

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

**Original Application No. 77 of 2023 (SZ)**

T. Saravanakumar,

... Applicant

**Versus**

**1.** The Tamilnadu State Environment Impact Assessment Authority  
and Anr

... Respondents

**REPLY STATEMENT FILED BY THE 2<sup>nd</sup> RESPONDENT  
(The Executive Engineer, PWD)**



**Dr. D SHANMUGANATHAN**

**COUNSEL FOR 2<sup>nd</sup> RESPONDENT**

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

**Original Application No. 77 of 2023 (SZ)**

T. Saravanakumar,  
S/o.Thangavel,  
Residing at No.6/121,  
Chinnathambipalayam, Kumaripalayam,  
Namakkal dt - 637015

... Applicant

Versus

1. The Tamilnadu State Environment Impact Assessment Authority,  
Rep by its Member Secretary,  
3rd Floor, Panangal Maligai,  
No. 1, Jeenis Maligai,  
Saidapet Chennai - 15
  
2. The Executive Engineer  
Public Works Department  
Mines and Monitoring Division,

... Respondents

**REPLY STATEMENT FILED BY THE 2<sup>ND</sup> RESPONDENT**

I, P.Murugavel, Son of Mr. A.Potturajan, aged 55 years, residing at 13, PWD Quarters, Kajamalai Colony, Trichirapalli - 620 020, now temporarily come down to Chennai, do hereby solemnly affirm and sincerely state as follows:

  
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Mining and Monitoring Sub Division  
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1. That I am the Executive Engineer, Mining and Monitoring Division, Water Resources Department, Trichirapalli, the 2<sup>nd</sup> Respondent herein and as such I am well acquainted with the facts of the case.

2. That the present Original Application has been filed by the Applicant for the following relief:

*“A. Direct the 2nd Respondent to carry on mining manually at SF No. 643/1 (Part) (Mile 77/2+150 to 77/5 + 150), Oruvandhoor village, Namakkal District, pursuant to the Environmental Clearance dated 10.08.2016 extended by Order dated 01.02.2023 issued by the 1st Respondent, in compliance with OM dated 24.12.2013.*

*B. Direct the 1st respondent to strictly comply with OM dated 24.12.2013 in issuing environmental clearances for mining of minor minerals.*

*C. Issue such other orders as it deems fit in the interest of the case and render justice”*

3. That the present application is not maintainable at all as it is devoid of merits on both the factual and legal aspects and the same has been filed with vested interest and is an abuse of process of law.

4. That I have read the contents of OA 77 of 2023 (SZ) and at the outset I deny all the averments in this application except those that are specifically admitted herein. I am filing this Reply Statement in my official capacity on behalf of the 2<sup>nd</sup>

  
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Respondent and reserve my right to file additional Reply Statement by this Respondent at a later stage.

**5. BEFORE TRAVERSING PARAWISE**, it is respectfully submitted that the Government of Tamil Nadu constituted a High Level Committee comprising of 6 members vide G.O.(2D) 46 Industries (MMC-1) Department Dated 25.09.2002, in pursuant to the Order of the Hon'ble Madras High Court in WP No. 985/2000 dated 26.7.2002, with respect to study the river and river beds in the State with reference to the impact of sand quarrying.

**6.** That taking cognizance of the indiscriminate quarrying in the river systems, the exploitation of natural resources and the illicit and haphazard sand mining which had led to deepening of the river beds, widening of the rivers, damage to civil structures, depletion of ground water table, degradation of ground water quality, sea water intrusion in coastal areas, damages to the river systems and reduction of bio-diversity, the Government of Tamil Nadu took immediate effective steps to curb the same, in public interest, issued an amendment to the Tamil Nadu Minor Mineral Concession Rules, 1959, in G.O.Ms.No.95, dated 01.10.2003 by introduction of Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, whereby all existing leases for quarrying sand in Government lands and permissions granted in Ryotwari lands ceased to be effective with effect from 02.10.2003. The right to quarry sand in the State now vests only with the State through the Public Works Department, Water Resources Department.

  
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7. That on 27.01.1994, the Ministry of Environment and Forests (MoEF), under the Environment (Protection) Act, 1986, issued an Environment Impact Assessment Notification (1994 Notification), which mandated that on and from the date of publication of notification, expansion or modernization of any activity if pollution load is to exceed the existing one, or new project listed in Schedule I to the notification, shall not be undertaken in any part of India, unless it has been accorded Environmental Clearance (EC) by the Central Government.

