

**BEFORE THE HONB'LE NATIONAL GREEN TRIBUNAL
Southern Zonal Bench, Chennai**

Appl No: 88 of 2016

George Isaac

... Applicant

Vs.

**Ministry of Environment &
5 others**

... Respondents

ADDITIONAL COUNTER AFFIDAVIT FILED BY THE 6TH RESPONDENT

**MILLU DANDAPANI
RAHUL KANDAMPULLY
ADVOCATES
Counsel for 6th Respondent**

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Millu Dandapani
Counsel for the 6th Respondent

3. The petitioner has raised a belated contention that the 6th respondent herein was a violator by operating the quarry without environmental clearance as early as 2006, from which time he contends that the quarry ought to have obtained an Environmental Clearance (hereinafter referred to as "EC" under EIA notification 2006. However, it is pointed out that vide EIA notification, 1994 dated 27.01.1994 and the subsequent Explanatory Note dated 04.05.1994, it is specifically stated by the Respondent Ministry that a mining project/quarry in operation since before the year 1994, where a No Objection Certificate from the State Pollution Control Board has been obtained, no environmental clearance is required operate the same. True copy of the relevant pages of the EIA Notification 1994 with the Explanatory note dated 04.05.1994 is produced herewith and marked as **R6(i)**. Annexure R6(a) being a quarry lease dated 29.06.1985 issued by the Government to this respondent makes it clear that the quarry is in operation since before 1994, hence it satisfies the conditions of AnnexureR6(i)
4. Subsequently the 1st respondent issued the EIA notification, 2006 dated 14.09.2006 and later a clarification dated 02.07.2007 was issued by the 1st respondent to the aforesaid notification wherein it is stated that all such mining projects which do not require EC under the EIA notification 1994 could continue to operate until the next renewal of the mining lease is due. True copy of the Circular bearing No. J-15012/35/2007-IA.II(M)-Part dated 02.07.2007 issued by the Ministry of Environment and Forests (IA division), Government of India is marked as **Annexure R(6)j**. As is evident from the counter affidavit of this respondent the benefit Annexure R6(j) is available to this respondent. It is submitted the Hon'ble Supreme Court in **Common Cause v Union of India (2017) 9 SCC 499** has upheld the above-described positions in Law.
- It is submitted that the mining lease of this respondent was due for renewal in 2009. Annexure R6(b) lease agreement dated 11.05.2009 was the renewed lease issued by the State Government to this respondent. At that time, this respondent was not aware of an environmental clearance being required for operating the quarry and nor the same was insisted on by the Government. The respondent government also took into



For SLABS & AGGREGATES


VARKISONS ENGINEERS
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consideration the fact that this respondent was operating the quarry for the past 40 years, without any objections raised from a single resident and also that the respondent was a large employer in the area and, subsequently issued Annexure R6(b) lease to this respondent. All relevant certificates and compliance including those from Kerala State Pollution Control Board, Mining and Geology Department and other necessary permits were produced before the government as well for the renewal purpose

5. In 2014, the respondent was informed by the State Government that minor mineral mining activities such as that of the respondent, would now require an EC as per the latest judgement of the Hon'ble Supreme Court. Immediately on being informed of the same the respondent filed application 10.07.2014 for obtaining the environmental clearance. It is pertinent to point out that as is evident from the application for the EC and the Annexure A1 EC certificate that this respondent has disclosed the entire details of operation of the quarry including the fact that the quarry has been in operation since 1985. Pursuant to the same, the respondents 1 and 2 conducted a detailed study and physical inspection of the quarry site pursuant to which Annexure A1 EC certificate was granted to the petitioner. During the inspection as well all other verifications for the grant of the EC, the attraction of violation proceedings or any remedial action for violation was not sought from the Respondent. Hence, no such steps were taken by this respondent.
6. Subsequently inspections have been conducted every six months by the respondents to see as to whether conditions of the EC are being complied with by this Respondent. Till date there has not been a single negative mark in any of the inspection reports against this respondent. The specific contention of the petitioner that this respondent has willfully concealed the fact that it was an existing quarry at the time of applying for Annexure A1 EC, is a false statement made without any basis.



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[Handwritten Signature]
 VARKISON'S ENGINEERS
 (Sole Proprietors)

In light of the contentions raised and arguments advanced before this Hon'ble Tribunal, it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the above appeal.

