

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. 75 of 2021

SHOUKKATH ALI : APPELLANT

Versus

STATE ENVIRONMENT IMPACT : RESPONDENTS
ASSESSMENT AUTHORITY & ORS

REJOINDER AGAINST THE REPLY AFFIDAVIT FILED BY THE 4TH
RESPONDENT

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

Counsel for the appellant

Amicus Advocates

II Floor, Chundanal Monarch, K.K Padmanabhan Road, Kochi-18

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. 75 of 2021

SHOUKKATH ALI

: APPELLANT

Versus

STATE ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY & ORS

: RESPONDENTS

INDEX

SL NO.	PARTICULARS	PAGE NOS
1.	Rejoinder	1 - 8
2.	ANNEXURE A25: A true photocopy of the judgment dated 06.03.2017 in CCC No. 1803 of 2017	9 - 10



RAJAN VISHNURAJ



HARISH VASUDEVAN

Advocates

COUNSEL FOR THE APPELLANT

Amicus Advocates

II Floor, Chundanal Monarch, K.K Padmanabhan Road, Kochi-18

Email: legalfriend@gmail.com / amicusadvocates@gmail.com

Mobile No: +91-9447755896

/

**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. 75 of 2021

SHOUKKATH ALI

: APPELLANT

Versus

STATE ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY & ORS

: RESPONDENTS

**REJOINDER AGAINST THE REPLY AFFIDAVIT FILED BY THE
4TH RESPONDENT**

I, Shoukkath Ali, aged 35 years, S/o Muhammed Ali. C, Charalil House, North Paloor, Pulamanthole P.O, Malappuram District, do hereby solemnly affirm and state as follows:

1. I am the 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.
2. It is respectfully submitted that all the averments and allegations raised by the 4th respondent in paragraphs 1 -28 are not true and hence denied. The allegation that the appellant is not residing anywhere near the quarry site is not true and denied. The allegation that the appellant does not have any landed property in the Pulamnathole Village is not true and hence denied. The averments raised by the 4th respondent that the appellant herein does not rely on agricultural activities for their means of their lively

Shoukkath Ali



2

hood is also not true and hence denied. The 4th respondent has alleged that the appellant herein is a government employee and hence he cannot be said to have any locus standi to file the present appeal before this Hon'ble Tribunal. Merely because the appellant is working as a teacher in a government school doesn't mean that the appellant and his family are not entitled to conduct agricultural activities in the properties. The appellant has pleaded in the appeal that he is in possession of a property and residential house in Pulamanthole village and his family resides there. The grievance of the appellant as well as several other residents in that area is that the 4th respondent is carrying out illegal and unscientific mining operations in the area leading to environmental degradation of the locality where the appellant lives. Moreover, the plying of the quarried materials is through the narrow local roads in heavy machinery and trucks are drastically affecting the appellant as well as causing environmental degradation in the area. Therefore, he indeed does come under the purview of an aggrieved person under Section 16(1) of the Act. The further allegation by the 4th respondent that the appellant is residing almost 1.7 kms from the quarry site is stoutly denied. The aerial distance to the 4th respondent's quarry from the appellant's home is way less than the distance mentioned by the 4th respondent in his reply affidavit.

3. With respect to the averments raised by the 4th respondent that the village officer has issued Annexure R4(B) that the appellant does not own or is paying tax for any property in Pulamanthole village is to shed bad light into the case of the appellant. The 4th respondent also states in his reply affidavit that the appellant has misrepresented this Hon'ble Forum that he is having landed property and that he has suppressed that the agricultural operations is a means of livelihood for him and that he and his wife are government employees. The appellant has not stated anywhere in the appeal that he is holding ownership of a property or building. It

Shaukath Ali



3

is to be noted that the appellant has stated that he is only in possession of the property and residential house in Pulamanthole village wherein he resides with his family. Moreover, the agricultural operations carried out by him and his family is a means of livelihood for the appellant. The appellant has not pleaded anywhere that it is the sole means of livelihood for his family. Moreover, it is not material suppression that the appellant has not stated that he and his wife are government employees. In fact, there was no requirement in the present case to mention this fact before this Hon'ble Tribunal. In fact, by not revealing the same, no prejudice is being caused in the present appeal to any of the parties herein. The 4th respondent is only trying to twist the facts of the case in order to deviate this Hon'ble Court from the actual facts of the present case. The appellant herein has not made any material suppression of facts before this Hon'ble Tribunal and the dictum quoted in the reply affidavit i.e., AIR 1994 SC 853 is not applicable in the present case as the appellant is a person who is aggrieved by the mining operations of the 4th respondent. Moreover, the 4th respondent has time again raised such unsustainable argument before the Hon'ble Court in various litigations and the same was not considered relevant. The allegations that the appeal is filed with extraneous reasons and is sponsored by somebody is nothing but a desperate attempt on the part of the 4th respondent to smear the cause of the appellant. The appellant herein has been continuously fighting against the illegal mining operations carried out by the 4th respondent in the area for the past several years before the Hon'ble High Court of Kerala. It is based on the case which he had given, the Hon'ble High Court had clarified the need for environmental clearance for mining operations in the State. The case filed by the appellant was allowed in his favour after the Hon'ble Court was well convinced of his locus standi.