8. That the said 1994 Notification became the subject matter in W.P. No. 4677/1985, i.e., M.C. Mehta Vs. Union of India, reported in (2004) 12 SCC 118, wherein the Hon'ble Supreme Court, held that all mining projects or major minerals of more than 5 Ha lease area, which have so far not obtained EC under the 1994 Notification, shall do so at the time of renewal of their lease.

9. That pursuant to the said order of the Hon'ble Supreme Court, MoEF & CC had issued a Circular dated 12.02.2004 in regard to the procedure for obtaining EC in the case of mining projects under the 1994 Notification. The said circular was modified by MoEF & CC by another Circular dated 28.10.2004, and thereby clarified the applicability of 1994 Notification, which is as follows:

  
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(i) Mining projects of major mineral with more than 5ha lease area, which have started production or increased their production and/or lease area on or after 27.01.1994.

(ii) In addition, all mining projects of major minerals of more than 5 ha lease area which have so far not obtained an environmental clearance under the EIA Notification, 1994 shall do so at the time of renewal of their lease in the context of the SC Judgment dated 18.03.2004 in W.P. 4677/1985 – M.C.Mehta vs UOI & Ors”.

**10.** That subsequently, MoEF & CC issued Notification dated 14.09.2006 (2006 Notification) issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 and sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act 1986, in supersession of its 1994 Notification, except in respect of things done or omitted to be done before such supersession, directed that on and from the date of its publication, the required 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 EC from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority (SEIAA), duly constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986, in accordance with the procedure specified in the notification.

  
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11. That by the said Notification 2006, the projects listed in the Schedule to the Notification require prior Environmental Clearance, which were classified into two categories viz., "A" category and "B" category. For "A" category projects, prior Environment Clearance had to be issued by MoEF & CC and for "B" category projects, Environment Clearance had to be issued by the State Environmental Impact Assessment Authority (SEIAA).

12. That the Hon'ble Madurai Bench of Madras High Court in its order dated 02.12.2010 in W.P.No.11182 of 2010 etc., (batch cases) directed that no poclain or other heavy machinery shall be used for sand quarrying. However, the said order was modified by granting permission for use of minimum poclains not more than "Two Poclains", vide Order dated 10.01.2011 in Review Petition in M.P.No.1 of 2011 in W.P. (MD) No. 11562 of 2010.

13. That subsequent to the above direction of the Hon'ble Madurai Bench of Madras High Court, the Government of Tamil Nadu issued G.O. (D) No. 67, Industries (MMC-I) Department, dated 11.03.2011, whereby directing the District Collectors to impose conditions restricting judicious use of minimum number of poclains and not more than two poclains.

14. That as per Schedule 1 (a) of the said Notification 2006, mining of minerals between 5 Ha to 50 Ha was categorized as B Project and above 50 Ha was categorized as A Project. However, the Hon'ble Supreme Court of India in **Deepak Kumar Vs.**

  
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**State of Haryana** reported in **(2012) 4 SCC 629** has directed the State Governments to take steps to frame necessary rules under section 15 of the Mines & Minerals (Development & Regulation) Act, 1957 and further directed that in the meantime, the leases of minor minerals including their renewal for an area less than 5 Ha be granted by States/ Union Territories only after getting clearance from the MoEF/SEIAA.

**15.** That in order to implement the aforesaid direction of the Hon'ble Supreme Court, MoEF & CC issued an Office Memorandum dated 18.05.2012, by which the mining projects of minor minerals including lease area less than 5 Ha which was categorized as B category, were directed to obtain prior Environment Clearance from the MoEF/SEIAA as per EIA Notification 2006.

