

Item No.5:

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

(Through Video Conference)

Original Application No. 75 of 2020 (SZ)

IN THE MATTER OF

Tribunal on its own motion
Suo Motu based on the news item published in
The Hindu Newspaper dated 30.05.2020,
“Kerala Forest Department told to permit sand removal from Pampa”

And

Chief Secretary of Kerala,
Government Secretariat
Central Stadium, Mahathma Gandhi Road,
Thiruvananthapuram, Kerala and Ors.

...Respondent(s)

For Applicant(s): Suo Motu by Court.

For Respondent(s): Mr. E.K. Kumaresan along with
Mr. G. Prabhu for R1, R2, R5 & R6.
Mr. Nagaraj Narayanan, Spl. Govt. Pldr. for R3, R4 & R7.
Mrs. Me. Saraswathy for R8.

Judgment Pronounced on: 19th April 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

ORDER

Judgment pronounced through Video Conference. The original application is disposed of with directions vide separate Judgment.

Pending interlocutory application, if any, shall stand disposed of.

**Sd/-
Justice K. Ramakrishnan, JM**

**Sd/-
Dr. Satyagopal Korlapati, EM**

**O.A. No.75/2022 (SZ)
19th April 2022. Mn.**

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Original Application No. 75 of 2020 (SZ)

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Tribunal on its own motion
Suo Motu based on the news item published in
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“Kerala Forest Department told to permit sand removal from Pampa”

And

1. Chief Secretary of Kerala,
Government Secretariat
Central Stadium, Mahathma Gandhi Road,
Thiruvananthapuram, Kerala 695001
2. Principal Secretary,
Department of Environment & Climate Change,
Room No. 406 4th Floor Annex II, Secretariat,
Thiruvananthapuram - 695 001.
3. Additional Chief Secretary of Forest and Wildlife,
Room No. 660, 3rd Floor, South Block, Secretariat,
Thiruvananthapuram - 695 001.
4. Principal Chief Conservator of Forests (Head of Forest Force),
Forest Headquarters, Vazhuthacaud,
Thiruvananthapuram - 695014.
5. Director, Directorate of Mining and Geology,
Kesavadasapuram, Pattom Palace P.O.,
Thiruvananthapuram -695004.
6. The District Collector,
Collectorate Pathanamthitta,
2nd Floor, Collectorate Rd, Chittoor,
Pathanamthitta, Kerala 689645.
7. The Divisional Forest Officer,
Divisional Forest Office,
Ranni, Pathanamthitta,
Kerala 689672.

8. Union of India
Rep. by its Secretary
Ministry of Environment, Forests and Climate Change
Indira Paryavaran Bhawan,
Jorbagh Road, New Delhi - 110 003.

(R8 - Suo Motu impleaded as per order of the
Tribunal dated 25.06.2021)

...Respondent(s)

For Applicant(s): Suo Motu by Court.

For Respondent(s): Mr. E.K. Kumaresan along with
Mr. G. Prabhu for R1, R2, R5 & R6.
Mr. Nagaraj Narayanan, Spl. Govt. Pldr. for R3, R4 & R7.
Mrs. Me. Saraswathy for R8.

Judgment Reserved on: 31st January 2022.

Judgment Pronounced on: 19th April 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

Whether the Judgement is allowed to be published on the Internet - Yes/No

Whether the Judgement is to be published in the All India NGT Reporter - Yes/No

JUDGMENT

Delivered by Justice K. Ramakrishnan, Judicial Member.

1. The above case has been Suo Motu registered by this Tribunal on the basis of a newspaper report published in The Hindu daily dated 30.05.2020 under the caption "**Kerala Forest Department told to permit sand removal from Pampa**" and also another newspaper report published in Malayalam Manorama daily dated 31.05.2020.

2. It is seen from the newspaper report that in the guise of using the provisions of National Disaster Management Act, State of Kerala is trying to do instream mining in the guise of desilting without getting any necessary clearances from the Forest Department. It is also seen from the newspaper report that it was being done at the instance of the then Chief Secretary and the Additional Chief Secretary and State Police Chief in the presence of the District Collector - Pathanamthitta and certain directions had given to remove sand with police protection to be transported to Kerala Clays and Ceramic Products Limited (KCCPL) which is functioning in Kannur.
3. It was also brought the notice of the Tribunal that during previous year, when similar situation happened for removal of sand and silt accumulated in River Pampa, Sabarimala at Kerala, permission was sought from the Ministry of Environment, Forests & Climate Change (MoEF&CC) and the Forest Advisory Committee had accorded the same by their order No.F.No.3/10/9-FC dated 26.02.2019 under Section 2 of the Forest (Conservation) Act, 1980 with some conditions.
4. This Tribunal had observed that considering the fact that the monsoon was approaching and the Government may anticipate over flow of rivers due to rain during monsoon, this Tribunal did not want to stop the normal work of desilting of the rivers under the "*Precautionary Principle*" to avoid flood in the State. Since this Tribunal had satisfied that there arose a substantial question of environment, the matter was admitted.

5. In order to ascertain the genuineness of the allegations made in the newspaper reports, this Tribunal had appointed a Joint Committee comprising of **(i)** a Senior Officer from the Regional Office of Ministry of Environment, Forests & Climate Change (MoEF&CC) at Bangalore, **(ii)** a Senior Officer not below the rank of Chief Conservator of Forest deputed by the Principal Chief Conservator of Forest (Head of Forest Force) and Chief Wildlife Warden, **(iii)** the District Collector - Pathanamthitta, **(iv)** a Senior Officer from the Department of Mines and Geology, **(v)** the Member Secretary - State Disaster Management Authority, Kerala and **(vi)** the Divisional Forest Officer - Pathanamthitta to enquire into the issue and considering its seriousness, submit a factual and action taken report, if there is any violation found including imposition of environmental compensation.
6. The Joint Committee was also directed to go into the question as to whether any study has been done as to how much silt/sand will have to be removed for the purpose of meeting the requirement of free flow of water during monsoon, in case of anticipated flood before making the in stream desilting.
7. The Regional Office of Ministry of Environment, Forests & Climate Change (MoEF&CC) at Bangalore was designated as the Nodal Agency for co-ordination and also for providing necessary logistics for this purpose.
8. Other respondents were also directed to file a statement regarding the circumstances under which the National Disaster Management Act has been invoked for the purpose of desilting and circumstances which led to take such an immediate action without following the necessary procedure.

9. The Director – Department of Mines and Geology filed the report dated Nil, received on 13.08.2021 which reads as follows:-

“Report filed by the Director of Mining and Geology as directed by the Hon'ble National Green Tribunal, Chennai in interim order dated 02.6.2020 in O. A. No. 75/2020

The Hon'ble National Green Tribunal, while considering O. A. No. 75/2020 passes interim order de. 02.6.2020 wherein it was instructed to constitute a joint committee with Regional Office, Ministry of Environment and Forest (MoEF), Bangalore as the Nodal Agency and with representation from various authorities including a senior officer from the office of this respondent, to look into the issue of proposed sand removal from Pamba rivers in Pathanamthitta revenue district, Kerala. It was also instructed to submit the response of state respondent regarding the circumstances under which National Disaster Management Act had been involved for the purpose of desilting of debris accumulated in the said river.

It is brought to the notice of the Hon'ble Court that this office has entrusted the District, Geologist Pathanamthitta to represent the Director of Mining and Geology in the joint committee and issued necessary orders in this regard (copy enclosed: 1) communicating the same to the nodal agency. It is learned that the committee is yet to commence the study owing to COVID19 pandemic related restriction in the District. The Geologist, District Office, Pathanamthitta informed that removal of sand and other garbages outside the premises of the river bank has already been stopped.

It is stated that the District Collector, Pathanamthitta invoked the Disaster Management Authority to remove the accumulated debris in the Pamba, Triveni basin, owing to apprehension of possible flooding this season also. The District Collector convened a meeting of all the connected department and took a decision to comply the Government directions in letter No. REV - DEV2 / 71/2020 - REV; dt. 06.3.2020.

Removal of sand from rivers / river basins in the State is governed by the provisions in the Kerala Protection of River Banks and Regulation of Removal of Sand Act 2001, in which the District Collector is the Chairman.

Report is submitted for favor of necessary action.”

10. The Member Secretary – Kerala State Disaster Management Authority filed the report dated 08.10.2020 raising at the outset the preliminary objections of lack of jurisdiction of the National Green Tribunal over the provisions of the Disaster Management Act, 2005 as per Section 14 of the NGT Act, 2010

and as per the Section 71 of the Disaster Management Act, 2005. As per schedule attached to the National Green Tribunal Act, only matters relating to those statutes can be entertained under Section 14 of the NGT Act, 2010 and the Disaster Management Act, 2005 did not find a place in Schedule - I attached to the National Green Tribunal Act, 2010. As per section 71 of the Disaster Management Act of 2005, *"No court (except the Supreme Court or a High Court) shall have jurisdiction to entertain any suit or proceedings in respect of anything done, action taken, orders made, direction, instruction or guidelines issued by the Central Government, National Authority, State Government, State Authority or District Authority in pursuance of any power conferred by or in relation to its functions, by this Act"*. The Division Bench of Hon'ble High Court Kerala in W.A. No. 2745 of 2015 in W.P. (C) 26377/2015 in its judgment dated 05.04.2016 has upheld the over-riding power of Disaster Management Act, 2005 against other legal instruments. Further, under Section 74 of the Disaster Management Act, 2005 *"Immunity from legal process - Officers and employees of the Central Government, National Authority, National Executive Committee, State Government, State Authority, State Executive Committee or District Authority shall be immune from legal process in regard to any warning in respect of any impending disaster communicated or disseminated by them in their official capacity or any action taken or direction issued by them in pursuance of such communication or dissemination"*. The various actions, orders and directions of the District Disaster Management Authority (DDMA) Pathanamthitta as follows: DM3-454/18 dated 18-5-2019 under Section 34 (d), DCPTA/454/DM3 dated 15-5-2020, DCPTA 454/2018/DM3 dated 30-5-2020, DCPTA/454/2018/DM3 dated 4-6-2020 and DCPTA/454/2018/DM3 dated 07-06-2020 are the ones under the consideration of the Hon'ble

Tribunal. As per the provision of Sections 71 and 74 of the Act, it is only the Hon'ble Supreme Court or Hon'ble High Court which can entertain any suit or proceedings in respect to the Disaster Management actions, orders issued and directions of the DDMA Pathanamthitta. Vide S.O. 1224 (E) dated 28-3-2020, the Ministry of Environment, Forest and Climate Change issued a notification in which it is clearly stated that *dredging and desilting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management do not require any prior environmental clearance*. In the Amicus Curiae report in W.P(C). No. 2651 of 2019 related to Kerala Floods 2018, before Hon'ble High Court of Kerala, it is stated that sediments in the river systems of Kerala has increased the flood magnitude. Under Section 30 (2) (iii) of the Disaster Management Act, 2005, the District Disaster Management Authority has to *"Ensure that the areas in the district vulnerable to disasters are identified and measures for the prevention of disasters and the mitigation of its effects are undertaken by the departments of the Government at the district level as well as by the local authorities"*. Under Section 33 of the Disaster Management Act, 2005 deals with *"The District Authority may by order require any officer or any Department at the district level or any local authority to take such measures for the prevention or mitigation of disaster, or to effectively respond to it, as may be necessary, and such officer or department shall be bound to carry out such order"*. Under Section 34 of the Disaster Management Act, 2005 deals with *"Powers and functions of District Authority in the event of any threatening disaster situation or disaster - For the purpose of assisting, protecting or providing relief to the community, in response to any threatening disaster situation or disaster, the District Authority may-* (a) *Give directions for the release and use of resources available with any Department of the Government and the local authority in the*

district; (d) Remove debris, conduct search and carry out rescue operations; (m) Take such other steps as may be required or warranted to be taken in such a situation". Section 65 (1) (a) of the Disaster Management Act, 2005 deals with "Resources includes men and material resources". Further, Section 64 of the Disaster Management Act, 2005, deals with "Making or amending rules, etc., in certain circumstances - Subject to the provisions of this Act, if it appears to the National Executive Committee, State Executive Committee or the District Authority, as the case may be, that provisions of any rule, regulation, notification, guideline, instruction, order, scheme or bye-laws, as the case may be, are required to be made or amended for the purposes of prevention of disasters or the mitigation thereof, it may require the amendment of such rules, regulation, notification, guidelines, instruction, order, scheme or bye-laws, as the case may be, for that purpose, and the appropriate department or authority shall take necessary action to comply with the requirements".

