

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPL BENCH, NEW DELHI
Original Application No. 648/2024.**

IN THE MATTER OF :-

Milkhi Ram SharmaApplicant

Versus

U.O.I. & Ors.Respondent(s)

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1.	Affidavit on the behalf of the Chief Secretary as Respondent No. 2 & Member Secretary, State Level Environment Impact Assessment Authority as Respondent No. 5 and Member Secretary, Himachal Pradesh State Wetland Authority (HPSWA). R-13.	

PLACE: SHIMLA

[Signature]

REPLYING RESPONDENTS

DATED: 10.09.24

*Director,
Department of Environment, Science Technology &
Climate Change, Shimla, H.P.*

Through

[Signature]

Divyanshu Kumar Srivastava (D/1383/2015)
48, Lawyers Chamber, Supreme Court of India
9711872319
Dksrivastava0511@gmail.com

ATTESTED
Executive Magistrate
H.P. Sect. Shimla

Director
Department of Environment, Science Technology &
Climate Change, Shimla, H.P.

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI **Original**
Application No. 648/2024

IN THE MATTER OF:-

Sh. Milkhi Ram, Sharma, S/o Sh. Mangat Ram, aged 71 years, Village -Palli, Post Office-Jakhara, Tehsil-Fatehpur, District- Kangra, Himachal Pradesh.

..... Applicant

Versus

1. Union of India through Secretary, MoEF&CC, Paryavaran Bhawan, CGO Complex Lodhi Road New Delhi-11000.
2. State of H.P. through Chief Secretary, to the Govt. of Himachal Pradesh-171002.
3. Additional Chief Secretary Forest to the Government of Himachal Pradesh-171002.
4. Principal Chief Forest Chief Conservator of Forest (Wildlife), Talland, Shimla-1.
5. Member Secretary, State Level Environment Impact Assessment Authority, MoEF&CC, at Department of Science & Technology, Paryavaran Bhawan near US Club, Shimla-1, H.P.
6. Member Secretary, H.P.State Pollution Control Board, Him Parivesh, Phase-III, New Shimla 171009.
7. The Chief Conservator of Forest (Wildlife) North Circle , Kangra at Dharamshala. H.P.
8. Divisional Forest Officer, Wild Life Range Hamirpur Division .H.P.

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9. Range Forest Officer, Wild Life Range, Nagrota Surian, Kangra, H.P.
10. Range Forest Officer, Wild Life Range, Dhameta, Kangra, H.P.
11. Chief Engineer, BBMB, Township, Talwara, District Hoshiarpur, Punjab.
12. National Wetland Committee, MoEF&CC through its Chairman.
13. State Wetland Authority, State of H.P. through its Chairman.
14. Central Pollution Control Board through its Member Secretary.

.....**Respondents**

Reply on the Behalf of Respondent No.2 (Chief Secretary to the GoH.P.), Respondent No.5 - Member Secretary, State Level Environment Impact Assessment Authority, (SEIAA) & Respondent No. 13 - Himachal Pradesh State Wetland Authority (HPSWA).

Preliminary Submissions:-

1. That the Application is not ex facie at all maintainable against the Replying Respondents No. 2, 5 & 13. It is submitted before the Hon'ble Court that the Replying Respondents are performing their duties in an utmost diligent manner. The Himachal Pradesh State Level Environment Impact Assessment Authority (HP SEIAA), R-5 & R-13 - H.P. State Wetland Authority (HPSWA), are performing their duties respectively in their area of jurisdiction. That the role of respondent No. 5,

