

Presented on: 24/08/2022
BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT CHENNAI

Original Application No. 142 of 2020 (SZ)

Renny Jacob George: Applicant

vs.

Kerala State Pollution Control Board and others : Respondents

ADDITIONAL AFFIDAVIT FILED BY THE APPLICANT IN THE
ABOVE CASE



K.K. ASHKAR (K/371/04) &
ASHIRA MOHAMED ASHROF (K/1224/03)
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Dated this the 24th day of August 2022



K.K. ASHKAR

Counsel for the Applicant

BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT CHENNAI

Original Application No. 142 of 2020 (SZ)

Renny Jacob George: Applicant

vs.

Kerala State Pollution Control Board and others : Respondents

AFFIDAVIT

I, Renny Jacob George, aged 42 years, S/o. George Mathai, Ovumannil House, Nooronmavu P.O., Anicadu, Pathanamthitta District, Pin-689 589, Kerala, do hereby solemnly affirm and state as follows:

1. I am the applicant in the above Original Application. The above original application is filed under section 15 (1) (C) of the NGT Act for restitution of environment which has been damaged by the mining operation conducted by the 8th Respondent and other ancillary reliefs.

2. When the above case was considered on 08/7/2022 for hearing, this Tribunal was pleased to adjourn the matter reluctantly to 01/08/2022 as follows:

4. The learned counsel appearing for the 8th Respondent wanted an accommodation, as a Senior Advocate has been engaged and he wanted the case to be posted to 01.08.2022 for that purpose.

5. With much reluctance, we are adjourning the case to 01.08.2022 with a rider that no adjournment will be granted on that date.

3. On 01/08/2022, the applicant was heard in part and adjourned to 16/08/2022 for further hearing, due to time limitations. While adjourning the matter, this Tribunal reprimanded no adjournments will be entertained on the next hearing.



4. When the case was taken on 16/08/2022, the counsel for the project proponent sought adjournment on account of health reasons and the tribunal was pleased to grant a short accommodation to the counsel appearing for the project proponent by adjourning the case to 26/08/2022 as requested by the counsel for the project proponent with a rider that no adjournment will be granted on that day.

5. Subsequent to the adjournment of the above case after hearing the arguments of the applicant in part on 01/08/2022, the project proponent filed a writ Petition before the honourable High Court of Kerala on 10/08/2022 challenging the maintainability of the above case with following questions of law:

1. *Whether the subject matter in OA No. 142/2020 is within the scope of the jurisdiction of National Green Tribunal and whether the said original application is maintainable?*
2. *Whether order of appointing the joint inspection committee is within the jurisdiction of National Green Tribunal?*
3. *Whether the inspection report of the joint committee is correct?*
4. *Hasn't the National Green Tribunal gone wrong in not considering the validity of the inspection committee report before proceeding with OA 142/2020?*
5. *Hasn't gone wrong in proceeding with the OA 142/2020 before considering its maintainability and before considering the application to prosecute the 8th respondent?*
6. A true copy of the memorandum of Writ Petition in W.P. (C) No. 25935/2022 filed by the 8th Respondent before the Hon'ble High



Court of Kerala on 10/08/2022 is produced herewith and marked for reference as **Annexure-A37**. The said writ petition filed by the 8th respondent came up for admission before the honourable High Court on 11/08/2022 and the same was adjourned to 16/08/2022 for admission. When the above original application was considered by this honourable Tribunal on 16/08/2022, the counsel for the project proponent appeared online and sought adjournment on account of health issues, but he suppressed about Annx-A37 writ petition filed by him challenging the maintainability of the above O.A. which was posted for admission on the same day before the honourable High Court. A true computer printout of the case status of W.P. (C) No. 25935/2022 taken from the website of High Court of Kerala is produced herewith and marked for reference as **Annexure-A38**. The conduct of the project proponent challenging the maintainability of the above case after adjournment of the above case for final hearing as per his convenience, is nothing but an abuse of the process of Court.

7. In Annx-A37 writ petition, the 8th Respondent prayed for quashing Ext.P9 (order of this Tribunal dated 07/08/2020 in the above case appointing joint committee and Ext. P11 (final report dated 15/06/2021 submitted by the joint committee in the above case) after calling for the records leading to it by issuing a Writ of certiorari. Ext.P9 order was sought to be set aside by the project proponent on the ground that it was passed without notice to him and without hearing him, hence it is violative of principles of natural justice. Exhibit P9 order was issued by this honourable Tribunal by admitting the above original application on 07/08/2020 and 2 years



have been elapsed since the date of the said order. So far, the project proponent challenged the said order either under Rule 21 or 22 of NGT (practices and procedure) Rules, 2011 seeking modification or setting aside the order. Appellate remedy provided under Section 22 of the NGT Act was also not invoked by the 8th Respondent so far. He has been contesting the above case since 2020 and the case had several postings. Challenging Ext.P9 order without resorting to alternate remedy available under the provisions of NGT Act and Rules after scheduling the case for final hearing according to the convenience of parties including him, is an improper practice to be deprecated.

