

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE AT CHENNAI**

O.A. No. 87 OF 2024

Krishnan CS
Son of Mr. Sreenivasan
Residing at F-205, Nandi Woods Apartments,
Yelanahalli, Bangalore – 560 076.

...Applicant

-Vs-

1. The State of Karnataka,
Through the Department of Transport,
Vidhana Soudha, Ambedkar Veedhi,
Bengaluru – 560 001
Represented by its Chief Secretary

2. Karnataka State Pollution Control Board
“Parisara Bhavana”, No. 49,
Church Street, Bengaluru – 560 001
Represented by its Chairman

...Respondents

ADDITIONAL AFFIDAVIT FILED BY THE APPLICANT

I, CS Krishnan, Son of Mr. Srinivasan, aged about 50 years and residing at F-205, Nandi Woods Apartments, Yelanahalli, Bengaluru – 560 076, do hereby solemnly affirm and sincerely state as follows:

1. I am the Applicant in the Original Application and as such, I am well acquainted with the facts and circumstances of the case and therefore, competent to swear this additional affidavit.

2. I submit that the above original application was filed *inter alia* seeking to

- a. Direct that all pre-BS - IV diesel trucks and buses and BS – IV diesel trucks and buses over 10 years of age that are owned or operated or governed by the Respondent, the State of Karnataka, and its lease route operators in public transport immediately use non-engine modifying retrofit devices which reflect 30% or more reduction in emissions.



- b. Direct the Respondent to provide the number of heavy-duty diesel vehicles over the age of 10 years & number of pre-BS-IV heavy duty diesel vehicles that it or any of its subsidiaries owns, operates or leases as well as the same numbers from all leased route operators for public transport in the state.
 - c. Under the "Polluter Pays Principle" direct that the Respondent, the State of Karnataka, pay for the retrofits requested in prayer (a.) hereinabove and place said retrofit devices into Central Stores for its various entities to access.
 - d. Direct the Respondent, State of Karnataka, to formalize and implement a policy for the private sector that will require retrofit or replace measures on non-BS-IV commercial diesel vehicles and BS – IV commercial diesel vehicles over 10 years of age prior to granting the extension of their operating license to reduce air pollution statewide from commercial diesel vehicles.
3. I further submit that an interim application was filed in the above original application *inter alia* seeking interim direction under Section 19(4)(i) and 20 of the National Green Tribunal Act, 2010 to immediately halt annual renewal of registration and remove from service all state owned diesel vehicles of pre-BS-IV manufacture and all state-owned diesel vehicles over 10 years of age or exceeding 10 lakhs kms, including all diesel vehicles of private sector ownership granted permits for public transport from plying the State of Karnataka unless they are refurbished for road safety and retrofitted for emissions, solely at the cost of the 1st Respondent for State owned diesel vehicles.
4. I submit that in addition to the averments / pleadings contained in the above Original Application, this additional affidavit is being filed to clarify certain factual / legal position and to bring on record certain other material facts more particularly in light of the oral submissions / allegations made by the Respondents during the hearing held on 20.09.2024, as the above Application stands scheduled for final hearing on 29.11.2024. Furthermore, despite repeated warnings from this Hon'ble Tribunal and even after imposition of costs, the Respondents have not filed a reply.



Consequently, the Applicant seeks to address the oral allegations made by the Respondents in several requests for additional time to file this reply, and this timely submission now also ensures that the Respondents have sufficient time to provide a written response before the final arguments on 29.11.2024.

5. I submit that at the outset, the Applicant hereby denies in its entirety the oral accusations of fraud, res judicata, and single product promotion made by the 1st Respondent on 20.09.2024. It is submitted that Prayer as sought in the above original application is based on settled proposition of laws / precedents as laid down by the Hon'ble Courts / Tribunals which remain in effect and have not been altered, overruled or superseded. Therefore, the decision herein is binary i.e., either the citations apply to the Respondent State, or they do not. If found applicable, the Respondent State has three options i.e., decommission and scrap non-compliant vehicles, buy new compliant ones, or retrofit existing ones; and the affected vehicles shall not operate on the roads in an "as it is" condition.
6. It is submitted that since 2014, the Respondent State has been obligated by the cited precedents to decommission or upgrade older diesel vehicles but has chosen not to do so. Without expanding clean public transportation to accommodate the displaced passengers, from the internationally proven measures outlined by CPCB and KSPCB, such as limiting the number of private vehicles in metros, odd/even driving days, and restricted driving areas cannot be implemented. Therefore, the Respondent State in fact requires more clean buses, not fewer, to reduce air pollution. However, the Respondent State has shown complete disregard to the policy, directives and decisions by intentionally neglecting diesel emissions in both public and private sectors at the cost of public health and the environment.
7. It is further submitted that the Respondent State's non-compliance has led the private sector to disregard diesel mandates, worsening air pollution while harming public health and the environment. The Respondent State should lead by example in compliance rather than showing the private sector how to bypass mandated measures intended to reduce hazardous air pollution. At the risk of repetition, it is submitted that the Respondent State has shown complete disregard to multiple directives that



mandate retrofitting or decommissioning of older diesel vehicles within a six-month timeframe and the State while observing non-compliance with the several mandates from the CPCB, KSPCB, NGT, or the 2014 Auto Fuel Policy, has not even provided a response in the above application within the stipulated six months' period.

