

**DISSENTING NOTE OF MEMBER REPRESENTATIVE OF MOEF&CC**  
**INTEGRATED REGIONAL OFFICE, BANGALORE IN**  
**OA NO. 124 OF 2021 (SZ)**  
**(SIBI JOSEPH VS UNION OF INDIA & OTHERS)**

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**DISSENTING NOTE OF MEMBER REPRESENTATIVE OF MOEF&CC,  
INTEGRATED REGIONAL OFFICE, BANGALORE IN OA NO. 124 OF 2021  
(SIBI JOSEPH VS UNION OF INDIA & OTHERS)**

1. Hon'ble National Green Tribunal (NGT) in OA No. 124 of 2021 vide its Order dated 10.06.2021 constituted a Joint Committee to ascertain the violations, if any, committed by the authorities or the respondent quarry owners, viz. M/s. Royal Sands & Gravels Pvt. Ltd. (8<sup>th</sup> respondent) and M/s. Mary Matha Granites (9<sup>th</sup> respondent), in procuring quarrying permit, environmental clearance, etc., and the consequential damage caused to the environment on account of the same. The Mining and Geology Department, Government of Kerala, was made the Nodal Agency for coordination and for providing necessary logistics for this purpose.
2. Pursuant to constitution of the Joint Committee, site inspections were conducted twice on 02.09.2021 and 09.09.2021 and the Joint Committee also met four times through video conference on 08.09.2021, 22.09.2021, 06.07.2022 and finally again on 08.07.2022 to discuss the Joint Committee Report for filing in Hon'ble NGT.
3. As per the directions of Hon'ble NGT vide its order dated 13.07.2022, the undersigned is re-submitting the dissent note regarding Point No. 1, 6 and 7 in a tabular column as below for kind consideration of Hon'ble Tribunal

S. No	Question Raised by Hon'ble NGT	Remarks of the Joint Committee	Dissent Note by the representative of MoEF & CC
1	Whether any suppression has been made by the respondents 8 and 9 and taking piece meal leases for quarrying clandestinely to avoid the stringent procedure for obtaining environmental clearance?	<p>The Joint Committee noted that the Director of Mining and Geology had granted Quarrying Leases only for four quarries at Akathethara Panchayat in Palakkad Taluk and out of which quarrying leases of two quarries have been expired and currently only two quarries, namely, M/s. Royal Sands and Gravels Pvt. Ltd (7.0655 Ha) and M/s. Mary Matha Granites Pvt. Ltd (2.7721 Ha) have valid quarrying leases for undertaking quarrying operations.</p> <p>The Joint Committee noted that of the two operating quarries only M/s. Royal Sands and Gravels Pvt. Ltd has a valid Environmental Clearance (EC) obtained from State Environmental Impact Assessment Authority (SEIAA), Kerala on 24.05.2014 for an extent of 9.3928 Ha.</p> <p>M/s. Mary Matha Granites was found to be operating with valid quarrying lease issued on 11.08.2010 and valid upto 10.08.2022 for an area of 2.7721 Ha but the same quarry is operating without Environmental Clearance (EC).</p> <p>Regarding M/s. Mary Matha Granites Pvt. Ltd., the quarry is operating with a valid quarrying lease on 2.7721 Ha. and quarry</p>	<p>The undersigned has a specific dissent with the observations of the Joint Committee regarding the requirement and functioning of Environmental Clearance by the 9<sup>th</sup> respondent (M/s. Mary Matha Granites Pvt. Ltd) even after 15.01.2016 based on several Orders of Hon'ble Tribunal and Hon'ble Supreme Court of India passed in certain matters as detailed below:</p> <p>I. OA No. 136/ 2017 (SZ) (Tamil Nadu Mine Owners Federation Vs MoEF&amp;CC and Others)</p> <p><u>In OA No. 136/ 2017 (SZ), Hon'ble Tribunal in its Order dated 30.06.2020 disposed of the matter while stating the following at Page No's. 81 and 82, Para No. 62, Point No.4 as follows:</u></p> <p>"The application is disposed of as follows:</p> <p>(i) <i>The applicant is not entitled to get a declaration to quash Circular dated 3.4.2017 as prayed for but can be clarified as detailed as per direction No.(ii) onwards.</i></p> <p>(ii) <i>The applications which are pending as on 31.3.2016 for Environment Clearance have to be treated as normal applications and</i></p>

*Ch. P. Venalikkrisna*

possesses all other valid licenses except Environmental Clearance. So the quarry operations were not scrutinized under the ambit of Environmental Clearance. In compliance with the Judgments of the Hon'ble High Court of Kerala in WP(C) No. 31148/2014 (S) and WP(C) No. 39548/2016 (P), the Department of Mining and Geology has not insisted Environmental Clearance from holders of quarrying leases, with land area less than 5 Ha, which were granted prior to the judgment dated 27.02.2012 of the Hon'ble Supreme Court of India in Deepak Kumar vs. State of Haryana. Since the lessee has a valid quarrying lease till August 2022, the requirement of Environmental Clearance will arise only while seeking renewal. The quarry has valid licenses except EC and has been working since August 2010.

*not violation applications and the authorities are directed to dispose of those applications in accordance with law.*

*(iii) The persons who have not filed applications on or before 31.3.2016 and filed thereafter can be treated as violation applications and the MoEF & CC /SEIAA is directed to dispose of those applications as violation cases in accordance with law.*

*(iv) It is also made clear that all mining leases, either major or minor, even less than 5 hectares area, has to apply and get Environment Clearance as per the amended EIA Notification dated 15.1.2016. This will apply to the existing mining leases as well. Without obtaining necessary Environment Clearance irrespective of area, no mining, both minor/major, shall be permitted to operate.*

*Considering the circumstances, there is no order as to costs.*

*The application is disposed of accordingly".  
Copy of the Order is enclosed as Exhibit-1*

2. Review Application No. 07 of 2020 (SZ) in OA No. 136 of 2017 (SZ) (Tamil Nadu Mine Owners Federation Vs MoEF&CC and Others)

In Review Application No. 07 of 2020 (SZ), the Hon'ble Tribunal in its Order dated 18.08.2020 disposed of the matter while stating the following at Page No's 5 and 6 at Para No. 12, 13 and 14 as follows:

*12. In fact, the Tribunal had considered those notifications as well in the Judgment in the right perspective and there is no error apparent on the face of the record which requires this Tribunal to review the Judgment to the extent sought for by the applicant.*

*13. So, there is no merit in the review application and the same is liable to be dismissed.*

*14. In the result, the review application fails and the same is hereby dismissed. Copy of the Order is enclosed as Exhibit-2*

*Ch. P. Laxali Krishna*

3. Civil Appeal No(s) 1789-1790 / 2021 in Hon'ble Supreme Court of India

The Hon'ble Supreme Court vide its Orders dated 23.07.2021 in the said above appeals dismissed the case stating the following:

1. *There is no error in the Orders of the National Green Tribunal dated 30 May 2020 and 18 August 2020 in Original Application No 136 of 2017 and Review Application No 7 of 2020 respectively.*
2. *The appeals are accordingly dismissed.*
3. *Pending applications, if any, stands disposed of. Copy of the Order is enclosed as Exhibit-3*
4. OA No. 244 of 2017 (Shefy Joseph Vs MoEF&CC and Others)

Hon'ble NGT in OA No. 244 of 2017 (SZ) in its Order dated 27.05.2021 disposed of the matter while stating the following at Page No. 31 of Para 45

- (i) *It is declared that the mining operation done by the 4th respondent under the name and style of M/s. Cochin Granites in the disputed area after 15.01.2016, till they stopped their mining operation on the basis of the old lease of 2006 is illegal and unauthorized and they are liable to pay environmental compensation for the quantity of mined articles which has to be assessed by the Mining and Geology Department.*
- (ii) *The Directorate of Mining and Geology Department is directed to assess the environmental compensation, penalty for excess mining and royalty lost to the exchequer for excess mining on the basis of the quantity of minerals mined from 15.01.2016, till the mining operation was stopped by M/s. Cochin Granites on the basis of the old lease and take steps to recover the amount from M/s. Cochin Granites in accordance with law.*
- (iii) *The Director of Mining and Geology Department is also directed to ascertain as to whether he had complied with the closure plan provided while executing the*

*Ch. Prudhvi Krishna*

mining lease of 2006 and if he had not complied with the same, take appropriate action against them for enforcing the mining closure plan and recover the damage, if any, caused on account of the same to the environment from the 4th respondent in accordance with law.

(iv) The Director of Mining and Geology Department is directed to file the action taken report on the basis of the above direction before this Tribunal within a period of 4 (Four) months, after providing necessary opportunities to the 4th respondent in this regard in accordance with law.

(v) If such report is filed, then the office is directed to place the same before the Bench for consideration and issuing further directions in this regard, if any required.

(vi) Considering the circumstances, the parties are directed to bear their respective costs in the application.

(vii) The Registry is directed to communicate this order to the Director of Mining and Geology Department by e-mail immediately for their information and compliance.

46. With the above observations and directions, this application is disposed of. Copy of the Order is enclosed as Exhibit-4

5. Civil Appeal No(s) 1789-1790 / 2021 (M D Kuriakose Vs Government of India & Others) in Hon'ble Supreme Court of India

The Hon'ble Supreme Court vide its Orders dated 16.08.2021 in the said above appeals dismissed the case stating the following:

1. There is no error of fact or law in the order of the National Green Tribunal dated 27 May 2021 in OA No 244 of 2017 (SZ).
2. The appeal is accordingly dismissed.
3. Pending application, if any, stands disposed of. Copy of the Order enclosed as Exhibit-5

In view of the above and keeping a cognizance of various Orders of Hon'ble NGT and Hon'ble

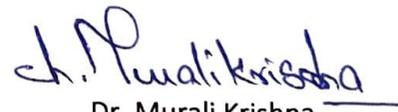
*Ch. P. Pravalikrishna*

			<p>Supreme Court of India as listed a few above, the undersigned is of the view that any quarry that is operating in India after 15.01.2016 without Environmental Clearance (EC) is to be considered as violation/ illegal and liable to be penalized as per provisions of Law.</p>
6	<p>Whether any excess or unscientific quarrying has been carried out by the respondents 8 and 9 and if so, what is the nature of damage caused to the environment and if any damage has been caused, assess the damage and environment compensation required for restoring the damage caused to the environment.</p>	<p>Based on the inputs provided by the DMG, after conduct of detailed survey, it is to note that M/s. Royal Sands and Gravels Pvt. Ltd has extracted granite building stone from the lease area as on 15,11.2021 is only 5,8,7294 MT against a permitted quantity of 18,00,000 MTA till March 2022 (i.e., only 32.62% of the permitted quantity has been extracted from the lease area) and no excess mining or mining outside the lease area is conducted.</p> <p>M/s. Mary Matha Granites was found to be operating with valid quarrying lease issued on 11.08.2010 and valid upto 10.08.2022 for an area of 2.7721 Ha but the same quarry is operating without Environmental Clearance (EC). The total quantity of granite building stone extracted from the lease before the preparation of mining plan was 884375 MT. The total mineable reserve estimated in the mining plan for the remaining years of quarrying lease is 1467405 MT. A detailed survey has been conducted in the lease area from 07/10/2021 to 16/10/2021 to ascertain the total quantity of Granite Building Stone extracted from the lease area. During the survey it was found that extraction of granite building stone has been carried out from outside the lease area also. As per the survey the total quantity of granite building stone extracted from the lease area and outside the lease area is calculated as 1546065 MT. As per records the quantity of granite building stone permitted for extraction up to 16/10/2021 is 1484401 MT only. Hence the excess quantity of Granite Building stone extracted from and outside the lease area as on 16/10/2021 is calculated as 61664 MT. Steps to realize the penalty for illegal extraction of Granite building stone from the lease holder shall be initiated immediately by the District Geologist Palakkad, Department of Mining &amp; Geology, as per the Rule 108(2) of Kerala Minor Mineral Concession Rules 2015.</p>	<p>The undersigned has a dissent with the observations of the Joint Committee and the Methodology adopted by the Department of Mining and Geology (DMG) in calculation of excess quantity of material that has been extracted by Respondent No. 9 (M/s. Mary Matha Granites Pvt. Ltd) which is explained below:</p> <p>Based on records made available (<u>Page No. 5, Para No.21 of the Mining Lease</u>) and as confirmed by the DMG, District Collector and Joint Committee in their respective reports and based on survey conducted by DMG during the period 07.10.2021 to 16.10.2022, Respondent No. 9 was granted a Quarry Lease over an extent of 2.7721 Ha for a period of 12 years from 11.08.2010 to 10.08.2022 with an annual mineable quantity of <u>only 40,000 tons per year (i.e., for a period of 12 years of lease, the maximum quantity that can be extracted is only 4,80,000 Tons) but as per the detailed survey conducted during the period 07.10.2021 to 16.10.2021, it is noted that the total quantity of material that has been extracted from the lease area and outside the lease area is 15,46,065 Tons. Accordingly, the excess quantity of material extracted from the lease area and outside the lease area should be 10,66,065 Metric Tons (15,46,065 - 4,80,000) but not 61,664 Metric Tons as assessed by the DMG.</u></p> <p><u>Copy of Mining Lease enclosed as Exhibit-6</u></p> <p>In view of the above observations, the undersigned is of the view that the excess quantity extracted more than the permitted quantity per year (as per lease) is to be considered as illegal and further, undertaking mining activities outside the lease area is to be considered as violation and accordingly, liable for penal action as per Law.</p>

*Ch. P. Prudh. Krishna*

<p>7</p>	<p>Whether the Pollution norms have been complied with by the respondents 8 and 9 in carrying out the quarrying operation envisaged in the environmental clearance as well as in the consent granted and if there is any violation, what is the nature of violation committed and what is the nature of action taken regarding the same</p>	<p>The Joint Committee noted that M/s. Royal Sands and Gravels which had a valid EC was complying with of the EC conditions and the seasonal nalas that were noted during the visit were being let into rainwater harvesting pit. Verification of half, yearly compliance reports and monitoring results of ambient air, water and noise monitoring reports indicated ail the values to be within stipulated norms.</p> <p>Regarding M/s. Mary Matha Granites Pvt. Ltd., the quarry is operating with a valid quarrying lease on 2.7721 Ha. and quarry possesses all other valid licenses except Environmental Clearance. So the quarry operations were not scrutinized under the ambit of Environmental Clearance. In compliance with the judgments of the Hon'ble High Court of Kerala in WP (C) No. 31148/2014 (S) and WP (C) No. 39548/2016(P), the Department of Mining and Geology has not insisted Environmental Clearance from holders of quarrying leases, with land area less than 5 Ha, which were granted prior to the judgment dated 27.02.2012 of the Hon'ble Supreme Court of India in Deepak Kumar vs. State of Haryana. Since the lessee has a valid quarrying lease till August 2022, the requirement of Environmental Clearance will arise only while seeking renewal. The quarry has valid licenses except EC and has been working since August 2010. The validity of the Lease period will be expired on 10.08.2022. Hence the quarry working days from 15.01.2016 without EC are calculated as 2363 days as on 07/07/2022.</p>	<p>The undersigned is dissenting with the observations of the Joint Committee which states that the requirement of Environmental Clearance (for Respondent No. 9 which is operating without EC) will arise only at the time of renewal of mining lease.</p> <p>The undersigned would like to humbly reiterate the observations made against Point No. 1 and is of the view that operating any quarry after 15.01.2016 without EC is violation of environmental norms.</p> <p>Further, since the Respondent No. 9 has not obtained EC nor has submitted any half yearly compliance reports to the Integrated Regional Office (IRO), Bangalore, it is not possible to ascertain the status of compliance of standard 61 General Conditions and Specific Conditions that are usually stipulated in EC's issued by State Environmental Impact Assessment Authority (SEIAA), Kerala, some of which inter-alia includes measures like rainwater harvesting, solar energy initiatives, dust suppression measures, greenbelt/ plantation requirements, acoustic measures for reduction of noise emissions, regular monitoring of ambient air quality parameters, water quality parameters etc.</p>
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 Dr. Murali Krishna  
 Additional Director (S)  
 25.07.2022

Item No. NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI  
Original Application No. 136 of 2017 (SZ)  
(Through Video Conference)

IN THE MATTER OF:

Tamil Nadu Small Mine Owners Federation  
Rep. by its General Secretary  
Mr. J. Mohan Kumar  
No. 3, Sankari Main Road,  
Annanthapatty, Salem.

... Applicant

Vs.

1. The Secretary,  
Ministry of Environment Forest and Climate Change  
Government of India,  
Paryavaran Bhavan, New Delhi
2. The State Level Environment Assessment  
Authority, Tamil Nadu, rep. by its  
Member Secretary,  
1, Jennis Road, Saidapet, Chennai 600 015.
3. The Principal Secretary,  
Industries Department,  
Government of Tamil Nadu,  
Fort St. George, Chennai 600 009.
4. The Commissioner,  
Department of Geology & Mining,  
Guindy, Chennai 600 032

.Respondents

Date of reserved for judgment:- 18-03-2020

Date of pronouncement/uploading:- 30-06-2020

CORAM: HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

Whether the Judgment is allowed to be published on the Internet – Yes/No

Whether the Judgment is to be published in the All India NGT Reporter – Yes/No

For Applicant(s) : Mr. Sanjay Upadhyay &

Mr. Sai Sathya Jith

For Respondent(s) Mr. G.M. Syed Nurullah Sheriff for R1 &R2,

Mr. M. Mani Gopi for R3 & R4

## JUDGEMENT/O R D E R

Delivered by Justice K. Ramakrishnan, Judicial Member

The above case has been filed by the applicant who is a federation of small mine owners by name Tamil Nadu Small Mine Owner's Federation, represented by its General Secretary, seeking the following reliefs:

*“(a) to call for the records pertaining to the letter bearing No.Z-11013/24/2017-1A.II(M) dated 3.4.2017 issued by the 1<sup>st</sup> respondent herein and quash the same as being violative of the EIA Notification 2006 dated 15.1.2016 as amended from time to time.*

*(b) Direct the 1<sup>st</sup> respondent to formulate an appropriate scheme containing uniform practice for grant of environmental clearance for both minor and major minerals.*

*(c) declare that the existing mines in operation prior to the EIA Notification dated 7.10.2014 shall be required to obtain Environmental Clearance only at the time of renewal or expansion or increase in production capacity (or) alternative;*

*(d) issue appropriate directions directing the respondents and such other authorities who may be involved in the process to expedite the process of grant of environmental clearance to the lessees of major minerals mining in a lease area of less than 5 HA by fixing a time limit thereof without reference to*

*Notification S.O.804(E) Ministry of Environment, Forests & Climate Change dated 14.3.2017.”*

2. It is alleged in the application that members of the applicant federation were involved in carrying out business of small mines, concerned with quarrying of major minerals like Limestone and Magnesite etc. Mining of major minerals and regulation thereof was governed by the provisions of Mines and Minerals (Development and Regulation) Act, 1957. The provisions of the said Act deal with general restrictions on prospective undertaking of mining operation, procedure for obtaining prospecting license or mining leases in respect of lands in which the minerals vest in the Government.

3. After passing of the Environment (Protection) Act, 1986 and framing of the Rules thereunder, the first respondent – MoEF & CC issued various notifications, regulating the mining of minerals. As per the Notifications issued from time to time since 1994, mining activity required obtaining Environmental Clearance for the projects as listed in Schedule 1 to the Notification of the year 1994. However, the Notification of the year 1994 did not deal with mining projects of minor minerals. On the other hand, it dealt only with mining projects concerning major minerals with leases more than 5 Hectares.

4. By a subsequent notification viz., EIA Notification, 2006 dated 14.9.2006, the projects listed in the Schedule to the Notification require prior Environmental Clearance. They were classified into two categories viz., “A” category and “B” category. For “A” category projects, prior Environment

Clearance had to be issued by MoEF & CC and for “B” category projects, Environment Clearance had to be issued by the State Environmental Impact Assessment Authority (SEIAA). “B” category projects were further divided into two categories viz., B-1 and B-2 category of which B-1 category projects require Environmental Impact Assessment Report, whereas, B-2 projects did not require the same.

5. As per the decision of the Hon’ble Supreme Court in DEEPAK KUMAR VS. STATE OF HARYANA (2012 (4) SCC 629), even mining activities in respect of minor minerals below 5 Hectares have to obtain Environment Clearance which includes their renewal as well.

6. In order to implement the aforesaid direction of the Hon’ble Supreme Court, the MoEF & CC issued an Office Memorandum dated 18.5.2012, produced as Annexure – I, by which the mining projects of minor minerals were directed to obtain prior Environment Clearance. When a clarification was sought for by the Member Secretary, SEIAA, Karnataka, as to whether mining projects of major minerals of the size of the lease area less than 5 Hectares would be covered by the order of the Hon’ble Supreme Court in DEEPAK KUMAR VS. STATE OF HARYANA (2012 (4) SCC 629), the MoEF & CC issued a Clarification dated 4.1.2013, produced as Annexure – II, wherein they had stated that there was no need to obtain prior Environment Clearance for mining projects of major minerals with lease area of less than 5 Hectares either from the State or Central Government and that the only requirement must be to obtain “consent to operate” from the State Pollution

Control Board under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974. There was no further notification/office memorandum/circular issued by MoEF & CC or the Central/State Governments, making prior Environment clearance mandatory for mining projects of major minerals with lease area less than 5 Hectare. All the notifications issued from time to time only dealt with non-coal mining projects in respect of minor minerals only.

7. Later, MoEF & CC issued an amendment to the EIA Notification dated 7.10.2014 by which all new mining operations were required to obtain prior Environment Clearance for mining of major minerals as well including mining lease area of less than 5 Hectares at the stage of renewal of mining of lease or enhancing the production capacity, evidenced as Annexure – III. Environment Clearance in respect of minor minerals with less than 5 Hectares and implementation of the directions issued in DEEPAK KUMAR VS. STATE OF HARYANA (2012 (4) SCC 629) along with challenge to Notification dated 9.9.2013 issued by the MoEF and certain other memorandums again were considered in HIMMAT SINGH SHEKHASWAT VS STATE OF RAJASTAN & OTHERS (O.A.No.123 of 2014) by the National Green Tribunal, Principal Bench, New Delhi) and the Principal Bench by its order dated 13.1.2015 issued several directions including expeditious disposal of the applications for prior Environment Clearance made in respect of minor minerals of lease area with less than 5 Hectares. There was no issue relating to mining projects of major minerals regarding obtaining of prior Environment Clearance for the

lease area less than 5 Hectares was raised or decided by the National Green Tribunal in that case.

8. Thereafter, M/s. Ahunik Cement, having a mining lease of major minerals with a lease area of less than 5 Hectares, sought for a clarification from MoEF & CC regarding the requirement of prior Environment Clearance in cases where mining operations were being carried even prior to the amended Notification dated 7.10.2014. The MoEF & CC issued a clarification dated 8.1.2016, evidenced by Annexure – IV, stating that after 7.10.2014, all mining operations required prior Environment Clearance and for existing mines, Environment Clearance had to be obtained at the time of renewal of mining leases. It was further clarified that mines of major minerals with the lease area of less than 5 Hectares which were operating before 7.10.2014 may continue the mining operations with the consented capacity and should not enhance the production capacity without prior Environment Clearance. The industries were however, advised to submit their applications for Environment Clearance without waiting for renewal and the SEIAA was requested to consider the same on priority basis and till such time the same was granted, the existing mining operations were permitted to continue within the existing consented capacity.

9. Thereafter, the MoEF & CC issued an amended EIA Notification dated 15.1.2016, evidenced by Annexure – V, dealing with process of granting Environmental Clearance for mining minor minerals, including sand mining and constitution of a District Environment Impact Assessment Authority. It

referred to the judgment in DEEPAK KUMAR VS. STATE OF HARYANA (2012 (4) SCC 629) and the order of the National Green Tribunal, Principal Bench, New Delhi in HIMMAT SINGH SHEKHAWAT's case dated 13.1.2015 relating to mining of minor minerals. Appendix VII to XII of the amended Notification only dealt with minor minerals only and there was no mention of major minerals anywhere in the Notification.

10. In JATINDER SINGH & ANR VS. UNION OF INDIA (O.A.No.495 of 2015), Principal Bench of the National Green Tribunal, New Delhi was dealing with the lease of minor minerals and by judgment dated 19.2.2016, after considering the directions given by the Hon'ble Supreme Court to the Central Empowerment Committee and its report on matters connected therewith, observed in para 21 that MOEF & CC is likely to issue a notification shortly, placing both minor and major minerals at par in relation to requirement for obtaining Environment Clearance prior to carrying on mining activity, irrespective of the size of lease area. But in the concluding part of the judgment, Principal Bench of the National Green Tribunal held that it would be mandatory for all the applicants to seek Environment Clearance for carrying on mining activity of minor or major minerals, even if the lease area is less than 5 Hectares and that MoEF & CC/SEIAA would adopt uniform practice for issuing Environment Clearance in this regard. The Hon'ble Principal Bench of the National Green Tribunal observed that the judgment in DEEPAK KUMAR's case would apply to both minor and major minerals.

11. It is submitted by the applicant that lessees of major minerals having mining lease of less than 5 Hectares were never put on notice about this judgment by the authorities in the State of Tamil Nadu. The MoEF & CC did not issue any notification/circular/advisory of the judgment dated 19.2.2016 that it has become mandatory for the mining leases even of major minerals less than 5 Hectares to obtain an Environment Clearance. However, out of abundant caution, the mining lease holders of major minerals, having mining lease area of less than 5 Hectares, have submitted their application for the grant of Environment Clearance to SEIAA as early as in January, 2016 and SEIAA did not pass any orders on the same.

