

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL SOUTHERN ZONE  
BENCH AT CHENNAI**  
(Under Section 18(1) read with Sections 14, 15 of National Green Tribunal Act,  
2010)

**Original Application No. 137 of 2021**

**IN THE MATTER OF**

Gutha Gunasekhar & ORS ..... Applicants  
-Vs-

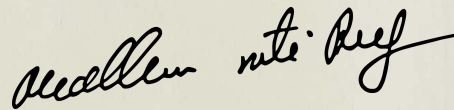
Union of India & ORS ..... Respondents

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S.No.	Description	Pg. No.
1.	Rejoinder of AP to the counter of MoEF&CC filed Dt:18.01.2022	1-19

**Place: Vijayawada**

**Date: 07-02-2022**



**M/S MADHURI DONTI REDDY  
ADVOCATE  
STANDING COUNCIL FOR GOVERNMENT OF  
ANDHRA PRADESH  
A.P. POLLUTION CONTROL BOARD  
T.T.D. SUPREME COURT OF INDIA**

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**COUNSEL FOR RESPONDENT 3 & 4**

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL SOUTHERN ZONE  
BENCH AT CHENNAI**

(Under Section 18(1) read with Sections 14, 15 of National Green Tribunal Act,  
2010)

**Original Application No 137 of 2021**

**IN THE MATTER OF:**

**1. GuthaGunasekhar,**

Age: 36 years,  
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Nagillavaripalli village, Peddauppara palli,  
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**3. SannapaneniYadava Naidu,**

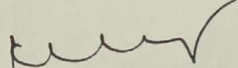
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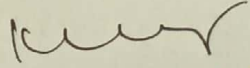
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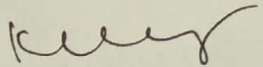
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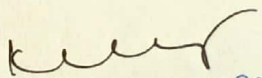
  
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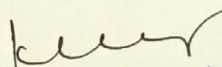
  
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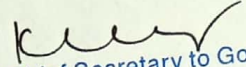


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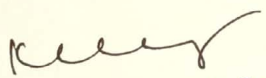
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**20. C.P. Haribabu,**

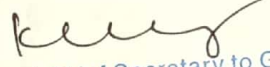
Aged 42, S/o. Mr. C.P. Krishnaiah,  
 No.9-5A, Ramakrishnapuram,  
 Avulapalle, Somala, Chittoor District,  
 Andhra Pradesh-517 257,  
 Mobile: 7780515489.  
 Email: [gautamraman@gmail.com](mailto:gautamraman@gmail.com)

**21. D. Venkatappa,**

Aged 52, S/o. D. Ramaiah,  
 No.8-92, Ramakrishnapuram,  
 Avulapalle, Somala, Chittoor District,  
 Andhra Pradesh-517 257,  
 Mobile: 9704070599.

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**Respondents**

  
 Special Chief Secretary to Govt  
 Water Resources Department  
 A.P. Secretariat, Amaravathi



**REJOINDER ON BEHALF OF THE 3<sup>rd</sup> RESPONDENT STATE TO  
THE COUNTER AFFIDAVIT FILED BY THE 1<sup>st</sup> RESPONDENT  
DATED 18.01.2022**

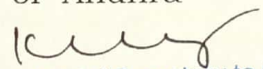
I, Dr. K.S Jawahar Reddy, S/o Late. K.S Eswar Reddy, aged about 57 years, Occ: Special Chief Secretary, Water Resources Department, Government of Andhra Pradesh, R/o Vijayawada, do hereby solemnly affirm and sincerely state on oath as follows:

1. I am Special Chief Secretary, Water Resources Department to the Government of Andhra Pradesh and I am well acquainted with the facts of the case. I am authorised to depose on behalf of the Applicant State. I have read the counter affidavit filed by the 1<sup>st</sup> respondent and I beg to submit in reply thereto as follows:
2. The allegations in Paras 2, 3 & 4 are nothing but repetition of the contentions of the Applicant and they need not be traversed to as they are borne out from the record.
3. In view of the statements made in Para 5 of the Counter Affidavit of the 1<sup>st</sup> Respondent, it is humbly submitted that the 'Environmental Clearance' granted to the HNSS and GNSS vide L.No.J-12011/10/2006-1A.I dt:08.05.2006 and L.No.J-12011/18/2006-1A.I dt:21.06.2006 respectively are valid till today and there is no dispute that work under HNSS and GNSS projects has commenced within 5 years from the date of issuance of the above stated clearances.

