

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI
MEMORANDUM OF APPLICATION
(Under Section 18(1) read with Sections 14, 15 of National Green
Tribunal Act, 2010)

Application No. 242 of 2021

Tejah Balantrapu & Ors

... Applicant

VERSUS

Union of India & Anr

... Respondent

Affidavit filed by the applicant

I, Tejah Balantrapu S/o. Hemachandra Balantrapu, residing at 102, Grace des res heights, SBI colony, Baghamberpet, Hyderabad-500013, Telangana, having temporarily come down to Chennai, solemnly swear and sincerely state as follows:

1. I am the 1st applicant herein and I am aware of the facts and circumstances of the case and competent to affirm this affidavit. I have been authorised by the other applicants to file this affidavit on their behalf.
2. I submit that the present affidavit is being filed to place on record certain facts and objections of the applicant to inter alia the filing of a report by NHAI in a sealed cover.
3. I submit that Hon'ble Tribunal in its order dated 24.05.2023, constituted a committee comprising of a Senior officer from IRC, senior officer from NHAI and a nominee of the PCCF, Head of forest force not below the rank of CCF to examine alternatives to save the subject Banyan Trees. The committee was also given the option to co-opt other members.
4. I submit that members of the save Chevella Banyans group were invited for a meeting on 21.06.2023 with Mr Kushwaha, PO, Ministry of Road Transport and Highways (MoRTH) by the PA of the Hon'ble Minister. Mr Nageswara

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Rao, PO of the NH-163 expansion project at NHAI also attended the meeting.

5. The meeting took place at an informal setting. Mr Kushwaha promised the group that NHAI and MoRTH would explore and find the means to save the Banyans of Chevella. The group submitted a formal letter asking that the trees be saved, along with some photos.
6. That very evening, I was informed of the site inspection scheduled on 23.06.2023 and that a committee comprising of
 - (i) Sri. Y. Balakrishna, Convener B-8 Committee of IRC & ADG (Retd), MoRT&H
 - (ii) Chief Conservator of Forests, Charminar Circle, Hyderabad
 - (ii) Lt. Col. A.K. Janbaz (Retd), CGM (Tech) & Regional Officer, NHAI, RO-Hyderabadwas constituted by NHAI for the said inspection. We participated in the inspection reserving our right to object to the constitution of the committee since NHAI, the project proponent was re-examining its own decisions and its inclusion in the committee is a clear case of conflict.
7. During the inspection, it was evident that alternatives were not being explored to save the Banyans and the absence of an ecologist or any subject matter expert to address issues inter alia like the ecological service of these trees, its importance etc., led to a situation where these aspects were not being considered.
8. A detailed letter was also submitted to the committee on 27.06.2023.
9. Thereafter, I was informed that there were some issues with the e-filing portal of this Hon'ble Tribunal and on 11.07.2023 we filed an IA seeking to recall the order since NHAI, which is the project proponent has also been

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made a member of the committee constituted to in effect re-examine its own project design. It is submitted that NHAI being in the committee is a clear case of conflict and amounts to a person being a judge of his own cause.

10. Therefore, it is necessary that the committee be reconstituted to exclude NHAI, the project proponent and include subject matter experts so that the banyans could be saved. The Hon'ble Supreme Court in BONANI KAKKAR Vs OIL INDIA LIMITED & ORS. (order dated 02/09/2021, Civil Appeal No(s).2201/2021), observed that the NGT's inclusion the Managing Director of the project proponent in the committee was a case of conflict and reconstituted the committee.

11. I submit that the OA was originally posted to 17.07.2023 and was adjourned on the causelist itself to 24.08.2023. However, on 17.07.2023 at about 5 pm, my counsel received an SMS from the learned counsel for the NHAI (the 2nd Respondent) stating that the "matter would be taken up next Monday (24.07.2023). Expert report in sealed cover submitted to the Court."

12. I am advised to submit that the mentioning of the matter for early listing was without notice to us.

13. I am advised to submit that the report however has questionably been submitted in a concealed manner in a 'sealed cover'. I respectfully submit that we have not been served with a copy of the report and have been denied details of its contents citing that the report is being submitted in a sealed cover and privy to the knowledge of this Tribunal alone. It is in these circumstances, that I am filing this affidavit. It is necessary to note that NHAI, the contesting respondent herein, was part of the committee and has knowledge of the report.

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14.I respectfully submit that the method/procedure of submitting documents/reports in sealed covers before an Adjudicating Authority may be resorted to only in exceptional circumstances where the document/report comprises of highly sensitive and critical information affecting national security or the privacy of individuals. The practice ought to be exercised selectively. Besides, the non-disclosure must be proportional to its purpose. In the present case, the report is one concerning the ecological impact of the felling of trees and its effect on the surrounding population and the consideration for alternatives. It thus involves the welfare and interests of the public at large. By no stretch of imagination, the report qualifies to be a document falling within the ambit enumerated above and thus does not require to be submitted in a concealed manner. It is respectfully submitted that method of 'sealed cover' adopted by the committee is unwarranted and lacks any legal sanction.

