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BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT CHENNAI

Application No. 143 of 2020

K.K. Muhammed Iqbal : Applicant

Vs.

Kerala State Pollution Control Board & others : Respondents

**AFFIDAVIT FILED BY THE APPLICANT IN THE ABOVE
CASE**



K.K. ASHKAR (K/371/04) &
ASHIRA MOHAMED ASHROF (K/1224/03)
COUNSELS FOR THE PETITIONER

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AFFIDAVIT

I, K.K. Muhammed Iqbal, aged 46 years, S/o. Kochu Muhammed, Janajagratha, Eloor East, Pathalam, Udyogamandal P.O., Ernakulam District, Kerala, do hereby solemnly affirm and state as follows:

1. I am the applicant in the above O.A. No. 143/2020 and am conversant with the facts of the case.
2. The above O.A has been filed seeking direction for implementation of Annexure-A4 DPR for remediation of hazardously contaminated sites in Edayar due to the operation of the 9th Respondent industry.
3. In paragraph 9 of the application in the above case, estimated project outlay for the remediation project as per Annx-A4 DPR has been wrongly stated as Rs.90 crores by an inadvertent mistake instead of the actual project outlay of around Rs.48 crores, which mistake may be pleased to be condoned since it is an inadvertent clerical mistake and it may be corrected as "about Rs.48 Crores".
4. I have filed another O.A. No.242/2016 before this Tribunal seeking direction to implement some pollution control measures in another industry working in Edayar Industrial development area on the banks of river Periyar, namely, M/s. Cochin Minerals & Rutiles Ltd., which was posted on 02/09/2021 along with connected cases regarding pollution of river Periyar. Along with the said Periyar cases, one O.A No.182/2021 was considered by this Honourable Tribunal on 02/09/2021 and this Tribunal posted that case to 17/05/2021 along with above O.A. No.143/2020, upon the submission of the learned counsel for State Pollution Control Board regarding pendency of the above case in the same subject matter.
5. Upon coming to know about the order dated 02/09/2021 in the above O.A.182/2021, applicant herein contacted the counsel for applicant in OA



No.182/2021 through my counsel and obtained copy of the application and documents via e-mail on 07/09/2021, to have a clear understanding about the subject matter of that case and its connection to the above case.

6. To the utter shock and dismay, this applicant came to notice that O.A. No. 182/2021 has been filed by one Mr. Mahesh Kumar, a resident of Edayar and an environmental activist, who used to associate with 'Janajagratha', a People's Initiative for Environment Protection and Social Awareness, representing whom I have filed the above Original Application. The O.A. No. 182/2021 was filed by the applicant therein (Mahesh Kumar), without the knowledge or consent of Janajagratha or the applicant herein. Neither different or better cause of action, nor any fresh legal ground, nor any personal grievance has been made out in the application to make a repeated litigation before this Tribunal by suppressing the pendency of above OA 143/2020. The applicant in OA 182/2021 was aware of the proceedings in the above case being associated with the organisation whom the applicant herein represents.

7. On perusal of the pleadings in OA No.182/2021, it can be seen that it is a plagiarised brief, by making wholesale copying of the pleadings made by me in the above original application in verbatim. Paragraph 2 to 13 of my application has been copied and reproduced by word to word, without even a change to the punctuations, as paragraph 2 to 13 of the application in O.A. No.182/2021. The array of parties and listing of documents is exactly in the same order in the above case. Paragraphs 1,2,3 and 8 in the Synopsis of my application has been in verbatim reproduced as Para 1,2,4, and 7 in the Synopsis of O.A. No.182/2021.

