

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

Original Application No. 77 of 2023 (SZ)

T. Saravanakumar,
S/o.Thangavel

... Applicant

Versus

The Tamilnadu State Environment Impact Assessment Authority,
Rep by its Member Secretary ,
& another

... Respondents

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COUNSEL FOR 2ND RESPONDENT



GOVERNMENT OF TAMIL NADU

ABSTRACT

Mines and Quarries - Minor Minerals - Tamil Nadu Minor Mineral Concession Rules, 1959 - Introduction of Rule - 38 A Amendment to Tamil Nadu Minor Mineral Concession Rules, 1959 - Notification - Issued.

INDUSTRIES (MMC1) DEPARTMENT

G.O.Ms.No. 95
DATED:1.10.2003

Read:

G.O. 2(D) No.46, Industries Department dated 25.9.2002

ORDER:

Taking cognizance of the indiscriminate quarrying in the river systems of Tamil Nadu in a public interest litigation, the Hon'ble High Court in their order dated 26.7.2002 had directed the State Government to constitute an Expert Committee consisting of geologist, environmentalist and scientists to study the river and river beds in the State with reference to the impact of sand quarrying. Accordingly the Government in the G.O. read above constituted a six member High Level Committee. The Committee after extensive touring of the State has submitted its report to the Government. A copy of the report has been furnished to the Hon'ble High Court. The High Court had while ordering the Government to constitute the High Level Committee also directed :-

“ The Government on receipt of the report from the Committee shall act in conformity with the Guidelines and take all necessary further steps to arrest the exploitation and to protect and improve the situation and restore status quo-ante. The Government shall pass suitable regulatory legislation in this regard. The action on the part of the Government after the receipt should not brook any delay, it should act fast.”

2. The High Level Committee in its report has pointed out that illicit and haphazard sand mining has led to deepening of the river beds, widening of the rivers, damage to civil structures, depletion of groundwater table, degradation of groundwater quality, sea water intrusion in coastal areas, damages to the river systems and reduction in biodiversity. Moreover sewage and other effluents let into the rivers cause health hazards and environmental degradation.

3. Some of the major observations of the High Level Committee are

(a) In all the areas, mining of river sand has been done in a haphazard, irregular and unscientific manner, causing environmental degradation.

(b) Sand quarrying has created pools of water stagnation in the river bed, impairing the water flow down stream, which in turn will have grave consequences on agricultural production.

(c) The usage of machinery like poelain for removal of sand has caused river bed erosion, collapse of banks, damages to infrastructure like bridges and transmission power lines, drinking water systems.

(d) The lessees have generally exceeded the area of grant and quarried more than the permissible depth.

(e) There is no responsibility of a single department in respect of sand mining. Three departments that are involved are Geology and Mining, Revenue and Public Works Department

4. The High Level Committee has concluded that

1. (a) illicit and haphazard sand mining has led to deepening of the river beds, widening of the rivers, damage to civil structures, depletion of groundwater table, degradation of groundwater quality, sea water intrusion in coastal areas, damages to the river systems and reduction in biodiversity. Moreover sewage and other effluents let into the rivers cause health hazards and environmental degradation. Tamil Nadu has several river basins with good potential of sand. Proper scientific approach of exploitation and utilization are needed to remove this resource. This will not only ensure good revenue to the Government, but will also be in harmony with nature.
2. (b) even though several rules on sand mining exist, illegal quarrying of sand is out of control. Authority for regulating sand mining is vested with different organizations such as, State Geology and Mining Department, Revenue Department and Public Works Department. Hence implementation and monitoring of rules and regulations regarding sand quarrying are not effective. This important task of sand mining therefore should be entrusted to a SINGLE AGENCY.

5. The observations and conclusions of the High Level Committee clearly indicate the emergent need for a framework for regulation of mining in the State in Public interest.

6. Hence, detailed discussions were held by a Government at various levels. After taking cognizance of the pernicious practice of unsustainable overexploitation of sand in the State it was decided in Public interest that the 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 henceforth will be undertaken only by the Government. In order to meet the above requirements, suitable amendment to the Tamil Nadu Minor Mineral Concession Rules, 1959 is necessary.

7. In accordance with the directions of the Hon'ble High Court and the recommendations of the High Level Committee constituted in pursuance of the directions of the Hon'ble High Court, Government has taken these initiatives in public interest to ensure

(a) elimination of indiscriminate and unscientific sand quarrying.

(b) uninterrupted availability and supply of sand in a regular and orderly manner to the common public.

(c) availability of the sand at affordable prices to common public thereby effecting reduction in the cost of construction.

(d) augmentation of the revenue of the State Government.

8. The Notification appended to this order will be published in the Tamil Nadu Government Gazette and in the District Gazettes. The Works Manager, Government Central Press, Chennai-79 is requested to publish the Notification in the Tamil Nadu Government Gazette and supply 75 copies of the Notification to this Department and Commissioner of Geology and Mining, Chennai-32 and to all District Collectors.

9. The Director, Tamil Development and Culture and Religious Endowments (Translation) Department is requested to send the Tamil translation of the Notification appended to this order to the Works Manager, Government Central Press, Chennai-79 for publishing in the Tamil Nadu Government Gazette and to the Collectors of all Districts for publishing it in the District Gazettes immediately.

(BY ORDER OF THE GOVERNOR)

D. RAJENDRAN,
SECRETARY TO GOVERNMENT (in-charge)

To

The Works Manager, Govt. Central Press, Chennai-79.

The Director, Tamil Development and Culture and Religious Endowments (Translation) Department, Chennai-9.

The Commissioner of Geology and Mining, Chennai-32.

The Chairman and Managing Director, TAMIN, Chennai-5.

All District Collectors.

All District Forest Officers through the Principal Chief Conservator of Forests, Chennai-6.

The Accountant General, Chennai-18.

Copy to:

The Public (SC) Department, Chennai 9.

The Chief Minister's Secretariat, Chennai 9.

The Law Department, Chennai-9.

The Finance Department, Chennai-9.

All Sections in Mining Wing, Industries Department, Chennai-9.

The Industries (OP.II) Department, Chennai-9.

Sf/Sc.

/FORWARDED/BY ORDER/

SECTION OFFICER.



GOVERNMENT OF TAMIL NADU

ABSTRACT

Mines and Quarries - Minor Minerals - Tamil Nadu Minor Mineral Concession Rules, 1959 - Use of machinery for quarrying of sand in river beds - Further amendments to Rule 36-A of Tamil Nadu Minor Mineral Concession Rules, 1959 - Issued.

INDUSTRIES (MMC 1) DEPARTMENT

**G.O.MS.NO. 19
DATED: 19.04.2004**

READ:

1. G.O.Ms.No.327, Industries Dept., dated 1.12.1997
2. G.O.Ms.No. 95, Industries Dept., dated 1.10.2003

ORDER:

In the Government Order first read above orders were issued by introducing Sub Rule (6) to Rule 36-A of Tamil Nadu Minor Mineral Concession Rules, 1959 to the effect that no machinery shall be used for quarrying sand from river beds. The above sub 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 machineries, the quarrying work will be done in an uncontrolled manner and more than the allowable depth with profit motive.

2. In the Government Order second read above, orders have been issued to the effect that all existing leases for quarrying sand in Government land and permissions / leases granted in ryotwari lands shall cease to be effective on and from 2.10.2003 and that the right to exploit sand shall vest with the State Government to the exclusion of others. As per the above orders Public Works Department has been entrusted with the task of operating the sand quarries in the State. Public Works Department is maintaining the irrigation sectors, regulating flood routing in river basin and will carry out the operations scientifically by understanding the implications and the impact of quarrying with respect to the location and function of the structures in the nearby vicinity of the location. Therefore, in view of the demand from the public and also to cater to the need of fullest demands of end users on time, the Government

have decided to amend the rule relating to use of machinery for quarrying of sand in river beds, with some conditions.

3. The appended Notification will be published in the Tamil Nadu Government Gazette Extraordinary dated 19.4.2004 and in the District Gazette. The Works Manager, Government Central Press, Chennai -79, is requested to publish the Notification in the Tamil Nadu Government Gazette Extraordinary dated 19.4.2004 and supply 50 copies of the Notification to this Department and Commissioner of Geology and Mining, Chennai 32 and all District Collectors.

4. The Director, Tamil Development and Culture (Translation) Department is requested to send the Tamil translation of the Notification appended to this order to the Works Manager, Government Central Press, Chennai 79, for publishing it in the Tamil Nadu Government Gazette and to the Collectors of Districts for publishing it in the District Gazette immediately.

(BY ORDER OF THE GOVERNOR)

**ARUN RAMANATHAN,
SECRETARY TO GOVERNMENT.**

To

The Works Manager, Government, Central Press, Chennai-79.

The Director, Tamil Development and Culture and Religious Endowments through the Principal Chief Conservator of Forests, Chennai-6.

The Accountant General, Chennai-18.

Copy to:

The Chief Minister's Secretariat, Chennai 9.

All Sections in Mining Wing, Industries Department, Chennai-9.

The Industries (OP.II) Department, Chennai-9.

SF/SCs

/FORWARDED/BY ORDER/

SECTION OFFICER.

NOTIFICATION

In exercise of the powers conferred by sub-sections(1) and (1-A) of section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957), the Governor of Tamil Nadu hereby makes the following amendment to the Tamil Nadu Minor Mineral Concession Rules, 1959.

2. The amendment hereby made shall come into force on the 19th April, 2004

AMENDMENT

In the said Rules, in rule 36-A, for sub-rule (6), the following sub-rule shall be substituted, namely:-

"(6) 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".

**ARUN RAMANATHAN,
SECRETARY TO GOVERNMENT**

/TRUE COPY/

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2011

CORAM

THE HONOURABLE Mrs. JUSTICE R. BANUMATHI
AND

THE HONOURABLE Mr. JUSTICE S. NAGAMUTHU

Review Application No.15 of 2011 in W.P. (MD) No. 11562 of 2010

1. The State of Tamil Nadu
represented by its Secretary
to Government, Industries Department,
Fort St. George, Chennai - 600 009.
2. The Director of Geology and Mining
Guindy, Chennai
3. The District Collector,
Tuticorin, Tuticorin District.
4. The Executive Engineer
Tamiraparani Basin
Public Works Department (PWD)
Tuticorin District.

.. Petitioners/Respondents

Vs.

M. Periyasamy

.. Respondents/Petitioner

Prayer: Originally the Petition in M.P. (MD) No.1 of 2011 is filed under Article 226 of Constitution of India praying to modify the Order dated 2.12.2010 made in W.P. (MD) No.11562 of 2010 etc., batch., in so far as it relates constituting a State Level Monitoring Committee other than the areas covered by Tamiraparani river and the use of machinery under Rule 36A(6) of Tamil Nadu Minor Mineral Concession Rules, 1959. The same is numbered as Review Petition No.15 of 2011 on a memo filed by the petitioners.

W.P.11562/2010:

Writ Petition praying to issue Writ of Mandamus directing the Respondents 1 to 3 to forbear the 4th Respondent from quarry sand on Tamirabarani River bed/basin, South Thozhappan Pannai Village, Thiruvaikundam Taluk, Tuticorin District.

For Petitioners
in Review Application

Mr. P. S. Raman,
Advocate General
assisted by
Mr. R. Thirugnanam,
Spl. Government Pleader

ba 00592

For Respondent in Review
Application/Petitioner
in W.P.No.11562/2010

: Mr.M.Venkatesh for
Mr.M.Ajmal Khan

For Petitioner
in W.P. (MDNos.11162 &
12383/2010

: Mr.G.R.Swaminathan

For Petitioner
in W.P(MD).No.12229/2010

: Mr.R.Nallakannu
Party-in-Person.

For Petitioner in W.P. (MD) No
12090 of 2010

: Mr.M.Ayyathurai for
Mr.D.Srinivasa Raghavan

For Petitioner in W.P(MD) No.: Mr.M.V.Venkataseghan
in W.P. (MD) No.12072 of 2010

ORDER

(Order of the Court was made by R.BANUMATHI, J)

The Writ Petitions in W.P.(MD) Nos.11182, 11562, 11710, 11827, 12072, 12098, 12229 and 12383 of 2010 came to be filed before the Madurai Bench of this Court seeking a mandamus to forbear the Government/ respondents in Writ Petitions - Government officials - Chief Secretary to Government, Government of Tamil Nadu, Public Works Department, Secretary to Government, Department of Environment, District Collector, Thoothukudi District, Directors of Geology and Mining District Collector, Tirunelveli District, Conservator of Forest, Forest Department, Palayamkottai, and other authorities from quarrying sand in Tamiraparani river.

2. Among other things, it was mainly contended by the writ petitioners that there was indiscriminate sand quarrying using poclains, which has resulted in huge loss to the natural resources and also it has caused irreparable damage to the said river. In order to ascertain the correctness of the said allegations made, by means of an interim order, we appointed a Committee of experts to make personal visit to the Tamiraparani river and to submit a report. Accordingly, the Experts Committee submitted a report, wherein it had been stated in categorical terms that going by the present condition of the Tamiraparani river there shall be no sand quarrying for the next five years. The Committee also reported that the quarrying had been done by indiscriminate use of machines/poclains, which has resulted in serious damage. After the said report was submitted, during the course of arguments, it was also brought to our notice that similar damage is caused in the other rivers in the State of Tamil Nadu by using poclains.

ba 0059235

For Respondent in Review
Application/Petitioner

in W.P.No.11562/2010

: Mr.M.Venkatesh for
Mr.M.Ajmal Khan

For Petitioner

in W.P. (MDNos.11162 &
12383/2010

: Mr.G.R.Swaminathan

For Petitioner

in W.P(MD).No.12229/2010

: Mr.R.Nallakannu
Party-in-Person.

For Petitioner in W.P. (MD) No : Mr.M.Ayyathurai for
12090 of 2010 Mr.D.Srinivasa Raghavan

For Petitioner in W.P(MD) No.: Mr.M.V.Venkateseshan
in W.P. (MD) No.12072 of 2010

ORDER

(Order of the Court was made by R.BANUMATHI, J)

The Writ Petitions in W.P.(MD) Nos.11182, 11562, 11710, 11827, 12072, 12098, 12229 and 12383 of 2010 came to be filed before the Madurai Bench of this Court seeking a mandamus to forbear the Government/ respondents in Writ Petitions - Government officials - Chief Secretary to Government, Government of Tamil Nadu, Public Works Department, Secretary to Government, Department of Environment, District Collector, Thoothukudi District, Directors of Geology and Mining District Collector, Tirunelveli District, Conservator of Forest, Forest Department, Palayamkottai, and other authorities from quarrying sand in Tamiraparani river.

2. Among other things, it was mainly contended by the writ petitioners that there was indiscriminate sand quarrying using poclains, which has resulted in huge loss to the natural resources and also it has caused irreparable damage to the said river. In order to ascertain the correctness of the said allegations made, by means of an interim order, we appointed a Committee of experts to make personal visit to the Tamiraparani river and to submit a report. Accordingly, the Experts Committee submitted a report, wherein it had been stated in categorical terms that going by the present condition of the Tamiraparani river there shall be no sand quarrying for the next five years. The Committee also reported that the quarrying had been done by indiscriminate use of machines/poclains, which has resulted in serious damage. After the said report was submitted, during the course of arguments, it was also brought to our notice that similar damage is caused in the other rivers in the State of Tamil Nadu by using poclains.

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indiscriminately. It was in those circumstances after affording sufficient opportunity to the petitioners, the Government and the other authorities, by means of a common order dated 2.12.2010 this Court issued certain directions to the Government. The foremost direction is that there shall be no sand quarrying in Tamiraparani river for the next five years. In respect of other rivers, it was directed that sand quarrying shall not be done by using machines like poclains. In other words, this Court clarified that quarrying of sand in those rivers can be made manually as per Rule 36-A Sub-Rule (6) of TN MMC Rules. This Court further directed constitution of a State Level Monitoring Committee to monitor and to take effective steps to ensure that quarrying in the quarry sites permitted by the Government takes place strictly in accordance with the norms prescribed in the Rules and without causing any damage to the rivers, river beds, ecology and environment. By subsequent order dated 22.12.2010, we issued further directions in respect of constitution of State Level Monitoring Committee and Zonal Committees naming the members of the Committees.

3. After the above said order was passed at Madurai Bench, the Government filed a Review Application (MD) No.1 of 2011 seeking to review paragraph 82 of the said order. Similarly, seeking modification of the said order dated 2.12.2010 in respect of the ban for use of poclains and in respect of constitution of State Level Monitoring Committee, a separate petition was filed before the Madurai Bench in M.P.(MD) No.1 of 2011. Subsequently, on the orders of the Hon'ble Chief Justice, these two petitions have been listed in the Principal Bench before us. During the pendency of these two petitions, the lorry owners Associations viz., Tamilnadu Sand Lorry Owners Federation and Coimbatore District Sand Lorry Owners and Traders Association filed two interlocutory applications in M.P.Nos.1 and 2 of 2011 in W.P.NO.11562 of 2010 seeking to implead themselves in the modification application - M.P(MD) No.1 of 2011.

4. By means of a separate order dated 20.1.2011, the review application No.1 of 2011 was disposed of by us by modifying Paragraph No.82 of the order dated 2.12.2010 as under:

"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 Tamiraparani river. In this regard, the learned Advocate General has also filed a draft scheme pertaining to constitution of monitoring committee for Tamiraparani river and its powers and functioning. Though the draft scheme filed by Advocate General is only in respect of Tamiraparani river, having regard to the larger public interest involved in sand quarrying, in our

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considered view, it would be appropriate that a State level monitoring committee for sand quarrying is to be constituted for all the rivers in the State of Tamil Nadu. 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."

5. During the course of the hearing of the modification application in M.P. (MD) NO.1 of 2011, a doubt was raised regarding the maintainability of the same by the learned counsel appearing for the writ petitioners and the party in person, Mr.R.Nallakannu. Thereafter the learned Advocate General has filed a memo requesting the Court to convert the said modification petition into one of a review application. Accordingly, the same was converted and that is how the Review Application No.15 of 2011 is now before us for disposal. Similarly, the impleading petitions in M.P.Nos.1 and 2 of 2011 in W.P.No.11562 of 2011 are also before us. The implead petitions are disposed of today by us by means of a separate order. The present order therefore governs only the Review Application No.15 of 2011.

6. In this Review Petition, the State wants to review two directions issued by this Court. The 1st one is the direction that there shall be no quarrying in the rivers and river beds in the State of Tamil Nadu other than Tamiraparani river by usage of poclains and the second direction sought to be reviewed is regarding the constitution of State level Monitoring Committee and the Zonal Committees. Let us take up the same one after another.

7. Review sought for in respect of use of Poclain:

In paragraph No.86(f) of our Order, ban was imposed for use of Poclain or other heavy machineries for sand quarrying and we expressed our views as under:

"No poclain or other heavy machinery shall be used for sand quarrying. It would be an 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."

8. Government seek to review the Order on the grounds of huge requirement of sand and difficulties in finding the labourers in sand quarrying and for loading sand, and consequential escalation of prices of sand. The learned Advocate General Mr.P.S.Raman inter alia raised the following submissions:

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- There is huge requirement of sand for the construction works of College buildings, Hospital buildings and dispensary, quarters, buildings for Judicial Departments by the Public Works Department and for quarters under construction under Police Housing Scheme and other welfare schemes like implementation of housing scheme.
- To implement the orders of the Court, action was taken by the authorities to completely stop the usage of machinery, which has led to a situation of increase in the price of sand several-fold besides creating scarcity of sand. Even though in G.O.No.401 Public Works Department dated 18.6.2004, Public Works Department fixed the price at Rs.626/- for two units (one lorry), because the supply of sand is not sufficient to cater the needs of the public, sand price spiralled to more than Rs.10,000/- per load, which has resulted in stalling various construction activities. High Sand Price has hit various infrastructure activities and Power Projects.
- Due to migration of labourers to towns and cities and reluctance of the farm labourers to change their work pattern, the situation of the sand quarries in remote locations from villages or nearby towns, the required labour is not available and therefore loading of sand by manual labour is not feasible, which has resulted in escalation of expenditure for quarrying and loading of sand."

9. The learned Advocate General would submit that the judicious exploitation of sand on sustainable basis by use of machinery would meet requirement of the public and the river sand can be quarried for developmental activities and thereby striking a balance between the development/construction activities and maintaining the ecology of the river. The learned Advocate General would further contend that Rule 36-A Sub-Rule (6) of Tamil Nadu Minor Mineral Concession Rules, (in short, "TN MMC Rules") enables the Secretary to Government, Industries Department or any other authority or officer, as may be authorised by him, to grant permission for use of such machinery, which will not be detrimental to ecology. It was submitted that in the event of taking away this proviso in Rule 36-A Sub Rule (6), by a blanket ban on use of machinery, it will not be possible to grant permission for usage of machinery even in deserving cases, which would be in the interest of public and at the same time, maintaining the river system.

10. Having regard to the difficulties faced in carrying out the construction activities, particularly, in implementation of welfare schemes, to ensure uninterrupted availability of sand, we have passed interim order dated 10.11.2011 permitting the Secretary, Industries Department or his delegates to grant permission for use

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of minimum poclains of not more than two poclains in each of the quarry sites and also directing that the poclains shall not be used after 7.00 p.m and before 6.00 a.m. In pursuance of the said interim order, Government issued G.O.(D) No.7 Industries (MMC 1) Department dated 11.1.2011 permitting the District Collectors for restricted and judicious use of minimum number of Poclains (not more than two) in each of the quarry site. The learned Advocate General has drawn our attention to the statement showing number of existing sand quarries in the State numbering 185 and the number of sand quarries for which permissions were granted for use of machinery i.e., 62 quarry sites. From the report containing the details of sand lifted, river-wise for the year 2009-10, filed by the Advocate General and also number of existing quarries, it was noticed that more number of sand quarries are operated in the following rivers and considerable larger extent of sand was quarried and transported as under:

Sl. No.	Name of River	No. of Sand Quarries Operated	No. of lorry loads (equivalent in 2 units)
1	Cauvery	19	481867
2	Vaigai	10	92623
3	Manimuthar	3	29147
4	Vaippar	8	82693
5	Amaravathi	12	7748
6	Pennaiyar	16	278112
7	Coleroon	23	301840
8	Vellar	20	130048
9	Cheyyar	16	51725

(vide Comprehensive report. in Para No.21)

Except the above said rivers, in all other rivers in the State of Tamil Nadu, only few i.e., about 1-4 quarries are in operation. Drawing our attention to the number of quarries operated, the learned Advocate General would submit that there is appreciable sand deposition in Kollidam and Cauvery rivers, which need to be cleared to maintain the regime of the rivers and the width of the rivers is too large and the Public Works Department has got a responsibility to desilt the excess and accumulated to ensure free flow of water during heavy rainy season. It was therefore submitted that for removal of sand in Kollidam and Cauvery rivers there is a necessity to use more number of machineries and blanket ban on use of such machinery or imposing restriction to use only two poclains would not be conducive. Any restriction on number of machineries would affect the uninterrupted supply of sand for implementation of welfare schemes and to the common public.

11. Raising strong objection for use of poclains, Mr.R.Nallakannu, party in person - petitioner in W.P.(MD) No.12229

ba 00592

of 2010 submitted that any permission to use poclain and earth movers would cause serious damage and impairment to the embankments and to ecology of the river. The Writ Petitioner further submitted that if permission is granted to use poclains there would not be scientific quarrying as use of heavy machines would lead to unexpected calamities spoiling the natural resources. Petitioner would further submit that adjacent States viz., Kerala and Andhra Pradesh have specifically banned use of poclains and other vehicles for sand quarrying by legislative provision and while so the prayer for use of machinery is not acceptable. The Writ Petitioner would further submit that inspite of the ban imposed, illicit sand quarrying is continued and in support of his submission, the writ petitioner drawn the attention of Court to materials and to certain paper clippings.

12. G.O.No.19 Industries (MMC 1) dated 19.4.2004 was passed amending Rule 36-A Sub-Rule 6. We are conscious that Rule 36-A Sub-Rule (6) enables the Secretary to Government, Industries Department or any other authority or Officer, as may be authorised by him, in this behalf to grant permission to use of such machinery, which will not be detrimental to Ecology. The view expressed by us pertaining to the amendment of Rule 36-A Sub-Rule 6 was only suggestive.

13. We have carefully considered the rival submissions. If poclains are allowed to be used for quarrying as well as loading sand from the rivers, the same shall cause serious damage to the rivers and river beds, the ecology, environment, etc. Before us, we have concrete evidence for the same by way of report of the Experts Committee in respect of Tamiraparani river, which has forced us to direct that there shall be no quarrying in Tamiraparani river. Therefore, the direction issued by this Court restraining usage of poclains for the purpose of quarrying and loading of sand from the rivers and river beds cannot be stated to be unreasonable. (At the same time, the requirement of sand for construction of roads, buildings, bridges, housing schemes, etc., by the Government and also requirement of sand in other private industries and for construction of houses by private individuals cannot be lost sight of. It is not a dispute before us that after the order of this Court banning usage of poclains for quarrying of sand and for loading, price of sand has gone up. We are informed that in some places a lorry load of sand is sold around Rs.18,000/-. Mr.R.Nallakannu would submit that such kind of artificial demand has been created by people involved in the industry and that is why the price of sand has gone up. But we do not have any material as of now to countenance the said contention of Mr.Nallakannu. It is in these circumstances only on an experimental basis, by means of an interim order, dated 10.1.2011, we permitted the Secretary, Industries Department, Government of Tamil Nadu to give permission for usage of poclains for quarrying and loading as per Rule 36-A Sub-Rule (6) of TN MMC Rules not exceeding two poclains per quarry site. As we have enumerated

above, after the said interim order for about one month quarrying has been going on in many quarry sites by using poclains of not more than two in numbers and in many other sites quarrying has been undertaken manually. During this experimental period, there has been no report to this Court or to any other authority like revenue authorities and police that by using poclains - not more than two in numbers per quarry site - any damage has been caused to the rivers, river beds, etc.,. Such limited use of poclains has also considerably reduced the price of sand in market and has also met with the demand of sand for the above purposes. (vide the data furnished to this Court). In these circumstances, we are of the view that what we have directed on experimental basis temporarily may be continued for another one year and thereafter depending upon the then prevailing facts and circumstances, the Government would be in a position to approach this Court again for appropriate modification of the said condition. In view of the above, we are inclined to review paragraph No.86(f) of our earlier Order dated 2.12.2010 and to permit the Secretary, Industries Department to permit poclains (not more than two in numbers) per quarry site depending upon the need on his estimation. We further direct that such poclains shall not be used after 7.00 P.M and before 6.00 A.M. The river sand quarrying shall not be detrimental to the ecology. This will carry all the other directions which we have incorporated in the earlier order. The other conditions also have to be adhered to as per the TN MMC Rules.)

