

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
Southern Zonal Bench, Chennai**

Appl No: 88 of 2017

George Isaac

... Applicant

Vs.

**Ministry of
Environment
& 5 others**

... Respondents

ARGUMENT NOTES FILED BY COUNSEL FOR THE 6TH RESPONDENT

**Counsel for 6th respondent
Millu Dandapani
Rahul Kandampully**

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Dated this the 15th day of August 2020.


Counsel for 6th respondent

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... Respondents

ARGUMENT NOTES FILED BY COUNSEL FOR THE 6TH RESPONDENT

1. It is submitted that this Hon'ble Tribunal was pleased to direct this respondent and all other parties in the above appeal to file a written argument note within one week of from the final hearing of the appeal, which was on 27.07.2021. Accordingly, the argument note is submitted hereunder and it is prayed that the same maybe taken on record and appropriate orders maybe passed dismissing the above appeal as prayed for by the 6th respondent.
2. The above appeal has been preferred by the applicant challenging the issuance of Annexure A1 Environment Clearance granted to the 6th respondent by the 2nd respondent. The 6th respondent has prayed for setting aside A1 Environment Clearance raising the contention that the 6th respondent is a violator of the EIA notification, 2006.
3. It is submitted that this respondent has been running a quarry since the year 1970 much before the EIA Notification, 2006 came into effect. making it one of the oldest quarries in the region. In the 1970's the system followed was called Advance Royalty System where the 3rd respondent used to issue permits to the 6th respondent for a specific quantity to be mined upon with the payment of an advance amount. Upon expiration of the said quantity, fresh advance amount had to be given for obtaining further mining permit. This system was followed by the 3rd respondent until the year 1985 from when it was required that a Lease Agreement be entered into for the purpose of mining.

4. Annexure R6(a) is the first leasing Agreement issued by the Government of India to this Respondent on 29/06/1985. The lease granted to this respondent in the year 1985 and the same has been consistently renewed since then. The lease was first renewed on 12/08/1998. After the expiry of that lease in 1998, this respondent renewed the lease for another 11 years. At that time, the EIA notification 1994 had come into effect. However, this respondent came within the ambit of an exemption under the notification, which stated that minor mineral mines which had started its operation prior to 1994 and which had also obtained a No Objection Certificate from the State Pollution Control Board would be exempted from obtaining an Environment Clearance (hereinafter referred to as "EC") for its operations. This respondent had obtained a No objection Certificate from the 5th respondent at that time, and hence did not require the EC for its operations.
5. Later on, the Government renewed the lease for a further 12 years which is borne out by the government order dated and is marked as Annexure R6(c). The renewal lease was for a further period of 12 years from 11.05.2009. At the time of the said renewal, the only requirement sought by the State Government was a license to be obtained from the 3rd respondent for its operations, the same was duly obtained by this respondent. The State Government nor any other authorities intimated or sought any EC from this respondent before the renewal of the said lease. The renewal lease was granted to this respondent, after duly verifying all other conditions as well as compliance of the terms and conditions of the license obtained from the 3rd respondent. It is pertinent to note here that, at the time of issuing license, the 3rd respondent had also not sought EC. It is submitted that this respondent has been operating the quarry since its inception with all due permissions and licenses from the Government. There has been no period since the inception of the quarry, that it has functioned illegally or without governmental permission.
6. It was in the year 2014, when this respondent attained knowledge about the EIA notification 2006 and about the EC that is prescribed there under, this respondent approached the 2nd respondent and applied for EC. The respondent applied by submitting Annexure A4 application with a pre-feasibility report for EC. Annexure A4 application of this respondent clearly indicates that this respondent has not concealed any material facts regarding the operation of the quarry while applying for the EC. This respondent has stated that the quarry has been functioning for 40 years in the application. After the submission of the

application the 2nd respondent had conducted inspections at the quarry of this respondent, and evaluated the circumstances with all material facts on record. The 2nd respondent had also deliberated the application of this respondent with the inspection reports in its meeting and has thereafter come to a conclusion regarding the grant of the application. The same is borne out by Annexure A8. It is submitted that there has been no deliberate or willful concealment on the part of this respondent while applying for the EC. This respondent had approached the 2nd respondent disclosing that the quarry has been running since 1985, and subsequently the lease for the quarry has been renewed since then. It was after thorough consideration of all the above facts that the 2nd respondent issued EC to this respondent.

7. Thereafter in the year 2017, W.P.(C) No. 24337 of 2017 was filed before the Hon'ble High Court of Kerala with the grievance that several granite quarries were functioning in the state of Kerala without EC. In the said petition the issue of grant of lease for mining purpose without obtaining prior E.C. was also raised. The petitioner also alleged that such quarries were functioning in violation of the directions issued by the apex court in **Deepak Kumar V. State of Haryana and others 2012 (4) SCC 629**. In the above writ petition this respondent was arrayed as respondent no. 29. It is evident that the issue under consideration before this Hon'ble tribunal is also similar to the issue that is considered by the Hon'ble High court of Kerala in the above writ petition.
8. The above writ petition was disposed of by the Hon'ble High court vide judgment dated 09.07.2021. It was observed by the Hon'ble High court with reference to the counter affidavit on behalf of the Director mining and geology, directorate of mining and geology, the 3rd respondent in the above appeal, that E.C. is mandatory only at the time of renewal of lease for existing lease folders, and that no E.C. had been granted without the same after the direction of the Hon'ble apex court in Deepak Kumar's case. It was also stated that the quarry operators are carrying out their activities in accordance with the restriction in the mining plan and also on the strength of various requisite licenses like D&O License, consent to operate, explosive license etc. The judgment also quotes directly from the counter affidavit as follows:

"It is submitted that after the verdict of the Hon'ble supreme court on Deepak Kumar case no quarrying leases were granted/renewed in the state without getting prior E.C. It is true that certain quarrying leases within area greater than 5 hectares

were granted after the issuance of EIA notification of 2006, without prior E.C. This had happened due to an oversight and all such leases were given instruction to provide EC for continuing the quarrying activity in the leased land."