8. The reliefs sought in the above original application is as follows:

- 1) *Direct the Respondents 1 to 4 to ensure implementation of Annx-A4 DPR for remediation of hazardously contaminated sites in Edayar in Kadungalloor Village, Parur Taluk, Ernakulam District in state of Kerala within a time frame;*
- 2) *Direct the 9th respondent to not remove plant and machineries from their industrial premises, before their environmental liability for Annx-A4 remediation project is quantified and settled by respondents 1 to 4;*

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- 3) *Direct the respondents 1 to 4 to constitute a team of experts to inspect the Jarosite ponds covering 20 acres of land in the premises of 9th respondent whether there is toxic leachate from the ponds;*
- 4) *Direct the 2nd respondent Government to deposit 40% of the Annx-A4 project cost to 4th respondent CPCB for implementation of the project in time;*
- 5) *Direct the Respondents 1 & 2 to collect 60% of the Annx-A4 project cost from 9th respondent and deposit the same to 4th respondent CPCB for implementation of the project in time;*
- 6) *Direct the 8th respondent to restore the joining portion of Chakala thodu to the river Periyar on upstream of Pathalam Regulator cum Bridge by removing the earth filled in it, enabling easy inflow and outflow of water through the channel to and from Edayattuchal paddy fields;*
- 7) *Direct the respondents 1 to 4 to quantify the other environmental damages caused by the operation of 9th respondent industrial unit in Edayar area and river Periyar and its remediation cost and to recover the same from the 9th respondent or 10th respondent, its holding company;*

9. The reliefs sought in O.A No.182/2021 is as follows:

1. *Direct the Respondents 1 to 4 to ensure implementation of Annexure A4 DPR for remediation of hazardously contaminated sites in Edayar in Kadungalloor Village, Parur Taluk, Ernakulam District in State of Kerala within a time frame;*
2. *Direct the 9th respondent to not remove plant and machineries from their industrial premises, before their environmental liability for Annexure -A4 remediation project is quantified and settled by Respondents 1 to 4;*
3. *Direct the Respondents 1 to 4 to constitute a team of experts to inspect the Jarosite ponds covering 20 acres of land in the premises of 9th Respondent whether there is toxic leachate from the ponds;*
4. *Direct the 2nd Respondent Government to deposit 40% of Annexure - A4 project cost to 4th respondent CPCB for implementation of the project in time;*
5. *Direct the Respondents 1 & 2 to collect 60% of the Annexure A4 project cost from 9th respondent and deposit the same to 4th Respondent CPCB for implementation of the project in time;*

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6. *Direct the Respondents 1 to 4 to quantify the other environmental damages caused by the operation of 9th and 10th Respondents industrial unit in Edayar area and river Periyar and its remediation cost and to recover the same from the 9th Respondent or 10th Respondents, its holding company, as held in AIR 1996 SC 1446 at p 1466.*

10. The reliefs sought in O.A. No.182/2021 are exactly the same reliefs sought by me in the above case and relief Nos. 1 to 5 and relief no.7 in the above case is in verbatim reproduced as relief Nos.1 to 5 and relief No.6 respectively in O.A. No.182/2021. The only difference between the prayers sought in the above case and O.A. No.182/2021 is that relief No.6 sought in the above case is omitted in the latter case.

11. Relief No.6 in the above case is seeking a direction against the 8th Respondent to restore an irrigation canal leading to the river *Periyar*, on upstream of *Pathalam* Regulator cum Bridge by removing the earth filled in it, enabling easy inflow and outflow of water through the channel to and from paddy fields. The pleading in support of that relief is given in paragraph 11 of the above original application and photographs showing the reclaimed portion of canal was also produced as Annx-A5 in the above case. Even though the applicant in O.A. No.182/2021 reproduced the said paragraph in verbatim in his application as paragraph 11 itself and 8th respondent Irrigation Department in the above case has been made party as 8th respondent in his application also, no relief is sought in the subject. The applicant in O.A. No.182/2021 has produced all the documents I have produced in the above case, in the same order except Annx-A5 photographs. That might be because, he cannot produce and mark photocopies of the photograph, since he made the application by copycatting the xerox copy of the above original application.

