

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
NEW DELHI**

O.A. No. 814 of 2024

IN THE MATTER OF:

Brand Ambassador Viyana Berwal & Anr. ...Applicants

versus

Tanmay Kumar & Ors. ...Respondents

INDEX

S. No.	PARTICULARS	PAGE No.
1.	REPLY ON BEHALF OF RESPONDENT NO. 2, DR. ALKA RAO WITH AFFIDAVIT	1-8
2.	VAKALATNAMA	9
3.	PROOF OF SERVICE	10

New Delhi

Filed by:

Date: 16.01.2025





ALOK SANGWAN, SUMIT KUMAR SHARMA & RAJAT SANGWAN

Advocates for the Respondent No.2

10, Babar Lane, 2nd Floor, Bengali Market,

New Delhi-110001, Mobile: 95604620320

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
NEW DELHI**

O.A. No. 814 of 2024

IN THE MATTER OF:

Brand Ambassador Viyana Berwal & Anr. ...Applicants

versus

Tanmay Kumar & Ors. ...Respondents

**REPLY ON BEHALF OF RESPONDENT NO. 2, DR. ALKA
RAO**

MOST RESPECTFULLY SHOWETH:

1. That the answering respondent has perused the contents of the present Original Application filed by the Applicants, including the revised Original Application. At the outset, the present Original Application filed in its present form *inter alia* challenging the appointment of the answering respondent as a non-official member of the National Biodiversity Authority (hereinafter 'the NBA') under section 8(4)(d) of the Biological Diversity Act, 2002 is neither maintainable nor tenable in the eyes of law and is a vexatious attempt to abuse the process of law. Furthermore, the OA is bereft of any merits whatsoever and has been filed with the sole intent to harass and humiliate the answering respondent. It is evident from the contents of the OA under reply that the same has been filed with a malicious intent to stoke publicity and fame in favour of the applicants at the expense of the stellar reputation of the answering respondent. Accordingly, the OA under reply is liable to be dismissed with exemplary costs in favour of the answering respondent.
2. That the challenge of the applicant in the present OA is beyond the jurisdiction of this Hon'ble Tribunal as defined under Section 14 of the National Green Tribunal Act, 2010 as the jurisdiction of this Hon'ble Tribunal is limited to disputes involving substantial environmental questions as specified

under the enactments listed in Schedule I of the NGT Act. Appointment issues do not qualify as a "substantial question relating to the environment" as defined under Section 2(m) of the NGT Act, 2010. The Applicant has failed to demonstrate any legal injury or direct violation of environmental obligations that could invoke the jurisdiction of this Hon'ble Tribunal.

3. The Applicant filed the present OA challenging the appointment of the answering respondent without impleading her as a respondent. This Hon'ble Tribunal, vide its order dated 05.11.2024, issued notice and directed the applicant to implead the answering respondent as a necessary party. This omission reflects the Applicant's lack of diligence and the frivolous nature of his application.
4. That the Applicant lacks the locus standi to challenge the answering respondent's appointment. The appointment involves administrative and policy decisions of the Central Government, which can only be challenged through a writ petition before the appropriate High Court or the Hon'ble Supreme Court of India. The Applicant has engaged in forum shopping by approaching this Hon'ble Tribunal to decide issues that are not within its purview.
5. That the Hon'ble Supreme Court of India in the case of *Techi Tagi Tara v. Rajendra Singh Bhandari* [(2018) 11 SCC 734] categorically held that this Hon'ble Tribunal does not have jurisdiction to entertain applications challenging appointments. In the said case, the Hon'ble Supreme Court observed that this Hon'ble Tribunal had exceeded its jurisdiction by directing State Governments to reconsider appointments to State Pollution Control Boards (SPCBs) and laying down guidelines for such appointments. The Hon'ble Court emphasized that such matters fall outside the NGT's legal purview and should be addressed by constitutional courts or appropriate authorities. The relevant paragraph from the said judgment is reproduced below:

