

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

**IN**

**ORIGINAL APPLICATION NO. 151 OF 2020 (SZ)**

**STATEMENT OF FACTS FILED ON BEHALF OF 1<sup>ST</sup> AND 6<sup>TH</sup>  
RESPONDENTS**

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Dated at Chennai on this the 25<sup>th</sup> day of April, 2022.

**M/s. E.K.KUMARESAN**

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





**STATEMENT OF FACTS ON BEHALF OF THE 1<sup>st</sup> and 6<sup>th</sup>**  
**RESPONDENTS IN OA 151/2020 FILED BY AKHILA KERALA**  
**DHEEVARA SABHA BEFORE THE HON'BLE NATIONAL**  
**GREEN TRIBUNAL, CHENNAI**

All the averments and allegations contained in the Original Application are denied except those which are specifically admitted here under.

**1 to 7 :** No remarks.

**8 to 10 :** The Thottappally estuary and spillway plays a vital role in the Flood mitigation of Kuttanad region in Alappuzha district. Effective discharge of flood waters from Pamba, Achenkovil and Manimala rivers to Arabian sea and prevention of saltwater intrusion to the Kuttanad region is carried out by the Irrigation Department by regulating shutters of the spillway. The estuary mouth of Thottappally (Pozhy mukham) become closed due to the sand deposits by Arabian sea when the flow from the above mentioned rivers becomes lean in summer. In order to drain out the flood water to the sea, cutting of sand bar is done prior to the monsoon season. To safeguard the lives and properties of the inhabitants of Kuttanad region, the excess flood water should be drained out to the sea through the spillway. The actual design capacity of Thottappally spillway is 1800 cubic metre/second but it is reduced to 600 cubic metre/ second due to the reduced width of pozhi. Due to the formation of sandbars and plantation of Casuarina tree in the pozhi, the width was reduced from 380m to 150m. This shortage of width at mouth decreases the efficiency of draining out the flood waters into the sea. Hence the above said work is essential to prevent flooding of Kuttanad region.

As per G.O(Rt.) No. 385/2019/WRD Dated 31.05.2019 an agreement was executed by the Department of Irrigation, Kerala with the 9<sup>th</sup> respondent, Kerala Minerals & Metals Ltd. (KMML) which is a Public sector undertaking to remove the mineral sand from Thottappally pozhy. Copy of the above Government Order is produced herewith and marked as Annexure R6(1).

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 REEJA JUSTUS  
 Under Secretary to Govt.  
 Water Resources Department  
 Govt. Secretariat  
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11 : As per clause 11 of the Memorandum of Understanding signed between Department of Irrigation Kerala with the Kerala Minerals and Metals Ltd. (KMML), KMML should not make any damages to the existing structures and should not cause pollution to the environment. If such incidents happens, the agreement authority has the right to terminate the contract at the risk and cost of the firm and such liabilities recovered by enforcing Revenue Recovery proceedings. KMML is a licensed agency by the Department of Atomic Energy, Government of India for processing of "Beach Sand Minerals" containing minerals like Ilmenite, Rutile, Zircon, Zillimanate, Monozite, etc..

12&13 : The quantity of silt /clay/sand to be removed from the channel for ensuring smooth flow through the channel was estimated by the Irrigation Department before the commencement of the desilting work. The progress of the same is strictly monitored by the officials of the Irrigation Department and District Disaster Management Authority. The Mineral sand deposits in the channel at the estuary is above the water level even at the high tides and hence the same is cut only up to the bed levels of the spillway by hydraulic excavators. The deposits in between estuary and spillway has to be removed by the dredgers as it is situated below the water level. The dredging operations is also done for removing the deposits situated above the bed level of the Thottappally spillway. There is no extraction of minerals carried out at Thottappally estuary. The whole excavated sand was transported by KMML to their plants at Chavara. As per the agreements and assessment, the quantity of sand is calculated in cubic metre. Acknowledgement receipts for each vehicle transporting the sand was issued and the same was entered in register book maintained at site itself. Measurements were also recorded in these receipts and register book at the site itself. The sand was transported by KMML only after the execution of necessary agreements and remittance of the amount to the government as per the rates in the agreement.

