

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE  
BENCH, CHENNAI**

**ORIGINAL APPLICATION NO. 77 of 2023**

**IN THE MATTER OF: -**

**T. Saravana Kumar**

**.... Applicant**

**Versus**

**State Level Environment Impact**

**Assessment Authority, Tamilnadu and Ors.**

**.... Respondent**

**COUNTER AFFIDAVIT FILED ON BEHALF OF STATE LEVEL  
ENVIRONMENT IMPACT ASSESSMENT AUTHORITY (SEIAA)**



Filed by:  
**G.M. SYED NURULLAH SHERIFF**  
**Senior Standing Counsel**  
**MoEF&Cc.**  
**Mob. No. 9444015330**  
**Counsel for Respondent no. 1**

**BEFORE THE NATIONAL GREEN TRIBUNAL,  
SOUTHERN ZONE, CHENNAI  
Original Application No. 77 of 2023 (SZ)**

**T. SARAVANAKUMAR,**  
S/o. Thangavel,  
Residing at No.6/121,  
Chinnathambipalayam, Kumaripalayam,  
Namakkal dt – 637015

... Applicant

Versus

**1. State Environment Impact Assessment  
Authority – Tamil Nadu,**  
Rep by its Member Secretary,  
3rd Floor, Panagal Maligai,  
No. 1, Jeenis Maligai,  
Saidapet Chennai – 15

**2. The Executive Engineer,**  
Public Works Department  
Mines and Monitoring Division,

... Respondents

**COUNTER AFFIDAVIT FILED BY THE FIRST RESPONDENT**

I, Deepak S. Bilgi, I.F.S., S/o Mr. Siddappa, aged about 44 years, working as Member Secretary, State Level Environment Impact Assessment Authority, Tamil Nadu (SEIAA-TN) having office at Third Floor, Panagal Building, Saidapet, Chennai - 600 015, solemnly affirm and sincerely state as follows:

1. I am filing this Counter Affidavit on behalf of the First Respondent/SEIAA - Tamil Nadu herein and as such I am well acquainted with the facts and the circumstances of the case from the records available in this office.
2. At the outset, I deny the averments and allegations stated in this original application except those that are specifically admitted hereunder and put the applicant to strict proof of the same.

3. It is submitted that, in exercise of the powers conferred under sub section 1 clause (v) of subsection (2) of section 3 of the Environment Protection Act, 1986 read with clause (d) of sub rule (3) of rule 5 of the Environment (Protection) Rules 1986, and in supersession of the earlier Environment Impact Assessment notification 1994, the Central Government issued EIA Notification 2006, wherein it directs that any new project or expansion of the existing project shall be undertaken in any part of India only after the prior Environmental Clearance from the Central Government or as the case may be, by the State Level Environmental Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the EP Act in accordance with the procedures laid down therein in the said Notification 2006.
4. As per Para 2 of the EIA Notification 2006, the projects or activities, listed therein in the Schedule appendix therein, shall require prior Environmental Clearance from the concerned regulatory authority i.e. The Central Government in the Ministry of Environment and Forest for matters falling under Category 'A' and at State level the State level Environmental Impact Assessment Authority for matters falling under Category 'B'.
5. It is submitted that, the State level Environmental Impact Assessment Authority herein referred to as the SEIAA shall be comprising of three members including a Chairman, a Member who are to be nominated by the State Government and a Member secretary. The Director, Department of Environment & Climate Change is the Member Secretary. The person who is an expert in the Environmental Impact Assessment Process shall be the chairman of the SEIAA. The Non-official member and the Chairman shall have a fixed term of three years. The SEIAA shall base its decision on the recommendations of State Expert Appraisal Committee has to be constituted for in the EIA 2006 Notification. The Expert Appraisal Committee shall screen, scope, appraise the projects to SEIAA for granting Environmental Clearance. Here the State Level Expert Appraisal Committee is doing the detailed

  
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scrutiny of the application and other documents like the Final EIA report submitted by the applicant. The Expert Appraisal Committee shall make the appraisal in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarification in person or through an authorized representative along with an EIA Co-Ordinator/Consultant. On conclusion of the proceeding, the Expert Appraisal Committee shall make categorical recommendations to the regulatory authority either for grant of prior Environmental Clearance or rejection of the application for prior Environmental Clearance.

6. It is submitted that the Expert Appraisal Committee shall consist of the professionals having experience of environmental quality, project management, Environmental Impact Assessment process, risk assessment, life science expertise in floral and faunal management, forestry and wild life and Environmental economics expertise. At present, SEAC Tamil Nadu is comprising of a Chairman, a Member Secretary and 12 Expert members with various field experiences. The chairman shall be a person with outstanding knowledge and experience in Environmental policy.
7. It is submitted that, the Environmental Clearances which are granted by the MoEF or SEIAA as the case may be, shall be challenged before the Hon'ble National Green Tribunal under the provisions of the National Green Tribunal Act 2010, if so aggrieved by such grant, as per the procedures laid down in the said Act of 2010.
8. It is submitted that the Environmental Clearance for the Sand quarry mentioned in this present Original Application was obtained from the State Environment Impact Assessment Authority constituted under subsection (3) of section 3 of the Environment (Protection) Act, 1986 by abiding all the rules and regulations.
9. It is submitted that, all the applications are processed by the State Environmental Impact Assessment Authority based on various reports and recommendation of the concerned District Collector and several levels of revenue officials i.e., Block Development Officer, Tahsildar,

  
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Revenue Divisional Officer, Assistant Executive Engineer, Public Works Department, Executive Engineer, TWAD Board and Assistant Director, Geology and Mining. The matter is examined by the State Expert Appraisal Committee (SEAC) which consists of several experts who make the recommendations after detailed analysis and it is only thereafter that the SEIAA issued the Environmental Clearance to quarry in the subject area of this original application.

