BEFORE THE NATIONAL GREEN TRIBUNAL,

SOUTHERN ZONE AT CHENNAI

O.A. NO. 77 of 2023

Saravanakumar .....Applicant

VS

SEIAA & Anr. ....Respondent

INDEX-Compilation

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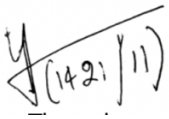
Dated this the 4th Day of July, 2023 at Chennai



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Madras High Court
M.Periyasamy vs The State Of Tamil Nadu on 2 December, 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02/12/2010

CORAM
THE HONOURABLE Mrs.JUSTICE R.BANUMATHI
AND
THE HONOURABLE Mr.JUSTICE S.NAGAMUTHU

W.P.(MD)No.11182 of 2010
W.P.(MD)No.11562 of 2010
W.P.(MD)No.11710 of 2010
W.P.(MD)No.11827 of 2010
W.P.(MD)No.12072 of 2010
W.P.(MD)No.12098 of 2010
W.P.(MD)No.12229 of 2010
and
W.P.(MD)No.12383 of 2010

W.P.No.11562/2010:

M.Periyasamy .. Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Industries Department,
Fort St. George, Chennai-9.

2. The Director of Geology and Mining,
Guindy, Chennai.

3. The District Collector,
Tuticorin, Tuticorin District.

4. The Executive Engineer,
Tamirabarani Basin,
Public Works Department (PWD),
Tuticorin District. .. Respondents.

W.P.No.11182/2010 C.Vaiguntaraman, President, Tamiraparani Mruthur Keezhkhal Padmanabha-

mangalam Village Water Users Association, No.1/270, Padmanabhamangalam, Srivaikuntam Taluk, Thoothukudi District. .. Petitioner.

vs.

1. The District Collector, Thoothukudi District, Thoothukudi.

2. The Assistant Director of Geology and Mining, Thoothukudi. .. Respondents.

W.P.No.11710/2010

Madasamy .. Petitioner.

vs.

1. The District Collector, Tuticorin

2. The Revenue Divisional Officer,
Beach Road, Tuticorin.

3. The Assistant Director,
Mines and Minerals,
Collectorate Office,
Tuticorin.

4. The Tahsildar,
Srivaikuntam Taluk, Tuticorin District.

5. The Executive Engineer,
Public Works Department(Water Resources)
Tamirabarani Distribution Circle,
Tirunelveli.

6. The Executive Engineer,
TWAD (Village),
Tuticorin.

7. Parvathy,
President,
Tholappanpannai village panchayat,

Srivaikuntam Taluk, Tuticorin District... Respondents.

(7th Respondent was impleaded as per the order of the Court in WP MP(MD) No.4/2010 dated 29.09.2010) W.P.No.11827/2010 M.S.Murugaiah Pandian .. Petitioner.

vs.

1. The District Collector, Thoothukudi District, Thoothukudi.

2. The Tahsildar, Srivaigundam Taluk Office, Srivaikundam, Thoothukudi District. .. Respondents.

W.P.No.12072/2010

The President,
Keelakaduvetti Panchayat,
Kalakad Panchayat Union,
Tirunelveli District. .. Petitioner

vs.

1. The District Collector,
Tiruneveli District.

2. The Sub Collector,
Cheranmahadevi,
Tiruneveli District.

3. The Dy. Director of Geology and Mining,
Tiruneveli District.

4. The Tahsildar,
Nanguneri, Tirunelveli District.

5. The Executive Engineer,
Public Works Department/
Water Resource Organisation,
Tamirabarani Basin Division,
Tiruneveli District. .. Respondents.

W.P.No.12098/2010

Kanagaraj,
District Secretary,
Communist Party of India (Marxist),
No.15, Poltenpuram 3rd street,
Thoothukudi. .. Petitioner

Vs.

1. State of Tamil Nadu,
rep. by its Secretary,
Public Works Department,
Secretariart, Chennai-9.

2. The District Collector,
Thoothukudi District,
Thoothukudi.

3. The Assistant Director/Geology & Mining,
Thoothukudi District,

Thoothukudi.

4. The Executive Engineer,
PWD/WRO,
Tamiraparani Basin Division,
Tirunelveli-2.

5. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Thoothukudi. .. Respondents.

W.P.No.12229/2010

R.Nallakannu .. Petitioner.

vs.

1. The District Collector,
Thoothukudi District,
Thoothukudi.

2. The Assistant Director of Geology and Mining,
Thoothukudi.

3. The Public Works Department
rep. by its Executive Engineer,
Tamiraparani Basin,
PWD(Water Resources),
Thoothukudi District. .. Respondents.

W.P.No.12383/2010

S.Nainar Kulasekaran .. Petitioner.

Vs.

1. State represented by
The Chief Secretary to Government,
Government of Tamil Nadu,
Public Works Department,
Secretariat, Chennai.

2. State represented by
The Secretary to Government,
Government of Tamil Nadu,
Department of Environment,
Secretariat, Chennai.

3. The District Collector,

Thoothukudi District,
Thoothukudi.

4. The District Collector,
Tirunelveli District,
Tirunelveli.

5. The Conservator of Forest,
Forest Department,
Palayamkittai, Tirunelveli. .. Respondents.

Prayer

W.P.No.11182/2010 - Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Mandamus directing the Respondents to forthwith prevent the illegal sand mining in river basin of Thamiraparani river, abutting Tholappanpannai village by acting on the Petitioner's representation dated 19.08.2010 submitted to the District Collector, Tuticorin.

W.P.No.11562/2010 - Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Mandamus directing the Respondents 1 to 3 to forbear the 4th Respondent from quarrying sand on Thamirabarani River bed/basin, South Thozhappan Pannai village, Thiruvaikundam Taluk, Tuticorin District.

W.P.No.11710/2010 - Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Ceritiorarified Mandamus calling for the records relating to the proceedings of the 1st respondent in Na.Ka.GN.1/75/2010 dated 8.4.2010 and quash the same and forbear the Respondents from operating the sand quarry in Survey No.1/1, Tholappanpannai village, Srivaikuntam Taluk, Tuticorin District.

W.P.No.11827/2010 - Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Mandamus directing the 1st Respondent to consider the representation dated 31.08.2010 within a stipulated period as may be fixed by this Court.

W.P.No.12072/2010 - Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorari to call for the records of impugned order Rc.No.M2/19674/2010 dated 09.09.2010 passed by the 1st Respondent and quash the same.

W.P.No.12098/2010 - Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Mandamus for bearing the Respondents from doing quarrying operations in Thamirabarani river in Tholappanpannai village in Srivaikundam Taluk.

W.P.No.12229/2010 - Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Mandamus directing the first Respondent to cancel the permission granted in favour of the third Respondent to quarry sand in Thamiraparani river in Tholappanpannai village in S.F.No.1/1 of Srivaikuntam Taluk, Toothukudi District by Proceedings Na.Ka.No.GM.1/75/2010 dated

08.04.2010.

W.P.No.12383/2010 - Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Mandamus forbearing the 3rd and 4th Respondents from permitting the sand mining activities in Thamiraparani river.

!For Petitioner in WP.No.11562/2010 ... Mr.M.Ajmal Khan For Petitioner in W.P.Nos.11182 & ... Mr.G.R.Swaminathan 12383/2010 For Petitioner in W.P.No.11710/2010 ... Mr.J.Ashok for M/s.Jayapaul Associates.

For Petitioner in W.P.No.11827/2010 ... Mr.S.Chandrasekar For Petitioner in W.P.No.12098/2010 ... Mr.D.Srinivasaragavan For Petitioner in W.P.No.12229/2010 ... Mr.R.Nallakannu Party-in-Person.

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For Petitioner
in W.P.No.12072/2010    ... Mr.M.V.Venkateseshan

For Respondents         ... Mr.P.S.Raman,
-Govt.Officials             Advocate-General, Chennai
in all W.Ps                 assisted by
                            Mr.V.Rajasekaran,
                            Spl. Government Pleader
                            for the State in all W.Ps.

^For 7th Respondent in  ... Mr.Veerakathiravan
   W.P.No.11710/2010.

:COMMON ORDER

R.BANUMATHI,J
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These Writ Petitioners inter alia raise important questions of public interest as to whether sand quarrying had been done well beyond the stipulated permission granted affecting the normal course of river, supply of water for irrigation and for drinking purposes and what are the remedial measures to ensure the scientific sand quarrying.

2. Since all the Writ Petitions are concerned with quarrying of sand in Tamiraparani river and the points for consideration are one and the same, all the Writ Petitions were taken up together and disposed of by this Common Order.

3. Tamiraparani river - Tamiraparani river originates near Pothigai mountain in the Western Ghats. Locally "Pothigai" is called "Periya Pothigai", the great Pothigai, to distinguish it from a smaller mountain adjoining it called "Aindu-talai Pothigai", the Pothigai with five heads. Periya Pothigai is the highest in the Tirunelveli range of Western Ghats and the highest point is "Pothigaimudi Peak" reaching 1868 m. Pothigai Mountain is locally called Agasthiar malai. The river leaving the ghats at Papanasam, runs in a south- easterly direction to Cheranmahadevi, then north-east between

Tirunelveli and Palayamkottai then again south and east entering into the Gulf of Mannar close to Punnakayal, 15 km. south of Tuticorin. The total length is 120 km. The river basin occupies an aerial extent of 5382 km2 covering the areas of Ambasamudram, Tenkasi, Shencottah, Kadayanallur, Tirunelveli, Srivaikundam taluks and partly the areas of Sankarankoil, Nanguneri, Kayathar and Tiruchendur taluks of Tirunelveli and Tuticorin districts [Vide - Commission Report 3.1].

4. Out of the total land area (4016 km2) in and around the main river and along its drains, 67.4% is crop land. Paddy is the main crop. The remaining area is occupied by oil seed crops like groundnut, millets like sorghum and ragi, pulse crops like black gram and green gram, tubers like colacacia, coleous, amorphaphalus and tapioca, vegetables like brinjal, tomato, chilli and cluster beans and annual crops like sugarcane and plantain. The farmers of Tamiraparani river basin follow double crop season pattern, Kar and Pisanam. While the Kar cultivation stretches between June 15 and September 15, the Pisanam cultivation is taken up between October 15 and March 15. There is a waterfall on the main Tamiraparani river called 'Banatirtham' on the slope of Pothigai Mountain. There is yet another famous waterfall, not far from Banatirtham, called "Pamban Aruvi". This remarkable falls is not in the main stream, but in a tributary (Pambar), which rises on the "five - headed Pothigai" [Vide Commission Report 3.3].

5. There are many ancient temples along the banks of the river and the people consider it holy to take bath in the river. Every portion of the river is considered sacred. The perennial flow of Tamiraparani is regulated by Papanasam and Servalar reservoirs for producing hydroelectric power. Proper infrastructure management starting from Papanasam to Punnakayal at about 65 points meets the need for drinking water for lakhs of people in Tirunelveli and Tuticorin districts. Besides providing succour to the plants and the people, Tamiraparani river is providing water to many major industries in Tuticorin district viz., Southern Petrochemical Industries (SPIC), Tuticorin Alkalai Chemicals (TAC), Tuticorin Thermal Power Stations. [Vide Commission Report 3.3]

6. The system of regulation and use of water for irrigation is very old and it is also more economical because storage tanks or wetlands are in their natural state with some alterations in the flow regulation by the construction of sluice gates. In modern times, the upper catchments of the basin have been further modified by the construction of reservoirs. The biggest one is Papanasam Reservoir with a storage capacity of 150 million cubic metres located at Karaiyar village. This is connected to another reservoir on the Servalar river through a tunnel of length 3.3 km and 3 m diameter which together feed the hydroelectric power house. Apart from this, there is a diversion weir called "Papanasam Reservoir Weir" (Lower Reservoir) located below the confluence of Servalar river and Tamiraparani river, to divert the water for power generation. Whenever the demand for irrigation is higher than the requirement for maximum power production, the excess water will be directly let down into the river. In the downstream, Tamiraparani river gets regulated by small dams or weirs in eight places. [Vide Commission Report 3.4]

7. Type of soil in Tamiraparani river - Tamiraparani river basin is mainly a hard rock terrain, predominantly underlaid by crystalline Archaean rocks which are heterogeneous in nature. Three major types of soils occur in Tamiraparani river basin namely (I) red sandy soil (thickness 1-5 m), (ii) black cotton soil (thickness 1-3 m) and (iii) the alluvial soil (thickness 7-12m). Major portion of

the basin is covered with red sandy soil and black cotton soil is confined to the north-eastern portion (Balasubramanian and Sastri, 1999).

8. Policy of State in Entrusting Sand Quarrying to Public Works Department

- Taking cognizance of pernicious practice of unsustainable over exploitation of sand in the State of Tamil Nadu and based upon the directions in the Public Interest Litigation by the Madras High Court, in public interest, in 2003, the State of Tamil Nadu decided that sand quarrying will be undertaken only by the Government through a single Department viz., Public Works Department. In G.O.Ms.No.95 Industries (MMC.1) Department dated 01.10.2003, it was ordered that quarrying of sand in Government poramboke lands and private patta lands by private agencies will cease to be effective with immediate effect and sand quarrying was entrusted to a single agency viz., Public Works Department.

9. Rule 38-A was inserted to Tamil Nadu Minor Mineral Concession Rules (in short, "TN MMC Rules") stipulating that all existing leases for quarrying sand in Government lands and permissions/leases granted in ryotwari lands shall cease to be effective on and from the date of coming into force of Rule 38-A and the right to exploit sand in the State shall vest with the State Government to the exclusion of others.

10. As per Rule 36-A Sub-rule (6) of TN MMC Rules, no machinery shall be used for quarrying sand from river beds. By G.O.Ms.No.19 Industries (MMC.1) Department dated 19.04.2004, Rule 36-A(6) was amended to the effect that the Secretary to Government, Industries Department or any other Authority or Officer, as may be authorised may grant permission for use of machinery, if it is not detrimental to ecology.

11. Permission to quarry sand in Tamiraparani river - Tuticorin District - By various proceedings, the District Collector, Tuticorin has granted permission/licence to carry out sand quarry operations in Tholappanpannai of Tamiraparani river bed. As per G.O.Ms.No.110/P.W.(W.Spl) Dept. dated 6.7.2006, new sand quarry proposals have to be sent to the District Collector for approval. Based on the proposal, the District Collector granted approval for sand mining by the Public Works Department for sand quarrying in Tholappanpannai. In D.O. Lr.No.9693/I.Spl.2/2005-1 dated 18.03.2005, Public Works Department instructed that the sand quarrying work should be executed as per the rules of the Government in force by strictly following the transparency in Tender Act and Rules of the Government. Based on the said instructions and based on the High Court Order dated 03.08.2005 in W.P.No.12934 of 2005 and other matters, after calling for tenders for the purposes of quarrying of sand by man power, sand quarrying was entrusted. In Tholappanpannai. Government Sand Quarry, the quarrying of sand is said to have been done and permits are said to be issued by the Public Works Department to the sand loaded lorries every day. Alleging that there is indiscriminate sand quarrying and that there is illegal quarrying of sand beyond the permission granted, the Petitioners have filed the Writ Petitions in W.P.Nos.11710 and 12072/2010 seeking for Certiorarified Mandamus to quash the Proceedings of the 1st Respondent-District Collector, Tuticorin in Na.Ka.GM.1/75/2010 dated 08.04.2010 and Rc.No.M2/19674/2010 dated 09.09.2010 of the District Collector, Thoothukudi and Tirunelveli respectively and forbear the Respondents

from operating sand quarrying in Tholappanpannai in Tamiraparani river bed.

12. Case of Petitioners is that sand quarry operations are carried out by using machinery such as Poclains, Hitachi and the private persons who are engaged to operate quarry have laid the road to the width of 10 - 20 feet across the river and the roads are used for transporting sand in 700 -800 lorries in that area without despatch slip as required under Rule 36 Sub-rule (5) of TN MMC Rules round the clock. Petitioners averred that even though permission was granted for sand quarrying to Public Works Department, the quarrying operations are carried out by lessees and inspite of number of representations, Respondents have not taken any steps to regulate the quarrying operations and the quarrying operations are carried out over and above the permitted area.

13. According to Petitioners, sand quarrying permission was granted only in respect of an extent of 15.40.0 Hectares, but the sand quarry operations were carried out over and above the permitted area, which is in clear violation of the rules and regulations prescribed under TN MMC Rules. By such haphazard quarrying, the water flow in the river is affected and the water resources to the cultivable lands in and around Tholappanpannai village and also drinking water supply to the village is very much affected. Alleging that such indiscriminate sand quarrying is in complete violation of TN MMC Rules, Petitioners in W.P.No.11710/2010 seek to quash the Proceedings in Na.Ka.GM.1/175/2010 dated 08.04.2010 granting permission to quarry in Tholappanpannai village and seeks direction to forbear the Respondents from operating the sand quarry in Tholappanpannai village. Likewise, the Petitioner in W.P.No.12072/2010 seek to quash the Proceedings in Na.Ka.Rc.No.M2/19674/2010 dated 09.09.2010 granting permission to quarry in Keelakaduvetti village, Nanguneri Taluk, Tirunelvelii District.

14. Alleging that there is illegal sand quarrying in Tamiraparanii river, the Organiser of Tamiraparani River Water Protection Organisation has filed W.P.No.12383 of 2010 seeking Writ of Mandamus forbearing the Respondents from permitting the sand mining activities in the entire Tamiraparani river.

15. Respondents have filed counter stating that only the Public Works Department alone is doing sand quarry with the help of man power and every day more than 200 employees are working in the places for sand quarrying and that the mining is done as per the rules stipulated in the Government Orders. According to Respondents, as per G.O.Ms.No.110/PW (W.Spl.) Department dated 6.7.2006, new sand quarry proposals have to be sent to the District Collector for approval and based on the said proposal, the District Collector granted approval for sand mining by the Public Works Department. It is averred that tenders were called for supply of man power for sand quarrying. According to Respondents, sand is essential for implementation of number of Housing Schemes, Check dam works and Village Developmental Schemes. It is the case of Respondents that sand quarries are functioning in a skillful, scientific and systematic manner. According to Respondents , Poclain is occasionally used only to retrieve the struck up loaded lorry which is caught in sand and machineries are not used in sand quarrying.

16. During the course of hearing, it was brought to the notice of the Court that permission was granted for sand quarrying in Tamiraparani river in Thirumalaikolunthupuram in Tirunelveli

District apart from Tholappanpannai, Kizhpadigai Appankovil, Mukkani and Mangalakurichi in Tuticorin District. In the initial stages of hearing, materials were produced bringing it to the notice of the Court that there is illicit mining and that machineries are also used. On 16.09.2010, the Court has passed an order of interim stay of all activities of sand quarrying through Tamiraparani river until further orders. By an order dated 28.09.2010, the same was modified continuing the interim order in respect of Tholappanpannai. Insofar as the other quarries, interim stay was lifted subject to the conditions elaborated in the order dated 30.09.2010 and that order was subsequently modified by order dated 20.10.2010.

17. By an order dated 30.09.2010, Commission was appointed consisting of

(i) Mr.N.Seshasayee, Registrar (Judicial), Madurai Bench of Madras High Court;

(ii) Dr.N.Chandrasekar, HOD, Center for Geo-Technology, Manonmaniam Sundaranar University and (ii) Prof.M.Arunachalam, HOD, Sri Paramakalyani Center for Environmental Sciences, Manonmaniam Sundaranar University to file its report on 06.10.2010.

18. The Division Bench of the High Court has directed the Commission to report on:

(a) Physical status of sand quarry in (i) Thirumalaikolunthupuram, (ii) Tholappanpannai (iii) Kilpidagai Appankovil (iv) Mukkani and (v) Mangalakurichi of Tamiraparani river system;

(b) Whether further quarrying of river sand in the above referred five sites would be detrimental to (I) public interest, (ii) the interest of ayacutdars and (iii) on ecological balance.

The Commission inspected sites in (a) Thirumalaikolunthupuram (b) Tholappanpannai and (c) Kizhpadigai Appankovil on 1.10.2010. The Commission inspected remaining two sites: (i) Mukkani and (ii) Mangalakurichi on 4.10.2010 and filed its Report.

19. The Bench has appointed the Commission to visit the sites and file its report as to (i) extent of sand quarrying done; (ii) feasibility of further quarrying, (iii) its impact on public interest and interest of ayacutdars, drinking water and on ecological system. Along with officials represented by the counsels and also parties, Commission inspected the five sites. The Commission felt that more details, which are available with the Government Departments, may be required to give the report with greater accuracy. However, after inspecting the river and by examining the physical features of sand quarried five sites, the Commission has given its report elaborating upon the extent of quarrying done and the physical impact of sand quarrying on the river and also on the ecological system and also suggesting remedial measures, which we would refer to at appropriate places.

20. The Commission's report consists of three parts. Part I - report is prepared by Registrar - Judicial containing consolidated opinion of experts. Part I contains notes on classical river system, Court direction, constraints, foundation of the report, status of five sites on sand mining, extent of sand mining, the effect on river eco-system, special features of the five sites, conclusions and suggestions. Part II is the report of Dr.N.Chandra Sekar, H.O.D. of Centre for Geotechnology,

Manonmaniam Sundaranar University. Part II comprises of general aspects of river system, views of the expert on five sites, general observations with conclusions and suggestions along with photo documentation. Part III is the report of Dr.M.Arunachalam, H.O.D. of Sri Paramakalyani Centre for Environmental Sciences, Manonmaniam Sundaranar University. Part III also contains river ecosystem, understanding of river sediments and physical processes, uniqueness of Tamiraparani river, physical status of five sites in Tamiraparani river on sand mining in instream, floodplain and terrace, Observations on all the five sites, recommendations and conclusions.

21. By and large, the Commission has noticed that in all five sites and in addition, one in Siruthandanaloor adjacent to Mangalakurichi, Commission commonly noticed:- (i) digging of huge pits which looked like ponds and lakes and pits were characterised by water stagnation; (ii) along the fringes of these pits huge pile of sand blended with clay was seen; (iii) pathways of permanent nature and (iv) quarried site is definitely obstructing free flow of water and an impediment to general course. Commission opined that all the above combined has altered the eco-system in all the five sites.

22. Before we advert to the rival contentions of the parties, it is worthwhile to refer to the relevant provisions of the TN MMC Rules. Rule 38-A deals with quarrying of sand by the State Government stipulating that all existing leases for quarrying sand in Government lands and permissions/leases granted in ryotwari lands shall cease to be effective on and from the date of coming into force of Rule 38-A and the right to exploit sand in the State shall vest with the State Government to the exclusion of others.

23. In G.O.Ms.No.327, Industries Department dated 1.12.1997, the Government issued orders by introducing sub-rule (6) to Rule 36-A of TN MMC Rules to the effect that no machinery shall be used for quarrying sand from river beds. The said rule was introduced for the reason that private parties operating quarries were all non-technical people and do not possess the knowledge of theoretical bed level and bed fall of the river and if they are allowed to use the machinery, the quarrying work will be done in an uncontrollable manner and more than the allowable depth with a profit motive. As pointed out earlier, Rule 38-A was introduced under which the Public Works Department has been entrusted with the task of operating sand quarries in the State. In view of the demand from the public and also to cater to the need, the Government decided to amend Sub-rule (6) of Rule 36-A relating to the use of machinery for quarrying of sand in river beds with some conditions, Government passed G.O.Ms.No.19 Industries (MMC 1) dated 19.4.2004. Rule 36-A sub-rule (6) was substituted as under:

"No machinery shall be used for quarrying sand from river beds, except with the permission of the Secretary to Government, Industries Department or any other authority or Officer, as may be authorized by him in this behalf, who may grant such permission if use of such machinery will not be detrimental to ecology."

24. As per proviso to sub-rule (1) of Rule 36 of TN MMC Rules, there shall be no quarrying of sand in any river bed or adjoining area or any other area which is located within 500 metres radial distances from the location of any bridge, water supply system, infiltration well or pumping

installation of any of the local bodies or Central or State Government Department or the Tamil Nadu Water Supply and Drainage (in short, "TWAD") Board head works or any area identified for locating water supply schemes by any of the above mentioned Government Departments or other bodies.

25. In the D.O.letter No.9693/I.Spl.2/2005-1 dated 18.3.2005, the Secretary to Government, Public Works Department, Secretariat, Chennai addressed to the Chief Engineer, Madurai Region Water Resources Organisation, Public Works Department that the sand quarry should be executed as per the rules of the Government in force by strictly following transparency in Tender Act and Rules of the Government. The relevant portion in the said letter reads as under: "..... 2. I am to state the above work (sand quarrying) should be executed following the guidelines enshrined in the Tamil Nadu Minor Minerals Concession Rules, 1959 like

1. No quarrying within a distance of 50 meters from a railway line, reservoir, canal or other public work such as public roads and buildings (this can be relaxed by the Appropriate Authority) In respect of Village roads, 10 meters safety distances should be provided. No quarrying within 500 meters radial distances from the location of any bridge water supply system, infiltration wells or pumping installations.

2. Shall keep correct accounts showing productions and despatches.

3. Shall carryout quarrying operations in a skilful, scientific and systematic manner keeping in view of proper safety of the labour, structure and the public works located in the vicinity to preserve the environment and ecology of the area.

4. As per Tamil Nadu Minor Minerals Concession Rules, 1959 Rule 12(2)(1) Pit shall be at a distance of atleast twice the height of the bund from the top of the bund and they shall not be more than one metre in depth (the depth shall be less, if pits one metre deep are likely to expose porus strata) The above rules stipulated in the Tamil Nadu Minor Mineral Concession Rules should be judicially taken into account while undertaking Sand Quarrying. The above instructions were directed to be scrupulously followed by the field level officers.

26. In so far as Tholappanpannai sand quarry, based on the proposal of Executive Engineer, P.W.D., the District Level Committee inspected the site and submitted its inspection report. Pursuant to the request of proposal of Executive Engineer, P.W.D. and the Joint Inspection Report of the District Level Committee, by the impugned proceedings in Na.Ka.G.M.No.1/75/2010 dated 8.4.2010 the District Collector, Thoothukudii has granted permission to P.W.D. (W.R.O.) to quarry sand in Tamiraparanii river in Survey No.1/1 - 71.01.5 hectares with specifications and conditions, the translated version of the said proceedings read as follows:

"The Survey Number 1/1 in Tholappanpannai village, Srivaikuntam Division, Thoothukudi District is of a total area of 71.01.5 hectares. This field has been classified as Tamiraparani river poramboke as per village revenue accounts. This is bounded on the north and west by patta lands and by Tamiraparani river on the eastern and western sides. The flow of the river is from west to east. A safety zone shall be left for a distance of 50 metres each from the northern and southern banks of

the river bed. The details pertaining to the places proposed for sand quarrying are as follows:-

Within 500 metres around this place, there are no drinking water wells maintained by the Drinking Water and Sewerage Board. There are no bridges. There is sufficient facility for pathway. This part is shown as coloured portion in topographic sketch. The total area of this is 71.01.5 hectares. This extent of area alone has been selected by the Public Works Department for fresh sand quarrying.

Name of the Village	Survey No.	Total extent (hectares)	Extent eligible for lifting sand (hectares)	Classifi

Tholappanpannai 1/1 71.01.5 15.40.0 Tamiraparani river poramboke Due to the monsoon rains in 2008 and 2009, the Tamiraparani river was flooded and hence sand got collected in the above said river bed and it can be seen that sand accumulation is approximately to a depth of 1 metre. Accordingly, the extent of sand to be lifted from the place, which has been selected for sand quarrying, is as follows:

1. Area of the place selected for quarrying = 700 x 200 = 1,54,000 sq.m.

2. Depth of sand to be quarried = 1 metre

3. Accumulation of sand in the proposed area= 1,54,000 cu.mtrs.

(or) 54,417 units Conditions:

1. The sand has to be quarried uniformly to a depth of 1 metre only, without causing hindrance to the water field.

2. The four corners of the permitted quarrying area shall be demarcated by fixing iron pipes with concrete, which shall be coloured and shall be continuously maintained and protected. Further, the area to be quarried shall be bench-marked and maintained.

3. On the northern and southern banks of the river, a safety zone to a distance of 50 metres shall be left and boundary stones shall be implanted and they shall be continuously maintained and protected. No kind of quarrying shall be carried out in the safety zone.

4. Without causing damage to the banks of the river and hindrance to the flow of water, a separate pathway should be made for the movement of the vehicles and then quarry work should be commenced. On completion of the quarry work, the above said pathway should be closed in such a manner that there is free flow of water.

5. The vehicle should carry only the extent of sand as fixed by the Government and they shall be permitted to leave the quarry only with the relevant permit slips. There shall be no specification made in the permit slips as to the transportation of sand to other States. A report containing the particulars regarding the limit of weight to be loaded everyday shall be submitted. Further, the

quarrying work shall be carried out only during the time fixed by the Government i.e., morning 8.00 hours to evening 6.00 hrs.

6. When sand is lifted from the quarry by using heavy machines like poclains. It shall be ensured that the heavy machines are used only after obtaining prior sanction of the Government under Rule 36-A (6) of the Minor Mineral concession Rules.

7. On completion of lifting of quarry to the above extent of 54,417 units, a completion report shall be submitted to the Collector, Thoothukudi."

27. Onbehalf of the petitioners, it was contended that in violation of TN MMC Rules and conditions of permission, sand quarry operations are carried out using machinery such as poclains, Hitachi, etc., and quarrying operators have laid a road to a width of 10 - 20 ft across the river and thereby prevented the free flow of water affecting irrigation for agricultural lands and also sources for drinking water. It was further argued that even though permission was granted in favour of P.W.D. (W.R.O), the quarrying operations are carried out by private contractors, who are using machinery for removing sand upto 10-15 feet depth from the river bed and quarrying operations are carried out in violation of the rules and regulations of TN MMC Rules. Learned counsels appearing for the Petitioners Mr.Ajmal Khan and Mr.G.R.Swaminathan and other counsels as well as party in person - Mr.R.Nallakannu contended that indiscriminate sand quarrying has led to lowering of water tables undermining river beds and would seriously affect the aquatic and riparian habitations. It was further contended that since there is flagrant violation of rules and regulations of TN MMC Rules and the excessive sand quarrying has affected the flow of water, the sand quarrying has to be stopped in the entire stretch of Tamiraparani.

28. The Party in person Mr.R.Nallakannu, General Secretary of Tamil Nadu C.P.I.(M) Party would further contend that there is illegal sand quarrying in the entire stretch of Tamiraparani river and the river flow to Marutharani and Thoothukudi District and Manappadu drinking water scheme are affected. In so far as sand quarrying at Mukkani, Mr.R.Nallakannu would contend that Mukkani is at the mouth-river joining sea (estuary) and continuance of sand quarry in Mukkani would affect the sea shore. Drawing our attention to the Commission's Report, Mr.R.Nallakannu would contend that the entire sand quarrying operations in Tamiraparani river has to be suspended atleast for five years and in future to have a controlled sand quarrying monitoring committee has to be constituted.

29. The learned Advocate General Mr.P.S.Raman contended that power is delegated to the District Collector to grant permission to P.W.D. and only based upon the initial inspection report, permission was granted to P.W.D. for sand quarrying, who in turn, employ contractors and only for the purpose of supply of labourers and therefore, there is no question of illegal sand quarrying. The learned Advocate General made meticulous submissions contending that sand is needed for building, infrastructure and various other schemes of the Government and therefore a balance has to be struck between the issues of ecology and need for sand and that there has to be balancing approach for sustainable development. The learned Advocate General would fairly submit that to have effective monitoring over sand quarrying, a Monitoring Committee at State level for River Sand quarrying consisting of members of the judiciary, two Senior Government Officers, experts and also

environmentalists could also be directed to be constituted. It was submitted that the Committee shall also be a forum to redress the grievance of public also.

30. In so far as the five disputed sites of sand quarrying in Tamiraparani river, the learned Advocate General submitted that the Government sand quarries are functioning in a skillful, scientific and systematic manner and not in an illegal manner. Laying emphasis on Part II of the Commission's report - report of Dr.N.Chandrasekar, the learned Advocate General would submit that having regard to the report of Dr.NChandrasekar, controlled sand quarrying could be permitted at Thirumalaikolundupuram and Mukkani. The learned Advocate General would urge that any complete ban of sand quarrying in Tamiraparani river would seriously impair the various welfare schemes of the Government in the southern Districts.

31. Onbehalf of the Respondents, even though it was contended that sand quarrying is done in a skillful, scientific and systematic manner and that there is no violation of TN MMC Rules and also the conditions of granting permission, and that no poclain or machinery are engaged for sand quarrying, sufficient materials were produced before the Court to show that the sand quarrying is being done by the machinery, Poclain, Hitachi. Commission also noticed machine marks indicating use of heavy machineries for sand quarrying. Absolutely no material was produced to show that as contemplated under Rule 36-A Sub-rule (6), permission was obtained for use of such machinery. In so far as Tholappanpannai, six months time granted for sand quarrying was already over. On behalf of the Respondents, learned Advocate General would contend that in Tholappanpannai the Government sand quarry is being operated by P.W.D. through reputed registered contractors as per the norms and the quarrying operation has not in any way affected the eco-system of the river, agricultural operations, drinking water and ground water level.

32. Even though it was contended that in Tholappanpannai, sand quarrying was done only as per the Rules, excessive sand quarrying and violation of the Rules affecting the natural river stream is amply demonstrated in the Commission's report and the photographs filed thereon. The learned Advocate General contended that the excessive quarrying was not at the instance of P.W.D. or the contractors employed by them, but only due to illegal sand quarrying. On the other hand, Mr.Nallakannu - party in person and the counsel appearing for the petitioners would vehemently contend that the excessive sand quarrying was done only at the instance of P.W.D. and the contractors. We do not propose to go into the factual dispute as to who was responsible for the excessive sand quarrying. Suffice it to note that there had been excessive sand quarrying in all the five sites involved.

33. We may usefully refer to a comparative view of the consolidated report (Part-I of Commission's report) and opinion of experts as to the physical status of five sites in Tamiraparani river (Parts-I and II), which is as under: Place/site Commission Report - Part-I Opinion of Expert Opinion of Expert Mr.N.Chandrasekar, Mr.M.Arunachalam -

Expert - Part - II Part III Thirumalaiko-

lunthupuram Quarrying is done beyond stipulated depth of 1 mtr and is far beyond sanctioned distance.

There are some midstream sand pile or sand terrace, but if it is destroyed, momentum of water flow would be lost.

River bed mining may be allowed. Mining may be permitted in the remaining adjacent area of Thirumalaikolunthu-puram not in existing excavated area. Instream extraction of bed material is excess. Extent of mining was nearly 1.5 km length and there are many mined pits with varying size. New road to a height of 1.25 - 1.5 m created a hydraulic disconnectivity between river channel and the floodplain.

Nearly 10-12 sand mined pits to a size of lake are seen, which create avulsion.

Tholappanpannai Quarrying is done beyond stipulated depth of 1 mtr and is far beyond sanctioned distance.

Some sand could be available on west, but has to be checked whether it is in this village (or) Kongarayakurichi.

River bed mining may be allowed.

Mining may be continued due to availability of sand and possibility for replenishment.

Floodplain mining digging gravel pit lakes adjacent to rivers is common activity found in this site and the extent of mining was nearly 1.8 km length and there are many mined pits with varying size. The mining pits are excavated below the water table.

A 11 m wide road was constructed with stones and other materials brought from outside the river eco-system.

Kizhipidagai Appancoil Sand quarried to clay level and excess depth should have been quarried. No much midstream sand deposit and palaeo sand dunes substantially quarried.

Ceasing of mining activity due to non-availability of sand and possibility for replenishment.

The mining activities in this area is about 868 m width 137 m along the banks and terrace. Mined pits are deeper than adjacent river causing more river avulsion. Heavy machineries were used to mask mining activity, which affects infiltration mechanism of river bed. Mined pits are with clay accumulation. Mangalakurichi Sand quarried to clay level and excess depth should have been quarried. No much midstream sand deposit and palaeo sand dunes substantially quarried.

Ceasing of mining activity due to non-availability of sand and possibility for replenishment.

Mining activities extended upto 1.2 km in total in floodplain and instream. Instream mining is regular feature and road was constructed inside river.

Mukkani Sand quarried to clay level & excess depth should have been quarried. No much midstream sand deposit and palaeo sand dunes substantially quarried. River bed mining may be allowed.

Mining may be continued duet o availability of sand and possibility for replenishment.

Mining activities extend upto 800m with a width of 152 m. Mined pits are observed all along the banks and stock piles are left with clay as quality of sand is poor with more alluvium and clay.

General:

Monitory quarrying has to be done.

In terms of availability of sand and geological possibility for speedier replenishment, bank strength, site must be found it. Test boring should be done at about 500 mtrs on upper and lower reaches of proposed quarrying site.

Mechanised quarry shall not be allowed.

Scientific study of entire river system must be undertaken.

General:

Mining should be prevented near the bank, bridges, road, filter points, etc., Removal of road constructed inside river and restore natural condition of river. Ban of Mechanised mining by allowing only manual mining. General:

General: In all 5 sites, instream mining, floodplain mining and terrace mining affected natural river system and new system is replaced with unstable, difficult to restore and relatively unproductive ecosystem and affects over all health.

Considering ecological imbalance of the eco-system created by sand mining and taking into account large supply of water for irrigation and water for drinking purpose, river system needs atleast 5 years to restore and hence sand/gravel mining/ quarrying should not be carried out for 5 years in all 5 sites.

Tholappanpannai:-

34. We may now elaborate upon the physical status of sand quarrying in the five sites individually. As pointed out earlier in Paragraph (26), in Tholappanpannai, as per the proceedings of the District Collector in Na.Ka.G.M.1/75/2010 dated 8.4.2010, permission was granted for sand quarrying over a site of 700m x 220m and for a depth of one meter. As seen from the Commission's report, even

though permitted quarrying length is 700m, as per range finder/distance meter, it was noticed that quarrying has taken place for about 1.6 km on the west. The Commission opined that there is a possibility that quarrying could possibly stretch into adjacent Kongarayakurichi village. Commission has opined that the quarrying of sand in this portion is not authorised. Commission has also noticed that a motorable way with an average width of 15 ft. right inside the river for a total distance close 1.6km was laid with stones and sand mixed with clay. The Commission has also noticed that after walking for . km, the motorable way divides towards north and re-joins the main pathway like a garland and within the loop created by this way lie quarrying sites, marked by five huge pits, where quarrying had taken place. Further, on the west, further beyond, two other huge pits were seen. As per the proceedings, permission was granted to quarry only upto depth of 1m. But the Commission noted that average depth of each pit varied from 4.5 feet to 5.8 ft. and due to water logging, depth variation could not be noticed or assessed inside each of the pits. In Part III of the Report - views of Dr.M.Arunachalam, it was noted that there are many mining pits with varying size and mining pits are excavated below the water table and hence during flooding the inundation will occur and a possible later migration of river into the mining lake and this will change the configuration of the floodplain. In Part III of the report, the expert has opined that floodplain mining will result in loss of habitats for fishes and floodplain mining also will cut off the original course of the river.

35. The photographs filed in Part III - report filed by Dr.Arunachalam would clearly show indiscriminate mining on floodplains; road formed inside the river and the stabilised road so formed affecting the water course. "Floodplain" means "(1) Area adjoining a body of water that becomes inundated during periods of over bank flooding that is given rigorous legal definition in regulatory programs. (2) Land beyond a stream channel that forms the perimeter for the maximum probability flood. (3) Strip of land bordering a stream that is formed by substrate deposition. (4) Deposit of alluvium that covers a valley flat from lateral erosion of meandering streams and rivers."

36. In Tholappanpannai, Commission noticed floodplain mining digging gravel pit lakes and mining pits were excavated below the water table. Stabilised roads were formed inside the floodplain. Deep excavated pits along the banks has affected riparian reserved forest. The experts felt that the combined effect of all these affect the eco-system of the river and flow of river water.

37. Kizhpidagai Appankovil - As per proceedings in G.O.No.1, G.M 1/74/2010, dated 8.3.2010 and G.M.1/264/10 dated 28.6.2010, permission was granted for quarrying 4,500 lorry loads equivalent to 9000 units of which portion is already quarried and the balance to be removed is 3,832 lorry loads. This is equal to 7664 units. The whole of the southern bank of the river bed was rich and huge sand dune, which the Experts opined as palaeo-deposit or very ancient deposit. The Commission noticed that quarrying was done along the southern bank and again a pool is formed inside the river bed that approximates to a rectangle. The Commission noticed that substantial portion of sand dunes along the western bank was already quarried. There were still some sand dunes about the middle of the river bed. All along the entire eastern edge, the Commission noted that the quarry sand dumped back into the quarried pit for a width of about 10 to 15 ft. and at places may be even 20 ft. and Commission noted that the refill was recent. The mined pits were found deeper than adjacent river and Commission opined that it may not be possible for the river to fill the quarried pits. In Kizhpidagai sand mining site, experts felt that heavy machines were used for sand quarrying.

Commission noticed (i) deep excavated pits and (ii) road constructed in between mined pits. Experts were of the view that the machine marks clearly indicate use of heavy machinery in sand quarrying.

38. Mukkani - This is right at the estuary in the lower reach of the river and the area is essentially swampy. Experts opined that this is brackish water and quarrying has been done on substantial portion along the north and well into the bed. As in the case of Kizhpidagai Appankovil, there is palaeo deposit of sand in the belt, but the same was substantially removed. In his report, Commission referred to the communication of PWD Secretary in letter No.5381/1 Spl.2/2006-1 dated 27.2.2006 addressed to the Chief Engineer, Water Resources Organisation that no specific quarrying site is prescribed and unlike Kilpidagai, not even quantum be quarried is prescribed. Photographs filed in Part III of the report shows that sand is removed and the mined clay is left along the banks and inside the river with stock piles. Mined pits were also observed along the banks and stock piles are left with clay. Artificial bunds formed were meant for transportation of sand. Commission felt that by formation of such bund/road, flow of river water is obstructed.

39. Mangalakurichi - This is a delta of Tamiraparani river, maked by palaeo sand dunes along the banks. In fact, even well beyond the river, experts indicated presence of sand to fortify their study about the existence of ancient sand deposit in the area. The sanction for quarrying is based on the proceedings of the District Collector Rc.No.GM 1/252/2010 dated 22.06.2010 under which permission was granted for quarrying 900 lorry loads of sand for Tsunami rehabilitation works, and subsequently vide Rc.NO.GM 1/252/2010, dated 03.09.2010 for quarrying 590 lorry loads for construction of houses in Aathinathapuram under Periyar Remembrance Habitation scheme.

40. In Mangalakurichi village also, it was noticed that sand mining had taken place about the flood line and river bed on the east, which has altered the course of the river flow. The quarried sand and the artificial bund created by the piled up sand has pushed the river to mouth. Its effect is seen in the fact that a filter point close to the quarried site on the east is titled due to instability caused by water current of flowing river. Instream mining was a regular feature noticed in Mangalakurichi sand quarry site. A road was found constructed in the middle of the river for transportation of the sand. Thick riparian forest and left side river was found highly damaged due to heavy sand quarrying.

41. Thirumalaikolundupuram, Tirunelveli District is located in the middle reach of the river system. Going by the satellite generated image, the river is seen meandering (bending). The permitted quarry site as per the proceedings of the District Collector M2/34710/2007 dated 6.12.2007 is 700m x 270m. However, the Commission noted that the quarrying has been done for a distance of about 1.3 km, far excess of the permission granted. Approximate depth of the site quarried is about 6 to 8 ft., which according to the Commission, is only a random measurement. Due to water stagnation variation, it could not be measured, but opined that the demonstrated depth indicates quarrying had been done well beyond the same.

42. In Thirumalaikolundupuram also, instream floodplains were found highly damaged. Photographs of Thirumalaikolundupuram show that after removal of sand and gravel the river bed was exposed to finer sediments i.e., clay. Commission noticed nearly 10-12 sand mined pits to a size

of a lake. The Commission felt that these lakes and pit mines were much deeper and wider than the normal river channel.

43. Violations of Rules and Conditions of quarry:- The two experts have prepared two separate reports as to the extent of sand quarrying and its impact. Based upon their two reports, a consolidated report has been prepared in Part I of the Commission's report and the Expert Commission has inter alia recorded that the quarrying had been done far beyond the sanctioned distance and depth. The conclusion of the Committee reads as under:

(a) Both in Thirumalaikolunthpurm and Tholappanpannai, quarrying had been done well beyond the stipulated depth of one meter. Even terms of distance, it is far beyond the sanctioned distance.

(b) In other places even though depth could not be measured, from the nature of clay content in the sand heap along the fringes of the quarried pit, it could be inferred, if not concluded with a degree of definiteness that sand has been quarried to the clay level. This again would indicate that excess depth should have been quarried.

(c) In the five sites involved, there prima facie is no adequate availability of river sand for further quarrying. This is based on the opinion expressed in (b), and also for the reason that even on physical observation, there is little to suggest that sand is available. In Thirumalaikolunthupuram, there are some mid-stream sand pile or sand-terrace but if that is destroyed then the barrier nature has created to arrest the momentum of water flow would be lost. In Tholappanpannai, there could be some availability of sand on the west, but it must first be checked whether it is in this village or in Kongarayakurichi village. In Kilpidagai Appancoil, Mukkani and Mangalakurichi, which are in the last stages of the river, even geologically, there could not be much mid stream sand deposit and the palaeo sand dunes have been substantially quarried.

(d) The quarrying has created eco-imbalance, and the same is detailed and justified in Part III of this Report by Prof.M.Arunachalam."

44. As elaborated earlier, in all the five sites and in addition, one in Siruthandanaloor adjacent to Mangalakurichi, the following features were noticed by the Commission showing unscientific sand quarrying, use of heavy machineries and thereby affecting free flow of water and altering the eco-system of the river:

"(a) In all the sites, barring to an extent in Mangalakurichi, huge pits are dug in the process of quarrying right in the middle of the river bed, or/and including the banks. They look not like places where surface quarrying had taken place, but on the contrary appear like excavated sites of archaeological exploration.

(b) All along the fringes of these pits, huge pile of sand blended with clay is seen. In many places, clay or alluvium is seen as the upper cover the sand pile.

(c) In all the pits are characterised by water stagnation. They are artificial pool created inside the river system.

(d) Pathways of permanent nature are seen made in at least two of the sites namely Thirumalaikolunthupuram and Tholappanpannai.

(e) Quarried site definitely obstruct free flow of water and is an impediment to its general course.

(f) All the above combined has altered the eco-system in all the five sites."

45. Balancing the conflicting public interest for and against sand mining in Part I of its report, the experts felt that in terms of long term ecological repair that quarrying had caused, no further quarrying shall be permitted. In terms of eco-system of the river and also to rehabilitate the quarried sites, Commission expressed its opinion as under:

"(a) If public interest involved in eco-imbalance is taken as the sole determining criterion to evaluate future quarrying of river sand in the five sites involved, then in terms of long term ecological repair that quarrying had caused, no further quarrying shall be permitted. (part III of the Report may be referred to.)

(b) The Commission is of the unanimous opinion that since the sand sample examined in the sand pile along the quarried pits do not indicate availability of further quarrying in the those sites, they must be directed to be re-dumped or re-filled in the pits.

(c) All permanent pathways laid must be levelled to let the river assume its normal course without any artificial obstruction to the extent possible under prevailing circumstances.

(d) Should river sand be quarried in future, it is mandatory to have the same monitored efficiently. (i) Firstly, the site must found fit for quarrying not in terms of just availability of sand, but in terms of geological possibility for speedier replenishment, bank strength and other parameters. (ii) Test boring should be done at the selected site and must be clarified with reference site to be selected at about 500 m on the upper and lower reaches of the proposed quarrying site.

(e) Mechanised quarry shall never be allowed, for, then the rate of exploitation of river sand would be disproportionately high as compared to rate of replenishment of sand.

(f) A scientific study of the entire river system must be undertaken with all scientific parameters."

46. Earlier, a batch of writ petitions in W.P.(MD) Nos.7917 Of 2006 etc., were filed forbearing the respondents from continuing the sand mining on the banks of the river Tamiraparani in various villages by bringing to the notice of the Court about the indiscriminate sand quarrying. In the said batch of writ petitions also, Dr.K.Murugesan, an Environmental Expert in Centre for Environmental Sciences was asked to inspect the area and after inspecting the area, he submitted his report. Based upon his report, by order dated 9.1.2007 in the above said batch of writ petitions, the Bench has

directed the authorities that in the interest of public to have a watch on the mining operations conducted by the private parties as per the lease granted in favour of them by directly following the measures suggested by the experts and the conditions laid down in the Rules. It was further directed not to use any machinery for excavating the sand from the river bed.

47. Inspite of concern and objections raised and directions issued by the Court, it is very unfortunate that the PWD has not cared to see that the sand quarrying is done as per TN MMC Rules and as per the conditions. There was no scientific mining and the authorities seldom cared about the impact on the eco- system of the river by such unscientific mining. Likewise, absolutely there seems to be no monitoring by the District Administration as to whether TN MMC Rules and conditions of sand quarrying were complied with or not. The Respondents were emboldened to file counter as if the sand quarrying work was executed only as per the existing rules and conditions of permission. In the counter affidavit filed in W.P.No.11182 of 2010, it was averred that Pocline machine is only used at necessary stage to retrieve the loaded lorry, which is caught in sand, clearing the jungles and de-silting the top soil of river bed. Photographs and other materials were produced before the Court that number of Poclains and machines were used for sand quarrying. As pointed out earlier, in Kizhpidagai Appankovil and other places experts noted machine marks clearly indicating use of machinery in sand quarrying.

48. As pointed out earlier, Commission was of the unanimous opinion that sand quarrying has been done far beyond the extent for which the permission was granted. Inspite of the clear embargo under Rule 36-A Sub-rule (6) of TN MMC Rules that there should be no quarrying by use of machines, as pointed out by the Commission, heavy machines were used for quarrying. As contemplated under Rule 36-A Sub-rule (6), no permission seems to have been obtained from the concerned authorities for sand quarrying with use of machineries.

