

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

APPLICATION NO.88 of 2017 (SZ)

Petitioner : George Issac

5th Respondent : Kerala State Pollution Control Board

**REPORT FIELD BY THE ENVIRONMENTAL ENGINEER AS PER
INSTRUCTIONS OF THE HON'BLE NATIONAL GREEN TRIBUNAL**



**Rema Smrithi VK
Standing counsel for KSPCB**

STANDING COUNSEL FOR THE 5TH RESPONDENT:

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

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Dated this the 12th day of February 2024

STANDING COUNSEL FOR THE 5th RESPONDENT

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

Appeal No. 88 of 2017 (SZ)

George Issac : Appellant

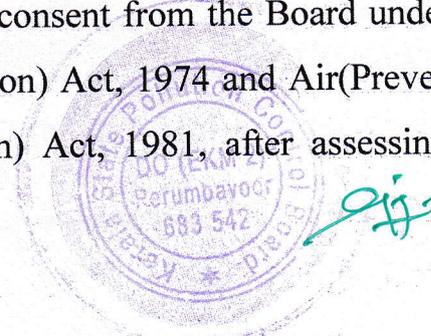
VS.

Ministry of Environment, Forests &
Climate Change & Others : Respondents

**REPORT FILED BY THE ENVIRONMENTAL ENGINEER, KERALA
STATE POLLUTION CONTROL BOARD, DISTRICT OFFICE II,
PERUMBAVOOR (5th RESPONDENT)**

I, Sajeesh Joy, Aged 47 years, S/o V. A. Joy, now working as Environmental Engineer, Kerala State Pollution Control Board, District Office-II, Perumbavoor, Ernakulam, do hereby submit the report in Appeal No. 88 of 2017.

1. It was directed by the Hon'ble NGT vide order dated 30/11/2023 in Appeal 88 of 2017 that the Kerala State Pollution Control Board (hereinafter referred to as Board) shall comply with the directions given earlier by the Hon'ble NGT vide judgment dated 26/10/2021 in Appeal 88 of 2017, as there is no existing interim order (stay) by the Hon'ble High Court in WP(C) No. 35120/2022.
2. The Hon'ble NGT had directed vide judgment dated 26/10/2021, Kerala State Pollution Control Board (KSPCB) to initiate appropriate proceedings for violations committed by the 6th respondent, M/s Slabs & Aggregates, Kadayirippu P.O., Kolenchery, Ernakulam- 682311, for operating the granite quarrying unit without obtaining consent from the Board under the Water (Prevention and Control of Pollution) Act, 1974 and Air(Prevention Page 40 of 41 and Control of Pollution) Act, 1981, after assessing the



period of violation, impose compensation for the violation and take steps to recover the amount from the 6th respondent in accordance with law.

3. In compliance with the above, the Environmental Compensation (EC) is assessed by the Board and submitted below:

As per the guidelines of the Central Pollution Control Board (CPCB), the Environmental Compensation (EC) based on 'Polluter Pays' principle is calculated using the following formula, subject to the condition that the general EC for a violation shall be a minimum of Rs. 5,000/- per day and a maximum of Rs. 60,000/- per day.

- I. Environmental Compensation for operating quarry without consent,

$$EC = PI \times N \times R \times S \times LF \text{ (in INR)}$$

Where,

EC is Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

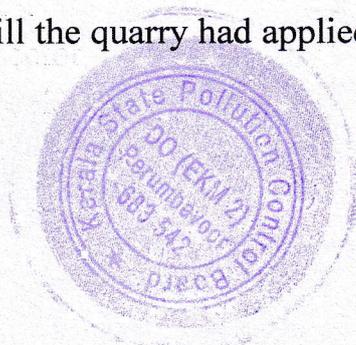
LF = Location factor

- I.a Pollution Index (PI):

Pollution Index of industrial sector shall be a minimum of 60 and maximum of 100. Average pollution index is taken as **80**.

- I.b Number of days operating without consent of KSPCB (N):

Number of days operating without consent of KSPCB shall be counted from the day on which quarry started first operation till the quarry had applied for consent from KSPCB, as per the available records



LF = 1 (Since population is less than one million).

