

Filed on: 28.03.2022

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ)
AT CHENNAI**

Appeal No.55 of 2022

Lukose K.T. @ Luka & Another : Appellants

Vs.

Ministry of Environment Forest
& Climate Change & Others : Respondents

COUNTER AFFIDAVIT FILED BY THE 5th RESPONDENT

*Copy Received
Cl. Adv. Hemish Vasudevan
28/3/2022*

**SUNIL V. MOHAMMED (K/1561/2000)
Counsel for 5th Respondent**

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL AT CHENNAI

Appeal No. 55 of 2022

Lukose K.T. Alias Luka & Another : Appellants

Vs.

Ministry of Environment Forest
& Climate Change & Others : Respondents

INDEX

Sl. No.	Particulars	Page No.
1.	Counter Affidavit	1 - 6
2.	<u>Annexure R5(1)</u> : True copy of the Information dated 21.10.2022 received under the RTI Act with English Translation.	7

Dated this the 26th day of March, 2023


Counsel for the 5th Respondent

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ)
AT CHENNAI

Appeal No.55 of 2022

Lukose K.T. @ Luka & Another : Appellants

Vs.

Ministry of Environment, Forest
& Climate Change & Others : Respondents

COUNTER AFFIDAVIT FILED BY THE 5th RESPONDENT

I, Rajeevan P.V., S/o. Kunhiraman, aged 44 years, residing at Puthiyaveetil House, Kooveri P.O., Kannur District, Kerala-670581, do hereby solemnly affirm and state as follows:

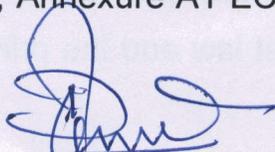
1. I am 5th respondent in the above Appeal. I am conversant with the facts of the case and competent to swear this affidavit.
2. I hereby deny the entire averments contained in the above Appeal, except to the extent admitted hereunder. The appellants have approached this Hon'ble Tribunal with incorrect and misleading facts. The cause raised by the Appellants is not public interest, but with vested private interest. Hence, the above Appeal is liable to be dismissed at the primary threshold itself.
3. It is submitted that the above Appeal has been filed challenging Annexure A1 EC dated 02.08.2022 issued for conducting mining of granite building stone for an area of 0.9936 Hectares in Re. Sy. No. 5 of Thimiri Village, Taliparamba Taluk, Kannur District in Kerala. The grounds of challenge leveled by the appellants in the above Appeal are that Annexure A1 EC is issued against law and the principle of sustainable development and if

the quarry is permitted to operate, it will cause danger to life and property of the appellants and the nearby residents and also serious environmental degradation.

4. It is submitted that, quarry operation is not permissible without Environmental Clearance Certificate issued by the competent authority. EIAA Kerala has been constituted by Government of India, authorizing to deal with Environmental Clearance for projects falling under Category 'B' of schedule in EIA Notification, 2006, which is issued U/s. 3 of the Environmental Protection Act, 1986. The issuance of Annexure A1 EC is not disputed.

5. The averments in para 1 of the Appeal that the 1st appellant is residing within 130 meters from the proposed quarry site, and he has landed property having an extent of 1 Hectares and 36.79 Ares in Re. Sy. No. 27/1884 of Thimiri Village is not fully correct. Admittedly, the 1st appellant has property in the area, but he is not residing therein. He resides 2 kms. away in House No. CP 1152/3A in Thimiri Village. As regarding the 2nd appellant, it is submitted that he is not residing in the area nor has he any residence therein. Infact, the appellants are puppets in the hands of a rival group headed by one Mr. Afin M. Alex, who wants to operate quarry in his property. The appellants are not socially committed citizens as claimed and they are not involved in any environmental protection activities. They lack bonafides and their only intention is to make a beneficial bargain from me. Moreover, a relative of the said Mr. Afin M. Alex, one Mr. Anoop, S/o. Illimootil Moncy is running two quarries nearby the area in question. It is reliably understood that the appellants have been made tools to prevent the proposed quarrying business for the aforementioned reasons.

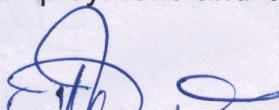
6. I hereby deny entire averments in para 2 and 3 of the Appeal. I am not engaged in any quarry and mining operations and the present site is my first attempt. It is incorrect to say that, Annexure A1 EC was granted violating the



procedure established by law and against the principle of sustainable development and that it will cause danger to the life and property of the appellant and serious environmental degradation. Further, averment that this respondent if permitted quarry operation would violate peaceful life and property of the appellants is baseless. Admittedly, I have submitted TOR on 14.12.2019 along with supporting documents, which were considered by the 3rd respondent and I was directed respondent to furnish 5 items and the prescribed Form 1M application.