15.I respectfully submit that as detailed out in the original application, the felling of the subject matter trees stands to have significant irreversible ramifications in the surrounding areas and its residents. Thus, a report analysing and commenting on the subject should in fact be a document that is made available to all stakeholders. On the contrary, the report has been submitted in a sealed cover to defeat the rights of those interested. Indeed, for this reason itself, there ought to be a direction to the committee to serve copies of the report upon me and the other applicants. It is additionally submitted that me and the other applicants indeed have reason to suspect that the 2nd Respondent having been made part of the committee has influenced it to adopt such discreet methods. It is indeed to avoid such perception of prejudice and bias that the applicants filed an application seeking the recall of the order dated 24.05.2023 which constituted the committee with the 2nd Respondent. I submit that the e-filing portal indicates that the IA has not been scrutinised or numbered yet.

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16. It is respectfully submitted that this Hon'ble Tribunal has heard and considered the contentions in the original application at significant length over the course of proceedings. We have also secured interim protection vide order dated 21.12.2021, as this Hon'ble Tribunal observed merit in our averments. It is in this stead that it directed the constitution of the committee and sought for an appropriate report on the allegations raised by us, as also for the purpose of considering alternatives that are possible/available.

17. It is respectfully submitted that the report would potentially remark, either in support or against on the various allegations/averments raised by us. It would thus indeed have a substantial influence in the decision of this Hon'ble Tribunal on this application. It is thus necessary that we be accorded an opportunity to peruse and reply to the contents of report failing which substantial prejudice would be caused to us. Indeed, doing so would also ensure compliance of the principles of natural justice.

18. The Hon'ble Supreme Court has in its latest judgement in **2022 SCC OnLine SC 1570** [Cdr Amit Kumar Sharma etc Vs. Union of India & Ors] elaborately dealt with the practice of sealed cover submissions and unequivocally upheld the contentions as stated above. Specific paragraphs enumerating the same is give below for convenient consideration of this Hon'ble Tribunal:

"...

28. The elementary principle of law is that all material which is relied upon by either party in the course of a judicial proceeding must be disclosed. Even if the adjudicating authority does not rely on the material while arriving at a finding, information that is relevant to the dispute, which would with 'reasonable probability'

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influence the decision of the authority must be disclosed. A one-sided submission of material which forms the subject matter of adjudication to the exclusion of the other party causes a serious violation of natural justice. In the present case, this has resulted in grave prejudice to officers whose careers are directly affected as a consequence.

29. The non-disclosure of relevant material to the affected party and its disclosure in a sealed-cover to the adjudicating authority (in this case the AFT) sets a dangerous precedent. The disclosure of relevant material to the adjudicating authority in a sealed cover makes the process of adjudication vague and opaque. The disclosure in a sealed cover perpetuates two problems. Firstly, it denies the aggrieved party their legal right to effectively challenge an order since the adjudication of issues has proceeded on the basis of unshared material provided in a sealed cover. The adjudicating authority while relying on material furnished in the sealed cover arrives at a finding which is then effectively placed beyond reach of challenge. Secondly, it perpetuates a culture of balance of power in a litigation in favour of a dominant party which has control over information. Most often than not this is the state. A judicial order accompanied by reasons is the hallmark of the justice system. It espouses the rule of law. However, the sealed cover practice places the process by which the decision is arrived beyond scrutiny. The sealed cover procedure affects the functioning of the justice delivery system both at an individual case-to-case level and at an institutional level. However, this is not to say that all information must be disclosed in the public. Illustratively, sensitive information affecting the privacy of individuals such the identity of sexual harassment victim cannot be disclosed. The measure of nondisclosure of sensitive

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information in exceptional circumstances must be proportionate to the purpose that the non-disclosure seeks to serve. The exceptions should not, however, become the norm.

...”

19. I respectfully submit that the report has been wantonly presented by way of a sealed cover to circumvent fair adjudication of the matter and to force the proceedings to an abrupt conclusion. It is humbly prayed that this Hon'ble Tribunal be pleased to forbid such attempts and ensure complete transparency in adjudication. The method in which the report has been filed frustrates the cause of the applicants that we have taken much effort to build and put forth and is one having staggering impact on the environment. It is in these circumstances, that this affidavit is filed seeking a copy the expert report be provided to us.

20. It is also submitted that the fundamental issues in the OA – that NHAI has not considered alternatives while framing the present project, not considered the environmental and ecological impact of felling these majestic Banyan tree, not considered the ecological services of the unique ecosystem presented by these trees etc., remain unaddressed. These are not illegalities that cannot be cured by a post facto examination by the project proponent. Arbitrary decisions in the absence of relevant considerations, as evident from NHAI's own PFR (which does not even mention the number or location of these trees, much less the impact), which envisages the consideration of impact in a detailed EIA report and the fact that such an EIA study was never conducted, cannot be justified by contending that NHAI has acquired the land and hence they are entitled to proceed with the felling of trees as planned.

21. It is necessary that the issue be examined without NHAI being part of the committee constituted by this Hon'ble Tribunal and the IA filed by us be

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numbered and listed at the earliest. It is also necessary that a copy of the report submitted in a sealed cover be provided to us in the interest of principles of natural justice, so that we can suitably respond.

It is prayed that this Hon'ble Court be pleased to take these submissions on record and pass such order or orders as may be fit, proper and necessary in the facts and circumstances of the case and thus render justice.

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Solemnly affirmed and signed his name this
The 23rd day of July, 2023 at Chennai

BEFORE ME

ADVOCATE: CHENNAI

Nivedita
(MS 13123/2019)
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