The considerations for the calculation of Environmental Compensation for operating quarry without consent of KSPCB are as detailed below:

$$\text{Environmental Compensation (EC)} = \text{PI} \times \text{N} \times \text{R} \times \text{S} \times \text{LF}$$

$$\text{PI} = 80$$

$$\text{N} = 2866 \text{ days}$$

$$\text{R} = 250$$

$$\text{S} = 0.5$$

$$\text{LF} = 1$$

$$\text{Environmental Compensation (EC)} = \text{PI} \times \text{N} \times \text{R} \times \text{S} \times \text{LF}$$

$$= 80 \times 2866 \times 250 \times 0.5 \times 1$$

$$= \text{Rs.}2,86,60,000/- \text{ (Rupees Two Crore Eighty Six lakh Sixty thousand only)}$$

i.e @ Rs.10,000/- per day of violation.

Environmental Compensation is assessed as Rs. 2,86,60,000/- (Rupees Two Crore Eighty Six lakh Sixty thousand only).

4. Notice of Environmental Compensation has been issued to the 6th respondent on 07.02.2024 directing to show cause why the Environmental Compensation assessed shall not be imposed. A copy of the notice is produced herewith and marked as **ExhibitR5(c)**. A notice also issued to the occupier on 07.02.2024 to attend hearing proposed to conduct on 16.02.2024 to present the facts/case justifying non levy of the Environmental Compensation. A copy of the notice is produced herewith and marked as **ExhibitR5(d)**. Direction under section 5 of the Environment (Protection) Act, 1986 will be issued after due hearing of the 6th respondent.

All the above are true to the best of my knowledge, information and belief.

Dated this the 12th day of February, 2024.



[Signature]
DEPONENT

VERIFICATION

I, Sajeesh Joy, Aged 47 years, S/o V. A. Joy, now working as Environmental Engineer, Kerala State Pollution Control Board (hereinafter referred to as **Board**), District Office-II, Perumbavoor, Ernakulam, duly authorized to file this reply on behalf of the Kerala State Pollution Control Board do hereby verify on this, the 12th day of February, 2024, that all what is stated above is true and correct to the best of my knowledge, information and belief and is borne out from the records maintained in our office.



Sajeesh Joy
Environmental Engineer, District
Office - II (Ernakulam),
Kerala State Pollution Control Board, Perumbavoor.



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

APPEAL NO. 88 of 2017

GEORGE ISSAC : Appellant

VS.

Ministry of Environment, Forests &
Climate Change & Others : Respondents

AFFIDAVIT

I, Sajeesh Joy, Aged 47 years, S/o V. A. Joy, residing at Kakkanadu, do hereby solemnly affirm and state as follows:

I am now working as the Environmental Engineer, District Office – II (Ernakulam), Kerala State Pollution Control Board at Perumbavoor, Ernakulam District. I am competent to and duly authorized to represent the 5th respondent in the above case. I know the facts and circumstances of the case. The factual submissions made here under are true and correct to the best of my knowledge, information and belief. The legal submissions made therein are made on advice received from Counsel. In these circumstances, it is just and necessary that this Hon'ble Tribunal may be pleased to accept the accompanying reply on file and it is so humbly prayed in the interests of justice in this case.


SAJEESH JOY, DEPONENT

Solemnly affirmed and signed before me by the literate deponent personally known to me on this the 12th day of February, 2024 at my office in Ernakulam.

STANDING COUNSEL FOR THE 5TH RESPONDENT



KERALA STATE POLLUTION CONTROL BOARD

Pattom P.O., Thiruvananthapuram-695 004

PCB/TAC/WP/236/2006

Dated, 13.06.2007

CIRCULAR

Sub: Fixing of norms for quarrying operations

Ref: (i) This office circulars of even no. dated 18.10.06 and 24.02.07
 (ii) Decision taken in the 158th meeting of the Board

As decided in the 158th meeting of the Board, the following norms shall be imposed for quarrying operations.

1. **Distance criteria** (applicable to new quarries and to expansion of existing quarries)

Minimum distance from boundary of quarry operation area to:
 Residential buildings, places of worship, public buildings,
 public road, river or lake, railway line, bridges : 100 m

2. **Sound level** at 1 m outside the boundary of the land owned or leased by the consentee whichever is farther.

