

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (S.Z)**

**SOUTHERN ZONE BENCH AT CHENNAI**

**APPEAL No. 15 of 2017 (SZ)**

**Between**

N. Shamsul Huda, Calicut,  
Kerala State.

**.... Appellant**

**-AND-**

- 1. Union of India, Rep by its Secretary**  
Ministry of Environment, Forest and Climate Change  
New Delhi – 110 003
- 2. Government of Kerala**  
Rep. by its Secretary,  
Department of Environment, Government Secretariat,  
Thiruvananthapuram- 695 001
- 3. State Environmental Impact Assessment Authority, Kerala,**  
Rep. by its Member Secretary  
Pallimukku, Pettah P.O, Thiruvanthapuram 695 024.
- 4. E.A. Abdul Karim, S/o Alikunju**  
Director, M/s. Malabar Aggregates (P) Ltd.,  
Edathuruthil House, Vadakakekara P.O.,  
Paravoor, Ernakulam, Kerala- 683 522

**... Respondents**

**WRITTEN ARGUMENTS FILED ON BEHALF OF THE 4th RESPONDENT**

**THE ISSUE IN THE PRESENT APPEAL IS COVERED BY THE JUDGEMENT OF THIS  
HON'BLE NATIONAL GREEN TRIBUNAL (SZ) IN O.A. NO. 136 OF 2017 AND O.A. NO.  
202 OF 2017**

1. It is submitted that the above Appeal has been filed praying for the following relief :

- 1) Issue any appropriate order or direction cancelling/setting aside the Annexure-A3 Post Facto Environmental Clearance issued in favour of 4th respondent.*
- 2) Issue any appropriate order or direction declaring that the 3rd respondent is empowered to issue only Prior Environmental Clearance after proper and scientific study on environment, ecology and biodiversity prevailing over the*

*locality, and the 3rd respondent has no jurisdiction/authority to issue Post Facto Environmental Clearance.*

*3) Issue any such other order, direction, declaration etc., as this Hon'ble Tribunal deems fit in the facts and circumstances of the case.*

2. It is submitted that the only and major contention of the Appellant is with regards to the impugned order being granted as an ex- post facto clearance.
3. It is submitted that the impugned Environmental Clearance has been granted for mining of mineral in an area of less than 5 hectares that is **2.3732 Hectares**. It is submitted that as per the decision of the Hon'ble Supreme Court in Deepak Kumar vs State of Haryana, it was laid down that the mining projects at an area of less than 5 hectares should also be permitted only after obtaining Environmental Clearance under the EIA notification, 2006.
4. Thereafter, after a series of notifications, amendments, and court proceedings, finally this Hon'ble Tribunal in the order made on **04-05-2016** in the case of **Naresh Zargar vs. State of Madhya Pradesh & Others**. laid down a cut off date for minor mineral projects less than 5 hectares to apply for Environmental Clearance as - on or before **31.03.2016**. It is submitted further that this Hon'ble Tribunal also in the case of **Jatinder Singh vs Union of India** had laid down that the requirement of Environmental Clearance of minor minerals would also apply to mining of major minerals.
5. It is submitted that, therefore the proposition of law that is declared and holding is that mining of minerals less than 5 hectares would be required to have submitted an application for grant of Environmental Clearance on or before 31.03.2016. It is submitted that this applies to all the projects which were functioning and in existence, wherein as a final chance they were granted an opportunity to apply for Environmental Clearance on or before 31.03.2016.
6. It is submitted that all the above judgements have been referred and a complete declaration of law in respect to all aspects was made by the landmark decision of this

Hon'ble bench in the case of **Tamil Nadu Small Mine Owners Federation vs MOEF & Ors in O.A No. 136 of 2017 order dated 18.03.2020 pronounced on 30.06.2020.**

This Hon'ble Court had laid down as follows :

*(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.*

7. It is submitted that therefore the question of ex- post clearance does not arise to projects who have applied for grant of Environmental Clearance on or before **31.03.2016**. In fact, the judgement of this Hon'ble Tribunal in **O.A No.136 of 2017** laid down that those projects which applied for Environmental Clearance on or before **31.03.2016** are entitled for grant of Environmental Clearance as per normal procedure and those projects alone which have applied for grant of EC after **31.03.2016** are liable to be treated as a violation case as per the notification of MoEF dated **03.04.2017**. The order of this Hon'ble Tribunal in **OA No 136 of 2017** was also upheld in **O.A. No 202 of 2017**.
8. In the present case the application for Environmental Clearance by the Respondent was made on **29.07.2015** which is within the cut- off date of **31.03.2016** as per the judgement in **OA No. 136 of 2017**. Therefore, the issue of the present impugned EC being ex- post facto is no longer *res integra* since a benefit has been given to all projects to apply for Environmental Clearance on or before **31.03.2016**. The said decision and benefit squarely applies to the facts of present case in favour of this Respondent and as such it is the contention of this Respondent that the relief in the Appeal cannot be granted as this

Respondent has applied for Environmental Clearance on **29.07.2015** which is within the cut-off date of **31.03.2016**.