14. Review sought for in respect of State Level Monitoring Committee:

By means of common order dated 2.12.2010 under review, while sitting at Madurai Bench, we directed that there shall be a State Level Monitoring Committee constituted for river sand and other sand quarrying in the following terms:

- (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 co-ordination 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

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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).

15. After the above order was passed, the Registry of Madurai Bench submitted list of Hon'ble Judges and other personalities for being considered to recommend for appointment as the Chairman of the Committee and members of the Committee. Considering the same, the Division Bench headed by one of us (R.Ranumathi, J.) and R.Subbiah, J. by Order dated 22.12.2010 constituted a State Level Monitoring Committee besides 4 zonal Committees at Chennai, Coimbatore, Trichy and Tirunelveli. In so far as the State Level Monitoring Committee is concerned, as per the said order, the State Committee shall have jurisdiction over all the rivers in the State of Tamil Nadu, whereas the Zonal Committees shall exercise their powers in respect of rivers falling within their zones. This part of the order is sought to be reviewed by the Government.

16. It is contended that when the Writ Petitions were all pertaining to Tamiraparani river, constitution of State Level Monitoring and other zonal Committees in respect of the other rivers in the State of Tamil Nadu is not warranted. He further submitted that already there are other Committees constituted by the Government including the Revenue authorities, police, etc. And since the said Committees are effectively in operation, there is no need for the constitution of the State Level Committee as well as the Zonal Committees. He would further submit that the constitution of these Committees would only cause heavy burden to the State Exchequer. Mr.R.Nallakannu would submit that the so called Committees, which have been constituted by the Government, have not been effective and in order to protect and preserve our natural resources, ecology, environment, etc., it is absolutely necessary that there has to be these Committees in place to monitor the quarrying operations in the rivers and river beds. The other counsel appearing for the writ petitioners would also submit the same in an elaborate manner.

17. The submissions of the learned Advocate General can be summarised as follows:

- After taking over of sand quarries by the Public Works Department, the Government in letter No.9731/MMC1/2004-9

dated 22.07.2004 issued directions to all the District Collectors to constitute the District Level Sand Co-ordination Committee under the Chairmanship of the District Collector in which the Assistant Director (Mines), Executive Engineer, Public Works Department and the Revenue Officials should participate and settle the issues in the District in respect of quarrying and sale of sand and the District Collectors were directed to send the copies of the proceedings of the proceedings of the meeting to the Secretaries to Government, Industries, Public Works Department and the Commissioner of Geology and . The meetings are being conducted on monthly basis at District level and the progress is reviewed by the High Level Monitoring Committee at the State Level.

- High Level Monitoring Committee consisting of Secretaries to Government, Industries, Public Works Department, Revenue Department, Home and P&E Department is constituted to monitor and report to Government periodically on quarrying and sale of sand by Public Works Department as per G.O.No.140 Industries (MMC 1) Department dated 11.7.2008. The meetings are conducted on quarterly basis on review of enforcement and action taken to curb illicit quarrying.
- The District Collectors have been instructed to organise frequent surprise and joint raids with all enforcing authorities of Revenue, Mines and Police Department. During 2009-10, 4,500 vehicles transporting illicitly quarried sand were seized and 21 cases were registered for illicit sand quarrying. The penalty levied and collected for the offence of illicit sand quarrying is about 9.70 crores and totally 740 criminal cases were filed under various enactments. In 2010-11, 3,242 vehicles transporting illicitly quarried sand were seized and 29 cases were initiated for illicit quarrying of sand. During the year 2010-2011, 1,023 cases were filed. The penalty levied and collected for the offence of illicit quarrying and transportation of sand is Rs.6.00 Crores.
- To curtail inter-State movement of sand, 70 police Check posts have been established in the border Districts. Port Trust authorities/Customs authorities have been requested not to permit export of river sand to other countries since the inter-State movement of sand itself was banned by the Government.
- As per G.O. (D) No.7 Industries (MMC 1) Department dated 11.01.2011, the Government directed the District level Task Forces and Taluk level Task Forces. As per the the Direction of the High Court in W.P.No.9860 of 2008 dated 05.11.2009 and as per G.O.No.357 Industries (MMA.1) Department dated 13.11.2009 the Government have constituted District level Task Forces comprising of the officials of Revenue, Police, Forest, Transport, Rural

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Development, Pollution Control Board, Geology and Mining and Public Works Department under the Chairmanship of District Collector and also constituted Taluk level Task Forces comprising Taluk level officials from the above Departments for contravention of illegal mining/transportation of minerals including river sand. In G.O. (D) No.7 Industries (MMC-1) Department dated 11.01.2011, District level Task Forces and Taluk level Task Forces were asked to organise frequent surprise raids and joint raids with all enforcing authorities and daily report has to be sent to the District Collector and the District Collector should consolidate the report and send the consolidation weekly report to the Government, Industries and Public Works Department every week for monitoring.

18. Drawing our attention to various administrative steps taken by the Government, the learned Advocate General submitted that the State Government is concerned with the prevention of illicit quarrying and transportation of minerals and in view of various Committees comprising of members from various Departments and that the said Committees are fully fledged multi-disciplinary Committees and therefore there is no necessity for creation of another State level monitoring Committee to oversee the sand quarrying operations in all the river beds of Tamil Nadu and the direction issued for constituting such Committee for all other rivers excepting Tamiraparani may be re-considered.

19. The writ petitioner in W.P. (MD) No.12229 of 2010 - Mr.R.Nallakannu - party in person and the other learned counsels viz., Mr.M.Venkatesh, learned counsel representing M.Ajmal Khan, learned counsel for petitioner in W.P. (MD) No.11562 of 2010, Mr.G.R.Swaminathan, learned counsel appearing for the petitioner in W.P. (MD) Nos.11182 and 12383 of 2010 and Mr.Ayyathurai learned counsel representing Mr.D.Srinivasaraghavan, learned counsel for petitioner in W.P.No.12098 of 2010, Mr.M.V.Venkateseshan, learned counsel for petitioner in W.P. (MD) No.12072 of 2010, submitted that in spite of existence of various Committees constituted by the State Government, there has been indiscriminate sand quarrying in Tamiraparani river and therefore there is a need to have an independent body to oversee the sand quarrying operations in all the river beds of Tamil Nadu and also to look into the compliance of violations of sand quarrying.

20. We do feel that the State Government has taken various steps in constitution of High Level Monitoring Committee and the District Level Committee in respect of quarrying and sale of sand and also District Level and Taluk level Task forces to prevent illicit sand quarrying and illegal transportation. In spite of such Committees, it was noticed that in Tamiraparani river, there was indiscriminate and unscientific sand quarrying seriously affecting

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the river system. Even though many number of poclains were used for sand quarrying, no permission was taken for use of poclains. In paragraph No.14 of the affidavit sworn in by the Principal Secretary to Government, Industries Department, it is clearly stated that so far no permission has been granted by the Industries Department for using machinery in sand quarrying though it is averred that machinery have been deployed for loading and clearing the vehicles, which got struck in the river bed. Therefore, it is needless to point out that in violation of Rule 36-A, Sub-Rule (6) there had been indiscriminate and unscientific use of machinery for sand quarrying. In our order, we have also elaborated upon indiscriminate use of machinery and as to how it has affected the ecology of river. In our considered view, even though there are various Committees consisting of the officials and other controlled mechanisms, they are not proved to be effective. This obviously goes to show that these Committees did not take note of the fact that poclains were freely used in Tamraparani river as well as in other rivers, which has caused very serious damage to the rivers and river beds. It can be noticed in our earlier order, where we have extracted in extenso the serious damage caused to the Tamiraparani river including laying of permanent roads into the river. Thus, we are fully satisfied that the Committees constituted by the Government, as submitted by the learned Advocate General, are not effective and there is no point in accepting the argument of the learned Advocate General that no separate State Level Monitoring Committee is required, as ordered by this Court. Therefore, as per our Order dated 22.12.2010, the State Level Monitoring Committee headed by a retired High Court Judge with experts as members is very much essential. By our further order dated 22.12.2010, we have directed the constitution of a State Level Monitoring Committee consisting of Chairman, Member Secretary and Administrative Officer and four Zonal Committees at Chennai, Coimbatore, Trichy and Tiruvelveli, each comprising of one Retired District Judge, one Environmentalist and one Geologist.

21. From the report filed by the Government and from the statistics, the report on details of Sand Quarries operated and Sand Lifted River-wise for the year 2009-10 reads as under:

Sl. No.	Name of River	No. of Sand Quarries operated	No. of lorry loads (equivalent in 2 Units)	Lorries Permitted-Nos.				No. of Cart Load (equivalent to 2 units)
				4 unit	3 unit	2 unit	1 unit	
1	Cauvery	19	481867	38201	268335	2962	0	
2	Pungaru	1	16	0	0	1	29	

Sl No.	Name of River	No. of Sand Quar- ries ope- rated	No. of lorry loads (equi- valent in 2 Units)	Lorries Permitted-Nos.				No. of Cart Load (equi- va- lent to 2 units)
				4 unit	3 unit	2 unit	1 unit	
3	South Vellar	1	4209	0	0	4209	0	
4	Koraiyaru	1	1875	0	0	1875	0	
5	Agniyanu	4	10976	0	6811	760	0	
6	Ambuliyar u	2	4531	0	2898	184	0	
7	Maharajas amuthiram	1	60	0	40	0	0	
8	Vennaru	1	2033	0	1078	416	0	
9	Thirumani muthar	1	304	0	0	0	607	
10	Malattar	2	11692	403	900	6822	5428	
11	Vaigai	10	92623	11	37422	29079	14778	
12	Lower Vaigai	1	10966	4	4008	4135	1623	
13	Virusuliy ar	1	1092	0	180	576	492	
14	Pambar	2	4469	38	4	4384	6	
15	Munimu- thar	3	29147	0	11947	10872	711	
16	Saruga- niyar	1	832	0	160	592	0	
17	Satha- nathu Odai	1	59	0	9	17	57	
18	Vaippar	8	82693	8379	19634	36484	0	
19	Karuppana dhi	1	5742	0	0	5742	0	
20	Gadana	2	684	0	456	0	0	
21	Nambiyar	1	626	0	417	0	0	
22	Upper Vaippar	2	2844	0	0	2844	0	
23	Theliyar	1	1941	0	0	1941	0	
24	Chittar	1	407	0	0	407	0	

Sl. No.	Name of River	No. of Sand Quarries operated	No. of lorry loads (equivalent in 2 Units)	Lorries Permitted-Nos.				No. of Cart Load (equivalent to 2 units)
				4 unit	3 unit	2 unit	1 unit	
25	Gundar	4	5155	4	786	3910	115	
26	Girudh-ammal	2	715	0	14	659	70	
27	Savel-periyar	1	4475	0	550	2872	1556	
28	Nagariyaru	1	548	0	0	548	0	
29	PALAR (CBE)	2	2259	0	373	971	1006	225
30	Varattar	1	119	0	0	0	0	119
31	Pachaiyar	1	295	0	0	0	0	295
32	Shanmuganadhi	2	104	0	0	0	0	104
33	Kodaganar	1	133	0	0	0	0	133
34	Amaravathi	12	7748	0	0	0	0	7748
35	Kosasthalaiyar	4	19256	0	6402	9653	0	
36	Pennaiyar	16	278112	23044	1033	226753	7442	
37	Markandeyanadhi	4	11078	581	6	9906	1	
38	Nachikuppan river	4	5165	263	10	4624	0	
39	Vaniyar	1	133	0	0	0	266	
40	Sitharu	1	1111	0	0	0	2222	
41	Chinnar	1	140	0	10	24	201	
42	Sankarabarani	1	746	0	0	746	0	
43	Gadilam	3	5245	0	0	5245	0	
44	Kalpadi	1	10	0	0	10	0	
45	Coleroon	23	301040	0463	205555	56509	0	
46	Vellar	20	130048	0	1745	127430	0	
47	Cheyvar	16	51725	0	894	48800	3168	

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S/No.	Name of River	No. of Sand Quarries operated	No. of lorry loads (equivalent in 2 Units)	Lorries Permitted-Nos.				No. of Cart Load (equivalent to 2 units)
				4 unit	3 unit	2 unit	1 unit	
	TOTAL	190	16,57,850	79391	5,71,677	6,13,040	39778	8624

22. From the above statement, it is seen that more number of sand quarries are in existence in 9 rivers viz., Cauvery, Vaigal, Manimuthar, Vaippar, Amaravathi, Pennaiyar, Coleroon, Vellar and Cheyyar. As seen from the above report, other than nine rivers mentioned above, in other rivers, there are only few sand quarries viz., 1-4 and only small quantities of sand are being lifted. Having regard to the report, we are of the view that the Zonal Committees ordered to be constituted by us by the Order dated 22.12.2010 may not be necessary. As pointed out earlier, the Committees constituted by the Government already in existence have not been proved to be effective. Even though there are number of Committees constituted by the Government, hitherto, there had not been effective control of river sand quarrying. In public interest, it has to be ensured that what has happened in Tamiraparani river may not happen in other rivers. In such view of the matter, in our considered view, there is a need for constitution of State Level Monitoring Committee for river sand and other sand quarrying as ordered by us in our orders dated 2.12.2010 and 22.12.2010, however, with certain modification in respect of the members of the said Committee. However, the order dated 22.12.2010 as to the constitution of Zonal Committees at Chennai, Coimbatore, Trichy and Tirunelveli requires deletion. Accordingly, the State Level Monitoring Committee for river sand and other sand quarrying shall be constituted with Chairman, three members viz., District Judge, (Retd.), Environmentalist and Geologist and an Administrative Officer.

23. For the fore-going reasons,

T. Paragraph No.86(f) of the Order dated 2.12.2010 in W.P.Nos.11182 and 11562 of 2010 etc., batch is reviewed as under:

"(f). In compliance with Rule 36-A Sub-Rule (6), 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 authorised by him in this behalf, who may grant such permission, if use of such machinery will not be detrimental to ecology. It is further directed that not more than two poclains could be used for each quarry site for sand quarrying and loading and Poclains shall not be

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used after 7.00 P.M and before 6.00 A.M. The Secretary to Government, Industries Department or any other authority or Officer authorised by him, preferably the District Collector, has to pass a specific order in writing permitting the use of poclains indicating the number to be used not exceeding two per quarry site. As directed in Paragraph No.3(iii) of G.O.(D) No.7 Industries. (MMC 1) Department dated 11.01.2011, the District Collector should consolidate the report and send the consolidated, weekly report to the Government, Industries and Public Works Department every week for monitoring. As and when the State Level Monitoring Committee is constituted, the consolidated report has to be sent to the State Level Monitoring Committee also."

IT. In so far as the constitution of the State Level Monitoring Committee, our Order dated 22.12.2010 is modified and the State Level Monitoring Committee for River Sand and other Sand Quarrying shall be constituted as under:

Chairman : The Hon'ble Mr. Justice E. PADMANABHAN,
Judge (Retd.), High Court, Madras.
No.11, Madha Church Road,
Mandavelipakkam, Chennai - 600 028
Phone: 044-2464 1845, 044-2461 6003

Administrative Officer : To be nominated by the Government in the cadre of Under Secretary to Government for co-ordinating with the Chairman in the Administration of the Committee.

Members : (1) Mr. A.S. Kannan,
District Judge (Retd.)
"Gokulam"
No.4, GRC
Chandrakanthi Nagar
Sowripalayam Post
Coimbatore - 28
Phone: 94426 19197

(2) Dr. R. Nagendran
(Environmentalist)
Professor
Centre for Environmental
Studies, Anna University
Chennai,
Phone: 98412 73080
044-24902080

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(3) Dr.N.G.Anuthaman, (Geologist)
Asst.Professor,
Centre for Water Resources,
Anna University,
Chennai.
Phone: 98409 94542'

As ordered by us earlier, the Chairman shall be paid remuneration of Rs.75,000/- per month. The District Judge (Retd.) shall be full time member and assist the Chairman in the administration of the Committee and the District Judge (Retd.) shall be paid honorarium of Rs.25,000/- per month. In so far as the members - Environmentalist/Geologist, the Committee shall avail their services on need basis and they shall be paid honorarium on the service extended by them but not exceeding Rs.25,000/- per month. However, there is no modification in other respects in our order dated 2.12.2010 and the subsequent order 22.12.2010 as to the nature of functions and duties of the State Level Monitoring Committee. However, there is no order as to costs.

Sd/
Asst.Registrar

/true copy/

21/11/11
Sd/ Asst. Registrar

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To

1. Secretary
to Government, Industries Department.
Fort. St. George, Chennai - 600 009.
2. The Director of Geology and Mining
Guindy, Chennai
3. The District Collector,
Tuticorin, Tuticorin District.
4. The Executive Engineer
Tamiraparani Basin
Public Works Department. (PWD)
Tuticorin District.
5. The Chairman,
The Hon'ble Mr. Justice F. PADMANABHAN
Judge (Retd.), High Court, Madras.
No.11, Madha Church Road,
Mandavelipakkam, Chennai - 600 028
Phone: 044-2464 1845; 044-2461 6003

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6. The Administrative Officer,
To be nominated by the Government in Officer
the cadre of
Under Secretary to
Government for co-ordinating with the
Chairman in the Administration of the Committee.

7. Mr. A.S. Kannan,
District Judge (Retd.)
"Gokulam"
No. 4, GRC
Chandrakanthi Nagar
Sowripalayam Post
Coimbatore - 28.
Phone: 94426 19197

8. Dr. R. Nagendran,
Environmentalist)
Professor,
Centre for Environmental
Studies, Anna University
Chennai.
Phone: 98412 73080
044-24902080

9. Dr. N.G. Anuthaman, (Geologist)
Asst. Professor,
Centre for Water Resources,
Anna University,
Chennai.
Phone: 98409 94542

- 1 cc To Mr. M.V. Venkataseshan, Advocate, SR.11480
- 1 cc To Mr. M. Ajmal Khan, Advocate, SR.11418
- 3 cc To Mr. K. Ramakrishna Reddy, Advocate, SR.11437
- 1 cc To The Government Pleader, SR.11493

Review Application No.15 of 2011
in W.P. (MD)
No.11562 of 2010

GV(CO)
PMK.21.2.2011



ABSTRACT

W.P (MD) No.11562/2010 – M.P.No.1 of 2011 in W.P (MD)No.11562/2010 – Interim order passed by Madras High Court, dated 02.12.2010 – Interim order passed by Madras High Court on 10.1.2011 – Permission granted to District Collectors for use of machinery for Sand quarry in the State (other than Palar and Thamiraparani) until further orders by the Hon'ble High Court of Madras – Order of the High Court, Madras, dated 15.02.2011 – Extended upto one year – Orders issued.

INDUSTRIES (MMC – 1) DEPARTMENT

G.O. (D) No.67

Dated: 11.03.2011.

Read:

- 1) Order of the Madurai bench of Madras High Court, dated 02.12.2010 in W.P.11182/2010 etc. (batch cases)
- 2) Order of the Madras High Court in M.P.No.1 of 2011 in W.P.(MD) No.11562/2010, dated 10.01.2011.
- 3) Government Letter No.13141/MMC-1/2008, dated 07.01.2011.
- 4) G.O.(D) No.7, Industries (MMC.1)Department, Dated 11.1.2011.
- 5) G.O.(D) No.19, Industries (MMC.1)Department, Dated 18.1.2011.
- 6) Order of the Madras High Court in M.P.No.1 of 2011 in W.P.(MD) No.11562/2010, dated 20.01.2011.
- 7) G.O.(D) No.33, Industries (MMC.1)Department, Dated 20.1.2011
- 8) Order of the Madras High Court, dated 01.02.2011.
- 9) G.O.(D) No.39, Industries (MMC.1)Department, Dated 01.02.2011.
- 10) Order of the Madras High Court, dated 15.02.2011 in review application No.15 of 2011 in W.P.(MD)No.11562 of 2011

ORDER:

The Madurai bench of the Madras High Court in its order dated 02.12.2010 has ordered in para 86(f) of the judgement that no 'Poclaim' or other heavy machinery shall be used in sand quarrying. It has also ordered to constitute a monitoring committee under the chairmanship of a retired High Court judge for the purpose of monitoring the adherence of the directions issued in its order dated 02.12.2010.

2. In the interim order second read above, the High Court has permitted the Secretary to Government, Industries Department or its delegates to grant permission for use of minimum poclains not more than 2 poclains in each of the quarry. The poclains shall not be used after 7 P.M. and before 6 A.M. The competent authority as to pass an order in writing permitting the use of poclains and indicating the number to be used and the same shall not be used after 7 p.m and before 6 AM. In the High Court order 8th read above, the use of machineries is extended until further orders. In compliance of the High Court order 8th read above, orders were issued in the Government Order ninth read above for use of poclaim machineries in sand quarries is extended until further orders.

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3 In the High Court order 10th read above, the High Court has ordered that

"(f) In compliance with Rule 36-A sub rule (6), 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. It is further directed that not more than two poclains could be used for each quarry site for sand quarrying and loading and Poclains shall not be used after 7.00 P.M and before 6.00 A.M. The Secretary to Government, Industries Department or any other authority or Officer authorised by him, preferably the District Collector, has to pass a specific order in writing permitting the use of poclains indicating the number to be used not exceeding two per quarry site. As directed in Paragraph No.3(iii) of Government Order (D) No.7, Industries (MMC 1) Department, dated 11.01.2011, the District Collector should consolidate the report and send the consolidated weekly report to the Government, Industries and Public Works Department every week for monitoring. As and when the State Level Monitoring Committee is constituted, the consolidated report has to be sent to the State level Monitoring Committee also."

4. The Government in compliance of the above order and powers vested in rule 36-A of Tamil Nadu Minor Mineral Concession Rules, 1959 permits the District Collectors for restricted and judicious use of minimum number of poclains and not more than 2 poclains in each of the quarry sites in the State (other than from Palar and Thamiraparani rivers) subject to the conditions specified in Government Order 4th read above for a further period of one year from the date of issue of the High Court Order dated 15.02.2011. The District level task force and Taluk level task force as constituted vide Government Order No.135, Industries (MMA.1) Department, dated 13.11.2009 comprising of officials from Forest, Police, Local Administration Departments should organize frequent surprise raids and joint raids with all enforcing authorities of Revenue, Mines and Police Department and monitor the sand quarries and daily report should be sent to District Collector. The District Collector should consolidate the report and send the consolidation weekly report to the Government, Industries and Public Works Department every week for monitoring. As and when the State Level Monitoring Committee is constituted, the consolidated report has to be sent to the State Level Monitoring Committee also.

The receipt of the Government Order may be acknowledged.

(BY ORDER OF THE GOVERNOR)

RAJEEV RANJAN
PRINCIPAL SECRETARY TO GOVERNMENT

To :

The All District Collectors,

The Secretary to Government,
Public Works Department, Chennai -9.

No. L-11011/47/2011-IA.II(M)
Government of India
Ministry of Environment & Forests

Paryavaran Bhavan,
C.G.O. Complex, Lodi Road,
New Delhi-110003.
Telefax: 24362434

Dated the 18th May, 2012

OFFICE MEMORANDUM

Sub: Order of Hon'ble Supreme Court dated 27.2.2012 in I.A. no. 12-13 of 2011 in SLP (C) no. 19628-19629 of 2009 in the matter of Deepak Kumar etc. Vs State of Haryana and Ors. – Implementation thereof - Regarding.

Reference is invited to the above mentioned order of the Hon'ble Supreme Court directing inter-alia as under:

"We in the meanwhile, order that leases of minor mineral including their renewal for an area of less than 5 ha be granted by the States / UTs only after getting environmental clearance from the MoEF."

2. The Environment Impact Assessment (EIA) Notification, 2006, as amended, requires mining projects (new projects, expansion or modernization of existing projects as also at the stage of renewal of mine lease) with lease area of 5 ha and above, irrespective of the mineral (major or minor) to obtain prior environment clearance under the provisions thereof. Mining projects with lease area of 5 ha and above and less than 50 ha are categorized as category 'B' whereas projects with lease area of 50 ha and above are categorized as category 'A'. The category 'A' projects are considered at the central level in the Ministry of Environment & Forests while category 'B' projects are considered by the respective State/UT Level Environment Impact Assessment Authority, notified by MoEF under the EIA Notification, 2006.

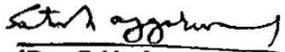
3. In order to ensure compliance of the above referred order of the Hon'ble Supreme Court dated 27.2.2012, it has now been decided that all mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior environment clearance. Mining projects with lease area up to less than 50 ha including projects of minor mineral with lease area less than 5 ha 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.

4. Further, the Hon'ble Supreme Court in its order dated 16.4.2012 in the above mentioned matter and the linked applications has observed as under:

"All the same, liberty is granted to the applicants before us to approach the Ministry of Environment and Forests for permission to carry on mining below five hectares and in the event of which Ministry will dispose of all the applications within ten days from the date of receipt of the applications in accordance with law."

Accordingly, the respective SEIAAs in dealing with the applications of the applicants referred to in the above mentioned order shall ensure that the directions of the Hon'ble Supreme Court are effectively complied with and the applications of such applicants are disposed of within the time limit prescribed by the Hon'ble Court in accordance with law.

This issues with the approval of the Competent Authority.


(Dr. S.K. Aggarwal)
Director

To

1. The Secretary, Ministry of Mines, Shastri Bhawan, New Delhi.
2. The Chief Secretaries of all the States / UTs
3. Chairpersons / Member Secretaries of all the SEIAAs/SEACs
4. Chairman, CPCB
5. Chairpersons / Member Secretaries of all SPCBs / UTPCCs

Copy to:-

1. PS to MEF
2. PPS to Secretary (E&F)
3. PPS to JS(RG)
4. All the Officers of IA Division
5. Website, MoEF
6. Guard File

-TRUE COPY-

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 '7.1 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 tarpoline 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 \leq 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 \leq 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 Manufacturing	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)
6. PPS to IG (FC)
7. Website, MoEF
8. Guard File

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

Appeal No. 64 of 2013 (SZ)

In the matter of:

Someswarapuram Vivasayigal Nala
Padhukappu Sangam
Rep. by its President
B. Vikaraman
S/o. Balasubramanian
Someswarapuram
(via) Tiruvaiyauru,
Papanasam Taluk
Thanjavur District.



.. Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
 2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.
 3. The Executive Engineer,
Public Works Department/WRD
M.K. Moopnar Road
Thanjavur
- Respondents

..

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.586/E/1(a)/42/2012, dated 30.11.2012 for the proposed Govidanattuchery sand quarry in River Coleroon at Mile 43/2 to 43/3 at S.F.No.291/A of Govindanattucherry village in Papanasam Taluk of Thanjavur District and etc.,)

Appeal No. 65 of 2013 (SZ)

In the matter of:

1

Someswarapuram Vivasayigal Nala
Padhukappu Sangam
Rep.by its President
B. Vikaraman
S/o. Balasubramanian
Someswarapuram
(via) Tiruvaiyauru,
Papanasam Taluk
Thanjavur District.

.. Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
 2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.
 3. The Executive Engineer,
Public Works Department/WRD
M.K. Moopnar Road
Thanjavur
- Respondents ..

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.589/E/1(a)/33/2012 dated 28.11.2012 for the proposed Veeramangudi sand quarry in River Coleroon at Mile 42/2 to 42/5 at S.F.No.1 of Veeramangudi village in Papanasam Taluk of Thanjavur District and etc.,)

Appeal No. 66 of 2013 (SZ)

In the matter of:

Someswarapuram Vivasayigal Nala
Padhukappu Sangam
Rep.by its President
B. Vikaraman
S/o. Balasubramanian
Someswarapuram
(via) Tiruvaiyauru,
Papanasam Taluk
Thanjavur District.

.. Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.
3. The Executive Engineer,
Public Works Department/WRD
M.K. Moopanar Road
Thanjavur

Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.586/E/1(a)/42/2012 dated 30.11.2012 for the proposed Govidanattuchery sand quarry in River Coleroon at Mile 43/2 to 43/3 at S.F.No.291/A of Govindanattuchery village in Papanasam Taluk of Thanjavur District and etc.,)

Appeal No. 67 of 2013 (SZ)

In the matter of:

N. Murugesan

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.
3. The Executive Engineer,

3

Public Works Department/WRD
Sarabanga Basin Division
Namakkal District.
Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.601/E/1(a)/15/2012 dated 26.10.2012 for the proposed Mohanur sand quarry in River Cauvery at Mile 75/4 to 76/1 at S.F.No.305 of Mohanur village in Namakkal Taluk and District and etc.,)

Appeal No. 68 of 2013 (SZ)

In the matter of:

N. Murugesan

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.
3. The Executive Engineer,
Public Works Department/WRD
Sarabanga Basin Division
Namakkal District.
Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.602/E/1(a)/15/2012 dated 05.11.2012 for the proposed Pettapalayam sand quarry in River Cauvery at Mile 73/4 to 73/5+160 m at S.F.No.170 of Pettapalayam village in Namakkal Taluk and District and etc.,)

Appeal No. 69 of 2013 (SZ)

In the matter of:

N. Murugesan

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.
3. The Executive Engineer,
Public Works Department/WRD
Sarabanga Basin Division
Namakkal District.

Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.603/E/1(a)/15/2012 dated 05.11.2012 for the proposed Vengarai sand quarry in River Cauvery at Mile 61/6 to 62/2+30 m at S.F.No.739 of Vengarai village in Namakkal Taluk and District and etc.,)

Appeal No. 70 of 2013 (SZ)

In the matter of:

M. Baskaran

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.
3. The Executive Engineer
Public Works Department/WRD

R.C.Division
Tiruchy.
Respondents

..

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.552/E/1(a)/5/2012 dated 26.10.2012 for the proposed Kallapalli sand quarry in River Cauvery at Mile 70/1+50 m to 71/2+50 m at S.F.No.1 (part) of Kallappalli village in Krishnarayapuram Taluk of Karur District.)

Appeal No. 71 of 2013 (SZ)

In the matter of:

M. Baskaran

..

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
 2. The Member Secretary
State Level Environment Impact Assessment
Authority, 3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet, Chennai- 600 015.
 3. The Executive Engineer
Public Works Department/WRD
R.C.Division
Tiruchy.
- Respondents

..

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.553/E/1(a)/39/2012 dated 30.11.2012 for the proposed Vaiganallur sand quarry in River Cauvery at Mile 98/7+99/1 m at S.F.No.1/2 (part) of Vaiganallur village in Kulithalai Taluk of Karur District.)

Appeal No. 72 of 2013 (SZ)

In the matter of:

M. Baskaran

..

Appellant

and

6

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.



2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.

3. The Executive Engineer
Public Works Department/WRD
R.C.Division
Tiruchy.
Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.554/E/1(a)/13/2012 dated 26.10.2012 for the proposed 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.)

Appeal No. 73 of 2013 (SZ)

In the matter of:

Kollidam Aaru Padhukappu Nala Sangam ..

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.

2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.

3. The Executive Engineer
Public Works Department/WRD
R.C.Division, Cantonment
Tiruchy. ..

Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.595/E/1(a)/40/2012 dated 30.11.2012 for the proposed Mangammalpuram

sand quarry in River Coleroon at Mile 20/0 to 20/1 at S.F.No.217, Mangammalpuram village in Lalgudi Taluk of Tiruchy District.)

Appeal No. 74 of 2013 (SZ)

In the matter of:

Kollidam Aaru Padhukappu Nala Sangam

..

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
 2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road, Saidapet
Chennai- 600 015.
 3. The Executive Engineer
Public Works Department/WRD
R.C.Division, Cantonment
Tiruchy.
- Respondents

..

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.558/E/1(a)/23/2012 dated 08.11.2012 for the proposed Ayyampalayam sand quarry in River Coleroon at Mile 103/3+65m to 103/5+15m at S.F.No.540/2, Ayyampalayam village in Musiri Taluk of Tiruchy District.)

Appeal No. 75 of 2013 (SZ)

In the matter of:

Kollidam Aaru Padhukappu Nala Sangam

..

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
2. The Member Secretary

9

State Level Environment Impact Assessment
Authority, 3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet, Chennai- 600 015.

3. The Executive Engineer
Public Works Department/WRD
R.iver Conservancy Division,
Court Campus, Cantonment
Tiruchy. ..

Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.561/E/1(a)/25/2012 dated 28.11.2012 for the proposed Perugamani sand quarry in River Cauvery at Mile 107/4 to 107/6+100m at S.F.No.216, Perugamani village in Srirangam Taluk of Tiruchy District.)

Appeal No. 76 of 2013 (SZ)

In the matter of:

Kollidam Aaru Padhukappu Nala Sangam ..

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.
3. The Executive Engineer
Public Works Department/WRD
R.C.Division, Cantonment
Tiruchy. ..

Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.566/E/1(a)/12/2012 dated 26.10.2012 for the proposed Valavanur sand quarry in River Coleroon at Mile 11/6 to 12/1 at S.F.No.131, Valavanur village in Lalgudi Taluk of Tiruchy District.)

10

Appeal No. 78 of 2013 (SZ)

In the matter of:

N. Danabalan

..

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.
3. The Executive Engineer
Public Works Department/WRD
River Cauvery Division
Cutchery Road,
Mayiladuthurai.

Respondents

..

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.554/E/1(a)/18/2012 dated 07.11.2012 for the proposed Mudikandanallur sand quarry in River Coleroon at Mile 76/2 to 76/5+180m at S.F.No.369/1 Mudikandanallur village in Mayiladuthurai Taluk of Nagapattinam District

Appeal No. 79 of 2013 (SZ)

In the matter of:

Kollidam Aaru Padhukappu Nala Sangam

..

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.

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2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.

3. The Executive Engineer
Public Works Department/WRD
Cauvery Basin Division
Thanjavur -613 001.

.. Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.585/E/1(a)/8/2012 dated 26.10.2012 for the proposed Tiruchennampoondi sand quarry in River Coleroon at Mile 21/6 to 22/1+50 m at S.F.No.1/1, Tiruchennampoondi village in Tiruvaiyaru Taluk of Thanjavury District.)

Appeal No. 80 of 2013 (SZ)

In the matter of:

Kollidam Aaru Padhukappu Nala Sangam

.. Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.

2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.

3. The Executive Engineer
Public Works Department/WRD
R.C.Division, Cantonment
Tiruchy.

Respondents

..

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.569/E/1(a)/9/2012 dated 26.10.2012 for the proposed Thiurmanamedu

andd quarry in River Coleroon at Mile 13/6 to 14/1 at S.F.No.161, Thirumanamedu village in Lalgudi Taluk of Tiruchy District.)



Appeal No. 81 of 2013 (SZ)

In the matter of:

Kollidam Aaru Padhukappu Nala Sangam

..

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
2. The Member Secretary
State Level Environment Impact Assessment
Authority, 3rd Floor, Panagal Maligai
No.1, Jeenis Road, Saidapet
Chennai- 600 015.
3. The Executive Engineer
Public Works Department/WRD
R.C.Division, Cantonment
Tiruchy.

Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.566/E/1(a)/35/2012 dated 28.11.2012 for the proposed Appathurai sand quarry in River Coleroon at Mile 9/7-10/2+100 m at S.F.No.135, Appathurai village in Lalgudi Taluk of Tiruchy District.)

Appeal No. 82 of 2013 (SZ)

In the matter of:

Kollidam Aaru Padhukappu Nala Sangam

..

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
2. The Member Secretary
State Level Environment Impact Assessment
Authority, 3rd Floor, Panagal Maligai
No.1, Jeenis Road

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Saidapet, Chennai- 600 015.

3. The Executive Engineer
Public Works Department/WRD
R.C.Division, Cantonment
Tiruchy.

Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.565/E/1(a)/36/2012 dated 28.11.2012 for the proposed Sevanthinathapuram sand quarry in River Coleroon at Mile 14/6 to 15/1 at S.F.No.110, Sevanthinathapuram village in Lalgudi Taluk of Tiruchy District.)

Appeal No. 83 of 2013 (SZ)

In the matter of:

Kollidam Aaru Padhukappu Nala Sangam

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.
3. The Executive Engineer
Public Works Department/WRD
R.C.Division, Cantonment
Tiruchy.

Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.557/E/1(a)/21/2012 dated 07.11.2012 for the proposed 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 Tiruchy District.)

Appeal No. 84 of 2013 (SZ)

In the matter of:

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M. Baskaran

..

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
 2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.
 3. The Executive Engineer
Public Works Department/WRD
R.C. Division
Tiruchy.
- Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.550/E/1(a)/41/2012 dated 30.11.2012 for the proposed 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.)

Appeal No. 85 of 2013 (SZ)

In the matter of:

Kollidam Aaru Padhukappu Nala Sangam

..

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.
3. The Executive Engineer

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Public Works Department/WRD
R.C.Division, Cantonment
Tiruchy.
Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.567/E/1(a)/34/2012 dated 28.11.2012 for the proposed Koohur sand quarry in River Coleroon at Mile 19/0 to 19/3 at S.F.No.144, Koohur village in Lalgudi Taluk of Tiruchy District.)

Appeal No.86 of 2013 (SZ)

In the matter of:

Kollidam Aaru Padhukappu Nala Sangam

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.
3. The Executive Engineer
Public Works Department/WRD
R.C.Division, Cantonment
Tiruchy.

Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.566/E/1(a)/22/2012 dated 09.11.2012 for the proposed 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 Tiruchy District.)

Appeal No. 87 of 2013 (SZ)

In the matter of:

M. Baskaran.

Appellant

and

1. The Union of India

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Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.

2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenu Road
Saidapet
Chennai- 600 015.
3. The Executive Engineer
Public Works Department/WRD
R.C.Division
Tiruchy.
Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.549/E/1(a)/7/2012 dated 26.10.2012 for the proposed 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.)

Appeal No. 88 of 2013 (SZ)

In the matter of:

M. Baskaran

Appellant

and

1. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
2. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenu Road
Saidapet
Chennai- 600 015.
3. The Executive Engineer
Public Works Department/WRD
R.C.Division
Tiruchy.
Respondents

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.548/E/1(a)/4/2012 dated 26.10.2012 for the proposed Achampapuram (Tirumukkudalur) sand quarry in River Cauvery at Mile 80/2+100m to 80/6+25m at S.F.No.265/1 of Achampapuram (Tirumukkudalur) village in Karur Taluk of Karur District.)

Appeal No. 89 of 2013 (SZ)

In the matter of:

Kollidam Aaru Padhukappu Nala Sangam

..

Appellant

and

4. The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests
2-A, Motilal Nehru Marg,
New Delhi- 110 011.
 5. The Member Secretary
State Level Environment Impact Assessment
Authority
3rd Floor, Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai- 600 015.
 6. The Executive Engineer
Public Works Department/WRD
R.C.Division, Cantonment
Tiruchy.
- Respondents

..

(Praying to quash the Environmental Clearance given by the 2nd respondent in Letter No. SEIAA/TN/F.568/E/1(a)/24/2012 dated 08.11.2012 for the proposed Edayathumangalam sand quarry in River Coleroon at Mile 15/4 to 16/2+100 m at S.F.No.160/6, Edayathumangalam village in Lalgudi Taluk of Tiruchy District.)

Counsel appearing for Appellants: M/s. T. Mohan, S. Devika, A, Yogeshwaran, and R. Nandakumar Advocates in Appeal Nos. 64-69, 71-83, 85,86,89 of 2013 (SZ); M/s. K. Balu and M.R. Elangovan, Advocates in Appeal Nos. 70, 84, 87,88/ 2013 (SZ)

Respondents in all the Appeals: Shrimathi C. Sangamithirai, Advocate for Respondent No.1, Shri N.R. Chandran, Senior Advocate assisted by Shri L.G. Sahadevan, Advocate

for Respondent No. 2. Shri A.L. Somayaji, Advocate General, Government of Tamil Nadu assisted by M/s. Abdul Saleem, Special Government Pleader, S. Saravanan and Shrimathi Vidhyalakshmi, Advocates. for Respondent No. 3.



JUDGEMENT

Present:

- (1) Hon'ble Shri Justice M. Chockalingam, Judicial Member**
- (2) Hon'ble Prof. Dr. R. Nagendran, Expert Member**

Date: 24th February, 2014

(Hon'ble Shri Justice M. Chockalingam, Judicial Member)

These appeals have been filed against the grant of Environmental Clearance (for short, EC) issued by the 2nd respondent, namely the State Level Environment Impact Assessment Authority (for short, SEIAA), Tamil Nadu in the relevant orders to the Executive Engineers of the Water Resources Department of the State Public Works Department who are arrayed as 4th respondent in each appeal for quarrying operation in River Cauvery and River Coleroon, as the case may be, in Thanjavur and Tiruchy Districts of Tamil Nadu. During the course of hearings, the 3rd respondent, namely the Chief Conservator of Forests (Central), Bangalore was given up as not a necessary party. All these appeals have been preferred against the EC granted by the 2nd respondent to the 4th respondent for quarrying operation on a common ground and hence are all taken up together for adjudication by a common order.

2. The case of the appellants in the appeals is briefed below:

The Hon'ble Madurai Bench of the Madras High Court in W.P. (MD).No.4699 of 2012 directed to stop the operation of sand quarries in operation for more than 5 years in the river bed and the remaining quarries were permitted to operate for a period of 3 months from the date of order with further directions that the newly opened quarries should obtain EC from the SEIAA. In compliance of the said directions of the Hon'ble High court, the 4th respondent applied for EC for quarrying sand in the river beds of Cauvery and Coleroon in Thanjavur and Tiruchy Districts through specific orders of the

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2nd respondent. The Environmental Impact Assessment (for short, EIA) Notification dated 14th September 2006 of the Ministry of Environment and Forests (for short, MoEF) has classified mining projects with more than 5 ha and less than 50 ha as 'B' category for which it is mandatory to obtain EC from the 2nd respondent. However, for projects falling under A category, the clearance has to be given by the MoEF, the 1st respondent herein. The mining projects coming under 'B' category have been further sub divided as 'B1' and 'B2' categories and for categorization of projects as 'B1' and 'B2' categories, the MoEF has to issue appropriate guidelines from time to time as per the EIA Notification, 2006. In the present cases, the SEIAA has sub divided projects as B1 and B2 without guidelines from the MoEF. The Rule 22 B of Mineral Concession Rules, 1960 has prescribed that the mining plan shall be prepared by a qualified person recognized under the Minor Mineral (Development and Regulation) Act, 1957. But, contrary to the rule, the mining plans submitted along with the application were prepared by the Public Work Department officials only. The clearance was granted for mining of inflated quantity which is impossible while the depth of mining is only for 1 m resulting in illegal mining and environmental degradation. Attention has to be paid to several instances where damage has been caused, including damage to lakes, riverbeds and ground water leading to drying up of water table and causing water scarcity on account of quarrying in mining leases granted under the Miner Concession Rules framed by the State Government under section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. The report on sustainable mining of minor minerals submitted in March 2010 to the Central Government clearly states that the mining of minor minerals individually is perceived to have lesser impact as compared to mining of major mines because of the smaller size of mine leases. However, the activity as a whole is seen to have significant adverse impacts on the environment. It is therefore necessary that the mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments and Union Territories, location of any eco-fragile zones within the impact zone of the proposed mining area, the rules/notifications governing such zones and the judicial pronouncements., if any, is duly noted. The Union Ministry of Mines along with the Indian Bureau of Mines and respective State Governments should therefore, make necessary provisions in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Minor Mineral Concession Rules, 1960 and

adopt model guidelines to be followed by all States. The 2nd respondent has not considered the gravity of the issue while granting the impugned clearance.

3. The appellants would further add that the Hon'ble Supreme Court of India in Special Leave Petition (C) Nos. 19628-19629 of 2009 has observed that the quarrying of river sand, it is true, is an important economic activity in the country with river sand forming 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 cause deepening of rivers which may result in the 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 and characteristics. It is highly necessary to have an effective framework of mining plan which take care of environmental issues and also evolve a long term rational and sustainable use of natural resources base and also the bio-assessment protocol. Sand mining may have an adverse effect on bio-diversity 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 leave isolated islands. Taking note of those technical, scientific and environmental aspects the MoEF issued various recommendations in March 2010 followed by the model rules in 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Articles 48A, 21A(g) read with Article 21 of the Constitution. The Hon'ble Apex Court went on further to order that the leases of minor mineral including their renewal for an area of less than 5 ha be granted by the State Governments/Union Territories only after getting EC from the MoEF. That being so, the 2nd respondent without any rationale, has classified the projects in the absence of any guidelines from the MoEF The impugned clearances have been granted without consideration of any relevant factors and without considering the extent of environmental damage that will result as a consequence of such mining in the area.

4. *Per contra*, the respondent No. 1, namely the MoEF of the Central Government has stated in the common reply to all the above appeals as follows:

The MoEF has notified EIA Notification, 2006 under the Environmental (Protection) Act, 1986 which deals with the process to grant EC. The projects of mining

of minerals as stated in the schedule require prior EC under this notification. Category 'B' projects are being handled in the respective SEIAA notified by MoEF and following the procedure prescribed under the EIA Notification, 2006. As per the EIA Notification, 2006, the Category 'B' projects require an EIA report. As per the notification, for categorization of projects into B1 and B2, the MoEF shall issue appropriate guidelines from time to time. The SEIAAs are not empowered to categorize the Category 'B' projects into 'B1' and 'B2' projects. In the office memorandum No. J-13012/12/2013-IA(I) dated 24.12.2013, *vide* Annexure R-1 in the type set papers, the MoEF has issued the guidelines for consideration of proposals for grant of EC as per the EIA Notification, 2006 and its amendments regarding categorization of 'B' projects/activities into Category 'B1' and 'B2' which stated that in order to ensure compliance of order of the Hon'ble Supreme Court of India dated 27.02.2012, in I.A.Nos. 12-13 of 2011 in Special Leave Petition (Civil) Nos. 19628-19629 of 2009 titled *Deepak Kumar vs State of Haryana and others*, the MoEF issued an office memorandum No. L-11011/47/2011-IA.II(M) dated 18.05.2012 (Annexure R-2) stating *inter alia* that all mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior EC and that the projects of minor minerals with lease area of less than 5 ha would be treated as Category 'B' as defined in EIA Notification, 2006 and will be considered by the SEIAA notified by the MoEF and following the procedure prescribed under EIA Notification, 2006.

5. Subsequently, the MoEF has issued an amendment to EIA Notification vide S.O.2731(E) dated 09.09.2013 and as per this Notification, the minor mineral mining projects having less than 5 ha of lease area are required to be appraised by the SEIAA/SEAC of the respective States for granting EC. The general conditions shall apply except for project or activity of less than 5 ha of mining lease area for minor minerals, provided that this exception shall not apply for the project or activity if the sum total of mining lease area of the said project or activity and that of existing operating mines and mining projects which were accorded EC and are located within 500 m from the periphery of such project or activity equals or exceeds 5 ha.

6. The respondent No.1, therefore, states that under the provisions of the procedure prescribed as per the EIA Notification, 2006, as amended from time to time, prior EC is necessary to operate any mining activity of minor mineral and the cases for

EC can only be processed as per the statutory procedure under the EIA, Notification, 2006 as amended.

7. The 2nd respondent, namely the Member Secretary, SEIAA, Tamil Nadu has filed a common reply to the above appeals countering averments in the applications in so far as the grant of EC for the 4th respondent. EC for the sand mining leases has been cleared for 9 applications as all of them are less than 25 ha in extent. It is contended by the 2nd respondent that, the Madurai Bench of Hon'ble Madras High Court disposed of the writ petitions in W.P.Nos. 10418 of 2004 4699, 8111, 8131, 8568, 8886 and 9654 of 2012 along with the connected miscellaneous petitions issuing the following directions on 03.08.2012 to SEIAA, Tamil Nadu: (a) enabling SEIAA to grant EC in terms of EIA Notification, 2006 for fresh sand quarry operations in the Cauvery River so as to give permission by the State authorities, and (b) on receipt of application seeking for EC for sand quarrying operation from the State authorities, the SEIAA shall consider the application and pass orders within a period of two months from the date of receipt of application from the State of Tamil Nadu/Public Works Department. Accordingly, the officials of the Public Works Department of the State of Tamil Nadu started filing project proposals from 13th August 2012. On an initial scrutiny of these proposals, it was seen that areas/extent applied for sand quarrying varied widely within 50 ha, all of which fall under 'B' category as per the thresholds fixed in the schedule. In the absence of appropriate MoEF guidelines on categorization of projects into 'B1' or 'B2', the SEIAA, Tamil Nadu could not proceed further in these cases in adhering to the orders of the Madurai Bench of the Hon'ble Madras High Court regarding the time limit. The MoEF was addressed to intimate the guidelines framed by the ministry for sub categorizing the 'B' category projects into 'B1' and 'B2' citing the directions of the Hon'ble High Court. While the matter stood thus, the SEIAA, Tamil Nadu came to know that the SEIAA, Andhra Pradesh had approved on 10.11.2008 certain guidelines as an interim arrangement, pending finalization of the guidelines by MoEF as to the sub categorization of 'B' and decided to follow the same guidelines and finalized the procedure in the joint meeting held by SEAC and SEIAA, Tamil Nadu in which it was decided that if the proposed mining area is more than 25 ha it will be considered as 'B1' category which will require the mandates of preparation of EIA as per the revised model terms of reference issued by the MoEF and public hearing shall be held which will be examined in detail for taking a decision on the issue of EC, strictly adhering to Government of India guidelines.

The SAEC/SEIAA of other States like Chattisgarh, Orissa, Karnataka Goa etc., are also following similar procedure of sub categorizing the B category projects into 'B1' and 'B2' depending upon the threshold of the individual projects. The stand of SAEC/SEIAA, Tamil Nadu in opting to frame interim and *ad hoc* guidelines to deal with the large number of project proposals filed by the Public Works Department of the State of Tamil Nadu seeking EC for sand quarry was again reiterated to MoEF by a communication dated 27.09.2012 stating further that when once the MoEF issues fresh notification for the guidelines the interim and *ad hoc* guidelines framed by the SEAC/SEIAA, Tamil Nadu would cease to be in force. Hence, the SEIAA, Tamil Nadu is bound to adopt a particular line of approach which is sound in consonance with environmental standards in order to obey the time limit prescribed by the Hon'ble Madurai Bench of Madras High Court and the sub categorization will apply only to sand mining in Tamil Nadu through Public Works Department. The SEAC/SEIAA, Tamil Nadu took every care to ensure that the basic requirements are fulfilled for appraising such projects with safeguards. Pointing to the violation of the judgment of the Apex Court in the matter of *Deepak Kumar and others Vs. State of Haryana and others (2012) 4 SCC 629*, the 2nd respondent would submit in reply that the EC was issued to the Project Proponents with adequate care and attention and included specific and general conditions and other requisites to protect the environment including the closure and rehabilitation of mined areas and environment management plan among other things.

8. The 2nd respondent would further contend in reply to the allegation of the appellant that the EC has been given on the basis of mining plan prepared in violation of the Mines and Minerals (Regulation and Development) Act, 1957 and thus it is illegal, that the Mineral Concession Rules, 1960 were framed and notified by Government of India in exercise of the powers conferred by section 13 of the Mines and Mineral (Regulation and Development) Act, 1957 and under Mineral Concession Rules, 1960 under rule 22(4A), the State Governments will be competent to approve mining plan of open cost mines (mines other than the underground mines) in respect of the non metallic or industrial minerals in their respective territorial jurisdiction and the 'sand' comes under non metallic and industrial minerals. When the sand is not used for prescribed purposes is to be considered as a minor mineral. The sand becomes a major mineral only when it attracts rule 22 (4 A) of the Mineral Concession Rules, 1960 and the sand is not to be treated as minor mineral only when it is used for the purposes listed in rule 70 of Mineral

Concession Rule, 1960. The EIA Notification, 1994 did not cover the mining of minor minerals for EC from the competent authority. However, minor minerals were brought under the ambit of EIA Notification, 2006 only when the leased area applied for EC is equal or more than 5 ha. The provisions of rule 22 of the Mineral Concession Rules, 1960 will be attracted only in the case of extraction of major minerals and not minor minerals. As such, the requirement of preparation of a mining plan by a recognized qualified person as envisaged in rule 22(B) of the Mineral Concession Rules, 1960 is not applicable to the present case. Under section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, the State Governments are vested with powers to make the rules in respect of minor minerals. This aspect has been discussed in detail by the Hon'ble Supreme Court which has ruled in paragraph 4 of the orders dated 27.02.2012 in I.A.Nos. 12-13 of 2011 in Special Leave Petition Nos. 19628-19629 of 2009 in *Deepak Kumar and others vs. State of Haryana and others etc.*, that the mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan which provide for reclamation and rehabilitation of the mined out areas. The Hon'ble Supreme Court further added in paragraph 14 of the said order that all the State Governments/Union Territories have to give due weight to the above mentioned recommendations of the MoEF which are made in consultation with all the State Governments/Union Territories. The model rules of 2010 issued by the MoEF are very vital from the environmental, ecological and bio-diversity point of view and therefore, State Governments have to frame proper rules in accordance with the recommendations under section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. The Hon'ble Supreme Court has directed all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by the MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines within a period of six months from the date of orders and to submit compliance reports.

