

BEFORE THE NATIONAL GREEN TRIBUNAL

MEMORANDUM OF APPLICATION

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

Application No. 6 of 2013

Between:

**Leo F Saldanha
Aged about 44 years
S/o S. J. Saldanha
1, Pearl Gardens
Vajarahalli
Kanakapura Road
Bangalore 560062**

..... Applicant

AND

**The Union of India
Rep. by its Secretary to Government
Ministry of Environment & Forests and Others**

..... Respondents

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Leo F. Saldanha
Party in Person
Date: 12th February 2014
Place:

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**The Union of India
Rep. By its Secretary to Government
Ministry of Environment & Forests
Prayavaran Bhavan, CGO Complex
Lodhi Road, New Delhi & Others**

.....Respondents

REPLY FILED BY THE APPLICANT

The Applicant states as follows:

1. At the outset the Applicant wishes to draw the attention of this Hon'ble Tribunal to certain egregious actions of certain Respondents who have blatantly flouted the directions of this Hon'ble Tribunal in the aforesaid matter, in particular violating the order dated 21st August, 2013 in which this Tribunal was pleased to direct "we make it clear that the *status quo* which is in existence as on date shall be maintained by the project proponents." This Applicant submits by way of **Annexure A and A1** copies of the police complaints that have been lodged by the District Amrit Mahal Kaval Struggle Committee, Chitradurga, dated 8th January, 2014. These complaints which have been filed before the Deputy Superintendent of Police, Challakere Taluk and Circle Inspector, Challakere Taluk, respectively charge that Respondent 12, namely Defence Research and Development Organisation, and Respondent 13, Indian Institute of Science, have both flagrantly violated the aforesaid direction of this Hon'ble Tribunal and have been involved in a variety of construction activities that involve buildings, walls and various structures of a scale that can only be described as massive. This

Applicant states that despite protests from local communities against such illegal activities by the Respondents, no action has been initiated by any of the statutory authorities and the police to stop such illegal activities and initiating necessary action as per law against the violators. The Applicant also encloses a copy of an article that has appeared in Vijaya Karnataka newspaper, dated _____ at **Annexure B**, that highlights the nature and scale of the ongoing violations. The Applicant prays this Hon'ble court to initiate appropriate action against the violators and their violations.

2. The Applicant respectfully submits by way of this Affidavit a set of resolutions passed by various Grama Panchayats and Grama Sabhas of Challakere Taluk by which they have sought to secure their fundamental rights as per the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Biological Diversity Act, 2002, by constituting Forest Rights Committees and Biodiversity Management Committees. These are annexed at **Annexure C (series)** along with their translations.
3. The Applicant submits at **Annexure D** a copy of a resolution passed by Nelagethanahatti Grama Panchayat, Challakere Taluk, Chitradurga dated 6th September, 2013, along with its translated copy, wherein the Panchayat has described its intricate relationship with the Amrit Mahal Kavals in Challakere and the acute dependency on the same by poor families and Scheduled Tribes of the surrounding 80 villages. The resolution urges the government not to divert the Kavals to any other purpose and pleads that the grassland ecosystem must be retained in its original state for the benefit of present and future generations. The resolution also highlights the fact that the diversion effected thus far has been done on the basis of “false reports”, and “false documents” and thereby the government should cancel all agreements that have been based on such false documents and report and restore the land to its original state.
4. The Applicant submits that a detailed representation, namely '*Forfeiting Our Commons*', was submitted to the Fact Finding Committee appointed by this Hon'ble Tribunal wherein a variety of facts were produced to demonstrate that the said Amrit Mahal Kaval is biodiversity rich and an ecologically sensitive habitat which supports various critically

endangered species and livelihoods of at least 70 villages. It is also on record in the aforesaid submission that the Amrit Mahal Kavals have been protected by local communities for centuries and that the same tradition has continued during the post-Independence period, a fact admitted by the aforesaid Committee. That under the Karnataka Forest Act, 1961 read with Karnataka Forest Rules, 1969 the said Amrit Mahal Kavals are District Forests and in this context this Applicant supports all the submission and contentions produced by Applicant 12/2013 (in the connected matter) by way of Affidavit to this Hon'ble Tribunal on 19th December, 2013.