  
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Since, the said clearances were obtained under EIA notification dt:27.01.1994 they are valid and they are not covered by EIA notification dt:14.09.2006. Those permissions cannot be reviewed or re-assessed under the EIA notification dt:14.09.2006 and there is no such power or jurisdiction under the said notification

4. In answer to the allegations in Para 8 of Counter Affidavit of the 1<sup>st</sup> Respondent, it is humbly submitted that under EIA notification dt:14.09.2006 '*prior Environmental Clearance*' is required for totally '*new projects*' or whenever there is '*modernization or expansion*' of the existing projects or activities. The 1<sup>st</sup> Respondent in Para 6 of its Counter affidavit has admitted that under HNSS project an extent of 2.438 lakh ha would be irrigated, besides supplying drinking water. Similarly, under GNSS project an extent of 1.052 lakh ha would be irrigated besides supplying drinking water to chronically drought affected areas of Rayalaseema region comprising of Anantapur, Kurnool, YSR Kadapa and Chittoor districts and the quantum of utilization under these projects are 40 TMC and 38 TMC respectively. Even though, works have commenced more than 15 years back, the threshold limits under the projects could not be achieved, more particularly in the tail end areas, which would serve chronically drought prone areas in Chittoor district to an extent of 7761 Sq.Kms. In view of, the State of Andhra

  
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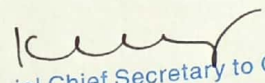


Pradesh sought to re-engineer the projects by connecting both the schemes through pipeline, without increasing the Ayacut under both the schemes put together and without increasing the quantum of water utilization. Thus, there is no change in the scope of the project at all and the contemplated utilizations under these projects are partly achieved as evident from the following table:

Sl No.	Name of the Project	Name of the District	Planned utilisation in TMC	Ayacut Contemplated in Acres	Ayacut Created in Acres
1	HNSS PROJECT	Kurnool	5.320	80,000	45,300
		Ananthapur	22.91	3,08,500	6,000
Kadapa		2.48	32,600	21,785	
Chittoor		9.29	1,81,400	14,250	
SUB- TOTAL:			40.00	6,02,500	87,335
2	GNSS	Kadapa	27.13	1,55,000	4,000
		Chittoor	10.87	1,05,000	0
SUB- TOTAL:			38.00	2,60,000	4,000

In the absence of any increase in the contemplated Ayacut and the proposed utilization by virtue of re-engineering the project, cannot be termed neither 'a new project' nor 'expansion nor modernization' of the existing projects, which have 'prior Environmental Clearance' as stated above. No fresh Environmental Clearance or prior Environmental Clearance is required.


5. In answer to the further allegations in Para 8 of Counter Affidavit of the 1<sup>st</sup> Respondent, it is humbly submitted that the 1<sup>st</sup> Respondent not properly interpreted para 2 (ii) of EIA Notification dt:14.09.2006 which reads as follows:

  
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***“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”(emphasis supplied)***

Thus, any activity under an existing project may require ‘prior Environmental Clearance’ if there is addition of capacity beyond the specified limits for the concerned sector. If the threshold of the limits prescribed in the Schedule for the concerned sector has not been exceeded, it neither becomes ‘expansion’ nor ‘modernization’ of the existing project. When the threshold of creating new ayacut has not been contemplated no ‘prior Environmental Clearance’ for such activities is necessary, which are nothing but re-engineering of the project to achieve contemplated benefits. Thus, para 2(ii) of the EIA Notification dt:14.09.2006 is not attracted for the contemplated activities under HNSS and GNSSS and no fresh Environmental Clearance is required. The essence of para 2(ii) of EIA Notification dt:14.09.2006 was again reiterated in sub-para ii of para 7 of EIA Notification dt:14.09.2006 which also reads as under:

***All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product –mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the***

  
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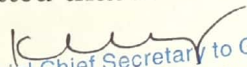
***application shall beappraised accordingly for grant of environmental clearance”.***

Thus, conjoint reading of sub para ii of para 2 and sub-para ii of para 7 of EIA Notification dt:14.09.2006, categorically to reiterate that no '*prior Environmental Clearance*' is necessary or required, by any stretch of imagination.