9. The 2nd respondent states that it is clear from the above said factors that the requirement of preparation of mining plan by the recognized qualified persons is not yet made mandatory as far as the mining of minor minerals is concerned. However, as directed by the Hon'ble Supreme Court of India in the said orders, a detailed mining plan has been prepared and got approved by the Government of Tamil Nadu through its Public Works Department, incorporating EIA report, Environment Management Plan and

providing budget for environmental management. Hence, the SEAC/SEIAA, Tamil Nadu have not violated any of the provisions of either the Act or Rules concerning the minor minerals.

10. In so far as the allegations of the appellants in their averments as to the grant of EC for an inflated quantum and this quantum would cause environmental degradation and irreparable damage to the river and the quarrying of sand beyond the depth of 1 m is in violation of the Tamil Nadu Minor Mineral Concession Rules, 1959, the 2nd respondent would contend that the appellants in these cases have not fully understood the nature of sand deposits in a river. Since most of the rivers including River Cauvery is not flowing to its full capacity throughout the year and since partial flows in the river has become the order of the day, due to water current carrying sand and depositing at parts of the river has resulted in the formation of sand dunes or shoals at many stretches. These sand dunes or shoals are formed over and above the natural river bed levels and as such they have the potential to alter the course of water flow within the river. In order to restore the carrying capacity of the river fully, these sand dunes or shoals which are essentially excess sand deposits are to be removed periodically which otherwise would obstruct the flow during floods and cause erosion in the opposite curves along the bank, causing breaches of river banks and flooding of adjoining areas. The Public Works Department Engineers of the State Government while submitting the project proposals for obtaining EC have furnished the total depth of sand deposits available below the natural river bed level at the area of proposed sand mining and also the depth of shoals available above the natural river bed level in the mining plans approved by the district level officers the Geology and Mining Department of the State Government. The cross section levels at 100 m interval of the entire length of the proposed mining area have been furnished with details of natural bed level and the existing bed level and the particulars of depth of sand available in the proposed mining area below natural bed level, the total depth of sand deposit available at various places in the mining area including shoal and EC was granted after looking into all the aspects and other technical details for removal of shoal as per the calculations shown in the mining plan and to remove sand up to 1 m depth.

11. With regard to the allegations in the averments of the appeals that the EC has been granted without having a public consultation and public hearing and preparation of EIA and merely on the basis of the applications by the proponents, namely the 4th

respondent is against EIA Notification, 2006, the 2nd respondent would reply that as the Tamil Nadu Government has categorized sand quarrying operations under 'B2' no public hearing was necessitated and was not conducted. However, the concerns of the local persons and others who have plausible stake in the environment of the proposed projects/activity were ascertained by the local revenue officials and then only the project proposals were recommended by the District Collectors. The 2nd respondent has therefore prayed to dismiss all the appeals as devoid of merits.

12. The 4th respondent, namely the Executive Engineer of the State Public Works Department, would state in reply that the 4th respondent had applied to the 2nd respondent for the grant of EC for sand mining as per the procedure laid down in the EIA Notification, 2006 and as directed by the Hon'ble Madurai Bench of Madras High Court in W.P. (MD).Nos. 4699, 8131, 8886 of 2012 and 10418 of 2004. At the time of processing of the application for EC, the appellants had raised their objections against the grant of EC for sand mining. However, the 2nd respondent, after due verification and perusal of the available materials/records, granted the EC for sand mining in accordance with law. In the EC, certain conditions were stipulated to be complied with by the 4th respondent before commencing the mining operations and only after the completion all the conditions stipulated in the EC, the Tamil Nadu Pollution Control Board gave its Consent to Operate. 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. The State Government with a view to eliminate indiscriminate and unscientific sand quarrying, to ensure uninterrupted availability of sand to the common people in a regular and orderly manner at affordable price and to augment the revenue of the State Government, in public interest issued amendment to the Tamil Nadu Minor Mineral Concession Rules, 1959, in G.O.Ms.No.95, dated 1.10.2003 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 respondent/Public Works Department.

13. As per the orders of the Hon'ble Supreme Court of India dated 27.02.2012 (Deepak Kumar's case- **Annexure R2**) and as per the MOEF Office Memorandum No. L-11011/47/2011-1A.II(M) dated 18.05.2012 (**Annexure R3**), the Hon'ble Madurai Bench of Madras High Court in its order dated 03.08.2012 in W.P.No.4699/2012 (**Annexure R4**), has ordered that the sand quarries should be operated only after obtaining EC from the SEIAA. The said order is as follows:

“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”.

14. Based on the above said order, the respondent had applied and obtained EC from the SEIAA i.e., the 2nd respondent herein and has been operating the sand quarries till date, in accordance with law. Most of the applicants in the above batch of cases before this Hon'ble Tribunal were also parties to the proceedings before the Hon'ble Madurai bench of the Madras High Court and are aware of the order that this respondent was directed to obtain EC from the 2nd respondent herein within a period of three months and as such they have not challenged the said order of the Hon'ble Madras High Court in W.P.No.4699/2012. In fact, it is only as per the orders of the Hon'ble Madurai Bench of the Madras High Court that the applications were made to the 2nd respondent herein and they had processed the same as per the time frame directed by the Hon'ble High Court. As per the EIA Notification, 2006, projects have been classified as Category “A” and “B”. Category “A” projects have to get EC from the MoEF, Union of India at New Delhi. For B category projects, the EC has to be obtained from the SEIAA, the 2nd Respondent herein and hence, as per the EIA Notification dated 14th September, 2006 any mining project with more than 5 hectares but less than 50 hectares is treated

as B category project and the EC has to be obtained from the 2nd respondent. In the case of B category projects, they are further sub divided into B1 and B2 categories. According to Para 7 (i) (1) of the above EIA Notification, 'the projects requiring an EIA report shall be termed category 'B1' and remaining projects shall be category 'B2' and will not require any EIA report. For Categorization of projects into B1 and B2 except Item 8(b), the MoEF shall issue appropriate guidelines from time to time'. However, these guidelines are yet to be issued. Pending issuance of guidelines by MOEF, several of SEIAAs of States like Chattisgarh, Orissa, Karnataka, Goa, have made *ad hoc* arrangements and are also following a similar procedure of sub-categorizing B category projects into B1 and B2, depending upon thresholds of individual projects and in the present case the 2nd Respondent herein had followed the procedure of SEIAA, Andhra Pradesh in this regard, to formulate similar guidelines for Tamil Nadu for mining projects as an interim arrangement till such time, the MoEF, Government of India issues guidelines. Moreover, the order of the Hon'ble Madurai Bench of the Madras High Court in W.P.No.4699 of 2013, dated 03.08.2012 had fixed a time limit of 3 months for the 2nd respondent to process this respondent's EC applications.

15. The guidelines of SEIAA of Andhra Pradesh (**Annexure R5**) which were followed and are relevant for the present are as follows:

"1. In case, if the mine lease area is less than 25 ha. it will be considered as B2 category with EMP.

2. In case, if the mine lease area is more than 25 ha. it will be considered as B1 category, prepare the EIA as per revised Model TORs issued by MoEF, GOI and shall undertake public hearing."

16. Based on the order of Madurai Bench of Madras High court in W.P.No.4699 of 2013, dated 03.08.2012, the new sand quarries in the river beds of Cauvery, Coleroon in the respective villages in Karur, Tiruchy and Thanjavur Districts were identified with all merits of the project, the detailed project report was submitted before SEIAA on 16.08.2012. The mining plan was approved by the District Collector after conducting the joint inspection of Assistant Director (Mines), Revenue Divisional Officer, Executive Engineers of Tamil Nadu Water Supply and Drainage Board and the Public Works Department and other Public Works Department officials. There were no

objections at all and in fact the applicants herein who were also aware of the same did not raise any objections and now suddenly as an afterthought have filed the above frivolous case for vested interest.

17. The SEIAA of Tamil Nadu in its sitting on 10.10.2012 conducted a detailed enquiry with the project proponent about the merits of the project. In this meeting, it was instructed by the SEIAA to conduct the air quality test, water table, quality test, and flora and fauna studies as a measure to study the impact on local environment. It was also instructed to form the pathway using bio-degradable materials, rest shed and eco-toilet for workers, safety kits for workers and first aid kits for workers. The EC was granted on 30.11.2012 after following all the rules and regulations and the procedure in accordance with law. All the conditions imposed by SEIAA, the 2nd Respondent herein have been and are being scrupulously followed by the respondent/ Department. Further, the area of 11.60 ha is much less than 25 ha, which is the requirement for the 2nd respondent to consider it as Category B2 item and thus, the respondent/ department has followed and is following the procedure enunciated in the EIA Notification 2006, by considering all the environment and ecological conditions.

18. In respect of minor minerals except granites, the 1st respondent's office memorandum dated 18.05.2012, has instructed to follow the order of Hon'ble Supreme Court dated 27.2.2012 in I.A.No.12-13 of 2011 in SLP (C) No 19628-19629 of 2009 in the matter of *Deepak Kumar etc., vs State of Haryana*. In Tamil Nadu, as per G.O. Ms. No. 95, Industries (MMCI) Department dated 01-10-2003, Rule 38 A of Tamil Nadu Minor Mineral Concession Rules 1959, contemplated that the right to exploit sand in the State shall only be vested with the State Government. The sand quarrying henceforth will be undertaken only by the Government through a single agency namely the 4th Respondent Department, to eliminate indiscriminate and unscientific sand quarrying. The sand quarries in the river bed of Cauvery and Coleroon are also intended to remove the sand shoals and to maintain the river section hydrologically safe to pass the flood without affecting the banks and villages. The sand mining itself is a reclamation process of river hydrology and the said activities by the State Government are in the true spirit and in obedience of the aforesaid orders of the Hon'ble Supreme Court.

19. Out of total revenue of sand, nearly 30% of amount is remitted to village panchayat for various rehabilitation measures like renewing the village roads, providing drinking water facilities, improving sanitary facilities, construction of public health centres, community halls and school building, planting of trees and other rehabilitation measures. Considering the facts, the Executive Engineer is the competent person to prepare the mining plan on the river bed by considering the level of production, details of geology i.e., depth of sand available, lithology of the precise area, nature and extent. The Rule 22 B of the Minor Mineral Concession Rule 1960 contemplates that the person having professional experience of five years in supervising of mining after obtaining the degree shall be recognized as Registered Qualified person (RQP) by State / IBM. The Executive Engineer, PWD is competent person to prepare any sand mining plan on river bed in the absence of clear rule provision for minor mineral, which is yet to be enacted by Govt. of India Further, the Executive Engineer, PWD has requested the state Government to approve him as a registered qualified person to prepare mining plan under the new rule of Draft Minor Mineral Conservation and Development Rule 2010. Since, he himself is fully qualified and also the Conservator of River. The concept of prior EC for minor minerals is in evolving stage after the Apex court order on 27.02.2013 in *Deepak Kumar vs Haryana State*. The environmental aspects of quarrying of minor mineral – Evolving of Model guidelines for lease area 5 ha and above which introduces the 'Draft Minor Mineral Conservation and Development Rules, 2010', is yet to be enacted by the Government of India and is under active consideration of the Government of India.

20. The quantity is calculated scientifically after taking the spot levels of the entire area. Cross sectional leveling of the river at the point of shoal formation was carried out. The area of shoal and average height give the granting of reserve above the natural bed. Further, it is added with the quantity of total base with 1 m depth below the natural river bed to calculate the estimate quantity. The quantity calculation with detailed cross section was submitted to the 2nd Respondent SEIAA and was scrutinized by SEIAA. The quantity of 3,70,423 M³ is credible and not inflated.

21. The sand mining operation by the 4th Respondent department has not affected the ground water and the statement that it leads to water scarcity is a farfetched imaginary statement and the 2nd respondent has not granted any lenience to this respondent and in fact all the required rules and regulations have been followed. Further,

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the 2nd respondent SEIAA has given EC for sand quarry with all effort to protect the environmental and ecological balance by getting all the required data through State Level Expert Appraisal Committee and after taking into consideration the merits and demerits and it is also to be considered that the sand is important raw material for infrastructure development of the State and people will get the sand at affordable price. The respondent would reiterate that based on the orders of the Hon'ble Madurai Bench of Madras High Court in its orders dated 03/8/2012 in W.P. (MD) No.4699 of 2012 and batch cases, necessary applications were made to the 2nd respondent and after having following the procedure in accordance with law, the ECs were granted. In case the appellants had any grievance, they could have challenged the orders in the writ petition or at least at the time of processing the application. However, the appellants chose to remain silent and suddenly woke up and to prove that the above appeal is motivated and filed at the instigation of interested parties.

22. Several strict specific and general conditions have been imposed by the 2nd respondent while granting EC, including those for the closure and rehabilitation of mined out areas, environment management plan. Among other things, the following conditions have been stipulated in the EC and this would prove that the appellant has misrepresented the case to suit their convenience:

Specific Conditions:

"In Part (5) xviii. At the end of mine closure, the Proponent shall immediately remove all the sheds put up in the quarry and all the equipment in the area at the time of closure of the operation of sand quarry. All the roads /path ways shall be leveled to let the river assume its normal course without any artificial obstruction to the extent possible.

xix. The mined out pits should be backfilled where warranted and area should be suitably landscaped to prevent environmental degradation.

xx. Restoration of riparian and in stream habitats, restoration of river geometry causing degradation in upstream, downstream and in the mining area, depletion and prevention of contamination of ground water etc., shall be taken care of, by the proponent."

GENERAL CONDITIONS :

“iv) A study shall be got carried out through an expert agency like Central Water Commission relating to replenishment of the mineral (siltation study) in this river so as to ensure that the quantity of mineral to be removed does not exceed the siltation to avoid over exploitation of mineral which may adversely affect the dynamics of the river. This study shall be steered by the State Government, based on which the capacity of the mine will be decided by the concerned Department of the State Govt. while granting mining lease.

ix) 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.

x) 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.

xii) Appropriate mitigative measures shall be taken to prevent pollution of the river in consultation with the State Pollution Control Board. It shall be ensured that there is no leakage of oil and grease in the river from the vehicles used either for excavation or for transportation.

xv) Quarrying should enrich rather than deplete the biodiversity as a corollary to their intervention in the ecology of their area of activity.

(xviii) After completion of quarrying of permitted quantity of sand in the river, the natural slope of the river should be maintained without any low-level area in the mined area, by carrying out an approved mine closure plan.

xxi) Mining activity should not cause threat to the biodiversity, destroy river vegetation, cause erosion, pollute water sources etc.

xxii) Four ambient air quality-monitoring stations should be established in the core zone as well as in the buffer zone for RSPM (Particulate matter with size less than 10 micron i.e., PM₁₀) and NO_x monitoring. Location of the stations should be decided based on the meteorological data, topographical features and environmentally and ecologically sensitive targets and frequency of monitoring should be undertaken in consultation with the State Pollution Control Board.

xxiv) Fugitive dust emissions from all the sources should be controlled regularly. Water spraying arrangement on haul roads, loading and unloading and at transfer points should be provided and properly maintained.

xxv) Personnel working in dusty areas should wear protective respiratory devices and they should also be provided with adequate training and information on safety and health aspects. Occupational health surveillance programme of the workers should be undertaken periodically to observe any contractions due to exposure to dust and take corrective measures, if needed.

xxvi) Periodical medical examination of the workers engaged in the project shall be carried out and records maintained. For the purpose, schedule of health examination of the workers should be drawn and followed accordingly. The workers shall be provided with personnel protective measures such as masks, gloves, boots etc.

Hence, the true spirit of the order of the Apex court has been followed and EC granted in accordance with law.

23. In the EIA Notification Para 7 (1) III Stage (3) Public Consultation (i) (e), all categories of projects and activities are exempted from the process of public consultation. The present project is categorized as B2 project and hence there was no requirement of any public hearing. However, as required objections were called for and all the required formalities were followed and the procedure followed in accordance with law. The entire mining operation of the sand quarry has been brought under strict regulatory regime and has been put under continuous scrutiny of the regulating

authorities and in the EC issued to this respondent, adequate care and attention have been taken and all specific and General conditions and the required safeguards to protect the Environment along with the Environment Management Plan, among other things, have been included and the same are being followed without any default.

24. The respondent would conclude that the above appeals are time barred, filed with vested interest and devoid of merits and any adverse order against this respondent would result in severe hardship as the regulated supply of sand is required for numerous public development and infrastructure activities. This apart, as the mining activity is being done only by the State and that too without affecting the environment, the appellant cannot have any grievance.

The following points for determination and decision are formulated:

- i. Who was authorized to issue Environmental Clearance for mining minor minerals at the relevant point of time?
- ii. Was the SEIAA, Tamil Nadu right in adopting guidelines of SEIAA, Andhra Pradesh?
- iii. Did the MOEF take exception to the usurpation of its powers by SEIAA, Tamil Nadu?
- iv. If no one was competent to process environmental clearances to minor minerals than what ought to be the practical approach?
- v. Whether the *ad hoc* and interim ECs granted by SEIAA/Tamil Nadu, the 2nd respondent herein to the 4th respondent/Executive Engineers of Public Works Department of the concerned Divisions in charge of Rivers Cauvery and Coleroon in the S. Nos. of the villages referred to above in the relevant proceedings are maintainable.

Point Nos. 1 to 5

25. Advancing the arguments on behalf of the appellants, the learned counsel Shri T. Mohan would submit that the 2nd respondent has granted the impugned clearances illegally classifying the projects as 'B2' category-Projects while the 2nd respondent has no power or authority to classify as B Category-Projects into B1 and B2. The said clearances were given against the mandatory requirement of EIA Notification, 2006. As

required, the public hearing was not held before granting the clearances. Pointing to Clause 7 of the EIA Notification, 2006, the learned counsel would submit that in case of B2 category projects activities the I stage of scrutiny would entail the scrutiny of an application seeking prior EC made in Form I by the concerned SAEC for determining whether or not the project and activities required further environmental studies for preparation of EIA for appraisal prior to grant of EC depending upon the nature, location etc., of the project. If the project required an EIA report, it shall be termed Category-B1 and the remaining project shall be termed Category-B2 which does not require an EIA report. But, for categorization of projects as B1 and B2 except item 8(b) the MoEF shall issue appropriate guidelines from time to time. Thus, the EIA Notification has abundantly made clear that the SEIAA has no authority to classify the projects in the absence of guidelines from MoEF. It is pertinent to point out that the Respondent Nos. 1, 2 and 4 have conceded that on the date of granting of the impugned clearances, no guidelines were issued. The 1st respondent/MoEF in its reply affidavit has categorically stated that the SEIAAs were not empowered to sub categorize the B projects into B1 and B2. The 1st respondent has also stated that the guidelines are issued by the MoEF dated 24.12.2013 for consideration of proposals for grant of EC as per EIA Notification, 2006. Thus, it would be quite clear that the 2nd respondent has acted without authority and any exercise of powers without sanction of law is illegal and thus the impugned clearances are illegal and *non est* in law. Even the 2nd respondent has also admitted that the impugned clearances were granted by classifying the projects as B2 without mandatory guidelines issued by the 1st respondent. The affidavit filed by the 2nd respondent would indicate a communication shown as Annexure-II whereby it was written to the 1st respondent in the absence of guidelines, no categorization was possible. No reliance can be placed either on the decision or on the guidelines framed by SEIAA of Andhra Pradesh State dated 10.11.2008 since the 2nd respondent cannot claim that the authority could follow a decision taken by other States when it is illegal. The 2nd respondent has also acknowledged the fact that the action taken by them in the absence of authority could lead to problems of litigation. All the above would indicate that the 2nd respondent has usurped the powers and granted the impugned clearances in the absence of any powers vested on them by law. The learned counsel would further state that the 4th respondent has categorically admitted in his reply that the guidelines were yet to be issued by the MoEF on the date of reply. The averments about the adequacy of the alleged safeguards in the impugned clearances were false. It is an admitted fact that the 2nd respondent had

proceeded to grant the impugned clearances even without insisting on an EIA being conducted and without any material to show that the rivers were fit for mining. The ECs granted by the 2nd respondent were not based on any study of assessment. Condition No.9 of the General Conditions states that *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 and.* the studies should be done and submitted to the authority. It was also submitted that the mining plan ought to be prepared by an authorized person under rule 22 (B) of the MCR, 1960. But, no mining plan has been submitted by the respondent. The respondents have never taken into consideration that under MCR, 1960 sand ought not to be treated as minor mineral when used for 7 uses mentioned therein. The 2nd respondent has not considered whether the present mining would be utilized for the said purposes and has granted the impugned clearances by treating sand as a minor mineral. The contention of the respondents in respect of the demand for sand did not justify any violation of law.

26. Placing reliance on the decision of the Hon'ble Supreme Court of India in *Deepak Kumar and others vs. State of Haryana and others reported in AIR 2012, SC 1386*, the counsel would submit that quarrying of river sand is an important economic activity in the country with river sand forming a crucial raw material for infrastructural development and for the construction industry, but the excessive in-stream sand and gravel mining causes degradation of rivers and sand mining might have an adverse effect on bio-diversity as loss of habitat caused by sand mining will effect various species and flora and fauna and it might also destabilize the soil structure of river banks and often leaves isolated islands. The counsel also took the Tribunal to the decision of the Hon'ble Madras High Court in *M.K. Janardhanam vs. The District Collector (Contempt Application No. 561 of 2001 in W.P.No. 985 of 2000)* speaking about illicit quarrying of sand in Thiruvallur District. The effect of excessive, illegal quarrying without proper assessment of the risks and impact would have adverse effects on the ecosystem. And thus while granting licenses the local people should be taken into confidence. They should be allowed to air their views and raise objections. But, in the instant case public objections were not even considered while granting the impugned clearances. Indiscriminate sand mining without assessing the carrying capacity of the area and the environment and

without a holistic and comprehensive assessment of the impact of mining is contrary to the Principles of Sustained Development and Precautionary Principles. The Hon'ble Supreme Court of India in *Research Foundation for Science Technology and Natural Resources Policy vs. Union of India (AIR 2007 SC (Supp) 852)*, has reaffirmed the 'Precautionary Principle' and 'Polluters-Pay' principles are part of the concept of Sustainable Development. The applications of those principles are well settled and they govern the law in our country as is clear from Articles 47, 48-A and 51-A (g) of the Constitution of India. The above concepts are already imbibed in various environmental statutes including the Environment (Protection) Act, 1986 (for short 'EPA,1986). The learned counsel would further submit that the grant of ECs by the 2nd respondent to 4th respondent is against the Principles of Inter- generational Equity and Sustainable Development and also against the Public Trust Doctrine. . In order to substantiate his contentions, the learned counsel relied on the following decisions:

- (i) *Andhra Pradesh State Pollution Control Board Vs. Prof. M.V. Naidu and others (1999) 1 SCR 235.*
- (ii) *L. Krishnan Vs. State of Tamil Nadu (2005(3) MLJ 363*
- (iii) *National Audubon Society Vs. Superior Court of Alpine Country 33 Cal. 419.*

27. The learned counsel concluded his arguments by stating that the impugned clearances were illegally issued without authority of law and contrary to the environmental protection and conservation. Hence, the impugned environmental clearances have to be set aside.

28. The elaborate submissions made by Shri N.R. Chandran, the learned Senior Counsel appearing for the 2nd respondent, Shri A.L. Somayaji, learned Advocate General of Tamil Nadu appearing for the 4th respondent/Public Works Department and Shrimathi C. Sangamithirai, learned Standing Counsel appearing for the 1st respondent/MoEF, Government of India were heard. The written submissions placed by the 2nd and 4th respondents are recorded.

29. The Tribunal paid its anxious considerations on the submissions made both oral and written by the learned Senior Counsel, Advocate General and the Standing counsel appearing for the Respondent Nos. 2, 4 and 1, respectively.

30. All these appeals have been filed challenging the ECs granted by the 2nd respondent/SEIAA to the 4th respondent/Public Works Department.

31. As per the EIA Notification, 2006 all the projects are classified as Category A and B. While the Category-A projects have to get EC from the MoEF/Government of India, for Category-B projects, EC has to be obtained from SEIAA shown as the 2nd respondent herein. Under EIA Notification, 2006 any mining project with more than 5 ha and less than 50 ha is classified as B Category-Project and EC has to be obtained only from the 2nd respondent. The B Category-Projects are further sub divided into B1 and B2 categories and in so far as the projects falling under B2 category no EIA nor public consultation and public hearing are required. Thus, only for B1 category the EIA, public consultation and public hearing are required.

32. According to paragraph 7(1) (1) of the EIA Notification, 2006, the projects requiring an Environmental Impact Assessment report shall be termed category 'B1' and remaining projects shall be category 'B2' and will not require an Environment Impact Assessment report. For Categorization of projects into B1 and B2, except Item 8(b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time. It is a pleaded case of all the parties that these guidelines were not issued till 24.12.2013. A copy of the guidelines was placed before the Tribunal during the pendency of the proceedings. It is pertinent to point out at this stage that though the EIA Notification, 2006 which came into force with a mandate that the MoEF should issue appropriate guidelines for Categorization of projects into B1 and B2 except item 8(b) from time to time, the MoEF has not framed the guidelines all along in the past. No explanation was forthcoming from the 1st respondent in this regard.

33. It is contended by the learned Advocate General that the State Government with a view to eliminate indiscriminate and unscientific sand quarrying and also to ensure continuous availability of sand to larger public in a regular and orderly manner at an affordable price and also to augment the revenue of the State, issued an amendment to the Tamil Nadu Minor Mineral Concession Rules, 1959 by introducing rule 38-A whereby all existing leases for sand quarrying in Government lands and permissions granted in *ryotwari* lands ceased to have effect from 02.10.2003 and as a result the right to quarry

sand in the State now vests only with the State through the 4th respondent/Public Works Department. Thus, it would be quite clear that at present the right to quarry sand in the State is now vested with the State Government through one of the Departments, namely the Public Works Department.