5. With regard to the common counter filed by the 1st and 3rd Respondents, namely Union Ministry of Environment and Forests, Headquarters and Regional Office at Bangalore, is concerned, this Applicant submits that the Affidavit broadly and specifically supports the contentions raised by the Applicant. In particular the Respondents confirm that the Amrit Mahal Kaval constitute ecologically sensitive areas, are an habitat to critically endangered species such as the Great Indian Bustard and that the entire Kaval ought to be treated as forests in consonance with directions of the Hon'ble Supreme court in W.P (Civil) 202/1995. Keeping this in view it is clear that the ongoing activity of Respondents 10, 11, 12, 13, 14, 15, 16 and any other developer who has accessed the said Amrit Mahal Kaval, is grossly illegal and in blatant contravention of the aforesaid directions of the Hon'ble Supreme court and the Forest Conservation Act, 1980.
6. With regard to the Counter Affidavit filed by the 4th Respondent, namely Karnataka State Pollution Control Board, this Applicant denies all averments made therein except those which have been specifically accepted. This Applicant submits that pursuant to the directions of this Hon'ble Tribunal, the 4th Respondent has extended Consent for Establishment to certain Respondents arraigned in this Application, but subject to the condition that the consent would become inoperable if the land in question is forest land and if it has been diverted in violation of the norms, rules and procedures contained in the Forest (Conservation) Act, 1980 and other such applicable laws. Keeping in view the submission made by the 1st Respondent as cited above, it is evident that any activity undertaken without seeking the prior approval of the 1st Respondent for diverting forest land to non-forest

purposes is in clear abrogation of the law and the aforesaid direction of the Hon'ble Supreme Court. Considering the fact that several of the Respondents who have secured the Amrit Mahal Kavals for their various proposed projects have continued a variety of construction activities without first securing appropriate permissions from the Union Government, such actions constitute serious violations of both law and judgments of the Supreme court and this Hon'ble Tribunal, and thereby the 4th Respondent is bound to withdraw the consent so extended and initiate appropriate criminal action against the said Respondents in strict conformance with applicable law. Further, this Applicant submits that the Consent for Establishment extended by the 4th Respondent to the 14th Respondent, namely M/s Sagitaur, is in gross violation of the office memorandum of the 1st Respondent, namely Union Ministry of Environment and Forests, dated 30th June, 2011 (No.J-11013/41/2006-IA.II(I)), a copy of which is annexed at **Annexure E**. It is evident from this Office Memorandum that the 4th Respondent ought not to have issued the said consent as the area in question involves ecologically sensitive area, is rich in biodiversity, is an habitat to critically endangered dryland species, and the project proposal will cause serious and irreversible disturbance of the habitation which is forest land, and that no prior clearance has been secured by the project proponent for diversion of forest land to non-forest purpose per the Forest (Conservation) Act, 1980. Clearly therefore the consent so extended is void *ab initio*.

7. With regard to the common counter Affidavit filed by the 8th Respondent, namely District Commissioner, Chitradurga, this Applicant states that all the averments made therein are denied as false and that true facts have been submitted by this Applicant in the aforesaid report to the Fact Finding Committee. This Applicant prays that this Hon'ble Tribunal would take note of the serious misrepresentations of fact and clever and deliberate distortions of judicial pronouncements that have been affected by the District Commissioner's office to illegally divert the Amrit Mahal Kavals. This Applicant also submits a detailed survey conducted by the Ullarhi Gram Panchayat of the livestock that is held by its communities, which is verifiable evidence to prove that the averments made in the aforesaid Affidavit by the 8th Respondent are false and misleading and consequently attack the Right to Life and Livelihood of the impacted communities in the most unjust and inhuman manner, and the same is annexed at **Annexure F**.