“23. It appears to us that the NGT realised its limitations in this regard and therefore issued a direction to the State Governments to reconsider the appointments already been made, but the seminal issue is really whether the NGT could at all have entertained a claim of the nature that was raised. For reasons given above, the answer must be in the negative and it would have been more appropriate for the NGT to have required the claimant to approach a constitutional court for the relief prayed for in the original application. To this extent therefore, the direction given by the NGT must be set aside as being without jurisdiction. However, we have been told that some States have implemented the order of the NGT and removed some members while others have approached this Court and obtained an interim stay order. Those officials who were removed pursuant to the order of the NGT (including the appellant Techi Tagi Tara) have an independent cause of action and we leave it open to them to challenge their removal in appropriate and independent proceedings. This is an issue between the removed official and the State Government — the removal is not a public interest issue and we cannot reverse the situation.”

This judgment unequivocally clarifies that appointments to statutory bodies such as the National Biodiversity Authority (NBA) cannot be challenged before this Hon’ble Tribunal. Accordingly, the present OA challenging the appointment of the answering respondent is outside the jurisdiction of this Hon’ble Tribunal and is liable to be dismissed outright.

6. That the answering respondent’s appointment as a non-official member of the NBA is strictly in accordance with the Biological Diversity Act, 2002, and the Biological Diversity Rules, 2004. The appointment is based on her exceptional qualifications, expertise, and contribution to the field of environmental sciences, biotechnology, and biodiversity conservation.
7. That the answering respondent is an eminent person *inter alia* in the field of Protein Science, Analytical Biochemistry and Microbial Glycobiology over the past 15 years and is the first woman appointed as a non-official member of National Biodiversity Authority. The answering respondent holds a distinguished feat of executing more than 22 R&D projects and generating leading Intellectual Property Rights for Council of

Scientific & Industrial Research (CSIR) on Enzymatic S-Glycosylation Methods. Additionally, the answering respondent has also developed a growth-promoting product for crop applications for industry partners. The answering respondent, in addition, has also served the Government of India (MoEFF&CC, MoH&FW, MoE, DBT, and DST), the State of Haryana and Institutes of National Importance as an expert member while facilitating various matters of R&D, Academics, Policies, Acts, and Regulations & Management thereof.

8. The answering respondent has most recently contributed in drafting the amendments to the Biological Diversity Act, 2002, framing of national position on Digital Sequence Information (DSI)/ CBD, Direct Benefit Transfer of Access Benefit Share (ABS) to primary conservationists and stakeholders, harmonization and development of food additives standards including Indian Mithais/ Namkeens and fortified rice (for Public Distribution System), facilitating the launch of DST sponsored “Vigyan Jyoti” pilot in NVS schools in 2019-2021 and creation and popularization of STEM content in Indian Sign Language.
9. That Section 8(4)(d) of the Biological Diversity Act permits the Central Government to appoint individuals with expertise in relevant fields. The appointment process followed the statutory guidelines, and the answering respondent fulfills all requisite qualifications. After assuming the position of a non-official member as envisaged under section 8(4)(d) of the Biological Diversity Act, 2002, the answering respondent has actively contributed to the objectives of the NBA by:
 - a. Contributing towards research findings, disseminated through peer-reviewed publications and conference presentations, have contributed to novel methods for studying glycoproteins, identifying drug targets, developing computational tools, and understanding probiotics' role in food safety and health;