10. It is respectfully submitted that; the project proponent, the Executive Engineer, PWD/WRD, who is the State Agency for Sand Mining has applied for Environmental Clearance vide Online Proposal No.SIA/TN/MIN/50278/2016, dated 23.02.2016 for sand quarrying S.F.No.643/1 (P) (Mile 77/2+150 to 77/5+150) in Cauvery River Bed, Oruvanthoor Village, Namakkal Taluk, Namakkal District, Tamil Nadu.
11. It is respectfully submitted that; the proposal was considered and examined by the SEAC based on the project documents furnished and the explanation made before the committee in its **79<sup>th</sup> Meeting** held on 08.08.2016. The SEAC has recommended for the grant of Environmental Clearance for the said sand quarry project, based on the scrutiny of relevant documents such as approved mining plan, Pre-feasibility reports and other supporting documents in detail. The SEAC appraised the subject project in detail and took into consideration the less pollution that is possible in these types of activities and after verification of the details furnished by the proponent subject to usual terms and conditions. The relevant conditions are as follows: -

- I. The quarrying activity shall be stopped if the entire quantity is quarried even before the expiry of the quarry lease period and the same shall be monitored by the District Authorities.
- II. It is the responsibility of the project proponent to maintain the village approach road in good condition usable by the public during the implementation of the project. On the completion of the project the village approach road should be in good condition.

- III. After restoration of the road, the proponent should submit the detailed report of the road maintenance Including cost along with photographs to SEAC within one month of the completion of the project.
  - IV. Base line studies to be conducted for the entire area.
  - V. Replenishment study to be carried out once in three years for the mined-out area.
  - VI. Around 2 km radius from the proposed area ground water study to be carried out through reputed research institution before, during and after mining to assess the ground water table.
12. Subsequently, the proposal was placed before the SEIAA in its **186<sup>th</sup> meeting** held on 10.08.2016 and based on the project documents furnished, the authority has recommended to issue environmental clearance for the said project under the provisions of Environment Impact Assessment Notification, 2006 subject to strict compliance of the terms and conditions. EC was issued to the proponent vide Lr.No. SEIAA-TN/F.No.5093/EC/1(a)/3524/2016 dated 10.08.2016.
13. It is further respectfully submitted that; Sand is a minor mineral, as defined under section 3(e) of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act). Section 15 of the MMDR Act empowers State Governments to make rules for regulating the grant of mineral concessions in respect of minor minerals and for purposes connected therewith. The regulation of grant of mineral concessions for minor minerals is, therefore, within the legislative and administrative domain of the state governments. Under the power granted to them by section 15 of the MMDR Act, State Governments have framed their own minor minerals concession rules.
14. Further, Section 23C of the MMDR Act, 1957 empowers State Governments to frame rules to prevent illegal mining, transportation and storage of mineral sand for purposes connected therewith. Control of illegal mining is, therefore, under the legislative and administrative

jurisdiction of state governments.

15. Accordingly Sub-rule (6) of Rule 36-A Tamil Nadu Minor Mineral Concession Rules makes conditional provisions for usage of Machineries in Sand Quarries.
16. And subsequent to its earlier G.O s, The Government of Tamilnadu issued a G.O Ms. No. 21 dated 02.06.2017, wherein it was directed that the PWD may approach SEIAA on case-to-case basis to permit more number of poclains for Sand quarries.
17. It is respectfully submitted that; the project proponent, citing the above G.O, The Executive Engineer, PWD/WRD had submitted a proposal for the issue of amendment for usage of more machines in the EC issued for the sand quarrying in River Cauvery over an extent of 16.18.0 ha at S.F.No.643/1(P), Oruvanthoor Village, Namakkal Taluk, Namakkal District, Tamil Nadu vide Lr. dated 26.07.2017. Consequently, the project proponent was addressed to furnish certain additional details vide Lr.No. SEIAA-TN/F.No.5093/2016 dated 27.07.2017. The proponent furnished the details vide letter dated 12.08.2017.
18. It is respectfully submitted that, the proposal received from the PWD were placed before the **93<sup>rd</sup> State Level Expert Appraisal Committee Meeting** held on 12<sup>th</sup> August, 2017. Based on the discussion with the PWD Engineers, the committee members concluded that more information and data was needed from the PWD to make a decision regarding the request for increase number of poclains. Accordingly, the committee directed the PWD to furnish the following data and information to the SEAC to consider the request of PWD. The data and information should be site specific and separately furnished for each quarry. The committee asked PWD to submit a comprehensive report detailing the following points;

I.

- a) The details of the location to cover land use and ecologically sensitive areas.

  
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- b) Details of wells in the vicinity, ground water tables and other surface water bodies in the vicinity.
- c) Thickness of Sand and its variation covering the entire area; similarly, the width of the sand bed.
- d) Agricultural land if any, surrounding the quarry site.
- e) The composition of sand and other minerals present in the river bed.
- f) Details of the river bed.

II. The list of quarries which were covered in the report of the constituted by the Government of Tamil Nadu, headed by Thiru. Rajesh Lakhoni, IAS.

III. Reclamation of the sand area after mining needs to be submitted.

IV. Justification for usage of more poclains in individual sand mining areas to be given.

V. Adequate safety measures in the quarrying area with respect to poclains to be deployed.

VI. Adequate plan for traffic management for the loaded vehicles passing through nearby habitation.

VII. The impact of dust pollution and noise on the habitations nearby.

19. Accordingly, PWD made a presentation on 12.08.2017 highlighting the mining project with emphasis on the information and data requested by the SEAC. A power point presentation of the quarries was made along with ecological features related to the mining projects. The PWD also submitted a report covering the ecological aspects in this regard.

