

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(SOUTHERN ZONE BENCH, CHENNAI)
IN
ORIGINAL APPLICATION NO. 151 OF 2020 (SZ)**

**STATEMENT OF FACTS SUBMITTED ON BEHALF OF 1ST AND 3RD
RESPONDENTS**

Index

S.No	Particulars	Page No.
1	Common Reply Statement of 1 st and 3 rd Respondents	1-8
2	Exhibit - R1(1) - Copy of Agreement	9-17
3	Exhibit - R1(2) - Copy Environmental Clearance	18-19

Dated at Thiruvananthapuram on this the 19th day of February, 2022.

M/s. E.K.KUMARESAN

Standing Counsel for State Government of Kerala - NGT(SZ) Chennai
Bench

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

ORIGINAL APPLICATION NO. 151 OF 2020 (SZ)

IN THE MATTER OF

Akhila Kerala Dheevera Sabha

...Applicant(s)

Vs.

State of Kerala,
Rep. by Chief Secretary,
Thiruvananthapuram and 15 others

...RESPONDENT(S)

COMMON REPLY STATEMENT OF 1ST AND 3RD RESPONDENTS

I, Latheesh. S. Dharan, Under Secretary to Government, Fisheries Department have been authorized to submit this reply statement on behalf of 1st and 3rd respondents. I humbly submits the following statement of facts in respect of the averments made in the above said application:-

1. It is humbly submitted that all the averments/allegations raised by the applicant in the original application are denied except which are specifically admitted hereunder.

2. The 1st and 3rd Respondents have no remarks in respect of the averments made in para-1.

3. In respect of the averments made in para-2, it is submitted that the main livelihood in Alapuzha Coast is fishing and they depend heavily on the fishing activities along the coast. The intention of Government is to provide safe and sufficient infrastructure facilities to these people. Thottappally fishing harbor is constructed for providing safe and secure landing and berthing for the fishing vessels and provide facilities for the

*ASD
Latheesh*

~~auCoring~~ selling and transportation of the catch. For the smooth movement of fishing boats, a sufficient depth of water is required inside the smooth movement of fishing boats, a sufficient depth of water is required inside the harbor basin and entrance. To maintain this depth (3.00m below chart datum respect to CD) periodic maintenance dredging i.e., removal of deposited silt and sand from the basin is necessary.

3. It is submitted that the 1st and 3rd Respondents have no remarks in respect of the averments made in para-3.

4. In respect of the averments made in para-4, it is submitted that Indian Rare Earths Limited is a public sector company under the Government of India engaged in mining and separation of minerals and metals and production of value-added products from these minerals.

5. In respect of the averments made in para-5, it is submitted that no illegal mining is being done inside the harbor. The work arranged through 8th Respondent is the periodic maintenance dredging of Thottappally harbor to ensure sufficient water depth inside the basin and channel. The Environment Impact, Assessment clearance for capital dredging inside the harbor is issued by Government of India, Ministry of Environment and Forest vide OM No. J-16011/29/91-1 AIII dated 9.3.1992. EIA clearance is not required for maintenance dredging of harbors. The dredging work was entrusted to the 8th Respondent as per G.O.(Rt) No.296/2016/F&PD dated 25.04.2016 by the 3rd Respondent. 8th Respondent Company carries out the dredging work free of cost and they

*l.p.p.
Rakesh*

are permitted to extract minerals from the dredged soil, for which they are paying extra amount.

6. It is submitted that the statement made in para-6 is not true. The 5th Respondent granted permission to the 8th Respondent for dredging inside the harbor basin only. This was inevitable to maintain required water depth inside the harbor for the safe movement of fishing vessels. Copy of the agreement is furnished as Exhibit-R1(1). The agreed quantity of maintenance dredging is 34,768 m³, of which only 28,767.62 m³ sand is dredged by 8th Respondent so far. This is done solely with the intention of safety of fishermen.

7. Regarding the averments raised in para-7, it is submitted that the Ministry of Environment and Forest, Government of India had issued Environmental clearance for the Thottappally. Fishing Harbor Project vide Order OM No. J-16011/29/91-1 A III dated 09.03.1992 and vide ON No. J-16011/29-91-1 A III dated 01.9.1998. The capital dredging work inside the harbor is one of the components in the approved project of construction of Thottappally Fishing Harbor project. The dredging arranged now is the maintenance dredging which doesn't require EIA clearance.

