BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH AT BHOPAL

ORIGINAL APPLICATION NO: ____ OF 2021

IN THE MATTER OF:-

RAJESH KUMAR TRIPATHI …APPLICANT

VERSUS

UNION OF INDIA & ORS …RESPONDENTS

SYNOPSIS

The applicant, by way of the present application, seeks to raise substantial questions related to environment arising out of violations of EIA Notification, 2006, read with Ministry of Environment, Forest and Climate Change ('MoEF') Office Memorandum ('OM') concerning 'public hearings', dated 14.09.2020 by the Chhattisgarh Environment Conservation Board ('Board').

The applicant submits that the Board has been conducting and scheduling public hearing proceedings under the EIA Notification without enforcing any COVID appropriate measures in public hearings in accordance with OM dated 14.09.2020. Specifically, the Board conducted a hearing for expansion of a coal washery unit in Village Chote Dumarpali, District Raigarh, where a public gathering of more than 10,000 people was present without any enforced preventive measures in place including social distancing, staggered entry of individuals, and mask wearing. Despite various representations made to the Board, it has scheduled two more public hearings on 28.07.2021 and 30.07.2021 where similar violations are apprehended. The applicant submits that these violations of legislation of Schedule I of the NGT Act, 2010 will have a direct, measurable, fatal, and large scale impact on public health.

The OM dated 14.09.2020 specifically mentions as follows:

"The State/UT Pollution Control Boards/Committees shall restrict the number of persons gathered, to the ceiling specified by the Ministry of Home Affairs from time to time, for a single gathering and conduct the public hearing with adequate social distancing and other safeguards as issued by the Government from time to time." (emphasis of the applicant)

The applicant submits that in light of increasing risk of a third wave of the coronavirus, the Ministry of Home Affairs recently issued an advisory to all states mentioning as follows:

"6. You would appreciate that we must guard ourselves against complacency and laxity which creep in as positivity declines. Instead, during the periods of low positivity, efforts must be stepped up to prevent any probable future surge. …

8. I would, therefore urge you, to issue strict directions to the district and all other local authorities concerned to regulate the crowded places, and take necessary measures to for management of COVID-19. The officers concerned should be made personally responsible for any laxity in strict enforcement of COVID appropriate behavior. …

To Chief Secretaries of all states"

Furthermore, the Hon'ble Supreme Court of India, in a recent order passed in the matter of **In Re: Alarming Newspaper Report regarding Kanwar Yatra in State of U.P**, Suo Motu Writ (C) No. 5/2021 has re-emphasized the fundamental right to life of citizens as the single most important priority for the Government in light of an impending third wave of the coronavirus. The relevant portion of the order dated 16.07.2021 is reproduced below:

"We are of the view that this is a matter which concerns everyone of us as citizens of India, and goes to the very heart of Article 21 of the Constitution of India, which has a pride of place in the fundamental rights Chapter of our Constitution. The health of the citizenry of India and their right to "life" are paramount. All other sentiments, al beit religious, are subservient to this most basic fundamental right." (emphasis of the applicant)

The applicant submits that furthermore, the District Magistrate of Raigarh has imposed stringent restrictions on any public gatherings via directions dated 05.06.2021:

"Pending further directions the following activities will be completely restricted: …

iii. All kinds of gatherings, processions, sit-in/protest, demonstration, social, religious, or political organization will be completely restricted."

To the best of the knowledge of the applicant, no further directions have been issued by the District Magistrate making any relaxations with respect to large scale public gatherings.

The applicant submits that despite the above stated directions and advisory coming from the Union and State level government, the Board continues to organize large scale public gatherings whilst failing to enforce any COVID appropriate preventive measures. Not only will this have an impact on public health as stated above, it also reduced a public hearing proceeding to a mere incantation and empty formality, where citizens are expected to be present at large scale public gatherings despite a mortal threat to their lives.

The applicant submits that in such a case where citizens are under immense stress because of the pandemic and public health emergency, they cannot be expected to participate meaningfully in proceedings as intended and mentioned in the EIA Notification, 2006.

In such a serious situation where public hearings are being organized in a public health emergency, the urgent intervention of this Hon'ble Tribunal is warranted, issuing crucial future guidance to prevent injury to the environment. The applicant submits that a public hearing which is an exercise in empty formality has a direct and negative impact on decisionmaking with respect to the environment.

This Hon'ble Tribunal has wide ranging jurisdiction to pass such directions and future guidance to ensure that OM dated 14.09.2020 is strictly adhered to by the Board. The Hon'ble Supreme Court in the case of **Director General (Road Development) National Highways Authority of India v. Aam Aadmi Lokmanch & Ors.** 2020 SCC Online SC 572, has held that:

"… general directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, can be given by the NGT."

In the absence of these directions, the Board is expected to continue organizing such large scale public gatherings without any respect for the fundamental right to life and health of citizens. Hence this application under Section 14, 19, and 20 the National Green Tribunal Act, 2010, read with

Rules 14 and 21 of the National Green Tribunal (Practices and Procedure) Rules, 2011.

