

Filed on: 26.11.2020

**BEFORE THE HON'BLE 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. 88 OF 2017

BETWEEN

GEORGE ISAAC **APPELLANT**

Versus

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

**REJOINDER SUBMITTED AGAINST THE REPLY STATEMENT FILED
BY THE 2nd RESPONDENT & COUNTER AFFIDAVIT AND
ADDITIONAL COUNTER AFFIDAVIT FILED BY THE 6th RESPONDENT**

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Date: 25.11.2020

Place: Kochi



**HARISH VASUDEVAN
COUNSEL FOR THE APPELLANT**

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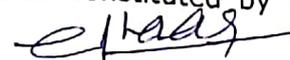
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I, George Isaac, aged 70 years, S/o Isaac, Chennakkattu Kalangamara, Kadayiruppu P.O, Kolanchery, Ernakulam, Kerala - 682311, do hereby solemnly affirm and sincerely state as follows:

1. I am appellant in the above-mentioned case and I am conversant with the facts and circumstances of the present case. I am competent to affirm this affidavit. I submit that I have read the reply statement filed on behalf of the 2nd respondent, and the Counter Affidavit and additional counter affidavit filed on behalf of the 6th Respondent in this case. I deny all the contents of the same as false, except to the extent expressly admitted to hereunder. Without prejudice to the generality of the above denial, the following rejoinder is tendered.
2. At the outset, it is submitted that the person who filed the affidavit on behalf of the 2nd Respondent is not the competent person to represent the 2nd Respondent. There is no authorized post of 'Administrator' in the State Environment Impact Assessment Authority, either as per EIA Notification or the order constituting SEIAA, Kerala. Administrator is a person appointed by the State of Kerala for managing the office affairs of the 2nd Respondent. He is not a part of SEIAA as constituted by the



Central Government. No documents have been shown or produced to show that how he has been authorized to sworn an affidavit and represent on behalf of the 2nd Respondent. He cannot legally represent the SEIAA before this Hon'ble Tribunal. It is a settled position of law that the power delegated through a provision of statute cannot be sub-delegated. The powers conferred to the 2nd Respondent by EIA Notification, 2006 and the notifications issued by the 1st Respondent cannot be subdelegated to an administrator. Such sub-delegation is without authority, illegal and hence, the affidavit sworn by the administrator on behalf of the 2nd Respondent is liable to be rejected on that sole ground.

3. It is to be noted that none of the factual contentions raised by me are specifically denied by the 2nd Respondent. In fact, some key facts stated by the me are supported by the 2nd Respondent. The 2nd Respondent did not specifically deny the fact that 6th respondent was conducting mining operations in violation of EIA Notification, 2006 in the site in which Annexure A1 is issued. The very fact that the 6th Respondent was conducting mining based on Exhibit P2 and P3 mining lease is an undisputed one. Hence, it has made clear that there was no power or authority for the 2nd Respondent to issue Annexure A1 ex-post facto.
4. The averments made in paragraph 1 to 8 of the statement filed on behalf of the 2nd Respondent is false and hence denied. The only case of the 2nd Respondent is that they did not get any complaint from the appellant or any other person. The 2nd Respondent is not the authority to take cognizance of the offence under the provisions of EP Act, 1986. The fact that the illegal mining is going on by the 6th Respondent is an admitted fact in Annexure A4 Form-1 application. The 2nd Respondent did not content or dispute the facts stated by the appellant in para 9 to 14 of the appeal.



5. The averments made in paragraph 9 to 13 of the statement filed on behalf of the 2nd Respondent is false and hence denied. Appellant has produced proof for all the allegations including the distance from the nearby residential building. None of them were denied by the 2nd Respondent. The 2nd Respondent is keeping their eyes shut on the self-speaking evidences placed by the appellant herein. The SEAC did not even consider the basic fact as to whether the SEIAA has jurisdiction to entertain an application ex-post facto clearance.

6. The averments made in paragraph 1 to 11 of the counter affidavit filed on behalf of the 6th Respondent is not true and hence denied. The 6th Respondent has made blatant false statement on affidavit and is liable to be prosecuted for the offence of perjury. The 6th respondent is neither the nephew of the Appellant nor a close relative. The allegation made by the 6th respondent that there is some family dispute between the appellant and the 6th respondent is stoutly denied. The said allegation has been made by the 6th respondent only to cause prejudice before this Hon'ble Court and create bias against the appellant in the present case. The false submission is made on affidavit by the 6th Respondent only to prejudice this Hon'ble Court and to escape from the merit review of Annexure A1. The 6th Respondent has made utter self-contradictory statements in para 3 and para 6 of the counter affidavit. The EIA Notification, 2006 has come into force on 14.08.2006 requiring mining operations of minor minerals more than 5 hectares require prior EC from SEIAA. The mining activity done by the 6th Respondent based on Annexure A2, A3 without obtaining prior EC is a clear violation of the same. Neither the 2nd Respondent nor the 6th Respondent has disputed the scope of Annexure A9.