7. The averments in para 4 of the Appeal are utter false. The Talacauvery Wildlife Sanctuary is situated more than 14 kms. away and Brahmagiri Wildlife Sanctuary is at a distance of about 40 kms. Therefore, the averments pertaining to that are untenable. Annexure A1 would reveal that it is a new project and that field inspection was conducted on 12.12.2021. Further, the EC is granted for a period of 5 years from the date of permit from Mining and Geology Department. I being the project proponent has complied with all the formalities of the SEIA, PCB and the orders of the MoEF as well as EIA Notification, 2006 and all other relevant orders. It is incorrect to say that I have commenced quarry operation. Till date I have not received a mining permit from the Mining and Geology Department and I am not carrying on any quarrying operation in the site as alleged.

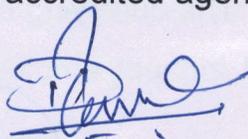
8. The averments in para 5 to 10 of the appeal are highly incorrect and baseless. It is specifically stated in Annexure A2 that the required water will be met from pond and well. A small pond is already available near to the project, which belongs to one Mr. Illimootil Joseph Antony from whom this project proponent has obtained the project land on lease for quarrying activities. There is no dwelling house or human inhabitation within 136 meters as alleged in the Appeal. The human settlement available is 136 meters away from the project land. The quarrying operation will benefit the local community by way of direct and indirect employment and the ROM will be utilized for



various infrastructure purposes like roads, housing etc. It is specifically mentioned therein that the protected areas or sensitive flora and fauna etc. are not available within 15 kms. from the quarry boundary. The project is stated to be coming under Zone-III, Moderate Damage Risk Zone as per Building Material and Technology Promotion Council (BMTPC) etc. and further the area has no history of any incidents like earthquake, land slide, erosion etc.

9. Further, as per Annexure A2, Brahmagiri Wildlife Sanctuary is stated to have been situated at an aerial distance of 25 kms. and the Thadikadavu River at an aerial distance of 1.37 kms. The nearest house is mentioned at a distance 138 meters. It is also mentioned in the application that no forest area is available nearby and that the project land is totally a private land and water bodies are not present in the quarry area or the buffer area. Annexure A2 contains the details of EIA Consultant. The EIA Consultant concerned holds certificate of accreditation, which is valid upto 01.07.2024. It is clearly mentioned in Annexure A2 that the grounding of the project will not be causing any alteration to the drainage pattern of the area. Annexure A3(b) District Survey Report of Minor Minerals issued under the EIA Notification, 2006, coming under the Environment (Protection) Act, 1986 is submitted along with the application for EC.

10. As regarding Annexure A4, it is submitted that there is no such project implemented in the Chapparapadavu Grama Panchayat under the People's Planning Program, which is clearly evident from the information received under the RTI Act in that regard. The true copy of the Information dated 21.10.2022 received under the RTI Act with English Translation is produced herewith and marked as **Annexure R5(1)**. The agency that prepared the Rapid Biodiversity Assessment Report is an accredited consultancy. Form1-M documents were prepared by the accredited agency. My project comes under

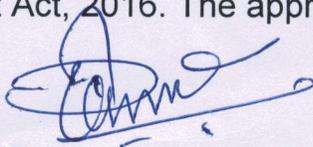


B-II category. So the averments in para 11 and 14 contrary to the above facts are false.

11. The averments in para 15 to 23 of the Appeal are misleading. The averment that streams within 100 meters of the boundaries were not marked in the revised map and that it is without any details and scientific scrutiny of the 3rd respondent is untenable. The averments of violation of KLA Rules, 1964 in para 18 are incorrect. It is also incorrect to say that there is a stream running in the quarry area, where there is a Pico-hydro electric project, which is known as 'Thodu' and that it is the drinking water source of residence. There is no such stream available in the area.

12. There is a well situated near the residential property of Mr. Luka, which is 150 meters away and that is the water resource available in the area. The said pond is unaffected. Admittedly, Annexure A12 is the revised survey map submitted by the 3rd respondent based on the survey map. According to the appellants, the minimum distance criteria of quarry are 200 meters from the residential area. The matter as to the implementation of 200 meters distance is under challenge and pending consideration of the Hon'ble Apex Court and at present status quo of 50 meters is maintained in Kerala. As per Annexure A13, it is clearly mentioned that in Kerala blasting involves within the range of 50-100 meters from the boundary lines of residential buildings, canals, rivers etc. and when no plastic is involved, range of 50-70 meters is fixed as minimal distance.

