

**BEFORE THE NATIONAL GREEN TRIBUNAL, SOUTHERN
ZONE AT CHENNAI**

Original Application No. 183 of 2016

BETWEEN

Vinay Shivananda Naik

...APPLICANT

AND

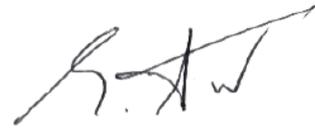
State of Karnataka & Ors.

...RESPONDENTS

MEMO

The counsel for the Applicant humbly prays that this Hon'ble Tribunal may be pleased to take the following documents on record, in the interest of justice and equity.

- 1. Letter dated 27.03.2023 issued to the Chairperson, National Green Tribunal, Southern Zone**
- 2. Letter dated 30.03.2023 issued to the members of the Karnataka Monitoring Committee**



Chennai
Date: 29.05.2024

Counsel for the Applicant

SHRISTI LAW ASSOCIATES

#203, Harsha Greenwoods, 148, Malleshpalya, 5th Main Road, Kaggadasapura, Bengaluru, Kamataka – 560 075

Mobile no.: 8583021856

e-mail: archishman17@gmail.com

By Courier

27.03.2023

To,
Chairperson,
National Green Tribunal, Southern Zone,
377J+8MH, Kalas Mahal, Kamarajar Salai,
PWD Estate, Chepauk, Triplicane,
Chennai, Tamil Nadu 600005

Respected Sir,

Sub: Order dated 13 April 2022 passed by this Hon'ble Tribunal in OA No.183/2016 (SZ)

1. Please note that the subject Order was passed by this Hon'ble Tribunal directing the Chief Secretary to the State of Karnataka to *"periodically atleast once in three months and necessary directions and support (both financial and technical) to implement the action plan so evolved to achieve the goal, that too with shorter timelines."* A copy of the Order dated 13 April 2022, is enclosed herewith.
2. Furthermore, as per the Order dated 27.02.2019, the National Green Tribunal, Principal Bench, New Delhi, made it clear that *"BS II and BS III vehicle shall not be granted renewal of registration and registration of new BS IV compliant vehicle shall be subject to be subject to the decision of the Tribunal in Original Application no.21 of 2014, Vardhaman Kaushik Vs. Union of India & Ors."* Therefore, to renew the registrations for the existing BS II and BS III is illegal and amounts to contempt of the orders of the Hon'ble NGT.

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3. In view of the foregoing mandates of this Hon'ble Tribunal, we humbly request for copies of the reports submitted in compliance of the said Order dated 13 April 2022.

4. This request has been made for *bona fide* reasons in public interest.



Archishman Chaudhury

Item No. 02

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Original Application No. 176/2018
(M.A. No. 508/2018)
(Earlier O. A. No. 183/2016 (SZ))

Shri Vinay Shivanand Nayak

Applicant(s)

Versus

State of Karnataka & Ors.

Respondent(s)

Date of hearing: 27.02.2019

**CORAM: HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. Manu Kulkarni, Mr. Saran Jain and Mr. Meka Venkata Ramakrishna, Advocates

For Respondent (s): Mr. Sarashwathy for MoEF (R-9)
Mr. Devraj Ashok, Advocate for State of Karnataka
Mr. P.D. Surana, Mr. R.S. Hegde, Mrs. Farhat Jahan Rehmani and Mr. T. Venkatesh, Advocates for R-3, BMTC
Mr. Azmat H. Amanullah, Advocate for R-7, Gail India Ltd.
Mr. Kartik Seth and Mr. Anubhav Anand Pandey, Advocates for R-11

ORDER

1. Referring to order dated 26.09.2018, the question for determination in the present case is with regard to the use of BS-II and BS-III compliant public transport vehicles and the incidental question of granting permission for purchase of 1000 number of BS-IV complaint transport vehicles as prayed for on behalf of the State Transport Corporation. Without dealing further on the facts, we make it clear that BS-II and BS-III vehicle shall not be granted renewal of registration and registration of new BS-IV complaint vehicle shall be subject to the decision of the Tribunal in "*Original Application no. 21 of 2014, Vardhaman Kaushik Vs. Union of India & Ors.*"