LIST OF DATES

S.No.	Date	Particulars
1.	14.09.2006	Environment Impact Assessment Notification is notified by the Ministry of Environment, Forest and Climate Change with specific provisions in Appendix IV to ensure widest possible public participation in public hearing proceedings. Appendix IV of this notification empowers Pollution Control Boards to take 'untoward emergency situations' into account before organizing public hearings.
2.	11.03.2020	The World Health Organization declares COVID-19 as a global pandemic.
3.	24.03.2020	Ministry of Home Affairs recognizes WHO declarations and imposes stringent guidelines to control the COVID public health emergency and pandemic.
4.	22.06.2020	The District Magistrate, Raigarh, issues directions imposing stringent restrictions on any gatherings in religious venues. The public hearing on 28.07.2021 is taking place at a religious venue i.e Maa Banjari Temple, Taraimal, Raigarh. The directions are as follows: "5. Visitors are made to enter one by one. At any one point of time, permission for a maximum of 5 (five) visitors will be there. Crowd must not be created simultaneously inside."
5.	14.09.2020	Ministry of Environment, Forest and Climate change issues its OM restricting public hearing proceedings under EIA Notification, 2006. MoEF clarifies that the guidelines in the OM are subject to: "The State/UT Pollution Control Boards/Committees

		shall restrict the number of persons gathered, to the ceiling specified by the Ministry of Home Affairs from time to time, for a single gathering and conduct the public hearing with adequate social distancing and other safeguards as issued by the Government from time to time." (emphasis of the applicant)
6.	15.05.2021	District Magistrate of Raigarh declares entire district as containment zone in light of COVID-19 emergency.
7.	29.05.2021	Chhattisgarh Environment Conservation Board issues public advertisement for public hearing concerning expansion of coal washery plant of M/s Bhatia Energy and Minerals Pvt. Ltd.
8.	05.06.2021	The District Magistrate, Raigarh imposes stringent restrictions on any public health gatherings in light of the pandemic spread and increasing deaths, also continuing classification of entire district as a containment zone: "Pending further directions the following activities will be completely restricted: … iii. All kinds of gatherings, processions, sit-in/protest, demonstration, social, religious, or political organization will be completely restricted."
9.	17.06.2021	Applicant has representations sent to respondents herein raising serious issues with conducting public hearing during COVID-19 emergency. To the best of knowledge of applicant, no response has been received by any respondent despite emergency situation.
10.	19.06.2021	MHA issues circular to all Chief Secretaries mentioning as follows: "… It is therefore, essential to ensure that complacency does not set in, and there is no let-up in adhering to COVID appropriate behavior …"
11.	22.06.2021	State of Chhattisgarh asks all internal departments to abide by MHA circular dated 19.06.2021.
12.	25.06.2021	Chhattisgarh Environment Conservation Board issues public advertisement for public hearings concerning expansion of steel plant of M/s Singhal Enterprises Pvt. Ltd.

13.	29.06.2021	Chhattisgarh Environment Conservation Board issues public advertisement for public hearings concerning expansion of steel plant of M/s Ind Synergy Ltd.
14.	30.06.2021	The public hearing concerning expansion of coal washery of M/s Bhatia Energy and Mineral Pvt. Ltd. is carried out in complete violations of orders of District Magistrate and OM dated 14.09.2020. Thousands of people were exposed to the virus in absence of any enforcement of preventive measures concerning coronavirus.
15.	02.07.2021	This Hon'ble Tribunal, observes that authorities may proceed in accordance with law with respect to public hearing conducted on 30.06.2021 in OA 41/2021/CZ.
16.	08.07.2021	Applicant has further representation sent to respondents herein raising serious concerns about public hearings during the pandemic.
17.	14.07.2021	MHA issues another advisory asking all states to ensure that no complacency sets in with respect to COVID and that all preventive measures should be strictly taken.
18.	19.07.2021	Applicant is constrained to move to file lawsuit before this Hon'ble Tribunal considering the emergency situation.

BEFORE THE NATIONAL GREEN TRIBUNAL

CENTRAL ZONE BENCH AT BHOPAL

(Application under Section 14 read with Sections 19 and 20 of the National Green Tribunal Act, 2010)

ORIGINAL APPLICATION NO. _____ 2021

IN THE MATTER OF:

RAJESH KUMAR TRIPATHI

Member, Jan Chetna, Raigarh,
Kelo Vihar Colony, Raigarh,
Chhattisgarh,
PIN: 496001 … APPLICANT

VERSUS

1. **UNION OF INDIA**

   Through the Director (Coal Mining, and Industry – I) at
   Agni Block, Indira Paryavaran Bhawan
   Ministry of Environment, Forest and Climate Change
   Jor Bagh, New Delhi – 110003
   Ph: 01124695328/137; 91 82750 45979
   Email: iro.raipur-mefcc@gov.in