20. Based on the presentation and the ecological profile, the SEAC recommended the following amendment with respect to the request of the PWD regarding the use of poclains in the mining projects.

Maximum number of poclains to be used was decided based on the quantity of sand in each of the quarries which was available to be mined. The number of poclains will have a bearing on number of total machineries that will be put on the site, the implications of the movement of the vehicles on river bed and river banks, physical features and the flora and fauna of the river bed and banks. Considering the above, the Committee formulated the following criteria in deciding the number of poclains:

- i. Upto one lakh m<sup>3</sup> sand yet to be mined - maximum 2 poclains
- ii. One - Two lakh m<sup>3</sup> sand yet to be mined-maximum 3 poclains
- iii. Two - Four lakh m<sup>3</sup> sand yet to be mined-maximum 4 poclains
- iv. Four - Seven lakh m<sup>3</sup> sand yet to be mined - maximum 5 poclains

So far as the sand quarry project at Oruvandhor Village, Namakkal District is concerned 360706 cu.m of sand was available to be mined. As per the above criteria, the maximum number of poclains permitted is 4 Nos.

**The above amendment is subject to the compliance of the following conditions by the PWD:**

1. Wherever irrigation channels take off from the river within the boundary of the mining project, the mining operation should not affect the flow of water in the irrigation channels.
2. The entire sand mining operation should be as per the guidelines for sustainable sand mining issued in 2016 by the MoEF & CC, GOI, New Delhi.
3. Around all the sand mining projects agricultural activities are seen. In addition, the surroundings present thick greeneries. The mining operation should not affect the greeneries and the agricultural activities.
4. It is reported that there are few habitations closer to the

Oruvandhor project but all of them are 400-500m away from the mining area. Also, there are 14 open wells and 7 bore wells closer to the mining area. The mining operation should not lead to depletion of ground water table and agricultural activities.

5. The approach road and loading of the sand in the vehicles, movement of the vehicle should be planned and implemented in such a way that there is no noise and dust pollution in the nearby habitation. We recommend that PWD should maintain at least a safe distance of 300m from the habitations while planning the approach road and the loading operation. Wherever necessary and near the habitation in particular dust suppression measures to be adopted. While the loaded vehicle moves on the road that should be fully covered with tarpaulin.

6. The pathway used by all machineries should be properly constructed and maintained by the PWD in order to avoid pollution.

7. The mining operation should be above the ground water table.

8. The conditions stipulated above need to be monitored and reviewed on fortnightly basis by the Taluk Level Task Force headed by Tahsildar. At least two representatives from reputed research organizations like NIT, Trichy, Anna University department, Trichy, Annamalai University and Bharathidasan University should be included in the task force. The committee should send the monthly monitoring report to SELAA which will be scrutinized by SEAC.

9. Adequate statutory manpower to be deployed for complying with the provisions to use heavy machineries as per Mines Safety Regulations (MCDR, 2017 & MMR, 1961).

21. It is respectfully submitted that; the proposal was thereafter placed in the **234<sup>th</sup> SEIAA Authority meeting** held on 21.08.2017 and the proposal was discussed in detail, the authority decided to defer the amendment for want of details about the court case in the High Court of Madras, Madurai Bench regarding restraint on sand mining in the stretch of Karur and Trichy. Subsequently, the proposal was placed in

the **235<sup>th</sup> SEIAA Authority meeting** held on 23.08.2017 and the authority decided to defer the project for the want of additional details. Consequent to the reply furnished by the proponent, the proposal was again placed in the **241<sup>st</sup> SEIAA Authority meeting** held on 09.10.2017. After a detailed discussion, the authority decided to recommend the proposal for the grant of Amendment to the EC already issued. Accordingly, the Amendment EC was issued to the proponent vide Lr.No. SEIAA-TN/F.No.5093/EC/1(a)/3524 (A)/2016-1 dated 09.10.2017.

**22.** It is respectfully submitted that; the project proponent, The Executive Engineer, PWD/WRD /Second Respondent, submitted an application for the extension of validity of earlier issued EC for sand quarrying over an extent of 16.18.0 ha in River Cauvery at S.F.No.643/1(P), Oruvanthoor Village, Namakkal Taluk, Namakkal District, Tamil Nadu vide Online proposal No.SIA/TN/MIN/28664/2017-1 dated 09.08.2018.

**23.** It is respectfully submitted that; the proposal was placed in this **284<sup>th</sup> SEAC Meeting** held on 10.06.2022. The project proponent gave detailed presentation. The details of the project furnished by the proponent are available in the website. (Parivesh.nic.in).

The SEAC noted the following:

- I. The Proponent, Executive Engineer, PWD/WRD. has applied for amendment in Environmental Clearance issued for the Sand quarry over an extent of 16.18.0 Ha in Cauvery River located at S.F.No. 643/1(P). Oruvandhoor Village, Namakkal Taluk, Namakkal District, Tamil Nadu.
- II. The project/activity is covered under category "B1" of Item 1(a) "Mining of Minerals Projects" of the schedule to the EIA Notification, 2006.
- III. Environmental Clearance was accorded vide Lr. No. SEIAA-TN/F.No. 5093/EC/1(a)/3524/2016, dated: 10.08.2016 and amendment vide Lr.No. SEIA A-

  
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TN/F.No.5093/EC/1(a)/3524(A)/2016, dated: 09.10.2017 for the quarrying of 360706 cu.m Sand.