8. I submit that an immediate compliance with the precedents cited in the above original application and interim application filed therein is crucial in improving air quality. However, the consistent attempts of the Respondents causing delay undermine regulatory enforcement while also severely harming the health of the general public. Despite proven effectiveness, the Respondent State, without any rhyme or reason, refuses to retrofit, replace, or scrap affected vehicles. Under these circumstances, the Applicant prays that this Hon'ble Tribunal finds and concludes that immediate action is necessary and grant directions as prayed for.

9. I submit that the Respondent has the technical capability and financial means to follow the cited judicial orders and statutory directives but has failed to do so for over a decade. It is under these circumstances, urgent action / direction is sought from this Hon'ble Tribunal. Furthermore, retrofitting diesel vehicles to reduce emissions has proven effective worldwide to meet air quality standards, and the Respondent's own field tests show that non-engine-modifying retrofits work well and can be deployed immediately without needing new type approvals with their associated lengthy approval process. Having not done so and being continuously non-compliant, the State is
 - a. acting in violation of the of the Auto Fuel Policy. More particularly, Section 12.10.3, of the Auto Fuel Policy 2014 which mandates timebound retro fitment of commercial diesel vehicles, both public and private sectors;
 - b. disregarding the end-of-life criteria established for older vehicles.
 - c. acting in non-compliance with the Principal Bench's order in Vardhaman Kaushik v. Union of India which state that diesel vehicles over 10 years of age must not ply.



In addition to the above, the Applicant submits that vide notification bearing reference number KSPCB/SEO-Infra/DG-Retrofitting/2021-22/955 dated 25.05.2023, the entire State of Karnataka is designated as an "Air Pollution Control Area," mandating retrofitting of all DG sets of 125 KVA and above (including the same engines in trucks and buses) with emission control devices within six months. Therefore, the Respondent State should be directed to retrofit its own diesel trucks and buses according to the Auto Fuel Policy and KSPCB statutory directives, **with a maximum six-month period** to provide proof of purchase on retrofits and/or new buses and/or scrapping arrangements accounting for all affected public sector vehicles.

10. I further submit that the present original application does not seek a single product retrofit mandate. In this regard, it is submitted that compliance for mobile sources, unlike stationary DG sets, requires any retrofit that modifies the engine or its exhaust to obtain a new type approval for the entire vehicle. That process can only be initiated by the original equipment manufacturer (OEM). These approvals are specific to each make, model, and year of vehicle. Even assuming that the manufacturer co-operates, a step that will impact sales of new buses, the process can take years to complete for a sizable portion of affected vehicles. Allowing this option lends itself to the "we have a different way" last minute alternative from the Respondent State that has delayed any compliance for ten years. If not restricted to retrofits that do not require a new type approval, the Respondent State's proficiency at this well practiced delay game will lead to years more inaction in addressing diesel air pollution and cause grave harm to public health, especially for the young and old citizens of Karnataka.
11. Furthermore, the misplaced allegations of fraud and res judicata are nothing but meek attempts of the Respondent to escape compliance with the settled laws / directives as stated above. As can be seen from the contents of the above Original Application and the Interim Application filed therein, the disposed off original application in OA No. 183 of 2016 is disclosed and a copy thereof forms part of the records. While the Respondent had once again undertaken to convert the older fleet



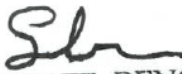
to BS – IV as recorded in Para 17 of the judgment therein, the subject matter therein was phasing out of older vehicles and implementation of green and clean fuel policy which indeed to this day is due to be complied with. It is under these circumstances, the Applicant requests that no more extensions be granted / indulgence is shown for the Respondent State which is now grasping at every straw, and that the matter be proceeded with for final arguments on 29.11.2024 as directed by the Hon'ble Bench on 20.09.2024.

It is therefore prayed that this Hon'ble Tribunal may be pleased to take on record this additional affidavit in Original Application No. 87 of 2024 and pass such other order/orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.

Solemnly affirmed at Bengaluru on
this the 11th day of November, 2024
and signed his name in my presence.



BEFORE ME


ADVOCATE, BENGALURU
Sathies Kumar
D/3495/2014

MULTI STATE COLLABORATIVE LEGAL
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Infantry Road, BANGALORE - 560 001.
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A K Abilash <advakabilash@gmail.com>

Re: OA No. 87 of 2024 - "Krishnan CS Vs. State of Karnataka & Anr." - NGT, Southern Zone at Chennai

Abilash A K <mail@capitallawchambers.in>

Tue, Nov 12, 2024 at 4:08 PM

To: lexregula@gmail.com, darpan.advocate@gmail.com, Rajat Shaw <rajatshaw178@gmail.com>

Cc: Anu Ganesan <advocateanuganesan@gmail.com>

Sir / Ma'am,

Please find attached herewith the **Additional Affidavit** filed by the Applicant in the subject referred Original Application.

Regards,

A K Abilash

Associate Advocate, High Court of Madras



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On Wed, May 29, 2024 at 7:00 PM A K Abilash <mail@capitallawchambers.in> wrote:

Sir / Ma'am,

Please find attached herewith the interim application being filed on behalf of the Applicant in the subject referred Original Application.

Regards,

A K Abilash

Associate Advocate, High Court of Madras



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Additional Affidavit filed by the Applicant in O. A. No. 87 of 2024.pdf

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TRIBUNAL, SOUTHERN ZONE AT
CHENNAI**

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In the matter of:

Krishnan CS

...Applicant

-Vs-

The State of Karnataka,
Through the Department of Transport &
Anr.

...Respondents

**ADDITIONAL AFFIDAVIT FILED BY
THE APPLICANT**

ANU GANESAN	(MS 1881/2015)
VIGNESH VENKATACHALAM	(MS 3587/2012)
A.K.ABILASH	(MS 3409/2023)
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