49. As pointed out earlier, in D.O.Letter No.9693/I Spl.2/2005-1 dated 18.3.2005, the Secretary to Government, Public Works Department has directed the Chief Engineer, Madurai Region, Water Resources Organisation, P.W.D. that sand quarrying is to be carried out in skillful, scientific and systematic manner and that pits shall not be more than one metre in depth. As it was noticed by the experts that everywhere the sand quarrying was done more than one meter and in number of places it was done beyond 10 feet depth and in some places, the depth of 10 feet. The Commission opined that the mined pits and ultimately pools/lakes created inside the river stream and they are characterised by water stagnation. The unscientific sand quarrying, use of heavy machineries and violation of the conditions clearly show that it is a case of abuse of permission granted by the District Administration for sand quarrying. P.W.D. contends that private contractors were brought in only for supply of labour contractors. We are not able to countenance the said stand of P.W.D. We are afraid that either with or without the connivance of the Public Works Department, there was indiscriminate and heavy sand quarrying beyond the extent for which the permission was granted resultantly causing devastation of the river.

50. Impact of Excessive sand mining: - Sand quarrying in rivers and watersheds are killing the rivers. Such activities lead to bank erosion, lowering of water table and create several environmental problems. Impact of sand mining can be broadly classified into three categories - (i) physical; (ii)

water quality and (iii) ecological.

51. Indiscriminate excessive sand mining causes degradation of rivers and lowers stream bottom, which may lead to bank erosion. Excessive instream sand- and-gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom, which may lead to bank erosion. Depletion of sand in the stream bed and along coastal areas causes the deepening of rivers and estuaries, and the enlargement of river mouths and coastal inlets. It may also lead to saline- water intrusion from the nearby sea. Excessive instream sand mining is a threat to bridges, river banks and nearby structures. Sand mining also affects the adjoining groundwater system and the uses that local people make of the river.

52. Instream sand mining results in the destruction of aquatic and riparian habitat through large changes in the channel morphology. Impacts include bed degradation, bed coarsening, lowered water tables near the streambed, and channel instability. These physical impacts cause degradation of riparian and aquatic biota and may lead to the undermining of bridges and other structures. Continued extraction may also cause the entire streambed to degrade to the depth of excavation

53. Both the experts have elaborated as to how the indiscriminate sand mining has created eco imbalance. Dr.Arunachalam, Head of Department of Centre for Environmental studies has clearly pointed out that in Thirumalaikolunthupuram, 10 - 12 sand mined pits to a size of a lake were seen and they would create avulsion. In so far as construction of roads, formation of roads inside the river, Dr.Arunachalam observed that construction of road and the gravel pit mines disconnect the link with nearby river in the adjacent site and the loss of hydraulic connectivity may result in changing water table elevations. He has also opined that because of the sand mine pits created the river may be reoriented during rainy season causing more physical damage and to the river dynamics.

54. Dr.N.Chandra Sekar, though has made a different observation as to the availability of sand in Thirumalaikoluthupuram, Tholappanpannai and Mukkani, he has also observed that extraction of bed material is in excess of replenishment particularly in Appankovil and Mangalakurichi. He has also found that degradation has depleted the entire depth of sand material exposing other substrates i.e., clay deposits in Thollappanpannai, Thirumalaikolunthupuram, Kilpadagai Appankovil and Mangalakurichi villages. Groundwater level could not be confirmed with accuracy in the inspection as a result of water in the flood plain and river bed and the pits. Both the experts are of the same view that the sand quarrying was beyond the permission granted.

55. Riparian Habitat, Flora and Fauna:- Instream mining can have other costly effects beyond the immediate mine sites. Degraded stream habitats result in loss of fisheries productivity, biodiversity, and recreational potential. Severely degraded channels may lower land and aesthetic values. The most important effects of instream sand mining on aquatic habitats are bed degradation and sedimentation, which can have substantial negative effects on aquatic life.

56. Water Quality:- Instream sand mining activities will have an impact upon the river's water quality. Increased riverbed and bank erosion increases suspended solids in the water at the

excavation site and downstream. Apart from threatening bridges, sand mining transforms the riverbeds into large and deep pits; as a result, the groundwater table drops leaving the drinking water wells on the embankments of these rivers dry. Bed degradation from instream mining lowers the elevation of stream flow and the floodplain water table which in turn can eliminate water table-dependant woody vegetation in riparian areas.

57. At this juncture, it is worthwhile to refer to the introductory remarks of the Commission's report as to how the river water painstakingly brings in particles of sand along its flow and whether man has conducted himself wisely and sensibly with the consciousness of tomorrow's India in utilization of the nature's bounty. "War for Water is not a movement but a National Commitment. Nature has its mechanism for water generation, and in the process has also developed its own structure for its storage alongside. River water painstakingly and unrelentingly brings in particles of sand along its flow, and patiently accumulates it over generations. River sand is not just molecules of silica, but a bed of huge sponge that nature in its endless wisdom has developed to retain and distribute water in order the lives it creates do not perish. But War for Water need not necessarily be interpreted as war against river sand, if only the latter is used wisely and sensibly. Should river sand be diverted for purposes which human intelligence dictates, but that for which Nature in its wisdom has not provided for, then it has to be so done with the humility of a seeker. Nature knows only two languages: Peace and fury, and when it speaks either of them it essentially remains a passive observer as it philosophically disengages itself from the emotions of humankind. If life on this planet destroys itself, commits hara-kiri, Nature mercilessly watches. But, it does throw endless opportunities for man to mend his ways of dealing with it, but man seems to believe tomorrow does not exist and there is no judgment day for him. And Nature watches and waits. Is man to-day willing to meander, as the river does in its course, towards sensible living, and intelligent utilization of nature's bounty? And in the five sand quarry of contextual relevance, has he conducted himself wisely and sensibly with the consciousness of tomorrow's India".

58. Sustainable development: - Of course, sand and gravel have been used in the construction of roads and buildings. Demands for sand and gravel continues to increase. P.W.D., which has been entrusted on the sand quarrying must work to ensure that sand mining is conducted in a responsible manner. Excessive sand quarrying has resulted in narrowing and deepening river systems. Formation of road in the middle of the river affecting flow of water and increasing vehicular traffic carrying sand and gravel to urban centres affecting the source of drinking water and agriculture, certainly the local communities have large to complain about.

59. As held by the Supreme Court in the case of M.C.MEHTA VS. KAMAL NATH, ((1997) 1 SCC 388), it is a classical struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibility, who under the pressures of the changing needs of an increasingly complex society find it necessary to encroach to some extent upon open lands considered inviolate to change. The Supreme Court held as follows:

"The issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those

charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. ..... The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

60. Learned counsel Mr.Ajmal Khan contended that the State holds the natural resources in public trust and inter generational equity requires protection of natural resources by placing reliance upon MEHTA, M.C. VS. KAMAL NATH, ((1997) 2 SCC 388 - Paras 24 to 29 and 34; FOMENTO RESORTS & HOTELS LTD. VS. MINGUEL MARTINS, ((2009) 3 SCC 571) -Paras 51 to 59, 61, 63 and 64 and KARNATAKA INDUSTRIAL AREAS DEVELOPMENT BOARD VS. C.KENCHAPPA, (2006) 6 SCC 371.

61. Even while the permission is granted for sand quarrying, the dynamics of the river has to be maintained. In fact, the object of entrusting sand quarrying with the P.W.D. itself was to put an end to unsustainable over exploitation of sand in the State. The major observations of the High Level Committee constituted are regarding the creation of pools of water stagnation in the river bed and impairing the water flow downstream, which in turn, will have grave consequences. The pits dug for sand quarrying have created several pit lakes greatly affecting the flow of water. The usage of machinery like poclain for removal of sand has caused river bed erosion, collapse of banks, damage to infrastructure like bridges, transmission power lines and drinking water system. In their report, Dr.Arunachalam has opined that in terms of long term ecological repair in the above quarrying sites, no further quarrying shall be permitted. Based on the assessment on the physical status of the five sand quarrying sites in Tamiraparani river - Thirumalaikolunthupuram in Tirunelveli District, Thozhappanpannai, Kizhpidagai Appankovil, Mukkani and Mangalakurichi in Thoothukudi District and considering the eco-imbalance of the eco system created by sand mining and taking into account the large supply of water for irrigation and for drinking purposes, Dr.Arunachalam has emphasized that "the river system needs at least five years to restore and hence sand/gravel mining/quarrying should not be carried out for the next 5 years."

62. Per contra, Dr.Chandra Sekar has opined that controlled sand mining may be continued in Thollappanpannai and Mukkani villages due to the availability of sand and possibility for replenishment. In so far as Thirumalikolunthupuram, Dr.Chandrasekar has opined that in the existing area even though sand is not available but controlled mining may be permitted in the remaining adjacent area of Thirumalaikolunthupuram.

63. In a catena of decisions, the Supreme Court has held that natural resources are the assets of the entire nation. It is the obligation of all concerned, including the Union Government and State Governments to conserve and not waste these resources. Any threat to the ecology can lead to violation of the right of enjoyment of healthy life guaranteed under Article 21, which is required to be protected. (vide T.N.GODAVARMAN THIRUMULPAD VS. UNION OF INDIA ((2006) 1 SCC 1).

64. Over the years, the Supreme Court tried to balance the mining operations vis-.-vis environmental protection. In VELLORE CITIZENS' WELFARE FORUM V. UNION OF INDIA ((1996) 5 SCC 647 and M.C.MEHTA VS. UNION OF INDIA, ((2002) 4 SCC 356), the Supreme Court observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of "sustainable development". Considering the environmental clearance given for Tehri dam, the Supreme Court in the case of N.D.JAYAL AND ANOTHER VS. UNION OF INDIA AND OTHERS, ((2004) 9 SCC 362) has observed that the power under Environmental Protection Act cannot be treated as a power simplicitor, but is a power coupled with duty and held as under:

25. Therefore, the adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to "sustainable development" cannot be singled out. Therefore, the concept of "sustainable development" is to be treated as an integral part of "life" under Article 21. Weighty concepts like intergenerational equity (State of H.P. v. Ganesh Wood Products (1995) 6 SCC 363), public trust doctrine (M.C. Mehta v. Kamal Nath (1997) 1 SCC 388) and precautionary principle (Vellore Citizens (1996) 5 SCC

647), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

26. To ensure sustainable development is one of the goals of the Environment (Protection) Act, 1986 (for short "the Act") and this is quite necessary to guarantee the "right to life" under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of "life" under Article 21. Acknowledgment of this principle will breathe new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance with the directions under the Act. The object and purpose of the Act: "to provide for the protection and improvement of environment" could only be achieved by ensuring strict compliance with its directions. The authorities concerned by exercising their powers under the Act will have to ensure the acquiescence of sustainable development. Therefore, the directions or conditions put forward by the Act need to be strictly complied with. Thus the power under the Act cannot be treated as a power simpliciter, but it is a power coupled with duty. It is the duty of the State to make sure the fulfilment of conditions or direction under the Act. Without strict compliance, right to environment under Article 21 could not be guaranteed and the purpose of the Act will also be defeated. The commitment to the conditions thereof is an obligation both under Article 21 and under the Act. The conditions glued to the environmental clearance for the Tehri Dam Project given by the Ministry of Environment vide its order dated 19-7-1990 has to be viewed from this perspective."

65. In the case of INTELLECTUALS FORUM, TIRUPATHI VS. STATE OF A.P. AND OTHERS, ((2006) 3 SCC 549 = 2006(2) CTC 71)), the Supreme Court held as under:

67. The responsibility of the State to protect the environment is now a well-accepted notion in all countries. It is this notion that, in international law, gave rise to the principle of "State responsibility" for pollution emanating within one's own territories (Corfu Channel case, ICJ Reports (1949)

4). This responsibility is clearly enunciated in the United Nations Conference on the Human Environment, Stockholm 1972 (Stockholm Convention), to which India was a party. The relevant clause of this declaration in the present context is para 2, which states:

"The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate."

.....

70. This Court in Essar Oil Ltd. v. Halar Utkarsh Samiti, 2004 (2) SCC 392 was pleased to expound on this. Their Lordships held: "27. This, therefore, is the [sole] aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other."

71. A similar view was taken by this Court in Indian Council for Enviro- Legal Action v. Union of India, 1996 (5) SCC 281, para 31) where Their Lordships said:

"While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment."

72. The concept of sustainable development also finds support in the decisions of this Court in M.C. Mehta v. Union of India (Taj Trapezium case), 1997(2) SCC 653, State of H.P. v. Ganesh Wood Products, 1995(3) SCC 363 and Narmada Bachao Andolan v. Union of India, 2002(10) SCC 664.

66. In the case of T.S.SENTHIL KUMAR VS. THE GOVERNMENT OF TAMIL NADU, (2010 Writ Law Reporter 113), the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act was challenged, wherein, this Court has dealt with the importance of conservation of Water courses. In L.Krishnan v. State of Tamil Nadu, 2005(4) CTC 1 (DB) = AIR 2005 Madras 311, this Court has held

that the State must take definite measures to restore the Water storage tanks, ponds and lakes and that it is imperative that such natural resources must be maintained by the State Government. When that is so, it is all the more the duty of the State and the authorities like the Housing Board not to be parties to destruction of such natural resources.

Doctrine of Public Trust:

67. We may briefly refer to the public trust doctrine and its applicability to the river sand under consideration. In T.N.GODAVARMAN THIRUMULPAD VS. UNION OF INDIA ((2006) 1 SCC 1), the Supreme Court held that we are trustees of natural resources which belong to all including the future generation as well. The public trust doctrine has to be used to protect the right of this as also the future generation.

68. In STATE OF TAMIL NADU V. HIND STONE ((1981) 2 SCC 205), it has been held as follows:

"6. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation..."

Thus, the Hon'ble Supreme Court has evolved the principle of doctrine of public trust. As of the said theory, the natural resources are not only meant for the present generation but should be preserved for the posterity. The Government and the present generation acts as a trustees for the future generation. The said principle was also followed by the Hon'ble Supreme Court in (2006) 1 SCC 1 T.N.GODAVARMAN THIRUMULPAD V. UNION OF INDIA, wherein the Supreme Court was pleased to hold that the natural resources are the assets of the entire nation, that is the obligation of all concerned including the Union Government and the State Government.

69. In T.S.Senthil Kumar case, this Court had also referred to Ramsar Convention which requires the conservation and wise use of wet lands. Sustainable Development is that kind of a development "which meets the needs of the present without compromising the ability of future generations to meet their own needs". Persistent developmental activities ignoring the protection of natural resources cause irreparable damage. Section 12 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 prohibits alienation of tank poramboke lands otherwise than in public interest and in Paragraph No.20(c) and (d) of T.S.Senthil Kumar's case cited supra, it was held thus: "(c) As already stated, the State will ensure that alienation of tank Poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the words "public interest" shall be implicitly borne in mind.

(d) The State holds all the Water bodies in Public Trust for the welfare of this generation and all the succeeding generations and, therefore, protecting Water bodies must be given as much weightage, if not more as allowing house- sites or other buildings to come up on such tanks or tank poramboke lands, and Water charged lands...."

70. State to act in public trust:- The learned Advocate General submitted that for construction of Samathuvapuram to provide housing to the needy and for construction of other infrastructure, sand is required and complete ban of sand mining would affect the welfare schemes of the Government to be carried out in the southern districts. Of course, housing is one of the basic needs next to food and clothing. Likewise, infrastructure is also an essential development. But it must be remembered that Tamiraparani river and other rivers are major source of drinking water for the people, agriculture and also for the industries set up along the banks, hydropower. Protection of the rivers is essential for maintenance of ecology. Even though sand mining has been regulated by entrusting it to P.W.D.,we find that there is hardly any environmental impact assessment;no strict implementation of TN MMC Rules and the instructions by the Government.

71. As discussed earlier, sand mining causes erosion, affecting riparian and aquatic habitat. Excessive sand mining generates excessive vehicle traffic. As noted by the Commission, pucca roads have been formed inside the river affecting free flow of water negatively impairing the river's eco-system. Such excessive sand mining will also affect the impact of river's water quality.

72. Sand Quarrying in Tamiraparani River - Whether could be allowed to be continued:- The learned Advocate General contended that sand is needed for building and for other infrastructural purposes and for implementation of various welfare schemes of the Government like providing free houses and complete ban for sand quarrying would affect the implementation of welfare schemes of the Government and also supply of sand for infrastructural and other construction activities. Learned Advocate General would further contend that as per the well settled position of sustainable development, controlled mining with strict monitoring could be ordered in three sites - Mukkani, Thollappanpannai and the adjacent area in Thirumalikolunthupuram.

73. Drawing the Court's attention to the report of Dr.Chandra Sekar, the learned Advocate General would submit that in Thirumalaikolunthupuram, adjacent part of the area has permissible quantum of sand is visualized in the field and therefore mining can be continued after identifying the area by the Inspecting Team. Likewise, based on the report of Dr.Chandra Sekar, the learned Advocate General would submit that controlled sand quarry may be continued in Tholappanpannai and Mukkani.

74. In response, Mr.R.Nallakannu, party-in-person and the counsels appearing for the writ petitioners laying emphasis upon Dr.M.Arunachalam's Report would contend that permitting P.W.D. to continue with the sand quarrying would seriously affect the river flow to Marudhurani and the water course to Tuticorin District and also Manappadu drinking water scheme. It was further argued that sand quarrying has been done as if excavation was being done and if any further sand quarrying is permitted, it would affect river flow affecting irrigation for agriculture, drinking water source apart from affecting the sea shore and the coastal lines.

75. As discussed earlier, there was excessive unscientific sand quarrying beyond the sanctioned limit, which has affected the flow of water and river's eco-system. As pointed out in the comparative table, the experts have unanimously opined that in Kizhpadigai Appankovil and Mangalakurichi, sand is not available. The Advocate General himself submitted that sand quarrying has already been

stopped in those two sites. In so far as Thirumalaikolunthupuram, in Part-II of report, Dr.N.Chandrasekar opined that in the remaining adjacent area, mining may be permitted. Insofar as Tholappanpannai and Mukkani, Dr.N.Chandrasekar has opined that controlled mining may be continued due to availability of sand. Per contra, Dr.M.Arunachalam opined that considering the ecological imbalance of the eco-system created by sand mining and taking into account large supply of water for irrigation and water for drinking purposes, the river system needs atleast five years to restore and hence sand mining/quarrying should not be carried out for five years in all five sites.

76. As seen from Part-I of the consolidated report, in all the five sites, quarrying has been done far beyond the permissible limits crating ecological imbalance of the river system. Having regard to the imbalance caused, we deem it appropriate to accept the report of Dr.M.Arunachalam and taking into account the large supply of water for irrigation and water for drinking purposes, sand mining/quarrying should not be carried out for five years in all the five sites.

77. Of course sand is essential for construction of roads and buildings. At the same time, natural resources are to be conserved and a balance has to be struck between the requirement and the preservation of rivers, especially, a unique river like Tamiraparani. In our considered view, Tamiraparani river has to be allowed to replenish itself to undo the imbalance caused as per the opinion of Dr.Arunachalam and we hold that sand mining/quarrying shall not be carried out for five years.

78. Sand quarrying in Tamiraparani river - Whether could be allowed to be continued- Macro View:-

As discussed earlier, on number of occasions, excessive sand quarrying in Tamiraparani river was brought to the notice of this Court expressing concern over illegal/excessive/unscientific quarrying inter alia issued various directions. Either with or without the connivance of P.W.D., and local authority, quarrying of sand is carried on extensive scale beyond the limits of permission. The Court has been repeatedly issuing directions to quarry sand in accordance with the TN MMC Rules and the conditions imposed for sand quarrying. Inspite of such directions, the excessive and illegal sand quarrying appears to have continued devastating the river. Excessive instream mining and huge pits created artificial pools/lakes affecting the water course. It has affected the river banks and riparian forests and aquatic habitats. Excessive sand mining has greatly affected the river. Now the position has become worsened. In these circumstances, this Court has now decided not just to focus on individual sites of sand quarrying but have a larger view of the matter, particularly, while suspending the operation of sand quarrying in the entire stretch of Tamiraparani river.

79. As we have discussed earlier, there has been excessive unscientific sand quarrying, which is substantiated by the Commission's Report and also the photographs filed in the Report. In such extraordinary situation, accepting the opinion of Dr.Arunachalam, having regard to large supply of water for irrigation and water for drinking purpose, we hold that sand quarrying/mining should not be carried out in the entire stretch of Tamiraparani river for a period of five years.

80. Rehabilitation of Tamiraparani river: -

Even though excessive quarrying has been done in an unscientific and unskillful manner, no measures were taken to rehabilitate the area. The Commission has suggested that the sand piles along the quarried pits must be directed to be re-dumped or re-filled in pits. All permanent pathways laid must be levelled to let the river assume its normal course without any artificial obstruction to the extent possible under prevailing circumstances. The learned Advocate General fairly submitted that those two recommendations of the Commission would be implemented at the earliest. These two suggestions of the Commission are to be carried out within two months from the date of this order and report has to be filed before this Court.

81. Sand quarrying in all the rivers in the State of Tamil Nadu - Macro View:- Though we have been considering the excessive sand quarrying in Tamiraparani river, it is relevant to note that every now and then writ petitions are being filed alleging violations of TN MMC Rules in sand quarrying and also excessive sand quarrying. Sand mining lease is increasingly becoming an environmental issue. Environmentalists have raised public awareness of illegal sand mining. Having regard to the larger public interest in sand mining, we have decided not just to focus on Tamiraparani river alone, but on all the rivers in the State of Tamil Nadu.

82. The Public Works Department engage the assistance of Labour Contractors. The labour contractors either with or without the connivance of Public Works Department and local authority carry out indiscriminate sand quarrying. Scientific quarrying is not employed. What was sought to be prevented by G.O.Ms.No.95 dated 1.10.2003 is now worsened. The learned Advocate General fairly submitted that a monitoring committee could be constituted for monitoring the sand quarrying in all the rivers in the State of Tamil Nadu. In this regard, the learned Advocate General has also filed a draft scheme pertaining to the constitution of the monitoring committee and its powers and functioning. Therefore, to have effective monitoring not only over Tamiraparani river, but in respect of all the rivers in the State of Tamil Nadu, it is appropriate to issue directions for the scientific sand quarrying in respect of all the rivers in accordance with TN MMC Rules and also to constitute a monitoring committee for all the rivers in the State of Tamil Nadu.

83. As pointed out earlier, the District Collectors are the competent authorities to grant permission to the Public Works Department to quarry sand. On proposal made by P.W.D., team of experts comprising of officials from Geology and Mining, revenue officials, Pollution Control Board, Water Board (TWAD), P.W.D. officials and also P.W.D.(W.R.O), inspect the site and submit its report to the District Collector. Upon consideration of the report of the inspecting team and the proposal made by the P.W.D., the District Collector grants permission for sand quarrying.

84. In future, while inspecting area identified for sand quarrying, the inspecting team shall prepare its report focusing on environmental issues like impacts of sand mining - (i) physical; (ii) water quality and (iii) ecological, stability of structures, riparian habitat, flora and fauna. The inspecting team shall prepare a sand budget depending upon the topography, hydrology and hydrologic information and express its views as to the amount of sand that could be removed from the area without causing undue erosion or degradation either at the site or at a nearby location, upstream or downstream. The District Collector shall consider the report of inspecting team and keeping in view the impact on environmental issues, shall grant permission specifying the exact area of sand quarry

and the quantity to be carried, manner of quarrying, etc.,

85. In the result, the Writ Petitions are disposed of with the following directions:-

Directions in respect of Tamiraparani river:

(a) It is directed that there shall be no sand mining/quarrying for five years from today in the entire stretch of Tamiraparani river including the quarry sites at Thirumalaikolunthupuram, Tholappanpanai, Kilpidagai Appankovil, Mukkani and Mangalakurichi.

(b) If the District Collector of Tirunelveli or Tuticorin is of the view that the sand from the Tamiraparani river is absolutely required before the expiry of five years from today for meeting the demands for projects relating to the public utility, then, the respective District Collectors shall identify the place where the sand is available for quarrying, make personal inspection and satisfy the legal formalities, as per the Tamil Nadu Minor and Mineral Concession Rules, 1959. The District Collectors of Tirunelveli and Thoothukudi shall also obtain the views of the respective inspecting team and offer identification of the places for sand quarrying and fixing the requirement, and then make a report to the Monitoring Committee constituted under this order. When such report is submitted by the District Collectors of Tirunelveli and Thootnhhukudi, the Monitoring Committee shall examine the feasibility of allowing such quarrying. The Monitoring Committee shall inspect the area so identified and examine the environmental issues like impact of sand mining (I) physical, (ii) water quality; and (iii) ecological and other relevant aspects and the Monitoring Committee shall also examine the requirement and also the quantity required.

(c) If the Committee opined that the quarrying can be permitted in any particular site, the District Collector may grant permission to the Public Works Department. If any such permission is granted by either the District Collector, Tirunelveli or Tuticorin for mining/quarrying, as mentioned above, then the Monitoring Committee shall closely monitor the mining/quarrying so as to ensure that there is no illegal mining/quarrying or any violation of the mining norms. If the Committee opines against the proposal for granting permission for quarrying, the District Collector may approach this Court.

(d) Rehabilitation: The sand piled along the quarried pits in the five sand quarry sites - Thirumalaikolunthupuram, Tholappanpannai, Kizhpidagaii Appankovil, Mukkani and Mangalakurichi are directed to be re-dumped or re-filled in the pits. All permanent pathways laid in the above said five sites must be levelled to let the river assume its normal course without any artificial obstruction to the extent possible under prevailing circumstances. These two suggestions of the Commission are to be carried out within two months from the date of this order and report has to be filed before this Court within ten weeks. The Registrar- Judicial, Madurai shall bring to the notice of the Court about the compliance of the report. In case the report is not filed within the time granted, the same shall also be brought to the notice of the Court.

(e) In the entire stretch of Tamiraparani, there has to be a strict vigil over illegal quarrying of sand by private per;sons. In so far as illegal quarrying by private persons, the District Collector of

Tirunelveli and Thoothukudi in consultation with the Superintendents of Police, P.W.D., and Department of Geology and Mining, shall constitute a special team to check illegal sand quarrying and strictly implement the provisions of Environmental Protection Act.

86. General directions for sand quarrying operations in all the rivers in the State of Tamil Nadu:-

(a) As pointed out earlier, the District Collectors are the competent authorities to grant permission to the Public Works Department to quarry sand. On proposal made by P.W.D., team of experts comprising of officials from Geology and Mining, revenue officials, Pollution Control Board, Water Board (TWAD), P.W.D. officials and also P.W.D.(W.R.O), inspect the site and submit its preliminary report to the District Collector. Upon consideration of the report of the inspecting team and the proposal made by the P.W.D., the District Collector grants permission for sand quarrying.

(b) In future, while inspecting the area identified for sand quarrying, the inspecting team shall prepare its report focusing on environmental issues like impacts of sand mining - (i) physical; (ii) water quality and (iii) ecological, stability of structures, riparian habitat, flora and fauna. The inspecting team shall prepare a sand budget depending upon the topography, hydrology and hydrologic information and express its views as to the area in which the sand quarry has to be done, amount of sand that could be removed from the area without causing undue erosion or degradation either at the site or at a nearby location, upstream or downstream.

(c) The District Collector shall consider the report of inspecting team and keeping in view the impact on environmental issues, shall grant permission specifying the exact area of sand quarry and the quantity to be carried, manner of quarrying, etc.,

(d) The Public Works Department engage the assistance of Labour Contractors. The labour contractors either with or without the connivance of Public Works Department and local authority carry out indiscriminate sand quarrying. Scientific quarrying is not employed. What was sought to be prevented by G.O.Ms.No.95 dated 1.10.2003 is now worsened. The quarrying operations will be conducted by the Public Works Department directly. The PWD may however engage the assistance of labour contracts which shall all be given through Public tender as permitted by the Hon'ble Madras High Court vide judgment of Division Bench of this Court dated 03.08.2005 in W.P.No.12934 of 2005 etc.

(e) To have effective monitoring not only over Tamiraparani river, it is appropriate to issue directions for all the rivers for the scientific sand quarrying in accordance with TN MMC Rules and also to constitute a monitoring committee for all the rivers in the State of Tamil Nadu. The quarrying operation itself shall be strictly restricted to areas, which have already been or in future shall be specifically earmarked by the District Collector in consultation with the PWD. All quarrying operation of river sand shall be only done strictly in accordance with Rule 36-A of the TN MMC Rules, 1959 as amended by G.O.Ms.95 Industries Department dated 1.10.2003, which has come into effect from 02.10.2003 and also other instructions issued by the Government and by this Court in these Writ Petitions.

(f) No poclain or other heavy machinery shall be used for sand quarrying. It would be in order of the Government of Tamil Nadu exercises its discretion in bringing the necessary amendment to Rule 36-A Sub-Rule (6) of TN MMC Rules, which permits use of machinery with permission of authorised officer. We hope that the State will put in place the necessary amendment within six months to prevent use of machinery in sand quarrying.

(g) The loading contractors can load sand only on the direction of the PWD authorities and their registration number and name of lorry driver shall be mentioned in the receipt issued by the authorities. No sand lorry shall be despatched without mentioning the destination. Mention of place of destination in the receipts is mandatory. The accounting procedure, receipts for issuance and the quantum of load put up by the lorries should have accuracy and nowhere deviation to procedure/Rule is to be permitted.

(h) Regarding the actual quarrying operations, the same shall be strictly in accordance with the TN MMC Rules and also as per instructions issued by the Secretary, PWD dated 18.03.2005 communicated to all Superintending Engineers and Chief Engineers and the Chief Engineers of Water Resource Organisations of the PWD and other directions issued by the authorities and also by this Court.

87. Constitution of State Level Monitoring Committee for river sand and other sand quarrying:

(a) There shall be a State level monitoring Committee constituted for the purpose of monitoring the adherence of the directions issued in this order and the TN MMC Rules.

(b) State Level monitoring committee for river and other sand quarrying shall be constituted comprising of the following persons:

(i) a Retired Judge of the Madras High Court shall be the Chairman;

(ii) One Member Secretary shall be appointed in the Head Office; and

(iii) One Retired District Judge for each Zone [Chennai Zone; Tirunelveli Zone; Coimbatore Zone; Tiruchi Zone].

(iv) Expert in Water Resources Management; and

(v) Environmentalist shall be the members.

We hope that the State will issue necessary notification constituting the Committee preferably within a period of six months from today. While issuing notification, the Government shall also demarcate the areas for all the four zones and also indicate the names of the rivers in the respective zones.

(c) The Chairman shall be paid remuneration of Rs.50,000/- per month and the members shall be paid Rs.25,000/- per month each. The tenure of the Committee shall be initially for a period of two years. The Committee shall be provided with office space in Chennai, Tirunelveli, Coimbatore and Tiruchi. The Committee is to be provided with a typist and Assistant at Head Office and Zonal Offices by providing necessary infrastructure. Adequate police protection has to be given to the Committee while visiting the sites to ensure effective monitoring.

(d) After granting permission for sand quarrying in any river or tributary in the State of Tamil Nadu, the respective District Collectors shall forward a copy of the preliminary report submitted by the inspecting team and also the copy of the proceedings permitting sand quarrying. The Committee shall monitor that the sand quarrying is done in accordance with the TN MMC Rules and in compliance with the terms and conditions of the permission granted and the directions issued in this order.

(e) The Committee shall monitor whether sand quarrying is done in a scientific and skilful manner. The Committee shall have power to check the transport permits issued. The Committee shall verify the accounting procedure and the quantum of load put up to the lorries.

(f) Any person having grievance about illegal quarrying/excessive quarrying/non-compliance of TN MMC Rules/other directions shall prefer complaint before the Committee and the Committee shall look into the same and shall make enquiry and shall communicate with the District Collector and the Public Works Department to redress the grievance. The Committee shall collect the reports from the Zonal Committee and send a periodical report to this Court once in four months.

(g) Insofar as Vaipar and Palar, pursuant to the orders of the Court, already Committees have been constituted to monitor the sand quarrying. Insofar as Vaipar and Palar, State Level Monitoring Committee shall function in coordination with those Committees already constituted.

(h) Any deviation of procedure/rule is to be brought to the notice of the District Collector for taking appropriate action. In case of inaction of the District Administration, the Committee shall bring it to the notice of the Court by filing appropriate Report.

(i) The Registrar Judicial has to finalise the names of the members of the Committees. The Registrar judicial is directed to submit the list of retired District Judges in the respective areas, panel of names of experts in Water Resource Management, Environmentalists in the respective zones. Registrar-Judicial shall also communicate with the High Court Registry, Universities/Institutions in getting the names of the experts. The Registrar Judicial shall also contact the individuals and obtain the willingness and submit his report giving the names, designations, addresses and contact numbers within a period of two weeks from today to enable this Court to pass further orders in constituting the Committee.

(j) The Registry is directed to list this case on 20.12.2010 for further orders as indicated in (i).

However, there is no order as to costs. Consequently, all the connected miscellaneous petitions are closed.

B/o usk Copy to:

1. The Advocate General, High Court, Madras

2. The Chief Secretary to Government, Government of Tamil Nadu, Public Works Department, Secretariat, Chennai.

3. The Secretary to Government, Industries Department, State of Tamil Nadu, Fort St. George, Chennai-9.

4. The Director of Geology and Mining, Guindy, Chennai.

5. The District Collector, Tuticorin, Tuticorin District.

6. The Executive Engineer, Tamirabarani Basin, Public Works Department (PWD), Tuticorin District.

7. The Assistant Director of Geology and Mining, Thoothukudi.

8. The Revenue Divisional Officer, Beach Road, Tuticorin.

9. The Assistant Director, Mines and Minerals, Collectorate Office,Tuticorin.

10. The Tahsildar, Srivaikuntam Taluk, Tuticorin District.

11. The Executive Engineer, Public Works Department(Water Resources) Tamirabarani Distribution Circle, Tirunelveli.

12. The Executive Engineer, TWAD (Village), Tuticorin.

13. The District Collector, Tiruneveli District.

14. The Sub Collector, Cheranmahadevi, Tiruneveli District.

15. The Dy. Director of Geology and Mining, Tiruneveli District.

16. The Tahsildar, Nanguneri, Tirunelveli District.

17. The Executive Engineer, Public Works Department/ Water Resource Organisation, Tamirabarani Basin Division, Tiruneveli District.

18. The Secretary, Public Works Department, State of Tamil Nadu,Secretariat, Chennai-9.

19. The District Environmental Engineer, Tamil Nadu Pollution Control Board, Thoothukudi.

20. The Secretary to Government, Government of Tamil Nadu, Department of Environment, Secretariat, Chennai.

21. The Conservator of Forest, Forest Department, Palayamkittai, Tirunelveli.

MANU/TN/1103/2012

IN THE HIGH COURT OF MADRAS (MADURAI BENCH)

M.P. (MD) Nos.1 to 6 of 2012 in W.P. (MD) No. 4699 of 2012, M.P. (MD) No. 1 of 2012 in W.P. (MD) No. 8111 of 2012, M.P. (MD) Nos. 1 and 2 of 2012 in W.P. (MD) No. 8131 of 2012, M.P. (MD) No. 1 of 2012 in W.P. (MD) No. 8568 of 2012, M.P. (MD) Nos. 1 and 2 of 2012 in W.P. (MD) No. 8886 of 2012, and WP MP No. 12142 of 2004 in W.P. No. 10418 of 2004

Decided On: 03.08.2012

Appellants: **Cauvery Neervala Aathara Pathukappau Sangam**
Vs.
Respondent: **The Government of Tamil Nadu**

Hon'ble Judges/Coram:
Honourable Mrs. Justice R. Banumathi and Honourable Mr. Justice G.M. Akbar Ali

Counsels:
For Appellant/Petitioner/Plaintiff: Mr.M. Ajmal Khan Senior Counsel for M/s.Jayapaul Associates, Mr.M. Subash Babu M.P. (MD) No. 3 of 2012, Mr.G.R. Swaminathan M.P. (MD) No. 4 of 2012, Mr.G.S. Asok Adhithiyan M.P. (MD) No. 5 of 2012, Ms. U. Nirmala Rani M.P. (MD) No. 6 of 2012 in W.P. (MD) No. 4699 of 2012, Mr.G.R. Swaminathan for Mr. K. Gukul in W.P. (MD) No. 8111 of 2012, Mr.G.R. Swaminathan, Mr. G.S. Asok Adhithiyan M.P. (MD) No. 2 of 2012 in W.P. (MD) No. 8131 of 2012, Mr.T. Lajapathi Roy in W.P. (MD) No. 8568 of 2012, Mr.G.R. Swaminathan for M/s. Renga Nandakumar W.P. (MD) No. 8886 of 2012 and Mr. T. Mohan in W.P. (MD) No. 10418 of 2004

For Respondents/Defendant: Mr.K. Chellapandian, Additional Advocate General assisted by Mr.R. Karthikeyan, Add. Government Pleader For Respondents 1 to 5, Mr.K. Govindarajan For Respondent No. 6, Mr.S. Venkatesh, Government Pleader For Respondents 7 to 15 in W.P. (MD) No. 4699 of 2012, Mr.K. Mahendran Special Government Pleader in W.P. (MD) No. 8111 of 2012, Mr.K. Chellapandian, Additional Advocate General For Respondent No. 1, Mr.K. Mahendran Special Government Pleader For Respondents 2 to 8 in W.P. (MD) No. 8131 of 2012, Mr.K. Chellapandian, Additional Advocate General For Respondent No. 1, Mr.K. Mahendran Special Government Pleader For Respondents 2 to 7 in W.P. (MD) No. 8568 of 2012, Mr.K.K. Senthilvelan Assistant Solicitor General of India For Respondents 1 and 2, Mr.K. Mahendran Special Government Pleader For Respondents 3 to 7 in W.P. (MD) No. 8886 of 2012 and Mr.K. Chellapandian, Additional Advocate General For Respondent Nos. 1 & 3 Mr.K. Mahendran Special Government Pleader For Respondent No. 2 in W.P. (MD) No. 10418 of 2004

JUDGMENT

R. Banumathi, J.

1. The Writ Petitions are filed seeking writ of mandamus to forbear the respondents from carrying sand quarry operations along the stretches of rivers of Cauvery and Kollidam, which runs through Karur, Trichy, Thanjavur, Thiruvarur and Nagapattinam Districts. Since the issue involved in these Writ Petitions are with regard to sand mining in Cauvery River, all the Writ Petitions were heard together and disposed of by this common Order.

2. The Petitioners allege violation of rules and regulations of Minor Mineral Concession Rules. The Petitioners allege excessive and unscientific sand quarrying and that number of poclains are used for scooping the sand up to 10-15 feet depth and that pits are created in the middle of the river and roads are also formed affecting the normal water course and also equality of the river stream.

3. Grievance of the Writ Petitioners is that excess sand mining in riverbeds and instream which cause damages to the river system and degradation of good water quality. Writ Petitioners contend that for quarry operations including minor minerals, as per the Environmental Impact Notification dated 14.09.2006, environmental clearance has to be obtained from the Ministry of Environment and Forests/State Level Impact Assessment Authority, Chennai.

4. Respondents resist the Writ Petitions contending that in the State of Tamil Nadu, sand quarry operations are directly under the control of Public Works Department and loading of sand to the vehicles directly from the riverbed are done under the strict supervision of Public Works Department. Proposals are submitted to the District Collectors by the Public Works Department after studying the availability of sand, safe quarrying, environmental aspects etc. Considering these aspects, the District Collectors grant permission to Public Works Department for sand quarrying imposing strict conditions. Government is strictly enforcing the guidelines in respect of sand quarrying and Government have taken steps to curb excessive and illicit sand quarry operations. According to Government, various benefits are gained due to sand quarrying just above the bed level:- (i) by removal of sand dunes, free flow of water could be ensured thereby inundation in adjoining villages of Trichy, Ariyalur, Thanjavur and Nagapattinam Districts can be avoided; (ii) flood carrying capacity of Kollidam will be restored; (iii) requirement of sand for public will be fulfilled for day today construction and developmental activities implemented by the Government; and (iv) revenue of the Government is increased.

5. Regarding the plea of environment clearance, according to the Government, in the State of Tamil Nadu, as per G.O.Ms. No. 95 Industries (MMC.I) Department dated 01.10.2003, sand quarry operations are being carried out by the Public Works Department. The said G.O.Ms. No. 95 dated 01.10.2003 has been upheld by the Madras High Court in MANU/TN/0560/2004 : (2004) 4 MLJ 418 (State of Tamil Nadu v. P.Krishnanmurthy) and by the Hon'ble Supreme Court in MANU/SC/1581/2006 : (2006) 4 SCC 517 (State of T.N. and another v. P.Krishnamurthy and others) and since sand

quarry operations are being carried in a skillful and scientific manner under the supervision of Public Works Department, it is not necessary to obtain environmental clearance; for sand quarry operations in the State of Tamil Nadu.

6. In order to appreciate the contention of parties, it is necessary to refer to the brief history of sand quarrying in the State of Tamil Nadu and Policy and also the relevant Government Orders.

7. Background facts:-

Taking cognizance of the indiscriminate sand quarry in the river streams of Tamil Nadu, way back in 2002, High Court by an order dated 26.7.2002 in Contempt Application No. 561 of 2001 arising out of Order dated 08.2.2000 in W.P. No. 985 of 2000 directed the State Government to constitute a Committee of Experts consisting of Geologist, Environmentalist and Scientist to study the river and riverbeds in the State with particular reference to the damage caused on account of indiscriminate and illicit sand quarrying. In compliance with the direction of High Court, Government constituted a six member High Level Committee. The Committee in its report expressed the view that illicit and haphazard sand mining has led to deepening of river beds, widening of the rivers, damage to civil structures, depletion of groundwater level, degradation of ground water quality and damages to the river streams and reduction of biodiversity. Taking note of the observation and conclusion of the High Level Committee, Government felt that there is an emergent need for frame work for regulation of sand quarrying in the State in public interest. With a view to eliminate indiscriminate and unscientific sand quarrying and also to ensure uninterrupted availability of sand to the common people at affordable price and also to augment the revenue of the State Government, the Government issued amendment introducing Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, whereby all existing leases for quarrying sand in Government lands and permissions granted in Ryotwari lands ceased to be effective with effect from 2.10.2003 and the right to quarry sand in the State vests with the Government. Government had taken a policy decision to cancel all the sand quarry leases and to vest the same with the Government vide Rule 38-A of Tamil Nadu Minor Mineral Concession Rules, 1959 in G.O.Ms. No. 95, Industries (MMC.I) Department dated 1.10.2003. From 2.10.2003, all the sand quarries in the Government land areas are operated by the Public Works Department. In respect of patta land quarries, they were stopped from operation. G.O.Ms. No. 95 dated 01.10.2003 and amended Rule 38-A was challenged in a batch of writ petitions and same was upheld by the Hon'ble Apex Court in MANU/SC/1581/2006 : (2006) 4 SCC 517 [State of T.N. and another v. P.Krishnamurthy and others]. Between 2003-2006 i.e. till G.O.Ms. No. 110, Public Works Department dated 06.7.2006, based on the recommendations of the Chief Engineer, Water Resources Organisation, Government issued various Government Orders for operation of sand quarry in the recommended places.

8. G.O.Ms. No. 110, Public Works Department dated 06.7.2006:- In order to avoid delay and also ensure availability and supply of sand in an orderly manner to the common public at affordable price, Government had given instructions for issuing of orders of permission to quarry by the Public Works Department. The normal procedure for grant of sand quarry in areas are first identified by the Public Works Department and then area is applied for grant. The application is processed by the concerned Assistant Director/Deputy Director of Geology and Mining Department. Proposals are submitted to the District Collectors by the Public Works Department after studying the availability of sand, safe quarrying, environmental aspects etc. Considering the availability of sand and other aspects, the District Collectors grant permission to Public Works Department to quarry sand in a particular area and stipulating time frame as well as quantity of sand to be lifted.

9. Rules stipulated in Tamil Nadu Minor Mineral Concession Rules, 1959:-

Government issued certain Circular/Communication stating that sand quarry should be operated as per the Rules of Government in force by strictly following the conditions for quarrying. While granting permission for sand quarry, conditions inter alia imposed as per TN MMC Rules, 1959 and other which read as under:-

1. No quarrying within a distance of 50 meters from a railway line, reservoir, canal or other public work such as public roads and buildings (this can be relaxed by the Appropriate Authority). In respect of Village roads, 10 meters safety distances should be provided.

2 . No quarrying within 500 meters radial distances from the location of any bridge water supply system, infiltration well or pumping installation of any installation of any of the local bodies or Central or State Government Department or Tamil Nadu Water Supply and Drainage Board load works or any area identified for locating water supply schemes by any of the Government Departments. (Rule 36 of TN MMC Rules)

3. Shall carryout quarrying operations in a skilful, scientific and systematic manner keeping in view of proper safety of the labour, structure and the public works located in the vicinity to preserve the environment and ecology of the area.

4. As per Tamil Nadu Minor Minerals Concession Rules, 1959 Rule 12(2)(1).

Pit shall be at a distance of atleast twice the height of the bund from the top of the bund and they shall not be more than one metre in depth (the depth shall be less, if pits one metre deep are likely to expose porus strata)

5. Shall keep correct accounts showing productions and despatches. The above rules stipulated in the Tamil Nadu Minor Mineral Concession Rules should be judicially taken into account while undertaking Sand Quarrying. The above instructions were directed to be scrupulously followed by the field level officers.

10. Use of Machineries/Poclains:- In G.O.Ms. No. 327, Industries Department dated 1.12.1997, the Government issued orders by introducing sub-rule (6) to Rule 36-A of TN MMC Rules to the effect that no machinery shall be used for quarrying sand from river beds. The said rule was introduced for the reason that private parties operating quarries were all non-technical people and do not possess the knowledge of theoretical bed level and bed fall of the river and if they are allowed to use the machinery, the quarrying work will be done in an uncontrollable manner and more than the allowable depth with a profit motive. As pointed out earlier, Rule 38-A was introduced under which the Public Works Department has been entrusted with the task of operating sand quarries in the State. In view of the demand from the public and also to cater to the need, the Government decided to amend Sub-rule (6) of Rule 36-A relating to the use of machinery for quarrying of sand in river beds with some conditions, Government passed G.O.Ms. No. 19 Industries (MMC 1) dated 19.4.2004. Rule 36-A sub-rule (6) was substituted as under:

> No machinery shall be used for quarrying sand from river beds, except with the permission of the Secretary to Government, Industries Department or any other authority or Officer, as may be authorized by him in this behalf, who may grant such permission if use of such machinery will not be detrimental to ecology.

11. Directions in Tamiraparani case - Taking cognizance of indiscriminate quarrying of river sand in Tamirabarani river, in W.P. No. 11182 of 2010 etc., (batch cases), by order dated 2.12.2010, extending the scope of directions for sand quarry operations in all the rivers in the State of Tamil Nadu, in Para 86(f) of the Judgment, the Madurai Bench of Madras High Court (in which one of us was a Member - Justice R.Banumathi) has directed that no poclains or heavy machinery shall be used in sand quarrying, which reads as under:

> (f) No poclain or other heavy machinery shall be used for sand quarrying. It would be in order of the Government of Tamil Nadu exercises its discretion in bringing the necessary amendment to Rule 36-A Sub-Rule (6) of TN MMC Rules, which permits use of machinery with permission of authorised officer. We hope that the State will put in place the necessary amendment within six months to prevent use of machinery in sand quarrying.

12. Subsequently, Review Petition was filed in M.P. No. 1 of 2011. By considering the difficulties expressed by the Government in ensuring availability of sand quarry rivers at affordable cost, by the order dated 10.1.2011, Court modified the directions in Paragraph 86(f) granting permission for use of minimum poclains not more than "two poclains" in each of the quarry sites. It was further directed that the poclains shall not be used after 7.00 P.M. and before 6.00 A.M. Accordingly, Government also issued G.O.(D) No. 67, Industries (MMC-I) Department, dated 11.03.2011 directing District Collectors to impose conditions restricting judicious use of minimum number of poclains and not more than two poclains in each of the quarry sites (other than Palar and Tamiraparani rivers).

13. State Level Monitoring Committee for River Sand Quarry:- The Court also ordered to constitute a monitoring committee under the Chairmanship of Retired High Court Judge for the purpose of monitoring adherence of the directions issued in the order dated 2.12.2010. In so far as direction to constitute Committee under the Chairmanship of High Court Judge, for the purpose of monitoring adherence to the directions issued in the Order dated 2.12.2010, even though Government issued G.O.(Ms.) No. 79, Industries (MMC-I) Department, dated 11.03.2011, the same is yet to be implemented. Expressing certain difficulties in implementation of the direction in constituting the State Level Monitoring Committee, State Government Petition and the matter is pending consideration in W.P. No. 11562 of 2010 and batch cases.

14. Cauvery River:- Cauvery is an easterly flowing river of the Peninsular India that runs across three of the Southern Indian States i.e. Karnataka, Tamil Nadu, Kerala and a Union Territory of Puducherry. The fourth largest river of Southern Region, begins its 800 km long journey from the Western Ghats; traverses through Mysore plateau and finally forms a delta on the Eastern Coastline of the subcontinent before falling into the Bay of Bengal. The point of origin of Cauvery, "Talakaveri" is in the Brahmagiri ranges of the Western Ghats at an elevation of 1341m. Geologically, the basin forms a part of the South Indian Shield.