9. The Hon'ble High court after consideration of all contention therein, held that all mining operations in the State are going on with the required E.C. issued by the competent authority and no quarrying operations are permitted in the districts without E.C. or prior permissions from the authorities concerned. In view of the same the Hon'ble High court did not issue any reliefs as prayed for in the above writ petition. A true copy of the judgment of the Hon'ble High court of Kerala in Jason Basil V. State of Kerala WP(c) NO. 2433 OF 2017 is enclosed herein as **Enclosure R6(a)**.

10. A perusal of the above judgment clearly indicates that the issues regarding the violation of EIA notification 2006 by this respondent as well as the issuance of the EC to the respondent has already been considered by the Hon'ble High court. The appellant herein has filed the above appeal with a similar relief, praying to set aside Annexure A1 issued to the 6th respondent. As stated in the above judgment the grant of renewal of lease to this respondent without seeking prior EC was an oversight on the part of the competent authority. It has also been stated that the authority has also issued several such EC to other such mining operators. It was after the Deepak Kumar judgment that the 3rd respondent herein issued instructions to all mining operators without EC to obtain the same. This instruction was also received by this respondent vide Annexure A5, this respondent had duly complied with the same and stopped mining operations till EC was granted. However, in the case of this respondent the application for EC was submitted prior to the issuance of Annexure A5.

11. It is submitted that the important issue of the validity of the E.C. as well as the violation of EIA notification 2006 by this respondent has already been decided upon by the Hon'ble High court and hence this respondent is covered under the judgment and hence Annexure A1 Environment Clearance of this respondent cannot be set-aside. In light of the same the appeal filed by the appellant is without any merits and should be dismissed accordingly.

12. Assuming and not accepting there lies a violation by the respondent with regard to EIA notification 200, then the respondent would fall under the ambit of the office memorandum F No. 22-21/2020-IA. III dated 07.07.2021 issued by the first

respondent whereby the standard operating procedure for identification and handling of violation cases under the EIA notification 2006 is dealt with. As per the above O.M the respondent would fall under the category of violation cases where prior E.C. has not been taken. In such category the penalty provision for violation stipulates that the violator shall pay 1% of the total project cost incurred upto the date filing application along with EIA/EIMP report plus 0.25% of the total turn over during the period of violation therefore, the contention of the appellant that the entire cost of mining shall be retrieved from this respondent is without any merits. True copy of office memorandum F No. 22-21/2020-IA. III dated 07.07.2021 issued by the first respondent is enclosed herewith as **Enclosure R6(b)**

The specific contentions of the appellant in the above appeal is dealt with hereunder on merits.

A. Allegation that this respondent has been operating the Mining Unit without Environmental Clearance.

At the time of Renewal of Lease in 2009, the State Government did not mandate obtaining Environment Clearance. In fact, in WPC No. 24337/2017 before the Hon'ble Chief Justice of the Kerala High Court, wherein this respondent was also a party, the Geologist filed a sworn affidavit, paragraph 6 of which stated thus,

"6. It is most humbly submitted that all the quarries in this District are functioning at present with environmental clearance. The Hon'ble Supreme Court in Order dated 02/12/2016, in SLP No. 30103/2015 ordered to the effect that environmental clearance is mandatory for all types of mining activities. It is submitted that the 7th respondent did not issue movement permits to mine minerals without environmental clearance after the above said order of the Honourable Supreme Court. Hence in the above facts and circumstances, the Writ Petition is devoid of merit and liable to be dismissed."

Hence, clearly, no renewal of lease has been granted to any quarry in the state of Kerala according to the Geologist at any point in time after the direction of the Hon'ble Supreme Court in Deegak Kumar's Case which is dated 27/02/2012. Pertinently, the Lease of this respondent was renewed in 2009, much before 27/02/2012 from which date the respondent State started imposing requirement of Environmental Clearance for Mining activity.

The Director of Mining and Geology also filed a counter affidavit, the relevant portion of which reads thus, "7. *It is submitted that after the verdict of the Hon'ble Supreme Court in Deepak Kumar's Case no quarrying leases were granted/renewed in the state without getting prior Environmental Clearance. It is true that certain quarrying leases with an area greater than 5 Ha were granted after the issuance of EIA Notification 2006, without prior Environmental Clearance, this had happened due to oversight and all such lessees were given instructions to produce Environmental Clearance for continuing quarrying activity in the leased land. A true copy of the instruction transmitted by the respondent to all sub offices for producing Environmental Clearance for continuing quarrying activity in the leased land is produced herewith and marked as Exhibit R4(b).*

Hence, it is admitted by the Director of Mining and Geology itself that several Leases, including that of this respondent, was renewed without requirement for an Environmental Clearance. Infact, this respondent has provided all documents sought for from it for the purpose of conducting the mining Unit. Regular inspection are carried out by the Kerala State Pollution Control Board, Department of Geology, etc, and this respondent has successfully cleared all of above. Hence, at all points of time, this respondent has been following all the norms prescribed by the statutory authorities. Immediately upon receipt of Stop Memo, this respondent ceased to function, applied for and obtained Environmental Clearance Certificate and only thereafter commenced functioning. Hence, this respondent is in no manner a violater.

B. Allegation that no effective discussion of pre-feasibility report by SEAC:

Application for EC filed by this respondent on 10/07/2014. Environmental Impact Assessment Study entrusted with M/s. Creative Engineers and Consultants.

- a. Application considered by SEAC in its sitting on 29/09/2015 and 30/09/2015 (Annexure A6). Referred for Quarry site inspection.
- b. Field visit conducted on 02/12/2015 and Annexure A7 report filed.
- c. Annexure A7 report contained certain pre- conditions to be conducted by 6th respondent as evident from Annexure A7 Report.

- d. SEAC in its sitting held on 25/02/2016 and 26/02/2016 examined the Mining Plan, Pre-Feasibility Report, Field Inspection Report and all other documents and recommended for issuance of EC subject to pre-conditions as stated in (Annexure A8)
- e. All pre-conditions were complied by this respondent.
- f. Annexure A1 EC issued on 01/06/2016.
- g. Subsequently periodical inspections are being conducted by the other respondent to ensure pre-conditions are being complied.