2. **CHHATTISGARH ENVIRONMENT CONSERVATION BOARD**

   Through the Regional Officer
   Chhattisgarh Environment Conservation Board
   T.V. Tower Road, Raigarh
   Dist: Raigarh (C.G.) - 496001
   Phone No.: 07762-226569
   e-mail: hocecb@gmail.com

3. **DISTRICT COLLECTOR**

   Collectorate Parishar,
   Raigarh (CG) – 496001
   Phone No.: 07762-222301
   e-mail: raigarh.cg@nic.in … RESPONDENTS

I. The address of the Applicant's counsels is given above for the service of notices of this application.

II. The addresses of the Respondents are given above for the service of notices of this application.

MOST RESPECTFULLY SHOWETH:

III. That the applicant, by way of the present application, seeks to raise substantial questions relating to the environment arising out of violation of the Environment Impact Assessment (EIA) Notification, 2006 read with Office Memorandum (OM) dated 14th September, 2020 issued by the Ministry of Environment, Forest and Climate Change (MoEF), imposing restrictions on public hearings under the EIA Notification, 2006, in light of the coronavirus public health emergency.

The applicant submits that the Chhattisgarh Environment Conservation Board and District Magistrate, Raigarh have conducted a public hearing in District Raigarh, on 30th June, 2021 for expansion of a coal washery where more than 10,000 people gathered without enforcing any COVID related precautionary measures, seriously endangering public health, and their ability to meaningfully register concerns under the Paragraph 7 (III) of the EIA Notification, 2006.

A copy of representation dated 17th June, 2021, sent to respondents raising serious concerns with organizing public hearings at the time of a public health emergency is annexed herewith as **Annexure A – 1 (Colly)**. A Copy of OM dated 14th September, 2020 is annexed herewith as **Annexure A – 2**. Copies of photographs of public hearing dated 30th June, 2021, showing complete violation of OM dated 14th September, 2020 are annexed herewith as **Annexure A – 3 (Colly)**.

IV. That furthermore, the Board continues to schedule public hearings for capacity expansion of two steel plants on 28th July, 2021 and 30th July, 2021 in District Raigarh, where similar serious violations of the law and danger to public health are apprehended.

The applicant has made all efforts to raise concerns with these public hearings with the respondents, to no avail. A copy of representation dated 8th July, 2021 and 18th July, 2021, is annexed herewith as **Annexure A – 4**.

V. That the present petition raises the following substantial questions relating to the environment under Section 14 of the NGT Act, 2010:

i. Whether a public hearing proceeding conducted during a worldwide public health emergency without any enforced precautionary measures in place, is an empty formality under the EIA Notification, 2006,

ii. Whether a direct violation of a statutory environmental obligation leading to immediate impacts on public health may be addressed under Section 14 of the NGT Act, 2010,

iii. Whether decisions likely to have such immediate impacts in violation of a statutory environmental obligation may be taken by the Chhattisgarh Environment Conservation Board in light of:

a. Continuing guidance warning against such decisions, from the Union Government and State of Chhattisgarh? and
b. Instances where public health was seriously endangered in the recent past due to these decisions,

iv. Whether the threshold under Paragraph 7 read with Appendix IV of the EIA Notification, 2006, for reviewing a public consultation is based on number of participating individuals or an equal and fair opportunity to participate?

v. Whether the Government is required to apply its mind to the presence of ‘untoward emergency situations’ prior to conducting a public hearing proceeding in implementing the Environment Protection Act, 1986, and Environment Impact Assessment Notification, 2006,

vi. Whether the Environment Protection Act, 1986, and Environment Impact Assessment Notification, 2006 require the Government to ensure that public hearing proceedings are not compromised in any way by ‘untoward emergency situations’?

vii. Whether ‘COVID-19 and resultant restrictions’ come within the ambit of the phrase ‘untoward emergency situation’ in Appendix IV of the Environment Impact Assessment Notification, 2006?

viii. Whether this Hon’ble Tribunal has the powers to issue future guidance on the issue of application of mind (of Government) to ‘untoward emergency situations’ as it concerns the implementation of the Environment Impact Assessment Notification, 2006?

FACTS IN BRIEF:

1. That the Applicant is a public spirited, socially motivated and environmentally vigilant citizen working for the welfare of environment and related issues in Raigarh district since more than about two decades. He is also a member of Jan Chetna which is an organization based in Raigarh, working for creating awareness regarding coal mining, forest rights, and river pollution. He is based in Raigarh district, Chhattisgarh.

2. That Respondent No. 1 is the Union of India represented through the Ministry of Environment, Forest and Climate Change (‘MoEF’). The MoEF is responsible for implementing the EIA Notification, 2006, issuing O.M dated 14.09.2020, appraising the projects and activities under the EIA Notification, 2006, and deciding whether they should be given a clearance under the Environment Protection Act, 1986. Respondent No. 2 is the Chhattisgarh Environment Conservation Board, responsible for carrying out the public hearing proceedings under the EIA Notification, 2006. Respondent No. 3 is the District Collector of Raigarh, who is responsible for maintaining law and order in the district, and who ascertains the presence of any ‘untoward emergency situation’ therein.