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By Courier

30.03.2023

To,
The Hon'ble Members of the Karnataka Monitoring Committee
Constituted by the Hon'ble National Green Tribunal in OA No.184/2016

1. **Additional Chief Secretary to Government
(Forests, Environment and Ecology Department)**
Karnataka Government Secretariat, Room No. 447,
4th Floor, Gate no. 2, Multi-storey Building,
Bangalore-560001.
2. **Principal Secretary to Government
(Department of Transport)**
Office of the Commissioner for Transport,
1st Floor, 'A' Block, TTMC Building, Shantinagar,
Bengaluru – 560027
3. **Additional Chief Secretary to Government
(Finance Department)**
Room No.255, Vidhana Soudha
Bangalore – 560 001
4. **Senior Officer from Integrated Regional Office
(Central Pollution Control Board)**
Parivesh Bhawan, East Arjun Nagar,
New Delhi-110032
5. **Chairman of Karnataka Pollution Control Board.**
"Parisara Bhavan",
No #49, Church Street ,
Bengaluru - 560001

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Dear Sir(s):

Subject: Directions given by the Hon'ble Supreme Court of India in Civil Appeal Diary No.19562 od 2022

1. We would like to bring the following facts and circumstances to your kind notice.
2. As you are aware, the air pollution crisis in Karnataka is undeniable, especially in the urban areas. The simple, proven international formula we ask this Monitoring Committee to implement is: **Retrofit, Refuel, Replace**. This formula has been used worldwide for decades to address / reduce urban air pollution from mobile diesel sources: **Retrofit** all non-BS-IV commercial diesels thus allowing annual license / permit renewal, until they can be replaced; **Refuel** to a non-liquid fuel power plant (CNG, LPG, Electric) on all new purchases; **Replace** the older vehicles once feet numbers are up to required levels.
3. The State of Karnataka and its various Transport Corporations have a long-established pattern of obfuscation and misrepresentation to justify inaction and non-compliance with Court Orders, the Auto Fuel Policy and KSPCB directives for their bus fleets to use CNG or non-liquid fuel and to use catalytic retrofits on all older buses in the interim. Lack of funds is the excuse repeatedly used to refuse to undertake proven and necessary actions.
4. In MC Mehta v. Union of India, (2002) 4 SCC 356, the Hon'ble Supreme Court of India has held as follows:

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“Articles 39 (e), 47 and 48A by themselves and collectively cast a duty on the State to Secure the health of the people, improve public health and protect and improve the environment. Lack of concern or effort on the part of various governmental agencies had resulted in spiraling pollution levels. The State Government and the statutory authorities must anticipate, prevent, and attack the causes of environmental degradation... lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation... balance the needs of transportation with the need to protect the environment... priority being given to the environment over economic issues.” M.C. Mehta v Union of India (2002).

5. Therefore, the State is charged with the aforesaid solemn constitutional duty.
6. The Supreme Court in M.C. Mehta (2002) has further stated: *“The aforesaid analysis emphasize the need for change to non-liquid fuel like CNG or LPG so as to improve the air quality in this country and not merely of Delhi.”*
7. India’s National Auto Fuel Policy of 2014 in Section 12.10.3, states that *“Time-bound Retro Fitting Requirement for Commercial Vehicles states “once a geography is fully converted to BS IV grade fuel, commercial vehicles are required by law to get retro-fitting done within a period of two years for the extension of their operating license under the Motor Vehicles rules”.* (pdf page 266 of the report) Therefore, all non-BS-IV commercial diesel vehicles in Karnataka should now be in compliance with the retrofit requirement.
8. Furthermore, as per the Order dated 27.02.2019, the National Green Tribunal, Principal Bench, New Delhi, made it clear that *“BS II and BS III vehicle shall not be*

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granted renewal of registration and registration of new BS IV compliant vehicle shall be subject to be subject to the decision of the Tribunal in Original Application no.21 of 2014, Vardhaman Kaushik Vs. Union of India & Ors.” Therefore, to renew the registrations for the existing BS II and BS III is illegal and amounts to contempt of the orders of the Hon’ble NGT.

