

**SYNOPSIS**

The Appellant is constrained to file the present Appeal under Section 22 of the National Green Tribunal Act, 2010 against the impugned final order passed by the Hon'ble National Green Tribunal, Principal Bench (NGT, PB) in Review Application No. 4 of 2021, wherein, it without considering the scope and ambit of Rule 22 of National Green Tribunal (Practice & Procedure) Rules, 2011 (Rules, 2011) and without affording an opportunity to the Appellant to file a reply to the Review Application, erroneously disposed of the same and also closed O.A. No. 111 of 2021 initiated by NGT South Bench.

The State of Karnataka filed a Review Application under Rule 22 of Rules, 2011 seeking inter-alia the following relief.

- (a) *“Review/recall the order dated 21.05.2021 passed by this Hon'ble Tribunal in OA No. 111 of 2021 (SZ) and consequently close the proceedings in OA No. 111 of 2021 (SZ);*
- (b) *Pass an order granting hearing of the present Review Petition before open Court.”*

Rule 22 of the National Greens Tribunal Procedure and Practice Rules 2011 (Rule 2011 deals with application for review and reads as under:-

***Application for review.-***

- (1) *No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.*
- (2) *A review application shall ordinarily be heard by the Tribunal at the same place of sitting which has passed the*

*order, unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by Tribunal sitting at any other place.*

*(3) Unless otherwise ordered by the Tribunal sitting at the concerned place, a review application shall be disposed of by circulation and the Tribunal may either dismiss the application or direct notice to the opposite party.*

*(4) When an application for review of any judgment or order has been made and disposed of, no further application for review shall be entertained.*

*(5) No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise, and also those which are sworn on the basis of the legal advice.*

*(6) The counter affidavit in review application shall also be on a duly sworn affidavit wherever any averment of fact is disputed.*

The Hon'ble Principal Bench, without recording any reasons as contemplated in Rule 22(2) of Rules, 2011 proceeded to dispose off, despite the order under review was passed by the NGT Southern Bench in O.A. No. 111 of 2021. Further, it failed to grant any opportunity to the Appellant to file its reply to the said application and proceeded to dispose off the same on the 1<sup>st</sup> day of hearing held on 17.06.2021.

The NGT Principal Bench proceeded on an erroneous assumption that in the light of pendency of M.A. No. 3127 of 2018 in Civil Appeal No. 2453 of 2007 nothing survives. It failed to consider that the Application pending adjudication relates to the challenge to the preparation of Detailed Project Report for

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Mekedatu Balancing Reservoir Cum Drinking Water Project, while, the issue raised in the Original Application was with regard to taking up road laying work without taking any Forest and Environment Clearances under the Forest Conservation Act, 2003 and **Environment Impact Assessment Notification**, 2006 and the impact on the nearby Reserve Forests and Wildlife Sanctuaries. Admittedly, the project involves a total of 5252.40 Ha out of which 4996 ha is under submergence (3181.9 Ha of Cauvery Wildlife Sanctuary, 1869.5 ha of Reserve Forest and 201 Ha of Revenue land) and remaining 256.40 ha is required for other construction activities.

The Hon'ble Tribunal disposed of Review Application filed by Karnataka based on the assertion made in the application, without affording an opportunity to the Appellant to file a reply as contemplated in Rule 22 of the Rules 2011. Further, the impugned order is in violation of Rule 22 of Rules 2011 and the Principal Bench instead of remanding the matter to NGT South proceeded to take up the Application for review without recording any reason for taking up the same before the Principal Bench at Delhi.

The State of Karnataka in the documents filed before NGT Southern Zone Bench placed on record several documents indicating the steps taken by it which inter-alia included a letter to Dy. Commissioner, Mandya District to allocate the identified lands for undertaking Compensatory Afforestation towards diversion of forest land for the Project. The news report referred to the steps being taken and material collected near the proposed project area which is in reserve forests and

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sanctuaries and that no sanctions or clearances have been obtained by the project authorities.

By the impugned order, the NGT while holding that M.A. is pending adjudication before this Hon'ble Court, which only pertains to grant of permission for pre-feasibility report for preparing the DPR by CWC, and for recalling the said DPR, it proceeded to allow the review application filed by State of Karnataka. The Hon'ble Tribunal which is established to ensure effective environmental protections and conservation of forest, has a power coupled with duty to ensure that the project proponent does not violate the mandate and not to undertake any work without getting prior approvals from the concerned authorities.

In the present case, NGT Southern Bench by its order dated 21.05.2021 took cognizance and directed constitution of a committee to consider as to whether any activity has been undertaken by the project proponent of the State of Karnataka.

It is submitted that the impugned order is without jurisdiction and contrary to the express mandate of the Act and Rules 2011, ought not to have interfered with the order dated 21.05.2021 and in any event, ought to have afforded an opportunity to the Appellant and directed the matter to be placed before Southern Bench of NGT which was in seizure of the matter.

Hence, the present appeal.