7. The averments made in paragraph 12 to 30 of the counter affidavit filed on behalf of the 6th Respondent is not true and hence denied. No



materials are produced to prove the averments made by the 6th Respondent. The 6th Respondent has a duty to prove the statements made by him. The 6th Respondent has not disputed the existence of Annexure A10. The 6th respondent has admitted the fact regarding Annexure A5, as it is not denied in the counter affidavit or in the additional counter affidavit. The attempt of the 6th Respondent to cook up a story of family dispute in between the appellant and the 6th Respondent has miserably failed as it lacks merit and proof. This is nothing but a cheap attempt to justify the environmental degradation being caused by the 6th Respondent and to escape from the merit review being done the Annexure A1 by this Hon'ble Tribunal.

8. The averments made in paragraph 1 to 10 of the additional counter affidavit filed on behalf of the 6th Respondent is not true and hence denied. No proof has been shown by the 6th Respondent that they had uploaded a copy of the impugned EC in their website before 25.11.2016 or even thereafter. None of the respondents have given any proof stating that the impugned EC was available in the website of the 2nd Respondent before 05.09.2016. The appellant is an aggrieved person well within the scope of NGT Act. None of the respondents have produced any proof to prove that there was a public communication of the impugned EC through any website. The impugned EC was not available in the website shown in the Annexure R6(g) and R6(h) advertisements. Annexure A12 proves that the appellant had enquired a copy of the EC as early as on 19.07.2016 and the 2nd Respondent has provided a copy of the impugned EC only through Annexure A12 which was obtained on 05.09.2016. The appeal has been preferred within 30 days from the date of Annexure A12 at the filing section of the circuit bench of NGT at Kochi. Though it was accepted by the Circuit bench, Kochi on 27.09.2016, it was numbered only on 18.10.2016 and notice was issued to the 6th respondent on 18.10.2016



itself by the consultant NGT Circuit Bench, Kochi. A true photocopy of the postal receipt dated 18.10.2016 of the notice sent by the consultant NGT is produced herewith and marked as **Annexure A13**. The delay from the part of the NGT officials cannot be attributed as the fault of the appellant. Appellant has approached the NGT well within the statutory time prescribed. Even according to the 6th Respondent, 27.09.2016 is well within the period of limitation considering the delay condonable powers of the Hon'ble NGT.

9. Therefore, all the contention raised by the respondents No. 2 and 6 in their reply statement, counter affidavit and additional counter affidavit are liable to be discarded and the appeal may be allowed in the interest of justice, equity and good conscience. Being a senior citizen, the appellant herein was directed be continued in reverse quarantine at home by the health officials, and hence could not file the rejoinder within the prescribed time. The Hon'ble tribunal may kindly condone the delay of filing this rejoinder.



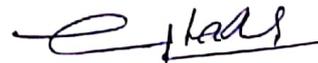
COUNSEL FOR THE APPELLANT



SIGNATURE OF APPELLANT

VERIFICATION

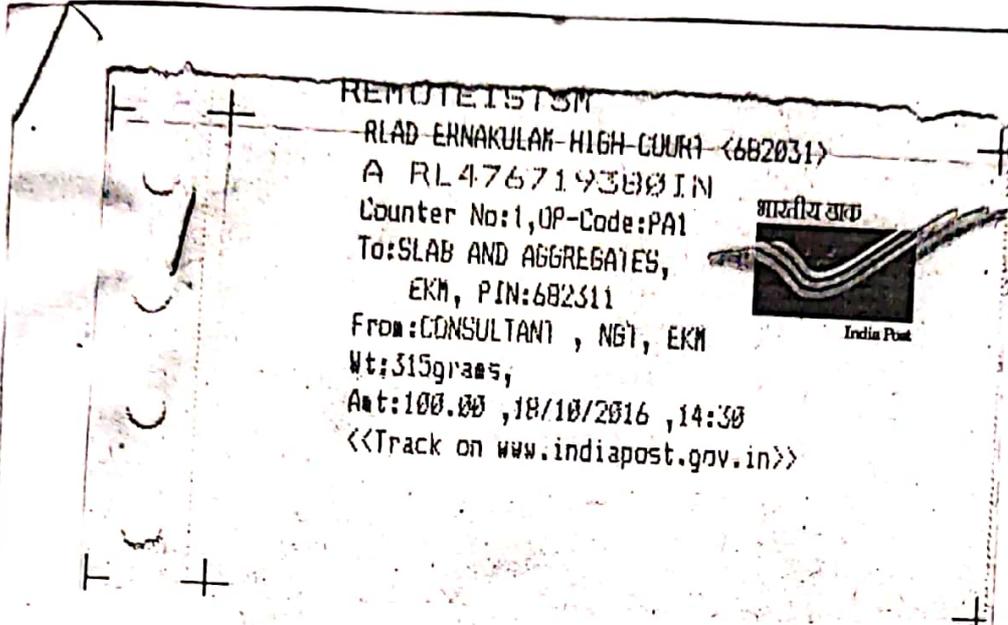
I, George Isaac, aged 70 years, S/o Isaac, Chennakkattu Kalangamara, Kadayiruppu P.O, Kolanchery, Ernakulam, Kerala - 682311, the appellant herein, do hereby verify that the contents of the above paragraphs No. 1 to 9, are true to the best of my knowledge and that I have not suppressed any material fact.



SIGNATURE OF APPELLANT

Date: 24.11.2020

Place: Kochi



*This is the true copy of the document
 marked as EXHIBIT I
 ANNEXURE A13 referred
 in above case* _____ ADVOCATE