C. That the appellant is an aggrieved party due to grant of Annexure A1 EC:

This is completely false. Even according to the appeal, the appellant accepts that the Mining Unit has been running for past 40 years. Till date no issues or difficulty has been raised by the appellant. Also, the appellant is the Uncle of the Owner of this respondent and the instance case is merely an offshoot of a family dispute.

D. Allegation that SEIAC did not consider environment impact and safety measures were not followed:

These are baseless allegations wherein the appellant is attempting to put himself in the shoes of SEIAC, which is the expert body which has carried out the inspection based on which the EC is granted. Infact, a mere perusal of the EC states that additional safe guards have been asked to be made, which has been made by this respondent as evident from approvals given by 6 monthly inspection conducted by the Government Body.

E. Allegation that Flora and Fauna of area was damaged beyond repair due to huge level extraction of top soil:

Again the allegations are unsupported by facts but are mere conjectures by the appellant. There is no indiscriminate mining by this respondent. All the relevant Rules and Permits have been obtained by this respondent before conducting the mining activities. Infact, this respondent provides jobs to the local natives of the area as well. Till date, there has not been a single complaint against the mining Unit of this respondent.

F. Allegation that A6 to A8 would reveal that appraisal process was conducted by SEAC on facts stated by this respondent in a mechanical manner:

This statement is completely false. Infact, a mere perusal of the EC as well as its supporting documents and proceedings before SEIAA, shows the indepth nature of the study, including physical inspections conducted, prior to grant of the EC.

G. Allegation that this respondent was mining 70,000/- tonnes per annum whereas this respondent only had permit to extract 25,000 tones:

This is a blatantly false statement. It is specifically stated that it is the capacity of the machinery which is 70,000/- tons and not what is actually being produced. This respondent has only mined what is permissible as per the Lease. The appellant is making wild allegations on conjectures and misrepresentations.

H. Allegation that approach road to quarry was not maintained and no measures taken to protect safety:

Incorrect and false submission. The approach road is well maintained and all measures for safety have been taken as has been noted by the SEIAA and SEAIC.

I. Allegation that no measures taken to limit fly rock from Quarry and no dust suppression mechanism in quarry:

This is again baseless. Sufficient measures as mandated have been taken to limit any potential pollutants from the mining area to the environment. Infact, the measures of this respondent have been so effective, that not a single resident of the area has complained or represented of any polluting effect of the mining unit of this respondent.

J. Allegation that this respondent concealed information regarding residential house of appellant near Quarrying site and that the same has developed cracks due to quarrying:

There has been no concealment of any kind by this respondent. The SEIAA and SEIAC has physically inspected the site, satisfied itself of no building, residences within the exempted limit after which EC has been granted. Infact, the appellant has never had any complaint over the past 40 years regarding any cracks or that his house is near the quarrying site. No complaint has been filed before any authority regarding the same as the same is completely

untrue. The house of the appellant is located far away. The same is a mere concoction fabricated for the purpose of this case.

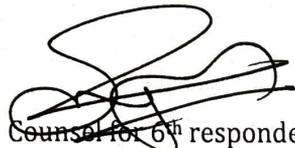
K. Allegation that another Quarry of Aikarandu Panchayat was denied permission to operate quarry as it was a dangerous area and that this respondent had caused environmental damage:

The allegations are completely false and misleading. Firstly, the mining unit of this respondent does not fall within Aikaranadu panchayat. Infact, the other Quarry, to which permission was denied was located on a completely different area, on the slopes of another Hill a long distance away. There is no proximity or connection between the quarry of this respondent and the alleged proposed quarry. As the norms weren't met, the operation of the said quarry was disallowed. Infact, this goes on to show that the statutory authorities of the area were strictly enforcing environmental protection norms and goes onto to show the stellar record of this respondent in that area.

L. Relationship Between the Parties cause of Dispute:

The appellant is the uncle of the Managing Partner of the 6th respondent. The instant litigation is an offshoot of a separate Family Dispute ongoing between the parties. Infact, quarry of the 6th respondent has been functioning with the acquiescence of the appellant for over 40 years. Infact, vide Sale Deed No. 376/1977, the appellant has sold portion of his property to 6th respondent, adjacent to the instant quarry, for the purpose of quarrying and quarrying has been completed on that Land without any objection of appellant.

Dated this the 15th day of August 2020.


Counsel for 6th respondent

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 9TH DAY OF JULY 2021 / 18TH ASHADHA, 1943

WP(C) NO. 24337 OF 2017

PETITIONER:

JAISON BASIL, AGED 55 YEARS, S/O.BASALEOUS, KANDAMKARY HOUSE,
S.T JUDE NAGAR, KILIYANTHARA P.O, KANNUR 670 706.

BY ADVS.

SRI.P.RAMAKRISHNAN

SRI.C.ANIL KUMAR

SMT.ASHA K.SHENOY

SRI.T.C.KRISHNA

SMT.PREETHI RAMAKRISHNAN

SRI.PRATAP ABRAHAM VARGHESE

RESPONDENTS:

- 1 THE CHIEF SECRETARY, STATE OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM 695 001
- 2 THE PRINCIPAL SECRETARY TO INDUSTRIES, STATE OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM 695 001
- 3 THE REVENUE PRINCIPAL SECRETARY, STATE OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM 695 001.
- 4 THE DIRECTOR, MINING AND GEOLOGY, DIRECTORATE OF MINING AND GEOLOGY,
KESAVADASAPURAM, THIRUVANANTHAPURAM 695 004
- 5 THE DISTRICT GEOLOGIST, OFFICE OF THE DISTRICT GEOLOGIST, MINING AND
GEOLOGY DEPARTMENT, KANNUR 670 003.
- 6 THE DISTRICT GEOLOGIST, OFFICE OF THE DISTRICT GEOLOGIST, MINING AND
GEOLOGY DEPARTMENT, KASARAGODE 671 121
- 7 THE DISTRICT GEOLOGIST, OFFICE OF THE DISTRICT GEOLOGIST, MINING AND
GEOLOGY DEPARTMENT, KOZHICODE 673 001
- 8 THE DISTRICT GEOLOGIST, OFFICE OF THE DISTRICT GEOLOGIST, MINING AND
GEOLOGY DEPARTMENT, MALAPPURAM 676 503