8. In regard to the common Statement of Objections filed by the 10th Respondent, namely Bhabha Atomic Research Center, and 12th Respondent namely Defence Research and Development Organisation, this Applicant denies all the averments made therein except those which have been specifically accepted in the submissions made by the Applicant. The Applicant draws the attention of this Hon'ble Tribunal to the fact that at para 10 of the aforesaid submission, the 10th Respondent confirms that the proposed “large scale facility viz. Special Material Facility to meet the future requirement of upgraded fuel for use in power sector as well as other strategic purposes”. This statement clearly suggests and implies, and confirms as well, that the said facility is proposed as a civilian and also as defense nuclear project. The Applicant submits that such dual use of nuclear facilities is expressly prohibited under international law, in particular the norms of International Atomic Energy Agency (IAEA), which are binding on India as it has ratified this agreement. The same claim has been repeated at para 13 where the Respondent states brazenly that this project “will also ease the sanction imposed by the international community on such strategic technologies” without coming clean on the mandatory obligations of the country to conform with the IAEA norms. The admitted fact that enormous amount of public money has been already invested in this illegal project clearly demonstrates the cavalier approach of this Respondent in meeting with its obligatory norms per international law and statutory requirements per national law, which amount to seriously jeopardising the public interest and welfare. It is this very cavalier approach against conforming with applicable laws and standards that has been seriously criticized in **Ninetieth Report of the Public Accounts Committee (2013-14) of the 15th Lok Sabha**, a copy of which is annexed at **Annexure G**, which this Applicant prays this Hon'ble Tribunal to take serious note of. With regard to the averments made by the 12th Respondent at para 24 of the common counter Affidavit it is evident that the exemptions claimed at para 26 are not applicable for the project admittedly is a mega project that involves a variety of massive developments including Air Cluster Labs, weapons testing and production facilities. Besides, as has been reported by this Applicant at section VIII of the aforesaid submission '*Forfeiting Our Commons*', the 12th Respondent has already committed various egregious violations of environmental statutes including that of Wildlife (Protection) Act, 1972. Further, the Applicant draws the attention

of this Hon'ble Tribunal to the admitted fact by the Respondent at para 20 that the proposed production of "UAVs have in the present context great use in low intensity conflicts within the country". This statement, the Applicant respectfully submits, is an express and clear admission of the intent to use weaponised UAVs (commonly known as drones) against civilian populations within India, in blatant disregard of the Fundamental Rights of Indians which is enshrined as the bedrock of our democracy and guaranteed by the glorious and Constitution of India, a promise unprecedented in human history.

9. With regard to the averments made by the 11th Respondent, namely Indian Space Research Organisation, this Applicant denies all the averments made therein as untrue except those that are specifically admitted in the Applicant's submissions. In particular, this Applicant respectfully draws the attention of this Hon'ble Tribunal to the admission made at para 16 that "ISRO is yet to finalise the master plan of the campus i.e., the facilities to be located in the proposed campus". This statement, the Applicant submits respectfully, is a clear admission of the fact that this premier high-tech planning agency of this country has no clue about what it intends to do with such massive extents of ecologically sensitive Amrit Mahal Kavals that have been allocated to it. Such granting of largesse by the State is in clear violation of the Directive Principles enshrined in the Constitution of India. In addition, the Respondent's statement is a clear admission of the gross disregard for the environmental protection and planning norms as envisaged in the Environment Protection Act, 1986 and such other laws.

10. With regard to the objection statement filed by the 13th Respondent, namely Indian Institute of Science, the Applicant wishes to deny all averments made therein except those that are expressly admitted here under. The Applicant draws the attention of this Hon'ble Tribunal to the fact that a Biodiversity survey of the said Amrit Mahal Kaval by the Centre for Ecological Sciences, a Centre of Excellence established by the 1st Respondent, namely Ministry of Environment and Forests, a core unit of the 13th Respondent, which has been cited at page 25 of the Applicant's aforesaid submission ('Forefeiting Our Commons'), concludes in making an emphatic case against diversion of these grassland ecosystems for any other purpose as it states:

