

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ)

CHENNAI

Original Application No.151 of 2020

Between

Akhila Kerala Dheevara Sabha

APPLICANT

Versus

STATE OF KERALA & OTHERS

RESPONDENTS

REPLY FILED BY RESPONDENT NO.7 – Managing Director – IREL

The 7th Respondent respectfully submits as follows:

1. The 7th Respondent is M/s. Indian Rare Earths Ltd. (hereinafter referred to as “IREL”) having its Office at Chavara in Kollam District, Kerala.
2. The address for service of all notices and processes on the 7th Respondent (IREL) is that of their counsel, M/s. S. Ramasubraminam & Associates, 6/1, Bishop Wallers Avenue (West), Mylapore, Chennai – 600 004.
3. At the outset, all the allegations and averments made in the Application filed on behalf of the Applicant including but not limited to the documents filed by the Applicant are denied except those that are specifically admitted hereunder. None of the allegations and averments contained in the Application including but not limited to the documents filed by the Applicant shall be deemed to be admitted merely for want of a specific denial / traverse.
4. Indian Rare Earths Limited, now known as IREL (India) Limited and hereinafter referred to as “the Company”, is a Government of India undertaking, functioning under the aegis of the Department of Atomic Energy. The Company is engaged in the business of mining and separation of beach sand minerals along coastline of India. It is submitted that beach sand mining and mineral separation operation is an environment friendly operation as the mined out areas are simultaneously back-filled with the tailings generated out of the gradation process. The activity does not involve drilling and blasting operations for extraction of minerals. The beach sand mining and mineral separation operation is carried out under mining leases granted by the




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respective State Governments and for which the Company has obtained all the necessary clearances as required under statute.

5. The present case involves De-silting of Harbours by dredging (at Thottappally and Azheekkal), harbor entrance, leading channel and adjoining areas under Fisheries and Harbur Engineering dept, Govt of Kerala to facilitate the smooth movement of fishing boats, in and out of the harbours. It leads to accidents if not de-siltec.
6. De-silting of the Thottapally Spillway Channel and the Pozhy mouth under Irrigation Department, Govt of Kerala. Kuttanad region, which is up-stream of the Spillway channel, being a flood prone area, the State of Kerala, Respondent No.1 directed dredging activities to be undertaken in the Thottappally spillway channel and Pozhy mouth. This is to ensure free flow of flood waters into Arabian Sea from the river, to de-risk Kuttanad region from flooding during monsoon. The answering Respondent requested the Gcvernment of Kerala to permit it to carry out de-silting operations by dredging at its own cost in the Harbours, Spillway channel & Pozhy mouth, as the silt in these Harbours and Spillway channel contains Atomic Minerals. This request was accepted by the Government of Kerala who permitted the answering Respondent to carry out dredging operations the harbors and remove the sand vide G.O. dated 31.01.2018 bearing reference G.O. (Gen) No. 73/2018/FHD and GO dated 08.10.2018 bearing reference G.O. (Gen) No. 793/2018/FHD. Initially, under G.O. (Gen) No. 73/2018/FHD dated 31.01.2018, the answering Respondent was allotted a quantity of 1,00,000 cu.m. to be collected from Thottappally harbor by paying an amount Rs. 464.55 per cu.m. of the de-silted sand. Thereafter, the 1st Responcent permitted the answering Respondent to dredge the Azheekal Pozhi vide G.O. (Gen) No. 793/2018/FHD dated 08.10.2018 by paying an amount at the rate of Rs.392/- per cu.m. of the de-silted sand.
7. In respect of the Kuttanad region, it is submitted that, to avoid the risk of flooding, Government of Kerala decided to deepen and widen the Thottapalli spillway channel and Pozhy mouth. Since the sand contains atomic minerals the Government of Kerala allowed the answering Respondent and the 9th Respondent, Kerala Mines and Minerals Limited to deepen/widen the Thottapally spillway channel and Pozhy mouth, thereby facilitating free flow of flood waters to Arabian sea and to collect and transport 2,00,000 cu.m. of de-silted sand at a rate of Rs.464.55 per cu.m. vide G.O. dt. 31.05.2019 bearing reference no. 385/2019/WRD. It is necessary to mention here that the said GO dated 31.05.2019 was primarily issued as a safety measure to control seasonal flooding in the low-lying areas of Kuttanad region as recommended in the Swaminathan Report.




