

FILED ON: 19.09.2023.

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

O.A. No. 143 of 2020

K.K. Muhammed Iqbal : Applicant

Vs.

Kerala State Pollution Control Board and others : Respondents

With

O.A. No. 182 of 2021

Mahesh Kumar, Ernakulam : Applicant

Vs.

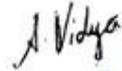
Kerala State Pollution Control Board and others : Respondents

INDEX

SL.NO.	PARTICULARS	PAGE NO
1	Affidavit filed by 9 th respondent	1-7
2.	Annexure-R9(d): True copy of the order dated 05.01.2022 of this Honourable Tribunal in O.A. No.2 of 2022.	8-9

Dated this the 18th day of September 2023

For Viruksham Legal



Partner

M/s. VIRUKSHAM LEGAL

Advocates for 9th Respondent

Vidya.A (Ms.1226/2008) 9841867224

Mohan Prasad.P (Ms.2120/2011) 9940327619

partners@virukshamlegal.in

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

O.A. No. 143 of 2020

K.K. Muhammed Iqbal : Applicant

Vs.

Kerala State Pollution Control Board and others : Respondents

With

O.A. No. 182 of 2021

Mahesh Kumar, Ernakulam : Applicant

Vs.

Kerala State Pollution Control Board and others : Respondents

**AFFIDAVIT FILED ON BEHALF OF 9TH RESPONDENT IN THE
ABOVE CASE**

I, Bismith Mohamed Alingal, aged 51 years, S/o Late Abdul Rahman, Director, Edayar Zinc Ltd (formerly "Binani Zinc Ltd"), having registered office at 37/2, Chinnar Park, New Town, Rajarhat Main Road, P.O. Hatiara, Kolkatta-700157, do hereby solemnly affirm and state as follows:

1. I am the director of the 9th Respondent company and conversant with facts of the case. I am competent to swear this affidavit on behalf of the company.
2. The above original applications have been filed by the applicant seeking directions regarding remediation of contaminated sites in Edayar, in Kerala included under NCEF project as per Annx-A4 DPR prepared for the project.
3. The remediation is sought under the DPR is for two area, one is within the factory premises of this respondent by transferring the historical dump of Jarosite in capped old ponds into the 4th pond constructed as per the guidelines/authorization of CPCB and



KSPCB (hereinafter referred to as 'onsite remediation for easy reference) and the other site is large tract of paddy land owned by private parties lying far from the factory premises alleged to have contaminated by leach from legacy waste of jarosite (hereinafter referred to as 'the offsite remediation' for easy reference).

4. It is a fact that our zinc smelting factory at Edayar was closed in 2014 due to financial crunches, as it became financially not viable due to the change of time and the changes in the national and international market conditions and the lender bank of the company Punjab National Bank has taken possession of the assets of the company under securitization proceedings. But our company is not wound up, we were trying to settle our liabilities incurred during the operation of the factory, which generated employment opportunities and revenue to the state and in pursuit for molding a sustainable growth plan by utilizing the industrial land of this Respondent in Edayar. We have already settled 40% of our liabilities. In discharge of our commitment for providing piped drinking water, given to Edayar residents as part of our corporate social responsibility in 2005 while we were in operation, we have given additional deposit for increasing monthly limit of free drinking water supplied to the beneficiaries, even after closure of the factory with an additional financial commitment of Rs.45 Lacs.

5. Now, we are in an endeavor to restructure the company after availing one-time settlement option from the lender bank, by using the industrial land for setting up 700 Crore Eco industrial and Logistics Township project in association with KINFRA providing direct employment generation of about 3000 and indirect employment of 10,000. The discussions for the same at Government level are in finalization stage.

6. A writ petition vide W.P.(C) No.22772/2018 filed through the same counsel appearing for the main O.A 143/2020 before this



Tribunal was there under the consideration of the Honourable High Court of Kerala seeking similar reliefs sought in the above original applications. Under the orders of the Honourable High Court, hazardous chemicals and other materials kept at the plants of the factory were disposed under the supervision of a monitoring committee constituted by the Board.

7. Regarding onsite remediation proposed under Annx-A4 DPR, we undertook our willingness before the Honourable High Court by affidavit dated 06.12.2021 to remove jarosite kept in 3 old ponds in our premises and to safely dispose the same in Pond No.4 which was constructed as per PCB guidelines with leakproof HDPE liner and other control measures, under the supervision of state pollution control Board after obtaining concurrence from the lender bank and subject to finalization of Jarosite handling protocol prepared by CPCB under the provisions of HW Rules, 2016.