**LIST OF DATES AND EVENTS**

- 16.02.2018 This Hon'ble Court rendered its Judgment affirming the final order dated 05.02.2007 passed by Cauvery Water Disputes Tribunal (Tribunal) with certain modifications. [2018(4) SCC 1]
- 04.08.2018 State of Karnataka without the concurrence of the Appellant State submitted a Feasibility Report proposal for the proposed Mekedatu balancing reservoir/ drinking water project with an estimated cost of Rs.5912 crores.
- 17.09.2018 The Appellant vide its letter to CWC conveyed its objections stating inter-alia that:

*“the objections of Tamil Nadu with regard to any new storages by the upper riparian States were specifically recorded in the submissions before this Hon'ble Court that any further capacity to store water would be the cause of further disputes between the States. (Para 353 of Judgment). This Hon'ble Court directed ....” that upper riparian State shall not take any action so as to affect the scheduled deliveries of water to the lower riparian State”. (Para 441). Thus, Karnataka is prevented from taking any suo-motu action which will affect the lower riparian State.*

*Reference was made to the various unauthorised lift irrigation schemes created*

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*by Karnataka, which were contrary to the decision of the Tribunal as affirmed by this Hon'ble Court and the details of such unauthorized schemes were brought to the notice of the Supervisory Committee, on which no action was taken.*

*It was further stated that the CWC ought to have advised Karnataka to get the concurrence of the Tamil Nadu and other co-basin States. Further, any storage structure at Mekedatu will affect the livelihood of lakhs of farmers, who depend on Cauvery waters. CWC was accordingly requested to stop forthwith further processing of the feasibility report submitted by the instrumentality of Government of Karnataka to construct the balancing reservoir at Mekedatu across the river Cauvery and not to give any consent / concurrence for any of the projects in the river Cauvery.*

22.11.2018 CWC granted permission to the Project Authority of Karnataka to go ahead for preparation of DPR subject to certain conditions which inter-alia included views of other co basin States to be taken into consideration while preparing the DPR and that acceptance of the project by CWMA would be a pre-requisite for consideration of the DPR.

30.11.2018 The Appellant filed Misc. Application No. 3127 of 2018 before this Hon'ble Court praying inter-alia

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- (i) *Stay the operation of the permission given by the Central Water Commission on 22.11.2018 to Karnataka Cauvery Neeravari Nigam Ltd., Bangalore, an instrumentality of State of Karnataka to go ahead with preparation of Detailed Project Report for Mokedatu Balancing Reservoir cum Drinking Water project;*
- (ii) *Direct the Central Water Commission, Ministry of Water Resources, to withdraw the letter dated 22.11.2018 issued to the Managing Director, Cauvery Neeravari Nigam Ltd., Bangalore, granting permission for preparation of the Detailed Project Report with regard to the proposed Mokedatu Balancing Reservoir cum Drinking Water project;*
- (iii) *Restrain the State of Karnataka and its instrumentalities namely Cauvery Neeravari Nigam Ltd., from proceeding further with the preparation of the Detailed Project Report with regard to the proposed Mokedatu Balancing Reservoir cum Drinking Water project, pursuant to the permission given by Central Water Commission on 22.11.2018;*
- (iv) *Direct State of Karnataka and its instrumentalities to maintain status quo till the disposal of the present application.*

02.01.2019      The State of Karnataka filed a Counter stating inter-alia that the final order as modified by this Hon'ble Court does not prohibit or bar from constructing a hydro-electric project at the site which is undisputedly located within the

territory of Karnataka and that implementation of the project does not affect the Appellant. Further, the project is for generation of power and to meet drinking water needs and that the water stored in the said reservoir is not meant to be used for irrigation purposes.

21.01.2019 The State of Karnataka filed additional affidavit before this Hon'ble Court stating inter-alia that pursuant to the letter dated 22.11.2018 the DPR has been filed with the CWC and therefore the application filed by Appellant no longer survives.

22.01.2019 The Appellant filed Rejoinder disputing the allegations made in the Counter by Karnataka stating inter-alia that the proposed reservoir is not a designated storage reservoir and that the unilateral action of Karnataka to take up the project is detrimental to the interest of downstream State and that the proposed reservoir is an attempt to impound the flows from the uncontrolled catchment below Kabini and KRS reservoirs, uncontrolled flows from Shimsha, Arkavathy and Suvarnavathy sub-basins and various other small streams. The impounding of these flows from the uncontrolled catchment which contributes to the flows to Tamil Nadu would severely affect the scheduled deliveries to Tamil Nadu during crucial months

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of irrigation season i.e. June to September, which will affect the entire agricultural operations besides affecting drinking water facility in the Cauvery Basin of Tamil Nadu.