12. While so, the District Authorities orally informed during the month of January, 2017 to stop their mining operations forthwith, quoting the MoEF & CC Notification dated 15.1.2016. Though the lessees of major minerals of less than 5 Hectares informed the authorities that those notifications did not apply to major minerals and they were governing in respect of minor minerals and not dealing with the mining operation of major minerals of less than 5 hectares without obtaining Environment Clearance, they did not respond to the same. Even if mines were to function, they did not issue any transport permit which effectively puts a curb on all mining activities relating to major minerals in the State of Tamil Nadu.

13. Thereafter, several representations were made to respondents 3 and 4 stating that MoEF & CC had not issued any amended notification or letters or circulars, indicating that the lessees of major minerals mining in a lease area

of less than 5 Hectares ought to obtain Environment Clearance and they may be permitted to operate and one such representation dated 6.1.2017 was produced as Annexure – VI. Though the lessees of mining lease of major minerals of area of less than 5 Hectares were prepared to apply for Environment Clearance, but they wanted some time for that purpose if it is mandatory. Annexure- VII representation dated 18.1.2017 was also submitted for this purpose.

14. In the mean time, the Commissioner of Geology and Mining, Government of Tamil Nadu who is the third respondent in the application, directed the major minerals lease holders, having less than 5 Hectares of area, to obtain Environment Clearance on or before 11.1.2017, failing which the mining activities were to be stopped. On account of the oral directions given, the members of the applicant federation had stopped their activities, leaving lot of people out of employment. They also submitted representation dated 6.1.2017 produced as Annexure – VIII to MoEF & CC and Annexure IX representation dated 18.2.2017 to Chief Secretary, Government of Tamil Nadu stating that obtaining of prior Environment Clearance would apply only to new units and not to the existing leases who were already operating mining projects and in any event, they had also applied for Environment Clearance based on the order of the Hon'ble National Green Tribunal dated 19.2.2016 and therefore their mining activities should be permitted and transport permits will have to be issued. They also submitted Annexure – IX representation

dated 18.2.2017 to the Principal Secretary, Industries Department as well as Commissioner of Geology and Mining, Government of Tamil Nadu.

15. Representatives of the applicant federation met the authorities of MOEF&CC at New Delhi on 3.3.2017 and requested for clarification regarding the requirement of Environment Clearance for major minerals. They orally clarified that mines operating prior to 7.10.2014 having lease area of less than 5 Hectares do not require Environment Clearance and they may continue mining operations as such and Environment Clearance will be required only at the time of renewal or expansion or new license. They also mentioned that they are prepared to issue necessary clarification, if the State Government made any official request for such clarification. Thereafter, they filed Annexure – XI representation dated 13.3.2017 to Principal Secretary, Industries Department for making such request for clarification. However, contrary to the oral clarification given by MoEF & CC, informed the Secretary, Industries Department by its clarificatory letter dated 3.4.2017 that as per Notification dated 15.1.2016, all mining leases (major mineral as well as minor mineral) operating in the country were required to obtain Environment Clearance after 15.1.2016. It is also mentioned in the letter that such mines (including less than 5 Hectares) which were in operation prior to 15.1.2016 were required to stop their mining activity and apply to MoEF & CC at Central Level, SEIAA at State Level and District Environment Impact Assessment Agency at District Level for seeking Environment Clearance. The clarification also stated that mining leases that continue to operate without obtaining

Environment Clearance after 15.1.2016 shall be considered as violation cases and the same shall be dealt with in accordance with the violation policy under the EIA Notification, 2006. The MoEF & CC clarification dated 3.4.2017 was produced as Annexure – XII.

16. According to the applicant, clarification dated 3.4.2017 was against law and was issued arbitrarily, without considering the precedents on this aspect. The applicant did not apply for environment Clearance, as they were under the impression that it was not mandatory but they were prepared to apply for Environment Clearance in accordance with law but should not be taken as violation case, as mentioned in the impugned clarification dated 3.4.2017 of the MoEF & CC. The SEIAA has rejected the application for Environment Clearance filed by some of members of the applicant federation stating that it was a case of violation on the basis of the letter dated 3.4.2017 of the MoEF & CC on the ground that the mining leases were continuing to operate after 15.1.2016 without Environment Clearance and shall be considered as violative cases and one such order dated 26.4.2017 was produced as Annexure – XIII. The MoEF & CC Notification dated 4.3.2017 is produced as Annexure – XIV.

17. It is also mentioned that rejection orders passed by SEIAA were referred to in the order of the National Green Tribunal dated, 18.4.2017 passed in M.A.No.260 of 2017 in O.A.No.123 of 2014 wherein the Tribunal has directed the State Government to ensure that no mining activity is permitted to carry on without obtaining prior Environment Clearance. According to the applicant, that order was also passed without application of

mind, as the issue regarding mining of major minerals of lease area of less than 5 Hectares was not the subject matter in that case. So petitioner filed the above application seeking the above reliefs.

18. First respondent – MoEF & CC filed reply statement contending as follows:

*“It is respectfully submitted that in the present case the applicant has inter alia alleged that the respondent Ministry has not framed any guidelines or issued any circular till date to prescribe the procedure for grant of environmental clearance to lessees of major minerals mining in a lease area of less than 5 ha.*

*That the Ministry had mandated the requirement of prior Environmental Clearance in respect of non coal mine leases of less than 5 hectare for all new projects and cases of lease renewal vide its notification S.O.2601(E) dated 7.10.2014. That further, vide notification S.O.141(E) dated 15.1.2016 the Ministry stipulated for all the mining leases (major mineral as well as minor mineral) operating in the country to obtain Environmental Clearance after 15.1.2016 as per the provisions contained in Environmental Impact Assessment Notification, 2006.*

*That it is humbly submitted that the above mentioned notifications made it clear that no mining lease shall operate without prior EC and all such mines (including less than 5 Hectares) which were in operation before 15.1.2016 are required to stop their mining activity and apply to MoEF & CC at Central*

*Level/State Environment Impact Assessment Agency at State Level/District Environment Impact Assessment Agency at District level for seeking EC.*

*That the mine leases which continued to operate without obtaining EC after 15.1.2016 are considered as violation cases and are required to be dealt in accordance with the violation policy under Environmental Impact Assessment Notification, 2006 as amended. The S.O.804(E) dated 14.3.2017 is notified by the Ministry of Environment, Forest and Climate Change to deal with such violation cases.*

*The Hon'ble High Court of Madras vide judgment dated 13.10.2017 in W.P.No.11189 of 2017, PUDUCHERRY ENVIRONMENT PROTECTION ASSOCIATION VS. UNION OF INDIA has upheld the violation Notification No.S.O.804(E) dated 14.3.2017 and further held that "the notification does not compromise with the need to preserve environmental purity, but only allows those industries and/or projects which might otherwise have been given prior environmental clearance to operate on the conditions imposed by the authorities concerned, including their liability under the principle "polluter pays".*

*That the respondent Ministry has issued Sustainable Sand Mining Management Guidelines, 2016 to ensure inter alia that sand and gravel mining is done in environmentally sustainable and socially responsible manner, ensure conservation of the river equilibrium and its natural environment by protection and restoration of the ecological system, to ensure that rivers are*

*protected from bank and bed erosion beyond its stable profile. The above mentioned guidelines were issued with one of the objectives being that each lease holder should be given the opportunity to self regulate to the extent that it can demonstrate compliance with legislation and regulations. That where self regulation fails to deliver compliance with legislation and regulations increased formal enforcement and monitoring should be implemented with punitive measures applied in line with the legal frame work.*

*That it is submitted that the notifications brought out by the Ministry to cover all the mining leases under the ambit of EIA Notification, 2006 are in line with the directions passed by Hon'ble Supreme Court/Hon'ble High Court/Hon'ble National Green Tribunal from time to time."*

19. Second respondent filed counter statement contending as follows:

*"It is respectfully submitted that the EIA Notification, 2006 mandates prior Environmental Clearance for new projects or activities including expansion or modernization of existing projects listed in its Schedule. The Category "A" projects shall obtain EC from the Central Government and Category "B" projects from the concerned State Level Environment Impact Assessment Authority/Union Territory Environment Impact Assessment Authority. For the proposed mining project, the proponent shall submit application seeking Environmental Clearance for the proposed quarry along with Form – 1, precise area communication from the District Collector, Mining plan approved by the Department of Geology and Mining, Mining lease deed, prefeasibility*

*report and other essential documents. The proposal will be placed before the State Expert Appraisal Committee for screening, scoping and appraisal. Based on the recommendations of SEAC, the proposal is placed before the State Environment Impact Assessment Authority for the consideration of issue of Environmental Clearance. After detailed discussion and based on the document furnished, Environmental Clearance is issued by the Authority.*

*It is respectfully submitted that the Hon'ble Supreme Court, vide its order dated 27.2.2012 in I.A.No.12-13 of 2011 in SLP(C) No.19628-19629 of 2009 in the case of Deepak Kumar etc. VS. State of Haryana & others has inter alia ordered that leases of minor minerals including their renewal for an area less than 5 ha be granted by the State/Union Territory only after getting environment clearance from the Ministry of Environment & Forests. In order to ensure compliance of the aforesaid order of the Hon'ble Supreme Court, MoEF issued an O.M.No.L-11011/47/2011-IA.II(M) dated 18.5.2012 stating inter alia that all mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior EC and that the projects of minor minerals with lease area less than 5 ha would be treated as Category "B" as defined in EIA Notification, 2006 and will be considered by the respective State Environment Impact Assessment Authorities notified by MoEF.*

*It is respectfully submitted that Hon'ble National Green Tribunal Principal Bench, New Delhi order dated 4.5.2016 on the Original Application No.34 of 2016 filed by Naresh Zargar versus State of Madhya Pradesh and others has*

*given certain directions inter alia that “all the mine owners which of them have not submitted the application as on 31<sup>st</sup> March, 2016 to SEIAA, DEIAA and DEAC shall be shut down forthwith and will not be permitted to carry on any mining activity in any manner whatsoever”. Further, the above Hon’ble NGT order was communicated to the respective Deputy Director/Assistant Director, Department of Geology and mining vide SEIAA letter Dt.26.9.2016 to re-examine the proposals seeking Environmental Clearance for the existing quarries considering the above Hon’ble NGT order with an intimation to the proponent.*

*It is respectfully submitted that the Ministry of Environment, Forest and Climate Change vide Notification dated 14.3.2017 has stated that the cases of violations will be dealt strictly as per the procedure specified in the following manner:*

*“In case the project or activities require prior environmental clearance under EIA Notification 2006 from the concerned Regulatory Authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization and change in product mix without prior EC, these projects shall be treated as cases of violations and in such cases even Category B projects which re granted environmental clearance by the SEIAA constituted under sub section (3) section 3 of the Environment (Protection) Act, 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the Central Level.”*

*Further the projects are activities were are in violation as on date of this notification only will be eligible to apply for Environmental Clearance under this notification and the project proponent can apply for Environmental Clearance under this notification only within six month from the case of the notification.*

*It is respectfully submitted that MoEF & CC vide its letter Z-11013/24/20176/-IA.II(M) dt.3.4.2017 has clarified stating that no mining lease shall operate without Environmental Clearance and shall all mines (including less than 5 Hectare) which were in operation before 15.1.2016 are required to stop their mining activity and apply to MoEF & CC/SEIAA/DEIAA for seeking EC. The proponent with mining lease continues to operate without obtaining EC after 15.1.2016 shall be considered as violation cases and the same shall be dealt in accordance with the violation policy under EIA Notification, 2006 as amended.*

*It is respectfully submitted that The Hon'ble NGT (PB) in its order dt.18.4.2017 in M.A.No.260 of I2017 in OI.A.No.123 of I014 filed by Himmat Singh Shekhawat against State of Rajasthan & others has directed that "the State Government again to expedite the compliance to the law as expeditiously as possible and to ensure that no mining activity is permitted to be carried on without obtaining prior Environmental Clearance."*

*It s respectfully submitted that the existing quarry under operation without obtaining Environmental Clearance and continues to operate without obtaining*

*EC after 15.1.2016, it shall be considered as per the violation case as per MoEF & CC letter Z-11013/24/20176/IA.II(M) dt.3.4.2017. All the existing quarries applied for Environmental Clearances were communicated stating that their application seeking Environmental clearance could not be processed at SEIAA-TN and requested the applicant to submit the proposal seeking EC to MoEF & CC the guidelines. Further, it was also informed that their application seeking EC is closed and recorded.*

*It is respectfully submitted that the Hon'ble High Court of Madras in the W.P.No.11180 of 2017 in its order dated 13.10.2017 stated that the submission of the learned Additional Solicitor General that a public hearing can be read into paragraph 5 of the impugned Ministry of Environment, Forest and Climate Change Notification 14.3.2017 and this shall certainly and clearly be a one time measure."*

20. Respondents 3 and 4 filed their counter as follows:

*"It is submitted that the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter called as the Act of 1957) provides inter alia for general restrictions on undertaking prospecting and mining operations, the procedure for obtaining prospecting licences or mining leases in respect of the land in which the minerals vests in the Government, and the rule making power for regulating the grant of prospecting licences and mining leases in respect of minor minerals.*

*It is submitted that with the passage of time and development of law, the Union of India, Ministry of Environment Forest and Climate Change issued various Notifications and Circulars to impose restrictions and prohibitions on the expansion and modernization of any activity or new projects in respect of mining of major and minor minerals.*

*It is submitted that the Environment (Protection) act, 1986 and Environment (Protection) Rules, 1986 were enacted and came into force on 19<sup>th</sup> November, 1986. The object of this act of 1986 is not provide for the protection and improvement of environment and for matters connected therewith. Under provisions of the Act and Rules of 1986, Ministry of Environment Forest and Climate Change issued various other Notifications regulating the mining of major and minor minerals, specifically stating the procedures that were required to be complied by persons intending to carry on such mining activity and for which the authorities to regulate the same.*

*It is submitted that prior to the year 1994, there was no specific regime to get Environmental Clearance for mining activities. The Notification issued by Ministry of Environment Forest and Climate Change on 27<sup>th</sup> January, 1994 in exercise of the powers vested in it under sub rule 3 of Rule 5 of the Rues of 1986 and sub section (1) and Clause (V) of sub section (2) of Section 3 of the Act of 1986 prescribed the requirement and procedure for seeking Environment Clearance for the major minerals mining projects with lease area of more than 5 hectares. In exercise of its statutory powers afore indicated the Central Government on 14th September, 2006 issued a Notification i.e.,*

*Environmental Clearance Regulation, 2006. In terms of this Notification, the projects as stated in the Schedule to this notification required prior Environmental Clearance as per the procedure. The projects have been categorised into two kinds i.e., category "A" and category "B" under Clause 2 of the Notification. Projects under Category "A" were required to take prior Environment Clearance by Ministry of Environment Forest and Climate Change. For category B" projects, Environmental clearance has to be given by State Environment Impact Assessment Authority subsequently in respect of "B2" category of project i;.e., Minor minerals by district Environment Impact Assessment authority with effect from 15.1.2016.*

*It is submitted that from this Entry in the Schedule to the Notification of 2006, the projects in respect of non coal mine leases, where the area is more than 50 hectares would require prior Environmental Clearance from Ministry of Environment Forest and Climate Change, while the projects of less than 50 hectares and more than 5 hectares of mining area would require prior Environmental Clearance fro State Environment Impact Assessment Authority. The procedure for taking prior Environmental Clearance under both these categories is more or less the same except that the agency which gives the clearance is different. Clause 7 of the Notification of 2006 specifies the stages through which such projects for grant of Environmental Clearance are required to be passed and processed. They include screening, scoping, public consultation and appraisal upon which the Expert Appraisal Committee would make a recommendation to the MoEF/SEIAA as the case may be which would*

*then grant or refuse the Environmental Clearance to the project in question. Under the head “screening” this clause 7 also provides for a further bifurcation of projects falling under Category “B” into “B-1” and “B-2”. The relevant part of Clause 7 dealing with this aspect reads as under:*

*“Stage (1) – Screening*

*In case of category “B” projects or activities this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the concerned State Level Expert Appraisal Committee for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment for its appraisal prior to the grant of environmental clearance depending upon the nature and location specificity of the project. The projects requiring an environmental Impact Assessment report shall be termed Category “B1” and 30 remaining projects shall be termed Category “B-2” and will not require an Environment Impact Assessment report. ;For categorization of projects into B1 or 2 except item 8(b) the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.”*

*It is submitted that in terms of the above, at the stage of screening, the State Level Expert Appraisal committee has to determine whether or not the project requires further environmental studies for preparation of an Environmental Impact Assessment report for its appraisal, prior to the grant of Environment Clearance, depending upon the nature and location specificity of*

*the project. The Category "B1" projects requires Environmental Impact Assessment report for Environment Clearance for the projects comes under Category "B2" does not require environmental Impact Assessment report for Environmental Clearance. The Hon'ble Supreme Court in I.A.Nos.12-13 of 2011 in S.L.P.(C).No.19628-19629 of 2009, Deepak Kumar etc. Vs. State of Haryana and others, has directed all the State and Union Territories that leases of minor mineral including the renewal for an area of less than five hectares be granted only after getting Environmental Clearance from the Ministry of Environment and Forest and Climate Change.*

*It is submitted that accordingly vide Office Memorandum dated 8.12.2012 issued by the MoEF, it was decided by MoEF that all the mining projects for minor minerals, including their renewal, irrespective of the size of the lease would henceforth require prior Environmental Clearance. Wherever the area was less than five hectares be granted they would be treated as category "B" projects in terms of Notification of 2006 and should be processed accordingly.*

*It is respectfully submitted that the National Green Tribunal Principal Bench, New Delhi in its order dated 19.2.2016 in O.A.No.495 of 2015 in the case of Jatinder Singh issued the following directions among others which reads as follows:-*

*a."It shall be mandatory for all the applicants to seek EC for carrying on of mining activity of minor or major minerals even if the lease area is less than 5 ha. In other words, MoEF, SEIAA and all other authorities would adopt*

*uniform practice for issuance of EC in regard to the mining area of less than 5 a notwithstanding the fact that environment impact of mining of minor minerals is no way less than that of the mining of major minerals. The judgment of the Supreme Court in the Deepak Kumar Vs State of Haryana (2012) 4 SCC 629 is applicable to both minor and major minerals.”*

*It is respectfully submitted that further the National Green Tribunal, Principal Bench, New Delhi in its order dated 4.5.2016 in O.A.No.34 of 2016 in the case of Naresh Zargar issued the following directions among others which reads as follows:*

*i.”We hereby quash and direct the State of Madhya Pradesh ad all other concerned States including Rajasthan not to issue such circulars and any other circular in variation and/or in derogation of the orders of the Tribunal.*

*‘ii. All the district level authorities DEIAA and DEAC are directed to dispose of all the applications pending with them by 31<sup>st</sup> May, 2016 positively. We will not grant any extension of time for this purpose hereafter.*

*iii. All the mines owners which of them have not submitted the applications as on 31<sup>st</sup> March, 2016 to SEIAA, DEIAA and DEAC shall be shut down forthwith and will not be permitted to carry on any mining activity in any manner whatsoever.*

*iv. The applications which are deficient and where the applicants have not submitted all requisite documents such applicants are hereby grated last opportunity of 1 week to submit the documents. In the event they fail to*

*submit such document and make applications complete and errorless in all respects then after the stated period of 1 week they shall also be liable to be shut down without any further notice. If they comply with this direction, they would also be entitled to the advantage upto 31<sup>st</sup> May, 2016.*

*v. All the State Authorities are directed to upload on their respective websites, details of the applications pending before them as on 31<sup>st</sup> March, 2016. They will also separately classify the applications which are deficient in any respect whatsoever. With the above directions this application is hereby disposed.”*

*It is respectfully submitted that in order to comply with the directions of the Hon'ble Supreme Court of India and the National Green Tribunal Principal Bench, New Delhi, the Commissioner of Geology and Mining vide letter No.6731/LC/2015 dt.11.1.2017 issued directions to all the District Collectors and the District Officers of the Department of Geology and Mining to ensure the compliance of the directions of the Supreme court of India and National Green Tribunal in letter and spirit accordingly the issuance of transport permit were stopped for mining and quarrying leases which are not having Environment clearances. However, in the interest of the public, in the interest of existing mining industries, in the interest of the State Revenue and in the interest of employment, the State of Tamil Nadu filed a Miscellaneous Application No.260 of 2017 in O.A.No.123 of I2014 in the matter of Himmat Singh Shekawhat before the National Green Tribunal, Principal Bench, New Delhi.*

*It is respectfully submitted that the National Green Tribunal Principal Bench, New Delhi in its order dt.18.4.2017 in M.A.No.260 of 2017 and O.A.No.123 of 2014 in the matter of Himmat Singh Shekhawat Vs. State of Tamil Nadu and others issued the following directions among others as follows:*

*“Following the dictum of the Hon’ble Supreme Court of India laid down in the case of Deepak Kumar & ors Vs. State of Haryana & ors (2012) 4 SCC 629, the Tribunal had passed a detailed judgment in the case of Himmat Singh Shekhawat Vs. State of Rajasthan & ors decided on 13<sup>th</sup> January, 2015 vide this judgment, the Tribunal had issued large number of directions in paragraph 83 of the judgment. The Tribunal had quashed the Notification issued by the Union of India dated 9th September, 2013 enunciating that the prescribed procedure was contrary to law and therefore, liable to be quashed. Along with this, even the Office Memorandums issued on 24<sup>th</sup> June, 2013 and 24<sup>th</sup> December, 2013 were held to be invalid and inoperative being beyond the power of delegated legislation. It was specifically directed that in light of the judgment of the Ho’ble Supreme Court of India and the order of the Tribunal, mine holders would be required to obtain EC irrespective of the fact that whether the area involved is more than or less than 5 ha. Certain other directions were also issued permitting the existing mine operators to go on till the specified time and subject to the conditions stated in the judgment.*

*The State Governments, SEIAA and other agencies involved in the process of granting EC were provided with a time bound programme under the said*

*judgment. In terms of Clause 9 of the said judgment the applications were required to be dealt with and appropriate orders passed thereupon as early as possible and not later than six months from the date of pronouncement of the judgment. After pronouncement of the said judgment, which as per the submissions made at the bar has already attained finality certain applications had been filed for extension of time for compliance of these conditions. Vide order dated 24<sup>th</sup> July, 2015 the extension of time was granted keeping in view the peculiar facts and circumstances stated before the Tribunal, particularly that there were large number of applications to be dealt with by the agencies and they require further time. After the grant of the extension in terms of these orders, applications were again moved seeking further extension of time for compliance of the directions contained in the judgment. These applications were dismissed by order of the Tribunal dated 4<sup>th</sup> May, 2016 & 26<sup>th</sup> May, 2016. The Tribunal had passed reasoned orders while declining further extension of time as the stakeholders had failed to take requisite steps in accordance with the judgment and the law in force.*

*The judgment of the Tribunal was pronounced on 13<sup>th</sup> January, 2015 and now more than a period of two years has already been passed but the State of Tamil Nadu still has to take primary steps in accordance with the judgment of the Tribunal and the mandate of the Hon'ble Supreme Court of India laid down in Deepak Kumar's case. Inaction on the part of the State and its instrumentalities cannot be taken as ground for extending the period for compliance. This in fact tantamount to taking benefit of one's own wrong.*

*There is nothing stated in the application as to what steps the State Government and its authorities and instrumentalities have taken in the provided period of to years. No explained circumstances have been stated in the application which would justify the ground of extension of time to the State as opposed to the application filed by other States and mine holder, which were rejected by the Tribunal vide its orders dated 4<sup>th</sup> May, 2016 & 26<sup>th</sup> May, 2016. Vide these orders a clear deadline of 31<sup>st</sup> December, 2015 was provided and we see no reason to grant any further relaxation thereto. We may also notice that the grounds of unemployment or loss of revenue to the State were within the notice of the State as back as on 13<sup>th</sup> January, 2015. Nothing prevented the State and its agencies from taking all requisite steps within the time provided in the judgment and in any case by December, 2015. Sufficient time has been grated for compliance and such non compliance remains entirely unexplained, much less justified by proper grounds and reasoning. Economic reasons cannot entirely frustrate the environmental protection. The principle of sustainable development requires a balanced approach. We cannot therefore permit that mining activities should continue to cause irretrievable damage to the environment and ecology just for economic reasons. Grant of prior EC to carry on mining activity is not only the requirement of the judgment of the Hon'ble Supreme court of India and this Tribunal but even Rule 42 referred. The State Government's rules also mandate that the prior EC should be taken before commencement of such activity. The contentions raised on behalf of the State Government are devoid*

*of any merit and they only exhibit inaction and apathy on the part of the State to comply with the judgment and the law that it has itself enacted for the protection of environment and ecology.*

*We direct the State Government again to expedite the compliance to the law as expeditiously as possible and to ensure that no mining activity is permitted to be carried on without obtaining prior EC. Nothing prevents the State from considering such applications with priority.”*

*It is respectfully submitted that Ministry of Environment Forest and climate Change issued a notification vide S.O.804(E) dt.143.2017 to bring such projects and activities in compliance with the environmental laws at the earliest point of time, rather than leaving them unregulated and unchecked. As such units are more polluting if they are not brought under the environment compliance regime but the process for such violators has to be stringent and punitive under the above notification it is made clear that all the cases of violation irrespective of category will be appraised as category “A” projects by respective sector Expert Appraisal Committee at Central Level. So violation cases can only be appraised at the level of Ministry.*

*In these circumstances, it is respectfully submitted that the Puducherry Environment Protection Association rep. by its Honorary President R. Kothandaraman filed a Public Interest Petition W.P.No.11189 of 2017 before the Hon’ble Division Bench of the High Court of Madras with a prayer to declare the impugned notification dated 14.3.2017 issued by the respondent*

*Ministry of Environment Forest and Climate Change in S.O.804(E) as arbitrary, illegal and violative of Articles 14, 21 of the Constitution of India and the Environment (Protection) Act, 1986 and to stay the impugned notification dt.14.3.2017 issued by the respondent Ministry of Environment Forest and Climate Change pending disposal of the writ petition.”*

21. Applicant filed common rejoinder to the reply affidavits filed by respondents, reiterating their earlier contentions that the existing mining leases of major minerals, having an extent of less than 5 Hectares, do not require any Environment Clearance and they need to apply at the time of their renewal. Further, none of the decisions relied on by the official respondents deal with the mining activity of major minerals, having an extent of less than 5 Hectares and those decisions were relating to mining of minor minerals where directions have been given to the effect that Environment Clearance is required irrespective of the area of operation. Further, they also contended that the authorities have wrongly construed the decisions of the Apex Court as well as the National Green Tribunal in this regard. Further, even as per Notification dated 15.1.2016 which makes the Environment Clearance mandatory for mining activity, irrespective of the lease area and irrespective of whether it is minor or major also did not mention anything about the existing mining leases of major minerals of less than 5 Hectares. However, the minors of major minerals having less than 5 Hectares area also filed applications for getting Environment Clearance on the basis of the direction given by the MoEF & CC and also on the basis of the directions given by the

Apex Court as well as National Green Tribunal, directing that no mining activities shall be permitted without getting prior Environment Clearance within the time granted by the Tribunal and as such they cannot be treated as violators. Even in one of the cases, the MoEF & CC had undertaken that they would issue notification or clarification in this aspect but no such notification had come but instead they issued a circular dated 3.4.2017, treating all applications which were filed after 15.1.2016, as violation cases and directed the respective SEIAA to consider the same as per the notification issued by the MoEF & CC in respect of dealing with violation cases and not having Environment Clearance. So that is illegal.

