

Presented on: 06.09.2022

**BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL (SZ), CHENNAI**

APPEAL No. 5 OF 2022

BETWEEN

SHAJI A. K

: APPELLANT

Versus

MINISTRY OF ENVIRONMENT, FOREST AND
CLIMATE CHANGE & ORS

: RESPONDENTS

**REJOINDER AGAINST THE COUNTER AFFIDAVIT FILED BY THE 5TH
RESPONDENT**

RAJAN VISHNURAJ (R-1268) [K/653/2010]
HARISH VASUDEVAN (H-253) [K/779/2013]

Counsel for 1st respondent

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II Floor, Chundanal Monarch, K.K Padmanabhan Road, Kochi-18

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RESPONDENT**

I, Shaji A.K. Aged about 47 years, S/o. Kuryakose, Arakkal House, Perinkari P.O., Kannur District - 670 706, do hereby solemnly affirm and state as follows:

1. I am the appellant in the memorandum of appeal and as such I am conversant with the facts of the case. I am competent to swear this affidavit.
2. I submit that I have read the counter affidavit filed by the 5th respondent. I wish to deny all the contents except to the facts specifically admitted hereunder. Without prejudice to the generality of the above denial, the following rejoinder is filed. The appellant herein also reserve a right to file a detailed rejoinder against the counter affidavit filed by the 5th respondent, bringing more facts to prove the case before the Hon'ble Tribunal.
3. All the averments in paragraphs Nos.3, 4 &5 are totally untrue and hence denied. Even though the 5th respondent had a contention that their project

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the procedure contemplated therein. The 5th respondent ought to have filed their application only as per the provisions of the notification dated 14.07.2017. Impugned EC have not followed the provisions of the said notification and therefore had to be cancelled purely on the basis of procedural impropriety, unfairness and against the provisions of the relevant law prevailing as on the date of grant of EC. The judgment of Bombay High Court is not applicable to the facts and circumstances of the case as there was no consideration of the notification dated 14.07.2017 in that case.

5. All the averments in paragraphs Nos.11 to 16 are totally untrue and hence denied. The consequential action of violation of the provision of EIA Notification, 2006 is considered by the Hon'ble Supreme Court in Common Cause Vs. Union of India and the Hon'ble Court had held that the cognizance of offence has to be registered and action should be followed prior to the issuance of EC. By complying with the said judgment, the 1st respondent had issued an office memorandum to that effect. This is not challenged by the 5th respondent and therefore the dictum laid down by the Hon'ble Supreme Court in common Cause's case has to be admitted as such. The notification dated 14.07.2017 also stipulates to register an FIR if application comes from a project having violation. Without having a remedial plan, EIA and EMP and also Public Consultation, the violation cases cannot be appraised by the 2nd or 3rd respondent. The 2nd and 3rd respondents are considering such applications from projects having violation strictly in accordance with the notification dated 14.07.2017 and the 2nd respondent had violated such provisions and deviated from their legal stand only in the 5th respondent, which is curious, shocking and the reason would probably of the high handedness of the 5th respondent in the political field. The very legal question raised in this appeal is that the 2nd respondent has no power or authority to consider any application from the 5th respondent if there is a violation and has started any activity in the

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comes under 8(a) and not under 8(b) of EIA Notification, such baseless contentions were rejected by the 2nd respondent and has processed with the application, as if it falls within the ambit of 8(a) of the EIA Notification and granted Annexure A1. The 5th respondent did not challenge Annexure A1 to the extent that it rejected the argument of the 5th respondent regarding the categorization of the project and that the project is considered as 8(b) category. Instead, the decision of rejecting of such arguments by the 2nd respondent was accepted by the 5th respondent by not filing an appeal against the impugned EC within the time stipulated. Therefore the res judicata will apply to the 5th respondent and they are barred from raising such contentions unless the impugned EC is challenged by them to that extent. Therefore the 5th respondent cannot raise the argument that their project falls under category 8(b) of the EIA Notification in this appeal filed by the appellant, and is impermissible by law and therefore such contention has to be rejected in all sense.

4. All the averments in paragraphs Nos.6 to 10 are false and hence denied. Considering the provisions of EIA Notification, 2006, Environment (Protection) Act 1986 and various Court orders including that of the Jharkhand High Court, the Union of India, and the 1st respondent had issued a notification on 14.07.2017 explaining what is 'violation' and what should be the procedure for consideration of applications involving such violations. The procedure mandated by law as on 14.07.2017 by the 1st respondent was in field when the impugned EC was issued by the 2nd respondent. All the respondents herein were duty bound to follow the notification dated 14.07.2017 issued by the 1st respondent in this regard. Even though the EIA Notification, 2006 does not stipulates any action for violation, Section 19 of Environment (Protection) Act specifically says that any order, notification passed under this Act if violated will invite the penalty as stipulated in the Act. EIA Notification, 2006 is only a scheme for providing EC imposing restrictions of certain activities without following

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project area in violation of the EIA Notification, 2006. Such powers have been conferred upon the SEIAA only through the notification dated 14.07.2017 by the 1st respondent. There is no other provision under the Environment (Protection) Act to process any application once the project has started construction without obtaining prior EC. Therefore, the argument that the 2nd respondent has power or authority to consider the project of the 5th respondent despite its violations is liable to be dismissed.

6. Therefore, it is most humbly requested and prayed that, having regard to the above mentioned and other grounds that may be pleased to accept this rejoinder and allow this appeal, with cost to the 5th respondent.

All the facts stated above are true to the best of my knowledge, belief & information.

Dated this the 3rd day of September, 2022

Shaji A.K. 

DEPONENT

Solemnly affirmed and signed before me by the deponent whom I know on this the 3rd day of September, 2022 in my office.


ADVOCATE
Hanish Vasudevan

VERIFICATION

I, Shaji A.K. Aged about 47 years, S/o. Kuryakose, Arakkal House, Perinkari P.O., Kannur District - 670 706, do hereby verifies that the contents of the above paragraphs 1 to 6 are true to the best of my knowledge and I have not suppressed any material facts.

DATE: 03-09-2022.

PLACE: Ernakulam.


SIGNATURE OF THE APPELLANT

Shaji A.K.