SEIAA having its office at Department of Environment Science Technology & Climate Change starts when the Project Proponent apply on the web portal of MoEF&CC, PARIVESH (<http://www.environmentclearance.nic.in>), for seeking Environment Clearance (EC) for mining of minor minerals under Environment Impact Assessment Notification, 2006 and subsequent amendments from time to time, and thereafter the process for granting of Environment Clearance starts. It submitted that no such clearance has been granted by the the respondent No.5 that manifests an obligation on replying respondent for any compliance whatsoever. That the HPSWA, is responsible to prepare draft Integrated Management Plans (IMP's) for wetlands within the State of Himachal Pradesh and create awareness, capacity building of stakeholders for performing their duties towards Wetland conservation.. It is evident from the bare perusal of the Wetland Rules, 2017, as per the rule 3 of the Wetland Rules, 2017 :

These rules shall apply to the following wetlands or wetlands complexes, namely:—

- (a) *Wetlands categorized as 'wetlands of international importance' under the Ramsar Convention;*
- (b) *Wetlands as notified by the Central Government, State Government and Union of the Territory Administration:*

2. *Provided that these rules shall not apply to the wetlands falling in areas covered under the Indian*

Forest Act, 1927, the Wild Life (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the State Forest Acts, and the Coastal Regulation Zone Notification, 2011 as amended from time to time.

3. It is also submitted that prior to grant of Environment Clearance (EC) for all the applicants, it is pre requisite to obtain necessary permission of Mining Department State of Himachal Pradesh, various NOC's in case required w.r.t. wild life sanctuary, Forest Department, Public Works Departments, Ground Water Authority, IPH Department, etc. besides recommendations of Joint Inspection by committee under chairmanship of SDO (Civil), approved Mining Plan, Forest Clearance, in case required, is also required to be submitted. That the replying respondents are performing their duties in those activities which falls under their preview of jurisdiction and rest of the compliances are to be ascertained by the respective stakeholder Department i.e. Forest Department.

4. It is submitted that as per the EIA notification, 2006 and its subsequent amendment the General Conditions shall apply only if,

Any project or activity specified in Category 'B' will be appraised at the Central Level as Category 'A', if located in whole or in part within 5 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972 (53 of 1972); (ii) Critically Polluted areas as

identified by the Central Pollution Control Board¹ constituted under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) from time to time; (iii) **Eco-sensitive areas as notified under sub-section (2) of section 3 of the Environment (Protection) Act, 1986, and** (iv) inter-State boundaries and international boundaries; provided that for River Valley Projects specified in item 1(c), Thermal Power Plants specified in item 1(d), Industrial Estates/ parks/complexes/areas, export processing zones (EPZ), Special Economic Zones (SEZs), biotech parks, leather complexes specified in item 7 (c) and common hazardous waste treatment, storage and disposal facilities (TSDFs) specified in item 7 (d), the appraisal shall be made at Central level even if located within 10 km.

Provided further that the requirement regarding distance of 5 km or 10 km, as the case may be, of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or the Union Territories sharing the common boundary in case the activity does not fall within 5 km or 10 km, as the case may be of the areas mentioned at item (i), (ii), and (iii) above.

As the Ministry of Environment, Forest & Climate Change, New Delhi, by draft notification has considered Pong Dam Lake Wild life Sanctuary as Eco-sensitive zone under the relevant Acts.


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It is worthwhile to mention here that while appraisal of such cases near to eco-sensitive zones, the project proponent are required to fill the detail in the Form-1 of prescribed format as per EIA Notification and certificate from H.P. State Forest Department/National Board for Wildlife (NBWL) w.r.t. distance criteria. If such cases fall under General conditions of EIA Notification, then these cases are treated as "Category-A" projects and appraised at MoEF&CC level for grant of Environment Clearance.

Reply on Merits:-

1. That the contents of this para relate to the applicant, who as per his claim is the resident of the village-Palli, Kangra and he was former member of Pong Dam Lake Biodiversity Society. The applicant has raised issues regarding encroachment of the Pong Dam lake wildlife sanctuary, destruction of habitat of the multifarious varieties of wild life thriving in the Pong dam area by illegal, unauthorized cultivation in the sanctuary by use of machinery, use of various fertilizers, insecticides and pesticides and putting to fire the residue of the crops cultivated in the sanctuary area, thereby causing huge damage to the environment, habitat of wildlife and Pong Dam Wildlife sanctuary. In reply to these averments, it is submitted that, as far as the replying respondents are concerned, no such permissions has been granted by them for any kind of activities in the aforesaid area, leading to environment degradation of that area.