3. That the present fact situation concerns public hearings within the District of Raigarh, Chhattisgarh, including:

a. Hearing dated 30.06.2021 organized at Village Chote Dumarpali, District Raigarh, w.r.t capacity expansion of a coal washery unit operated by M/s Bhatia Energy and Minerals Pvt. Ltd from 0,96 to 5.0 Metric Tons per Annum,
b. Hearing dated 28.07.2021 at Maa Banjari Mandir area, Village Taraimal, District Raigarh, for capacity expansion of integrated steel plant from 2,83,500 Tons per Annum to 4,46,000 Tons per Annum and from 16 MW to 40 MW of power generation, operated by M/s Singhal Enterprises Pvt. Ltd.,
c. Hearing dated 30.07.2021 at M/s Ind Synergy Ltd. area, Village Siarpali, Raigarh, for capacity expansion of integrated steel plant from 3,00,000 to 6,30,000 Tons per Annum and from 24 MW to 99 MW of total power generation operated by M/s Ind Synergy Ltd.

Copies of newspaper advertisements for public hearings of each of these are annexed herewith as **Annexure A – 5**. Copies of relevant portion of EIA for each of these industries are annexed herewith as **Annexure A – 6**.

4. That the applicant makes the following submissions in support of the contents of paragraphs III and IV above:

I. The Chhattisgarh Environment Conservation Board has failed to duly apply its mind and acted in gross violation of the provisions of EIA Notification read with OM dated 14.09.2020,
II. The violations of EIA Notification, 2006 and OM dated 14.09.2020, and future imminent apprehension of similar violations, raise substantial questions related to environment under Section 14 of the NGT Act, 2010,
III. Scheduling public hearing in without considering ‘untoward emergency situation’ during a nationwide public health emergency frustrates the purpose of EIA Notification, 2006, and
IV. This Hon’ble Tribunal has power to give meaning to unambiguous words in phrase ‘untoward emergency situation’ under EIA Notification, 2006, and issue relevant guidance, applicable across the nation.

THE CHHATTISGARH ENVIRONMENT CONSERVATION BOARD HAS FAILED TO DULY APPLY ITS MIND AND ACTED IN GROSS VIOLATION OF THE PROVISIONS OF EIA NOTIFICATION READ WITH OM DATED 14.09.2020

5. That on 14.09.2020, the MoEF published an OM consisting of guidance for organizing public hearings taking the pandemic public health emergency into consideration. This OM relies on guidelines of the MHA dated 29.08.2020, requiring mandatory social distancing at public gatherings. The relevant portion of the OM is reproduced below:

> "The State/UT Pollution Control Boards/Committees shall restrict the number of persons gathered, to the ceiling specified by the Ministry of Home Affairs from time to time, for a single gathering and conduct the public hearing with adequate social distancing and other safeguards as issued by the Government from time to time." (emphasis of the applicant)

6. That the MoEF, in its wisdom, specifically mentioned the phrase "other safeguards as issued by the Government from time to time" to account for the rapidly changing conditions in the pandemic. The applicant submits that the MHA has most recently issued an advisory on 14.07.2021 which mentions as follows:

> "3. … blatant violations of COVID norms have been observed across several parts of the country, especially in public transport and at hill stations. Massive crowds are also thronging the market placed, violating norms of social distancing. … Therefore, it is important that authorities concerned shall be made responsible for ensuring COVID appropriate behavior (CAB) in all crowded places …
>
> 4. It needs to be ensured that if the norms of COVID appropriate behavior are not maintained at any establishment/premises/markets etc., such places shall be liable for reimposition of restrictions for containing the spread of COVID-19 and the defaulters shall also be liable for action under the relevant laws. …
>
> 6. You would appreciate that we must guard ourselves against complacency and laxity which creep in as positivity declines. Instead, during the periods of low positivity, efforts must be stepped up to prevent any probable future surge. …
>
> 8. I would, therefore urge you, to issue strict directions to the district and all other local authorities concerned to regulate the crowded

places, and take necessary measures to for management of COVID-19. The officers concerned should be made personally responsible for any laxity in strict enforcement of COVID appropriate behavior. …

To Chief Secretaries of all states"

A copy of MHA advisory dated 14.07.2021 is annexed herewith as **Annexure A – 7**.

7. That furthermore, the Government of Chhattisgarh has imposed multiple stringent restrictions on any public gatherings since June, 2021. On 05.06.2021, the District Magistrate issued directions prohibiting any public gatherings in the entire district. The District Magistrate also made it clear that the district will be a 'containment zone' to prevent any increase in coronavirus related fatalities. Relevant portions from directions dated 05.06.2021 are reproduced hereunder:

"Pending further directions the following activities will be completely restricted: …

iii. All kinds of gatherings, processions, sit-in/protest, demonstrations, social, religious, or political organization will be completely restricted."