8. It is submitted that no remark in respect of the averments made in para Nos.8 to 12.

9. In respect of the averments made in para-13, it is submitted that the rate was fixed by Government vide G.O.(Rt) No.296/2016/F&PD dated 25.04.2016 after a series of discussions and technical scrutiny. The

DPD
Natkeesh

rate fixed is not for purified illmonite. It is for the mixture of sand and illmonite. Further 8th Respondent is a company fully owned by Government of India. Hence, there is no relevance for the contention that rate fixed for the sand will be a loss to Government exchequer. The intention of Harbor Engineering Department is only to deepen the harbor basin and ensure safety of fisherman. No dredging beyond the harbor limits is done by Harbor Engineering department through 8th Respondent Company.

10. In respect of the averments made in para-14, it is submitted that houses and livelihood in coastal belt are affected by the monsoon wave attack. Natural calamities like floods, storm surges etc. have become more frequent due to the global climatic changes. The phenomena are seen all along the coast of Kerala and not only in Thottappally area. A proposal for shore protection works at Thottappally is sanctioned under Kerala Infrastructure Investment Fund Board (KIIFB) funding for an amount of Rs.240.06 lakhs. Also, Government is giving top priority to the rehabilitation of fishermen families in the erosion prone areas. A residential complex with 214 housing units is already under construction at Mannumpuram near to the Thottappally area for rehabilitation of fishermen. Houses were not destroyed due to mining/dredging harbor basin. Fisheries department has not given any official reports based on this.

11. In respect of the averments made in para-15, it is submitted that there are no reports/remarks from health authorities/agencies

*APR
Lakshmi*

regarding health issues due to the deposited waste sand inside the harbor premises. Now, the dredged sand after removing minerals are proposed to reclaim the land in Mannumpuram Colony.

12. In respect of the averments made in para-16, it is submitted that the maintenance dredging inside the harbor upto 3m depth will not affect any ground water resources and as accused. The contention of the Applicant is without proper scientific proof.

13. It is submitted that no remarks in respect of the averments made in para Nos.17 to 19.

14. In respect of the averments made in para-20, it is submitted that the issues outside the harbor limits are beyond the control of Harbour Engineering Department. Government machinery including police will take care of such things.

15. In respect of the averments made in para-21, it is submitted that the removal of silt deposition inside the Harbour basin is done by dredging for maintaining the water depth for entering the fishing boats. Dredging does not come under the term mining. It will not cause any damages to the structures and houses nearby. There is not such report of damages to the building till date.

16. It is submitted that the averments made in para-22 is not related to the dredging inside a harbor basin and approach channel.

17. It is submitted that no remarks in respect of the averments made in para Nos.23 & 24.

OSP
Katheer

18. In respect of the averments made in para-25, it is submitted that the environmental clearance had been obtained as mentioned in para-7 for the Thottapally harbor project, a copy of the same is produced herewith and may be marked as Exhibit R1(2) and capital dredging inside the Harbour basin is one of the component of the above project. The maintenance dredging need not require EIA clearance.

19. In respect of the averments made in para-26, it is submitted that the damages to the houses are not due to dredging inside harbor basin which is confined to small area within 2 breakwaters. This dredging is only upto 3 m depth below water level. Even the structures inside the harbor which are likely to get damaged before any other structures are affected, now remains without any minor damages.

The 1st and 3rd Respondents submit the following Remarks on the points raised on Grounds: -

- A. No remarks.
- B. Maintenance dredging now carried out in the Thottapally fishing Harbour need not require Environmental Clearance.
- C. The destruction of houses is not due to the dredging in the harbor basin. There are structures in the harbor very close to the basin which were not yet have any minor damages.
- D. The maintenance dredging inside the harbor area is inevitable to maintain sufficient navigable depth for the movement of fishing vessels. Otherwise the movement of fishing vessels inside the basin will be obstructed and the vessels may be damaged which

BBP
Zathesh

will cause huge loss to the poor fishermen and ultimately the harbor should be closed and livelihood of fishermen will be affected severely.

E. By establishing the spiral unit in the harbor the radio active heavy minerals in the dredged sand were removed and pure sand which will remain ager spirally can be used for filling the low lying area such as Mannumpuram area where the fishermen housing project is commenced.

F & G: No remarks.

H. There will not be any damages to the buildings of the local people or any other structures as the dredging done by the Harbour Engineering Department is only in the harbor basin and only upto a depth of 3m below water level. Thottappally Fishing Harbour is the main livelihood project of the fishermen in the Alappuzha District. And the smooth functioning of the Harbour requires periodical dredging. So, any attempt to prevent this activity will cause serious damages to the welfare of fishing community.

I to L: No Remarks.

20. In view of the remarks and statement of facts stated above, it is submitted that the contentions put forth by the applicant are devoid of any merits and hence the application is liable to be dismissed.