15. The Cauvery River originating from "Thalai Cauvery" enters Tamil Nadu through Dharmapuri District and further runs through the length of Erode District. Its tributaries, Noyyal and Amaravathi joins Cauvery river in Karur District, before it reaches Trichy. Here, the Cauvery river becomes wide, with a sandy bed and flows towards East, until its splits into two branches about 14 kilometres west from Trichy. The Northern Branch of the river is called "Kollidam". "Kollidam" river is a major flood carrier branching from Cauvery at Upper Anaicut. Normally flood water received in Cauvery is being surplus into "Kollidam" river at Upper Anaicut. The surplus water if any realised in river Cauvery will also be diverted to "Kollidam", while the Southern Branch retains the name of "Cauvery" and goes Eastwards through Thanjavur, Thiruvarur and Nagapattinam Districts, before its merger in Bay of Bengal. 60% of the total flow of the Cauvery is used for irrigation purpose, especially in Thanjavur District around 4000 square miles of the delta regions are irrigated extensively from the water flow of Cauvery river. There are several lakh hectares of cultivable lands depended on the water resource of Cauvery river. The basin is characterised with a unique forest with some of very distinct fauna and flora and is home to many sanctuaries and National Parks. Further, the Cauvery river is a sacred one and has great significance in Hinduism and various historical temples are situated along the banks of Cauvery river.

16. Sand quarry in Cauvery River:- Like in all other rivers in the State, Public Works Department is operating the sand quarries operations in Cauvery river. It is stated that there are about 42 sand quarries operated in the river across five Districts viz., Karur, Tiruchi, Thanjavur, Thiruvarur and Nagapattinam. Since details of survey number, area, extent and sand to be lifted from each quarry were not available in the Writ Petitions, by various orders, we have directed District Collectors to file details/permission granted regarding the sand quarries. By the order dated 18.6.2012, we have directed the District Collectors of Karur, Tiruchi, Thanjavur, Nagapattinam and Thiruvarur to file report regarding number of quarries functioning. Accordingly, the District Collectors have filed the report giving details about the sand quarries operating in the respective Districts, Sanction Orders, Date of Commencement of Sand Quarries.

17. The Details of the approved quarries as furnished by the District Collectors are as under:-

NAGAPATTINAM:

Sl. No	Name of Quarry	Taluk, Village SF No.	Location	Sanction Order No.	Permitted period and quantity	Date of Commencement	Quantity of sand quarried in CuM	Remarks as per Collector's report
1	Mathirivelur	Sirkazhi Taluk Mathirivelur Village, SF. No. 782/1	Coleroon River RB at Mile 87/0 to 88/0	G.O.(3D) No. 39/PWD/ Dated 07-10-03	Not mentioned	8-10-03	285136	Functioning
2	Siddhamalli-I	Mayiladuthurai Taluk Sidhamalli Village, SF. No. 495/1	Coleroon River RB at Mile 81/2 to 81/5	G.O.Lr. No. 3418/I.Spl.2/2005-2/ Dt.29-03-05	Not mentioned	22-04-05	22-04-05	Temporarily stopped since 14.04.2012
3	Siddhamalli-II	Mayiladuthurai Taluk Sidhamalli Village, SF. No. 1/1, 1/31	Coleroon River RB at Mile 81/2	Nagapattinam Collector Proc. No. RC.54/2010/ (Mines)/Dt.04-10-10	Not mentioned	Not mentioned		To be Started
4	SeePuliyur	Mayiladuthurai Taluk, Thiruchitrambalam Village, SF. No. 1	Coleroon River RB at Mile 74/3	Nagapattinam Collector Proc. No. RC.54/2010/ (Mines)/Dt 04-10-10	Not mentioned	Not mentioned		To be Started
5	Rajasuriyan-pettai	Mayiladuthurai Taluk, Kadakkam village, SF. No. 1	Coleroon River RB at Mile 78/0	Nagapattinam Collector Proc. No. RC. 129/2007/(Mines)/Dt. 02-05-07	530 Days 300000M3	7/12/2007	266821	Temporarily stopped since 27.07.2010
6	Gopala-samudram	Mayiladuthurai Taluk, Gopalasamudram Village, SF. No. 10	Coleroon River RB at Mile 91/0	Nagapattinam Collector Proc. No. RC. 707/2007/ (Mines)/Dated 24-12-07	Not mentioned	19-05-08	80985	Temporarily stopped since 31.10.2009
7	Pappakudi	Mayiladuthurai Taluk, Manalmedu Village, SF. No. 1	Coleroon River RB at Mile 77/1	Nagapattinam Collector Proc. No. RC.31/2010/(Mines)/Dt. 21-01-10	1520 Days 635000M3	10-03-10	330913	Temporarily stopped since 29.02.2012
8	Panan-gattangudi	Sirkazhi Taluk, Agaraelathur Village, SF. No. 495/1	Coleroon River RB at Mile 83/4	Nagapattinam Collector Proc. No. RC.54/2010/(Mines)/Dt. 29.01.10	1520 Days 300000 M3	15-03-10	118748	Functioning
9	Melavadi Vadarangam	Sirkazhi Taluk Vedarengam Village, SF. No. 321	Coleroon River RB at Mile 86/3	Nagapattinam Collector Proc. No. RC.54/2010/(Mines)/Dt. 04-10-10	Not mentioned	Not mentioned	Not mentioned	To be Started
10	Mudikan-danallur	Mayiladuthurai Taluk Mudikandanallur Village SF. No. 369	Coleroon River RB Mile 76/5	Nagapattinam Collector Proc. No. RC.54/2010/(Mines)/Dt. 04-10-10	Not mentioned	14-01-11	41750	Temporarily stopped since 17.03.2012
11	Kurichi	Mayiladuthurai Taluk, Kuruchi Village, SF. No. 5/1	Coleroon River RB at Mile 83/3	Nagapattinam Collector Proc. No. RC.54/2010/(Mines)/Dt. 04-10-10	Not mentioned	12-01-11	133612	Functioning

THANJAVUR

Sl. No.	Name of the Village	S.F. No.	Extent in Hectares	Location	Collector's Proceedings	Period of permission	Quantity permitted
1	Koviladi Revenue village, Thiruvaiyarutaluk	S.F. No. 1A	**27.00**.0 Hectares	Kollidam River Right Bed Mile 19/3 to 20/0	Na.Ka. No. 221/2011 (Mines) dated 28.6.2011	Not mentioned in the order	Not mentioned in the order
2	Vilangudi village, Thiruvaiyarutaluk	S.F. No. 1A	300000 square meter	Kollidam River Right Bed Mile 37/0	Na.Ka. No. 97/2007 (Mines) dated 14.04.2007	Not mentioned in the order	Not mentioned in the order

3	Veeramangudi village, Papanasamtaluk	S.F. No. 1	**15.00**.0 Hectares	Kollidam Right Mile 40/0 (West)	Na.Ka. No. 12/2012 (Mines) dated 6.4.2012	Not mentioned in the order	50000 Unit
4	Govindanattu-cherry Papanasam Taluk	S.F. No. 291/A	**13.50**.0 Hectares	Kollidam Right Mile 44/7(East)	Na.Ka. No. 322/2011 (Mines) dated 6.4.2012	Not mentioned in the order	45000 Unit
5	Pazhamarneri Village, Thiruvaiyar Taluk	S.F. No. 73/1	**10.00**.0 Hectares	Kaveri River Poramboke	Na.Ka. No. 198/2007 dated 21.3.2007	Not mentioned in the order	Not mentioned in the order

KARUR:

Sl. No.	Name of the Taluk and Village	S.F. No.	Extent in Hectares	G.O. No. & Date	Collector's Proceeding	Period of permission	Quantity permitted
1	Karur Vangal	1499	Not mentioned in the order	G.O.3D No. 39 PWD, Dated 07.10.2003	Not mentioned	Not mentioned in the order	Not mentioned in the order
2	Karur-Nerur	2596	Not mentioned in the order	P.W.D. Special Secretary Lr. No. 3151/WSPL/2005 Dt.26.04.2005	Not mentioned	Not mentioned in the order	Not mentioned in the order
3	Krishnarayapuram Sithalavadi 1 (Part)	**10.00**.0		District Collector, Karur Proc. No. 166/G&M/ 2006 dated 20.03.2007	Not mentioned	Not mentioned in the order	Not mentioned in the order
4	Krishnaraya-puram, Sithalavadi	1	Not mentioned in the order	P.W.D., Special Secretary Lr. No. 36330/WSPL/ 2003-1, Dt.10.01.2004	Not mentioned	Not mentioned in the order	45000 Unit
5	Kulithalai Thimmachipu-ram	1	Not mentioned in the order	P.W.D., Special Secretary Lr. No. 36330/WSPL/ 2003-1, Dt.10.01.2004	Not mentioned	Not mentioned in the order	Not mentioned in the order
6	Kulithalai Vathiyam	1	Not mentioned in the order	P.W.D., Special Secretary Lr. No. 36330/WSPL/ 2003-1, Dt.10.01.2004	Not mentioned	Not mentioned in the order	Not mentioned in the order
7	Kulithalai Maruthur	1	Not mentioned in the order	G.O.3D No. 39 P.W.D. Dated 07.10.2003	Not mentioned	Not mentioned in the order	Not mentioned in the order

TRICHY:

Sl. No.	Taluk Village	SF. No.	Extent	G.O./Collector's Proceedings & Date	Period of Permission	Quantum permitted
1	Srirangam Killikoodu	81/1,2,3 (Bit I) & (Bit II)	**24.00**.0	Rc. No. B.557/2011, dated 10.3.2012	**10.3**.2012 to 09.11.2012	80,000 Cu.Meter
2	Srirangam Uthamarseeli	218(Part)	**12.50**.0	G.O.110(PWD) (CP2) Dept.dt.06.7.2006	Not mentioned	Not mentioned
3	Lalgudi Ariyoor	240 (Bit 1)	**36.00**.0	Rc. No. A.816/2010, dt.02.12.2011	**02.12**.2011 to 1.10.2012	33,600 Lorry loads
4	Lalgudi Kila Anbil	184(P)	**45.00**.0	G.O.110(PWD) (CP2) Dept dated 06.7.2006	Not mentioned	Not mentioned
5	Musiri Musiri	248/1	Not Mentioned	G.O.(3D)13PW (W.Spl.)Dept. dt.22.3.2004	Not mentioned	Not mentioned
6	Thottiyam Thiruengoimalai	299	Not Mentioned	G.O.(3D)13PW (W.Spl.)Dept. dt.22.3.2004	Not mentioned	Not mentioned
7	Musiri Manamedu	61 (Bit I) & (Bit II)	**12.50**.0 & 27.50.0	Rc. No. 638/2011, dt.10.4.2012	**10.4**.2012 to 19.12.2012	1,25,000 & 2,75,000 Cu. Meter
8	Musiri Evoor	436 (Bit I) & (Bit II)	**16.50**.0 & 15.00.0	Rc. No. B/527/2011, dt.01.3.2012	**01.3**.2012 to 30.11.2012	36,383 Lorry Loads
9	Srirngam Kondayampettai	202 (Bit I) & Bit (II)	**11.00**.0 & 16.00,0	Rc. No. 559/2011, dt.09.11.2012	**10.3**.2012 to 09.11.2012	38,870 Lorry Loads

TIRUVARUR:

S. No.	Name of Taluk	Name of Village	Name of quarry	Remarks /p>
1	Valangaiman	Mathur & Kandiyur	Mathur & Kandiyur	

2	Needamangalam	Vasudevamangalam	Vasudevamangalam	
3	Valangaiman	Thirukalambur	Thirukalambur	
4	Thirukalambur	Thenkuvalaveli	Thenkuvalaveli	

As per the letter of the District Collector, Thiruvaur in R.C. No. 206/(G&M)/2012 dated 10.07.2012, the said sand quarries were not functioning during the year 2011-2012 and to till date.

18. Contentions:-

On behalf of Writ Petitioners, Mr. M. Ajmal Khan, learned Senior Counsel and Learned Counsel Mr. T. Mohan raised the following contentions:-

Sand quarry permissions were granted by the respective District Collectors without application of mind and without taking into consideration of the environmental impacts of sand mining like (i) physical; (ii) ecological stability of structures; (iii) course of river. There is unregulated sand mining operations and sand mining is done beyond the permissible depth level (1 meter = 3 feet). Large quantities of sand are stored like mountains (25 feet) in the quarrying site. Roads to a width of 10 - 20 feet across the river is formed in zig-zag manner and the said roads are used for transporting the sand through Taurus lorry etc. Even though permission is granted to use only two poclains, more poclains are used for quarrying the operation in each site. Quarrying operations are carried out round the clock in violation of the conditions to operate between 6.00 A.M. and 7.00 P.M. Placing reliance upon Deepak Kumar's case, both the learned Senior Counsel Mr. M. Ajmal Khan and the Learned Counsel Mr. T. Mohan submitted that as per EIA Notification, 2006 environmental clearance has to be obtained.

19. Mr. T. Lajapathi Roy, Learned Counsel appearing for the Petitioner in W.P.(MD) No. 8568 of 2012 submitted that sand quarry operation is located very near to Vedasandur Drinking Water Scheme and if the quarry operation continues, the entire Drinking Water Scheme is in peril which will have disastrous effects for the Drinking Water Scheme. In support of his contention, Learned Counsel also produced the photographs.

20. Mr. G.R. Swaminathan, Learned Counsel for Petitioner submitted that no permission was obtained by the Government from the State Impact Assessment Committee for sand mining. Learned Counsel would further submit that the decision of the Hon'ble Supreme Court in Deepak Kumar's case is applicable to the present case.

21. Main contention of Learned Counsel for Petitioners is that as per the Environment Impact Assessment Notification dated 14.09.2006 for sand quarry of an area more than five hectares, environment clearance has to be obtained from the Ministry of Environment and Forests/Environment Impact Assessment Authority. Insofar as the licenses granted for sand quarry for an area of less than five hectare permission be granted only after getting environmental clearance from MoEF. In support of their contention, reliance was also placed upon MANU/SC/0169/2012 : (2012) 4 SCC 629 (Deepak Kumar v. State of Haryana and others).

22. On behalf of Respondents 1 and 2, Mr. K. Chellapandian, learned Additional Advocate General made the following submissions:-

Kollidam" being a flood water carrier, to maintain the flood water capacity of "Kollidam", and to maintain bed levels and to keep up "Kollidam", sand dunes are to be removed and only then flood carrier capacity of "Kollidam" will be restored. Proposals are submitted to the District Collectors by the Public Works Department, after studying the availability of sand, safe quarrying, environmental aspects etc. Before granting permission, these aspects are considered by the District Collectors. In quarrying operations, there are no violation of rules and regulations of Tamil Nadu Minor Mineral Concession Rules and quarrying operations are done in accordance with the rules and regulations of Minor Mineral Concession Rules and also the directions issued by the Court. Government have taken effective steps to prevent illegal mining of sand and transporting of sand to neighbouring States has largely been brought under the control. Quarrying work is carried out only in the permitted area and within the permissible depth and only two poclains are used for quarrying. Pathways for transporting the sand has been formed inside the river using sand and biodegradable materials and dry sugarcane leaf (fUk;g[Brhif) for transportation of lorries.

23. In response to the contention that as per Environment Impact Assessment Notification dated 14.09.2006, environmental clearance is required, Mr. S. Venkatesh, learned Government Pleader has submitted that as per G.O.Ms. No. 95 Industries (MMC1) Department, dated 01.10.2003 in the State of Tamil Nadu quarrying operation is done only by the Public Works Department and that unscientific quarry is totally eliminated in the State and therefore, as per Environment Impact Assessment Notification dated 14.09.2006, there is no need to obtain environmental clearance for sand quarry operations in the State of Tamil Nadu.

24. Taking us through the reports of the District Collectors, Mr. K. Mahendran, learned Special Government Pleader submitted that since the Petitioners in W.P.(MD) Nos.8131 and 8111 of 2012 were prevented from quarrying the sand, they filed the Writ Petitions. Learned Special Government Pleader would further submit a Peace Committee was conducted in which the petitioners in W.P.(MD) Nos.8131 and 8111 of 2012 were signatories. It was further submitted that the petitioners were earlier the beneficiaries of the sand mining and they are the rival party and as such no public interest involved. Drawing our attention to the reports of the District Collectors, learned Special Government Pleader contended that permission to quarry sand was granted by the District Collectors only based on the availability of sand and free flow of water in the river.

25. The learned Special Government Pleader submitted that the Petitioner in W.P.(MD) No. 8111 of 2012 had arranged for road roko on 02.03.2012 and the Tahsildar, Lalgudy Taluk convened a peace meeting on 01.03.2012. Contention of

the Petitioner during the peace meeting was that only local lorries should be allowed to ply vehicles and that heavy vehicles (Taurus) should not be allowed in the Anbil road and the same was accepted in the peace meeting and passing of Taurus (heavy vehicle) through Anbil road was stopped immediately and in the said resolution of meeting, the Petitioner accepted and signed. Learned Special Government Pleader would further submit that since the Petitioner had again arranged for road roko and demanded not to allow other taluk vehicles into the Anbil quarry and he wanted to ply only Lalgudy taluk vehicles to carry sand from the said quarry. Again peace meeting was convened on 14.05.2012 and it was resolved that the other taluk vehicles would be stopped from 15.06.2012 and in this resolution also the Petitioner signed. Learned Special Government Pleader further submitted that since the Petitioner and others kept blocking the traffic and also damaged the poclains, lorries etc., it was decided to form a temporary pathway along the bank of Kollidam riverbed and that the same is only a temporary arrangement and the same cannot be classified as a road and there is no environmental damages as alleged in the Petition.

26. Environment Impact Assessment Notification dated 14.09.2006 and Environmental Clearance:- As per Environment Impact Assessment Notification, 1994 and as per Schedule-I of the said Notification, 1994 mining project (major minerals) with leases more than five hectares required environmental clearance from the 1st Respondent. As per Environment Impact Assessment Notification, 1994, only "major minerals" required environmental clearance.

27. In exercise of the powers conferred by Sub-Section (1) and Clause (v) of Sub-Section (2) of Section 3 of the Environment (Protection) Act, 1986 read with Clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the Notification, 1994, MoEF introduced Environment Impact Assessment Notification dated 14.09.2006. As per Environment Impact Assessment Notification, 2006, mining of minerals (including minor minerals) require environmental clearance. As per the said Notification, there are two categories viz., 'A' and 'B'. Category 'A' consists of mining in an area of more than fifty hectares. Category 'B' consists of mining in an area of less than fifty hectares. Category 'B' consists of two sub-categories viz., 'B1' - less than fifty hectares and 'B2' -five hectares or less.

28. Category 'A' projects - more than fifty hectares mining of both major and minor minerals are considered at the Central level in MoEF and required environmental clearance from MoEF and Union Government. While category 'B1' projects i.e. less than fifty hectares, mining of both major and minor minerals are considered by the respective State/Union Territory Level Environment Impact Assessment Authority notified by MoEF under Environment Impact Assessment Notification, 2006 and mining requires environmental clearance from State Level Environment Impact Assessment Authority. Insofar as category 'B2' - less than five hectares, no clearance was then required. As per the Notification, mining licence for less than five hectares, it does not require environmental clearance.

29. In Deepak Kumar's case MANU/SC/0169/2012 : (2012) 4 SCC 629, the Hon'ble Supreme Court considered leases granted by the Government of Haryana for minor minerals, boulders, gravel and sand quarries artificially dividing homogeneous areas into tracts of less than five hectares in order to circumvent EIA Notification, 2006. Elaborately, referring to the recommendations of the Core Group for riverbed mining, in Paragraph (24), the Hon'ble Supreme Court held that leases of minor mineral 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.

30. Expressing concern over excess river sand quarrying and holding that it is necessary to have effective frame work of mining plan, in Deepak Kumar's case, the Hon'ble Supreme Court held as under:-

> **25.** Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive in-stream sand and gravel mining causes the degradation of rivers. In-stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.
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> **26.** We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution.
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> **27.** The State of Haryana and various other States have not so far implemented the above recommendations of the MoEF or the guidelines issued by the Ministry of Mines before issuing auction notices granting short term permits by way of auction of minor mineral boulders, gravel, sand etc., in the river beds and elsewhere of less than 5 hectares. We, therefore, direct to all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, within a period of six months from today and submit their compliance reports.
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> **28.** Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules 2010 at the earliest. State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Govt. of India. Communicate the copy of this order to the MoEF, Secretary, Ministry of Mines, New Delhi, Ministry of Water Resources, Central Government Water Authority, the Chief Secretaries of the

respective States and Union Territories, who would circulate this order to the concerned Departments.

29. We, in the meanwhile, order that leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting Page 43 environmental clearance from the MoEF. Ordered accordingly." (underlining added) Thus as per the decision of the Hon'ble Supreme Court in Deepak Kumar's case, in respect of lease of minor minerals including renewal for an area less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF.

31. Directions of MoEF dated 18.05.2012 in compliance with the directions of the Hon'ble Supreme Court in Deepak Kumar's case:- In order to ensure compliance of the order in Deepak Kumar's case, MoEF issued Office Memorandum dated 18.05.2012 that as per the directions of the Supreme Court in Deepak Kumar's case, all mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior environment clearance. The relevant portion of Office Memorandum of MoEF dated 18.05.2012 reads as under:-

3. In order to ensure compliance of the above referred order of the Hon'ble Supreme Court dated 27.2.2012, it has now been decided that all mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior environment clearance. Mining projects with lease area up to less than 50 hectares including projects of minor mineral with lease area less than 5 hectares would be treated as category 'B' as defined in the EIA Notification, 2006 and will be considered by the respective SEIAAs notified by MoEF and following the procedure prescribed under EIA Notification, 2006.

32. Re-contention: Environment Impact Assessment Notification,2006 is not applicable to the State of Tamil Nadu:- Mr. K. Chellapandian, learned Additional Advocate General and Mr. S. Venkatesh, learned Government Pleader tried to persuade us that in view of the existing law enacted by the State Government - Tamil Nadu Minor Mineral Concession Rules, Rule 38-A and G.O.Ms. No. 95 Industries (MMC1) Department dated 01.10.2003, all sand quarries in the State are operated by the Public Works Department and therefore, EIA Notification, 2006 is not applicable and environmental clearance from Ministry of Environment and Forests/State Level Environment Impact Assessment Authority (SEIAA) is not required. The learned Additional Advocate General and the learned Government Pleader would further contend that licence for sand quarry is granted by the District Collectors to the Public Works Department only after studying the availability of sand, environmental aspects and licenses are granted by imposing strict conditions that sand quarrying to be done without affecting the riverbeds and also imposing conditions regarding the depth of sand to be quarried. It was further submitted that the validity of G.O.Ms. No. 95 Industries (MMC1) Department, dated 01.10.2003 was upheld by the Madras High Court [MANU/TN/0560/2004 : (2004) 4 MLJ 418 (State of Tamil Nadu v. P.Krishnamurthy)] which was affirmed by the Hon'ble Supreme Court in MANU/SC/1581/2006 : (2006) 4 SCC 517 (State of T.N. and another v. P.Krishnamurthy and others).

33. Learned Additional Advocate General submitted that Kollidam being a flood water carrier, to maintain the flood water capacity of Kollidam and to maintain the bed levels and to keep up Kollidam, sand dunes are to be removed. It was further submitted that Kollidam is the major flood water carrier and to maintain bed levels so as to keep up the Kollidam to discharge the designed capacity of (4.5 lakh cusecs) flood water by removing sand dunes and at the same time, requirement of sand in construction and development activities will be fulfilled.

34. Learned Additional Advocate General and the learned Government Pleader drew the attention of the Court to the statistics of availability of sand and sand quarries in the past and at present stated in the counter. The said details as narrated in the counter (W.P.(MD) No. 4699 of 2012) read as follows:-

1. The total length of the Kollidam 168.21 Km

2. Length covers under the jurisdiction of (Vettamangalam village to Mahindrapalli of Nagapattinam District) 50.01 Km

3. Area left for Ground water reaching and thereby drinking water recharging and thereby drinking water purpose recommended by TWAD Board Mudigandanallur, Pappakudy, Siddhamalli, Vadarangam, Seepuliyur (Newly proposed)

4. Area left for Reserve forest =2.75 Sq.Km-(10x275M)

5. No. of places at which sand dunes identified and being identified and its total length 10 Places at an average length of 3.95 Km 39.50 Km says 40 Km

6. Quantity of sand dunes that affects Floor discharge 40 Km x 900 M x 2 M = 7,20,00,000 M3 7. Sand might be quarried 40 Km x 900 M x 1.00 = 3,60,00,000 M3

8. Qty so far quarried 21,60,540 M3

9. Qty may be utilized for quarrying purpose 3,38,39,460 M3

35. The learned Additional Advocate General and the learned Government Pleader further contended that State Government have taken stringent actions in preventing illicit sand mining and number of vehicles have been seized and Rs.17.19 Crores have been collected as penalty amount for the year 2011-2012 [up to May 2012]. It was further submitted that violations in this regard are being dealt with an iron hand and about 2087 Criminal Cases have been filed against the sand offenders and also Goondas Act have been invoked on four persons who indulged in illegal sand quarrying. It was further submitted that State Government also constituted a District Committee headed by the District Collector and when the sand quarry is operated by the Public Works Department and in the light of the strict conditions

imposed for sand quarrying and in view of stringent actions taken by the State Government and District Committee constituted at the District Levels, obtaining environmental clearance is not necessary for the State of Tamil Nadu.

36. It was further submitted that whenever objections are received from the general public and request is made by the other departments like Tamil Nadu Water Supply and Drainage Board, quarries have been stopped by the District Collector whenever occasion demanded so. The learned Additional Advocate General and the learned Government Pleader drew the attention of the Court to such instances stopping the sand quarrying operations in the places viz.,

(i) Tiruvaikavur in Kollidam river at Thirumandakudi village ,Papanasam Taluk, Thanjavur District;

(ii) Poovalur in Pattukottai Taluk, Thanjavur District;

(iii) Mayanur in Krishnarayapuram Taluk, Karur District;

(iv) Nerur at Karur Taluk, Karur District.

The learned Additional Advocate General and the learned Government Pleader made meticulous submission that making distinction between quarry operations in the State of Tamil Nadu where sand quarries are operated by the Public Works Department, whereas in other States, sand quarries are auctioned to private individuals and operated by private individuals.

37. Countering the submissions of the learned Additional Advocate General and the learned Government Pleader and placing reliance upon Deepak Kumar's case, Learned Counsels for Petitioners submitted that environmental clearance is necessary for the State of Tamil Nadu and that Environment Impact Notification does not make any distinction between sand quarries operated by the individuals and the State. Learned Counsels would further submit that in Tamiraparani case, the Court ordered to constitute a State Level Monitoring Committee and the same has not been constituted/not functioning effectively due to non-cooperation of the State Government. It was further submitted that environmental clearance from MoEF/SEIAA is mandated by EIA Notification dated 14.09.2006 and no permission be granted for sand quarrying without environmental clearance.

38. Even though sand quarries are operated by the Public Works Department, in Tamiraparani case [W.P.(MD) No. 11182 of 2010 etc. Batch), Court noticed that even though sand quarries were operated by the Public Works Department, the same was not done as per Tamil Nadu Minor Mineral Concession Rules and as per the conditions of quarrying. It was also noticed that there was lack of skillful scientific mining. Even though permission was granted for sand quarrying to a depth of one meter, in Tamiraparani case, it was noticed that in number of places, sand quarrying was done beyond ten feet depth. Court appointed Expert Committee who inspected the quarry sites and filed its report. Upon analysis of the said report and referring to unscientific and indiscriminate sand quarrying, in Tamiraparani case, the Court observed as under:-

> 49. .... We are afraid that either with or without the connivance of the Public Works Department, there was indiscriminate and heavy sand quarrying beyond the extent for which the permission was granted resultantly causing devastation of the river.

39. Of course, after the judgment in Tamiraparani case, number of poclains engaged for sand quarrying is restricted to "two". Time of operation of sand quarry is also now restricted. After Tamiraparani case, now stringent conditions are imposed for sand quarrying and violations are now said to be being dealt with an iron hand.

40. Minerals other than 'minor minerals' are governed by Sections to 13 of Mines and Minerals (Development and Regulation) Act, 1957. While Section 15, enables the State Governments to make rules in respect of the minor minerals. In exercise of the said provision, the Tamil Nadu Minor Mineral Concession Rules were framed. As per Section 13(e) of MM (D&R) Act, 1957, 'minor minerals' means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette declare to be a minor mineral. Environmental Impact Assessment Notification of 1994 did not apply to the mining of minor minerals.

41. It was noticed that proposals for mining of major minerals typically undergo environmental impact assessment and environmental clearance procedure, but due attention has not been given to environmental aspects of mining of minor minerals. MoEF's attention was drawn to several instances across the country regarding damage of lakes, riverbeds and groundwater leading to drying up of water beds and causing water scarcity on account of quarry/mining leases and mineral concessions granted under the Mineral Concession Rules framed by the State Governments under Section 15 of the MM (D&R) Act, 1957. MoEF noticed that less attention was given on environmental aspects of mining of minor minerals. Government of India was receiving various reports regarding adverse impact on riverbeds and ground water due to quarrying/mining of minor minerals and sand. Considering the potential environmental impacts of mining of minor minerals, Environment Impact Assessment Notification dated 14.09.2006 was passed applying EIA Notification to mining of minor minerals also.

42. In exercise of powers under Section 15 of MM (D&R) Act, 1957, State Government enacted TN MMC Rules. As pointed out earlier, from 01.10.2003 onwards quarrying of sand by private persons has been banned in the State of Tamil Nadu by introducing Rule 38-A of TN MMC Rules and the same was taken over by the Public Works Department. Ever since 2003, the Public Works Department is quarrying and selling the same at the quarry site. Since then the Government issued various Orders and imposed stringent conditions to control indiscriminate sand quarrying over exploitation and illicit sand mining. Complying with the direction in Tamiraparani case, restricting the use of number of poclains to two, the Government issued G.O.(D) No. 67 Industries (MMC-1) Department dated 11.03.2011. Government also passed G.O.(Ms) No. 32 Industries (MMC2) Department dated 11.02.2011 introducing Rule 38-C imposing various

restrictions regarding storage and transportation of sand. G.O.(Ms) No. 32 Industries (MMC2) dated 11.02.2011 introducing Rule 38-C came to be challenged in a batch of Writ Petitions. In the Principal Seat, First Bench by common order dated 19.06.2012 in W.P. No. 14180 of 2011 etc. batch upheld Rule 38-C of Tamil Nadu Minor Mineral Concession Rules, 1959 for the purpose of curbing illegal mining, such regulation in sale and transportation of sand is required. We also find force in the submissions of the learned Additional Advocate General. As pointed out earlier, illegal mining of sand and transporting to neighbouring States has largely been brought under the control. 2087 Criminal Cases have been registered against the sand offenders and also Goondas Act has been invoked on four persons. 6282 vehicles have been seized which were used for illegal mining. Rs.17.19 Crores have been collected as penalty amount for the year 2011-2012.

43. Granting permission for quarrying, mining and removal of sand have serious environmental impact on the rivers and riverbeds. Sand quarrying may have adverse effect of biodiversity. Even though the Public Works Department along with Geologist is said to study the availability of the sand and also the environmental issues, it is not known whether the Public Works Department undertakes any study on the possible environmental impact in the riverbeds or like river stability, environmental degradation. Collective environmental impact of sand mining is very significant. Hence, there is necessity for proper environmental clearance by the State Level Environment Impact Assessment Authority.

44. In Deepak Kumar's case, the Hon'ble Supreme Court in extenso referred to the reference of Core Group and the recommendations made by MoEF and the adverse impacts of sand mining on the side of rivers. In Paragraphs (8) and (9), expressing the need for environmental impact of sand mining and the need for proper planning and sand management, the Hon'ble Supreme Court held as under:-

> **8.** ..... Sand mining on either side of the rivers, upstream and instream, is one of the causes for environmental degradation and also a threat to the biodiversity. Over the alarming rate of unrestricted sand mining which damage the ecosystem of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers, etc.
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> **9.** Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, instream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both instream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.

45. As per EIA Notification, 2006 issued by MoEF, all mining projects, irrespective of the mineral - major or minor to obtain prior environmental clearance under the provisions thereof. As per EIA Notification, 2006 notified by MoEF and further Notification dated 18.05.2012, sand quarries with lease area less than fifty hectares including sand quarries with an area less than five hectares are to obtain environmental clearance from State Level Environment Impact Assessment Authority, Chennai-15. By perusal of EIA Notification, 2006, it is seen that Environment Impact Assessment has several stages of considering the application having public discussion and impact of mining and also involves post environmental clearance monitoring. Considering the larger environmental issues involved, we are of the view that notwithstanding that the sand quarries in the State of Tamil Nadu operated by the State itself, for mining of sand which is a minor mineral, as per EIA Notification, 2006, environmental clearance has to be obtained from the State Level Environment Impact Assessment Authority.

46. Pending environmental clearance whether sand quarry operations are to be continued/operated:-

> Obtaining environmental clearance is a long process. By perusal of EIA Notification, 2006 dated 14.09.2006, it is seen that it involves Page 56 various stages viz., (i) Screening; (ii) Scoping; (iii) Public Consultation; (iv) Appraisal; (v) Grant or Rejection of Prior Environmental Clearance; and (vi) Post Environmental Clearance Monitoring. Considering the various stages involved in obtaining environmental clearance, we feel that it would take atleast a minimum of two-three months for obtaining such environmental clearance.

47. When we direct the State Government to obtain environmental clearance for sand quarry operations, now the point falling for consideration is whether the existing sand quarry operations are to be stopped.

48. River sand is a very important raw material for infrastructure development, construction activities including implementation of various welfare schemes of the Government. In various decisions, the Hon'ble Supreme Court held that balance between environmental protection and developmental activities could only be maintained by strictly following the principles of 'sustainable development'. Right to environment is a fundamental right; at the same time, right to development is also one. In MANU/SC/0649/2003 : (2004) 9 SCC 362 [N.D.Jayal and another v. Union of India and others], the Hon'ble Supreme Court held that "concept of sustainable development is to be treated as integral part of life under Article 21 of Constitution of India". The concept of 'sustainable development' finds support in various decisions of the Court in MANU/SC/1201/1995 : 1995 (3) SCC 363 [State of H.P. v. Ganesh Wood Products];1997 (2) SCC 653 [M.C.Mehta v. Union of India]; MANU/SC/2878/2000 : 2002 (10) SCC 664 [Narmada Bachao Andolan v. Union of India] and MANU/SC/8047/2006 : (2006) 3 SCC 549 [Intellectuals Forum, Tirupathi v. State of A.P. and others].

49. We need to balance between economic and social needs on the one hand with environmental consideration on the other hand. Sand is required for construction of houses to the poor, implementation of welfare schemes and infrastructure development activities. If the sand quarry operation is to be stopped, abruptly, the developmental

activities and implementation of various welfare schemes of the Government would come to a stand-still. In the State of Tamil Nadu, sand quarry operations are being carried out by the Public Works Department, perhaps with a bonafide impression that environmental clearance is not necessitated in view of the unique feature that Public Works Department itself is operating the sand quarries. Sufficient time is to be granted to the State Government/Public Works Department to approach the Authorities for obtaining mandated environmental clearance and in the mean while, we are of the considered view that certain sand quarries as indicated infra are to be continued to be operated for a period of three months.

50. As per the earlier order in Tamiraparani case, two poclains were permitted for sand quarrying. As per the present permission, sand quarrying is between 7.00 A.M. and 6.00 P.M. However, photographs were produced showing the engagement of more than two poclains and also sand quarrying being carried beyond 6.00 P.M. in river Cauvery. In order to restrict sand quarry operation and also to ensure scientific sand mining, the Public Works Department is directed to use "poclains judiciously" for sand quarry operations in river Cauvery. Sand quarrying operation is to be carried out between 7.00 A.M. and 5.00 P.M. (Ten hours).

51. Let us now consider the sand quarries by grouping them:

A) old sand quarries in operation for more than five years;

B) sand quarries for which permission granted recently.

(i) sand quarries where permission was granted without mentioning the quantity of the sand to be removed;

(ii) permission granted by mentioning the quantity of the sand to be removed and also the period of operation of the sand quarry.

52. Quarries in operation for more than five years:- By perusal of the details of sand quarries furnished by the District Collectors, some of the sand quarries are in operation for more than five years. Some of the quarries are operated from 2003. By perusal of the Government Orders/Proceedings of the District Collectors, it is seen that sand quarries to be operated between one mile stone to another mile stone. In those Proceedings granting sand quarry, neither the period of operation of sand quarries nor the sand to be lifted are mentioned. Regarding sand quarries which are in operation for more than five years, no statistics is available as to the quantity of sand so far lifted. Likewise, no details are furnished as to the continued replenishment of river sand in those quarries justifying continuation of sand quarry. It is pertinent to note that in these quarries which are in operation for more than five years, Government Orders/Order of the District Collectors granting permission do not mention the quantity of sand to be lifted. No statistics is available as to the quantity of sand to be lifted.

53. The following sand quarries which are in operation for more than five years are ordered to be stopped for the reasons:- (i) those quarries are in operation for more than five years; (ii) quantity of sand to be lifted is not mentioned; and no statistics are forthcoming justifying their continued operation:-

(I) In Nagapattinam District:

(1) Mathirivelur, (2) Siddhamalli-I

(II) In Thanjavur District:

(1) Vilangudi and (2) Pazhamarneri

(III) In Karur District:

(1) Vangal, (2) Nerur, (3) Sithalavadi, (4) Sithalavadi, (5) Thimmachipuram, (6) Vathiyam and (7) Maruthur.

(IV) In Trichy District:

(1) Uthamarseeli, (2) Kila Anbil, (3) Musiri and (4) Thiruengoimalai.

In case, if the Respondents feel that the sand quarries in the above places are to be continued, the Respondents are at liberty to approach the State Level Environment Impact Assessment Authority for obtaining environmental clearance for continuing the operations.

54. As a measure of rehabilitation in the above sand quarries which are in operation for more than five years and now ordered to be stopped, the Public Works Department is directed to immediately remove all the sheds put up in these quarries and remove all the equipments in these areas. The Public Works Department is further directed to level all the roads/path ways to let the river assume its normal course without any artificial obstruction to the extent possible. The Public Works Department is also directed that the sand piled along the quarried pits are to be re-dumped or re-filled in the pits and restoring the river's normal water course.

55. Recent quarries - yet to be started:-

In Nagapattinam District, even though permission was granted by the District Collector in Proceedings No. Rc.54/2010 (Mines) dated 04.10.2010 for quarrying operation in Siddhamalli-II, SeePuliyur and Melavadi Vadarangam, as is seen from the report of the District Collector, Nagapattinam these quarries are yet to be

started. In so far as, sand quarries viz., (1) Siddhamalli-II, (2) SeePuliyur and (3) Melavadi Vadarangam of Nagapattinam District, the operation of sand quarries shall be started only after getting environmental clearance from the State Level Environment Impact Assessment Authority.

56. Recent quarries - presently functioning:-

The following quarries are permitted to operate sand quarries for three months from the date of this order and its continuation is subject to the order of environmental clearance from State Level Environment Impact Assessment Authority.

In Trichy District:

(1) Killikoodu (S.F. No. 81/1, 2, 3 (Bit-I & Bit-II),

(2) Ariyoor (S.F. No. 240 (Bit-I),

(3) Manamedu (S.F. No. 61 (Bit-I & Bit-II),

(4) Evoor (S.F. No. 436 (Bit-I & Bit-II); and

(5) Kondayampettai (S.F. No. 202 (Bit-I & Bit-II)

In Nagapattinam District:

(1) Panangattangudi (S.F. No. 495/1); and

(2) Kurichi (S.F. No. 5/1)

In Thanjavur District:

(1) Koviladi Revenue Village (S.F. No. 1A)

(2) Veeramangudi (S.F. No. 1)

(3) Govindanattucherry (S.F. No. 291/A)

57. Permission to continue the sand quarry operation for a period of three months with the above condition, is subject to the environmental clearance to be obtained from the State Level Environment Impact Assessment Authority. The State Government/Public Works Department shall file necessary application before the State Level Environment Impact Assessment Authority within a period of three weeks from the date of this order. Any application filed by the State Government/Public Works Department seeking environmental clearance for sand quarrying operation, the State Level Environment Impact Assessment Authority is directed to consider the application and pass orders within a period of two months from the date of receipt of the application from the State of Tamil Nadu/Public Works Department. Conclusion:-

In the result, all the writ petitions are disposed of with the following directions:-

(a) Permission for fresh sand quarry operation in Cauvery river are to be granted by the State Government/Secretary Industries (MMC.I) Department/District Collectors only after getting environmental clearance from the State Level Environment Impact Assessment Authority as per the Environment Impact Notification dated 14.09.2006 and further Office Memorandum of MoEF dated 18.05.2012.

(b) In respect of existing sand quarries, it is ordered as under:-

NAGAPATTINAM:
Village and Taluk
Survey Number
Sanction Order/Collector's Proceedings
Period of permission
Quantity permitted
Order of the Court (dated 03.08.2012)
Mathirivelur
Sirkazhi Taluk
S.F.No.782/1

G.O.(3D) No.39/PWD dated 7.3.2003
Not mentioned
285136
More than 5 years old sand quarry

Ordered to be stopped.
Siddhamalli-I
Mayiladuthurai Taluk
S.F.No.495/1
Lr.No.3418/I.Spl.2/ 2005-2 dt. 29.03.2005
Not mentioned
539833
More than 5 years old sand quarry

Ordered to be stopped.

Siddhamalli-II
Mayiladuthurai Taluk
S.F.No.1/1, 1/31
Collector, Nagapattinam Proceedings No.RC.54/2010 (Mines) dt.
4.10.2010
Not mentioned
Not mentioned
As per District Collector's report yet to be started

To be started, after getting environmental clearance.
SeePuliyur Mayiladuthurai Taluk
S.F.No.1
Collector, Nagapattinam Proceedings No.RC.54/2010 (Mines) dt.
4.10.2010
Not mentioned
Not mentioned
As per District Collector's report yet to be started

To be started after getting environmental clearance.
Rajasuriyan-pettai
Mayiladuthurai Taluk
S.F.No.1
Collector, Nagapattinam Proceedings No.RC.129/2007 (Mines) dt.
02.05.2007
530 days
300000 M3
As per the order of District Collector, temporarily stopped since
27.07.2010

Ordered to be stopped
Gopalsamud-ram Mayiladuthurai Taluk
S.F.No.10
Collector, Nagapattinam Proceedings No. RC.707/2007 (Mines) dated
24.12.2007
Not mentioned
80985
As per the order of the District Collector, "temporarily stopped" since
31.10.2009

To be started after getting environmental clearance.
Pappakudi
(Manalmedu village) Mayiladuthurai Taluk
S.F.No.1
Collector, Nagapattinam Proceedings No.31/2010 (Mines) dated
21.01.2010

1520 days
330913
As per the order of the District Collector, "temporarily stopped" since
from
29.02.2012

To be started after getting environmental clearance.
Panangattan-gudi,
(Agaraelathur village)
Sirkazhi Taluk
S.F.No.495/1
Collector, Nagapattinam Proceedings No.RC.54/2010 (Mines)dt.
4.10.2010
1520 days
118748
As per the District Collector's report "functioning"

Permitted to operate for three months and its continuation is subject to
the
order from SEIAA.
Melavadi (Vadarangam village) Sirkazhi Taluk
S.F.No.321
Collector, Nagapattinam Proceedings No.RC.54/2010 (Mines) dated
4.10.2010
Not mentioned
Not mentioned
As per District Collector's report "yet to be started"

To be started after getting environmental clearance.
Mudikanda-nallur,
Mayiladuthurai Taluk

S.F.No.369
Collector, Nagapattinam Proceedings No.RC.54/2010 (Mines) dt.
4.10.2010

Not mentioned
41750
As per the order of the District Collector, "temporarily stopped" since
17.03.2012

To be started after getting environmental clearance.
Kurichi,
Mayiladuthurai Taluk
S.F.No.5/1
Collector, Nagapattinam Proceedings No. RC.54/2010 (Mines) dated
4.10.2010
Not mentioned
133612
As per the District Collector's report "functioning"

Permitted to operate for three months and its continuation is subject to
the
order from SEIAA.

THANJAVUR:
Village and Taluk
Survey Number
Sanction Order/Collector's Proceedings
Period of permission
Quantity permitted
Order of the Court (dated 03.08.2012)
Koviladi Revenue village,
Thiruvaiyaru Taluk
S.F.No.1A
Na.Ka.No.221/2011 (Mines) dated 28.6.2011
Not mentioned
Not mentioned
As per the District Collector's report "functioning"
Permitted to operate for three months and its continuation is subject to
the
order from SEIAA.
Vilangudi village,
Thiruvaiyaru Taluk
S.F.No.1A
Na.Ka.No.97/2007 (Mines) dated 14.4.2007
Not mentioned
Not mentioned
More than five years old

Ordered to be stopped.
Veeramangudi village,
Papanasam Taluk
S.F.No.1
Na.Ka.No.12/2012 (Mines dated 06.4.2012
Not mentioned
50000 Unit
As per the District Collector's report functioning
Permitted to operate for three months and its continuation is subject to
the
order from SEIAA.
Govindanattu-cherry
Papanasam Taluk
S.F.No.291/A
Na.Ka.No.322/2011 (Mines) dated 06.04.2012
Not mentioned
45000 Unit
As per the District Collector's report functioning
Permitted to operate for three months and its continuation is subject to
the
order from SEIAA.
Pazhamarneri village,
Thiruvaiyaru Taluk
S.F.No.1
Na.Ka.No.198/2007 dated 21.03.2007
Not mentioned
Not mentioned
More than five years old

Ordered to be stopped.

KARUR:
Village and Taluk
Survey Number
Sanction Order/Collector's Proceedings
Period of permission
Quantity permitted
Order of the Court (dated 03.08.2012)
Vangal
Karur Taluk
S.F.No.1499
G.O.3D No.39/PWD dated 07.10.2003
Not mentioned
Not mentioned
More than five years old

Ordered to be stopped.
Nerur
Karur Taluk
S.F.No.2596
P.W.D. Special Secretary Lr.No.3151/WSPL/2005 dated 26.4.2005
Not mentioned
Not mentioned
More than five years old

Ordered to be stopped.
Sithalavadi

Krishnaraya- puram
S.F.No.1 (Part)
Collector, Karur Proceedings No.166/G&M/2006 dated 20.03.2007
Not mentioned
Not mentioned
More than five years old

Ordered to be stopped.
Sithalavadi
Krishnaraya- puram
S.F.No.1
P.W.D. Special Secretary Lr.No.36330/WSPL/2003-1 dated 10.01.2004
Not mentioned
45000 Unit
More than five years old

Ordered to be stopped.
Thimmachi- puram
Kulithalai
S.F.No.1
P.W.D. Special Secretary Lr.No.36330/WSPL/2003-1 dated 10.01.2004
Not mentioned
Not mentioned
More than five years old

Ordered to be stopped.
Vathiyam
Kulithalai
S.F.No.1
P.W.D. Special Secretary Lr.No.36330/WSPL/2003-1 dated 10.01.2004
Not mentioned
Not mentioned
More than five years old

Ordered to be stopped.
Maruthur
Kulithalai
S.F.No.1
G.O. 3D No.39, PWD dated 07.10.2003
Not mentioned
Not mentioned
More than five years old

Ordered to be stopped.
TRICHY:
Village and Taluk
Survey Number
Sanction Order/Collector's Proceedings
Period of permission
Quantity permitted
Order of the Court (dated 03.08.2012)
Killikoodu
Srirangam Taluk
S.F.No.81/1, 2, 3 (Bit I) and (Bit II)
Rc.No.B.557/2011 dated 10.03.2012
10.03.2012 to 09.11.2012
80,000 Cu. Meter
As per the District Collector's report "functioning"
Permitted to operate for three months and its continuation is subject to the
order from SEIAA.
Uthamarseeli
Srirangam Taluk
S.F.No.218 (Part)
G.O.110 (PWD) (CP2) Department dated 06.7.2006
Not mentioned
Not mentioned
More than five years old sand quarrying

Ordered to be stopped.
Ariyoor
Lalgudi Taluk
S.F.No.240 (Bit I)
Rc.No.A.816/2010 dated 02.12.2011
02.12.2011 to 01.10.2012
33,600 lorry loads
As per the District Collector's report "functioning"
Permitted to operate for three months and its continuation is subject to the
order from SEIAA.
Kila Anbil
Lalgudi Taluk
S.F.No.184 (Part)
G.O.100 (PWD) (CP2) Department dated 06.7.2006
Not mentioned
Not mentioned
More than five years old sand quarrying

Ordered to be stopped.
Musiri
Musiri Taluk
S.F.No.248/1
G.O. (3D) 13 PWD Spl. Department dated 22.03.2004
Not mentioned
Not mentioned
More than five years old sand quarrying

Ordered to be stopped.
Thiruengoi- malai
Thottiyam Taluk
S.F.No.299
G.O. (3D) 13 PWD Spl. Department dated 22.03.2004
Not mentioned
Not mentioned
More than five years old sand quarrying

Ordered to be stopped.
Manamedu

Musiri Taluk
S.F.No.61 (Bit I) and (Bit II)
Rc.No.638/2011 dated 10.04.2012
10.04.2012 to 19.12.2012
1,25,000 & 2,75,000 Cu.Meter
As per the District Collector's report "functioning"
Permitted to operate for three months and its continuation is subject to the
order from SEIAA.
Evoor
Musiri Taluk
S.F.No.436 (Bit I) and (Bit II)
Rc.No.B/527/2011 dated 01.03.2012
01.03.2012 to 30.11.2012
36,383 lorry loads
As per the District Collector's report "functioning"
Permitted to operate for three months and its continuation is subject to the
order from SEIAA.
Kondayam- petti
Srirangam Taluk
S.F.No.202 (Bit I) and (Bit II)
Rc.No.559/2011 dated 09.3.2012
10.03.2012 to 09.11.2012
38,870 lorry loads
NAGAPATTINAM:
Village and Taluk
Survey Number
Sanction Order/Collector's Proceedings
Period of permission
Quantity permitted
Order of the Court (dated 03.08.2012)
Mathirivelur
Sirkazhi Taluk
S.F.No.782/1

G.O.(3D) No.39/PWD dated 7.3.2003
Not mentioned
285136
More than 5 years old sand quarry

Ordered to be stopped.
Siddhamalli-I
Mayiladuthurai Taluk
S.F.No.495/1
Lr.No.3418/I.Spl.2/ 2005-2 dt. 29.03.2005
Not mentioned
539833
More than 5 years old sand quarry

Ordered to be stopped.