9. In view of the foregoing, we hereby call upon you to direct the State of Karnataka, to formalize with 6 months a Policy for the private sector requiring retrofit or replace measures, such as have been otherwise prayed for, to reduce diesel air pollution statewide. Further, progress on implementation to be monitored by the Chennai Bench of the Hon’ble Green Tribunal by calling for monthly reports from State of Karnataka.
10. We request you to further direct that, as an interim measure, all non-BS IV diesel buses that are owned or operated by the Government of Karnataka / State RTCs i.e., Respondents No.2, 3, 5 and 6 and its lessees in public transport use non-engine-modifying retrofit devices on all non-BS-IV diesel buses which reflect 30% or more reduction in smoke emissions, within a short time frame fixed by and progress monitored by the Hon’ble Tribunal via a monthly report from Respondent No.1, and under Polluter Pays Principle”, direct the Respondent No.1 to pay for the said retrofits.
11. This representation has been made for *bona fide* reasons in public interest.



Archishman Chaudhury

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No _____ of 2022

(D No 19562 of 2022)

Krishnan CS

.... Appellant(s)

Versus

State of Karnataka & Ors

....Respondent(s)

ORDER

1 Permission to file appeal granted.

2 Delay condoned.

3 The National Green Tribunal¹, by its impugned order dated 13 April 2022, issued certain directions to the State of Karnataka for taking measures for the abatement of vehicular pollution in Bangalore City.

4 The NGT has appointed a Monitoring Committee in paragraph 62(iii) of its order and has issued consequential directions.

5 The appellant has certain concrete suggestions which have been made before this Court.

6 In our view, the ends of justice would be met by permitting the appellant to place his suggestions before the Monitoring Committee appointed by the NGT.

Signature Not Verified

Digitally signed by
Sanjay K. Datta
Date: 2022.12.12
17:14:07 IST
Reason:

The Committee shall factor in the suggestions which are made by the appellant when it submits its report before the NGT in pursuance of the impugned judgment and order.

1 “NGT”

- 7 The appeal shall stand disposed of in the above terms.
- 8 Pending application, if any, stands disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Pamidighantam Sri Narasimha]

New Delhi;
December 09, 2022
-S-

ITEM NO.24

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s).19562/2022

(Arising out of impugned final judgment and order dated 13-04-2022 in OA No. 183/2016 passed by the National Green Tribunal, Southern Zone at Chennai)

KRISHNAN CS

Appellant(s)

VERSUS

THE STATE OF KARNATAKA & ORS.

Respondent(s)

(WITH IA No.181362/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.181360/2022-PERMISSION TO FILE APPEAL and IA No.181359/2022-CONDONATION OF DELAY IN REFILEING / CURING THE DEFECTS and IA No.181363/2022-APPROPRIATE ORDERS/DIRECTIONS)

Date : 09-12-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Petitioner(s) Mr. Vikram Hegde, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

- 1 Permission to file granted.
- 2 Delay condoned.
- 3 The appeal is disposed of in terms of the signed order.
- 4 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
DEPUTY REGISTRAR

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

(Signed order is placed on the file)

B

SYNOPSIS

1. Aggrieved by the delay in adjudication of Original Application No.183 of 2016 (the “**Application**”) pending before the Hon’ble National Green Tribunal, (South Zone) (the “**Hon’ble Tribunal**”) and deeply concerned about the level of air pollution increasing at an alarming rate in the Bengaluru metro and the State of Karnataka, this Appeal is preferred seeking expeditious disposal of Original Application No.183 of 2016 pending before the Hon’ble Tribunal.
2. The Original Application [Application No.183/2016] under Section 18(1) read with Section 14, 15, 16 and 17 of the National Green Tribunal Act, 2010 (“**NGT Act**”) has been filed before the Hon’ble Tribunal seeking necessary directions against the Respondent Authorities to take immediate actions and proactive steps to protect the environment. The grievance of the Appellant before the Hon’ble Tribunal is *inter alia* the level of pollution caused by diesel vehicles, the need to switch over to green fuels, and the need to retrofit existing diesel vehicles during the transition to clean fuels.
3. It is widely accepted that vehicular air pollution, especially pollution caused by diesel vehicles is one of the largest contributors to the air pollution in cities like Bengaluru. Air pollution causes disastrous consequences on the human health particularly on infants and children. Children in particular are affected by and suffer from that negligence but, since children do not agitate or hold rallies, their sound is not heard by the State of Karnataka (Respondent No.1).