- 20.02.2019 The Appellant State filed response to the Additional Affidavit of Karnataka stating inter-alia that its submissions that the application does not survive is totally untenable. The Appellant strongly objected to the permission given to the Project Authority. Further, the conditions imposed therein have not been fulfilled as the objections of Tamil Nadu and Puducherry were not considered, the details of which were set out in the said Additional Affidavit.
- 19.07.2019 In the minutes of the meeting of the Expert Appraisal Committee the issue of grant of ToR was deliberated and the Committee opined that in view of the objections raised by the Appellant, amicable solutions be arrived between the two States and put up for reconsideration for grant of ToR.
- 04.05.2020 In spite of pendency of the matter before this Hon'ble Court, the instrumentality of State of Karnataka (CNNL) vide its letter to Director, MoEF requested for issuance of Terms of Reference (ToR).

- 07.08.2020 The Project Authorities of Karnataka (CNNL) sought suitability certificate for lands identified for compensatory afforestation to obtain Forest and Wildlife Clearances from the Competent Authorities.
- 25.11.2020 The Instrumentality of the State of Karnataka requested the Dy. Commissioner, Mandya to allocate the land for undertaking compensatory afforestation towards diversion of forest lands for the project.
- 15.02.2021 The State of Karnataka vide its letter to Additional Secretary of Revenue Department requested to give necessary instructions to Dy. Comm, Mandya District to carry out inspections and accelerate the process of identification, allocation of compensatory afforestation lands in lieu of diversion of forest land for Mokedadu Project so as to enable Department to carry out further process for submission of applications for Forests and Wildlife clearances from MoEF.
- 15.04.2021 Newspaper Report published in The Times of India, Chennai Edition under the caption "Construction Activity near proposed Mokedatu dam evokes unease in TN".
- 27.04.2021 The Secretary of the Appellant vide his letter to MoWR stated inter-alia that Karnataka has

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commenced preliminary activities like laying roads, collection of construction materials, etc., for the proposed Mokedatu Project, which is causing anguish amongst its farmers. It was also stated that Karnataka cannot suo moto take any action to commence construction of the proposed Mokedatu Project and that the matter is subjudice. The Ministry was requested to advise Karnataka not to initiate any activity with reference to the Mokedatu Project.

- 10.05.2021 The above letter to the Ministry of Jal Shakti, Government of India was forwarded to the State of Karnataka requesting it to furnish its views.
- 21.05.2021 The NGT Southern Zone took suo moto proceedings in O.A. No. 111 of 2021 by which it was pleased to appoint a Joint Committee comprising of (1) a Senior Member from the Integrated Regional Office, Ministry of Environment, Forests & Climate Change, (MoEF&CC) Bangalore, (2) a Senior Officer from the Cauvery Water Management Authority, (3) a Senior Officer from the Cauvery Neeravari Nigam Limited and (4) a Senior Officer from the Forest Department not below the rank of Additional Conservator of Forest, State of Karnataka, to ascertain the genuineness of the allegations made in the newspaper report, and

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directed to submit its Report on or before 05.07.2021.

- 07.06.2021 The State of Karnataka vide its letter to MoWR stated inter-alia that the allegations of appellant do not merit any consideration and that it has not started any preliminary work of the proposed Mokedatu Project. However, it clarified that it reserves its right to take up the project in accordance with law.
- 09.06.2021 The State of Karnataka filed a Review Application No. 04 of 2021 before NGT (Southern Zone) seeking review /recall of order dated 21.05.2021 passed in O.A. No. 111 of 2021 and consequently close the proceedings.
- 17.06.2021 The Appellant came to know about the application being listed before NGT Principal Bench, New Delhi and requested the papers to be served by the Counsel appearing for Karnataka, which were served at 0945 a.m. on 17.06.2021. The matter was taken up by the Principal Bench comprising of 5 Members instead of it being taken up by the Members (Southern Bench), when the Counsel for Appellant sought time to study the papers and file brief reply. However, no time was granted and the Bench proceeded to hear the application for review/recall. The Principal

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Bench was pleased to dispose of the O.A. No. 111 of 2021 as well as R.A. No. 4 of 2021, by holding inter-alia that –

*“9. We have given due consideration to the rival submissions. We find merit in the submission of learned AG for the State of Karnataka that the media report does not mention that the issue of statutory environmental clearances is already pending consideration before the concerned statutory authorities. Even the very same media report has been mentioned by the State of Tamil Nadu Government in its submission before the Ministry of Jal Shakti vide letter dated 27.4.2021 even before taking of cognizance by this Tribunal. Further, the same issue has also been raised by the State of Tamil Nadu before the Hon’ble Supreme Court. Thus, there is no need for this Tribunal to continue the suo moto proceedings.”*

It accordingly closed the proceedings without prejudice to the rival contentions of the parties.

Hence, the present Civil Appeal.