Beside, regulating these activities is the mandate of Forest Department.

Approvals/permissions /activities, if any, in Pong Dam Wildlife sanctuary falls under jurisdiction of Forest Department. The Himachal Pradesh State Wetland Authority (HPSWA) constituted in the year 2017 under the aegis of H.P. Council for Science, Technology & Environment (HIMCOSTE) is nodal agency to coordinate the **Wetland Conservation Programme** with the active participation of all the stakeholders. Planning and implementation is being done keeping in view the requirement of multi disciplinary approach involving various Departments and Agencies such as Forests, Fisheries, Tourism, Industries and State Pollution Control Board, Universities, Zoological Survey of India. National & State level research institutes are also actively involved in the Wetland Conservation Programme. The core objective of the Wetland Conservation Programme is to conserve and restore wetlands with the active participation of the local community at the planning, implementation and monitoring level. Beside this, the broad objectives laid down in the Management Plan are to conserve and to restore the habitats for migratory & resident species of birds of the area, to conserve the indigenous fish species and make fishery, sustainable livelihood for the local fishermen, to harmonize the relation between fishermen, wildlife.


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2. That the contents of this para relates to the Notification issued on dated 23.10.1999 to declare the Pong Dam as Wild Life Sanctuary, which is a matter of record, hence need no reply from replying respondents.
3. That the content of this para relates to the authorities who are responsible for supervision and management of activities in Wild Life Sanctuaries. That all the five Wetlands of the State having national and international importance are governed by the Forest Department in pursuance to the Forest (Conservation) Act, 1980 and Wild life (Protection) Act, 1980. The Wildlife Protection Act, 1972, under Section-33 the Chief Wild Life warden is responsible for control, supervision and management of wild life sanctuaries within their jurisdiction, hence needs no reply from replying respondents.
4. That the content of this para relates to the alleged mandate of the Forest Department as the area is a designated Wildlife Sanctuary governed under Wildlife Protection Act, 1972, hence, need no comments from replying respondents.
5. That the content of this para are related to the alleged illegal, unauthorized and open occupation of the various anti social elements who are engaged in cultivation in that area leading to destruction of aquatic life, flora and fauna and thus causing serious damage to Biodiversity. In this regard it is submitted that the prevention and abatement of these illegal


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activities fall under the jurisdiction of Forest Department.

6. In reply to this para it is submitted that as far as replying respondents are concerned no such permissions are being granted by the replying respondents, hence needs no comments.
7. That the content of this para are related to the representations made by local residents to local authorities. No such representation has been received by the replying respondents, hence need no comments.
8. That the contents of this para does not pertain to the replying respondents, hence need no comments.
9. That the content of this para are related to the communication made by applicant to the seek legal relief, hence needs no comments from replying respondent.
10. That the content of this para are related to the illegal activities in the sanctuary area, which is under the jurisdiction of Forest Department, need no reply from replying respondents.
11. That the content of this para relates to the complaint made by applicant to the Hon'ble Chief Minister of Himachal Pradesh, hence need no reply from replying respondents.
12. That the content of this para relates to the area and its regulations are not under the jurisdiction of the replying respondent No. 5 & 13, hence needs no submissions.