11. As per the provisions of the Disaster Management Act, 2005, exercising the power vested with the authorities have taken the following action: -

- *The District Disaster Management Authority (DDMA) Pathanamthitta has satisfied itself by means that it deemed appropriate identified an area as vulnerable as no study is pragamatically possible to be conducted immediately prior to the emergence of a threatening disaster situation. It is also not a statutory requirement for Disaster Management Authorities to conduct such studies for removal of debris.*

- *The DDMA Pathanamthitta has reported that they have conducted site specific study which included technically competent experts such as Assistant Executive Engineer, Irrigation, District Geologist and Assistant Executive Engineer Dewasom Board and Divisional Forest Officer (Ranni). This is deemed sufficient by the DDMA Pathanamthitta to undertake such an activity in light of the threatening disaster situation. Amicus Curiae report furnished in the High Court of Kerala in W.P (C) No. 2651 of 2019 related to floods has also highlighted the need for desilting.*

- *There is no violation in removing debris from river Pamba to avoid disaster. It is evident that DDMA has examined and have satisfied itself as to the need and amount of debris to be removed.*

• India Meteorological Department (IMD) issued the first long range forecast pertaining to monsoon on 15.04.2020 indicating 100% rainfall during the south west monsoon season of 2020. This was a prediction higher than that was predicted in 2018 and 2019. In 2018, the predicted monsoon rainfall was 97% of the long period average, while the actual received was 196%. In 2019, the predicted monsoon rainfall was 96% of the long period average, while the actual received was 113%. Therefore, there was cognizable evidence from IMD that there is a probability of heavy rainfall and therefore the possibility of floods was evident.

• Further, in the Minutes of the Meeting held on 20-5-2020, 11 am at the Durbar Hall, Government Secretariat, Thiruvananthapuram under the chairmanship of the State Relief Commissioner for Monsoon Preparedness 2020 the possibility of floods was highlighted by the Principal Secretary, Science and Technology of Government of Kerala, Prof. Dr. Sudheer, who is also a renowned scientific expert in the field of flood prediction studies in the country from IIT, Madras. He informed the meeting "that even though the IMD's seasonal forecast predicts a normal rainfall, by observing a pattern change in the previous years, the scientific community believes that there may be extreme events to happen. So the state has to anticipate a flood scenario and prepare well for the season".

• It is also to be stated that the decision of the DDMA to remove debris that accumulated in 2018 and 2019 floods in public spaces such as rivers, rivulets and canals was inline with the statutory state wide applicable decision dated 18-5-2020 of State Executive Committee (SEC), a statutory committee of State Disaster Management Authority constituted under Section 20 (1) of the Disaster Management Act, 2005. Government order (Rt) No. 457/2020/DMD dated 19-5-2020 was also issued based on this decision of the SEC providing funds from State Disaster Response Fund for the conduct of debris removal from public spaces such as rivers, rivulets and canals in Pathanamthitta District.

• The State Executive Committee of KSDMA "placed on record its deep appreciation for the speedy debris removal activities being carried out by Pathanamthitta District Disaster Management Authority from Pamba and by Alappuzha District Disaster Management Authority from Thottappally" in its meeting held on 9-7-2020.

• It is also reported that the Division Bench of Hon'ble High Court Kerala in WP (C) No. 11394 of 2020 (S) dated 1-6-2020 in petition against removal of debris from the rivers of Kerala as a preparedness against floods of 2020 has already ruled that "Instant writ petition is filed with bald averments, criticizing the Government of Kerala alleging that there is no mechanism, lack of study on the aspect of removal of natural deposit of sand and silt. The prayer to issue a mandamus for constituting a committee and thereafter to submit a report, is without any basis".

• Thus, the Hon'ble High Court examined the matter in detail and had disposed the very idea of any expert committee for studying debris removal from the rivers of Kerala as a this was a specific disaster management activity. Hence the very existence of any expert committee on the matter is against the directive of the Hon'ble High Court.

12. They have given the details of observations made at the Joint Committee

Inspection and made the following technical recommendations:-

“V. Technical Recommendations

• The Kerala Forest Department should immediately comply with Section 39 and Section 40 of the Disaster Management Act, 2005 and prepare the departmental disaster management plan and submit to KSDMA. The template for the same may be found here <https://sdma.kerala.gov.in/templates/>

• The Departmental Disaster Management Plan of Forest Department should include measures and funds for maintaining the depth and width of river channels within forest areas every year so as to ensure the minimum width of channel as given in the Survey of India Topographic Sheet. Such a plan and funds allocated under Section 39 (C) of Disaster Management Act, 2005 will ensure that such litigations do not arise in Forest areas such that when Disaster Management directions are issued by State/District Disaster Management Authorities, the Forest Department themselves will be able to undertake the required measures urgently without any delay.

• Forest Department should ascertain the usable sand content through College of Engineering, Thiruvananthapuram in the deposited debris and utilize it for construction purposes related to Rebuild Kerala Initiative (Post flood reconstruction programme) and major Governmental Projects in the State. It is warned that leaving the debris as is will result in erosion problems and invite Audit remarks for wastage of valuable resources.”

13. The Principal Secretary - Department of Forest (3rd Respondent) has filed their response reiterating the initiation of Suo Motu proceedings and also the observations made by this Tribunal that it did not intend to stop the normal work of desilting of the river, considering it as precautionary measure to avoid flood in the State, as monsoon is approaching and over flow of rivers is expected due to rain during monsoon and in compliance with the directions of this Tribunal, they are filing this response. They further contended that during heavy rainfall in August 2018, the shutters of Anathode Dam across the Kakki River were opened which along with the excessive rain water in the forest downstream, resulted in flash flood. This water also brought huge quantities of debris along with it. The narrow Foot Over Bridge (FOB) at Pamba having low height with closely arranged pillars was blocked due to the incoming debris. This caused the river to over flow above the bridge level and in its course destroyed constructions made along the river bed, depositing debris all along its bank. The Foot Over Bridge was fully covered under several meters of sand / silt / debris (debris). The connectivity between Pamba and Sannidhanam was totally cut-off due to this deposit of debris. Post flood emergency relief works like clearing the debris and restoring the connectivity across river Pamba was entrusted to M/s. Tata Projects Limited (M/s.TPL) by the Government. The Government convened a high level meeting on 13.10.2018, in which several decisions were taken for facilitating the sabarimala pilgrim season starting in November. Accordingly, the Forest Department was directed to make site available for dumping the sand / debris being removed from Pamba and also to secure Government of India approval for disposing these materials for public purpose / tender. The copy of the minutes of the meeting dated 13.10.2018

is attached as Annexure-R 1 (1). Accordingly, the Principal Chief Conservator of Forests, vide letter No.FC2/ 63200/2018 dated 13/12/2018, requested the Additional Principal Chief Conservator of Forests (Central), MoEF&CC, Regional Office, Bangalore to grant permission for immediate removal of sand collected and deposited in Pamba-Triveni, after the pilgrim season and before the onset of the monsoon, so that it does not get washed down again into the river. It was specifically informed that the permission is not sought for mining of sand but for the removal of the sand already collected and dumped which is hazard, as it may aggravate the flooding in the next monsoon season. A copy of the letter is attached as Annexure-R 1(2). The Government of India, vide Letter F.No. 8-2/2019-FC dated 26.02.2019, granted one-time permission under the Forest (Conservation) Act, 1980, for the removal of sand and silt accumulated at Pamba - Triveni in 2018 floods. A copy of this Order is attached as Annexure-R 1(3). On request from Forest Department, the National Centre for Earth Science Studies (NCESS) conducted a rapid survey of the material accumulated during the flood. National Centre for Earth Science Studies reported that a total quantity of 1,20,240 M³ of sand, gravel, cobbles and other deposits were available at Thriveni - Chakkupallam - Kakki portion. The sand, silt and debris at Pamba - Triveni collected by M/s.TPL were deposited at places such as Chakkupalam in front of the Inspection Bungalow, Hill Top Station, Chakkupalam main road side, etc. The initial estimation of the quantity of such material deposited was about 90,000 M³. In pursuance to the permission from the Government of India, the State Government issued G.O.(Rt.)No. 48/2019/F&WLD, dated 06/02/2019 which is produced as Annexure-R 1(4), allotting a part of this materials to Travancore Devaswom Board (TDB) and permitting the

remaining to be disposed in auction. Subsequently, vide G.O.(Rt.) No.169/2019/F&WLD, dated 13.05.2019, Government directed the Travancore Devaswom Board to remove 20,000 M³ of sand immediately (Annexure -R 1(5)). The Forest Department had conducted 12 e-auctions for the bulk sales using the MSTC platform, but three lots having a total of 3,000 M³ alone could be sold. The Department had also transported 1,000 M³ of sand to Areekakavu Depot along the periphery of the forests for auction to the retail users. The e-auction attempts for the retail sale also did not attract much interest. On the other hand, the Travancore Devaswom Board removed only 2287.1 M³ sand even though they were allotted 20,000 M³, free of cost. In spite of best efforts taken by forest department so far, only less than 10% of the sand / debris deposited by M/s.TPL within the forest area in and around Pamba could be removed. Over the past two years, this material which was continuously exposed to sun and rain got compacted and has got reasonably stabilized. Subsequently, on the request of the Forest Department, National Centre for Earth Science Studies assessed the quality of the materials cleared and dumped by M/s.TPL. According to their report in May 2020, this material dumped at Chakkupalam is described as "cobbles, pebbles, sand, soil, organic and construction debris". Materials dumped at Hill Top Station is also a mix of cobbles, pebbles, organic and construction debris and sand. The study also reported that the materials dumped by M/S.TPL at Chakkupalam and Hill Top areas can only be considered as debris accumulated during the flood, which cannot be considered as saleable sand. While these efforts were being made by the Forest Department, the District Collector & the Chairman District Disaster Management Authority, Pathanamthitta (DDMA), issued Orders on 18.05.2019 (Annexure - R1(6)), stating the

direction of Chief Secretary in the Video Conference dated 05.05.2019 to the effect that the sand deposited at Pamba which could not be removed by Forest Department is a potential hazard during the forthcoming monsoon and that the same has to be kept safely. In view of this, the District Disaster Management Authority was directed to take an early decision on this. As per this Order of the Chairman, District Disaster Management Authority, the Travancore Devaswom Board was directed to remove and safely keep 20,000 M³ of sand accumulated near Arattukadavu (not from the material deposited by M/s.TPL) and this work was also directed to be completed before 25.05.2019. As per this Order, Travancore Devaswom Board started collecting sand deposited within the river / on the river banks, which was not covered under the permission granted by the Government of India. Therefore, this was objected to by the Forest Department. The Travancore Devaswom Board raised their objections before the State Government which was explained and the matter was not pursued by them. The State Government had constituted a Committee under the Chairmanship of Chief Secretary with Additional Chief Secretary (Water Resources), Additional Chief Secretary (Local Self Government Department), Additional Chief Secretary (Forests and Wildlife), Principal Secretary (Revenue), Principal Secretary (Environment) and the Director (Mining & Geology) as members, in order to look into matters relating to dredging of rivers. The Committee in its meeting held on 07.11.2019 decided to entrust respective District Collectors to conduct de-silting and removal of debris in flood affected rivers in the context of the massive floods that happened in 2018 and 2019. The State Government, vide G.O.(Rt.)No.3880/2019/RD dated 24.12.2019, took the stand that as per Section 24, 34 of the Disaster Management Act, 2005, State Disaster

Management Executive Committee and District Disaster Management Authority can take necessary steps to remove debris, conduct search and carry out operations. With regard to the authority of Section 33 of the Disaster Management Act, 2005, the Hon'ble High Court, Uttarakhand, in W.P (C) No.93/2015 has ordered that "*if the dredging is undertaken for the purpose of maintaining water bodies, no clearance of Ministry of Environment & Forest is required*". As per Section 72 of the Disaster Management Act, 2005, this Act overrides the other Acts. The Government also accorded sanction to all District Collectors for removing silt and the debris in flood affected rivers, as an immediate measure to accommodate flood waters and to utilize the capacity of river channels. The District Collectors were also given the liberty to dispose of the silt and the debris in the appropriate manner (Annexure - R1(7)). The Chairman, District Disaster Management Authority, Pathanamthitta, vide DCPTA 454/2018/DM3, dated 15.05.2020, issued Orders, invoking Section 34 (d) of the Disaster Management Act, 2005, for removal of 75,000 M³ of sand, silt, plastic and other debris, from Pamba - Triveni by M/s.Kerala Clays and Ceramic Products Limited, Kannur (M/s.KCCPL), subject to the conditions, inter alia, that they should obtain necessary permission / pass from the Departments concerned. It was also specified therein that the work should be completed before 30.06.2020 and if, any land has to be used along the Pamba River for storing and processing the materials, necessary permission will be facilitated. The above Order is seen to have been issued on the assessment made by the Chairman, District Disaster Management Authority, that it is necessary to restore the natural flow of the river, enhance its storage capacity and for avoiding chances of flood (Annexure - R1(8)). The Forest Department made its own internal assessment of the situation and felt it