PP
Kattank

For the reasons stated above, it is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the Original Application filed by the Applicant and pass suitable order and thus render Justice.

Dr. Lakshmi

Verification

I, Latheesk S. Dhoran, representing the 1st respondent herein do hereby verify on oath that the contents of the above paragraphs are True to the Best of my Personal Knowledge and Based on the information available, Which I believe to be true. No material has been concealed and no part is false.



Signature

I, Latheesk S. Dhoran, representing the 3rd respondent herein do hereby verify on oath that the contents of the above paragraphs are True to the Best of my Personal Knowledge and Based on the information available, Which I believe to be true. No material has been concealed and no part is false.

Dated at Thiruvananthapuram on this the 19th day of February, 2022



Signature

**BEFORE THE HON'BLE
NATIONAL GREEN TRIBUNAL
(SOUTHERN ZONE) CHENNAI**

O.A. No. 151 of 2020

BETWEEN

Akhila Kerala Dheevara Sabha
...Applicant(s)

Vs.

State of Kerala,
Rep. by Chief Secretary,
Thiruvananthapuram and 15
others

...Respondent(s)

**COMMON REPLY STATEMENT
OF 1ST AND 3RD
RESPONDENTS**

M/s. E. K. KUMARESAN
Standing Counsel for State
Government of Kerala
NGT (SZ) Chennai Bench.

सं. १०८०/१९९२
Telegram: PARYAVARAN
NEW DELHI
दूरभाष : 438 1569/Ext. 410
टेलीफोन : 438 1569/Ext. 410
टॉक्स : W-66185/DOE IN
FAX : 360678

भारत सरकार
पर्यावरण एवं वन मंत्रालय
GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT & FORESTS
पर्यावरण भवन, सी. जी. ओ. कॉम्प्लेक्स
PARYAVARAN BHAVAN, C.G.O. COMPLEX
लोदी रोड, नई दिल्ली-110003
Lodi Road, New Delhi-110003

O.H. No. J-46014/29/94-IA.III

OFFICE MEMORANDUM

Subject: Construction of Break Water - Berthing and loading facilities at T. Koppalli, in Kerala - environmental clearance regarding.

Reference is invited to letter No. 45743/B2/89/F&PD dated 5th October, 1991 and 2nd January, 1992 from the Fisheries & Ports Department, Govt. of Kerala on the above subject.

The proposal has been examined in the Ministry and Environmental clearance for the project is hereby accorded subject to the following conditions :-

- (i) The project authorities must ensure that dredging operations do not cause any adverse impact on water hydrology and marine productivity in the vicinity and on the surrounding soils;
- (ii) Dredging must be carried out with best practicable technology and operating methods to minimize sediment release. The dredged material should be disposed off in the sea. It should be disposed at specific locations identified for the purpose;
- (iii) The dredging operations should be carried out in consultation with agencies like Central Water Power Research Station, Pune;
- (iv) The construction of buildings etc. should be undertaken as per the plans approved by the concerned local authorities. The construction should comply with the existing surrounding environment;
- (v) The surface water quality such as turbidity, dissolved oxygen, ammonical nitrogen and other nutrients in water should be measured at regular intervals to monitor water quality which must be maintained within the prescribed standards;

Contd.... 2/2

L.P.P.
Lakshmi

- (vi) Liquid effluent generated at the sorting platform, auction hall etc., should conform to the standards laid down by the State Pollution Control Board/Central Pollution Control Board whichever are more stringent;
- (vii) In order to prevent discharge of sewage, bilge waste and other liquid wastes into the sea, adequate sewage collection, treatment and disposal system including a shore line interceptor, for receiving liquid waste for all shore line installations and for discharge of sewage must be provided to serve at the complex;
- (viii) Adequate devices must be provided to remove all floatable materials including oil spills to prevent pollution of the sea;
- (ix) Organic waste/liquid effluents generated from fish processing, should not be discharged in nearby marine environment to prevent eutrophication resulting in depletion of oxygen in the water body. Such wastes should be properly treated before these are disposed off safely;
- (x) The quality of treated effluent, solid wastes, emissions and noise levels must conform to the standards laid down by the competent authorities including Central/State Pollution Control Board and under the Environment(Protection) Act, 1986 whichever are more stringent;
- (xi) Green belt development programme as proposed must be carried out. In addition, suitable species of trees must be planted along the existing and proposed roads in the landing centre, open vacant spaces and along the shore line to have greenery in the area and to stabilize the shore line;
- (xii) A Disaster Management Plan and a contingency plan for any eventuality, oil spillage etc., should be prepared and got approved from the competent authorities and a copy made available to the Ministry within a period of six months from the date of approval of this project; and
- (xiii) Adequate financial provisions must be made in the project estimates and the annual budget to meet the financial requirement for the implementation of the aforesaid safeguards.