22. Heard Mr. Sanjay Upadhayay, learned counsel appearing for the applicant, Mr. G.M. Syed Nurullah Sheriff, learned counsel appearing for respondents 1 and 2 and Mr. Mani Gopi, learned counsel appearing for respondents 3 and 4.

23. Learned counsel appearing for applicant submitted that till EIA Notification 1994, there was no regulation of mining leases, whether minor or major. They were regulated by the Mines and Minerals (Development and Regulation) Act, 1957. As per the provisions of that Act, procedures have been provided for obtaining mining license and mining leases in respect of the land in which the minerals vests in the Government and only after passing of Environment Protection Act, 1986 and the Rules framed thereunder, the first respondent MoEF & CC issued various Notifications, regulating the mining of minerals. For the first time, the mining activities were brought under the

regulation and obtaining Environment Clearance as per EIA Notification, 1994 and they did not deal with mining projects of minor minerals but they only deal with mining projects of major minerals with lease area of more than 5 Hectares which may obtain prior Environment Clearance for the commencement of new projects or for expansion or involving any modernisation, affecting pollution loads etc as provided under the notification. So there was no provision for obtaining Environment Clearance for mining leases of major minerals, having extent of less than 5 Hectares. Even the decision of the Apex court in DEEPAK KUMAR's case and subsequent decisions of the National Green Tribunal did not deal with mining lease of major minerals having area of less than 5 Hectare. Those decisions only considered the necessity of obtaining Environment Clearance in respect of minor minerals irrespective of the area of operation, considering its impact on environment and over exploitation of natural resources. Till 2016, when EIA Notification dated 15.1.2016 was issued, there was no necessity for obtaining any Environment Clearance for mining activities of major minerals of less than 5 Hectares. Only in 2016 Notification, it was made mandatory for all mining leases of non coal products, less than 5 Hectares had to obtain Environment Clearance. But there was no mention about the existing mining leases of major minerals less than 5 Hectares in that notification as well and representations were made by the mining lease holders of such category to the Government to issue necessary clarification and in all the clarifications issued, they had only mentioned that only those leases which were come into

existence after the notification dated 7.10.2014 alone require prior Environment Clearance and not in respect of the existing leases of major minerals of lease area less than 5 ha. They had undertaken before the Tribunal that they would be issuing a further clarification on this aspect, regulating the mining lease, both minor and major in an uniform method applicable to the entire country. But such clarification had not been issued so far. But to their surprise, the MoEF & CC issued a clarification dated 3.4.2017 stating that all those who did not apply for Environment Clearance after 15.1.2016 after coming into force of EIA Notification, 2016 will have to be treated as violation cases, without considering the fact that there was no clarification issued by the MoEF & CC in respect of mining leases of major minerals, having an extent of less than 5 Hectares, though requests and representations had been made by the lease holders time and again. So according to the learned counsel appearing for the applicant, the Circular dated 3.4.2017 is illegal and the applications filed by the members of applicant federation have to be treated as regular applications and not violation application and direction to that extent has to be issued.

24. On the other hand, Mr. G.M. Syed Nurullah Sheriff, learned counsel submitted that the EIA Notification, 2006 did not specify or distinguish mining lease as minor or major and as such the notification covered all mining lease of non-coal products upto 50 Hectares which includes the lease area of less than 5 Hectares as well. Further, as per the directions of the Hon'ble Supreme Court, the mining activities in the country had been stopped, as

there was a direction by the Apex Court that mining activities, irrespective of minor or major and irrespective of area of operation, should not be allowed to continue without obtaining Environment Clearance. It was reiterated by the orders of the National Green Tribunal also in several cases. So under these circumstances, in order to provide a clarity on this aspect, MoEF & CC issued a Circular dated 3.4.2017, directing SEIAA to consider the application filed by the lease holders irrespective of the area after 15.1.2016 as violation cases. Though several opportunities had been given, none of the members of the applicant federation had filed any such application. So there was no illegality committed by the MoEF & CC in issuing the Circular and the SEIAA complying with the direction and treating the pending applications filed after 15.1.2016 as violation cases, directing the members of the applicant federation to make their applications as violation cases to the Central Government as per the directions of MoEF & CC. as such cases have to be dealt with by them.

25. Counsel appearing for Respondents 3 and 4 also supported the submissions made by counsel appearing for MoEF & CC.

26. The points arise for consideration are:

- (i) Whether the mining lease of major minerals having extent of less than 5 Hectares require Environment Clearance after EIA Notification, 2016 dated 15.1.2016 ? .
- (ii) Whether the Circular dated 3.4.2017 issued by MoEF & CC is liable to be set aside for any of the reasons stated by the applicants in their application?.

(iii) Whether the applications filed by the members of the applicant federation after 15.1.2016 have to be treated as violation cases or any cut off date has to be fixed by the Tribunal for enabling the parties to file their application in view of the circumstances mentioned by them in this application ?.

(iv) Reliefs to which parties are entitled to.

27. **Points 1 to 3** :- The grievance of the applicant was that there was no clarification issued by the MoEF & CC in respect of obtaining Environment Clearance for the existing mining leases of major minerals, having an extent of less than 5 Hectares, though as per 2016 Notification, all mining areas, both minor and major, irrespective of extent of lease, was regulated and further, to their surprise, according to the applicant, the MoEF & CC, by their Circular dated 3.4.2017, directed SEIAA to treat all the applications which were pending with them, filed after 15.1.2016, after coming into force of EIA Notification, 2016, will have to be treated as violation cases and the same will have to be forwarded to the Ministry, as per the guidelines issued by MoEF & CC in dealing with violation cases. So they are aggrieved by this order.

28. It is an admitted fact that till 1994, the mining leases, both minor and major, were governed by the provisions of Mines and Minerals (Development and Regulation) Act 1957. So there was no provision for obtaining Environment Clearance for mining leases under the provisions of the above said Act. They were governed by the procedure of obtaining mining license and mining leases from the respective Departments for the purpose of

undertaking mining project. It is an admitted fact that for the first time, the mining activities were brought under the regime of obtaining Environment Clearance on the basis of the various notifications issued by the MoEF & CC in this regard, invoking power under Section 3 of the Environment (Protection) Act, 1986. First of such Notification was issued as EIA Notification, 1994, dated 27.1.1994, whereby mining activities were brought under the regime of obtaining Environment Clearance vide Item No.20 of Schedule I attached to that Notification, which reads as follows:

*“Mining projects (with leases more than 5 hectares)*

There also there was no difference between “major” and “minor” minerals. But Environment Clearance was made mandatory only for mining projects which were having area more than 5 Hectares. So mining projects, having less than 5 Hectares area, were not governed by this Notification. But they were governed by the Mines Minerals (Regulation and Development) Act, 1957. Subsequently, an Explanatory Note dated 4.5.1994 was issued to this Notification wherein it was mentioned that the project proponents were required to seek Environment Clearance for proposed expansion/modernization activity, if the resultant pollution load is to exceed the existing levels. Under Clause 8 of the Explanatory Note, certain exemptions had been granted to the projects already initiated which reads as follows:

*“For projects listed in Schedule – I to the notification in respect of which the required land has been acquired and all relevant clearances of the State Government including NOC from the respective State Pollution Control Board have been obtained before 27<sup>th</sup> January, 1994 a project proponent will not be required to seek environmental clearance from the Impact Assessment Authority. However, those units who have not as yet commenced production will inform the Impact Assessment Authority.”*

So from this it is clear that Environment Clearance was required only for new units and for the existing units, Environment Clearance was required only at the time of modernization or expansion and when the pollution load was increased.

29. As per Circular No.J-20012/11/98IA II(M) dated 12.2.2002, the MoEF & CC had issued certain clarification to the EIA Notification dated 27.1.1994 where they stated as follows:

*“Attention is invited to the EIA Notification of 27<sup>th</sup> January, 1994 and subsequent amendments thereof wherein thirty categories of projects which include mining of major minerals with lease area more than 5 ha are required to obtain environmental clearance from this Ministry and also to Press Note No.J-11016/12/94-IA.II(M) of 31.8.1994 and Circular No.J-11011/20/97-IA.II (I) dated 17.5.1999 clarifying applicability of the Notification to renewal cases for mining and expansion of existing projects.*

*In respect of mining proposals, the following issues have been brought to the attention of this Ministry:*

*Whether applications for site/environmental clearance are required to be forwarded by the State Governments to MoEF.*

*Whether public hearing is required for obtaining site clearance and whether an Environmental Impact Assessment report is required to be submitted to the concerned SPCB/PCC for arranging such public hearing.*

*Whether four seasons baseline data is a pre-requisite for preparation of EIA report.*

*Whether environmental clearance is required at the time of renewal of mining lease or for operating mines when (i) there is no increase in the lease area and production (ii) there is increase in production without change in the lease area (iii) there is increase in lease area without change in production and (iv) there is upgradation in mining technology.*

*In this context, the requisite clarifications are*

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*d. Environmental Clearance is not required at the time of renewal of mining lease if there is no increase in the originally sanctioned lease area and/or production. The proponent should, however, seek prior environmental clearance from the Central Government for expanding production and/or mining lease are irrespective of the quantum of increase in size of ML*

*area/production or investment involved. The above provisions will apply to existing operating mines even when no renewal of mining lease is involved.”*

As per this Circular, it has been clarified that EIA Notification, 1994 will apply to mining activities of major minerals with lease are having more than 5 Hectares and under Clause (d), Environmental Clearance is not required at the time of renewal of mining lease if there is no increase in the originally sanctioned lease area and/or production. The proponent should, however, seek prior environmental clearance from the Central Government for expanding production and/or mining lease are irrespective of the quantum of increase in size of ML area/production or investment involved. The above provisions will apply to existing operating mines even when no renewal of mining lease is involved. So it is made clear by this clarification that when there is expansion, increase in the production level, then Environment Clearance must be obtained even before renewal of mining lease.

30. The question regarding Environment Clearance in respect of mining lease was considered by the Apex Court in M.C. MEHTA V. UNION OF INDIA & ORS (2004 (12) SCC 118). The Apex Court had considered the applicability of EIA Notification dated 27.1.1994 wherein it has been observed that the said Notification applies to mining projects (major minerals) with leases of more than 5 hectares and ultimately came to the conclusion in para 77 that they are unable to accept the contention that the notification dated 27<sup>th</sup> January, 1994 would not apply to leases which come up for consideration for renewal after issue of the notification. The notification mandates that the mining operation

shall not be undertaken in any part of India unless environmental clearance by the Central Government has been accorded. The clearance under the notification is valid for a period of five years and held in that case that no mining operation can commence without obtaining environment impact assessment in terms of the notification and ultimately the court has held as follows:

*The order dated 6<sup>th</sup> May, 2002 as clarified hereinbefore cannot be vacated or varied before consideration of the report of the Monitoring Committee constituted by this judgment.*

*The notification of environment assessment clearance dated 27<sup>th</sup> January, 1994 is applicable also when renewal of mining lease is considered after issue of the notification.*

*On the facts of the case, the mining activity on areas covered under Section 4 and/or of Punjab Land Preservation Acts, 1900 cannot be undertaken without approval under the Forest (Conservation) Act, 1980.*

*No mining activity can be carried out on area over which plantation has been undertaken under Aravalli project by utilization of foreign funds.*

*The mining activity can be permitted only on the basis of sustainable development and on compliance of stringent conditions.*

*The Aravalli hill range has to be protected at any cost. In case despite stringent condition, there is an adverse irreversible effect on the ecology in the Aravalli*

*hill range area, at a later dated, the total stoppage of mining activity in the area may have to be considered. For similar reasons such step may have to be considered in respect of mining in Faridabad District as well.*

*MOEF is directed to prepare a short term and long term action plan for the restoration of environment quality of Aravalli hills in Gurgaon district having regard to what is stated in final report of CMPDI within four months.*

*Violation of any of the conditions would entail the risk of cancellation of mining lease. The mining activity shall continue only on strict compliance of the stipulated conditions.*

That was a case where the question of applicability of 1994 Notification was considered in respect of existing mining leases and contention of minors that it will not be applicable for renewal, was rejected.

31. On the basis of the above judgment, MoEF & CC had issued a further Circular No.J-20012/11/98-IA.II(M) dated 28.10.2004 regarding the applicability of EIA Notification 1994 in respect of mining lease of major minerals of more than 5 hectares as follows:

*“The EIA Notification, 1994 as amended from time to time shall include:*

*(i) Mining projects of major mineral with more than 5 ha lease area, which have started production or increased their production and/or lease area on or after 27.1.1994.*

(ii) In addition, all mining projects of major mineral of more than 5 ha lease area which have so far not obtained an environmental clearance under the EIA Notification, 1994 shall do so at the time of renewal of their lease in the context of the SC judgment dated 18.3.2004 in W.P.4677/1985 – M.C. Mehta vs UOI.”

32. Thereafter, the EIA Notification, 1994 was replaced by EIA Notification 2006 dated 14.9.2006. Mining project was included as Item No.1(a) in the Schedule to the Notification which reads as follows:

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
1		Mining, extraction of natural resources and power generation (for a specified production capacity)		
1	2	3	4	5
1(a)	(i)Mining of minerals (ii)Slurry pipelines (coal lignite and through national parks/sanctuaries/ coral reefs, ecologically	>100 ha. Of mining lease area in respect of non coal mine lease. >150 ha of mining lease	<100 ha of mining lease area in respect of non coal mine lease. < 150 ha of mining lease	General conditions shall apply except: (i)for project or activity of mining of minor

	<i>sensitive areas</i>	<i>area in respect of coal mine lease Asbestos mining irrespective of mining area All projects</i>	<i>area in respect of coal mine lease</i>	<i>minerals of Category "B2" (upto 25 ha of mining lease area): (ii) for project or activity of mining of minor minerals of Category "B1" in case of cluster of mining lease area; and (iii) River bed mining project on account of inter state boundary</i>

As per this Notification, the mining activities have been classified as Category "A" and Category "B" and under Category "A" mining leases in respect of non coal mining lease having more than 100 ha, in respect of coal mine lease above 150 ha area, all such mining, irrespective of mining area were brought under Category "A". Mining lease in respect of non coal mining area having extent equal to and less than 100 ha and in respect of coal mine lease having extent equal to and less than 150 ha were brought under Category "B". Further, certain exceptions were provided under column (5) where it was mentioned that general conditions shall apply except (i) for project or activity of mining of minor mineral of Category "B2" (upto 25 ha of mining lease area); (ii) for project or activity of mining of minor minerals of Category "B1" in case of cluster of mining lease area; and (iii) river bed mining projects on account of inter state boundary. Certain procedures were provided for obtaining Environment Clearance for mining of minor minerals including clusters.

Here also nothing was mentioned about the mining of major minerals having extent of less than 5 hectares. But a reading of clause would go to show that mining lease area in respect of non coal mine having an extent of equal to and less than 100 ha were brought under the regime of Environment Clearance.

33. Thereafter, the MoEF & CC by their Circular No.J-15012/35/2007-IA.II(M)-Part dated 2.7.2007 issued a clarification regarding applicability of EIA Notification, 2006 for mining leases of less than 5 hectares of major minerals

and mining leases of minor minerals which have been operating before 14.9.2006 which reads as follows:

**CIRCULAR**

*Sub: Clarification regarding applicability of EIA Notification, 2006 on mining leases of 5 hectare (major minerals) and mining leases of minor minerals which have been operating before 14.9.2006 – reg.*

*Federation of Mining Associations of Rajasthan and others have raised concerns regarding applicability of EIA Notification dated 14<sup>th</sup> September, 2006 to mining leases of 5 ha for major minerals and mining leases of minor minerals which have been in operation before the said Notification coming into force. The matter has been examined in the ministry.*

*It is clarified that all such mining projects which did not require environmental clearance under the EIA Notification, 1994 would continue to operate without obtaining environmental clearance till the mining lease falls due for renewal, if there is no increase in lease area and/or there is no enhancement of production. In the event of any increase in lease area and /or production, such projects would need to obtain prior environmental clearance. Further, all such projects which have been operating without any environmental clearance would obtain environmental clearance at the time of their lease renewal even if there is no increase either in terms of lease area or production. It is clarified as per this notification that all mining projects which are in operation prior to the coming into force of EIA Notification, 2006 dated*

14.9.2006 having a lease area of 5 hectares for major minerals and mining lease of minor minerals for which no Environment Clearance was required as per EIA Notification, 1994 which continue to operate without obtaining Environment Clearance till the mining lease falls due for renewal if there is no increase in lease area and/or there is no enhancement of production. In the event of any increase in lease area and/ or production, such projects would need to obtain prior environmental clearance. Further, all such projects which have been operating without any environmental clearance should obtain environmental clearance at the time of their lease renewal even if there is no increase either in terms of lease area or production. So it was clarified by this circular that the existing lease areas of major minerals having less than 5 hectares which were in operation prior to 14.9.2006 for which no environment Clearance was contemplated as per EIA Notification, 1994 were permitted to continue and they need to obtain Environment Clearance only at the time of renewal even if there was no increase in the area or enhancement of production.

34. Thereafter, EIA Notification, 2009 was published on 1.11.2009 amending EIA Notification, 2006 where item 1(a) of Schedule I was replaced as follows:

(1)	(2)	(3)	(4)	(5)
1(a)	(i) mining of mineral (ii) Slurry pipelines (coal	>50 ha of mining lease	<50 ha >5 ha of	General condition

<p><i>lignite ad other ores) passing through national parks/sanctuaries/coral reefs, ecologically sensitive areas</i></p>	<p><i>area in mining lease &gt;150 ha of mining lease area in respect of local mine lease Asbestos mining irrespective of mining area. All projects</i></p>	<p><i>mining leases area in respect of non coal mine lease. &lt;150 ha &gt; 5 ha of mining lease area in respect of coal mine lease</i></p>	<p><i>shall apply</i> <i>Note:</i> <i>Mineral prospecting is exempted</i></p>
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As per this amendment, mining area of non coal mine, having mining lease area equal to or more than 50 hectares were brought under Category "A" and mining leases of non coal mining lease having extent of less than 50 hectares but more than or equal to 5 hectares was brought under Category "B" irrespective of whether it is minor or major minerals. So here also mining

leases major minerals of less than 5 hectares was not brought under the regime of obtaining Environment Clearance.

35. Thereafter, EIA Notification, 2006 amended by 2009 Notification was further amended by EIA Notification, 2011 dated 4.4.2011 where against Item 1(a) in column (5) of Schedule I of EIA Notification, 2006, as amended by EIA Notification, 2009 the following was added:

*“Prior environmental clearance is as well required at the stage of renewal of mine lease for which application should be made up to one year prior to date of renewal.”*

There it was made clear that prior Environment Clearance is required at the stage of renewal of mining lease for which application should be made one year prior to the date of renewal. There also mining lease major minerals having less than 5 hectares does not require Environment Clearance. But a time limit was provided as to when application for Environment Clearance is to be made in case of renewal of lease.

36. The scope of obtaining Environment Clearance in respect of mining/quarrying of minor minerals, boulders, gravel and sand having mining lease of less than 5 hectares has been considered by the Apex Court in the decision reported in DEEPAK KUMAR V. STATE OF HARYANA (2012) 4 SCC 629). The Hon'ble Supreme Court has considered all the notifications issued and also considered the recommendation made by MoEF & CC on the basis of study conducted by the Expert Appraisal Committee appointed by

them and held that the mining area having less than 5 hectares of minor minerals was brought under the regime of obtaining Environment Clearance. It was held in the decision that irrespective of the lease area Environment Clearance has to be obtained. A direction was issued as follows:

*“We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF.”*

So it was made clear by this decision that irrespective of lease area for the purpose of operation of mining of minor minerals Environment Clearance has to be obtained and no renewal can be granted without getting Environment Clearance.

37. Thereafter, an Official Memorandum No.L-11011/47/2011-IA.II(M) dated 18.5.2012 was issued by the MoEF & CC on the basis of the orders passed by the Hon'ble Supreme Court dated 27.2.2012 in DEEPAK KUMAR V. STATE OF HARYANA (2012) 4 SCC 629). There also it was clarified that all mining projects of minor minerals including renewal irrespective of the size of the lease would henceforth require prior environment clearance. Mining projects with lease area upto less than 50 ha including projects of minor mineral with lease are less than 5 ha would be treated as category “B” as defined in the EIA Notification, 2006 and will be considered by the respective SEIAs notified by MoEF and following the procedure prescribed under EIA Notification, 2006. Here also nothing was mentioned about the obtaining of

Environment Clearance in respects of mining lease of major minerals having less than 5 hectares area. In this notification, a mention was made regarding the order of the Hon'ble Supreme Court dated 16.4.2012 where the Supreme Court has observed as follows:

*“All the same, liberty is granted to the applicants before us to approach the Ministry of Environment and Forests for permission to carry on mining below five hectares and in the event of which Ministry will dispose of all the applications within ten days from the date of receipt of the applications in accordance with law.”*

In the Office Memorandum, the MoEF & CC directed the respective SEIAAs to deal with the application of the applicants referred to above and pass appropriate orders in compliance with the direction of the Hon'ble Supreme Court within the time prescribed by the Hon'ble Apex Court.

38. Thereafter, MoEF & CC has issued another Office Memorandum No.J-11013/182/2012-IA.II(M) dated 4.1.2013 which reads as follows:

#### *OFFICE MEMORANDUM*

*Subject: Clarification with regard to applicability of provisions of EIA Notification, 2006 for mining of major minerals in areas less than 5 hectare – regarding.*

*Reference is invited to your letter no.SEIAA 1 Misc.2013 dated 2.1.2013 addressed to this Ministry seeking the clarification with regard to applicability*

*of provisions of EIA Notification, 2006 for mining of major minerals in areas less than 5 hectare.*

*Reference is also invited to the order of Hon'ble Supreme Court dated 27.2.2012 in I.A.no.12-13 of 2011 in SLP (C) no.19628-19629 f 2009 in the matter of Deepak Kumar etc. Vs. State of Haryana and Ors, directing inter alia as under:*

*"We in the meanwhile, order that leases of minor mineral including their renewal for an area of less than 5 ha be granted by the States/UTs only after getting environmental clearance from the MoEF".*

*It is clarified that the mining projects of major minerals of the size of the lease areas less than 5 ha. will not be under the purview of the above referred order of the Hon'ble Supreme Court dated 27.2.2012 and the O.M.No.L-11011/47/2011-IA-II (M) dated 18.5.2012 issued by the MoEF. Hence, there is no need of prior environmental clearance for the mining projects of major minerals of lease area less than 5 ha as per EIA Notification, 2006 either from the State Government or the Central Government. However, such mining operations shall need to obtain the consent to operate from the State Pollution Control Board under the provisions of Air Act, 1980 and Water Act, 1974."*

*There also they have clarified that mining projects of major minerals of the size of lease area less than 5 Hectares will not be under the purview of the above referred order of the Hon'ble Supreme Court dated 27.2.2012 and O.M.No.L-11011/47/2011.IA-II(M) dated 18.5.2012. So they have*

categorically stated in this Office Memorandum that there is no need for prior Environment Clearance for the mining projects of major minerals of lease area less than 5 hectares as per EIA Notification, 2006 and subsequent amended Notification and Official Memorandum either from the State Government or the Central Government. However, it was clarified further that such mining operations shall need to obtain the consent to operate from the State Pollution Control Board under the provisions of Air (Prevention and Control of Pollution) Act, 1980 and Water (Prevention and Control of Pollution) Act, 1974 respectively. So it is also clear from this that none of the earlier notifications which cover the mining projects of major minerals, having mining lease extent of less than 5 hectares.

