

Presented on: 08.12.2025

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

APPEAL No. 4 OF 2025

BETWEEN

SHAJI A. K

: APPELLANT

Versus

MINISTRY OF ENVIRONMENT, FOREST AND
CLIMATE CHANGE & ORS

: RESPONDENTS

**REJOINDER AGAINST THE REPLY STATEMENT FILED BY THE 7TH
RESPONDENT**

HARISH VASUDEVAN (H-253) [K/779/2013]

RAJAN VISHNURAJ (R-1268) [K/653/2010]

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I, Shaji A.K. Aged about 49 years, S/o. Kuryakose, Arakkal House, Perinkari P.O., Kannur District - 670 706, 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. I submit that I have read the reply statement filed by the 7th respondent. I wish to deny all the contents and contentions of the 7th Respondent in the said affidavit, except to the facts specifically admitted hereunder. Without prejudice to the generality of the above denial, the following rejoinder is filed. The appellant herein also reserve a right to file a detailed rejoinder against the reply statement filed by the 7th respondent, bringing more facts to prove the case before the Hon'ble Tribunal.



3. The contention of the 7th respondent that the appeal is barred by limitation is wholly misconceived. Annexure A29 order of the Hon'ble High Court of Kerala in I.A. No.7/2024 in WP(C) No.43954/2023 expressly directed that the entire period spent before the High Court shall be excluded for the purpose of limitation before the National Green Tribunal. The present appeal filed on 20.10.2024, and it is therefore well within the limitation period. The Hon'ble Tribunal, by proceedings dated 12.09.2024, has already taken note of annexure A29 and permitted conversion of the Original Application into an Appeal. Moreover, if the merit of the arguments is not addressed, it will defeat the very purpose of Division Bench Judgment transferring the issue from the High Court of Kerala to the National Green Tribunal. Hence, the objection of limitation will have to be rejected.
4. The 7th respondent's plea that a wrong challenge or approach to another forum bars this appeal is untenable. The Hon'ble High Court itself relegated the matter to this Tribunal under annexure A24 judgment and annexure A25 order, making it clear that the substantial environmental issues must be decided by this Tribunal. Therefore, the maintainability is beyond question at this later stage.
5. The assertion that SEIAA/SEAC assessed the proposal in accordance with the EIA Notification, 2006 and all subsequent amendments is false. As clearly pleaded in the appeal, no cluster was formed as mandated under annexures A4 to A8 notifications. The 5th respondent in its counter affidavit before the High Court (Annexure A21) categorically admitted that the Geologist is not the competent authority to issue cluster certificates and that only factual information is issued by that office. **Therefore, the**



so-called “cluster certificate” dated 24.06.2022 relied upon by the 7th respondent has no legal sanctity as admitted by the Geologist himself.

In the absence of a valid cluster certificate and DSR prepared as per the 2018 amendment (Annexure A6), the EC is void ab initio.

6. The 7th respondent repeatedly contends that the total cluster area is only 4.6123 Ha and hence below 5 Ha. This is factually and legally incorrect. Annexure A9(a) itself shows that there are three quarries within 500 meters of each other. When the existing leases and the area mined out by M/s RDS Projects Pvt. Ltd. are considered as per annexure A3 judgment, the cumulative area far exceeds 5 Ha. The attempt to exclude the expired or suspended leases is a clear subterfuge to avoid public consultation and the preparation of EIA report. The EIA Notification does not permit such exclusion. A cluster situation arises if any lease is within 500 meters, regardless of its operational status. Clause (vi) of the Appendix X doesn't differentiate a cluster whether below 5 hectare or above 5 hectare.

7. The 7th respondent's claim that the NGT's direction in OA No.75 of 2021 pertained only to M/s RDS Projects Pvt. Ltd. is contrary to record. Annexure A3 judgment directed the Director of Mining & Geology to strictly adhere to the Joint Committee's recommendation that no further lease shall be granted in that area as resources are nearly exhausted. Despite this binding direction, the 3rd respondent granted EC to the 7th respondent in the very same survey number (Survey No. 74/1D, Kuttoor Village). The plea that boundaries do not overlap cannot override the categorical prohibition contained in Annexure A3. The area referred to in Annexure A3 Judgment is applicable to the cluster area as the environmental damage has no minor geographical boundaries.