- 9 THE DISTRICT GEOLOGIST, OFFICE OF THE DISTRICT GEOLOGIST, MINING AND GEOLOGY DEPARTMENT, PALAKKAD 678 014.
- 10 THE DISTRICT GEOLOGIST, OFFICE OF THE DISTRICT GEOLOGIST, MINING AND GEOLOGY DEPARTMENT, THRISSUR 680 003
- 11 THE DISTRICT GEOLOGIST, OFFICE OF THE DISTRICT GEOLOGIST, MINING AND GEOLOGY DEPARTMENT, ERNAKULAM 682 030
- 12 THE DISTRICT GEOLOGIST, OFFICE OF THE DISTRICT GEOLOGIST, MINING AND GEOLOGY DEPARTMENT, IDUKKI
- 13 THE DISTRICT GEOLOGIST, OFFICE OF THE DISTRICT GEOLOGIST, MINING AND GEOLOGY DEPARTMENT, KOTTAYAM 686 002
- 14 THE DISTRICT GEOLOGIST, OFFICE OF THE DISTRICT GEOLOGIST, MINING AND GEOLOGY DEPARTMENT, PATHANAMTHITTA 689 645
- 15 THE DISTRICT GEOLOGIST, OFFICE OF THE DISTRICT GEOLOGIST, MINING AND GEOLOGY DEPARTMENT, KOLLAM 691 507
- 16 THE DISTRICT GEOLOGIST, OFFICE OF THE DISTRICT GEOLOGIST, MINING AND GEOLOGY DEPARTMENT, THIRUVANANTHAPURAM 695 001
- 17 M/S ARANHIKKAL GRANITE UNIT, PATHAPPIRIYAM P.O, MALAPPURAM, PIN 676 123.
- 18 K.A ABRAHAM, MANAGING PARTNER, POABSON GRANITE PRODUCTS PVT LTD, THELAKKADU P.O, PERINTHALMANNA 679 325
- 19 P.K MOHAMMED ASHRAF, MANAGING PARTNER, HIGH TECH METALS, NADUVAKKADU, OORAKAM, MALAPPURAM 676 519
- 20 THE MANAGING DIRECTOR, PORTLAND GRANITE (P) LTD. PULIKKAL P.O, MALAPPURAM, PIN 673 637
- 21 M/S ASSOCIATES ENGINEERING AND CHEMICALS, THAVANOOR P.O, MALAPPURAM 679 573
- 22 MS. LUXURY SAND PRIVATE LIMITED, CB 122, RIVIERA RETREAT, THEVARA WATER FRONT, THEVARA, KOCHI 682 013
- 23 M/S POABS GRANITES PVT LTD, CHULLY P.O, ANKAMALY, ERNAKULAM, PIN 683581

- 24 GEORGE ANTONY, MANAGING PARTNER, M/S. GK GRANITES, KIZHAKKAMBALAM, ERNAKULAM 683 562.
- 25 MANAGING PARTNER, M/S. G K GRANITES, CHULLY P.O, ANKAMALY, ERNAKULAM 683581
- 26 GEORGE ANTONY, MANAGING DIRECTOR, CRYSTAL GRANITES, CHULLY P.O, ANKAMALY, ERNAKULAM 683581
- 27 JOJI P.L, PUTHUSSERY HOUSE, THABORE, P.O MOOKKANNOOR, ERNAKULAM PIN 683577
- 28 JEOMON JOSEPH, EDATHALA HOUSE, NEELESWARAM P.O. ERNAKULAM, PIN 683574
- 29 SLABS AND AGGREGATES, PROPRIETOR, VARKEYSONS ENGINEERS, KODAYIRUPPU P.O, KOLENCHERY 682 308
- 30 M/S COCHIN GRANITES, PULICKAL ASSOCIATES, NORTH MAZHUVANNOOR P.O, CHEENIKUZHY, PERUMBAVOOR 686 669
- 31 MANAGING PARTNER, MARTHOMA GRANITES, EDAVETTY P.O, THODUPUZHA, IDUKKI 685 588
- 32 ABY DOMINIC, MANAGING PARTNER, KARIPARAMBIL CRUSHER WORKS, POOVANCHY, MUNDAKKAYAM 686 513
- 33 M/S POABS ROCKS PRODUCTS, NELICKAPARAMBU P.O, MUKKAM, PIN 673 602
- 34 P.T DAVIS, MANAGING PARTNER, THOMSON METALS, KOMBIDINJAMAKKAL, THAZHEKKADU P.O, THRISSUR 680 683
- 35 SRI SADANADAN, ABADYIL NEW BUNGLAVU, PANNIVIZHA, ADOOR 691 523
- 36 MANAGING DIRECTOR, VIMROCK, GRANITES, THEKKUMALA, VADASSERIKARA, RANNI 689 662
- 37 NAVEEN PHILIP MATHEW, THEKKENEDUMPLACKAL HOUSE, MALLAPPILLY WEST P.O, PATHANAMTHITTA 689 585

BY ADVS. SR.GOVERNMENT PLEADER SRI.TEKCHAND
SRI.N.JAMES KOSHY
SRI.SHIBU JOSEPH
SRI.P.S.SREEDHARAN PILLAI
ALEX ABRAHAM
SRI.CHERIAN GEE VARGHESE

SRI.ENOCH DAVID SIMON JOEL
SRI.P.HARIDAS
SRI.P.MARTIN JOSE
SRI.PHILIP J.VETTICKATTU
SRI.P.PRIJITH
SRI.RENJI GEORGE CHERIAN
SRI.SHIBU JOSEPH
SRI.S.SREEKUMAR SR.
SRI.P.K.SURESH KUMAR SR.
SRI.K.P.SUDHEER
SRI.S.K.SAJU
SRI.P.C.SHIJIN
SRI.THOMAS P.KURUVILLA
SRI.P.VISWANATHAN
SRI.VINEETH KURIAKOSE
SRI.P.M.ZIRAJ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09.07.2021,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 9th day of July 2021

S.MANIKUMAR, C.J.

