

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL,
SOUTHERN BENCH, CHENNAI**

IN

APPEAL No. 29 OF 2020 (SZ)

IN THE MATTER OF: -

S.K. Vijaykumar
Appellant

...

VERSUS

Karnataka State Environment Impact
Assessment Authority & ors.
Respondent

...

””

**REPLY AFFIDAVIT ON BEHALF OF RESPONDENT
NO.7, MINISTRY OF ENVIRONMENT, FOREST AND
CLIMATE CHANGE**

MOST RESPECTFULLY SHOWETH: -

I, Dr. Murali Krishna Chimata aged 39 years, working as Scientist “D” in the Integrated Regional Office of the Ministry of Environment, Forest & Climate Change, at Bengaluru, the deponent herein does hereby solemnly affirm and state on oath as under: -

1. That I am duly authorized and competent to swear the present reply affidavit on behalf of Ministry of Environment,

Dr. Murali Krishna

Forest and Climate Change (herein after referred as MoEFCC).

2. That the contents of the application, unless specifically admitted, are denied to the extent that they are inconsistent with submissions made hereinafter.
3. It is respectfully submitted that the instant reply is filed by the Answering Respondent without prejudice to his right to file a fuller and more detailed reply at a later stage, if so necessary.
4. It is respectfully submitted that under sub section (1) clause (v) of sub section (2) of Section-3 of the Environment (Protection) Act, 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) Notification vide S.O. No. 1533(E) dated 14.09.2006, (hereinafter referred to as the "EIA Notification, 2006") with its subsequent amendments.

Ch. N. Prasad

5. That under the provision of the EIA Notification, 2006, construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the schedule annexed to the said notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India, as applicable, only after receipt of the prior environment clearance from the Central Government or by the State Level Environment Impact Assessment Authority ("SEIAA"), as the case may be. It is submitted that, the Central Government under sub Section (3) of section 3 of the Environment Protection Act, 1986 in accordance with the procedures specified in the EIA Notification, 2006, duly constitutes SEIAA.

6. The EIA Notification, 2006 in Paragraph 7, stipulates four stages in the process of obtaining Environmental Clearance. Stage (1) is screening wherein the Expert Appraisal Committee or the State Expert Appraisal Committee takes the decision whether or not Environmental Impact Assessment Report has to be prepared for the proposed projects. Stage (2) is Scoping wherein the Expert Appraisal Committee for category 'A' projects and the State Expert

ch. N. K. Kishore

Appraisal Committee for category 'B' projects determines detailed and comprehensive Terms of Reference 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. Stage (3) relates to Public Consultation and has two components- (i) a public hearing, which is conducted by the concerned State Pollution Control Board at the project site or in its close proximity, explaining all possible environment impacts and measures proposed in EMP and (ii) obtaining written responses from other concerned persons who have a plausible stake in the environment aspects of the project or activity. Lastly, 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 relating including public hearing proceedings, submitted by the Project Proponent to regulatory authority concerned for grant of environment clearance is conducted.

7. It is respectfully submitted that Environment Impact Assessment Notification of 2006 has decentralized the

Ch. N. Pratik Krishna

environmental clearance projects by categorizing the developmental projects in two categories, i.e., Category 'A' project and Category 'B'. The 'Category 'A' projects are appraised at Central level by the Expert Appraisal Committee (EAC) and Category 'B' projects are appraised at State Level Expert Appraisal Committee (SEAC). State Level Environment Impact Assessment Authority (SEIAA) and State Level Expert Appraisal Committee (SEAC) are constituted to provide clearance to Category 'B' projects.

8. It is respectfully submitted that, as per "General Condition" under the EIA notification, 2006, "Any project or activity specified in Category 'B' is treated 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, (ii) Critically Polluted areas as notified by the Central Pollution Control Board from time to time, (iii) Eco-sensitive areas as notified under Section 3 of the Environment (Protection) Act, 1986, (iv) Inter-State boundaries and International boundaries". These projects are appraised at the Central Level by the EAC.

9. It is humbly submitted that the instant project was reportedly established in 1985, prior to EIA Notification, 1994. Furthermore, the project was reportedly expanded including change in product mix in the year 1997 without prior environmental clearance, violating the norms of the EIA Notification, 1994.

10. It is humbly submitted that the proposal was considered by SEIAA as a case of violation of EIA Notification, 2006 in light of the Ministry's Notification No. 804(E), dated 14.03.2017 and S.O. 1030 (E), dated 08.03.2018. The Copy of the said notification is enclosed as **Annexure-1.**

11. It is further humbly submitted that the Ministry's Notification S.O. 1030(E), dated 08.03.2018 states that,

"In case the projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 from the concerned regulatory authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product-mix without prior

ch. P. Prudhvi Krishna

environmental clearance, these projects shall be treated as cases of violations and for category B projects, the appraisal and approval thereof shall vest with the State or Union territory level Expert Appraisal Committees, and State or Union territory Environment Impact Assessment Authorities in different States and Union territories, constituted under subsection (3) of section 3 of the Environment (Protection) Act, 1986."