39. Thereafter, MoEF & CC has issued an amended notification, amending EIA Notification, 2006 dated 9.9.2013, amending the schedule where the mining of minerals as Item 1(a) which reads as follows:

(1)	(2)	(3)	(4)	(5)
1(a)	(i) Mining of minerals (ii) Slurry pipelines (cost lignite and other ores)	>50ha of mining lease area in respect of non coal mine lease >150 h of	<50 ha of mining lease area i respect of minor minerals mine lease; and <50ha >5 ha of	General Conditions shall apply except for project or activity of less than 5 ha of mining lease area for minor minerals; Provided that the above exception shall not apply

	<p>passing through national parks or sanctuaries or coral reefs, ecologically sensitive areas.</p>	<p>mining lease area in respect of coal mine lease. Asbestos mining irrespective of mining are.</p>	<p>mining lease area in respect of other non coal mine lease &lt;150 ha &gt;5 ha of mining lease area in respect of coal mine lease</p>	<p>for project or activity if the sum total of the mining lease area of the said project or activity and that of existing operating mines and mining projects which were accorded environment clearance and are located within 500 metres from the periphery of such project or activity equals or exceeds 5 ha.</p> <p>Note: Prior environmental clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal. Further, a</p>
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				<p>period of two years with effect from the 4th April, 2011 is provided for obtaining environmental clearance for all those mine leases which were operating as on the 4<sup>th</sup> April, 2011 with requisite valid environmental clearance and which have fallen due for renewal on or after 4<sup>th</sup> November, 2011:</p> <p>Provided that no fresh environmental clearance shall be required for a mining project or activity at the time of renewal of mining lease which has already obtained environmental clearance under this notification.</p> <p>(ii) Mineral prospecting is</p>
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				exempted.
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There it was specifically mentioned that under Category "B" less than 50 hectares of mining lease area in respect of minor minerals mine lease and less than and equal to 50 hectares and more than and equal to 5 hectares mining lease area in respect of other non coal mine lease. It is also made clear under column (5) of the schedule that prior Environment Clearance is required at the stage of renewal of mining lease for which an application shall be made upto two years prior to the date due for renewal. Further, a period of two years with effect from the 4<sup>th</sup> April, 2011 is provided for obtaining environmental clearance for all those mine leases which were operating as on the 4<sup>th</sup> April, 2011 with requisite valid environmental clearance and which have fallen due for renewal on or after 4<sup>th</sup> November, 2011. Here also it was made clear that Environment Clearance is required only at the time of renewal that too in respect of minor minerals. There was nothing mentioned about the mining lease of major minerals of less than 5 hectares area.

40. Thereafter, the EIA Notification, 2006 was further amended as per Notification dated 7.10.2014. There also the schedule to the Notification was amended in respect of mining of minerals as Item 1(a) which reads as follows:

(1)	(2)	(3)	(4)	(5)
1(a)	(i) mining of minerals (ii) Slurry pipelines	>50 ha of mining lease are in respect of	<50 ha of mining lease area in respect of	General conditions shall apply except for project or activity of less than 5 ha of mining lease area;

	<p><i>(coal lignite and other ores) passing through national parks or sanctuaries or coral reefs, ecologically sensitive areas.</i></p>	<p><i>non coal mine lease. &gt;150 ha of mining lease area in respect of coal mine lease. Asbestos mining irrespective of mining area All projects</i></p>	<p><i>non coal mine lease. &lt;150 ha of mining lease area in respect of coal mine lease</i></p>	<p><i>Provided that the above exception shall not apply for project or activity if the sum total of the mining lease area of the said project or activity and that of existing operating mines and mining projects which were accorded environment clearance and are located within 500 metres from the periphery of such project or activity equals or exceeds 5 ha.</i></p> <p><i>Note:</i></p> <p><i>(i) Prior environmental clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal.</i></p> <p><i>Provided that no fresh environmental clearance shall be required for a mining project or activity at the time of renewal of mining lease which has already obtained environmental clearance under this notification.</i></p> <p><i>(ii) Mineral prospecting is exempted</i></p>
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There mining lease less than 50 hectares in respect of non coal mine were brought under Category "B" and general conditions are exempted in respect of projects or activity of less than 5 hectares of mining lease area. Here also it was mentioned by way of note that prior Environment Clearance is required at

the stage of renewal of mining lease for which an application shall be made up to two years prior to the date due for renewal. In column (3) there was no distinction in respect of nature of mineral as to whether minor or major. But that represents non coal mine lease and coal mine lease. But in column (5) it was mentioned that general condition shall apply except for project or activity of less than 5 ha of mining lease area. Environment Clearance was also necessitated only at the time of renewal.

41. Thereafter, EIA Notification 2006 was further amended by Notification dated 15.1.2016 where they have given the reason for the present amendment and also prescribed the procedure for considering the Environment Clearance, depending upon the category in which they fall. The schedule 1(a) was amended as follows:

(1)	(2)	(3)	(4)	(5)
1(a)	(i) mining of minerals (ii) Slurry pipelines (coal lignite and other ores) passing through national parks or sanctuaries or coral reefs, ecologically sensitive areas.	>50 ha of mining lease area in respect of non coal mine lease >150 ha of mining lease area in respect of coal mine lease Asbestos mining irrespective of mining area All projects	<50 ha of mining lease area in respect of non coal mine lease. < ha of mining lease area in respect of local mine lease	General conditions shall apply except; (i) for project or activity of mining of minor minerals of category 'B2' (upto 25 ha of mining lease area); (ii) River bed mining projects on account of inter state boundary. Note: (1) Mineral prospecting is exempted (2) The prescribed procedure for environmental clearance for mining of minor minerals including cluster

				<p><i>situation is given in Appendix XI.</i></p> <p><i>(3)The mining lease which have obtained environmental clearance under Environment Impact Assessment Notification, 1994 and Environment Impact Assessment Notification 2006 shall not require fresh environmental clearance during renewal provided the project has valid and subsisting environmental clearance.</i></p>
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42. The Tamil Nadu Government, Industries (MMC.1) Department had issued a Government Order G.O.(Ms) No.105 dated 14.7.2016, extending the time for producing Environment Clearance from 450 days, by ten months and amended Rule 41 and 42 of Tamil Nadu Minor Mineral Concession Rules, 1959 accordingly.

43. Thereafter MoEF & CC had issued a further Notification dated 14.3.2017, after considering several decisions of various High Courts and the Apex Court and also National Green Tribunal **and** issued guidelines as to how violations have to be considered and provided procedure for the same and granted six months time for filing application for Environment Clearance from the date of notification.

44. The Ministry had issued further clarification regarding obtaining Environment Clearance on the basis of the request made by the Principal Secretary, Industries Department, Chennai vide Letter No.Z-11013/24/2017-IA.II(M) dated 3.4.2017 which is under challenge as follows:

*Sub: Requirement of Environmental Clearance for major minerals below 5 hectares – re.*

*Ref: Your letter no.Nil dt.13.3.2017*

*Sir,*

*Kindly refer to above seeking clarification on requirement of Environmental Clearance for major minerals below 5 hectare.*

*In this regard, I am directed to refer to the notification S.O.14(E) dated 15.1.2016 and inform that all the mining leases (major mineral as well as minor mineral) operating in the country are required to obtain Environmental Clearance (EC) after 15.1.2016 as per the provisions contained in Environmental Impact Assessment Notification, 2006 as amended. Further, no mining lease shall operate without prior EC and all such mines (including less than 5 hectares) which were in operation before 15.1.2016 are required to stop their mining activity and apply to MoEF & CC at Central Level/State Environment Impact Assessment Agency at State Level/District Environment Impact Assessment Agency at District level for seeking Environment Certificate. The mine leases which continue to operate without obtaining Environment certificate after 15.1.2016 shall be considered as violation cases and the same shall be dealt in accordance with the violation policy under*

*Environmental Impact Assessment Notification, 2006 as amended.”*

As per this letter, it was clarified that any mining activity, either major or minor, including less than 5 hectares will be treated as violation cases, if Environment Clearance was not obtained after 15.1.2016 as per amended notification.

45. The Hon'ble Supreme Court in COMMON CAUSE V. UNION OF INDIA & ANR (W.P.(C).No.114 of 2014 and PRAFULLA SAMANTRA & ANR V. UNION OF INDIA (W.P.(C) No.194 of 2014 by common order dated 2.8.2017 considered the scope of obtaining Environment Clearance and made the following conclusion and clarification:

*“Conclusions on the issues of mining without an EC or FC or both*

*To avoid any misunderstanding, confusion or ambiguity, we make the following very clear:*

*A mining project that has commenced prior to 27<sup>th</sup> January, 1994 and has obtained a No Objection Certificate from the SPCB prior to that date is permitted to continue its mining operations without obtaining an EC from the Impact Assessment Agency. However, this is subject to any expansion (including an increase in the lease area) or modernization activity after 27<sup>th</sup> January, 1994 which would result in an increase in the pollution load. In that event, a prior EC is required. However, if the pollution load is not expected to increase despite the proposed expansion (including an increase in the lease area) or modernization activity, a certificate to this effect is absolutely necessary from the SPCB, which would be reviewed by the Impact*

*Assessment Agency.*

*The renewal of a mining lease after 27<sup>th</sup> January, 1994 will require an EC even if there is no expansion or modernization activity or any increase in the pollution load.*

*For considering the pollution load the base year would be 1993 – 94 which is to say that if the annual production after 27<sup>th</sup> January, 1994 exceeds the annual production of 1993 – 94, it would be treated as an expansion requiring an EC.*

*There is no doubt that a new mining project after 27<sup>th</sup> January, 1994 would require a prior EC.*

*Any iron ore or manganese ore extracted contrary to EIA 1994 or EIA 2006 would constitute illegal or unlawful mining (as understood and interpreted by us) and compensation at 100% of the price of the mineral should be recovered from 2000 -2001 onwards in terms of Section 21(5) of the MMDR Act, if the extracted mineral has been disposed of. In addition, any rent, royalty or tax for the period that such mining activity was carried out outside the mining lease are should be recovered.*

*With effect from 14<sup>th</sup> September, 2006 all mining projects having a lease area of 5 hectares or more are required to have an EC. The extraction of any mineral in such a case without an EC would amount to illegal or unlawful mining attracting the provisions of Section 21(5) of the MMDR Act.*

*For a mining lease of iron ore or manganese ore of less than 5 hectares area, the provisions of EIA 1994 will continue to apply subject to EIA 2006.*

*Any mining activity carried on or after 7<sup>th</sup> January, 1998 without an EC amounts to illegal or unlawful mining in terms of the provisions of Section 21(5) of MMDR Act attracting 100% recovery of the price of the extracted mineral that is disposed of.*

*In the event of any overlap, that is, illegal or unlawful mining without an EC or without an EC or without both would attract only 100% ad not 200% compensation. In other words, only one set of compensation would be payable by the mining lease holder.*

*No mining lease holder will be entitled to the benefit of any payments made towards NPV or additional NPV or penal compensatory afforestation.”*

46. MoEF & CC also issued another Notification dated 8.3.2018 delegating certain powers for granting Environment Clearance in respect of Category “B” project to SEIAA.

47. MoEF & CC issued another Office Memorandum No.Z-11013/22/2017-IA.II(M) dated 15.3.2018 as follows:

*“OFFICIAL MEMORANDUM*

*Sub: Implementation of Notification S.O.1030 (E) dated 8<sup>th</sup> March, 2018 – reg.*

*The Environment Impact Assessment Notification, 2006 under the Environment (Protection) Act, 1986 mandates the requirement of prior environmental clearance to the projects/activities listed in the schedule to the said Notification. These projects/activities have been categorized under Category “A” or “B” and require appraisal and approval by the respective*

*regulatory authorities at the Central/State level.*

*The Ministry has issued a Notification number S.O.804(E) dated 14<sup>th</sup> March, 2017 under the Environment (Protection) Act, 1986 to appraise and regularize the projects, already taken up or under implementation without obtaining the prior environmental clearance in terms of the provisions of the EIA Notification, 2006 and thus identified to be in violation of the same. The Notification enables consideration of such proposals at Central level by providing one time opportunity to submit the request in this regard within 6 months.*

*In order to streamline and expedite consideration of proposals, it has now been decided that the projects/activities covered under category "B" shall be considered by the SEAC/SEIAAs in the respective States/UTs. The Ministry has issued another Notification number S.O.1030 (E) dated 8<sup>th</sup> March, 2018, amending the Notification dated 14<sup>th</sup> March, 2017 to that extent.*

*In order to operationalize the Notification number S.O.1030(E) dated 8<sup>th</sup> March, 2018, following directions are being issued for compliance with immediate effect.*

*The proposals received upto 13<sup>th</sup> September, 2017 on the Ministry's portal, shall be considered by the EAC or the SEAC/SEIAA in the respective States/UTs, as the case may be, in order of their submission.*

*All the proposals of category "B" projects/activities pertaining to different sectors, received within six months only i.e. upto 13<sup>th</sup> September, 2017 on the Ministry's portal but yet not considered by the EAC in the Ministry, shall be*

*transferred online to the SEAC/SEIAAs in the respective States/UTs.*

*The proposals submitted directly for consideration of EC (in place of ToR) shall also be considered on the same lines in order of their submission on the Ministry's portal.*

*All the projects of category "B" pertaining to different sectors, although considered by the EAC in the Ministry and accorded ToR shall be appraised for grant of EC by the SEA/SEIAAs in the respective States/UTs.*

*All projects/activities of all sectors shall be required to adhere to the directions of Hon'ble Madras High Court vide order dated 13<sup>th</sup> October, 2017 while upholding the Ministry's Notification dated 14<sup>th</sup> March, 2017."*

48. MoEF & CC issued another Office Memorandum No.Z-11013/22/2017-IA(M) dated 16.3.2018 directing the concerned authority to comply with the order of the Madras High Court as follows

*"Office Memorandum*

*Sub: Compliance of the order dated 14<sup>th</sup> March, 2018 of Hon'ble High Court of Judicature at Madras in WMP.Nos.3361 and 3362 of 2018 and WMP.No.3721 of 2018 in WP.No.11189 of 2017 – reg.*

*The Ministry has issued a Notification number S.O.804(E) dated 14<sup>th</sup> March, 2017 under the Environment (Protection) Act, 1986 to appraise and regularize the projects already taken up or under implementation without obtaining the prior environmental clearance in terms of the provisions of the EIA Notification, 2006 and thus identified to be in violation of the same. The Notification enables consideration of such proposals at Central level by*

*providing one time opportunity to submit the request in this regard within 6 months.*

*Pursuant to the Ministry's Notification number S.O.1030(E) dated 8<sup>th</sup> March, 2018 regarding consideration of proposals by the Expert Appraisal Committee or the SEAC/SEIAA depending upon the categorization of projects/activities (A or B) listed in the schedule to the Environment Impact Assessment Notification, 2006, the Ministry has issued Office Memorandum on 15<sup>th</sup> March, 2018 to operationalize the same.*

*Hon'ble High Court of Judicature at Madras vide order dated 14<sup>th</sup> March, 2018 in WMP Nos. 3361 and 3362 of 2018 and WMP.No.3721 of 2018 in WP.No.11189 of 2017 has directed as under:*

*In this view of the matter, considering that sub-clause (i)(d) of Stage III of paragraph 7(1) of parent notification as contained in item INo.8(a) of the Schedule being housing projects, we deem it necessary to clarify that projects and project proponents falling under category alone shall be governed by the 'public consultation' clause in the parent notification.*

*With regard to the prayer of MOEF for extension of time for submission of proposals by project proponents, we are of the view that it will serve the ends of justice if time is extended by 30 days from the date of delivery of this order in open court.*

*In view of the above orders of Hon'be High Court, following directions are being issued for compliance with immediate effect:-*

*i.The project proponent who have not submitted the proposals within six*

months window i.e. upto 13<sup>th</sup> September, 2017 in pursuance of this Ministry's Notification S.O.804(E) dated 14<sup>th</sup> March, 2017 are required to submit the proposals within 30 days, to the EAC for category A projects or the SEAC/SEIAA in the respective States/UTs for category B projects.

ii. The project proponent who have submitted the proposals on the Ministry's portal after 13<sup>th</sup> September, 2017 are also required to submit the proposals afresh within 30 days to the EAC for category A projects or the SEAC/SEIAA in the respective States/UTs for category B projects.

iii. The projects/activities pertaining to all sectors shall be considered as per the directions of Hon'ble High Court of Judicature at Madras vide order dated 14<sup>th</sup> March, 2018 in WMP Nos. 3361 and 3362 of 2018 and WMP.No.3721 of 2018 in WP.No.11189 of 2017.

The directions issued vide this Ministry's OM dt.15<sup>th</sup> March, 2018 shall continue to apply."

49. MoEF & CC issued another Office Memorandum No.22-8/2018-IA.III dated 20.4.2018 regarding the procedure for disposal of Environment Clearance application in respect of certain categories.

50. MoEF & CC issued another Office Memorandum No.3-50/2017-IA.III(Pt) dated 30.5.2018 regarding consideration of violation cases on the basis of the notification dated 14.3.2017 and subsequent amendment as follows:

*"Office Memorandum*

*Sub: Consideration of mining proposals involving violation of the EIA*

*Notification, 2006 under the provisions of S.O.804(E) dated 14.3.2017 and subsequent amendments for ToR/EC – reg.*

*In order to regularize the projects involving violation of EIA Notification, 2006 the Ministry of Environment, Forest and Climate Change has issued a Notification number S.O.804(E) dated 14<sup>th</sup> March, 2017 and S.O.1030(E) dated 8<sup>th</sup> March, 2018 under the Environment (Protection) Act, 1986 to appraise the projects that have not taken prior environment clearance in terms of provisions of Environment Impact Notification, 2006 amended from time to time. Such cases have been termed as case of violation of said notification.*

*Meanwhile, Hon'ble Supreme Court vide judgment dated 2<sup>nd</sup> August, 2017 Writ Petition (Civil) No.114 of 2014 in the matter of Common Cause Vs. Union of India and Ors has passed a detailed order interpreting Section 21(5) of the MMDR Act and directing payment of 100% penalty for illegal mining operations with reference to the relevant statutes which inter alia include the Environment (Protection) Act, 1986 the Water (Prevention and Control of Pollution) Act, 1974 the Air (Prevention and Control of Pollution) Act, 1981, the Forest (Conservation) Act, 1980 and the Mines and Minerals (Development & Regulation) Act, 1957.*

*In pursuance of the Ministry's Notification referred to in para 1 above, the proposals involving violations of the EIA NOTIFICATION, 2006 are to be appraised for grant of ToR/EC at the Central level or by the respective SEAC/SEIAA in different States/UTs levels depending upon the categorization of the project.*

*In pursuance of the above notifications, the ministry had invited proposals for regularization of violation during a specified time window. Now, the Ministry has received a number of proposals for grant of Terms of Reference Environment Clearance to mining projects engaged in mining of major and minor minerals for regularization of the same.*

*In the above context, in order to additionally comply with the directions given by the Hon'ble Supreme Court as referred to in para 2 above, it has been decided to include the following additional conditions in ToRs/ECs to be issued for mining projects under the provisions of S.O.804(E) dated 14.3.2017 and subsequent amendments:-*

*The project proponent shall give an undertaking by way of affidavit to comply with all the statutory requirements and judgment of Hon'ble Supreme Court dated the 2<sup>nd</sup> August 2017 in Writ Petition (Civil) No.114 of 2014 in the matter of Common Cause vs. Union of India & ors before grant of ToR/EC. The understanding inter alia include commitment of the PP not to repeat any such violation in future.*

*In case of violation of above undertaking, the ToR/Environmental Clearance shall be liable to be terminated forthwith.*

*The Environmental Clearance will not be operational till such time the Project Proponent complies with all the statutory requirement and judgment of Hon'ble Supreme Court dated the 2d August 2017 in Writ Petition k(Civil) No.114 of 2014 in the matter of Common Cause vs. Union of India & ors.*

*The State Government concerned shall ensure that mining operation shall*

not commence till the entire compensation levied if any for illegal mining paid by the project proponent through their respective Department of Mining & Geology in strict compliance of judgment of Hon'ble Supreme Court dated the 2d August 2017 in Writ Petition (Civil) No.114 of 2014 in the matter of Common Cause vs. Union of India & ors.

The direction issued vide this Ministry's OM dt.15<sup>th</sup> March 2018 and 16<sup>th</sup> March 2018 shall continue to apply."

51. MoEF & CC by Notification dated 14.8.2018 schedule in respect of mining, amended as follows:

Project or Activity		Category with threshold limit			Conditions if any
		A	B		
1		Mining, extraction of natural resources and power generation (for a specified production capacity)			
1	2	3	4	5	
1(a)	(i)Mining of minerals (ii)Slurry pipelines (coal lignite and through national	>100 ha. Of mining lease area in respect of non coal mine lease. >150 ha of mining lease	<100 ha of mining lease area in respect of non coal mine lease. < 150 ha of mining	General conditions shall apply except: (i)for project or activity of mining of minor minerals of Category "B2" (upto 25 ha of mining lease area): (ii) for project or activity of mining of minor minerals	

	<p><i>parks/sanc tuaries/ coral reefs, ecological y sensitive areas</i></p>	<p><i>area respect coal lease Asbestos mining irrespective of mining area All projects</i></p>	<p><i>in of mine lease lease lease</i></p>	<p><i>of Category "B1" in case of cluster of mining lease area; and (iii) River bed mining project on account of inter state boundary Note: (1)Mineral prospecting is exempted (2)The prescribed procedure for environmental clearance for mining of minor minerals including cluster situation is given in Appendix XI</i></p>
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By this, all mining activities either major or minor, having extent equal to or less than 100 hectares was classified as Category "B" and time for filing Environment Clearance was taken away. So that makes mandatory for all mining operations, to file their application for Environment Clearance immediately.

52. MoEF & CC issued another Office Memorandum No.22-10/2019-IA.III, dated 9.9.2019 regarding consideration of Category “B” violation proposal at State level as per Notification dated 14.3.2017 which reads as follows:

*“Office Memorandum*

*Subject: Consideration of Category B violation proposals at the State level as per the provisions of Notification .O.804(E) dt.14.3.2017 through lateral entry – reg.*

*The Ministry of Environment Forest and Climate Change issued a Notification vide S.O.804(E) dt.14.3.2017 under the Environment (Protection) Act, 1986 to appraise the projects which have started the work onsite without taking prior environmental clearance in terms of the provisions of the Environment Impact Assessment Notification, 2006. Time period of six months (14.3.2017 to 13.9.2017) was given vide aforesaid notification to the proponents to submit proposals.*

*Soon after the publication of aforesaid notification a PIL challenging the validity of the notification dt.14.3.2017 was filed in Hon’ble High Court of Madras. Hon’ble High Court of Madras vide order dt.7 June 2017 prohibited from taking any further action pursuant to the Notification dt.14.3.2017 and therefore appraisal process for violation cases could not be taken up further. Hon’ble High Court of Madras vide order dt.13.10.2017 vacated the order while upholding validity of the notification dt. 14.3.2017.*

*Pursuant to the notification dt. 14 March 2017 Ministry received a number of proposals relating to all sectors covered under category A and category B. As*

*per the said notification all the proposals of violation, irrespective of its categories were required to be appraised at Central level by the Expert Appraisal Committee.*

*Further, Ministry vide Notification S.O.1030(E) dt.8.3.2018 amended the Notification S.O.804(E) dt. 14.3.2017 and delegated the power to the States for appraisal of category B proposals which are under violation of EIA Notification.*

*Subsequently, the Ministry issued an OM dt. 15.3.2018 for the implementation of Notification S.O.1030(E) dt. 8.3.2018. All the category proposals were transferred to the concerned State Level Environment Impact Assessment Authority.*

*The Hon'ble High Court of Madras vide order dt. 14.3.20-18 was of the view that it will serve the ends of justice if time is extended by 30 days from the date of delivery of the order, thereby extending the time till 13<sup>th</sup> April, 2018 providing time for violators to apply as per the provisions of Notification S.O.804(E). Therefore, again a one month window was given from the date of order of Hon'ble High Court (14.3.2018 – 13.4.2018) to submit proposals under violation of EIA Notification. The Ministry has issued OM dt. 16.3.2018 for the compliance of the order dt. 14.3.2018 of Hon'ble High Court of Madras.*

*Proposals involving violation of EIA Notification, which had applied during the window (14.3.2017 to 13.9.2017 & 14.3.2018 to 13.4.2018) under violation category are being considered by the violation committee. However, in addition to such proposals, there were many category A proposals submitted*

*in the respective sectoral committees for regular appraisal during or prior to violation window period. Sectoral committee while deliberating on the proposals identified these as violation of EIA Notification. These proposals were subsequently forwarded to the violation committee after approval by the Competent Authority and such proposals are termed as 'lateral entry proposals'.*

*It is possible that there may be certain category B proposals which were submitted at SEIAA during or prior to the violation window period but not under violation category and later during the appraisal by State Level Expert Appraisal Committee identified as violation proposals.*

*Now a decision has been taken in the Ministry that such proposals as mentioned in para (8) above may be considered in terms of provisions of Ministry's Notification dt. 14.3.2017 & 8.3.2018 by the SEIAA. It is clarified that only those proposals may be taken up for consideration under this provision which had been submitted to SEAC during the window or prior to it as detailed above."*

53. The Principal Bench of the National Green Tribunal, New Delhi in NARESH ZARGAR VS. STATE OF MADHYA PRADESH & ORS (O.A.No.34 of 2016 dated 4.5.2016) along with connected cases, after considering the scope of the application and also scope of the judgment of the Hon'ble Supreme Court in DEEPAK KUMAR's case and also the decision of the National Green Tribunal in HIMMAT SINGH SHEKHAWAT V. STATE OF RAJASTHAN (O.A.No.123 of 2014 dated 13.1.2015) observed that the

existing mining lease holders should have complied with the requirement of obtaining Environment Clearance from the competent authority in accordance with law and three months time was given for filing application for obtaining Environment Clearance and the same was directed to be disposed of within a period of six months from 13.1.2015. Since the same could not be complied with, certain applications have been filed for extension of time and also for reviewing the order in O.A.No.123 of 2014 etc and the Tribunal by order dated 13.1.2015 held that no mining activity, including existing units, would be permitted to go on, without taking Environment Clearance and disposed of all the applications as follows:

*“We hereby quash and direct the State of Madhya Pradesh ad all other concerned States including Rajasthan not to issue such circulars and any other circular in variation and/or in derogation of the orders of the Tribunal.*

*All the district level authorities DEIAA and DEAC are directed to dispose of all the applications pending with them by 31<sup>st</sup> May, 2016 positively. We will not grant any extension of time for this purpose hereafter.*

*All the mines owners which of them have not submitted the applications as on 31<sup>st</sup> March, 2016 to SEIAA, DEIAA ad DEAC shall be shut down forthwith and will not be permitted to carry on any mining activity in any manner whatsoever*

*The applications which are deficient and where the applications have not submitted all requisite documents, such applicants are hereby granted last opportunity of 1 week to submit the documents. In the event they fail to*

*submit such document and make applications complete and errorless in all respects then after the stated period of 1 week they shall also be liable to be shut down without any further notice. If they comply with this direction, they would so be entitled to the advantage upto 31<sup>st</sup> May, 2016.*

*All the State Authorities are directed to upload on their respective websites, details of the applications pending before them as on 31<sup>st</sup> March, 2016. They will also separately classify the applications which are deficient in any respect whatsoever*

*With the above directions this application is hereby disposed.”*

So it is clear from this that those mine owners who have not submitted their application as on 31.3.2016 were directed not to carry on their mining activity in any manner whatsoever and directed the authorities to dispose of the applications in accordance with law. In HIMMAT SINGH SHEKHAWAT V. STATE OF RAJASTHAN & ORS (O.A.No.123 of 2014 dated 4.5.2016) in respect of extension application **with respect to** State of Rajasthan, directed that no mining activities should be permitted to be carried on without obtaining prior Environment Clearance.