13-14. That the content of these paras relates to the CWPIIL no. 53/2022, filed before the Hon'ble High Court, wherein orders were passed to take measures to preserve the Wetland. That the contents further relates to the CWPIIL no. 06/2024, filed before the Hon'ble High Court, which was disposed with further directions to which the replying respondent was not impleaded as respondent, hence no compliance solicited at the end of the replying respondent. It is submitted that the Himachal Pradesh State Wetland Authority (HPSWA) performs its duties towards conservation and preservation of the Wetland situated within the jurisdiction of the State of Himachal Pradesh as per the Wetland Rules in association with the site managers, in the instant matter for Pong Dam Wetland, Deputy Conservator of Forest, Wildlife Hamirpur. The details of the various activities being undertaken by HPSWA in association with the Forest Department is submitted herein under:-

Activities Undertaken by HPSWA in association with Site Manager (Deputy Conservator of Forest Wildlife, Hamirpur):-

Sl.No.	Particular	Action
1	Construction of Non-geometrical bunds	It is submitted that the shallow ponds have been constructed in the Sugnara, by the DFO, (Wildlife) Hamirpur, and Forest Department. These ponds and mounds are found useful for water birds especially during the summer season. The mound constructed at Jakhara Palli has been found suitable for breeding of the Sarus Crane. Divisional Forest Officer (Wildlife) has

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		informed that the project intervention resulted in successful breeding of vulnerable species Sarus Crane (<i>Grus Antigone</i>) in these mounds in 2020.
2	Training of the local people as Guides, Boatman, Pattal Making and Catering etc	As part of our local outreach programme and to generate livelihood for locals, Trainings were imparted to the Local community on a regular basis during the financial year 2022-23. More than 150 individuals were trained under different programmes which include Tourism, Tailoring, handicrafts Food Processing etc.
3	Anti-poaching and Anti-grazing activities at Pong dam	Anti-poacher and Anti-grazers are engaged for protection purpose from time to time in and around Pong Dam area. No case of poaching is reported for the Year 2022-23. Regular patrolling, Awareness camps, Outreach programmes and Strict vigilance by the Field staff using drones, CCTV Cameras is being undertaken. The Illegal cultivation inside the sanctuary was prohibited during the year 2022-23 which has yielded positive results.
4	Uprooting of weeds, collection, soil conservation works, removal and disposal of plastic material, protection of breeding sites	<ul style="list-style-type: none"> • Removal of weeds, collection-Uprooting of weeds is a regular activity and conducted throughout the year when ever required. • Soil Conservation Works-Brushwood Check Dams were

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		<p>constructed in Dhameta Beat and were found working satisfactorily in controlling the soil erosion into the Wetland flowing from Nallah.</p> <ul style="list-style-type: none"> • Removal and Disposal of Plastic Material – activity is carried out regularly when ever required. During the FY 2022-23, 740kg of Plastic waste is collected from the Pong Dam Lake, which reaches wetland through flash floods during the rainy season and disposed as per Govt. guidelines. • Protection of breeding sites-The mound constructed at Jakhara Palli was found suitable for breeding of Sarus Crane. More such breeding sites are protected and new sites are being created particularly in case of vultures.
5	<p>Awareness campaigns to local inhabitants as well as tourists which can sensitized about the importance of the Wetlands and the benefits of maintaining the ecological</p>	<p>i. Awareness campaigns were/are being organized from time to time for local inhabitants as well as tourists for sensitization about the importance of the Wetlands and the benefits of maintaining the ecological fragility. 30 Bicycles and 44</p>

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	fragility	<p>Sewing Machines were purchased from the funds allocated by the H.P. State Wetlands Authority, which were distributed to the needy people of Nagrota Surian and Jawali in the year 2018, so that they could earn their livelihood, which reduces the dependency of the local people on the Wetland. The Pong Dam Lake Biodiversity Conservation Society has been reconstituted and is in the process of formation of EDC (Eco Development Committee) to ensure local participation in the Conservation of the Wetland.</p> <p>ii. Under Mission LIFE, All Students from nearby Schools were sensitized on the importance of Wetland and its conservation. Involving locals in the conservation by engaging them as Wetland Mitras is in process and with a focus on conservation-oriented tourism. Opportunities are being created to engage with the local community.</p>
6	5	year HPSWA in association with