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4. As early as 1991, this Hon'ble Court, in the case of *M.C. Mehta vs Union of India and others* reported at (1991) 2 SCC 137, has taken cognizance of the pollution caused by the diesel vehicles and has held as follows:

“3. We are of the view that the heavy vehicles operating in the city being the buses, trucks and defence vehicles constitute the main contributing factor to pollution. It is necessary, therefore, that more of attention is directed against these vehicles”

5. This Hon'ble Court vide its order dated April 05, 2002, in Writ Petition (c) No. 13029 of 1985 in the matter of *M.C. Mehta v. Union of India*, (2002) 4 SCC 356 has held as follows:

“23. A study conducted with regard to children in Bangalore shows that the incidents of asthma in percentage of children rose from 9% in 1979 to 29.5% in 1999, thereby corresponding increase in vehicles from 1.46 lakhs in 1979 to 12.23 lakhs in 1999.

25. The increase in respiratory diseases specially amongst the children should normally be a cause of concern for any responsible Government. The precautionary principle enshrined in the concept of sustainable development would have expected the Government and the health authorities to take appropriate action and arrest the air pollution. However, children do not agitate or hold rallies and, therefore, their sound is not heard and the only concern of the Government now appears to be is to protect the financial health of the polluters, including the oil companies who by present international desirable standards produce low quality petrol and diesel at the cost of public health.

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26. *The statistics show that the continuing air pollution is having a more devastating effect on the people, than what was caused by the Bhopal gas tragedy. In that case, the nation, including the Union of India, was rightly agitated and sought action and compensation from the multinational company, who was held to be responsible for the same. Here, in the case of CNG, the shoe is on the other foot because the Government is not facilitating measures for clean air and water including the supply of CNG or any other clean unadulterated fuel. It is due to the lack of proper concern on the part of the governmental authorities that people are suffering from respiratory and other diseases. The Bhopal gas tragedy was a one-time event which, hopefully, will not be repeated, but here, with not enough concern or action being undertaken by the Union of India, far greater tragedies in the form of degradation of public health are taking place every day.*

27. *Under these circumstances, it becomes the duty of this Court to direct such steps being taken as are necessary for cleaning the air so that the future generations do not suffer from ill health.”*

6. The Auto Fuel Policy Report of the Expert Committee, Government of India, dated May 2014 (petroleum.nic.in/docs/autopol.pdf) that had representation from all relevant Ministries, manufacturers, academia and NGO's was adopted by the Government of India. A relevant portion on page xvii states as follows:

“Once an area is switched over entirely to BS IV fuel, the existing stock of commercial vehicles, especially heavy duty diesel units, should be directed to compulsorily get after-

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treatment devices... retro-fitted within two years, failing which their licence should not be renewed. The point has repeatedly been made in the course of the deliberations of the Committee that the vexed issue of pollutant stress on air quality and health cannot be addressed solely through improving fuel quality and emission norms.”

Non-engine-modifying retrofits (intermediate or bridge technologies), also known as catalytic retrofits are readily available to the State. The Respondent No.1 should be required to employ this type of technology immediately on a large scale. Further, from the website of Respondent No.2, it appears that Respondent No. 2 has tested at least one such retrofit product and the test report reflects smoke emissions were reduced by 40% and the fuel savings indicated its use could be revenue neutral. The retrofit devices such as above were recognized by the Hon'ble Supreme Court of India, as early as 1991, in the case of *M.C. Mehta vs Union of India and others* (1991) 2 SCC 137.