8. Another the relief sought by the project proponent in Annx-A37 writ petition is a direction commanding this honourable Tribunal to consider the maintainability of the above original application as a preliminary issue before proceeding further with the above case.

9. The project proponent has filed a preliminary objection regarding the maintainability of the above case on 12/04/2021. The preliminary objection raised by the 8th Respondent/project proponent regarding the maintainability of the above original application was considered in detail by this honourable Tribunal by order dated 25/08/2021 and held thus:

“The submissions made by the learned counsel appearing for the 8th Respondent that the application is not maintainable, and the application is liable to be rejected or dismissed on the basis of the preliminary objection raised, is unsustainable in law and the same is liable to be rejected. So,

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we feel that there is no necessity to dismiss application on the preliminary objections raised by the 8th Respondent and on the basis of the committee report, this Tribunal can proceed with the matter and ascertain as to whether he is liable for the alleged illegal mining and whether he is liable to pay compensation etc., after considering the objections if any filed by the 8th Respondent. So preliminary objections raised by the 8th Respondent that the application is not maintainable, and the application is liable to be dismissed in limine, is rejected.”

10. For canvassing the direction against the tribunal to consider maintainability of the above original application, the project proponent urged in the writ petition that though the petitioner has pressed for hearing the maintainability, the Honourable National Green Tribunal was not inclined to consider the question of maintainability as a preliminary issue. This is nothing but misrepresentation of the proceedings of this honourable tribunal. He canvassed the relief by suppressing the order dated 25/08/2021 of this Tribunal which dismissed the preliminary objection raised by him regarding maintainability of the above original application. He has not challenged the said order rejecting his preliminary objection either by invoking remedy of review under Rule 22 of NGT Rules, 2011 or appellate remedy under section 22 of the NGT Act, 2010. About 1 year has been elapsed since the date of said order and the main case has been posted for final hearing.

11. Another prayer made by the project proponent was for a direction against this Tribunal to dispose I.A. No.37/2022 filed by him



for prosecuting the applicant for perjury, before proceedings with O.A. No. 142/2020. On a perusal of orders of this tribunal dated 08/07/2022 and 01/08/2022, it can be seen that the said I.A is posted along with the main case for final hearing. The above relief has been canvassed by the project proponent by suppressing the actual facts revealed in the above orders of this honourable Tribunal.

12. The final relief prayed by the project proponent in Annx-A37 writ petition is for a direction to this Tribunal to dispense with filing of the translation of vernacular documents. It is pertinent to note that the pleadings are complete in the above case and final hearing has been commenced by advancing argument on behalf of the applicant in part. Moreover, the prayer sought by him is in oblivious of Rule 33 of NGT (Practices and Procedure) Rules, 2011 which prescribes English as the language of the Tribunal. The Rule only permits Hindi as a language of pleadings and document other than English language that too permissible only with the leave of the Tribunal. How can High Court consider such a relief overlooking the provisions of statutory rules.

13. He assails the order of this honourable Tribunal dated 07/08/2020 constituting a joint committee to inspect the site and also the report submitted by the joint committee relying on an order of Supreme Court dated 21/0/2021 in Civil Appeal No. 4543/2021 which held that the adjudicatory function of the National Green Tribunal Act cannot be assigned to committees and the decision has to be that of the NGT. The facts and circumstances of the above case is entirely different, and the apex Court made such observation regarding the adjudicatory function of this Tribunal in a statutory appeal provided under Section 16 of the NGT Act.

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14. The honourable division bench of Kerala High Court in *Sachu Rajan Eapen and Others v. State of Kerala and Others (2021 KHC 373)* and the apex Court in *Municipal Corporation of Greater Mumbai v. Ankita Sinha and Others (AIR 2021 SC 5147)* held that NGT has wide and extensive jurisdiction under Section 14 and 15 of the Act to secure the ends of justice and NGT is conferred the power of moulding any relief beyond the relief sought by the parties and NGT has been recognised as one of the most progressive Tribunal in the world.

15. In *State of Meghalaya and Others v. All Dimasa Students Union, Dima-Hasao District Committee and Others (2019 (8) SCC 177)* Honourable Supreme Court held that *NGT can exercise the power to appoint commission for scientific investigation like a civil Court under Order 26 Rule 10A and while asking expert to give a report by NGT is not confined to the four corners of Rule 10A and its jurisdiction is not shackled by strict terms of Order 21 Rule 10A by virtue of section 19 (1) of the NGT Act, 2010. Rule 24 of the NGT (Practice and Procedure) Rules, 2011 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. There is no lack of jurisdiction in NGT in directing for appointment of the committee and to obtain a report from the committee. It also held that NGT by directing for Constitution of the committee does not delegate its essential judicial functions as the Tribunal had kept complete control on all steps which were required to be taken by the committees. The matter being pending before the Tribunal on facts of the committee are under the direct control of the Tribunal and if the committee oversteps in any direction the same can very well be corrected by the Tribunal on the matter is being brought before it.*