**16.** That as per the direction of the Hon'ble Supreme Court of India dated 27.02.2012 (Deepak Kumar's case) and as per the Ministry of Environment and Forest (MOEF) Office Memorandum No. L-11011/47/2011-1A.II(M) dated 18.05.2012, the Hon'ble Madurai Bench of Madras High Court in its order dated 03.08.2012 in W.P.No.4699 of 2012, directed that the Sand Quarries should be operated only after obtaining Environment Clearance from State Level Environment Impact Assessment Authority. The relevant portion of the order is as follows:

  
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*“a) Permission for fresh sand quarry operations in the Cauvery River are to be granted by the State Government / Secretary, Industries Department / District Collector only after getting Environmental Clearance from the SEIAA, as per the Environmental Impact Assessment Notification dated 14.9.2006 and further Office Memorandum of Ministry of Environment and Forests dated 18.5.2012.*

*b) On receipt of the application seeking for Environmental Clearance for sand quarrying operation from the State Government / Public Works Department, the State Environmental 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”.*

**17.** That in compliance of the above directions of the Hon'ble Madurai Bench of Madras High Court and as per EIA Notification 2006, necessary applications for Environmental Clearances were applied by the State Government for river sand mining in the State. However, in the absence of notification of MoEF regarding categorization of B1 and B2 categories, the SEIAA, TN decided in its meeting held on 28.08.2012 to follow the procedure of SEIAA, Andhra Pradesh in this regard to formulate similar guidelines for mining projects as an interim arrangement till such time, the MoEF, GOI issues guidelines

  
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that ***the proposed mining area is less than 25 ha, it will be considered as B2 category.***

**18.** That as directed by the Hon'ble Madurai Bench, within 2 months from the date of receipt of applications, the State Environmental Impact Assessment Authority granted Environmental Clearances under B2 Category based on the ad-hoc guidelines, to the State Government from 26.10.2012 onwards to quarry on the existing sand mining operations.

**19.** That aggrieved by the aforesaid grant of the Environmental Clearances by the State Environmental Impact Assessment Authority, batch of appeals were filed before the National Green Tribunal, Southern Zone, Chennai seeking to quash the Environmental Clearances given by the State Environmental Impact Assessment Authority for sand quarry operations in the Cauvery and Coleroon Basin of State of Tamil Nadu in Appeal Nos. 64 – 89 of 2013 (SZ).

**20.** That in the meantime, Office Memorandum dated 24.12.2013 issued by the MoEF, wherein the "B" category projects were further divided into two categories viz., B-1 category (25 Ha to 50 Ha) and B-2 category (5 Ha to 25 Ha) of which B-1 category projects require Environmental Impact Assessment Report, whereas, B-2 projects did not require the same which will be granted based on Form I accompanied with Pre-feasibility Report, Further, the said OM restricts river sand mining project with mine lease area less than 5 Ha, however, it mandates that the mining activity for the mine lease area

  
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between 5 – 25 Ha which was categorized as B2, should be done manually.

**21.** That in the appeals in Appeal Nos. 64 – 89 of 2013, the National Green Tribunal, Southern Zone, Chennai in its judgement dated 24.02.2014, directed the Executive Engineer, PWD, to run all the above sand quarries based on the ad-hoc guidelines of SEIAA for a period of six months and 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.

**22.** That aggrieved by the above judgment dated 24.02.2014 passed by the National Green Tribunal, the individual Respondents and Associations have filed batch of Writ Petitions in W.P. (MD) Nos. 7146 to 7157 and 7767 to 7772 of 2014 at the Madurai Bench of Madras High Court, wherein, the Hon'ble Madurai Bench by citing the Office Memorandum dated 24.12.2013 regarding categorization of B category in to B1 and B2, passed an interim order dated 30.04.2014, whereby directed as follows:-

*“(i) There shall be no instream mining and  
(ii) the Respondents shall not do mechanized mining”.*

**23.** That as against the above said interim order dated 30.04.2014 of the Hon'ble Madurai High Court, the Public Works Department filed an Appeal in Civil Appeal Nos. 5531-5548 of 2014 in SLP(c) Nos.12619-12636 of 2014 at the Hon'ble

  
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Supreme Court. The Hon'ble Apex Court in its order dated 09.05.2014, vacated the interim order and directed as follows:-

*"3. Having regard to the over-all facts and circumstances of the case, we vacate the part of the impugned order whereby the High Court has restrained the present appellants (respondents before the High Court) from doing mechanised mining. In other words, the appellants (respondents before the High Court) are at liberty to do mechanised mining. The rest of the impugned order remains as it is.*

*4. We request the High Court to hear and decide the Writ Petitions on the next date i.e., 4<sup>th</sup> June 2014 or for any reason, if the matter is adjourned, to dispose of the Writ Petitions within one month therefrom positively.*

*5. All issues including objections regarding maintainability of Writ Petitions are kept open to be raised before the High Court.*

.....  
....."

