

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

APPEAL NO. 43 OF 2022 (SZ)

IN THE MATTER OF:

1. Ratheesh Karattu,
S/O R.K. Vasu, Rayaroth House,
Tholambra P.O, Peravoor, Kannur District - 670 673
2. Nidhin C.M.,
Chandroth House, Tholambra P.O, Peravoor,
Kannur District - 670 673

... Appellants

Versus

1. Ministry of Environment, Forests and Climate Change
And Ors
Indira Parayavaran Bhawan, Jor Bagh, Ali Ganj,
New Delhi - 110 003,
Represented by its Secretary
2. State Environmental Impact Assessment Authority,
KSRTC Bus Terminal Complex, 4th floor,
Thampanoor, Thiruvananthapuram, Kerala - 695 001
Represented by its Chairman
3. State Expert Appraisal Committee,
KSRTC Bus Terminal Complex, 4th Floor,
Thampanoor Thiruvananthapuram, Kerala - 695 001
Represented by its Member Secretary
4. The Administrator,
State Environmental Impact Assessment Authority,
KSRTC Bus Terminal Complex, 4th Floor,
Thampanoor Thiruvananthapuram, Kerala - 695 001
5. K.K. Premkumar, Kolanthara (H), Melmuringodi P.O.,
Manathana, Kannur District, Kerala - 670 673
6. State Disaster Management Authority,
Vikas Bhavan P.O, Observatory Hills,
Opposite Kananakknu Palace,
Nanthancodu,
Thiruvananthapuram, Kerala 695 003

... Respondents

REPLY FILED ON BEHALF OF THE 5TH RESPONDENT, K.K.PREMKUMAR


The answering respondent submits as follows:

1. I am the 5th Respondent project proponent in the instant appeal and as such I am well acquainted with the facts and circumstances of the case and competent to swear to the contents of the instant reply affidavit.



2. At the outset, I deny each and every averment contained in the Appeal and put the Appellant to strict proof of the same. I state that the Appellants, particularly the 1st Appellant is guilty of re-agitating the same issue in as much as the complaint of the 1st Appellant was already rejected by the 2nd Respondent after due consideration. Further, the instant appeal is rife with baseless allegations. Be that as it may, I will respond to each of the allegations issue wise, hereinafter. I reserve my right to file further affidavits and documents in support of the same, during the pendency of the instant appeal.
3. I state that I own land admeasuring 1.4621 Ha, Re.Sy.No. 1/100, 1 & 9 of Tholambara Village, Thalassery Taluk, Kannur District, Kerala. ("**subject lands**") I state that I have been engaged in the activity of quarrying and mining since 1998 and I have abided by every legal requirement to carry on the same. I state that I first obtained a Quarrying Lease from the Government of Kerala on 26.02.1998, which was valid till 2010. Thereafter, I obtained a fresh Quarrying Lease on 01.03.2010, which was valid till 29.02.2020. After obtaining the EC dated 11.07.2022, the answering Respondent is now preparing the mine closure plan for the previous lease granted and will apply for the fresh lease after the said mine closure plan is approved. Therefore, as on date, there is no mining activity undertaken in the subject lands.
4. I state that I have been carrying on mining activities in the subject lands since 1998 with requisite permissions. On 21.11.2019, I applied for Environmental Clearance via PARIVESH bearing Proposal No. SIA/KL/MIN/43053/2019, for commencing a granite building stone quarry in the subject lands.
5. Thereafter, my proposal was considered by the Respondent State Level Impact Assessment Authority conducted 8 hearings (108th, 111th, 113th, 114th, 115th, 118th, 125th, 126th) during which I was asked to submit various documents for their scrutiny and also make presentations. All of this was duly complied with by me and the same is evidenced by the Environmental




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Clearance No. 36/O/2022, granted to me on 11.07.2022, i.e. after a lapse of nearly 2 years from the date of my proposal.