16. The project proponent also sought interim order from the High Court in Annx-A37 writ petition for staying further proceedings of this Tribunal, until disposal of the said Writ Petition. But when the



honourable High Court considered the said Writ petition for admission on 22/08/2022, declined to grant an interim order as prayed for by the 8th Respondent, without hearing the parties in the case after issuing notice to them. Therefore, Honourable high court ordered notice to party respondents including this applicant in the Writ Petition and the case is posted to 30/08/2022. This applicant came to know about Annx.A37 only on 23/08/2022.

17. The intention of the 8th respondent in filing the said writ petition after scheduling the above application for final hearing, is to protract the matter on one pretext or the other. The 8th Respondent averred in paragraph 17 of the Annx-A37 Writ petition that when the above case came up before this Tribunal on 23/02/2022, 08/07/2022 and 01/08/2022, he pressed for hearing the issues regarding appointment of joint inspection committee and the validity of the issues regarding the maintainability of above O.A. He also urged for passing orders on his application to prosecute this applicant, but this Tribunal was not ready to hear and decide the said issues and observed that Tribunal will hear and dispose of O.A only and the validity of interim orders and inspection committee report will not be considered. The application for prosecution also will not be taken up. This statement is a naked lie, and a contumacious act tends to scandalise this honourable Tribunal. The orders of this Tribunal dated 23/02/2022, 08/07/2022 and 01/08/2022 shows the falsehood of the statement made therein by the 8th Respondent.

18. Since the Writ petition filed by the 8th Respondent with misrepresentation of the proceedings of this honourable Tribunal and in suppression of various orders passed by this Tribunal, contains

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pleadings which tends to bring this Tribunal into contempt or to lower its authority, this applicant consider it is my duty as a law abiding citizen to bring such scandalous Writ petition to the notice of this honourable Tribunal to uphold the propriety and majesty of law and to instil public faith in rule of law by enabling this Tribunal to initiate appropriate action against the 8th Respondent for indulging in unethical practice of scandalising this honourable Tribunal by casting scandalous aspersions on this Tribunal with a dishonest intention to obtain an order staying the proceedings of this Tribunal.

In the above circumstances, it is most humbly prayed that this Honourable Tribunal may be pleased to hear the above original application expeditiously, in the interest of justice and environment.

All the facts stated above are true and correct.

Dated this the 24th day of August 2022.

Despondent: Renny Jacob George



Solemnly affirmed and signed before me by the deponent who is personally known to me on this the 24th day of August 2022 at my office at Ernakulam.



K.K. ASHKAR
Advocate

Presented on: 10.08.2022

Sub:- Writ Petition (Civil) – MMDR Act, KMMC Rules, Orders by NGT in violation of the same; Challenge thereto.

**BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM**

W.P.(Civil) No. 25935 of 2022

Naveen Mathew Philip : Petitioner

Vs.

Kerala State Pollution Control Board
& Others : Respondents

**WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

C.F. Rs. 100/-

P.HARIDAS (H-21),
BIJU HARIHARAN (B-318)
SHIJIMOL M. MATHEW (K/907/2005)
SHIJIN P.C. (S-2736)
RISHIKESH HARIDAS (R- 3324) &
GREESHMA T.G. (K/2281/2022)

**M/s.CHERIAN & HARIDAS
ADVOCATES**

Door No. 68/990,
K.K. Padmanabhan Road,
Kochi – 682 018
Counsel for the Petitioners

**BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM**

W.P. (Civil) No. of 2022
Naveen Mathew Philip : Petitioner

Vs.

Kerala State Pollution Control Board & Others. : Respondents

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Dated this the 8th day of August, 2022


P. Haridas
Counsel for the Petitioners



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4. Hasn't the National Green Tribunal is went wrong in not considering the validity of the inspection committee report before proceeding with OA 142/2020?
5. Hasn't went wrong in proceeding with the OA 142/2020 before considering its maintainability and before considering the application to prosecute the 8th respondent?

Brief Facts

Petitioner was conducting two stone quarries lying contiguously and a stone crusher unit therein. The quarry was commenced by petitioner's father in the year 1979 after obtaining short term permits. Thereafter petitioner's father obtained quarrying lease in 1981. The quarry was expanded after the death of the father of the petitioner in 2009 petitioner took over the operations. 8th respondent is a nephew of rival quarry operator. He along with his uncle wanted to take over the quarry by making it defunct. Various litigations were initiated by him. In 2012 quarrying of the petitioner was objected by a stooge of the 8th respondent and by Ext P4 judgment of this hon'ble court directed the Pollution Control Board to consider the objection. Thereupon the consent to operate was renewed. Thereafter 8th respondent and one Georgekutty filed WP(C) No. 39189/2015 seeking to interdict quarrying of the petitioner for want of environmental clearance. Petitioner filed WP(C) No.