12. Furthermore the term Ecologically Sensitive Area (ESA) refers to the ecologically fragile area or landscape prone to loss of life forms and significant damage to the natural processes of evolution and speciation mainly due to increasing anthropocentric influences involving unsustainable exploitation of natural resources. Based on the criteria set up by Pronab Sen Committee, the MoEFCC has identified seven such ecologically fragile landscapes in India and notified six of them as Eco- Sensitive Areas (ESAs) under section 3 of the Environment (Protection) Act, 1986 and section 5(1) of the Environment (Protection) Rules, 1986. These Six ESAs include (i) Dahanu Taluka (Maharashtra), (ii) Mahabaleshwar - Panchgani

Ch. N. Prasad

(Maharashtra), (iii) Matheran (Maharashtra), (iv) Mount Abu (Rajasthan), (v) Bhagirathi (Uttarakhand) and (vi) Doon Valley (Uttarakhand). The developmental activities in these ESAs are being regulated as per provisions contained in their respective notifications as determined by the MoEFCC after considering the recommendations of the concerned State Governments and the specifically designated Expert Committee (by the MoEFCC) for this purpose.

13. Furthermore, it is submitted that Eco- Sensitive Zone (ESZ) may refer to an area that is declared to provide buffer around legally designated protected areas (National Park, Biosphere Reserve, Wildlife Sanctuary, Tiger Reserve etc.) in India under the Environment (Protection) Act, 1986. ESZs are declared by the MoEFCC after following due process and recommendations of State Governments and ESZ Expert Committee. To date, the Ministry has declared around 432 protected areas vide 303 Final Notifications issued from time to time. Total 107 Draft Notifications covering 130 Protected Areas have been published and are awaiting publication of Final Notification.

Ch. P. Malik Krishna

14. It is further submitted that there is no mention of the term 'ESZ' in EIA Notification, 2006 and subsequent amendments. However, both ESA and ESZ are equally important from ecological and biodiversity conservation points of view. Considering the importance of ESZ, the MoEFCC has issued OM dated 08.08.2019 (**Annexure 2**), followed by a letter dated 16.07.2020 (**Annexure - 3**) to all the States, regarding procedure for consideration of developmental projects located within 10 km of National Park/ Wildlife Sanctuary seeking Environmental Clearance under the provisions of the EIA Notification, 2006. Therefore, the notification of ESZs are associated to the boundaries of the protected areas such as National Parks and Wildlife Sanctuaries and which were started to be issued only from 2010 onwards and was not cited in the EIA Notification, 2006. However, ESAs are related to any area which has imminent possibility of permanent and irreparable loss of extant life- forms and their notification were being issued from 2001 onwards and hence the conditions for ESA were mentioned in EIA Notification, 2006.

15. It is humbly submitted that the answering Ministry has not notified ESZ around Tippagondanahalli Reservoir as on date.
16. It is submitted that the present reply affidavit 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.
17. That there is a delay in filing of the statements in the present appeal due to the current prevailing conditions and restrictions / Lockdowns being imposed in various States as a result of the COVID - 19 situation. Further, it is humbly requested that due to this indisposition and present pandemic crisis, the payment of cost imposed vide order dated 12.04.2021 may kindly be waived off.

Ch. P. Prasad Krishna

DEPONENT

ಶ್ರೀ. ಚ. ಪ. ಪ್ರಸಾದ್ ಕೃಷ್ಣ
D:\Aadara Krishna Channa
6/1/2019 11:21
Solemnly
BY THE DEPONENT Government of India
ವಿಧೇಯನು ಸಹಿತು ಸಂಪಾದನಾ ವಿಭಾಗದ ಅಧಿಕಾರಿ
Ministry of Environment, Forest & Climate Change
ಅಧಿಕಾರಿ ಸಂಪಾದನಾ (ಪಶ್ಚಿಮ ವಿಭಾಗ)
Regional Office, Southern Zone
Bengaluru

VERIFICATION

Verified at Bangalore on 18th day of May, 2021 that the contents of the above affidavit are correct to my knowledge and belief based on official records and nothing material has been concealed there from.

ch. P. P. Krishna
DEPONENT

ಶಿ. ಪಿ.ಪಿ. ಕೃಷ್ಣ
Devidas Krishna Chinnappa
ಇ-ಐಡಿ ನಂ: 00
Edenbit "0"
ಸರ್ಕಾರಿ ಸೇವಾ (Government of India)
ಪರಿಸರ ಮತ್ತು ಹವಾ ಸ್ವಚ್ಛತೆ ಮತ್ತು ಹವಾ ಸಂರಕ್ಷಣೆ
Ministry of Environment, Forest & Climate Change
ದಕ್ಷಿಣ ಮಂಡಲೀಯಾ (ಉತ್ತರ ಕರ್ನಾಟಕ)
Regional Office, (Southern Zone)
ಬೆಂಗಳೂರು