Siddhamalli-II
Mayiladuthurai Taluk
S.F.No.1/1, 1/31
Collector, Nagapattinam Proceedings No.RC.54/2010 (Mines) dt.
4.10.2010

As per the District Collector's report "functioning" Permitted to operate for three months and its continuation is subject to the order from SEIAA.

(c) Sand quarries are permitted to continue their operations for three months from the date of this order and their continuation is subject to the order from the State Level Environment Impact Assessment Authority.

(d) Sand quarries which are permitted to continue their operations mentioned in Column No. 6 [Order of the Court dated 03.08.2012] with the conditions already imposed by the District Collectors and further modified conditions as under:-

(i) Sand quarrying operation to be carried out between 7.00 A.M. and 5.00 P.M. (Ten hours).

(ii) The sites where quarrying is permitted to be continued, the Public Works Department is directed to demarcate the area by planting required number of posts with red flags.

(iii) Wherever the sand quarry is permitted in the riverbed and roads are formed either temporarily or semi-permanently, the District Collector/Public Works Department to ensure that the roads are formed only by laying of sugarcane leaves and biodegradable materials and if they find any other gravels are used, the District Collector / Public Works Department is directed to remove the said roads immediately, so that the course of the river is not affected and also directed to ensure that the roads are not running across the river, so as to create an artificial dam or lake.

(iv) To ensure that the sand quarry is not operated beyond the said ten hours, the Public Works Department is directed to depute an Assistant Engineer for each quarry site to ensure that sand

quarry is done within the permissible limit.

(v) The Public Works Department is directed to file a report before the respective District Collector concerned showing the quantity of the sand lifted as against the permitted quantity allowed to be lifted once in two weeks.

(e) Direction to the District Collectors: -

(i) The District Collectors are directed to ensure that the sand quarry operations are done within the permitted limits and in accordance with TN MMC Rules and also the conditions imposed.

(ii) The District Collectors are further directed to visit the quarry site either personally, or by deputing an officer not lower than the rank of Revenue Divisional Officer to each of the quarry sites periodically.

(f) Direction to the State Level Environment Impact Assessment Authority:-

On receipt of the application seeking for environmental clearance for sand quarrying operation from the State Government/Public Works Department, the State Level Environment Impact Assessment Authority is directed to consider the application and pass orders within a period of two months from the date of receipt of the application from the State of Tamil Nadu/Public Works Department.

In view of the order passed in the Writ Petitions, all the Connected Miscellaneous Petitions are closed. No costs.

2014 (5) CTC 397

IN THE HIGH COURT OF MADRAS
(Madurai Bench)

V. Ramasubramanian & V.M. Velumani, JJ.

W.P.(MD) Nos.7146 to 7157, 7767 to 7772 of 2014; 9265 & 9654 of 2012; 16789 of 2013 & 9153 of 2014 & M.P.(MD) Nos.3 & 3 of 2014 respectively in W.P. Nos.7146 & 7147 of 2014 & all other connected pending MPs

6.8.2014

Kollidam Aaru Pathukappu Nala Sangam, rep. by its President, R. Subramanian **2.** P. Ettikkan ***.....Petitioners***

Vs.

Union of India, rep. by its Secretary to Government, Ministry of Environment & Forests, New Delhi-110011. **2.** The Member Secretary, State Level Environment Impact Assessment Authority, III Floor, Panagal Maaligai, Chennai-15 [*Respondents in all W.Ps.*]. **3.** The Executive Engineer, Public Works Department/WRO, R.C. Division, Cantonment Trichy [*Respondent in W.Ps. No.7146 to 7149, 7151 to 7157 & 7767 to 7772/2014*] **4.** The Executive Engineer, Public Works Department/WRD, Cauvery Basin Division, Thanjavur-613001 [*Respondent in W.P. No.7150 of 2014*] **5.** The National Green Tribunal, Southern Zone, rep. by its Registrar, Arumbakkam, Chennai [*Respondent in all WPs*] **6.** Tamil Nadu Sand Lorry Owners' Federation, rep. by its President, Sella Rajamani [*Proposed Party in W.P. No.7146 of 2014*] **7.** M. Anand [*Proposed Party in W.P. No.7147 of 2014*] ***.....Respondents***

National Green Tribunal Act, 2010 (19 of 2010), Sections 22 & 29 — Constitution of India, Articles 226, 323-A & 323-B — Writ Petition challenging Order of National Green Tribunal — Maintainability of — Section 22 of 2010 Act providing for Appeal to Apex Court against Orders of National Green Tribunal [NGT] — Provision of Appeal to High Court not provided under Act, but same not specifically excluded — Section 29 excluding jurisdiction of all Civil Courts — Said provision, *held,* not excluding jurisdiction of High Courts — Contention of Respondents, that jurisdiction of High Court impliedly excluded by virtue of Section 22 — *Held,* decision of Apex Court in *R.K. Jain v. Union of India,* 1993 (4) SCC 119, emphasizing significance of power of Judicial Review of High Courts over Tribunals — Moreover, Landmark Judgment of Supreme Court in *L. Chandrashekar case* upholding power of High Court to exercise judicial superintendence over Tribunals — Apex Court in said case striking down Section 28 of Administrative Tribunals Act and similar provisions in all other enactments that would exclude jurisdiction of High Court — Power of Judicial Review conferred on High Court under Article 226/227, *held,* part of basic structure of Constitution and said power not to be excluded either exclusively or impliedly — Any exclusion of said power, *held,* would be in contravention to decision of Apex Court in *L. Chandrasekhar case* — In such circumstances, *held,* as power of High Court under Article 226/227 cannot be excluded expressly, implied exclusion of same, *held,*

would be invalid as per decision of Apex Court in *L. Chandrasekhar case* — Instant Writ Petitions filed challenging Order of NGT, *held,* maintainable.

Facts : Proposal by PWD for commencement of Sand mining. Application made to SEIAA for clearance as mandated under Section 3 of Environment Protection Act, 1986 read with Rule 5 of Environment Protection Rules, 1986. *Ad hoc* interim Guidelines issued by SEIAA for proposing proposal till issuance of revised Guidelines by Ministry of Environment and Forests (MoEF) and Environmental Clearance granted to State of Tamil Nadu for a period of five years. Said grant of clearance was challenged by way of Appeal before National Green Tribunal. Revised Guidelines issued by MoEF during pendency of said Appeal. National Green Tribunal by way of Order dated 24.2.2014 held that PWD has to obtain clearance only under revised Guidelines issued by MoEF, however, considering that said process would take time, State Government was ordered to continue quarrying for period of six months on basis of Environmental Clearance granted by SEIAA. Said Order of National Tribunal is challenged by way of instant Writ Petition.

Held : An argument was advanced before the Supreme Court in *R.K. Jain* that many of the Statutes creating such Tribunals either in terms of Article 323-A or in terms of Article 323-B, provided for a right of Appeal to the Supreme Court and that therefore, the High Court cannot exercise the power of Judicial Review under Article 226. But, the said argument was rejected in clear terms by K. Ramaswamy, J. in Paragraph 76 of the report in *R.K. Jain.* The relevant portion of Paragraph 76 of the report in *R.K. Jain* reads as follows:

> "The remedy of Appeal by Special leave under Article 136 to this Court also proves to be costly and prohibitive and farflung distance too is working a constant constraint to litigant public, who could ill afford to reach this Court. An Appeal to a Bench of Two-Judges of the respective High Courts over the Orders of the Tribunals within its territorial jurisdiction on questions of law would assuage a growing feeling of injustice of those who can ill afford to approach the Supreme Court."

Therefore, the argument that a remedy of Appeal is available to the Supreme Court was clearly rejected in *R.K. Jain.* A careful look at the majority opinion rendered in *R.K. Jain* would show that they did not express any dissent on the views expressed by K. Ramaswamy, J with regard to the availability of the power of Judicial Review under Articles 226/227. *[Para 20]*

After *R.K. Jain* came the decision of the Supreme Court in *L. Chandrakumar.* In *L. Chandrakumar*, the Supreme Court held that the power of Judicial Review over legislative action vested with the High Courts under Article 226 and the Supreme Court under Article 32 is an integral and essential feature of the Constitution, constituting part of its basic structure. In Paragraph 79, the Supreme Court specifically held that "the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution." As a consequence of the aforesaid conclusion, the Larger Bench of the Supreme Court struck down as unconstitutional, in *L. Chandrakumar*, Clause (2)(d) of Article 323-A and Clause (3)(d) of Article 323-B, to the extent they excluded the jurisdiction of the High Courts and the Supreme Court. The Supreme Court also declared as unconstitutional, Section 28 of the Administrative Tribunals Act, to the extent that it excluded the jurisdiction of the High Court. More specifically, the Larger Bench held in Paragraph 99 as follows:

"Section 28 of the Administrative Tribunals Act, 1985 and the 'exclusion of jurisdiction' Clauses in all other legislations enacted under the aegis of Articles 323-A & 323-B are, to the same extent, unconstitutional." *[Para 21]*

It should be noted that though the Supreme Court was mainly concerned with the scope of Judicial Review of the orders of the Administrative Tribunals, the Supreme Court declared as unconstitutional, all the 'exclusion of jurisdiction' clauses in all similar enactments. This is perhaps the reason why the National Green Tribunal Act, does not specifically exclude the jurisdiction of the High Courts. The National Green Tribunal Act specifically excludes the jurisdiction of the Civil Courts under Section 29, but, it does not exclude the jurisdiction of the High Court. It nevertheless provides for a right of Appeal under Section 22 to the Supreme Court. But, this right of Appeal provided to the Supreme Court has to be understood in the context of the observations made in Paragraph 76 of the decision in *R.K. Jain*. *[Para 23]*

Therefore, it is clear from the decision of the Three Member Bench of the Supreme Court in *Vishwabharathi* that the provision of a three tier mechanism, the first at the District Level, the second at the State Level and the third at the National Level, did not take away the power of Judicial Review of this Court under Articles 226 & 227. This decision is of significance, in view of the fact that the Consumer Protection Act 1986 provides for a remedy of Appeal to the State Consumer Commission against an Award of the District Consumer Forum and it also provides for a remedy of further Appeal against the order of the State Commission to the National Commission. The provision of such a three tier mechanism alone was not taken by the Supreme Court as sufficient to uphold the validity of the Act. The availability of the power of Judicial Review to the High Court under Articles 226 & 227 was also taken as a factor by the Supreme Court for upholding the validity of the Act. *[Para 26]*

Therefore, from all the above decisions, it is quite clear that the power of Judicial Review conferred upon this Court under Articles 226/227, is part of the basic structure of the Constitution, which cannot be taken away even by a law enacted by the Parliament. As a matter of fact, the National Green Tribunal Act, 2010 does not expressly exclude the jurisdiction of this Court under Articles 226/227. Though it excludes the jurisdiction of the normal Civil Courts under Section 29, there is no express exclusion of the jurisdiction of this Court. The Respondents seek to read into Section 22 of the National Green Tribunal Act, 2010, an implied exclusion of the jurisdiction of this Court. As we have pointed out earlier, Section 22 provides for a remedy of Appeal to the Supreme Court, to any person aggrieved by any award, decision or order of the Tribunal. As seen from the language of Section 22, the Appeal is almost like a Second Appeal on a substantial question of law. *[Para 31]*

As we have pointed out earlier, the National Green Tribunal exercises both Original jurisdiction (under Section 14) as well as Appellate jurisdiction (under Section 16). Irrespective of whether an Order passed by the National Green Tribunal was in its Original or Appellate jurisdiction, the right of Appeal to the Supreme Court under Section 22 is put to the same tests as that of a Second Appeal under Section 100 of the Civil Procedure Code. *[Para 32]*

As a matter of fact, Section 29 of the National Green Tribunal Act, bars the jurisdiction of the Civil Courts. It can be compared with the language of Section 28 of the Administrative Tribunals Act, 1985 as it stood before the decision of the Supreme Court in *L. Chandrakumar*. Section 28 of the Administrative Tribunals Act, read as follows:

"*Exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution:*

> On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no Court except, (a) the Supreme Court; or (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for time being in force, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters." *[Para 33]*

As we have pointed out earlier, the Supreme Court not merely struck down Clause (2)(d) of Article 323-A and Clause (3)(d) of Article 323-B, but also struck down Section 28 of the Administrative Tribunals Act, to the extent it excluded the jurisdiction of this Court under Articles 226/227. The Constitution Bench did not stop there. The Supreme Court went to the extent of declaring all 'exclusion of jurisdiction' clauses in all similar enactments also as unconstitutional. *[Para 34]*

Therefore, if the Parliament had actually included in Section 29 of the National Green Tribunal Act, 2010, a specific exclusion of the jurisdiction of the High Courts under Articles 226/227, the same would have been hit by the express declaration made in *L. Chandrakumar*. If an express exclusion could have been burnt to ashes in the fire ignited in *L. Chandrakumar*, we do not know how an implied exclusion could survive. *[Para 35]*

Therefore, it is contended by Mr. R. Muthukumarasamy, learned Senior Counsel for the SEIAA that cases where a statutory remedy of Appeal is provided, would stand on a different footing than cases where no such statutory remedy of Appeal is provided. According to the learned Senior Counsel, a statutory remedy of Appeal to the Supreme Court is provided by Section 22 of the National Green Tribunal Act, 2010 and that therefore, the ratio laid down in *L. Chandrakumar* may not apply to orders passed by the National Green Tribunal. *[Para 41]*

But, we do not think that it is the correct way of understanding the decision in *T. Sudhakar Prasad*. In Paragraph 19 of its decision in *T. Sudhakar Prasad*, the Supreme Court clarified that "jurisdiction should not be confused with status and subordination." After drawing such a fine distinction, the Supreme Court nevertheless pointed out towards the end of Paragraph 19 that there is no anathema to the Tribunal exercising the jurisdiction of the High Court and in that sense, being supplemental or additional to the High Court, but at the same time not enjoying the status equivalent to the High Court and also being subject to Judicial Review and judicial superintendence of the High Court. *[Para 42]*

If we have a careful look at Sections 17 & 28 of the Administrative Tribunals Act, 1985, it would be clear that any order passed by the Administrative Tribunal under Section 17, would have been amenable to the jurisdiction of the Supreme Court under Section 28, before *L. Chandrakumar* read down Section 28. The only difference brought forth by *L. Chandrakumar* was that if a person had been punished under Section 17 of the Administrative Tribunals Act, 1985, he could have challenged the same under Articles 226/227 of the Constitution, without invoking the remedy under Section 19 also. *[Para 43]*

What the Supreme Court took exception to, in *T. Sudhakar Prasad* was the decision reached by the Andhra Pradesh High Court that Section 17 of the Administrative Tribunals Act had also been rendered otiose by the decision in *L. Chandrakumar*. In *L. Chandrakumar*, the Constitution Bench of the Supreme Court

merely struck down two Sub-Clauses of Articles 323-A & 323-B and read down Section 28 of the Administrative Tribunals Act, 1985. The Supreme Court did not hold in *L. Chandrakumar* that the power under Section 17 was not available to the Administrative Tribunals. But, the Andhra Pradesh High Court read into the decision of the Supreme Court in *L. Chandrakumar* that Section 17 had also been rendered redundant. This is why the Supreme Court clarified in *T. Sudhakar Prasad* that Section 17 survived despite *L. Chandrakumar* and that if Section 17 survived, the remedy of Appeal under Section 19 of the Contempt of Courts Act also survived. If the power under Section 17 of the Administrative Tribunals Act survived despite *L. Chandrakumar* and if the right of Appeal under Section 19 of the Contempt of Courts Act also survived as a consequence, then there was only one question left open to be decided. It was as to whether a person can directly go to the Supreme Court under Section 19 of the Contempt of Courts Act or should first go before the High Court under Article 226. On this question, the answer is too obvious to state. The statutory remedy of Appeal under Section 19 of the Contempt of Courts Act, provided a larger scope for canvassing the correctness of an order punishing a person for contempt. The jurisdiction under Articles 226 & 227 is confined only to the parameters, on which, a Judicial Review is permissible under the Constitution. Therefore, the Supreme Court came to the conclusion in *T. Sudhakar Prasad* that it is not possible to exclude the availability of a larger right statutorily conferred, on the ground of availability of a lesser right in terms of the power of superintendence conferred upon this Court. *[Para 44]*

As we have pointed out earlier, the National Green Tribunal Act, 2010 contains two provisions, one in Section 22 and another in Section 29, with the former providing for a remedy of Appeal and the latter barring the jurisdiction of Civil Courts and not Constitutional Courts. What the Respondents want us to do is to read into Section 22, an exclusion of jurisdiction of this Court under Articles 226 & 227. If the National Green Tribunal Act itself had contained a specific provision excluding the jurisdiction of this Court under Articles 226 & 227, the same would have been obviously invalid in view of the specific declaration made in *L. Chandrakumar*. If an express exclusion, assuming that it had been provided, cannot be saved, we do not know how an implied exclusion could be saved. In view of the above, we reject the objections made by the Respondents to the maintainability of the Writ Petitions. *[Para 48]*

Contempt of Courts Act, 1971 (70 of 1971), Section 19 — National Green Tribunal Act, 2010 (19 of 2010), Section 22 — Appeal under both enactments — Comparison between — Remedy of Appeal granted under Section 22 of NGT Act, *held,* similar to Second Appeal under Section 100 of CPC, consequently, any Appeal made under Section 22 ought to raise a substantial question of law — Said qualification not applicable to Appeal made under Section 19 of Contempt of Courts Act — Appeal under Section 22 of NGT Act, *held,* a remedy and Appeal made under Section 19 of Contempt of Courts Act, a right — *Code of Civil Procedure, 1908 (5 of 1908), Section 100.*

We have already extracted Section 22 of the National Green Tribunal Act, 2010. We have also pointed out that the right of Appeal under Section 22 of the National Green Tribunal Act, 2010 is subject to a very serious restriction namely that it should pass the same test as stipulated in Section 100 of the Civil Procedure Code

namely the existence of a substantial question of law. But, an Appeal under Section 19 of the Contempt of Courts Act, 1971 is as a matter of right. As can be seen from the language employed in Section 19(1) of the Contempt of Courts Act, 1971, an Appeal shall lie "as of right". *[Para 46]*

Therefore, the distinction between cases arising under Section 19 of the Contempt of Courts Act and those arising under Section 22 of the National Green Tribunal Act, 2010, is too easy to be seen and deciphered. What is conferred by Section 19 of the Contempt of Courts Act, 1971 is a right, the exercise of which does not depend upon any discretion in the matter of admission of the Appeal. In contrast, what is conferred by Section 22 of the National Green Tribunal Act, 2010, is only a remedy, the availability of which is subject to very serious restrictions and discretion. The availability of a remedy, which is subject to serious restrictions, cannot be equated to a right conferred by the Statute. In *T. Sudhakar Prasad*, the Andhra Pradesh High Court interpreted the decision of the Supreme Court in *L. Chandrakumar* in such a manner as to extinguish a statutory right and elevate a discretionary remedy. This is why the Supreme Court stepped in to clear the air of confusion. *[Para 47]*

Environment (Protection) Act, 1986 (29 of 1986), Sections 3(1)(v) & 3(2) — Environment (Protection) Rules, 1986, Rule 5(3)(d) — State Level Environment Impact Assessment Authority [SEIAA] — Environmental Clearances granted by SEIAA — Whether contrary to law — Mining Plan submitted by Executive Engineer of PWD cleared by Executive Engineer of another wing in PWD — *Held,* approval of Mining Plan granted by Officer of same Department contrary to Rule 13 of Draft Rules — Moreover, grant of Environmental Clearance by SEIAA in an area, which is an 'overexploited' region, *held,* contrary to law — Established that indiscriminate mechanical mining carried out by State of Tamil Nadu only under pressure of Lorry owners — Clearances granted by SEIAA only under pressure and same contrary to its own creator, *i.e.* Central Government — Order of NGT permitting quarrying operations for six months as per *Ad hoc* Guidelines issued by SEIAA — Said period of six months expiring soon — Consequently, quashing of Order of NGT, not warranted — PWD to approach MoEF for grant of fresh Environmental Clearance as mandated by NGT — Writ Petitions dismissed as quashing of Order of NGT, not warranted.

In other words, they are supposed to work in tandem. But unfortunately, in the case on hand, they have worked at cross purposes. *The Central Government has taken a stand both before the National Green Tribunal and before this Court that the Environmental Clearances granted by the SEIAA in accordance with the Ad hoc Guidelines, are contrary to law. But, the SEIAA, which is actually a creature of the Central Government, has gone against its own creator and contested the case, both before the National Green Tribunal and before this Court, like a private party would do, virtually advancing the cause of the lorry owners engaged in the transportation of sand.* *[Para 69]*

We are prepared to go by the submissions made by the learned Advocate General (a) that the Mining Plan was submitted on 13.8.2012 and not on 15.2.2013; and (b) that the circular of the Commissioner of Geology and Mining dated 19.11.2012

cannot have retrospective effect, so as to affect the Applications already submitted by the Public Works Department. But still, the learned Advocate General has no answer to one fundamental question. As per Rule 13, read with Annexure I of the Draft Rules, approved by the Supreme Court in *Deepak Kumar,* the Mining Plan should be in a prescribed format and approved by a qualified person recognized in this behalf by the State Government. We do not know how the State Government authorized the Executive Engineer of the Public Work Department to approve the Mining Plan. *[Para 96]*

The proposals for the grant of Environmental Clearances were made by the Executive Engineer, Public Works Department, Water Resources Organization, River Conservancy Division, Trichy. If the Mining Plan is approved by another Executive Engineer of a different wing of the very same Department, the sanctity of Rule 13 of the Draft Rules is completely lost. When the Public Works Department is the proponent of the project for the grant of Environmental Clearance, the State Government could not have recognized one of the Officers of the very same Department to be a recognized qualified person in terms of Rule 13 of the Draft Rules. Therefore, the Applications submitted by the Executive Engineer, Public Works Department for Environmental Clearances to the SEIAA were obviously not in accordance with the mandate of the Supreme Court in *Deepak Kumar. [Para 97]*

It is seen from G.O.Ms. No.51, Public Works Department, dated 11.2.2004 that based on the development of ground water resources, the panchayat union blocks in Tamil Nadu were categorized into dark and grey areas. Blocks with more than 85% ground water development were categorized as dark blocks. Blocks with ground water development between 65% to 85% were categorized as grey blocks. Thereafter, a State Level Working Group was constituted for the assessment of the ground water potential in Tamil Nadu. On the basis of the Report submitted by them, the Government approved and categorized all panchayat union blocks in Tamil Nadu as (i) over exploited; (ii) critical; (iii) semi critical; and (iv) safe blocks. After such categorization, the Government ordered in Paragraph 6 of the said Government Order, that no schemes shall be formulated in over exploited and critical blocks. *[Para 99]*

Thottiyam is one of the villages, which fell within the category of 'safe area' in the year 2004, under G.O.Ms. No.51, Public Works Department, dated 11.2.2004. But, within a period of ten years, it has now gone from "safe zone" to the over exploited region. This is one of the villages, in respect of which, the Environmental Clearance is now granted. But, this has not been taken note of either by the Public Works Department, when proposing a project or by the SEIAA while granting clearance. Hence, Mrs. U. Nirmalarani, learned Counsel is right in contending that the Environmental Clearance granted by the SEIAA was not in accordance with law. *[Para 100]*

As a matter of fact, there was no mechanical mining of sand in the State of Tamil Nadu, upto the year 2003. It was started only in the year 2003 and contrary to the original Order of this Court dated 3.8.2012, large scale mechanized mining appears to be taking place. *[Para 101]*

Though it is submitted by the Respondents that mechanized mining is taking place only with two poclains and that no in-stream mining is taking place, the said claim appears to be false. That it is false, could not have been realized by this Court, but for the fact that the Lorry Owners' Association has come with a Petition for impleading themselves as parties. In W.P.(MD). No.7146 of 2014, the Tamil Nadu Sand Lorry Owners Federation has come up with M.P.(MD). No.3 of 2014 for impleading themselves as a contesting Respondent in the Writ Petition. *[Para 102]*

It is claimed in Paragraph 2 of the Affidavit in support of the Impleading Petition that the Federation was registered as an association in the year 2010 and that the Federation has a membership of about 1000. The members of the federation, as per the Affidavit, own 75,000 lorries in the State and all these lorries are specially built for the transportation of sand and that they cannot be used for any other purposes. It is further claimed in the Impleading Petition that the members of the Federation employ about 2,00,000 workers, who are engaged only in the transportation of sand. It is also claimed that the members of the Federation and about 2,00,000 workers depend entirely upon the transportation of sand for their livelihood. In Paragraph 5 of the Affidavit in support of the Impleading Petition, the Federation claims that the capacity of the lorries depends upon the laden weight of each vehicle ranging from 2 units to 3 units and that therefore, sand cannot be loaded manually. *[Para 103]*

The Federation claims that unless there are two stand-by poclains in each quarry, it is not possible to load sand and retrieve the vehicles, whenever a vehicle is stuck. In Paragraph 5 of the Affidavit in support of the Impleading Petition, it is also claimed by the Federation that it is impossible to quarry 7,000 Lorry loads of sand per day manually. *[Para 104]*

These statistics make it clear *(i) that there has been indiscriminate mechanical mining carried out by the State of Tamil Nadu, perhaps under pressure from the Lorry owners; and (ii) that the quantities of sand quarried are not correctly projected by the Department. The actual statistics appear to have been buried deep into the very same sand.* The pressure exerted by the sand Lorry Owners' Federation upon the Government and the SEIAA appears to have increased, in geometric portions, the pressure exerted on environment and ecology. Otherwise, we see no reason as to why the SEIAA should actually take a stand contrary to the stand taken by the Central Government in this case. *[Para 105]*

Conclusion:

Therefore, we are of the view that the Environmental Clearances granted by SEIAA are actually contrary to law. But, today, there is no point in setting aside the same, for the reasons stated below:

(i) The National Green Tribunal has held by its impugned Order that based upon the Environmental Clearances, the State Government can continue to quarry only up to 23.8.2014 (six months from the date of the order of the National Green Tribunal dated 24.2.2014). This period is coming to an end soon;

(ii) The Order of the National Green Tribunal dated 24.2.2014, permitting the State Government to make use of these Environmental Clearances only for a period of six months, came to be challenged in these Writ Petitions, only after two months. The Writ Petitions were filed and they came up for hearing for the first time only on 23.4.2014, by which time, a period of two months out of the total period of six months had already expired;

(iii) By an Interim Order passed on 30.4.2014, we granted an Interim Stay of the Order of the Tribunal. But, our Order dated 30.4.2014 was set aside by the Supreme Court, by an Order dated 9.5.2014 and the Supreme Court directed us to take up the impugned Writ Petitions and dispose them of within a period of one month. Therefore, the Writ Petitions were taken up for hearing after the Court reopened after summer recess on 4.6.2014. But, the Respondents took time to file Counter Affidavit and the Counter Affidavit was filed on 16.6.2014. Thereafter, the arguments were heard on 25.6.2014 and 26.6.2014 and Judgment reserved by us on 26.6.2014. Thereafter, written submissions were circulated on

3.7.2014. By this time, a period of four months, out of the total period of six months granted by the Tribunal had already expired;

(iv) Therefore, we do not find any useful purpose being served in setting aside the impugned Orders, at this distance of time. Therefore, these Writ Petitions are dismissed. No costs. *[Para 106]*

Environment (Protection) Act, 1986 (29 of 1986), Sections 3(1)(v) & 3(2) — Environment (Protection) Rules, 1986, Rule 5(3)(d) — State Level Environment Impact Assessment Authority [SEIAA] — Whether overreaching its mandate — SEIAA constituted under Notification issued by Environment Impact Assessment [EIA] — Power of SEIAA, *held,* emanates only from said Notification and not otherwise — Nonetheless, *Ad hoc* Guidelines issued by SEIAA going far beyond Notification of EIA and also in contravention to same — Classification created by SEIAA with regard to mining projects, contrary to EIA Guidelines — Blindfold clearances sought to be granted by SEIAA for areas less than 25 hectares without screening, scoping, public consultation and appraisal of projects, *held,* totally opposing mandate of Notification of EIA and also against dictum of Apex Court decision in *Deepak Kumar case* — SEIAA, *held,* overreaching its mandate and acting against its purpose of creation.

But, we do not think that the SEIAA can, under any pretext, actually usurp the powers not conferred upon it. This can be well appreciated only if we have a look at the source of power for the SEIAA. The SEIAA was actually constituted in terms of Paragraph 3 of the Notification on EIA dated 14.9.2006 issued by the Central Government in exercise of the power conferred under Section 3(1)(v) and Section 3(2) of the Environment (Protection) Act, 1986 read with Clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986. Since the SEIAA is a creature of the Notification on EIA, the source of power flows only out of the Notification and not otherwise. *[Para 63]*

The fact that the SEIAA overreached its mandate and went against the very purpose of its creation, can be appreciated from the very *Ad hoc* Guidelines framed by the SEIAA on 27.9.2012 on the specious plea that the MoEF had not issued any Guidelines. At the risk of repetition, the Guidelines issued by the SEIAA on 27.9.2012 are again extracted as follows:

"*(i)* All mining projects wherein the boundary of the proposed mining area is at least 1.0 KM away form the human habitation/other sensitive areas will be considered for sanction of Environmental Clearance subject to satisfaction of other Guidelines.

(ii) If the boundary of the proposed mining area is less than 1.0 KM, the SEAC will inspect the site and assess the various environmental impacts and then recommend/reject with specific conditions/reasons.

(iii) In case, if the proposed mining area is less than 25.0 Hec, it will be considered as B2 category with Environmental Management Plan, and processed further.

(iv) In case, if the proposed mining area is more than 25.0 Hec, it will be considered as B1 category, which will require preparation of the EIA as per revised model TORs issued by MoEF, Government of India and Public Hearing will be undertaken and the same will be examined in detail for taking a decision

on the issue of Environmental Clearance, strictly adhering to Government of India Guidelines.

It is also informed that the above said Guidelines will cease to be in force from the date of Notification/Memorandum to be issued by the MoEF, GOI on the subject." *[Para 70]*

The above *Ad hoc* Guidelines issued by the SEIAA would shock the conscience of any person, as it goes far beyond the Notification on EIA dated 14.9.2006 and the directions issued by the Supreme Court in *Deepak Kumar.* The above *Ad hoc* Guidelines issued by the SEIAA actually tend to over-reach and also destroy the requirements of the Notification on EIA, as seen from the following:

(i) These Guidelines divide Mining Projects first into two categories, one located at least 1.0 KM away from human habitation and another located within a distance of 1.0 KM from human habitation. Such a classification is not to be found in the Notification on EIA dated 14.9.2006. We do not know where from the SEIAA, which derives its powers from the Notification on EIA, got the power to create one more classification based upon the distance or the location from human habitation. No residual powers have been conferred upon the SEIAA by the Notification on EIA; and

(ii) The *Ad hoc* Guidelines of the SEIAA classify B Category Projects into B1 and B2 Category Projects. Projects on proposed mining area of less than 25 hectares are classified as B2 and projects on a proposed mining area of more than 25 hectares are classified as B1 Category Projects. After doing so, the *Ad hoc* Guidelines issued by the SEIAA dated 27.9.2012 have completely dispensed with the requirements of Paragraph 7 read with Paragraph 5 of the Notification on EIA dated 14.9.2006, in respect of projects on proposed mining area of less than 25 hectares. Therefore, the *Ad hoc* Guidelines dated 27.9.2012, on the basis of which, the SEIAA granted the Environmental Clearances in the cases on hand, were completely contrary to the Notification on EIA dated 14.9.2006, as amended by the Notification dated 1.12.2009. They were also completely contrary to the dictum of the Supreme Court in *Deepak Kumar.* *[Para 71]*

But, the *Ad hoc* Guidelines issued on 27.9.2012 by the SEIAA completely overlooks the above observations of the Supreme Court, as it tends to grant Environmental Clearances blind-fold, if the proposed mining area is less than 25 hectares. *[Para 73]*

Therefore, the first contention of Mr. T. Mohan, learned counsel appearing for the Petitioner in the first batch of Writ Petitions, that the Environmental Clearances issued by SEIAA on the basis of the *Ad hoc* Guidelines dated 27.9.2012 that were completely contrary to the Notification on EIA, ought to be upheld. The Notification on EIA dated 14.9.2006, as amended by the Notification dated 1.12.2009, empowered the SEIAA to process the proposals for projects in a mining area of 5 hectares and above, but below 50 acres. *The EIA Notifications dated 14.9.2006 and 1.12.20009 did not empower the SEIAA to annul the effect of Paragraphs 5 & 7 of the Notification dated 14.9.2006 and grant Environmental Clearances, without screening, scoping, public consultation and appraisal to projects where the proposed mining area is less than 25 hectares*. In as much as *the Ad hoc Guidelines of the SEIAA permit the grant of clearances to projects on proposed mining area of less than 25 hectares without screening, scoping, public consultation and appraisal, they are completely contrary to the Notification, by which, the SEIAA was created.* Even the Union of India, in the counter filed before the National Green Tribunal,

clearly admitted that the SEIAAs are not empowered to sub-categorize B projects into B1 and B2 categories. *[Para 74]*

Contention No.2:

In *Deepak Kumar,* the Supreme Court issued three directives. They are (i) the Central Government should take steps to bring into force The Minor Minerals Conservation and Development Rules, 2010 at the earliest; (ii) the State Governments should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, taking into consideration the recommendations of the MoEF in its Report of March 2010; and (iii) in the meanwhile, the leases of minor minerals including their renewal for an area of less than 5 hectares be granted by the States/Union Territories only after getting the Environmental Clearances from the MoEF. Therefore, *the second contention of the Petitioners is that the SEIAA is neither competent to issue Ad hoc Guidelines nor competent to grant Environmental Clearances for areas equivalent to or more than 5 hectares.* *[Para 75]*

In order to test the correctness of the above contention, it is necessary to have a look at Paragraphs 28 & 29 of the decision of the Supreme Court in *Deepak Kumar.* They read as follows:

> "The Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules, 2010 at the earliest. The State Governments and UTs also should take immediate steps to frame necessary Rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its report of March 2010 and Model Guidelines framed by the Ministry of Mines, Government of India. Communicate the copy of this order to MoEF, Secretary, Ministry of Mines, New Delhi, Ministry of Water Resources, Central Government Water Authority; the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the Departments concerned.
>
> 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." *[Para 76]*

In pursuance of the decision of the Supreme Court in *Deepak Kumar* rendered on 27.2.2012, the MoEF issued certain directions on 18.5.2012. Paragraph 3 of the Office Memorandum dated 18.5.2012 issued by the MoEF reads as follows:

> "In order to ensure compliance of the above referred Order of the Hon'ble Supreme Court dated 27.2.2012, it has now been decided that all mining projects of minor minerals including their renewal irrespective of the size of the lease would henceforth require prior environment clearance. Mining projects with lease area up to less than 50 hectares including projects of minor mineral with lease area less than 5 hectares would be treated as Category 'B' as defined in the EIA Notification, 2006 and will be considered by the respective SEIAAs notified by MoEF and following the procedure prescribed under EIA Notification, 2006." *[Para 77]*

Therefore, the second contention of the Petitioners that the SEIAA granted Environmental Clearances, contrary to the Judgment of the Supreme Court in *Deepak Kumar,* is too obvious. *[Para 78]*

Environment (Protection) Act, 1986 (29 of 1986), Sections 3(1)(v) & 3(2) — Environment (Protection) Rules, 1986, Rule 5(3)(d) —

Environmental Clearances for mining — Guidelines issued by State Level Environment Impact Assessment Authority [SEIAA] *vis-à-vis* Guidelines issued by Ministry of Environment and Forests [MoEF] — Comparison between — Whether warranted — Guidelines issued by MoEF only permitting mining activity to be conducted manually — However, Guidelines issued by SIEAA permitting mining activity even manually — *Held,* A*d hoc* Guidelines issued by SEIAA would not be more stringent by Guidelines issued by MoEF — Act of National Tribunal in comparing both Guidelines, without jurisdiction.

The third contention of Mr. T. Mohan, learned Counsel, is that it was not within the jurisdiction of the National Green Tribunal to compare the *Ad hoc* Guidelines dated 27.9.2012 issued by the SEIAA with the Guidelines issued by the MoEF dated 24.12.2013 and come to a conclusion that those issued by SEIAA were far better. *[Para 79]*

We are in Agreement with the above contention of Mr. T. Mohan, learned Counsel. In Paragraph 41 of its Order dated 24.2.2014, the National Green Tribunal presented in a tabular form, a comparative statement of the *Ad hoc* Guidelines issued by the SEIAA and those issued by the MoEF. Even a bare perusal of the very same tabular statement would show that as per the Notification of the MoEF, mining activity is to be done only manually. But, the Environmental Clearances granted by the SEIAA, permit mining activity even mechanically. We do not know how such a prescription in the *Ad hoc* Guidelines could be taken to be more stringent than the Guidelines issued by the MoEF, restricting mining only to manual operations. *[Para 80]*

As a matter of fact, the National Green Tribunal ought to have tested the *Ad hoc* Guidelines dated 27.9.2012 on the touchstone of the parent Notification dated 14.9.2006. If so done, it would have become very clear that the *Ad hoc* Guidelines actually overreached and even nullified the effect of the original Notification. Another important aspect omitted to be taken note of by the Green Tribunal, while making a comparison, is that in the latest Guidelines dated 24.12.2013 issued by the MoEF, the requirement of public hearing is dispensed with, only due to the fact that it permitted manual mining alone for such projects. The National Green Tribunal has not appreciated this most crucial aspect. Therefore, the third contention of the Petitioners is also to be upheld. *[Para 81]*

CASES REFERRED

T. Mohan for Renga Nandakumar, Advocate for Petitioner in W.P. Nos.7146 to 7157 of 2014; U. Nirmala Rani, Advocate for Petitioner in W.P. Nos.7767 to 7772 of 2014.

A.L. Somayaji, Advocate General assisted by S. Abdul Saleem & A. Baskarapandian, Additional Government Pleader for State; K.K. Senthilvelan, Additional Solicitor General for Central Government; R. Muthukumarasamy, Senior Counsel for S. Sethuraman for State Level Environment Impact Assessment Authority; M. Subash Babu, Advocate for Proposed Party in M.P. No.3 of 2014 in W.P. No.7146 of 2014; V. Karuna, Advocate for Proposed Party in M.P. No.3 of 2014 in W.P. No.7147 of 2014.

W.Ps. DISMISSED — NO COSTS — M.Ps.3 & 3 of 2014 in W.Ps.7146 & 7147 DISMISSED — OTHER M.Ps. CLOSED

Prayer : W.P. No.7146 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.73 of 2013 dated 24.2.2014, quash the same by setting aside the Order of the Second Respondent in Letter No.SEIAA/TN/F.595/E/1(a)/40/2012 dated 30.11.2012 and direct the Third Respondent to abstain from quarrying at Mangammalpuram sand quarry in River Kollidam at Mile 20/0 to 20/1 at S.F. No.217, Mangammalpuram Village in Lalgudi Taluk of Trichy District forthwith.

W.P. No.7147 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.74 of 2013 dated 24.2.2014, quash the same by setting aside the Order of the Second Respondent in letter No.SEIAA/TN/F.558/E/1(a)/23/2012 dated 8.11.2012 and direct the Third Respondent to abstain from quarrying at Ayyampalayam sand quarry in River Kollidam at Mile 103/3+65m to 103/5+15m at S.F. No.540/2, Ayyampalayam Village in Musiri Taluk of Trichy District forthwith.

W.P. No.7148 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.75 of 2013 dated 24.2.2014, quash the same by setting aside the order of the Second Respondent in letter No.SEIAA/TN/F.561/E/1(a)/25/2012 dated 28.11.2012 and direct the Third Respondent to abstain from quarrying at Perugamani sand quarry in River Cauvery at Mile 107/4 to 107/6 + 100m at S.F. No.116, Perugamani Village in Srirangam Taluk of Trichy District forthwith.

W.P. No.7149 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.76 of 2013 dated 24.2.2014, quash the same by setting aside the order of the Second Respondent in Letter No.SEIAA/TN/F.566/E/1(a)/12/2012 dated 26.10.2012 and direct the Third Respondent to abstain from quarrying at Valavanur sand quarry in River Kollidam at Mile 11/6 to 12/1 at S.F. No.131, Valavanur Village in Lalgudi Taluk of Trichy District forthwith.

W.P. No.7150 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.79 of 2013 dated 24.2.2014, quash the same by setting aside the Order of the Second Respondent in Letter No.SEIAA/TN/F.585/E/1(a)/18/2012 dated 26.10.2012 and direct the Third Respondent to abstain from quarrying at Thiruchennampoondi sand quarry in River Kollidam at Mile 21/6 to 22/1+50m at S.F. No.1/1, Thiruchennampoondi Village in Thiruvaiyaru Taluk of Thanjavur District forthwith.

W.P. No.7151 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.82 of 2013 dated 24.2.2014, quash the same by setting aside the Order

of the Second Respondent in Letter No.SEIAA/TN/F.565/E/1(a)/36/2012 dated 28.11.2012 and direct the Third Respondent to abstain from quarrying at Sevathinathapuram sand quarry in River Kollidam at Mile 14/6 to 15/1 at S.F. No.110, Sevathinathapuram Village in Lalgudi Taluk of Trichy District forthwith.

W.P. No.7152 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.83 of 2013 dated 24.2.2014, quash the same by setting aside the order of the Second Respondent in letter No.SEIAA/TN/F.557/E/1(a)/21/2012 dated 7.11.2012 and direct the Third Respondent to abstain from quarrying at Amoor sand quarry in River Cauvery at Mile 106/5+50m to 106/7+30m at S.F. No.131, Amoor Village in Musiri Taluk of Trichy District forthwith.

W.P. No.7153 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.85 of 2013 dated 24.2.2014, quash the same by setting aside the Order of the Second Respondent in Letter No.SEIAA/TN/F.567/E/1(a)/34/2012 dated 28.11.2012 and direct the Third Respondent to abstain from quarrying at Koohur sand quarry in River Kollidam at Mile 19/0 to 19/3 at S.F. No.144, Koohur Village in Lalgudi Taluk of Trichy District forthwith.

W.P. No.7154 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.81 of 2013 dated 24.2.2014, quash the same by setting aside the order of the Second Respondent in Letter No.SEIAA/TN/F.566/E/1(a)/35/2012 dated 28.11.2012 and direct the Third Respondent to abstain from quarrying at Appathurai sand quarry in River Kollidam at Mile 9/7 to 10/2+100m at S.F. No.135, Appathurai Village in Lalgudi Taluk of Trichy District forthwith.

W.P. No.7155 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.86 of 2013 dated 24.2.2014, quash the same by setting aside the Order of the Second Respondent in Letter No.SEIAA/TN/F.566/E/1(a)/22/2012 dated 9.11.2012 and direct the Third Respondent to abstain from quarrying at Natham sand quarry in River Cauvery at Mile 86/5+40m to 86/7 at S.F. No.383, Natham Village in Thottiam Taluk of Trichy District forthwith.

W.P. No.7156 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.89 of 2013 dated 24.2.2014, quash the same by setting aside the Order of the Second Respondent in Letter No.SEIAA/TN/F.568/E/1(a)/24/2012 dated 8.11.2012 and direct the Third Respondent to abstain from quarrying at Edayathumangalam sand quarry in River Kollidam at Mile 15/4 to 16/2+100m at S.F. No.160/6, Edayathumangalam Village in Lalgudi Taluk of Trichy District forthwith.

W.P. No.7157 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.80 of 2013 dated 24.2.2014, quash the same by setting aside the Order of the Second Respondent in Letter No.SEIAA/TN/F.569/E/1(a)/9/2012 dated 26.10.2012 and direct the Third Respondent to abstain from quarrying at Thirumanamedu sand quarry in River Kollidam at Mile 13/6 to 14/1 at S.F. No.161, Thirumanamedu Village in Lalgudi Taluk of Trichy District forthwith.

W.P. No.7767 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.164 of 2013 (SZ) dated 7.3.2014, quash the same by setting aside the order of the Second Respondent in Letter No.SEIAA/TN/F.554/EC/1(a)/13/ 2012 dated 26.10.2012 and direct the Third Respondent to abstain from quarrying at Rajendram sand quarry in River Cauvery at Mile 99/6 to 100/0 + 100m at S.F. No.337/1 (part) of Rajendram Village in Kulithalai Taluk of Karur District forthwith.

W.P. No.7768 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.165 of 2013 (SZ) dated 7.3.2014, quash the same by setting aside the Order of the Second Respondent in letter No.SEIAA/TN/F.550/EC/1(a)/41/ 2012 dated 30.11.2012 and direct the Third Respondent to abstain from quarrying at Nerur South sand quarry in River Cauvery at Mile 79/4+50m to 79/5m at S.F. No.2596/B of Nerur South Village in Karur Taluk of Karur District forthwith.

W.P. No.7769 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.166 of 2013 (SZ) dated 7.3.2014, quash the same by setting aside the Order of the Second Respondent in letter No.SEIAA/TN/F.549/EC/1(a)/7/2012 dated 26.10.2012 and direct the Third Respondent to abstain from quarrying at Nanniyur sand quarry in River Cauvery at Mile 70/7+50m to 71/2+150m at S.F. No.539 of Nanniyur Village in Karur Taluk of Karur District forthwith.

W.P. No.7770 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.167 of 2013 (SZ) dated 7.3.2014, quash the same by setting aside the Order of the Second Respondent in Letter No.SEIAA/TN/F.548/EC/1(a)/4/2012 dated 26.10.2012 and direct the Third Respondent to abstain from quarrying at Achammapuram (Tirumukkudalur) sand quarry in River Cauvery at Mile 80/2+100m to 80/6+25m at S.F. No.265/1 of Achammapuram (Tirumukkudalur) Village in Karur Taluk of Karur District forthwith.

W.P. No.7771 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.168 of 2013 (SZ) dated 7.3.2014, quash the same by setting aside the Order of the Second Respondent in letter No.SEIAA/TN/F.553/EC/1(a)/39/ 2012 dated 30.11.2012 and direct the Third Respondent to abstain from quarrying at Vaiganallur sand quarry in River Cauvery at Mile 98/7+99/1m at S.F. No.1/2 (part) of Vaiganallur Village in Kulithalai Taluk of Karur District forthwith.

W.P. No.7772 of 2014 : Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order passed by the Fourth Respondent in Appeal No.169 of 2013 (SZ) dated 7.3.2014, quash the same by setting aside the order of the Second Respondent in letter No.SEIAA/TN/F.552/EC/1(a)/5/2012 dated 26.10.2012 and direct the Third Respondent to abstain from quarrying at Kallapalli sand quarry in River Cauvery at Mile 70/1+50m to 71/2+50m at S.F. No.1 (part) of Kallapalli Village in Krishnarayapuram Taluk of Karur District forthwith.

JUDGMENT

V. Ramasubramanian, J.

1. All these Writ Petitions question the correctness of the Orders passed by the Southern Regional Bench of the National Green Tribunal dated 24.2.2014.

2. We have heard Mr. T. Mohan and Mrs. U. Nirmala Rani, learned Counsel appearing for the Petitioners, Mr. A.L. Somayaji, learned Advocate General appearing for the State, Mr. R. Muthukumarasamy, learned Senior Counsel appearing for the State Level Environment Impact Assessment Authority (hereinafter referred to as the SEIAA), Mr. K.K. Senthilvelan, learned Assistant Solicitor General appearing for the Union of India and Mr. M. Subash Babu and Mr. V. Karuna learned Counsel appearing for the parties, who seek to implead themselves in the Writ Petitions.

3. After intensive quarrying in the volumes and volumes of papers filed before us, the factual matrix unearthed could be summarized as follows:

(a) In exercise of the powers conferred by sub-section (1) and Clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, read with Clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, the Central Government issued The Environment Impact Assessment (hereinafter referred to as the EIA) Notification, on 14.9.2006, directing that on and from the date of its publication, the construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the Notification entailing capacity addition with change in process and or technology, shall be undertaken in any part of India only after the prior Environmental Clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of

Section 3 of the said Act, in accordance with the procedure specified hereinafter in this Notification.

(b) On 27.2.2012, the Supreme Court passed an Order in ***Deepak Kumar and others v. State of Haryana & others,*** 2012 (4) SCC 629, holding that leases of minor minerals as well as their renewal, be granted by the States /Union Territories in certain cases only after getting Environmental Clearance.

(c) On 3.8.2012, this Court passed an Order in a batch of cases in W.P. No.4699 of 2012, etc. mandating Environmental Clearance before commencement of sand mining. The SEIAA was also directed to pass Orders within 2 months on the project proposal of the Public Works Department of the State Government.

(d) Therefore, on 28.8.2012, a joint meeting was convened between the SEIAA and the State Experts Appraisal Committee on formulation of Interim Guidelines.

(e) Thereafter, the SEIAA filed a Petition for extension of time for processing the proposal of the PWD. However, it was not effectively pursued.

(f) But on 27.9.2012, the SEIAA issued a set of *Ad hoc* Interim Guidelines for processing Applications/project proposals, till the MoEF issued revised Guidelines. On the basis of those Guidelines, the SEIAA also granted Environmental Clearances to the Public Works Department of the State of Tamil Nadu on 30.11.2012 valid for a period of 5 years.