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2783/2016 seeking to continue with quarrying operation. This Hon'ble court passed an order permitting petitioner to continue quarrying covered by Ext P2 lease till its expiry and directed to resume quarrying in area covered Ext P2 only after getting environmental clearance. However petitioner stopped quarrying covered by Ext P2 on 16.03.2016 and area covered by Ext P1 on 31.03.2015. Under such circumstances, 8th respondent initiated vexatious proceedings against the petitioner mainly seeking reclamation of mining pits and also to stall running of the crusher unit. Hence petitioner filed WP(C) No. 34335/2016. 8th respondent filed WP(C) No. 32820/2016. This Hon'ble court was pleased to pass an order permitting the petitioner to continue with crushing operation and closed WP(C) No. 32820/2016 without prejudice to right of the 8th respondent to approach the statutory authority under Environmental Protection Act or Minor Mineral Concession Rules, 2015.

The 8th respondent filed WA No. 583/2017 and WA No. 699/2017. In the said cases 8th respondent took a stand that his uncle Sri A.J. Abraham is not the Managing partner of M/s. Shanio Crushers. Hence petitioner filed an affidavit alleged commission of perjury by the 8th respondent. Thereafter the 8th respondent has not made any attempt to pursue the writ appeal.



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Thereafter, 8th respondent in OA 142/2020 before the NGT, (SZ) seeking identical relief in the aforementioned writ petition. The tribunal passed ex parte interim order appointing a joint committee to inspect the property. The committee has inspected the property nearly having 7 Acres in 2 hours and filed a vexatious case. Petitioner filed detailed objections to the original application disputing the maintainability. The objection to the joint inspection committee report also was filed seeking to reject it. An application also was filed seeking to prosecute the 8th respondent for perjury. Petitioner has pressed for hearing on validity and acceptability of Ext P11 joint committee report. However petitioner also pressed for hearing on the application to prosecute the 8th respondent. However, tribunal is of the view that validity of the inspection report the application for prosecution and maintainability of the OA 142/2020 will not be heard but it will state away hear and dispose of OA No.142/2020. Hence, this Writ Petition (Civil).

Dated this the 9th day of August, 2022

 P. Haridas

Counsel for the petitioner



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**BEFORE THE HON'BLE HIGH COURT OF KERALA
ERNAKULAM**

W.P.(C).No. of 2022

PETITIONER:-

Naveen Mathew Philip, aged 39 years,
Thekkenedumplackal House, Mallappally West P.O.,
Mallappally Taluk, Pathanamthitta District, Pin:-689585

V.

RESPONDENTS:-

1. Kerala State Pollution Control Board, Pattom P.O., Thiruvananthapuram- 695 004, Represented by its Chairman. Phone: 0471-2318150, 9447975000, e-mail: chn.kspcb@gov.in
2. Environmental Engineer, District Office, Kerala State Pollution Control Board, Pathanamthitta. Pin-689645. Ph: 0468-2223983, 9447975724. E-mail: kspcbpta@gmail.com
3. Government of Kerala , Represented by its Principal Secretary, Department of Environment & Climate Change, Thiruvananthapuram 695001, ph: 0471-2331509. E-mail-secy.hedu@kerala.gov.in
4. The District Collector, Pathanamthitta, 2nd Floor, District Collectorate, Pathanamthitta, PIN-689645. Ph: 9447029008, e-mail: dcpta.kerala@nic.in
5. Anicadu Grama panchayat, Nooromavu P.O., Pathanamthitta District, PIN-689589, Represented by its Secretary. Ph:9447440231, e-mail: anicadugp@gmail.com
6. The Geologist, Department of Mining and Geology, Pathanamthitta - 689645, ph: 04682317119. E-mail: pat.dmg@kerala.gov.in
7. The Director, Directorate of Mining & Geology, Kesavadasapuram, Pattom Palace P.O., Thiruvananthapuram. Pin - 695 004, Ph: 0471-2556119, e-mail: director.dir.dmg@kerala.gov.in.

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8. Renny Jacob George, aged 42 years, S/o. George Mathai, Ovumannil house, Noorommavu P.O., Anicadu, Pathanamthitta District, Pin - 689589.

WRIT PETITION FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Address for services of all notices and process to the petitioner is that of his Counsel Biju Hariharan, Shijimol Mathew, Shijin P.C., Rishikesh Haridas & Greeshma T.G., Advocates, Door No.68/990, Opposite Matha Offset, K.K. Padmanabhan Road, Kochi - 682 018.

Address for service of all notices and process to the respondents are as shown above.