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8. The primary focus was the de-silting of harbor at Thottapalli and Azheekal and similarly in the Thottapalli spillway channel. Since the de-silted sand was found to be rich in atomic and other rare earth minerals, the answering Respondent was permitted to purchase the sand and remove it to its plant at Chavara. It is to be noted that this sand would otherwise have been of no use but to backfill low-lying areas. The answering Respondent has been permitted to carry on the desilting by dredging operations since the year 2015 in the Thottapalli harbor. This can, by no stretch of imagination, be termed as a mining operations and that too illegal. Hence the present petition is illusory and deserves to be dismissed.
9. Now reverting to the allegations under the head "Facts in Brief" contained in the Application filed by the Applicant.
10. The contents of paragraph 1 are denied as false. It is denied that the members of AkhilaKeralaDheevara Sabha (State level organization of fishermen community) residing in Purakkad, Amblappuzha, Thirikkunnappuzha and Arattupuzha are highly affected by the illegal mineral beach sand mining. The Applicant is put to strict proof of the statement that it is actively fighting against heavy environmental de-gradation committed by the 'mineral - beach sand mining companies in Alappuzha District'.
11. As regards paragraph 2, it is denied that beach sand mining is a threat to the sociological and environmental stability in Kerala. It is a fact that beach sand mining carried out by the answering Respondent, in the areas where mining leases have been granted by the Government of Kerala, is one of the most environment friendly operations as there is no drilling & blasting, no use of chemicals and only physical separation of minerals from the sand is collected from deposit by observing all rules and regulations. Once the mineral content is removed, the tailings generated out of the gradation process are used to backfill simultaneously in the mined out areas. Hence there is no merit in the said contention. As regards all other averments made in the said paragraph, the Applicant is put to strict proof of the same.
12. As regards paragraph 3, the contents therein are not denied. The answering Respondent/7th Respondent is a full-fledged Government of India undertaking, functioning under the aegis of the Department of Atomic Energy, who is the sole agency in the country authorized to handle atomic minerals, including monazite and separate the atomic minerals for strategic and critical use in the nuclear, future power and defense/aerospace program of the country.




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13. The contents of paragraph 4 are denied as being false and baseless. It is denied that the Government of Kerala has permitted to conduct sand mining operations at the harbor. Whereas, the Government of Kerala has only permitted the answering Respondent to de-silt by dredging the harbour and remove the sand at a fixed price for smooth and safe navigation of the fishing boats in and out of the fishing harbor and for safe docking of the boats after fishing.
14. The contents of paragraph 5 are denied as false and baseless. It is denied that the 7th Respondent is doing illegal mining of mineral beach sand as per an amended order. As stated above, the answering Respondent has been de-silting by dredging the harbor and removing the sand from the year 2015. It has also been permitted to install a spiral unit to enable it to separate the mineral from the sand at the dredging site itself. After separation, the tailings handed over to the Harbour Engineering Department, Government of Kerala and are used to back fill the low lying areas in and around the harbor as per Government directions. The answering Respondent even submitted an application for license to set up a plant and operate as per the GO. The same was rejected by the Purakkad Grama Panchayath for no valid reason. This constrained the answering Respondent to file WP (C) No. 36975/2017 before the Hon'ble High Court of Kerala. Initially the Hon'ble High Court of Kerala, vide judgement dated 15-11-2017, granted an interim stay of the communication dated 06-11-2017 issued by Purakkad Grama Panchayath. The said interim order was extended until further orders on 04-09-2018. The Writ Petition is pending on the file of the Hon'ble High Court of Kerala.
15. The contents of paragraph 6 are denied as being false and baseless. It is denied that the mining is around 20-meter depth thereby affecting the lives of the people nearby. It is submitted that the de-silting of sand done by the answering Respondent is done only for a depth of 2- 3 mts to ensure the smooth and safe movement of the fishing boats in and out of the harbor. It is not denied that the Purakkad Grama Panchayat had issued the notice dated 16.11.2017. However, by virtue of the interim order dated 04.09.2018, the answering Respondent is continuing the dredging operations at the Thottapally harbor. It is denied that the answering Respondent was given permission to take the sand to unknown places. It is humbly submitted that the answering Respondent is only transporting the sand to its Mineral Separation Plant in Chavara and not to any unknown as claimed by the Applicant. It is denied that the answering Respondent has carried out beach sand mining in the harbor area. The de-silting works carried out by the answering Respondent near the harbor basin does not cause any damage to the environment of the Purakkad - Ambalapuzha village.
16. It is submitted that the collection of silt in the harbor leading channel and harbor berth area in Azheekal Harbor and Thottapally Harbor hampered the movement of