necessary to keep 300 M stretch between Triveni Bridge and the confluence of Njunangar, clear of any debris, so as to reduce the chance of flood related damage. Vide FC2-61898/18, dated 22.05.2020, PCCF has made recommendation to the State Government, to permit M/s. KCCPL to remove the balance quantity of the debris deposited by M/s.TPL and also approximately 500 M³ of sand / debris from Pamba River. Accordingly, Government, vide letter No.C2/4712020/F&WLD, dated 02.06.2020, permitted the agency fixed by District Collector to remove the material, collected and dumped by M/s.TPL, if the Order of the District Collector specify that this material need to be removed to avoid a disaster during the monsoon (Annexure - R1(9)). It was also informed that if the DDMA is of the view that sand is to be removed from the river bed, other than what is collected by M/s.TPL, the same should be deposited at sites identified by the Forest Department, within the forests, and it can be transported outside the forests after obtaining approval under the Forest (Conservation) Act, 1980. In the meanwhile, District Collector and Chairman of District Disaster Management Authority, vide his Order No.DCPTA-455/2018/DM3 dated 30.05.2020, invoking Section 34 (d) of the Act, issued orders to the effect that the sand, silt etc. accumulated, along the 2290 M stretch from the Valiyanavattom Vented Cross Bar (VCB) to KSRTC Vented Cross Bar (VCB), and assessed as 1,28,193 M³, be removed and taken out by M/s.KCCPL so as to restore the natural flow and improve the water storage capacity. This Order was also subject to condition that it should be completed before 30th June 2020 and if any land is required for processing the material, it will be facilitated. The Chairman District Disaster Management Authority, Pathanamthitta vide his letter No.DCPTA-454/2018/DM, dated 03.06.2020 has informed the DFO, Ranni

that in view of the directions from the Additional Chief Secretary (Forests), dated 02.06.2020 he may make necessary arrangements for dumping the sand to be collected from the 2290 M stretch of Pamba from Valiyanavattam Vented Cross Bar to Kerala State Road Transport Corporation Vented Cross Bar (Annexure - R1(11)). As per the orders of Chairman District Disaster Management Authority dated 30.05.2020, a total of 74248.11 M³ of sand and debris has been removed from the Pamba River and in compliance with the Government directions in Annexure 9, it is deposited within the forest area. There is no human habitation nor any man made physical infrastructure over the 18 KM stretch of the Kakki river from Anathode dam to Pamba Triveni. Similarly, on the downstream stretch of 30 KM from Pamba to the outer periphery of the reserved forests, there is no human habitation or infrastructure, except those created for the purpose of Sabarimala pilgrimage. During the heavy rains of August 2018, huge quantity of water was released from the Anathode dam which, along with the rain water accumulated in the downstream of the dam, caused extensive erosion of the river banks including erosion of small hillocks. All these water along with the sand, silt and other debris would have flown down the river but for the block caused by the narrow Foot Over Bridge at Pamba - Triveni. The narrow passage under this Foot Over Bridge was blocked by the uprooted trees and other debris brought down by the flood waters at an early stage of the flood. Because of this blockage, the flood waters took a right turn totally destroying / seriously damaging various pilgrimage related constructions in the river bed / river bank, moved further downwards, changed course and forcefully hit the left bank causing serious erosion there. Blockage of the passage under the Foot Over Bridge resulted in deposit of silt to the extent of several meters

in depth. Had the Foot Over Bridge not been blocked, the flood water would have carried the silt / debris load further down and deposited at various Ghats all along its course. Necessary passage across the river was opened by M/s.TPL as part of emergency flood relief work and the materials so collected was deposited within the forests well before the Sabarimala pilgrim season which started in November 2018. Under the direction of the Hon'ble Chief Minister approval of Government of India under the Forest (Conservation) Act was obtained for the removal of this sand / silt to outside the forest area. However, only less than 10% of the quantity so deposited could be removed out of the forests, primarily due to the poor quality of sand which resulted in very poor response for the several rounds of public auctions. The need for transport through the forests by road over a long distance of more than 35 KM also impacted on the response. Using a thumb rule of 5 M³ of sand per truck load would indicate that more than 15,000 trips (about 10.5 lakh KM) have to be made through the dense forests of Ranni division for removing the balance quantity of sand, silt and debris already collected by M/s.TPL. This is likely to heavily pollute the air within these dense natural forests which even otherwise is seriously impacted by the huge number of pilgrims to the Sabarimala temple during the 100 days of darshan. This stretch of the road also seriously suffered during the floods of 2018. The overlap between the movement of sand laden trucks and the pilgrim vehicles will also seriously impact the strength of this road within the forests. The balance quantity of sand, silt and the debris that was deposited in the forests by M/s.TPL for about two years has by now compacted itself and has more or less merged with the forest ecosystem. In view of all the above, it may not have to be removed any more and instead, could be left

for further stabilizing at site. Over the last two years, significant part of the debris that was left behind in the river bed and river banks at Pamba - Triveni has already been washed downstream by the flowing water and the remaining quantity has also got partially stabilized. Heavy rainfall was predicted during the 2020 monsoon especially the south-west monsoon, which will soon come to an end at that time. In view of the experiences of 2018 and 2019 floods, the narrow Foot OB has to be always kept clear of any debris, atleast for 300 M upstream and downstream. The Chairman District Disaster Management Authority had ordered removal of 75000 M³ of sand / silt / debris from the river at Pamba - Triveni. Even when the order of the Chairman District Disaster Management Authority was to remove the material and transport it only with the due permissions, M/s KCCPL, the agency, was trying to transport it outside the forests without approval under the Forest (Conservation) Act. While the interpretation of the Chairman, District Disaster Management Authority that the removal of material from the course of the river so as to avoid the disaster is within the purview of Section 34 (d) of the Act, the interpretation that this section also empowers him to order its removal to outside the reserved forests is well outside its purview. Such removals will attract the provisions of the Forest (Conservation) Act which is endorsed by the State Government and the Ministry of Environment, Forest and Climate Change in this case itself. In view of this, the Government in the Forest Department has issued direction vide letter No.C2/47/2020-FWLD dated 02.06.2020 that only the material collected immediately after the flood and deposited in the forests, for which the clearance under the Forest (Conservation) Act is issued should be removed outside the forests. This has been complied with, except for the 49.5 M³ that was removed on the

orders of the Chairman, DDMA and under Police protection. Based on the orders of the Chairman, District Disaster Management Authority a total of 74248.11 M³ of sand, silt and the debris have been removed from the 2290 meter stretch of the river and it is dumped inside the forests at sites identified by the Forest Department. If the disaster risk caused by this debris was assessed in advance and informed to the Forest Department, early action for permission under the Forest (Conservation) Act would have been taken. The District Collector's specific report also proved that no forest produce has been removed in the exercise of removing the debris. Only the sand, mud, silt, clay, plastic waste, cloth waste etc., were accumulated and that have to be removed urgently in view of the upcoming pilgrim season in Sabarimala during which lakhs of people visit the shrine. Also the State has witnessed huge floods during the past two years and this has increased the debris to a huge extent which had to be immediately removed for the ensuing pilgrimage at that time and also to avoid intensity of floods in future. The Forest Department, as demonstrated in this case itself, could have facilitated all the operations related to reducing the disaster risk as per the existing provisions of Forest Conservation Act, but section 34(d) of Disaster Management Act 2005 has to be enforced which reads as *"For the purpose of assisting, protecting or providing relief to the community, in response to any threatening disaster situation or disaster, the District Authority may (d) remove debris, conduct search and carry out rescue operations"*. Since debris removal operations had to be done on a war footing basis to facilitate smooth pilgrimage as stated above and to avoid further floods, the above section had to be invoked. The activities in the above area as stated above, including the visit of the Chief Secretary and the State Police Chief, was only to monitor the

progress of the above work and to enforce and ensure completeness of the same before the fast approaching pilgrimage season and to avoid further flooding as stated above. There was no intention to violate any provisions of Forest (Conservation) Act, 1980. The Disaster Management Act which is having overriding effect on any other Acts in force had to be invoked in view of the exigency to avert future floods and was done in good faith. They prayed for accepting their contentions and to pass appropriate orders.

14. The Principal Chief Conservator of Forest and Head of Forests Force, Kerala (4th Respondent) filed their response contending that this Tribunal had Suo Motu initiated the above proceedings based on the newspaper report dated 30.05.2020 and appointed a Joint Committee by order dated 02.06.2020, comprising of various officers to enquire into the issue and if there is any violation found, to take appropriate action. The Hon'ble Chief Minister, Kerala convened a high level meeting on 13.10.2018, in which several decisions were taken for facilitating the pilgrim season starting in November. Accordingly, the Forest Department was directed to make the site available for dumping the sand / debris being removed from Pamba and also to secure Government of India approval for disposing these materials for public purpose / tender. The copy of the minutes of the meeting dated 13.10.2018 is attached as Annexure-1. Accordingly, the Principal Chief Conservator of Forests vide letter No. FC2 / 63200/2018 dated 13/12/2018, requested the Additional Principal Chief Conservator of Forests (Central), MoEF&CC, Regional Office, Bangalore for permission for immediate removal of sand collected and deposited in Pamba-Triveni after the pilgrim season and before the onset of the monsoon so that it

does not get washed down again into the river. It was specifically mentioned that the permission is not sought for mining of sand but for the removal of the sand already collected and dumped which is a hazard as it may aggravate the flooding in the next monsoon season. A copy of the letter is attached as Annexure-2. The Government of India vide letter F.No.8- 2/2019-FC dated 26.02.2019 granted one time permission under Forest (Conservation) Act, 1980 for the removal of sand and silt accumulated at Pamba – Triveni in 2018 floods and a copy of this order is attached as Annexure-3. On request from the Forest Department, the National Centre for Earth Science Studies (NCESS) conducted a rapid survey of the material accumulated during the flood. NCESS reported that a total quantity of 1,20,240 M³ of sand, gravel, cobbles and other deposits were available at Thriveni - Chakkupallam - Kakki portion. As per this order of the Chairman DDMA, TDB was directed to remove and safely keep 20,000 M³ of sand accumulated near Arattukadavu (not from the material deposited by M/s.TPL) and this work was also directed to be completed before 25.05.2019 and also to safely keep it. Under the cover of this order, TDB started collecting sand deposited within the river / on the river banks, which was not covered under the permission granted by the Government of India. Therefore, this was objected to by the Forest Department. The Forest department is of the firm belief that, though the Disaster Management Act has overriding effect on other statues, the debris collected could be transported outside the forest area only after obtaining requisite permission as envisaged under the relevant provisions of Forest (Conservation) Act, 1980. The Joint Committee has been constituted and they will be filing independent report of the Member Secretary -Kerala State Disaster Management Authority, for compliance before this Tribunal.

15. They also filed further report more or less reiterating their contentions and also the contentions raised by the Principal Secretary for Forest. They further contended that the State Government had constituted a Committee under the Chairmanship of Chief Secretary with ACS (Water Resources), ACS (LSGD), ACS (Forests and Wildlife), Principal Secretary (Revenue), Principal Secretary (Environment) and the Director (Mining & Geology) as members, in order to look into matters relating to dredging of rivers. The Committee in its meeting held on 07.11.2019 decided to entrust respective District Collectors to conduct de-silting and removal of debris in flood affected rivers in the context of the massive floods that happened in 2018 and 2019. The State Government in the Revenue Department, vide G.O. (Rt) No.3880/2019/ RD dated 24.12.2019 took the stand that as per Section 24, 34 of the Disaster Management Act, 2005, State Disaster Management Executive Committee, District Disaster Management Authority can take necessary steps to remove debris, conduct search and carry out operations. With regard to the authority of Section 33 of the Disaster Management Act 2005, the Hon'ble High Court, Uttarakhand in W.P (C) No.93/2015 has ordered that *"if the dredging is undertaken for the purpose of maintaining water bodies, no clearance of Ministry of Environment & Forest is required"*. As per Section 72 of the Disaster Management Act, this Act overrides the other Acts. The Government also accorded sanction to all District Collectors for removing silt and the debris in flood affected rivers, as an immediate measure to accommodate flood waters and to utilize the capacity of river channels. The District Collectors were also given the liberty to dispose of the silt and the debris in the appropriate matter (Annexure - 7). The Chairman, DDMA, Pathanamthitta vide DCPTA 454/2018/DM-3, dated 15.05.2020 issued orders invoking Section 34 (d) of the Disaster

Management Act for removal of 75,000 M³ of sand, silt, plastic and other debris from Pamba - Triveni by M/s.Kerala Clays and Ceramic Products Limited, Kannur (M/s.KCCPL) subject to the conditions, inter alia that they should obtain necessary permission / pass from the Departments concerned, the work should be completed before 30.06.2020 and if any land has to be used along the Pamba River for storing and processing the materials, the necessary permission will be facilitated. The above order is seen to be issued on the assessment made by the Chairman, DDMA that it is necessary to restore the natural flow of the river, enhance its storage capacity and for avoiding chances of flood (Annexure - 8). In the meanwhile, the Forest Department made its own internal assessment and felt it necessary to keep the 300 M stretch between Triveni Bridge and the confluence of Njunangar clear of any debris so as to reduce the chance of flood related damages. Accordingly, vide FC2-61898/18 dated 22.05.2020, recommendation was made to the State Government to permit M/s. KCCPL to remove the balance quantity of the debris deposited by M/s.TPL and also the approximately 500 M³ of sand / debris from the Pamba River. In pursuance to this, the Government in Forest Department vide letter No.C2/47/2020 / F&WLD, dated 02.06.2020 permitted the agency fixed by District Collector to remove the material collected and dumped by M/s. TPL if the order of the District Collector specify that this material need to be removed to avoid a disaster during the monsoon (Annexure - 9). It was also informed that if the DDMA is of the view that sand is to be removed from the river bed other than what is collected by M/s.TPL, the same should be deposited at sites identified by the Forest Department within the forests and it can be transported outside forests after procuring the necessary approvals under the Forest (Conservation)

Act Subsequently, M/s. KCCPL started removing sand / silt from the Pamba River and instead of depositing it in the nearby forests, attempted to remove it outside the forests without the permission of the Forest Department which is at variance with the orders of the Chairman, DDMA. In the meanwhile, District Collector and Chairman DDMA vide his order No.DCPTA-455/2018/DM3, dated 30.05.2020, invoking Section 34 (d) of the Act issued orders to the effect that the sand, silt etc. accumulated along the 2290 M stretch from the Valiyanavattom VCB to KSRTC VCB, and assessed as 1,28,193 M³ be removed and taken out by M/s.KCCPL so as to restore the natural flow and improve the water storage capacity. This order was also subject to the condition that it should be completed before 30th June 2020 and if any land is required for processing the material, it will be facilitated. The Chairman DDMA, Pathanamthitta vide his letter No. DCPTA 454/2018/DM, dated 03.06.2020 has informed the DFO, Ranni that in view of the directions from the Additional Chief Secretary (Forests) dated 02.06.2020, make necessary arrangements for dumping the sand to be collected from the 2290 M stretch of Pamba from Valiyanavattam VCB to KSRTC VCB (Annexure - 10). In pursuance of the order of the Chairman DDMA, dated 30.05.2020, a total of 74248.11 M³ of sand and debris has been removed from the Pamba River and in compliance with the Government directions in Annexure - 9, it is deposited within the forest area.