8. In line with our undertaking before the Honourable High Court in W.P.(C) No.22772/2018, we requested the State PCB by letter dated 04.02.2022 to grant permission for commencement of the onsite remediation as proposed under item 5.3 of the DPR by giving appropriate permissions/directions/orders as deem fit by you for the implementation of the jarosite pond remediation, enabling us to complete the work without delay.

9. We are firm in our preparedness to undertake the onsite remediation at our cost as per the guidelines/direction of CPCB and KSPCB in compliance of the remediation methodology prescribed under item 5.3 of Annx-A4 DPR, and conforming to the "Guidelines on Handling and Management of Jarosite" prepared under Hazardous Waster Management Rules, 2016 which is yet to be finalized as submitted by CPCB in their report dated 08.05.2023 in the above case.



The block contains a handwritten signature in blue ink and a circular purple stamp. The stamp features the text "Eastern Zinc Limited" around the perimeter and a central emblem.

10. The contention of the intervenor that he has a patented technology to convert jarosite into crystallized gypsum and which can be channelized in the cement manufacturing industry, is nothing new and not found to be feasible by the CPCB and the intervenor is not able to convince the expert committee regarding its feasibility by providing details and availability of the proposed industrial solid waste for mixing with jarosite, sources of spent acid proposed for treatment of Jarosite and its availability, willingness of potential utilizers (cement plants), including the quality requirement of the gypsum produced by the applicant's technology, characterization of the Jarosite waste lying in the premises of M/s Binani Zinc.

11. Even if the intervenor in I.A.No.99/2022 is able to prove that he can convert jarosite into gypsum found suitable for coprocessing in cement manufacturing industry and if all the cement industries in India come willing to accept the jarosite converted gypsum for their cement production, the total requirement of the material would be lesser in quantity, whereas the total quantity of jarosite remaining in old ponds will come around 8.5 Lakhs Tons as estimated in Annex-A4 DPR. We tried to explore such coprocessing of jarosite in cement and steel manufacturing industry during operation of our factory, which found to be not feasible, and no cement industry came forward to receive the same for using it in their production process, which require modification of plants and processes in their factories. We have no hesitation in handing over even entire jarosite storage to the applicant in I.A.No.99/2022, but trial run and experiment of his technology should not be upon our cost.

12. The investigation of pond conducted by DPR preparing consultant as part of remedial investigation found that existing pond No.4 is constructed with double-liner system including GCL, double HDPE liner, geotextile, and leachate collection system and with



piezometers around the pond. The DPR proposed excavation of approximately 8.5 lakh tons of Jarosite placed in Ponds 1, 2, and 3 which were not constructed in a manner to sufficiently prevent migration of the contaminants contained in the Jarosite and its transfer to the existing Jarosite Pond 4. This pond would then be capped, and a long-term operation and monitoring effort would be initiated. We are ready to undertake the above work ensuring the integrity of the liner and walls of the Pond No.4, subject to the directions/ authorization issued in this regard by PCBs and the Guideline for Jarosite Handling and Management issued by CPCB.

13. The onsite remediation was not proposed originally in the NCEF project, and it was included under its purview during the remedial investigation since the industrial land and plants were left abandoned during the time due to closure of the factory.

14. The remediation of contaminated sites was taken up by the appropriate governments/agencies pursuant to the recommendations of Supreme Court Monitoring Committee on hazardous wastes and orders issued by apex court in W.P.(C) No.657/1995. The apex court transferred the writ petition to the Principal Bench of this Tribunal and the matter regarding compliance of Hazardous Waste Management Rules, 2016 has been dealt with by Principal Bench in OA No.804/2017, *Rajiva Narayan & Anr. v Union of India & Ors* and the Principal Bench constituted a Monitoring Committee to compile relevant information in the light of apex court order dated 18.07.2018 transferring proceedings before this Tribunal. The Tribunal issued further directions, considering the report of the Monitoring Committee, fixing timelines for disposal of hazardous waste in a scientific manner. The Tribunal reviewed the compliance status on 07.07.2020 and finally on 29.01.2021 and issued following final directions for remediation of contaminated sites across the country within a timeline by State Govt/SPCBs by



constituting an Empowered Monitoring Committee.

15. Since the matter regarding remediation of contaminated sites across the country was considered by the Principal Bench and orders have been passed by the Principal Bench for timely compliance, consideration of the same subject matter in the above cases would be improper as it may amount to sitting appeal on / reviewing the orders passed by the Principal Bench in O.A No.804/2017 and O.A No. 362/2021 and likely to lead conflicting decisions and proceedings. Therefore, the remedy available for the applicants to approach NGT, Principal Bench under section 25 of National Green Tribunal Act, 2010. The applicant in O.A. 143/2020 approached this Tribunal in O.A.No.02/2022 seeking directions for timely implementation of action plan for Periyar under River Rejuvenation Projects. This Honourable Tribunal was please to dismiss the said OA stating that sine the reliefs sought is execution of order passed in O.A. No.673/20128 by the Principal Bench of NGT, New Delhi dealing with polluted river stretches across the country under section 25 of NGT Act, 2010, the matter has to be agitated before the Principal Bench of NGT at New Delhi. A true copy of the order dated 05.01.2020 in O.A.No.02/2022 of this Honourable Tribunal is produced herewith and marked for reference as Annexure-R9 (d). Therefore, the above application must be dismissed, in the interest of justice and propriety.