14 : The construction of structures including breakwater of harbours along the sea coast may be attributed to the erosion of sea in Northern side of the structure and accretion on the Southern side. The Thottappally pozhi is located at the Southern side of the harbour and the excessive erosion on the Northern side and damages of houses along this stretch of the sea coast, if any, as stated by the applicant shall be redressed by the maintenance of seawalls or with the construction of



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new anti- sea erosion structures.

**15 to 18 :** The desilting works from Veeyapuram to Thottappally for attaining the original bed profile of the canal is in progress. The desiltation of Thottappally channel in downstream side of the spillway to attain the original bed profile is completed by KMML.

**19 :** As per the Government Order dated 31.05.2019 issued by Irrigation Department, the dredging activity of the Thottappally spillway channel and pozhy mouth was required to be done to avoid the risk of flooding in Kuttanad area. Environmental clearance is not necessary for the dredging activities, in rivers and canals for their maintenance, upkeep and disaster management vide Notification dated: 28.03.2020 of the Ministry of Environment, Forest and Climate Change.

**20 :** No extraction of minerals have been carried out at Thottappally estuary. The whole excavated sand was transported by KMML to their plant at Chavara.

**21 :** The Statement of the Petitioner regarding several incidents wherein the mining activities have led to seismic activities in the area is baseless. If the houses were damaged partially in the nearby areas by the sea erosion it could not be attributed to the dredging activities.

**22 :** As per clause 11 of MOU signed between Department of Irrigation, Kerala with the KMML, KMML should not make any damages to the existing structures and should not cause pollution to the environment. If such incidents happens, the agreement authority has the right to terminate the contract at the risk and loss to the terms and such liabilities recovered by enforcing Revenue Recovery proceedings.

**23 :** The whole excavated sand was transported by KMML to their plants at Chavara. Acknowledgement receipt for each vehicle transporting the sand was issued and the same was entered in the register book maintained at site itself. The sand was transported by KMML only after the execution of necessary agreements and remittance of the value of sand to Government as per the Government Order.

**24 :** The deepening and widening the "Thottappally Spillway channel and spillway mouth" and to remove the sand in the leading channel to

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Secretary to the  
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Chavara

facilitate free flow of water to ensure the safety of the people and to avoid any flooding in Kuttanad area under disaster management. The work envisage removal of sand deposited on the mouth of the pozhy, which happens to contain atomic minerals. Removal of this minerals done by KMML which is a State Public Sector Undertaking, so as to ensure that no minerals in the sand are wasted or frittered away, does not fall within the meaning of Section 3(d) of the Mines and Minerals (Development and Regulation) Act, 1957 which defines "Mining Operations" as operations undertaken for the purpose of mining any minerals. No extraction of minerals has been carried out at Thottappally estuary. The whole accumulated sand was transported by KMML to their plant at Chavara, at price fixed by the Government of Kerala. Hence the contention of the petitioner that removal of sand will affect the drinking water source in the area is baseless.

**25 :** The Ministry of Environment, Forest & Climate Change has exempted Environmental Impact Assessment clearance for dredging and desilting of river and canals for the purpose of their maintenance, upkeep and disaster management.

**26 :** The statement of the applicant that 159 houses were already damaged due to the desilting of canals at Thottappally is baseless. If the houses were damaged partially in the nearby areas by sea erosion, it could not be attributed to the desilting of canals and spillway at Thottappally.

## GROUNDS

**A to K -** In every year during Monsoon season the water level of the rivers Achenkovil, Pamba, Manimala rises inordinately causing heavy flood in the low laying area of Kuttanad region. To safeguard the life and properties of these habitations in Kuttanad region, the excess flood water should be drained out to the sea through Thottappally spillway. The Thottappally estuary is closed for most part of the year and needs to cut before the onset of monsoon. The actual design capacity of Thottappally spillway is 1800 cubic metre/second but it gets reduced to 600 cubic metre/second due to the reduced width of pozhi. Due to the formation of sand/ and plantations of casuarinas tree in the pozhi, the width was reduced from 380 metre to 150metre. This shortage of width at mouth decrease the efficiency of draining out the flood water in to the sea. Hence the dredging work at Thottappally spillway is essential to

  
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 Thottappally

prevent flooding of Kuttanad region, as per the study report of M.S.Swaminathan foundation and IIT Chennai.