7. Further, the division bench of the Hon'ble High Court of Karnataka *vide* its order dated August 17, 2004 in Writ Petition Nos. 46850/2002 in the matter between *Karnataka Lorry Malikara Okkuta v. State of Karnataka* reported at ILR 2004 Kar 4206 has held as follows:

“18. Under the circumstances, it will be appropriate to direct the respondents to evolve some scheme after considering the details. Government should also give sufficient time to the vehicle owners for replacement of the old vehicles, in a phased manner, to make available the CNG fuel and to have the vehicles converted to it in a

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phased manner. The authority concerned should overall monitor and check the two wheelers, four wheelers and other types of vehicles including commercial/transport vehicles as well as passenger vehicles, at important functions, and to see that they do not violate the prescribed norms of pollution and the traffic rules and to ensure the safety and welfare of the public. The authorities concerned are also free to take note of the direction issued by the Apex Court in M.C. Mehta's case (supra)."

8. Furthermore, the Karnataka State Pollution Control Board on 25-08-2014 had directed the Road Transport Corporations to convert the fleet of diesel buses to clean fuel under Section 31A of the Air Act, 1981. In fact, pursuant to a *suo moto* public interest litigation initiated by the Hon'ble High Court of Karnataka, Respondent No.3 submitted that "*phased conversion of diesel powered public transport vehicles to CNG vehicles is taken up seriously*" [...] and it shall consider all the aspects of the matter of replacement of the entire fleet of buses in a phased manner and shall make an action plan with the timelines for the phased conversion.
9. Despite lapse of almost two decades since the decision of this Hon'ble Court, the State of Karnataka (Respondent No.1) has been negligent in not addressing the specific suggested starting point from this Hon'ble Court in reducing air pollution from Government diesel vehicles and public undertaking diesel vehicles including public transport diesel vehicles. This negligence has violated the constitutional rights of citizens along with damaging the health and welfare of its citizens.
10. The grievance of the Appellant is not the use of non-BS-IV diesel vehicles, but the level of pollution caused by such vehicles. It is pertinent to state

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that the same diesel vehicles fitted with emission control devices can ensure immediate and meaningful reduction in pollution levels during the transition to new clean fuel vehicles, thus providing a comprehensive approach to the burgeoning problem of urban air pollution.

11. In the foregoing circumstances, concerned about the increase in level of air pollution, the Appellant approached the Hon'ble High Court of Karnataka by way of a public interest litigation in Writ Petition No. 51663 of 2015 seeking *inter alia* direction against the Respondents to ensure that all the buses plying in and/or passing through metro Bengaluru be converted to CNG/LPG or retrofitted with a non-engine-modifying emissions device within a specified time frame.
12. At the request of the Respondents, the Hon'ble High Court of Karnataka after granting interim orders in favor of the Appellant disposed of the Writ Petition *vide* order dated July 22, 2016, with the following observations:

“5. On hearing learned counsel and considering the interim orders passed by this Court, we are of the view that it would be appropriate for the National Green Tribunal to consider this matter. However, having entertained this petition and having passed interim orders, it would be just and necessary that the interim orders continue for some time.

6. The petition is disposed off by reserving liberty to the Appellant to approach the National Green Tribunal for necessary orders. The interim order granted by this Court shall continue for a period of two weeks, from the date of receipt of a copy of this order.”

H

13. Accordingly, the Appellant approached the Hon'ble Tribunal by filing Application under Section 18(1) read with Section 14, 15, 16 and 17 of the NGT Act.
14. The Hon'ble Tribunal was pleased to grant an interim order on 16.08.2016:

“ ...

The matter was originally filed before the High Court of Karnataka at Bengaluru and the Division Bench of the said High Court in its order dated 05.05.2016, has passed an interim order, which is as follows:

“Insofar as the Bangalore Metropolitan Transport Corporation (BMTC) is concerned, it transpires that it is negotiating the purchase of numerous Diesel Engine buses. Before finalising any such purchase, the BMTC shall take this Court into confidence. “

By a subsequent order dated 22.07.2016, the Bench has directed the applicant to move the NGT within a period of two weeks by extending the interim order till then. Accordingly, this application has been filed.