8. The 7th respondent admits that the 2016 DSR was used for appraisal, and that revision based on the 2018 notification is still pending. This admission itself establishes that the EC was granted without a valid DSR prepared in accordance with annexure A6 and A7 notifications and annexure A13 OM. The plea that the outdated DSR was accepted pursuant to a High Court direction in another case is irrelevant, since no such permission existed for the present project proponent. The EIA Notification mandates that appraisal must be based on a valid DSR approved as per 2018 guidelines, which was admittedly not done. Even the 2016 Notification is not followed while granting the impugned EC. The site inspection and recommendation report of the Sub-Divisional Committee is a mandatory requirement of law, to grant any EC, even according to the Judgment of the Apex Court in Pawan Kumar's case reported in **2022 (2) SCC 348**. This stand has been re-iterated in the Judgment of the Apex Court in **State of Uttar Pradesh Vs Gaurav Kumar** reported in **AIR 2025 SC 2503**. It is pertinent to note that **there is no valid subsisting DSR as on the date of issuance of the impugned EC. This legal issue is settled by the Hon'ble Apex Court. On that ground alone, this Appeal has to be allowed.**
9. The plea that projects below 5 Ha are exempt from cluster appraisal and public consultation is contrary to the 1st respondent's Office Memorandum dated 12.12.2018 (Annexure A8), which expressly provides that if the cumulative area within 500 meters exceeds 5 Ha, the cluster shall be treated as a B1 category project requiring EIA and public consultation. The 3rd respondent's omission to apply this principle vitiates the entire EC process.



10. The 7th respondent's claim that SEAC & Sub-Committee conducted inspection and verified "ground realities" is unsubstantiated. The minutes of SEAC and SEIAA meetings (annexures A14 to A17) show that the project was recommended and cleared mechanically, without any discussion on the cluster situation, without forming a cluster and without considering annexure A3 judgment or annexure A8 OM. The inspection did not examine cumulative impact or compliance with the prohibition in OA 75/2021. Hence, the assertion of due diligence is untenable. The cluster was never formed. The Schematic Presentation under the EIA Notification stipulates cluster even below 5 Ha. The EMP prepared by the 7th Respondent is not for the entire cluster area. On that ground also, the EC has to be re-considered and re-appraised.
11. The attempt to exclude the area of M/s RDS Projects Pvt. Ltd. by referring to it as an "expired permit" is a blatant suppression. Annexure A9(a) certificate itself acknowledges its existence within 500 meters. The law does not exempt such areas merely because permits are expired or suspended. Further, as shown in annexure A11 Google imagery, four quarries including that of the 7th respondent are active within 500 meters, clearly attracting cluster formation.
12. The statement that revision of DSR for Kannur is "under scrutiny" only reinforces the appellant's case that annexure A1 EC was granted without a valid, subsisting DSR. Until the revised DSR is approved by the SEIAA, no EC could have been issued in accordance with the 2018 amendment, based on a draft DSR. Hence, the EC is void and issued without jurisdiction.



13. The 7th respondent's assertion that all required forms and EMP were filed is irrelevant since compliance with Forms 1M and Form-2 cannot substitute the mandatory requirement of EIA, public consultation and cluster appraisal. Procedural completeness in paperwork cannot cure the jurisdictional defect of proceeding without cluster formation and valid DSR.
14. The reliance on Mining Plan approval by the Department does not establish availability of resources. The Joint Committee in OA 75/2021 found the area to be over-exploited. Granting further EC in the same area without a fresh geological and environmental assessment is contrary to the Tribunal's direction and the precautionary principle.
15. The 7th respondent's reply does not disprove any of the specific violations pleaded in the Appeal. On the contrary, the statements therein only serve to confirm the illegality of the impugned proceedings. The 7th respondent has admitted that the DSR relied upon for appraisal was the one prepared in 2016, which stands outdated and non-compliant with the 2018 guidelines. Moreover, the reply establishes that the 3rd respondent has not adhered to or implemented the binding directions issued by this Hon'ble Tribunal in O.A. No. 75 of 2021, which categorically prohibited further mining in the same survey area where the resources were found to be exhausted.



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 7th respondent.

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

Dated this the 1st day of December, 2025.



DEPONENT

Solemnly affirmed and signed before me by the deponent whom I know on this the 1st day of December, 2025 in my office.



Harish Vasudevan
ADVOCATE

VERIFICAION

I, Shaji A.K. Aged about 49 years, S/o. Kuryakose, Arakkal House, Perinkari P.O., Kannur District - 670 706, do hereby verifies that the contents of the above paragraphs are true to the best of my knowledge and I have not suppressed any material facts.



DATE : 01.12.2025

SIGNATURE OF THE APPELLANT

PLACE: Ernakulam.