- | | | |
|----|------------------|----------------------|
| a) | Residential area | : 55 dB (A) Leq, max |
| b) | Commercial area | : 65 dB (A) Leq, max |
| c) | Industrial area | : 75 dB (A) Leq, max |
- (as stated in the Noise Pollution (Regulation & Control) Rules, 2000)

3. **Suspended Particulate Matter (SPM)** (dust) level at boundary of the land owned with different adjoining areas, excluding roads:

- | | | |
|----|----------------------------------|--------------------------------------|
| a) | Residential and commercial areas | : 200 $\mu\text{g}/\text{m}^3$, max |
| b) | Industrial area | : 500 $\mu\text{g}/\text{m}^3$, max |

4. **Respirable Suspended Particulate Matter (RSPM)** (<10 μ m) level at boundary of the land owned with different adjoining areas, excluding roads:

- | | | |
|----|----------------------------------|--------------------------------------|
| a) | Residential and commercial areas | : 100 $\mu\text{g}/\text{m}^3$, max |
| b) | Industrial area | : 150 $\mu\text{g}/\text{m}^3$, max |

5. After excavation at the site is completed, the land may be used for rain water harvesting with protective barriers/any other suitable approved purpose or may be reclaimed.

In the consents issued for quarrying, the following condition should be added. "The consent issued is subject to the conditions specified in the clearances issued by the Mining and Geology Department and Explosives Department as per the provisions of the relevant statutes".

The AEE-3

[Handwritten signature]

All new quarries shall commence operation only after obtaining clearance (consent to establish and consent to operate) from the Board. Existing quarries shall apply for and obtain clearance (consent to operate) from the Board within three months from today. The fees chargeable shall correspond to Sl no: 6- red category of Table I of the Kerala Water (Prevention and Control of Pollution) Amendment Rules 2006 and Kerala Air (Prevention & Control of Pollution) Amendment Rules 2006 till detailed categorisation is made. Penalty fees will be due from the quarries applying for consent after the aforesaid due dates.

The revised quarrying norms will be applicable with immediate effect.

Sd/-

MEMBER SECRETARY

To

CEE/SEE, R.O., TVM/EKM/KKD
SEE / EE, D.O., TVM /KLM/ PTA/ ALPZA/ KTYM/ IDKI/ EKM/
ESC/ TSR/ PLKD / MLPM/ KKD/ WYD/ KNR/ KSD

Copy to

All Technical Staff in the H.O
Public Relations Agency

FORWARDED / BY ORDER



ENVIRONMENTAL ENGINEER

No. DOE/1458/E2/2015

District Office of the
Dept. of Mining & Geology,
Civil Station, Ernakulam,
geo.ern.dmg@kerala.gov.in
Kochi-682030, 0484-2422354

Dated 20/7/15

STOP MEMO

Sir,
Sub: Mines and Minerals-Minor Minerals-Granite (BS)-Quarrying Lease and Crusher Unit-
RMCU- stop notice issued reg:
Ref: 1. Kerala Minor Mineral Concession Rules 2015
2. RMCU Registration No. 175/15-16/RMCU/EKM/3925/M3/2015 dated 17.4.2015
3. Letter No. 896/M3/2015 dated 18.6.2015 of the Director Mining and Geology

Please refer to the above. 2nd referred registration has been granted to your quarry for the period 2015-16. As per the 3rd referred letter, the quarrying leases having a lease area exceeded 5 Hectares in extent are not authorized to function without obtaining Environmental Clearance (EC).

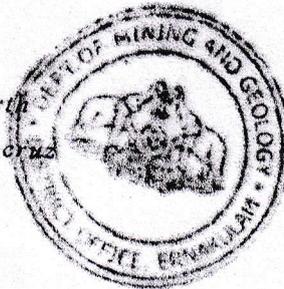
In the above circumstance, you are directed to stop all quarrying activities in the above said lease area till the Environmental Clearance (EC) from the State Environmental Impact Assessment Authority is obtained.

[Handwritten signature]
20/7/15
Geologist

To
Managing Director, M/s Slabs and Aggregates,
Proprietor Varkisons Engineers, Kadayiruppu P.O.
Kolenchery

Copies to

1. Village officer, Aikaranadu North
2. Sub Inspector of Police, Puthencruz
3. Office copy



KERALA STATE POLLUTION
CONTROL BOARD
THIRUVANANTHAPURAM
8 FEB 2024

☎: General: 0471- 2312910, 2318153, 2318154, 2318155 Chairman: 2318150 Member Secretary: 2318151
e-mail: chn.kspcb@gov.in; ms.kspcb@gov.in FAX: 2318152 web: kspcb.kerala.gov.in



KERALA STATE POLLUTION CONTROL BOARD

കേരള സംസ്ഥാന മലിനീകരണ നിയന്ത്രണ ബോർഡ്

Pattom P.O., Thiruvananthapuram – 695 004

പട്ടം പി.ഒ., തിരുവനന്തപുരം - 695 004



KSPCB/739/2023-SEE-1

Date: 07/02/2024

NOTICE UNDER ENVIRONMENT (PROTECTION) ACT, 1986

Sub:- Levying of Environmental Compensation from M/s. Slab & Aggregates, Ernakulam – reg.