34. Alleging violation of rules and regulation of MMCR and also excessive and unscientific sand quarrying in the river beds and in-stream causing damage to river system and degradation of good water quality, a batch of writ petitions was filed in W.P. (MD) Nos. 4699, 8111, 8131, 8568, 8886 of 2012 and 10418 of 2004 before the Hon'ble Madurai Bench of Madras High Court. A Division Bench of the High Court after considering the merits of the petitions therein made a common order on 03.08.2012 that the sand quarries should be operated only after obtained EC from the SEIAA. The said order reads as follows:

"48. 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.

49. 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 (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 1995 (3) SCC 363 [State of H.P. v. Ganesh Wood Products]; 1997 (2) SCC 653 [M.C.Mehta v. Union of India]; 2002 (10) SCC 664 [Narmada Bachao Andolan v. Union of India] and (2006) 3 SCC 549 [Intellectuals Forum, Tirupathi v. State of A.P. and others].

50. 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.

35. A reading of the above order would indicate that the permission for fresh sand quarry operations in Rivers Cauvery and Coleroon should be granted by the State only after getting EC from the SEIAA as per the EIA Notification, 2006 and further the Office Memorandum of MoEF dated 18.12.2012. It was also made clear in the order that when an application seeking for EC for sand quarry was made by the State Government/Public Works Department, SEIAA should consider the application and pass order within a period of two months from the date of receipt of the application. Since many of the appellants were parties to the writ petitions, they cannot now plead as if they had no knowledge of the proceedings and order made thereon. But, the said order of the High Court was never challenged by any one of the writ petitioners.

36. Pursuant to the order of the High Court, the 4th respondent in the relevant appeals herein above made their applications for the project proposals for sand quarries within 50 ha all of which falling under B category. It is not in controversy that for the categorization of projects as B1 and B2, the MoEF has to issue appropriate guidelines from time to time. But, the MoEF did not formulate the guidelines. However, the SEIAA had to consider the applications within 2 months from the date of receipt of the same.

While the Hon'ble Division Bench of Madurai of the High Court Madras made the common order on 03.08.2012, the 4th respondents made their applications on the dates within the time limit allowed in the common order dated 03.08.2012, Under such circumstances, the Chairman, SEIAA sent a communication on 21.08.2012 addressed to the Joint Secretary, MoEF and also another communication dated 30.08.2012 wherein the receipt of applications, directions issued by the High Court and stating that *ad hoc* guidelines if any framed by the SEIAA would give way for further litigations was brought to specific notice of the MoEF stressing the imminent necessity for framing the guidelines by MoEF for sub categorization of the B Category projects into B1 and B2. However, the MoEF kept silent. A reading of the said common order clearly indicates that the direction of Madurai Bench of the Madras High Court in the above said order was brought to the notice of the MoEF. But no reply was received. It remains to be stated that the MoEF, which has not framed the guidelines from the time of EIA Notification, 2006 has not paid due consideration. The Tribunal is able to notice that there were two compelling reasons:- firstly, the direction issued by the Hon'ble Madurai Bench of Madras High Court to SEIAA to pass order within 2 months and secondly, the silence on the part of MoEF by not responding to the communication with a request for formulation of guidelines for taking a decision for framing interim and *ad hoc* guidelines. Explaining all the above circumstances, the 2nd respondent/SEIAA informed its decision to the Secretary, MoEF to adopt the following guideline in the joint meeting of SAEC and SEIAA conducted on 28.12.2012 by a communication dated 27.09.2012:

- (i) *All mining projects wherein the boundary of the proposed mining area is at least 1 km away from the human inhabitation/other sensitive areas will be considered for sanction of EC subject to satisfaction of other guidelines.*
- (ii) *If the boundary of the proposed mining area is less than 1 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 ha, it will be considered as B2 category with Environmental Management Plan (EMP) and processed further.*
- (iv) *In case, if the proposed mining area is more than 25 ha, it will be considered as B1 category, which will require preparation of EIA as per the revised model Terms of Reference (TOR) 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 EC, strictly adhering to Government of India guidelines.

37. It was also made clear that the above guidelines were only interim and *ad hoc* in nature and would be replaced by those notified by MoEF, Government of India in future and the said *ad hoc* guidelines would cease to be in force from the date of notification/office memorandum to be issued by the MoEF on the subject. It is a matter of surprise to note that even after the above communication dated 27.09.2012, the MoEF neither replied nor raised any objections, nor formulated any guideline till 24.12.2013. Though the 1st respondent filed reply affidavit in all these appeals, nowhere it was averred that the guidelines so framed were illegal nor how the 2nd respondent was not justified in making the *ad hoc* guidelines to meet the said situation arising out of the directions of the Hon'ble Madurai Bench of Madras High Court in the order dated 03.08.2012 in the batch of writ petitions as aforesaid. The MoEF, though averred in its reply that the SEIAA was not empowered to categorize the B Projects into B1 and B2 and framed the guidelines on 24.12.2013, has not stated anything or found fault with the EC issued by the 2nd respondent. Neither it has nullified, nor cancelled or even commented on the impugned ECs prior to the date of issuance of the guidelines dated 24.12.2013.

38. Under such circumstances, the Tribunal is able to find force in the contentions put forth by the learned Advocate General that in view of the above 2 factors, the 2nd respondent was legally bound to take a decision which was in sound consonance with environmental standard in order to obey the time limit prescribed by the High Court. Apart from that, sub categorization of B Projects into B1 and B2 and also the guidelines thereon was purely interim and *ad hoc* and that too only for the sand mining in the rivers by the State Government through its Public Works Department.

39. Terming the sub classification of B Category Projects into B1 and B2 and also the guidelines made by the 2nd respondent as illegal, the learned counsel for the appellants with vigor and vehemence submits that the 2nd respondent has no power under EIA Notification, 2006, the MoEF only should issue appropriate guidelines from time to time and while the same is made abundantly clear under EIA Notification, 2006, the SEIAA should not have classified the projects and any demand for sand did not justify

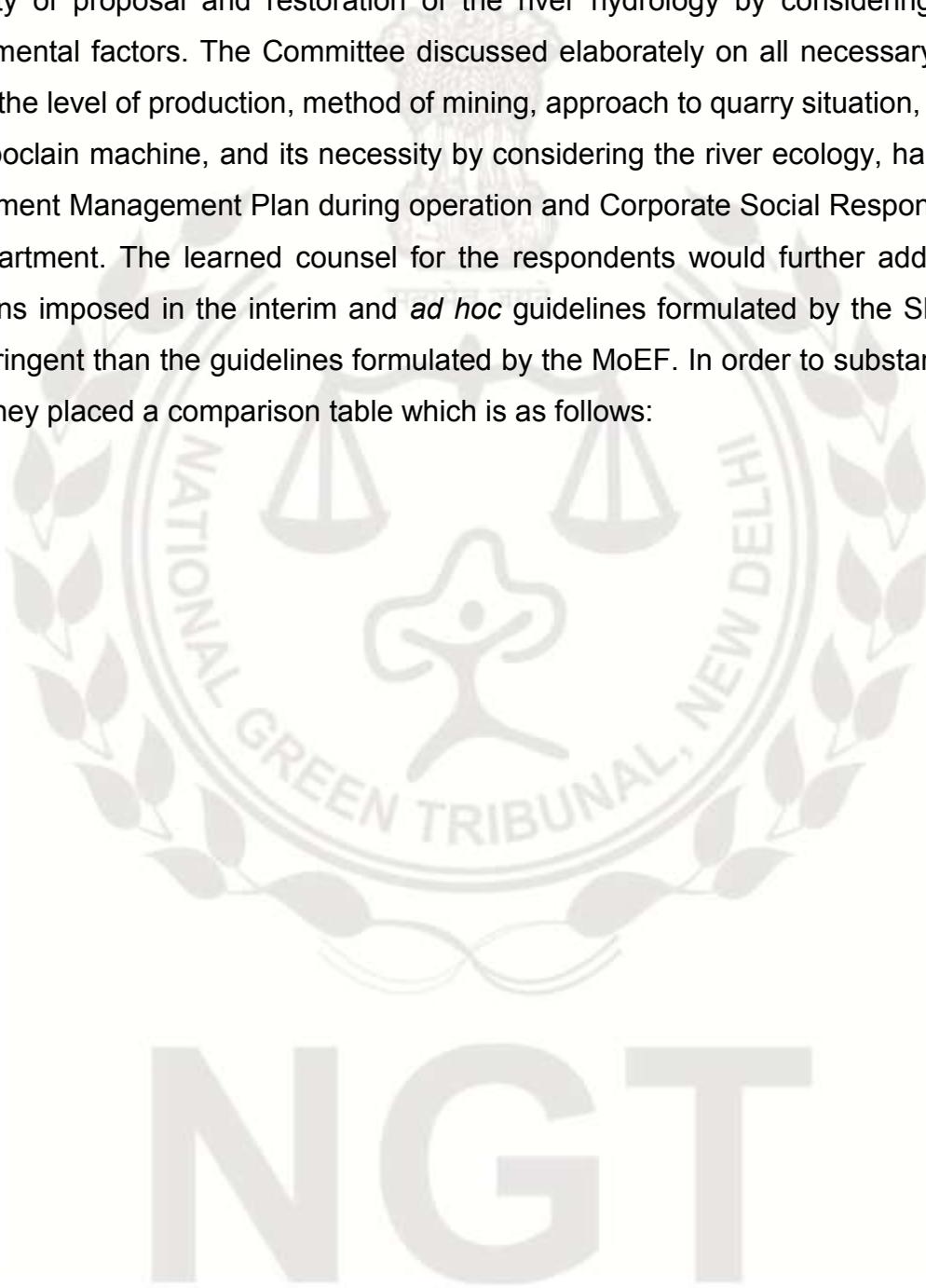
the violation of law. The said contention is answered by the learned counsel for the respondents that knowing fully well its obligations to frame the guidelines, the MoEF has not done so, even though compelling reasons were brought to its notice. Despite 3 communications made by the 2nd respondent, the MoEF did not come forward with any prohibition by way of any notification, circular, or in the form of reply from categorization of B Projects into B1 and B2 by adopting *ad hoc* guidelines merely because the guidelines were yet to be framed by the MoEF will not in any way take away the right of 2nd respondent to exercise its discretion to take a decision as done in the instant case. In order to substantiate the said contention, the learned Advocate General relied on the following decisions:

- (i) *Trisha Gupta Vs. Guru Gobind Singh Indraprastha University and another, in W.P (c).No. 5436 of 2012 & CM 11067/2012 , High Court of Delhi at New Delhi.*
- (ii) *Shriram Sugar Industries Ltd. v. State of Andhra Pradesh and Others, reported at (1974) 1 SCC 534.*
- (iii) *Bhakta Ramegowda and others Vs. State of Karnataka and Others – reported in (1997) 2 Supreme Court Cases 661.*
- (iv) *Shri Rama Sugar Industries Ltd Vs. State of Andhra Pradesh – reported (1974) 1 SCC Shri Rama Sugar Industries Ltd Vs. State of Andhra Pradesh – reported (1974) 1 SCC.*

40. All the above decisions lend support to the contentions put forth by the respondents' side. Thus, the right vested with the 2nd respondent/SEIAA to sub categorizes the B Category Projects into B1 and B2 will not be taken away by not framing of guidelines by the 1st respondent/MoEF. Nor it can be termed as illegal so long it complies with and be reconcilable with the provisions of the notification and has relevance to its objects.

41. Assailing the impugned ECs, the learned counsel for the appellants would submit that not only the ECs were granted by the 2nd respondent/SEIAA without power, but also the concerns of the public and also the factors affecting the interested were not taken into consideration. The so called conditions imposed were simply farce. In response to the above contention, the learned counsel for the respondents would submit

that the subject projects were treated as B2 for which public consultation, public hearing and preparation of EIA were not required. The sand quarry proposals with less than 25 ha were placed before the SAEC by the Chief Engineer, Public Works Department, Water Resources Department, Tiruchy. The Project Proponents explained the need and necessity of proposal and restoration of the river hydrology by considering various environmental factors. The Committee discussed elaborately on all necessary factors, namely the level of production, method of mining, approach to quarry situation, judicious use of poclain machine, and its necessity by considering the river ecology, habitations, Environment Management Plan during operation and Corporate Social Responsibility of the department. The learned counsel for the respondents would further add that the conditions imposed in the interim and *ad hoc* guidelines formulated by the SEIAA are more stringent than the guidelines formulated by the MoEF. In order to substantiate the same, they placed a comparison table which is as follows:



Categorization of B2 Projects by SEIAA and MoEF

Sl. No	SEIAA	MoEF
1	Less than 25 ha.	Less than 25 ha
2	Form-I, Pre-feasibility Report, Mining Plan and Environment Management Plan	Form -I, Pre-feasibility Report, Mining Plan
3	Post monitoring studies on Environmental Impact by air test, water test, hydrogeological studies, replenishment studies and flora and fauna studies	-----
4	Mining activity done manually or in strict accordance with the orders of the Government of Tamil Nadu as upheld by the Hon'ble High Court of Madras	Mining activity done manually
5	It shall be ensured that the sand quarrying shall not be carried out below water table under any circumstances	No in-stream mining shall be allowed
6	No public hearing and EIA report	No public hearing and EIA report
7	The ultimate working depth shall be 1 m from the theoretical bed level of the river/water level, whichever is less	Depth of mining shall be restricted to 3 meter/water level, whichever is less.
8	A study to be carried out through an expert agency like Central Water Commission relating to replenishment of the mineral (siltation study) in the river	Mining plan approved by an 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.
9	Maximum ceiling for EC is 5 years	Maximum ceiling for EC is 5 years

42. A perusal of the *ad hoc* guidelines framed by the 2nd respondent and also the guidelines made by the MoEF dated 24.12.2013, no doubt, as seen above, would indicate that the conditions imposed in the *ad hoc* guidelines are stringent than the guidelines formulated by the MoEF and hence the contentions put forth by the learned counsel for the appellants have necessarily to be rejected.

43. The contentions put forth by the appellants as to the extraction of sand more than the permitted limit does not fall within the scope of the appeals and hence does not arise for consideration.

44. Much reliance was placed by the counsel for the appellants on the decision of the Hon'ble Apex Court in *Deepak Kumar and others vs State of Haryana and others* AIR (2012) SC 1386. Equally, the reliance was placed on the above decisions before the Hon'ble Madurai Bench of the Madras High Court in the writ petitions referred to above. After taking into consideration of the factual and legal positions the Division Bench of the Madras High Court has observed as follows:

"48. 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.

49. 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 (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 1995 (3) SCC 363 [State of H.P. v. Ganesh Wood Products]; 1997 (2) SCC 653 [M.C.Mehta v. Union of India]; 2002 (10) SCC 664 [Narmada Bachao Andolan v. Union of India] and (2006) 3 SCC 549 [Intellectuals Forum, Tirupathi v. State of A.P. and others].

50. 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. “

45. When a question was raised as to what should be the practical approach in respect of the sand quarry operation in the absence of any guidelines by the MoEF for categorization and no *ad hoc* guidelines are framed by the 2nd respondent, the learned counsel for the appellants would submit that if such a necessity arose, the sand has to be transported from other States in order to meet the needs. The above contention cannot be given any consideration from the view of larger interest of the public. At this juncture, the learned Advocate General placed materials to show that pending issuance of the guidelines by the MoEF, the SEIAAs of different States like, Andhra Pradesh, Chattisgarh, Odisha, Karnataka, Goa, etc., had made *ad hoc* arrangements and were following similar procedure of sub categorizing the B Category Projects into B1 and B2. In the present case, the 2nd respondent has followed the procedure of SEIAA, Andhra Pradesh in this regard, to formulate guidelines for the sand mining projects in Tamil Nadu as an interim arrangement till such time the guidelines are issued by the MoEF.

46. The Tribunal is of the considered opinion that balance has to be struck on economic and social needs on one hand with environmental consideration on the other. After perusal of the guidelines and also the conditions attached to the EC, it would be quite clear that sufficient safeguards have been taken by the 2nd respondent at the time of framing the *ad hoc* and interim guidelines and it would be replaced by those guidelines notified by the MoEF. It is true that the MoEF has now framed the guidelines dated 24.12.2013 as per the legal mandate made in the EIA Notification 2006 and a copy of which is placed before the Tribunal. Following the said guidelines, the 4th respondents

have to necessarily make applications for EC. After the applications are made they have to necessarily pass through the stages namely, screening, scoping, public consultation and appraisal before the grant of EC. Needless to say, it is a time consuming process which would take not less than six months. In the larger interest of the public it would not be fit and proper to stop abruptly the operation of the ECs granted by the SEIAA, the 2nd respondent herein as an interim and *ad hoc* measure.

47. In view of the economic and social needs and public interest at large, the Tribunal is of the considered opinion that the ECs originally granted 2nd respondent/SEIAA based on the *ad hoc* guidelines can be continued for a period of six months with a direction to the 4th respondents to make necessary applications for obtained EC based on the guidelines issued by the MoEF which have come into force from 24.12.2013 and thereafter the 2nd respondent has to proceed for grant of ECs within 5 months thereafter. During the period of 6 months, while *ad hoc* arrangements have to continue, the 4th respondents as directed to strictly monitor the compliance of the conditions attached to the EC. This order will apply only to the sand quarries which are in operation pursuant to the grant of impugned ECs.

48. A striking point/feature emerging from the present litigation is the attitude and inaction on the part of the MoEF. As is evident from the EIA Notification, 2006, the MoEF is mandated to issue appropriate guidelines to categorize "B" projects into B1 and B2, from time to time. With regard to categorization of river sand mining projects, no guidelines were evolved by the MoEF from September 2006 to December, 2013. We are of the considered view that the present litigations would not have knocked the doors of the Tribunal if only the mandated guidelines were made available in time by the MoEF. In the instant case, as discussed earlier, the MoEF did not even flash its interest in the matter despite repeated communications from the SEIAA. We are indeed at a loss to understand or comprehend the reasons for the same. Reasons notwithstanding, the fact that the MoEF, the custodian of the Environment and Natural Resources of the country, is so callous and lethargic in developing mandated guidelines in respect of one of most important natural resources, namely the river sand is, to say the least, totally unacceptable. We therefore direct the MoEF to be more accountable and vigilant in fulfilling its mandate concerning precious and most sought after natural resources and

facilitate Sustainable Development of human welfare projects. We do hope that the concerned officials in the MoEF would spend quality time to ponder over such matters of National importance and Public interest.

49. In the result all the appeals are disposed of with the following decision and direction.

50. 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 adhoc guidelines shall continue for a period of six months with a direction to the 4th respondents 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.

51. During the period of six months, the adhoc arrangements have to continue and the 4th respondents 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.

No cost.

(Justice M. Chockalingam)
Judicial Member

(Prof. Dr. R. Nagendran)
Expert Member

Chennai,
24th February, 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
 (Special Original Jurisdiction)
 Wednesday, the Thirtieth day of April Two Thousand Fourteen
 PRESENT

The Hon'ble Mr. Justice V. RAGASUBRAMANIAM
 and
 The Hon'ble Ms. Justice V.M. VELUPILLAI

MP(MD) No.2 to 2 of 2014
 IN

WP(MD) No.7146 to 7157 and 7767 to 7772 of 2014

Co. Ct.	
App. Ct.	<i>[Signature]</i>
Cor. Ct.	
J. Ct.	
P.S.A.	<i>[Signature]</i>

KOLLIDAM RASU PATHUKAPPU NALA SANGAM, ... PETITIONER IN MP(MD) 2/2014
 REP BY ITS PRESIDENT R.SUBRAMANIAN IN WP(MD) .7146 TO 7157/2014

P.ETTIKKAN ... PETITIONER IN MP(MD) .2/2014
 IN WP(MD) .7767 TO 7772/2014

Vs

1 THE UNION OF INDIA,
 REP. BY ITS SECRETARY TO GOVT.,
 MINISTRY OF
 ENVIRONMENT AND FORESTS, NEW DELHI

2 THE MEMBER SECRETARY
 STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT
 AUTHORITY, 3RD FLOOR, PANAGAL NAALIGAI, NO.1,
 JEEVIE ROAD, SAIDAPET, CHENNAI 15

3 THE EXECUTIVE ENGINEER,
 PWD /WRD, RC DIVISION, CANTONMENT, TRICHY

4 THE NATIONAL GREEN TRIBUNAL,
 SOUTHERN ZONE, REP. BY ITS REGISTRAR,
 ARJAMBAKAM, CHENNAI ... RESPONDENTS IN ALL THE PETITIONS.

Referred in MP(MD) 2/2014 in WP(MD) 7146/2014

Petitions praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the operation of the impugned order passed by the 4th respondent in Appeal No.73 of 2013 dated 24.02.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondent's order in Letter No.SEIAA/TN/F.595/B/1(a)/40/2012 dated 30.11.2012 for the Mangamulpuram sand quarry in River Kollidam at Mile 20/0 to 20/1 at S.F No.217, Mangamulpuram Village in Lalgudi Taluk of Trichy District pending disposal of the above WP and thus render justice.

Prayer in MF (MD). 2/ 2014 in WF (MD). 7147/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No. 74 of 2013 dated 24.02.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondent's order in Letter No. SBIAA/TN/F. 558 /E/1 (a) / 23 / 2012 dated 08.11.2012 for the 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 and pass such further order or other orders.

Prayer in MF (MD). 2/ 2014 in WF (MD). 7148/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No. 75 of 2013 dated 24.02.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondent's order in Letter No. SBIAA/TN/F. 561 /E/1 (a) / 25 / 2012 dated 28.11.2012 for the Perungamani sand quarry in River Cauvery at Mile 107/4 to 107/6 + 100m at S.F. No. 216, Perungamani Village in Srirangam Taluk of Trichy District.

Prayer in MF (MD). 2/ 2014 in WF (MD). 7149/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No. 76 of 2013 dated 24.02.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondent's order in Letter No. SBIAA/TN/F. 585 /E/1 (a) / 12 / 2012 dated 26.10.2012 for the 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 pending disposal of the above WF and thus render justice.

Prayer in MF (MD). 2/ 2014 in WF (MD). 7150/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No. 79 of 2013 dated 24.02.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondent's order in Letter No. SBIAA/TN/F. 585 /E/1 (a) / 8 / 2012 dated 26.10.2012 for the 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 pending disposal of the above WF.

Prayer in MF (MD). 2/ 2014 in WF (MD). 7151/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No. 82 of 2013, dated 24.02.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondent's order in Letter No. SBIAA/TN/F. 585 /E/1 (a) / 36 / 2012 dated 28.11.2012 for the Sevanthipuram sand quarry in River Kollidam at Mile 14/6 to 15/1 at S.F. No.110, Sevanthinathapuram Village in Lalgudi Taluk of Trichy District.

141339

Prayer in MF (MD). 2/ 2014 in WF (MD). 7152/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No. 83 of 2013 dated 24.02.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondent's order in Letter No. SEIAA/TN/E. 557 /E/1 (a) / 21 / 2012 dated 07.11.2012 for the Amoor sand quarry in River Cauvery at Mile 106/5+30m to 106/7+30m at S.F.No.131, Amoor Village in Musiri Taluk of Trichy District pending disposal of the above WP and thus render justice.

Prayer in MF (MD). 2/ 2014 in WF (MD). 7153/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No.85 of 2013 dated 24.02.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondent order in Letter No. SEIAA/TN/E. 567 /E/1 (a) / 34 / 2012 dated 28.11.2012 for the Koothur sand quarry in River Kollidam at Mile 19/0 to 19/3 at S.F No. 144, Koothur Village in Lalgudi Taluk of Trichy District pending disposal of the above WP.

Prayer in MF (MD). 2/ 2014 in WF (MD). 7154/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No. 81 of 2013, dated 24.02.2014, in so far as it permit the 3rd respondent to continue quarrying on the strength of the 2nd respondent's order in Letter No. SEIAA/TN/E.566 /E / 1(a)/35/2012, dated 28.11.2012 for the Appathuraisand 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.

Prayer in MF (MD). 2/ 2014 in WF (MD). 7155/2014 :

To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the To stay the operation of the impugned order passed by the 4th respondent in Appeal No. 86 of 2013 dated 24.02.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondent's order in Letter No. SEIAA/TN/E. 566 /E/1 (a) / 22 / 2012 dated 09.11.2012 and direct the 3rd 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 Thottaim taluk of Trichy district forthwith and pass such further order or other orders.

Prayer in MF (MD). 2/ 2014 in WF (MD). 7156/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No.89 of 2013 dated 24.02.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondent's order in Letter No. SEIAA/TN/E. 568 /E/1 (a) / 24 / 2012 dated 08.11.2012 for the 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, pending disposal of the above WP.

1141340

Prayer in MF (MD). 2/ 2014 in WF (MD). 7157/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No. 80 of 2013, dated 24.02.2014, in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondents order in Letter No. SEIAA / TN / F.569 / B / 1(a) / 9 / 2012, dated 26.10.2012 for the 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.

Prayer in MF (MD). 2/ 2014 in WF (MD). 7767/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No.164 of 2013 (SZ) dated 07.03.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondent in Letter No. SEIAA/TN/F. 554 /BC/1 (a) /13/ 2012 dated 26.10.2012 for the 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 pending disposal of the above WP.

Prayer in MF (MD). 2/ 2014 in WF (MD). 7768/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No.165 of 2013 (SZ) dated 07.03.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondents order in Letter No. SEIAA/TN/F. 550 /BC/1 (a) /41/ 2012 dated 30.11.2012 for the Nerur South sand quarry in River Cauvery at Mile 79/4+50m to 79/5 m at S.F No. 2596/B of Nerur South Village in Karur Taluk of Karur District pending disposal of the above WP and thus render justice.

Prayer in MF (MD). 2/ 2014 in WF (MD). 7769/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No.166 of 2013 (SZ) dated 07.03.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondent's order in Letter No. SEIAA/TN/F. 549 /BC/1 (a) /7/ 2012 dated 26.10.2012 for the Manniyur sand quarry in River Cauvery at Mile 70/7+50m to 71/2+150m at S.f. No. 539 of Manniyur Village in Karur Taluk of Karur District pending disposal of the WP.

Prayer in MF (MD). 2/ 2014 in WF (MD). 7770/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No.167 of 2013 (SZ) dated 07.03.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondent in Letter No. SEIAA/TN/F. 548 /BC/1 (a) /4/ 2012 dated 26.10.2012 for the Achannapuram (Tirumukkudalur) sand quarry in River Cauvery at Mile 80/2+100 m to 80/6+25m at S.F.NO.265/1 of Achannapuram (Tirumukkudalur) in Karur Taluk of Karur District .