To the best of the applicants' knowledge, no further directions have yet been issued by the District Magistrate, making any kind of relaxations. A copy of directions dated 05.06.2021 is annexed herewith as **Annexure A – 8**.

8. That on a reading of OM dated 14.09.2020, Direction dated 05.06.2021, and Advisory dated 14.07.2021, it is clear that public hearings shall be strictly regulated, as public gatherings. This regulation has been mandated at the Union as well as State level, from the MHA, MoEF, and Government of Chhattisgarh.

9. That despite this, the Chhattisgarh Environment Conservation Board organized a public hearing on 30.06.2021, without enforcing any kind of COVID appropriate norms. There was no social distancing on site at Village Chote Dumarpali, Raigarh, and a large proportion of people were not wearing masks, including children and infants. Further, a

total of more than 10,000 people attended the hearing, to the best of the applicants' knowledge, greatly increasing chances of spread of the virus. Photographs depicting the scale of crowding and lack of social distancing in public hearing dated 30.06.2021 have been annexed above as Annexure A – 3 (Colly).

10. That in implementing provisions of EIA Notification, 2006, by organizing the a public gathering at a time of a public health emergency, without any COVID appropriate behavior enforced, the Chhattisgarh Environment Conservation Board has acted in gross violation of OM dated 14.09.2020 read with various directions of the Union and State Government with respect to COVID. The applicant submits that a serious and deadly threat is directly likely to result due to these violations by the Board, and its concerned officers may accordingly be held liable and directed to strictly adhere to relevant directions of the government.

11. That this Hon'ble Tribunal, in order dated 02.07.2021, in **O.A 41 of 2021 (CZ)** has specifically mentioned as follows with respect to the public hearing dated 30.06.2021:

> "Statutory authorities are at liberty to proceed <u>in accordance with law</u> and in case, if anybody is aggrieved by the order of the authorities, remedy lies in approaching to appropriate forum." (emphasis of applicant)

The applicant respectfully submits that he, being a part of the said public hearing proceeding, is aggrieved and directly impacted by the serious violations of law. A copy of order dated 02.07.2021 is annexed herewith as **<u>Annexure A – 9</u>**.

12. That the Hon'ble Supreme Court, in its recent order dated 16.07.2021, in the matter of **In Re: Alarming Newspaper Report regarding Kanwar Yatra in State of U.P**, Suo Motu Writ (C) No. 5/2021 has re-emphasized the fundamental right to life of citizens as the single most important priority for the Government in light of an impending third wave of the coronavirus. The applicant submits that the right to life of citizens takes precedence over any other interest during the

pandemic, and directions to enforce stringent preventive mechanisms in all public gatherings are necessary. The relevant portion of the order dated 16.07.2021 is reproduced below:

"We are of the view that this is a matter which concerns everyone of us as citizens of India, and goes to the very heart of Article 21 of the Constitution of India, which has a pride of place in the fundamental rights Chapter of our Constitution. The health of the citizenry of India and their right to "life" are paramount. All other sentiments, al beit religious, are subservient to this most basic fundamental right." (emphasis of the applicant)

A copy of order dated 16.07.2021 is annexed herewith as **Annexure A – 10.**

THE VIOLATION OF EIA NOTIFICATION, 2006 AND OM DATED 14.09.2020, AND FUTURE IMMINENT APPREHENSION OF SIMILAR VIOLATIONS, RAISES SUBSTANTIAL QUESTIONS RELATED TO ENVIRONMENT UNDER SECTION 14 OF THE NGT ACT, 2010

13. That substantial question related to environment as been defined as follows under the NGT Act, 2010, to include an instance where:

"2 (1) (m) … (i) there is a direct violation of a specific statutory environmental obligation by a person by which –
(A) The community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or …
(C) The damage to public health is broadly measurable; …"

14. That the facts in this case are an instance of direct violation of a specific statutory environmental obligation which is EIA Notification, 2006 read with MoEF OM dated 14.09.2020. As a direct result of this violation, the people of District Raigarh, and beyond, are directly at heightened risk of contracting coronavirus.

15. That considering communications in form of OM dated 14.09.2020, Direction dated 05.06.2021, and Advisory dated 14.07.2021, it is sufficiently clear that the public hearing was conducted during a time of serious emergency. Not only did the Board fail to regulate the

public gathering according to these communications, it also conducted a public hearing at a time of emergency, endangering their fundamental right to health of citizens.