These stipulations will be enforced among other under the provisions of the Water(Prevention & Control of Pollution) Act, 1974, the Air(Prevention & Control of Pollution) Act, 1986, and Environment(Protection) Act, 1986.

To
The Secretary,
Fisheries & Ports Department,
Govt. of Kerala, TRIVANDRUM.

Ashok Bhatia
(Ashok Bhatia)
Dy. Director(Scientific)

B.P. Lakshmi

AGREEMENT NO. 46/17-18/HECC, DATED: 12 .02.2018

Contract agreement entered into this the Twelfth day of February Two thousand and Eighteen between the Superintending Engineer, Harbour Engineering Central Circle, Ernakulam, Office cum shopping complex at Paramara Road, Ernakulam (North), Kochi-18 for and on behalf of the Governor of Kerala (hereinafter referred to as the 'Government') of the one part and Sri. A.J.Janardhanan , Unit Head, IRE Limited, Chavara (herein after referred to as the 'Contractor') of the other part for the work – “ Thottappally Fishery Harbour-Dredging and Transportation of Mineral Sand.” for the proper execution by the latter for the use of Harbour Engineering Department of the said Government of Kerala as per the accompanying agreement Schedule and conditions of the contract approved by the Superintending Engineer, Harbour Engineering Central Circle, Ernakulam, Kochi-18.

CONTRACTOR

SUPERINTENDING ENGINEER



As per government Order GO (RT) No. 296/2016/F & PD dated 25.04.2016 sanction has been accorded to Indian Rare Earth Limited for removal of approximately 85000 cubic meters of mineral mixed sand stored in IREL dredging and dumping yard at Thottapally Harbor at a rate of 464.55 per m³ (After deducting cost of dredging). As per the above order, IREL has been given permission to dispose of the sands on advance payment and to deposit the waste sand received after minerals have been extracted in the dumping yard as defined by the officials.

As per the letter dated 23.6.2016 from Alappuzha Executive Engineer informing that 50232 cubic meters of sand has been collected in Yards A, B and C, and the agreement executed, the work has been completed by giving selection notice dated 30.06.2016 No. D1-1614 / 16 / HECC.

According to the letter dated 27.09.2017, Alappuzha Executive Engineer had informed that out of 85000 cubic meters of sand, 50232 cubic meters of sand has been removed and the remaining 34768 cubic meters is to be removed. Subsequently, on 29.1.2018, the selection notice was issued under D1-1614 / 16/HECC-A. Based on this selection notice and above said government order, Rupees 16,15,200/- which is 10% of the contract amount, out of which Rs. 8,07,600 / - deposited in Government Treasury and the remaining Rs. 8,07,600, deposited at State Bank of India, Chavara Branch for a period of one year and was pledged to Superintending Engineer , Harbor Engineering Central Circle, Ernakulam and to Executive Engineer, Harbor Engineering Division, Alappuzha.

On the basis of this, subject to the provisions of Government Order dated 25.04.2016 which allows Indian Rare Earth Limited Chavara Unit to separate and dispose of the mineral sand at their own expense for 34,768 cubic meters of sand dredged and stored in Thottapally Harbour by paying the requisite amount in advance, the agreement is signed in the presence of the following witnesses, subject to the following conditions:

CONTRACTOR

SUPERINTENDING ENGINEER



In witness where of Smt. S.Girija, Superintending Engineer, Harbour Engineering Central Circle, Ernakulam (North), Kochi-18 for and on behalf of the Governor of State of Kerala and the Contractor here unto set their hands the day, the month and the year first above written.

Signed and delivered by the above mentioned contractor
Sri. A.J.Janardhanan , Unit Head, IRE Limited, Chavara

In the presence of witnesses:

(1)

(2)

CONTRACTOR

Signed and delivered by Smt. S.Girija, Superintending Engineer, Harbour Engineering Central Circle, Ernakulam (North), Kochi-18, for and on behalf of the Governor of State of Kerala.

In the presence of witnesses:

(1)

(2)

CONTRACTOR

SUPERINTENDING ENGINEER



CONDITIONS.