1141341

Rever in MP (MD) 2/ 2014 in WP (MD) 7771/2014 :

To stay the operation in Appeal No.168 of 2103 (S2) dated 7.3.2104 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondents order in letter SEIAA/TN/F.553/EC/1 (a) /39/ 2012 dated 30.11.2012 and direct the 3rd respondent to abstain from quarrying at Vaiganallur sand quarry in River Cauvery at Mile 98/7+ 99/1m at S.E. No. 1/2(part) of Vaiganallur Village in Kulithalai Taluk of Karur district.

Rever in MP (MD) 2/ 2014 in WP (MD) 7772/2014 :

To stay the operation of the impugned order passed by the 4th respondent in Appeal No.169 of 2013 (S2) dated 07.03.2014 in so far as it permits the 3rd respondent to continue quarrying on the strength of the 2nd respondent s order in Letter No.SEIAA/TN/F.552/EC/1(a)/5/2012 dated 26.10.2012 for the Kallapalli sand quarry in River Cauvery at Mile 70/1+50m to 71/2+150m at S.F. No. 1 (part) of Kallapalli Village in Krishnarayapuram Taluk of Karur District, pending disposal of the WP.

ORDER : These petitions coming on for orders upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of M/S.RENGA NANDAKUMAR, Advocate for the petitioner in IN MP(MD)2/2014 IN WP(MD).7146 TO 7157/2014 and of M/S.U.NIRMALA RANI, Advocate IN MP(MD)2/2014 IN WP(MD).7767 TO 7772/2014 MR.K.CHELLAPANDIAN learned Additional Advocate General appearing for the State of Tamil Nadu assisted by Mr.A.K.BASKARAPANDIAN, Learned Special Government Pleader on behalf of the Respondents in the court made the following order:-

Challenging the Environmental Clearances given by the Member Secretary State Level Environment Impact Assessment Authority, dated 08.11.2012, for quarrying sand from the river calesoon, the petitioners in all the above writ petitions filed statutory appeals before the Southern Regional Bench of National Green Tribunal. By a detailed order, dated 24.02.2014, the National Green Tribunal disposed of all the appeals with the following directions:

i) In view of the economic and social needs and public interest at large the Environmental and Clearances originally granted by the second respondent/State Level Environment Impact Assessment Authority based on the adhoc guidelines shall continue for a period of six months with a direction to the 4th respondents to make necessary applications for obtaining Environmental Clearances based on the new guidelines issued by the Ministry of Environment and Forests which have come into force from 20.12.2013. 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.

ii) During the period of six months, the ad-hoc

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arrangements have to continue and the 4th respondents 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 that are in operation pursuant to the grant of impugned environmental clearances".

2. Thereafter, one more batch of appeals, challenging the very same Environmental Clearances granted by the said authority on 08.11.2012 came up for hearing before the National Green Tribunal. Since the issue was already covered by the earlier orders, dated 24.02.2014, the National Green Tribunal disposed of the second batch of appeals also by a separate order, dated 07.03.2014 on the same lines as the orders, dated 24.02.2014.

3. Therefore, aggrieved by the order of the National Green Tribunal, dated 24.02.2014 persons who went before the Tribunal as appellants, came up with the first batch of writ petitions in W.P (MD) Nos. 7145 to 7157 of 2014. Along with the writ petitions, the petitioners also came up with independent applications for stay in M.P(MD) Nos. 2 of 2014 in each of the writ petitions. The writ petitions were admitted on 23.04.2014 and notices were ordered in the miscellaneous petitions, with a direction to the learned Special Government Pleader to get instructions by 29.04.2014. This is in view of the fact that the Court is due to close for summer recess on 01.05.2014 and would re-open only on 03.06.2014. The period of six months, granted by the Tribunal, has already worked itself out for about two months. Therefore, the postponement of the hearing of the miscellaneous petitions to June 2014 would make the writ petitions at least half dead. Therefore, the respondents were directed to get instructions on the prayer for interim relief, by 29.04.2014.

4. When the miscellaneous petitions for interim relief in the 1st batch of writ petitions were taken up for hearing on 29.04.2014, a second batch of writ petitions in W.P(MD) Nos. 7167 to 7173 of 2014 came up for admission, challenging the second set of orders dated 07.03.2014 passed by the National Green Tribunal. These writ petitions were also admitted.

5. Thereafter, we have heard the submissions of Mr. G. R. Swaminathan and Ms. V. Nirmala Rani, learned counsels appearing for the petitioners and Mr. K. Chellapandian, learned Additional Advocate General appearing for the State of Tamil Nadu assisted by Mr. A. K. Baskarapandian, learned Special Government Pleader.

6. A brief history of events that have led to the present writ petitions, can be summarised as follows:

(a) The Ministry of Environment and Forests notified the Environment Impact Assessment Notification 2006 under the Environment (Protection) Act, 1986, for dealing with the process of granting of Environmental Clearances. The projects of mining minerals require prior Environmental Clearances under the notification. For the purpose of handling, the projects are

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classified into category A projects and category B projects, with the former being handled by the Ministry of Environment and Forests and the latter being handled by the respective State Environment Impact Assessment Authorities. The category B projects were further subdivided into B-1 and B-2 projects, with the former the requiring Environment Impact Assessment Report and the latter, not requiring the report.

(b) However, the State Environment Impact Assessment Authorities are not empowered to categorise the Category B project into B-1 category and B-2 category.

(c) On 27.02.2013, the Hon'ble Supreme Court issued a directive in I.A.Nos.12 and 13 of 2011 in S.L.P.(Civil)Nos.19628 and 19629 of 2009 in Deepak Kumar etc., Vs. State of Haryana. In pursuance of the directions so issued by the Hon'ble Supreme Court, the Ministry of Environment and Forests issued an office memorandum dated 10.05.2013 to the effect that all mining projects of minor minerals including their renewal irrespective of the size of the lease would require prior Environmental Clearances and that the projects of minor minerals with lease area of less than five hectares would be treated as category 'B'. They will be considered by the respective SEIAAs.

(d) While things were taking a definite shape at the level of the Central Government, a few writ petitions came to be filed on the file of this Court in W.P.(MD)No.4699 of 2012 batch, by several persons including a society by name Cauvery Neervalā Aathara Pathulappu Sangam, praying for the issue of Writs of Mandamus to forbear the respondents from carrying on sand quarry operations along the stretches of the rivers, Cauvery and Kollidam, running along the districts of Karur, Trichy, Thanjavur, Tiruvarur and Nagapattinam. The writ petitions were disposed of by a Division Bench of this Court by a common order dated 03.08.2012. As per the said order, permission for fresh sand quarry operations in Cauvery river bed are to be granted by the State Government/Secretary to the Industries Department/District Collectors only after getting Environmental Clearances from the State Level Environment Impact Assessment Authority. Insofar as existing sand quarries are concerned, the Division Bench passed orders in respect of each one of them either directing them to stop operations or ordering them to get clearances.

(e) Thereafter, the Executive Engineer of the Public Works Department of the Government of Tamil Nadu made an application to the State Level Environment Impact Assessment Authority for an Environment Clearance. By an order dated 08.11.2012 permission was granted by the State Level Environment Impact Assessment Authority. It is this order that was challenged by the writ petitioners herein before the National Green Tribunal.

(f) During the pendency of the appeals before the National Green Tribunal, challenging the Environmental Clearances granted by the SEIAA, the Ministry of Environment and Forests, issued an amendment to the EIA notification on 09.09.2013. We are not

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concerned about this amendment.

(g) But subsequently, the Ministry of Environment and Forests, issued another office memorandum dated 24.12.2013 framing guidelines for consideration of proposals for grant of Environmental Clearance as per EIA notification, 2006 and its amendment regarding categorisation of Category 'B' projects into 'B1' and 'B2' categories". As per this office memorandum, the State Level Environment Impact Assessment Authorities are not empowered to categorise Category 'B' projects into 'B1' and 'B2' categories.

(H) Virtually by the notification dated 24.12.2013 issued by the Ministry of Environment and Forests, the Environmental Clearances granted to the Public Works Department of the State of Tamil Nadu by the SEIAA on 08.11.2012 became a dead letter. Therefore, the appeals filed by the writ petitioners herein actually deserve to be allowed. But the State of Tamil Nadu pleaded before the National Green Tribunal that the implementation of the latest notification of the Ministry of Environment and Forests, dated 24.12.2013 would spell doom for the construction of industry. Therefore, by the orders dated 24.02.2014 and 07.03.2014, the National Green Tribunal, has allowed the State to continue to quarry sand as per the Environmental Clearances granted by the SEIAA on 08.11.2012, for a period of six months with a further direction to the Government of Tamil Nadu to comply with the notification, dated 24.12.2013 in the meantime.

7. Therefore, in the light of the above background of facts, the main grievance of the petitioners is that by the orders impugned in these writ petitions, the National Green Tribunal has allowed the State of Tamil Nadu to do something for six months in violation of the notification of the Ministry of Environment and Forests. Therefore, the petitioners pray for stay of operation of the impugned orders.

8. But Mr. K. Chellapandian, learned Additional Advocate General, seeks time to file a counter, on the ground (i) that the petitioners having come to Court after two months, cannot now press for urgent interim orders and (ii) that if quarrying operations are stopped all of a sudden, all construction activities may come to a grinding halt.

9. Under normal circumstances, we would have been willing to grant the request of the learned Additional Advocate General for time to file counter. But in this case, the petitioners are prepared to restrict their prayer for interim relief, at least for the present, only two things namely, (a) that there should be no instream mining, until further orders and (b) that there should be no mechanised mining. If an interim protection is granted to this effect for the present, the petitioners are prepared to await a counter from the respondents and argue the matters elaborately later on.

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10. Insofar as the instream mining is concerned, the learned Additional Advocate General states that the Public Works Department will not do instream mining. Therefore, the respondents have no objection, at least for the present, not to have instream mining. But insofar as mechanised mining is concerned, the respondents vehemently oppose the grant of any interim order.

11. We have carefully considered the issues raised on both sides and we have also weighed the balance of convenience in granting or refusing an interim order to prohibit mechanised mining. We are of the view that stopping mechanised mining at least for a period of four weeks until the re-opening of the Court after summer recess, will not really spell doom, for the respondents. After all, they can carry out manual mining by employing sufficient number of people for meeting out emergent needs. In case, we agree with the submissions of the respondents, after hearing the matter elaborately in the first week of June 2014, it is possible for us to allow the respondents to be compensated for the loss of activity that they suffer during this one month. But once we permit the mechanised mining, to continue and if we ultimately take a decision against the respondents, the loss to ecology suffered during this period, cannot be compensated. Compensation in terms of money has no meaning insofar as the environment is concerned.

12. Therefore, for the present, the following interim order is passed:-

"(i) There shall be no instream mining and (ii) the respondents shall not do mechanised mining".

13. Post the writ petitions for further hearing on 04.06.2014.

sd/-

30/04/2014

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)

TO

- 1 THE SECRETARY TO GOVT., THE UNION OF INDIA, MINISTRY OF ENVIRONMENT AND FORESTS, NEW DELHI
 - 2 THE MEMBER SECRETARY, STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY, 3RD FLOOR, PANAGAL MAALIGAI, NO.1, JERNIS ROAD, SAIDAPET, CHENNAI 15
 - 3 THE EXECUTIVE ENGINEER, PWD /WRO, RC DIVISION, CANTONMENT, TRICHY
 - 4 THE REGISTRAR, THE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE, ARUAMBAKKAM, CHENNAI
- +4. C.C. to M/S.K.GOKUL Advocate SR.No.27250 & 27251
+1 to the Spl.Govt.Pleader Sr.No.27370

ORDER IN

MP(MD) No.2 to 2 of 2014 IN

WF(MD) No.7146 to 7157 and

7767 to 7772 of 2014

Date :30/04/2014

NA/02/05/2014/P9/10C

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5531-5548 OF 2014
(arising out of S.L.P. (Civil) Nos. 12619-12636 of 2014)

EXEC. ENGINR., PWD/WRO, RC DIV. TRICHY
& ETC.

Appellant (s)

VERSUS

KOLLIDAM AARU P.N. SANGAM & ORS.
& ETC.

Respondent (s)

O R D E R

Certified to be true copy
Assistant Registrar (S-1)
2014
Supreme Court of India

Leave granted.

2. Since the main matter is pending before the High Court, we refrain ourselves from considering the matter at length.

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., June 4, 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.

6. Appeals are disposed of as above with no order as to costs.

Sch
.....CJI.
(R.M. LODHA)

Sl
.....J.
(A.K. PATNAIK)

Sch
.....J.
(K.S. RADHARRISHNAN)

NEW DELHI;
MAY 9, 2014.

Sl
.....J.
(SURINDER SINGH NIJJAR)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

.....

**ORIGINAL APPLICATION NO. 123 OF 2014
AND
M.A. NO. 419 of 2014**

IN THE MATTER OF:

Himmat Singh Shekhawat,
98, Rooprajat Township, Phase-II,
Pal Road, Jodhpur – 342008
Rajasthan



..... Applicant

Versus

1. State of Rajasthan
Through Principal Secretary, Mines Department,
Government of Rajasthan, Secretariat,
Jaipur – 302001,
Rajasthan.
2. Director, Mines & Geology Department
Khanij Bhawan,
Shashtri Circle, Udaipur - 313001,
Rajasthan
3. Union of India
Through the Secretary
Ministry of Environment and Forests
Government of India,
Paryavaran Bhawan, CGO Complex
Lodhi Road, New Delhi – 110003
4. Secretary, Forest Department
Government of Rajasthan,
Secretariat, Jaipur – 302001,
Rajasthan.
5. Larsen & Toubro Ltd.
4th Floor, SDC Monarch,
Plot no. D-236,
Amrapali Marg,
Jaipur – 302021
Rajasthan

Through Mr. Vivek Narayan Gokhale,
Project Director, Larsen and Tourbo Ltd.

6. M/s. Hi-Tech Rock Products & Aggregates Ltd.

(A Company incorporated under the Companies Act, 1956)

Having registered Office at
Mount Poonamallee Road,
Manapakkam, P.O. Box 979,
Chennai – 600089

Through Mr. K. Prasanna Kumar,
Manager (Mines)
Hi-Tech Rock Products & Aggregates Ltd.

7. Mr. Prahlad Rai
R/o Ward No. 10,
Behind DSP Office,
Ladnu Road,
Sujan Garh,
District Churu, Rajasthan
Through POA holder – Shri Rohitash.
8. Mr. Jagdish Kumar Jat
R/o 13, Ramdev Mandir Mohalla,
P.O. Salasar, Tehsil-Sujangarh,
District Churu,
Rajasthan 331507
Through POA holder – Shri Rohitash
9. Mr. Yogesh Kumar Nyariya
R/o Krishi Upaj Mandi,
Shrimadhapur,
District Sikar, Rajasthan
Through POA holder – Sh. Shahbuddin Quereshi
10. M Vinita Devi
R/o Karni Dharma Kanta,
H-Pratham,
23-Industrial Area,
Neemka Thana
District Sikar, Rajasthan
Through POA holder – Sh. Shahbuddin Quereshi
11. Ms. Kavita Jain
R/o Sadar Bazar, Rupangarh,
Tehsil-Kishangarh
District Ajmer, Rajasthan
Through POA Holer – Proprietor,
M/s. Maruti Mines & Minerals
Mr. Sarveshwar Agarwal &
Sh. Sanjay Kumar Jain
12. Ms. Sushila Jain
R/o Sadar Bazar, Rupangarh,
Tehsil – Kishangarh
District Ajmer, Rajasthan

Through POA Holder – Proprietor,
M/s. Maruti Mines & Minerals
Mr. Sarveshwar Agarwal &
Sh. Sanjay Kumar Jain

13. Mr. Virendra Dave
Bada Bas, Near Laxmi Temple,
Sojat City,
Dist, Pali, Rajasthan
Through POA Holder – Shri. Rajuram Gurjar
14. Mr. Sohanlal Gurjar
Gurjaro Ka Vas,
Village Kharchi

.....Respondents

AND

APPEAL NO. 23 OF 2014

AND

**M.As. NO. 469 OF 2014, 470 OF 2014, 471 OF 2014, 473 OF
2014, 479 OF 2014, 480 OF 2014, 488 OF 2014, 489 OF 2014,
512 OF 2014 AND 563 OF 2014**

IN

APPEAL NO. 23 OF 2014

IN THE MATTER OF:

Sunil Acharya
S/o Shri Chndra Shekhar Acharya,
245, Ramchandra, Matri Chhaya, Tajgiron Ki Bari,
Kalika Mata Road, Banswara
Rajasthan.

..... Applicant

Versus

1. Shri Sanjay Bakliwal
S/o Shri Manak Chandra Bakliwal,
Director, M/s. R.K. Grenny Marmo Pvt. Ltd.,
R/o Oswali Mohalla, Madanganj, Kishangarh,
District Ajmer, Rajasthan-305001
2. Shri Ashok Patni
S/o Shri Kanwarlal Patni,
Director, M/s. R.K. Premises Pvt. Ltd.,
R.K. House, Madanganj, Kishangarh,
District Ajmer, Rajasthan – 305001
3. Shri V.K. Gheeya
S/o Late Shri Kamal Prasad Gheeya,
Director, M/s. Patni Premises Pvt. Ltd.,
R/o 202, Mahalaxmi Apartment, Post Badgaon,
Bedla Road, Udaipur, Rajasthan-313001
Through the Chief Secretary,

Delhi Secretariat, I.P. Estate,
New Delhi - 110002

4. Shri Vinay Patni
S/o Shri Suresh Kumar Patni,
Director, M/s. Patni States Pvt. Ltd.
Through its Vice Chairman,
Vikas Bhawan,
New Delhi - 110002
5. Shri Suresh Patni
S/o Shri Kanwarlal Patni,
Director, M/s. Supreme Buildstates Pvt. Ltd.
R/o R.K. House, Madanganj, Kishangarh,
District Ajmer, Rajasthan-305001
6. Shri Parmanand Patidar
S/o Shri Prabhulal Patidar,
Director, M/s. Elegant Premises Pvt. Ltd.
R/o 20, Kanchan Deep, Bohra Ganesh Road,
Udaipur, Rajasthan-313001.
7. Shri Jaideep Shah
S/o M/s. R.K. Super Cement Product Pvt. Ltd.
R/o D-8, Lal Bahadur Nagar,
In front of Hotel Clark, J.L.N. Marg,
Jaipur, Rajasthan.
8. The Government of Rajasthan
Through the District Collector and the President,
District Level Forest Rights Committee,
Banswara, Rajasthan-327001.
9. The Assistant Engineer,
Mines and Geology Department,
Banwara - 327001.
10. The Dy. Forest Conservator,
Department of Forest,
Dahod Road,
Banswara - 327001
11. The Senior Assistant Inspector General of Forest,
Ministry of Forest Environment House,
C.G.O. Complex, Lodhi Road,
New Delhi.

.....Respondents

AND
ORIGINAL APPLICATION NO. 343/2013
AND
M.A. NO. 442 OF 2014 and M.A. NO. 1093 OF 2013
IN
ORIGINAL APPLICATION NO. 343 OF 2013

Shri Ranbir Singh
S/o Shri Swadesh Singh,
Proprietor M/s. New Shiva Stone Crusher,
Vill. & P.O. Kandwal, Tehsil Nurpur
And Distt. Kangra,
Himachal Pradesh.

..... Applicant

Versus

1. State of Himachal Pradesh
Through Secretary (Industries) to the Govt. of
Himachal Pradesh, Shimla-1.
2. Director Industries to the State of H.P.
Udyog Bhawan,
Shimla – 1
3. State Geologist to the State of H.P.
Udyog Bhawan,
Shimla –1
4. Mining Officer,
Solan Distt., Solan,
Himachal Pradesh
5. Mr. Parshant Joshi
5-A, Agar Nagar,
Ludhiana.

.....Respondents

AND

ORIGINAL APPLICATION No. 279(T_{HC}) of 2013

AND

M.A. NO. 1120 OF 2013

IN

ORIGINAL APPLICATION No. 279(T_{HC}) of 2013

1. Smt. Promila
W/o Shri Rajesh Kumar,
Proprietor M/s. Amarjeet Stone Crusher,
Vill. Sainsiwala, P.O. Barotiwala, Tehsil Baddi
And Distt. Solan,
Himachal Pradesh.
2. Shri Mohan Lal Mehta
S/o Shri Hira Nand Mehta,
Proprietor M/s. Vishwakarma Hard Stone Crusher,
Vill. Khali, P.O. Kumarhatti, Tehsil & Distt. Solan,
Himachal Pradesh.

3. Shri Sanjay Singh
S/o Shri Mohan Singh,
Proprietor M/s. Shiva Stone Crusher,
Vill. Kailar, P.O. Saproon, Tehsil & Distt. Solan,
Himachal Pradesh.

..... Applicants

Versus

4. State of Himachal Pradesh
Through Secretary (Industries) to the Govt. of
Himachal Pradesh, Shimla-1.

5. Director Industries to the State of H.P.
Udyog Bhawan,
Shimla – 1

6. State Geologist to the State of H.P.
Udyog Bhawan,
Shimla – 1

7. Mining Officer,
Solan Distt., Solan,
Himachal Pradesh

.....Respondents

AND

**M.A. NOs. 529 of 2014 & M.A. NO. 623 OF 2014
IN
Original Application No. 171 OF 2013**

IN THE MATTER OF:

National Green Tribunal Bar Association
Versus

..... Applicant

Ministry of Environment & Forests & Ors.

.....Respondents

AND IN THE MATTER OF:

Dr. Sarvabhoom Bagali,
Kachari Road, Opp. Head P.O.,
Indi, Dist. Bijapur, Karnataka-586209

..... Applicant

Versus

1. State of Karnataka
Department of Mines and Geology,
Through its Director,
No. 49, Khanija Bhavan,
Race Course Road, Bengaluru,
Karnataka – 560001

2. Department of Law, Justice & Human Rights,
Government of Karnataka,
Through its Principal Secretary,
Vidhana Soudha, Bengaluru-560001
3. Karnataka State Pollution Control Board
Through its Member Secretary,
'Parisara Bhavan', #49, IVth & Vth Floor,
Church Street, Bengaluru- 560001
4. Department of Industries and Commerce,
Govt. of Karnataka,
Through Secretary to the Government,
No. 49, South Block, Khanija Bhavana,
Race Course Road, Bengaluru- 560001
5. Karnataka State Environment Impact Assessment
Authority (SEIAA), Through its Chairman,
Department of Ecology & Environment,
Room No. 709, VII Floor, IV Gate,
M.S. Building, Bengaluru
6. Public Works Department,
Through its Principal Secretary,
Karnataka Government Secretariat,
III Floor, Vikasa Soudha, M.S. Building,
Dr. Ambedkar Road, Bengaluru- 560001
7. Executive Engineer,
Public Works Department,
Bangalore Rural Division,
PWDD Annexue Building, II Floor
K.R. Circle, Bengaluru,
Karnataka – 560001
8. Executive Engineer,
Public Works Department,
PWD Division, 23rd Sector,
Navanagar, Bagalkot,
Bagalkot Distt., Karnataka - 587103.
9. Executive Engineer,
Public Works Department,
PWD Division, Kote, Belgaum,
Belgaum Distt.,
Karnataka – 590016
10. Executive Engineer,
Public Works Department,
PWD Division, Kote, Bellary,
Bellary Distt.,

Karnataka – 583102

11. Executive Engineer,
Public Works Department,
PWD Division, Mangalpet,
Opp. to S.P. Office, Bidar, Bidar Distt.,
Karnataka – 585401
12. Executive Engineer,
Public Works Department,
PWD Division, Station Road,
Opp. to State Bank of India, Bijapur,
Bijapur Distt. Karnataka – 586101
13. Executive Engineer,
Public Works Department,
PWD Chamarajnagar Division,
Kote Road, Chamarajnagar,
Chamarajnagar Distt., Karnataka – 571313
14. Executive Engineer,
Public Works Department,
PWD Chikkaballapur Division,
Opp. to Govt. Hospital, Chikkaballapur,
Chikkaballapur Distt., Karnataka - 562101
15. Executive Engineer,
Public Works Department,
PWD Chikmagalore Division,
Near Azad Park, Belur Road, Chikmagalore,
Chikmagalore Distt., Karnataka – 577101
16. Executive Engineer,
Public Works Department,
PWD Chitradurga Division,
D.C. Circle, Chitradurga
Chitradurga Distt., Karnataka – 577501
17. Executive Engineer,
Public Works Department,
PWD Mangalore Division, Mini Soudha,
II Floor, Opp. Nehru Ground, Hampanakatte,
Mangalore, Dakshina Kannada Distt., Karnataka - 575001.
18. Chief Secretary,
Government of Mizoram
Civil Secretariat,
Block-C Aizwal-796001.
19. Chief Secretary,
Government of Nagaland
Secretariat,

- Kohima-797001.
20. Chief Secretary,
Government of NCT of Delhi
New Secretariat Building, I.P Estate
New Delhi-110002.
21. Chief Secretary,
Government of Orissa,
General Admn. Dept.
Orissa Secretariat,
Bhubaneswar-751001.
22. Chief Secretary,
Government of Pondicherry
No. 1, Beach Road,
Pondicherry-605001.
23. Chief Secretary,
Government of Punjab
Punjab Civil Secretariat,
Chandigarh-160001.
24. Chief Secretary,
Government of Rajasthan
Secretariat,
Jaipur-302005.
25. Chief Secretary,
Government of Sikkim
Tashiling Secretariat,
Gangtok-737101.
26. Chief Secretary,
Government of Tamil Nadu
Secretariat,
Chennai-600009.
27. Chief Secretary,
Government of Tripura
Civil Secretariat,
Agaartala -799001.
28. Chief Secretary,
Government of Uttar Pradesh
Lal Bahadur Shastri Bhavan
UP Secretariat,
Lucknow-226001.
29. Chief Secretary,
Government of Uttarakhand
Uttarakhand Secretariat,

4B Shubhash Road
Dehradun-248001.