- Ref:
1. Judgment dated 26.10.2021 of Hon'ble N.G.T, in Appeal 88 of 2017.
 2. Order of Hon'ble High Court of Kerala in WP(C) No. 35120/2022.
 3. E- mail received on 24.08.2023 from the Environmental Engineer, District Office-2, Ernakulam enclosing letter from the unit dated 03.08.2023
 4. Order of Hon'ble N.G.T dated 30.11.2023
 5. Letter No.PCB/EKM/DO-2/GEN-57/18 dated 05/01/2024
 6. Your letter dated 14.12.2023
 7. This office letter of even no. dated 07.02.2024

WHEREAS the Central Government notified the Environment (Protection) Act, 1986 for the protection of environment;

WHEREAS the Hon'ble National Green Tribunal, vide order dated 19/02/2019 in O.A.593 of 2017 (W.P (Civil) No.375/2012 by the Paryavaran Suraksha Samiti and Anr. Vs. Union of India and Ors.), directed that "CPCB may take penal action for failure against those who are accountable for not setting up and maintaining STPs, CETPs ETPs and CPCB may also assess and recover

compensation for damage to the environment and the said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment”;

WHEREAS the NGT vide order dated 12/03/2019 in O.A. No. 710/2017, directed that the State Pollution Control Boards are also authorized to recover compensation from the polluters or laying down their own scale which should not be less than the scale fixed by Central Pollution Control Board;

WHEREAS the Hon'ble National Green Tribunal, Principal Bench, New Delhi in the Order dated 22/11/2018 in O.A No. 353/2016 clarified that apart from prosecution, the statutory authorities under the Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974, must, in exercise of their incidental powers, prescribed scale of compensation to be collected from the polluters on the “Polluter Pays Principle”. Such scale which may be laid down at various levels, having regard to the local condition or as per direction in the hierarchy of the authorities. In various other application also, the Hon'ble NGT passed similar orders, for instance, in the Order dated 20/11/2018 in O.A No. 117/2014, 499/2014 and 102/2014 the Hon'ble NGT noted as; “Needless to say that statutory authorities under the Environment (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution Act), 1974 are entitled to assess and recover damages as “Polluter Pays Principle ” in exercise of incidental powers to protect environment”;

WHEREAS in pursuant to Hon'ble National Green Tribunal, in the matter of O.A. 593 of 2017 CPCB has developed a “Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund”;

WHEREAS the methodology developed by the CPCB for assessing Environmental Compensation is as follows;

$$EC = PI \times N \times R \times S \times LF$$

Where,

EC – Environmental Compensation in Rupees.

PI – Pollution index of industrial sector (PI of 80, 50 & 30 may be taken for Red, Orange and Green respectively)

N – Number of days for which violation took place, which is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified.

R – Factor in Rupees. Which may be minimum 100 and maximum of 500.

It is suggested to consider R as 250 as the Environmental Compensation in case of violation.

S – Factor for scale of operation (Suggested to take 0.5 for micro and small, 1 for medium and 1.5 for large units)

LF – Location factor based on population of city/town and location of industrial unit - Within Municipal boundary or up to 10 km distance for the municipal boundary of city /town. LF can be taken as follows: 1 for less than 1 million population, 1.25 for population 1 million to < 5 million, 1.5 for population 5 million to less than 10 million and 2 for population 10 million and above.

WHEREAS in any case, minimum Environmental Compensation shall be Rs.5000/day;

WHEREAS M/s. Slab and Aggregates, Kadayirippu P.O., Kunnathunadu Taluk, Ernakulam District, herein after referred to as quarry, is a building stone quarry;

WHEREAS appeal no.88 of 2017(SZ) was filed by Sri. George Issac before the Hon'ble National Green Tribunal, with the said quarry as the 6th respondent;

WHEREAS as per the order of Hon'ble National Green Tribunal, cited (1) above, in the above O.A., " Kerala State Pollution Control Board is also directed to initiate appropriate proceedings for violations committed by the 6th respondent for operating the unit without obtaining consent from the Board under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, after assessing the period of violation, impose compensation for the violation as directed by the Principal Bench as well as this Bench in several cases of this nature and take steps to recover the amount from the 6th respondent in accordance with law";