6. I state that it was during this process, the Appellant herein filed a complaint with the 2nd Respondent and the same was duly considered by State Environmental Impact Assessment Authority ("**SEIAA**") during the 126th SEAC meeting held on 11.04.2022 - 13.04.2022. After due consideration, the 1st Appellant's complaint lacked veracity. The same has been stated by the 2nd Respondent when is issued the EC dated 11.07.2022 in favour of the 5th Respondent. The relevant portion is extracted hereunder:

"2. In the 126th SEAC meeting held on 11th to 13th April 2022. The committee examined the proposal, documents submitted the Field Inspection Report and the complaint received fro Ratheesh Karattu, Secretary, PuralimalaSamrakshana Samithi. The Committee observed that as per the existing norms there is no veracity in the complaint. The committee decided to recommend EC for Project life of 8 years subject to the following Specific Conditions in addition to General Conditions:"

(Emphasis supplied)

7. Therefore, the instant appeal is a re-agitating the same issue which has finality, as demonstrated above. There is no mention of the 126th meeting of the 2nd Respondent, during which the complaint of the Appellants was considered and rejected for lack of proof. The very same complaint is being re-agitated here without providing any cogent reasons as to why the rejection of the complaint by 2nd Respondent was bad in law or in facts. Further, the Appellants have not challenged this rejection of their complaint by the 2nd Respondent till date but have chosen to assail the EC dated 11.07.2022 after it has been granted for reasons best known to them.

Therefore, it is the Appellants who are guilty of suppression / concealment of information.

Cluster Situation:



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8. I state that the Appellants have misunderstood the law on when a certificate of cluster formation is required per the EIA Notification dated 15.01.2016. In this regard, the judgement dated 13.09.2018 of the National Green Tribunal, Principal Bench in O.A.No. 186/2016 *Satendra Pandey vs. MoEF&CC&Anris* relevant in as much as the EIA notification dated 15.01.2016 was challenged and the following finding was rendered:

"21. Dispensing with the requirement of Public Hearing which forms a part of the Public Consultation under Stage-III of the Environmental Clearance process under EIA Notification, 2006 for areas measuring 0 to 25 ha for individual mine areas and in cluster situation where public hearing has been provided, has resulted in gross dilution of EIA Notification dated 14th September, 2006. Such dilution would, in our O. A. No. 142/2022 Jayant Kumar Vs. MoEF&CC&Ors.view, result in its misuse by unscrupulous elements and the situation would revert back to the lawless state prevailing prior to the decision in the case of Deepak Kumar (supra). Stringent measures are, therefore, necessary if the rampant exploitation of the minor minerals is to be curbed. This apparently was also the view of the Hon'ble Supreme Court in the case of Deepak Kumar (supra).

22. For all these reasons, we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of Deepak Kumar (supra) by

(i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/ SIEAA as well as for cluster situation wherever it is not provided;

(ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA;

(iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance;



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(iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof;

(v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area;

(vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining.

23. We have permitted retention of 0-5 ha as a category keeping in view that some States grant isolated single lease of 5 ha and less not falling in cluster situation for which stringent requirements in Form-1M will serve the purpose of providing safeguards for protection of the environment and sustainable mining of minor minerals. This is particularly true in smaller and mountainous States as will also appear from condition no. 2 under "The Issues and Management of Mining in Cluster" referred to earlier in para 20 of this order."

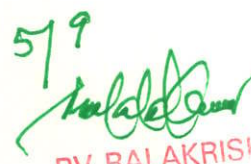
(Emphasis supplied)

Admittedly, the 5th Respondent's proposal is less than 5 ha, i.e. 1.4621 ha. Further, even if the adjacent quarries are taken into consideration, they do not exceed 5 ha as they account for only 2.9 ha., admittedly. Therefore, the requirement EIA/EMP of a cluster will not apply to the 5th Respondent. It is relevant to note that order dated 13.09.2018 itself states reiterates that the

retention of 0-5 ha as a category keeping in mind the requirement of smaller mountainous states and also states that Form 1M will suffice for this purpose.

In correct understanding and compliance with the law, the 5th Respondent has furnished its Form 1M and a certificate of the Geologist dated 17.07.2019.

Lack of accreditation of EIA consultant:

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10.It is submitted that the EIA Consultant of the 5th Respondent is "Global Environment and Mining Services", a duly accredited consultant by the National Accreditation Board for Education and Training of the Quality Council of India ("**QCI-NABET**") bearing no. NABET/EIA/1619/SA060. The same is borne out in the Application for Environmental Clearance made by the 5th Respondent and annexed to the instant appeal at pg.no.69. Therefore, the instant allegation is wholly baseless and is liable to be rejected without any further enquiry.

Appraisal:

11.It is submitted that the answering Respondent has furnished all the necessary information as sought for by the 2nd Respondent, specifically during the 113th and 115th meetings, in response to which the answering Respondent furnished letters dated 19.03.2020 and 26.06.2020. These letters contained the response to ADS query raised by the 2nd Respondent. Thereafter, a sub committee headed by Dr.R.Ajayakumar visited the answering Respondent's premises.