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fishing boats in and out of the harbor. The Government of Kerala therefore, decided to de-silt by dredging the harbor basins and the same was carried out by Harbor Engineering Department. It was found that the de-silted sand contained atomic and other rare earth minerals and the answering Respondent requested the Government of Kerala to de-silt the said harbours and collect the sand removed after de-silting. This request was accepted and the answering Respondent was permitted to remove a fixed quantity of sand to its Chavara plant. Hence the activities carried out by IREL will not fall under the definition of "mining" as alleged by the Applicants.

17. Further, it is denied that the Applicant's organization is fighting against the heavy environmental degradation committed by the "mineral- beach mining companies" in Alappuzha District. It is a fact that the beach sand mining carried out by the answering Respondent in the areas where Mining Leases are granted by Govt. of Kerala, is one of the most environment friendly operations as the sand is collected, taken to the separation plant where the sand is separated from the minerals. Once the mineral content is removed, the tailings generated out of the gradation process are used to backfill the mined out areas. Therefore, it is denied that the activities carried out by the answering Respondent cause environmental degradation.

18. It is submitted that activities carried out by IREL is to desilt the harbor basin for smooth movement of fishing boats which will help the fishermen to venture into the sea and this will in no way affect the fish stock. This activity carried by IREL will not fall under the category of beach sand mining. The applicant is put to strict proof of the same.

19. The contents of paragraph 7 are denied as being false and baseless. It is submitted that de-silting work allotted by the Government of Kerala entails the removal of sand deposited in the harbor entrance, harbor basin, Spillway channel, mouth of the Pozhi, which happens to contain atomic and other rare earth minerals. Removal of these minerals so as to ensure that the same are not wasted or frittered away does not fall within the meaning of Section 3 (d) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter "MMDR Act") which defines "mining operations" as operations undertaken for the purpose of winning any mineral. The issuance of government orders is not for the purpose of winning any mineral but as safety measure to control seasonal flooding in the low lying areas as per the recommendation of Swaminathan report. Such specialized operations of flood control taken up in the interest of public safety and to safeguard national property on need basis does not come within the ambit of the MMDR Act or Rules made thereunder. It is not denied that the Applicant and others are entitled to live in a clean and safe environment which is a fundamental right guaranteed under Article 21 of the



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Constitution of India. However, the answering Respondent has not violated any provisions of the Environment Protection Act nor caused any degradation of the environment which would entail a prosecution under the Environment Protection Act.

20. As stated above, the answering Respondent has been requested to dredge the harbor mouth and the said activity does not require any approval under the Environment Protection Act. Wherever the answering Respondent is carrying mining operations under mining leases, the necessary approvals have been obtained. Moreover, as per the notification dated 28.03.2020 issued by the Ministry of Environment & Forests, dredging is an exempted activity and as such there is no violation of law as alleged by the Applicant. The notification dated 28.03.2020 is annexed hereto as **Annexure - 1**. Hence, the substantial questions of law posed in the said paragraph are in the realm of conjectures and surmises and ought to be dismissed.

21. The contents of paragraph 8 are denied as being false and baseless. It is denied that the 6th Respondent neglected the environment hazards and issued GO dated 31.05.2019. As per the G.O. dt. 31.05.2019 issued by the Irrigation Department, the dredging activity of the Thottappally Spillway Channel and Pozhi mouth was required to be done to avoid the risk of flooding of Kuttanad area. This cannot be considered as negligence of environmental hazards.

22. The contents of paragraphs 9, 10, 11 and 12 pertain to the 9th Respondent/1st Respondent and hence this Respondent is not adverting to the allegations made therein.

23. The contents of paragraph 13 are denied as being false and baseless. It is submitted that the activity carried out by the answering Respondent is to ensure the free flow of flood water from Kuttanad area to sea. This is evident from the EOI called by the Irrigation Department from the two public sector undertakings, Respondents 8 & 9, who are the only organizations in the country permitted to deal with atomic minerals.