16. That the applicant submits that conducting a public hearing at a time of emergency reduces it to a mere incantation, and empty formality. The applicant respectfully submits that the Board was well within its discretion to organize public hearings at a later time by when an imminent danger of the third wave of the coronavirus was adequately addressed by the government. The Hon'ble Supreme Court, in the case of **Hanuman Laxman Aroskar v. Union of India & Ors.,** (2019) 15 SCC 401:

> "101. … Public consultation cannot be **reduced** to a mere incantation or a procedural formality which has to be completed to move on to the next stage." (emphasis of the applicant)

17. That despite serious violations of law directly impacting the community at large, the Chhattisgarh Environment Conservation Board continues to sanction public hearings in Raigarh district. It is submitted that the Board recently announced hearings for 28.07.2021 and 30.07.2021, where the applicant apprehends similar serious violations of law may occur, leading to compounded and fatal consequences for the people of Raigarh district, due to uncontrolled spread of the coronavirus.

18. That one of the hearings scheduled on 28.07.2021 for M/s Singhal Enterprises Pvt. Ltd. has been scheduled in the Maa Banjari temple area in Village Taraimal, Raigarh, where the District Magistrate has imposed stringent restrictions on any gatherings in religious places via directions dated 22.06.2020. The relevant portion of these directions is reproduced below:

> "The World Health Organization has declared coronavirus (COVID-19) as a pandemic. Due to the spread of coronavirus, India, and the entire world is danger. In view of spread in the district, and via Official Direction No. 4916/Corona Cell/2021, Raigarh, dated 11.06.2021, some restrictions and directions were passed, revising which the following conditions are imposed with respect to any permission for prayer/operation in religious place/venue:

…

5. Visitors are made to enter one by one. At any one point of time, permission for a maximum of 5 (five) visitors will be there. Crowd must not be created simultaneously inside."

A copy of directions dated 22.06.2020 is annexed herewith as **Annexure A – 11**.

19. That considering recent and grave violations of the EIA Notification, 2006 read with OM dated 14.09.2020, on 30.06.2021, and imminent risk of such a violation occurring again at the behest of the Chhattisgarh Environment Conservation Board, directions in the form of future guidance are crucial to prevent lasting impact to public health. The Hon'ble Supreme Court, in the case of **Director General (Road Development) National Highways Authority of India v. Aam Aadmi Lokmanch & Ors.** 2020 SCC Online SC 572, has held that:

"… general directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, can be given by the NGT."

The applicant submits that a public hearing that is a mere incantation directly and negatively impacts the decision making processes under the EIA Notification, 2006, and hence injures the environment. Therefore, this Hon'ble Tribunal is well within its powers to issue binding guidance taking into account the circumstances in the district of Raigarh, and the entire nation at the moment.

SCHEDULING PUBLIC HEARING WITHOUT CONSIDERING 'UNTOWARD EMERGENCY SITUATION' FRUSTRATES THE PURPOSE OF EIA NOTIFICATION, 2006

20. That Appendix IV of the EIA Notification, 2006 specifically mentions the possibility of postponing a public hearing in cases of 'untoward emergency situations'. The applicant submits that the present fact situation likely falls within the meaning of 'untoward emergency situation', hence attracting the 'postponement exception' under Appendix IV of the EIA Notification, 2006. The applicant reiterates

that protecting the right to life of citizens is of paramount and overriding importance at the moment.

21. That considering OM dated 14.09.2020, Direction dated 05.06.2021, and Advisory dated 14.07.2021, the Chhattisgarh Environment Conservation Board should have sought the opinion of the District Magistrate on postponement of the public hearings including those dated 28.07.2021 and 30.07.2021, especially concerning the unfortunate instance of unregulated gathering of thousands of people at public hearing dated 30.06.2021.

22. That the notification requires that citizens get a fair opportunity to voice their concerns with respect to a project, in Paragraph 7. Considering the nationwide second wave of COVID-19, there is a reasonable likelihood that citizens that are already suffering immense stress and loss, may not be able to meaningfully voice their grievances as intended by the legislature in the EIA Notification, 2006. The applicant submits that the present pandemic is a nationwide emergency situation, and pollution control boards charged with conducting public hearings, including the Chhattisgarh Environment Conservation Board must take this into account while implementing the provisions of the EIA Notification, 2006.

THIS HON'BLE TRIBUNAL HAS POWER TO GIVE MEANING TO UNAMBIGUOUS WORDS IN PHRASE 'UNTOWARD EMERGENCY SITUATION' UNDER EIA NOTIFICATION, 2006, AND ISSUE RELEVANT GUIDANCE

23. That this is a case where the phrase 'untoward emergency situation' under the EIA Notification is clear, plain, and unambiguous. The applicant submits that the various intimations concerning COVID-19 made by the Raigarh District Administration, and at a national level, by the Ministry of Home Affairs, demonstrate that COVID-19 and the resultant curfew and other restrictions, are likely within the scope of the phrase 'untoward emergency situation'. This is particularly so

because of the unpredictability of the pandemic, making emergency situations caused due to the pandemic unexpected, and untoward.

24. That in not considering postponing the public hearing, as specifically provided for in 'untoward emergency situations', the Board has failed to give full effect to an unambiguous phrase used in the EIA Notification, 2006, hence requiring the urgent intervention of this Hon'ble Tribunal.