12.After submitting the requisite documents, it was determined by the 2nd Respondent that the project falls in moderate hazard zone and the reposndent in willing to take permission of the district level crisis management group headed by the DC before commencing mining activity and is willing to provide an affidavit for the same. Therefore, all the necessary appraisal has been conducted by the 2nd Respondent and there is no lacuna in the same.

Impact of Disaster Management Act and landslides:

13. It is submitted that 2nd Respondent, while granting the EC dated 11.07.2022 in favour of the answering Respondent has taken into consideration the issue of landslides prevalent and also that its occurrence has been increasing. In response to the same, the EC dated 11.07.2022 stipulates the following Additional Specific Condition on the 5th Respondent:



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"In the wake of occurrence of large scale landslides in the state, as per the information provided by the Department of Mining & Geology, it is directed to use only NONEL (Non Electrical) technology for blasting to reduce the vibration of the ground, which is one of causative factors that triggers landslides, formation of cracks in the surrounding buildings and disturbance to human and wildlife."

It is needless to mention that if the above specific condition is not complied with by the 5th Respondent, the EC would stand cancelled and hence the 5th Respondent is bound by the same. Therefore, allegations that landslide propensity was not taken into consideration while granting the EC dated 11.07.2022 lacks foundation.

The impact of minimum distance criteria of CPCB

14. It is submitted that the minimum distance of 200 meters, as mandated by the Central Pollution Control Board is pending consideration before the Hon'ble National Green Tribunal for fresh consideration, after the Supreme Court remanded the same after hearing a batch of appeals in this regard. Therefore, the requirement of 200 meters has not yet attained finality. It is submitted that the requirement was enhanced from 50meters to 200 meters unilaterally by the Central Pollution Control Board and upheld by the NGT. Upon appeal the Hon'ble Kerala High Court set aside the same. While disposing of the petitions, the court also made it clear that that its interim order that quarries during their valid period of licence or lease need not follow the 200-metre distance norm set by the NGT and these quarries need to maintain only the distance norms of 50 metres as contemplated in Kerala Minor Mineral Concession Rules would continue.

15. Thereafter, appeals were preferred before the Hon'ble Supreme Court, wherein vide order dated 25.10.2021, the aggrieved licensees were directed to canvass their case before the National Green Tribunal, Principal Bench
afresh.



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16. In furtherance to the above, the aggrieved licensees approached the National Green Tribunal, Principal Bench in O.A.No. 304/2019 and Ors. On 09.12.2021, the Principal Bench constituted a 7 member joint committee to furnish a report to the Principal Bench after conducting a study on the impact of blasting with NONEL Detonation technology at distances of 50m, 75m, 100m, 125m, 150m, 200m and 250m. However, as on date, the findings of the committee have not been filed with the Principal Bench yet. In view of the same, placing reliance on the Central Pollution Control Board rules is incorrect.

Subsequent independent studies:

17. It is submitted that the statement of the Appellant that the subject lands are ecologically sensitive is incorrect and is not supported by valid / accredited proof. It is submitted that the whole purpose of an EIA /EMP is to assess the nature of the lands sought to be excavated and the impact it would have. After such assessment, suitable prevention and rehabilitation measures are stipulated in the EC itself, which the project proponent is bound by, failing which the EC itself would stand cancelled.

18. It is submitted that the 1st Appellant had canvassed the very same grievance before the 2nd Respondent and the same was rendered meritless. This has not been challenged by the 1st Appellant before any court of law and has thus attained finality.

19. It is submitted that comparing the case of the 5th Respondent with that of another K.K.Surendran's quarry is wholly baseless. The facts and circumstances are different and cannot be compared with the case of the answering Respondent.

20. Thus, as demonstrated above, I state that the entire case foisted by the Appellants is entirely baseless and is seeking to reopen issues that have already attained finality. I state that I have complied with all the



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requirements as mandated by law for obtaining the EC and undertake to comply with the special and general conditions mentioned in EC.

For all the abovementioned reasons, it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the instant appeal and pass such further or other orders as it deems fit in the facts and circumstances of the case and thus render justice.

Dated at Kannur on this the 23rd day of February, 2023.


5TH RESPONDENT

VERIFICATION

I, K.K.Premkumar, son of K.K.Kunhiraman, aged about 60 years, having residence at Kolanthara House, Melmurigodi, Kannur, do hereby verify that the contents of paras 1 – 20 are true to the best of my personal knowledge and legal advice and that I have not concealed any material fact.


Dated at Kannur on this the 23rd day of February, 2023.


5TH RESPONDENT

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Literate deponent/executant solemnly
and signed before me on 23/2/23 at Kannur




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