12. The only contribution from the applicant as well as his counsel in the pleadings of O.A. No.182/2021 is that synopsis of the case is presented in a different fashion than of the above case and some more precedents were added in separate paragraphs in support of polluter pay principle under the grounds of the case. On examination of O.A. No. 182/2021, it does not reveal any independent labour or effort from the part of its applicant in the pleadings and legal arguments. The applicant as well as his counsel in O.A. No.182/2021 exclusively depended on the above original application filed by me and made

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wholesale copying of my pleadings. But he did not have the honesty to acknowledge the source of his pleading when he repeated the wordings, legal argument and line of thinking of my application in verbatim in his application. The applicant in the latter case not only copied the pleadings in the above case in verbatim without attribution to the source, but also wilfully suppressed this Tribunal also about the pendency of the above case in the same subject matter.

13. Since the pleadings in O.A. No.182/2021 was made by copying the pleadings in the above case in verbatim, applicant or his counsel cannot plead ignorance about the pendency of above case. If the applicant in O.A. No.182/2021 was a diligent and bonafide litigant, he must have been aware of the proceedings and daily orders in the above case from the website of this Tribunal.

14. The relief No. 2 sought in the above case is seeking a direction to injunct the 9th Respondent company from removing plant and machineries from their industrial premises before their environment liability for Annx-A4 remediation project is quantified and settled. The said prayer is repeated in verbatim as relief No. 2 in O.A. No.182/2021. This applicant sought that prayer in oblivious of the fact that removal of plants and machineries are under the orders of Debts Recovery Tribunal-1, Mumbai and under the orders of honourable High Court of Kerala in W.P. (C) No. 19291/2020 as per the provisions of SERFAESI Act. After coming to know about the said proceedings, this applicant has made an interlocutory application vide I.A No.106/2020 for deleting relief No. 2 in the above case in order to avoid accusation of canvassing a relief in a parallel proceeding before this Tribunal by overlooking pending proceedings in another legal forum. This Tribunal by order dated 13/04/2021 deleted the said relief from the above case by holding that since the removal of machineries are being done as per the orders of the Hon'ble High Court of Kerala, this Tribunal cannot injunct them from removing the same.

15. In spite of the order dated 13/04/2021 holding that this Tribunal cannot injunct removal of plant and machinery since it is done under the orders of High Court, the applicant in O.A. No.182/2021 mechanically repeated that relief in his application as relief no.2 by overlooking the order of this Tribunal and he also prayed for the same relief as interim order.

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16. Relief No.3 in the above case is seeking a direction to constitute a team of experts to inspect the jarosite ponds covering 20 acres of land in the premises of 9th Respondent to ascertain whether there is toxic leachate from the ponds. This honourable Tribunal by order dated 13/04/2021 in the above case, appointed a joint committee comprising of (1) Senior Officer from the Central Pollution Control Board,(2) Senior Officer/Scientist from Kerala State Pollution Control Board, (3) a scientist having expertise in soil study from Department of Soil Science and Agricultural Chemistry, Kerala Agricultural University and (4) a Senior Soil Conservation Officer from Department of Soil Survey and Soil Conservation, Government of Kerala, to inspect the area in question in the case and to submit a report regarding nature of contamination of the agricultural land, sources of contamination and also to ascertain whether any of the activities of the 9th and 10th Respondent had contributed to the alleged contamination. Thus, it can be seen that relief No. 3 sought in the above case is allowed and the above case is posted to 17/09/2021 for consideration of the report of the joint committee appointed by this Tribunal.

17. The order of this Tribunal dated 13.04.2021 was prominently reported in the leading Malayalam newspapers including Malayala Manorama and Mathrubhumi on 26.04.2021 and other media. The above O.A. No.182/2021 is seen filed by the applicant on 03/07/2021, which is about 3 months after the passing of aforesaid order by this Tribunal constituting a joint committee to conduct study and submit report in the subject matter. The applicant in O.A. No.182/2021 repeated the relief No. 3 in his application seeking direction to appoint a joint committee, despite the fact that a committee was already appointed by this honourable Tribunal by the said order and which fact was within the active knowledge of the applicant.