STATEMENT OF FACTS

1. It is submitted that petitioner is the 8th respondent in OA No. 142/2020 filed by the 8th respondent herein before the National Green Tribunal, South Zone, Chennai.
2. It is submitted that petitioner is conducting 2 stone quarries lying contiguously and a stone crusher unit therein.
3. It is submitted that the quarry was originally started by petitioner's father as early in the year 1979 under short term permits. Thereafter he obtained lease on




02.07.1981 for 12 years for properties in Sy No. 559/1-3 of Anicadu village.

4. It is submitted that thereafter petitioner's father expanded the business and acquired more properties. He obtained another quarrying lease over an area of 3.9842 hectares of land comprised in sy. Nos. 305/10, 305/12, 325/2, 326/2, 327/1, 328/6, 329/9 and 329/10 of Anicadu village, Mallappally Taluk, Pathanamthitta District for 12 years commencing from 20.10.1995 up to 19.10.2007. True copy of the quarrying lease No. 343/95-06/9106/M4/94 dated 20.10.1995 is produced herewith and marked as **Exhibit P1.**

5. Thereafter petitioner's father obtained 2 quarrying leases. True copy of the quarrying lease for 1.0183 hectares comprised in Re.sy. No 326/2, 326/4 and 326/5 of Anicadu village for 12 years dated 18.11.2005 is produced herewith and marked as **Exhibit P2.** True copy of the quarrying lease for 5.1962 hectares comprised in sy. No 328/6, 328/9, 329/10, 327/1, 325/1, 325/2, 305/10 and 305/11 of Anicadu village




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for 12 years dated 22.2.2008 is produced herewith and marked as **Exhibit P3**.

6. 8th respondent is the nephew of Sri A.J. Abraham, a rival quarry and crusher operator, who owns M/s. Shanio Crushers situated not much far away from the petitioner's unit. 8th respondent is also having been a large extent of property adjacent to petitioner's quarry. 8th respondent and his uncle want to acquire petitioner's unit at a throw away price after making it defunct.
7. While so, 8th respondent joined hands with one Mr. Georgekutty who wanted to extract protection money from the petitioner initiated various vexatious litigations and petitions against the petition. Consequently Pollution Control Board refused to renew the consent and Geologist issued stop memo. Hence petitioner filed WPC No. 28830/2012 and WP(C) No. 29487/2012 before this Hon'ble court. This hon'ble court was pleased to direct the 1st respondent to consider petitioner's application. Interdictions by the panchayat was held to be of no consequences. True copy of the



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common judgment in WP(C) No. 28830/2012 of this Hon'ble court dated 07.03.2012 is produced herewith and marked as **Exhibit P4**. True copy of the proceedings of 1st respondent dated 10.05.2013 is produced herewith and marked as **Exhibit P5**. Thereafter consent also was issued.

8. Thereafter, 8th respondent and aforementioned Georgekutty filed WP(C) No. 39189/2015 seeking to interdict quarrying of the petitioner for want of environmental clearance. Petitioner filed WP(C) No. 2783/2016 seeking to continue with quarrying operation. This Hon'ble court passed an order permitting petitioner to continue quarrying covered by Ext P2 lease till its expiry and directed to resume quarrying in area covered Ext P2 only after getting environmental clearance. True copy of the judgment in WP(C) No. dated 39189/2016 dated 16.03.2016 of this Hon'ble court is produced herewith and marked as **Exhibit P6**. However petitioner stopped quarrying covered by Ext P2 on 16.03.2016 and area covered by Ext P1 on 31.03.2015. Petitioner decided that



quarrying will be resumed only after getting environmental clearance. For that purpose he started to purchase properties also to maintain statutory distance.

9. It is submitted that however petitioner continued operating the crusher unit and crushed granite boulders from other quarries.
10. Under such circumstances, 8th respondent initiated vexatious proceedings against the petitioner mainly seeking reclamation of mining pits and also to stall running of the crusher unit. Hence petitioner filed WP(C) No. 34335/2016. 8th respondent filed WP(C) No. 32820/2016. This Hon'ble court was pleased to pass an order permitting the petitioner to continue with crushing operation and closed WP(C) No. 32820/2016 without prejudice to right of the 8th respondent to approach the statutory authority under Environmental Protection Act or Minor Mineral Concession Rules, 2015. True copy of the judgment in WP(C) No. 32820/2016 of this hon'ble court dated 04.01.2017 is produced herewith and marked as **Exhibit P7**. The 8th

respondent filed WA No. 583/2017 and WA No. 699/2017.

11. In the said cases, 8th respondent took a stand that his uncle Sri. A.J. Abraham is not the Managing partner of M/s. Shanio Crushers. Hence petitioner filed an affidavit alleging commission of perjury by the 8th respondent. Thereafter the 8th respondent has not made any attempt to pursue the writ appeal.
12. It is submitted that thereafter claiming identical relief made in the aforesaid writ petitions and writ appeals, the 8th respondent filed OA No. 142/2020 before the National Green Tribunal. True copy of the memorandum of original application in O.A. NO. 142/2020 dated 10.06.2020 without annexures is produced herewith and marked as **Exhibit P8**.
13. It is submitted that on admission stage itself the Hon'ble National Green Tribunal passed an order without notice to the petitioner appointing the joint committee to inspect the property and to submitted status and action taken report and to file a report assessing environmental damages and to fix



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environmental compensation to be recovered from him. True copy of the order of the Hon'ble Supreme Court in Civil Appeal No. 4543/2021 dated 31.08.2021 is produced herewith and marked as **Exhibit P9**.