**IN THE SUPREME COURT OF INDIA**

**(Civil Appellate Jurisdiction)**

**CIVIL APPEAL NO.            OF 2021**

**(U/s. 22 of the National Green Tribunal Act, 2010)**

<b>In the matter of:</b>	<b>Position of the Parties</b>	
	<b>Before the Tribunal</b>	<b>Before this Hon'ble Court</b>
1. The Chief Secretary to Govt. of Tamil Nadu, Govt. Secretariat, Fort St. George, Chennai, Tamil Nadu – 600 009.	Respondent No. 5	Appellant No. 1
2. The Principal Secretary to Government, Public Works Department, Government Secretariat, Fort St. George, Chennai, Tamil Nadu – 600 009.	Respondent No. 7	Appellant No. 2
Versus		
1. State of Karnataka, Thro Chief Secretary to Govt., Secretariat, Room No. 320, 3 <sup>rd</sup> Floor, Vidhana Soudha, Bangalore-560 001, Karnataka.	Applicant No. 1	Contesting Respondent No. 1
2. The Principal Secretary to Govt. of Karnataka, Department of Forests, Environment and Ecology, Government Secretariat, Room No. 708, 7 <sup>th</sup> Floor, Gate No. 4, M.S. Building, Bangalore-560 001, Karnataka.	Applicant No. 2	Contesting Respondent No. 2
3. The Secretary to Govt. of Karnataka, Water Resources Department, Government Secretariat, Room No. 304, 3 <sup>rd</sup> Floor, Vikasa Soudha, Bangalore-560 001, Karnataka.	Applicant No. 3	Contesting Respondent No. 3

- |   |                     |                                   |
|---|---------------------|-----------------------------------|
| 4. Union of India,<br>Ministry of Environment,<br>Forests & Climate Change,<br>Rep. by its Secretary,<br>Indira Paryavaran Bhavan,<br>Jor Bagh Road,<br>New Delhi – 110 003.  | Respondent<br>No. 2 | Contesting<br>Respondent<br>No. 4 |
| 5. Department of Water Resources<br>River Development & Ganga<br>Rejuvenation,<br>Rep. by its Secretary,<br>6 <sup>th</sup> Floor Cabin,<br>Shram Shakti Bhawan,<br>Rafi Marg, New Delhi – 110 001.                                     | Respondent<br>No. 3 | Contesting<br>Respondent<br>No. 5 |
| 6. Central Water Commission,<br>Rep. by its Chairman,<br>2 <sup>nd</sup> Floor (South),<br>Sewa Bhawan, R.K. Puram,<br>New Delhi – 110 066.   | Respondent<br>No. 4 | Contesting<br>Respondent<br>No. 6 |
| 7. Cauvery Water Management<br>Authority,<br>Rep. by its Secretary,<br>Office of Chief Engineer,<br>Yamuna Basin Organization,<br>CWC, Kalindi Bhawan,<br>B-5, Tara Crescent Road,<br>Qutub Institutional Area,<br>New Delhi – 110 016. | Respondent<br>No. 8 | Contesting<br>Respondent<br>No. 7 |
| 8. Cauvery Neeravari Nigam Limited<br>Rep. by its Managing Director,<br>Surface Water Data Center<br>Building, 3 <sup>rd</sup> and 4 <sup>th</sup> Floor,<br>Ananda Rao Circle, Bangalore,<br>Karnataka – 560 009.                      | Applicant<br>No. 4  | Contesting<br>Respondent<br>No. 8 |
| 9. The Secretary to Government of<br>Tamil Nadu,<br>Department of Environment &<br>Forests, Govt. Secretariat<br>Fort St. George, Chennai,<br>Tamil Nadu – 600 009.   | Respondent<br>No. 6 | Proforma<br>Respondent<br>No. 9   |

**AN APPEAL UNDER SECTION 22 OF  
NATIONAL GREEN TRIBUNAL ACT, 2010**

To

The Hon'ble Chief Justice of  
India and his companion judges  
of the Hon'ble Supreme Court of  
India.

The humble appeal of  
Appellant above named

**MOST RESPECTFULLY SHEWETH:**

1. The present Appeal under Section 22 of National Green Tribunal Act, 2010 is directed against the impugned final order dated 17.06.2021 passed by the Hon'ble National Green Tribunal, Principal Bench in Review Application No. 4 of 2021 in Original Application No. 111 of 2021, wherein it erroneously allowed the Review Application by setting aside the direction of constitution of a Committee and closed the proceedings.
- 1-A The Respondent No. 1 in the Review Application before the NGT, Principal Bench, has made the Tribunal as 1<sup>st</sup> respondent, and being a statutory body, it has not been made a party in the present appeal.

**2. QUESTIONS OF LAW:**

The following substantial questions of law arise for consideration in the present appeal:

- a) Whether the Hon'ble Tribunal's Principal Bench acted in contravention of Rule 22 of Rules, 2011 in

entertaining the Review Application filed by the State of Karnataka?