16. They further mentioned that the circumstances which lead to the above situation, as known to the Forest Department as follows:-

"1. There are no human habitations nor any man made physical infrastructure over the 18 KM stretch of the Kakki river from Anathode

dam to Pamba – Triveni. Similarly, on the downstream stretch of 30 KM from Pamba to the outer periphery of the reserved forests, there is no human habitations or infrastructure, except those created for the purpose of Sabarimala pilgrimage.

2. During the heavy rains of August 2018, huge quantity of water was released from the Anathode dam which, along with the rain water accumulated in the downstream of the dam, caused extensive erosion of the river banks including erosion of small hillocks.

3. All these water along with the sand, silt and other debris would have flown down the river but for the block caused by the narrow FOB at Pamba – Triveni. The narrow passage under this FOB was blocked by the uprooted trees and other debris brought down by the flood waters at an early stage of the flood. Because of this blockage, the flood waters took a right turn totally destroying / seriously damaging various pilgrimage related constructions in the river bed / river bank, moved further downwards, changed course and forcefully hit the left bank causing serious erosion there. Blockage of the passage under the FOB resulted in deposit of silt to the extent of several meters in depth. Had the FOB not been blocked, the flood water would have carried the silt / debris load further down and deposited at various Ghats all along its course.

4. Necessary passage across the river was opened by M/s.TPL as part of emergency flood relief work and the materials so collected was deposited within the forests well before the Sabarimala pilgrim season which started in November 2018. Under the direction of the Hon'ble Chief Minister, approval of Government of India under the Forest (Conservation) Act was obtained for the removal of this sand / silt to outside the forest area. However, only less than 10% of the quantity so deposited could be removed out of the forests, primarily due to the poor quality of sand which resulted in very poor response for the several rounds of public auctions. The need for transport through the forests, by road over a long distance of more than 35 KM also impacted on the response.

5. Using a thumb rule of 5 M of sand per truck load would indicate that more than 15,000 trips (about 10.5 lakh KM) have to be made through the dense forests of Ranni division for removing the balance quantity of sand, silt and debris already collected by M/s.TPL.

This is likely to heavily pollute the air within these dense natural forests which even otherwise is seriously impacted by the huge number of pilgrims to the Sabarimala temple during the 100 days of darshan. This stretch of the road also seriously suffered during the floods of 2018. The overlap between the movement of sand laden trucks and the pilgrim vehicles will also seriously impact the strength of this road within the forests.

6. The balance quantity of sand, silt and the debris that was deposited in the forests by M/s.TPL for about two years has by now compacted itself and has more or less merged with the forest ecosystem. In view of all the above, it may not have to be removed any more and instead, could be left for further stabilizing at site.

7. Over the last two years, significant part of the debris that was left behind in the river bed and river banks at Pamba - Triveni has already been washed downstream by the flowing water and the remaining quantity has also partially stabilized.

8. Heavy rainfall was predicted during the 2020 monsoon, especially the south west monsoon which will soon come to an end. In view of the experiences of 2018 and 2019 floods, the narrow FOB has to be always kept clear of any debris, at least for 300 M upstream and downstream.

9. The Chairman DDMA had ordered removal of 75000 M of sand / silt / debris from the river at Pamba - Triveni. Even when the order of the Chairman DDMA was to remove the material and transport it only with the due permissions, M/s KCCPL, the Agency, was trying to transport it outside the forests without approval under the Forest (Conservation) Act. While the interpretation of the Chairman, DDMA that the removal of material from the course of the river so as to avoid the disaster is within the purview of Section 34 (d) of the Act, the interpretation that this section also empowers him to order its removal to outside the reserved forests is well outside its purview.

10. It is submitted that such removals will definitely attract the relevant provisions of the Forest (Conservation) Act, in view of this, the Government in the Forest Department has issued directions that only the material collected immediately after the flood and deposited in the

forests for which the clearance under the Forest (Conservation) Act is issued should be removed outside the forests. This has been complied with, except for the 49.5 M that was removed on the orders of the Chairman, DDMA and under Police protection.

11. Based on the orders of the Chairman, DDMA a total of 74248.11 M³ of sand, silt and the debris have been removed from the 2290 M stretch of the river and it is dumped inside the forests at sites identified by the Forest Department. If the disaster risk caused by this debris was assessed in advance and informed to the Forest Department, early action for permission under the Forest (Conservation) Act could have been taken."

17. The Forest department is of the firm belief that, though the Disaster Management Act has over-riding effect on other statutes, the debris collected could be transported outside the forest area only after obtaining requisite permissions as envisaged under the relevant provisions of Forest (Conservation) Act, 1980.

18. The Ministry of Environment, Forests & Climate Change (8th Respondent) has filed their reply affidavit contending that the land is a subject matter of State Government. The forest areas and the legal boundaries thereof are determined and maintained by the concerned State Government. Being the repository of land records, State Government has the primary responsibility to determine status of any parcel of land, giving due regards to gazette notifications, provisions under State and Central Acts and concerned judgements and directions of the Hon'ble Supreme Court. In the instant matter, this Tribunal vide order dated 25.06.2021 has directed the MoEF&CC to answer the following; *"Considering the fact that there is an important issue arose as to whether permission under Forest Conservation Act is required for such activities or Disaster Management Act will over-ride the*

Environmental Laws, we feel the view of MoEF&CC is also required as they are the persons to accord sanction, if any, required for such purposes applied for." Apparently, from the above direction, it seems that there is ambiguity in considering over-riding effect between the provisions of Forest (Conservation) Act, 1980 and National Disaster Management Act, 2005. In view of the aforesaid ambiguity in the face of law, has vide letter dated 23.09.2021 requested the Department of Legal Affairs, Ministry of Law and Justice to provide their legal opinion in the matter, so that an appropriate reply can be filed in the Hon'ble Tribunal.

19. It is further contended that the reply from the Ministry of Law and Justice, in this regard, is awaited. Copy of the letter dated 23.09.2021 sent by them attached as Annexure A1. The 8th Respondent reserved their right to file additional affidavit before the Hon'ble Tribunal, if required till Pendent elite.

20. The learned counsel appearing for the Forest Department filed a statement contending that the above statement was filed as directed by this Tribunal by order dated 15.09.2021. During the flood disaster in Kerala 2018, flash floods occurred in Pamba river passing through the Pamba - Triveni area of Sabarimala during August, 2018. Consequently, huge quantity of sand and silt accumulated at Pamba - Triveni area submerging many infrastructures including two bridges in the said area. As part of the emergency relief operations to restore the connectivity between Pamba and Sannidhanam, Government had engaged M/s. Tata Projects Limited during September- October 2018. The quantity of sand and silt collected and deposited in the above places by TPL was about 90,000 M³ and TPL,

themselves arranged for the protection of this sand and silt by paving sand - filled bags on the lower sides. The Forest Department vide letter No. FC2/63200/2018 dated 13.12.2018 sought the permission of the Central Government for the removal of the above sand having quantity of 90,000 M³. The Government of India, Ministry of Environment, Forests and Climate Change (FC Division), New Delhi vide letter F. No. 8-2/2019- FC dated 26.02.2019 accorded permission for removal of the sand and silt under the Forest (Conservation) Act, 1980. The permission granted was 'one time permission'. Consequently, the Government of Kerala vide G.O (Rt) No. 48/2019/ F&WLD dated 06.02.2019 accorded sanction for disposal of the sand and silt at seigniorage rate at 2777/M³. Sanction was accorded for transporting of about 15000 m³ of sand from Pamba- Thriveni to dumping sites at the forest periphery for conducting e-auction retails sales to own use customers and the remaining quantity of sand and silt was ordered to be sold to bulk customers through e-auction. Subsequently, Government sanctioned 20,000 M³ of sand to Travancore Devaswom Board (TDB) for their construction at Nilakkal Base Camp vide G.O (Rt) No. 169/2019/ F&WLD dated 13.05.2019 and the said sand was sanctioned to TDB free of cost vide G.O. (MS) No. 12/2019/F&WLD dated 22.05.2019 and extended the same for use at Pamba and Sannidhanam vide G.O (Ms) No. 15/2019/F&WLD. In the meantime, the Government reduced the selling price of sand for the e-auction bulk sale and retail sales to the prevailing (Delhi Schedule Rate) of Rs.1,200/ M³ instead of the seigniorage rate of 2,777/M³, considering the low quality of sand vide GO (Ms) No. 11/2019/F&WLD dated 22.05.2019. The Forest Department conducted 18 e-auction bulk sales at the rate of 2 auctions per day from 06.02.2019, to 01.08.2019. In these auctions, 3000 M³ of sand could be sold. Moreover,

Forest Department has transported 1000 M³ of sand to Areekkakavu Depot (under Punalur Timber Sales Division) which is about 50 KM away from Pamba for the e-auction retail sales to the own use customers, for which, around 80 Torrus vehicle loads were required to remove 1000 M³ of sand. After the initial ones, the e-auction sales were not successful. So, additional sand was not transported from Pamba due to lack of progress of the e-auction retail sales. The sale of sand and silt by e-auction or from Areekkavu Depot was not successful, for which one of the reasons could be the low quality of the sand accumulated. Though the expert report of the Centre of Earth Science Studies has found the sand so collected is suitable for construction and allied activities, response to e-auction was slow due to the occurrence of silt in the sand and low quality of sand as assessed by the potential buyers. In the meantime, the Pathanamthitta District Disaster Management Authority (DDMA) vide order dated 18.05.2019 issued under Section 34 (d) of the Disaster Management Act 2005 directed TDB authorities to remove and collect an additional 20,000 M³ sand from the river basin immediately and keep the same in safe custody in a secured place. It was specifically stated in the said order that it shall not be taken out of the forest area and that sand should be removed and collected under the supervision of the Forest, Revenue and Irrigation authorities. Though there were directions to the TDB to remove 40,000 M³ quantity of sand and silt from the river, only 2287.1 M³ of sand and silt was removed by TDB. In addition, TDB had transported 86 M³ of sand from the river bed, which was not from the stored quantity allotted to them. Subsequently, the Principal Secretary, Revenue in the Video conference held on 29.04.2020 directed the District Collector, Pathanamthitta to examine the possibility of removing debris from the

area by M/s. Kerala Clays and Ceramic Products, Kannur, which is a public sector Government company. Subsequently the DDMA at its meeting held on 15.05.2020 approved removal of 75000 M³ of silt, clay, plastic and cloth waste from Pamba Triveni area and the same to be taken by M/s. Kerala Clays and Ceramic Products Limited free of cost after availing necessary passes of the concerned department. Consequently, M/s. Kerala Clays and Ceramic Products Limited removed 49.50 M³ of sand and silt from the river banks to Erumeli on 03.05.2020 and 01.06.2020 and removed another 47.16 M³ from the river banks and deposited the same in Pamba forest area on 21.05.2020 and 22.05.2020. Thus the total sand and silt removed from the river bank by M/s. Kerala Clays and Ceramic Products Ltd. was 96.66 M³. Out of the 75248.16 M³ of accumulated sand, silt and debris, collected under the orders of the District Collector in 2020, 75198.66 M³ is deposited inside forest land and has not been taken out of the forest land. Thus 99.93% of the sand, silt and debris removed from the Pamba River are still lying inside the forest and have not been removed to any place outside the forest. Only 0.07 % of the sand, silt and debris removed from the river, have been moved out of forest. Earlier, though permission was granted by the Central Government for 90,000 M³ quantity of sand/silt to be moved out of forest, nearly 93% of the same could not be moved out of forest. It appears that may be in this context, the District Administration may have allowed M/s. Kerala Clays and Ceramic Products Ltd. to move the sand and silt outside forest. The said activity was stopped by M/s. Kerala Clays and Ceramic Products Ltd. from 02.06.2020. Only a negligible quantity of sand and silt was moved out of forest by Kerala Clays Ltd., which is a Company owned by the Government of Kerala and working under the Administrative control of

the Industries Department, Government of Kerala. Only a negligible quantity of 49.5 M³ of sand mixed with silt and debris was transported out of forest area in the exigency situation apprehending the issues which arose during the previous flash flood disasters which occurred during August, 2018 and August-September, 2019 in the Sabarimala - Pamba area and in good faith of facilitating the Sabarimala pilgrim season which was fast approaching. The remaining sand mixed with silt and debris still remains in the forest and has now become part of the forest also. So, they prayed for closure of the application.