14. It is submitted that hon'ble apex court held that "***the adjudicatory function of the National Green Tribunal cannot be assigned to committees, even expert committees. The decision has to be that of the NGT. The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the tribunal.***" True copy of the order of the Hon'ble Supreme Court in Civil Appeal No. 4543/2021 dated 31.08.2021 is produced herewith and marked as **Exhibit P10**.

15. The joint committee conducted an inspection without proper notice to the petitioner. Site inspection was conducted from 12:15 PM. to 2:15 PM on 13.1.2021. The entire volume of the granite quarried from 1979 was quantified in a very casual and callous



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manner on the basis of guess work and wild imagination. The volume of quarry below water level was computed by quarry merely having 7 hectares was quantified by measuring out depth of the water nearly on 7 points and taking average of that. The volume above the water level was only a mere guess work. There was no benchmark for the date of petitioner taking over the quarry. The joint inspection committee assessed total damage to the ₹1,589,995,103. True copy of the Joint Inspection Committee Report, NGT (SZ) in O.A. 142/2020 dated 15.06.2021 is produced herewith and marked as **Exhibit P11**. Petitioner has filed a detailed counter affidavit to the OA. Petitioner has contended that the OA not maintainable and that the National Green Tribunal having no jurisdiction and reliefs cannot be granted. The appointment of joint inspection committee also was challenged for want of jurisdiction. True copy of the counter affidavit in O.A. No. 142/2020 before NGT (SZ) dated 09.12.2021 is produced herewith and marked as **Exhibit P12**.



16. Petitioner also has filed a detailed objection regarding the joint committee inspection report. True copy of the objection filed by petitioner in OA 142/2020 to joint inspection committee report of NGT (SZ) dated 14.02.2022 is produced herewith and marked as **Exhibit P13**. Petitioner and also filed an application to prosecute the 8th respondent for committing perjury. True copy of the I.A. No. 37/2022 in OA No. 142/2020 before NGT dated 14.2.2022 is produced herewith and marked as **Exhibit P14**. It is submitted that 8th respondent submitted a reply to petitioner's application. In the reply the 8th respondent took a novel stand that though his uncle Sri A.J. Abraham was managing partner of M/s. Shanio Crushers he is no more a partner. True copy of the reply filed by 8th respondent to I.A. No. 37/2022 in O.A. No. 142/2020 before NGT dated 28.07.2022 is produced herewith and marked as **Exhibit P15**. The said statement was false and that he again committed perjury before the National Green Tribunal. Thereupon, this petitioner filed an



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application before the National Green Tribunal seeking to prosecute the 8th respondent.

Print outs of pending cases before this hon'ble court categorically shows that Sri A.J. Abraham is still managing partner of M/s. Shanio Crushers.

17. The case came up on 23.2.2022, 8.07.2022, and 01.08.2022 The petitioner pressed for hearing the issues regarding appointment of joint inspection committee and the validity of the issues regarding the maintainability of OA No. 142/2020, Ext P9 order as well as that of the validity and maintainability of Ext P11 report. Petitioner also urged for passing orders on application to prosecute 8th respondent. However, hon'ble National Green Tribunal was not ready to hear and decide the said issues but observed that it will hear and dispose of OA only and the validity of interim orders and inspection committee report will not be considered. The application for prosecution also will not be taken up.

Under such circumstances, petitioner is left with no other alternative and efficacious remedy other than to approach this honorable court under article 227 of the Constitution of India on the following among other;



GROUND S

- A. The subject matter of the original application is beyond the scope of the jurisdiction of the hon'ble NGT. The subject matter is not within the scope of section 14 and schedule 1 of the National Green Tribunal Act. The reliefs sought for are exclusively to be dealt with only under mechanism provided under The Mines and Minerals (Development and Regulation) Act, 1957 and Kerala Minor mineral Concession Rules, 2015. Hence, appointing the committee in such matter is also without jurisdiction. The Hon'ble tribunal went wrong in assigning the adjudicatory function to the joint committee appointed by it.
- B. The 8th respondent is sought for identical relief before this hon'ble court by filing different writ petitions including WP(C) No. 39189/2015 resulted in Ext P6 judgment and WP(C) No. 34335/2016 resulted in Ext P7 judgment. The 8th respondent has not challenged Ext P6 but filed WA No. 583/2017 and WA No. 699/2017. Hence it is illegal for the 8th respondent initiating a parallel proceeding before the National Green Tribunal in



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a subject matter which already pending before this hon'ble court in WA No. 583/2017 and WA No. 699/2017.