**24.** That subsequently in compliance of the above direction of the Hon'ble Supreme Court, the Hon'ble Madurai Bench of the Madras High Court in its order dated 06.08.2014 dismissed the batch of Writ Petitions in W.P. (MD) Nos. 7146 to 7157 and 7767 to 7772 of 2014.

  
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25. That in the meantime, the above Office Memorandum dated 24.12.2013 was stayed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi (Circuit Bench) in batch of application viz., Application Nos. 279 & 343 of 2013 vide its Order dated 28.03.2014, wherein it was observed as follows:

***".....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 miner minerals like sand etc., list these matters on 30th May, 2014 for hearing."***

26. That apart from the above Applications, various other Original Applications in O.A. Nos. 123 of 2014 & Batch, were filed against the aforesaid OM dated 24.12.2013, on the ground that in their States, larger mining areas of more than 5 Ha are hardly available, besides raised various other grounds. The Hon'ble Principal Bench in its Order dated 13.01.2015 held that Clause 2 (iii) of Office Memorandum dated 24.12.2013 declared as invalid as it relates to mining less area than 5 ha and further held that till MoEF issues a comprehensive notification consonant with Deepak Kumar case, the following directions shall be followed:

  
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“83. In light of the above discussion and particularly keeping in view the persistent conflict between the State Regulations and the Central Notifications, **it is imperative for us to issue directions specially to provide for an interim period, during which appropriate steps should be taken to comply with the Judgment of the Hon’ble Supreme Court and to issue Notifications which are necessary in that regard.** Therefore, we pass the following order and directions:

I. For the reasons afore recorded, we hold and declare that the Notification dated 9th September, 2013 is invalid and inoperative for non-compliance of the statutorily prescribed procedure under the Environment (Protection) Rules, 1986 and for absence of any justifiable reason for dispensation of such procedure.

II. We also hold and declare that the Office Memorandums dated 24th June, 2013 and 24th December, 2013 to the extent aforeindicated are invalid and inoperative being beyond the power of delegated legislation.

III. All the Office Memorandums and Notifications issued by MoEF i.e. 1st December, 2009, 18th May, 2012 and 24th June, 2013 and 24th December, 2013 (except to the extent afore-stated) are operative and would apply to the lease mine holders irrespective of

  
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*the fact that whether the area involved is more or less than 5 hectares.*

IV.....

.....”

It is apparent clear from the above direction that the arrangements and observations made in the above order, are valid only till MoEF issued comprehensive notification with regard to river sand mining.

**27.** That in conformity with the judgment of the Supreme Court in Deepak Kumar’s case and also the above judgment in O.A. Nos. 123 of 2014 & Batch of the Principal Bench, the MoEF amended the 2006 Notification and issued a comprehensive Notification in exercise of the powers conferred by Section 3(2)(v)(1) of the EP Act, 1986 wherein it included lease areas less than or equal to 5 ha as also requiring prior EC (known as ‘B2’ category), and also constituted a District Level Environment Impact Assessment Authority (DEIAA) in the district level to process such projects and introduced Form I-M appendix VIII vide S.O. 141 (E) dated 15.01.2016.

**28.** That subsequently, in consultation with all the states including the State of Tamil Nadu, the MoEF & CC on 15.03.2016, issued a **SUSTAINABLE SAND MINING MANAGEMENT GUIDELINES, 2016**. In the said Guidelines,

  
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i. Sl.No. 19 (Sustainable Mining Practices) under the heading “**Standard Environmental Conditions For Sand Mining**” wherein it mentioned as follows:-

*“Depending upon the location, thickness of sand, deposition, agricultural land/Riverbed, the method of mining may be manual, semi-mechanized or mechanized; however, manual method of mining shall be preferred over any other method.”*

ii. Sl.No.11 (For Tamil Nadu State) of Appendix: Table – 5 (Common method and practice of Sand mining in State / UT), it was observed as follows:-

*“Manual mining is carried out in certain quarries. In most of the sand quarries two poclains are used by the PWD.”*

iii. It is crystal clear from the above that the MoEF & CC has taken note of the common practices followed in various States and also acknowledged the practice of the State of Tamil Nadu in using poclains in river sand mining in the State. The said Guidelines 2016 are still in force.

