

**BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), SITTING AT
CHENNAI**

Appeal No. 14/2020

BETWEEN:

Yelahanka Puttenahalli Lake
and Bird Conservation Trust (Regd)

...**APPELLANT**

AND

Ministry of Environment & Forest and Ors.

...**RESPONDENTS**

**ADDITIONAL WRITTEN SUBMISSIONS ON BEHALF OF
RESPONDENT NO.4**

The Respondent No.4 humbly states as follows:

1. The instant Appeal has been filed by the Appellant under Sections 14, 15(1), 16(h) and 18 of the National Green Tribunal Act, 2010. The Appellant has stated that the setting up of a Gas based Combined Cycle Power Plant ("**Power Plant**") by the Respondent No.4 has allegedly given rise to a substantial question relating to the Environment which requires to be adjudicated by this Tribunal. The Appellant has alleged that there has been damage to Environment by the Respondent No.4 in setting up the Power Plant requiring restitution of the Environment. The Appellant has also challenged the Environmental Clearance ("**EC**") issued to the Respondent No.4 for the establishment of the Power Plant stating that the same is *void ab initio*.

Response to the Oral Arguments of the Appellant

2. **Contention of the Appellant:** The Yelahanka Combined Cycle Gas based Power Plant ("Power Plant") has a capacity of 350 MW. As per the EIA Notification, 2006 (1(d) of the Schedule) thermal power plants having a capacity of below 500MW require to get their Environmental Clearance from the SEIAA. However, as the Power Plant is situated within 10 km from the Puttenahalli Bird Conservation Reserve (it is situated 500 mts from the Puttenahalli Lake) then the General Condition of the EIA

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Notification would apply and the project would have to be treated as a 'Category A' project. Therefore, EC for such a project would have to be obtained from the MOEFCC as per the EIA Notification, 2006.

3. **Response:** The Puttenahalli Lake was notified in the Official Gazette as a Bird Conservation Reserve only on 10/09/2015, which is after the granting of the Environmental Clearance to the Respondent No.4 i.e. on 01/09/2015. In fact, at the time the Respondent No.4 made an application for the EC, i.e. on 20/12/2014, the Puttenahalli Lake had not been notified as a Bird Conservation Reserve. It is trite law that a notification would come into force only as on the date the same was published in the official gazette. As the notification was published in the Official Gazette only on 10/09/2014, the Puttenahalli Lake could be considered a Bird Conservation Reserve only prospectively from that date. (*Municipal Corporation of Greater Mumbai vs Anil Shantaram Khoje (2016) 15 SCC 726, B.K. Srinivasan and Others vs State of Karnataka and Ors. (1987) 1 SCC 658.*) Therefore the application for the Environmental Clearance for the project had rightly been made to the SEIAA as it was a 'Category B' project as per the terms of the EIA Notification, 2006. The General Conditions of the EIA notification would not apply to the Power Plant of the Respondent No.4.

4. **Contention of the Appellant:** The Environmental Clearance was issued to the Respondent No.4 without public hearing being conducted, as was required under the EIA Notification, 2006 and therefore the EC issued to the Respondent No.4 was in violation of the EIA Notification. Further, an OM dated 04/04/2016 issued by the MOEFCC clarifies that thermal power plants inside a notified industrial area could not be exempt from public consultation. The said OM would apply retrospectively to Power Plant of the Respondent No.4.

5. **Response:**
 - a) It is submitted that Section 7(III) (i) (b) of the EIA Notification, 2006, exempts any Category A or Category B project from having to

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conduct a public consultation if it is a project or activity in a located within an industrial estate or park. In the case of the Respondent No.4, the Power Plant is located in an Industrial Area notified as such by the Karnataka Industrial Areas Development Board in 1985 and therefore was exempt from having to carry out a public consultation.

- b) The Respondent No.2 (SEIAA) vide its letter dated 19/01/2015 had exempted the project from having to conduct a public consultation as per Section 7(III) (i) (b) of the EIA Notification.
- c) The Environmental Clearance for the above project was granted on 01/09/2015 and the same was advertised on 6th and 8th Sept 2015 as per the directions of the Respondent No.2, SEIAA, vide General Conditions No-11 of the EC letter. The Ministry of Environment and Forests thereafter issued an Office Memorandum No..J-11013/36/2014-IA-1 dated 04/04/2016 stating that large scale projects even thermal projects in Industrial areas would not be exempt from holding Public Consultations. It is submitted that the Office Memorandum dated 04/04/2016 was issued the year after the EC was obtained by the Respondent No.4. It is further submitted that a bare reading of the EIA notification along with the Office Memorandum clearly shows that the Office Memorandum issued is in the nature of an amendment to the EIA notification,2006 making an exception previously available to certain industries unavailable thereon and is clearly in the nature of an amendment to the same. Therefore, the Office Memorandum would only apply prospectively and not retrospectively to projects which have already received Environmental Clearances pursuant to the exemption under the EIA Notification,2006.