4. It is respectfully submitted that all the allegations and averments

Shankar Ali



4

raised by the 4th respondent in Paragraphs No. 29 to 53 of the reply affidavit are not true and denied.

5. It is respectfully submitted that all the allegations and averments raised by the 4th respondent in Paragraphs No. 54 to 61 of the reply affidavit are not true and denied. The appellant herein submits that Both Annexures A2 and R4(c) are with regard to the illegal mining conducted by the 4th respondent in Sy No. 1/1B and Sy No. 85 Thani (Sub Division) of Pulamanthole Village of Perinthalmanna Taluk. The appellant submits that in Annexure A13 judgment, it is clearly evident that the 4th respondent had conducted illegal mining operations in the area comprising in Sy No. 1/1B and Sy No. 85 Thani (Sub Division) of Pulamanthole Village. Admittedly, it is seen now that Annexure A15 directions has been complied with by the statutory authority and has issued Annexure R4(j). Similarly, during the proceedings in WPC No. 7781 of 2015, the appellant herein had brought to the notice of the Hon'ble Court that illegal mining was being continued by the 4th respondent herein with the help and support of the District Geologist, Malappuram and accordingly contempt of court proceedings suo motu against the Geologist vide Annexure A13 judgment. In the contempt proceedings, it was found by the Hon'ble Court that the District Geologist, Malappuram had in fact in collusion with the 4th respondent had conducted illegal mining operations in Sy No. 1/1B and Sy No. 85 Thani (Sub Division) of Pulamanthole Village. Accordingly, the contempt proceedings were initiated and were dropped later on after accepting the unconditional apology of the said officer. Therefore, there is no question as to whether or not the 4th respondent had conducted illegal mining operations in the area in question. The averment raised by the 4th respondent that the land specified in Annexure A1 and A2 are virgin land is not true and denied. Whether is it the area specified in Annexure A2 or Annexure R4(j), the 4th respondent has conducted illegal mining operations and the 1st

Shankarath Ali



5

respondent ought to have followed the procedure mandated in Annexure A16 and subsequent OMs and circulars before even processing Annexure A2 application. In the present case, the 1st respondent has gone ahead and processed Annexure A2 application solely on the version of the 4th respondent, which is clearly illegal and arbitrary.

6. It is respectfully submitted that all the averments and allegations raised by the 4th respondent in Paragraphs No. 62 to 64 are not true and denied. The averment that the projects with respect to Annexure A2 is a virgin land and that no mining operations has taken place in the said lands is not true and denied. The specific case of the appellant is that the aspect of illegal mining has been suppressed by the 4th respondent while preferring Annexure A2 application and accordingly Annexure A1 has been granted. A perusal of Annexure A15 judgment would reveal that the 4th respondent even while there was an interim order of the Hon'ble Court, had conducted mining operations in Sy No. 1/1B and Sy No. 85 Thani (Sub Division) of Pulamanthole Village and under such circumstances, contempt proceedings were initiated against the District Geologist, Malappuram. In fact, even in the contempt proceedings, the District Geologist, Malappuram has admitted that he had illegally permitted mining operations in the above mentioned survey numbers. It was only due to an unconditional apology tendered, contempt proceedings were dropped against the said officer. Therefore, the contention of the 4th respondent that the said land in question in Annexure A2 is one that is untouched and is a fresh project and was not a violation project as on the date of Annexure A16 notification is incorrect and stoutly denied. Annexure A16 notification would clearly apply to the project in question and since Annexure A1 has been granted without taking this aspect into consideration, the same is liable to be set aside. A true photocopy of the judgment dated 06.03.2017 in CCC No. 1803 of 2017 is

showkath ali



6

produced herewith and marked as **Annexure A25**.

7. It is respectfully submitted that all the averments and allegations raised by the 4th respondent in Paragraphs No. 65 to 70 are not true and denied. The averment that the mining operations carried out by the 4th respondent during the time period from 2014 to 2016 was on the basis of valid mining permits and cannot be treated as illegal quarrying operations is not correct. Vide Annexure A15 judgment, the Hon'ble High Court of Kerala had declared the mining operations which were carried out on the strength of the mining permits without prior environmental clearance as illegal. Moreover, even while the interim orders of the Hon'ble High Court were pending, the 4th respondent had conducted mining operations in the above mentioned properties. Therefore, he cannot hide his illegal actions merely by taking such a defense. The further allegation raised by the 4th respondent there is no substantial question relating to the environment and that the appellant herein has no locus standi is not correct and denied. The appellant herein is aggrieved party as a result of the granting of the Annexure A1 clearance to the 4th respondent for conducting unscientific mining operations, thereby likely to causing huge damage to the appellant herein as well as the environment at large. The appellant in the present case, is raising a substantial question relating to the environment.
8. That, the averment by the 4th respondent that he has disclosed all the relevant information material for the appraisal process is not true and denied. The project site where the 4th respondent proposed to carry out mining operations was having water stream / river in it. The illegal mining in the said plot has destroyed the eco-system of the said water stream / river to a large extent. The presence of the river / water stream in the said land, in close proximity to the proposed mining site. This fact was deliberately concealed by the 4th respondent in his Form-1 application. Also in the query as to