As per the G.O (Rt) No. 385/2019/WRD Dated 31.05.2019 an agreement was executed by the Department of Irrigation, Kerala with the 9<sup>th</sup> respondent, Kerala Minerals & Metals Ltd (KMML) which is a Public sector undertaking. The quantity of silt /clay/sand to be removed from the channel for ensuring smooth flow through the channel was estimated by the Irrigation Department before the commencement of the desilting work. The work is carried out by the supervision of officials of Irrigation Department. Extraction of minerals has not been carried out at Thottappally estuary site. The whole excavated sand was transported by KMML to their plants at Chavara. On behalf of Irrigation Department, no atomic mineral separation units were installed or established at Thottappally. The Ministry of Environment, Forest and Climate Change has exempted Environment Impact Assessment clearance for the activity of dredging and desilting of rivers and canals for their routine maintenance and disaster management.

In view of the facts mentioned above, the Original Application is devoid of any merits and hence liable to be dismissed.



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GOVERNMENT OF KERALA

Abstract

Water Resources Department –Removal of Mineral sand from Thottappally Spillway Pozhimouth – Permission accorded to M/s Kerala Minerals & Metals Ltd (KMML) –Rate fixed - orders issued.

WATER RESOURCES (IR) DEPARTMENT

G.O.(Rt)No.385/2019/WRD Dated, Thiruvananthapuram, 31/05/2019

- Read 1 Letter No.W3 -31299/2018/R/DB-2 dated 01/11/2018 and 09/05/2019 from Chief Engineer, Irrigation & Administration, Thiruvananthapuram.
- 2 Minutes of the meeting held by Hon'ble Minister for Water Resources on 02/05/2019.
- 3 Letter No.MS/Mines/TPLY/05 dated 02/05/2019 from MD, KMML.
- 4 Minutes of the meeting held by the Secretary, Water Resources Department on 14/05/2019.
- 5 Letter No.D8-4661/2019/ISC dated 29/05/2019 from the Superintending Engineer, Irrigation South Circle, Thiruvananthapuram.

ORDER

The accumulation of sand in the Thottappally Spillway in Alappuzha District has affected the free flow of flood water to the sea, risking the Kuttanad area by flooding during the impending Monsoon season. 2018 witnessed severe flooding in the area. The M.S. Swaminathan Research Foundation (MSSRF) & the IIT, Madras upon consultation have recommended clearance of sand bar at the mouth of spillway and deepening and widening of the leading channel for further derisking the flood problem in Kuttanad.

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2) Since the sand deposit are noted to contain regulated minerals, the disposal of the sand can be entrusted only to the appropriate licensees in the public sector.

3) M/S Indian Rare Earths Ltd., Chavara & The Kerala Minerals & Metals Ltd, Chavara have approached Government for the sand and based on the decision in the meeting held by Hon'ble Minister on 24/01/2019, Superintending Engineer, Irrigation South Circle, Thiruvananthapuram invited Expression of Interest (EoI) on 26/02/2019. M/s KMML submitted their EoI and their quotation for removal of sand quoting a rate of Rs.290/M<sup>3</sup>. The firms upon negotiation by the Superintending Engineer proposed that the order for removal of mineral sand may be made in favour of M/s KMML by suitable conveyance clauses. As per the report of the Chief Engineer, (I&A) dated 09/05/2019, M/s KMML has agreed that all financial and legal obligations with the department shall be met by M/s KMML.