(g) Consequently, the Review Applications filed by the Government before this Court, seeking a review of the Order dated 3.8.2012 were dismissed on 12.12.2012 and the copies of the Environment Clearances were handed over to the concerned Writ Petitioners.

(h) Challenging the said Environment Clearances, Appeals were filed before the National Green Tribunal, South Zone at Chennai in February 2013.

(i) During the pendency of the Appeals, the Ministry of Environment and Forests (hereinafter referred to as the MoEF) issued revised Guidelines on 24.12.2013 on sub-categorisation of B projects.

(j) On 24.2.2014, the National Green Tribunal, Southern Regional Bench disposed of all the Appeals holding that after the issue of the revised Guidelines by the MoEF, the Public Works Department of the State has to get clearance only under those Guidelines and that since it would take time, the State Government can continue to quarry for 6 months (that is upto 24.8.2014) on the basis of the Environmental Clearances granted by the SEIAA.

(k) As against the order of the Southern Regional Bench of the National Green Tribunal dated 24.2.2014, the Petitioners have come up with the above Writ Petitions.

4. The first batch of Writ Petitions were admitted on 23.4.2014 and we ordered notice in the Petitions for stay. After notice, we passed a very limited order on 30.4.2014 in all the above Writ Petitions, (i) restraining the Respondents from carrying on in-stream mining, and (ii) also restraining the Respondents from carrying on mechanized mining.

5. As against the said Order, the State filed Civil Appeals in Civil Appeal Nos. 5531 to 5548 of 2014. On 9.5.2014, the Supreme Court disposed of the Civil appeals, vacating the Interim Orders passed by us and directing the High Court to dispose of the Writ Petitions finally. Therefore, the Writ Petitions were taken up for hearing and we have heard all parties concerned.

6. Before proceeding to consider the rival contentions on merits, it is necessary to deal with the question of maintainability first.

Maintainability :

7. The National Green Tribunal was constituted in terms of the provisions of the National Green Tribunal Act, 2010, with the object of providing for the establishment of a Tribunal for the effective and expeditious disposal of cases relating to Environmental Protection and conservation of forests and other natural resources, including enforcement of any legal right relating to environment. The Tribunal is supposed to consist of (i) a full time Chairman; (ii) not less than 10 but subject to a maximum of 20 full time Judicial Members; and (iii) not less than 10 but subject to a maximum of 20 full time Expert Members.

8. Under Section 5(1) of the Act, a person shall not be qualified for appointment as the Chairperson or Judicial Member of the Tribunal unless he is or has been a Judge of the Supreme Court or Chief Justice of a High Court. However, the Proviso to Section 5(1) states that a person, who is or who has been a Judge of the High Court shall also be qualified to be appointed as a Judicial Member.

9. The Tribunal is conferred with both Original as well as Appellate jurisdiction. Under Section 14(1), the Tribunal has jurisdiction over all Civil cases where a substantial question relating to environment is involved and such question arises out of the implementation of the Enactments specified in Schedule-I. Section 16 also confers Appellate jurisdiction on the Tribunal, over the Orders passed either by the Board or by the Appellate Authority or by the State Government under the provisions of the Water (Prevention and Control of Pollution) Act, 1974. The Appellate jurisdiction extends to any Order passed under the Forest (Conservation) Act, the Air (Prevention and Control of Pollution) Act as well as the Environment (Protection) Act. The nature of the reliefs that could be granted by the Green Tribunal is indicated in Sections 15 & 17. Section 19 indicates that the Tribunal shall not be bound by the procedure laid down by the Civil Procedure Code, but shall be guided by the Principles of Natural Justice. The Tribunal can regulate its own procedure and it is not bound by the rules of evidence contained in the Evidence Act. Section 20 states that while passing any order or taking any

decision, the Tribunal should apply the Principles of Sustainable Development, Precautionary Principle and the Polluter Pays Principle.

10. Section 22 of the Act provides for a remedy of appeal to the Supreme Court as against an Order of the Tribunal. It reads as follows:

> "Any person aggrieved by any Award, Decision or Order of the Tribunal, may file an Appeal to the Supreme Court, within ninety days from the date of communication of the Award, Decision or Order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):
>
> Provided that the Supreme Court may entertain any Appeal after the expiry of ninety days, if it is satisfied that the Appellant was prevented by sufficient cause from preferring the Appeal."

11. Section 25 makes an Award or Order or Decision of the National Green Tribunal, executable as a decree of a Civil Court. Section 29 bars the jurisdiction of the Civil Court and it reads as follows:

> *"(1)* With effect from the date of establishment of the Tribunal under this Act, no Civil Court shall have jurisdiction to entertain any Appeal in respect of any matter, which the Tribunal is empowered to determine under its Appellate jurisdiction.
>
> *(2)* No Civil Court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the Civil Court."

12. Section 33 contains a declaration to the effect that the provisions of the Act will have overriding effect and it reads as follows:

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

13. In the light of the above provisions, it is contended by the learned Advocate General and Mr. R. Muthukumarasamy, learned Senior Counsel appearing for the SEIAA that the Writ Petitions are not maintainable. However, Mr. A.L. Somayaji, learned Advocate General also brought to our notice that another Division Bench of this Court has held at least *prima facie* that a Writ Petition challenging the order of the National Green Tribunal is maintainable.

14. This decision was in ***Vijayalakshmi Shanmugam v. Secretary to Government,*** W.P.SR. Nos.7001, 7004 & 7006 of 2014, dated 4.2.2014. In the said decision, the Division Bench relied upon the decision of the Constitution Bench of the Supreme Court in ***L. Chandrakumar v. Union of India,*** 1997 (3) SCC 261, and a decision of the Full Bench of this Court in ***Sanjos Jewellers v. Syndicate Bank,*** 2007 (5) CTC 305. Moreover, in an

Order passed by the Supreme Court in S.L.P.(C) Nos.27886-27887 of 2012 arising out of the Orders of the Armed Forces Appellate Tribunal, the Supreme Court made it clear that the pendency of the Special Leave Petitions will not be an impediment for the High Courts to entertain the Writ Petitions against the Orders of the Armed Forces Tribunal.

15. Therefore, the learned Advocate General stated that the issue of maintainability is not so far finally decided, either by this Court or by the Supreme Court. Hence, we may have to deal with it in *extenso*, which we shall do at present.

16. The creation of every Tribunal or an alternative forum and the exclusion of jurisdiction of normal Civil Courts have always given rise to a vexed question about the nature and extent of ouster of jurisdiction of Courts. So long as the ouster of jurisdiction was confined only to the normal Civil Courts, the issue did not assume larger proportions. But, the moment the creation of a Tribunal led to the bar of jurisdiction of the Constitutional Court itself, the question assumed greater significance.

17. Part XIV-A with the heading "Tribunals" was inserted in the Constitution, under the Constitution (42nd Amendment) Act, 1976. This part comprises of two Articles namely 323-A & 323-B. While Article 323-A empowered the Parliament to create Administrative Tribunals, by law, for the adjudication or trial of disputes and Complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local or other authority, Article 323-B empowers the Parliament to create Tribunals for the resolution of any disputes, complaints or offenses with respect to taxation, foreign exchange, labour dispute, land reforms, elections, essential goods, etc.

18. In pursuance of the power so vested under Article 323-A, the Parliament enacted the Administrative Tribunals Act, 1985. The Act created the Tribunal as a substitute for the High Court and ousted the jurisdiction of all Courts including that of the High Court under Article 226. Therefore, a challenge to the *vires* of the Act was made before the Supreme Court under Article 32 in ***S.P. Sampathkumar v. Union of India & others,*** 1987 (1) SCC 124. While upholding the validity of the Act, the Supreme Court pointed out in ***S.P. Sampathkumar*** that to create a Tribunal as an additional forum, from where the parties could go to the High Court, would certainly have been a retrograde step. The only silver-lining indicated by the Supreme Court in ***S.P. Sampathkumar*** was that certain things have to be done for making the Administrative Tribunal a real substitute for the High Court, not only in form and *de jure*, but also in content and *de facto*.

19. After ***S.P. Sampathkumar***, the next case to come up before the Supreme Court was the one in ***R.K. Jain v. Union of India,*** 1993 (4) SCC 119. In the said decision, K. Ramaswamy, J., in his independent opinion, indicated in Paragraph 67 that the Tribunals set up under Articles 323-A &

323-B of the Constitution or under an Act of Legislature are creatures of the Statute and that in no case can they claim the status of Judges of the High Court or parity or claim to be substitutes. It would be of interest to note that the learned Judge referred to the decision of the Constitution Bench in ***S.P. Sampathkumar*** and still pointed out in Paragraph 66 that what was meant by the Court in ***S.P. Sampathkumar*** was that the Tribunals are created as an institutional alternative mechanism to adjudicate service disputations. The learned Judge held towards the end of Paragraph 66 of the report in ***R.K. Jain*** that "this Court did not appear to have meant that the Tribunals are substitutes of the High Court under Articles 226 & 227 of the Constitution." Consequently, the Bench pointed out in Paragraph 70 that "Judicial Review is the basic and essential feature of the Indian Constitutional Scheme entrusted to the Judiciary" and that "it cannot be dispensed with by creating a Tribunal under Articles 323-A & 323-B of the Constitution." The Court further held that "any institutional mechanism or Authority in negation of a Judicial Review is destructive of basic structure."

20. An argument was advanced before the Supreme Court in ***R.K. Jain*** that many of the Statutes creating such Tribunals either in terms of Article 323-A or in terms of Article 323-B, provided for a right of Appeal to the Supreme Court and that therefore, the High Court cannot exercise the power of Judicial Review under Article 226. But, the said argument was rejected in clear terms by K. Ramaswamy, J. in Paragraph 76 of the report in ***R.K. Jain***. The relevant portion of Paragraph 76 of the report in ***R.K. Jain*** reads as follows:

> "The remedy of Appeal by Special leave under Article 136 to this Court also proves to be costly and prohibitive and farflung distance too is working a constant constraint to litigant public, who could ill afford to reach this Court. An Appeal to a Bench of Two-Judges of the respective High Courts over the Orders of the Tribunals within its territorial jurisdiction on questions of law would assuage a growing feeling of injustice of those who can ill afford to approach the Supreme Court."
>
> Therefore, the argument that a remedy of Appeal is available to the Supreme Court was clearly rejected in *R.K. Jain*. A careful look at the majority opinion rendered in *R.K. Jain* would show that they did not express any dissent on the views expressed by K. Ramaswamy, J with regard to the availability of the power of Judicial Review under Articles 226/227.

21. After ***R.K. Jain*** came the decision of the Supreme Court in ***L. Chandrakumar***. In ***L. Chandrakumar***, the Supreme Court held that the power of Judicial Review over legislative action vested with the High Courts under Article 226 and the Supreme Court under Article 32 is an integral and essential feature of the Constitution, constituting part of its basic structure. In Paragraph 79, the Supreme Court specifically held that "the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution." As a consequence of the aforesaid

conclusion, the Larger Bench of the Supreme Court struck down as unconstitutional, in ***L. Chandrakumar***, Clause (2)(d) of Article 323-A and Clause (3)(d) of Article 323-B, to the extent they excluded the jurisdiction of the High Courts and the Supreme Court. The Supreme Court also declared as unconstitutional, Section 28 of the Administrative Tribunals Act, to the extent that it excluded the jurisdiction of the High Court. More specifically, the Larger Bench held in Paragraph 99 as follows:

> "Section 28 of the Administrative Tribunals Act, 1985 and the 'exclusion of jurisdiction' Clauses in all other legislations enacted under the aegis of Articles 323-A & 323-B are, to the same extent, unconstitutional."

22. The Supreme Court emphasized in ***L. Chandrakumar*** that "the jurisdiction conferred upon the High Court under Articles 226 & 227 and upon the Supreme Court under Article 32 is a part of the inviolable basic structure of the Constitution." In Paragraphs 91 & 92, the Supreme Court held as follows:

> "We may first address the issue of exclusion of the power of Judicial Review of the High Courts. We have already held that in respect of the power of Judicial Review, the jurisdiction of the High Courts under Article 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the *vires* of legislations is questioned and that they should restrict themselves to handling matters where Constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of Constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 & 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving Constitutional issues would not serve the purpose for which they were Constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of Judicial Review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an Appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a First Appellate Court. We have already emphasised the necessity for ensuring that

> the High Courts are able to exercise judicial superintendence over the decisions of Tribunals under Article 227 of the Constitution. In *R.K. Jain's case*, after taking note of these facts, it was suggested that the possibility of an Appeal from the Tribunals on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the afore-stated contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's Writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls."

23. It should be noted that though the Supreme Court was mainly concerned with the scope of Judicial Review of the orders of the Administrative Tribunals, the Supreme Court declared as unconstitutional, all the 'exclusion of jurisdiction' clauses in all similar enactments. This is perhaps the reason why the National Green Tribunal Act, does not specifically exclude the jurisdiction of the High Courts. The National Green Tribunal Act specifically excludes the jurisdiction of the Civil Courts under Section 29, but, it does not exclude the jurisdiction of the High Court. It nevertheless provides for a right of Appeal under Section 22 to the Supreme Court. But, this right of Appeal provided to the Supreme Court has to be understood in the context of the observations made in Paragraph 76 of the decision in ***R.K. Jain***.

24. After ***L. Chandrakumar***, which emanated from Madras Bar, it was the turn of the Delhi Bar in ***Union of India v. Delhi High Court Bar Association,*** 2002 (2) CTC 106 (SC) : 2002 (4) SCC 275. The said case related to the challenge to the Constitutional validity of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. While upholding the validity of the Act, the Supreme Court pointed out in Paragraph 25 that the 1993 Act provided for a remedy of Appeal to an Appellate Tribunal, whose decision was also not final in view of the fact that the same could be subjected to Judicial Review by the High Court under Articles 226 & 227. In other words, one of the grounds, on which the 1993 Act was saved was that the power of Judicial Review of the High Court was not taken away by the creation of the Tribunal.

25. In ***State of Karnataka v. Vishwabharathi House Building Cooperative Society,*** 2003 (2) SCC 412, the Supreme Court was concerned with the Constitutionality of the Consumer Protection Act, 1986. After taking note of various provisions of the Act, the Supreme Court pointed out in Paragraph 41 that "by reason of the provisions of the Act, the power of Judicial Review of the High Court, which is a basic feature of the Constitution, has not been nor could be taken away." In Paragraph 53 of its decision in ***Vishwabharathi***, the Supreme Court pointed out as follows:

> "The provisions relating to power to approach the Appellate Court by a party aggrieved by a decision of the Forums/State Commissions as also the power of the High Court and this Court under Articles 226/227 of the Constitution of India

and Article 32 of this Court apart from Section 23 of the Act provide for adequate safeguards."

26. Therefore, it is clear from the decision of the Three Member Bench of the Supreme Court in ***Vishwabharathi*** that the provision of a three tier mechanism, the first at the District Level, the second at the State Level and the third at the National Level, did not take away the power of Judicial Review of this Court under Articles 226 & 227. This decision is of significance, in view of the fact that the Consumer Protection Act 1986 provides for a remedy of Appeal to the State Consumer Commission against an Award of the District Consumer Forum and it also provides for a remedy of further Appeal against the order of the State Commission to the National Commission. The provision of such a three tier mechanism alone was not taken by the Supreme Court as sufficient to uphold the validity of the Act. The availability of the power of Judicial Review to the High Court under Articles 226 & 227 was also taken as a factor by the Supreme Court for upholding the validity of the Act.

27. The next decision of the Supreme Court was that of a Nine Member Bench in ***I.R. Coelho (dead) by L.Rs. v. State of Tamil Nadu,*** 2007 (2) SCC 1. What led to a reference to the Nine-Judges Bench was the question as to whether the protection afforded by Article 31-B of the Constitution, was available to the laws added to the 9th Schedule by way of amendments issued after 24.4.1973, the date on which, the decision in ***Kesavananda Bharati v. State of Kerala,*** AIR 1973 SC 1461, came. The necessity for such a reference arose in view of the attempts made by the Parliament to include several laws in the 9th Schedule, so as to get over the difficulty posed by the basic structure theory propounded and accepted in ***Kesavananda Bharati***. In Paragraphs 135 & 136 of its decision in ***I.R. Coelho***, the Supreme Court dealt with the question as to whether the exclusion of Judicial Review was compatible with the Doctrine of Basic Structure. It was held in Paragraphs 135 & 136 as follows:

"Exclusion of Judicial Review if compatible with the Doctrine of Basic Structure-concept of Judicial Review:

135. Judicial Review is justified by combination of the Principle of Separation of Powers, rule of law, the principle of Constitutionality and the reach of Judicial Review' (*Democracy Through Law* by Lord Styen, p.131).

136. The role of the judiciary is to protect fundamental rights. A modern democracy is based on the twin principles of majority rule and the need to protect fundamental rights. According to Lord Styen, it is job of the judiciary to balance the principles ensuring that the Government on the basis of number does not override fundamental rights."

28. Though the decision of a Five-Judges Bench of the Supreme Court in ***State of West Bengal & others v. Committee for Protection of Democratic Rights, West Bengal & others,*** 2010 (2) CTC 84 (SC) : 2010 (3) SCC 571, arose in a different context with regard to the power of the High Court to order an investigation by the Central Bureau of Investigation, the Supreme Court

considered in that case, the question whether the power under Articles 226/227 was part of the basic structure. In Paragraph 39 of its decision, the Supreme Court pointed out that the power of Judicial Review stands on a different pedestal and that being part of the basic structure of the Constitution, it cannot be ousted or abridged even by a Constitutional amendment. Again in Paragraph 51, the Court pointed out that the power of Judicial Review vested in the Supreme Court and the High Courts is an integral part and essential feature of the Constitution, constituting part of its basic structure. While eliciting the conclusions that the Constitution Bench reached in the said decision, the Supreme Court held in Paragraphs 68(iii) & (v) as follows:

> "In view of the Constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of Judicial Review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional Courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and therefore, this requires an Authority other than Parliament to ascertain whether such limitations are transgressed. Judicial Review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, Judicial Review is justified by combination of 'the Principles of Separation of Powers, Rule of Law, the Principle of Constitutionality and the reach of Judicial Review.'
>
> ... ...
>
> Restriction on Parliament by the Constitution and restriction on the Executive by Parliament under an enactment do not amount to restriction on the power of the Judiciary under Articles 32 & 226 of the Constitution."

29. In ***A.K. Behera v. Union of India & another,*** 2010 (11) SCC 322, the decision of the Government of India to abolish the post of Vice Chairman of the Central Administrative Tribunal and the insertion of Section 10-A, into the Administrative Tribunals Act, 1985 was under challenge. By a 2:1 majority, the Supreme Court rejected the challenge. However, in his dissenting opinion, Dalveer Bhandari, J. indicated in Paragraph 74 of the decision that the power of Judicial Review is a basic and essential feature of the Constitution and that no law passed by the Parliament can abrogate it or take it away. The learned Judge pointed out that if the power of Judicial Review is abrogated or taken away, the Constitution will cease to be what it is.

30. In ***Indra Das v. State of Assam,*** 2011 (3) SCC 380, the Supreme Court was concerned with the conviction of a person under Section 3(5) of Terrorist and Disruptive Activities (Prevention) Act. In Paragraph 24 of the

said decision, it was pointed out by the Court that the Constitution is the highest law of the land and that no statute can violate it. If there is a statute, which appears to violate the Constitution, the Court can either declare it unconstitutional or read it down to make it Constitutional.

31. Therefore, from all the above decisions, it is quite clear that the power of Judicial Review conferred upon this Court under Articles 226/227, is part of the basic structure of the Constitution, which cannot be taken away even by a law enacted by the Parliament. As a matter of fact, the National Green Tribunal Act, 2010 does not expressly exclude the jurisdiction of this Court under Articles 226/227. Though it excludes the jurisdiction of the normal Civil Courts under Section 29, there is no express exclusion of the jurisdiction of this Court. The Respondents seek to read into Section 22 of the National Green Tribunal Act, 2010, an implied exclusion of the jurisdiction of this Court. As we have pointed out earlier, Section 22 provides for a remedy of Appeal to the Supreme Court, to any person aggrieved by any award, decision or order of the Tribunal. As seen from the language of Section 22, the Appeal is almost like a Second Appeal on a substantial question of law.

32. As we have pointed out earlier, the National Green Tribunal exercises both Original jurisdiction (under Section 14) as well as Appellate jurisdiction (under Section 16). Irrespective of whether an Order passed by the National Green Tribunal was in its Original or Appellate jurisdiction, the right of Appeal to the Supreme Court under Section 22 is put to the same tests as that of a Second Appeal under Section 100 of the Civil Procedure Code.

33. As a matter of fact, Section 29 of the National Green Tribunal Act, bars the jurisdiction of the Civil Courts. It can be compared with the language of Section 28 of the Administrative Tribunals Act, 1985 as it stood before the decision of the Supreme Court in ***L. Chandrakumar***. Section 28 of the Administrative Tribunals Act, read as follows:

> "*Exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution:*
>
> On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no Court except, (a) the Supreme Court; or (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for time being in force, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

34. As we have pointed out earlier, the Supreme Court not merely struck down Clause (2)(d) of Article 323-A and Clause (3)(d) of Article 323-B, but also struck down Section 28 of the Administrative Tribunals Act, to the

extent it excluded the jurisdiction of this Court under Articles 226/227. The Constitution Bench did not stop there. The Supreme Court went to the extent of declaring all 'exclusion of jurisdiction' clauses in all similar enactments also as unconstitutional.

35. Therefore, if the Parliament had actually included in Section 29 of the National Green Tribunal Act, 2010, a specific exclusion of the jurisdiction of the High Courts under Articles 226/227, the same would have been hit by the express declaration made in ***L. Chandrakumar***. If an express exclusion could have been burnt to ashes in the fire ignited in ***L. Chandrakumar***, we do not know how an implied exclusion could survive.

36. However, Mr. R. Muthukumarasamy, learned Senior Counsel appearing for the SEIAA, relied upon two decisions of the Supreme Court, one in ***T. Sudhakar Prasad v. Government of A.P.,*** 2001 (1) LLN 829 (SC) : 2001 (1) SCC 516; and another in ***R. Mohajan v. Shefali Sengupta,*** 2012 (4) SCC 761.

37. In ***T. Sudhakar Prasad***, the Supreme Court was concerned with two fundamental questions. One was as to whether the Administrative Tribunals have the power to punish a person for its contempt. The second question was whether, after the decision in ***L. Chandrakumar***, Section 17 of the Administrative Tribunals Act survived or had been rendered otiose.

38. The facts leading to the decision of the Supreme Court in ***T. Sudhakar Prasad*** are noteworthy. In that case, an Application was filed before the Andhra Pradesh Administrative Tribunal under Section 17 of the Administrative Tribunals Act, invoking its contempt jurisdiction. The Tribunal issued Notice and the State of Andhra Pradesh challenged before the High Court, the jurisdiction of the Tribunal to take cognizance of the alleged contempt. In yet another matter, a Contempt Petition was filed directly on the file of the High Court of Andhra Pradesh, complaining of willful disobedience of the Order of the Andhra Pradesh Administrative Tribunal, ignoring Section 17 of the Administrative Tribunals Act, 1985. When both the matters were taken up together by a Division Bench of the Andhra Pradesh High Court, the High Court held that after the decision of the Supreme Court in ***L. Chandrakumar***, Section 17 of the Administrative Tribunals Act did not survive and that consequently the Administrative Tribunals cannot exercise Contempt jurisdiction under Section 17. The High Court further held that a person, complaining of disobedience of the orders of the Administrative Tribunal, could as well approach the High Court under the provisions of the Contempt of Courts Act, 1971, which empowers the High Court to punish a person for contempt of Orders of the Subordinate Courts.

39. Aggrieved by the decision of the Andhra Pradesh High Court, the employee went on Appeal to the Supreme Court. After taking note of the discussion in ***L. Chandrakumar***, the Supreme Court held in Paragraph 17 as follows:

"The Supreme Court in the case of *L. Chandrakumar* has nowhere said that orders of the Tribunal holding the contemner guilty and punishing for contempt shall also be subject to judicial scrutiny of the High Court under Articles 226/227 of the Constitution in spite of remedy of statutory Appeal provided by Section 19 of the Contempt of Courts Act being available. The distinction between orders passed by the Administrative Tribunal on matters covered by Section 14(1) of the Administrative Tribunals Act and orders punishing for contempt under Section 19 of the Contempt of Courts Act read with Section 17 of the Administrative Tribunals Act, is this : as against the former there is no remedy of Appeal statutorily provided, but as against the latter statutory remedy of Appeal is provided by Section 19 of the Contempt of Courts Act itself."

40. The aforesaid decision rendered by a Three Member Bench in ***T. Sudhakar Prasad*** was followed by the Supreme Court in ***R. Mohajan***. After extracting the decision in ***T. Sudhakar Prasad,*** the Supreme Court held in ***R. Mohajan*** that as against a Notice issued by the Central Administrative Tribunal in exercise of its contempt jurisdiction under Section 17 of the Administrative Tribunals Act, an Appeal to the Supreme Court would directly lie.

41. Therefore, it is contended by Mr. R. Muthukumarasamy, learned Senior Counsel for the SEIAA that cases where a statutory remedy of Appeal is provided, would stand on a different footing than cases where no such statutory remedy of Appeal is provided. According to the learned Senior Counsel, a statutory remedy of Appeal to the Supreme Court is provided by Section 22 of the National Green Tribunal Act, 2010 and that therefore, the ratio laid down in ***L. Chandrakumar*** may not apply to orders passed by the National Green Tribunal.

42. But, we do not think that it is the correct way of understanding the decision in ***T. Sudhakar Prasad***. In Paragraph 19 of its decision in ***T. Sudhakar Prasad***, the Supreme Court clarified that "jurisdiction should not be confused with status and subordination." After drawing such a fine distinction, the Supreme Court nevertheless pointed out towards the end of Paragraph 19 that there is no anathema to the Tribunal exercising the jurisdiction of the High Court and in that sense, being supplemental or additional to the High Court, but at the same time not enjoying the status equivalent to the High Court and also being subject to Judicial Review and judicial superintendence of the High Court.

43. If we have a careful look at Sections 17 & 28 of the Administrative Tribunals Act, 1985, it would be clear that any order passed by the Administrative Tribunal under Section 17, would have been amenable to the jurisdiction of the Supreme Court under Section 28, before ***L. Chandrakumar*** read down Section 28. The only difference brought forth by ***L. Chandrakumar*** was that if a person had been punished under Section 17 of the Administrative Tribunals Act, 1985, he could have challenged the same under Articles 226/227 of the Constitution, without invoking the remedy under Section 19 also.

44. What the Supreme Court took exception to, in ***T. Sudhakar Prasad*** was the decision reached by the Andhra Pradesh High Court that Section 17 of the Administrative Tribunals Act had also been rendered otiose by the decision in ***L. Chandrakumar***. In ***L. Chandrakumar***, the Constitution Bench of the Supreme Court merely struck down two Sub-Clauses of Articles 323-A & 323-B and read down Section 28 of the Administrative Tribunals Act, 1985. The Supreme Court did not hold in ***L. Chandrakumar*** that the power under Section 17 was not available to the Administrative Tribunals. But, the Andhra Pradesh High Court read into the decision of the Supreme Court in ***L. Chandrakumar*** that Section 17 had also been rendered redundant. This is why the Supreme Court clarified in ***T. Sudhakar Prasad*** that Section 17 survived despite ***L. Chandrakumar*** and that if Section 17 survived, the remedy of Appeal under Section 19 of the Contempt of Courts Act also survived. If the power under Section 17 of the Administrative Tribunals Act survived despite ***L. Chandrakumar*** and if the right of Appeal under Section 19 of the Contempt of Courts Act also survived as a consequence, then there was only one question left open to be decided. It was as to whether a person can directly go to the Supreme Court under Section 19 of the Contempt of Courts Act or should first go before the High Court under Article 226. On this question, the answer is too obvious to state. The statutory remedy of Appeal under Section 19 of the Contempt of Courts Act, provided a larger scope for canvassing the correctness of an order punishing a person for contempt. The jurisdiction under Articles 226 & 227 is confined only to the parameters, on which, a Judicial Review is permissible under the Constitution. Therefore, the Supreme Court came to the conclusion in ***T. Sudhakar Prasad*** that it is not possible to exclude the availability of a larger right statutorily conferred, on the ground of availability of a lesser right in terms of the power of superintendence conferred upon this Court.

45. For understanding the decision of the Supreme Court in ***T. Sudhakar Prasad***, it is necessary to have a look at Section 19 of the Contempt of Courts Act, 1971 and have the same compared with Section 22 of the National Green Tribunal Act, 2010. Section 19 of the Contempt of Courts Act reads as follows:

> "*Appeals.— (1)* An Appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt—
>
> *(a)* where the order or decision is that of a Single Judge, to a Bench of not less than two Judges of the Court;
>
> *(b)* where the order or decision is that of a Bench, to the Supreme Court:
>
> Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.
>
> *(2)* Pending any Appeal, the Appellate Court may order that:
>
> *(a)* the execution of the punishment or order appealed against be suspended;

(b) if the Appellant is in confinement, he be released on bail, and

(c) the Appeal be heard notwithstanding that the Appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an Appeal may be filed satisfies the High Court that he intends to prefer an Appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An Appeal under sub-section (1) shall be filed—

(a) in the case of an Appeal to a Bench of the High Court, within thirty days;

(b) in the case of an Appeal to the Supreme Court, within sixty days, from the date of the order appealed against."

46. We have already extracted Section 22 of the National Green Tribunal Act, 2010. We have also pointed out that the right of Appeal under Section 22 of the National Green Tribunal Act, 2010 is subject to a very serious restriction namely that it should pass the same test as stipulated in Section 100 of the Civil Procedure Code namely the existence of a substantial question of law. But, an Appeal under Section 19 of the Contempt of Courts Act, 1971 is as a matter of right. As can be seen from the language employed in Section 19(1) of the Contempt of Courts Act, 1971, an Appeal shall lie "as of right".

47. Therefore, the distinction between cases arising under Section 19 of the Contempt of Courts Act and those arising under Section 22 of the National Green Tribunal Act, 2010, is too easy to be seen and deciphered. What is conferred by Section 19 of the Contempt of Courts Act, 1971 is a right, the exercise of which does not depend upon any discretion in the matter of admission of the Appeal. In contrast, what is conferred by Section 22 of the National Green Tribunal Act, 2010, is only a remedy, the availability of which is subject to very serious restrictions and discretion. The availability of a remedy, which is subject to serious restrictions, cannot be equated to a right conferred by the Statute. In ***T. Sudhakar Prasad***, the Andhra Pradesh High Court interpreted the decision of the Supreme Court in ***L. Chandrakumar*** in such a manner as to extinguish a statutory right and elevate a discretionary remedy. This is why the Supreme Court stepped in to clear the air of confusion.

48. As we have pointed out earlier, the National Green Tribunal Act, 2010 contains two provisions, one in Section 22 and another in Section 29, with the former providing for a remedy of Appeal and the latter barring the jurisdiction of Civil Courts and not Constitutional Courts. What the Respondents want us to do is to read into Section 22, an exclusion of jurisdiction of this Court under Articles 226 & 227. If the National Green Tribunal Act itself had contained a specific provision excluding the jurisdiction of this Court under Articles 226 & 227, the same would have been obviously invalid in view of the specific declaration made in ***L. Chandrakumar***. If an express exclusion, assuming that it had been provided,

cannot be saved, we do not know how an implied exclusion could be saved. In view of the above, we reject the objections made by the Respondents to the maintainability of the Writ Petitions.

On Merits :

49. Having settled the question of maintainability of the Writ Petitions, let us now move on to the merits.

50. At the cost of repetition, the brief facts that led to the impugned Order of the National Green Tribunal, are summarized with reference to certain historic facts, as follows:

(a) By an Order dated 26.7.2002 passed in a Contempt Petition in Cont.P. No.561 of 2001, arising out of a Writ Petition in W.P. No.985 of 2000, this Court directed the State Government to constitute a Committee of Experts comprising of Geologists, Environmentalists and Scientists to study the river and river beds in the State with particular reference to the damage caused on account of indiscriminate sand quarrying operations;

(b) Accordingly, the Government constituted a Six Member High Level Committee. On the basis of the recommendations made by the Committee, the Government inserted Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, whereby all existing leases for quarrying sand in Government lands and the permissions granted in ryotwari lands ceased to be effective from 2.10.2003. The right to quarry sand vested with the Government. Therefore, on and from 2.10.2003, all sand quarries in Government lands started getting operated only by the Public Works Department;

(c) The validity of Rule 38-A was upheld by the Supreme Court in ***State of Tamil Nadu v. P. Krishnamurthy,*** 2006 (4) SCC 517;

(d) By order in G.O.Ms. No.327, Industries, dated 1.12.1997, the Government prohibited the use of machinery for quarrying sand from river beds. By another Government Order in G.O.Ms. No.19, Industries Department, dated 19.4.2004, sub-rule (6) was inserted under Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules. The said Sub-Rule prohibited the use of machinery for quarrying sand from river beds, except with the permission of the Secretary to Government, Industries Department or anyone authorized by him;

(e) In the year 2010, a batch of Writ Petitions came to be filed on the file of the Madurai Bench of the Madras High Court in W.P.(MD).No.11182 of 2010 batch of cases, with regard to indiscriminate sand quarrying operations in the river Tamirabarani. By a common Order dated 2.12.2010, a Division Bench of this Court issued certain directions, which were applicable also to the quarrying of sand in the other rivers of the State of Tamil Nadu. One of the directions issued in Paragraph 86 of the said decision was that no poclain or other heavy machinery should be

used for sand quarrying and that an amendment in this regard should be made to the Rules within six months;

(f) The Government came up with an Application for review of the Order. Considering the request, the Division Bench of this Court, by an Order dated 10.1.2011, modified its earlier Order dated 2.12.2010 and permitted two poclains to be used, during restricted timings.

(g) Thereafter, a batch of Writ Petitions came to be filed in W.P.(MD). Nos. 4699 of 2012, etc. cases, praying for the issue of Writs of Mandamus to forbear the Respondents from carrying on sand quarrying operations along side the stretches of the rivers of Cauvery and Kollidam in Karur, Trichy, Thanjavur, Nagapattinam and Thiruvarur Districts. In the course of hearing of those Writ Petitions, the Government pointed out that there were about 42 sand quarrying operators operating in the river Cauvery across five districts namely Karur, Trichy, Thanjavur, Thiruvarur and Nagapattinam. Therefore, this Court directed the District Collectors of those five districts to file independent reports giving details about the quarries in operation. Accordingly, those details were filed by the District Collectors.

(h) Thereafter, the Division Bench of this Court disposed of the said Writ Petitions by a common Order dated 3.8.2012. The effect of the Order of the Division Bench was that permission for fresh sand quarrying operations in the river Cauvery could be granted by the State Government only after getting Environmental Clearance from the SEIAA, as per the Notification on the EIA dated 14.9.2006 and the Office Memorandum of the MoEF dated 18.5.2012. The Bench directed some of the existing quarries to be either stopped for ever or to be started after getting Environmental Clearance. The Bench also directed that quarrying operations are to be carried out only between 7 a.m. & 5 p.m., in areas specifically earmarked by the Public Works Department. The Bench further directed the SEIAA to consider the Applications of the State Government/Public Works Department for appropriate permission and to pass Orders within a period of two months from the date of receipt of the Applications.

(i) It appears that in pursuance of the said Order, the Public Works Department started filing project proposals before the SEIAA. Since the Division Bench granted only two months' time to the SEIAA for processing those Applications and for passing Orders, the SEIAA appears to have sent a Letter to the Secretary to Government, MoEF, Government of India on 21.8.2012, requesting them to issue Guidelines for processing the Applications and project proposals. It was followed by another Letter dated 30.8.2012 making a similar request on the ground that the time fixed by the High Court was running out.

(j) By a communication dated 27.9.2012, the SEIAA informed the MoEF that in the absence of any Guidelines issued by the MoEF, the SEIAA itself would adopt certain Guidelines. The Guidelines sought to be

adopted by the SEIAA as an interim measure and which were indicated in their Letter dated 27.9.2012 to the MoEF, are as follows:

"*(i)* All mining projects wherein the boundary of the proposed mining area is at least 1.0 KM away form the human habitation/other sensitive areas will be considered for sanction of Environmental Clearance subject to satisfaction of other Guidelines.

(ii) If the boundary of the proposed mining area is less than 1.0 KM, the SEAC will inspect the site and assess the various environmental impacts and then recommend/reject with specific conditions/reasons.

(iii) In case, if the proposed mining area is less than 25.0 Hec, it will be considered as B2 category with Environmental Management Plan, and processed further.

(iv) In case, if the proposed mining area is more than 25.0 Hec, it will be considered as B1 category, which will require preparation of the EIA as per revised model TORs issued by MoEF, Government of India and Public Hearing will be undertaken and the same will be examined in detail for taking a decision on the issue of Environmental Clearance, strictly adhering to Government of India Guidelines."

Thereafter, finding no response from the MoEF, the SEIAA granted Environmental Clearances on 30.11.2012, on the basis of the above *Ad hoc* Guidelines.

(k) These clearances granted on 30.11.2012 by the SEIAA to the Executive Engineer of the Public Works Department of the Government of Tamil Nadu were challenged by various Farmers' Associations and Environmentalists by way of Appeals in Appeal Nos.64 to 69, 73 to 76 & 78 to 89 of 2013, under Section 16 of the National Green Tribunal Act, 2010. During the pendency of these Appeals, the MoEF issued a fresh Notification dated 24.12.2013. Therefore, these Guidelines were placed before the National Green Tribunal, in the course of hearing.

(l) Thereafter, the National Green Tribunal disposed of all the Appeals by a common Order dated 24.2.2014, holding that in view of the Guidelines issued by the MoEF on 24.12.2013, the Guidelines issued by the SEIAA and the Environmental Clearances granted on the basis of those Guidelines actually lapsed. However, considering the economic and social needs and public interest at large, the National Green Tribunal allowed the State Government to continue quarrying operations for a period of six months on the basis of the Environmental Clearances granted by the SEIAA and on the basis of the of the Guidelines framed by them on 27.9.2012.

(m) In the meantime, the Public Works Department was directed by the Tribunal to make fresh Applications to the MoEF as per the Guidelines dated 24.12.2013 and obtain clearances in accordance with law. The operative portion of the Order of the Southern Regional Bench of the Green Tribunal requires reproduction. Hence, it is reproduced as follows:

"In view of the economic and social needs and public interest at large, the Environmental Clearances originally granted by the 2nd Respondent/State Level Environment Impact Assessment Authority based on the *Ad hoc* Guidelines shall continue for a period of six months with a direction to the 4th Respondent to make necessary Applications for obtaining Environmental Clearances based on the new Guidelines issued by the MoEF which have come into force from 24.12.2013. The Authorities issuing Environmental Clearances are directed to process the Applications following the new Guidelines cited above as per law for the grant of Environmental Clearances. During the period of six months, the *Ad hoc* arrangements have to continue and the 4th Respondent are directed to strictly follow and ensure the compliance of conditions attached to the Environmental Clearances. This order will apply only to the sand quarries which are in operation pursuant to the grant of impugned Environmental Clearances."

51. Neither the Executive Engineer of the Public Works Department nor the SEIAA nor the Lorry Owners' Association, which has come up with an Application for impleading, probably as a co-sponsor, have come up with any Writ Petition against the order of the National Green Tribunal dated 24.2.2014. None of them have also gone to the Supreme Court by way of an Appeal under Section 22 of the National Green Tribunal Act, 2010. Therefore, it is clear that the State Government, the SEIAA as well as the Lorry Owners' Association have accepted the verdict of the Southern Regional Bench of the National Green Tribunal.

52. The consequence of the State Government and the SEIAA not challenging the Order of the Green Tribunal dated 24.2.2014 is of great significance. The significance is that the State Government as well as the SEIAA are now bound by the order of the Green Tribunal. By the said order, the National Green Tribunal allowed the Executive Engineer of the Public Works Department to carry on sand quarrying operations, as per the Environmental Clearances granted by the SEIAA, only for a period of six months. This period of six months will expire on 23.8.2014. Before the said date, namely 23.8.2014, the Public Works Department is supposed, by the Order of the Green Tribunal, to approach the MoEF for Environmental Clearances afresh.

53. But, according to the learned Advocate General, the Public Works Department has not so far filed any Application before the MoEF for Environmental Clearances in terms of the Guidelines issued by them on 24.12.2013. Therefore, it is admitted by Mr. R. Muthukumarasamy, learned Senior Counsel appearing for the SEIAA that the Public Works Department of the State cannot continue quarrying operations as per the Order of the Green Tribunal, beyond 24.8.2014. This date is hardly one month away from now.

54. In other words, out of the total period of six months granted by the National Green Tribunal (perhaps as a moratorium) to the Public Works Department, a period of five months has already expired. The Public Works Department of the State has enjoyed the fruits of the Order of the National Green Tribunal for five months out of the period of six months granted by

them and they have not taken any steps to get Environmental Clearance beyond 24.8.2014 in accordance with the new Guidelines.

55. Mr. A.L. Somayaji, learned Advocate General contended that though with the issue of the Guidelines dated 24.12.2013 by the MoEF of the Government of India, the *Ad hoc* Guidelines issued by the SEIAA on 27.9.2012 would have lapsed, the Environmental Clearances granted by the SEIAA in terms of those *Ad hoc* Guidelines would not lapse. In other words, he tried to contend that the Environmental Clearances granted on 30.11.2012 by the SEIAA in terms of their *Ad hoc* Guidelines would survive for a full period of five years (upto 31.10.2017), despite the *Ad hoc* Guidelines themselves facing a natural death.

56. But, Mr. R. Muthukumaraswamy, learned Senior Counsel appearing for the SEIAA did not agree with the above contention. In response to a pointed query made by us, the learned Senior Counsel conceded that such an argument as advanced by the learned Advocate General was not raised before the National Green Tribunal. The National Green Tribunal did not opine that the Environmental Clearances granted by the SEIAA on 30.11.2012 would survive. As a matter of fact, the National Green Tribunal was of the view that the Environmental Clearances granted on 30.11.2012 by the SEIAA in terms of its own *Ad hoc* Guidelines dated 27.9.2012, perished, the moment the MoEF issued the Guidelines dated 24.12.2013. This is why the National Green Tribunal assumed to itself the power to grant a new lease of life to the already dead licenses, for a period of six months from 24.2.2014 upto 23.8.2014, to enable the State to make Applications in terms of the MoEF Notification dated 24.12.2013. Since the State Government has accepted the Order of the National Green Tribunal, it is not open to the State Government to contend that despite the order of the Green Tribunal, the Environmental Clearances obtained by them will survive upto the year 2017.

57. Before we proceed to test the correctness of the Order of the National Green Tribunal, we may have to take note of one more development that had taken place in the recent past. It appears that certain Applications were filed before the Principal Bench of the National Green Tribunal, sitting in Circuit at Shimla, challenging the Notification of the MoEF dated 24.12.2013. The Principal Bench of the National Green Tribunal appears to have passed an order on 28.3.2014, staying the operation of the Office Memorandum dated 24.12.2013. The Order of the Principal Bench of the National Green Tribunal reads as follows:

> "We have heard learned Counsel appearing for the parties. The Ministry of Environment and Forest (MoEF) has not been able to explain as to how the Office Memorandum dated 24th December 2013 is in conformity with the Order of the Hon'ble Supreme Court in *Deepak Kumar's case,* order of the NGT and the Notification dated 9th September 2013 issued by the MoEF itself. We do not think that the MoEF could have issued such memorandum. The Notification issued by the MoEF is an act of subordinate legislation and was issued in

exercise of statutory powers. The Office Memorandum is an Administrative Order and cannot frustrate the legislative act. In fact, it falls beyond the scope of administrative powers. Consequently, we stay the operation and effect of the order of Office Memorandum dated 24th December 2013. In so far as it relates to the minor minerals like sand, etc., list these matters on 30th May 2014 for hearing."

58. Therefore, on the basis of the order of the Principal Bench of the National Green Tribunal staying the operation of the MoEF Notification dated 24.12.2013, it was contended that the Environmental Clearances cannot be obtained as per the order of the Green Tribunal impugned in these Writ Petitions.

59. But, we do not think that we can resolve the said problem. If the State Government is of the opinion that they may not be now able to apply for Environmental Clearances as per the Notification of the MoEF dated 24.12.2013 and in pursuance of the order of the Green Tribunal dated 24.2.2014, they should only take it up with the Principal Bench of the National Green Tribunal, for vacating the order of stay. Therefore, as things stand today, there is no escape from the conclusion that once we dismiss all the Writ Petitions, the order of the Green Tribunal dated 24.2.2014, which is impugned in all these Writ Petitions, will continue to bear fruit for the State Government only upto 23.8.2014 and not thereafter.

Contentions on Merits:

Contention 1:

60. It is contended by Mr. T. Mohan, learned Counsel appearing for the Petitioner in the first batch of Writ Petitions, that as per the EIA Notification dated 14.9.2006, issued by the MoEF, in exercise of the powers conferred by sub-section (1) and Clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, Environmental Clearances for mining minor minerals in an area of more than 50 hectares, classified as category A projects, have to be obtained from the MoEF. If the area in question is of the extent of more than 5 hectares but less than 50 hectares, the project for mining minor minerals in those areas are classified as category B projects, for which, Environmental Clearances could be obtained from the SEIAA.

61. Though the Notification on EIA dated 14.9.2006 came into force on 14.9.2006, the State of Tamil Nadu did not take care to obtain Environmental Clearances, till this Court issued a mandate on 3.8.2012 in a batch of Writ Petitions in W.P. Nos.4699 of 2012, etc. cases. Thereafter, the Public Works Department applied for clearances to the SEIAA. Under the pretext of complying with this Court's directions, SEIAA framed Draft Guidelines on 27.9.2012. Under these Draft Guidelines, the SEIAA sub-classified category B projects into B1 & B2 projects. Quarries in an area of less than 25 hectares were categorized as B2 projects and quarries in an area of more than 25 hectares were classified as B1 projects. Therefore, in

essence, the contention of Mr. T. Mohan, learned Counsel for the Petitioner is that SEIAA usurped the power of the MoEF.

62. The usurpation powers by the SEIAA are sought to be defended on two grounds, namely —

(a) that they were racing against the time limit of 2 months fixed by this Court in its Common Order dated 3.8.2012 for framing Guidelines and examining the proposals of the State Government; and

(b) That the SEIAA of the Andhra Pradesh as well as other States have issued similar *Ad hoc* Guidelines.

63. But, we do not think that the SEIAA can, under any pretext, actually usurp the powers not conferred upon it. This can be well appreciated only if we have a look at the source of power for the SEIAA. The SEIAA was actually constituted in terms of Paragraph 3 of the Notification on EIA dated 14.9.2006 issued by the Central Government in exercise of the power conferred under Section 3(1)(v) and Section 3(2) of the Environment (Protection) Act, 1986 read with Clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986. Since the SEIAA is a creature of the Notification on EIA, the source of power flows only out of the Notification and not otherwise.

64. It is under the very same Notification on EIA dated 14.9.2006 (Paragraph 4) that all projects and activities are broadly classified into A and B categories, based on (i) the spatial extent of potential impacts; and (ii) potential impacts on human health and natural and man made resources. The Schedule to the Notification on EIA dated 14.9.2006 contains a Table that lists out (i) the projects or activities; (ii) the category to which, each of them belongs; and (iii) the conditions that would apply. In so far as the mining of minerals is concerned, it is covered by S. No.1(a) of the Table given in the Schedule to the Notification on EIA dated 14.9.2006.

65. In Column Nos.3 & 4 of the Table under the Schedule to the Notification on EIA, it is indicated as against S. No.1(a) that mining of minerals in a lease area of 50 hectares and above would be categorized as A Projects and mining of minerals in a lease area of 5 hectares and above, but below 50 hectares would be categorized as B Projects. In Column No.5 of the same Table, it is made clear that general conditions would apply to both A and B Category Projects. Below the Table, under the Schedule to the Notification, there is a note, which indicates general condition as well as specific condition. The general condition reads as follows:

> "Any project or activity specified in Category B will be treated as Category A, if located in whole or in part within 10 Kms from the boundary of (i) protected areas notified under the Wild Life (Protection) Act, 1972; (ii) critically polluted areas as notified by the Central Pollution Control Board from time to time; (iii) notified ecosensitive areas; (iv) Inter State and International boundaries."

66. Paragraph 4(iii) of the Notification on EIA dated 14.9.2006 makes it clear that all projects or activities included as Category B in the Schedule will require prior Environmental Clearances from the SEIAA and that the SEIAA should base its decision on the recommendations of a State Level Expert Appraisal Committee (hereinafter referred to as the SEAC). This Paragraph makes it clear that in the absence of a duly constituted SEIAA or SEAC, a Category B Project shall be treated as a Category a project. But, this portion of the Notification on EIA dated 14.9.2006 [last line of Paragraph 4(iii)], was amended by a Notification dated 1.12.2009 to enable the Category B Projects to be considered at the Central Level, in the absence of SEIAA or SEAC.

67. Under Paragraph 7 of the Notification on EIA dated 14.9.2006, as amended by the Notification dated 1.12.2009, the Environmental Clearance process for new projects will comprise of a maximum of four stages, in the sequential order as follows :

(i) Screening (only for Category B projects);

(ii) Scoping;

(iii) Public Consultation; and

(iv) Appraisal.

68. Paragraph 5 of the Notification on EIA dated 14.9.2006 makes it clear that the Expert Appraisal Committee at the Central Level and the SEAC at the State Level shall screen, scope and appraise the projects or activities in Category A as well as Category B respectively. It is of interest to note that under Paragraph 5(e) of the Notification on EIA, the Expert Appraisal Committees at the Central level and those at the State level (SEACs) are obliged to function on the principle of collective responsibility.