IV. Now, the PP vide Lr No. DB/JDO3/2018 Dt. 09.8.2018 has stated the following "The total approved quantity of sand is 3.60.706m<sup>3</sup>. The quarry operations were started on 16.6.2017 and operated for only 8 days up to till date. The Public litigation case (WP.No.22433/2017) came to an end and court has given final verdict on 06.07.2018 to commence quarry operation under the supervision of 4-member monitoring committee under the head of project director sand quarrying operations.

As the environmental clearance period for which approval was granted ended on 09.08.2018 and only 3515m<sup>3</sup> quantity of sand was lifted in 8 days, the balance quantity of 3,57,191m<sup>3</sup> out of 3.60.706m<sup>3</sup> was available to be lifted further, the quantity lifted is measured as not even 1% of the approved quantity.

The PP also requested to grant extension of time for further period of two years for the EC that had been issued.

24. The proposal was placed in the 284<sup>th</sup> Meeting of SEAC held on 10.06.2022. Based on the presentation and documents furnished by the PP. SEAC noted that, as per the original mining plan the period of mining was restricted to two years and as per the modified mining plan (page 7), the remaining lease period was 1 year 1 month, hence the validity expired on (from 20.7.2017) 20.8.2018. SEAC, therefore, decided to obtain the following details from the PP for further deliberations,

1. The PP shall furnish revised/modified mining plan approved from competent Authority.

25. It is respectfully submitted that; the proponent submitted a representation vide letter dated 30.12.2022. based on the above representation made by the project proponent, the proposal was

subsequently placed in the **343<sup>rd</sup> SEAC Meeting** held on 05.01.2023. The PP furnished the District Collector's letter bearing Lr No. Rc. No. 1198/Mines/2015 Dt. 18.12.2022 wherein it is stated that, considering the exclusiveness of Rule 38(A) of the Tamil Nadu Minor Mineral Concession Rules 1959. conferring the right to exploit sand in the State shall vest with the State Government and the Govt. Department Public Works Department, WRO Mining & Monitoring Division they were requesting for extension of the permission period, which lapsed for reasons beyond their control. Considering the same, sanction was accorded for the revival of the lapse period of 1 year and 4 months from 07.11.2017 to 11.03.2019 and extended it from the date of resumption of quarrying work in the S.F.No.643/1(P) over an extent of 16.18.0 Ha (Cauvery River) in Oruvandhur Village. Mohanur Taluk of Namakkal district subject to the following conditions"....

- a. As per the Rule 41 of Tamil Nadu Minor Mineral Concession Rules 1959, a revised and Modified Mining plan for quarrying and removal of 3.57.191.14cbm of sand in a period of 1 year and 4 months.
- b. As per the Rule 42 of Tamil Nadu Minor Mineral Concession Rules 1959, necessary Environmental Clearance from SEIAA Chennai has to be submitted.
- c. Prior to start quarrying activities the consent of TNPCB on Air and Water (prevention) of pollution has to be submitted.
- d. As per the orders of the Hon'ble High Court of Madras dated 06.07.2018 In W.P.No.22433 of 2017 all the sand quarrying operations in the subject area to be oversee by a committee it was already constituted by the Hon'ble High Court of Madras.”

During the meeting, the proponent stated that he had requested for an automatic extension as per the MoEF & CC notification dated 12.04.2022 and O.M dated 13.12.2022 and hence requested for the same.

SEAC noted that as per O.M. Dated 13.12.2022, clarification on the amendment to EIA Notification, 2006 issued vide S.O. No. 1807(E)

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dated 12.04.2022 with regard to validity of Environment Clearance, para 2 (ii) states that....

"The Environment Clearances for which the project proponents have submitted the application for extension of validity as per the provisions of the EIA Notification 2006 as on the date of publication of Notification i.e., 12.04.2022 shall stand automatically extended to respective increased validity as mentioned at Para no. 1 column (C) above."

**Based on the presentation made by the proponent, the SEAC decided to confirm that the proposal was eligible for 'automatic extension to the respective increased validity' as per the aforementioned OM issued by the MOEF & CC.**

26. It is respectfully submitted that; the proposal was subsequently placed in the 588<sup>th</sup> SEIAA Meeting held on 01.02.2023. After detailed deliberations, SEIAA decided to grant extension of Environmental Clearance already issued, for the balance quantity of **3,57,191 m<sup>3</sup> of sand for the period of 1 year and 4 months from the date of execution**, subject to the following conditions:

A) The conditions imposed in EC vide Lr. No. SEIAA-TN/F.No.5093/EC/1(a)/3524/2016 Dated: 10.08.2016 remains unchanged and unaltered.

27. It is respectfully submitted that, subsequently the extension of validity of earlier EC was issued to the proponent vide Lr.No. SEIAA-TN/F.No.5093/EC/1(a)/3524 /2016/Extn/2022 dated 01.02.2023.