- b) Whether the Hon'ble Tribunal exceeded its Review jurisdiction and acted without adhering to the mandate of Rule 22 of Rules, 2011?
- c) Whether the Hon'ble Tribunal's Principal Bench was justified in considering the Review Application filed by State of Karnataka, without recording any reasons, despite review being sought against the order passed by the Southern Zone Bench in O.A. No. 111 of 2021, in breach of Rule 22 of Rules, 2011?
- d) Whether the Hon'ble Tribunal was justified in holding that the issue is sub-judice before this Hon'ble Court in M.A. No. 3127 of 2018 in Civil Appeal No. 2453 of 2007, when the issue involved in this Hon'ble Court pertains to grant of permission for conducting a pre feasibility report and DPR and the issue before the NGT pertains to undertaking activity without permission from authorities?
- e) Whether the impugned order has been passed in violation of the principles of natural justice, in as much as the Appellant was not even afforded any opportunity to file a reply to the application which contained about 600 pages?
- f) Whether the Hon'ble Tribunal was justified in disposing of the Applications without considering the

environmental impact, alongwith the lack of Forest Clearance as well as Environment Clearance of the project?

g) Whether the Hon'ble Tribunal acted in contravention of the object behind the establishment of the Tribunal which is to ensure protection of the environment, conserve forests and other natural resources?

h) Whether the Hon'ble Tribunal was justified in disposing of the applications without taking into consideration the impending environmental damage that would be caused due to the lack of any statutory clearances obtained by the project proponent?

3. The brief facts and circumstances leading to the filing of the present appeal are as under:-

a. This Hon'ble Court rendered its Judgment dated 16.02.2018 affirming the final order dated 05.02.2007 passed by Cauvery Water Disputes Tribunal (Tribunal) with certain modifications. [2018 (4) SCC 1]

b. The State of Karnataka without the concurrence of the Appellant State submitted a Feasibility Report dated 04.08.2018 for the proposed Mokedatu balancing reservoir/ drinking water project with an estimate cost of Rs.5912 crores.

c. The Appellant vide its letter dated 17.09.2018 to CWC conveyed its objections stating inter-alia that:

*“the objections of Tamil Nadu with regard to any new storages by the upper riparian States were specifically recorded in the submissions before this Hon’ble Court that any further capacity to store water would be the cause of further disputes between the States. (Para 353 of Judgment). This Hon’ble Court directed ....” that upper riparian State shall not take any action so as to affect the schedule deliveries of water to the lower riparian State”. (Para 441). Thus, Karnataka is prevented from taking any suo motu action which will affect the lower riparian State.*

*Reference was made to the various unauthorised lift irrigation schemes created by Karnataka, which were contrary to the decision of the Tribunal as affirmed by this Hon’ble Court and the details of such unauthorised schemes were brought to the notice of the Supervisory Committee, on which no action was taken.*

*It was further stated that the CWC ought to have advised Karnataka to get the concurrence of the Tamil Nadu and other co-basin States. Further, any storage structure at Mokedatu will affect the livelihood of lakhs of farmers, who depend on Cauvery waters. CWC was accordingly requested to stop forthwith further processing of the feasibility report submitted by the instrumentality of Government of Karnataka to construct the balancing reservoir at Mokedatu across the river Cauvery and not to give any consent / concurrence for any of the projects in the river Cauvery.*

A copy of the letter dated 17.09.2018 from the Chief Secretary of Appellant to MoWR is annexed herewith and marked as **ANNEXURE: 1 (Page Nos. 29 to 34)**.

- d. CWC granted permission vide its letter dated 22.11.2018 to the Project Authority of Karnataka to go ahead with preparation of DPR subject to certain conditions which inter-alia included views of other co basin States to be taken into consideration while preparing the DPR and that acceptance of the project by CWMA would be a pre-requisite for consideration of the DPR. A copy of letter dated 22.11.2018 issued by CWC to the Project Authority is annexed herewith and marked as **ANNEXURE: 2 (Page Nos. 35 to 43)**.
- e. The Appellant filed Misc. Application No. 3127 of 2018 dated 30.11.2018 before this Hon'ble Court praying inter-alia
- (i) *Stay the operation of the permission given by the Central Water Commission on 22.11.2018 to Karnataka Cauvery Neeravari Nigam Ltd., Bangalore, an instrumentality of State of Karnataka to go ahead with preparation of Detailed Project Report for Mokedatu Balancing Reservoir cum Drinking Water project;*
  - (ii) *Direct the Central Water Commission, Ministry of Water Resources, to withdraw the letter dated 22.11.2018 issued to the Managing Director, Cauvery Neeravari Nigam Ltd., Bangalore, granting permission for preparation of the Detailed Project Report with regard to the proposed Mokedatu Balancing Reservoir cum Drinking Water project;*
  - (iii) *Restrain the State of Karnataka and its instrumentalities namely Cauvery Neeravari Nigam*

*Ltd., from proceeding further with the preparation of the Detailed Project Report with regard to the proposed Mokedatu Balancing Reservoir cum Drinking Water project, pursuant to the permission given by Central Water Commission on 22.11.2018;*

(iv) *Direct State of Karnataka and its instrumentalities to maintain status quo till the disposal of the present application.*

A copy of M.A. No. 3127 of 2018 dated 30.11.2018 filed by Appellant before this Hon'ble Court is annexed herewith and marked as **ANNEXURE: 3 (Page Nos. 44 to 62)**.