24. The contents of paragraph 14 pertain to the Government of Kerala, 1st Respondent herein and hence this Respondent is not adverting to the same.

25. The contents of paragraph 15 are denied as being false and baseless. It is denied that the company dumps the residue along the coastline, exposing the local biota to detrimental radioactivity. It is submitted that the sand removed by de-silting operations is transported to the mineral separation units for separation of atomic minerals namely ilmenite, rutile, zircon, sillimanite and monazite. The tailings, after removal of these atomic minerals, are transported back to the location for filling of



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answering Respondent is transporting the atomic minerals in wet form, with proper cover, where the fugitive dust will not be there during transportation.

31. The contents of paragraph 21 are denied as being illusory. It is denied that the several incidents have led to seismic activities. The allegation that sand mining projects cause seismic disturbance is baseless. The deepening and widening of the rocky mouth cannot cause any seismic disturbance. It is further denied that several houses in the area have collapsed to a depth of 10 to 20 feet. The de-silting by dredging are undertaken to remove sand to a depth of 1-2 m only and no damage will be caused to the people or livelihood and no report had submitted in respect of this.
32. The contents of paragraph 22 are denied as being false and baseless. It is denied that the activities of the answering Respondent will not impact the environment or have a cumulative impact on other existing or planned activities in the area. The Applicant has not placed on record any scientific analysis to buttress the said contentions and hence the same do not merit any consideration by this Hon'ble Tribunal.
33. The contents of paragraph 23 pertain to the 9th Respondent and hence the answering Respondent is not adverting to the same.
34. The contents of paragraph 24 are denied as false and baseless. It is denied that the de-silting activities by dredging, carried out by the answering Respondent has led to formation of pits as alleged by the Applicant. It is further denied that the same has disrupted the drinking water source.
35. The contents of paragraph 25 are denied as false and baseless. The reply to paragraph 19 and 28 may be taken as response to the averments made herein. It is not denied that notification No.SO 394(E) dated 16.4.1987 was issued empowering the State Governments to take cognizance of any offence under the Environment Protection Act.
36. The contents of paragraph 26 are denied as false and baseless. It is denied that serious environmental degradation is caused as a result of the uncontrolled mining activities of the 7th and 8th Respondent. It is further denied that the answering Respondent is indulging in any uncontrolled mining activity. The answering Respondent is not aware of any damage to houses which has forced the occupants to live in shelter homes. In any event, the dredging of Spillway commenced in May 2020 and whereas owner's representation is dated 24-01-2019 and thus has no relation to the activities undertaken.
37. Now dealing with the "Grounds" raised by the Applicant in the present Application,



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- a. Ground (A) is denied. The activities carried out by the Respondents do not fall in the category of mining. The de-silting by dredging activity does not cause any environment degradation or pollution as alleged by the Applicant.
- b. Ground (B) is denied. The answering Respondent has repeatedly stated that dredging activity does not require any environment clearance as alleged by the Applicant.
- c. Ground (C) is denied. It is denied that the answering Respondent has destroyed houses, livelihood of the residents and their land by its de-silting operations.
- d. Ground (D) is denied. It is denied that the answering Respondent is carrying on illegal mining in the name of dredging.
- e. Grounds (E) & (F) are denied. It is denied that the cause of action arose on 31.01.2018 and 31.05.2019 when the G.O. was issued to dredge the Thottappally Harbour, and to deepen and widen the Thottapalli spillway channel for smooth and safe navigation of fishing boats and to avoid the risk of flooding of Kuttanad area respectively. The answering Respondent most respectfully submits that the entire grievance put forth by the Applicant being in the realm of conjectures and surmises, no cause of action has at all arisen which necessitates adjudication by this Hon'ble Tribunal.
- f. Ground (G) is denied. It is not denied that every individual has a right to a clean environment. However, the answering Respondent cannot be blamed for a degradation that is completely imaginary and has no legs to stand.
- g. Ground (H) is denied. It is submitted that no mining activities have been carried out by the answering Respondent. It is only the de-silted sand that is being transferred to the Chavara Plant since the same contained atomic minerals.
- h. Ground (I) is denied. It is not denied that Section 15 of the Environment (Protection) Act prescribes the penalty for contravention of the provisions of the said Act. However, the answering Respondent's activity at the harbor and spillway will not attract Section 15 as it has not failed to comply with the provisions of the Act, Rules made there under or orders/directions issued therein.
- i. Grounds (J), (K) and (L) are denied. While the answering Respondent does not deny the law laid down by the Hon'ble Supreme Court and this Hon'ble Tribunal,




