

Filed on: 11.08.2023

**BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI
MEMORANDUM OF APPEAL**

(Under Section 18(1) read with Section 16 of the National Green Tribunal
Act, 2010)

APPEAL No. 55 of 2022

LUKOSE K T ALIAS LUKA & ANR : **APPELLANTS**

Versus

MINISTRY OF ENVIRONMENT, FOREST AND
CLIMATE CHANGE & ORS : **RESPONDENTS**

**REJOINDER AGAINST THE REPLY AFFIDAVIT FILED BY THE
RESPONDENTS No. 2 to 4**

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

Counsel for the Appellants

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I Lukose K T Alias Luka, aged 75 years, S/o Thomas, Kurijirappally House, Eruvatty PO, Thimiri, Chapparapadavu, Kannur - 670581, do hereby solemnly affirm and state as follows:

1. I am the 1st appellant in the memorandum of appeal and as such I am conversant with the facts of the case. I am competent to swear this affidavit on behalf of the 2nd appellant also.
2. I have read the counter affidavit filed by the respondents No.2 - 4. All averments and allegations raised by the respondents No.2 - 4 in the in the said counter affidavit except those which are specifically admitted hereunder are false and hence filing this rejoinder.



3. It is respectfully submitted that all the averments and allegations raised by the respondents No.2 - 4 in paragraphs 4 to 15 of the reply affidavit are not true and hence stoutly denied. It is pertinent to note that in paragraph No.7 of the counter affidavit, the respondents No. 2 - 4 have admitted that they have sought the updated DSR in their 119th meeting. However, nowhere in the subsequent meeting such an updated DSR is produced by the 5th respondent. No reason has been stated by the respondents No.2 – 4 as to why a statutorily mandated document like the DSR was not prepared and considered before the grant of the impugned EC. Even though the 119th meeting of SEAC sought for an updated DSR, it was ignored without any valid reason.
4. It is pertinent to note that in paragraph No.10 of the Counter affidavit, the SEIAA had admitted that the 5th respondent did not even file an application for EC as mandated in the EIA Notification, but only submitted an application for ToR. However, later it was found that in another file, an application was filed for EC. The recommendation given by the SEAC in its 128th meeting was not on the application filed in File No.1432 but in File No.1431 where the application was only for ToR. This fact admitted by the SEIAA is supporting the grounds in the appeal especially on the ground that there was no proper appraisal done by the SEAC and there was sheer lack of application of mind at the time of recommendation for EC.
5. There is absolutely no whisper regarding the non-preparation of DSR as per the EIA Notification, 2006 and how such condition was incepted for

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the 5th respondent. The SEIAA did not make any contention that the 2016 DSR or any subsequently prepared DSR was considered by SEIAA and approved the same prior to the grant of Annexure A1. Therefore, it is to be presumed that no DSR was prepared or considered in accordance with law before the grant of Annexure A1. In paragraph No.14 of the Counter affidavit, it is admitted that the DSR already prepared is not in tune with the EIA Notification 2006 and therefore on that ground alone, this appeal has to be allowed.

6. It is submitted that the judgment in WPC.No.5209 of 2022 dated 16.02.2022 by the Hon'ble High Court is not applicable in the case of the 5th respondent herein as there is no general direction issued by the Hon'ble High Court for such a consideration and there was no striking down of the provisions of law laid down by the EIA Notification, 2006. In the said case, the DSR was not of Kannur district but of Idukki district and therefore, the facts in the said case is also not similar in the present appeal. At the maximum, the said judgment can be made applicable in the case of the application submitted by the petitioner in WPC.No.5209 of 2022, and the benefit cannot be extended to the 5th Respondent.

Therefore, it is most humbly requested and prayed that, having regard to the above mentioned and other grounds that may be urged at the time of hearing, this Hon'ble Tribunal may be pleased to accept this rejoinder and allow this appeal, with cost to the respondents No.2 - 4, in the interest of justice.



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

Dated this the 10th day of August, 2023



DEPONENT

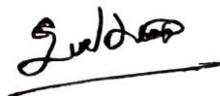
Solemnly affirmed and signed before me by the deponent whom I know on this the 10th day of August, 2023 in my office at Ernakulam.



ADVOCATE

VERIFICATION

I, Lukose K T Alias Luka, aged 75 years, S/o Thomas, Kurijirappally House, Eruvatty PO, Thimiri, Chapparapadavu, Kannur - 670581, do hereby verifies that the contents of the above paragraphs 1 to 6 are true to the best of my knowledge and I have not suppressed any material facts.



SIGNATURE OF THE APPELLANTS

DATE : 10.08.2023

PLACE : Ernakulam