29. That the 2<sup>nd</sup> Respondent who is the project proponent had proposed to quarry river sand in Cauvery River and identified an area measuring 16.18 Ha comprised in S.F. No. 643/1 (P) of Oruvanthoor Village, Namakkal Taluk, Namakkal District, and sent a proposal seeking new quarry outlet to the District Collector, vide Letter dated 17.12.2015.

  
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**30.** That pursuant to the above proposal, the joint field inspection was conducted by the Revenue Divisional Officer, Namakkal, Assistant Director of Mines, Namakkal, Assistant Executive Engineer (Maintenance, TWAD, Namakkal, Assistant Executive Engineer, WRO, PWD Sarabanga Basin Division, Namakkal, on 10.02.2016 to ascertain the technical viability and feasibility of quarrying of sand and recommended for grant of permission for opening of new sand quarry in the subject area.

**31.** That based on the recommendations of the above joint inspection, Precise area communication was issued by the District Collector, Namakkal, to the 2<sup>nd</sup> Respondent, to obtain Environmental Clearance from SEIAA and the Tamil Nadu Pollution Control Board, vide letter dated 18.02.2016.

**32.** That a mining plan for the subject quarry was prepared by the Recognized Qualified Person (RQP) and the same was approved by the Assistant Director, Geology and Mining, Namakkal District vide Letter dated 22.02.2016. The mining plan was prepared based on a thorough field study by the RQP. In the said mining plan, method of mining proposed was **“opencast semi mechanized of shallow mining, without drilling and blasting”** and Type of machinery proposed was **“Machineries like excavators”**.

  
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**33.** That in compliance of the EIA Notification 2006 and its amendments, the 2<sup>nd</sup> Respondent applied for Environmental Clearance for the subject quarry, through online under B2 category, vide Proposal dated 22.02.2016.

**34.** That the above proposal was placed before the 79<sup>th</sup> SEAC (State Level Expert Appraisal Committee) meeting held on 08.08.2016 wherein the application and other supporting documents were appraised by the experts and recommended for grant of EC to SEIAA.

**35.** That the recommendation of SEAC, was placed before the 503<sup>rd</sup> SEIAA meeting held on 10.08.2016 and granted EC for the subject quarry in favour of the 2<sup>nd</sup> Respondent with various general and specific conditions. In the said EC, it was permitted to use two poclains for excavation of sand. The relevant condition reads as follows:

*"5. Specific Conditions:*

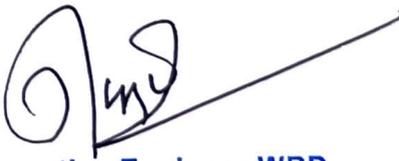
*.....*

*iv. The Project Proponent is restricted to use judicious use of minimum number of poclains and not more than two poclains in the project site till the expiry of lease period or excavation of approved quantity whichever is earlier.*

*v. Loading and use of poclains, transport of sand shall not be entertained between 7.00 pm to 5.00 am.*

*vi. The project proponent is allowed to engage lorries or tippers to transport the sand"*

  
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**36.** That in compliance of the conditions imposed in the above EC dated 10.08.2016, the 2<sup>nd</sup> Respondent had obtained necessary Consents from the Tamil Nadu Pollution Control Board under Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974 on 05.01.2017.

**37.** That the District Collector, Namakkal in his Proceedings bearing RC No. 1198/Mines/2015 dated 12.03.2017, granted permission to operate the subject quarry.

**38.** That after the receipts of all the permissions / approvals / clearances from the competent authorities and in compliance of the conditions imposed therein, the 2<sup>nd</sup> Respondent commenced its quarry operation on 16.06.2017.

**39.** That in the meantime, based on the Sand Mining Guidelines 2016, the Government of Tamil Nadu issued G.O Ms No. 21 dated 02.06.2017, wherein it was directed that the Public Works Department may move SEIAA on case to case basis to permit more number of poclains for sand quarries.

**40.** That pursuant to the above, a modified mining plan was prepared for the subject sand quarry for both manual and machinery excavation with five number of poclains and extending the period of operation for two more years, which was approved by the Assistant Director, Geology & Mining, Namakkal vide letter dated 20.07.2017.