6. **Contention of the Appellant** : The Respondent No.4 had prior knowledge of the declaration of Puttenahalli Lake as a Bird Conservation Reserve as it is the Chief Minister who officiates as the Chairman of KPCL .

7. **Response:** The Respondent No.4 had no prior knowledge about the intention of the Government of Karnataka in declaring the area as a Bird Conservation Reserve. At the time of making its application for Environmental Clearance, the Puttenahalli Lake was not a notified "conservation reserve". Notwithstanding the same, the Bird Conservation Reserve was notified as such only on 10/09/2015, after the date of issuance of the EC.
8. **Contention of the Appellant:** The Environmental Clearance was obtained on false and misleading information provided by the Respondent No.4 in the Application for EC made in the prescribed Form No.1.
- Respondent No.4 has stated that the project does not attract the General Conditions of the EIA Notification.
 - Respondent No.4 has stated that proposal does not involve approvals to be obtained under the Forest Conservation Act, The Wildlife Protection Act, 1972 and the CRZ notification, 1991.
 - Respondent No.4 has stated that the Project does not involve forest land. However, Respondent No.4 has sought for transfer of approximately 6 hectares of forest land adjacent to the site for plantation purpose.
 - Respondent No.4 has declared that there are no eco sensitive zones within 15 kms from the project location.
 - The Terms of Reference issued by the SEAC also needed Respondent No.4 to describe the ecologically sensitive area near the project which it has not done.
 - Clause 4.8.4 of the EIA Assessment Report for the Power Project extracted in the Appeal states that Sanctuaries, National Parks, Biosphere reserve and Migratory Routes have not occurred in the study area. There is a contradiction to what has been stated in this Clause of the EIA Report and in the Clause 5.6.3 of the EIA report where it states that the Puttenahalli lake was once a breeding centre for certain birds.

Section 8(vi) of the Environment Impact Assessment Notification, 2006 provides for the cancellation of the prior Environmental Clearance granted

on the basis of deliberate concealment and/or submission of false or misleading information or data. Respondent No.4 has failed to declare the existence of the Puttenahalli Bird Conservation Reserve. Therefore, suppression of facts by KPCL should result in cancellation of EC.

9. **Response:**

- a) It is false to state that KPCL has deliberately concealed and/or has submitted false and misleading information to the SEIAA and thereby illegally obtained the present Environmental Clearance. There is no false and misleading information in the Application for Environmental Clearance prescribed in Form No.1 submitted by it on 20/12/2014. It is submitted that on the date on which the said application form was submitted to the SEIAA i.e on **20/12/2014**, the Puttenahalli Lake had not been notified as a Bird Conservation Reserve. There was also no declaration of the same as being a Bird Conservation Reserve as on that date. Therefore, there was no notified Eco Sensitive Zone in existence which was required to be declared in the Application for Environmental Clearance. Therefore, the project does not attract the General Conditions of the EIA Notification.
- b) The General Condition of the EIA Notification, 2006 states that "Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as identified 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, such as, Mahabaleshwar Panchgani, Matheran, Pachmarhi, Dahanu, Doon Valley, and (iv) inter-State boundaries and international boundaries..." Therefore, the General Condition itself considers only areas notified as protected areas or eco-sensitive zones.
- c) The project of the Respondent No.4 did not require approvals to be obtained under the Forest Conservation Act, The Wildlife Protection Act, 1972 and the CRZ notification, 1991, as, on the date on which the application was made there was no notified Eco Sensitive Zone/Area

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within a 10 kms radius of the project due to which the Respondent No.4 would require such approvals. The Respondent No.4 has obtained all required permissions and clearances required for the Project. Respondent No.4 has not utilised any forest land for the construction of its power plant. The Power Plant is located within a pre-existing industrial zone and there was a diesel gas power plant previously operating on the site.

10. **Contention of the Appellant:** The EIA Report does not even make mention of or study the impact of the Power Plant on the Puttenahalli and Yelahanka Lake System.