- b. Rendering expertise in analytical biochemistry, molecular microbiology, and protein sciences provides tools for understanding the biochemical pathways and molecular interactions that underpin biodiversity through numerous research papers published under the authorship/ co-authorship of the answering respondent;
- c. Research work encompassing a similar multidisciplinary approach, integrating expertise in analytical biochemistry, molecular microbiology, protein sciences, and bioinformatics by collaboration with scientists, policymakers, local communities, NGOs, and other stakeholders where it was sought essential;
- d. Regular participation of the answering respondent in meetings representing the scientific fraternity, active contribution in Biodiversity Act 2002 amendments, advocating for financial support to State Biodiversity Boards (SBBs) and Union Territory Biodiversity Councils (UTBCs), strengthening Biodiversity Heritage Sites (BHS) and Biodiversity Management Committees (BMCs), recommending new BHS at Kerala, active intervention for the conservation of the sacred grove at Fatehgarh Punjab, facilitating the first ever direct benefit transfers to Red Sander farmers of Andhra Pradesh and Telangana and to the microbial repositories, participating in rule-making, and resolving long-standing Access and Benefit Sharing (ABS) cases;
- e. Providing scientific input on Genetically Modified Organisms (GMOs) to the Genetic Engineering Appraisal Committee (GEAC) and serving as Chairperson of the Scientific Panel on "Food Additives, Flavourings, Processing aids & Materials in contact with Food" at FSSAI, contributing to scientific discussions, reviewing literature, developing recommendations, and representing India in international discussions on food additive standards;

- f. Research work aligning with the CBD and Nagoya Protocol, focusing on sustainable microbial bioresource uses by exploring the role of Digital Sequence Information (DSI) in conservation and food security, investigating glycoproteins' role in food safety, and contributing to the understanding of DSI's application from farm to fork;
- g. contributing extensively to scientific and or advisory roles at other eminent institutions such as IISER Mohali, DBT, DST, GMCH, Chandigarh, AcSIR and HWSPSHI, encompassing contribution in matters like recruitment, research proposal review, facility inspections, fundraising, curriculum revision, quality assurance, etc.;
- h. recognizing biotechnology's role in bioprospecting, environmental remediation, and food safety, particularly through probiotics through published research papers apart from work with GEAC, FSSAI, and NBA which has focused on assessing the risks and benefits of biotechnology, developing guidelines for GMO use, evaluating the safety of biotechnology-derived food products, and advocating for ABS in bioresource conservation;
- i. Utilizing technology for biodiversity monitoring, ecosystem understanding, and conservation. My research has contributed to developing computational tools for protein study and high-throughput screening systems to leverage microbial diversity.

10. It is pertinent to mention herein that as a non-official member, the answering respondent receives no salary or office of profit. She is entitled only to allowances for attending meetings, as per Rule 6 of the Biological Diversity Rules, 2004. This does not contravene any provisions regarding public service or office of profit. Relevant portion of Rule 6 is reproduced as under:-:

“(2). Every non-official member attending the meeting of the Authority shall be entitled to sitting allowance,

travelling expenses, daily allowance and such other allowances as are applicable to non-official member of commissions or committees of the Central Government attending the meeting(s) of such Commissions or Committees.”

Therefore, it is evident that the answering respondent is neither holding any office of profit nor drawing any exorbitant emoluments by serving as a non-official member of the NBA.

11. That the Applicant has failed to demonstrate how the answering respondent's appointment impacts the environment or falls under the ambit of environmental disputes defined under Section 14 of the NGT Act, 2010. The Applicant's prayers for cancellation of the answering respondent's appointment are untenable. The appointment was made following statutory guidelines and based on merit. The Applicant has not provided any evidence of malfeasance, bias, or violation of legal provisions to substantiate his claim.

In view of the submissions made hereinabove and judgment passed by the Hon'ble Supreme Court of India in *Techi Tagi Tara* (supra), it is most respectfully prayed that this Hon'ble Tribunal may be pleased to dismiss the Original Application as being misconceived, non-maintainable, and lacking merit with exemplary costs in favour of the answering respondent to deter frivolous litigation.