In view of the fact that when the matter was pending before the Hon'ble High Court of Karnataka, there was an interim order as elicited above and accordingly, there will be an interim order in the above said terms.”

I

15. GAIL Gas Limited – Respondent No.11 filed reply affidavit not only (*inter alia*) submitting that there is sufficient supply of CNG but also offered to absorb some cost of CNG buses – the difference between a like equipped diesel and CNG bus.
16. After the pleadings were complete, the Hon'ble Tribunal, vide order dated 20.11.2017 was pleased to hold as follows:

“Learned counsel appearing for the applicant and the respondents are present.

Rejoinder has already been filed. Pleading are completed.

List the matter for final arguments on 15.12.2017.”

17. However, the Hon'ble Tribunal (Principal Zone) vide its order dated March 19, 2018, in Miscellaneous Application No. 382 of 2018, considering the importance of the issue coupled with the fact that the Southern Zonal Bench of the Tribunal was non-functional, transferred the Application to the Principal Bench, New Delhi for consideration in accordance with law.
18. Once again, the Hon'ble Principal Bench vide order dated 10.07.2019 was pleased to observe as follows:

“The application filed on behalf of the applicant for interim direction and the affidavit filed on behalf of the BMTC on 12th July, 2018 and 08th July, 2018 respectively are taken on record. Since pleadings are complete the matter now be listed for final hearing as it has been going on for a long time.”

J

19. It is pertinent to note that although multiple affidavits / submissions have been made by the Respondents before the Hon'ble Tribunal about plans for inducting CNG buses or electric buses, so far, the Respondents did not report any purchases or retrofitted even a single bus with emissions control devices.
20. On the said basis, though the Hon'ble NGT allowed the OA of the Petitioner in part, no specific direction was given on IA No. 144/2022 and IA No. 145/2022.

Hence the present Appeal.

LIST OF DATES

SL. NO.	DATE	EVENT
1.	1991	This Hon'ble Court in the case of <i>M.C. Mehta vs Union of India</i> and others reported at (1991) 2 SCC 137, took cognizance of the pollution caused by the diesel vehicles and observed that the heavy vehicles operating in the city like buses, trucks and defence vehicles constitute the main contributing factor to pollution and that it is necessary, to pay more attention against these vehicles.
2.	05.04.2002	This Court of India in <i>M.C. Mehta vs Union of India</i> reported at (2002) 4 SCC 356 observed that the continuing air pollution is having a more devastating effect on the people, than what was caused by the



A K Abilash <advakabilash@gmail.com>

Re: OA No. 183 of 2016 - "Vinay Shivananda Naik Vs. State of Karnataka & Ors. " - NGT, Southern Zone at Chennai

1 message

A K Abilash <mail@capitallawchambers.in>

Wed, May 29, 2024 at 6:54 PM

To: darpan.advocate@gmail.com, r.thirunavukarasu@bharatmail.co.in, thirunavukarasurajabathar@gmail.com, advocatesarashwathy@gmail.com, bharadwaj@vivrti.in

Cc: archishman chaudhury <archishman17@gmail.com>, Anu Ganesan <advocateanuganesan@gmail.com>

Sir / Ma'am,

Please find attached herewith the memo being filed on behalf of the Applicant in the subject referred Original Application.

Regards,

A K Abilash

Associate Advocate, High Court of Madras



Office: Capital Law Chambers, Old No. 158, New No. 325, 3rd Floor, Linghi Chetty Street, Paryys, Chennai - 600 001.
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**Memo in OA 183 of 2016.pdf**

1674K

**BEFORE THE NATIONAL
GREEN TRIBUNAL, SOUTHERN
ZONE AT CHENNAI**

O.A. No. 183 of 2016

Vinay Shivananda Naik

...Applicant

-Vs-

State of Karnataka & Ors.

...Respondents

MEMO

ARCHISHMAN CHAUDHARY

(WB 1667/2009)

ANU GANESAN (MS 1881/2015)

COUNSEL FOR THE APPLICANT

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