13. It is incorrect to say that I will be using nitrate mixture for explosion is utter false. So far no blasting licence is issued to me. Moreover, the explosive method proposed by me is using gelatin stick and ED. Further, there is no deliberate and willful concealment of facts etc. in Form 1A application. The DSR prepared is scientific and with proper information. There is no violation of the State Disaster Management Act, 2016. The appraisal done by the SIEA



is proper. As undertaken by me, I am bound to follow all the terms and conditions appended with Annexure A1 EC. Over and above this, the Appeal is bad for limitation and further the Appeal is not maintainable on facts as well.

14. It is submitted that the Pollution Control Board has issued Consent to Operate the quarry. The Pollution Control Board has considered all the complaints and Consent to Operate was issued after a detailed site inspection conducted during July, 2022 and also considering various other aspects.

15. The Grounds A to DD in the Appeal are untenable for the reasons stated above. The contentions of the appellants are without any bonafides and merits and highly vexatious. In the circumstances, the reliefs sought for by the appellants are liable to be rejected.

As such, it is most humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the above Appeal, in the best interest of justice.

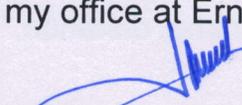
The facts stated above are true and correct.

Dated this the 26th day of March, 2023



Deponent

Solemnly affirmed and signed before me by the Deponent who is personally known to me on this the 26th day of March, 2023 at my office at Ernakulam.



SUNIL V. MOHAMMED
Advocate
K/1561/2000



നമ്പർ.401042/GGRI12/GPO/2022/2558/(1)

ചപ്പാരപ്പടവ് ഗ്രാമ പഞ്ചായത്ത് ഓഫീസ്

കുവേരി

ചപ്പാരപ്പടവ്.പി.ഓ

കണ്ണൂർ

Phone No:04602270221

E-mail:secretarycgp@gmail.com

തീയതി : 21/10/2022

പ്രേഷകൻ

സംസ്ഥാന പബ്ലിക് ഇൻഫർമേഷൻ ഓഫീസർ

സ്വീകർത്താവ്

ശ്രീ CHANDRAN.T.P

ELAMBERAM PARA, Koovery, 670581, Kannur, Kerala

സർ,

വിഷയം:- വിവരാവകാശ നിയമം, വിവരാവകാശ അപേക്ഷ (അപേക്ഷാ ഫീസ് കോർട്ട് ഫീ സ്റ്റാനിഫ് ചെയ്തവഴി)

സൂചന-താങ്കളുടെ 27/09/2022 ലെ അപേക്ഷ

മുന്തൂർകളും എന്ന സ്ഥലത്ത് മിനി ഹൈഡ്രോ ഇലക്ട്രിക്കൽ പ്രോജക്ട് നിലവിലുള്ളതായി രേഖകളൊന്നും തന്നെ ഈ ഓഫീസിൽ ലഭ്യമല്ല.

(ഈ മറുപടി സംബന്ധിച്ച് താങ്കൾക്ക് ആക്ഷേപം ഉണ്ടെങ്കിൽ അപ്പീൽ ഈ മറുപടി കൈപ്പറ്റി 30 ദിവസത്തിനകം പെർഫോമൻസ് ഓഡിറ്റ് യൂണിറ്റ് സൂപ്പർവൈസർ, യൂണിറ്റ് 4, കല്ലയാശ്ശേരി എന്ന വിലാസത്തിൽ നൽകേണ്ടതാണ്)

വിശ്വസ്തയോടെ,



STATE PUBLIC INFORMATION COMMISSION
HEAD CLERK
21/10/2022

English Translation

No. 401042/GGR112/GPO/2022/2558/(1)

Chapparapadavu Grama Panchayat Office

Kooveri

Chapparapadavu P.O.

Kannur

Phone No: 04602270221

E-mail:secretarycgp@gmail.com

Date: 21.10.2022

From

State Public Information Officer

To

Sri. Chandran T.P.,

Elamberam Para, Kooveri, 670581, Kannur, Kerala.

Sir,

Sub:- Right to Information Act, Application under Right to Information
(Application fee through Court Fee Stamp/Chellan)

Ref: Your Application dated 27.09.2022

There are no documents available in this office to show that Mini Hydro Electrical Project is existing in the place Munnoorkulam.

(In case of any objection with respect to the above reply, you need submit an Appeal from 30 days of receipt of this reply in the address Performance Audit Unit Supervisor, Unit 4, Kalliassery).

Yours Faithfully,

Sd/-

State Public Information Officer
Head Clerk
Chapparapadavu Gramapanchayat
Chapparapadavu P.O.-670581
Ph: 0460 2270221

This is the true copy of the document marked as
Annexure R5(1) in the above OA.