21. The same statement was again filed under the signature of the Principal Secretary for Forest and Wildlife Department.

22. The 8th Respondent (MoEF&CCC) also filed another statement stating that the matter was examined by the MoEF&CC. As both the Acts viz., Disaster Management Act, 2005 and Forest (Conservation) Act, 1980 are special Acts, in order to ensure that both the Acts are harmoniously implemented, it has been decided to hold a consultation/meeting with the Ministry of Home Affairs and form joint views of Government of India. It would take some time to come to a common and rational view which upholds and ensures that objectives of both the Act are fulfilled. They wanted atleast eight weeks to file the statement.

23. Though such a statement was filed in December 2021, they have not filed any further statement in this regard.

24. The Joint Committee has filed the report which reads as follows:-

**Report on sand removal as ordered in OA No.75/2020 of National
Green Tribunal, Chennai**

1. INTRODUCTION

A *suo moto* case was initiated by the Chennai bench of the National Green Tribunal based on Hindu newspaper item dated 30.05.2020 titled “Kerala Forest Department told to permit sand removal from Pampa”. The Court after due deliberations *inter alia* has appointed a Joint Committee to enquire into the issue and considering its seriousness submit a factual and action taken report, if there is any violation found including imposition of environmental compensation. A site inspection was scheduled on 15th September, 2020 and all the members of the Joint committee were present during the field visit.

2. FACTUAL AND ACTION TAKEN REPORT

2.1. Huge quantity of sand mixed with Debris were accumulated in the sacred river of Pamba -Triveni due to heavy floods in Kerala during August 2018. The Debris deposited at Pamba Triveni area during the flood was collected by TATA Project Ltd and dumped in the following places as per the decisions taken in the meeting chaired by Hon. Chief Minister on 13.10.2018.

- Chakkupalam 1 parking ground, Hilltop
- On the sides of the Chakkupalam main road
- Opposite Forest Inspection Bungalow, Pamba

A satellite imagery of the Pamba Triveni area where the sand was dumped in 2018 and 2020 is given in Image 1 and Image 2.

Image 1. Locations where sand was deposited during 2018



Image 2. Locations where sand is deposited during 2020



2.1 Chronology of events

| Date | Events |
|------------|---|
| 13.10.2018 | The State Government, Kerala convened a high-level meeting on 13.10.2018, in which several decisions were taken for facilitating the pilgrim season starting in November. Accordingly, the Forest Department was directed to make site available for dumping the sand / debris being removed from Pamba and also to secure Government of India approval for disposing these materials for public purpose / tender. The copy of the minutes of the meeting dated 13.10.2018 is attached as Annexure-1 |
| 13.12.2018 | Accordingly, the Principal Chief Conservator of Forests vide letter No. FC2 / 63200/2018 dated 13/12/2018, requested the Additional Principal Chief Conservator of Forests (Central), MoEF&CC, Regional Office, Bangalore for permission for immediate removal of sand collected and deposited in Pamba-Triveni after the pilgrim season and before the onset of the monsoon so that it does not get washed down again into the river. |
| 06.2.2019 | the State Government issued G.O.(Rt) No.48/2019/F&WLD, dated 06/02/2019 (Annexure-2) allotting part of this materials to Travancore Devaswom Board (TDB) and permitting the remaining to be disposed in auction. |
| 26.2.2019 | The Government of India vide letter F.No.8-2/2019-FC dated 26.02.2019 granted one-time permission under F(C) Act, 1980 for the removal of sand and silt accumulated at Pamba – Triveni in 2018 floods (Annexure-3) |
| 13.5.2019 | The Government of Kerala vide G.O. (Rt) NO.169/2019/ F&WLD, dated 13.05.2019 Govt. had directed the TDB to remove 20,000 M3 of sand immediately (Annexure – 4). the TDB removed only 2287.1 M3 sand even though they were allotted 20,000 M3, free of cost. The State Forest Department removed 1000m ³ of sand to the Areekakavu depot away from the Pamba Triveni area. |

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| 24.12.2019 | The Revenue Department, vide G.O. (Rt) No.3880/2019/ RD dated 24.12.2019 took the stand that as per Section 24, 34 of the Disaster Management Act, 2005, State Disaster Management Executive Committee, District Disaster Management Authority can take necessary steps to remove debris, conduct search and carry out operations. The Government also accorded sanction to all District Collectors for removing silt and the debris in flood affected rivers, as an immediate measure to accommodate flood waters and to utilize the capacity of river channels. The District Collectors were also given the liberty to dispose of the silt and the debris in the appropriate manner (Annexure - 5) |
| 15-5-2020 | As per the Disaster Management Act 2005, the District Collector Pathanamthitta vide order No. DCPTA/454/2018 /DM3 dated 15/5/2020 permitted the Kerala Clays and Ceramic Ltd to remove debris from Pamba Triveni (Annexure-6). |
| 22-5-2020 | The Principal Chief Forest Conservator of Forests & Head of Forest Force in letter No.FC2-61898/18 dated 22-5-20 has recommended the Govt. that M/s Kerala Clays & Ceramics Products Ltd, Kannur can be permitted to remove the above said debris from Triveni bridge to Njonangar confluence (500 m ³) and all the debris deposited by Tata Project Ltd at Chakkupalam, Hill Top etc at a rate as decided by the Govt. of Kerala (Annexure-7). |
| 29-5-2020 | It is reported by the District Collector that The Chief Secretary of Kerala along with Home Secretary, DGP inspected the site and had discussion with the District officials and had directed to remove the debris urgently and directed the District Collector to issue an order under Disaster Management Act to remove the debris at the earliest as the monsoons were expected to start by first week of June. (Annexure-8) |
| 30-5-2020 | The District Collector Pathanamthitta issued his order dated 30-05-2020 for removing the 1,28,193 m ³ debris |

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| | collected from Valiyanavattam to KSRTC Depot area (2290 metre) (Annexure-9) . Based on this order M/s Kerala Clays& Ceramics Products Ltd Company started removing debris from Pamba river with Police protection. It is reported that 42 m ³ of sand is transported outside the forest limits by the agency. The Range Forest Officer along with his staff had visited Pamba to stop the work as clearance under Forest Conservation Act, 1980 was not obtained by the concerned authorities as in 2019. |
| 1.6.2020 | From the report given by the District Collector, Pathanamthitta and CWLW, Kerala Forest Department, The Forest Range Officer, Goodrickal Range, in writing had stopped the desilting operation vide letter GR-1/1328 dated 1-6-2020 as permission under Forest Conservation Act, 1980 was not obtained as in during February 2019. However, the work continued with the protection of the police officials s instructed by the officials from Sub Collector Thiruvalla to Chief Secretary, Govt of Kerala. |
| 2.6.2020 | Additional Chief Secretary (Forests) vide letter No.C2 j 47 j2020-FWLD dtd.02.06.2020 informed the Principal Chief Forest Conservator & Head of Forest Force that if the District Disaster Management Authority is of the view that any sand is to be removed from the river bed other than what is already collected by M/s TATA Project Limited in 2018, the same should be deposited at sites identified by the Forest Department within the forest and it can be transported outside forest after procuring the necessary approvals under The Forest Conservation Act (Annexure-10) . |
| 3.6.2020 | The Chairman DDMA, Pathanamthitta vide his letter No. DCPTA-454/2018/DM, dated 03.06.2020 has informed the DFO, Ranni that in view of the directions from the Additional Chief Secretary (Forests), dated 02.06.2020 he may make necessary arrangements for dumping the sand to be collected from the 2290 M stretch of Pamba from Valiyanavattam VCB to KSRTC VCB (Annexure - 11) . |

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| | <p>As reported by the District Collector, Pathanamthitta, the Kerala Clays and Ceramics Products, Kannoor informed vide letter No.KCCP/GL/32/20/2020-21 dated 03.06.2020 that they have stopped the work and withdrawn from the work after getting the directions of the Additional Chief Secretary (Forest and Wildlife).</p> <p>The Hon'ble Chief Secretary of Kerala in a video Conference, inquired about the progress of removing the debris from Pamba Triveni area and directed the District Administration to remove the sand, silt and debris from the Pamba, Triveni directly using the State Disaster Redressal Fund, under the supervision of District Administration, if the Kerala Clays and Ceramics has stopped the operations.</p> |
| 06.06.2020 | The District Collector in his letter No. DCPTA/454/2018/DM3 dated 16.10.2020 has incorporated that "As per the direction of the Chief Secretary, the desilting started again under the direct onsite supervision of Sub-Collector, Thiruvalla and the decision has been ratified in the DDMA meeting held on 06.06.2020". |
| 07.06.2020 | District Collector and Chairman, District Disaster Management Authority quashed the Orders issued on 15.05.2020 and 30.05.2020 authorising the Kerala Clays and Ceramics to carry out desilting in the river. |
| | From 04.06.2020 to 29.07.2020 an extent of 74151.5 M ³ of Debris has been removed and deposited at Chakkupalam, KSRTC and Hilltop locations which is about 1.5 KM away from the river which is under Reserve Forest and the locations were identified by the Forest Department. The work was finished on 29.07.2020. |

3 IS THERE ANY VIOLATION UNDER FOREST CONSERVATION ACT, 1980?

3.1 The Forest Department had allowed the Kerala Clays and Ceramics Products, Kannur, for collecting the debris in Pamba river for ensuring the smooth flow of flood water in the coming monsoon and to store it in a safer place at Pamba. It is reported by the CWLW that the company transported 49.5 m³ of debris outside forest area without Forest Clearance and based on order issued by District Collector in the light of Disaster Management Act, 2005, claiming that this Act supersedes all the other Acts, both State and Central. This needs to be solved through judicial mechanisms. The removal of sand or debris during 2019 was done after obtaining clearance under Forest Conservation Act, 1980. However, it is pertinent to say that Clearance under Forest Conservation Act is not obtained during 2020 for the removal of debris in Pamba and Kakki river as it is a non forest activity. Further, the transportation of debris outside the forest definitely attracts the provisions of Forest Conservation Act, 1980 under Section 2 (2). Since the debris have been removed by the State Authorities without the prior approval of the Central Government under section 2 of Forest (Conservation) Act, 1980, it shall attract the penal action under section 3A and 3B of the Forest (Conservation) Act, 1980. A report with full details of violation is required to be submitted by the State Government on the recommendation of the Forest Department of the State to the Government of India for a formal enquiry in the matter.

3.2 Attention is drawn to the section 2 of Forest Conservation Act., 1980 which states that “ Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or Authority shall make, except with prior approval of the Central Government, any order directing that any order directing that any forest land or any portion thereof may be used

for any non-forestry purpose”. Hence there is a direct conflict in the provisions of Forest (Conservation) Act, 1980 and National Disaster Management Act, 2005.

3.3 The District Collector, Pathanamthitta in his letter No. DCPTA/454/2018 /DM3 dated 14.09.2020 has mentioned that there is no violation of the Forest Conservation Act. 1980 on the following grounds **(Annexure 12)**.

3.3.1 All the orders issued, and acts done by the DDMA are in accordance with and in exercise of the powers conferred under Section 34 of the Disaster Management Act 2005.

3.3.2 The overriding effect provided under Section 74 of the Act and the immunity provided to the officers, and employees of various authorities including District Authority provided under Section 71 of the Act.

3.4 As it is observed from above, there is no unanimity among different members in this issue on sand mining. While the District Administration headed by Collector and Member Secretary, KSDMA place their view that sand mining or removal of debris was done as per the Disaster Management Act, 2004 to prevent flooding in the downstream areas, the officers of the State Forest Department claim that there is a violation under provisions of the Forest Conservation Act, 1980.

4 IS THERE ANY ENVIRONMENTAL COMPENSATION?

4.1 Regarding imposing of environmental compensation, no such action has been taken up by the authorities. However, a fine may be imposed on the quantity of sand removed from the river inside the forest area.