Grievance raised in this writ petition is with respect to the functioning of granite quarries operated by respondents 17 to 37, without any environmental clearance. According to the petitioner, grant of lease for mining purpose to these respondents without obtaining prior Environmental Clearance is illegal. Petitioner has also alleged that the respondents are not taking any steps to effectively monitor and check the functioning of these quarries. These quarries are functioning in violation of the directions issued by the Apex Court in ***Deepak Kumar Vs. State of Haryana and others reported in 2012 (4) SCC 629***. Hence this writ petition, for the following prayers:

- A) Issue a writ of mandamus or other appropriate writ or order, directing the 1st respondent to cancel the mining leases issued to respondents 17 to 37 after Exhibit P1 notification and the order of the Honourable Supreme Court in 2012 (4) SCC 629.
- B) Hold that the grant of mining lease to respondents 17 to 37 without prior environmental clearance envisaged in Exhibit P1 is arbitrary and illegal.

2. Mr.P.Ramakrishnan, learned counsel for the petitioner has urged various grounds in support of the contentions raised in this writ petition. According to him, for any activity concerning mining of minerals, environmental clearance is a prerequisite. One of the mandatory requirements mentioned in

Ext.P1 notification, dated 14.9.2006 issued by the Government of India, under Section 3(1)(v) and 3(2) of the Environment Protection Act, 1986 is prior environmental clearance from the concerned regulatory authority, before commencement of projects, expansion and modernization of existing project or activity listed in the Schedule to the notification. Mining of minerals is at Sl.No.1 in the schedule. According to the learned counsel, issuance of mining leases in violation of statutory prescriptions is an infringement on the petitioner's rights under Article 21 of the Constitution of India.

3. We have perused the counter affidavit filed on behalf of respondent No.7/the District Geologist wherein, it is clearly stated that no indiscriminate quarrying operations in the river bed and ground water resources are going on in Kozhikode district. It is further submitted that mining operations in the district are going on with the required environmental clearance issued by the competent authority. Relevant portion of the counter affidavit reads thus:

"3. The 33rd respondent of the petition is a quarry proponent of Kozhikode District. Three quarrying leases have been granted to this proponent in Kodyathur Village of Kozhikode District. Out of these three quarrying leases, only one has obtained environmental clearance and this quarry alone is functioning at present and the two other quarries are not working now. The office of the 7th respondent conducts inspections occasionally and once it was found that the 33rd respondent was extracting granite building stone from area other than the lease area.

4. The quarrying lease of the 33rd respondent was compounded as per the provisions of Registered Metal Crusher Unit Compounding system. In this system the crusher is compounded in force of the quarrying lease connected with the crusher. As the royalty is realized in compounding manner and based on the production in the crusher there was no restriction for the extraction in quantity of minerals. In this case, before

the institution of mining plan for the quarrying operations, there was no restriction for extraction under this system. The mining plan is prepared for this quarry and it suggests the quantity of mineral to be extracted from a quarry site. After the institution of the mining plan for the quarry operations it is monitored that no excess quantity of extraction is allowed. It is submitted that 20% excess extraction is allowable as per the provisions of the mining plan. It is submitted further that the office of the 7th respondent conducts inspections occasionally to monitor the mining activities within the District. No indiscriminate mining or other such serious illegality could be found out by this office.

5. The 7th respondent did not issue movement permits to mine minerals without environmental clearance after the issue of the Judgment of the Hon'ble Supreme Court in Deepak Kumar v State of Haryana case. No quarrying lease has been seen granted/renewed the above said within the District of Kozhikode after the issue of the abovesaid Judgment of the Hon'ble Supreme Court and so no illegal quarrying is going on in this district. No quarrying operations of such a grade to change the climatic pattern and water resources are seen in this district. The quarry operations in this district are not affecting the life, fundamental right and healthy environment of the public. It is submitted that the mining plan has been introduced in the mining field to propagate sustainable development of minerals. So the mineral resources are protected at a maximum level by these means. No quarrying operations are there in this district violating the statutory prescriptions.

6. It is most humbly submitted that all the quarries in this District are functioning at present with environmental clearance. The Hon'ble Supreme Court in order dated 02.12.2016, in SLP No.30103/2015 ordered to the effect that environmental clearance is mandatory for all types of mining activities. It is submitted that the 7th respondent did not issue movement permits to mine minerals without environmental clearance after the abovesaid order of the Honourable Supreme Court. Hence in the above facts and circumstances, the Writ Petition is devoid of merit and liable to be dismissed."

4. In the counter affidavit filed on behalf of 4th respondent/ the Director Mining and Geology, Directorate of Mining and Geology, it is averred that Environmental Clearance is mandated only at the time of renewal of lease for

existing lease holders. No lease without Environmental Clearance had been granted, after the direction of the Hon'ble Apex Court in Deepak Kumar's Case. It is also averred that respondents quarry operators are carrying out their activities in accordance with the restriction in the mining plan and also on the strength of various requisite licenses like D&O Licence, Consent to operate, explosive licence etc.

Relevant portions of the said counter affidavit read as under:

“3. It is respectfully submitted that writ petition is filed by the petitioner mainly aggrieved by the functioning of granite quarries operated by the respondents 17 to 37 without any environmental clearance. The petitioner alleged that these quarries are functioning in violation of the orders of the Hon'ble Supreme Court dated 27.2.2012 in SLP(C) No.19628 - 19629 - Deepak Kumar etc Vs. State of Haryana and others and hence are liable to be interdicted. At this instance it is submitted that the verdict of the Hon'ble Supreme Court in the aforesaid SLP never insists an environmental clearance for existing mining projects. The State of Kerala had ensured that none of the leases for mining operations had been granted without a prior environmental clearance after the promulgation of orders by the Hon'ble Apex Court in the year, 2012.