54. In JATINDER SINGH AND OTHERS VS. UNION OF INDIA AND OTHERS (O.A.No.495 of 2015 dated 19.2.2016) the Principal Bench of the National Green Tribunal, while considering the EIA Notification dated 4.4.2011, considered all the existing notifications as on date issued by the MoEF & CC and disposed of the case as follows:

*“ Notification of 2006 is primarily of a mandatory character and is enforceable in terms of its provisions. Every applicant and authority is obliged to comply with the said Notification. This aspect need not detain us any further as it is a settled position of law as far as the Tribunal is concerned. After deliberating on the law in relation thereto, the Tribunal had clearly held that the Notification of 2006 does not leave any scope for default or non-compliance or discretionary enforcement. [Reference can be made to the judgment of the Tribunal in the cases of **S.P. Muthuraman Vs. Union of India, 2015 ALL (I) NGT REPORTER (2) (DELHI) 170, Lokendra Kumar Vs. State of U.P. & Ors. 2015 ALL (I) NGT REPORTER (1) (DELHI) 194 and Krishan Lal Gera v State of Haryana & Ors. 2015 ALL (I)NGT REPORTER(2)(DELHI)286**].*

*Despite the fact that the Notification of 2006 is mandatory still it lacks implementation and enforcement mechanism. It requires better and more specific time schedule in light of the principle of Sustainable Development and the need for expeditious disposal of such applications. We have already noticed that the role of the State Government is neither defined nor postulated in the Notification of 2006 but remains a matter that falls in the grey area. The need for States participation is indicated in the object of the Act of 1986 and the federal structure of the Indian Constitution.*

*Till all these deficiencies are removed and suggestions of the CEC are implemented in their true spirit and substance, it would be inevitable for the Tribunal to issue interim directions, particularly, in light of the judgments of the Supreme Court as referred in the above cases and the recommendations of the CEC to fill the gaps temporarily till a proper Notification is issued by MoEF providing due mechanism in this regard. It is a settled canon of law that the Courts and the Tribunals could issue interim directions keeping in view the gaps in the provisions of an Act including imposition of a prohibition where the facts and circumstances of a case so demand. Reference can be made to the judgment of the Tribunal in the case*

of Court on its own **Motion Vs. State of Himachal Pradesh & Ors. 2014 ALL (I) NGT REPORTER (1) (DELHI) 66.**

*In light of the above discussion we dispose of this application with the following directions:*

*It shall be mandatory for all the applicants to seek EC for carrying on of mining activity of minor or major minerals, even if the lease area is less than 5 ha. In other words, MoEF, SEIAA and all other authorities would adopt uniform practice for issuance of EC in regard to the mining area of less than 5 ha notwithstanding the fact that environmental impact of mining of minor minerals is no way less than that of the mining of major minerals. The judgment of the Supreme Court in the [Deepak Kumar Vs State of Haryana](#) (2012) 4 SCC 629 is applicable to both minor and major minerals.*

*Every effort should be made by all concerned authorities not to encourage grant of EC for mining activity where the area is less than 5 ha. However, for providing clarity, we further observe that where for reasons of necessity for geographical, ecological and other reasons, if it is necessary to grant EC, for carrying on of mining activity of minor and major minerals in an area less than 5 ha, a special report in that behalf shall be invited from the concerned State authority and EC would be granted for specific reasons to be recorded in that behalf and then the Application would be considered for grant/refusal of EC.*

*MoEF in consultation with the State Government shall constitute a District Committee which would submit its report to MoEF prior to preparation of ToR, in regard to the contents of the application, the physical location of mining site, environmental concerns and the scope of ToR. This report shall be taken into consideration by MoEF and/or SEIAA before issuing ToR at the time of consideration of the EIA report.*

*The State Government should submit its mining plan in consonance with the **provisions of Act of 1957, Mineral Concession Rules, 1960** and the same*

*should be approved by MoEF and other concerned ministries in accordance with law.*

*Every applicant shall be granted permission for mining only after the mining plan submitted by the applicant to the Central Government has been approved in accordance with Rule 22 and in consultation with the Director General of Police, Secretary In-charge of mining and the Chief Scientist and Scientist-in-Charge of Central Institute of Mining and Fuel Research, Regional Centre, Roorkee, an expert body in the field of mining which shall issue guidelines within the six weeks of the pronouncement of the judgment, providing proper mechanism for supervision and ensuring the implementation of judgment and taking appropriate action in accordance with law post issuance of order granting consent to operate and EC.*

*MoEF shall also re-examine in consultation with expert bodies to ensure reduction of time taken in issuance of EC, particularly, in light of the judgment afore referred. All the mining authorities and MoEF/SEIAA would give due consideration to the applicants applying for mining lease or grant of EC, who have been found guilty of illegal, unauthorised and unscientific mining, violating the terms and conditions of the orders by which consent to operate and/or EC has been granted. Normally, it should be taken as a disability for renewal and/or granting of mining lease or such consent orders. Wherever the government or the authority takes a decision to the contrary, it will be an obligation to record specific reasons in that behalf.*

*The application is disposed of with no orders as to costs.”*

55. It is clear from the above that the Principal Bench of the National Green Tribunal, after considering all the aspects, came to the conclusion that till the directions are issued by the MoEF & CC in respect of regulating the mining of minerals, both minor and major, irrespective of its extent regarding obtaining Environmental Clearance, thought it necessary to issue interim directions. Till that date, no mining activities, either minor or major, without

getting Environmental Clearance, should not be permitted to operate, irrespective of its area of operation. So it cannot be said that the Tribunal had wrongly applied the dictum laid down in DEEPAK KUMAR's case for major minerals as well, cannot be accepted.

56. The Hon'ble High Court of Madras had considered the scope of the violation notification dated 14.3.2017 of the MoEF & CC, referred to above in PUDUCHERRY ENVIRONMENT PROTECTION ASSOCIATION VS. THE UNION OF INDIA (W.P.No.11189 of 2017 dated 13.10.2017) and disposed of the case, recording the submission of the Additional Solicitor General that this is intended as one time measure and not to ratify future violation cases.

57. Even if the National Green Tribunal had wrongly decided any case, applying the principles laid down in DEEPAK KUMAR's case, may be applicable to major minerals as well, unless it is set aside or reviewed, the same has to be followed by this Tribunal, as there was a declaration issued by the National Green Tribunal in respect of regulation of mining activities both minor and major.

58. So under these circumstances, the submission made by the learned counsel appearing for the applicant that the observation made by the Principal Bench of the National Green Tribunal, making applicable the dictum laid down in DEEPAK KUMAR's case to major minerals as well is not correct, and cannot be accepted.

59. Further, it is clear from the observations made above that even in 2014, when 2006 Notification was amended, the distinction between major and minor minerals was taken away and any mining lease of non coal product, having less than 5 hectares, has been brought under the regime of Environment Clearance. Further, as per 2016 Notification, the time limit for filing application provided for the purpose of renewal, has been taken away perhaps, for the reason that by amending the Mines and Minerals (Development and Regulation) Act, 1957, the period of lease has been extended upto 50 years from 20 years. That may be reason why the MoEF & CC has thought that existing mines also has to obtain Environment Clearance after 15.1.2016 and they need not wait for renewal. Further, the National Green Tribunal in the decision stated supra, has categorically stated that no mining activity should be carried out in India without obtaining Environment Clearance that includes the existing mining leases as well, irrespective of its character viz., minor or major and it is further held that those minors who have not filed application prior to 31.3.2016 were completely debarred from operating mining operations. So under these circumstances, the cut off date for filing the application has to be limited upto 31.3.2016 and those minors who have filed application thereafter, will be treated as violators and their applications will have to be treated as violation applications and disposed of in accordance with law. Further, the notification dated 14.3.2017, providing one time measure for violation cases has been upheld by the Madras High Court also in the decision in PUDUCHERRY ENVIRONMENT PROTECTION

ASSOCIATION case cited supra. Further it was admitted in the application itself that when the cement company wanted some clarification in this regard , MOEFF&CC vide their letter dated 8-1-2016 informed them to apply for environment clearance without waiting for renewal.

60. So, under these circumstances, we find no reason to set aside the Office Memorandum dated 3.4.2017 in toto. **However**, we can clarify that those persons who have already filed application for Environment Clearance as on 31.3.2016 cannot **be** treated as violator, as the Principal Bench of the National Green Tribunal had permitted them to comply with application and consider those applications in accordance with law. Only those persons who have filed application thereafter will have to be treated as violator. Merely because the mining activities of the members of the applicant federation have come to a standstill, is not a ground to dilute the procedure for obtaining Environment Clearance, even in respect of mining activities of major minerals of less than 5 hectares.

61. So under these circumstances, the application can be disposed of, giving the following directions:

(i)The applications which are pending as on 31.3.2016 for Environment Clearance have to be treated as normal applications and not violation applications and the authorities are directed to dispose of those applications in accordance with law.

(ii) The persons who have not filed applications on or before 31.3.2016 and filed thereafter, can be treated as violation applications and the MoEF & CC /SEIAA is directed to dispose of those applications as violation cases in accordance with law.

(iii) It is also made clear that all mining leases, either major or minor, even less than 5 hectares area, has to apply and get Environment Clearance as per the amended EIA Notification dated 15.1.2016. This will apply to the existing mining leases as well. The points are answered accordingly.

62. Point No. 4;-

The application is disposed of as follows:

(i) The applicant is not entitled to get a declaration to quash Circular dated 3.4.2017 as prayed for but can be clarified as detailed as per direction No.(ii) onwards.

(ii) The applications which are pending as on 31.3.2016 for Environment Clearance have to be treated as normal applications and not violation applications and the authorities are directed to dispose of those applications in accordance with law.

(iii) The persons who have not filed applications on or before 31.3.2016 and filed thereafter can be treated as violation applications and the MoEF & CC /SEIAA is directed to dispose of those applications as violation cases in accordance with law.

(iv) It is also made clear that all mining leases, either major or minor, even less than 5 hectares area, has to apply and get Environment Clearance as per the amended EIA Notification dated 15.1.2016. This will apply to the existing mining leases as well. Without obtaining necessary Environment Clearance irrespective of area, no mining, both minor/major, shall be permitted to operate.

Considering the circumstances, there is no order as to costs.

The application is disposed of accordingly.

.....J.M.

(Justice K. Ramakrishnan)

.....E.M.

(Shri. Saibal Dasgupta)

O.A.136/2017  
30.6.20  
Kkr

NGT



**NGT**

**Item No.1:**

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

**Review Application No. 07 of 2020 (SZ) in  
Original Application No. 136 of 2017 (SZ)**

**IN THE MATTER OF:**

Tamil Nadu Mine Owners Federation  
Rep. by its General Secretary  
Mr. J. Mohan Kumar  
Having Office at 3 Sankari Main Road,  
Annathanpatty, Salem – 636 002.

... Review Applicant

**WITH**

- 1) The Secretary,  
Ministry of Environment, Forest & Climate Change,  
Government of India  
Paryavaran Bhavan  
New Delhi – 110 003.
- 2) The State Level Environment Assessment Authority –  
Tamil Nadu,  
Rep. by its Member Secretary,  
3<sup>rd</sup> Floor, Panagal Maaligai,  
No.1, Jeenis Road, Saidapet,  
Chennai – 600 015.
- 3) The Principal Secretary,  
Industries Department,  
Government of Tamil Nadu,  
Fort St. George, Chennai – 600 009.

4) The Commissioner,  
Department of Geology & Mining,  
Guindy, Chennai – 600 032.

...Respondent(s)

**Date of Order/Judgment: 18.08.2020.**

**CORAM:**

**HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER**

**HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

**For Review Applicant(s) :** M/s. Sanjay Upadhyay &  
M/s. Sai Sathya Jith.

**IN CHAMBER BY CIRCULATION**

**JUDGMENT**

1. The above review application has been filed by the review applicant to review the final order passed in Original Application No. 136 of 2017 (SZ) dated 30.06.2020 to the extent of fixing time for treating the application for environment clearance as violation case as 31.3.16 under Section 19 (4) (f) of National Green Tribunal Act, 2010 r/w Rule 22 of National Green Tribunal (Practice and Procedure) Rules, 2011.

2. It is alleged in the review application that the notifications upto 2016 were only relating to minor minerals which were published on the basis of the **DEEPAK KUMAR VS. STATE OF HARYANA (2012) 4 SCC 629** case by the Hon'ble Apex Court. As far as the major minerals having an extent of five acres require Environment Clearance only after the notification of 2016 and that too at the time when they apply for the renewal of the existing lease.
3. Further, the dictum laid down by this Tribunal was relating to minor minerals but this Tribunal relying on that decision and making the dictum in that decision applicable to major minerals is erroneous.
4. Further, the Tamil Nadu Government by Annexure A-8, G.O. No.105 dated 14.07.2016 extended the time to produce the Environment Clearance from 450 days to 630 days by amending Rule 42 of Mines and Minerals (Development and Regulation) Act, 1957.
5. By judgement dated 14.07.2016, fixing the date as 31.03.2016, is erroneous which amounts to error apparent on the face of the records which requires review to that extent and hence this review application.

6. Under Rule 22 of the National Green Tribunal (Practice & Procedure) Rules, 2011, the Review Application need not be posted in open Court and it can be disposed of by circulation, unless the Tribunal feels that open hearing is required in Court. Since we felt that there is nothing to be heard in open court in this application, we decided to dispose the matter by circulation.
7. We have gone through the allegations in the review application and documents produced along with the review application which were already produced by the party in the original application and this Tribunal while disposing of the matter had considered those notifications in the final judgment.
8. This Tribunal also considered the dictum laid down in the decision reported in Deepak Kumar & Ors. case relied on by the applicant and on that basis the dictum laid down in that case as well as the dictum laid down by the Principal Bench of National Green Tribunal and extended the same principle to the major minerals as well and came to the conclusion that this will apply to major minerals of lease area less than five acres of land and there is no distinction made in 2016 Notification dated 15.01.2016 between the major minerals and minor minerals.

9. Further if any executive order has been issued by the Government against the original notification, that will not affect the original notification or dilute the impact of that notification and such issuance of executive orders were deprecated by the Hon'ble Apex Court in several decisions.

10. Even if we go through the notification, that will only reiterate the necessity of Environment Clearance to the mining lease and that will not exempt the mandatory provision for applying for Environment Clearance, particularly which was mandatory under the EIA Notification issued by the Central Government under Section 5 of the Environment (Protection) Act, 1986.

11. So, the averments in the review application that those notifications were not properly applied by the Tribunal and understanding the dictum laid down by the Hon'ble Apex Court as well as the Principal Bench of National Green Tribunal, New Delhi in this regard are not proper and cannot be a ground for review.

12. In fact, the Tribunal had considered those notifications as well in the Judgment in the right perspective and there is no error

apparent on the face of the record which requires this Tribunal to review the Judgment to the extent sought for by the applicant.

13. So, there is no merit in the review application and the same is liable to be dismissed.

14. In the result, the review application fails and the same is hereby dismissed.

.....J.M.  
**(Justice K. Ramakrishnan)**

.....E.M.  
**(Shri. Saibal Dasgupta)**

**R.A. No.07/2020 (SZ)  
in O.A. No.136/2017,  
18<sup>th</sup> August, 2020. Mn.**

**NGT**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
Civil Appeal Nos 1789-1790 of 2021**

**Tamil Nadu Small Mine Owners Federation**

**.... Appellant(s)**

**Versus**

**The Secretary, Ministry of Environment  
Forest and Climate Change & Ors**

**....Respondent(s)**

**ORDER**

- 1 There is no error in the orders of the National Green Tribunal dated 30 May 2020 and 18 August 2020 in Original Application No 136 of 2017 and Review Application No 7 of 2020 respectively.
- 2 The appeals are accordingly dismissed.
- 3 Pending application, if any, stands disposed of.

.....J.  
**[Dr Dhananjaya Y Chandrachud]**

.....J.  
**[M R Shah]**

ITEM NO.10

Court 5 (Video Conferencing)

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).1789-1790/2021

TAMIL NADU SMALL MINE OWNERS FEDERATION

Appellant(s)

VERSUS

THE SECRETARY, MINISTRY OF ENVIRONMENT,  
FOREST AND CLIMATE CHANGE & ORS.

Respondent(s)

(FOR ADMISSION and IA No.62273/2021-EXEMPTION FROM FILING  
AFFIDAVIT)

Date : 23-07-2021 These appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE M.R. SHAH

For Appellant(s) Mr. ARL Sundaresan, Sr. Adv.  
Mr. S. Sai Sathyajith, Adv.  
Mr. Anish R. Shah, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

- 1 The appeals are dismissed in terms of the signed order.
- 2 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)  
AR-CUM-PS

(SAROJ KUMARI GAUR)  
COURT MASTER

(Signed order is placed on the file)

**Item No.2:**

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

**Original Application No. 244 of 2017 (SZ)**

(Through Video Conference)

**IN THE MATTER OF**

Shefy Joseph

...Applicant(s)

**Versus**

Ministry of Environment, Forest and Climate Change,  
New Delhi and Ors.

...Respondent(s)

For Applicant(s):

None.

For Respondent(s):

Mrs. Me. Saraswathy for R1.

Mr. E. K. Kumaresan for R2 & R3.

Mr. M. George Poonthottam Senior Adv. along with

Mr. Shoban M Padmanaban for R4.

**Judgment Pronounced on: 27<sup>th</sup> May, 2021.**

**CORAM:**

**HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER**

**HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

**ORDER**

Judgment pronounced through Video Conference. Original  
Application is disposed of with directions vide separate Judgment.

Sd/-

.....J.M.  
(Justice K. Ramakrishnan)

**O.A. No.244/2017,  
27<sup>th</sup> May, 2021. Mn.**

Sd/-

.....E.M.  
(Shri. Saibal Dasgupta)

**Item No.2:**

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

**Original Application No. 244 of 2017 (SZ)**

(Through Video Conference)

**IN THE MATTER OF**

Shefy Joseph,  
D/o. Late M.P. Joseph,  
Aged 29 years, Puthanpurackal House,  
Chembarakki, South Vazhakulam P.O.,  
Perumbavoor – via, Ernakulam District,  
Kerala State, Pin – 683 556.

...Applicant(s)

**Versus**

- 1) Government of India,  
Represented by its Secretary,  
Ministry of Environment, Forest and Climate Change,  
Pariyavaran Bhavan, CGO Complex,  
Lodhi Road,  
New Delhi - 110 003.
- 2) Government of Kerala,  
Represented by its Principal Secretary,  
Department of Environment,  
Government Secretariat,  
Thiruvananthapuram, Kerala – 695 001.
- 3) Geologist, Mining and Geology Department,  
Civil Station, Kakkanad, Ernakulam,  
Kochi, Kerala – 682 030.
- 4) M.D. Kuriakose, Madappillil House,  
Pazhanganad P.O., Kizhakkambalam – via,  
Ernakulam District, Kerala State – 683 562.

...Respondent(s)

For Applicant(s): None.

For Respondent(s): Mrs. Me. Saraswathy for R1.  
Mr. E. K. Kumaresan for R2 & R3.  
Mr. M. George Poonthottam Senior Adv. along with  
Mr. Shoban M Padmanaban for R4.

**Judgment Reserved on: 19<sup>th</sup> March, 2021.**

**Judgment Pronounced on: 27<sup>th</sup> May, 2021.**

**CORAM:**

**HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER**

**HON'BLE MR. SAIBAL DASGUPTA, 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 application has been filed by the applicant alleging certain irregularities committed by the 4<sup>th</sup> respondent in conducting the quarry in the place allotted to him. According to the applicant, his father namely, M.P. Joseph was in absolute possession, ownership and enjoyment of 2.10 Acres of property (84.98 Ares) comprised in Resurvey No.289/4 of Vengola Village, Kunnathunadu Taluk, Ernakulam District, by virtue of Document No.2922/1991 dated 12.08.1991 of the District Registrar Office, Ernakulam. Her father died on 24.06.2016 and his entire property devolved on his four daughters including the applicant and she is one of the legal heirs of said M.P. Joseph which is evidenced from Relationship Certification, Annexure A1. The 4<sup>th</sup> respondent is conducting a quarry in Survey No.285/2, 5,

288/1/3, 291/1, 2, 290/7, 289/1, 289/3-2, 3-4 in Vengola Village without obtaining Environmental Clearance (EC) causing severe threat and danger to the environment.