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	Integrated Management Plan	GIZ and Site manager Pong dam wetland has prepared the IMP of Pong Dam Wetland which has been submitted to MoEF&CC, GoI on 26.07.2023 for financial assistance.
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In addition following information has been received by HPSWA from the office of Deputy Conservator of Forest Wildlife, Hamirpur:-

Sl. No.	Particulars	Latest Report
1	Compliance in relation to setting up for industry, solid waste dumping, discharge of untreated wastes and effluents from industries, cities, towns etc	At present there are no cases related to setting up of industry, solid waste dumping, discharge of untreated wastes and effluents from industries, cities & towns.
2	Any construction of permanent nature or any other activity that is prohibited or regulated in the wetland and Eco-sensitive Zone surrounding the protected area (if applicable)	No construction of permanent nature or any other anti wild life activity that is prohibited or regulated in the wetland during the year 2023-24 has been reported by the field staff. The Draft Eco-sensitive zone Notification stands notified dated 28th April, 2022. All the instructions/orders on the conservation of wetlands and protected area will be kept in view while preparing master plan of Eco-sensitive zone.
3	Any other preservation and conservation	i. From time to time the Nakas/patrolling/public meetings to awareness the local public & control the illegal activities in

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	<p>activities carried out</p>	<p>Pong Dam Lake Wildlife Sanctuary is also done by the field staff of this Wildlife Division to control the anti wild life activities and conservation of Wetlands.</p> <p>ii. Regular and frequent patrolling of Pong Dam has been ensured/ being undertaken by the field staff of this department and necessary directions have been given to take stern action against the defaulters as per prevailing law. Time and again, necessary help from the local police authority & Administration is also being taken to control the illegal cultivation/grazing inside the Sanctuary.</p> <p>iii. Government vehicle was/is being provided to the staff of the department for frequent patrolling and the same is being used for awareness announcements for the knowledge of local inhabitants and tackling the illegal activities being undertaken in the restricted area by the nomadic Gujjars /local inhabitants.</p> <p>iv. After the direction of Hon'ble High Court in CWPII No. 41/2023 the 68 number damage reports in Wildlife Nagrota Surian and 39 in Wildlife Range Dhameta against the offenders on account of illegal activities undertaken by them in the restricted / protected area has been issued and compensation amounting to Rs. 522490/- was recovered/realized. Range wise detail is appended below:</p> <table border="1" data-bbox="671 2011 1273 2051"> <thead> <tr> <th>Name</th> <th>of</th> <th>No.</th> <th>of</th> <th>Amount</th> </tr> </thead> </table>	Name	of	No.	of	Amount
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Range	Damage report issued	
N/ Surian	68	312000/-
Dhameta	39	210490/-

v. Special Check posts have been erected at entry point to prevent entry of Nomadic grazers and to prevent illegal grazing.

It is submitted that Pong Dam is a notified Wildlife Sanctuary and as per the Rule No-3 of Wetlands (Conservation and Management) Rules, 2017 ***“these rules shall not apply to the wetlands falling in areas covered under the Indian Forest Act, 1927, the Wild Life (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the State Forest Acts, and the Coastal Regulation Zone Notification, 2011 as amended from time to time.”***

In addition, as per the draft notification of Ministry of Environment, Forest and Climate Change, GoI dated 16th November, 2015 the extent and boundaries of eco-sensitive zone shall be of 46.31 square kilometers with an varying extent upto 1.5 kilometres around the boundary of Pong Dam lake Wildlife Sanctuary, subsequently varying it from 50 metres to 1.5 kilometres around the boundary of Pong Dam Lake Wildlife Sanctuary (area of 114.7 square kilometers) as per notification dated 28th April, 2022. As per the notification, Clause 4 (**List of activities prohibited or to be regulated within Eco-sensitive Zone**) states that ***“All activities in the Eco-sensitive Zone shall be governed by the provisions of the Environment Act and the rules made there under including the Coastal Regulation Zone, 2011 and the Environmental Impact Assessment Notification,***


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2006 and other applicable laws including the Forest (Conservation) Act, 1980 (69 of 1980), the Indian Forest Act, 1927 (16 of 1927), the Wildlife (Protection) Act 1972 (53 of 1972), and amendments made thereto.”