- C. The National Green Tribunal went wrong in entertaining OA No. 142/2020 which was already concluded by this hon'ble court in Ext P6 judgment and also is subject matter of WA No. 583/2017 and WA No. 699/2017 against the dictum laid down by constitutional bench of the Hon'ble Supreme court in **L. Chandrakumar v. Union of India** reported in **AIR 1997 SC 1125**.
- D. The Hon'ble Supreme court in **The State of Andhra Pradesh v. Raghu Ramakrishna Raju Kanumuru (M.P.)** reported in **AIR 2022 SC 2850** held that when the High court is in seisin of the matter the National Green Tribunal may not proceed with the matter. In the instant case many of the reliefs claimed by the 8th respondent have finally decided in favour of the petitioner by Ext P6 judgment and rest of the relief is pending consideration of this Hon'ble court in WA No. 583/2017 and WA No. 699/2017. Hence it is illegal for the tribunal to proceed with the original application. When the proceedings in

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the OA itself are bad, passing *ex-parte* interim orders therein by appointing an inspection committee is not at all maintainable and illegal.

- E. The Hon'ble Supreme court in **The State of Andhra Pradesh v. Raghu Ramakrishna Raju Kanumuru (M.P.) (Supra)** held that "in any case, no law is necessary to state that insofar as the Tribunals are concerned, they would be subordinate to the High Court insofar as the territorial jurisdiction of the High Court is concerned". Therefore this hon'ble court has ample jurisdiction to issue a writ of certiorari and such other appropriate writs.
- F. Ext P9 order was passed without notice to the petitioner and without hearing the petitioner hence it is violative of principles of natural justice and is liable to be set aside.
- G. The Hon'ble National Green Tribunal went wrong in constituting and deputing a committee for ascertaining matters which is not at all claimed in the original application.
- H. Though by Ext P7 judgment this hon'ble court was relegated 8th respondent to approach the statutory



authority without following the same 8th respondent has approached the National Green Tribunal.

- I. The report of the joint committee is absolutely illegal though the quarrying was started as early from 1979 and the petitioner took over the quarry only in 2009. The committee is tried to impose entire liability upon the petitioner that too in unscientific manner. The joint inspection committee suppressed the fact that petitioner and his predecessor was paying royalty at consolidated rate under Rule 48P of Minor Mineral Concession Rules, 1967 as it is a Registered Metal Crusher Unit (RMCU) under chapter VIIB of said Rules.
- J. The application is barred by limitation. The limitation explained by the applicant is incorrect. The applicant is trying restitution of a mine started in 1979 and seeking its reclamation. Applicant also is seeking to quantify the granite stone extracted since 22.2.2008 and seeking a direction to the Geologist to recover the same. Hence, starting point of limitation is from 1979 as well as from 22.2.2008. Hence, it is not within the period of limitation prescribed under section 15(3) of National Green Tribunal



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- Act. The date on which quarrying operations were temporarily suspended also cannot be treated as starting point of limitation. Furthermore, the relief sought for are also time barred by law of limitation.
- K. Though the petitioner has pressed for hearing the maintainability the hon'ble National Green Tribunal was inclined to consider the question of maintainability as a preliminary issue.
- L. Ext P9 order is without jurisdiction and authority and beyond the scope of the OA No. 142/2020 submitted by the 8th respondent. Hence the same is liable to be set aside. The Hon'ble National Green Tribunal erred in not considering the validity of the joint committee report before the proceedings to consider the original application, inspite of petitioner pressed such hearing and the case was being posted only for considering such report. Non consideration of plea and prayer to consider the validity, maintainability and legality of Ext P11 report amount to non-exercise of jurisdiction and is causing miscarriage of justice.
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- M. The plain reading of joint committee report would show that it was prepared in 2 hours a callous and casual manner and not based on any data or calculation and liable to be set aside.
- N. The tribunal proceedings in a matter without jurisdiction is violative of valuable constitutional rights of the petitioner under article 14 of the Constitution of India. Constitution of a joint inspection committee without jurisdiction and proceedings to act upon the same also violative of article 14 of the Constitution of India.

On the above and other grounds which may be permitted to urge at the time of hearing, it is most humbly prayed that this Honourable Court may be pleased to pass the following:

RELIEFS

- (a) Call for the records leading to Exhibits P9 and P11 and may quash the same by issuing a writ of *certiorari*.
- (b) Issue appropriate writ, order or direction commanding the National Green Tribunal, South Zone to consider maintainability of OA no. 142/2020 as preliminary issue before proceeding any further with OA No. 142/2020.