25. The Hon'ble Supreme Court, in the case of **Nathi Devi v. Radha Devi Gupta**, (2005) 2 SCC 27, made it clear that in cases where the words used in a statute are clear, plain, and unambiguous, and reasonably susceptible to only one meaning, the interpretive function of the courts would be to give those words that meaning, irrespective of the consequences.

26. That in light of the above, present application has been filed to bring this to this Hon'ble Tribunal's attention towards serious violations of the provisions of EIA Notification, 2006, which are likely to cause widespread detrimental impact to the environment as well as public health.

GROUNDS

27. The present application is filed on the following among other grounds which the Applicant might take at the time of hearing the case:

A. Because the COVID-19 public health emergency has been recognized as such by the MoEF (Ministry of Environment, Forest and Climate Change) in the circulars issued by it from time to time, relying on guidance from MHA (Ministry of Home Affairs), and MoHFW (Ministry of Health and Family Welfare),

B. Because the MoEF has specifically issued an OM dated 14.09.2020 imposing restrictions entailing COVID appropriate behavior at public hearings under the EIA Notification, 2006,

C. Because OM dated 14.09.2020 specifically requires Pollution Control Boards to conduct "public hearing with adequate social distancing and other safeguards as issued by the Government from time to time." (emphasis of the applicant)

D. Because the Ministry of Home Affairs has issued a specific advisory on 14.07.2021 requiring concerned authorities at state level to ensure and enforce COVID related preventive measures including social distancing. Further, the MHA has clarified that there is no scope for complacency in controlling the pandemic,

E. Because the District Magistrate of Chhattisgarh, via directions dated 05.06.2021 has specifically imposed stringent restrictions on any public gatherings in the entire district,

F. Because despite these directions applicable at the Union, State, and District Level, the Chhattisgarh Environment Conservation Board has been conducting public hearings without enforcing any kind of COVID appropriate behavior and restricting crowds to ensure that the virus does not spread,

G. Because in one such hearing, conducted on 30.06.2021, at total of more than 10,000 people were present in a small space without any enforced COVID preventive measures, in complete violation of OM dated 14.09.2020, Direction dated 05.06.2021, and Advisory dated 14.07.2021,

H. Because the applicant apprehends that similar gross violations of law will take place in two hearings scheduled in Raigarh District on 28.07.2021 and 30.07.2021,

I. Because these violations which have occurred and are apprehended to occur in the near future, will have a devastating and direct impact on public health and right to life of citizens,

J. Because these provisions, particularly Paragraph 7 (III) (ii) (a) read with Paragraph of Appendix IV form a specific statutory environmental obligation that arises out of implementation of

legislation falling under Schedule I of the National Green Tribunal Act, 2010,

K. Because a violation of a specific statutory environmental obligation under the EIA Notification renders infirm environmental decisions that cause injury to the environment and communities,

L. Because conducting a public hearing where there is a present and life threatening danger such as the coronavirus, without any enforced preventive measures in place, is a mere incantation and empty formality which strikes at the fundamental purpose of the EIA Notification, 2006,

M. Because competent authorities including concerned Pollution Control Boards and District Administration have specifically been given powers to postpone public hearing proceedings under the EIA Notification, 2006 owing to 'untoward emergency situations' in order to preserve the form and function of a consultation,

N. Because the Chhattisgarh Environment Conservation Board has the positive obligation to apply its mind and make an assessment of any 'untoward emergency situation' prior to sanction of public hearing proceedings under the EIA Notification, 2006,

O. Because such an assessment is particularly important during a time when stringent restrictions have been imposed nationwide and in Raigarh District owing to the COVID-19 public health emergency, where the public hearing in this case has been scheduled on 30.06.2021,

P. Because considering the serious violations of law which have already taken place at public hearing dated 30.06.2021, it is all the more important for the Board to assess a safe way to carry out a public hearing without endangering the life of citizens, as prescribed by the Union and State Governments,

Q. Because it is the positive obligation of the MoEF, Chhattisgarh Environment Conservation Board, and District Administration, directly and through delegation of powers, to be contextually responsive to the COVID-19 public health emergency as it develops daily,

R. Because this is a case where substantial questions relating to environment arising out of implementation of legislation under Schedule I of the National Green Tribunal Act, 2010 arise, giving this Hon'ble Tribunal jurisdiction to pass necessary orders and directions to protect the interests of the citizens of the nation,

S. Because the Hon'ble Supreme Court, in its recent order dated 16.07.2021, in the matter of **In Re: Alarming Newspaper Report regarding Kanwar Yatra in State of U.P**, Suo Motu Writ (C) No. 5/2021 has re-emphasized the fundamental right to life of citizens as the single most important priority for the Government in light of an impending third wave of the coronavirus. The relevant portion of the order dated 16.07.2021 is reproduced below:

> "We are of the view that this is a matter which concerns everyone of us as citizens of India, and goes to the very heart of Article 21 of the Constitution of India, which has a pride of place in the fundamental rights Chapter of our Constitution. The health of the citizenry of India and their right to "life" are paramount. All other sentiments, al beit religious, are <u>subservient</u> to this most basic fundamental right." (emphasis of the applicant)

T. this Hon'ble Tribunal, in order dated 02.07.2021, in **O.A 41 of 2021 (CZ)** has specifically mentioned as follows with respect to the public hearing dated 30.06.2021:

> "Statutory authorities are at liberty to proceed <u>in accordance with law</u> and in case, if anybody is aggrieved by the order of the authorities, remedy lies in approaching to appropriate forum." (emphasis of applicant)

The applicant respectfully submits that he, being a part of the said public hearing proceeding, is aggrieved and directly impacted by the serious violations of law.

U. Because the Hon'ble Supreme Court, in the case of **Nathi Devi v. Radha Devi Gupta**, (2005) 2 SCC 27, made it clear that in cases where the words used in a statute are clear, plain, and unambiguous, and reasonably susceptible to only one meaning, the interpretive function of the courts would be to give those words that meaning, irrespective of the consequences. The words 'untoward emergency situation' are clear, plain, and unambiguous and must therefore be given meaning to by this Hon'ble Tribunal.

V. Because The Hon'ble Supreme Court, in the case of **Director General (Road Development) National Highways Authority of India v. Aam Aadmi Lokmanch & Ors.,** 2020 SCC Online SC 572, has held that:

> "… general directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, can be given by the NGT."

Therefore, this Hon'ble Tribunal is well within its powers to issue or direct for the issuance of binding guidance to give effect to the phrase 'untoward emergency situation' in the EIA Notification, 2006, taking into account the circumstances in the district of Raigarh, and the entire nation at the moment.

W. Because the instrumental role that public hearings play in the scheme of the EIA Notification has also recently been emphasized by the Hon'ble Supreme Court, in the case of **Hanuman Laxman Aroskar v. Union of India & Ors.,** (2019) 15 SCC 401:

> "101. … Public consultation cannot be **reduced** to a mere incantation or a procedural formality which has to be completed to move on to the next stage." (emphasis of the applicant)

X. Because the Hon'ble Supreme Court in the case of **Hanuman Laxman Aroskar v. Union of India & Ors**., (2019) 15 SCC 401, has clearly stated the role of the EIA Notification vis a vis environmental rule of law in the following unequivocal terms:

> "128. …

> the rule of law in environmental matters is indispensable "for equity in terms of the advancement of the Sustainable Development Goals.
> …
> 141. The 2006 notification must hence be construed as a significant link in India's quest to pursue the SDGs. … The fundamental principle which emerges from our interpretation of the 2006 notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.
> Emphasis of applicant on 'transparent, responsive and inclusive')

Y. Because the EIA Notification, 2006 is an essential ingredient of environmental rule of law in the nation and any decisions taken thereunder must be responsive to a public health emergency such as COVID-19,

Z. Because untold harm to public health and environmental rule of law will occur if the Government sanctions public hearing proceedings without applying its mind to whether public health emergencies such as COVID-19 are 'untoward emergency situations' under the EIA Notification, 2006.

LIMITATION

The present application has been filed within the statutory limitation period of six months from when the composite cause of action first arose, as prescribed under Section 14 of the National Green Tribunal Act, 2010.

PRAYER

That in light of the above facts and circumstances, and considering Section 19 of the National Green Tribunal Act, 2010 read with Rules 14 and 21 of the National Green Tribunal (Practices and Procedure) Rules, 2011, it is humbly prayed that this Hon'ble Tribunal may be pleased to:

(i) Direct the Ministry of Environment, Forest and Climate Change to initiate inquiry into violations of its Office Memorandum dated 14.09.2020, by the Chhattisgarh Environment Conservation Board in conducting a public hearing proceeding on 30.06.2021, without any enforcement of preventive measures to contain COVID-19,

(ii) Direct the Ministry of Environment, Forest and Climate Change, Chhattisgarh Environment Conservation Board, and District Collector, Raigarh, to determine whether 'COVID-19 and resultant restrictions' are an 'untoward emergency situation' under the EIA Notification, 2006, and submit an action taken report to this Hon'ble Tribunal for scrutinization,

(iii) Direct the Chhattisgarh Environment Conservation Board and District Collector, Raigarh to keep all public consultation proceedings of Raigarh District, including those taking place on 28.07.2021 and 30.07.2021, in abeyance, till a determination in the form of action taken report under Prayer (ii) is duly made and scrutinized by this Hon'ble Tribunal,

(iv) Direct the Ministry of Environment, Forest and Climate Change, Chhattisgarh Environment Conservation Board and District Collector, Raigarh to prepare an inter-departmental guidance on 'untoward emergency situations' under Appendix IV, Paragraph 3 of the EIA Notification and submit the same to this Hon'ble Tribunal as an action taken report for scrutinization,