  
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**41.** That the 2<sup>nd</sup> Respondent had applied for the modified proposal to SEIAA on 26.07.2017 and the same was placed before the 93<sup>rd</sup> SEAC Meeting held on 12.08.2017 and the Committee directed the 2<sup>nd</sup> Respondent to submit comprehensive report, which was complied with by the 2<sup>nd</sup> Respondent and made a presentation on 12.08.2017. Subsequently, SEAC recommended the amendment with respect to usage of 4 poclains in the subject sand quarry, based on the following formulation :

*“1. Upto one lakhs m3 sand yet to be mined – maximum 2 poclains.*

*2. One – Two Lakh m3 sand yet to be mined – maximum 3 poclains.*

*3. Two – Four Lakh m3 sand yet to be mined – maximum 4 poclains.*

*4. Four – Seven lakh m3 sand yet to be mined – maximum 5 poclains”*

**42.** That the above proposal was placed before the 241<sup>st</sup> SEIAA Meeting held on 09.10.2017 and amended the EC dated 10.08.2016 which is valid upto 09.08.2018, with permission to operate 4 poclains.

**43.** That in the meantime, one Mr. Varadharajan, approached the Hon’ble Madras High Court and filed a Public Interest Litigation, W.P.22433 of 2017. An order of interim stay was granted vide order dated 06.11.2017 in WMP No. 23563/2017. The quarry operation was stopped by the 2<sup>nd</sup> Respondent immediately on 06.11.2017.

  
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**44.** That the Hon'ble Madras High Court in its order dated 13.11.2017 wherein suo moto impleaded SEIAA as a party, extended the interim order and directed SEAC as follows:-

*"5..... In the light of the materials placed before this Court in the form of additional typed set of documents, the State Level Expert Appraisal Committee shall cause inspection of the quarry in question, after putting the petitioner on notice and find out as to whether the general conditions stipulated in the Environmental Clearance dated 10.08.2016 issued by the State Level Environment Impact Assessment Authority are complied with or not and such a report shall be filed on or before 27.11.2017."*

**45.** That on 22.11.2017, as directed above, SEAC conducted a field inspection and filed report. Considering the recommendations of SEAC in the report, the Hon'ble Madras High Court in its order dated 20.12.2017 directed to comply with the same and file report.

**46.** That the Hon'ble Madras High Court in its final order dated 06.07.2018 closed the above W.P.22433/2017 and appointed an independent monitoring agency comprising of four members, to oversee the quarry operations and to report periodically and the said committee conducted a inspection 01.08.2018 as per the orders of the Hon'ble Madras High Court. The committee members are as follows :

  
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(i) *Dr.A.Arun Thamburaj, I.A.S.,  
Project Director (Sand Mining), Tamil Nadu.*

(ii) *Mr.Mohan,  
Professor and Head of the Department,  
Department of Environment and Water Studies,  
Indian Institute of Technology (I.I.T),  
Sardar Patel Road, Opp. to C.L.R.I.,  
Adyar, Chennai-600 036.*

(iii) *Dr.S.Ganapathy Venkata Subramaniam,  
Professor, Department of Environment Studies,  
Anna University,  
Opp. to Gandhi Mandapam,  
Sardar Patel Road, Guindy, Chennai-600 025.*

(iv) *Dr.V.Pugazhendi,  
Senior Hydro Geologist (Retd.) TWAD Board, Chennai.*

**47.** That as the validity period of EC as well as the mining lease, was expired on 09.08.2018, the 2<sup>nd</sup> Respondent had applied to the District Collector, Namakkal and SEIAA for time extension of EC for further period of two years to excavate the remaining quantity of sand.

**48.** That the District Collector, Namakkal, in his Letter dated 18.12.2022 approved the lease extension for remaining quantity of sand in the subject quarry. Subsequently, on 01.02.2023 the SEIAA extended the period of EC for 1 year and 4 months.

  
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**49.** That as per the Water and Air Acts, the 2<sup>nd</sup> Respondent had obtained necessary Consents from the Tamil Nadu Pollution Control Board on 03.04.2023.

**50.** That the District Collector, Namakkal in his Proceedings dated 05.05.2023, granted permission to resume the quarry operation in the subject site.

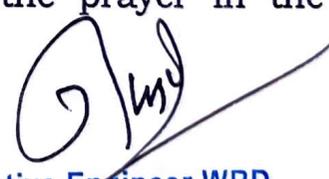
**51.** That subsequently, the 2<sup>nd</sup> Respondent resumed the quarry operation in the subject site on 10.05.2023 as per the conditions stipulated in the above approvals / permissions, without any deviation.