30. Chief Secretary,
Government of West Bengal
Writers' Building,
Kolkata -700001.
31. Chief Secretary,
U.T. of Andaman & Nicobar Islands
Secretariat, Port Blair
Andaman – 744101
32. Adviser to Administrator
U.T. of Chandigarh
Secretariat, Sector 9
Chandigarh – 160001
33. Administrator
U.T. of Dadra & Nagar Haveli
Secretariat, Silvassa – 396230
34. Administrator
U.T. of Daman & Diu
Fort Area, Secretariat
Moti Daman – 396220
35. Administrator
U.T. of Lakshadweep
Secretariat, Kavaratti – 682555
36. State Level Environment Impact Assessment Authority
Directorate of Environment, State of Uttar Pradesh
Dr. Bhim Rao Ambedkar Paryavan Parisar,
Vineet Khand – I, Gomati Nagar
Lucknow, Uttar Pradesh PIN – 226010
37. Geological Survey of India
3rd Floor, A wing,
Shastri Bhawan, New Delhi 110001
38. Department of Geology & Mining
Through Director
State of Uttar Pradesh,
Khanij Bhawan 27/8,
Ram Mohan Rai Marg
Lucknow – 226001
39. Department of Irrigation
Through Engineer in Chief
State of Uttar Pradesh,

New Planning Bhawan Toilibag, 3rd Floor
Lucknow, PIN – 226001
Uttar Pradesh

40. Central Pollution Control Board
Through Member Secretary
Parivesh Bhawan, CBD-Cum Office Complex
East Arjun Nagar, Delhi – 110032
41. Uttar Pradesh State Pollution Control Board,
Through the Member Secretary
Picup Bhawan, 2nd Floor, B – block
Vibhuti Khand, Gomiti Nagar,
Lucknow – 226010
42. District Magistrate,
Gautam Budha Nagar,
Noida, Uttar Pradesh
PIN 201301
43. Superintendent of Police,
Gautam Budha Nagar,
Noida, Uttar Pradesh
PIN 201301
44. Ministry of Mining
Shastri Bhawan, New Delhi
45. Vishal Agarwal
S/o Lt. Sri Nahar Singh
R/o 12/10, Ashirwad Enclave
Ballupeer, Dehradun.
46. Vivek Kumar Aggarwal
47. Deepak Gupta
48. Jagannath Mane
49. Ministry of Environment and Forest.
50. Mohit, S/o Sh. Devendra,
Resident of Mandi, Mailganj
Tehsil Nagina, District.
51. Mrs. Muntur W/o P. Ismail
R/o Puliyamthodi House,
Vazhakkad Post
Malapurram, Dist.
Kerala.

52. Lasim C., S/o Basheer
R/o Kodi thodina House,
Payangadi Amsom,
Kondotty Post,
Malappuram Dist. Kerala
53. Dr. Sarvabhoom Bangali
Kacheri Road.
Opp. Head P.O.
Distt. Bijapur
Karnataka.
54. Ministry of Water Resources,
New Delhi
55. Santhakumar A, S/o U. Achuthan
Secretary, All Kerala Quarry Association,
Palakkad.
56. K.M. Koyamu, S/o Modi Kattathodi
Secretary, All Kerala Crusher Owner Association
State Committee, Malappuram, Kerala
57. Muneer, P.M. S/o Moidu
Paleri Town, P.O. Kulliyati
Kerala
58. A.K. Sasi
Athimattathil House
Palakkad, P.O.
Palakkad District
Kerala

Counsel for Applicants:

- Mr. Anand Verma, Advocate in OA No.123/2014.
Mr. Pinaki Mishra, Sr. Advocate with Mr. Rohit Gupta and Mrs. Megha Mehta Agarwal, Adv. in M.A. No. 419/2014 in OA No.123/2014.
Mr. Raj Panjwani, Sr. Advocate with Mr. Aagney Sail, Advocate in M.A. No. 529/2014 in OA No.171/2013.
Mr. Rishi Malhotra and Mr. Deepak Kaushal, Advocates in OA No.343/2013 and OA No. 279(THC)/2013.
Mr. Parikshit Nayak, Advocate in Appeal No. 23/2014

Counsel for Respondents :

- Mr. Parag P. Tripathi, Sr. Advocate along with Mrs. Megha Mehta Agarwal and Mr. Rohit Gupta, Advocates for Respondent No. 5 – 14 in OA No.123/2014
Mr. Vikas Malhotra along with Mr. P. Sahay, Advocates for MoEF in OA No.123/2014

Mr. Vikas Malhotra along with Mr. M.P. Sahay, Advocates for Respondent No. 1 in OA No.171/2013
Mr. Bikas Kargupta, Advocate for State of West Bengal, Respondent No. 30 in OA No.171/2013
Mr. Dev Raj Ashok, Advocate for State of Karnataka in OA No.171/2013
Mr. Suryanaryana Singh, Addl, AG along with Ms. Kanupriya Tiwari, Advocates for Respondent No. 1 in OA No. 343/2013
Mr. Vikas Malhotra along with Mr. M.P. Sahay, Advocates for MoEF and Applicant in M.A.No.442/2014
Mr. A.R. Takkar, Ms. Gurinderjit, Mr. Ankur Sharma, Ms. Nilika Kumar and Mr. Soumil Garg, Advocates for Respondent No. 6 in OA No.343/2013
Mr. Suryanaryana Singh along with Ms. Kanupriya Tiwari, Advocates for Respondent No. 1 in OA No. 279(T_{HC})/2013
Mr. Vikas Malhotra along with Mr. M.P. Sahay, Advocates for MoEF in OA No. 279(T_{HC})/2013
Mr. A.R. Takkar, Ms. Gurinderjit, Mr. Ankur Sharma, Ms. Nilika Kumar and Mr. Soumil Garg, Advocates for Respondent No. 6 in OA No. 279(T_{HC})/2013
Mr. Krishanan Venugopal, Sr. Advocate and Mr. Sandip Jha, Advocate in M.A. No. 470-471/2014 in (Appeal No.23/2014(PH))
Mr. Sanjeev, Advocate in M.A. No. 473/2014 in (Appeal No.23/2014(PH))
Mr. Sunil Prakash Sharma, Advocate in M.A. No. 480/2014 in (Appeal No.23/2014(PH))
Ms. Bhavna Sharma, Advocate in M.A. No. 488/2014 in (Appeal No.23/2014(PH))
Mr. Vivek Chib along with Mr. Asif Ahmed, Advocates for MoEF (Respondent No. 11) in (Appeal No.23/2014(PH))

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

**Reserved on 16th October, 2014
Pronounced on 13th January, 2015**

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The National Green Tribunal Bar Association filed Original Application No. 171 of 2013 under Sections 14 and 15 read with

Sections 18 (1) and 18 (2) of the National Green Tribunal Act, 2010 (for short 'the NGT Act') stating that rampant illegal sand mining in the Yamuna riverbed was going on in violation of law, without taking prior Environmental Clearance. This activity of sand mining has adversely affected the eco-system and overall ecology of the area. Various incidents of rampant illegal sand mining have been referred to in the petition. It is averred that, despite serious efforts made by some officers, still, the illegal activity was going on. Referring to a recent academic study on environment, which in fact, relates to sand mining, it has been stated that in-stream mining of sand and gravel can reduce water quality, as well as, degrade the channel bed and banks. Mining of these aggregates on the floodplain can affect water table and alter the land-use. The impacts of sand mining from a riverbed are stated to be Habitat and Aesthetic Beauty Degradation, Land use Change, River System Degradation, Floodplain Ponding, Riparian Zone Degradation. The applicant, while relying upon the judgment of the Hon'ble Supreme Court in *Deepak Kumar v. State of Haryana*, (2012) 4 SCC 629, stated that the extraction of alluvial material from within or near a stream bed has a direct impact on the stream's physical habitat characteristics. The Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) observed as follows:-

"These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both in-stream 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.”

In paragraph 29 of the same judgment, the Hon’ble Supreme Court, while emphasising upon the need for seeking Environmental Clearances in relation to mining activity, held as under:

“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 the MoEF”

2. The applicant further submitted that, it is the duty of the said authorities and the State Environmental Impact Assessment Authority (for short, ‘SEIAA’) to ensure that the objective of Environmental Impact Assessment Notification, 2006 (for short, ‘Notification of 2006’) is upheld in letter and spirit and that indiscriminate and rampant mining in the riverbed is not permitted. Such authorities have failed to take or are intentionally not taking any effective steps to prevent this menace. The application was filed with the prayer that the Tribunal should direct the authorities to take appropriate legal action against all sand mining which was being carried on without seeking prior Environmental Clearance or wherever Environment Clearance has been granted, in violation of its conditions. Further, it is also prayed that respondent authorities should formulate proper scheme to prevent illegal mining.

3. It may be noticed here that the applicant has impleaded Ministry of Environment and Forest, Union of India (for short ‘MoEF’) and all

the State Governments, Central Pollution Control Board (for short, 'CPCB') and Pollution Control Board of the States particularly, Uttar Pradesh (for short, 'UPPCB') amongst other authorities of Union and the State Governments.

4. When this application (O.A. No. 171 of 2013) came up for hearing before the Tribunal on 5th August, 2013, the Tribunal passed a detailed order directing all concerned to prohibit illegal mining, particularly, on the riverbeds. While issuing notice to the respondents, the Tribunal passed the following directions:

“In the meantime, we restrain any person, company, authority to carry out any mining activity or removal of sand, from riverbeds anywhere in the country without obtaining Environmental Clearance from MoEF/SEIAA and license from the competent authorities.

All the Deputy Commissioners, Superintendent of Police and Mining Authorities of all the respective States are directed to ensure compliance of these directions.”

5. On 14th August, 2013, when the case again came up for hearing, the Tribunal, issued certain directions and also required the States to submit a status report as to what steps had been taken by them in furtherance to the Judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra). The Tribunal also invited suggestions in relation to the formation of a Committee of experts which would help in implementation of the directions. The States were required to submit details in relation to illegal mining and how many cases of that kind were caught by the different wings/departments of the States. The States were also required to submit a comprehensive study as to what extent and in what manner mining activity can be permitted.

6. Against the order of the Tribunal dated 5th August, 2013, the State of Madhya Pradesh had preferred an appeal before the Hon'ble Supreme Court of India. In that appeal, it was stated that an application had been filed, being M.A. No. 685 of 2013, before the Tribunal, for modification of the order dated 5th August, 2013 praying that a District Level Committee shall be constituted to grant permission to carry on mining at the district level and that the Tribunal had not passed any final order in that regard. The Hon'ble Supreme Court vide its order dated 16th August, 2013, disposed of the appeal with the following directions:

“Considering the aforesaid submission made by Mr. Tankha instead of entertaining these appeals, we request the National Green Tribunal, Principal Bench, New Delhi to take up IA No. 685 of 2013 and pass orders thereon in accordance with law if possible within a week from today. The appeals stand disposed of in the above terms.”

In the meanwhile, M.A. No. 708 of 2013 had been filed by the Madhya Pradesh State Mining Corporation Limited for impleadment and for being heard in support of M.A. No. 685 of 2013 filed by the State of Madhya Pradesh. In Original Application No. 171 of 2013, vide its order dated 28th November, 2013, passed by the Tribunal, M.A. No. 708 of 2013 was allowed, while, M.A. No. 685 of 2013 came to be dismissed. We would be dealing with some of the findings recorded by the Tribunal in this judgment dated 28th November, 2013, shortly here in after.

7. Another Original Application No. 279 of 2013(Thc) was filed by Smt. Promila Devi and others praying that the order dated 30th August, 2013, passed by the Mining Officer, Solan, Himachal

Pradesh be quashed and set aside. In view of the order dated 5th August, 2013, passed by this Tribunal in Original Application No. 171 of 2013, the authority, vide order dated 30th August, 2013, restrained the applicants from carrying on any mining activity or removing sand from the riverbed without obtaining Environmental Clearance from MoEF/SEIAA. The applicants were, thus, directed to take the requisite clearance. It is the case of these applicants that they hold mining lease for the land in question and the area is less than 5 hectares. The lease had been granted to the applicant on 29th March, 2011, i.e., prior to *Deepak Kumar's* judgment (supra) and as such, the order of the Tribunal dated 5th August, 2013, was not applicable to their case. Therefore, the order passed by the Mining Officer, Solan, Himachal Pradesh was liable to be set aside and they should be permitted to carry on with their activity.

8. On similar lines, however, without challenging any specific orders passed by the State of Himachal Pradesh, another Applicant - Ranbir Singh filed an Original Application No. 343 of 2013, praying that since mining leases of the applicants are not covered under the order of the Tribunal dated 5th August, 2013, therefore, their mining activity should not be disrupted by the respondent authorities.

9. Original Application Nos. 279(T_{HC}) of 2013 and 343 of 2013 had been listed together for hearing. On 28th March, 2014, when these matters came up for hearing, the Tribunal stayed the

operation and effect of the Office Memorandum dated 24th December, 2013, issued by the MoEF.

10. One Himmat Singh Shekhawat has filed an Original Application No. 123 of 2014, submitting that, he was the holder of Letter of Intent issued by the State of Rajasthan for excavation of minor mineral, bajri/sand in an area admeasuring 2439 hectares located on the riverbed of Rivers Luni and Mitri. According to him, he fulfilled three conditions for the grant and execution of mining lease, i.e, submission of mining plan duly approved by the competent authority, Environmental Clearance granted by the MoEF and had also submitted an affidavit for financial assurance under Rule 37J of the Rajasthan Minor Mineral Concession Rules, 1986 (for short, Rajasthan Rules of 1986). These Rules came to be amended by way of Rajasthan Minor Mineral Concession (Amendment) Rules, 2012, published on 23rd May, 2012, (for short 'Rajasthan Rules of 2012'). The amended Rules provided that mining leases for mineral, 'bajri', shall be granted only by way of auction or tender. On 8th January, 2014, the State of Rajasthan issued guidelines as well as a notice on 6th May, 2014 for auction of minor minerals. The applicant was aggrieved from the procedure being adopted by the State Government. Thus, he filed this application before the Tribunal, praying that, the guidelines issued by the State of Rajasthan dated 8th January, 2014 and the Public Notice dated 6th May, 2014, by the State of Rajasthan, should be quashed and as an interim order, its operation should be stayed.

11. Another Applicant, Sunil Acharya, filed an Appeal No. 23 of 2014. He submitted that, he is an eminent citizen and a social activist of Banswara and is concerned with the environment. He was raising challenge to the orders passed by the Government of State of Rajasthan, granting approval on the basis of the applications filed by the non-applicants in regard to grant of mining leases ML No. 9/09 to 24/09 in relation to village Kothara, Tehsil and District Banswara. According to the appellant, the Additional Director, Mines vide his letter dated 22nd February, 2012, addressed to the Assistant Mining Engineer, Banswara had directed him to comply point wise with the terms and conditions specified in the letter dated 13th February, 2012, issued by the Government of India and to submit a report in this regard to the Head Chief Forest Conservator, Jaipur through the Divisional Forest Officer, Banswara and Chief Forest Conservator, Udaipur. The matter was further examined by the Assistant Mining Engineer, Mines and Geology Department. Thereafter, the District Collector, Banswara, vide his letter dated 29th February, 2012, issued a certificate with regard to diversion of 64 hectare of forest land in favour of 16 lease holders for mining of marble in the Banswara district of Rajasthan. It was also stated that the permission granted under the Forest (Conservation) Act, 1980 (for short 'Act of 1980') shall be subject to Environmental Clearance under the Environment (Protection) Act, 1986 (for short 'Act of 1986'). It is stated by the appellant that the non-applicants/respondents no. 1 to 7, in collusion with the

Respondent Nos. 9 and 10, and in violation of the Notification of 2006, made false representations in their applications that the area of mining was less than 5 hectares, i.e., 4 hectares and hence the Notification was not applicable to them. The Respondents No. 1 to 7 were granted different mining leases. The appellant served the notice under Section 80 of Code of Civil Procedure, 1908. The appellant, being aggrieved by the decisions taken by the authorities, vide their orders dated 22nd February, 2012, 23rd February, 2012 and 29th February, 2012, has filed an appeal challenging the correctness of these orders. In the appeal, it was even prayed that temporary injunction may be issued for staying the orders of the authorities dated 22nd February, 2012, 23rd February, 2012 and 29th February, 2012, prohibiting Respondents No. 1 to 7 from carrying on illegal mining operation during the pendency of the appeal.

12. After hearing the Counsel for the parties on 10th July, 2014, the Tribunal issued notice on the appeal and passed the following order:

“We have heard Mr. Parikshit Nayak, learned Counsel appearing for the Applicant.

The grievance of the Applicant is that permission is granted to the Respondent Nos. 1 to 7 for carrying out mining operations without obtaining Environment Clearance and it was pursuant to the decision of the Ministry of Environment & Forests. Though, by Office Memorandum dated 24.12.2013, it is provided that EC is not necessary, if the area of mining is less than 5 hectares, the Tribunal has already stayed operation of the said Office Memorandum dated 24.12.2013 by order dated 28.03.2014 in the case of “*Ranbir Singh Vs. State of H.P. & Ors. Application No. 343/2013*”.

In such circumstances, if Respondent Nos. 1 to 7 have not obtained the EC and is not having the necessary consent to operate, they are not entitled to carry on mining.

In such circumstances, Issue Notice to the Respondents by registered post/acknowledgment due and Dasti as well. Requisites be filed within three days from today.

In the meanwhile, Respondent Nos. 1 to 7 are restrained from carrying on mining operations, without obtaining EC and obtaining consent from the Rajasthan State Pollution Control Board.”

It may be noticed here that M.A. No. 469 of 2014 was filed by the Respondent No. 5 in Appeal no. 23 of 2014, wherein he prayed for vacation of the order dated 10th July, 2014, as their business was being adversely affected. Similarly, M.A. No. 470 of 2014, M.A. No. 473 of 2014, M.A. No. 479 of 2014, M.A. No. 480 of 2014, M.A. No. 488 of 2014 and M.A. No. 489 of 2014 were filed by other respondents in Appeal No. 23 of 2014 with the same prayer as made by the applicant in M.A. No. 469 of 2014.

13. In continuation to the proceedings pending before the Tribunal in all the above five matters, which were being heard together, MoEF placed on record, the Office Memorandum dated 24th December, 2013, with an explanatory affidavit. Having noticed certain ambiguities in it, the Tribunal on 28th August, 2014, recorded the statement of Dr. V.P. Upadhyay and Dr. P.B. Rastogi from MoEF. This clarification is of serious consequences as far as the matter in issue in the present case is concerned. Thus, it will be useful to refer to the order of the Tribunal passed in this case on 28th August, 2014, which reads as under:

“Dr. V.P. Upadhyay, Scientist – ‘F’ (Director) and Dr. P.B. Rastogi, Scientist – ‘F’ (Director) from the Ministry of Environment and Forests are present before the Tribunal.

It is submitted before us that Office Memorandum dated 24th December, 2013 issued by the MoEF intended to stop consideration/grant of Environment Clearance for any river bed mining where area in question is less than 5 hectares. There are certain ambiguities in the said Memorandum. These Officers submit that they are duly authorised by their Ministry to make statement before the Tribunal today.

Joint Statement of both these Officers is being recorded, being authorised representatives of the MoEF, which is also confirmed by the learned counsel appearing for the MoEF.

They make the following statement:-

Statement

1. The Office Memorandum dated 24th December, 2013 intends and it is now clarified and reiterated that no Environmental Clearance will be granted for extraction of Minor Minerals (sand mining) from any river bed/ water body where the area is less than 5 hectares.

2. In other words the mining activity of minor minerals (river sand mining) area of less than 5 hectares is not permitted.

3. The surface water level as referred in the Office Memorandum dated 24th December, 2013 would be the normal water level prevalent during the lean season.

4. The minor minerals mining activity in areas other than riverbed (sand mining) would be permitted, provided that Environmental Clearance for the same is taken in accordance with law.

To that extent the Office Memorandum dated 24th December, 2013 is explained and clarified and it will bind the MoEF in accordance with law.

The above statement made on behalf of MoEF has been taken on record.

Learned counsel appearing for the different parties wish to argue the matter.”

14. M.A. No. 442 of 2014, M.A. No. 469 of 2014, M.A. No. 470 of 2014, M.A. No. 473 of 2014, M.A. No. 479 of 2014, M.A. No. 480 of 2014, M.A. No. 488 of 2014 and M.A. No. 489 of 2014 have been filed by different applicants in the above mentioned cases praying for the vacation of the injunction granted or the directions passed

by the Tribunal vide its order dated 5th August, 2013, 28th March, 2014 and 10th July, 2014.

15. As already noticed, vide these orders, the Tribunal had restricted carrying on of any mining activity from the riverbeds anywhere in the country, without obtaining Environmental Clearance from MoEF/SEIAA and license from the competent authority. The Tribunal had also stayed the operation of the Office Memorandum issued by the MoEF on 24th December, 2013. Lastly, in the case relating to the State of Rajasthan, similar restraint order was passed and it was also directed that, without obtaining consent from the Rajasthan State Pollution Control Board, the mining activity cannot be permitted to be carried on.

Discussion on law in force in relation to mining of minor minerals

16. In order to properly consider various contentions that have been raised in the above Original Applications, Appeal as well as Miscellaneous Applications, it is necessary for us to examine the regime of law, relating to mining of brick earth, ordinary earth and all other minor minerals that has been in force.

17. Entry 54 of List 1 in Schedule VII to the Constitution of India, is an entry that enabled the Parliament of India to acquire power in respect of 'Regulation of mines and minerals development, to the extent to which such regulation and development, under the control of the Union, is declared by the Parliament by law to be expedient in the public interest'. On the other hand, Entry 23 of List 2 of the

same Schedule, read with Article 246(3) of the Constitution of India, confers legislative powers on the State Legislature in respect of 'Regulation of mines and mineral development', but, this power is subject to the provisions of List 1 with respect to the regulation and development under the control of the Union. The Indian Parliament, with the object to amend and consolidate the law relating to the regulation of labour and safety in mines enacted the Mines Act, 1952. Section 2(JJ) of the Mines Act, 1952 defines "minerals" to mean, all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulic, quarrying or by any other operation and includes mineral oils (which, in turn, include natural gas and petroleum). This Act, primarily provided for welfare of the labourers working in mines, inspection and surveying by inspectors, mining operation and management of mines. Mines Rescue Rules also came to be framed under Section 59 of the Act in the year 1984.

18. On 1st June, 1958, the law, to provide for the regulation of mines and development of minerals under the control of the Union came into effect and was promulgated as the Mines and Minerals (Development and Regulation) Act, 1957 (for short 'Act of 1957'). This Act provides, *inter alia*, for general restrictions on undertaking prospecting and mining operations, the procedure for obtaining prospecting licences or mining leases in respect of the land in which the minerals vests in the Government, the rule making power for regulating the grant of prospecting licences and mining leases,

special powers of Central Government to undertake prospecting or mining operations in certain cases, and for development of minerals. This Act was amended by the Amendment Act of 1972 by adding Section 4A to the Act of 1957, which provided for premature termination of mining leases and the grant of fresh leases to Government Companies or Corporations owned or controlled by the Government. The word 'regulation' in Entry 54 would not include 'prohibition' and should not be confused with 'restrictions', occurring under Article 19(2) to (6) of the Constitution of India. The Entry was stated to be purposive and keeping in view, the object and purpose of the legislation, the Hon'ble Supreme Court said that the legislative power of regulation and development of mines must dictate the nature of law made in the exercise of that power because public interest demands that power [*K.C. Gajapati Narayan Deo and Ors. v. The State of Orissa*, (1954) 1 SCR 1].

19. With the passage of time and development of law, the Union of India, issued various Notifications and Circulars to impose restrictions and prohibitions on the expansion and modernization of any activity or new projects in respect of mining in major and minor minerals.

20. The Act of 1986 and Environment (Protection) Rules, 1986 (for short 'Rules of 1986') were enacted and came into force on 19th November, 1986. The object of this Act of 1986 is to provide for the protection and improvement of environment and for matters connected therewith. Under provisions of the Act and Rules of 1986,

MoEF issued various other Notifications regulating the mining of minor minerals, specifically stating the procedures that were required to be complied by persons intending to carry on such mining activity and for the authorities to regulate the same.

21. It appears that, prior to 1994, there was no specific regime in place in relation to mining activity being carried on in minerals. The Notification issued by MoEF on 27th January, 1994, in exercise of the powers vested in it under Sub-Rule 3 of Rule 5 of the Rules of 1986 and Sub Section (1) and Clause (v) of Sub-Section (2) of Section 3 of the Act of 1986, prescribed the requirement and procedure for seeking Environmental Clearance for the projects listed in Schedule I. Schedule I of this Notification did not deal with mining projects of minor minerals. On the contrary, the projects covered under S. No. 20 of Schedule I of this Notification were only “mining projects (major mineral) with leases more than 5 hectares”. This Notification provided as to how the applications have to be moved/considered and that the project should be site specific. It also provided for the constitution of Expert Committees and preparation of Environmental Impact Assessment Report which was to be evaluated and assessed by the Impact Assessment Agency. It is clear that there had been a vacuum in specific law for regulation of and effective control on the minor mineral mining activities. In exercise of its statutory powers afore-indicated, the Central Government on 14th September, 2006, issued a Notification, i.e., ‘Environmental Clearance Regulation, 2006’. In terms of this

Notification, the projects as stated in the Schedule to this Notification, required prior Environmental Clearance as per the procedure. The projects have been categorised into two kinds, i.e., Category 'A' and Category 'B' under Clause 2 of the Notification. Projects under Category 'A' were required to take prior Environmental Clearance by MoEF. For Category 'B' projects, Environmental Clearance was to be given by SEIAA. In the present case, we are considered with Entry 1(a) of the Schedule to the Notification of 2006 which was substituted vide Notification dated 1st December, 2009. This entry reads as under:

Project of Activity		Category with threshold limit		Conditions if any
		A	B	
1		Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	(2)	(3)	(4)	(5)
¹⁸ [1(a)]	(i) Mining of minerals. (ii) Slurry pipe-lines (coal lignite and other ores) passing through national parks/sanctuaries/coral reefs, ecologically sensitive areas.	≥50 ha of mining lease area in respect of non-coal mine lease >150 ha of mining lease area in respire of coal mine lease Asbestos mining irrespective of mining area All projects	<50 ha ≥ 5 ha of mining lease area in respect of non-coal mine lease ≤150 ha ≥5 ha of mining lease area in respect of coal mine lease]	¹⁹ [General conditions shall apply <i>Note:</i> (i) Prior environmental clearance is as well as required at the stage of renewal of mine lease for which application should be made up to one year prior to date of renewal. (ii) Mineral prospecting is exempted.