- f. The State of Karnataka filed its Counter dated 02.01.2019 stating inter-alia that the final order as modified by this Hon'ble Court does not prohibit or bar from constructing a hydro-electric project at the site which is undisputedly located within the territory of Karnataka and that implementation of the project does not affect the Appellant. Further, the project is for generation of power and to meet drinking water needs and that the water stored in the said reservoir is not meant to be used for irrigation purposes. A copy of reply of Karnataka to M.A. No. 3127 of 2018 before this Hon'ble Court is annexed and marked as **ANNEXURE: 4 (Page Nos. 63 to 83)**.
- g. The State of Karnataka filed additional affidavit dated 21.01.2019 before this Hon'ble Court stating inter-alia that pursuant to the letter dated 22.11.2018 the DPR has been filed with the CWC and therefore the application

filed by Appellant no longer survives. A copy of Additional Affidavit filed by Karnataka in M.A. No. 3127 of 2018 before this Hon'ble Court is annexed and marked as **ANNEXURE: 5 (Page Nos. 84 to 86)**.

- h. The Appellant filed Rejoinder dated 22.01.2019 disputing the allegations made in the Counter by Karnataka stating inter-alia that the proposed reservoir is not a designated storage reservoir and that the unilateral action of Karnataka to take up the project is detrimental to the interest of downstream State and that the proposed reservoir is an attempt to impound the flows from the uncontrolled catchment below Kabini and KRS reservoirs, uncontrolled flows from Shimsha, Arkavathy and Suvarnavathy sub-basins and various other small streams. The impounding of these flows from the uncontrolled catchment which contributes to the flows to Tamil Nadu would severely affect the scheduled deliveries to Tamil Nadu during crucial months of irrigation season i.e. June to September, which will affect the entire agricultural operations besides affecting drinking water facility in the Cauvery Basin of Tamil Nadu. A copy of the Rejoinder dated 22.01.2019 filed by Appellant to the Counter Affidavit filed by 1<sup>st</sup> Respondent is annexed herewith and marked as **ANNEXURE: 6 (Page Nos. 87 to 116)**.
- i. The Appellant State filed response dated 20.02.2019 to the Additional Affidavit of Karnataka stating inter-alia

that its submissions that the application does not survive is totally untenable. The Appellant strongly objected to the permission given to the Project Authority. Further, the conditions imposed therein have not been fulfilled as the objections of Tamil Nadu and Puducherry were not considered, the details of which were set out in the said Additional Affidavit. A copy of the Response dated 20.02.2019 filed by appellant to Additional Affidavit filed by Karnataka is annexed herewith and marked as **ANNEXURE: 7 (Page Nos. 117 to 127)**.

- j. In the minutes of the meeting of the Expert Appraisal Committee dated 19.07.2019 the issue of grant of ToR was deliberated and the Committee opined that in view of the objections raised by the Appellant, amicable solutions be arrived between the two States and put up for reconsideration for grant of ToR. A copy of the Minutes of the Meeting dated 19.07.2019 is annexed herewith and marked as **ANNEXURE: 8 (Page Nos. 128 to 131)**.
- k. In spite of pendency of the matter before this Hon'ble Court, the instrumentality of State of Karnataka (CNL) vide its letter dated 04.05.2020 to Director, MoEF requested for issuance of Terms of Reference (ToR) for EIA studies. A copy of the letter dated 04.05.2020 from CNL to MoEF is annexed herewith and marked as **ANNEXURE: 9 (Page Nos. 132 to 133)**.
- l. The Project Authorities of Karnataka (CNL) vide its letter dated 07.08.2020 sought suitability certificate for lands

identified for compensatory afforestation to obtain Forest and Wildlife Clearances from the Competent Authorities. A copy of the letter dated 07.08.2020 from CNNL to Department of Forest is annexed herewith and marked as **ANNEXURE: 10 (Page Nos. 134 to 135)**.

- m. The Instrumentality of the State of Karnataka requested vide its letter dated 25.11.2020 to Dy. Commissioner, Mandya to allocate land for undertaking compensatory afforestation towards diversion of forest lands for the project. A copy of letter dated 25.11.2020 from State of Karnataka to Dy. Comm, Mandya is annexed herewith and marked as **ANNEXURE: 11 (Page Nos. 136 to 137)**.
- n. The State of Karnataka vide its letter dated 15.02.2021 to Additional Secretary of Revenue Department requested to give necessary instructions to Dy. Comm, Mandya District to carry out inspections and accelerate the process of identification, allocation of compensatory afforestation lands in lieu of diversion of forest land for Mekedatu Project so as to enable Water Resources Department to carry out further process for submission of applications for Forests and Wildlife clearances from MoEF. A copy of letter dated 15.02.2021 from State of Karnataka to Addl. Secretary, Revenue Department, is annexed herewith and marked as **ANNEXURE: 12 (Page Nos. 138 to 140)**.
- o. A Newspaper Report dated 15.04.2021 published in The Times of India, Chennai Edition under the caption "Construction Activity near proposed Mekedatu dam

evokes unease in TN”. A copy of news item, published in Times of India (Chennai Edition) dated 15.04.2021 is annexed herewith and marked as **ANNEXURE: 13 (Page Nos. 141 to 143)..**