9. It is submitted that, it is the contention of this Respondent that the present project is a fresh grant of Environmental Clearance at the impugned location which elaborated hereunder and without prejudice has stated the above in light of the recent landmark decision in **OA No 136 of 2017**.

**ALLEGATIONS OF EX-POST FACTO CLEARANCE IS FACTUALLY INCORRECT**

10. It is submit that this 4<sup>th</sup> Respondent quarry had been granted Environmental Clearance (hereinafter referred to as EC) vide proceedings dated 31.12.2016 submitted as Annexure No. 3 by the Applicant, which is under challenge in the present appeal. I state that the details of the site are as follows: -

EC Location :- Survey No 36/3 (pt), 37/1(pt), 37/2(pt), 37/3 (pt) at Morayoor Village, Kondotty Taluk, Malappuram District, Kerala

EC Extent :- 2.3732 Hectares.

EC date and Expiry :- 31.12.2016 ; 5 years

11. It is submitted that earlier, this respondent had been granted Quarrying Permit, Consent from the Kerala State Pollution Control Board and Explosive license which had been submitted as Annexure 2 to 4 by this Respondent. The details of the permission is as follows :-

Location :- Survey No 37/1, 37/3 at Morayoor Village, Kondotty Taluk, Malappuram District, Kerala

Extent :- 1 Acre

Validity :- Upto 09.01.2015

12. It is submitted that the area that has been granted Environmental Clearance now is different and a larger extent of lands. Hence the same is only a fresh clearance. Further, the areas in Survey No 37/1 and 37/3 are larger extents of lands where a portion of it

alone was granted permissions for quarrying earlier. It is most important to note that even those areas where permissions had been granted, the same had been closed and non-functional for almost a period of one year. The same had also been recorded during the site visit by the SEIAA on 30.05.2016. This has also been reflected and referred to in the proceeding granting the Impugned Environmental Clearance to this Respondent.

13. Despite all of the above, the Appellant has alleged that the impugned site was a working quarry as on the date of clearance which is evidently and obviously false. It is a matter of fact and a matter of record that the site was non-operational and closed. The allegation of the Appellant to the contrary in his rejoinder is thus specifically denied.

14. Thus, on the facts and background of the case itself, it has been clearly recorded that the EC is a PRIOR Environmental Clearance. The Appellant while alleging the contrary has not furnished any proof to the same. The Respondent also had stated that same in the earlier reply and by a convenient interpretation, the Appellant, has alleged in the Rejoinder as if this Respondent had stated that the quarry had been functioning. It is specifically denied and has never been admitted. Thus, the case of the Appellant has no iota of merit and is liable to be dismissed.

**ALLEGATIONS OF IMPROPER APPRAISAL AND NON-CONSIDERATION OF ENVIRONMENTAL FACTORS IS INCORRECT**

15. It is further submitted **In Arguendo** to the above submissions, this Respondent had obtained the EC only following the due process and existing procedures as per law. The same is explained hereunder: -

**Date of Application for EC: - 29.07.2015**

Date of perusal of the application: - 50<sup>th</sup> SEAC meeting on 30-31/12/2015

Re-consideration of the application: - 52<sup>nd</sup> SEAC meeting on 8-9/02/2016

Recommendation of the application: - 51<sup>st</sup> SEIAA meeting on 29/03/2016

Site Visit : - 30/05/2016

Re-consideration of the proposal: - 54<sup>th</sup> SEIAA meeting on 21/06/2016

Compliance of pre-conditions: - 25/08/2016, 26/08/2016 and 24/09/2016

Grant of EC: - 31/10/2016.

Therefore, it is submitted that only after following a rigorous scrutiny and appraisals as mandated per law, the EC had been granted to this Respondent.

16. It is submitted that all relevant factors had been looked into at the time of granting of EC by even conducting site inspections. In fact, the EC was granted after recording the proceedings of the officials namely, Village Officer (Morayur) and Geologist (Malappuram) who have vided communication dated 26.08.2016 & 24.09.2016 respectively, recorded the absence of land slides in the area. Further, this respondent had also given a communication dated 25.08.2016 stating that the dwelling unit nearby had also been demolished.