2. The 4<sup>th</sup> respondent had obtained annexure A2, Consent to Operate from Kerala State Pollution Control Board (KSPCB) dated 03.07.2012 valid up to 30.06.2015 and it was renewed upto 31.03.2016, evidenced by annexure A3, proceedings dated 19.06.2015. Later, the Kerala State Pollution Control Board (KSPCB) had issued Consent Variation Order dated 12.01.2016, evidenced by annexure A4, renewing the Consent to Operate upto 30.06.2018. The Village Officer, Vengola had issued the annexure A5, Possession Certificate dated 21.12.2017, enabling the 4<sup>th</sup> respondent to run the quarrying operation, as he was said to be in possession of the same. On account of the illegal mining conducted by the 4<sup>th</sup> respondent without obtaining Environmental Clearance (EC) had caused irreparable damage to the environment. Further, the property of the applicant's father is lying adjacent to the quarrying site of the 4<sup>th</sup> respondent where he conducting illegal mining. The fact that he was running the quarrying without obtaining Environmental Clearance (EC) was admitted by him in letter dated 28.02.2017, annexure A6 submitted before the Secretary, Vengola Grama Panchayat for getting license from the Panchayat. The Principal Bench of National Green Tribunal, New Delhi by virtue of annexure A7, Judgment dated 13.01.2015 in O.A. No.123/2014 and connected cases held that no quarrying/ mining shall be done, without obtaining Environmental Clearance (EC), relying on the decision of the Hon'ble Apex Court in ***Deepak Kumar Vs. State of Haryana (2012) 4 SCC 629.***

3. It was observed in Para 74 & 75 of the said Judgment that as per the directions of the Hon'ble Apex Court in Deepak Kumar's case, even persons

conducting quarrying operation of minor minerals having area of less than 5 Hectares must also obtain Environmental Clearance (EC). The Tribunal had rejected the contentions of the quarry owners that for existing quarries, it is not applicable and as per the Office Memorandums issued by the MoEF&CC dated 18.05.2012, 24.06.2013 and 24.12.2013, the extent which it was quashed was valid and would be enforceable against the existing mining leaseholders. They cannot be permitted to destroy the environment and ecology for their personal gains on the strength of the contention that they are existing units and these notifications and Office Memorandums would not apply to them. Several States have granted time to the existing leaseholders to apply for Environmental Clearance (EC), irrespective of the area of mining on the basis of the decision of the Hon'ble Apex Court and following directions were issued by the Principal Bench in Annexure A7,

Judgment as cited supra:-

- (i) *For the reasons afore recorded, we hold and declare that the Notification dated 9th September, 2013 is invalid and inoperative for non-compliance of the statutorily prescribed procedure under the Environment (Protection) Rules, 1986 and for absence of any justifiable reason for dispensation of such procedure.*
- (ii) *We also hold and declare that the Office Memorandums dated 24th June, 2013 and 24th December, 2013 to the extent aforeindicated are invalid and inoperative being beyond the power of delegated legislation.*
- (iii) *All the Office Memorandums and Notifications issued by MoEF i.e. 1st December, 2009, 18th May, 2012 and 24th June, 2013 and 24th December, 2013(except to the extent afore-stated) are operative and would apply to the lease mine holders irrespective of the fact that whether the area involved is more or less than 5 hectares.*
- (iv) *We further hold that the existing mining lease right holders would also have to comply with the requirement of obtaining Environmental Clearance from the competent authorities in accordance with law. However, all of them, if not already granted Environmental Clearance would be entitled to a reasonable period (say three months) to submit their applications for obtaining the same, which shall be disposed of expeditiously and in any case not later than six months from pronouncement of this judgment.*

- (v) *All the States and the Ministry of Environment and Forest shall ensure strict compliance to the directions issued by the Hon'ble Supreme Court in the case of Deepak Kumar (supra). We direct Secretary, Ministry of Environment and Forest to hold a meeting with the State of Rajasthan, Himachal Pradesh and Karnataka to bring complete uniformity in application of the above referred Notifications and Office Memorandums including the Notification of 2006.*
- (vi) *We direct that in the meeting it shall also discuss and appropriate recommendations be made and placed before the Tribunal, as to whether riverbed mining covering an area of less than 5 hectares can be permitted, if so, the conditions and regulatory measures that need to be adopted in that behalf.*
- (vii) *We direct that the District Environmental Committees constituted by the respective State Governments shall not discharge any functions and grant approval as contemplated under the Notification of 2006.*
- (viii) *Secretary, Ministry of Environment and Forest along with such experts and the States afore-referred will also consider the possibility of constituting the branches of SEIAA at the district or at least, division levels, to ensure easy accessibility to encourage the mine holders to take Environmental Clearance expeditiously.*
- (ix) *It is stated before us that in large number of cases, particularly in relation of State of Rajasthan, persons carrying on mining activity of minor minerals, non-coal mining and brick earth and ordinary earth have applied for obtaining Environmental Clearances in accordance with the terms and conditions of the Notification of 2006. Let all such applications be dealt with and orders passed by the concerned authorities at the earliest and in any case not later than six months from today.*
- (x) *We direct the respondent authorities, particularly SEIAA, to dispose of the application of all these private respondents who have already filed applications seeking Environmental Clearance as expeditiously as possible, in any case not later than three months from today. Thus, Appeal No. 23/2014 and M.A. No. 469/2014, M.A. No. M.A No. 488/2014, 489/2014, 479/2014, 480/2014, 473/2014, 470/2014, 471/2014 and 469/2014 stand disposed of with the above directions. Till the grant of environmental clearance they would not carry out any activity of marble mining.*
- (xi) *We dispose of Original Application No. 123/13 with a direction that SEIAA shall consider the applications filed for seeking Environmental Clearance in accordance with law and observations made in this judgment, expeditiously, and in any case within a period of three months from today.*
- (xii) *In the meanwhile, no State shall permit carrying on of sand mining or minor mineral extraction on riverbed or otherwise without the*

*concerned person obtaining Environmental Clearance from the competent authority.*

*(xiii) We direct the Ministry of Environment and Forest to issue comprehensive but self-contained Notification relating to all minor mineral activity on the riverbed or otherwise, to avoid unnecessary confusion, ambiguities and practical difficulties in implementation of the environmental laws.*

*(xiv) In light of the judgment of the Supreme Court and what has emerged from the various cases that are subject matter of this Judgment, we direct the Ministry of Environment and Forest to formulate a uniform cluster policy in consultation with the States for permitting minor mineral mining activity including, its regulatory regime, in accordance with law.”*

4. Further, while disposing the M.A. No.260 of 2017 in O.A. No.123/2014 by annexure A8 - Judgment dated 18.04.2017, dismissed the application holding that the economic development and sustainable development must be considered on balanced approach and it should not cause any irretrievable damage to the environment and ecology and rejected the contentions that, no Environmental Clearance (EC) is required for the existing lease till their renewal and it was not accepted.

5. According to the applicant, the running of the quarry by the 4<sup>th</sup> respondent without Environmental Clearance (EC) is illegal. Though this was brought to the notice of the official respondents, they have not taken any steps. So, the 4<sup>th</sup> respondent is responsible for the damage caused to environment on account of the unauthorized operation of the mining without obtaining Environmental Clearance (EC).

6. So, the applicant filed this application seeking the following reliefs:-

*(i) Issue any appropriate order or direction commanding the respondents 1 to 3 to restrain the 4<sup>th</sup> respondent from conducting the quarrying operations, without Environmental Clearance*

*(ii) Issue any appropriate order or direction commanding the respondents 1 to 3 to ascertain the damages caused by the 4<sup>th</sup> respondent to the environment, consequent to the quarrying*

*done without EC, and to recover the loss caused by the 4<sup>th</sup> respondent to the environment, forthwith*

*(iii) Issue any appropriate order or direction, in favour of the applications, as this Hon'ble Tribunal deems fit in the facts and circumstances of the above O.A."*

7. The 1<sup>st</sup> respondent filed reply affidavit contending that the applicant alleged in the application that the 4<sup>th</sup> respondent is carrying out illegal mining operation of granite stone without obtaining Environmental Clearance (EC) in Vengola Village, Kerala and he had obtained valid consent from the Kerala State Pollution Control Board (KSPCB) which was valid upto 30.06.2018. The 1<sup>st</sup> respondent/Ministry had issued EIA Notification, 2006 dated 14.09.2006, which is superseded the old EIA Notification dated 27.01.1994. As per the EIA Notification, 2006, certain projects are expected to obtain prior Environmental Clearance (EC) before any construction work in case of new projects or expansion and modernization of existing projects or activities. The schedules to the notification detail the categories/ projects/ activities which require prior Environmental Clearance (EC). As per the notification, the projects were divided into two categories namely, Category 'A' and Category 'B', based on the spatial extent of potential impacts and potential impacts on human health, natural and man-made resources. All projects/activities included as Category 'A' in the schedule, including expansion and modernization of existing projects/activities and change in product mix, shall require prior Environmental Clearance (EC) from the Central Government in the Ministry of Environment, Forests & Climate Change (MoEF&CC) on the recommendations of Expert Appraisal Committee (EAC) to be constituted by the Central Government for this purpose. All projects/ activities coming under Category 'B' includes expansion and modernization of existing projects/ activities as specified in

Sub Paragraph (ii) of Paragraph 2, or change in product mix as specified in sub paragraph (iii) of Paragraph 2, but excluding those which fulfil the General Conditions stipulated in the schedule will require prior Environmental Clearance (EC) from the State/Union Territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the basis of the recommendations of a State or Union Territory Level Expert Appraisal Committee (SEAC) to be constituted as per the notification. In the absence of a duly constituted State Environment Impact Assessment Authority (SEIAA) or State Expert Appraisal Committee (SEAC), Category 'B' project shall be treated as a Category 'A' project and Environmental Clearance (EC) shall be obtained from the MoEF&CC. Further, as per the amended EIA Notification, 2006 dated 15.01.2016, mandated Environmental Clearance (EC) for all mining projects irrespective of the lease area and nature of mineral including existing projects, such that 'B2' Category projects pertaining to mining of minor mineral of lease area less than or equal to five hectares shall require prior Environmental Clearance (EC) from District Environment Impact Assessment Authority (DEIAA) which shall base its decision on the recommendations of the District Expert Appraisal Committee (DEAC) as constituted under this notification evidenced by annexure R1 (A) Notification dated 15.01.2016. The Expert Appraisal Committee (EAC) at the levels shall screen, scope and appraise projects or activity in Category 'A', 'B1', 'B2' and 'B2' projects for mining of minor minerals. The proposal of mining lease area less than and equal to five hectares are dealt at District Level by DEIAA/DEAC. They shall meet atleast once in a month. The State Pollution Control Board is the nodal authority in the State for dealing with cases related to pollution or environment management coming under the purview of Water

(Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 and as per the requirements of the EIA Notification, 2006 as amended, should have insisted upon the requirements of Environmental Clearance (EC) for all mining projects post 15.01.2016. It is also obligatory on the part of mining operators to obtain valid permission under various statutes including Environmental Clearance (EC). In case, the 4<sup>th</sup> respondent is carrying out mining operation, even after consent from SPCB without prior Environmental Clearance (EC), then it will amount to violation of EIA Notification, 2006 and the operations are liable to be stopped immediately. The mining operation shall not be allowed to continue till such time Environmental Clearance (EC) is obtained. The State Department of Mines and Geology is the nodal authority entrusted with the enforcement and regulation of mining operations in the State, including illegal mining. Since the area falls within the jurisdiction of the State Level Environment Impact Assessment Authority (SEIAA), the Central authority has no role and they are unnecessary party to the proceedings. So, they prayed for passing appropriate orders accepting their contentions.

8. The 2<sup>nd</sup> respondent filed counter statement contending that as per the orders of the Hon'ble Tribunal in several cases, it was made clear that for the existing leaseholders, Environmental Clearance (EC) mandates only for renewal and hence, the functioning of the 4<sup>th</sup> respondent quarry with valid mineral concession 'without Environmental Clearance' cannot be defined as illegal. The quarrying lease was granted to the 4<sup>th</sup> respondent in the name of M/s. Cochin Granites, West Vengola P.O., Perumbavoor for quarrying of Granite Building Stones in Survey Nos.285/2-2, 285/5-4, 288/1-1, 290/7 pt, 288/3 pt, 291/1 pt and 291/2 pt, Block 21 of Vengola Village, Kunnathunad

Tank, Ernakulam District for a period of 12 years with a validity upto 12.12.2018. The permission vide order No.388/4209/2006-07/M3/06 dated, 15.09.2006 was granted by the Director of Mining and Geology as per the Kerala Mineral Concession Rules, 1967 satisfying all the stipulated conditions as per Rules. The lessee opted for payment of consolidated royalty as per Rule 89 and registered as per Registered Metal Crusher Unit (RMCU) as per Reg. No.96/2018-19/RMCU/EKM/3782/M3/2018 dated, 28.03.2018. The 4<sup>th</sup> respondent had acquired the statutory documents such as Explosive License with validity upto 31.03.2020, D&O license from concerned panchayath with validity upto 31.03.2018 and Consent to Operate from Kerala State Pollution Control Board (KSPCB) with validity upto 30.06.2018. This Court has made it clear in several occasions that for existing lease holders, Environmental Clearance (EC) mandates only for renewal of land and hence, the functioning of the 4<sup>th</sup> respondent's quarry with valid mineral concession 'without Environmental Clearance' cannot be defined as illegal. Since the existing lease was granted prior to 18.05.2012, the Environmental Clearance (EC) is not a requisite license in the case of the 4<sup>th</sup> respondent. So, the 4<sup>th</sup> respondent was permitted to conduct quarrying as per the prevailing rules. In the meanwhile, a new quarrying lease was granted to the 4<sup>th</sup> respondent for 4.4603 Hectares of land in Block 21, Sy. Nos.288/4-2 pt, 288/3 pt, 291/1 pt, 291/2 pt, 291/4 pt, 297/1-2 pt, 297/2 pt, 299/1 pt, 299/5 pt, 289/4 pt, 290/8 pt, 290/9 pt, 290/10 pt and 290/7pt of Vengola Village, Kunnathunad Taluk. The quarrying lease was granted by the Director of Mining and Geology as per the Kerala Minor Mineral Concession Rules, 2015 (vide order No.86/2018-19/5486/M3/DMG dated 05.05.2018) for a period of 5 years having validity upto 08.05.2023. The lease was granted as per Rules on submission of all the requisite

documents including approved mining plan and Environmental Clearance (EC) obtained from the District Environment Impact Assessment Authority (DEIAA). The Environmental Clearance (EC) (No.P/6508/2017/DIA/KL/MIN/8877/2017 dated 19.03.2018) was granted for aforesaid quarrying area for a validity period of 5 years or the expiry of quarrying lease period issued by the Kerala Government, whichever is earlier. The respondent had obtained requisite valid documents for functioning of the quarry in the said lease, the details of which is enumerated as follows:-

- (i) Quarrying lease – Validity upto 08.05.2023.
- (ii) Consent to Operate from Kerala State Pollution Control Board validity upto 18.03.2023.
- (iii) D&O License – Validity upto 31.03.2019.
- (iv) Explosive License – Validity upto 31.03.2020.
- (v) Environmental Clearance – Validity upto 18.03.2023.

9. On the grant of new quarrying lease, Quarrying Lease No.388/4209/2006-07/M3/06 dated 15.09.2006 stands cancelled vide order No.85/2018-19/5486/M3/2017/DMG dated 05.05.2018 of Director of Mining and Geology. The quarry in the said lease area was functioning as Registered Metal Crusher Unit as per the Registration No.96/2018-19 RMCU/EKM/3/2018 dated 31.05.2018, on opting for payment of consolidated royalty as per Rule 89 of Kerala Minor Mineral Concession Rules, 2015. The 4<sup>th</sup> respondent was conducting the quarry unit with all necessary documents and as such, it cannot be said to be an illegal and their functioning cannot be stopped as requested for in the application. They prayed for dismissal of the application.

10. The 4<sup>th</sup> respondent filed counter affidavit contending that the application is not maintainable as it was filed with ulterior motive without having any real interest in protecting the environment so as to pressurize the 4<sup>th</sup> respondent to meet the illegal demands of the applicant. She tried to compel him to purchase alleged share in the land said to be covered by the Document No.2922/1991 for an unconscionable price as a condition for her abstinence from resisting quarrying in respect of which the application was filed. He denied the allegations that the applicant's father M.P. Joseph was in absolute possession and enjoyment of 2.10 acres of property comprised in resurvey No.289/4 of Vengloa Village as per Document No.2922/1991 of District Registry, Ernakulam. They also denied the allegation that the death of M.P. Joseph on 24.06.2016, entire property was succeeded to his four daughters including the applicant and thereby she is also having interest and title in the property. According to the 4<sup>th</sup> respondent, annexure A1 - Document is an invalid document to prove succession and claim title to the property and that document is nothing to do with the title and ownership comprised in resurvey No.289/4 of Vengola Village. Since this respondent was not amenable for the proposal made by the applicant and her husband to purchase her share in the said land in respect of which no original title deeds were available with her and other legal heirs did not say anything about her right in the property, she filed this application to coase him to purchase her share in the property. The quarrying is being done by the 4<sup>th</sup> respondent as a partnership firm under the name and style of "**Cochin Granites**", for which, he had obtained all necessary permission for conducting quarry. The allegations that quarrying in survey No. 285/2, 285/5, 288/1/3, 291/1, 291/2, 290/7, 289/1, 289/3-2, 289/3-4 without obtaining Environmental Clearance (EC) was causing very severe threat and danger to the environment is not

correct and hence denied. The quarrying in dispute is being operated with all required permits and licences. The Environmental Clearance (EC) was not required to the said quarry, which was commenced prior to 2012, till its renewal. The allegation that the illegal mining is being done by this respondent without Environmental Clearance (EC), is illegal and unauthorized are not correct and this accordance with the approved mining plan without causing any pollution beyond the statutory limit. The allegations that the property inherited by the applicant is lying adjacent to the quarrying site are not fully correct and thereby causing severe environmental issue is also not correct. Annexure A6 produced by the applicant cannot be used to prove that the 4<sup>th</sup> respondent is conducting the quarry illegally. It is admitted that there was no Environmental Clearance (EC) for quarrying obtained by the 4<sup>th</sup> respondent and as per their letter, they have only mentioned that panchayat cannot insist for production of EC certificate for processing D&O licence.

11. The allegation in Para 7 of the application were denied and the dictum laid down in the decision relied on in O.A. No. 123/2014 is not applicable to the facts of the case. In *Deepak Kumar Vs. State of Haryana* it has been made clear that obtaining Environmental Clearance (EC) is required only on the renewal of a mining lease. Further, as per Judgment in *All Kerala River Protection Council Vs. State of Kerala*, the Hon'ble High Court of Kerala had clarified that the mining lease commenced prior to Deepak Kumar's case need not to obtain Environmental Clearance (EC) till the renewal of the lease. Actually, during the hearing in the said case, the Kerala Minor Mineral Concession Rules, 1967 was replaced by the Minor Mineral Concession Rules, 2015. The ratio therein was applied directly in *Paristhithy Samrakshana Janakeeya Samithy & Anr. Vs. State of Kerala*

*& Ors.* wherein, it has been held that even in the matter of permitted quarries, if they had valid permit upto 09.01.2015, they can continue without Environmental Clearance (EC) till the tenure of permit. This was in tune with the benefit granted by Rule 12 of the Minor Mineral Concession Rules, 2015. The challenge against the said Judgment before the Hon'ble Apex Court in *SL.P. No.30103/2015* was dismissed. So, it is clear from this, the Hon'ble Apex Court had stuck to its earlier stand that Environmental Clearance (EC) is not mandatory for mining lease, which commenced prior to Deepak Kumar's case. So, the averments in Para 8 of the application and the Annexure A8 - Judgment relied on by the applicant is not applicable to the facts of this case. The Kerala State had redrafted the Minor Mineral Concession Rules in 2015, incorporating additional conditions to protect environment by mineral conservation. The quarry of the 4<sup>th</sup> respondent has been following the statutory requirements, including mining plan, even in respect of the then existing quarry for conducting the quarrying operations as on the date of the above application. The said Concession Rules, 2015 also does not mandate that there should be Environmental Clearance (EC) for conducting with the quarrying activities under a valid lease commenced prior to Deepak Kumar's case. The application is barred by limitation and the allegation that she came to know about the conduct of 4<sup>th</sup> respondent quarrying only recently without Environmental Clearance (EC) on 14.08.2014 is false and hence denied. The allegations in the application projecting her as an environmentalist is not genuine. Some of the pseudo environmentalist had approached the Hon'ble Kerala Lok Ayuktha by filing Complaint C 874/2017-D alleging that due to illegal quarrying, there were several environmental violations with the aid of official respondents. The Hon'ble Kerala Lok Ayuktha through its investigation agency headed by the

Superintendent of Police conducted a surprise inspection and detailed investigation and they submitted Annexure R4 (a) Report to the Kerala Lok Ayuktha holding that the quarrying conducted by the 4<sup>th</sup> respondent unit did not cause any pollution to the environment and they are complying with all the environmental norms. Since there was some threat made by the pseudo environmentalist for demanding money, on the basis of the complaint given by the 4<sup>th</sup> respondent, the Station House Officer of Perumbavoor Police Station, Kerala registered a Criminal Case as Crime No.3813/2017 against them and they were arrested and produced before the learned Magistrate who had ordered to remand them to the Judicial custody. Some of the colleagues of the applicant move the Hon'ble High Court of Kerala to stop the quarrying operation of the 4<sup>th</sup> respondent but that was in vain. As an abundant caution, the Cochin Granites had already stopped the disputed quarry which was being run on the basis of the Lease Order bearing Nos.388/4209/2006/07/M3/06 dated 15.09.2006. The EIA Notification, 2006 was not applicable as it was the lease for an area less than 5 Hectares evidenced by annexure R4(b) which was valid up to 14.09.2018. The said quarrying was being done with consent from the Pollution Control Board after satisfying with all the parameters for preventing pollution. The EIA Notification, 2006 is contrary to the provisions of Section 3, 5 r/w Section 6 of the Environment (Protection) Act, 1986 and Rule 5 (3) of the Environment (Protection) Rules, 1986. The Environment (Protection) Act, 1986 does not take in the activities of MMDR Act, 1957. Further, there was no valid notification which prohibits or restricts any quarrying in the land covered by annexure R4 (b). As an abundant caution, the said Cochin Granites had applied for Environmental Clearance (EC) and the same has been granted, evidenced by annexure R4 (c). As per the proceedings of the

DEIAA Ernakulam, after several rounds of public hearing permitted by the Hon'ble High Court of Kerala. It is only after evaluating the possible pollution that is likely to be caused on account of the quarrying operation of the 4<sup>th</sup> respondent in the disputed area that the Environmental Clearance (EC) was granted. Later, the quarry in dispute was stopped by cancelling the lease arrangement as per annexure R4 (b) Order. Now, a fresh lease has been executed in favour of Cochin Granites and fresh quarry is working in tune with the conditions prescribed in the annexure R4(c) and the fresh lease deed executed bearing No.2209/2018 of District Registrar Ernakulam in favour of the Cochin Granites was produced as annexure R4(d). The 4<sup>th</sup> respondent is conducting the quarrying operation in accordance with law and there was no violation of environmental laws and there was no pollution caused on account of the quarrying operation and the 4<sup>th</sup> respondent prayed for dismissal of the application.

**12.**No rejoinder was filed by the applicant to the same.

**13.**On several occasions, though the matter was posted for hearing, there was no representation for the applicant and several opportunities have been given to the applicant to appear by adjourning the case and ultimately, it was taken up on 19.03.2021 and on that day also, there was no representation for the applicant.

**14.**Though the applicant was not present on several occasions, in view of the enabling provision in the National Green Tribunal Act, 2010 namely, Rule 20 of the National Green Tribunal (Practice and Procedure) Rules, 2011, the Tribunal may in its discretion either dismiss such application or appeal for default or hear and decide it on merit. Since environmental issue has been raised in this matter, this Tribunal feels that instead of dismissing the application for default, it is better to consider and pass appropriate orders,

after hearing the counsel appearing for the respondents and dispose the matter on merit.

**15.** Heard Mrs. Me. Saraswathy counsel appearing for the 1<sup>st</sup> respondent, Mr. E.K. Kumaresan counsel appearing for respondents 2 & 3 and Mr. George Poonthotam, Senior Advocate along with Mr. Shoban M Padmanabhan counsel appearing for 4<sup>th</sup> respondent.

**16.** The learned counsel appearing for the 1<sup>st</sup> respondent argued that as per EIA Notification, 2016 dated 15.01.2016, even the existing quarry owners are expected to obtain Environmental Clearance (EC) irrespective of the area of lease and this was necessitated on the basis of the directions issued by the Hon'ble Apex Court in Deepak Kumar's case and also by several directions issued by the Principal Bench of National Green Tribunal in this regard. So, according to the learned counsel appearing for the 1<sup>st</sup> respondent that if the 4<sup>th</sup> respondent was operating the quarry after 15.01.2016 without getting Environmental Clearance (EC), then it is an illegal operation.

**17.** The learned counsel appearing for the respondents 2 & 3 argued that the Hon'ble High Court of Kerala has held in *All Kerala River Protection Council Vs. State of Kerala & Ors.* reported in *2015 (2) KLT 78 = MANU/KE/0345/2015* dated 23.03.2015 that Deepak Kumar's case is not applicable to the existing leases of quarrying and that will apply only to fresh lease.

**18.** The learned counsel further argued that a reading of the Official Memorandum issued by the MoEF&CC and the provisions of the Kerala Minor Mineral Concession Rules, 2015, it is not mandatory for the existing quarry owners who were operating prior to Deepak Kumar's case or prior to the Kerala Minor Mineral Concession Rules, 2015 to obtain Environmental Clearance (EC) and they need only to obtain Environmental Clearance (EC)

at the time of renewal. So, the contention of the applicant that the operation of the 4<sup>th</sup> respondent unit without Environmental Clearance (EC) is not valid in law and the applicant is not entitled to get any of the reliefs claimed.

**19.**The learned Senior Advocate Mr. George Poonthotam appearing for the 4<sup>th</sup> respondent argued that the lease was in existence since long time and the applicant filed the application with ulterior motive. Further, the Deepak Kumar's case is not applicable to the existing leases and even as per the subsequent notification issued by the MoEF&CC on the basis of the Deepak Kumar's case, the Environmental Clearance (EC) is required only for new quarrying operations or new activities and it is not necessary for the existing quarry owners having less than 5 Hectares mining area and the Hon'ble High Court in *All Kerala River Protection Council* case mentioned supra held that the existing quarry owners need not obtain Environmental Clearance (EC) for continuing their operation and they need only to obtain Environmental Clearance (EC) only at the time of renewal of their lease or if any modernization or other activities were intended by them.

**20.**The learned Senior Advocate further argued that the same view was reiterated by the Hon'ble Kerala High Court in *Paristhithy Samrakshana Janakeeya Samithy & Anr. Vs. State of Kerala & Ors.* an attempt made by the applicant and other alleged natural lovers by filing various proceedings before the various authorities including the High Court were entered against them and this was filed thereafter to wreck vengeance against the 4<sup>th</sup> respondent, as he was not amenable for the illegal demands made by the applicant to purchase her alleged share in the neighbouring property. However, for some time, he had stopped operation of the quarry and thereafter, he get a fresh lease and he obtained Environmental Clearance (EC) on 19.03.2018 which was issued by District Environment Impact

Assessment Authority (DEIAA) after consideration of all aspects and objections raised by the local people. Even prior to that, they were operating the unit with necessary consent from the Pollution Control Board which was the only condition required for running the quarry and the crusher unit. There is no pollution caused on account of the operation of the 4<sup>th</sup> respondent unit which is evidenced from the report submitted by the investigation agency appointed by the Kerala Lok Ayuktha when a complaint was filed regarding the operation of the 4<sup>th</sup> respondent unit. Further, since the Hon'ble High Court has already held that no Environmental Clearance (EC) is required for existing leases, the question of directing to pay environmental compensation as opined by this Tribunal also did not arise for consideration.