New Delhi

Filed by:

Date: 16.01.2025





ALOK SANGWAN, SUMIT KUMAR SHARMA & RAJAT SANGWAN

Advocates for the Respondent No.2

10, Babar Lane, 2nd Floor, Bengali Market,

New Delhi-110001, Mobile: 95604620320

**BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL, NEW DELHI
O.A. No. 814 of 2024**

IN THE MATTER OF:

Brand Ambassador Viyana Berwal & Anr. ...Applicants

versus

Tanmay Kumar & Ors. ...Respondents

AFFIDAVIT

I, Dr. Alka Rao, W/o Mr. Satyaprakash TL aged about 46 years, resident of #1620, Sector 39B, Chandigarh presently at New Delhi, do hereby solemnly affirm and declare as under:-

1. That I am respondent no.2 in the above Original Application and thus, I am well conversant with the facts and circumstances of the case and hence competent to swear this affidavit.

2. That the reply has been drafted by my counsel under my instructions and the contents of the same are true and correct to the best of my knowledge and belief. Nothing material has been concealed therefrom.

Alka Rao

Deponent

Verification:

Verified at New Delhi on this the 8th day of January, 2025 that the contents of the above affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

Alka Rao

Deponent

8/1/2025



ATTESTED
NOTARY PUBLIC DELHI
Govt. of India
Mob.: 9664768498

VAKALATNAMA
BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL
BENCH, NEW DELHI
Original Application No. 814 of 2024

In re: -

Brand Ambassador Viyana Berwal Via Naresh Kadyan & Ors.

...Applicants

Mr. Tanmay Kumar & Ors.

Versus

...Respondent

KNOW ALL to whom these present shall come that I / We Dr. Alka Rao

The above named Respondent No.2 do hereby appoint

Alok Sangwan, Sumit Kumar Sharma and Rajat Sangwan
 [D/678/2000] [D/6028/2020] [D/4417/2019]
 Advocates for the appellants/petitioners
 10, Babar Lane, 2nd Floor, Bengali Market
 NEW DELHI 110001



E-mail: sangwanalok@gmail.com, Phone: 9560462030, 9810364929

(herein after called by advocate/s) to be my/our Advocate in the above-noted case authorise him:-

To act, appear and plead in the above-noted case in this court or in any other Court in which the same may be tried or heard and also in the appellate court including High Court subject to payment of fees separately for each court by me/us.

To sign file, verify and present pleadings, appeals cross-objections or petitions for executions review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subjects to payment of fees for each stage.

To file and take back documents, to admit and /or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings.

The deposit, draw and receive money, cheques, case and grant receipts hereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner authorising him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on our behalf.

And I/We the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purpose.

And I/We undersigned that I/We or my/our duly authorised agent would appear in court on all hearings and will inform the Advocate for appearance when the case is called.

And I/We undersigned do hereby agree not to hold the advocate of his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the court shall be of the Advocate which he shall receive and retain for himself.

And I/We undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/We hereby agree that once the fee is paid, I/We will not be entitled for the refund of the same in any case whatsoever and if the case prolongs for more than 3 years the original fee shall be paid again by me/us.

IN WITNESS WHERE OF I/We do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this 08th day of January 2025

Accepted & Identified subject to the terms of the fees

Alok Sangwan

Sumit

Rajat

Alka Rao

Alok Sangwan, Sumit Kumar Sharma and Rajat Sangwan
 [D/678/2000] [D/6028/2020] [D/4417/2019]
 Advocates for the appellants/petitioners
 10, Babar Lane, 2nd Floor,
 Bengali Market
 NEW DELHI 110001
 E-mail: sangwanalok@gmail.com
 Phone: 9560462030, 9810364929

Client



Mayank Kain <kainmayank@gmail.com>

**Reply in the matter of O.A. No. 814 of 2024 titled as Brand Ambassador
Viyana Berwal & Anr vs. Tanmay Kumar**

1 message

Mayank Kain <kainmayank@gmail.com>
To: kadyan.ipfa@gmail.com

20 January 2025 at 15:36

Sir

Please find attached Reply on behalf of the Respondent no. 2 Dr. Alka Rao in the abovementioned matter.

Thanks & Regards,

Mayank Kain

O/o Mr. Alok Sangwan

Advocate



REPLY DR. ALKA RAO.pdf

569K