6. In this context, it is also bring to the kind notice of this Hon'ble Tribunal that undertaking of the contemplated work is to link the canals of GNSS and HNSS and since these existing canals are situated at different elevations, the water is sought to be lifted and it is not a lift scheme on its own, with any new ayacut or new utilization is contemplated. Since both HNSS and GNSS have '*prior Environmental Clearance*' and there is no need of obtaining fresh Environmental Clearance and G.O Rt No.444 WR(Projects.III) dt:26.08.2020 and G.O Rt No.461 WR(Projects.III) dt:02.09.2020 are valid and no fresh Environmental Clearance is required in tune with EIA Notification dt:14.09.2006 as explained above.

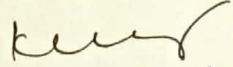
7. In answer to the allegations in para 9, it is humbly submitted that it is clear from the statements made by the 1<sup>st</sup> Respondent, no construction activity or no pre construction activity is going on at the project site and the works are being done only for the preparation of DPR.

8. In answer to the allegations in para 10 of the counter affidavit of the 1<sup>st</sup> Respondent, it is humbly submitted that it

  
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is settled law that the law existing as on the date of consideration of application would alone apply and such permission cannot be revisited by change of law subsequently. Thus, para 9 of EIA notification dt:14.09.2006 has no application to the facts of the case and thus para 9 cannot divest of any existing permission nor fasten any new obligation and such interpretation would be contrary to the EIA Notification dt:14.09.2006.

9. It is humbly submitted that the applicants without understanding the scope of re-engineering of GNSS and HNSS projects is trying to draw parallels between two incomparable i.e., RLS on one hand and GNSS and HNSS on the other hand, on the ground that both are drawing water from foreshore of Srisailam reservoir. The sole object of the applicants is to rely upon judgment passed in O.A.71 of 2020. The applicants have deliberately did not inform this Hon'ble tribunal. GNSS and HNSS can draw water independently from the foreshore of Srisailam reservoir even without operation of Rayalaseema lift scheme. GNSS and HNSS draw surplus water as and when it is available depending upon the nature of the season. HNSS is a scheme which draws water through foreshore of Srisailam reservoir at Malyala pump house from +834 ft and at Muchumarri pump house from +800 ft, whereas, GNSS draws water from Pothireddypadu Head Regulator by gravity at +854ft

  
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10. It is submitted that independent of such proposed diversion, the scope of work for which a valid Environmental Clearance exists included the following:

- a. Construction of reservoirs
- b. Construction of lifts
- c. Construction of canals
- d. Construction of tunnels etc.,

11. It is submitted that the purposes of the proposed diversion, there is no new activity which is proposed to be undertaken.

The following may kindly be noticed:

- a. The source of water does not change.
- b. The quantum of water allocated cumulatively does not change.
- c. The purpose for which these projects were undertaken also does not change.
- d. For the time being, the diversion of water is being used only for the purposes of drinking water to the tail end areas of Chittoor District.
- e. Creation of reservoirs and construction of lifts was in any case contemplated

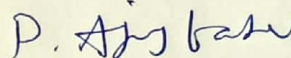
12. Hence, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the OA and pass such other order or orders, as this Hon'ble Tribunal deem fit and proper.

Solemnly affirmed at Vijayawada,  
Andhra Pradesh on this the  
day 7<sup>th</sup> of February, 2022 and  
signed his name in my presence

  
**DEPONENT**

Special Chief Secretary to Govt.  
Water Resources Department  
A.P. Secretariat, Amaravathi

**BEFORE ME**



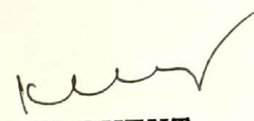
**ADVOCATE,**

**PENUMAKA AJAY BABU**  
ADVOCATE M.A., L.L.M.,  
HIGH COURT OF A.P.

**VERIFICATION**

I, Dr. K.S Jawahar Reddy, S/o Late. K.S Eswar Reddy, aged about 57 years, Occ: Special Chief Secretary, Water Resources Department, Government of Andhra Pradesh, R/o Vijayawadado hereby state that what is stated above in paragraphs 1 to 12 are true to the best of my knowledge and belief.

Dated at Vijayawada on this the day <sup>th</sup>7 of February 2022.

  
**DEPONENT**  
Special Chief Secretary to Govt  
Water Resources Department  
A.P. Secretariat, Amaravathi