**21.** The points that arise for consideration are:-

- (i) Whether the operation of the 4<sup>th</sup> respondent unit is unauthorized for want of Environmental Clearance (EC) in view of the dictum laid down by the Hon'ble Apex Court in Deepak Kumar's case?
- (ii) Whether the 4<sup>th</sup> respondent is liable to pay any environmental compensation?
- (iii) Whether the applicant is entitled for any of the reliefs claimed in the application?

**Points:-**

**22.** The allegation in the application was that the 4<sup>th</sup> respondent was conducting mining operation without obtaining Environmental Clearance (EC) especially, after the dictum laid down in the decision reported in Deepak Kumar's case by the Hon'ble Apex Court and also by orders of the Principal

Bench of National Green Tribunal, New Delhi in O.A. No.123 of 2014 dated 18.04.2017.

**23.**It is an admitted fact that the 4<sup>th</sup> respondent was conducting quarrying operation in 285/2, 5, 288/1/3, 291/1, 2, 290/7, 289/1, 289/3-2, 3-4 in Vengloa Village prior to 2012. Prior to 2012 Judgment in Deepak Kumar Case, there was no obligation on part of the mining lease holders having lease area less than 5 Hectares to obtain Environmental Clearance (EC). Only, leaseholders having more than 5 Hectares are mandated to obtain Environmental Clearance (EC) for establishing the mining operation. It is after *Deepak Kumar Vs. State of Haryanan 2012 (4) SCC 629* case that it became mandatory for obtaining Environmental Clearance (EC) irrespective of the area of operation.

**24.**It is also an admitted fact that after Deepak Kumar's case, certain official memorandums have been issued by the Ministry of Environment, Forests & Climate Change (MoEF&CC) during the year 2012-13 clarifying that existing mine operators of having less than 5 Hectares of minor minerals, need not obtain Environmental Clearance (EC) and they need apply for Environmental Clearance (EC) only at the time of renewal or at the time of expansion of their unit more than the capacity permitted under the lease. This aspect has been considered by the Hon'ble High Court of Kerala in *All Kerala River Protection Council Vs. State of Kerala &Ors.* and other connected cases reported in *2015 (2) KLT 78 = MANU/KE/0345/225* dated 23.03.2015 wherein, the Division Bench of High Court of Kerala considered all the notifications till then issued and also considered the impact of the decision in Deepak Kumar's case and considered the question as to whether for existing leaseholders, there is no necessity for obtaining Environmental Clearance (EC) and the Environmental Clearance (EC) is required only at

the time of renewal in view of the EIA Notification, 2016 dated 14.09.2016 and after the elaborate discussion, came to that conclusion and disposed of the matter with the following directions:-

*“82. In view of the foregoing discussion, we come to the following conclusions.*

*(i) In case where quarrying/mining/lease which were existing on the date of issuance of Notification dated 14.09.2006 or on the date of issue of the order dated 18.05.2012 by the Government of India, Ministry of Environment and Forests with regard to area less than 5 hectares no environmental clearance with regard W.P(C) No.31148 of 2014 & connected cases to extraction of minor mineral is required. Notification dated 14.09.2006 contemplated obtaining environmental clearance only with regard to new projects/new activities.*

*(ii) Government Order dated 10.01.2014 cannot be relied on by the parties in view of the restraint order issued by the National Green Tribunal dated 27.09.2013 till such time the restraint order continues.*

*(iii) By amendment of Section 14 by Act 37 of 1986 making Section 4 applicable to minor minerals also the provision contained in Section 4 shall be applicable to mining operations by a person holding mining lease or any other kind of mineral concession. It cannot be accepted that mining operation with effect from 10.02.1987 cannot be continued by a person holding any other mineral concession apart from mining lease.*

*(iv) Judgment of the Apex Court in Deepak Kumar's case (supra) did not contemplate environmental clearance for an area less than 5 hectares with regard to existing mining lease/mining permits on the date of judgment. Paragraph 29 of the judgment clearly directed that leases of minor minerals including their renewal for an area of less than five hectares be granted by the State/Union Territories only after getting environmental clearance.*

*(v) Environmental clearance as contemplated by Notification dated 14.09.2006 required environmental clearance for new projects/new activities.*

*(vi) The Notification dated 14.09.2006 having been applied vide order dated 18.05.2012 of the Government of India, Ministry of Environment and Forests all mining operations for new project and new activities for an area less than 5 hectares after 18.05.2012 required environmental clearance carried through either a mining lease or mining permit.*

*(vii) Interim order passed by the Apex Court on 27.01.2012 was intended by the Supreme Court to operate till the Rules have been framed by the States taking into consideration the guidelines and recommendations of the Ministry of Environment and Forests.*

(viii) *As per Rule 68 no mining/quarrying operations can be permitted without there being an approved mining plan. But such rule is subject to exception as engrafted in Rule 66, i.e., for existing lease holders, time has been allowed to submit mining plan.*

**83.** *Now we come to Issue No. IX, reliefs which the petitioners are entitled to.*

**84.** *In view of foregoing discussions, we dispose of all the Writ Petitions including one Writ Appeal in the following manner:*

(i) *Writ Petitions relating to Group - I, Public Interest Litigations are disposed of in accordance with our conclusions and directions contained in paragraph 82.*

(ii) *All the Writ Petitions relating to Group - II, challenging quarrying operations by private individuals are disposed of with a direction to the District Collector to examine the right of quarrying owners/mining permit owners (private respondents) to carry mining operations and to issue necessary clarifications/clearance only after being satisfied that such mining operations are in accordance with the 2015 Rules as well as the observations made by this Court in the present case.*

(iii) *Writ Petitions of Groups - III & IV (except WP(C).No.7632 of 2014), by quarry owners as well as quarry owners seeking police protection are disposed of giving liberty to the petitioners to approach the District Collector for carrying on mining operations which clearance shall be issued by the District Collector only after being satisfied that they are entitled to carry mining operations as per the 2015 Rules and the observations made by this Court in the present case.*

(iv) *W.P(C).No.7632 of 2014 is dismissed upholding the order of State Government dated 19.2.2014 cancelling the quarry lease.*

(v) *All the three cases of miscellaneous Group are disposed of in the following manner:*

(a) *W.P(C) No.4462 of 2014 is disposed of giving liberty to the petitioner to submit appropriate application before the competent authority seeking permit of ordinary earth as per the 2015 Rules.*

(b) *Writ Appeal No.1566 of 2014 is dismissed giving liberty to the appellant to make fresh application before the Panchayat for obtaining licence under the Kerala Panchayat Raj Act after obtaining necessary permit for quarrying operations in accordance with the 2015 Rules.*

(c) *W.P(C) No.2636 of 2015 is dismissed having become infructuous due to enforcement of 2015 Rules with effect from 07.02.2015.”*

**25.** **The question whether for getting temporary permit and conduct quarrying on that basis, Environmental Clearance (EC) was required or not was**

considered by the Division Bench of Kerala High Court in W.P.C. No.10694/2015 in ***Paristhithy Samrakshana Janakeeya Samithy & Anr. Vs. State of Kerala & Ors.*** wherein, the Division Bench of the High Court of Kerala has observed that the party respondents therein should not carry on any mining operations unless they obtain valid permit along with Environmental Clearance (EC) and the provisions of the Mines Act, 1952 and Metalliferous Mines Regulations, 1961 as far as applicable to the mining operation is to be followed in its letter and spirit and if there is any violation, then the same will have to be dealt with in accordance with law.

26. It is also observed therein that under Rule 12 of the Minor Mineral Concession Rules, 2015, obtaining of Environmental Clearance (EC) need not be insisted, only when the applicant had valid permit as on 09.01.2015. After 09.01.2015, for valid permit for carrying on mining operation, obtaining of Environmental Clearance (EC) is a pre condition. Only those permits can take benefit of Rule 12 first proviso which were having valid permit as on 09.01.2015.

27. The Judgment of the Hon'ble Kerala High Court dated 30.09.2015 in ***Paristhithy Samrakshana Janakeeya Samithy & Anr. Vs. State of Kerala & Ors.*** (W.P.C. NO.10694/2015) was confirmed by the Hon'ble Apex Court in Special Leave to Appeal No.30130/2015 ***T.K. Thomas & Ors. Vs. Paristhithy Samrakshana Janakeeya Samithy & Ors.*** dated 02.12.2016.

28. The learned Senior counsel appearing for the 4<sup>th</sup> respondent relying on the decision of the Kerala High Court cited supra for the proposition that there is no necessity to obtain Environmental Clearance (EC) for leaseholders having mining area less than 5 Hectares and that is required only at the time of renewal of the lease.

29. It may be mentioned here that it was thereafter the Principal Bench of National Green Tribunal in M.A. No.419/2014 in O.A. No.123/2014 and other connected cases (***Himmat Singh Shekhaswat Vs. State of Rajasthan & Ors.***) disposed of the case with following directions:-

- (i) *For the reasons afore recorded, we hold and declare that the Notification dated 9th September, 2013 is invalid and inoperative for non-compliance of the statutorily prescribed procedure under the Environment (Protection) Rules, 1986 and for absence of any justifiable reason for dispensation of such procedure.*
- (ii) *We also hold and declare that the Office Memorandums dated 24th June, 2013 and 24th December, 2013 to the extent aforeindicated are invalid and inoperative being beyond the power of delegated legislation.*
- (iii) *All the Office Memorandums and Notifications issued by MoEF i.e. 1st December, 2009, 18th May, 2012 and 24th June, 2013 and 24th December, 2013(except to the extent afore-stated) are operative and would apply to the lease mine holders irrespective of the fact that whether the area involved is more or less than 5 hectares.*
- (iv) *We further hold that the existing mining lease right holders would also have to comply with the requirement of obtaining Environmental Clearance from the competent authorities in accordance with law. However, all of them, if not already granted Environmental Clearance would be entitled to a reasonable period (say three months) to submit their applications for obtaining the same, which shall be disposed of expeditiously and in any case not later than six months from pronouncement of this judgment.*
- (v) *All the States and the Ministry of Environment and Forest shall ensure strict compliance to the directions issued by the Hon'ble Supreme Court in the case of Deepak Kumar (supra). We direct Secretary, Ministry of Environment and Forest to hold a meeting with the State of Rajasthan, Himachal Pradesh and Karnataka to bring complete uniformity in application of the above referred Notifications and Office Memorandums including the Notification of 2006.*
- (vi) *We direct that in the meeting it shall also disused and appropriate recommendations be made and placed before the Tribunal, as to whether riverbed mining covering an area of less than 5 hectares can be permitted, if so, the conditions and regulatory measures that need to be adopted in that behalf.*
- (vii) *We direct that the District Environmental Committees constituted by the respective State Governments shall not discharge any functions and grant approval as contemplated under the Notification of 2006.*
- (viii) *Secretary, Ministry of Environment and Forest along with such experts and the States afore-referred will also consider the possibility of*

*constituting the branches of SEIAA at the district or at least, division levels, to ensure easy accessibility to encourage the mine holders to take Environmental Clearance expeditiously.*

- (ix) *It is stated before us that in large number of cases, particularly in relation of State of Rajasthan, persons carrying on mining activity of minor minerals, non-coal mining and brick earth and ordinary earth have applied for obtaining Environmental Clearances in accordance with the terms and conditions of the Notification of 2006. Let all such applications be dealt with and orders passed by the concerned authorities at the earliest and in any case not later than six months from today.*
- (x) *We direct the respondent authorities, particularly SEIAA, to dispose of the application of all these private respondents who have already filed applications seeking Environmental Clearance as expeditiously as possible, in any case not later than three months from today. Thus, Appeal No. 23/2014 and M.A. No. 469/2014, M.A. No. M.A No. 488/2014, 489/2014, 479/2014, 480/2014, 473/2014, 470/2014, 471/2014 and 469/2014 stand disposed of with the above directions. Till the grant of environmental clearance they would not carry out any activity of marble mining.*
- (xi) *We dispose of Original Application No. 123/13 with a direction that SEIAA shall consider the applications filed for seeking Environmental Clearance in accordance with law and observations made in this judgment, expeditiously, and in any case within a period of three months from today.*
- (xii) *In the meanwhile, no State shall permit carrying on of sand mining or minor mineral extraction on riverbed or otherwise without the concerned person obtaining Environmental Clearance from the competent authority.*
- (xiii) *We direct the Ministry of Environment and Forest to issue comprehensive but self-contained Notification relating to all minor mineral activity on the riverbed or otherwise, to avoid unnecessary confusion, ambiguities and practical difficulties in implementation of the environmental laws.*
- (xiv) *In light of the judgment of the Supreme Court and what has emerged from the various cases that are subject matter of this Judgment, we direct the Ministry of Environment and Forest to formulate a uniform cluster policy in consultation with the States for permitting minor mineral mining activity including, its regulatory regime, in accordance with law.”*

**30.** Further, the Principal Bench of National Green Tribunal in M.A. No.260/2017 in O.A. No.123/2014 (*Himmat Singh Shekhaswat Vs. State of Rajasthan &Ors.*) in the matter of State of Tamil Nadu declined to extent

time for applying for Environmental Clearance (EC) by the existing leaseholders and dismissed that application.

**31.**After the orders of the Principal Bench, the MoEF&CC has issued further notification amending Item 1 (a) of Schedule 1 of EIA Notification, 2006 by notification dated 15.01.2016 whereby, Environmental Clearance (EC) irrespective of mining lease area was made mandatory even for existing mining leases.

**32.**This aspect was considered by this Bench in *O.A. No.136/2017 (Tamil Nadu Small Mine Owners Federation Vs. The Secretary, MoEF&CC, New Delhi and Ors.)* and by Judgment dated 30.06.2020, after considering all the notifications issued in this regard and also the Judgment of the Hon'ble Apex Court and the Principal Bench of National Green Tribunal observed that after 15.01.2016, all existing mining leaseholders whether minor or major mineral irrespective of the area of lease has to obtain Environmental Clearance (EC) for continuance of their operation and further held that, those who have not filed application prior to 31.03.2016, will be considered as a violation case.

**33.**The judgment relied on by the senior counsel appearing for the 4<sup>th</sup> respondent was decided on the basis of the then existing rules which does not insist for Environmental Clearance (EC) for existing mining lease area of less than 5 hectares and even the amended notification issued thereafter in respect of the same where also an exemption was provided for existing mining lease holders permitting them to obtain Environmental Clearance (EC) at the time of renewal.

**34.**So, it was under such circumstances, the Hon'ble High Court of Kerala held that those mining leases have less than 5 Hectares which were in existence prior to Deepak Kumar's case need not obtain Environmental Clearance

(EC) for their continuance and they need obtain Environmental Clearance (EC) only at the time of their renewal.

**35.** But the position has changed after 15.01.2016 notification whereby, even for existing mining leases irrespective of the area, Environmental Clearance (EC) was made mandatory and one time measure by Notification of 2017, an opportunity was given to the parties to apply for getting Environmental Clearance (EC) as violation case and that part of the notification was upheld as one time settlement by the Hon'ble Madras High Court in the *Writ Petition No.11189/2017* dated 14.03.2018. This Tribunal also in that Judgment held that applications which were pending as on 30.06.2020 for Environmental Clearance (EC) has to be treated as normal application and not as violation applications.

**36.** It was also made clear in that Judgment that all mining leases either major or minor even less than 5 Hectare has to apply and get Environmental Clearance (EC) as per amended EIA Notification, 2016 dated 15.01.2016 and this will apply to existing mining leases as well and without obtaining necessary Environmental Clearance (EC) irrespective of the area, no mining both minor and major shall be permitted to operate.

**37.** Admittedly, in this case, at the time when this application was filed, the EIA Notification, 2016 dated 15.01.2016 was in operation and the 4<sup>th</sup> respondent had not obtained Environmental Clearance (EC) for his existing lease. Though it was mentioned in the counter affidavit that as an abundant caution M/s. Cochin Granites had stopped by cancelling the lease arrangement as per annexure R4 (b) - Order and after obtaining the fresh lease as per the annexure R4(c) - Lease Deed bearing No.2209/2018 of District Registrar Office, Ernakulam, they have applied for Environmental Clearance (EC) and obtained Environmental Clearance (EC) by Proceedings

No.DIA/KL/MIN/8877/2017 dated 19.03.2018, it is not clear from the counter affidavit filed by the 4<sup>th</sup> respondent as to when they have stopped the mining operation.

**38.**If the mining operation was done after 15.01.2016 without obtaining Environmental Clearance (EC), then the period of operation from 15.01.2016 till they stopped the operation will be treated as an unauthorized operation of the quarry, for which, they will be liable for payment of environmental compensation.

**39.**Further, it is not known as to whether the 4<sup>th</sup> respondent had complied with the mining closure plan of the prior lease area in respect of which he had conducted mining operation. Further, it is not on the basis of the quantity of mining done that the royalty was fixed, but it was on the basis of the lump sum payment of royalty that he is doing the mining operation. It is also not known as to whether he had made any excess mining as well.

**40.**So under such circumstances, there is some force in the allegations made in the application that till he stopped operation before obtaining the present Environmental Clearance (EC), after 15.01.2016 will be deemed to be an illegal operation and he must be made liable to pay compensation for the same.

**41.**So, the submission made by the Senior Advocate appearing for the 4<sup>th</sup> respondent that there was no illegal operation of mining conducted by the 4<sup>th</sup> respondent cannot be accepted.

**42.**So under such circumstances, we hold that the mining operation of the 4<sup>th</sup> respondent in the name and style of M/s. Cochin Granites after 15.01.2016 till they stopped the mining operation as mentioned in the counter statement till they obtain the fresh lease and Environmental Clearance (EC) is illegal and they are liable to pay environmental compensation for doing

unauthorized mining operation during this period and the Mining and Geology Department and the Kerala State Pollution Control Board (KSPCB) are bound to take action against the 4<sup>th</sup> respondent for that period.

**43.** So under such circumstances, we feel that the application can be disposed of by giving following directions:-

(i) It is declared that the mining operation done by the 4<sup>th</sup> respondent under the name and style of M/s. Cochin Granites in the disputed area after 15.01.2016, till they stopped their mining operation on the basis of the old lease of 2006 is illegal and unauthorized and they are liable to pay environmental compensation for the quantity of mined articles which has to be assessed by the Mining and Geology Department.

(ii) The Directorate of Mining and Geology Department is directed to assess the environmental compensation, penalty for excess mining and royalty lost to the exchequer for excess mining on the basis of the quantity of minerals mined from 15.01.2016, till the mining operation was stopped by M/s. Cochin Granites on the basis of the old lease and take steps to recover the amount from M/s. Cochin Granites in accordance with law.

(iii) The Director of Mining and Geology Department is also directed to ascertain as to whether he had complied with the closure plan provided while executing the mining lease of 2006 and if he had not complied with the same, take appropriate action against them for enforcing the mining closure plan and recover the damage, if any, caused on account of the same to the environment from the 4<sup>th</sup> respondent in accordance with law.

- (iv) The Director of Mining and Geology Department is directed to file the action taken report on the basis of the above direction before this Tribunal within a period of 4 (Four) months, after providing necessary opportunities to the 4<sup>th</sup> respondent in this regard in accordance with law.
- (v) If such report is filed, then the office is directed to place the same before the Bench for consideration and issuing further directions in this regard.
- (vi) Considering the circumstances, the parties are directed to bear their respective costs in the application.

**44.** Thus, the points are answered accordingly.

**45.** In the result, the application is disposed of as follows:-

- (i) It is declared that the mining operation done by the 4<sup>th</sup> respondent under the name and style of M/s. Cochin Granites in the disputed area after 15.01.2016, till they stopped their mining operation on the basis of the old lease of 2006 is illegal and unauthorized and they are liable to pay environmental compensation for the quantity of mined articles which has to be assessed by the Mining and Geology Department.
- (ii) The Directorate of Mining and Geology Department is directed to assess the environmental compensation, penalty for excess mining and royalty lost to the exchequer for excess mining on the basis of the quantity of minerals mined from 15.01.2016, till the mining

operation was stopped by M/s. Cochin Granites on the basis of the old lease and take steps to recover the amount from M/s. Cochin Granites in accordance with law.

(iii) The Director of Mining and Geology Department is also directed to ascertain as to whether he had complied with the closure plan provided while executing the mining lease of 2006 and if he had not complied with the same, take appropriate action against them for enforcing the mining closure plan and recover the damage, if any, caused on account of the same to the environment from the 4<sup>th</sup> respondent in accordance with law.

(iv) The Director of Mining and Geology Department is directed to file the action taken report on the basis of the above direction before this Tribunal within a period of 4 (Four) months, after providing necessary opportunities to the 4<sup>th</sup> respondent in this regard in accordance with law.

(v) If such report is filed, then the office is directed to place the same before the Bench for consideration and issuing further directions in this regard, if any required.

(vi) Considering the circumstances, the parties are directed to bear their respective costs in the application.

(vii) The Registry is directed to communicate this order to the Director of Mining and Geology Department by e-mail immediately for their information and compliance.

46. With the above observations and directions, this application is disposed of.

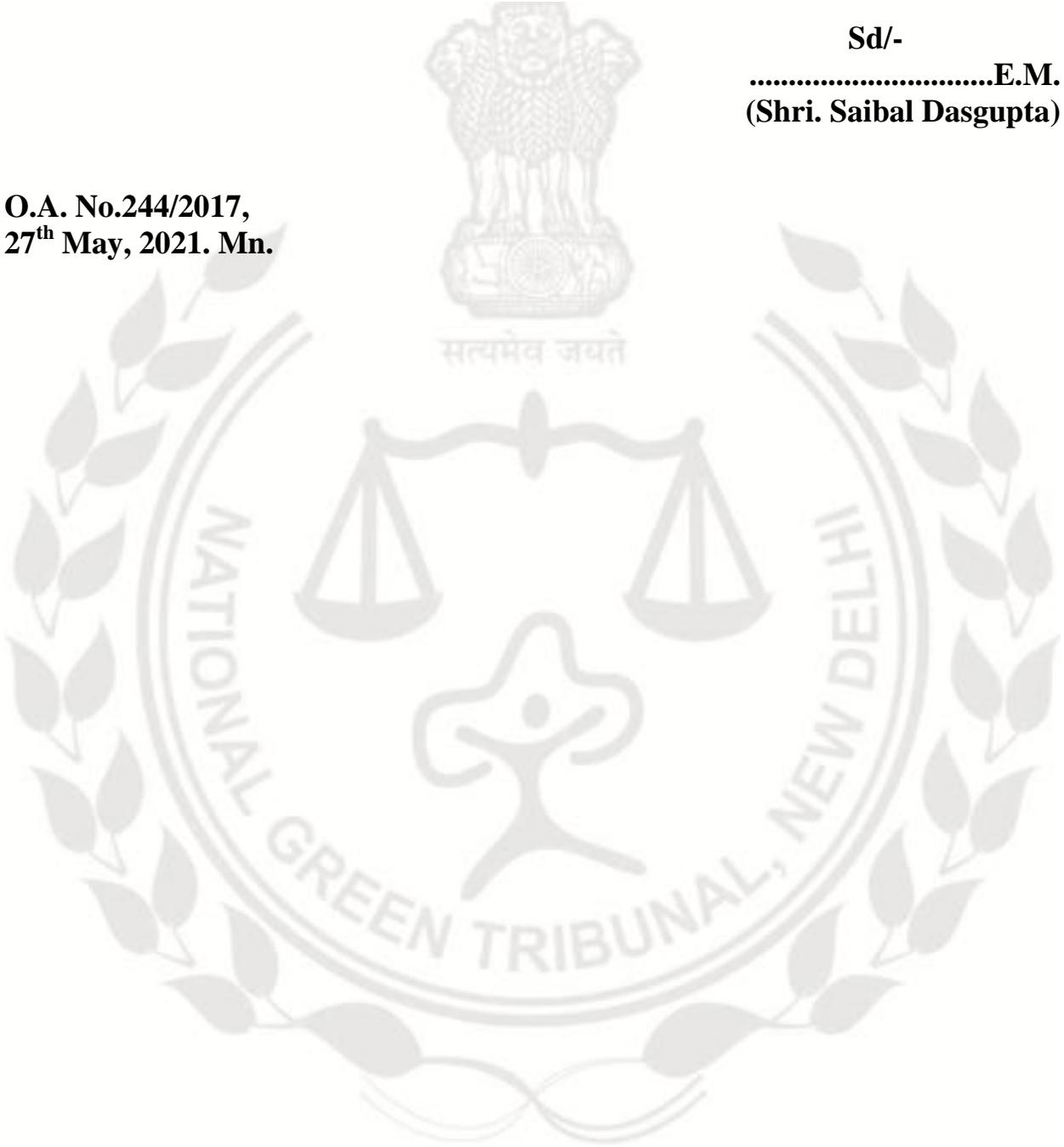
Sd/-

.....J.M.  
(Justice K. Ramakrishnan)

Sd/-

.....E.M.  
(Shri. Saibal Dasgupta)

O.A. No.244/2017,  
27<sup>th</sup> May, 2021. Mn.