4. It is submitted that the parliament enacted the Environmental (Protection) Act, 1986 to provide for protection and improvement of environment and matters connected therewith. Section 3 of 1986 Act empowered the Central Government to take measures to protect and improve environment and Section 5 empowered the Central Government to give directions. In exercise of Rule 5(3) of 1986 Rules Central Government issued notification dated 27.01.1994 prohibiting expansion and modernization of any activity or new projects listed in the schedule unless it has been accorded environmental clearance by the Central Government. Thereafter, in supersession of 1994 notification, another notification dated 14.09.2006 was issued where restriction was imposed on construction of new projects or activities or the expansion or modernization of existing projects or activities which were to be undertaken only after getting prior environmental clearance. It is true that "mining of minerals" is a project included in the schedule of Notification. Projects were categorized into A & B and mining of minerals of area of less than 50 Ha and more than 5 Ha were included in category B.

5. It is submitted that the Hon'ble Supreme Court in Deepak Kumar's case issued direction that "leases of minor minerals including their renewal for an area of less than 5 Ha be granted by the States/Union Territories only after getting environmental clearance from MoEF. It is stated that after the judgment of the Apex Court dated 27.02.2012 in Deepak Kumar's case, MoEF came up with office Memorandum dated 18.05.2012, true copy of the office Memorandum dated 18.05.2012 is produced herewith and marked as Exhibit R4(a).

6. By direction dated 18.05.2012, Government of India included mining areas of less than 5 Ha under the environmental regime as contemplated by notification dated 14.09.2006. Government of India directed that mining projects with lease area upto 50Ha including projects of minor mineral with lease area less than or equal to 5 Ha would be treated as category B. Thus it is clear that even if for lease area less than 5Ha, after order dated 27.02.2012 of the Apex Court in Deepak Kumar's case, Environmental Clearance is required for grant/renewal of mining leases.

7. It is submitted that after the verdict of the Hon'ble Supreme Court in Deepak Kumar's case no quarrying leases were granted/renewed in the State without getting prior Environmental Clearance. It is true that certain quarrying leases with an area greater than 5 Ha were granted after the issuance of EIA Notification 2006, without prior Environmental Clearance. This had happened due to oversight and all such lessees were given instructions to produce Environmental Clearance for continuing quarrying activity in the leased land. A true copy of the instruction transmitted by the respondent to all sub offices for producing Environmental Clearance for continuing quarrying activity in the leased land is produced herewith and marked as Exhibit R4(b).

8. It is reported that few of such operators had approached this Hon'ble Court and obtained favourable orders permitting continuation of operations. The true copy of consolidated details of quarrying leases operating in the State with attributes as area of lease, its status, Environmental Clearance etc. is produced herewith and marked as Exhibit R4(c).

9. It can be seen from the table that 8 of the leases with are greater than 5Ha are not having Environmental Clearance and except one all others have terminated operation due to want of the said requirement. The only operational quarry with lease area greater than 5Ha without Environmental Clearance is in Idukki District and this has been permitted in obedience to the judgment passed by this Hon'ble Court in W.P.(C) No.20554/2015. In that case, the Hon'ble Court has allowed the petitioner to undertake the

quarrying operation in an area 2Ha within the leased land. It is submitted that, the Hon'ble Apex Court had never issued any direction to stop the existing mining projects. The directions are binding for new projects and renewals.

10. It is submitted that, Government have established effective mechanism to monitor the mining activities carried out by the respective quarry operators. Mining activities are pursued in accordance with the approved scientific mining plan as insisted in the KMMC Rules, 2015. Those lease holders who have opted for payment of consolidated Royalty and registration for their own crusher unit (RMCU registration) with leases and crusher units attached can produce and despatch the quantity as allowed in the mining plan; without restricting themselves to the quantity permitted in the lease deed. For lease granted before the enactment of KMMC Rules, 2015, they can also conduct the quarrying operation in accordance with the stipulations in the mining plan. It is worthwhile to point out that the institution of mining plan has effectively reduced the unscientific plunder of mineral wealth thereby safeguarding the environmental values.

11. It is submitted that, respondent quarry operators are carrying out their activities in accordance with the restriction in the mining plan and also on the strength of various requisite licenses like D&O Licence, Consent to operate, explosive licence etc. The state has never compromised the environmental values and implemented the obligation of environmental protection.

12. It is submitted that Environmental Clearance is mandated only at the time of renewal of lease for existing lease holders. No leases without Environmental Clearance had been granted after the direction of the Hon'ble Apex Court in Deepak Kumar's Case."

5. We have heard the learned counsel for the parties and perused the materials available on record.

6. Sum and substance of the averments made in the counter affidavit filed by the official respondents in this writ petition is that mining operations in the districts are going on with the required environmental clearance issued by the competent authority and no quarrying operations are permitted in the districts without

environmental clearance or prior permissions from the authorities concerned.

Placing on record the abovesaid submission, we are of the view that there is no need to issue any reliefs as prayed for in this writ petition. Writ petition is disposed of.

SD/-
S.MANIKUMAR
CHIEF JUSTICE

SD/-
SHAJI P. CHALY
JUDGE

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F. No. 22-21/2020-IA.III
Government of India
Ministry of Environment, Forest and Climate Change
Impact Assessment Division

Indira ParyavaranBhawan
Jor Bagh Road, Aliganj
New Delhi - 110003
sujit.baju@gov.in

Date: 7th July, 2021

Office Memorandum

Subject: Standard Operating Procedure (SoP) for Identification and handling of violation cases under EIA Notification 2006 in compliance to order of Hon'ble National Green Tribunal in O.A. No.34/2020 WZ - Regarding.

The Ministry had issued a notification number S.O.804(E), dated the 14th March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. &Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar Vs. Central Ground Water Authority &Ors., vide order dated 03.06.2021 held that "(...) **for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process**".

4. Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24.05.2021 has directed that "**...a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SELAAs in the country**".

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been

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pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the light of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations / decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined.