28. It is respectfully submitted that; Thiru. T. Saravanakumar, has filed an Original Application before the Hon'ble National Green Tribunal in Original Application No.77 of 2023 (SZ) praying for the following directions:

*I. "The 2<sup>nd</sup> respondent/The Executive Engineer, to carry on mining manually at SF. No.643/1(Part) (Mile 77/2+150 to 77/5+150), Oruvandhoor Village, Namakkal District,*

  
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*pursuant to the Environment Clearance dated 10.08.2016 extended by order dated 01.02.2023 issued by the 1<sup>st</sup> respondent/SEIAA-TN, in compliance with OM dated 24.12.2013.*

**II.** *Directing the 1<sup>st</sup> respondent/SEIAA-TN, to strictly comply with the OM dated 24.12.2013 in issuing environmental clearances for mining of minor minerals.”*

**29.** It is respectfully submitted that, in the above Original Application, the Hon'ble Tribunal was pleased to pass an Interim Order on 31.05.2023, the said Interim Order as follows:

*“...13. As per the Office Memorandum No.J-13012/12/2013-IA-II(I) dated 24.12.2013 which mandates only manual operation for 'B2' category, the 2<sup>nd</sup> respondent/The Executive Engineer shall operate manually. If the project proponent proposes to operate with the poclains, it is at liberty to do after obtaining the Environmental Clearance to 'B1' category.”*

**30.** It is respectfully submitted that the said Interim Order on 31.05.2023 was challenged before this Hon'ble Madras High Court in W.P. No. 17725 of 2023 by the PP wherein this Hon'ble Court in its order dated 23.06.2023 was pleased to modify the said Interim Order of the Hon'ble Tribunal and directed as follows:

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

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

*(ii) The learned Senior Counsel for the petitioner/The Executive Engineer as well as the learned Additional Solicitor General for the*

  
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second respondent TNSEIAA agreed that they will serve the copy of the counter affidavit to the first respondent/Thiru. T. Saravanakumar in advance on or before 28.06.2023.

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

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

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

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

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

31. It is respectfully submitted that; Subsequently, The Hon'ble National Green Tribunal, Southern Zone, Chennai on 05.07.2023 again passed an interim order which stated as follows:

**“...17. We are also of the opinion that it is open to the PWD to use the poclains for mining provided they obtain Environmental Clearance under ‘B1’ category which would strictly assess the environmental impact. The Environmental Impact Assessment is dispensed with in the ‘B2’ category only because it was allowed to do the manual mining. In such circumstances, we are of the opinion that**

*the argument of the PWD cannot be sustained and they cannot be permitted to use poclains contrary to the OM issued. Therefore, the PWD is directed to continue their mining only manually and it cannot operate the poclains. They are at [12] liberty to operate the mining with poclains provided they obtain the Environmental Clearance under 'B1' category".*

32. It is respectfully submitted that; aggrieved by the above order of the Hon'ble NGT (SZ), a Writ Petition No.21447 of 2023 was filed before the Hon'ble High Court of Madras by the P.W.D. and the Hon'ble High Court passed an interim order in the W.P. No.21447 of 2023 dated 20.07.2023 which stated as follows:

*"...4. However, Mr .T. Mohan, learned Senior counsel appearing for the 1<sup>st</sup> respondent, assisted by Mr .A. Yogeswaran, would submit that a Division Bench of this court in similar matters, had already taken a view that the usage of poclains in certain projects is to be prohibited and as such, the present writ petition involving the said issue, require consideration by a Larger Bench.*

*5. Inter alia, the argument raised by the learned Additional Advocate General appearing for the petitioner-PWD is that neither the Notification 2006 nor its subsequent amendments or the comprehensive sand mining guidelines, restrict usage of machinery in category B2 project of river sand mining and that the Honourable Supreme Court and this court on various occasions held that the Office memorandum/Guidelines is an administrative order and cannot have statutory force and it cannot supersede the Statutory Rules/Acts. 6. Taking note of the above arguments and the grounds raised in the Writ Petition, there shall be an order of interim stay as prayed for.*

*7. The first respondent is directed to file counter.*

*8. Post on 03.08.2023".*

33. It is respectfully submitted that; taking cognizance of the public Hon'ble

High Court in its their order dated 26.07.2002 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.(2D) 46 Industries (MMC-1) Department Dated 25-09-2002 constituted a six-member High Level Committee. The observations and conclusions of the High-Level Committee clearly indicated the emergent need for a framework for regulation of mining in the State in Public interest.

34. It is respectfully submitted that as a follow-up to which, the Industries Department of the State of Tamil Nadu issued G.O. Ms. No. 95 dated 01.10.2003 and the Government stopped the quarrying of sand in Poramboke Lands and in Private Patta lands by private agencies. It has been decided by the State that the sand quarrying will be undertaken only by the Government of Tamil Nadu. The said G.O.Ms.No.95 dated 01.10.2003 was challenged and upheld by the Hon'ble Madras High Court in (2004) 4 MLJ 418 (State of Tamil Nadu Vs. P. Krishnamurthy) and by the Hon'ble Supreme Court in (2006) 4 SCC 517 (State of T.N. and another Vs. P. Krishnamurthy and others) and since then sand quarry operations are allowed to be carried on only by the Public Works Department.
35. It is respectfully submitted that; the Government of Tamil Nadu brought an amendment in Tamil Nadu Mines and Minerals Concession Rules 1959 inserting Rule 38 (A) under which all existing leases for quarrying sand in Government lands and permissions / leases granted in ryotwari lands would cease to be effective on and from the date of coming into force of the Rule and the right to exploit sand in the State was to vest only with the State Government to the exclusion of others.
36. It is respectfully submitted that; the Government of Tamil Nadu vide its G.O. MS. No. 19 Industries (MMC 1)Department Dated: 19.04.2004 has amended the rule relating to use of machinery for quarrying of sand in river beds, with certain conditions which states that, 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".

37. It is respectfully submitted that; the Union of India brought Environmental Impact Assessment notification 2006. The mining leases and activities were categorized on the basis of the area of operation. Where the area exceeds 50 ha. they were categorized as A and where mining operation were conducted in lease area from 5 to 50 ha. were categories as B. The State Government was getting permission from the SEIAA for quarrying sand.