69. In other words, they are supposed to work in tandem. But unfortunately, in the case on hand, they have worked at cross purposes. *The Central Government has taken a stand both before the National Green Tribunal and before this Court that the Environmental Clearances granted by the SEIAA in accordance with the Ad hoc Guidelines, are contrary to law. But, the SEIAA, which is actually a creature of the Central Government, has gone against its own creator and contested the case, both before the National Green Tribunal and before this Court, like a private party would do, virtually advancing the cause of the lorry owners engaged in the transportation of sand.*

70. The fact that the SEIAA overreached its mandate and went against the very purpose of its creation, can be appreciated from the very *Ad hoc* Guidelines framed by the SEIAA on 27.9.2012 on the specious plea that the MoEF had not issued any Guidelines. At the risk of repetition, the Guidelines issued by the SEIAA on 27.9.2012 are again extracted as follows:

> "*(i)* All mining projects wherein the boundary of the proposed mining area is at least 1.0 KM away form the human habitation/other sensitive areas will be

considered for sanction of Environmental Clearance subject to satisfaction of other Guidelines.

(ii) If the boundary of the proposed mining area is less than 1.0 KM, the SEAC will inspect the site and assess the various environmental impacts and then recommend/reject with specific conditions/reasons.

(iii) In case, if the proposed mining area is less than 25.0 Hec, it will be considered as B2 category with Environmental Management Plan, and processed further.

(iv) In case, if the proposed mining area is more than 25.0 Hec, it will be considered as B1 category, which will require preparation of the EIA as per revised model TORs issued by MoEF, Government of India and Public Hearing will be undertaken and the same will be examined in detail for taking a decision on the issue of Environmental Clearance, strictly adhering to Government of India Guidelines.

It is also informed that the above said Guidelines will cease to be in force from the date of Notification/Memorandum to be issued by the MoEF, GOI on the subject."

71. The above *Ad hoc* Guidelines issued by the SEIAA would shock the conscience of any person, as it goes far beyond the Notification on EIA dated 14.9.2006 and the directions issued by the Supreme Court in ***Deepak Kumar.*** The above *Ad hoc* Guidelines issued by the SEIAA actually tend to over-reach and also destroy the requirements of the Notification on EIA, as seen from the following:

(i) These Guidelines divide Mining Projects first into two categories, one located at least 1.0 KM away from human habitation and another located within a distance of 1.0 KM from human habitation. Such a classification is not to be found in the Notification on EIA dated 14.9.2006. We do not know where from the SEIAA, which derives its powers from the Notification on EIA, got the power to create one more classification based upon the distance or the location from human habitation. No residual powers have been conferred upon the SEIAA by the Notification on EIA; and

(ii) The *Ad hoc* Guidelines of the SEIAA classify B Category Projects into B1 and B2 Category Projects. Projects on proposed mining area of less than 25 hectares are classified as B2 and projects on a proposed mining area of more than 25 hectares are classified as B1 Category Projects. After doing so, the *Ad hoc* Guidelines issued by the SEIAA dated 27.9.2012 have completely dispensed with the requirements of Paragraph 7 read with Paragraph 5 of the Notification on EIA dated 14.9.2006, in respect of projects on proposed mining area of less than 25 hectares. Therefore, the *Ad hoc* Guidelines dated 27.9.2012, on the basis of which, the SEIAA granted the Environmental Clearances in the cases on hand, were completely contrary to the Notification on EIA dated 14.9.2006, as amended by the Notification dated 1.12.2009. They were also completely contrary to the dictum of the Supreme Court in ***Deepak Kumar.***

72. In Paragraphs 25 & 26 of its Judgment in ***Deepak Kumar,*** the Supreme Court observed as follows:

> "Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive in-stream sand and gravel mining causes the degradation of rivers. In-stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the stream-bed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a stream-bed has a direct impact on the stream's physical habitat characteristics.
>
> We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio-assessment Protocol. Sand mining, it may be noted, may have an adverse effect on biodiversity as loss of habitat caused by sand mining will affect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48-A and Article 51-A(g) read with Article 21 of the Constitution."

73. But, the *Ad hoc* Guidelines issued on 27.9.2012 by the SEIAA completely overlooks the above observations of the Supreme Court, as it tends to grant Environmental Clearances blind-fold, if the proposed mining area is less than 25 hectares.

74. Therefore, the first contention of Mr. T. Mohan, learned counsel appearing for the Petitioner in the first batch of Writ Petitions, that the Environmental Clearances issued by SEIAA on the basis of the *Ad hoc* Guidelines dated 27.9.2012 that were completely contrary to the Notification on EIA, ought to be upheld. The Notification on EIA dated 14.9.2006, as amended by the Notification dated 1.12.2009, empowered the SEIAA to process the proposals for projects in a mining area of 5 hectares and above, but below 50 acres. *The EIA Notifications dated 14.9.2006 and 1.12.20009 did not empower the SEIAA to annul the effect of Paragraphs 5 & 7 of the Notification dated 14.9.2006 and grant Environmental Clearances, without screening, scoping, public consultation and appraisal to projects where the proposed mining area is less than 25 hectares*. In as much as *the Ad hoc Guidelines of the SEIAA permit the grant of clearances to projects on proposed mining area of less than 25 hectares without screening, scoping, public consultation and appraisal, they are completely contrary to the Notification, by which, the SEIAA was created.* Even the Union of India, in the counter filed before the National Green Tribunal, clearly admitted that the SEIAAs are not empowered to sub-categorize B Projects into B1 and B2 Categories.

Contention No.2:

75. In ***Deepak Kumar,*** the Supreme Court issued three directives. They are (i) the Central Government should take steps to bring into force The Minor Minerals Conservation and Development Rules, 2010 at the earliest; (ii) the State Governments should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, taking into consideration the recommendations of the MoEF in its Report of March 2010; and (iii) in the meanwhile, the leases of minor minerals including their renewal for an area of less than 5 hectares be granted by the States/Union Territories only after getting the Environmental Clearances from the MoEF. Therefore, *the second contention of the Petitioners is that the SEIAA is neither competent to issue Ad hoc Guidelines nor competent to grant Environmental Clearances for areas equivalent to or more than 5 hectares.*

76. In order to test the correctness of the above contention, it is necessary to have a look at Paragraphs 28 & 29 of the decision of the Supreme Court in ***Deepak Kumar.*** They read as follows:

> "The Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules, 2010 at the earliest. The State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its report of March 2010 and Model Guidelines framed by the Ministry of Mines, Government of India. Communicate the copy of this order to MoEF, Secretary, Ministry of Mines, New Delhi, Ministry of Water Resources, Central Government Water Authority; the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the Departments concerned.
>
> *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.*"

77. In pursuance of the decision of the Supreme Court in ***Deepak Kumar*** rendered on 27.2.2012, the MoEF issued certain directions on 18.5.2012. Paragraph 3 of the Office Memorandum dated 18.5.2012 issued by the MoEF reads as follows:

> "In order to ensure compliance of the above referred Order of the Hon'ble Supreme Court dated 27.2.2012, it has now been decided that all mining projects of minor minerals including their renewal irrespective of the size of the lease would henceforth require prior environment clearance. Mining projects with lease area up to less than 50 hectares including projects of minor mineral with lease area less than 5 hectares would be treated as Category 'B' as defined in the EIA Notification, 2006 and will be considered by the respective SEIAAs notified by MoEF and following the procedure prescribed under EIA Notification, 2006."

78. Therefore, the second contention of the Petitioners that the SEIAA granted Environmental Clearances, contrary to the Judgment of the Supreme Court in ***Deepak Kumar,*** is too obvious.

Contention No.3:

79. The third contention of Mr. T. Mohan, learned Counsel, is that it was not within the jurisdiction of the National Green Tribunal to compare the *Ad hoc* Guidelines dated 27.9.2012 issued by the SEIAA with the Guidelines issued by the MoEF dated 24.12.2013 and come to a conclusion that those issued by SEIAA were far better.

80. We are in Agreement with the above contention of Mr. T. Mohan, learned Counsel. In Paragraph 41 of its Order dated 24.2.2014, the National Green Tribunal presented in a tabular form, a comparative statement of the *Ad hoc* Guidelines issued by the SEIAA and those issued by the MoEF. Even a bare perusal of the very same tabular statement would show that as per the Notification of the MoEF, mining activity is to be done only manually. But, the Environmental Clearances granted by the SEIAA, permit mining activity even mechanically. We do not know how such a prescription in the *Ad hoc* Guidelines could be taken to be more stringent than the Guidelines issued by the MoEF, restricting mining only to manual operations.

81. As a matter of fact, the National Green Tribunal ought to have tested the *Ad hoc* Guidelines dated 27.9.2012 on the touchstone of the parent Notification dated 14.9.2006. If so done, it would have become very clear that the *Ad hoc* Guidelines actually overreached and even nullified the effect of the original Notification. Another important aspect omitted to be taken note of by the Green Tribunal, while making a comparison, is that in the latest Guidelines dated 24.12.2013 issued by the MoEF, the requirement of public hearing is dispensed with, only due to the fact that it permitted manual mining alone for such projects. The National Green Tribunal has not appreciated this most crucial aspect. Therefore, the third contention of the Petitioners is also to be upheld.

Contention No.4:

82. The fourth contention of the Petitioners is that even as per the Environmental Clearances granted by the SEIAA on 30.11.2012, the project proponent (Public Works Department of the State in this case) should undertake adequate safeguard measures during extraction of river bed material and ensure that due to this activity, the hydro geological regime of the surrounding area is not affected. But, this study has not been undertaken and no report so far submitted to the MoEF. Hence, it is contended by Mr. T. Mohan, learned Counsel that in any case, the Respondents cannot continue to quarry sand from the river beds, as they are guilty of violating the conditions for the grant of clearance.

83. For an assessment of the above contention, it is essential to have a look at the Environmental Clearance granted by the SEIAA on 30.11.2012.

The Environmental Clearance is actually for quarrying 2,28,453 cubic meters of sand, at the rate of (i) 44,608 cubic meters in the first year; (ii) 50,000 cubic meters per annum for the years 2013-2016; and (iii) 33,843 cubic meters for the years 2016 and 2017. Paragraph 6 of the Environmental Clearance dated 30.11.2012 contains general conditions, subject to which, the clearance was granted. Clauses (ix) and (x) of Paragraph 6 of the Environmental Clearance dated 30.11.2012 read as follows:

> "The project proponent shall undertake hydro geological study through reputed institution/organization within six months. The proponent shall undertake adequate safeguard measures during extraction of river bed material and ensure that due to this activity the hydro-geological regime of the surrounding area shall not be affected.
>
> Regular monitoring of ground water level and quality shall be carried out around the mine lease area by establishing a network of existing wells and installing new piezometers during the mining operation. The periodic monitoring [(at least four times in a year - pre-monsoon (April-May), monsoon (August), post-monsoon (November) and winter (January); once in each season)] shall be carried out in consultation with the State Ground Water Board/Central Ground Water Authority and the data, thus, collected may be sent regularly to the Ministry of Environment and Forests and its Regional Office Bangalore, the Central Ground Water Commission and the Regional Director, Central Ground Water Board. If at any stage, it is observed that the groundwater table is getting depleted due to the mining activity, necessary corrective measures shall be carried out, which includes immediate stopping of mining."

84. We do not know whether the Respondents have complied with the above conditions. But this question has become one of mere academic importance in view of the fact that even according to the SEIAA, the Environmental Clearances granted by them will not survive beyond 23.8.2014. Therefore, we do not wish to go into that question.

Contention No.5:

85. The next contention raised by Mr. T. Mohan, learned Counsel appearing for the Petitioner, is that the Environmental Clearance granted by the SEIAA was on the basis of the consent given by the Tamil Nadu Pollution Control Board. But, the consent has actually expired.

86. In response to the above contention, the Respondents produced two Consent Orders bearing Nos.669 & 630 dated 1.4.2013. The Consent Orders are normally valid for one year. We do not know whether the Consent Orders were extended beyond 1.4.2014. But, we do not wish to attach too much of a significance to this aspect, in view of our finding (i) that the very Guidelines of the SEIAA, on the basis of which, they granted the Environmental Clearances, are *ultra vires* the Notification on EIA; and (ii) that in any case, the Environmental Clearances now in favour of the

Respondents would automatically expire, by virtue of the Order of the National Green Tribunal, on 23.8.2014.

Contention Nos.6 & 7:

87. Mrs. U. Nirmalarani, learned Counsel appearing for the Petitioner in the second batch of Writ Petitions, contended (i) that a mining plan in accordance with Annexure I of the Draft Rules, which received a seal of approval from the Supreme Court in ***Deepak Kumar,*** was not prepared by the Competent Authority in the format prescribed and hence, the Environmental Clearances were illegal; and (ii) that even according to the studies conducted by the Government of Tamil Nadu themselves, the ground water level in the areas, in which, mechanized mining is now permitted, has reached a critical stage, threatening to explode like a time bomb at any time.

88. We will now take up these contentions one after another.

89. According to Mrs. U. Nirmalarani, learned Counsel appearing for the Petitioner in the second batch of Writ Petitions, the concept of preparing a Mining Plan was evolved in Paragraph 4.5 of the recommendations made by the MoEF, on the basis of the report of the Core Group constituted by an Order dated 22.3.2009. This recommendation of the MoEF finds a place in Paragraph 19 of the decision of the Supreme Court in ***Deepak Kumar*** and it reads as follows:

> "*Requirement of mine plan for minor minerals:*
>
> At present, most of the State Governments have not made it mandatory for preparation of mining plan in respect of minor minerals. In some States like Rajasthan, eco-friendly mining plans are prepared, which are approved by the State Mining Department. The eco-friendly mining plans so prepared, though conceptually welcome, are observed to be deficient and need to be made comprehensive in a manner as is being done for major minerals. Besides, the aspects of reclamation and rehabilitation of mined out areas, progressive mine closure plan, as in vogue for major minerals could be introduced for minor minerals as well.
>
> It is recommended that provision for preparation and approval of mine plan, as in the case of major minerals may appropriately be provided in the Rules governing the mining of minor minerals by the respective State Governments. These should specifically include the provision for reclamation and rehabilitation of mined out area, progressive mine closure plan and post mine land use."

90. In Paragraph 20 of its Judgment in ***Deepak Kumar,*** the Supreme Court recorded with approval that as per the Report of the MoEF, the operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. The Supreme Court specifically stated in Paragraph 20 of its Judgment as follows:

> "The necessity of the preparation of 'Comprehensive Mines Plan' for contiguous stretches of mineral deposits by the respective State Governments may also be

encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines."

91. The Supreme Court also recorded in Paragraph 22 of its Judgment in ***Deepak Kumar,*** the Letter dated 1.6.2010 issued by the Minister of Environment and Forests to the Chief Ministers of all States, so that the recommendations made in the report could be incorporated in the Mineral Concession Rules for the mining of minor minerals.

92. In Annexure-I to the Draft Minor Minerals Conservation and Development Rules, 2010, issued by the Ministry of Mines, Indian Bureau of Mines, by the proceedings bearing No.296/7/2000/MRC dated 16.5.2011, a particular format is prescribed for applying for a mining plan. Rule 13 of the Draft Rules stipulates that a Mining Plan shall not be approved unless it is prepared by a qualified person recognized by the State Government or authorized by the State Government or by a recognized person under Rule 22-B of the Mineral Concession Rules, 1960.

93. According to Mrs. U. Nirmalarani, learned Counsel appearing for the Petitioner, the Mining Plan submitted by the Public Works Department was (i) neither in the format as specified in Annexure I to the Draft Rules (ii) nor approved by a person as stipulated in Rule 13 of the Draft Rules. In this case, the Mining Plan was prepared by the Executive Engineer of the Public Works Department. Moreover, as per the Circular issued by the Commissioner of Geology and Mining in Rc. No.3868/LC/2012 dated 19.11.2012, the Draft Mining Plan should be prepared by a qualified person recognized by the State Government or Indian Bureau of Mines. In this case, the Respondents prepared a Mining Plan only on 15.2.2013 and got it approved by the District Collector rather than by the Assistant Director of Mines, as seen from their own statement. Therefore, it is contended by the learned Counsel that the very basis, on which the Environmental Clearance was granted by the SEIAA, was contrary to (i) the Draft Rules issued by the MoEF; and (ii) the directions issued by the Supreme Court in ***Deepak Kumar*** to follow the prescription contained in the Draft Rules.

94. In response to the above contention, it is claimed by the learned Advocate General that the circular of the Commissioner of Geology and Mining dated 19.11.2012 came only after Applications were filed before the SEIAA by the Public Works Department and that therefore, the instructions issued therein cannot affect the Applications already made. The learned Advocate General also submitted that on facts, the date of submission of Mining Plan was not 15.2.2013 as claimed by Mrs. U. Nirmalarani, learned Counsel, but was actually 13.8.2012.

95. We have carefully considered the rival contentions.

96. We are prepared to go by the submissions made by the learned Advocate General (a) that the Mining Plan was submitted on 13.8.2012 and not on 15.2.2013; and (b) that the circular of the Commissioner of Geology

and Mining dated 19.11.2012 cannot have retrospective effect, so as to affect the Applications already submitted by the Public Works Department. But still, the learned Advocate General has no answer to one fundamental question. As per Rule 13, read with Annexure I of the Draft Rules, approved by the Supreme Court in ***Deepak Kumar,*** the Mining Plan should be in a prescribed format and approved by a qualified person recognized in this behalf by the State Government. We do not know how the State Government authorized the Executive Engineer of the Public Work Department to approve the Mining Plan.

97. The proposals for the grant of Environmental Clearances were made by the Executive Engineer, Public Works Department, Water Resources Organization, River Conservancy Division, Trichy. If the Mining Plan is approved by another Executive Engineer of a different wing of the very same Department, the sanctity of Rule 13 of the Draft Rules is completely lost. When the Public Works Department is the proponent of the project for the grant of Environmental Clearance, the State Government could not have recognized one of the Officers of the very same Department to be a recognized qualified person in terms of Rule 13 of the Draft Rules. Therefore, the Applications submitted by the Executive Engineer, Public Works Department for Environmental Clearances to the SEIAA were obviously not in accordance with the mandate of the Supreme Court in ***Deepak Kumar.***

98. The next contention of Mrs. U. Nirmalarani, learned Counsel appearing for the Petitioner is that even according to the Government Orders, the ground water resources in the Panchayat Union blocks, within which areas, the Environmental Clearances have been granted, are now classified as over exploited. But, this has not been taken into consideration.

99. It is seen from G.O.Ms. No.51, Public Works Department, dated 11.2.2004 that based on the development of ground water resources, the panchayat union blocks in Tamil Nadu were categorized into dark and grey areas. Blocks with more than 85% ground water development were categorized as dark blocks. Blocks with ground water development between 65% to 85% were categorized as grey blocks. Thereafter, a State Level Working Group was constituted for the assessment of the ground water potential in Tamil Nadu. On the basis of the Report submitted by them, the Government approved and categorized all panchayat union blocks in Tamil Nadu as (i) over exploited; (ii) critical; (iii) semi critical; and (iv) safe blocks. After such categorization, the Government ordered in Paragraph 6 of the said Government Order, that no schemes shall be formulated in over exploited and critical blocks.

100. Thottiyam is one of the villages, which fell within the category of 'safe area' in the year 2004, under G.O.Ms. No.51 Public Works Department, dated 11.2.2004. But, within a period of ten years, it has now gone from "safe zone" to the over exploited region. This is one of the villages, in respect of which, the Environmental Clearance is now granted. But, this has not been

taken note of either by the Public Works Department, when proposing a project or by the SEIAA while granting clearance. Hence, Mrs. U. Nirmalarani, learned Counsel is right in contending that the Environmental Clearance granted by the SEIAA was not in accordance with law.

101. As a matter of fact, there was no mechanical mining of sand in the State of Tamil Nadu, upto the year 2003. It was started only in the year 2003 and contrary to the original Order of this Court dated 3.8.2012, large scale mechanized mining appears to be taking place.

102. Though it is submitted by the Respondents that mechanized mining is taking place only with two poclains and that no in-stream mining is taking place, the said claim appears to be false. That it is false, could not have been realized by this Court, but for the fact that the Lorry Owners' Association has come with a Petition for impleading themselves as parties. In W.P.(MD). No.7146 of 2014, the Tamil Nadu Sand Lorry Owners Federation has come up with M.P.(MD). No.3 of 2014 for impleading themselves as a contesting Respondent in the Writ Petition.

103. It is claimed in Paragraph 2 of the Affidavit in support of the Impleading Petition that the federation was registered as an association in the year 2010 and that the Federation has a membership of about 1000. The members of the Federation, as per the Affidavit, own 75,000 lorries in the State and all these lorries are specially built for the transportation of sand and that they cannot be used for any other purposes. It is further claimed in the Impleading Petition that the members of the Federation employ about 2,00,000 workers, who are engaged only in the transportation of sand. It is also claimed that the members of the Federation and about 2,00,000 workers depend entirely upon the transportation of sand for their livelihood. In Paragraph 5 of the Affidavit in support of the Impleading Petition, the Federation claims that the capacity of the lorries depends upon the laden weight of each vehicle ranging from 2 units to 3 units and that therefore, sand cannot be loaded manually.

104. The Federation claims that unless there are two stand-by poclains in each quarry, it is not possible to load sand and retrieve the vehicles, whenever a vehicle is stuck. In Paragraph 5 of the Affidavit in support of the Impleading Petition, it is also claimed by the federation that it is impossible to quarry 7,000 Lorry loads of sand per day manually.

105. These statistics make it clear *(i) that there has been indiscriminate mechanical mining carried out by the State of Tamil Nadu, perhaps under pressure from the Lorry owners; and (ii) that the quantities of sand quarried are not correctly projected by the Department. The actual statistics appear to have been buried deep into the very same sand.* The pressure exerted by the sand Lorry Owners' Federation upon the Government and the SEIAA appears to have increased, in geometric portions, the pressure exerted on environment and ecology. Otherwise, we see no reason as to why the SEIAA

should actually take a stand contrary to the stand taken by the Central Government in this case.

Conclusion:

106. Therefore, we are of the view that the Environmental Clearances granted by SEIAA are actually contrary to law. But, today, there is no point in setting aside the same, for the reasons stated below:

(i) The National Green Tribunal has held by its impugned Order that based upon the Environmental Clearances, the State Government can continue to quarry only up to 23.8.2014 (six months from the date of the order of the National Green Tribunal dated 24.2.2014). This period is coming to an end soon;

(ii) The Order of the National Green Tribunal dated 24.2.2014, permitting the State Government to make use of these Environmental Clearances only for a period of six months, came to be challenged in these Writ Petitions, only after two months. The Writ Petitions were filed and they came up for hearing for the first time only on 23.4.2014, by which time, a period of two months out of the total period of six months had already expired;

(iii) By an Interim Order passed on 30.4.2014, we granted an Interim Stay of the Order of the Tribunal. But, our Order dated 30.4.2014 was set aside by the Supreme Court, by an Order dated 9.5.2014 and the Supreme Court directed us to take up the impugned Writ Petitions and dispose them of within a period of one month. Therefore, the Writ Petitions were taken up for hearing after the Court reopened after summer recess on 4.6.2014. But, the Respondents took time to file Counter Affidavit and the Counter Affidavit was filed on 16.6.2014. Thereafter, the arguments were heard on 25.6.2014 and 26.6.2014 and Judgment reserved by us on 26.6.2014. Thereafter, written submissions were circulated on 3.7.2014. By this time, a period of four months, out of the total period of six months granted by the Tribunal had already expired;

(iv) Therefore, we do not find any useful purpose being served in setting aside the impugned Orders, at this distance of time. Therefore, these Writ Petitions are dismissed. No costs.

(v) The Petitions for impleading, filed by the Tamil Nadu Sand Lorry Owners' Federation and by one M. Anand are also liable to be dismissed, for the reason that what is challenged before us are the orders of the National Green Tribunal, relating to the validity of the Environmental Clearances granted in favour of the State Government. These persons are neither necessary nor proper parties. Therefore, M.P. Nos.3 & 3 of 2014 in W.P. Nos.7146 & 7147 of 2014 are dismissed. Other connected M.Ps. are closed.

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Original Application No. 152 of 2021 (SZ)
with
Original Application No. 53 of 2022 (SZ)
With
Original Application No. 187 of 2021 (SZ)
(Through Video Conference)

IN THE MATTER OF

D. Hema Kumar,
No. 1-63, Karani Village,
Nagalapuram, Chittoor District,
Andhra Pradesh-517 589

...Applicant(s)
(In O.A. Nos. 152/2021 & 53/2022)

Versus

1. **Union of India**
   Represented by its Secretary,
   Union Ministry of Environment, Forest & CC,
   Indira Paryavaran Bhawan,
   Jor Bagh, New Delhi- 110003.

2. **State of Andhra Pradesh,**
   Represented by its Principal Secretary for Mines and Geology,
   Secretariat, D.NO. 7-104, B-Block,
   5th and 6th Floor, Ibrahimpatnam,
   Vijayawada, AP- 521456.

3. **The District Collector Chittoor,**
   New Collectorate Office of Chittoor,
   Chittoor District.

4. **The Assistant Director of Mines and Geology,**
   Chitoor Jurisdiction,
   2-53 & 54, Officer Lane,
   Kongareddy Pally, Chittoor- 517001.

5. **The Chairman,**
   Andhra Pradesh Pollution Control Board,
   D.No. 33-26-14 D/2, Near Sunrise Hospital, Pushpa Hotel Centre,
   Chalamalavari Street, Kasturibaipet,
   Vijaywada- 520 010.

6. **The Andhra Pradesh Mineral Development Corporation Limited,**
   Rep by its Executive Director,
   No. 294/1D, Tadigadapa to Enikepadu 100ft. Road,
   Kanuru Village, Penamaluru Mandal,
   Vijayawada- 521137

7. **PMR Infra India Limited,**
   Rep by its Managing Director,
   Flat No. 706, MVV Royal Palace,

D. No. 1018, Visakhapatnam,
Andhra Pradesh- 530003.

8. Jai Prakash Power Venture Ltd.,
Rep by its Managing Director,
H. No. 40-14-7, Second Floor,
Chandramoulipuram, Benz Circle, Vijawada,
Andhra Pradesh- 530003.

...Respondent(s)
(In O.A. No. 152/2021)

With

1. Union of India
Represented by its Secretary,
Union Ministry of Environment, Forest & CC,
Indira Paryavaran Bhawan,
Jor Bagh, New Delhi- 110003.

2. State of Andhra Pradesh,
Represented by its Principal Secretary for Mines and Geology,
Secretariat, D.NO. 7-104, B-Block,
5th and 6th Floor, Ibrahimpatnam,
Vijayawada, AP- 521456.

3. The District Collector Chittoor,
New Collectorate Office of Chittoor,
Chittoor District.

4. The Assistant Director of Mines and Geology,
Chitoor Jurisdiction,
2-53 & 54, Officer Lane,
Kongareddy Pally, Chittoor- 517001.

5. The Chairman,
Andhra Pradesh Pollution Control Board,
D.No. 33-26-14 D/2, Near Sunrise Hospital, Pushpa Hotel Centre,
Chalamalavari Street, Kasturibaipet,
Vijaywada- 520 010.

6. State Environment Impact Asssessment Authority (SEIAA),
Door No. 33-26-14 D/2. Near Sun Rise Hospital,
Pushpa Hotel Centre, Chalamavari Street,
Kasturibaipet, Vijayawada- 520 010.

7. The Andhra Pradesh Mineral Development Corporation Limited,
Rep by its Executive Director,
No. 294/1D, Tadigadapa to Enikepadu 100ft. Road,
Kanuru Village, Penamaluru Mandal,
Vijayawada- 521137

8. PMR Infra India Limited,
Rep by its Managing Director,
Flat No. 706, MVV Royal Palace,
D. No. 1018, Visakhapatnam,
Andhra Pradesh- 530003.

9. Jai Prakash Power Venture Ltd.,
Rep by its Managing Director,
H. No. 40-14-7, Second Floor,
Chandramoulipuram, Benz Circle, Vijawada,
Andhra Pradesh- 530003.

...Respondent(s)
(In O.A. No. 53/2022)

With

Nagendra Kumar
S/o Sathyanarayana,
Dharanikota Village,
Amaravathi Mandal,
Guntur District, Andhra Pradesh.

...Applicant(s)

Versus

1. Government of India,
Represented by its Secretary,
Ministry of Environment, Forest and Climate Change,
Central Secretariat,
Indira Paryavaran Bhavan,
Jorbagh Road,
New Delhi- 110003.

2. State of Andhra Pradesh,
Represented by Secretary to Government,
Department of Mines and Geology,
Sri Anjaneya Towers, D. No. 7-104,
B-Block, 5th & 6th Floors,
Vijayawada, Ibrahimpatnam,
Andhra Pradesh- 521 456.

3. The Andhra Pradesh Mineral Development Corporation Limited,
Rep by its Executive Director,
No. 294/1D, 100ft. Road Tadigadapa to Enikepadu Road,
Kanuru Village, Penamaluru Mandal,
Vijayawada- 521137

4. State Environment Impact Asssessment Authority (SEIAA),
Rep by its Member Secretary,
Door No. 33-26-14 D/2. Near Sun Rise Hospital,
Pushpa Hotel Centre, Chalamavari Street,
Kasturibaipet, Vijayawada- 520 010.

5. The Director,
Department of Mines and Geology,
Sri Anjaneya Towers, D. No. 7-104,
B-Block, 5th & 6th Floors, Vijayawada,
Ibrahimpatnam, Andhra Pradesh- 521456.

6. The Deputy Director,
Department of Mines and Geology, Srikakulam,
Plot No.6, 1st Floor, Vysya Bank Colony,
Srikakulam- 532001, Andhra Pradesh.

7. **The Deputy Director,**
   Department of Mines and Geology, Vizianagaram,
   H.No. 1-15-18, Plot No. 31,
   Near St. Paults Lutharan Church,
   SBI Cantonment Road,
   Vizianagaram- 535003, Andhra Pradesh.

8. **The Deputy Director,**
   Department of Mines and Geology, Visakhapatnam,
   D.No. 2-2/4D/15 M.I.G-108,
   M.V.P. Colony, Sector-6,
   Visakhapatnam-17, Andhra Pradesh.

9. **The Deputy Director,**
   Department of Mines and Geology, Kakinanda,
   Vishwa House, Palam Raj Nagar,
   Road No.2, Kakinada- 533001, Andhra Pradesh.

10. **The Deputy Director,**
    Department of Mines and Geology, West Godavari,
    D.No. 23-9-2, Near Atidhi Hotel,
    R.R. Peta, Eluru, West Godavari District,
    Andhra Pradesh- 534002.

11. **The Deputy Director,**
    Department of Mines and Geology, Krishna
    D. No. 54-18-67/1B, LIC Colony,
    Vijayawada, Krishna District,
    Andhra Pradesh- 520008.

12. **The Deputy Director,**
    Department of Mines and Geology, Guntur,
    D. No. 17-14-830, 3/5, Vidhya Nagar,
    Guntur- 522007, Guntur District, Andhra Pradesh.

13. **The Deputy Director,**
    Department of Mines and Geology, Prakasam,
    Block No. 58 & 59, Old RIMS,
    Government Officers Complex,
    Opp. Collectorate, Ongole,
    Prakasam District, Andhra Pradesh- 523001.

14. **The Deputy Director,**
    Department of Mines and Geology, Nellore,
    Lakshmi Villa, D. No. 11/28, Talpagiri Colony,
    Buja Buja Nellore, Nellore Rural Mandal,
    Nellore- 524004, Andhra Pradesh.

15. **The Deputy Director,**
    Department of Mines and Geology, Chittoor,
    D. No. 2-55/2, Officers Line, Guru Nagar Colony,
    Near Municipal Office, Chittoor- 517001,
    Andhra Pradesh.

16. **The Deputy Director,**
    Department of Mines and Geology, Kadapa,
    G-3, New Collectorate Complex,

Kadapa- 516004, YSR District,
Andhra Pradesh.

17. The Deputy Director,
Department of Mines and Geology, Ananthapur,
D.No.6/3/116, 1st Floor,
Opp. Comfort Apartment, Ram Nagar,
Anantapuramu- 515002, Andhra Pradesh.

18. The Deputy Director,
Department of Mines and Geology, Kurnool,
45/86-6, Upstairs, Narasimhareddy Nagar,
Kurnool- 518004, Andhra Pradesh.

19. Jaiprakash Power Ventures Limited,
Rep by its Chairman and Mangaing Director,
Registred Office at
Complex of Jaypee Nigrie Super Thermal Power Plant,
Tehsil Sarai, Nigrie, Singrauli,
Madhya Pradesh- 486669.

20. Jaiprakash Power Ventures Limited,
Rep by its Chairman and Mangaing Director,
Corporate Office at
'JA House', 63 Basant Lok,
Vasant Vihar, New Delhi- 110057.

...Respondent(s)

O.A. No. 152/2021

For Applicant(s): Mr. A. Yogeshwaran along with
Mr. S. Kamalesh Kannan.

For Respondent(s): Mr. L. Suryaprabhu for Mr. G. M. Syed Nurullah Sheriff for R1
Mrs. Madhuri Donti Reddy for R2 to R5.
Mr. Atmaram NS Nadkarni, Sr. Adv. Along with
Mr. S.S. Rebello, Mr. Shreeyash U. Lalit,
Mr. Gauravvardhan Nadkarni for R8.
Mr. R. Krishnamoorthy for R6.

O.A. No. 53/2022

For Applicant(s): Mr. A. Yogeshwaran along with
Mr. S. Kamalesh Kannan.

For Respondent(s): Mrs. Madhuri Donti Reddy for R2 to R7.
Mr. Atmaram NS Nadkarni, Sr. Adv. Along with
Mr. S.S. Rebello, Mr. Shreeyash U. Lalit,
Mr. Gauravvardhan Nadkarni for R8.

O.A. No. 187/2021

For Applicant(s): Mr. R. Jayaprakash.

For Respondent(s): Mr. L. Suryaprabhu for Mr. G. M. Syed Nurullah Sheriff for R1
Mrs. Madhuri Donti Reddy for R2, R3, R5 to R18.
Mr. Atmaram NS Nadkarni, Sr. Adv. Along with
Mr. S.S. Rebello, Mr. Shreeyash U. Lalit,
Mr. Gauravvardhan Nadkarni for R19 & R20.

Judgment Reserved on: 06th December, 2022.

Judgment Pronounced on: 23rd March, 2023.

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGMENT

Delivered by* Smt. Justice Pushpa Sathyanarayana*, Judicial Member

1. Unabated illegal sand mining is the matter of concern in the above applications filed by one D. Hema Kumar, who is the applicant in O.A. No. 152 of 2021 and O.A. No. 53 of 2022 and Mr. Nagendra Kumar in O.A. No. 187 of 2021.

O.A. No. 152 of 2021

2. It is stated that the River Aaraniaar runs through the karani Village and other nearby villages, namely, Suruttapalli, SSB Petta, BK Bedu and Nagalapuram before entering the State of Tamil Nadu. The total stretch of the river runs to about 11km. The villages are primarily engaged in agriculture. It is alleged that the State of Andhra Pradesh and the Andhra Pradesh Mineral Development Corporation Limited and one M/s PMR Infra India Limited who are respondents 2, 6 and 7 are indulging in the above said illegal sand mining in the Aaraniaar River in different survey numbers in each of the above referred villages. The allegations of the applicant are as follows:

   (i) It is alleged that in the name of desilting and dredging activity without an Environment Impact Assessment, respondents 6and 7 are doing illegal activity of sand mining.

(ii) In the mining activity heavy machineries are being used in the river when there is the Reserved Forest adjacent to the impugned site. The District Collector on 08.07.2019 identified 05 reaches for river sand mining in Aaraniaar River which clearly mentioned that the word that the purpose of mining is due to shortfall of sand demand-supply in the State. Accordingly, the 3rd respondent, the District Collector, had given the consent for excavation of sand. The respondents are carrying on the mining activity, covering to an extent of 11km in total in the same river without obtaining prior Environmental Clearance for the same. The term 'desilting' is used in the sites in which the permissions are issued mentioned as 'sand reaches'.

(iii) Without assessing the environmental damage that would be caused, the respondents 6 and 7 have started their mining activity. For the purpose of carrying the excavated sand using the heavy machineries, the respondents have also laid a temporary road. If it is only an activity of desilting for the purpose of removing the accumulated silt, only bullock carts are to be used and not heavy machineries and lorries. It is also stated that the excavation is being done 24 hours a day in full capacity at nights.

(iv) Respondents are misusing the office memorandum dated 15.01.2016, which gives an exemption for dredging and desilting of dams, reservoirs , weirs, barrages, rivers and canals for the purpose of their maintenance, upkeep and disaster management. As the mining is done in the extent of 11km covering about 350 ha of area, it is done without necessary Environmental Clearance as per EIA Notification, 2006.

3. On the above allegations, the applicant sought for a direction forebearing the respondents 2, 6 and 7 mining the Aaraniyar River sand from Nagalapuram to Surutuppali villages to an extent of 350 ha., running about 11km in Chittoor District and also sought for criminal action for illegal activity.

4. **The 1st respondent, who is the Ministry of Environment, Forest and Climate Change (MoEF&CC)**, has stated that as per EIA Notification, 2006 certain projects are required to obtain prior Environmental Clearance before any construction work in case of new projects or expansion and modernization of the existing projects or activities and these activities are categorised in two categories- 'A' and 'B' on the potential impacts on spatial extent and human health and natural and man-made resources. The 1st respondent also had came up with the notification S.O. 141 (E) dated 15.01.2016 which stipulates 'B2' category projects pertaining to mining of minor mineral of lease area less than or equal to 05 ha., which requires prior Environmental Clearance from the DEIAA. The DEIAA shall base its decision on the recommendations of the DEAC. After the challenge to the said notification, the National Green Tribunal had directed the MoEF&CC to take appropriate steps to revise the procedure laid down in the said notification in terms of the directions and observations in conformity with the Judgement of the Hon'ble Supreme Court in **Deepak Kumar vs. State of Haryana (2012) 4 SCC 629.** Subsequently, the Central Government had made amendments in the Environmental Impact Assessment Notification, 2006 vide S.O. 3977(E) dated 14.08.2018 wherein schematic presentation of requirements on Environmental Clearance of minor minerals including cluster situation and entries relating thereto. After quoting the other notifications, the MoEF&CC stated that the Mines and Geology Department of the State is the nodal authority for allotting mining lease under the Mines and Mineral (Development and Regulation) Act (MMDR Act).

5. **The 6th respondent, who is the Andhra Pradesh Mineral Development Corporation Ltd.,(APMDC)** had filed their counter affidavit stating that the application itself was filed on misplaced facts and that the Environmental Clearance obtained by the 6th respondent with respect to 05 sand reaches are furnished in the report. It is stated that the District Authority had permitted the 05 sand reaches for excavation of sand in the area mentioned in the application after getting the required statutory clearances, namely, Approved Mining Plan, Environmental Clearance and Consent for Operation from authorized departments. Previously, the above sand reaches were operated by APMDC as per sub-rule 1(d) of Rule 9-B of APMMC Rules, 1966 prevailing at that time. Later Government of Andhra Pradesh appointed a private agency, who is the 8th respondent, to undertake the sand operations in the districts of Nellore, Ananthapurram, Chittoor and YSR Kadapa Districts. Now, the 8th respondent is carrying on sand mining in the 05 authorised sand reaches. The respondent has further stated that the SEIAA, Andhra Pradesh had granted permission for sand mining with semi-mechanised method/manual vide order dated 19.12.2020. The statutory clearances were obtained from all the Departments, namely, Approved Mining Plan, Environmental Clearance and Consent for operation for excavation of sand. It is stated that the permitted sand reaches are located 230 meters away from State Highway. The shortest aerial distance from Ambakam Reserve Forest to the authorised sand reaches is 0.7km.

6. As per the agreement between the State Governments and the private agency the sand excavated from the authorised sand reaches shall be stored nearby stock points. As it is not possible to

excavate sand from reaches during the rainy season or flowing time the excavated sand are stored in particular stock yard from where it is supplied to the consumers. Hence, it was stated that there was no merit in the allegations made by the applicant. The 6th respondent also had produced the copy of the Environmental Clearances obtained by them.

7. **The 8th respondent, who is the project proponent,** has filed an affidavit in response to the application. It is stated that this respondent had undertaken mining activity only from 14.05.2021 in only two out of the five reaches i.e. SSB Petta Village, Pichatur Mandal and BK Bedu Village, Nagalapuram, Mandal. The 8th respondent also stated that they had obtained all clearances, permissions, licenses as mandatory under the law for mining. The 8th respondent also had carried out mining activity only with the valid Environmental Clearance and wherever the Environmental Clearances have expired no mining activity has been conducted by them. Regarding two reaches the lease expired in December, 2021 and thereafter mining was stopped in those reaches.

8. The 8th respondent further stated that apart from Mining Department of the State, the Ground Water Department takes up periodical or annual inspections as the case may be in terms of the rules and a joint inspection of the officials from the Department of Mines and Geology and/or other concerned Departments. For mining in the sand reaches all the statutory clearances, namely, Approved Mining Plan, Preparation of the District Survey Report, obtaining Environmental Clearance, Consent for Establishment and Consent for Operation for the sand reaches are handed over to the

agency for undertaking the sand operations as per the procedure laid down by the Director of Mines and Geology. As this respondent started mining from 14.05.2021 strictly in accordance with and as per the mining plan approved and in compliance with the conditions as imposed in the Environmental Clearance, there is no violation as alleged by the applicant. It is further stated that the mining operation is being carried on in the very professional and scientific manner conscious of the precious ecology and environment. The 8th respondent had denied that he is involved in the activity of mining using heavy machinery in the River. This respondent also denied that he had mined the river sand to a depth of 35 feet using heavy machinery and the allegation of construction of temporary road is also denied. The alleged temporary road is only used for the purpose of transportation. The activity of mining is for 24 hours a day is also denied. It is specifically submitted that this respondent was permitted to mine only till the depth of 01 meter as per the Environmental Clearance and the mining is done within the precincts of Environmental Clearance.

O.A. No. 53 of 2022

9. The above Original Application is filed by the applicant on the allegations that the respondents 7 to 9 are running sand mining quarries in the River Aaraniaar in an uncontrolled manner beyond the depth and boundary noted in the earlier Environmental Clearance. The respondents 7 to 9 are indulging in the illegal sand mining in about 11km stretches in the villages referred to in the earlier O.A. No. 152 of 2021. The specific prayer of the applicant in

this Original Application is to declare respondents 8 and 9 as violators of the Environmental Clearance conditions and direct the authorities to take immediate measures to assess the damages that have been caused on account of the illegal quarrying and take criminal action against the officials responsible for permitting such illegal activities.

10. The applicant has stated that though these activities are covered under B2 category as per the Environmental Clearance issued the respondents 7 to 9 are using numerous heavy machineries for the purpose of mining and the same is being done in a hurried manner. Though the prayers are identical in both the Original Applications. This Original Application is filed because of the lethargic attitude of the officials in taking steps to control the illegal mining and the severe damage caused to the ecology which had in fact resulted in change of natural flow pattern of the river. The applicant alleges that there is no fencing around the Environmental Clearance granted area which itself is violation of the condition in the Environmental Clearance.

11. In response to the same, the 3rd respondent, who is the District Collector, Tirupati had filed his report dated 16.05.2022 stating that the private respondents have been given an Environmental Clearance by the 6th respondent. As per the Environmental Clearance, the mining has to be done manually. Contrary to the said condition it is alleged that the project proponents are using heavy machinery and have breached the conditions resulting in affecting the ecology at large. To the said allegations, the District Collector has found that the 11km stretch of Aaraniaar River is

spread over five villages in Nagalapuram and Pitchatur Mandals of newly formed Tirupati District. The District Collector had observed the physical features of the river and the sand mining areas which are permitted to the private respondents, project proponent. It is reported that during his inspection no machinery was found in the sand excavation localities of the 05 villages in the stretch of 11km and sand excavation is not done at the time of inspection. The Collector has specifically stated that unless a technical Committee is appointed and verify, it will not be possible to ascertain whether the conditions are violated or not and also about the environmental impact.

12. The Tahsildar, Nagalapuram Mandal has addressed the District Collector, Tirupati in his correspondence dated 03.09.2022 stating that he has been keeping a constant vigil on the extraction of sand from the reach by keeping the VROs of B.K Bedu, Nandhanam, Subbanaidu Kandriga and Karani Villages round the clock to monitor. He has stated that it has been taken care of not using the heavy machineries from the reach. The said correspondence is also filed by the District Collector.

13. **The 4th respondent, who is the Assistant Director, Mines and Geology,** also has filed his report. It is stated in the report that the project proponent had taken all permissions as the excavations are for commercial purpose. The sand excavation is being done after getting required statutory clearances only. The SEIAA, Andhra Pradesh has granted permission for sand mining with semi-mechanised method/manually by its order date 19.12.2020. It is stated that the shortest aerial distance from Ambakam Reserved

Forest to the above said authorised sand reaches is 0.7km. The 4th respondent also has repeated the submissions of the District Collector and requested the Joint Inspection Committee report to be referred.

14. **The 5th respondent, Andhra Pradesh Pollution Control Board** has field its report contending that the Andhra Pradesh Pollution Control Board had issued the 'Consent for Operation' of the Board to the project proponent, who is the 9th respondent, for the locations in 05 villages and 07 reaches upon considering the validity of the Environmental Clearance obtained for the respective sand reaches. The above sand reaches have obtained Environmental Clearance for carrying out the mining operations in semi-mechanised method.

15. **The 6th respondent, who is the State Environment Impact Assessment Authority (SEIAA), Andhra Pradesh** has filed counter stating that the 9th respondent had obtained Environmental Clearance from SEIAA and has been carrying out the sand mining in Aaraniaar River in about 11km stretch in five villages coming under the control of the Nagalapuram Mandal, Chittoor District. The SEIAA also confirms that the Environmental Clearance granted to the 9th respondent for sand mining is in a semi-mechanised method. The mining plan was also approved by the Deputy Director of Mines and Geology permitting semi-mechanised mining of the sand. The practice of semi-mechanized mining of sand is being carried out as per the Sand Mining Management Guidelines, 2016 published by the MoEF&CC. The counter further states that the semi-mechanized mining is

permitted as part of ensuring sustainable sand mining and environmentally friendly management practices in order to restore and maintain the ecology of the river and other sand sources. Accordingly, the SEIAA permitted the semi-mechanized mining i.e., the sand shall be excavated by backhoe/shovel and loaded into tippers. It is stated further that the red line is at a depth of 3.2 mts from the surface of the sand reach as per approved mining plan.

16. The SEIAA had explained three methods of sand operations which are as follows:

> 1. Manual: This method involves the scooping of sand with shovels and loading on the tractors/tippers.
> 2. Semi-mechanised: It is method to excavate sand manually along with machinery like backhoes (JCB) comprising bucket capacity of 0.6cum and load the excavated sand on to tippers. Combination of man and machine is semi-mechanized method of mining.
> 3. Mechanised: it is a method to excavate sand using heavy machinery (without human intervention) of bucket capacity of 1.1 cum and more and load the excavated sand on the lorry's/tippers.

17. In the present case, the 9th respondent has been granted Environmental Clearance to carry out the sand mining operations by way of semi-mechanised method of mining.

18. **Finally, the 9th respondent, who is the project proponent,** has filed his objections denying all the allegations against it in its counter dated 07.11.2022. According to the 9th respondent, the application itself is filed on ulterior motive. The SEIAA granted the Environmental Clearance after careful consideration and permitted the project proponent to carry out the mining only to one meter depth sand through semi-mechanised /manually and no underwater mining is undertaken. It is stated that the respondent

is not using heavy machinery for carrying out the sand mining operation and is carrying the sand mining operations by using semi-mechanised method i.e. manually method along with backhoe and thereafter loading the excavated sand into the tippers which method is known as semi-mechanised method of mining.

19. While denying all the allegations made in the application against the 9th respondent, it is stated that the mining activity is taken by the 9th respondent only in a permissible manner in terms of the conditions of the Environmental Clearance, manually and in a semi-mechanised manner without any damage to the ecology in large. The allegations made by the applicant are said to be bared and without any substance. The photographs annexed by the applicant to prove the usage of heavy machinery is misconceived as they are employed only for the formation of the road work and there was no excavation process being done on the relevant date i.e. 09.01.2022. Regarding the other photographs taken on 27.03.2022 they are the piled up excavated sand for drying purpose. There is no earth moving or sand excavation done there. The backhoes are only used to load the piled up excavated sand which are then taken and loaded by the backhoes into the tippers. Therefore, the photographs allegedly taken on 27.03.2022 are not relevant to the allegations made by the applicant.

O.A. No. 187 of 2021

20. This application also relates to the sand mining in the State of Andhra Pradesh. However, this application is filed in general seeking direction against the respondents 2 to 18 to take appropriate and effective steps to monitor and sand mining

performed by the respondents 19 and 20 in particular in 13 districts of State of Andhra Pradesh.

21. The contention of the applicant is that despite the existence of repeated circulars and enforcement guidelines to prevent mismanagement of the sand mining process, the officials have been unable to monitor/enforce strictly the statutory guidelines which they ought to have followed. The present application is filed seeking to address the same by highlighting the various violations committed by the private respondents who have been awarded the sand mining contract in the State of Andhra Pradesh, particularly, in Guntur District.