1. This agreement is executed and/or contract is entered into in accordance with Government Order, GO (Rt) 296/2016/F & PD dated 25/04/2016 and letter No. D1-1614/16/HECC dated 30/06/2016 of Superintending Engineer, central circle and said order and other orders issued by the Government in this regard are part of this Agreement
2. The duration of this contract shall be 120 working days from the date of execution of the agreement. The IREL has to pay requisite amount for 34768m³ sand as per government order GO (Rt) 296/2016/F & PD dated 25 04 2016 and to re-deposit the waste sand after mineral has been extracted as per direction of the departmental officers at designated location.
3. The IREL shall remove only allotted quantity of sand within the contract period as per direction of the departmental officers.
4. The IREL shall examine the site conditions and must be ascertained before entering into a contract. No further complaints regarding the quantity and availability of dredged sand shall be entertained later.
5. The Superintending Engineer shall have the power to terminate the contract and rearrange the work, if IREL violates any of the terms of the Agreement or causes distress to the Government. If any liability is determined as such, it will be recovered from IREL through Revenue Recovery Procedures.
6. At the end of the contract period, the liabilities made by IREL will be deducted from the security deposit and the remaining amount if any will be refunded.
7. The IREL must price the sand and at its own expense and responsibility remove the aforementioned sand to separate the minerals.
8. The IREL shall re-stock the waste sand after separation of minerals to record the measurements at the area defined.
9. The IREL shall NOT remove sand in excess of the permitted quantity and shall not remove outside the area allotted by the department.

CONTRACTOR

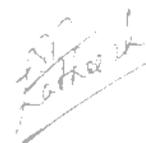
SUPERINTENDING ENGINEER



10. The IREL shall remit all taxes, royalties and other duties payable to the government for sand removal at its respective rates.
11. The sand shall be removed only from 8 am to 5 pm on weekdays. If the sand is removed at other times, the prior permission of the department officials must be obtained.
12. The sand should be removed only after measuring quantity based on the levels in the presence of department officials and IREL at the designated area. The actual quantity of sand is determined based on the initial level before sand removal and the final level of the same area after removal.
13. Each load of minerals should be removed only after the department officials have received the sealed and signed passes stating the quantity of minerals, lorry number, time, date and route of transport.
14. Sand shall not be transported without proper documents.
15. The IREL shall obtain each pass for the number of Lorries to be taken each day, including the lorry number, must be obtained in advance from the department officials.
16. The IREL shall remove required quantity of sand as directed and legal action shall be taken in case of non-compliance.
17. No claim shall be made to any variation in quantity of sand to be removed.
18. The IREL should ensure that when removing sand, the department property is not damaged and that it is safe.
19. The IREL should ensure that the existing vegetation on the site should not be damaged.
20. If any of the existing structures on the site are damaged, IREL will have to repair it at its own expense.
21. The IREL should appoint an authorized agent on the site and provide full details of the agent, including signature, in writing and sand should be taken only in the presence of Agent / IREL.
22. The sand and/or segregated minerals may be transported only in the presence and permission of the Department Officer.

CONTRACTOR

SUPERINTENDING ENGINEER



23. Although only a limited amount of sand is available at the allotted area, IREL has no other rights and department has no liability on this.
24. The IREL has to resolve, if any problems or obstacles on the site or along the way during sand removal at their own cost and responsibility.
25. The IREL must be resolved all employment issues arising locally at their own responsibility and should not make any claims in this regard.
26. If the minerals are separated at the site using IREL machines, the remaining waste sand should be stocked by IREL itself to record measurements at the location specified by the Department. IREL is required to install machines at its own expense for mineral separation and to remove them at its own expense at the end of the contract period.
27. Disputes whatever arising out of this Agreement may be resolved only through the jurisdictional Civil Law Court where the contract is entered into.

I have read and are convinced and agreed to all of the above terms.

Signed and delivered by the above mentioned contractor
Sri. A.J.Janardhanan , Unit Head, IRE Limited, Chavara

In the presence of witnesses:

(1)

(2)

CONTRACTOR

CONTRACTOR

SUPERINTENDING ENGINEER



Signed and delivered by Smt. S.Girija, Superintending Engineer, Harbour Engineering Central Circle, Ernakulam (North), Kochi-18, for and on behalf of the Governor of State of Kerala.

In the presence of witnesses:

(1)

(2)

CONTRACTOR

SUPERINTENDING ENGINEER

180
K. Girija

AFFIDAVIT

AGREEMENT NO. 46/17-18/HECC, DATED: 12 .02.2018

I have read and am convinced of all the conditions set out in the Agreement above and have voluntarily agreed. It hereby swears that 34768 cubic meters of sand will be disposed of within 120 working days from the date of contract as per the terms.

Sri. A.J.Janardhanan ,
Unit Head,
IRE Limited, Chavara

Place: Ernakulam

Date:12.02.2018

CONTRACTOR

SUPERINTENDING ENGINEER

English Translation from Original Malayalam
Agreement



Superintending Engineer