“Even a short, preliminary, incomplete biodiversity survey of the new campus revealed it to be extraordinarily rich in vertebrate and plant species. **From the spectacular and highly endangered blackbuck to small mammals such as foxes and hares, from the rich diversity of raptors (birds of prey) to the tiny minivets and sunbirds and the large number of native plant species, all these point to a rich, relatively undisturbed natural ecosystem.** There is much that can be learned from studying species of plants and animals that have evolved to thrive in arid landscapes and, in a world where fresh water is becoming an increasingly rare resource, preserving these species and studying their special adaptations to arid environments should surely be a high priority.

Many of the plant and animal species found here are specialists of arid scrub and grassland – ecosystems that have essentially vanished from the Indian subcontinent, or if present, are mostly highly degraded and taken over by exotic, invasive species. The rich diversity of native scrub specialists revealed by this survey, together with the highly endangered status of the blackbuck, found in large numbers on our campus, places upon us a special responsibility to ensure the continued survival of these original inhabitants of our campus. (Emphasis supplied.)”.

11. The Applicant submits that the counter filed by the 14th Respondent, namely M/s Sagitaur Ventures India Pvt Ltd, claims exemption from the applicability of the EIA Notification, 2006 to its project by relying on an Office Memorandum dated 13th May, 2011 (No.J-11013/41/2006-IA.II(I)) issued by one Dr. S. K. Aggarwal, Director, Ministry of Environment and Forests. Speciously the same officer issues another Office Memorandum on 30th June, 2011, annexed as **Annexure E** to this rejoinder, wherein it is stated at para 2 of the Memorandum hat:

“it has been decided that:

- State Pollution Control Board/UTPCC before issuing consent to establish under Air and Water Act to such units may ensure and satisfy themselves by undertaking a site visit that the proposed area does not involve; (i) any wet land, (ii) any agriculture land, (iii) ecologically sensitive area, (iv) areas rich in biodiversity, (v) areas with large habitation. In case, any displacement of habitation is involved, The requisite R&R and CSR should be put in place as per the norms of the respective State Government. Further, if the area involves any forestland, it needs to be ensured that the requisite prior forestry clearance for diversion of forestland has also been

obtained under FC Act.

- In addition, the site should also conform to the provisions of the CRZ Notification, 2011. Under the CRZ Notification, 2011, this activity will be prohibited in the CRZ area.
- It also needs to be ensured that the requisite prior commitment from the Competent Authority for availability of requisite quantity of water for the project is available with the proponent.
- The land so made available for the solar thermal power plant will not be deviated for any other purpose and no change of land use what so ever will be permitted without obtaining requisite clearance from the Competent Authority as applicable.
- All other clearances as may be applicable from other Regulatory Authorities under various Rules and Regulations inter-alia consent under HSM Rules etc. should be available before issue of consent by the SPCB. ”

The Applicant submits that neither the 14th Respondent nor the 1st Respondent have brought this Memorandum to the attention of this Hon'ble Tribunal thus exposing their intent to hide a major policy decision of the Union Government that ecologically sensitive areas and forest areas should not be diverted to Solar Parks, and that Consent for Establishment should not be extended to such projects unless there has been a thorough assessment of the environmental and ecological implications priorly, and also appropriate permissions have been secured per the Forest (Conservation) Act, 1980. Considering the fact that such assessments have not been carried out nor has there been any consideration of the fact that the Amrit Mahal Kavals are indeed forest land by the 14th Respondent and necessary permissions sought for their diversion to non-forest purpose, the entire exercise, including securing of the Consent for Establishment from the 4th Respondent is void *ab initio*.

12. I state that *inter-alia* for the foregoing reasons, the application is liable to be allowed.

Applicant Signature

VERIFICATION

I, Leo F. Saldanha, Applicant No. 6/2013 before this Hon'ble Tribunal, do hereby verify that the contents of paras 1 to 12 are true to the best of my knowledge and that I have not suppressed any material fact.

Date: 12th February 2014

Place:

Signature of the Applicant