**52.** That one Mr. Saravanakumar, who claimed to be an activist, after knowing of all the above and for the personal unlawful enrichment, filed the present Original Application, OA No. 77 of 2023 (SZ) under Sections 14, 15 read with 18 (1) of the National Green Tribunal Act 2010, at this Hon'ble Tribunal, despite being aware that the Original EC was granted on 10.08.2016, amendment to the Original EC was granted on 09.10.2017 and Extension of EC was granted on 01.02.2023 and also necessary permissions were already obtained from the competent authorities for quarry, for permission to operate 4 poclains.

**53.** That the prayer sought for in the application is contrary to the conditions stipulated in the EC / Amendment / Extension already granted by the 2<sup>nd</sup> Respondent who is the expert body, wherein the 2<sup>nd</sup> Respondent is permitted to use 4 Nos of poclains in the subject quarry. However, the prayer in the

  
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present application, is nothing but challenging the conditions imposed in the EC, which can be challenged by way of an appeal under Section 16 (h) of the National Green Tribunal Act 2010, within 30 days from the date of EC. But, the Applicant with an ulterior motive to unsettle proceedings which have been issued in accordance with law, has approached this Hon'ble Tribunal after the limitation period only to circumvent the delay by filing an application and the same would reflect that the Applicant is abusing the process of law for his vested interest.

**54.** That the documents filed in support of the present application was applied and obtained by one Mr.K.Varadharajan under RTI from the 1<sup>st</sup> Respondent, who was the person who filed a Writ Petition in W.P. No. 22433 of 2017 against the subject sand quarry, which was already dismissed by the Hon'ble Madras High Court in its order dated 06.07.2018, would show the attitude of the present Applicant who filed the present application on the instigation of the said Mr. K.Varadharajan.

**55.** That it is important to mention here that the Applicant purposefully did not make the Ministry of Environment Forest and Climate Change (MoEF &CC) as a party in this application, who is the authority issued various Guidelines, Office Memorandums, Notifications etc., for the protection of Environment and effective implementation.

  
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**56.** That there is a specific condition in the EC/Amended EC to use poclains / machineries / excavators in the subject project, which was considered by the 1<sup>st</sup> Respondent based on the approved mining plan / revised mining plan.

**57.** That it is not the allegation of the Applicant in the present application that the 2<sup>nd</sup> Respondent has violated the conditions stipulated in the EC/Amendment/Extension, however, it is the specific case of the Applicant that the 2<sup>nd</sup> Respondent is using machinery in B2 category project of river sand mining, which makes it clear that he is only challenging the conditions of EC/amendment, therefore the filing of an Original Application is per se invalid and impermissible in law.

**NOW DEALING WITH PARAWISE CONTENTION:**

**58.** As far as Paragraph Nos. 1 – 3 are concerned, the same need not be traversed since it is the prayer of the Applicant in the above OA, facts and about the notifications/OMs issued by the MoEF.

**59.** I deny the averments made in Paragraph Nos. 4 – 7 of the application and it is humbly submitted as follows:-

**i.** That the Applicant has wrongly presumed/assumed that if the machineries are used in B2 category projects, the same will fall in B1 category, however, the categorization of B1 and B2 Projects in the Notification 2006, is based only on the **SIZE/AREA** of the projects and not based on usage of machineries / poclains. Further,

  
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neither EIA Notification 2006 nor Sand Mining Guidelines 2016 or amendments to EIA, prohibits usage of machineries/poclains in B2 Projects.

**ii.** That the Hon'ble Principal Bench of this Hon'ble Tribunal in its judgment dated 13.01.2015 in OA No. 123 of 2014 & batch, while declaring selected portion of Office Memorandum dated 24.12.2013 as invalid, had clearly held and directed that - in view of the persistent conflict between the State Regulations and the Central Notifications, it is imperative to issue directions specially to provide for an **interim period**, during which appropriate steps should be taken to comply with the Judgment of the Hon'ble Supreme Court and to issue Notifications which are necessary in that regard.

**iii.** That while stay was granted by the Hon'ble Principal Bench, it was observed by Order dated 28.03.2014, in Application Nos. 279 & 343 of 2013, that the EIA notification issued by the MoEF is an act of subordinate legislation and was issued in exercise of statutory powers, on other hand, an Office Memorandum is an administrative order and cannot frustrate the legislative act.

