

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

APPEAL NO. 80 of 2022

IN THE MATTER OF: -

**Anaithu Vivasaykalin Kanimavala, Neervalu,
Sutrusoolal Padhukapu Sangam,
Virudhunagar District & Anr.**

.... Applicant

Versus

**The Secretary, MOEF & CC,
New Delhi & Ors.**

.... Respondent

**ADDITIONAL COUNTER AFFIDAVIT FILED ON BEHALF OF THE
STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY,
TAMILNADU**



Filed by:
G.M. SYED NURULLAH SHERIFF
Senior Standing Counsel
MoEF&Cc.
Mob. No. 9444015330
Counsel for Respondent no.3

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

Appeal No. 80 of 2022

1. **Anaithu Viyasaykalin Kanimavala,
Neervalu, Sutrusoolal Padhukapu Iyakkam**
Registration No. 108/2021,
Represented by its President,
M.S. Thirumalai,
Door No.2/184, Chinna Kaliamman Kovil Street,
Pisindi Village, Kariyapatti Taluk,
Virudhunagar District.
2. **Nenmeni Panchayat,**
Sattur Taluk, Virudhunagar District,
Represented by its President,
Mrs. S. Velammal,
W/o. Sakthivel,
Nenmeni, Sattur Taluk,
Virudhunagar District.

.....Appellants

/Versus/

1. **The Secretary**
Government of India,
Ministry of Environment, Forest and Climate Change,
Paryavaran Bhavan, CGO Complex, Lodhi Road,
New Delhi – 110003.
2. **The Secretary to Government,**
Department of Environment, Climate Change & Forest Department,
Government of Tamil Nadu, Fort George,
Chennai – 600009.
3. **The Member Secretary,**
State Level Environment Impact Assessment Authority,
Tamilnadu, Third Floor, Panagal Maligai,
No.1, Jeenis Road, Saidapet, Chennai- 600015.
4. **The Executive Engineer,**
PWD, WRO, MMD,
Tallakulam, Madurai – 625002.

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5. The District Collector,
Virudhunagar District,
Virudhunagar.

.....Respondents

**ADDITIONAL AFFIDAVIT FILED ON BEHALF OF SEIAA- Tamilnadu, THE
THIRD RESPONDENT**

I, Deepak S. Bilgi, I.F.S., S/o Mr. Siddappa, aged about 43 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 additional affidavit on behalf of the third Respondent/SEIAA-TN 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 appeal except those that are specifically admitted hereunder and put the applicant to strict proof of the same.
3. It is respectfully submitted that; taking cognizance of the indiscriminate quarrying in the river systems of Tamil Nadu in a public interest litigation in C.A. No. 561/2001 in WP No. 985/2000, the Hon'ble High Court in their order dated 26.7.2002 had directed the State Government to constitute an Expert Committee consisting of geologist, environmentalist and scientists to study the river and river beds in the State with reference to the impact of sand quarrying. Accordingly, the Government in the G.O.(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.
4. It is respectfully submitted that; 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

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was decided 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 has been upheld by the Hon'ble Madras High Court in (2004) 4 MLJ 418 (State of Tamil Nadu Vs. P. Krishnanmurthy) 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 being carried in a skillful and scientific manner under the supervision of Public Works Department.

5. 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 with the State Government to the exclusion of others.
6. 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, in view of the demand from the public and also to cater to the need of fullest demands of end users on time, the Government decided to amend 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".
7. 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 operations. 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. It is pertinent to mention here that all the cases which are covered in the instant Special Leave Petition fall under category "B" project. The State Government was getting permission from the SEIAA for quarrying sand.

8. It is respectfully submitted that; in W.P.No.11182 of 2010 etc., (batch cases), Writ Petitioners inter alia raise 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 poclain 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."

9. It is respectfully submitted that; subsequently, a review petition was filed in M.P.No.1 of 2011 in the above said case. By considering the difficulties expressed by the Government in ensuring availability of sand quarry rivers at affordable cost, by the order dated 10.1.2011, the Hon'ble Court modified the directions in Paragraph 86(f) granting permission for use of minimum poclains 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).
10. 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 MoEFCC and following the procedure prescribed under EIA Notification, 2006.

11. It is respectfully submitted that; further, the MoEFCC 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.*
- (c) For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone shall be worked out on case-to-case basis to the satisfaction of SEAC/SEIAA, taking into account the structural parameters, locational aspects, flow rate, etc., and no mining shall be carried out in the safety zone so worked out.*
- (d) No in stream mining shall be allowed*
- (e) The mining plan approved by the authorized agency of the State Government shall inter-alia include study to show that the annual replenishment of sand in the mining lease area is sufficient to sustain the mining operations at levels*

prescribed in the mining plan and that the transport infrastructure is adequate to transport the mines material. In case of transportation by road, the transport vehicles will be covered with tarpoline to minimize dust/sand particle emissions.

(f) EC will be valid for mine lease period subject to a ceiling of 5 years

12. 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 orders in para 83 as follows,

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 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.