4.2 The riverbanks of Pamba and Kakki where the sand is removed in an unscientific manner needs to be restored. The bank characteristics needs to be restored and the cost of restoration may be collected from the concerned authorities. As per Mayaja *et al*

2017¹, natural tropical forest act as an effective sponge for reducing the quick rain water run-off and prevents flash floods. Further, forest cover in the river basin prevents soil erosion altering the river contours. Many studies have shown that forest cover is an effective stabilizing factor to control unlimited run offs. Therefore, there is a need for imposing environmental compensation in terms of physical restoration of the banks and make the stream or river healthy. Also, monetary compensation needs to be paid against the removal of sand outside forest area and stabilization of sand. There needs to be a study on stream rehabilitation and evaluation of environmental flow needs of such rivers as they support wildlife, endemic and extant. Empirical data on flow duration and analysis on frequency of floods, fluvial geomorphology, hydraulics and their biological implication is not made available for this Pamba river basin. The details on how much sediment is yielded from the catchment, motion of such sediments and deposition needs to be done for all the rivers in Kerala as they pose flood threat. The quantitative assessment of regional debris flow risk in Pamba needs to be studied.

4.3 Basic data on stream hydrographs indicating flood peaks and base flow for river Pamba is not made available by the concerned authorities. In absence of such important data it is difficult to decide on how much debris or sediments can be removed or how to compensate environmentally. It is discussed in various studies² that the absence of an infrastructure policy, scientifically taking care of the river basin and ecology leads to difficulty in addressing issues on conservation of river and stream hydrology and biology thereof.

¹ Mayaja N A and Srinivasa C V, 2017. Land use and land cover changes and their impacts in Pamba river basin- A remote sensing based analysis, Journal of Geomatics, Vol11, No. 1, April 2017

²Mayaja N A and Srinivasa C V,2016. Flood hazard zoning using analytic hierarchy process: A case study for Pamba river basin, Kerala, India, Vol.10, No.1

4.4 In Pamba Triveni area, there is a confluence of three rivers, Njonangar, Pamba and Kakki. Therefore, any increase in rainfall in the catchment area will result in increase in water levels here. As this area is surrounded by forests, it is evident that the buildings constructed on the banks closer to the rivers has diverted the water causing flooding, breaching and massive accumulation of debris. If the buildings were not constructed on the flood plain, the debris would have travelled downstream, mainly flat terrain and may not even caused a disaster. The nearest habitation is almost 10 kms downstream as per the satellite imagery in imagery below.



4.5 The Building constructed by Travancore Devasom Board in the flood plains of Pampa river are the main cause of obstruction to the natural flow of the river (in case of Excessive rain) and resultant accumulation of sand. Central Empowered Committee has made similar kind of observation in para No. 19 and 20 its report No. 44 of 2018 dated 31st October, 2018 in IA No. 63946 and 35372 of 2017 IN W.P. No. (G) of 202 of 1995. The report of Central Empowered Committee is enclosed at **Annexure 13**

5 WHETHER ANY STUDY ON SAND REMOVAL DONE FOR PAMBA BASIN?

5.1 Regarding the question on whether a study on how much sand can be removed, Principal Chief Conservator of Forests, Kerala Forest Department had mentioned in his letter dated 13.12.2018 to the MoEF&CC that National Centre for Earth Sciences (NCESS) was contacted to conduct a rapid survey during 2018. According to them, a total quantity of 71700 m³ of sand was deposited in the floods of August 2018 and had to be removed to restore the active channel to the pre-flood scenario. However, 90000 m³ had been removed and dumped on the forest land. During 2019 or 2020, no such studies have been done and this needs to be taken up for standardizing the methodology for sand removal not only in Pamba but all over the country in an objective manner based on the fluvial dynamics of each river. The District Collector had reported that a Committee had been formed to estimate the amount of sand/debris that needs to be removed from the river to prevent disaster in Triveni area. The members were Sub Collector, Thiruvalla, DFO, Ranni, District Geologist, Asst. Executive Engineer, (MI). Tahsildar, Ranni and AEE, Travancore Devaswom Board. The quantity recommended to be removed as per the report in 6 stretches of the 2.29 km stretch of the river is 128193m³.

5.2 There were no independent experts of Hydrology or Geographical Information System, Disaster management or Wildlife in the above Committee. Therefore, it may be concluded that the sand or debris removal in Pamba Triveni area is done without adequate scientific studies or inquiry and based on laws like the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.

The main problem now is, the sand and other debris removed from the river banks is deposited in many places as given in Images 1 and 2. However, the debris mixed with sand seem to have stabilized in this area and removing it

using trucks will cause damage to the environment and cause disturbance to the wildlife there. Moreover, the attempt to sell the mined material during 2018 through e-auction has failed repeatedly as given by the report of CWLW, Kerala. The options of rehabilitation of the dumps using different physical and vegetative measures needs to be explored as done in stabilization of dumps will help to stop further erosion.

6. COMMENTS RECEIVED FROM DIFFERENT MEMBERS ON THE ISSUE

6.1 Comments of Senior Geologist; (Department of Mines and Geology):

As far as Mining and Geology Department is concerned, collection of royalty for the extracted mineral is the main concern. Collection of Debris alone cannot be considered as an extraction of mineral. But if extraction of mineral is involved, royalty has to be paid as per schedule -I of the Kerala Minor Mineral Concession Rule 2015. Exemption regarding payment of royalty in disaster related activities can be given by the State Government. During the site inspection report it was noticed that, the debris along with sand which was extracted from river basin is currently stored near to the banks of the present river basin at some places There are chances that during the coming rains, the debris and sand will again return to the river basin as part of water erosion. **(Annexure-14)**

6.2 Comments of Member Secretary, Kerala State Disaster Management Authority:

The Member Secretary, Kerala State Disaster Management Authority is also one of the members of the Joint Committee who has submitted a separate report. The report of Member Secretary is enclosed as **Annexures-15&16**. The salient features of the report are

- The District Authority has powers under Section 34 of the Disaster Management Act, 2005 i.e. Powers and functions of the District Authority in the event of any threatening situation or disaster to assist, protect or provide relief to the community in response to any threatening disaster situation or disaster

- The report also elaborates the preliminary objections on lack of jurisdiction of Honourable NGT over the provisions of the Disaster Management Act, 2005 under sections 14 and 17 in Disaster Management Act of 2005. The report also talks about various legal provisions for justifying the action of desilting in river Pamba.
- The literature on the geomorphology of streams , classification of streams, geometry and dynamics of stream channels and with special reference to river Pamba is given explicitly.
- The major findings by the DDMA is that the accumulation of debris in the river channel resulted in flooding and change in the course of the river resulting in levee breach. It is also researched that the reduction in the upstream containment capacity due to the deposited debris transfers the flooding risk to downstream more populated areas.
- The report talks about the necessity of the conduct of Strategic Environment Impact Assessment (SEIA) at the selected sites to ascertain the impact and to identify sites for dumping debris in forest lands under the Section 40 of the Disaster Management Act, 2005 to reduce the flood impact downstream.
- Key technical recommendations for Forest Department is also given in the report.

6.3 Comments of District of Collector, Pathanamthitta

The comments of the District Collector, Pathanamthitta is enclosed as **Annexures 17 & 18** and it is mentioned that the debris had accumulated after the first flood in 2018. Despite repeated efforts by the District Administration to remove the debris before the next monsoon, none materialised, and second flood hit in 2019. It is reported that it was the sole responsibility of DDMA to take all necessary steps to save the lives and property of the public and avert floods, necessary steps were taken under Disaster Management Act, 2005. Though there was a flood scare during 2020, due to the timely action by DDMA, the impact was minimal.

CONCLUSION

During 2019, the removal of sand or debris in river Pamba was done after obtaining clearance under Forest Conservation Act, 1980. However, during 2020, Clearance under Forest Conservation Act is not obtained for the removal of debris in Pamba and Kakki river even though it is a non-forestry activity. The provisions of Section 34 under Disaster Management Act were available during 2019 also and it appears that there is a problem in interpretation of the laws and rules by the District Authorities. The removal of sand or debris based only on the orders of the Collector under the provisions of Disaster Management Act, 2005 appears to be not based on scientific studies and done only on the report submitted by the Committee comprising of administrative officers as mentioned supra in paragraph 5.1. Whereas the process of Forest Clearance involves multiple steps and there is a scientific inquiry in decision making starting from District officials to Principal Secretary to the Government, Forests and Wildlife in the State Government. At the level of Central Government, committees like Regional Empowered Committee and Forest Advisory Committee comprising of non-official members from different areas of expertise in the field of environment, forests and wildlife scrutinize the due process of providing Forest Clearances.

Therefore, the orders under NDMA by the Collector puts a question mark on the whole exercise of mining sand and debris from the banks of rivers on the pristine wet evergreen forests of Southern Western Ghats, known for its diversity and endemism of flora and fauna. It is also not clear whether such sand removal causes more damage to the ecology and hydrology of the riverine ecosystems and downstream impacts.

The members of the Forest Department, Kerala, has stated clearly that there is a violation under Forest Conservation Act, 1980, wherein so prior permission of the Central Government was obtained to remove the sand or debris from Pamba Triveni in forest area of Ranni division. Further, the CWLW observes that the buildings constructed by Travancore Devasom Board in the flood plains of Pamba river are the main cause of obstruction to the natural flow of the river (in case of Excessive rain) and resultant

accumulation of sand and mentions that Central Empowered Committee has made similar kind of observation in their report .

In contrast, the District Administration headed by the District Collector and Member Secretary, KSDMA have put forth their dissent and raised objections on the violation of provisions under Section 2 of Forest Conservation Act, 1980. The District Administration claims that the DDMA has taken all necessary steps as per the Section 34 of the Disaster Management Act, 2005 to save the lives and property of the public and avert floods. The Member Secretary, KSDMA in his report has prescribed various technical recommendations to State Forest Department to avert floods and the importance of Strategic Environmental Impact Assessment of removing debris from rivers in forest areas. The Senior Geologist has concluded that there are chances that during the coming rains, the debris and sand will again return to the river basin as part of water erosion.

Therefore, in the absence of a unanimous view of the members of the Joint Committee, a plethora of issues involved in this case of sand and debris removal in the river Pamba is put up before the Honourable Court for consideration."

25. They also enclosed certain dissenting notes by some of the members, according to whom, no such separate permission under the Forest (Conservation) Act, 1980 is required and the Disaster Management Act, 2005 will over riding effect over other statutes.

26. Heard Mr. G. Prabhu for Mr. E.K. Kumaresan, the learned counsel for the State Departments viz., Respondents No.1, 2 5 & 6, Mr. Nagaraj Narayanan, Special Government Pleader for the Forest Department viz., Respondents No.3, 4 & 7 and Mrs. Me. Saraswathy for the MoEF&CC/8th Respondent.

27. The learned counsel appearing for the State of Kerala submitted that the alleged acts were done pursuant to the flood occurred in Kerala during 2018 and under the Disaster Management Act, 2005, authorities have got

power to meet the situation and the Act will have over riding effect over other environmental laws.

28. On the other hand, the learned counsel appearing for the Forest Department submitted that the Disaster Management Act, 2005 is intended for the purpose of meeting the immediate situation and also to provide a long-term plan for preventing such disaster being recurring. For the purpose of immediate relief, they can undertake certain actions and in this particular case, the debris collected during the flood season of 2018 and 2019, was to be removed and a decision was taken at the Government level and on that basis, permission was sought from the Central Government (MoEF&CC) under the Forest (Conservation) Act, 1980 for removal of the sand and silt collected outside the forest area and such a permission was granted by the Central Government, as one time permission. It is in pursuant to the permission that certain acts have been taken place. Further, they are prepared to abide by any directions issued by this Tribunal in this regard.

29. The points that arise for consideration are:-

- i. Whether the Disaster Management Act, 2005 will have any over-riding effect over other environmental laws?
- ii. What is the nature of further directions to be issued in this case to be complied with by the concerned department in future?

POINTS:-

30. The above case has been Suo Motu registered by this Tribunal on the basis of the newspaper report published in The Hindu and also another

newspaper report published in Malayalam Manorama where, the allegation was that illegal sand mining is being happening and sand from Pampa River region is being removed outside the forest area without obtaining necessary permission.

31. According to the State of Kerala, this necessitated due to floods happened in 2018 and 2019 whereby large scale debris, sand and silt was accumulated which resulted in over flow of river Pampa, resulting in even destruction of bridges and other structures constructed on the Pampa River Basin.

32. It is also in a way admitted by them that in order to address the issue, High Level Committee under the then Chief Secretary was convened and certain directions have been issued which inter alia includes the Forest Department to seek necessary permission from the Central Government for removal of the sand and silt from the forest area and on that basis, the Forest Department conducted a study through the National Centre for Earth Science and Studies and they assessed the quantity of 1,20,244 Cu. M. sand and silt available in that area.

33. It is also in a way admitted that for that purpose, they have sent a letter to the Central Government (Regional Office, MoEF&CC) seeking permission under the Forest (Conservation) Act, 1980 and the Central Government by letter dated 26.02.2019 through the MoEF&CC accorded permission which was produced as Annexure - R1 (3) along with the response submitted by the Principal Secretary for Forest, State of Kerala which reads as follows:-

F. No. 8-2/2019-FC
Government of India
Ministry of Environment, Forests and Climate Change
(FC Division)

Paryavaran Bhawan,
C.G.O Complex, Lodhi Road,
New Delhi – 110003.