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in the said judgments, no reference can drawn to the same on the facts of the present case or the alleged illegalities. The answering Respondent is not carrying on mining activity in the Harbour or Spillway area. There is no requirement to obtain environmental clearance for dredging and hence there is no violation of the Environment Protection Act, 1986.

38. No cause of action has arisen for the filing of the present application when the allegations are only in the nature of conjectures and surmises. The allegations under the paragraphs "Limitation", "Interim Relief", and "Main Relief" are denied for the reasons mentioned in the above mentioned paragraphs. It is to be noted that the desilting by dredging operations in Thottappalli harbor have been carried out since the year 2015 which the Applicant has been fully aware of and hence the application is time-barred. The Applicant cannot claim that the same is a continuing cause of action and is not time-barred.

39. The answering Respondent has taken all measures necessary and reasonable to safeguard the environment, sea water and marine life and has adhered to all applicable laws whilst conducting its operations. This permission granted by the Government of Kerala vide G.O. dated 08.10.2018 bearing reference G.O. (Gen) No. 793/2018/FHD and G.O. dated 31.01.2018 bearing reference G.O. (Gen) No. 73/2018/FHD is not for any mining activity but to dredge the earmarked areas and remove the mineral sand at a price. The present Application is totally misconceived and without any basis in law or facts. The averments are imaginary, frivolous and bereft of any merit. The Applications deserves to be dismissed with costs.

In light of the above facts and circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the present Application with exemplary costs and thereby render justice.

Dated at Chennai on this the ^{25th} day of January, 2021.

RAMASUBBRAMANIAM & ASSOCIATES


PARTNER

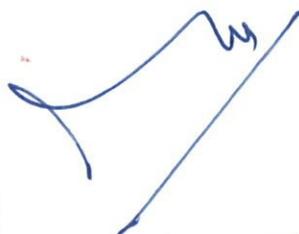
COUNSEL FOR THE 7th RESPONDENT



7th RESPONDENT

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VENU J. PILLAI
ADVOCATE & NOTARY
KOLLAM TALUK
REG. No. 05/2011/KLM



VERIFICATION

I, Mr. S.Surya Kumar, son of Mr. Sreerama Murthy Siddhani, aged 57 years, the Chief General Manager & Head of the 7th Respondent, having office at Chavara in Kollam do hereby declare that what is stated above is true to the best of my knowledge, information and belief.

Dated at Chennai on this the ^{25th} day of January, 2021.

RAMASUBBRAMANIAM & PARTNERS



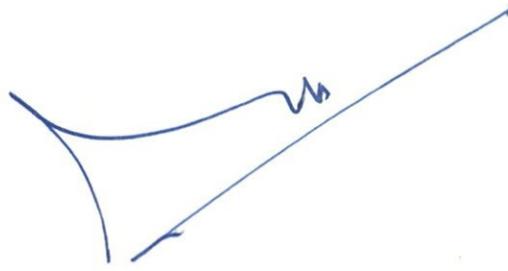
COUNSEL FOR THE 7th RESPONDENT

PARTNER



7th RESPONDENT

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ADVOCATE & NOTARY
KOLLAM TALUK
REG. No. 05/2011/KLM

VERIFICATION

I, Mr. S.Surya Kumar, son of Mr. Sreerama Murthy Siddhani, aged 57 years, the Chief General Manager & Head of the 7th Respondent, having office at Chavara in Kollam do hereby declare that what is stated above is true to the best of my knowledge, information and belief.

Dated at Chennai on this the ^{25th} day of January, 2021.

& RAMASUBBRAMANIAM & ASSOCIATES

PARTNER
COUNSEL FOR THE 7th RESPONDENT


7th RESPONDENT
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NATIONAL GREEN TRIBUNAL

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COUNTER STATEMENT FILED BY 7TH
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COUNSEL FOR 7th RESPONDENT