that under the provisions of the EIA Notification, 2006 as amended time to time, if the total built up area is 20,000 sq. mtrs. or more prior Environmental Clearance is required to be obtained from concerned SEIAA. Further, that as per the EIA Notification,



A. Suresh / Am

2006, in the absence of a duly constituted SEIAA/SEAC, a category 'B' project shall be considered at the Central Level as category 'B' project.

13. It is submitted that in the present case, if the built up area is more than 20, 000 sq. mtrs., then the project in question would be covered under the provisions of the EIA Notification, 2006 and prior Environmental Clearance is required from the concerned authority i.e. SEIAA, Maharashtra. The SEIAA Maharashtra is in existence as on date. It is further submitted that as per EIA Notification, 2006 commencement of construction work either wholly or in phase wise cannot be undertaken without prior Environmental Clearance.

14. That the EIA Notification also provides that in the case of items 8(a) and 8(b) of the Schedule, considering their unique project cycle, the State Level Expert Appraisal Committee concerned shall appraise projects or activities on the basis of Form-1, Form 1A, conceptual plan (for item 8(a) of schedule to EIA Notification, 2006) and the environment impact assessment report (required only for projects listed under 8(b)of schedule to EIA Notification, 2006) and make recommendations on the project regarding grant of Environmental Clearance or otherwise to the concerned authority and stipulating the conditions for environmental clearance.

15. It is submitted that this Hon'ble Tribunal vide its order dated 27.08.2020 has appointed a joint committee comprising Municipal Commissioner, Pune, State Environment Impact Assessment Authority, Maharashtra and Maharashtra Pollution Control Board and to direct them to submit a factual and action taken report with regard to allegations made in the present application.

16. It is humbly prayed that the present counter reply may kindly be taken on record and into consideration and the Hon'ble Tribunal may pass appropriate Order(s), direction(s) as deemed fit and proper under the facts and circumstances of the present case which the Answering Respondent

shall duly comply with.



A. Suresh Kumar

17. That other/ancillary issues raised in the application under reply do not pertain to the Answering Respondent. The Answering Respondent seeks crave leave to make additional submissions, if required, during the course of the proceedings.

A. Surabh / An
08/12/2020
DEPONENT

SURESH KUMAR KAPPA
वैज्ञानिक 'डी'
SCIENTIST 'D'
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Ministry of Environment, Forest & Climate Change
क्षेत्रीय कार्यालय (पश्चिम मध्य क्षेत्र)
Regional Office (WCZ)
नागपुर / Nagpur - 440001



VERIFICATION:-

Verified at Nagpur on this the 8th day of December, 2020 that the contents of the above reply are true and correct, no part of it is false and nothing material has been concealed there from.

A. Suresh Kumar
08/12/2020
SURESH DEPONENT
SCIENTIST 'D'
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Ministry of Environment, Forest & Climate Change
क्षेत्रीय कार्यालय (पश्चिम मध्य क्षेत्र)
Regional Office (WCZ)
नागपुर/Nagpur-440001

NOTARIAL REG
ENTRY NO. 16794
DATE 08/12/2020



SURESH KUMAR
Suresh Kumar Adappa
WHO IS PERSONALLY KNOWN
TO ME IDENTIFIED BY Adv
BEFORE ME THIS THE 08th
DAY OF Dec 2020 AT NAGPUR
HAIDARI NAUSHAD S. ALI
NOTARY
NAGPUR DIST. (M.S. INDIA)