4) As per the proposal dated 01/11/2018 of Chief Engineer (I&A) for the removal of mineral sand from Thottappally Spillway, the amount fixed for the mineral sand was Rs.464.55/M<sup>3</sup> (excluding the cost of dredging) with reference to the G.O.(Rt)No.645/2018/F&PD dated 06/08/2018 granting sanction to dredge sand at Thottappally Harbour by Fisheries & Port Department. As per G.O.(Rt) No.571/ 2012/WRD dated 14/05/2012; permission was granted to IREL for dredging of sand bar at Thottappally Spillway (TSW) mouth at the rate of Rs.450/M<sup>3</sup>. However, as per the G.O.(Rt) No.112/19/F&PD dated 12/02/2019, the rate fixed for the dredged spoil at Neendakara Port is Rs.306.54/M<sup>3</sup> including all taxes and the bidder M/s KMML had to pay the cost of dredging to the Fisheries Department. Essentially all these were within a range, comparable rates.

5) Since the rates proposed by the IREL & KMML based on above G.O. dated 12/02/2019 was quite below the previous rates (Rs.464.55/M<sup>3</sup>, Rs.450/M<sup>3</sup>) especially considering that the sand contains regulated atomic minerals, Government had entrusted Mining & Geology Department as well as the NCESS to assess and evaluate the contents of the mineral sand. But both institutions have not replied till date conclusively recommending a different rate. Further, in response to Government letter dated 30/04/2019, M/s KMML informed that they are

ready to accept the rate of Rs.464.55/M<sup>3</sup> for the sand. In the meantime a high level meeting was convened on 02/05/2019, under the Chairmanship of the Hon'ble Minister for Water Resources Department, in which Hon'ble Ministers for Finance, Public Works Department, Food & Civil Supplies and Agriculture were also present, to decide on the removal of sand from Thottappally Spillway. The meeting assessed that the then rate quoted by IREL & KMML appeared to be low (ie.Rs. 290/M<sup>3</sup>) and therefore the Additional Chief Secretary, Water Resources Department was entrusted to have discussions with the Secretary, Industries Department and to take a decision in the matter. Also decided that the Chief Engineer(I&A) shall realize the proceeds of sale to Government heads.

6)Based on the above decision, a meeting was convened by Secretary, WRD on 14/05/2019 with officials of IREL, KMML, and representative of MD, KSIDC & Secretary to Industries Department. In the meeting it was found that sand is to be removed before the onset of current monsoon (June 2019). The KMML and Industries Department(KSIDC) refused to increase the offered rate. But agreed to review it later if necessary. The only practically feasible option before the Government is therefore to accept the highest rate offered by KMML and IREL on the date ie. Rs. 464.55/M<sup>3</sup> excluding the excavation/ dredging charges as per the terms and conditions of agreement and EoI floated. The KMML has also to bear the GST expenses such as income tax, welfare tax, royalty etc.

7) Government have examined the matter in detail and are pleased to accord sanction to Chief Engineer, (I&A) to accept the highest offered rate on date of Rs.464.55/M<sup>3</sup> for the sand excluding GST and excavations/ dredging charges offered by M/s KMML as per letter read 3<sup>rd</sup> paper above in accordance with the terms and conditions of EoI floated subject to the condition that the above rate will be in force only for three (3) months which is to be revisited at that point on recommendations of Chief Engineer (I&A).

8)The Chief Engineer (I&A) is directed to take urgent action to execute necessary agreement with the PSU mentioned above and move forward to avoid the loss of sand during the impending monsoon, so as to allow free flow of water through the pozhi mouth.

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(By order of the Governor)  
**Dr. B. ASHOK**  
Secretary to Government

To:

The Chief Engineer (I&A), Thiruvananthapuram.

The Chief Engineer Kuttanad Package & Inland Navigation,  
Alappuzha

The Chief General Manager & Head, IREL, Chavara, Kollam

Managing Director, KMML, Chavara, Kollam

Managing Director, Kerala State Industrial Development  
Corporation (KSIDC), Thiruvananthapuram.

The Principal Accountant General (A&E / Audit), Kerala,  
Thiruvananthapuram.

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Forwarded /By order

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Section Officer

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