- p. Based on the newspaper report, the Secretary of the Appellant vide his letter dated 27.04.2021 to MoWR stated inter-alia that Karnataka has commenced preliminary activities like laying roads, collection of construction materials, etc., for the proposed Mekedatu Project, which is causing anguish amongst its farmers. It was also stated that Karnataka cannot suo moto take any action to commence construction of the proposed Mekedatu Project and that the matter is subjudice. The Ministry was requested to advise Karnataka not to initiate any activity with reference to the Mekedatu Project. A copy of the letter dated 27.04.2021 from Principal Secretary for Appellant to Secretary, MoWR, is annexed herewith and marked as **ANNEXURE: 14 (Page Nos. 144 to 146).**
- q. The above letter to the Ministry of Jal Shakti, Government of India was forwarded vide Appellant’s letter dated 10.05.2021 to the State of Karnataka requesting it to furnish its views.
- r. The NGT Southern Zone vide its order dated 21.05.2021 took suo moto proceedings in O.A. No. 111 of 2021 by which it was pleased to appoint a Joint Committee comprising of (1) a Senior Member from the Integrated Regional Office, Ministry of Environment, Forests &

Climate Change, (MoEF&CC) Bangalore, (2) a Senior Officer from the Cauvery Water Management Authority, (3) a Senior Officer from the Cauvery Neeravari Nigam Limited and (4) a Senior Officer from the Forest Department not below the rank of Additional Conservator of Forest, State of Karnataka, to ascertain the genuineness of the allegations made in the newspaper report, and directed to submit its Report on or before 05.07.2021. A copy of Order dated 21.05.2021 passed by the NGT Southern Zone is annexed herewith and marked as **ANNEXURE: 15 (Page Nos. 147 to 152)**.

- s. The State of Karnataka vide its letter dated 07.06.2021 to MoWR stated inter-alia that the allegations of appellant do not merit any consideration and that it has not started any preliminary work of the proposed Mekedatu Project. However, it clarified that it reserves its right to take up the project in accordance with law. A copy of the letter dated 07.06.2021 from State of Karnataka to MoWR is annexed herewith and marked as **ANNEXURE: 16 (Page Nos. 153 to 155)**.
- t. The State of Karnataka filed a Review Application No. 04 of 2021 on 09.06.2021 before NGT (Southern Zone) seeking review /recall of order dated 21.05.2021 passed in O.A. 111 of 2021 and consequently close the proceedings. A copy of Review Application No. 04 of 2021 filed by 1<sup>st</sup> Respondent before NGT (SZ) without

annexures is annexed herewith and marked as **ANNEXURE: 17 (Page Nos. 156 to 181)**.

- u. The Appellant came to know about the application being listed before NGT Principal Bench, New Delhi and requested the papers to be served by the Counsel appearing for Karnataka, which were served at 09.45 a.m. on 17.06.2021. The matter was taken up by the Principal Bench comprising of 5 Members instead of it being taken up by the Members (Southern Bench), when the Counsel for Appellant sought time to study the papers and file brief reply. However, no time was granted and the Bench proceeded to hear the application for review/recall. The Principal Bench was pleased to dispose of the O.A. No. 111 of 2021 as well as R.A. No. 4 of 2021, by holding inter-alia that –

*“9. We have given due consideration to the rival submissions. We find merit in the submission of learned AG for the State of Karnataka that the media report does not mention that the issue of statutory environmental clearances is already pending consideration before the concerned statutory authorities. Even the very same media report has been mentioned by the State of Tamil Nadu Government in its submission before the Ministry of Jal Shakti vide letter dated 27.4.2021 even before taking of cognizance by this Tribunal. Further, the same issue has also been raised by the State of Tamil Nadu before the Hon’ble Supreme Court. Thus, there is no need for this Tribunal to continue the suo moto proceedings.”*

It accordingly closed the proceedings without prejudice to the rival contentions of the parties.