7. Relevant Court Cases on the issue: It is noted that while deciding issues related to violations of the Environment Protection Act, 1986 on account of running the project/activity without prior environmental clearance or in excess of capacity allowed in such clearances, the Hon'ble courts have, *inter-alia*, deliberated on various facets involving 'violation' cases and have enunciated principles of 'Proportionality' and 'Polluter Pays' in various decisions viz. Industrial Council for Enviro-Legal Action Vs Union of India (the Bichhri village industrial pollution case) (1996 SCC [3] 212); Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. (C.A. No. 1526 of 2016, order dated 1.4.2020) and Hindustan Copper Limited Vs Union of India in (W.P. (C) No. 2364 of 2014, order dated 28.11.2014). The salient extracts of the judgements are as under:

Issue 1: Proposal for grant of Environmental Clearance in violation cases – to be considered on merits:

i. Hon'ble High Court of Jharkhand in the matter of Hindustan Copper Limited Vs Union of India in W.P. (C) No. 2364 of 2014, vide order dated 28.11.2014

Held: "(...) action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance cannot await initiation of action against the project proponent."

"(...) the proposal of the petitioner company for environmental clearance must be examined on its merits, independent of any proposed action for the alleged violation of the environmental laws."

ii. Hon'ble Madras High Court in the matter of Puducherry Environment Protection Association Vs The Union of India in W.P. No. 11189 of 2017, vide order dated 13.10.2017

Held "27. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance, even though the establishment may not otherwise be violating

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pollution laws or the pollution, if any, can conveniently and effectively be checked. **The answer necessarily has to be in the negative.**"

"29. It is reiterated that protection of environment and prevention of environmental pollution and degradation are non-negotiable. At the same time, the Court cannot altogether ignore the economy of the Nation and the need to protect the livelihood of hundreds of employees employed in projects, which as stated above, otherwise comply with or can be made to comply with norms."

Issue 2: Environmental Clearance – Prospective & not ex-post facto:

Hon'ble Supreme Court in the matter of Common Cause Vs Union of India in W.P. (C) No. 114 of 2014, vide order dated 2.8.2017

Held: "(...) an EC will come into force **not earlier than the date of its grant.**"

Issue 3: 'Principles of Proportionality' – to be applied:

Hon'ble Supreme Court in the matter of Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. in C.A. No. 1526 of 2016, vide order dated 1.4.2020

Held: "(...) **this Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord with the principle of proportionality**"

Issue 4: 'Polluter pays' principle &

Issue 5: Costs for remedial measures implicit in Sections 3 & 5 of Environment (Protection) Act, 1986.

Hon'ble Supreme Court in the matter of Indian Council for Enviro- Legal Action Vs Union of India (the Bichhri village industrial pollution case) in (1996 SCC [3] 212)

Held:

a) **The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. The said powers will include giving directions ... and also the power to impose the cost of remedial measures on the offending industry and utilize the amount so recovered for carrying out remedial measures.....**

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b) **Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5** which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry.

c) The question of liability of the respondents to defray the costs of remedial measures can also be looked into from accepted universally sound principle, viz., the **"Polluter Pays" Principle**. "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".

8. Legal provisions:

i. The Environment (Protection) Act, 1986 mandates the Central Government to take all measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution (reference sub-section (1) of Section 3 of Environment (Protection) Act, 1986). Further, clause (xiv) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 specifies that the measures stipulated under sub-section (1) of Section 3 of the Environment (Protection) Act 1986 includes 'such other matters as the Central Government deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act'.

ii. Further, notwithstanding anything contained in any other law but subject to the provisions of the Environment Protection Act, 1986, Section 5 of the Environment (Protection) Act, 1986, provides that the Central Government may, in the exercise of powers and performance of Central Government functions under the said Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

9. Definition of Violation and Non-compliance:

The Standard Operating Procedure (SoP) considers 'Violation' & 'Non-compliance' from the following perspective:

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- i. "Violation" means cases where projects have either started the construction work or installation or excavation, whichever is earlier, on site or have expanded the production capacity and / or project area beyond the limit specified in the Environmental Clearance (Prior-EC) without obtaining Prior-EC or change of scope without prior approval from the Ministry.
- ii. "Non-compliance" means non-compliance of terms and conditions prescribed by the Regulatory Authority in the Prior Environment Clearance accorded to the project.

10. Standard Operating Procedure - Guiding Principles:

- i. Without prejudice to any other consequences, **action has to be initiated under section 15 read with section 19 of The Environment (Protection) Act, 1986 against all violations.**
- ii. Projects not allowable/permissible, for grant of EC, as per extant regulations: **To be demolished.**
- iii. "Non-compliance" is allowable/permissible, if prior EC had been taken as per extant regulations: **To be closed until EC is granted (if no prior EC has been taken) or to revert to permitted production level (in case prior EC has been granted).**
- iv. **Polluter pays:** Violators to pay for violation period - proportionate to the scale of project and extent of commercial transaction.
- v. **Setting up a mechanism for reporting of violation to the regulatory authority(ies).**

11. SOP for dealing with the violation cases:

Step 1: Closure or Revision

Sl.no.	Status of EC	Actions
1.	If no prior EC has been taken	Order to close its operation
2.	If prior EC is available for existing/old unit	Order to revert the activity/production to permissible limits.
3.	If prior EC was not required for earlier production level but is now required	Restrict the activity/production to the extent to which prior EC was not required.

Step 2: Action under Environment (Projection) Act, 1986

Action under section 15 read with section 19 of the Environment (Protection) Act, 1986 shall be initiated against the violators.

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Step: 3: Appraisal under EIA Notification, 2006

The permissibility of the project shall be examined from the perspective of whether such activity/project was at all eligible for the grant of prior EC.

A. If not permissible:

i. The project shall be **ordered for the demolition/closure after issuing show cause notice and providing an opportunity of hearing.**

*Ex. If a red industry is functioning in a CRZ-I area which means that the activity was, in the first place, not permitted at the time of commencement of project. Therefore, the activity is not permissible and therefore it shall be **closed & demolished.***

ii. Respective regulatory authorities shall issue directions under section 5 of the Environment (Protection) Act, 1986 for such closure & demolition of the project/activity.