WHEREAS you have filed WP(C) No.35120 of 2022 before the Hon'ble High Court of Kerala, against the judgment dated 26-10-2021 in appeal no. 88 of 2017 and had obtained a stay order;

WHEREAS vide order dated 13.04.2023 of the Hon'ble High Court of Kerala, cited (2), the interim order was extended for two months;

WHEREAS in compliance with the above order of Hon'ble High Court, further action against your unit was kept in abeyance;

WHEREAS as per your letter enclosed with e mail cited (3) above, the stay has not been extended further;

WHEREAS Hon'ble NGT, vide order cited (4) has directed to comply with the directions given earlier;

WHEREAS as per the letter cited (5) the Environmental Engineer, District Office, Ernakulam has calculated and reported the Environmental Compensation as stated in the judgment dated 26/10/2021 in APPEAL NO. 88 /2017 (SZ);

WHEREAS as per circular no.PCB/TAC/WP/236/2006 dated 13.06.2007, existing quarries shall apply for and obtain clearance (Consent to Operate) from the Board within three months from 13/06/2007;

WHEREAS the total number of days, for which quarrying operations were done without obtaining consent from Board, were counted from 13/09/2007 (as per circular dated 13/06/2007) till 20/07/2015 (the date on which the District Geologist had issued stop memo);

WHEREAS the number of days of violation is 2866 days and the Environmental Compensation is calculated as per the "Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund", developed in the matter of O.A. No. 593/2017;

WHEREAS Environmental Engineer, District Office-2, Ernakulam has assessed the Environmental Compensation as shown below and reported the same as Rs.2,86,60,000/- (Rupees Two Crore Eighty Six Lakhs and Sixty Thousand Only) for 2866 days from 13/09/2007 till 20/07/2015;

Environmental Compensation (EC) = PI x N x R x S x LF

PI = 80

N = 2866 days

R = 250

S = 0.5

LF = 1

Environmental Compensation = 80 x 2866 x 250 x 0.5 x 1
= Rs.2,86,60,000/-

(Rupees Two Crore Eighty Six Lakhs and Sixty Thousand Only).

WHEREAS you have requested an opportunity for hearing to present the facts/case, vide letter cited (6);

WHEREAS a hearing is scheduled to be held in this connection on 16.02.2024 and the hearing letter was sent to you vide letter cited (7);

WHEREAS, during the hearing the facts / case justifying non levy of the Environmental Compensation can be presented by you;

NOW THEREFORE is exercise of the powers vested under section (5) of the Environment (Protection) Act, 1986, you are directed to Show Cause within 15 days of receipt of this notice as to why you shall not be directed to remit an Environmental Compensation of Rs. 2,86,60,000/- (Two Crore Eighty Six Lakhs and Sixty Thousand Only).


CHAIRPERSON

To

M/s. Slab & Aggregates,
Kadayirippu P.O., Kolenchery (via),
Ernakulam District-682311.

0/2

Copy to:

1. Chief Environmental Engineer, Regional Office, Ernakulam.
2. The Environmental Engineer, District Office-2, Ernakulam
3. The Senior Environmental Engineer-1, Head Office

☎: General: 0471- 2312910, 2318153, 2318154, 2318155 Chairman: 2318150 Member Secretary: 2318151
e-mail: chn.kspcb@gov.in; ms.kspcb@gov.in FAX: 2318152 web: kspcb.kerala.gov.in



KERALA STATE POLLUTION CONTROL BOARD

കേരള സംസ്ഥാന മലിനീകരണ നിയന്ത്രണ ബോർഡ്

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KSPCB/739/2023-SEE-1

Date: 07/02/2024

From

The Chairperson

To

Varkisons Engineers (Sole Proprietors)
M/s. Slabs & Aggregates
Kadayiruppu. P. O.,
Kolenchery - 682 311.



Sub: Request for hearing - reg.

Ref: Your letter dated 14/12/2023.

Sir,

Based on your request cited above, it is proposed to conduct a hearing in the chamber of undersigned on 16.02.2024 at 2:00pm. Please attend the hearing with relevant documents.

Your's faithfully


CHAIRPERSON

014

Copy to:

1. Chief Environmental Engineer
Regional Office, Ernakulam
2. Environmental Engineer
District Office-2, Ernakulam
3. The Senior Environmental Engineer-1
Head Office

Please attend the hearing