4. Aggrieved by the above, the Appellant prefers the present Appeal before this Hon'ble Court. The Appellant has not filed any appeal before this Hon'ble Court or any other Court. The present appeal is being filed on the following grounds:

**GROUND**

- I. It is submitted that the impugned order being contrary to the object of the National Green Tribunal Act, 2010 and without compliance of Rules, 2011 deserves to be set aside.
- II. It is submitted that entertaining the Review Application is contrary to Rule 22 of the Rules, 2011 which mandates NGT to record reason to entertain the review application. However, it proceeded to hear the same instead of relegating the Applicant State of Karnataka to NGT Southern Bench which passed the order under review.
- III. It is submitted that direction of the Hon'ble Tribunal is against the essence of Rule 22 of the NGT Rules, 2011 which reads as under:

*“22. Application for review.- (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.*

***(2) A review application shall ordinarily be heard by the Tribunal at the same place of sitting which has passed the order, unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by Tribunal sitting at any other place.***

- IV. It is submitted that the Hon'ble Tribunal exceeded its review jurisdiction and disposed of the Original Application as well as the Review Application against the order passed by NGT (SZ) as though it is an intra court appeal.
- V. It is submitted that the Hon'ble Tribunal erred in holding that the issue is sub-judice before this Hon'ble Court in M.A. No. 3127 of 2018 in Civil Appeal No. 2453 of 2007, which pertains to the grant of permission for conducting a feasibility report and the Detailed Project Report. The issue involved in the NGT was regard to the alleged initiation of activities in reserved forest without any clearances.
- VI. It is submitted that the Hon'ble Tribunal failed to consider the environmental damage likely to be caused by the continuation of the construction works which involves large extent of Reserve Forests and Wildlife Sanctuaries.
- VII. It is submitted that the Hon'ble Tribunal ought not to have disposed of the Application without taking into consideration that no statutory clearances was granted to the preliminary works.

- VIII. It is submitted that the Hon'ble Tribunal acted in contravention of the object of the establishment of Tribunal, which is to ensure effective environmental protection and conservation of forests and other natural resources.
- IX. It is submitted that Hon'ble Tribunal failed to consider that the Miscellaneous Application pending adjudication before this Hon'ble Court is related to the preparation of Detailed Project Report for Mekedatu Balancing Reservoir Cum Drinking Water Project. However, the issue raised in the Original Application was with regard to the lack of Forest Clearances and Environment Clearances under the Forest (Conservation) Act, 1980 as well as the EIA Notification, 2006 and the impact on the nearby Reserve Forests and Wildlife Sanctuaries.
- X. It is submitted that the Hon'ble Tribunal failed to consider that prior environmental clearance is mandatory for projects under the Environment Impact Assessment Notification, 2006, and by the State of Karnataka's own admission, the project has not received the requisite clearances.
- XI. It is submitted that the Hon'ble Tribunal erroneously failed to consider the impact on the nearby Reserve Forests and Wildlife Sanctuaries wherein admittedly, the project involves a total of 5252.40 ha out of which 4996 ha is submergence (3181.9 Ha of Cauvery Wildlife

Sanctuary, 1869.5 ha of Reserve Forest and 201 ha of Revenue land) and remaining 256.40 ha is required for other construction activities, thereby mandating forest Clearance, which has admittedly not been granted to project proponents of State of Karnataka.

- XII. It is submitted that the Hon'ble Tribunal erred in disposing of the Applications when the Environment Impact Assessment of the Project has not been brought on record and by the admission of the State of Karnataka as recorded in Para 5 of the impugned order, only Application for Terms of Reference has been uploaded on the MoEF&CC website, but no Environment Clearance was granted to the project.

*“The project is intended to provide drinking water to the people in Karnataka consistent with the Judgment of the Hon'ble Supreme Court in State of Karnataka v. State of Tamil Nadu, (2018) 4 SCC 1. A feasibility report has been duly prepared which has been forwarded to the Cauvery Water Management Authority. The Secretary, Ministry of Water Resources has been requested to direct the concerned authorities to consider the report. The Central Water Commission (CWC) has communicated with the Cauvery Neeravari Nigam Limited (CNNL) on the subject. A detailed project report in respect of the project has been submitted to the Central Water Commission and is pending approval. Application for Terms of Reference (ToR) for preparation of Environment Impact Assessment (EIA) and Environmental Management Plan (EMP) has been*

*uploaded on the website of the MoEF&CC on 20.06.2019. The Expert Appraisal Committee of the MoEF&CC held a meeting. **The CNNL has sought clearance from MoEF&CC as well as Forest and Wildlife clearances from competent authorities.***"

5. The Appellant craves leave of this Hon'ble Court to add to and / or amend the said grounds. The Appellant has not preferred any other appeal against the order impugned herein before this Hon'ble Court.

**PRAYER**

It is most respectfully prayed that this Hon'ble Court may be pleased to

- a) Admit and allow the present Appeal of the appellant and set aside the impugned final order dated 17.06.2021 passed by the Hon'ble National Green Tribunal (Principal Bench) in R.A. No. 4 of 2021 in O.A. No. 111 of 2021(SZ); and
- b) Pass such further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE APPELLANT AS IN DUTY BOUND SHALL EVER PRAY.

Drawn By  
G. Umapathy, Advocate.

Filed By

Settled By:  
R. Shanmugasundaram,  
Advocate General,

D. KUMANAN  
Advocate on Record  
State of Tamil Nadu  
78384 26676

Filed On: .08.2021.