17. In addition to the above, the EC had been granted subject to a total of ELEVEN (11) specific conditions and about SIXTY-ONE (61) general conditions. The same had been approved and granted by the competent, scientific and statutory authorities. The Applicant has miserably failed to point out any errors or establish any merits to challenge the impugned EC. On the other hand, merely by raising certain technical objections, the Appeal had been filed which is erroneous.

**NO ILLEGALITY IS COMMITTED BY THE RESPONDENT PROJECT**

18. It is submitted that originally under the Environment Impact Assessment Notifications (hereinafter referred to as EIA) dated 1994 and 2006, issued under the powers granted under Section 3 and 5 of the Environmental Protection Act, 1986 did not mandate the requirement of EC for mining of minor minerals for an area of less than 5 Hectares.

19. However, by a judgement of the Hon'ble Supreme Court in the case of **Deepak Kumar & Ors Vs. State of Haryana & Ors in 2012 (4) SCC 629**, it was held that the leases of minor minerals including their renewal for an area of less than five hectares be granted only after getting the environmental clearance from the authorities. Thereafter the Ministry of Environment and Forest had issued an Office Memorandum dated 18.05.2012 to comply with the directions of the Hon'ble Apex Court and decided that all

mining projects minor minerals including their renewal, irrespective of the size of the lease would require prior environmental clearance.

20. Thereafter, certain issues arose amongst the proponents and authorities with respect to the implementation of the above decision. Notably, the Hon'ble High Court of Kerala in the case of **All Kerala River Protection Council vs State of Kerala (2015) 2 KLT 78** had held that EC was required for only new projects/activities. It further held that the decision of the Apex Court in Deepak Kumar case did not contemplate environmental clearance for an area of less than 5 Hectares with regard to existing minor mining lease/permits. The Hon'ble Court also had held that as per Rule 12 of Kerala Minor Minerals Concession Rules, 2015 to the effect that environmental clearance required under Rule 9 shall not be insisted in the case of renewal of quarrying permits in case of quarries which had a valid permit as on 9<sup>th</sup> day of January, 2015.

21. Further, it is submitted that even otherwise, as per the proviso to Rule 9 of the Kerala Minor Minerals Concession Rules, 2015, the mineral of "Laterite Building Stone" was exempted from providing Environmental Clearance in order to obtain the quarrying permit. Thus, very obviously, for the above referred activity, at the relevant point of time, the existing legal framework did not mandate for the obtainment of an Environmental Clearance under the EIA Notification, 2006.

22. Thus, it is submitted that at the relevant point of time this Respondent project had complied with the existing law in force. It is particular to state that the Hon'ble Division Bench of the Kerala High Court had relied upon clause(2) of the EIA, Notification, 2006 and in any event had laid down that the operation of the judgement in the Deepak Kumar case would be applicable in terms of clause(2) to projects at the time of renewal or expansion.

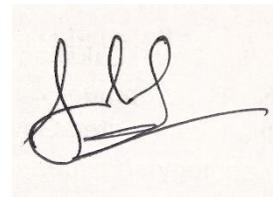
23. The above issue was again considered by another Division Bench of the Hon'ble Kerala High Court in **M.K.Najeeb vs MOEF & Ors in its order dated 15.07.2015 in W.A. No.1514 of 2015** which had also held that in respect of quarries which have valid permit as on January, 2015 have to be read in accordance with the law as has been noticed and laid down in the earlier Judgement.

24. Therefore, it is submitted that the Respondent project has always been relying upon the existing laws in force as declared by the Hon'ble Courts. In fact, as submitted earlier the project is also compliant with the directions of this Hon'ble Tribunal in the cases of Naresh Zargar and the Tamil Nadu Small Mines Owner's Federation. Therefore, at no point of time has the impugned project been in violation of any existing provision of law and as such the allegations against the project are thoroughly improper and unsustainable.

25. Thus, it is submitted that this respondent is a law-abiding unit and has been undertaking business only after obtaining proper permissions as per existent law. On the other hand, even though it is a known fact that there are a number of illegal operators in the state of Kerala, even after the Appellant himself had pointed out several others, only this respondent had been targeted to be litigated against. In fact, there are a number of illegal operators who are causing one trouble or another to lawful units such as this respondent and the present litigation is a continuation in the series of problems faced by this respondent.

Therefore, it is respectfully prayed that this Hon'ble Tribunal may be pleased to dismiss the above Appeal as devoid of merits and pass such further or other orders as this Hon'ble Tribunal may deem fit and thus render justice.

Dated at Chennai on this the 02<sup>nd</sup> day of August, 2021.



**Counsel for the 4<sup>th</sup> Respondent**

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**COUSEL FOR THE 4<sup>th</sup>  
RESPONDENT**

**M/s SAI SATHYA JITH**

**97890 52084**

**taurs@gmail.com**