16. O.A. No.182/2021 is just a xerox copy of O.A. No. 143/2020 with only a change only in the name of the applicant, filed with some ulterior motive and by suppressing the pendency of O.A. No.143/2020. Honourable Supreme Court held that anyone who takes recourse to method of suppression the Court of law, is, in actuality, playing fraud with the Court, in the *maxim suppression veri, Expression faisai*, i.e., suppression of the truth is equivalent to the expression of falsehood gets attracted and that an order obtained



by practicing fraud and suppressing material facts before a Court of law to gain advantage, the said order cannot be allowed to stand (***State of Orissa v. Lekshmi Narayan Das (Dead) thr. Lrs (2023 KHC 6702)***). We have filed a preliminary objection regarding the maintainability of O.A.No.182/2021.

17. In the above circumstances, its most humbly prayed that this Honourable may be pleased to consider the preliminary issue of maintainability of the above original applications first before proceeding to hear the matter on merit and may be pleased to dismiss the above applications, in the interest of justice.

All the facts stated above are true and correct.

Dated this the 18th day of September 2023

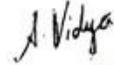
Deponent: Bismith M.A



Solemnly affirmed and signed before me by the deponent who is personally known to me on this the 16th day of September 2023 at my office at Chennai.

Adv. Vidya,
Partner, Viruksham Legal

For Viruksham Legal



Partner

Item No.01:

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Original Application No. 02 of 2022 (SZ)*(Through Video Conference)*

IN THE MATTER OF:

K.K. Muhammed Iqbal, aged 46 years
S/o, Kochu Muhammed
Janajagratha , Eloor, Udyogamandal P.O.,
Ernakulam District, Kerala – 683 501.

...Applicant(s)

Versus

1. Government of Kerala,
Represented by its Chief Secretary,
Secretariat, Thiruvananthapuram,
PIN – 695 001.
2. Kerala State River Rejuvenation Committee,
Represented by its Chairman & Secretary, Environment
Department, Government of Kerala,
Secretariat, Thiruvananthapuram,
PIN – 695 001.
3. The Central Monitoring Committee for River Rejuvenation,
Represented by its Chairman & Secretary, Ministry of Jal Shakti
6th Floor, Shram Shakti Bhawan, Rafi Marg,
New Delhi – 110 001.
4. Kerala State Pollution Control Board,
Represented by its Member Secretary/Chairman,
Pattam P.O., Thiruvananthapuram – 695 004.
5. Irrigation Department, Government of Kerala,
Represented by Additional Chief Secretary to Government,
North Block, Secretariat, Thiruvananthapuram – 695 001.
6. Department of Industries & Commerce,
Government of Kerala, Secretariate,
Represented by its Principal Secretary,
Thiruvanthapuram – 695 001.
7. The Central Pollution Control Board,
Represented by its Member Secretary,
Parivesh Bhavan, Esat Arjuna Nagar,
New Delhi – 110 032.

8. The District Collector, Ernakulam,
Civil Station, Kakkanad,
Kochi - 682 030, Kerala.

9. Kadungalloor Grama Panchayat,
Represented by its Secretary,
Muppathadom P.O.,
Ernakulam – 683 110, Kerala.

...Respondent(s)

Date of Order: 05.01.2022

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

For Applicant(s): Mr. K.K. Ashkar

For Respondent(s): None.

ORDER

1. When it was pointed out that from relief claimed in the application, it appears to be an execution of the order passed in *Original Application No. 673 of 2018* by the Principal Bench of National Green Tribunal, New Delhi while dealing with polluted river stretches under Section 25 of the National Green Tribunal Act, 2010, the matter has to be agitated before the Principal Bench of National Green Tribunal, New Delhi, the learned counsel appearing for the applicant sought permission to withdraw this application with liberty to move the Principal Bench of National Green Tribunal, New Delhi for execution of the order passed.
2. The above submission is recorded. The application is dismissed as withdrawn with above liberty.

.....SD/.....J.M.
(Justice K. Ramakrishnan)

Sd/--
.....E.M.
(Dr. Satyagopal Korlapati)

O. A. No.02/2022,(SZ)
05.01.2022,Sr.