15. That the contents of this para relates to the implementations of different Acts and Rules i.e. Wild Life (Protection) Act, 1972, The Water (Prevention and Control of Pollution) Act, 1974, The Forest (Conservation) Act, 1986 and The Biodiversity Act, 2002 for conservation and preservation of Pong Wet land area, the implementation and the effective compliance does not fall under the preview of the replying respondent No.5.

a-) That the provisions mentioned in the para for protection of the Sanctuary area falls under the preview of the Forest Department as these areas are governed in terms of conservation and preservation of the area under Wild Life Protection Act, 1972.

b-) That the replying respondents have no jurisdiction into the area, neither any Environment Clearance or any other permission has been granted to any activities being carried out in the area nor the area is specifically under the control of HPSWA, that falls under the preview of the Wetland as the area is a sanctuary area governed and protected under the Wildlife Protection Act, 1972, as explained in detail in paras supra, the role of HPSWA is in association with site managers i.e the concerned Forest Division.

c) That the replying respondents have not authorized any person for cultivation in the sanctuary area by use of heavy machinery or otherwise leading to destruction of the habitat of wildlife

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falls. The replying respondents has no jurisdiction of action against such illegal encroachments and is not authorizes to do so.

Prayer:-

a-d) It is submitted that the role of Replying Respondents,i.e for R-5 starts once the Project Proponent apply on the web portal of MoEF&CC, State Environment Impact Assessment Authority (SEIAA), having its Office at Department of Environment, Science Technology & Climate Change, for seeking Environment Clearance (EC) under EIA Notification, 2006. That for the Respondent No.12 the Wetlands in the State of Himachal Pradesh falls under the jurisdiction of *areas covered under the Indian Forest Act, 1927, the Wild Life (Protection) Act, 1972, the Forest (Conservation) Act, 1980, therefore the Wetland Rules are not applicable in these areas.* It is therefore, most respectfully prayed that the present Petition against the Replying Respondents being not maintainable may kindly be dismissed.

PLACE: SHIMLA



REPLYING

RESPONDENTS

DATED: 10-09-2024


Director,
Department of Environment, Science Technology &
Climate Change, Shimla, H.P.

Through



Divyanshu Kumar Srivastava (D/1383/2015)
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IN THE MATTER OF :-

Milkhi Ram Sharma

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AFFIDAVIT

I, Duni Chand Rana, S/o Late Sh. S.R. Rana, aged about 52 years presently working as Director, Department of Environment Science Technology & Climate Change -cum-Member - Secretary, State Environment Impact Assessment Authority do hereby solemnly affirm and state as follows:

1. That I am arrayed as a Respondent in the captioned matter.

I am fully conversant with the facts and circumstances of the case and I have been duly authorized and am, therefore, competent to affirm this affidavit.

2. I state that I have read the contents of the Reply. I state that the facts contained therein are true to the best of my knowledge and belief as derived from the record.

3. I state that the legal argument in the Reply is based on the legal advice given to me by my Counsel and factual statements are based on documents/records relied upon.

DEPONENT

VERIFICATION

Director,
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I, the Deponent abovenamed, do hereby verify that the contents of paragraph no. 1 to 3 of the above affidavit are true and correct

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to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified at Shimla on this 10th day of September 2024.

DEPONENT

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Declared before me on 10th day of September
2024 on oath (Solemnly Affixation)
by Shri Dumichand Bana Director, Department of Env., Sci & Tech.
who is personally known to me or who Del H. Shimla.
has been identified by Sh K.L. Neji
who is personally known to me.

Executive Magistrate
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