38. It is respectfully submitted that; in W.P.No.11182 of 2010 etc., (batch cases), High Court Petitioners inter alia raised important questions of public interest as to whether sand quarrying had been done well beyond the stipulated permission granted affecting the normal course of river, supply of water for irrigation and for drinking purposes and what are the remedial measures to ensure the scientific sand quarrying. And the Hon'ble Madurai Bench of Madras High Court in its order dated 2.12.2010, in para 86, the Hon'ble Court made General directions for sand quarrying operations in all the rivers in the State of Tamil Nadu. Among others in para 86(f) of the Judgment the Hon'ble Court made following directions,

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

39. It is respectfully submitted that; subsequently, in a review petition in M.P.No.1 of 2011 in the above said case by the order dated 10.1.2011, the Hon'ble Court modified the directions in Paragraph 86(f) granting

permission for use of not more than "two poclains" in each of the quarry sites. It was further directed that, the poclains shall not be used after 7.00 P.M. and before 6.00 A.M. Accordingly, Government also issued G.O. (D) No. 67, Industries (MMC-I) Department, dated 11.03.2011 directing the District Collectors to impose conditions restricting judicious use of minimum number of poclains and not more than two poclains in each of the quarry sites (other than Palar and Tamiraparani rivers).

40. It is respectfully submitted that; the Government of India issued an Office Memorandum on 18.05.2012 clarifying that 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 & CC and following the procedure prescribed under EIA Notification, 2006.
41. It is respectfully submitted that; further, the MoEF & CC issued guidelines on 24.12.2013 further categorizing the category B projects into B1 and B2. The projects categorized as B1 required an EIA report for appraisal and to undergo Public Consultation process whereas the category B2 did not require the Public Consultation process and were to be appraised on the basis of the application accompanied by the pre-feasibility report. The Office Memorandum with regard to the Sand mining and mining of minor minerals reads as follows:

*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.*

  
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- (c) *For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone shall be worked out on case-to-case basis to the satisfaction of SEAC/SEIAA, taking into account the structural parameters, locational aspects, flow rate, etc., and no mining shall be carried out in the safety zone so worked out.*
- (d) *No in stream mining shall be allowed*
- (e) *The mining plan approved by the authorized agency of the State Government shall inter-alia include study to show that the annual replenishment of sand in the mining lease area is sufficient to sustain the mining operations at levels prescribed in the mining plan and that the transport infrastructure is adequate to transport the mines material. In case of transportation by road, the transport vehicles will be covered with taurpoline to minimize dust/sand particle emissions.*
- (f) *EC will be valid for mine lease period subject to a ceiling of 5 years*

42. It is respectfully submitted that; it is further pertinent to mention that, the Hon'ble Principal Bench of National Green Tribunal, New Delhi in Original Application No. 123 of 2014 and M.A. No. 419 of 2014 has observed the following in para 83 of the order:

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

- I. *For the reasons afore recorded, we hold and declare that the Notification dated 9th September, 2013 is invalid and inoperative for non-compliance of the statutorily prescribed*

  
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*procedure under the Environment (Protection) Rules, 1986 and for absence of any justifiable reason for dispensation of such procedure.*

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

*III. All the Office Memorandums and Notifications issued by MoEF i.e., 1st December, 2009, 18th May, 2012 and 24th June, 2013 and 24th December, 2013(except to the extent afore-stated) are operative and would apply to the lease mine holders irrespective of the fact that whether the area involved is more or less than 5 hectares.*

*XII. In the meanwhile, no State shall permit carrying on of sand mining or minor mineral extraction on riverbed or otherwise without the concerned person obtaining Environmental Clearance from the competent authority.*

*XIII. We direct the Ministry of Environment and Forest to issue comprehensive but self-contained Notification relating to all minor mineral activity on the riverbed or otherwise, to avoid unnecessary confusion, ambiguities and practical difficulties in implementation of the environmental laws.*

43. It is respectfully submitted that; complying the above NGT order, in consultation with various states and stake holders, the Ministry of Environment, Forest and Climate Change, has issued Sustainable Sand Mining Management Guidelines, 2016, which, inter-alia, addresses the issues relating to regulation of sand mining. And On 15.01.2016 the MoEF & CC issued the following Notification for Amendment in EIA notification 2006 with respect to mining of minor minerals including sand mining and others. Wherein requirements on Environmental Clearance of Minor Minerals including cluster situation have been categorized as follow,

Schematic Presentation of Requirements on Environmental Clearance of  
Minor Minerals including cluster situation

Area of Lease (Hectare)	Category of Project	Requirement of EIA/EMP	Requirement of Public Hearing	Requirement of EC	Who can prepare EIA/ EMP	Who will apply for EC	Authority to appraise/ grant EC	Authority to monitor EC compliance
<b>EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease</b>								
0 – 5 ha	'B2'	Form – 1M, PFR and Approved Mine Plan	No	Yes	Project Propone nt	Project Propone nt	DEAC/ DEIAA	DEIAA, SEIAA, SPCB, CPCB, MoEF & CC Agency
> 5 ha and < 25 ha	'B2'	Form – I, PFR and Approved Mine Plan and EMP	No	Yes	Project Propone nt	Project Propone nt	SEAC / SEIAA	nominated by MoEF & CC
≥ 25ha and < 50ha	'B1'	Yes	Yes	Yes	Project Propone nt	Project Propone nt	SEAC/ SEIAA	
≥ 50 ha	'A'	Yes	Yes	Yes	Project Propone nt	Project Propone nt	EAC/ MoEF & CC	
<b>EC Proposal of Sand Mining and other Minor Mineral Mining in cluster situation</b>								
Cluster area of mine leases up to 5 ha	'B2'	Form – 1M, PFR and Approved	No	Yes	State, State Agency, Group of Project Propone nts,	Project Propone nt	DEAC/ DEIAA	DEIAA, SEIAA, SPCB, CPCB, MoEF & CC Agency