Response:

- a. It is submitted that the Respondent No.4 has through its consultant, studied the Puttenahalli-Yelahanka lake eco-system extensively while drawing up the EIA Report.
- b. Section 5.6.3 of the EIA report which studies the impact on the Puttenahalli and Yelahanka Lakes has been mentioned by the Appellant itself in the Appeal (Para 28 of the Appeal)
- c. A further reading of Section 5.6.3 of the EIA Report (*at Pg 343 of the Counter Statement of the Respondent No.4*), following the portion extracted by the Appellant in the Appeal (*Para 28 of the Appeal*) states that even though the Yelahanka Lakes were once breeding grounds for certain birds, due to large scale urbanisation and release of untreated *domestic* waste, the bird population visiting the lakes have dwindled and now only local species are seen therein.
- d. Further, while mentioning the possible impacts of Respondent's project on the lakes, the EIA Report specifically states that there will be a negligible impact on the air environment of lakes as the maximum concentration of NO_x, SO₂ and particulate emissions from the site will be negligible. The EIA Report also states that only treated water will be released into the lake from the Project; however, presently, the Respondent No.4 will not be making any discharge of effluents, treated or otherwise, into the lake pursuant to the Zero Liquid

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Discharge condition imposed by the KSPCB in the Condition For Establishment (*Para 3, Pg 710 of Annexure R-12*). Further the EIA report states that the proposed project will not have any effect on the soil quantity as well as sediment quality and it will not generate any solid waste. The Appellant has conveniently chosen to ignore these findings of the EIA Report for its own malafide purposes.

11. **Contention of the Appellant:** The Power Plant is located in a thickly populated area.

12. **Response:** It is submitted that the area in which the Power Plant was set up was notified as an industrial area in 1985 by the Karnataka Industrial Areas Development Board. Prior to the establishment of the Combined Cycle Power Plant using Natural Gas, there was a Diesel Power Plant ("*DG Plant*") operating at the site. The latter was shut down and a more ecologically friendly Natural gas based power plant has now been set up in its place. The Diesel based Power Plant was set up as early as 1993. It is submitted that at the time when the DG Plant was established, there was very little development in the area and the area was purely industrial. The area where the DG Plant was located was initially completely isolated and the city grew over the years and due to a lack of residential spaces within the vicinity of the city, lands in industrial areas were sought to be utilized for the same. Thereafter, as the city of Bangalore expanded more residences were set up around the industrial area. The area where the Power Plant is located became thickly populated only recently and the owners of the residential properties were well aware that their property abutted a functioning industrial area. The Puttenahalli Lake is currently fed by rainwater and from STP effluent discharges from the surrounding apartments.

13. **Contention of the Appellant:** The storm water drain (Rajakaluve) which runs between the Puttenahalli and Yelahanka Lakes has been concretised by the Respondent No.4 thereby destroying the wetland.

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14. Response:

- a) The concrete box drain established by Respondent No.4 was done at the behest of the BBMP as the storm water drain was filled with sewage and the same was spilling out from the storm water drain into the surrounding areas. The BBMP had suggested that a bund be constructed and storm water be diverted into the water body by deepening the drain so that the remaining areas on both sides of the drain could be developed into a Green Area. (*Annexure R-18 at Pg 760-761 of the Counter Statement*) It was in view of the request of the BBMP and recommendation of the EIA report that the Respondent No.4 proceeded to construct the box drain.
- b) As per the recommendations of the Committee constituted by this Tribunal in OA 57/2017, no new structures, changing of existing wetland by removing or adding to existing flora and fauna, will be done by the Respondent No.4 without the consultation of the Chief Wildlife Warden. Further, in order to protect and conserve the wetland, the Respondent No.4 is undertaking studies on the restoration of the wetland and to implement restoration measures in consultation with the Department of Forest, Ecology and Environment, Government of India.

15. Contention of the Appellant: The Respondent No.4's Power Plant will be releasing effluents, thereby polluting the Puttenahalli and Yelahanka Lakes.

16. Response:

- a. The Respondent No.4 will be abiding by the stringent conditions imposed by the Environmental Clearance and the Consent for Establishment issued by the Karnataka State Pollution Control Board.
- b. The Consent for Establishment requires the Respondent No.4 to ensure that there is Zero Liquid Discharge from the Power Plant. Therefore, no effluents will be discharged from the Power Plant into the Lakes as the Respondent No.4 is following the strict Zero Liquid

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discharge condition and is presently setting up a Zero Liquid Discharge Plant pursuant to the same in the Plant Premises. (*Letter of Award at Annexure R-20 at Pg 764 of the Counter Statement*)

- c. The Puttenahalli lake lies upstream of the Power Plant and no effluents could possibly be drained into it.
- d. The Respondent No.4 will be reusing any waste water generated and that the same would not be released into the lake. Therefore the waste water generated in the Power Plant will be used within the Plant itself. As per the Karnataka State Pollution Control Board ("KSPCB"), Consent for Establishment letter dated 02/11/2015, and the EC issued by the SEIAA, the treated effluents conforming to the prescribed standards should be recirculated and reused. The Respondent No.4 is also establishing an Ozonisation plant for water treatment instead of chlorination treatment in the Power Plant at an additional cost of Rs.8 crores to pre-empt any environmental hazards that may be caused by chlorine leakage.
- e. The Respondent No.4 is making all efforts to ensure that the ecological balance of the lake is maintained and is taking steps for developing the greenery around the lake. It is submitted that 33 percent of the total area of the Power Plant site has been reserved for tree plantation. The Respondent No.4 has already taken steps towards plantation of trees in the area of in 2 phases. About 1000 saplings have been planted in the first phase and the planting of 1000 more saplings are being carried out in the second phase.