22. From this Entry in the Schedule to the Notification of 2006, it is clear that projects in respect of non-coal mine leases, where the area is more than 50 hectares would require prior Environmental Clearance from MoEF, while the projects of less than 50 hectares and more than 5 hectares of mining area, would require prior Environmental Clearance from SEIAA. The procedure for taking prior Environmental Clearance under both these categories is more or less the same except that the agency which gives the clearance is different. Clause 7 of the Notification of 2006, specifies the stages through which such projects for grant of Environmental Clearance are required to be passed and processed. They include Screening, Scoping, Public Consultation and Appraisal, upon which, the Expert Appraisal Committee would make a recommendation to the MoEF/SEIAA as the case may be, which would then grant or refuse the Environmental Clearance to the project in question. Under the head 'Screening', this Clause 7 also provides for a further bifurcation of projects falling under category 'B' into 'B(1)' and 'B(2)'. The relevant part of Clause 7, dealing with this aspect, reads as under:

“Stage (1) - Screening:

In case of Category 'B' projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance depending up on the nature and location specificity of the project . The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and

remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report. For categorization of projects into B1 or B2 except item 8 (b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time."

23. In terms of the above, at the stage of 'Screening', the State Level Expert Appraisal Committee has to determine whether or not the project requires further environmental studies for preparation of an Environmental Impact Assessment report for its appraisal, prior to the grant of Environmental Clearance, depending upon the nature and location specificity of the project. The projects requiring an Environmental Impact Assessment report shall be termed as Category 'B1' and remaining projects shall be termed as Category 'B2', which will not require an Environment Impact Assessment report and for this categorisation, i.e., 'B1' and 'B2', the MoEF retained with itself, powers to issue guidelines from time to time. From the record before the Tribunal, it is evident that prior to the institution of these cases, no guidelines have been prepared or notified by the MoEF, in terms of Stage 1 of Clause 7 of the Notification of 2006. The Notification of 2006 came to be amended by Notification dated 1st December, 2009. It made some amendments in different clauses of the Notification of 2006 and deleted some portion appearing in column 5 of Entry 1(a) of the Schedule to the Notification of 2006. In substance, it made no change as far as minor mineral activity was concerned. Note (i) in column 5 stood omitted. Subsequent to the amendment of the Notification of 2006 in 2009, the judgment of the Hon'ble Supreme

Court came to be pronounced in IA No. 12-13 of 2011, in the case of *Deepak Kumar* (supra). In compliance to the direction of the Hon'ble Supreme Court in para 29 of the said judgment, MoEF issued an Office Memorandum dated 18th May, 2012, with an intent to implement the said direction of the Hon'ble Supreme Court. MoEF also noticed in the Office Memorandum, direction of the Hon'ble Supreme Court dated 16th April, 2012, wherein the applicants before the Hon'ble Supreme Court in the order dated 27th February, 2012, who were carrying on mining activity below 5 hectares were given liberty to approach MoEF for permission to carry on mining. These applications were to be disposed of by MoEF within 10 days from the date of the applications. The order of the Hon'ble Supreme Court dated 16th April, 2012, reads as under:

“All the same, liberty is granted to the applicants before us to approach the Ministry of Environment and Forests for permission to carry on mining below five hectares and in the event of which Ministry will dispose of all the applications within ten days from the date of receipt of the applications in accordance with law.”

24. In this Office Memorandum, it was decided by MoEF that all the mining projects for minor minerals, including their renewal, irrespective of the size of the lease would, henceforth, require prior Environmental Clearance. Wherever the area was less than 5 hectares, they would be treated as category 'B' projects in terms of Notification of 2006 and should be processed accordingly.

25. On 24th June, 2013, MoEF issued another Office Memorandum stating guidelines for consideration of proposals for grant of Environmental Clearance under the Notification of 2006 for

mining of 'brick earth' and 'ordinary earth' having lease area of less than 5 hectares. Referring to the judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) and its Office Memorandum dated 18th May, 2012, it further considered that the 'brick kiln' manufactures had stated that it was a small scale activity requiring that certain depth should be kept outside the purview of Environmental Clearance. Having considered various aspects, the recommendations of the Expert Committee, constituted by MoEF, were also examined and finally it was directed as follows:

“(a) The activities of borrowing / excavation of 'brick earth' and ordinary earth', upto an area of less than 5 ha, may be categorized under 'B2' Category subject to the following guidelines in terms of the provisions under '7.I Stage(1)-Screening' of EIA Notification, 2006:

(i) The activity associated with borrowing/excavation of 'brick earth' and 'ordinary earth' for purpose of brick manufacturing, construction of roads, embankments etc. shall not involve blasting.

(ii) The borrowing/excavation activity shall be restricted to a maximum depth of 2 m below general ground level at the site.

(iii) The borrowing/excavation activity shall be restricted to 2 m above the ground water table at the site.

(iv) The borrowing/excavation activity shall not alter the natural drainage pattern of the area.

(v) The borrowed/excavated pit shall be restored by the project proponent for useful purpose(s).

(vi) Appropriate fencing all around the borrowed/excavated pit shall be made to prevent any mishap.

(vii) Measures shall be taken to prevent dust emission by covering of borrowed/excavated earth during transportation.

(viii) Safeguards shall be adopted against health risks on account of breeding of vectors in the water bodies created due to borrowing/excavation of earth.

(ix) Workers / labourers shall be provided with facilities for drinking water and sanitation.

(x) A berm shall be left from the boundary of adjoining field having a width equal to at least half the depth depth of proposed excavation.

(xi) A minimum distance of 15 m from any civil structure shall be kept from the periphery of any excavation area.

(xii) The concerned SEIAA while considering granting environmental clearance for such activity for brick earth / ordinary earth will prescribe the guidelines as stated at (i) to (xi) above and specify that the clearance so granted shall be liable to be cancelled in case of any violation of above guidelines.

(b) Notwithstanding what has been stated at (a) above, the following will apply:-

(i) No borrowing of earth / excavation of 'brick earth' or 'ordinary earth' shall be permitted in case the area of borrowing/ excavation is within 1 km of boundary of national parks and wild life sanctuaries.

(ii) In case the area of borrowing / excavation is likely to result into a cluster situation i.e. if the periphery of one borrow area is less than 500 m from the periphery of another borrow area and the total borrow area equals or exceeds 5 ha, the activity shall become Category '8 I' Project under the EIA Notification, 2006. In such a case, mining operations in any of the borrow areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster.

This issues with the approval of the Competent Authority.”

26. These directions which were specific only to 'brick earth' and 'ordinary earth' activities for areas less than 5 hectares, as decided to be categorised as 'B(2)' Category projects, subject to the restrictions stated in the memorandum, provided that if the cluster area exceeded 5 hectares, then it would become Category 'B(1)' and would not be treated as Category 'B(2)' projects. It is clear that this Office Memorandum was not dealing with the issues of sand mining or any other minor mineral activity except 'brick earth' and 'ordinary earth'. On 9th September, 2013, MoEF, in exercise of its powers under the Act and Rules of 1986, dispensed with the requirement of notice and amended the Notification of 2006. Entry 1(a) was further amended as follows:

(1)	(2)	(3)	(4)	(5)
1(a)	(i) Mining of minerals.	<p>≥50 ha of mining lease Area in respect of non-coal mine lease.</p> <p>≥150 ha of mining lease area in respect of coal mine lease</p> <p>Asbestos mining irrespective of mining area.</p>	<p><50 ha of mining lease area in respect of minor minerals mine lease; and</p> <p>≤ 50 ha ≥ 5 ha of mining lease area in respect of other non-coal mine lease.</p> <p>≤ 150 ha > 5 ha of mining lease area in respect of coal mine lease.</p>	<p>General Conditions shall apply except for project or activity of less than 5 ha of mining lease area for minor minerals:</p> <p>Provided that the above exception shall not apply for project or activity if the sum total of the mining lease area of the said project or activity and that of existing operating mines and mining projects which were accorded environmental clearance and are located within 500 metres from the periphery of such project or activity equals or exceeds 5 ha.</p> <p>Note: (i) Prior</p>

				<p>environmental clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal. Further, a period of two years with effect from the 4th April, 2011 with requisite valid environmental clearance and which have fallen due for renewal on or after 4th November, 2011.</p>
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27. During the pendency of the present application and passing of certain orders by the Tribunal requiring the MoEF to clarify its stand in the light of *Deepak Kumar's* judgment (supra) of the Hon'ble Supreme Court, MoEF, on 24th December, 2013, issued another memorandum for consideration of proposals for grant of Environmental Clearance regarding categorisation of Category 'B' projects into Category 'B(1)' and 'B(2)'. Mining of minor minerals

had been separately dealt with in this Office Memorandum. This Office Memorandum stated that no river sand mining project with mining lease area of less than 5 hectares may be considered for grant of Environmental Clearance. Such area up to 25 hectares would be Categorised as 'B(2)' and such projects were to be considered, subject to the stipulations stated therein. This Office Memorandum had apparent ambiguities, which, as already noticed, were cleared by the statement of officers of the Ministry made before the Tribunal on 24th August, 2014, wherein it was stated that no Environmental Clearance would be granted for extraction of minor minerals from any riverbed and/or water body, where the area is less than 5 hectares. Sand mining, in area other than riverbeds, would be permitted, only if the Project Proponent takes Environmental Clearance.

28. Against the order dated 5th August, 2013, the State of Rajasthan and some others have preferred an appeal before the Hon'ble Supreme Court. These appeals came to be dismissed as 9703-9706 of 2013 titled, *Chief Secretary, Government of Rajasthan v National Green Tribunal Bar Association and Others*. While issuing notice, the Hon'ble Supreme Court had stayed the proceedings before this Tribunal in Original Application No. 171 of 2013. However, this order of the Hon'ble Supreme Court came to be varied by the Hon'ble Supreme Court vide its order dated 25th November, 2013, which varied the order of stay of all proceedings and passed specific orders in relation to 82 applicants who were holders of Letter of Intent. In relation to those

remaining, including other States, the Hon'ble Supreme Court directed that the matters may go on unless there was a specific stay granted by the Hon'ble Supreme Court in that particular case. The order of the Hon'ble Supreme Court dated 25th November, 2013, reads as under:

“Pursuant to orders passed by this Court on 11th November, 2013, the learned Solicitor General has submitted a status note on behalf of the Ministry of Environment and Forests on the applications for environmental clearance in respect of mining lease of bajri in the State of Rajasthan which is pending before the Ministry of Environment and Forests.

From the aforesaid status note it appears that the time period prescribed under Environmental Impact Assessment Notification 2006 for processing the applications of 82 letter of intent holders/project proponents received from the State of Rajasthan will expire some time in February, 2014. Obviously the mining activity with regard to the bajri lease in the State of Rajasthan cannot be totally kept in abeyance till February, 2014.

We, therefore, direct that till the end of February, 2014, the letter of intent holders who have submitted their applications to the Ministry of Environment and Forests for clearance (numbering 82 only) can carry on mining operations in accordance with the Notification dated 21st June, 2012 of the Mines (Act 2) Department, Government of Rajasthan issued under Rule 65A of the Rajasthan Mines and Mineral Concession Rules, 1986.

We make it clear that the orders that will be passed by the Ministry of Environment and Forests on the 82 applications will be in accordance with the Notification, Environmental Impact Assessment 2006 dated 14th September, 2006.

The State of Rajasthan will ensure that this interim order is not violated in any manner.

It has been mentioned by Mr. Raj Panjwani, learned counsel appearing for the National Green Tribunal Bar Association that besides the Rajasthan matters, other matters are pending before the Tribunal. We make it clear that the other matters may go on in the Tribunal if there are no specific orders of this Court staying the proceedings in the particular matter.”

29. It is in furtherance to the above order, that, proceedings before this Tribunal continued in relation to all other States, as well as, beyond those 82 applicants who were specifically covered by the above order of the Hon'ble Supreme Court.

Stand of the Respective States and Respondents

30. We may now notice the stand taken by the respective States before the Tribunal in the above case.

State of Rajasthan has taken a common stand in two of these cases (Appeal No. 23 of 2014 and Original Application No. 123 of 2014). It is stated on behalf of the State that, Respondent No. 1, Sanjay Bakliwal, in Appeal No. 23 was granted consent to establish and operate on 26th November, 2012. This respondent was granted lease for mining of minor minerals on 23rd November, 2012. In furtherance to the judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), all the States were directed to consider the recommendations of the Committee which were recorded in the judgment and were directed to frame their rules and their mining policy. Accordingly, the State of Rajasthan amended the State Rules w.e.f. 19th June, 2012 by incorporating Chapter IVA for scientific and eco-friendly mining. Under the amended Rules, the mining area allowed for mining of minor minerals is 1 hectare. Obtaining Environmental Clearance, for carrying on river sand mining activity, in an area of less than 5 hectares, was not required. Such requirement was introduced vide Notification dated 9th September, 2013. Lease holders carrying on the minor mineral activity were to apply for

Environmental Clearance at the time of renewal as per the Notification of 9th September, 2013. This Notification made prior grant of Environmental Clearance mandatory in relation to river sand mining and provided that Environmental Clearance will only be required at the stage of renewal of mining in the cases of existing lease.

31. State of Rajasthan, as noticed above, had amended its rules and particularly introduced Rules 37P, 37Q, 37R, 37S, reference to which would be necessary. Rule 37P provided for grant of short term permits for mining in an area of less than 5 hectares. Association of lessees could, through recognised persons, submit Environment Management Plan to the District Level Environmental Committee for approval. The association was to be formed within three months from declaration of cluster. Under this, various persons would become Members of the association and apply for cluster mining. Even a person falling within a cluster was deemed to be a member of the association. 37R provided for the composition of the District Level Environmental Committee. Environment Management Plan had to be approved by such Committee, which was required to be implemented in terms of Rule 37S. This was to provide environmental safeguards which were to be implemented by the holders of the short term permits and the association. According to Respondent No. 1, the lessee, he had complied with all these requirements and as per Government practise, clusters were formed by the State Government and Environment Management Plan was approved by the District Environmental Committee. However, Respondent No. 1 also submits that, during the

operation of the orders of the Tribunal, he had applied for obtaining Environmental Clearance. The Rajasthan State Pollution Control Board, vide its letter dated 31st October, 2013, also directed Respondent No. 1 that if they wished to increase the production after 9th September, 2013, they must obtain Environmental Clearance. It is the stand of the Respondents that ToR has been issued by SEIAA and public hearing has been done on 27th-28th August, 2014 and that they are awaiting grant of Environmental Clearance. According to Respondent No. 1, the Notification dated 9th September, 2013, is not applicable to the lease as it operates only prospectively.

32. According to State of Rajasthan, post Notification dated 9th September, 2013, issued by the MoEF, they have not granted any mining lease without Environmental Clearance. However, in the period between 27th February, 2012 and 9th September, 2013, i.e., the bridge period, mining leases for minor minerals were granted to all the private respondents as no Environmental Clearance was required for such activity. Directions contained in the case of *Deepak Kumar* (supra) were followed by requiring clusters to make Environment Management Plan in accordance with the Rules afore-referred. It is further submitted by the State of Rajasthan, that, after the operation of the Office Memorandum issued by MoEF dated 24th December, 2013, was stayed by this Tribunal, the State has not given effect to the Office Memorandum dated 24th June, 2013 also, which, has in fact, become one of the grievances of the private respondents in OA No. 123 of 2014.

33. As already stated, two applicants, namely, Smt. Promila Devi and Shri Ranbir Singh have filed independent petitions, *inter alia*, praying for quashing of the order dated 31st August, 2013, and threat to implement the same against the other by the Mining Officer, Solan, wherein, for not obtaining Environmental Clearance, the mining activity was ordered to be stopped. While in the latter, according to the applicant, he was granted mining lease of sand, stone and bajri which is found in mixed states in Khads and not in any manner on the river bed. The applicant has, therefore, prayed that in both the mines at Mohal Maira Doomal/Maira Batrah, in Tehsil Nurpur, District Kangra, Himachal Pradesh, Mining activity should not be stopped, with reference to the order of the Tribunal dated 5th August, 2013. The applicant prayed for vacation of the stay order. According to the applicant, they are not covered by the said order of the Tribunal and therefore, their mining activity should be permitted to be continued.

34. The stand of State of Himachal Pradesh in the case of Ranbir Singh is that the applicant had initially applied for mining of an area which was more than 5 hectares, but, later sought for reduction of the area to less than 5 hectares. Upon the reduced area, supplementary mining lease was executed on 8th December, 2013. However, after passing of the order of the Tribunal dated 5th August, 2013, the Mining Officer, Kangra has suspended the mining activity as it falls in the Khad/stream, i.e., river bed.

35. The applicant also submits that his mining activity is connected to a stone crusher and, as such, he would suffer serious losses. The matter pertaining to the applicant was also pending before the High Court of Himachal Pradesh in terms of the order of the Hon'ble Supreme Court, in the case of *Nanak Chand Dhiman & Ors. v. Chief Secretary to the Government of Himachal Pradesh, Shimla & ors.*, dated 25th July, 2013.

36. In the case of Smt. Promila Devi, it is stated that the Mining Officer, Solan, has suspended the mining activity of the applicant in compliance to the order of the Tribunal dated 5th August, 2013. According to the State, the area of petitioner no. 1 does not form part of the river bed, but, that of petitioner nos. 2 and 3 partly or wholly lies in the river bed. As such, since the order of the Tribunal was applicable only to petitioner Nos. 2 and 3, the order passed against petitioner no. 1 was withdrawn vide letter dated 11th October, 2013.

37. Under the River/Stream Bed Mining Policy/Guidelines for the State of Himachal Pradesh, 2004 (for short 'Policy of 2004'), it was mandatory for the holder of the mineral concession to prepare Working-cum-Environmental Management Plan. This plan was to be approved by the State Geologist, Himachal Pradesh and not by the MoEF/SEIAA. The MoEF had also issued a Circular on 2nd July, 2007 stating that Notification of 2006 shall not be applicable to those leases where neither the production has increased nor area is enhanced, till expiry of lease period.

38. According to the Himachal Pradesh Minor Minerals (Concession) Revised Rules, 1971 (for short 'Rules of 1971'), the State of Himachal Pradesh had reserved to itself, the power to grant mining lease for an area as it may deem fit. In terms of provisions of Rule-13 (1), for setting up of crusher and granting lease for river stream bed mining, an area of 10 hectares or above, was to be given priority and free sale of minor minerals lease up to 5 hectare shall be granted. That means, less than 5 hectare of mining lease could be granted. This Rule does not specifically contemplate issuance of Environmental Clearance.

39. According to the State, none of the petitioners have so far applied for Environmental Clearance, in accordance with the Notification of 2006. Against the order of the High Court of Himachal Pradesh dated 15th June, 2012, a Civil Appeal No. 6179/2013 titled '*Nanak Chand Dhiman & Ors. Vs. Chief Secretary of Government of Himachal Pradesh & Ors.*' was filed. The Hon'ble Supreme Court of India had set aside the orders of the High Court dated 15th June, 2012 and 14th September, 2012 and ordered that the appellant would file an appropriate application for impleadment before the High Court of Himachal Pradesh which will be considered afresh in accordance with law. It may be noticed that as per website of the Himachal Pradesh High Court, Civil Writ PIL No. 9 of 2011 and other applications have been finally disposed of by the High Court, vide its order dated 20th March, 2014.

The Hon'ble Supreme Court, while setting aside the order of Himachal Pradesh High Court, which had permitted one year period for the lease holders to obtain Environmental Clearance, though they were operating prior to 27th February, 2012 and the mining leases which were executed after 27th February, 2012, had directed stoppage of mining operations on the ground that the order was passed without granting opportunity of representation to the lessees who were having a valid lease. The State has taken the stand before the Hon'ble Supreme Court that it has already framed Rules in line with the recommendations of MoEF, placing incidents of getting Environmental Clearance from the authorities concerned. Where the leases were granted prior to 27th February, 2012, Environmental Clearance was not warranted as they were being appropriately regulated under the respective mining plans. The Hon'ble Supreme Court, without commenting upon the restrictive contentions, had set aside the High Court orders and granted liberty to the appellants to file appropriate applications before the High Court.

40. Following the directive of the Hon'ble Supreme Court in the case of *Deepak Kumar v. State of Haryana & Ors*, (supra), the State of Himachal Pradesh submits that they have not executed any fresh mining lease after 27th February, 2012. Vide Office Memorandum dated 18th May, 2012, MoEF, Government of India has brought all the mining leases irrespective of the area under the ambit of Notification of 2006. Except to the exceptions carved out in their Circular dated 2nd July, 2007, the mining activity and sanctioning

of mining lease in State of Himachal Pradesh is being granted in accordance with the Rules of 1971.

41. It has also been brought on record that the State of Himachal Pradesh, in furtherance to the directions issued by the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), has taken necessary steps and safeguards. According to the State, they had already initiated such steps as back as in the year 2004, while framing Policy of 2004. The State has carried-out necessary amendments in the Rules of 1971 vide Notification dated 10th June, 2004. It is even averred by the State that the order of the Hon'ble Supreme Court dated 27th February, 2012, is not applicable to the current mining leases as the direction would be considered only at the time of renewal, including, grant of Environmental Clearance. In terms of the Policy of 2004, and subject to the satisfaction of the conditions provided therein, mining activity is permitted.

42. Documents have been filed and it was also contended on behalf of the State of Himachal Pradesh that, after order of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), the Rules of 1971, as such, have not been amended, but, the State Government has framed the Himachal Pradesh Mineral Policy – 2013 (for short 'Policy of 2013') which has been notified on 24th August, 2013, wherein, subject to compliance of conditions, mining activities in the area of less than 5 hectares have been permitted. The river bed mining is permitted, subject to Environmental Clearance. Under this Policy, Sub-Divisional Level Committee has

been constituted, which has to provide recommendatory role for grant of Environmental Clearance. Other minor mineral activity is also allowed in the area of less than 5 hectares, subject to Environmental Clearance. The difficulties posed, which are stated to be peculiar in States like Himachal Pradesh, are that, larger mining areas of more than 5 hectare are hardly available, particularly in the river beds. It is also contended that 95% of the mining areas are privately owned and are less than 5 hectare. Removal of sand from the river bed that gets accumulated from the flow of river, also justifies the grant of mining permission in areas of less than 5 hectares, without obtaining Environmental Clearance for the same.

43. The stand of MoEF, even in these cases, is that the Ministry has already taken a decision on 2nd September, 2014 that no Environmental Clearance will be granted for extraction of minor minerals (sand mining) from any river bed where the area is less than 5 hectare in terms of its Office Memorandum dated 24th December, 2013. The minor minerals mining activity in areas other than river bed (sand mining) would be permitted, provided, Environmental Clearance is obtained in accordance with law.

44. One Dr. Sarvabhoom Bhagali has filed M.A. No. 529/2014 praying that, there is rampant illegal mining going on in the State of Karnataka, including mining in eco-sensitive areas. According the applicant, through video-conferencing dated 2nd January, 2014, the Director of Mines and Geology, had issued instructions that one

year period be given to take Environmental Clearance and during the transit period, mining activity could be continued. It is also stated that Rule 31-R(20) of the Karnataka Minor Mineral Concession (Amendment) Rules, 2013 (for short 'KMMC Rules of 2013') should be construed to declare that no mining activity, including existing leases, can be carried on without obtaining Environmental Clearance. The mine lessees, which have been shown as Respondents No. 7 to 35 have carried on illegal sand mining and they should be asked to furnish the details thereof and of the mining that they have done since 16th December, 2013. The amendments to Rule 31-R are contrary to law and are impermissible. The amendments permitting mining without Environmental Clearance and appointment of Regional Environment Management Committee are contrary to the judgment of the Hon'ble Supreme Court in *Deepak Kumar's* case (supra), as well as, the Notification of 2006 issued by MoEF.

45. The State of Karnataka has filed a detailed affidavit taking the stand that after the order of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), the Karnataka Minor Minerals Concession Rules, 1994 (for short 'Rules of 1994') have been amended vide Notification dated 16th December, 2013, which was duly published in the Gazette. The State of Karnataka claims to have adopted a unique mechanism of disbursing of sand since 2nd July, 2011 wherein Public Works Department (for short 'PWD') is given the responsibility of quarrying, storing and sale of sand from blocks

handed over by the concerned District Sand Monitoring Committee but no lease or licence is being issued. According to them, there is a direct control of the State PWD. The State of Karnataka is collecting 'Environmental Protection Fee' of Rs.84,000/- per hectare from all mining leases including minor minerals, except sand, murram and brick earth, since 2009. After amendment, a fee called the 'Environment Management Fee' of Rs.10 per cubic meter of sand sold is being collected. Mining in *patta* lands is prohibited throughout the State. According to the State of Karnataka, Notification dated 16th December, 2013, has been issued which constituted the Regional Environmental Committees. However, it is stated that they do not have much significance, as the applicant is to seek Environmental Clearance from SEIAA or MoEF, as the case may be. This was also clarified vide amendment dated 5th March, 2014. In the State of Karnataka, 375 persons have been granted permission by SEIAA for carrying on the mining activity. The Karnataka State Pollution Control Board is not issuing any consent to the sand, lime shell and building stone mining/quarrying activity (minor minerals). The Department of Mines and Geology has caught about 18354 cases of illegal mining, including illegal transportation and about 17587 cases have been compounded, as per the provisions of Section 23A of Act of 1957, by collecting compounding penalty of Rs.3495.74 lakhs in total. 702 cases are pending for disposal before jurisdictional courts. According to the State, huge mining activity is being carried on in the State.

Referring to the statistics, it has been stated that from March, 2012 to March 2013, total 6810709 MT of sand, 433431 cubic meter of Ornamental stone and 13023699 MT of building stone and 1790347 MT of other minor minerals like Laterite, Lime Kankar, Lime shell, Murram, Steatite, Ordinary Clay etc. were extracted in the State and royalty of Rs. 747.76 Crores has been realized for that year. According to the State, there are 527 mines of specified minor minerals. In the major part of these mines, the area involved under the lease is less than five hectares. In 202 cases, Environmental Clearance has been granted for specified minor minerals, including, four expansion projects. 169 number of Environmental Clearances were granted for non-specified minor mineral leases by SEIAA.

46. 116 applications are stated to be pending with SEIAA for grant of Environmental Clearance and no consents are being issued by the Karnataka State Pollution Control Board. As far as the contention in relation to the instructions issued through video conference is concerned, such a meeting was held and instructions were issued. However, referring to the amended Rules, it was stated that, in terms of Rule-31R (1C), the Taluk Sand Monitoring Committee is to conduct spot inspection of the sand blocks identified and the blocks to be newly identified and submit report to the District Committee. One year time was granted to obtain Environmental Clearance. During this period, mining was permitted. The minimum extent of permitted area for ordinary sand mining is fixed as 10 acres and all sand blocks less than 10 acres