B. If permissible:

i. As per extant regulations at the time of scoping, if it is viewed that the project activity is otherwise permissible, Terms of Reference (TOR) shall be issued with directions to complete the impact assessment studies & submit Environmental Impact Assessment (EIA) report & Environmental Management Plan (EMP) in a time bound manner.

ii. Such cases of violation shall be subject to appropriate

(a) Damage Assessment

(b) Remedial Plan and

(c) Community Augmentation Plan by the Central level Sectoral Expert Appraisal Committees or State/Union Territory Level Expert Appraisal Committees, as the case may be.

iii. The Competent Authority shall issue directions to the project proponent, under section 5 of the Environment (Protection) Act, 1986 on case to case basis mandating payment of such amount (as may be determined based on Polluters Pay principle) and undertaking activities relating to Remedial Plan and Community Augmentation Plan (to restore environmental damage caused including its social aspects).

iv. Upon submission of the EIA & EMP report, the project shall be appraised by the Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, as if it was a new proposal. If, on examination of the EIA/EMP report, the project is considered permissible for operation as per extant regulations, the requisite Environmental Clearance shall be issued **which shall be effective from the date of issue.**

v. However, during appraisal after examination if it is found that even though the project may be permissible but not environmentally sustainable in its present

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form/configuration/features then the project shall be directed to be modified so that the project would be environmentally sustainable.

vi. If, however, it is not considered appropriate to issue EC, the project shall be directed to be demolished/ closed. If such proposal is a case of expansion, the project shall be directed to revert back to the extent of activity for which EC had been granted earlier or to revert back to the extent of activity for which EC was not required (as the case may be).

vii. Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, may insist upon public hearing to be conducted for such categories of projects for which the EIA Notification 2006, as amended from time to time, requires the public hearing to be conducted.

viii. The project proponent will be required to submit a bank guarantee equivalent to the amount of Remediation Plan and Natural & Community Resource Augmentation Plan with Central / the State Pollution Control Board (depending on whether it is appraised at Ministry or by SEIAA). The quantification of such liability will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority. The bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the Remediation plan and Natural & Community Resource Augmentation Plan.

Note - The activities, as per above clauses, shall be undertaken simultaneously wherever feasible. Environmental Clearance, if granted, to such projects or activities, after due appraisal of EIA/EMP report, shall be effective only from the date of issuance of such clearance and shall be subject to compliance of obligations towards Damage Assessment, Remedial Plan & Community Augmentation Plan, etc. finalized in each case.

12. Penalty provisions for Violation cases and applications:

a. For new projects:

- i. **Where operation has not commenced:** 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report; [Ex: Rs.1 lakh for project cost of Rs.1 Cr]
- ii. **Where operations have commenced without EC:** 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report PLUS 0.25% of the total turnover during the period of violation. [Ex: For Rs.100 Cr project cost and Rs.100 Cr total turnover, the penalty shall be Rs.1 Cr + Rs. 0.25 Cr = Rs.1.25 Cr]

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b. For expansion projects:

- i. **Where operation/production with expanded capacity has not commenced:**
1% of the project cost, attributable to the expansion, incurred up to the date of filing of application along with EIA/EMP report.
- ii. **Where operation/ production with expanded capacity have commenced:**
1% of the project cost (attributable to the expansion activity) incurred upto the date of filing of application along with EIA/EMP report PLUS 0.25% of the total turnover (attributable to the expanded activity/capacity) involved during the period of violation.

12.1. Without prejudice to obligation as per (a) & (b) above, where the project or activity is considered for appraisal as above & the project proponent fails to provide required information or requisite documents or complete the requisite study for the purpose of EIA/EMP reports or does not furnish such reports within such period, as specified by the appraisal committee, without reasonable cause, it shall be inferred that the project proponent is not serious enough and the project or activity shall be directed to be demolished / closed.

12.2. The percentage rates, as above, shall be halved if the project proponent *suo-moto* reports such violations without such violations coming to the knowledge of the Government either on inquiry or complaint.

12.3. The penalty, as above, shall be in addition to liability for carrying out various remedial measures which shall be worked out based on the damage assessment for quantifying the environmental damage caused due to unauthorized project activity [as per Step 3 enumerated above].

13. Identification of Violation cases:

With a view to protecting the environment and to expeditiously bring violators into a regulatory regime so as to prevent & control environment damage caused by such violation & to determine whether operation of such projects is permissible and to take action stipulated under Section 15 of the Environment (Protection) Act, 1986 for contravention of the provisions of the said Act, Rules, orders and directions, it is expedient to also identify the cases of violation, examine and appraise such projects so as to refrain them from causing further environmental damage and also to compensate for causing damage to the environment. Therefore, in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986, the Central Government hereby directs that:-

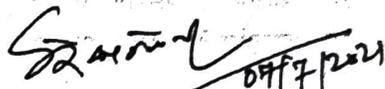
- i. State Pollution Control Boards & Union Territory Pollution Control Committees, before grant or renewal of Consents under Water(Prevention & Control of Pollution) Act, 1974 & Air (Prevention& Control of Pollution) Act, 1981, shall ensure that the project proponents applies for or possess valid Prior

Environmental Clearance in terms of extant EIA Notification and shall not grant or renew CTO (Consent to Operate) unless Environment Clearance (if applicable) has been obtained.

- ii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall identify cases of violation under their respective jurisdiction, report such cases to the Ministry or State/Union Territory Level Environmental Impact Assessment Authority, as the case may be and also revoke CTO, if granted to the unit after giving an opportunity of being heard.
- iii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall expeditiously examine the references, received from public and other bodies, relating to violations and take necessary steps as per (ii) above.

14. This is issued with the approval of the Competent Authority.

Union Territory
under their
State/Union
a community
To


(Dr. Sujit Kumar Bajpayee)
Joint Secretary (IA)

To

1. Chairperson/Member Secretary of Central Pollution Control Board
2. Chairperson/Member Secretaries of all the SEIAAs/SEACs
3. Chairman/Members of all the Expert Appraisal Committees
4. Chairman/Members of all the State Pollution Control Boards and Union Territory Pollution Control Committees

Copy for information:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS for Environment, Forest and Climate Change
3. PPS to Secretary(EF&CC)
4. PPS to AS(RS) / AS (RA)/ AS (UD)/ JS(JT) / JS (MP)/ JS (NPG)
5. All the officers of IA Division
6. Website of MoEF&CC/PARIVESH/Guard file

Copy (by email) also forwarded to the Registrar, NGT, in compliance to instruction given in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors.(order dated 24.05.2021).