22. It is stated that the Enforcement and Monitoring Guidelines for Sand Mining, 2020 is a supplementary guidelines to the already existing regulatory mechanism. As per the above guidelines, the mining should be done only during dry season and State SEIAA has been entrusted with the duty of monitoring periodically and to file a compliance report once in every 06 months. The river bed mining during monsoon season has been prohibited as per the enforcement guidelines only to ensure sustainable sand mining. It is generally alleged that the mandatory requirements for sand mining are not being followed in its letter and spirit. The present application is focused on the violations committed by the respondents 19th and 20th who are contractor selected for the purpose of sand mining and excavation in the State of Andhra Pradesh. The applicant alleges that the respondents 19 and 20 have violated all the mandatory requirements in all the 13 districts

of Andhra Pradesh where they are involving in excavation and sand mining. The applicant raised the following allegations:

(i) The first allegation is that the private respondents are involved in the process of sand mining, even during the monsoon season.

(ii) The respondents 19 and 20 have undertaken instream mining in Rajamundhry, Karnool and Kastala for the last two months even though the same has been categorically mandated to be prohibited.

(iii) The SEIAA has failed to comply with its duty of filing a compliance report every six months.

(iv) The District Administration has also failed to take any effective steps to monitor the mandatory requirements under the Acts and Rules. To file a report with respect to the status of excavation and sand mining works in the respective districts undertaken by the respondents 19 and 20.

23. On the above allegations, the applicant is seeking a direction to the official respondents to take effective steps to monitor the excavation and sand mining performed by the respondents 19 and 20 and to prevent any further damage to the environment in terms of the illegal excavation.

24. The 5th respondent, who is the Director of Mines and Geology, had placed his counter affidavit dated 3rd December, 2022. The said counter affidavit referred to the upgraded sand policy which is as follows:

> "a. The sand excavation, storage and sale operations shall be preferably undertake by the Central Govt. agencies/Central Govt. PSUs (CPSUs) appointed on nomination basis on terms and condition as prescribed by GoAP.
> b. In case, no response is received from Central Govt. agencies/CPSUs, sand operations shall be entrusted to a technically experienced, competent and financially strong agency (ies) selected through two (2) bid system i.e., Technical and Commercial bids, with a minimum auction premium fixed

by GoAP, in addition to seigniorage fee and other applicable levies.

25. When the Director of Mines and Geology approached the Central Government agencies/CPSUs seeking their willingness to undertake all sand operations such as excavation, storage, sale etc, there was no response or any interest expressed. Hence, as per the Upgraded Sand Policy referred above under G.O. Ms. No. 25 dated 16.04.2021, a tender procedure for selecting the technically experienced, competent and financially strong agency through tender was invited and the 19th and 20th respondents emerged as the successful bidder for all the three packages by quoting the highest bid. As per the tender terms and conditions, the work order was issued in favour of the successful bidder as per the Andhra Pradesh Minor Mineral Concession Rules, 1966. Of the total 446 sand reaches including 331 open reaches and 115 desiltation points have been handed over to the M/s Jaiprakash Power Ventures Limited and the said agency started the operations with effect from 14.05.2021.

26. While considering the pleadings in all the above three applications, the following points emerged for consideration:

(i) Whether the private respondents have necessary clearances, consents, approvals, sanctions from the authorities concerned for sand mining?

(ii) If so, whether there are any violations of the conditions imposed either in the Environmental Clearance or any of the approvals granted?

(iii) Whether there is any indiscriminate, unscientific mining being carried out as had been alleged by the applicant?

(iv) Whether there is any excess mining being done by the private respondents?

(v) If so, whether they are liable to be levied with Environmental Compensation?

27. Earlier there was a Joint Committee appointed by this Tribunal in O.A. No. 87 of 2020 comprising of an officer from MoEF&CC, a Scientist from SEIAA, Andhra Pradesh, Assistant Director of Mines and Geology, Chittoor District, Senior Officer from Central Pollution Control Board and District Collector, Chittoor District to inspect the area in question and submit a report regarding the status and nature of work that is being done in that area and also to find out whether in the guise of desilting and dredging any illegal mining is being done without obtaining any permissions and clearances. The said Committee was directed to submit a report in this regard. Accordingly, the Joint Committee had visited the site on 12.10.2021 to see the present status and nature of work done in the area, ascertain whether illegal mining is taking place in the guise of desilting or dredging. The quantity of sand mined and the quantity of sand mined that has been transported for supply and also to assess the quantity of illegally mined sand in order to fix the environmental compensation.

28. The Committee constituted by this Tribunal had visited the villages concerned and had interacted with the villagers and also with the Department concerned and compared the satellite images. As per the finding of the Committee the District Authority had permitted sand mining in five reaches for excavation of sand after getting following statutory clearances (i) Approved Mining Plan from the Department of Mines and Geology, Andhra Pradesh, (ii) Environmental Clearance from SEIAA, (iii) Consent for Operation

from Andhra Pradesh Pollution Control Board. It is specifically stated that till May, 2021 the sand reaches were operated by APMDC ltd, Vijayawada, which is the 6th respondent. As the sand policy was upgraded and amendments were issued to the Andhra Pradesh Minor Mineral Concession Rules, 1966, the 8th respondent was awarded the work of sand extraction for package-3 which is Nellore, Anathapuram, Chittoor and YSR Kadapa Districts. The District Level Committee during the meeting held on 13.10.2020 based on the joint inspection report of Mines and Geology, Irrigation Department, Ground water and Water Audit, RWS&S and Revenue Departments had permitted for sand extraction in five open sand reaches in River Araniar.

29. The area permitted for sand mining is 4.910 ha. However, as per the geo-coordinates given in the approved mining plan, Environmental Clearance and Consent for Operation, the area permitted for mining is 37.85 ha. The report states that the officials from the Department of Mines and Geology stated that there is a typographical error in the mining plan, Environmental Clearance and Consent for Operation. The Department of Mines and Geology had not approached SEIAA, Andhra Pradesh and Andhra Pradesh Pollution Control Board for correction of the same. The joint Committee had further observed that the total excavation permission quantity from Nandanam reach is 73,650 metric tonnes. Out of which 18,273 metric tons was excavated by APMDC and 53,820 was excavated by the 8th respondent till 30.09.2021. The reach had a valid Consent for Operation issued by the Andhra Pradesh Pollution Control Board valid from 11.12.2020 to 30.11.2021. The operations were stopped during 30.06.2021. The

aerial distance between Nandanam-I and Nandanam-II is 531 metres. The sand excavated by the 8th respondent is observed to be within the permitted quantity mentioned in the Environmental Clearance and Consent for Operation.

30. Apart from the observations referred above, the Committee also specifically observed that the area permitted is 4.75 ha., and as per the satellite image also the area is 4.75ha., and it is matching. Similarly, the total sand excavation permission quanity from Nandanam-2 reach is 71,250 metric tons. Out of which 66,667 metric tons was excavated by the APMDC and 3,500 metric tons was excavated by 8th respondent till 30.09.2021. Operations were started during03.03.2021 and stopped during 30.06.2021. Regarding the BK Bedu area, the area permitted for sand mining is 4.92 ha., and the satellite image also shows only 4.92 ha., and both are matching. The total sand excavation permitted quantity at BK Bedu reach is 73,800 metric tons. Out of which 4,488 metric tons was excavated by APMDC and 68,120 metric tons was excavated by the 8th respondent till 30.09.2021. The reach was having a valid Consent for Operation issued by Andhra Pradesh Pollution Control Board till 30.11.2021. However, operation stopped during 30.06.2021. Thus, it was observed that the excavated sand from BK Bedu sand reach is within the permitted quantity mentioned in Environmental Clearance and Consent for Operation.

31. Similarly, for Subbaiah Naidu Kandriga also the Joint Committee found the satellite image to match with the permitted extent. In this case also the satellite image is matching with the permitted

hectares of the area. Here, the operation was stopped during 10.02.2021.

32. The specific observation with respect to SSB Peta-2 also is said to matching in terms of hectares and regarding the excavation done. The permitted quantity was 72,000 metric tons. Out of which 20,911 metric tons was excavated by APMDC and 49,800 metric tons was excavated by the 8th respondent till 30.09.2021. The aerial distance from SSB Peta-2 and Surutupalle is around 340 meters and the entire area between these two reaches is mined. Under such circumstances, it has to be treated as a single reach of larger area and accordingly necessary permissions need to be obtained.

33. The Joint Committee had further observed that the quantity of sand present, extracted and transported from each reach was assessed by inspection of documents submitted by different departmental officials. However, scientific assessment of each reach by measuring the length, width and depth of sand at different locations was not carried out due to the fact that river was in full flow.

34. As per the information provided by Director of Mines and Geology the sand excavation is within the approved limits and that the sand reaches are having valid Environmental Clearance from SEIAA and Consent from Andhra Pradesh Pollution Control Board. There were no proper records on the quantity of sand extracted from the reaches. The Joint Committee further observed that registers were not available in the reach on the quantity of sand produced and

the quantity dispatched and the type of vehicles used per day for sand transportation etc. There was no weigh bridge at the reach also. The mining plans does not include scientific mine closure plan and approach road/ramps to the sand reach etc. Thus, the Joint Committee concluded that the APMDC and Department of Mines and Geology may effectively be directed to monitor and regulate the sand extraction activities in River Araniar. The sand reaches shall be permitted for sand extraction only after scientific assessment of the quantity of sand. The Committee did not observe any environmental impacts or damage to structures near to reach.

35. Considering the importance and gravity of the issue alleged in the Original Application No. 187 of 2021 a Joint Committee was constituted and making the Department of Mines and Geology as nodal agency for coordination. The Joint Committee also conducted inspection over the sand reaches on various dates at various districts. The Committee observed that no open reaches are being sanctioned and entrusted to the private respondents for sand quarrying operations. It also submitted that most of the sand reaches in the State of Andhra Pradesh are inundated with flood water and very few are in working conditions. Regarding the fact whether the respondents 19 and 20 had valid consent under the Environmental Laws. The Committee had observed that all the sand reaches which are in operation in the State of Andhra Pradesh have obtained Environmental Clearance and Consent for Operations. The Assistant Director of Mines and Geology is the lessee for all sand reaches. The Joint Committee also seem to have observed that there was no violation of the Environmental

Clearance conditions. Regarding the indiscriminate and unscientific sand being carried out in the reaches, the Joint Committee had observed that gravel/boulders used for construction of roads/ramps were left in unscientific manner causing obstruction of river flow during flood seasons. The strict implementation and practice of the Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines, 2020 was recommended to be followed strictly in all the reaches. Regarding the excess mining done, it was found that there was no excess mining done by the private respondents and the Department also has given its explanation in this regard in every aspect to the report of the Joint Committee.

36. The concern of the applicant in both the O.A. No. 152 of 2021 and O.A. No. 53 of 2022 are same i.e. regarding the alleged illegal mining by the project proponent, M/s Jai Prakash Power Venture Limited in the Aaraniaar River sand from Nagalapuram to Suruttapalli Villages to an extent of about 350 ha., running about 11 km in Chittoor District, Andhra Pradesh and in O.A. No. 187 of 2021 the prayer is to regulate the illegal sand mining in 13 districts of State of Andhra Pradesh. Hence the above three applications are taken together for disposal.

37. The Government of Andhra Pradesh had issued orders for upgrading the existing Sand Policy 2019 as per G.O No. 78 dated 12.11.2020 wherein it was stated that sand operations will be entrusted to a technically experienced, competent and financially strong agencies selected through two bid system. All the reaches across the State are classified into three packages. The Director of

Mine and Geology entered into a MoU with M/s MSTC, Government of India Enterprise for selection of package wise agency to carry out all sand operations such as excavation, storage, sale etc in the State of Andhra Pradesh. Accordingly, tenders were invited for all the sand operations such as excavation, storage, sale etc of sand in the State of Andhra Pradesh for package no. 3 Nellore, Ananthapurram, Chittoor, Kurnool and YSR kadapa Districts. The MSTC informed that M/s Jai Prakash Power Venture Limited had quoted the highest consideration amount and emerged as the highest bidder. Accordingly, M/s Jai Prakash Power Venture Limited was engaged to commence the sand operations in the specified areas of package. Thus, M/s Jai Prakash Power Venture Limited have been doing the sand mining on behalf of the M/s APMDC Limited.

38. The preparation work of DSRs of the State was given to M/s Andhra Pradesh Space Application Centre (APSAC), Vijayawada which prepared the DSR for the 13 districts giving out the details of the mineral resources including the sand in accordance with the guidelines given under Sustainable Sand Mining Guidelines, 2016. Regarding the replenishment studies to be carried out every year, it is stated that in the State of Andhra Pradesh, the statutory clearances such as Environmental Clearances, 'Consent to Establish' and 'Consent to Operate' are being obtained for the feasible sand bearing areas for a period of one year only. For identification of sand reaches feasible for sand quarrying the line departments, namely, Ground water, Irrigation, Revenue, Mines and Geology shall inspect all the sand bearing areas in the district and identify the sand reaches feasible for sand quarrying in

accordance with the Andhra Pradesh Water Land Tree Rules, 2004 and Rule 9-B(1)(b) of Andhra Pradesh Minor Mineral Concession Rules, 1966. As per the Sand Mining Guidelines, 2016, the sand mining shall be permitted depending upon the location, thickness of sand deposition, agricultural land/river bed, the method of mining like manual, semi-mechanised and mechanised. The District Level Sand Committee of the concerned District will prepare a report and the mining plan will be approved by the Director of Mines and Geology and will obtain the Environmental Clearance, 'Consent to Establish' and 'Consent to Operate' for a period of one year only.

39. The number of reaches with mine lease area of less than 05 ha., at a particular area may lead to cluster formation. Instead of number of reaches a single mine lease of having mine lease area up to 25 ha., may be identified and processed. The Director of mines and Geology may declare the areas of sand mining zone and mine leases may grant up to 25 ha. The SEIAA, Andhra Pradesh will examine and appraise the Environmental Clearance applications for sand mining reaches especially the reaches falls at cluster area. The Director of Mines and Geology is required to obtain prior Environmental Clearance for sand mining for quantities more than 5,000 cum. As per G.O Ms. No. 2 dated 06.01.2022, the sand extraction from Ist to IIIrd Order streams shall be permitted from the non-notified areas having estimated sand deposits of more than 5,000 cum. Accordingly, total of 44 numbers of III order streams having sand deposit more than 5,000 cum., have been identified. Even as part of post mining, the approach roads/ramps should be removed and the gravels/boulders should be stacked

outside the river bank for further use in other sand reaches. The mining plans of sand reaches shall have detailed information regarding total sand reserves available in respective reach. The mining plans also shall include scientific mine closure plan along with the detailed map of approach roads/ramps to the sand reach. Similarly, the mining plan shall also include detailed mine closure plan. The Director of Mine and Geology also should comply with all the conditions stipulated in the Environmental Clearance and the 'Consent for Operation'.

40. The River Aaraniaar is originating at Sadasivuni Konda in Narayanavanam Mandal and passing through various villages in the Narayanavaram, Nindra, Nagalapuram and Pichatur Mandals in Andhra Pradesh and then enters into Tamil Nadu. The total stretch of Aaraniyaar River is 108 km. In this, the District Authorities had permitted five reaches for excavation of sand after getting the statutory clearances, namely, approved mining plan from Department of Mines and Geology, Andhra Pradesh, Environmental Clearance from SEIAA and 'Consent for Operation' from Pollution Control Board.

41. In the instant case, the Project proponent has obtained Environmental Clearance for each of the sand reaches i.e. Nandanam 2, B.K. Bedu, Modugulapalem-2, Musalipedu, Kotrakona and Nandanoor, Anagallu, Muthukur, S.S.B. Peta-2, Nandanam-1, Subbanaidu Kadriga-2 and Taha Nagar-1 and there was also amendment to the above Environmental Clearance on 19.12.2020. The said Environmental Clearances granted for different locations was challenged by the applicant, herein, in Appeal Nos. 81 of 2021

and 1,2,3 and 4 of 2022. The appeals were disposed of on 01.04.2022 on the ground of limitation granting liberty to the appellants, therein, to move the Tribunal in the event if there is any violation of the Environmental Clearance conditions.

Issue nos. 2, 3 and 4

42. The allegation of the applicant in both the O.A. No.152 of 2021 and O.A. No. 53 of 2022 is that there is illegal activity by the project proponents as they have indulged in illegal sand mining in Aarniaar River in the 11 km stretch of the 05 villages in the pleadings. The complaint of the applicant in particular is that the mining is to be done only manually but the project proponents are using heavy machineries thus violating the conditions which have resulted in ecological damage. In this regard, the original Environmental Clearance granted on 01.12.2020 may be usefully adverted to:

> "....III. The proposal comes under Category 'B2'. The proposed project falls under Item No. 1(a) of the Schedule of the EIA Notification 2006-(i) Mining of Minerals (<100 Ha of mining lease area in respect of non-coal mine lease).
> The proposal has been examined and processed in accordance with EIA Notification, 2006 and its amendments thereof; The State Level Expert Appraisal Committee (SEAC) examined the application, in its meeting held on 18.11.2020 and 19.11.2020. The representatives of the project proponent District Sand Officer, and their RQP M/s. PV Satyanarayana have attended the online meeting. The Committee recommended for issue of Environmental Clearance for one year to this proposed sand mining project for the production quantities: Ordinary sand 49,100 m3/annum, duly stipulating a condition that the project proponent shall carryout mining only one meter depth sand from the top manually and no underwater mining is undertaken....."

43. Further in Specific Condition No.II, it is mandated that *the project proponent shall carryout mining only one meter depth sand from the top manually and no underwater mining is undertaken*. The said allegation is denied by the project proponent stating that

there is no usage of heavy machinery for carrying out the sand mining operations and the same is done by using semi-mechanised method i.e. manual method along with back hoe and using the JCB for loading the excavated sand into the tippers which is defined as semi-mechanised method as per the Environmental Clearance. In this regard, the project proponent also invited our attention to the amendment to the Environmental Clearance issued by the SEIAA, Andhra Pradesh dated 19.12.2020. The above document goes to show that original Environmental Clearance for various sand reaches were issued on 01.12.2020 therefore, the Assistant Director of Mines and Geology, Chittoor District, Andhra Pradesh in letter dated 17.12.2020 had requested for an amendment in the Environmental Clearance orders issued to operate through semi-mechanized method for sand mining. The said issue was examined by the SEAC in its meeting dated 18.12.2020 and recommended as follows "*The Committee after detailed discussions and deliberations on the Environmental Clearance amendment to the above said sand reaches of sand mining with semi-mechanised method has considered and recommended subject to submission of the following information by the project proponent: (i) The District Survey Report as per the "Sustainable Sand Mining Management Guidelines, 2016" issued by MoEF&CC, (ii) the details of the revised mining plan and (iii) the details of replenishment of sand in the sand reach".*

44. The SEIAA, Andhra Pradesh in its meeting held on 19.12.2020 examined the proposal and recommendation of SEAC for taking up semi-mechanised mining in place of manual mining. The Assistant Director, Mines and Geology, Chittoor District also had submitted

documents, namely, the District Survey Report as per the Sustainable Sand Mining Management Guidelines, 2016 and the details of the revised mining plan and the details of replenishment of sand in the sand reach to the SEAC or SEIAA. After considering the said aspect SEIAA amended Clause 2 of the Environment Clearance special conditions as follows *"(ii) The project proponent shall carryout mining only one meter depth sand through semi-mechanised/manually and no underground mining is undertaken"* retaining all the other conditions. This amendment Environmental Clearance was not challenged by the applicant.

45. Be that as it may, the S.O 3977(E) dated 14.08.2018 issued by the Ministry of Environment, Forest and Climate Change had made amendment in the EIA Notification, 2006 which reads as follows:

Area of Lease (Hectare)	**Category of Project**	**Requirement of EIA / EMP/ DSR**	**Requirement of Public Hearing**	**Requirement of EC**	**Who can prepare EIA/ EMP**	**Who will apply for EC**	**Authority to appraise/ grant EC**	**Authority to monitor EC compliance**
EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease								
0 – 5ha	'B2'	Form –1M, PFR, DSR and Approved Mine Plan	No	Yes	Project Proponent	Project Proponent	DEAC/ DEIAA	DEIAA SEIAA SPCB CPCB MoEFCC Agency nominated by MoEFCC
> **5 ha and < 25 ha**	'B2'	Form –I, PFR, DSR and Approved Mine Plan and EMP	No	Yes	Project Proponent	Project Proponent	SEAC / SEIAA	
≥ **25ha and ≤ 100ha**	'B1'	Form –I, PFR, DSR and Approved Mine Plan and EIA and EMP	Yes	Yes	Project Proponent	Project Proponent	SEAC / SEIAA	
> **100 ha**	'A'	Form –I, PFR, DSR and Approved Mine Plan and EIA and EMP	Yes	Yes	Project Proponent	Project Proponent	EAC/ MoEFCC	
EC Proposal of Sand Mining and other Minor Mineral Mining in cluster situation								
Cluster area of mine leases up to 5 ha	'B2'	Form –1M, PFR, DSR and Approved Mine Plan	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	DEAC/ DEIAA/	DEIAA SEIAA SPCB CPCB MoEFCC Agency nominated by MoEFCC

Cluster area of Mine leases > 5 ha and < 25 ha with no individual lease > 5 ha	'B2'	Form –I, PFR, DSR and Approved Mine Plan and one EMP for all leases in the Cluster	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	DEAC/ DEIAA/	
Cluster area of Mine leases > 5 ha and < 25 ha with any individual lease > 5 ha	'B2'	Form –I, PFR, DSR and Approved Mine Plan and one EMP for all leases in the Cluster	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	SEAC/ SEIAA	
Area of Lease (Hectare)	**Category of Project**	**Requirement of EIA / EMP/ DSR**	**Requirement of Public Hearing**	**Requirement of EC**	**Who can prepare EIA/ EMP**	**Who will apply for EC**	**Authority to appraise/ grant EC**	**Authority to monitor EC compliance**
EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease								
0 – 5ha	'B2'	Form –1M, PFR, DSR and Approved Mine Plan	No	Yes	Project Proponent	Project Proponent	DEAC/ DEIAA	DEIAA SEIAA SPCB CPCB MoEFCC Agency nominated by MoEFCC
> 5 ha and < 25 ha	'B2'	Form –I, PFR, DSR and Approved Mine Plan and EMP	No	Yes	Project Proponent	Project Proponent	SEAC / SEIAA	
≥ 25ha and ≤ 100ha	'B1'	Form –I, PFR, DSR and Approved Mine Plan and EIA and EMP	Yes	Yes	Project Proponent	Project Proponent	SEAC / SEIAA	
> 100 ha	'A'	Form –I, PFR, DSR and Approved Mine Plan and EIA and EMP	Yes	Yes	Project Proponent	Project Proponent	EAC/ MoEFCC	
EC Proposal of Sand Mining and other Minor Mineral Mining in cluster situation								
Cluster area of mine leases up to 5 ha	'B2'	Form –1M, PFR, DSR and Approved Mine Plan	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	DEAC/ DEIAA/	DEIAA SEIAA SPCB CPCB MoEFCC Agency nominated by MoEFCC
Cluster area of Mine leases > 5 ha and < 25 ha with no individual lease > 5 ha	'B2'	Form –I, PFR, DSR and Approved Mine Plan and one EMP for all leases in the Cluster	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	DEAC/ DEIAA/	
Cluster area of Mine leases > 5 ha and < 25 ha with any individual lease > 5 ha	'B2'	Form –I, PFR, DSR and Approved Mine Plan and one EMP for all leases in the Cluster	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	SEAC/ SEIAA	

46. Earlier on 24.12.2013 an office memorandum was issued by the MoEF&CC prescribing the guidelines for consideration of proposals for grant of Environmental Clearance and its amendments regarding categorization of 'B' projects/activities into category 'B1' and 'B2'. As per the said OM, category 'B' projects prescribed under EIA Notification, 2006 will be further categorised into category 'B1' and 'B2' except for township and area development projects for which the MoEF&CC shall issue appropriate guidelines from time to time, provision under 7.1 stage-I screening of the notification referred. The project categorised as 'B1' will require EIA report for appraisal and to undergo public consultation process. Projects categorised as 'B2' will be appraised based on the application in Form-I accompanied with the pre-feasibility report and any other documents.

47. The said notification specifically deals with river sand mining "no river sand mining project with mine lease area less than 05 ha., may be considered for granting Environmental Clearance. The river sand mining project with mining lease area more than 05 ha., but less than 25 ha., will be categorised as 'B2'". In addition to the requirement of the documents, the above projects will be considered subject to the following stipulations (i) the mining activities shall be done manually, (ii) the depth of the mining shall be restricted to 03 meters/water level whichever is less for carrying out mining in proximity to any bridge and/ or any embankment, appropriate safety zone shall be worked out on case to case bases to the satisfaction of SEIAA/SEAC taking into account the structural parameters, locational aspects floor rate etc.

and no mining shall be carried out in the safety zone so worked out, (iii) no in stream mining shall be allowed.

48. The above OM and the statutory order 3977(E) while allowing sand mining which is less than 05 ha., to be categorised as ' B2' category requires a Form-IM, pre-feasibility report, District Survey Report and approved mining plan. While public hearing is dispensed with, requirement of Environmental Clearance is made mandatory based on the EIA or EMP to be prepared by the project proponent. However, the OM dated 24.12.2013 which is guideline for consideration of proposal for grant of Environmental Clearance categorically states that the mining activity shall be done manually for 'B2' category. In such circumstances, whether the SEIAA can grant the amendment in contradiction to the conditions stipulated in the guidelines, if the answer is in the negative, then the amendment permitting the project proponent to use semi-mechanised method is without any authority and any act done by the project proponent pursuant to the same also would be illegal.

49. The Joint Committee appointed by this Tribunal had inspected the site on 12.10.2021 (i) to find out the present status and also the nature of work being done in the area, (ii) to ascertain whether illegal mining is taking place in the guise of desilting or dredging, (iii) the quantity of sand mined and the quantity of sand transported to the sand yards and (iv) also to assess the environmental compensation for any violations. So far as the Nandanam-1 is concerned, the area permitted for sand mining is 4.910 ha. It is pointed out that there is a typographical error in the mining plan, Environmental Clearance and 'Consent to Operate',

however, the Department of Mines and Geology has not approached SEIAA, Andhra Pradesh and Andhra Pradesh Pollution Control Board for correction of the same. The permitted quantity was 73,650 tonnes whereas as on 30.06.2021 the sand excavated is within the permitted quantity mentioned in the Environmental Clearance and ''Consent for Operation'. The operations were stopped during 30.06.2021. Regarding the Nandanam-2 the area permitted was 4.75 ha., permitted quantity was 71,250 tonnes and the excavated quantity by APMDC is 66,667 tones. Therefore the sand excavated is within the permitted quantity mentioned in the Environmental Clearance and ''Consent for Operation' here also the operation stopped during 30.06.2021. In the B.K. Bedu Village also the permitted quantity was 73,800 tonnes and the excavated quantity was only 4,488 tones and there is balance quantity available for excavation. In Subbaiah Naidu Kandriga the entire permitted quantity of 73,200 metric tonnes was excavated by the APMDC and it was stopped during 10.02.2021. In S.S. B. Peta-2 the area permitted for sand mining was 4.80 ha., and permitted quantity was 72,000 metric tonnes out of which 20,911 metric tonnes was excavated by the APMDC and 49,800 tonnes by the project proponent till 30.09.2021. The sand extraction was carried out beyond the boundaries. The aerial distance between S.S.B. Peta-2 and Surutupalle is around 340 metres and the entire areas between these two reaches are mined. Under such circumstances, it has to be treated as a single reach of larger area and accordingly permission ought to have been obtained.

50. Besides the above there are no CCTV cameras in the reach, no proper records regarding the quantity of sand extracted, the

registers were also not available on the reach and the quantity of sand excavated and quantity of sand dispatched, the particulars about the type of vehicles and the registration numbers used per day for sand transportation, there are no weigh bridges at the reach area. Above all the mining plan does not include any scientific mine closure plan and approach roads/ramps to the sand reach are not shown.

51. Earlier, there was a Joint Committee constituted in O.A. No. 187 of 2021 to look into the question as to whether the project proponents have valid documents, valid approvals and licenses and whether any excess mining has been done and penalty to be imposed. The 13 districts mentioned in O.A. No. 187 of 2021 and the sand reaches being operated in the State of Andhra Pradesh was mentioned in the report. In three districts, namely, Vijayanagaram, Visakhapatnam and Prakasham districts, there are no sand reaches available. The Committee had observed that most of the sand reaches in the State of Andhra Pradesh are inundated by flood water and very few reaches are in working condition. The Committee had specifically observed that sand replenishment studies in respect of district survey reports were not prepared in a scientific manner considering all the parameters by a competent person or authority. The mining plan of sand reaches does not have detailed information regarding the total sand reserve available in respective reach, the mining plan also does not include the scientific mine closure plan and approach road/ramp to the sand reach. Few of the sand reaches are located at inter-State and inter-district boundaries are falling under the cluster category i.e.,

less than 500 meters distance between the two reaches which require prior public hearing for grant of Environmental Clearance.

52. The Joint Committee also had mentioned the non-compliance of the Environmental Clearance conditions by the project proponent which are as follows:

(i) Assistant Director, Mines and Geology is not submitting the six monthly compliance report to the MoEF&CC.

(*Violation of General Condition No. iii- The half-yearly compliance reports in respect of the terms and conditions stipulated in this order & monitoring reports shall be uploaded in the website of the project periodically. It shall simultaneously be submitted in hard and soft copies to the SEIAA, A.P, District Collector and Ministry's Regional Office, Chennai on 1st June and 1st December of each calendar year.)*

(ii) Assistant Director, Mines and Geology has not allocated funds for implementation of cooperate social responsibility activities as committed.

(Violation of Specific Condition No. III- The project proponent shall allocate sufficient funds for implementation of CSR activities as committed by the representative along with the EMP).

(iii) It is observed that at few reaches the river flow pattern is being disturbed by the ramp constructed for transportation of the sand.

(*Violation of Specific Condition No. VII- It shall be ensured that sand mining does not in any way disturb the flow pattern of the river water*).

(iv) The Assistant Director, Mines and Geology does not have a separate environmental management cell with the suitable qualified persons to implement various environmental protection measures.

(v) Plantation has not been done on both sides of the approach path between the bund of the river and the main road.

(*Violation of Specific Condition No. XXII- Plantation shall be undertaken on either sides of the approach Katcha path (through which the vehicles ply between the bund of the river and the main road by the proponent at his cost*).

(vi) The air ambient quality is not being monitored,

(*Violation of Specific Condition No. XXIII- The proponent shall take appropriate measures to ensure that the GLC shall comply with the revised NAAQ norms notified by MoEF&CC, GOI on 16.11.2009*).

(vii) The ground water levels are also not being monitored in and around the mine lease areas.

(*Violation of Specific Conditions No. XXIV and XXV- Hydro geological studies in the mine lease area to be carried out by the Ground Water Department and Regular monitoring of Ground Water levels shall be carried out in and around the mine lease area to assess the quality of the ground water*).

(viii) The expenditure statement regarding the environmental protection measures are not being done.

(ix) The sand replenishment studies in respective District Survey Reports (DSR) were not prepared in a scientific manner considering all the technical parameters by a competent person/authority.

(x) The mining plans of sand reaches do not have detailed information regarding total sand reserves available in respective reach.

(xi) The mining plans do not include scientific mine closure plan and approach road/ramps to the sand reach.

53. The Joint Committee had further observed that though the State of Andhra Pradesh had obtained the Environmental Clearance and ''Consent for Operation' for the sand reaches which are in operations, the sand is being extracted at a few III order stream for quantities below 5,000 cum., for government work and local use with the permission of the District Collector at various districts without obtaining prior Environmental Clearance and 'Consent for Operation'. It has also been observed that a few sand reaches located at interstate and inter district boundaries fall under cluster category (distance between two reaches is below 500 meters) and requires prior public hearing for grant of Environmental Clearance

(B1 category) sand mining on river beds in area less than 05 ha., The extent in all the segments is less than 05 ha., and there is no discussion about the size of the cluster in the Environmental Clearance.

54. During the visit of the Joint Committee most of the sand reaches were not reachable due to inundation by flood water and the operational violations could not be identified. However, it has opined that by verifying the records there are no violation of the conditions imposed either in the Environmental Clearance or 'Consent for Operation'. The next main violation observed by the Joint Committee is the indiscriminate and unscientific sand mining carried out against the directions issued by the Tribunal in several cases. The Joint Committee has specifically observed that the expired/exhausted/earlier operated reaches the gravel/boulder used for construction of roads and ramps were left in unscientific manner causing obstruction of the river flow during flood season. The Joint Committee has found that there are violations as per the records available with the office of Deputy Director, Mines and Geology and M/s Jai Prakash Power Ventures Limited, it has not mentioned about the damages caused for using the heavy machineries when for 'B2' category sand mining it should be done only manually.

55. Finally the Joint Committee had given the following recommendations:

> *"**6.0 Recommendation of the Joint Committee***
> *As per the observations, the following recommendations are made by the Joint Committee:*
> 1. *Replenishment study of the sand bearing areas must be prepared in a scientific manner considering all the technical parameters by a*

competent person/authority. The District Survey Report shall be strengthened by including replenishment study of sand.

2. *Operation of number of reaches with mine lease area of less than 05.ha., at a particular area may leads to cluster formation. Instead of number of reaches, a single mine lease of having mine lease area up to 25 ha may be identified and processed.*
3. *The Director of Mines and Geology Department (DM&G) may declare above areas sand mining zone and mine leases may grant up to 25 ha.*
4. *The SEIAA, Andhra Pradesh may carefully examine and appraise the EC applications for sand mine reaches especially the reaches falls at cluster area.*
5. *The DM&G is required to obtain prior EC for sand mining at third order streams for quantities more than 5,000 Cu.m if used for commercial purpose.*
6. *As a part of post mining, the approach roads/ramps should be removed and the gravel/boulders should be stacked outside the river bank for further use in other sand reaches.*
7. *The mining plans of sand reaches shall have detailed information regarding total sand reserves available in respective reach.*
8. *The mining plans shall be included scientific mine closure plan along with detailed map of approach roads/ramps to the sand reach.*
9. *The mining plan shall include detailed mine closure plan.*
10. *The mining plan shall include the plates/sketches, as produced for other minor minerals.*
11. *Financial Assurance for the mine closure shall be furnished.*
12. *The DM&G must comply all the conditions stipulated in Environmental Clearances and Consent for Operation."*

56. Time and again this Tribunal has emphasised the importance of scientific and regulated sand mining especially in river beds. In O.A. No. 360 of 2015 and connected cases this Tribunal has clearly observed the likely adverse impacts of unscientific/unregulated sand mining which reads as follows:

> "15. It is undisputed that there is huge degradation of environment on account of unregulated sand mining remains which is otherwise lucrative activity. It poses threat to bio-diversity, could destroy riverine vegetation, cause erosion, pollute water sources, badly affecting riparian ecology, damaging ecosystem of rivers, safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spell disaster for the conservation bird 15 species, increase saline water in the rivers. It has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were going on illegally as well as legally without requisite restrictions....."

From the above, it is very clear that lack of detailed site specific environmental impact studies and lack of proper planning will result in unscientific sand mining which will disturb the riverine ecosystem.

57. The Environmental Clearances granted and the subsequent amendments issued which are listed below have been examined:

Table - 1

Sl. No.	Name of the sand reach	Date of EC applied	Date of EC issued	Date of Amended EC	Remarks
1.	Nandanam-1	10.11.2020	01.12.2020	19.12.2020	Representation by AD of Mines and Geology was sent on 17.12.2020 for amendment. SEAC Meeting held on 18.12.2020 and SEIAA meeting held on 19.12.2020.
2.	Nandanam-2	10.11.2020	01.12.2020	19.12.2020	
3.	B.K. Bedu	08.11.2020	01.12.2020	19.12.2020	
4.	Subbanaidu Kandriga-2	11.11.2020	01.12.2020	19.12.2020	
5.	Modugulapalem-2	---	01.12.2020	19.12.2020	
6.	Musalipedu	----	01.12.2020	19.12.2020	
7.	Kotrakona and Nandanoor	---	01.12.2020	19.12.2020	
8.	Anagallu	----	01.12.2020	19.12.2020	
9.	Muthukur	---	01.12.2020	19.12.2020	
10.	Taha Nagar-1	---	01.12.2020	19.12.2020	
11.	Nandanam-3	05.04.2022	21.04.2022	NA	All ECs were issued permitting semi-mechanised mining except S. No. 18 which was issued permitting manual mining.
12.	Nandanam-4	05.04.2022	03.05.2022	NA	
13.	Nandanam-5	05.04.2022	21.04.2022	NA	
14.	B.K. Bedu-1	05.04.2022	03.05.2022	NA	
15.	SSB Peta-3	05.04.2022	21.04.2022	NA	
16.	SSB Peta-4	05.04.2022	21.04.2022	NA	
17.	S.N. Kandriga, Karani-2	25.11.2021	24.12.2021	NA	
18.	SSB Peta-2	28.11.2020	19.12.2020	NA	

In respect of Environmental Clearances cited in Sl. No. 1 to 10 granted on 01.12.2020, an application was made by the Assistant Director of Mines and Geology on 17.12.2020 for amendment of Environmental Clearance to permit semi-mechanised method for sand mining. The matter was placed on the very next day i.e. on 18.12.2020, before SEAC and the issue was examined by SEAC and the same was recommended to SEIAA subject to submission of the following information from project proponent:

(i) The District Survey Report as per the "Sustainable Sand Mining Management Guidelines, 2016" issued by MoEF&CC.
(ii) The details of the revised mining plan and
(iii) The details of replenishment of sand in the sand reach.

The issue was examined by SEIAA in its meeting held on 19.12.2020, agreed with the recommendation of SEAC with certain

conditions. The Assistant Director of Mines and Geology, Chittoor through his letter dated 19.12.2020 submitted the documents sought by SEAC/SEIAA. On 19.12.2020 SEAC convened its 156th meeting and submitted its recommendation to the SEIAA, Andhra Pradesh for granting the amendment sought and the very same day SEIAA has convened its meeting, considered the proposal and issued its proceedings permitting the same. In respect of Environmental Clearances listed in Sl. Nos. 11 to 17, the Environmental Clearances were granted mostly within 20 days from date of application with permission for semi-mechanised mining, though Environmental Clearance was granted under 'B2' category. With regard to Sl. No. 18, the Environmental Clearance was granted under 'B2' category with permission for manual mining only.

58. The importance of appraisal by the SEAC prior to the grant of Environmental Clearance has been emphasised in several cases by National Green Tribunal and the Hon'ble High Courts. The Hon'ble Supreme Court in **Bengaluru Development Authority Vs. Mr. Sudhakar Hedge and Ors., Civil Appeal No. 2566 of 2019** held that appraisal by the SEAC being structured and defined by the EIA Notification, 2006, the SEAC is required to conduct a detailed scrutiny of the application and other documents submitted by the applicant for the grant of Environmental Clearance. It was also held by the Hon'ble Supreme Court that:

> *".....72. The reasons furnished by the SEAC must be assessed with reference to the norm that it is required to submit reasons for its recommendation. The analysis by the SEAC is, to say the least, both perfunctory and fails to disclose the reasons upon which it recommended to the SEIAA the grant of EC for the PRR project. The SEAC proceeds merely on the reply furnished by the appellant to the queries raised by the SEAC at its 115th meeting dated 11-12 August, 2014. In this view, the procedure followed by the SEAC suffers from a non application of mind.*

73. The SEAC is under an obligation to record the specific reasons upon which it recommends the grant of an EC. The requirement that the SEAC must record reasons, besides being mandatory under the 2006 Notification, is of significance for two reasons: (i) The SEAC makes a recommendation to the SEIAA in terms of the 2006 Notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as para 8(ii) of the 2006 Notification provides18, shall normally accept the recommendations of the EAC. Thus, the role of the SEAC in the grant of the EC for a proposed project is crucial; and (ii) The grant of an EC is subject to an appeal before the NGT under Section 16 of the NGT Act 2010. The reasons furnished by the SEAC constitute the link upon which the SEIAA either grants or rejects the EC. The reasons form the material which will be considered by the NGT when it considers a challenge to the grant of an EC.

.....

76. The SEAC, as an expert body, must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment and scrutinise the document submitted to it. The SEAC is duty bound to analyse the EIA report. Apart from its failure to repudiate a process conducted beyond the prescribed time period stipulated by the MoEF-CC, the SEAC failed to apply its mind to the abject failure of the appellant in conducting the EIA process leading upto the submission of the EIA report for the grant of EC. The SEAC is not required to accept either the EIA report or any clarification sent to it by the project proponent. In the absence of cogent reasons by the SEAC for the recommendation of the grant of EC, the process by its very nature, together with the outcome, stands vitiated."

59. From the above, it is clear that SEAC is under an obligation to record the specific reasons upon which it recommended the grant of Environmental Clearance and the reasons furnished by the SEAC constitute the link upon which the SEIAA either grants or rejects the Environmental Clearance. In the instant case, in the first instance, SEAC makes a recommendation to SEIAA stating that the request for semi-mechanised method of sand mining may be subject to submission of some information. The reports are said to have been furnished by the Assistant Director of Mines and Geology on the very next day and it was examined on the same day by the SEAC as well as SEIAA which clearly reveals that the said meetings have been convened only for the sake of record and without any analysis of the said reports, recommendation was made by SEAC and amendments were approved by SEIAA on 19.12.2020. We fail to understand how in respect of Environmental

Clearances listed in Sl. No. 1 to 10 within a matter of three days i.e. between 17th December, 2020 to 19th December, 2020 notices were sent for the meetings of SEAC and SEIAA and how the agenda papers were circulated among the members which normally requires a notice period of at least a weeks' time for each of the said meetings to facilitate scrutiny of the relevant documents circulated for offering their recommendations/decision making. In the instant case, it is evident that all the standard procedures involved in convening the meetings, circulation of papers in advance were all given a goby and we are constrained to infer that the said meetings were convened only for granting the amendment sought without any scrutiny of the records called for and without any application of mind and in violation of the guidelines to be followed under 'B2' category as per the Office Memorandum No.J-13012/12/2013-IA-II(I) dated 24.12.2013 issued by MoEF&CC as well as the clause 19 of standard environment conditions for sand mining of Sustainable Sand Mining Management Guidelines, 2016 (brought out by MoEF&CC) which clearly states:

> "Depending upon the location, thickness of sand, deposition, agricultural land/Riverbed, the method of mining may be manual, semi-mechanised or mechanised: however, manual method of mining shall be preferred over any other method."

Even in respect of proposals listed in Sl. No. 11 to 17 the time taken for the issuance of the Environmental Clarence from the date of submission ranges from 16 to 30 days. Within this particular period the meetings of SEAC and SEIAA were held. Perusal of the terms and conditions of the Environmental Clearances reveal that the basis on which SEAC has made a recommendation under 'B2' Category is not spelt out. Moreover the specific conditions (ii) and

(xi) [In Sl. No. 11 to 16 and conditions (ii) and (xiii) in Sl. No. 17] imposed in the Environmental Clearance are as follows:

> *"(ii) The project proponent shall carryout mining only one meter depth sand from the top Semi-mechanized mining method and no underwater mining is undertaken.*
>
> *(xi) The proponent shall carry mining by scrupulously following conditions stipulated for river sand mining in MOEF O.M. No. J-13012/12/2013-IA-II(I) dated 24.12.2013 and in A.P. WALTA Rules, 2004. The mining plan shall get modified to this extent."*

As per MoEF O.M. No. J-13012/12/2013-IA-II(I) dated 24.12.2013, the following condition *interalia* is imposed i.e., "in respect of 'B2' Category mining is to be done manually". So the permission granted under specific condition (ii) and (xi) are contrary to each other. Since as per the above referred O.M under 'B2' category only manual mining is permitted. This shows that besides non-conformity to the guidelines enforced, there is non-application of mind while imposing specific conditions.

60. It is also to be noted that though the Sustainable Sand Mining Management Guidelines allows usage of semi-mechanised and mechanised mining, it ought to be permitted only depending upon the location, thickness of sand, deposition and nature of land, which requires detailed examination for each site. Such an examination is possible only if a detailed Sand Replenishment Study and Environmental Impact Assessment Study are undertaken and is subject to public hearing to ensure transparency. In the instant case, when considering the amendment, SEAC/SEIAA before permitting semi-mechanized mining ought to have sought a detailed EIA study and consider the Environmental Clearance under 'B1' Category which alone would have fulfilled the conditions of the Sustainable Sand Mining

Management Guidelines, 2016. Under 'B2' category neither an EIA study nor a public hearing is envisaged, as a result only manual mining is permitted. This aspect was completely ignored by SEAC and SEIAA and they were too eager to grant the amendment sought by fast tracking the proposal and bypassing well established procedures of scrutiny and analysis of all relevant documents.

61. *So far as the instant cases are concerned, there are violation of Environmental Clearance conditions as 'B2' category as they cannot be permitted to use any machine be it mechanised or semi-mechanised. Mandatorily, it has to be done only manually. We are at a loss to understand as to how the SEIAA has amended the Environmental Clearance given earlier without adverting to its own guidelines for 'B2'categories*. No doubt there is no specific challenge to the Environmental Clearance granted but amendment given by SEIAA without adverting to its own guidelines cannot be taken advantage of by the project proponent. In this regard, we regret to state that the authority who is the rule maker has deliberately omitted to follow the same detrimental to environment.

62. To sum up, (i) Sand Replenishment studies were not carried out scientifically as stipulated in the guidelines in vogue, (ii) SEIAA without application of mind, has accorded permission for engagement of machinery in gross violation of guidelines in force instead of directing the PP to seek fresh EC under B1 category which would have necessitated an EIA, Public Consultation and other required processes. The permission granted for semi-

mechanised mining is in gross violation of the existing guidelines and (iii) established procedures of notice period, circulation of agenda notes in advance were all given a go by, by SEIAA.

63. We deprecate the conduct of the SEAC and SEIAA members who have consented for the amendment and granted Environmental Clearances and also hold that the Irrigation Department has failed in discharge of its responsibility of protecting the riverine ecosystems by consenting for segmentation of the sand mining in small pockets which paved the way for SEIAA to consider the Projects as B2 category. The Principle of Public Trust Doctrine was a casualty due to the conduct of the government agencies.

64. It has also been noticed that it has become a common practise for the Irrigation departments in different States to permit sand mining in rivers in stretches less than 25 hectares with impunity oblivious of the need to protect the riverine ecosystems which can be possible only if sand replenishment studies and detailed environmental impact assessment are undertaken for the entire river basin, prior to mining. We fail to understand why the Irrigation department and SEIAA are not insisting on such studies to be undertaken on the rivers, streams and Lakes. It is also noted that in the garb of sand mining in less than 25 hectares the State Government is splitting the river / lake /water bodies artificially only to secure EC under B2 category to escape the rigours of critical scrutiny which negates the very objective of EIA notification, Principles of Public Trust Doctrine and Principles of Sustainable Development. One can understand the need for B2 categorisation to cater to the needs of areas which are small where

mining, be it sand or mineral, are to be permitted. However, segmentation of rivers and water bodies which are more than 25 hectares is not what could be envisaged by the law makers, when the intention is to promote sustainable development. Unscientific mining on riverine and wetland ecosystem including manmade water bodies can spell disaster and have long term consequences for the riverine/lake ecosystems which in turn impact the very well being of people.

65. Time and again, cutting across States, it is noted by this Tribunal that the provisions of B2 are being misused by the State Agencies to undertake sand mining/quarrying to avoid the prescribed but time taking scientific studies for short term gains at the cost of environmental interests. Such an approach only belittles the faith reposed by Ministry of EF& CC in the State Agencies, since most of the amendments are being carried out based on the representations received from the State Agencies. Therefore we direct the MOEF&CC to re-examine the categorisation of B1 and B2 especially relating to Sand Mining.

66. In the conspectus of the above facts, the applications are disposed of in the following terms:

(i) The amendment granted to the Environmental Clearance in Sl. No. 1 to 10, Table-1 permitting semi-mechanised mining under 'B2' Category and all Environmental Clearances under 'B2' Category permitting semi-mechanised sand mining i.e. Sl. No. 11 to 18 are declared to be illegal and set aside as they are violative of the guidelines issued for 'B2'Category and are

also in violation of Sustainable Sand Mining Management Guidelines, 2016.

(ii) In view of the above, the operations should be stopped forthwith and the project proponents may be directed by SEIAA to obtain a fresh Environmental Clearance before proceeding further.

(iii) The MoEF&CC is directed to constitute a committee headed by Head of Integrated Regional Office, MoEF&CC, Vijayawada and a scientist from Southern Regional Office of CPCB to assess the environmental Compensation for mining carried out by the project proponent in violation of the original Environmental Clearance as observed by the Joint Committee in O.A. No. 187 of 2021 and also for the amendment of the Environmental Clearance by SEIAA contrary to the guidelines within a period of two months. Thereafter, the CPCB shall recover the environmental compensation so arrived by following due process of law within three months.

(iv) The Secretary to Government, MoEF&CC is directed to enquire into the manner in which amendments were granted to Environmental Clearances listed in Sl. No. 1 to 10 in Table-1, and also how semi-mechanised sand mining in riverbed/lakes was permitted under 'B2' Category in violation of the guidelines and Office Memorandum issued by the Ministry and recommend appropriate action against the persons concerned.

(v) MoEF&CC is also directed to re-examine categorisation of 'B1' and 'B2' categories especially in sand mining and sensitize the SEIAAs of various States.

(vi) SEIAA, Andhra Pradesh is directed to verify all the Environmental Clearances granted for sand mining under 'B2'

Category if permission has been granted for semi-mechanised or mechanised mining and re-examine the proposal either under 'B2' category (manual mining) or 'B1' Category (if semi-mechanised or mechanised mining is sought) following the prescribed procedures.