  
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		Mine Plan			Project Propone nt			nominate d by MoEF & CC
<b>Cluster area of Mine leases &gt; 5 ha and &lt; 25 ha with no individual lease &gt; 5 ha</b>	<b>'B2'</b>	Form – I, PFR and Approved Mine Plan and one EMP for all leases in the Cluster	No	Yes	State, State Agency, Group of Project Propone nts, Project Propone nt	Project Propone nt	DEAC/ DEIAA	
<b>Cluster of mine leases of area <math>\geq</math> 25 hectares with individual lease size &lt; 50ha Cluster of any size with any of the individual</b>	<b>'B1'</b>	Yes	Yes	Yes	State, State Agency, Group of Project Propone nts, Project Propone nt	Project Propone nt	SEAC/ SEIAA	
<b>lease <math>\geq</math> 50ha</b>	<b>'A'</b>	Yes	Yes	Yes	State, State Agency, Group of Project Propone nts, Project	Project Propone nt	EAC/ MoEF & CC	

					Propone nt			
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Subsequently, on 14.08.2018 the MoEF & CC issued another Notification in which the requirements on Environmental Clearance of Minor Minerals have been modified as stated in the Schematic presentation below,

Area of Lease (Hectare)	Category of Project	Requirement of EIA/EMP	Requirement of Public Hearing	Requirement of EC	Who can prepare EIA/ EMP	Who will apply for EC	Authority to appraise/ grant EC	Authority to monitor EC compliance
<b>EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease</b>								
0 - 5 ha	'B2'	Form - 1M, PFR and Approved Mine Plan	No	Yes	Project Proponent	Project Proponent	DEAC/ DEIAA	DEIAA, SEIAA, SPCB, CPCB, MoEF & CC Agency
2 > 5 ha and < 25 ha	'B2'	Form -I, PFR and Approved Mine Plan and EMP	No	Yes	Project Proponent	Project Proponent	SEAC / SEIAA	nominated by MoEF & CC
≥ 25ha and < 100ha	'B1'	Yes	Yes	Yes	Project Proponent	Project Proponent	SEAC/ SEIAA	
≥ 100 ha	'A'	Yes	Yes	Yes	Project Proponent	Project Proponent	EAC/ MoEF & CC	

44. It is respectfully submitted that; as per the above MoEF & CC notifications dated 15.01.2016 and 14.02.2018, the projects are categorised based on the extent of the area of mining and not based on the method of mining.

  
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45. It is respectfully submitted that; the Hon'ble Tribunal, The MoEF & CC while revising the requirements for environmental clearance for minor minerals, had categorized the Mining leases with respect to the extent of the area of mining only and not based on the method of mining. However, in the column mentioned against the Requirement of EIA and EMP in the notifications dated 15.01.2016 and 14.08.2018 stated in the foregoing paragraphs, the notification makes provisions for operating the mines as per the approved mining plan as stated in Column 3 above. The method of mining should be appraised before the Environmental Clearance issuing authority through the mining plan and the authority has to decide the method of mining i.e., either manual or mechanized or semi mechanized mining. It is respectfully submitted that the present Environmental Clearance was issued based on the Notifications and Sand Mining Guidelines issued by the MoEF & CC from time to time.

46. It is respectfully submitted that; the General Conditions of The Sustainable Sand Mining Guidelines 2016 issued by MoEF & CC, Govt. of India in consultation with various states mentions as follows

*'Depending upon the location, thickness of sand deposition, agricultural land/river bed, the method of mining may be manual, semi mechanised or mechanised. However, manual method of mining shall be preferred over any other method'.*

47. It is respectfully submitted that; Further, in the sand mining guidelines 2016 issued by MoEF & CC in Appendix: Table 5 Common Method and Practice of Sand Mining in State / UT

11	Tamil Nadu	Manual mining is carried out in certain quarries. In most of the sand quarries two poclains are used by the PWD.
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In Appendix: Table 6 SUGGESTIONS / RECOMMENDATIONS FROM

STATES / UTs FOR ENVIRONMENTALLY SUSTAINABLE SAND MINING

16	Tamil Nadu	1. Excess sand deposits identified in the flood plains and in-stream areas only to be mined in order to safeguard and maintain ground water table.
		2. Sand mining operation has to be carried out between 6 am to 7 pm.
		3. Mining operation should be carried out in a systematic manner without affecting environment and ecology of the area.

In Appendix: Table 7 BEST PRACTICE OF SAND MINING ADOPTED IN DISTRICT / STATE / UT

06	Tamil Nadu	Permission has been granted in favour of PWD for quarrying sand in the river Poramboke lands in 16 districts in the state of Tamil Nadu. Sand mining is being carried out by the PWD in the entire State
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In Appendix Table 8 STATUS OF PROMULGATION OF RULE ON SAND MINING IN THE STATE / UT

12	Tamil Nadu	1. As per G.O. Ms. No. 95 Industries (MMCI) Department dated 1.10.2003, a new Rule 38 A has been introduced in the Tamil Nadu Minor Mineral Concession Rules, 1959. Accordingly quarrying and sale of sand is being carried out by PWD in the state of Tamil Nadu since October 2003. 2. As per G.O. Ms. No. 158 Industries (MMIC) Department dated 25.08.2008, a new Rule 38 B has been introduced in the Tamil Nadu Minor Mineral Concession Rules, 1959. Accordingly transportation of sand outside the state not to be made. To regulate storage and transportation of sand a new Rule 38 C B has been introduced in the Tamil Nadu Minor Mineral Concession Rules, 1959 vide G.O. No. 32 Industries (MMIC) Department dated 11.02.2011.
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48. Hence, Ministry of Environment, Forest & Climate Change (MoEF&cc) has taken note of the common practices followed in various states in the case of sand mining and subsequently has acknowledged the use of

  
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poiclains in the state of Tamil Nadu.