18. The applicant in O.A. No.182/2021 requested and taken a copy of the above original application for perusal in last week of April, 2021, after the news appeared in Newspapers that a joint committee is constituted by this Tribunal in the above case. Applicant herein never thought Mr. Mahesh Kumar, a fellow activist would indulge in a copycat repeated litigation without informing me, thereby putting veil of suspicion upon the bonafide in the environmental activities of our organisation and me, in the mind of Tribunal as well as the

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official respondents. The said O.A. No.182/2021 came up for admission before this Tribunal on 16/08/2021. On perusal of the daily order dated 16/08/2021, it seems that applicant has not represented to the Court about the pendency of above case in the same subject, despite his application is almost in verbatim reproduction of the above original application.

19. No fresh cause of action, no fresh grounds or pleadings, no other reliefs than those sought in above case, nor any personal grievance, no subsequent factual development is pleaded in O.A. No.182/2021 than that of the pleadings in the above case. The O.A. No.182/2021 was made without application of mind and simply copying and pasting the entire pleadings in the above case. What is the use of this multifarious suit rather than resulting in to docket explosion and wasting of precious judicial time of this honourable Tribunal? If the applicant had any bona fide in prosecuting the cause espoused in both cases, the fair and proper option was to implead in the above case, in case he has anything more to place and assist the Court.

20. The conduct of the applicant in filing a plagiarised brief by concealing pendency of similar matter before this Tribunal, is lacking bonafide and made with some ulterior motive. This applicant apprehends that O.A. No.182/2021 was made by the applicant to defeat the environment cause pursued in the above case, by tending to cast a shadow of suspicion upon the bonafide of this applicant in the mind of this Tribunal that latter case, filed in *in verbatim* reproduction of the above case, is in collusion with the applicant herein, which may or may not eventually tilt the case in favour of the respondent company. Thus, this applicant is having strong apprehension that O.A. No.182/2021 is preferred by the applicant therein, is not to support the cause, but to defeat the cause by giving weapons into the hands of the polluters.

21. The wholesale copying of my brief by the applicant in O.A. No.182/2021 is a deceptive practice. The word-for- word copying of substantial, no routine portion of pleadings in a brief, shall not be permitted by this Honourable Tribunal. Filing of a plagiarised brief by suppressing the pendency of a former brief in the same subject matter, is nothing but abusing the process of this Tribunal which should be dealt with stern actions to instil public faith in the institution and to uphold the majesty and decorum of this Court of law.



22. Applicant painstakingly swear this affidavit against a fellow activist, only because passive tolerance to such sort of namesake, fame-hunting environment litigations by any, would defeat the environment causes in general. Not only river Periyar to be protected, but stream of justice also, to be safeguarded from those frivolous litigations which dares to foul it. The conduct of the applicant in O.A. No.182/2021 is involving dishonesty, fraud, deceit and misrepresentation.

23. Honourable Supreme Court in *Haryana State Co-operative Labour and Construction Federation Ltd. v. Unique Co-operative Labour and Construction Co-operative Society Ltd. and Another (2018 (14) SCC 248)* made a call to all the courts in India to deal with frivolous filings firmly by imposition of exemplary costs thus:

“Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that Courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all Courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every Court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the Courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to Courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all Courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all Courts to deal with frivolous filings in the same manner”

21. In the above circumstances, it is most humbly prayed that this Tribunal may be pleased to dismiss the O.A. No.182/2021 filed by abusing the process of this Court by suppressing pendency of another case in the same subject matter despite it was in the active knowledge of the applicant in that case and copycatting the pleadings of the former case, with exemplary cost to deter such namesake, fame-hunting litigation speculators from adventuring into such

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vexatious litigations in future, which would in effect defeat prosecutions of environmental causes attempted by bonafide litigants.

All the facts above stated are true and correct

Dated this the 14th day of September 2021

Deponent: K.K. Muhammed Iqbal

solemnly affirmed and signed by the deponent who is personally known to me on this 14th day of September 2021 at my office at Ernakulam



K.K. Ashkar
Advocate