(vii) In view of the violations cited above, an interim compensation of Rs. 18 crores i.e. Rs. 1 Crore for each of the Environmental Clearance issued, is levied and this will be subsumed in the Environmental Compensation to be arrived by the Committee constituted by this Tribunal in point (iii). In case the Environmental Compensation arrived is less than the interim compensation levied by this Tribunal, the interim compensation will become final.

(viii) The above interim compensation is payable by the project proponent to the Central Pollution Control Board within a period of 03 months. Upon payment, the said amount may be defrayed by the Central Pollution Control Board for remediation of sites and restoration of Araniyar riverine/lake ecology including pollution abatement measures.

Sd/-

.....J.M.

(Smt. Justice Pushpa Sathyanarayana)

Sd/-

.....E.M.

(Dr. Satyagopal Korlapati)

Internet – Yes/No
All India NGT Reporter – Yes/No

O.A. No.152/2021(SZ)
O.A. No.53/2022(SZ)
O.A. No.187/2021(SZ)
23rd March, 2023. (AM)

No. J-13012/12/2013-IA-II (I)
Government of India
Ministry of Environment and Forests

Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi – 110 003

Dated 24th December, 2013

OFFICE MEMORANDUM

Subject: Guidelines for consideration of proposals for grant of environmental clearance Environmental Impact Assessment (EIA) Notification, 2006 and its amendments – regarding categorization of Category 'B' projects/activities into Category 'B1' & 'B2'.

The EIA Notification, 2006 mandates prior Environmental Clearance (EC) 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 (SEIAA)/Union Territory Environment Impact Assessment Authority (UTEIAA). The EIA Notification, 2006 prescribes that Category 'B' projects, will be further categorized as category 'B1' and 'B2' (except for Township and Area Development Projects) for which the Ministry of Environment & Forests (MoEF) shall issue appropriate guidelines from time to time - provisions under '7.I Stage(1)-Screening' of the Notification refer. The projects categorized as B1 will require EIA Report for appraisal and to undergo public consultation process (as applicable). Projects categorized as 'B2' will be appraised based on the application in Form-I accompanied with the Pre-feasibility Report and any other documents.

2. In compliance with such a requirement under the EIA Notification and to examine other issues, the MoEF had constituted vide O.M No. J-11013/12/2013-IA-II(I) dated 30.01.2013, an Expert Committee, under the Chairmanship of Director, NEERI, Nagpur. The Committee has since submitted its report. The recommendations of the Committee have been examined by MOEF and the following has been decided w.r.t. categorization of Category 'B' projects/activities into Category 'B1' & 'B2' listed in the Schedule of EIA Notification, 2006 and its amendments:

I. Mining of Minerals

Mining of minor minerals

As of now, mining projects of minor minerals with less than 50 ha of mining lease area are categorized as Category 'B' as per Notification S.O.2731(E) dated 9th September, 2013. Also vide OM No.L-11011/47/2011-IA.II(M) dated 24.06.2013, guidelines have been issued regarding categorization of mining projects of 'brick earth' and 'ordinary earth' having lease area less than 5 ha as category 'B2' subject to stipulations stated therein.

In the above backdrop, the projects of mining of minor minerals, categorized as Category 'B' are hereby categorized as 'B2' as per the following:

(i) 'Brick earth' / 'Ordinary earth' mining projects having lease area less than 5 ha will be considered for granting EC as per the aforesaid guidelines issued by MOEF on 24.6.2013.

(ii) 'Brick earth' / 'Ordinary earth' mining projects with mining lease area ≥ 5 ha but < 25 ha and all other minor mineral mining projects with mining lease area <25 ha, except for river sand mining projects will be appraised as Category 'B2' projects. These projects will be appraised based on following documents:

(a) Form -1 as per Appendix-I under EIA Notification, 2006
(b) Pre-feasibility report of the project
(c) Mining plan approved by the authorized agency of the concerned State Government

Provided, in case the mining lease area is likely to result into a cluster situation, i.e., if the periphery of one lease area is less than 500 m from the periphery of another lease area and the total lease area equals or exceeds 25 ha, the activity shall become Category 'B1' Project under the EIA Notification, 2006. In such a case, mining operations in any of the mine lease areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster.

(iii) No river sand mining project, with mine lease area less than 5 ha, may be considered for granting EC. The river sand mining projects with mining lease area ≥ 5 ha but < 25 ha will be categorized as 'B2'. In addition to the requirement of documents, as brought out above under sub-para (ii) above for appraisal, such projects will be considered subject to the following stipulations:

(a) The mining activity shall be done manually.
(b) The depth of mining shall be restricted to 3m/water level, whichever is less.
(c) For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone shall be worked out on case to case basis to the satisfaction of SEAC/SEIAA, taking into account the structural parameters, locational aspects, flow rate, etc., and no mining shall be carried out in the safety zone so worked out.
(d) No in stream mining shall be allowed
(e) The mining plan approved by the authorized agency of the State Government shall inter-alia include study to show that the annual replenishment of sand in the mining lease area is sufficient to sustain the mining operations at levels prescribed in the mining plan and that the transport infrastructure is adequate to transport the mines material. In case of transportation by road, the transport vehicles will be covered with taurpoline to minimize dust/sand particle emissions.
(f) EC will be valid for mine lease period subject to a ceiling of 5 years.

Provided, in case the mining lease area is likely to result into a cluster situation i.e. if the periphery of one lease area is less than 1 km from the periphery of another lease area and total lease area equals or exceeds 25 ha, the activity shall become Category 'B1' Project under the EIA Notification, 2006. In such a case, mining operations in any of the mine lease areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster.

II. Other projects or activities

The guidelines for categorizing some of the other category of projects or activities into 'B1' or 'B2' out of the category 'B' projects listed in schedule to EIA Notification, 2006, as amended from time to time, are as follows. These projects will be appraised based on Form-1 as per Appendix-I under EIA Notification, 2006, as amended and pre-feasibility report of the project.

S. N. of Schedule	Activities	Category B2	Category B1
1 (d)	Thermal Power Plants	Thermal power plants based on coal/lignite/naphtha and gas of capacity ≤ 5 MW.	Thermal power plants based on coal/lignite/ naphtha and gas of capacity > 5 MW and < 500 MW.
2 (b)	Mineral Beneficiation	The mineral beneficiation activity listed in the Schedule as Category 'B', with throughput ≤20,000 TPA, involving only physical beneficiation.	All other mineral beneficiation activity falling in the Schedule as Category 'B'.
3 (a)	Metallurgical Industries (ferrous & non-ferrous)	All non toxic secondary metallurgical processing industries involving operation of furnaces only, such as induction and electric arc furnaces, submerged arc furnaces, and cupola with capacity > 30,000 TPA but < 60,000 TPA provided that such projects are located within the notified Industrial Estates.	All other non toxic secondary metallurgical processing industries falling in the Schedule as Category 'B'.
3 (b)	Cement Plants	All stand-alone grinding units listed in the Schedule as Category 'B' subject to the condition that transportation of raw material and finished products shall be primarily* through Railways.	All stand-alone grinding units listed in the Schedule as Category 'B' where the transportation of raw material and finished products is not primarily through Railways.
4 (d)	Chlor Alkali Industry	All Chlor Alkali plants with production capacity <300 TPD (located within notified industrial area) listed in the Schedule as Category 'B'.	All Chlor Alkali plants with production capacity < 300 TPD (located outside notified industrial area) listed in the Schedule as Category 'B'.
4 (f)	Leather/Skin/Hide Processing Industry	All new or expansion projects of leather production without tanning, located within a notified industrial area/estate, listed in the Schedule as Category 'B'.	All others projects listed in the Schedule as Category 'B'

5 (a)	Chemical Fertilizers	Single Super Phosphate (SSP) plants involving only the activity of granulation of SSP powder.	All other Single Super Phosphate (SSP) plants listed in the Schedule as Category 'B'.
5 (d)	Manmade Fibres Manufac-turing	All manmade fibre manufacturing units producing fibres from granules or chips.	All other manmade fibre manufacturing units listed in the Schedule as Category 'B'
7 (g)	Aerial Ropeways	All Aerial Ropeway projects, listed in the Schedule as Category 'B', should be categorized as Category B2.	

* *transportation by railways should not be less than 90% of the traffic (inward and outward put together)*

3. The guidelines for categorization of Category 'B' projects/activities into Category 'B1' & 'B2' are applicable only to those projects/activities mentioned above. All the other Category 'B' projects/activities listed under the Schedule of EIA Notification, 2006 and its amendments shall be considered as Category 'B1' projects and appraised as per the procedure prescribed in the EIA Notification.

4. The information filled in Form-1 by the project proponent inter-alia relates to land, water and energy requirement, use of hazardous substances, disposal of hazardous waste, emissions from combustion of fossil fuels, emissions from production process, handling and disposal of hazardous waste, etc. In case the concerned SEAC , based on the information provided by the project proponent in Form-1, comes to the conclusion that a project though falling in Category 'B2' as per these guidelines needs to be appraised as 'B1' Category project, it will accordingly be appraised as 'B1' category project notwithstanding the provisions under these guidelines.

This issues with the approval of the Competent Authority.

(Dr. P.B. Rastogi)
Director
Telefax : 24342436

To,

1. All the Officers of I.A Division
2. Chairpersons/Member Secretaries of all the SEIAAs/SEACs
3. Chairman, CPCB
4. Chairpersons/Member Secretaries of all the SPCBs/UTPCCs

Copy to:

1. PS to MEF
2. PPS to Secretary (E&F)
3. PPS to ADG (F)
4. PPS to ADG (WL)
5. PPS to JS (AT)
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7. Website, MoEF
8. Guard File

रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

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पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय

अधिसूचना

नई दिल्ली, 14 अगस्त, 2018

का. आ. 3977 (अ).—भारत सरकार, पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उपधारा (1) और उपधारा (2) के खंड (v) के साथ पठित पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उपनियम (3) के खंड (घ) के अधीन भारत सरकार के तत्कालीन पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय की अधिसूचना सं. 1533(अ) तारीख 14 सितंबर, 2006 द्वारा निदेश दिया गया कि इसके प्रकाशन की तारीख से ही उक्त अधिसूचना में सूचीबद्ध नई परियोजनाओं या क्रियाकलापों का अपेक्षित संनिर्माण या विद्यमान परियोजनाओं या क्रियाकलापों का विस्तार या आधुनिकीकरण, जिसमें प्रक्रिया या प्रौद्योगिकी या उत्पाद मिश्रण में परिवर्तन सहित क्षमता वर्धन, इसमें विनिर्दिष्ट प्रक्रिया के अनुसार, यथास्थिति, केंद्रीय सरकार से या उक्त अधिनियम की धारा 3 की उपधारा (3) के अधीन केंद्रीय सरकार द्वारा सम्यकतः गठित राज्यस्तरीय पर्यावरण संघात निर्धारण प्राधिकरण द्वारा पूर्व पर्यावरण अनापत्ति के पश्चात् हो, भारत में किसी भी भाग में किया जाएगा ;

उक्त मंत्रालय ने राज्य पर्यावरण समाघात निर्धारण प्राधिकारी (एसईआईएए) और जिला पर्यावरण समाघात निर्धारण प्राधिकारी को पर्यावरण अनापत्ति को प्रदान करने के संबंध में और अधिक शक्तियों के प्रत्यायोजन के लिए अनुरोध को स्वीकार किया है ;

और पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उपनियम (3) के खंड (क) उपबंध करता है कि जहां केंद्रीय सरकार का विचार है कि किसी उद्योग या किसी प्रक्रिया को चलाने या प्रचालन करने पर किसी क्षेत्र के प्रतिषेध या निर्बंधन अधिरोप किया जाना चाहिए तो ऐसे करने के अपने आशय का नोटिस देगी ;

और पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उपनियम (3) के खंड (घ) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उपधारा (1) और उपधारा (2) के खंड (v) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए, जारी पर्यावरण समाघात निर्धारण अधिसूचना, 2006 में संशोधन करने के लिए ड्राफ्ट अधिसूचना संख्यांक का.आ. 3933(अ) तारीख 18 दिसंबर, 2017 को प्रकाशित की गई थी, जिसमें उन सभी व्यक्तियों से, जिनके उससे प्रभावित होने की संभावना है, उक्त अधिसूचना के भारत के राजपत्र में प्रकाशन की तारीख साठ दिन की अवधि के भीतर आक्षेप और सुझाव आमंत्रित किए गए थे ;

और उक्त राजपत्र की प्रतियां जनता को 18 दिसंबर, 2017 को उपलब्ध करा दी गई थी ;

और केंद्रीय सरकार द्वारा पूर्वोक्त वर्णित प्रारूप अधिसूचना पर प्राप्त सभी आक्षेपों और सुझावों पर सम्यक्त: विचार किया गया था ;

केंद्रीय सरकार, पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उपनियम (3) के खंड (घ) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उपधारा (1) और उपधारा (2) के खंड (v) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, पर्यावरण समाघात निर्धारण अधिसूचना 2006 में निम्नलिखित और संशोधन करती है, अर्थात् :--

उक्त अधिसूचना की अनुसूची में, मद 1(क), 1(ग) और लघु खनिज के पर्यावरणीय अनापत्ति पर अपेक्षाओं का स्कीम संबंधी प्रस्तुति, जिसके अंतर्गत परिशिष्ट-XI में समूह स्थिति भी है और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित मद और प्रविष्टियां रखी जाएंगी, अर्थात् :--

<table>
<tr><td colspan="2">परियोजना या कार्यकलाप</td><td colspan="2">प्रारंभिक सीमा सहित प्रवर्ग</td><td>शर्तें यदि कोई हों</td></tr>
<tr><td colspan="2"></td><td>क</td><td>ख</td><td></td></tr>
<tr><td colspan="2">1</td><td colspan="3">खनन, प्राकृतिक संसाधनों का निष्कर्षण तथा विद्युत उत्पादन ..... (विनिर्दिष्ट उत्पादन क्षमता के लिए)</td></tr>
<tr><td>(क)
(1)</td><td>(2)</td><td>(3)</td><td>(4)</td><td>(5)</td></tr>
<tr><td>1(क)</td><td>(i) खनिजों का खनन

(ii) पिच्छल पाइप लाईने (कोयला लिग्नाइट और अन्य अयस्क) जो राष्ट्रीय उद्यानों/अभ्यारण्यों /कोरल रीफ, पारिस्थितिकी संवेदी क्षेत्रों से गुजरती है</td><td>गैर कोयला खनन पट्टे के संबंध में > हे. खनन पट्टा क्षेत्र

कोयला खनन पट्टे के संबंध में > 150 हे. खनन पट्टा क्षेत्र

खनन क्षेत्र पर विचार किए बिना अज़बेस्टो का खनन क्षेत्र

सभी परियोजनाएं ।</td><td>गैर कोयला खनन पट्टे के संबंध में < 100 हे. खनन पट्टा क्षेत्र

कोयला खनन पट्टे के संबंध में < 150 हे. खनन पट्टा क्षेत्र</td><td>सामान्य शर्तें लागू होंगी, सिवाय :

(i) प्रवर्ग 'ख2' लघु खनिजों के खनन (25 हेक्टेयर खनन पट्टा क्षेत्र तक) के लिए परियोजना का कार्यकलाप ;

(ii) खनन पट्टा क्षेत्र के समूह की दशा में 'ख1' प्रवर्ग के लघु खनिज के खनन की परियोजना और क्रियाकलाप के लिए ; और

(iii) अंतरराज्यीय सीमा के कारण नदी तल खनन परियोजनाएं ।

टिप्पण :

(1) खनिज के पूर्वेक्षण को छूट दी गई है ।

(2) लघु खनिजों, जिनके अंतर्गत समूह अवस्थिति है, के खनन के लिए पर्यावरणीय अनापत्ति की विहित प्रक्रिया परिशिष्ट XI में दी गई है ;</td></tr>
<tr><td>1(ग)</td><td>(i) नदी घाटी परियोजनाएं

(ii) सिंचाई परियोजना</td><td>(i) <50 मे.वा. जल विद्युत उत्पादन

(ii) >50,000 हे. खेती योग्य कमान क्षेत्र</td><td>(i) ≥25 मे.वा. और <50 मे.वा. जल विद्युत उत्पादन

(ii) >2000 हे और <50,000 हे.. खेती योग्य कमान क्षेत्र

सिंचाई प्रणाली | ईसी की अपेक्षा
(क) लघु सिंचाई प्रणाली (<2000 हे.) | छूट प्राप्त
(ख) मध्यम सिंचाई | ईएमपी और राज्य स्तरीय</td><td>साधारण शर्तें लागू होंगी

टिप्पण :

(i) एक से अधिक राज्य में आने वाली प्रवर्ग 'ख' नदी घाटी परियोजनाओं का मूल्यांकन केंद्रीय सरकार स्तर पर किया जाएगा ;

(ii) किसी विद्यमान परियोजना द्वारा पर्यावरणीय लाभयुक्त सिंचाई प्रौद्योगिकी में परिवर्तन किया जाना (उदाहरणार्थ, बाढ़ सिंचाई से ड्रिप सिंचाई), जिसके फलस्वरूप खेती योग्य कमान क्षेत्र में वृद्धि हो, किंतु बांध की ऊंचाई और जलमग्नता में वृद्धि न हो, के लिए पर्यावरणीय स्वीकृति अपेक्षित नहीं होगी ।</td></tr>
</table>

			प्रणाली (>2000 <10,000 हे.)	(ख2 प्रवर्ग) तैयार करना अपेक्षित।	
			(ग) महा सिंचाई प्रणाली (>10000 से <50000 हे.)	इआईए/इएमपी और राज्य स्तरीय (ख1 प्रवर्ग) तैयार करना अपेक्षित।	

लघु खनिज के पर्यावरणीय अनापत्ति पर अपेक्षाओं का स्कीम संबंधी प्रस्तुति, जिसके अंतर्गत परिशिष्ट-XI में समूह स्थिति भी है

पट्टे का क्षेत्र (हेक्टेयर)	परियोजना का प्रवर्ग	ईआईए/ ईएमपी की अपेक्षा	लोक सुनवाई की अपेक्षा	ईसी की अपेक्षा	कौन ईआईए/ ईएमपी तैयार कर सकता है	ईसी के लिए कौन आवेदन करेगा	ईसी का मूल्यांकन/ स्वीकृति देने के लिए प्राधिकारी	ईसी की अनुपालना की मानीटरी करने के लिए प्राधिकारी
व्यष्टिक खनन पट्टे के आधार पर बालू खनन और अन्य लघु खनिजों के खनन के लिए ईसी प्रस्ताव								
0-5 हे.	'ख2'	प्रारुप-1 एमपीएफआर,डीएसआर और अनुमोदित खनन योजना	नहीं	हां	परियोजना प्रस्तावक	परियोजना प्रस्तावक	डीईएसी/ डीईआईएए	डीईआईएए एसईआईएए एपीसीबी सीपीसीबी एमओईएफसीसी एमओईएफसीसी अभिकरण द्वारा नामनिर्देशिती
>5 हे. और <25 हे.	'ख2'	प्रारुप-1 पीएफआर और डीएसआर अनुमोदित खनन योजना और ईएमपी	नहीं	हां	परियोजना प्रस्तावक	परियोजना प्रस्तावक	एसईएसी/ एसईआईएए	
>25 हे. और <100 हे.	'ख1'	प्रारुप-1 पीएफआर और डीएसआर अनुमोदित खनन योजना और ईआईए तथा ईएमपी	हां	हां	परियोजना प्रस्तावक	परियोजना प्रस्तावक	एसईएसी/ एसईआईएए	
>100 हे.	'क'	प्रारुप-1 पीएफआर और डीएसआर अनुमोदित खनन योजना और ईआईए तथा ईएमपी	हां	हां	परियोजना प्रस्तावक	परियोजना प्रस्तावक	ईएसी/ एमओईएफसीसी	
समूह स्थिति में बालू खनन और अन्य लघु खनिज के लिए ईसी प्रस्ताव								
5 हे. तक खनन पट्टे का समूह क्षेत्र	'ख2'	प्रारुप-1 एमपीएफआर, डीएसआर और अनुमोदित खनन योजना	नहीं	हां	राज्य, राज्य अभिकरण, परियोजना प्रस्तावकों का समूह, परियोजना प्रस्तावक	परियोजना प्रस्तावक	डीईएसी/ डीईआईएए	डीईआईएए एसईआईएए एपीसीबी सीपीसीबी एमओईएफसीसी एंजेसी द्वारा नामनिर्देशिती
>5 हे. और <25 हे. के खनन पट्टे के समूह क्षेत्र, >5 हे. के बिना किसी व्यष्टिक पट्टे के	'ख2'	प्रारुप-1 पीएफआर, डीएसआर और अनुमोदित खनन योजना तथा समूह में सभी पट्टों के लिए एक ईएमपी	नहीं	हां	राज्य, राज्य अभिकरण, परियोजना प्रस्तावकों का समूह, परियोजना प्रस्तावक	परियोजना प्रस्तावक	डीईएसी/ डीईआईएए	

खनन पट्टे के समूह क्षेत्र, >5 हे. के किसी व्यष्टिक पट्टे के साथ	ख 2	प्रारुप-1 पीएफआर, डीएसआर और अनुमोदित खनन योजना तथा समूह में सभी पट्टो के लिए एक ईएमपी	नहीं	हां	राज्य, राज्य अभिकरण, परियोजना प्रस्तावकों का समूह, परियोजना प्रस्तावक	परियोजना प्रस्तावक	एसईएसी/ एसईआईएए	
व्यष्टिक पट्टा आकार <100 हे. के साथ >25 के खनन पट्टों का समूह	'ख1'	प्रारुप-1 पीएफआर, डीएसआर और अनुमोदित खनन योजना तथा समूह में सभी पट्टो के लिए एक ईआईए/ईएमपी	हां	हां	राज्य, राज्य अभिकरण, परियोजना प्रस्तावकों का समूह, परियोजना प्रस्तावक	परियोजना प्रस्तावक	सीईएसी/ एसईआईएए	
>100 हे. से किसी व्यष्टिक पट्टे के आकार का कोई समूह	'क'	प्रारुप-1 पीएफआर, डीएसआर और अनुमोदित खनन योजना तथा समूह में सभी पट्टो के लिए एक ईआईए/ईएमपी	हां	हां	राज्य, राज्य अभिकरण, परियोजना प्रस्तावकों का समूह, परियोजना प्रस्तावक	परियोजना प्रस्तावक	ईएसी/ एमओईएफसीसी	

[फा. सं. 19-2/2013-आईए.III (पार्ट- II)]

ज्ञानेश भारती , संयुक्त सचिव

टिप्पण : मूल नियम, भारत के राजपत्र, असाधारण, भाग II, खंड 3 उपखंड (ii) में का. आ. 1533(अ), तारीख 14 सितंबर, 2006 में प्रकाशित किए गए थे और तत्पश्चात् निम्नलिखित संख्याओं के द्वारा संशोधित किए गए :--

1. का.आ. 1949(अ), तारीख 13 नवम्बर, 2006;
2. का.आ. 1737(अ), तारीख 11 अक्तूबर, 2007;
3. का.आ. 3067(अ), तारीख 1 दिसंबर, 2009 ;
4. का.आ. 695(अ), तारीख 4 अप्रैल, 2011 ;
5. का.आ. 156(अ), तारीख 25 जनवरी, 2012 ;
6. का.आ. 2896(अ), तारीख 13 दिसंबर, 2012 ;
7. का.आ. 674(अ), तारीख 13 मार्च, 2013 ;
8. का.आ. 2204(अ), तारीख 19 जुलाई, 2013 ;
9. का.आ. 2555(अ), तारीख 21 अगस्त, 2013 ;
10. का.आ. 2559(अ), तारीख 22 अगस्त, 2013 ;
11. का.आ. 2731(अ), तारीख 9 सितंबर, 2013 ;
12. का.आ. 562(अ), तारीख 26 फरवरी, 2014 ;
13. का.आ. 637(अ), तारीख 28 फरवरी, 2014 ;
14. का.आ. 1599(अ), तारीख 25 जून, 2014;
15. का.आ. 2601(अ), तारीख 7 अक्तूबर, 2014 ;
16. का.आ. 2600(अ), तारीख 9 अक्तूबर, 2014 ;
17. का.आ. 3252(अ), तारीख 22 दिसंबर, 2014 ;
18. का.आ. 382(अ), तारीख 3 फरवरी, 2015 ;
19. का.आ. 811(अ), तारीख 23 मार्च, 2015 ;
20. का.आ. 996(अ), तारीख 10 अप्रैल, 2015 ;

21. का.आ. 1142(अ), तारीख 17 अप्रैल, 2015 ;
22. का.आ. 1141(अ), तारीख 29 अप्रैल, 2015 ;
23. का.आ. 1834(अ), तारीख 6 जुलाई, 2015 ;
24. का.आ. 2571(अ), तारीख 31 अगस्त, 2015,
25. का.आ. 2572(अ), तारीख 14 सितंबर, 2015,
26. का.आ. 141(अ) 15 जनवरी, 2016,
27. का.आ. 648(अ) तारीख 3 मार्च, 2016 ;
28. का.आ. 2269(अ) तारीख 1 जुलाई, 2016 ;
29. का.आ. 2944(अ), तारीख 14 सितम्बर, 2016;
30. का.आ. 3518(अ), तारीख 23 नवंबर, 2016 ;
31. का.आ. 3999(अ), तारीख 9 दिसंबर, 2016;
32. का.आ. 4241(अ), तारीख 30 दिसम्बर, 2016; और
33. का.आ. 3611(अ), तारीख 25 जुलाई, 2018 ।

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 14th August, 2018

S.O. 3977(E).— Whereas, by notification of the Government of India in the erstwhile Ministry of Environment and Forests vide number S.O.1533 (E), dated the 14th September, 2006 issued under sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government directed that on and from the date of its publication, the required construction of new projects or activities or the expansion or modernisation of existing projects or activities listed in the Schedule to the said notification entailing capacity addition with change in process or technology or product mix shall be undertaken in any part of India only after prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified therein;

And whereas, the said Ministry has received requests, for delegation of more powers to State Environment Impact Assessment Authority (SEIAA) and District Environment Impact Assessment Authority (DEIAA) with respect to grant of Environment Clearances;

And whereas clause (a) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 provides that, whenever the Central Government considers that prohibition or restrictions of any industry or carrying on any processes or operation in any area should be imposed, it shall give notice of its intention to do so;

And whereas, a draft notification for making amendments in the Environment Impact Assessment Notification, 2006 in exercise of the powers conferred under sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 was published, vide number S.O.3933 (E) dated the 18th December 2017, inviting objections and suggestions from all the persons likely to be affected thereby, within a period of sixty days from the date of publication of said notification in the Gazette of India;

And whereas, copies of the said notification were made available to the public on 18th December 2017;

And whereas, all objections and suggestions received in response to the above mentioned draft notification have been duly considered by the Central Government;

Now, therefore, in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following further amendments in the Environment Impact Assessment Notification, 2006 namely:-

In the said Notification, in the SCHEDULE, for item 1(a), 1(c), and the Schematic Presentation of Requirements on Environmental Clearance of Minor Minerals including cluster situation in Appendix-XI and entries relating thereto, the following item and entries shall be substituted, namely:

<table>
<tr><td colspan="2" rowspan="2">Project or Activity</td><td colspan="3">Category with threshold limit</td><td rowspan="2">Conditions if any</td></tr>
<tr><td>A</td><td colspan="2">B</td></tr>
<tr><td>1</td><td colspan="5">Mining, extraction of natural resources and power generation (for a specified production capacity)</td></tr>
<tr><td>(1)</td><td>(2)</td><td>(3)</td><td colspan="2">(4)</td><td>(5)</td></tr>
<tr><td>1 (a)</td><td>(i) Mining of minerals</td><td>> 100 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.</td><td colspan="2">≤ 100 ha of mining lease area in respect of non-coal mine lease.

≤ 150 ha of mining lease area in respect of coal mine lease.</td><td>General Conditions shall apply except:
(i) for project or activity of mining of minor minerals of Category ‘B2’ (up to 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.

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;</td></tr>
<tr><td></td><td>(ii)Slurry pipelines (coal, lignite and other ores) passing through national parks / sanctuaries / coral reefs, ecologically sensitive areas.</td><td>All projects.</td><td colspan="2"></td><td></td></tr>
<tr><td>1(c)</td><td>(i) River Valley projects

(ii) Irrigation projects</td><td>(i) ≥ 50 MW hydroelectric power generation;

(ii) ≥ 50,000 ha. of culturable command area</td><td colspan="2">(i) ≥ 25 MW and < 50 MW hydroelectric power generation;

(ii) > 2000 ha. and < 50,000 ha. of culturable command area.</td><td>General Condition shall apply.

Note:-
(i) Category ‘B’ river valley projects falling in more than one state shall be appraised at the central Government Level.

(ii) Change in irrigation technology having environmental benefits (eg. From flood irrigation to Drip irrigation etc.) by an existing project, leading to increase in Culturable Command Area but without increase in dam height and submergence, will not require amendment/ revision of EC.</td></tr>
<tr><td></td><td></td><td></td><td>Irrigation system</td><td>Requirement of EC</td><td></td></tr>
<tr><td></td><td></td><td></td><td>(a) Minor Irrigation system (≤ 2000 Ha)</td><td>Exempted</td><td></td></tr>
<tr><td></td><td></td><td></td><td>(b) Medium irrigation system (> 2000 and < 10,000 ha.)</td><td>Required to prepare EMP and to be dealt at State Level (B_2 category).</td><td></td></tr>
</table>

			(c) Major irrigation system (≥10,000 to < 50,000 ha.)	Required to prepare EIA/EMP and to be dealt at State Level (B_1 category).	

Schematic Presentation of Requirements on Environmental Clearance of Minor Minerals including cluster situation in Appendix-XI:

Area of Lease (Hectare)	Category of Project	Requirement of EIA / EMP/ DSR	Requirement of Public Hearing	Requirement of EC	Who can prepare EIA/ EMP	Who will apply for EC	Authority to appraise/ grant EC	Authority to monitor EC compliance
EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease								
0 – 5ha	'B2'	Form –1M, PFR, DSR and Approved Mine Plan	No	Yes	Project Proponent	Project Proponent	DEAC/ DEIAA	DEIAA SEIAA SPCB CPCB MoEFCC Agency nominated by MoEFCC
> 5 ha and < 25 ha	'B2'	Form –I, PFR, DSR and Approved Mine Plan and EMP	No	Yes	Project Proponent	Project Proponent	SEAC / SEIAA	
≥ 25ha and ≤ 100ha	'B1'	Form –I, PFR, DSR and Approved Mine Plan and EIA and EMP	Yes	Yes	Project Proponent	Project Proponent	SEAC / SEIAA	
> 100 ha	'A'	Form –I, PFR, DSR and Approved Mine Plan and EIA and EMP	Yes	Yes	Project Proponent	Project Proponent	EAC/ MoEFCC	
EC Proposal of Sand Mining and other Minor Mineral Mining in cluster situation								
Cluster area of mine leases up to 5 ha	'B2'	Form –1M, PFR, DSR and Approved Mine Plan	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	DEAC/ DEIAA/	DEIAA SEIAA SPCB CPCB MoEFCC Agency nominated by MoEFCC
Cluster area of Mine leases > 5 ha and < 25 ha with no individual lease > 5 ha	'B2'	Form –I, PFR, DSR and Approved Mine Plan and one EMP for all leases in the Cluster	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	DEAC/ DEIAA/	
Cluster area of Mine leases > 5 ha and < 25 ha with any individual lease > 5 ha	'B2'	Form –I, PFR, DSR and Approved Mine Plan and one EMP for all leases in the Cluster	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	SEAC/ SEIAA	

Cluster of mine leases of area ≥ 25 hectares with individual lease size ≤ 100ha	'B1'	Form –I, PFR, DSR and Approved Mine Plan and one EIA/EMP forall leases in the Cluster	Yes	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	SEAC/ SEIAA	
Cluster of any size with any of the individual lease > 100ha	'A'	Form –I, PFR, DSR and Approved Mine Plan and one EIA/EMP for all leases in the Cluster	Yes	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	EAC/ MoEFCC	

[F. No. 19-2/2013-IA.III (Pt.II)]

GYANESH BHARTI, Jt. Secy.

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) *vide* number S.O. 1533 (E), dated the 14th September, 2006 and subsequently amended *vide* the following numbers: -

1. S.O. 1949 (E) dated the 13th November, 2006
2. S.O. 1737 (E) dated the 11th October, 2007;
3. S.O. 3067 (E) dated the 1st December, 2009;
4. S.O. 695 (E) dated the 4th April, 2011;
5. S.O. 156 (E) dated the 25th January, 2012;
6. S.O. 2896 (E) dated the 13th December, 2012;
7. S.O. 674 (E) dated the 13th March, 2013;
8. S.O. 2204 (E) dated the 19th July 2013;
9. S.O. 2555 (E) dated the 21st August, 2013;
10. S.O. 2559 (E) dated the 22nd August, 2013;
11. S.O. 2731 (E) dated the 9th September, 2013;
12. S.O. 562 (E) dated the 26th February, 2014;
13. S.O. 637 (E) dated the 28th February, 2014;
14. S.O. 1599 (E) dated the 25th June, 2014;
15. S.O. 2601 (E) dated the 7th October, 2014;
16. S.O. 2600 (E) dated the 9th October, 2014
17. S.O. 3252 (E) dated the 22nd December, 2014;
18. S.O. 382 (E) dated the 3rd February, 2015;
19. S.O. 811 (E) dated the 23rd March, 2015;
20. S.O. 996 (E) dated the 10th April, 2015;
21. S.O. 1142 (E) dated the 17th April, 2015;
22. S.O. 1141 (E) dated the 29th April, 2015;
23. S.O. 1834 (E) dated the 6th July, 2015;
24. S.O. 2571 (E) dated the 31st August, 2015;
25. S.O. 2572 (E) dated the 14th September, 2015;
26. S.O. 141 (E) dated the 15th January, 2016;
27. S.O. 648 (E) dated the 3rd March, 2016;
28. S.O. 2269(E) dated the 1st July, 2016;
29. S.O. 2944(E) dated the 14th September, 2016;

30. S.O. 3518 (E) dated 23rd November 2016;

31. S.O. 3999 (E) dated the 9th December, 2016;

32. S.O. 4241(E) dated the 30th December, 2016; and

33. S.O. 3611(E) dated the 25th July, 2018.

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असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

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अधिसूचना

नई दिल्ली, 20 अप्रैल, 2022

का.आ. 1886(अ).—केंद्रीय सरकार पर्यावरण और वन विभाग के पूर्ववर्ती मंत्रालय में पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा (3) की उप-धारा (1) और उप-धारा (2) के खंड (v) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए, पर्यावरण समाघात निर्धारण अधिसूचना, 2006 (जिसे इसमें इसके पश्चात ईआईए अधिसूचना, 2006 कहा गया है), परियोजनाओं की कतिपय प्रवर्ग के लिए पूर्व पर्यावरणीय मंजूरी आज्ञापक बनाने के लिए, संख्या का.आ.1533(अ), तारीख 14 सितंबर, 2006 द्वारा प्रकाशित की है।

और राज्य पर्यावरण समाघात निर्धारण प्राधिकरण (एसईआईएए) का गठन प्रवर्ग ख के अधीन सभी प्रस्तावों के लिए पर्यावरण मंजूरी (ईसी) पर विचार और अनुदान के लिए प्रत्यायोजित शक्तियों का प्रयोग करने हेतु राज्य स्तर पर ईआईए अधिसूचना, 2006 के कार्यान्वयन के लिए पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उप-धारा (3) के अधीन किया गया है;

और राज्य पर्यावरण समाघात निर्धारण प्राधिकरण ने पर्यावरण मंजूरी मूल्यांकन प्रक्रिया में पिछले पंद्रह वर्षों में पर्याप्त अनुभव प्राप्त किया है और राज्य स्तर पर पर्यावरण मंजूरी प्रस्तावों के कुशल और पारदर्शी निपटान के लिए परिवेश पोर्टल के माध्यम से पूरी तरह से ऑनलाइन कर दिया गया है;

और केंद्रीय सरकार राज्य स्तर पर मंजूरी की प्रसुविधा के लिए पर्यावरण मंजूरी प्रक्रिया को और विकेंद्रीकृत करना आवश्यक समझती है;

और आज की तारीख में, सुरक्षा भागीदारी के महत्वपूर्ण तत्वों के साथ राष्ट्रीय रक्षा और सामरिक महत्व से संबंधित प्रवर्ग ख की परियोजनाओं का राज्य स्तर पर भी मूल्यांकन किया जा रहा है, जिसे केंद्रीय सरकार राष्ट्रीय सुरक्षा चिंताओं को ध्यान में रखते हुए केंद्रीय रूप से मूल्यांकन करना आवश्यक समझती है;

अतः अब, केंद्रीय सरकार, पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप-नियम (4) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उप-धारा (1) और उप-धारा (2) के खंड (v) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त नियमों के नियम 5 के उप-नियम (3) के खंड (क) के अधीन नोटिस की अपेक्षा को समाप्त करने के पश्चात, लोकहित में भारत सरकार की तत्कालीन पर्यावरण एवं वन मंत्रालय की अधिसूचना संख्यांक का.आ. 1533(अ), तारीख 14 सितम्बर, 2006,की अधिसूचना में निम्नलिखित और संशोधन करती है अर्थात्:-

उक्त अधिसूचना में-

(1) पैरा 4 में, उप-पैरा (iii क) के स्थान पर, निम्नलिखित रखा जाएगा, अर्थात्: -

(iii क) राष्ट्रीय रक्षा या सामरिक या सुरक्षा महत्व से संबंधित हैं या जिन्हें केंद्रीय सरकार द्वारा संकटकाल जैसे महामारी, प्राकृतिक आपदाओं जैसी अत्यावश्यकताओं के कारण ऐसी प्रवर्ग 'ख' परियोजनाओं को अधिसूचित किया गया है या राष्ट्रीय कार्यक्रमों या स्कीमों या मिशन या ऐसी परियोजनाओं के अधीन पर्यावरण के अनुकूल क्रियाकलापों का संवर्धन करने के लिए जो इस अधिसूचना में यथा अधिकथित समय-सीमा से अधिक विलंबित हैं और समय-समय पर इस संबंध में यथा-अधिकथित मानदंडों को पूरा करती हैं, उन्हें केंद्रीय स्तर पर प्रवर्ग 'ख' परियोजनाओं के रूप में विचार किया जाएगा;

(2) अनुसूची में, -

(i) मद 1(क) के सामने,-

(क) स्तंभ (3) में, -

(क) गैर-कोयला खनन पट्टे के संबंध में "> 100 हेक्टेयर खनन पट्टा क्षेत्र" के स्थान पर, निम्नलिखित रखा जाएगा, अर्थात्: -

"कोयले के अलावा अन्य प्रमुख खनिज खनन पट्टे के संबंध में >250 हेक्टेयर खनन पट्टा क्षेत्र";

(ख) ">150 हेक्टेयर" प्रतीक, अंक और अक्षर के स्थान पर, "> 500 हेक्टेयर" प्रतीक, आंकड़े और अक्षर रखे जाएंगे;

(ख) स्तंभ (4) में, -

(क) गैर-कोयला खनन के संबंध में <100 हेक्टेयर खनन पट्टा क्षेत्र के स्थान पर,

पट्टा", निम्नलिखित रखा जाएगा, अर्थात्: -

"लघु खनिज खनन पट्टों के संबंध में सभी खनन पट्टा क्षेत्र और कोयले के अलावा अन्य प्रमुख खनिज खनन पट्टे के संबंध में <250 हेक्टेयर खनन पट्टा क्षेत्र";

(ख) "<150 हेक्टेयर" के प्रतीकों, अंकों और अक्षरों के स्थान पर "<500 हेक्टेयर" के प्रतीक, अंक और अक्षर रखे जाएंगे;

(ii) मद 1(ग) के सामने, -

(क) स्तंभ (3) में, -

(क) क्रम संख्या (i) में, "> 50 मेगावाट, प्रतीकों, अंकों और अक्षरों के स्थान पर "> 100 मेगावाट "प्रतीक, आंकड़े और अक्षर रखे जाएंगे;

(ख) क्रम संख्या (ii) और उससे संबंधित प्रविष्टियों का लोप किया जाएगा;

(ख) स्तंभ (4) में, -

(क) क्रम संख्या (i) में, "<50 मेगावाट' प्रतीक, अंक और अक्षर के स्थान पर, "<100 मेगावाट' प्रतीक, आंकड़े और अक्षर रखे जाएंगे;

(ख) क्रम संख्या (ii) में, -

(I) "और <50,000 हेक्टेयर" शब्द, प्रतीक और अंक का लोप किया जाएगा;

(II) बिंदु (ग) में सारणी में, "से <50,000" शब्द, प्रतीक और अंक का लोप किया जाएगा; ।

(ग) स्तंभ (5) में, क्रम संख्या (ii) के पश्चात, निम्नलिखित क्रम संख्या अंत:स्थापित किया जाएगा, अर्थात् :-

"(iii) अंतर-राज्यीय मुद्दों से संबंधित सिंचाई परियोजनाओं का मूल्यांकन केंद्रीय स्तर पर श्रेणी में परिवर्तन के बिना किया जाएगा।";

(iii) मद 1(घ) के सामने,-

(क) स्तंभ (3) में, "> 50 मेगावाट" प्रतीकों, अंकों और अक्षरों के स्थान पर, "> 100 मेगावाट" प्रतीकों, अंकों और अक्षरों को रखा जाएगा;

(ख) स्तंभ (4) में, "<50 मेगावाट' प्रतीक, अंक और अक्षर के स्थान पर, "<100 मेगावाट" प्रतीक, आंकड़े और अक्षर रखे जाएंगे;

(iv) मद 2(क) के सामने, -

(क) स्तंभ (3) में, ">1" प्रतीकों और अंक के स्थान पर, ">2.5 "प्रतीकों और अंक को रखा जाएगा;

(ख) स्तंभ (4) में, "<1" प्रतीकों और अंक के स्थान पर, "< 2.5" प्रतीक और अंक रखे जाएंगे;

(ग) स्तंभ (5) में,विद्यमान पैरा के पश्चात, निम्नलिखित पैरा अंत:स्थापित किया जाएगा, अर्थात्: -

"खनन पट्टा क्षेत्र के भीतर स्थित धुलाई मशीनों के साथ एकीकृत कोयला खनन परियोजनाओं को कोयला खनन परियोजनाओं के लिए विद्यमान सीमा के अनुसार केंद्रीय स्तर या राज्य स्तर पर, यथास्थिति, विचार किया जाना जारी रहेगा।";

(v) मद 2 (ख) के सामने, -

(क) स्तंभ (3) में,विद्यमान प्रविष्टियों का लोप किया जाएगा;

(ख) स्तंभ (4) में, "<0.5 मिलियन टीपीए का उत्पादन" प्रतीक, अंक, शब्द और अक्षर के स्थान पर, "सभी खनिज परिष्करण परियोजना, परिष्करण की प्रक्रिया पर ध्यान दिए बिना" शब्द रखे जाएंगे;

(ग) स्तंभ (5) में,विद्यमान पैरा के पश्चात, निम्नलिखित पैरा रखा जाएगा,

अर्थात्: -

"भीतर स्थित लाभकारी संयंत्रों के साथ एकीकृत खनन परियोजनाएं खनन पट्टा क्षेत्र पर केन्द्रीय स्तर पर विचार किया जाता रहेगा या यथास्थिति, राज्य स्तर, खनन परियोजनाओं के लिए विद्यमान सीमा के अनुसार।";

(vi) मद 7 (क) के सामने,-

(क) स्तंभ (3) में, "सभी परियोजनाओं" शब्दों के स्थान पर "सभी नई परियोजनाएं" शब्द रखे जाएंगे;

(ख) स्तंभ (4) में, निम्नलिखित अंत:स्थापित किया जाएगा, अर्थात्: -

"सभी विस्तार परियोजनाएं, जिनमें हवाई पट्टियां भी सम्मिलित हैं, जो वाणिज्यिक उपयोग के लिए हैं।"

[फा. सं. आईए 3-22/10/2022-आईए. III]

डॉ. सुजीत कुमार बाजपेयी, संयुक्त सचिव

टिप्पण : मूल अधिसूचना भारत के राजपत्र, असाधारण, भाग II, खंड III, उप-खंड (ii), संख्या का.आ. 1533(अ), तारीख 14 सितंबर, 2006 द्वारा प्रकाशित की गई थी और अधिसूचना संख्या का.आ. 1807(अ), तारीख 12 अप्रैल, 2022 द्वारा अंतिम संशोधन किया गया था ।

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 20th April, 2022

S.O. 1886(E).—WHEREAS, the Central Government in the erstwhile Ministry of Environment and Forests, in exercise of its powers under sub-section (1) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 has published the Environment Impact Assessment Notification, 2006 (hereinafter referred to as the EIA Notification, 2006), vide number S.O.1533 (E), dated the 14th September, 2006 for mandating prior environmental clearance for certain category of projects;

And whereas, the State Environment Impact Assessment Authorities (SEIAAs) have been constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 for implementation of the EIA Notification, 2006 at State level for exercising delegated powers to consider and grant Environmental Clearance (EC) for all proposals under Category B;

And whereas, the SEIAAs have gained substantial experience over the past fifteen years in the EC appraisal process and the process at the State level has also been made completely online through the PARIVESH portal for efficient and transparent disposal of EC proposals;

And whereas, the Central Government deems it necessary to further decentralise the EC process for facilitating clearances at State level;

And whereas, as on date, category 'B' projects, relating to national defence and strategic importance with significant element of security involvement are also being appraised at the State level which, the Central Government deems it necessary to be appraised centrally taking into account national security concerns;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986),read with sub-rule(4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government, after having dispensed with the requirement of notice under clause (a) of sub-rule (3) of rule 5 of the said rules, in public interest, hereby makes the following further amendments in the notification of the Government of India, in the erstwhile Ministry of Environment and Forests, number S.O. 1533 (E), dated the 14th September, 2006, namely:-

In the said notification,-

(1) in paragraph 4, for sub-paragraph (iii a), the following shall be substituted, namely:-

(iii a) Such Category 'B' projects, relating to the National defence or strategic or security importance or those as notified by the Central Government on account of exigencies such as pandemics, natural disasters or to promote environmentally friendly activities under National Programmes or Schemes or Missions or such projects which are inordinately delayed beyond the stipulated timeline as laid down in this notification and also meet the criteria as laid down in this regard from time to time, shall be considered at the Central level as Category 'B' projects;

(2) in the Schedule,–

(i) against item 1(a),–

(a) in column (3),–

(A) for ">100 ha. of mining lease area in respect of non-coal mining lease", the following shall be substituted, namely:–

">250 ha mining lease area in respect of major mineral mining lease other than coal";

(B) for the symbol, figures and letters "> 150 ha", the symbol, figures and letters "> 500 ha" shall be substituted;

(b) in column (4),–

(A) for "≤ 100 ha of mining lease area in respect of non-coal mine lease", the following shall be substituted, namely:–

"All mining lease area in respect of minor mineral mining leases and ≤ 250 ha mining lease area in respect of major mineral mining lease other than coal";

(B) for the symbols, figures and letters "≤ 150 ha", the symbols, figures and letters "≤ 500 ha" shall be substituted;

(ii) against item 1(c),–

(a) in column (3),–

(A) in serial number (i), for the symbols, figures and letters "≥ 50 MW", the symbols, figures and letters "≥100 MW" shall be substituted;

(B) serial number (ii) and the entries relating thereto shall be omitted;

(b) in column (4),–

(A) in serial number (i), for the symbol, figures and letters "< 50 MW", the symbol, figures and letters "< 100 MW" shall be substituted;

(B) in serial number (ii),–

(I) the word, symbol and figures "and < 50,000 ha." shall be omitted;

(II) in point (c) in the table, the word, symbol and figures "to < 50,000" shall be omitted;

(c) in column (5), after serial number (ii), the following serial number shall be inserted, namely:–

"(iii) Irrigation projects involving Inter-State issues shall be appraised at Central level without change in category.";

(iii) against item 1(d),–

(a) in column (3), for the symbols, figures and letters "≥ 50 MW", the symbols, figures and letters "≥100 MW" shall be substituted;

(b) in column (4), for the symbol, figures and letters "< 50 MW", the symbol, figures and letters "< 100 MW" shall be substituted;

(iv) against item 2(a),–

(a) in column (3), for the symbols and figure "≥1", the symbols and figures "≥ 2.5" shall be substituted;

(b) in column (4), for the symbols and figure "<1", the symbols and figures "< 2.5" shall be substituted;

(c) in column (5), after the existing paragraph, the following paragraph shall be inserted, namely:–

"Integrated coal mining projects with washeries located within mining lease area shall continue to be considered at Central level or State level, as the case may be, as per the extant threshold for coal mining projects.";

(v) against item 2 (b),–

(a) in column (3), the existing entries shall be omitted;

(b) in column (4), for the symbol, figures, words and letters "< 0.5 million TPA throughput", the words "All mineral beneficiation projects irrespective of the procedure for beneficiation" shall be substituted;

(c) in column (5), after the existing paragraph, the following paragraph shall be inserted, namely:–

"Integrated mining projects with beneficiation plants located within mining lease area shall continue to be considered at Central level or State level, as the case may be, as per the extant threshold for mining projects.";

(vi) against item 7 (a),–

(a) in column (3), for the words "All projects", the words "All new projects" shall be substituted;

(b) in column (4), the following shall be inserted, namely:–

"All expansions projects, including airstrips, which are for commercial use.".

[F. No. IA3-22/10/2022-IA.III]

Dr. SUJIT KUMAR BAJPAYEE, Jt. Secy.

Note : The principal notification was published in the Gazette of India, Extraordinary, Part II, Section III, sub-section (ii), vide, number S.O. 1533(E), dated the 14th September, 2006 and was last amended, vide, the notification number S.O. 1807(E), dated the 12th April, 2022.

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