Dated: 26 February, 2019

To,

The Principal Secretary (Forests),
Department of Forests & Wildlife,
Government of Kerala,
Thiruvananthapuram.

Subject: Removal of Sand and Silt accumulated at Pampa-Thriveni near Sabrimla, Kerala State.

Sir,

I am directed to refer to the State Government's letter FC2/63200/2018 dated 13.12.2018 on above mentioned subject seeking prior approval of the Central Government under Section-2 of the Forest (Conservation) Act, 1980 and to say that the proposal has been examined by the Forest Advisory Committee constituted by the Central Government under Section-3 of the said Act.

After careful examination of the proposal of the State Government and on the basis of the recommendations of the Forest Advisory Committee, *the one time permission* of the Central Government under Forest (Conservation) Act, 1980 is hereby granted for removal of Sand and Silt accumulated at Pampa-Thriveni near Sabrimla, Kerala State subject to the following conditions:

- (i) No labour camp shall be established on the forest land;
- (ii) **No NPV and cost towards CA shall be levied.**
- (iii) **During the removal, utmost care should be taken so that no damage to flora and fauna is caused.**
- (iv) The User Agency shall obtain the Environment Clearance as per the provisions of the Environmental (Protection) Act, 1986, if required;
- (v) The User Agency shall provide fuels preferably alternate fuels to the labourers and the staff working at the site so as to avoid any damage and pressure on the nearby forest areas;
- (vi) No damage to the flora and fauna of the adjoining area shall be caused;
- (vii) No tree felling shall be done;
- (viii) Any other condition that the concerned Regional Office of this Ministry may stipulate with the approval of competent authority in the interest of conservation, protection and development of forests & wildlife; and
- (ix) The User Agency shall ensure compliance to provisions of the all Acts, Rules, Regulations and Guidelines, for the time being in force, as applicable to the project.

Yours faithfully,

(Sd/-) Arwan Kumar Verma
Dy. Inspector General of Forests

Copy to:

1. The Principal Chief Conservator of Forests (HoFF), Government of Kerala, Thiruvananthapuram.
2. The Addl. Principal Chief Conservator of Forests (Central), Regional Office, MoEF&CC, Bangalore.
3. The Nodal Officer (FCA), Forest Department, O/o the PCCF, Government of Kerala, Thiruvananthapuram.
4. The user agency.
5. Monitoring Cell of FC Section.
6. Guard File.

(Sd/-) Arwan Kumar Verma
Dy. Inspector General of Forests

34. It is on that basis, the State Government had issued subsequent directions, permitting M/s. TPL to remove the sand, silt and debris, as a process of dredging and desilting of Pampa River to increase the flow capacity of the river and ensure free flow of water in Pampa River. Thereafter, M/s. TPL have collected 90,000 Cu.M. and deposited the same at places such as Chakkupalam in front of the Inspection Bungalow, Hill Top Station, Chakkupalam main road side, etc.

35. Section 71 of the Disaster Management Act, 2005 deals with the bar of jurisdiction of Court which reads as follows:-

"71. Bar of jurisdiction of court – No court (except the Supreme Court or a High Court) shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken, orders made, direction, instruction or guidelines issued by the Central Government, National Authority, State Government, State Authority or District Authority in pursuance of any power conferred by, or in relation to its functions, by this Act."

36. Section 72 of the Disaster Management Act, 2005 reads as follows:-

"72. Act to have overriding effect - The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

37. It may be mentioned here that the National Green Tribunal Act, 2010 was passed subsequent to the Disaster Management Act, 2005. Further, the National Green Tribunal was established for the purpose of implementation of the environmental laws, so as to protect the environment and natural resources against over exploitation. The Disaster Management Act, 2005 was enacted for the purpose of meeting the

immediate necessity of providing relief caused under natural calamities and other calamities where action will have to be taken immediately and for that purpose, certain authorities constituted under the said Act was vested with certain powers. The authorities are also vested with preparing a long-term plan for the purpose of preventing disasters in future. For the purpose of immediate relief, probably in order to avoid further calamities and provide immediate relief to the persons affected, authorities under the said Act have to act swiftly and they will have to abide by certain directions issued by the authorities to meet the situation in an effective manner. If some part of removal of block caused to the free flow of water to ensure free flow of water and remove the block, they will have to do certain things immediately, otherwise, the situation will be worsened and further disaster may happen. But if it is in the process of a long-term measure on the basis of the Disaster Management Plan prepared, then such an over-riding effect cannot be expected and for the purpose of long time implementation, if some clearances or permissions are required under the environmental laws, then they are expected to obtain the same in accordance with law. The Disaster Management itself is intended for the purpose of protecting the environment and not to cause degradation to the environment. A detailed scientific study may not be required for the purpose of meeting the immediate situation of disaster being caused by natural calamities, but for a long-term measure, thorough study is required and for implementation of the same, they will have to obtain necessary permissions, if any, required as well.

38. In the case of conflict between two enactments, it is necessary to refer to certain decisions of the Hon'ble Apex Court on this aspect.

39. In the decision reported in **KSL & Industries Limited Vs. Arihant Threads Limited**¹ at Para (47), it was observed that *“Further, it is a settled rule of interpretation that if one construction leads to a conflict, whereas on another construction two Acts can be harmoniously construed, then the later must be adopted.”*

40. In the decision reported in **State of West Bengal Vs. Union of India**², the Hon'ble Apex Court held that *“In considering the true meaning of words or expression used by the Legislature the Court must have regard to the aim, object and scope of the statute to be read in its entirety. The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire Statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs.”*

41. Further, in the decision reported in **KSL & Industries Limited Vs. Arihant Threads Limited** cited supra, it was observed as follows:-

“Parliament must be deemed to have had knowledge of the earlier law i.e. SICA, enacted in 1985, while enacting the RDDB Act, 1993. It is with a view to prevent a clash of procedure, and the possibility of contradictory orders in regard to the same entity and its properties, and in particular, to preserve the steps already taken for reconstruction of a sick company in relation to the properties of such sick company, which may be charged as security with the banks or financial institutions, that Parliament has specifically enacted sub-section (2). The SICA had been enacted in respect of specified and limited companies i.e. those which owned industrial undertakings specified in the schedule to the IDR Act, as mentioned earlier, whereas the RDDB Act deals with all persons, who may have taken a loan from a bank or a financial institution in cash or otherwise, whether secured or unsecured etc.”

¹ (2015) 1 SCC 166

² (1964) 1 SCR 371

42. Further, in **Deep Chand Vs. State of Uttar Pradesh**³, it was held that when there is an apparent conflict between statutes of two different legislative bodies would attract doctrine of repugnancy and in such cases, the law passed by the Parliament will prevail over the law passed by the State Legislative to the extent of repugnancy with the provisions of the Central Act.

43. Further, in **KSL & Industries Limited Vs. Arihant Threads Limited**⁴, it was mentioned that the general rule of law is that in case of general and special laws, the special law prevails over an older and general law.

44. In **Life Insurance Corporation (LIC) Vs. D.J. Bahadur**⁵, the Hon'ble Apex Court had observed that *"The next logical question then is as to whether the ID Act is a general legislation pushed out of its province because of the LIC Act, a special legislation in relation to the Corporation employees. Immediately, we are confronted with the question as to whether the LIC Act is a special legislation or a general legislation because the legal maxim generalia specialibus non derogant is ordinarily attracted where there is a conflict between a special and a general statute and an argument of implied repeal is raised. Craise states the law correctly: "The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in Mary Seward v. Owner of the Veera Cruz, 'that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly*

³ 1959 Supp (2) SCR 8

⁴ (2015) 1 SCC 166

⁵ (1981) 1 SCC 315

repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. There is a well-known rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is *generalia specialibus non derogant* - i.e. general provisions will not abrogate special provisions.' When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject matter and its own terms."

45. Further, in the decision reported in **Life Insurance Corporation (LIC) Vs. D.J. Bahadur** cited supra, in Para (55), the Hon'ble Apex Court has observed as follows:-

"In J. K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of Uttar Pradesh this Court observed (at page 1174) "The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect". We have already shown that the Industrial Employment (Standing Orders) Act is a special Act dealing with a specific subject, namely with conditions of service, enumerated in the Schedule, of workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hardwon and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general, incidental provision like sec. 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing

Orders Act when is passed the Electricity (Supply) Act and Parliament never meant that the Standing Orders Act should stand pro tanto of the view that the provisions of the Standing Orders Act repealed by Sec. 79(c) of the Electricity Supply Act. We are clearly of the view that the provisions of the Standing Orders Act applies. I respectfully agree and apply the reasoning and the conclusion to the near-identical situation before me and hold that the ID Act relates specially and specifically to industrial disputes between workmen and employers and the LIC Act, like the Electricity (Supply) Act, 1948, is a general statute which is silent on workmen's disputes, even though it may be a special legislation regulating the take-over of private insurance business."

46. Further, in the decision reported in **Jagannath Temple Managing Committee Vs. Siddha Math**⁶ in Para (50), the Hon'ble Apex Court has observed as follows:-

"Further, Justice Krishna Iyer in the case of LIC v. D.J. Bahadur, while examining the difference between general and special statutes held as under:

"In determining whether a statute is a special or a general one, the focus must be on the principal subject matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity not absolutes-so too in life. The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission-the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the L.I.C. Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of

⁶ (2015) 16 SCC 542

nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such are beyond the orbit of and have no specific or special place in the scheme of the L.I.C. Act. And whenever there was a dispute between workmen and management the ID Act mechanism was resorted to."

47.In **Allahabad Bank Vs. Canara Bank**⁷ while considering the conflict between the Companies Act, 1956 and Recovery of Debts Due to Banks Act, 1991, in Para (40), the Hon'ble Apex Court observed as follows:-

"Special law versus special law:

Alternatively, the Companies Act, 1956 and the RDB Act can both be treated as special laws, and the principle that when there are two special laws, the latter will normally prevail over the former if there is a provision in the latter special Act giving it overriding effect, can also be applied. Such a provision is there in the RDB Act, namely, section 34. A similar situation arose in Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of India (1993(2) SCC 144) where there was inconsistency between two special laws, the Finance Corporation Act, 1951 and the Sick Industries Companies (Special Provisions) Act, 1985. The latter contained Section 32 which gave overriding effect to its provisions and was held to prevail over the former. It was pointed out by Ahmadi, J. that both special statutes contained non-obstante clauses but that the "1985 Act being a subsequent enactment, the non-obstante clause therein would ordinarily prevail over the non-obstante clause in Section 46-B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 statute is a special one".

⁷ (2000) 4 SCC 406

Therefore, in view of section 34 of the RDB Act, the said Act overrides the Companies Act, to the extent there is anything inconsistent between the Acts."

48. Further, in **Jay Engineering Works Limited Vs. Industry Facilitation Council**⁸, in Para (28), (30) & (31), the Hon'ble Apex Court has observed as follows:-

"28. Both the Acts contain non-obstante clauses. Ordinary rule of construction is that where there are two non-obstante clauses, the latter shall prevail. But it is equally well-settled that ultimate conclusion thereupon would depend upon the limited context of the statute. [See *Allahabad Bank (supra)* [para 34].

.....

30. In Shri Sarwan Singh and Another v. Shri Kasturi Lal [(1977) 1 SCC 750], this Court opined :

"When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration"

.....

31. The endeavour of the court would, however, always be to adopt a rule of harmonious construction."

49. In **ICIC Bank Limited Vs. SIDCO Leathers Limited**⁹, the Hon'ble Supreme Court has observed in Para (37) that "A non obstante clause must be given effect to, to the extent Parliament intended and not beyond the same".

50. So, it is clear from this when two enactments were there and if both are special in nature, then the same will have to be interpreted in such a way as to provide the intention of the legislature for enacting such specific laws

⁸ (2006) 8 SCC 677

⁹ (2006) 10 SCC 452

for certain specific situation and this will have to be harmoniously construed to give effect to the provisions of both the Acts as far as possible. Normally, general law will give way from special laws. Further, if any non-obstante clause has been provided, then it can give effect only to the extent to which the parliament intended for implementing that provision of law and not beyond that.

51. As regards the powers of the National Green Tribunal is concerned, the same was considered by the Hon'ble Apex Court in **State of Meghalaya Vs. All Dimasa Students Union**¹⁰, in Para (72) as follows:-

“The issue involved in the above case was entirely different which did not directly pertain to environmental degradation. Whether NGT has jurisdiction to entertain a particular cause is a question which depends on the facts of each case. To find out as to whether NGT has jurisdiction to entertain a case, the case set up before the Tribunal has to be looked into to answer the question. The judgment of Techi Tagi Tara (supra) was on its own facts and does not help the appellant in the present case.”