NGT

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No 4643 of 2021**

**M D Kuriakose**

**.... Appellant(s)**

**Versus**

**Government of India & Ors**

**....Respondent(s)**

**ORDER**

- 1 There is no error of fact or law in the order of the National Green Tribunal dated 27 May 2021 in OA No 244 of 2017 (SZ).
- 2 The appeal is accordingly dismissed.
- 3 Pending application, if any, stands disposed of.

.....J.  
**[Dr Dhananjaya Y Chandrachud]**

.....J.  
**[M R Shah]**

Signature Not Verified  
New Delhi;  
Digitally signed by  
Sanjay Kumar  
Date: 2021.08.16  
17:34:12 IST  
Reason: [ ]  
**August 16, 2021**

**-S-**

ITEM NO.19

Court 4 (Video Conferencing)

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).4643/2021

M.D. KURIAKOSE

Appellant(s)

VERSUS

GOVERNMENT OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION and IA No.94716/2021-STAY APPLICATION)

Date : 16-08-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE M.R. SHAH

For Appellant(s) Mr. V.Chithambaresh, Sr. Adv.  
Ms. Usha Nandini. V, AOR  
Alex M. Scaria, Adv.  
Ms. Saritha Thomas, Adv.  
Mr. Arun Paul Jacob, Adv.  
Mr. Biju P. Raman, Adv.

For Respondent(s)

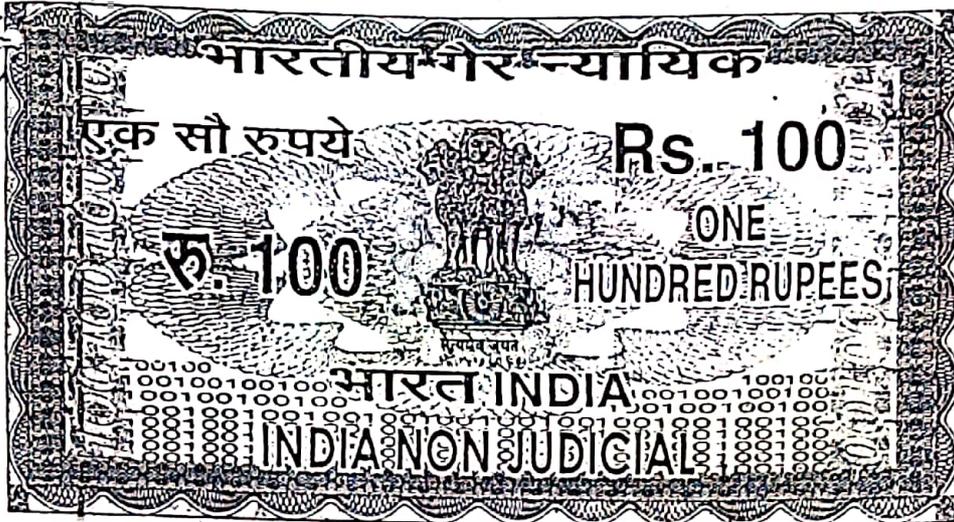
UPON hearing the counsel the Court made the following  
O R D E R

- 1 The appeal is dismissed in terms of the signed order.
- 2 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)  
AR-CUM-PS

(ANITA RANI AHUJA)  
ASSISTANT REGISTRAR

(Signed order is placed on the file)



केरल KERALA

FORM - 'H'

623351

(See Rule 32)

QUARRYING LEASE

This indenture made this the 11<sup>th</sup> day of August 2010 between the Governor of Kerala (hereinafter referred to as the "State Government" which expression shall, where the context so admits be deemed to include his successors and assigns) of the one part and Shri. Sajimon Abraham aged 39 years son of Shri. P.M. Abraham, resident of Palakkattu House, Kidangoor PC., Kottayam in the village of Kidangoor, taluk of the Meenachil, Kottayam District (hereinafter called the "lessee" which expression shall where the context so admits, include his / heirs, executors, administrators, representatives and permitted assigns) of the other part.

  
 A. K. MANOJ  
 Geologist  
 District Office of the Department of  
 Mining and Geology, Palakkad.

 .....2.  
 Sajimon Abraham



Re: -  
 O'm - 10  
 As - 3



No : 25616  
Value Rs : 100/-  
Sold to :  
Dated on : 20/08/2010

82320

7-8-10

TTP Palackal

2885/2010

P. RAVINDRANATHAN  
DISTRICT COURT VENDOB  
PALAKKAD

Presented in the office of the Sub Registrar of Olavakkod

The photo grahns & finger prints of the Buyer/s, Seller/s

in the presence of affixed under section 32A and a fee of

Rs 2586/- Paid at 10 hours minute on

the 20th day of August 2010

with letter No DOP/3833/09/AID/21.8.2010  
of the District Officer Palackal.

Sajimon Abraham Saji

28th day of August 2010

P. BALACHANDRAN  
SUB REGISTRAR  
OLAVAKKOD

1) Sajimon Abraham Saji S/o Pm Abraham business  
resides at Palackal House Kidangoor Kottayam

2) I have subscribed myself as the execution of this  
instrument by the M. Manoj Geologist District Office of the Dept  
Mining and Geology Palackal for and on behalf  
of the Governor of Kerala who is exempted from  
personal appearance under section 27(c) of the instrument.

Meena Varma & D/o Ravivarma Akattethara, Howewil  
2. Muhammad Rafiq S/o A. ABRAHIM ARTIST KALLADITODE

28th day of August 2010



2010

7

Registration No 2885  
2010  
227  
237

P. BALACHANDRAN  
SUB REGISTRAR  
OLAVAKKOD

28th day of August 2010

P. BALACHANDRAN  
SUB REGISTRAR  
OLAVAKKOD

Witnesseth that in consideration of the rents and royalties and lessee/lessee's covenants, hereinafter reserved and contained the State Government both hereby demise upto the lessee the land measuring 2.7721 hectares described in the schedule hereunder delineated on the plan here to annexed and therein coloured red (hereinafter called the "said lands") to hold the same for a period of 12 (twelve) years commencing from the 11<sup>th</sup> day of August 2010 and ending on the 10<sup>th</sup> day of August 2022 for the purposes of extracting minor minerals and subject to the terms and conditions contained in the Kerala Minor - Mineral Concession rules, 1967 (hereinafter referred to as "the Rules") and to the terms and conditions hereinafter appearing.

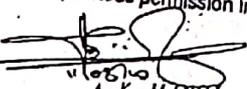
1. The lessee shall have the right in and upon the said lands to extract Granite Building Stone (hereinafter called the said mineral) and to do all acts necessary for the extraction of the said mineral including the erection on the said lands, buildings and plant required for the purposes and also to take lead and carry away over the said lands and to dispose off the said minerals extracted as aforesaid.
2. The lessee shall during the subsistence of this lease have the liberty to work the said mineral and remove the same from the quarry hold on permits issued by the competent authority or any other officer authorised by him in this regard. The permits shall be issued only on the basis of pre-paid royalty at the rates specified in schedule I to those Rules. The royalty rates shall be subject to revision from time to time as the State Government may order.
3. The lessee shall pay to the State Government a yearly surface rent equal to the land revenue if any, assessable under the rules for the time being in force, or if the land be the property of Government or in reserve forest then equal to the land revenue plus cess, if any per hectare of the land the surface whereof shall be occupied or used by the lessee for any of the purposes of this demise and so in proportion for any area less than a hectare. The said surface rent shall be paid by yearly payments, the first of such payments to be made on or before the last day of the first year of occupation provided always that no such rent shall be paid or demanded in respect of any roads or ways now in existence.
4. The lessee shall at all time during the currency of this demise keep correct and intelligible books of account showing accurately the quantity of the said minerals extracted and the weight and value of the said mineral sold or exported together with the names of the purchasers or consignees. The lessee shall also, maintain a register of employees showing therein separately men, women and children employed daily and shall at all reasonable times allow the competent authority appointed under the rules (hereinafter referred to as "competent authority") or the officer authorised by him/her to examine the said books of account and the register of employees and to take copies and extracts there from. The lessee shall submit reports in Forms 'F' and 'G' on the specified dates.
5. All sums found due under or by virtue of this deed from the lessee may be recovered from him jointly and severally from them and his properties movable and immovable under the provisions of the Revenue Recovery Act for the time being in force as though such sums are arrears of land revenue or in any other manner as the State Government may deem fit.

  
A.K. MANOJ  
Geologist  
District Office of the Department of  
Mining and Geology, Palakkad.

  
Sajimon Abraham



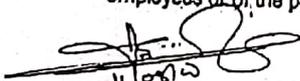
6. The lessee shall at the lessee's own expense erect and at all time maintain and keep in repair boundary marks and pillars along the boundaries of the said lands according to the demarcation shown in the plan hereto annexed.
7. No quarrying operations or working shall be carried on or permitted to be carried on by the lessee in or under the said lands at any point within a distance of 75 meters from any railway line except with the previous permission in writing of the railway administration concerned; and from any bridge on the National Highway or 50 meters from any reservoir, canal or other public works such as public roads and buildings or inhabited site, burial ground etc. shown on the plan thereto annexed except with the previous permission in writing of the State Government / competent authority or otherwise than in accordance with such instructions, restrictions and condition either general or special which may be attached to such permission. The said distance of 50 meters shall be measured in the case of a railway, reservoir, or canal horizontally from the outer edge of the bank or outer edge of the cutting, as the case may be and in the case of a building horizontally from the plinth thereof. In the case of village roads no workings shall be carried on within a distance of 10 meters of the outer edge of the cutting except with the previous permission in writing of the State Government / competent authority. For the purposes of this clause the expression "railway and railway administration" shall have the same meaning as defined in sub section (4) and (6) of section 3 of Indian Railway Act, 1890 (IX of 1890).
8. The sides of open workings shall sloped, stepped or secured by the lessee in such a manner as to prevent danger from falls of material, when an open working is worked in steps, steps shall be of sufficient breadth in relation to their height to secure safety. In open workings trees liable to fall and all loose ground and material shall be removed by the lessee sufficiently far from the edge or otherwise made source in order to prevent danger to persons employed in the quarry.
9. If a working place is found to be unsafe all persons shall be withdrawn by the lessee immediately from the dangerous area and all access to such working place except for the purpose of removing the danger of saving life shall be prevented by securely fencing the full width of all entrances to the place.
10. The lessee shall at all reasonable times allow any officer authorised by the Central Government or by the State Government in that behalf to inspect the said lands and the buildings and plants erected thereon and the lessee shall assist such persons in conducting the inspection and afford them all information they may reasonably require, and shall conform to and observe all orders which the Central and State Governments as the result of such inspection or otherwise, may from time to time pass.
- 10A The lessee shall be responsible for implementing the provisions of the various labour laws applicable, from time to time to the quarry.
11. The lessee shall not assign or underlet the said lands or any part thereof or the rights or privileges, therein hereby granted or any of them without the previous permission in writing of the competent authority.

  
A. K. MANOJ  
Geologist  
District Office of the Department of  
Mining and Geology, Palakkad.

  
Sajimon Abraham



- 11A Where the lease or any right, title or interest therein has been assigned, sublet or transferred as provided in rule 34 read with condition 11, then the person in whose favour such assignment, sublease or transfer has been made shall be responsible for implementing the provisions of the various labour laws applicable, from the time to time, to the quarry.
12. The lease may be surrendered by the lessee at any time after 3 months notice in writing to the competent authority.
- Provided that the lessee has paid all sums due on account of the lease. Provided further that if the lessee elect to determine this lease before the expiry of the term of the lease, shall pay in addition to other dues a sum equal to the dead rent payable for the remaining part of the terms of the lease deed.
13. On the expiration of the term of this lease or on its earlier determination under clause 12 the lessee shall pay to the State Government for all land which has been rendered useless for agriculture, through the exercise of the powers demised by this lease such sum as the District Collector may fix as equivalent to the capitalized value or the land revenue of such land rendered useless. The lease shall continue if the sums are not cleared before the date of determination of notice.
14. If the lessee shall be desirous of taking a further lease of the said lands for a further term of years he shall give three months previous notice in writing of such desire to the competent authority and if the lessee has duly observed all the conditions of this lease, the competent authority may agree to renew the lease for such further term and on such terms and conditions as the competent authority may determine which shall be in accordance with the provisions of these rules.
15. If the lessee shall at any time during the said term use the said lands or any part thereof in any manner other than as authorised by this lease or fail to carry on quarrying operations continuously without sufficient cause of which the State Government / competent authority shall be the Judge or shall commit a breach of any of the conditions of this lease it shall be lawful for the State Government / competent authority to cancel this lease and take possession of the said lands or in the alternative to receive from the lessee such penalty for the breach not exceeding five times the amount of the said yearly dead rent as the State Government / competent authority may fix.
16. If at the expiration of three calendar months after the expiry of the lease or its sooner determination, there shall remain in or upon the said lands, any engines, machinery, plant buildings, structures and other works erections and conveniences the said minerals or other property which the lessee is entitled to remove from the said lands, the same shall, if not removed by the lessee within one calendar month after notice in writing requiring their removal be given to the lessee by the competent authority be deemed to become the property of the State Government in such manner as they may deem fit without liability to pay any compensation or to account to the lessee in respect thereof.
17. This lease is subject to all rules and regulations which may from time to time be issued by the State Government regulating the working of the quarries and other matters affecting the safety, health and convenience of the lessee's employees or of the public, whether under the Indian Mines Act or other wise.

  
A. K. MANOJ  
Geologist

  
Sajimon Abraham



18. The lessee shall without delay send to the District Collector and the competent authority or the officer authorised by him in this regard report of any accident causing loss of life or serious bodily injuries or seriously affecting or endangering life or property which may at any time occur at or in the said lands in the course of operations under this lease.
19. The lessee shall furnish such reports and returns relating to output, labourers employed and other matters as the State Government may prescribe.
20. The lessee shall make and pay such reasonable satisfaction and compensation as may be assessed by lawful authority in accordance with the law in force on the subject for all damage, injury or disturbance which may be done by him in exercise of the powers granted by this lease and shall indemnify and shall keep indemnified fully and completely the State Government against all claims which may be made by any person or persons in respect of any such damage, injury or disturbance and all costs and expenses in connection therewith.
21. Any condition prescribed in the Kerala Minor Mineral Concession Rules, 1967, but left out in this lease which may be found applicable to the lessee shall be treated as binding on the lessee. In this case anticipated royalty for the mineral at the rate of Rs. 16/- (Rupees Sixteen only) per tonne for a period of one year is Rs. 6,40,000/- (Rupees Six Lakhs and Forty Thousand only).
22. Dead rent realizable at the rate of Rs. 1<sup>st</sup> year Nil, 2<sup>nd</sup> year Rs. 200/-, 3<sup>rd</sup> year onwards Rs. 800/- per hectare subject to revision from time to time. Surface rent at the rate of Rs. 100/- (Rupees One hundred only) per hectare for one year is Rs. 277/- (Rupees Two hundred and Seventy Seven only) security deposit is Rs. 1,000/- (Rupees One thousand only).



A. K. MANOJ  
Geologist  
District Office of the Department of  
Mining and Geology, Palakkad.



Seimon Abraham



The schedule above referred to Description of Land

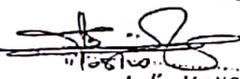
District Taluk	Village	Re-Survey No. of the area Block	Area in Hectares
Palakkad Palakkad	Akathethara	110/1 and 110/3 25	2.7721 Hectares

Bounded by

Sy. Nos.

- On the North by 117, 116
- On the East by 117
- On the South by 109
- On the West by 110/1

In witness whereof the parties hereto have set their hands hereunto on the day and year first above written

Signed by  .....  
A. K. MANOJ

for and on behalf of the Government of Kerala  
District Office of the Department of Mining and Geology, Palakkad.

  
Sajimon Abraham

In the presence of

1. *Handwritten name*  
Officer of the Department of Mining & Geology  
Palakkad.

2. *Handwritten name*  
Dept of Mining and Geology, Town 7-31 Complex, Palakkad.

Signed by  .....  
Sajimon Abraham

for and on behalf of the lessee / lessees

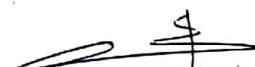
1. P. JACOB DARRA   
DARRAJITTA  
KATTAYANN

2. Sabu Thomas  
Kala puzhachal  
Ayyaraku man  
Kattayann

Government Presented form  
Correlation

  
Sajimon Abraham

True Copy

  
Advocate

भारतीय गैर न्यायिक  
 एक सौ रुपये  
 On production of the original document  
 I have satisfied myself that a stamp  
 duty of Rs. 100/- has been paid  
 (here of 1st March 2017) sub registration  
 T P Ajayans  
 भारत INDIA  
 INDIA NON JUDICIAL



Form E

TRANSFER OF QUARRYING LEASE

(See Rule 45)



The Indenture made this 23<sup>rd</sup> day of January 2017 between  
 Sri. Sajimon Abraham Business, aged 46 years, S/o P.M. Abraham residing at  
 Pulakkattu House, Kidangoor.P.O, Kottayam (name of the person with address  
 and occupation) (hereinafter referred to as the "transferor" which expression  
 shall where the context so admits be deemed to include his heirs, executors,  
 administrators, representatives and permitted assigns) of the first part.

Sajimon Abraham

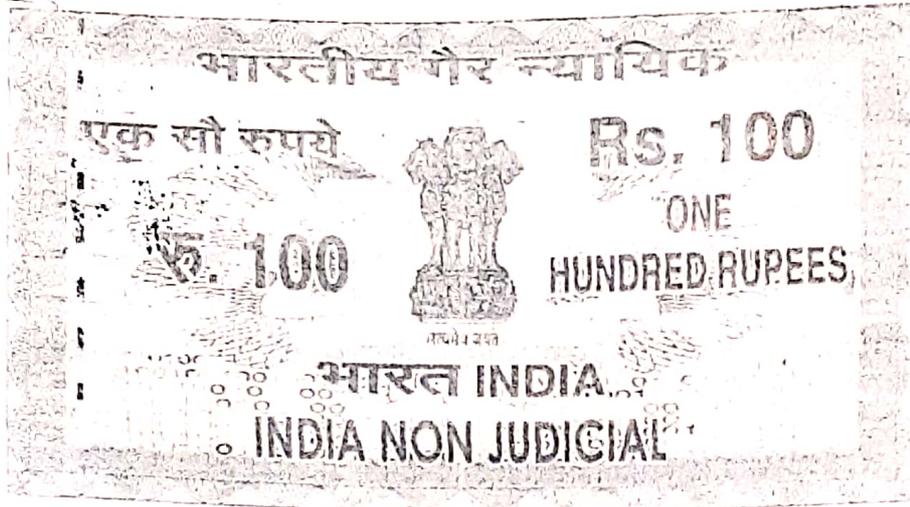
K.J. Thomaskutty

67600  
 100/-  
 K J Thomas Kutty  
 Dhoni  
 (1-17)



Recd  
 Date  
 Paid  
 to

P. RAVINDRANATHAN  
 DISTRICT COURT VENUE  
 PALAKKAD



കേരളം കേരल KERALA

3D 212211

And

( 2 )

Managing Partner M/s Mary Matha Granites, Dhoni.P.O, Palakkad Reg.No.3871 of 2015, represented by its managing partner Sri.K.J.Thomaskutty aged 66 years S/o K.T.Joseph residing at Kannanthanathu House, Vadasserikkara.P.O, Vadasserikkara Village, Ranni Thaluk, Pathanamthitta District, registered under the Indian Partnership Act 1932(9 of 1932) and having their registered office at House No.260, Mayapuram, Dhoni, Palakkad District (hereinafter referred to as "transferee" which expression where the context so admits be deemed to include all the said partners, their respective heirs, executors, legal representatives and permitted assigns) of the second part.

And

The Governor of Kerala (hereinafter referred to as the State Government which expression shall where the context so admits be deemed to include the successors and assigns) of the third part.

Sajimon Abraham

K.J.Thomaskutty

*Sajimon Abraham*

*K.B. Sajeev  
Geologist*



67601

No. 1001  
Value Ref KJ  
Sole to Thomas  
Date 11-1-17

Thomas Kutty  
Dhoni  
11-1-17

P. RAVINDRANATHAN  
DISTRICT COURT VENUE  
PALAKKAD

( 3 )

Whereas by virtue of a deed of lease proceedings order No.120/2010-2011/3355/M3/2010 dtd .26.05.2010 and registered as No.2885 on 28.08.2010 in the office of the Sub Registrar of Olavakode (hereinafter referred to as lease) the original whereof is attached hereto and marked 'A' entered into between the State Government (hereinafter called the lessor) and the transferor (hereinafter called the lessee) the transferor is entitled to search for, win and work quarries and minerals in respect of Granite Building Stone (name of mineral/s) in the lands described in Schedule thereto and also in Schedule annexed hereto for the term and subject to the payment of the rents and royalties and observance and performance of the lessee's covenant and conditions in the said deed of lease reserved and contained including a covenant not to assign the lease or any interest there under without the previous sanction of the State Government.

And whereas the transferor is now desirous of transferring and assigning the lease to the transferee and the State Government has, at the request of the transferor, granted permission to the transferor vide order No.599/2016-17 /6853/M3/2016 dated 17.12.2016 to such a transfer and assignment of the lease upon the condition of the transferees entering into an agreement containing the terms and conditions hereinafter setforth.

  
Sajimon Abraham

  
K.J.Thomaskutty

  
K.K. Sajeev  
Geology &c.



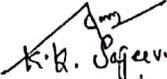
( 4 )

Now this Deed Witnesseth as follows :

1. The transferee hereby covenants with the State Government that from and after the transfer and assignment of the lease the transferee shall be bound by, and be liable to perform, observe and conform and be subject to all the provisions of all the covenants, stipulations and conditions contained in said herein before recited lease in the same manner in all respects as if the lease had been granted to the transferee as the lessee there under and he had originally executed it as such.
2. It is further hereby agreed and declared by the transferor of the one part and the transferee of the other part that
  - (i) The transferor and the transferee declare that they have ensured that the mineral rights over the area for which the quarrying lease is being transferred vest in the State Government.
  - (ii) The transferor hereby declares that he has not assigned, sublet, mortgaged or in any other manner transferred the quarrying lease now being transferred and that no other person or persons has any right, title or interest whereunder in the present quarrying lease being transferred.
  - (iii) The transferor further declares that he has not entered into or made any agreements, contact or understanding whereby he had been or is being directly or indirectly financed to a substantial extent by or under which the Transferor's operation or understandings were or are being substantially controlled by any person or body of persons other than the transferor.
  - (iv) The transferee hereby declares that he has accepted all the conditions and liabilities which the transferor was having in respect of such quarrying lease.
  - (v) The transferee further declares that he is financially capable of and will directly undertake quarrying operations.
  - (vi) The transferee further declares that he has filed an affidavit stating that he has filed up-to-date income tax returns, paid the income tax assessed on him and paid the income tax on the basis of self assessment as provided in the Income Tax, Act 1961, (43 of 1961).

  
Sajumon Abraham

  
K.J. Thomaskutty

  
K.K. Jageevy  
Geologist.



( 5 )

- (vii) The transferor has supplied to the transferee the Original or certified copies of all plans of abandoned workings in the area.
- (viii) The transferee hereby further declares that as a consequence of this transfer, the total area while held by him under mineral concessions are not in contravention of Kerala Minor Mineral Concession Rules, 2015.
- (ix) The transferor has paid all the rent, royalties, and other dues towards Government till date, in respect of this lease.

SCHEDULELocation and area of the lease

District	Taluk	Village	Panchayath	Re.Sy.No Block No.	Area in hectares
Palakkad	Palakkad	Akathethara	Akathethara	110/3 & 110/1	2.7721

Bounded by Sy Nos :-

Block 25 OLD Sy No. 1/9A1A3, 37/2

On the North by Sy No. : 117, 116  
 On the South by Sy No. : 109  
 One the East by Sy. No : 117  
 And on the West by Sy. No : 110/1

  
 Sajimon Abraham

  
 K.J. Thomaskutty

  
 K. K. Sajeev  
 Geologist



(6)

In witness whereof the parties hereto have signed on the date and year first above written.

Signed by



K. K. SAJEEVAN  
Geologist  
District Office of the Department of  
Mining and Geology, Palakkad  
Pin-678 014.

For and on behalf of the Governor of Kerala  
In the presence of

1. Vinod M.V., Dist. Geologist  
District Office, Department of Mining & Geology  
Palakkad

2. Swil Kumar R., Asst. Geologist  
District Office, Dept. of Mining & Geology  
Palakkad



Signature of transferor in the presence of witnesses

1. Tijo C. Ravi, Manager, Cheriya Vadakkuvattur  
KARIKATTUR P.O. MANIMALA



2. SAJEEV S KUZHIANAVIL  
THALACHIRA PO VPOSSERIKKARA

Signature of the transferee in the presence of witnesses

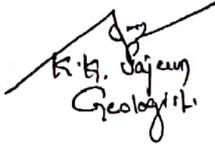
This deed prepared by: 1. GANJU SANKAR, Vattoppuzha  
MADAMEN P.O. PERUMAL



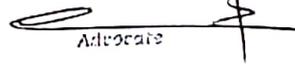
2. T. Santhosh,  
Sree Durga,  
Vattikkandam (P.O.)  
Palakkad T.S.S.

  
Sajimon Abraham

K.J. Thomaskutty

  
K. K. Sajeevan  
Geologist

This is the true copy of the  
document marked as Ext. R9(b)

  
Advocate