Shoukath Ali



whether the project could be affected by natural disasters causing environmental damage, the 4th respondent has responded by stating that there was no history of flood, earthquake, cloud burst and landslide. However, Annexure A14 talks otherwise and this relevant information material to the appraisal process was concealed by the 4th respondent. The further allegation that the area mentioned Annexure A2 is different from that mentioned in Annexures A11 to A13 are not true and denied.

9. It is respectfully submitted that all the averments and allegations raised by the 4th respondent in Paragraphs No. 71 to 80 are not true and denied. The averment raised by the 4th respondent that there is no cluster situation in the present project is not true and denied. A perusal of Annexure A18 to A21 would reveal that the proposed quarry of the 4th respondent forms a cluster and require Form-1, PFR and approved mining plan for the entire cluster. In this case, the Form-1 application and the PFR is preferred by the 4th respondent only for an area of 0.4497 hectares and not for the entire cluster. Annexure A1 was granted solely on false/misleading data, information and in violation of Appendix XI of the EIA Notification. Also, the 4th respondent states though the SEAC directed them to produce a certificate regarding hazard occurrence in the area, the same could not be procured by the 4th respondent as he alleges and the SEAC has decided to ignore this issue as a whole while appraising the project. This is clear admission to the fact that the project was appraised in total non-application of mind as well as in a easy going manner by the statutory authorities.
10. It is respectfully submitted that all the averments and allegations raised by the 4th respondent in Paragraphs No. 81 to 86 are not true and are hence denied. The averment that the present appeal is time barred by law is denied by the appellant herein. The appellant has specifically explained the aspect of limitation in the

shoukath ali



8

memorandum of appeal and do not wish to verbatim repeat the same once again.

11. In such circumstances it is only just and proper that this Hon'ble Forum while adjudicating the appeal can act as statutory authority and take necessary steps to set aside the EC granted to the 4th respondent. Therefore, it is most humbly requested and prayed that, having regard to the above mentioned and other grounds that may be pleased to accept this rejoinder and allow this appeal, with cost to the 4th respondent.

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

Dated this the 22nd day of July, 2022

shoukkath ali



DEPONENT

Solemnly affirmed and signed before me by the deponent whom I know on this the 22nd day of July, 2022 in my office at Ernakulam.

shoukkath ali



ADVOCATE

VERIFICATION

I, Shoukkath Ali, aged 34 years, S/o Muhammed Ali. C, Charalil House, North Paloor, Pulamanthole P.O, Malappuram District, do hereby verifies that the contents of the above paragraphs 1 to 11 are true to the best of my knowledge and I have not suppressed any material facts.



SIGNATURE OF THE APPELLANT

DATE : 22.07.2022

PLACE : Ernakulam

9

Annex-A25

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.NAVANITI PRASAD SINGH
&
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 24TH DAY OF OCTOBER 2017/2ND KARTHIKA, 1939

Con.Case(C).No. 1803 of 2017 (S)

ORDER DATAED 6.3.2017 W.P(C).7781/2015

SUO MOTU CONTEMPT OF COURT CASE (CIVIL)
INITIATED UNDER SECTION 2(B) AND SECTION 12
OF THE CONTEMPT OF COURTS ACT, 1971.

RESPONDENT(S):

IBRAHIM KUNHI K.
45 YEARS, S/O.ABDUL KHADAR BEARY, DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY, MINI CIVIL STATION,
MANJERI P.O., MALAPPURAM.

BY GOVERNMENT PLEADER SRI. S. KANNAN

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR
ADMISSION ON 24-10-2017, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sou.



**Navaniti Prasad Singh, CJ
&
Raja Vijayaraghavan V, J**

Cont. Case (Civil). No. 1803 of 2017

Dated this the 24th day of October, 2017

J U D G M E N T

Navaniti Prasad Singh, CJ

Heard the learned Government Pleader. He draws the attention of this Court to an affidavit filed by the alleged condemner tendering unqualified apology. In his affidavit, he has clearly stated that having been misled by the orders of this Court and the Apex Court, he passed the orders.

Be that as it may, having due regard to the affidavit as filed, we would accept the unconditional apology and close this contempt proceedings.

Sd/-
Navaniti Prasad Singh,
Chief Justice

Sd/-
Raja Vijayaraghavan V,
Judge

sou.24/10.

// True copy //