**60.** That the 2<sup>nd</sup> Respondent has obtained all the necessary clearances from the statutory authorities for the present project as mandated under law, hence, there is neither any Environmental Violation nor any statutory violation on the part of the 2<sup>nd</sup> Respondent till date.

  
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**61.** That the 1<sup>st</sup> Respondent approached the Hon'ble Tribunal for his vested interest and there was no public or environment interest involved in the subject matter. It is submitted that he is attempting to misuse and abuse the process of law for his personal unlawful enrichment.

### **DIRECTION OF THE HON'BLE MADRAS HIGH COURT**

**62.** That in the present application, this Hon'ble Tribunal has passed an Interim Order on 31.05.2023 and the same was challenged at the Hon'ble Madras High Court in W.P. No. 17725 of 2023 wherein the Hon'ble Court in its order dated 23.06.2023 has modified the said Interim Order of this Hon'ble Tribunal and directed as follows:

*"19. In view of the above factual scenario, submissions made and in the interest of justice, this Court is inclined to pass the following order:*

*(i) As agreed by both the parties, the Tribunal shall reconsider to pass appropriate interim orders afresh after affording sufficient opportunity to the parties, on or before 04.07.2023. Both the parties have agreed that they will extend their cooperation for passing of the interim orders by the NGT.*

*(ii) The learned Senior Counsel for the petitioner as well as the learned Additional Solicitor General for the second respondent TNSEIAA agreed that they will*

  
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*serve the copy of the counter affidavit to the first respondent in advance on or before 28.06.2023.*

*(iii) Thereafter, the first respondent shall file his reply / response to the counter affidavit on or before 02.07.2023.*

*(iv) It is made clear that in the interregnum, if the petitioner is carrying on any quarry operations, they shall use 2 poclains in strict compliance of the conditions imposed under EC/ approvals/permissions given by the authorities concerned, and if there is any violation of the conditions, it is open to the first respondent to place the same before the Tribunal.*

*(v) The petitioner department shall videograph the entire quarrying operations in the quarry site in question by using drone facility and the entire video recording shall be placed before the Tribunal.*

*(vi) The Tribunal shall decide the case on its own merits, without being influenced by any observations made by this Court.*

*(vii) The impugned order of the National Green Tribunal, Southern Zone, Chennai dated 31.05.2023 in O.A.No.77 of 2023 is modified to the above extent.”*

  
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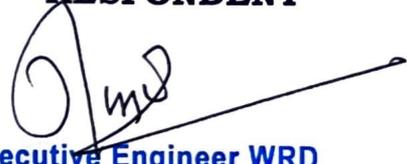
Under the above circumstances, I humbly pray that the Hon'ble Tribunal may be pleased to dismiss the above Original Application No. 77 of 2023 (SZ) as not maintainable and devoid of merits and thus render justice.

Dated at Chennai on this the 28<sup>th</sup> day of June, 2023

**COUNSEL FOR 2<sup>ND</sup> RESPONDENT**

  
Assistant Executive Engineer, WRD  
Mining and Monitoring Sub Division  
Mohanur - 637015

**2<sup>ND</sup> RESPONDENT**

  
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**VERIFICATION**

I, P.Murugavel, Son of Mr. A.Potturajan, aged 55 years, residing at 13, PWD Quarters, Kajamalai Colony, Trichirapalli – 620 020, now temporarily come down to Chennai, do hereby verify that the contents of Paragraph Nos. 1 to 62 are true to the best of my knowledge and believed to be true on legal advice and that I have not suppressed any material fact.

Verified at Chennai on this the 28<sup>th</sup> day of June, 2023

  
Assistant Executive Engineer, WRD.,  
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**2<sup>ND</sup> RESPONDENT**

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

**Original Application No. 77 of 2023 (SZ)**

T. Saravanakumar,

... Applicant

**Versus**

The Tamilnadu State Environment Impact  
Assessment Authority and Anr.

... Respondents

**REPLY STATEMENT FILED BY THE 2<sup>nd</sup>  
RESPONDENT**

**(The Executive Engineer, PWD)**

**Dr. D SHANMUGANATHAN**

**COUNSEL FOR 2<sup>nd</sup> RESPONDENT**

**Email : [dshanmuganathan@outlook.com](mailto:dshanmuganathan@outlook.com)**

**Ph - 82708 51824**