52. In the same decision, it was further observed in Para (69) as follows:-

“Hence, there was sufficient allegation regarding substantial questions relating to environment and violation of enactments in Schedule I. We fail to see any substance in the submission of the learned counsel for the appellant that NGT has no jurisdiction to entertain the case and pass orders. During submission, learned counsel for the appellant has not even referred to application which was filed by the applicant in O.A.No.73/2014. There were reports of the Meghalaya State Pollution Control Board before the State Government pointing out environmental degradation and the Tribunal having taken up the issue, the submission on behalf of the State that the Tribunal has no jurisdiction is not expected from the State Government who is under constitutional obligation to ensure clean environment to all its citizens. In cases pertaining to environmental matter the State has to act as

¹⁰ (2019) 8 SCC 177

facilitator and not as obstructionist. Article 48A of the Constitution provides:

“48A. Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”

53. Further, in the decision reported in **State of Madhya Pradesh Vs. Centre for Environment Protection Research & Development**¹¹, the Hon'ble Supreme Court upheld the directions issued by the National Green Tribunal in supplying fuel to vehicles without valid 'Pollution Under Control Certificate' as follows:-

“Violation of any specific statutory environmental obligation gives rise to a substantial question of law and not just statutory obligations under the enactments specified in Schedule I. However, the question must arise out of implementation of one or more of the enactments specified in Schedule I.

The Motor Vehicles Act, 1988 may not be specified in Schedule I to the NGT Act. However, the statutory 1989 Rules framed under the said Act casts statutory environmental obligations on manufacturers, owners and others in control of motor vehicles, as also the State and other statutory authorities under the said Act. The enforcement of the statutory environmental obligations under the 1989 Rules, which is a substantial question relating to environment, arises out of implementation of the 1981 Act and the Environment Protection Act and, in particular, Section 20 of the 1981 Act which casts on the State Government the mandatory duty to give instructions to the authorities in charge of Registration of Motor Vehicles with a view to ensure compliance of the standards of emission of our pollutants and Section 7 of the Environmental Protection Act, which prohibits any person from carrying on any operation, which would include operation of a motor vehicle, from discharging or emitting any environmental pollutants in excess of prescribed standards or permitting such discharge or emission.”

¹¹ (2020) 9 SCC 781

54. Further, in **Director General (Road Development) National Highways Authority of India Vs. Aam Aadmi Lokmanch & Ors.**¹², the Hon'ble Apex Court had considered the jurisdiction of the National Green Tribunal and observed as follows:-

"This court is of the considered opinion that the expression "environment" and "environmental pollution" have to be given a broader meaning, having regard to Parliamentary intent to ensure the objective of the EPA. It effectuates the principles underlying Article 48A of the Constitution of India. The EPA is in essence, an umbrella legislation enacting a broad framework for the central government to coordinate the activities of various central and state authorities established under other laws, such as the Water Act and Air Act. The EPA also effectively enunciates the critical legislative policy for environment protection. It changes the narrative and emphasis from a narrow concept of pollution control to a wider facet of environment protection. The expansive definition of environment No. 3181 dated 14 August, 2018, published by the Government of India, in the Official Gazette that includes water, air and land "and the interrelation which exist among and between water, air and land, other human creatures, plants, micro-organisms and property" give an indication of the wide powers conferred on the Central Government. A wide net is cast over the environment related laws. The EPA also empowers the central government to comprehensively control environmental pollution by industrial and related activities. For these reasons, and in view of the above discussion, it is held that the NGT correctly assumed jurisdiction, having regard to the nature of the accident in the facts of this case."

55. So, when a substantial question of environment arises and when there is any violation of environmental laws brought to the notice of the Tribunal, then this Tribunal will be getting jurisdiction to go into the question and decide the same.

¹² (2020) SCC Online SC 572

56. Further, in the recent decision of the Hon'ble Apex Court while considering the scope of the Suo Motu power of the National Green Tribunal in **Municipal Corporation of Greater Mumbai Vs. Ankita Sinha & Ors.**¹³ held that the powers of the National Green Tribunal cannot be narrowed down by interpreting the provisions by way of narrow interpretation and that will be in fact affect the purpose for which it was established.

57. It is true that under the Disaster Management Act, 2005, there are certain special powers given for the authorities under the said Act for effectively carrying out the same, any act has been done by them for providing immediate relief, then an over-riding effect of non-obstante clause will apply to that extent. If on account of doing certain act of long-term measures or in the guise of the same, any unauthorized activities which are deterrent to environment are being done, then a non-obstante clause will not come to the rescue of the authority to cover up their activities.

58. The Environment Impact Assessment (EIA) Notification, 1994 which was later superseded by the EIA Notification, 2006 was passed as a delegated legislation, invoking the powers under the Environment (Protection) Act, 1986, in order to regulate certain activities and industries to bring within the regime of obtaining prior Environmental Clearance (EC) and mining is one such activity.

59. In 2016, the EIA Notification was amended in respect of mining activities and Schedule - IX was incorporated wherein, certain exemptions were granted from obtaining Environmental Clearance (EC) which includes

¹³ AIR 2021 SC 5147

“Dredging and desilting of dams, reservoirs, weirs, barrages, rivers and canals for the purpose of their maintenance, upkeep and distaste management”. What was exempted under this rule is dredging and desilting for the purpose of maintenance and up keep and for disaster management and this will not include sand mining.

60. Further, this Tribunal in several cases observed that in the guise of dredging or desilting, no river sand mining can be permitted. Further, even in the case of dredging and desilting, those dredged or desilted materials will be utilized in the same area for the purpose of strengthening the bunds of the river or in case, sand is taken, use it for replenishment for the purpose of sand nourishment, it can be spread over to the low lying areas. Further, even for the purpose of doing dredging and desilting as a long-term measure, then certain procedures have been provided under the Sustainable Sand Mining Management Guidelines 2016 and Enforcement & Monitoring Guidelines for Sand Mining, 2020 by the MoEF&CC which the authorities are expected to implement. If excess sand that has been removed as part of dredging, if it has to be sold for commercial purpose, then it will amount to mining. In such circumstances, exemption granted under this rule will not apply. Further, if any activity has to be conducted inside the forest and anything has to be removed from the forest for non-forest purpose, then the provisions of the Forest (Conservation) Act, 1980 will come into play and they will have to obtain necessary permission from the authorities under the Forest (Conservation) Act, 1980 and it is evident from the conduct of the State of Kerala itself that they have applied to the MoEF&CC and obtained necessary permission for that purpose during 2019, for removing the debris collected as part of dredging and

desilting. Further, it is seen from the Joint Committee's report that even certain areas where constructions were made was in the river plains which resulted in diversion of the course of river and that is also one of the reason for disaster or causing flood.

61. Further, when a specific question was raised, the MoEF&CC was not in a position to answer and they referred the matter to the Ministry of Home Affairs and they wanted eight weeks time for filing the statement, but no further statement was filed by the MoEF&CC in this regard so far.

62. So, this Tribunal will have to consider this legal aspect and certain directions will have to be given till the Central Government comes with detailed guidelines as to how this will have to be dealt with, applying the "*Precautionary Principle*".

63. In view of the discussions made above, we deduce the following principles, as the directions to be issued for the purpose of protecting environment atleast in future to avoid exploitation of natural resources even by the Government institutions without complying with the environmental laws.

- a. When there is a conflict between two enactments, viz., Environmental laws and Disaster Management Act, 2005, both act in different fields but having some connection with each other and intended for the purpose of protecting the environment, both Acts will have to be harmoniously construed and efforts must be made for implementation of both Acts without any conflict to the objectives of the Acts.

- b. Whenever dredging or desilting is required, as part of maintenance of the water bodies including the river as part of disaster management, then it is exempted from obtaining Environmental Clearance (EC) by virtue of Appendix - IX Clause (6) of the EIA Notification, 2006 as amended in 2016, but exemption under other environmental enactments were not granted.
- c. In the guise of dredging or desilting, no river sand mining can be permitted.
- d. For the purpose of doing dredging or desilting without removing the same from the forest area, as part of the Disaster Management for immediate relief, when the threat is imminent, no permission under the Forest (Conservation) Act, 1980 need be obtained. But if in a forest area, it is required to desilt or dredge material including sand as part of dredging to the extent required for deepening and widening the river to ensure free flow of water as part of monsoon preparedness to avoid flood in future and if the dredged material has to be removed from the forest area for non-forest purposes or to outside the forest, then permission from the MoEF&CC under the Forest (Conservation) Act, 1980 has to be obtained, till further guidelines are given by the Central Government in this regard, as has been reflected in the counter statement filed by the MoEF&CC in this regard.
- e. At any rate, no sand mining is permissible in the guise of desilting and dredging which will be against the provisions of the environmental laws namely, EIA Notification, 2006 as amended from time to time and necessary clearances will have to be obtained for that purpose, as even in the permission obtained relied on by the State of Kerala from the MoEF&CC as 'one time permission' mentions that if

such activity requires Environmental Clearance (EC), the same will have to be obtained.

- f. Even at the time of undertaking dredging and desilting, as part of maintenance and disaster management preparedness as a long-term or short-term measure to prevent flood, then they will have to strictly follow the guidelines provided by the MoEF&CC in the Sustainable Sand Mining Management Guidelines 2016 and Enforcement & Monitoring Guidelines for Sand Mining, 2020.
- g. Since it was done on the basis of the earlier permission granted and with certain confusion regarding the applicability of the environmental laws among the departments in good faith, we are not inclined to take any further action of imposing environmental compensation in this case.
- h. The MoEF&CC is directed to come with a clear cut guideline as to how such circumstances will have to be dealt with, so as to provide harmonious implementation of both these statutes viz., Forest (Conservation) Act, 1980, Environment (Protection) Act, 1986, EIA Notification, 2006 as amended from time to time and the Disaster Management Act, 2005 and they are directed to issue necessary guidelines in this regard in consultation with the Central Government at the earliest possible time, so as to avoid conflict of interest between the departments in carrying out such activities which are required for the purpose of protecting the interest of environment as well as save human lives from likely disasters.

64. The points are answered accordingly.

65. In the result, this Original Application is disposed of with the following directions:-

- (i) When there is a conflict between two enactments, viz., Environmental laws and Disaster Management Act, 2005, both act in different fields but having some connection with each other and intended for the purpose of protecting the environment, both Acts will have to be harmoniously construed and efforts must be made for implementation of both Acts without any conflict to the objectives of the Acts.
- (ii) Whenever dredging or desilting is required, as part of maintenance of the water bodies including the river as part of disaster management, then it is exempted from obtaining Environmental Clearance (EC) by virtue of Appendix - IX Clause (6) of the EIA Notification, 2006 as amended in 2016, but exemption under other environmental enactments were not granted.
- (iii) In the guise of dredging or desilting, no river sand mining can be permitted.
- (iv) For the purpose of doing dredging or desilting without removing the same from the forest area, as part of the Disaster Management for immediate relief, when the threat is imminent, no permission under the Forest (Conservation) Act, 1980 need be obtained. But if in a forest area, it is required to desilt or dredge material

including sand as part of dredging to the extent required for deepening and widening the river to ensure free flow of water as part of monsoon preparedness to avoid flood in future and if the dredged material has to be removed from the forest area for non-forest purposes or to outside the forest, then permission from the MoEF&CC under the Forest (Conservation) Act, 1980 has to be obtained, till further guidelines are given by the Central Government in this regard, as has been reflected in the counter statement filed by the MoEF&CC in this regard.

(v) At any rate, no sand mining is permissible in the guise of desilting and dredging which will be against the provisions of the environmental laws namely, EIA Notification, 2006 as amended from time to time and necessary clearances will have to be obtained for that purpose, as even in the permission obtained relied on by the State of Kerala from the MoEF&CC as 'one time permission' mentions that if such activity requires Environmental Clearance (EC), the same will have to be obtained.

(vi) Even at the time of undertaking dredging and desilting, as part of maintenance and disaster management preparedness as a long-term or short-term measure to prevent flood, then they will have to strictly follow the guidelines provided by the MoEF&CC in the Sustainable Sand Mining Management Guidelines 2016 and

Enforcement & Monitoring Guidelines for Sand Mining, 2020.

(vii) Since it was done on the basis of the earlier permission granted and with certain confusion regarding the applicability of the environmental laws among the departments in good faith, we are not inclined to take any further action of imposing environmental compensation in this case.

(viii) The MoEF&CC is directed to come with a clear cut guideline as to how such circumstances will have to be dealt with, so as to provide harmonious implementation of both these statutes viz., Forest (Conservation) Act, 1980, Environment (Protection) Act, 1986, EIA Notification, 2006 as amended from time to time and the Disaster Management Act, 2005 and they are directed to issue necessary guidelines in this regard in consultation with the Central Government at the earliest possible time, so as to avoid conflict of interest between the departments in carrying out such activities which are required for the purpose of protecting the interest of environment as well as save human lives from likely disasters.

(ix) The Registry is directed to communicate this order to the District Collector - Pathanamthitta, District Disaster Management Authority, State Disaster Management Authority, Principal Chief Conservator of Forests (Head of

Forests Force) and Chief Wildlife Warden, Principal Secretary for Environment, Forest & Climate Change, the Chief Secretary to Government, State of Kerala and also to the MoEF&CC, New Delhi for their information and compliance of directions.

66. With the above observations and directions, this Original Application is disposed of.

Sd/-
Justice K. Ramakrishnan, JM

Sd/-
Dr. Satyagopal Korlapati, EM

O.A. No.75/2022 (SZ)
19th April 2022. Mn.

NGT