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- (c) Issue appropriate writ, order or direction directing the National Green Tribunal, South Zone to dispose of Ext P14 application before proceedings with OA No. 142/2020.
- (d) Dispense with filing of the translation of vernacular documents.
- (e) May grant such other reliefs this hon'ble court deem fit and necessary in the circumstances

INTERIM RELIEF

For the reasons stated in the above writ petition and the accompanying affidavit, it is most humbly prayed that this Hon'ble court may be pleased to pass an order staying all further proceedings in OA No. 142/2020 before National Green Tribunal, South Zone, during the pendency of the above Writ Petition (Civil).

Dated this the 9th day of August, 2022



Petitioner: Naveen Mathew Philip



P. Haridas

Counsel for the Petitioner



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**BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM**

W.P.(Civil) No. of 2022

Naveen Mathew Philip : Petitioner

Vs.

Kerala State Pollution Control Board

& others : Respondents

AFFIDAVIT

I, Naveen Mathew Philip, aged 39 years, S/o. Philip Mathew, Thekkenedumplakkal House, Mallappally West P.O., Pathanamthitta, Pin - 689585, Proprietor of M/s. Philip Grano Products, Nooromavu P.O., Mallappally West, Pathanamthitta Pin - 689589, do hereby solemnly affirm and state as follows:

1. I am the 1st petitioner herein and I am well conversant with the facts of the case. I am swearing this affidavit on behalf of the 2nd petitioner also.
2. The averments made in the Writ Petition(C) are true and the same may be read as part of this affidavit. To the best of my belief, the grounds urged in the Writ Petition(C) are sustainable.
3. Unless the reliefs prayed for in the Writ Petition(C) are granted, I will be put to irreparable injury and loss.
4. I have not filed any other Petition for the same reliefs earlier.





5. The Exhibits produced along with the Writ Petition(C) are the true copies of their originals.

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

Dated this the 9th day of August, 2022



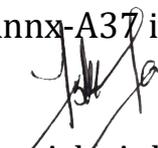
Deponent

Solemnly affirmed and signed before me by the deponent, who is personally known to me on this the 9th day of August, 2022 at my office at Ernakulam.



P. Haridas
Advocate

This is the true copy of the original document marked as Annx-A37 in the accompanying affidavit.



Adv Ashkar K.K

CASE DETAILS			
Case Type	WP(C)	Case Status	PENDING
Filing Number	WP(C) 26473/2022	Filing Date	10-08-2022
Registration Number	WP(C) 25935/2022 (N)	Registration Date	10-08-2022
CNR Number	KLHC010547052022	E-File NO	Offline

CASE STATUS			
First Hearing Date	Thursday, the 11th day of August 2022		
Case Status	PENDING		
Coram	4403-HONOURABLE MR.JUSTICE N.NAGARESH		
Bench	Single		
Last listed Details	Date : 22-08-2022	Bench: 4403 - HONOURABLE MR.JUSTICE N.NAGARESH	List : Daily List Item : 126

PETITIONER AND ADVOCATE	
1	Petitioner : NAVEEN MATHEW PHILIP, , Age : 39 Years Petitioner Advocate : P.HARIDAS,RISHIKESH HARIDAS,BIJU HARIHARAN,SHIJIMOL M.MATHEW,P.C.SHIJIN

RESPONDENT AND ADVOCATE	
1	Respondent : KERALA STATE POLLUTION CONTROL BOARD,
2	ENVIRONMENTAL ENGINEER,
3	GOVERNMENT OF KERALA,
4	THE DISTRICT COLLECTOR, PATHANAMTHITTA,
5	ANICADU GRAMA PANCHAYAT,
6	THE GEOLOGIST,
7	THE DIRECTOR,
8	RENNY JACOB GEORGE,

SERVED ON	
GOVERNMENT PLEADER-SERVED ON	
SRI. T.NAVEEN SC, KERALA STATE POLLUTION CONTROL BOARD,-SERVED ON	

ACTS	
Under Act(s)	Under Section(s)
CONSTITUTION OF INDIA	226

HISTORY OF CASE HEARING						
#	Cause List Type	Hon: Judge Name	BusinessDate	NextDate	Purpose of Hearing	Order
1	Part Two	4403-HONOURABLE MR.JUSTICE N.NAGARESH	11-08-2022		ADMISSION	Adjourned. POST ON 19/8/22
2	Part Two	4403-HONOURABLE MR.JUSTICE N.NAGARESH	16-08-2022		ADMISSION	Adjourned. POST ON 22/8/22
3	Daily List	4403-HONOURABLE MR.JUSTICE N.NAGARESH	22-08-2022	30-08-2022	ADMISSION	Admit Issue Notice Take notice

INTERIM ORDERS			
Business Date	Hon: Judge Name	Application	

CATEGORY DETAILS	
Category : 97.00 Mines & Minerals Act (259)	
Sub Category : 6.400 ENVIRONMENTAL PROTECTION - QUARRYING (171)	

OBJECTION	
#	Objection
1	All Objections are Complied

This is the true copy of the original document marked as Annx-A38 in the accompanying affidavit.



Adv. K.K. Ashkar