13. It is respectfully submitted that; the MoEFCC has issued various guidelines in consultation with all State Governments and Union Territories. On 15.01.2016 the MoEFCC 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
EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease								
0 – 5 ha	'B2'	Form – 1M, PFR and Approv	No	Yes	Project Proponent	Project PropONENT	DEAC/ DEIAA	DEIAA, SEIAA, SPCB, CPCB,

		ed Mine Plan						MoEFCC Agency
> 5 ha and < 25 ha	'B2'	Form – I, PFR and Approved Mine Plan and EMP	No	Yes	Project Proponent	Project Propone nt	SEAC / SEIAA	nominate d by MoEFCC
≥ 25ha and < 50ha	'B1'	Yes	Yes	Yes	Project Proponen t	Project Propone nt	SEAC/ SEIAA	
≥ 50 ha	'A'	Yes	Yes	Yes	Project Proponen t	Project Propone nt	EAC/ MoEFC C	
EC Proposal of Sand Mining and other Minor Mineral Mining in cluster situation								
Cluster area of mine leases up to 5 ha	'B2'	Form – 1M, PFR and Approved Mine Plan	No	Yes	State, State Agency, Group of Project Proponen ts, Project Proponen t	Project Propone nt	DEAC/ DEIAA	DEIAA, SEIAA, SPCB, CPCB, MoEFCC Agency nominate d by MoEFCC
Cluster area of Mine leases > 5 ha and < 25 ha with no individual lease > 5 ha	'B2'	Form – I, PFR and Approved Mine Plan and one EMP for all	No	Yes	State, State Agency, Group of Project Proponen ts, Project Proponen t	Project Propone nt	DEAC/ DEIAA	


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		leases in the Cluster						
Cluster of mine leases of area ≥ 25 hectares with individual lease size < 50ha Cluster of any size with any of the individual	'B1'	Yes	Yes	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	SEAC/SEIAA	
lease ≥ 50ha	'A'	Yes	Yes	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	EAC/MoEFC C	

Subsequently, on 14.08.2018 the MoEFCC 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
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EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease								
0 – 5 ha	'B2'	Form – 1M, PFR and Approved Mine Plan	No	Yes	Project Proponent	Project Propone nt	DEAC/ DEIAA	DEIAA, SEIAA, SPCB, CPCB, MoEFCC Agency
> 5 ha and < 25 ha	'B2'	Form – I, PFR and Approved Mine Plan and EMP	No	Yes	Project Proponent	Project Propone nt	SEAC / SEIAA	nominated by MoEFCC
≥ 25ha and < 100ha	'B1'	Yes	Yes	Yes	Project Proponent	Project Propone nt	SEAC/ SEIAA	
≥ 100 ha	'A'	Yes	Yes	Yes	Project Proponent	Project Propone nt	EAC/ MoEFC C	

14. It is respectfully submitted that; Anaithu Vivasaykalin Kanimavala, Neervalu, Sutrusoolal Padhukappu Sangam has filed an appeal in National Green Tribunal Southern Zone in Appeal no. 80 of 2022 (SZ) to grant an order of injunction for restraining respondents from running the Nenmeni Sand Quarry in Nenmeni Village of Virudhunagar District. The Tribunal directed that,

“It is to be noted that despite the said amendment of deleting Clause No.68, the Environmental Clearance continues under the „B2 - Category“. It is very well clear that when the sand mining is committed to be done with the machinery, automatically it will


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fall under, B1 - Category" which would require the public hearing, replenishment study and also the EIA Study. 4. Without following the above procedure, the SEIAA – Tamil Nadu has hurriedly given the amendment by deleting the condition of „manual excavation“, which according to us, it is a violation of the office memorandum, statutory orders and the EIA Guidelines and granted an order of injunction to stay the operations of the sand quarrying activities.”

15. It is respectfully submitted that; the Hon'ble Tribunal only relied upon the Office Memorandum issued by the MoEFCC on 24.12.2013. The MoEFCC while revising the requirements for environmental clearance for minor minerals, had categorized the Mining leases with respect to the extent 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 mine 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 ie., either manual or mechanized or semi mechanized mining. The present Environmental Clearance were issued based on the Notifications and Sand Mining Guidelines issued by the MoEFCC from time to time.

16. It is respectfully submitted that; the sustainable sand mining guidelines 2016 issued by MoEFCC, 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'.

17. 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


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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.
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		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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Hence, 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 poclains in the state of Tamil Nadu.

18. It is respectfully submitted that; in the light of the above facts, hereby it shall be noted 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. 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 to quarry sand in riverbed.

19. It is respectfully submitted that; accordingly, the industries (MMC.1) Department in its order vide G.O.(2D) No.21 dated 02.06.2017, the Government of Tamil Nadu has directed the PWD to move to the SEIAA on case-to-case basis to seek permission for engaging more no. of poclains for usage of sand quarries.


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20. It is respectfully submitted that; subsequently SEAC in its 90th meeting held on 06.06.2017 suggested to fix number of poclains based on the quantity of the sand to be mined out as per the mining plan.

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

Solemnly affirmed at Chennai
On this day of May 2023
& Signed his name in my presence.




FOR THIRD RESPONDENT
Member Secretary, SEIAA-TN

Member Secretary
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BEFORE ME
Attested Officer

Assistant Environmental Engineer
State Level Environment Impact Assessment Authority-Tamilnadu
Third Floor, Panagal Maligai
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