49. It is respectfully submitted that the Hon'ble Principal Bench of National Green Tribunal, New Delhi in Original Application No. 123 of 2014 and M.A. No. 419 of 2014 has directed the Ministry of Environment and Forest to issue comprehensive but self-contained Notification relating to all minor mineral activity on the riverbed or otherwise, to avoid unnecessary confusion, ambiguities and practical difficulties in implementation of the environmental laws. Subsequently, Notification vide S.O.141 (E) on 15.01.2016 and S.O.3977(E) on 14.08.2018 was issued. The above Notification deals with the categorization of category B projects into B1 and B2 based on the area of lease and is silent about the method of excavation to be carried out. Further, the notification states the necessary document required for B2 category project is Form -1M, PFR, DSR and Approved Mine Plan. Hence, in accordance with the Sand Mining Guidelines 2016 and subsequent notifications issued by MoEF&CC, Environmental Clearance had been issued to PWD of the Government of Tamilnadu to quarry sand in river beds.
50. It is respectfully submitted that; subsequently SEAC in its 90<sup>th</sup> meeting held on 06.06.2017 suggested to fix number of poiclains based on the quantity of the sand to be mined out as per the mining plan.
51. It is humbly submitted that; the sustained hearings in Hon'ble Supreme Court and Hon'ble NGT have resulted in first Sustainable Sand Mining Policy draft 2016 and then formation of Sustainable Sand Mining Guidelines 2016. Subsequently, Ministry of Environment, Forest and Climate Change has issued Sustainable Sand Mining Management Guidelines, 2016, which, inter-alia, addresses the issues relating to

regulation of sand mining.

52. It is respectfully submitted that, The Sustainable Sand Mining Guidelines 2016 which is the latest guidelines regarding sand mining, makes it clear that there is no blanket ban on the usage of machineries across the country and it is State specific and site specific and there is no Statutory Orders /Notifications prohibiting machineries in sand quarries pan India.

53. It is respectfully submitted that; the Office Memorandum dated 24.12.2013 is a Comprehensive Guidelines for Environmental Clearance for all Sectors, however, the Sustainable Sand Mining Guidelines 2016 issued by the MOEF & CC is a *self-contained guidelines relating to all minor mineral activity on the Riverbed* which was issued in compliance with Hon'ble Principal Bench of National Green Tribunal, New Delhi in Original Application No. 123 of 2014 and M.A. No. 419 of 2014 the dated 13<sup>th</sup> January 2015 and hence the Sand Mining Guidelines 2016 prevails over the guidelines dated 24.12.2013 in the case of the current subject.

54. It is further humbly submitted that; the latest Office Memorandum dated 12.07.2023 issued by MoEF & CC states that the exemption from EC provided vide S.O. 1224 (E) dated 28.03.2020 for dredging and desilting of dams, reservoirs, weirs, barrages, river and canals shall be subject to Environmental Safeguards as proposed in the National Framework for Sediment Management (copy enclosed) issued by the Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation.

It is further humbly submitted that; in Annexure II (Page No.22)

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(Approach for Sediment Management of Rivers) of National Framework for Sediment Management issued by Ministry of Jal Shakti Department of Water Resources, River Development & Ganga Rejuvenation states that;

The following sediments management practices may be adopted in the Upper Course,

*g. Boulder/Gravel/ Sand Mining- In the upper course, boulder, gravels and sand (course & fine) are deposited in the river. If these are mined at this stage and used for construction purpose, then Boulder/ Gravel/sand mining can be done strictly as per following guidelines.*

*i. "Sustainable Sand Mining Management Guidelines – 2016" of MoEF & CC. (Para 42)*

*ii. "Sand Mining Framework" released by Ministry of Mines in March, 2018.*

*iii. GSI Guidelines for riverbed gravel/ sand mining.*

*Similarly, the management practice prescribed for the Middle course is as follow,*

*c. Sand Mining - In this stage, sand is deposited in the river. If these are mined at this stage and used for construction or other purposes, then a major portion of sediment can be reduced. Sand mining can be done as per the guidelines mentioned above.*

In view of the latest Office Memorandum dated 12.07.2023 issued by MoEF&CC, it shall be ascertained that even though the desilting activity is exempted from the EC and it was directed to follow "Sustainable Sand Mining Management Guidelines – 2016" which does not insist specific method of mining.

55. It is respectfully submitted that this respondent has acted strictly in accordance with the *Sustainable Sand Mining Management Guidelines – 2016 (Para 42)* and other applicable Laws, Rules and Regulations while considering and granting Environmental Clearance.

  
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It is therefore humbly prayed that this Hon'ble National Green Tribunal, Southern Zone may be pleased to take on record the above-mentioned facts and pass appropriate orders as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case and thus render justice.

Solemnly affirmed at Chennai  
On this 18<sup>th</sup> day of August 2023  
& Signed his name in my presence.

  
**FOR FISRT RESPONDENT**  
Member Secretary, SEIAA-TN

**Member Secretary**  
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**BEFORE ME**  
Attested Officer

**Assistant Environmental Engineer**  
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