17. **Contention of the Appellant:** It is not correct to state that the Environmental Clearance is being challenged for the first time before this Hon'ble Tribunal. The same was challenged before the Hon'ble High Court in WP 25189/2018.

18. **Response :** The Environmental Clearance now being challenged by the Appellant was not challenged before the Hon'ble High Court and Supreme Court and is being challenged for the first time before this Tribunal. It is submitted that the Appellant herein filed a WP 25189/2018

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before the Hon'ble High Court of Karnataka seeking the following prayers(*Annexure A-13 at Pgs 229-248 of the Appeal*) :

- a) *Direct the 1st Respondent to consider the representation submitted by the Appellant and initiate necessary action against the 4th Respondent towards the cancellation of the illegal and void environmental clearance bearing SEIAA 20 IND 2014 dated 01.09.2015 issued by the 2nd Respondent herein*
- b) *Direct the 1st and 3rd Respondent to ensure that all steps are taken and necessary financial allocations are made towards preservation of the Puttenahalli Bird Reserve so as to ensure its restoration to its original pristine state.*
- c) *Pass any other orders in the interest of justice and equity.*

19. A perusal of the same clearly shows that the Appellant had not sought to challenge the Environmental Clearance before the Hon'ble High Court. It is pertinent to mention that the prayers were deliberately and adroitly so worded in order to circumvent the issue of limitation which would otherwise arise if the Appellant were to approach the Hon'ble National Green Tribunal directly. The Hon'ble High Court was pleased to dispose the said Writ Petition by way of its order dated 08/03/2019 stating that the matter came under the purview of the National Green Tribunal. It is also necessary to note that the MoEFCC had already considered the representation of the Appellant by virtue of Annexure R-8 which was deliberately withheld and concealed from the Hon'ble High Court as it would have rendered the writ petition infructuous.

20. Thereafter, instead of approaching this Hon'ble Tribunal, the Appellant moved the Hon'ble Supreme Court by way of a Special Leave Petition bearing No. 10555/2019 challenging the impugned order dated 08/03/2019 passed by the Hon'ble High Court of Karnataka. Therefore, the EC was not challenged before the Hon'ble Supreme Court.



21. The Appellant has now approached this Hon'ble Tribunal by way of Appeal No.14/2020 seeking the following reliefs (*Pg 82-83 of the Appeal*):

- a) *Declare the Environment Clearance vide SEIAA 20 IND 2014 dated 01.09.2015 granted by the Karnataka State Environment Impact Assessment Authority (Respondent No.2) ("EC"), to the Karnataka Power Corporation Ltd. (Respondent No.4 herein) as null and void and contrary to the provisions of Environmental Impact Assessment Notification, 2006, and hence cancel the same;*
- b) *Direct the Karnataka Power Corporation Ltd. (Respondent No.4 herein) not to put up the Gas-based Combined Cycle Power Plant at the present site in the vicinity of the Puttenahalli Bird Conservation Reserve and thereby restore the damage done by Puttenahalli-Yelahanka Lakes by illegal encroachment on the lake areas, and*
- c) *Issue an order directing the Respondent No.4 for restitution of environment and to ensure protection of bio-diversity of the Puttenahalli and Yelahanka Lakes and to ensure protection of aquatic life, flora and fauna, and*
- d) *Grant such other relief/reliefs that the Hon'ble Tribunal deems fit in the facts and circumstances of the case, in the interests of justice.*

22. It is submitted that the Hon'ble Supreme Court has permitted the Appellant to approach this Hon'ble Tribunal only in respect of the reliefs sought before the Hon'ble High Court in WP 25189/2018. As the Appellant has raised totally different reliefs before this Hon'ble Tribunal contrary to the direction of the Hon'ble Supreme Court, the Appeal cannot be entertained as the same would be in violation of the directions of the Hon'ble Supreme Court.

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23. The Respondent No.4 prays for the leave of this Tribunal to raise additional grounds and additional citations in support of its case, at the stage of oral arguments.

Wherefore, it is prayed that the instant Appeal be dismissed with costs, in the interests of Justice and Equity.

Date: 21/03/2022



Place: Bengaluru

Advocate for the Respondent No.4