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

Dated this the 25th day of July 2021



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VARKISO'S ENGINEERS
(Sole Proprietors)

Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me at my office at Ernakulam on this the 25th day of July 2021

Millu Dandapani
Counsel for the 6th Respondent

**EXPLANATORY NOTE REGARDING THE IMPACT
ASSESSMENT NOTIFICATION
DATED 27TH JANUARY, 1994**

1. Expansion and modernisation of existing projects

A project proponent is required to seek environmental clearance for a proposed expansion/modernisation activity if the resultant pollution load is to exceed the existing levels. The words "pollution Load" will in this context cover emissions, liquid effluents and solid or semi-solid wastes generated. A project proponent may approach the concerned State Pollution Control Board (SPCB) for certifying whether the proposed modernisation/expansion activity as listed in Schedule-I to the notification is likely to exceed the existing pollution load or not. If it is certified that no increase is likely to occur in the existing pollution load due to the proposed expansion or modernisation, the project proponent will not be required to seek environmental clearance, but a copy of such certificate issued by the SPCB will have to be submitted to the Impact Assessment Agency (IAA) for information. The IAA will however, reserve the right to review such cases in the public interest if material facts justifying the need for such review come to light.

2. Availability of Summary Feasibility Report, EIA/EMP Report etc. to concerned parties or groups

The project proponent will have to submit an executive summary incorporating in brief the essence of project details and findings of environmental impact assessment study which could be made available to concerned parties or environmental groups on request.

3. Clarification about concerned parties or environmental groups

The concerned parties or environmental groups will be the bonafide residents located at or around the project site or

site of displacement or site of alleged adverse environmental impact.

4.

Public Hearing

Public hearings could be called for in case of projects involving large displacement or having severe environmental ramifications.

5.

Requisite information required for site clearance/project clearance.

(a) Site Clearance:

Site clearance will be given for site specific projects as mentioned in para-2(ii) of the notification. Project proponents will be required to furnish information according to the environmental appraisal questionnaires for site clearance, as may be prescribed by the IAA from time to time. Additional information whenever required by the IAA will be communicated immediately to the project proponents who will then be required to furnish the same within the time frame specified:

(b) Project clearance:

In addition to the application form as mentioned in Schedule II to the notification, project proponents are required to furnish the following information for environmental appraisal:

(i) EIA/EMP report (20 copies);

(ii) Risk Analysis report (20 copies): however, such reports if normally not required for a particular category of project, project proponents can state so accordingly, but the IAA's decision in this regard will be final;

(iii) NOC from the State Pollution Control Board;

- (iv) Commitment regarding availability of water and electricity from the competent authority;
- (v) Summary of Project report/feasibility report (one copy);
- (vi) Filled in questionnaire (as prescribed by the IAA from time to time) for environmental appraisal of the project;
- (vii) Comprehensive rehabilitation plan, if more than 1000 people are likely to be displaced, otherwise a summary plan would be adequate.

As a Comprehensive EIA report will normally take at least one year for its preparation, project proponents may furnish Rapid EIA report to the IAA based on one season data (other than monsoon), for examination of the project. Comprehensive EIA report may be submitted later, if so asked for by the IAA.

The requirement of EIA can be dispensed with by the IAA, in case of project which are unlikely to cause significant impacts on the environment. In such cases, project proponent will have to furnish full justification for such exemption, for submission of EIA. Where such exemption is granted, project proponents may be asked to furnish such additional information as may be required.

6. **Submission of Insufficient or inadequate data**

Regarding cases liable to be rejected due to inadequacy of data, it is clarified that the IAA will make such rejection within 30 days from the date of submission of the proposal. While rejecting a proposal due to insufficient or inadequate data after the first evaluation, the IAA may also stipulate additional requirement of information/clarification for impact assessment purposes if deemed essential due to the specific nature of location of the proposed project whose data as prescribed is

not available, the IAA can examine the project on the basis of available data.

7.

Application Form

(i) In order to remove any hardship to the project proponent in providing any information, the project proponent may, where some information is not available or would cause inordinate delay, mention this in their application form. The IAA may consider the project proposal based on the information available.

(ii) Quality and quantity of ground water

If 15 years data on the quantity and quality variation of ground water is not available with the concerned Department or Authorities, the project proponent may mention this accordingly in the application form prescribed in Schedule-II to the notification. Further, in case of projects, where ground water is not to be used, and effluents are not to be discharged on the land, the requirement of ground water variation data for the previous 15 years will be dispensed with.

(iii) A project proponent may write the words "Not Applicable" while filling the application form as mentioned in Schedule-II to the notification in respect of items which are not relevant for the purposes of the proposed project.

8.

Exemption for projects already initiated

For projects listed in Schedule-I to the notification in respect of which the required land has been acquired and all relevant clearances of the State Government including NOC from the respective State Pollution Control Boards have been obtained before 27th January, 1994, a project proponent will not be required to seek environmental clearance from the IAA. However those units who have not as yet commenced production will inform the IAA.

No. J-15012/35/2007-IA.II(M)-Part
Government of India
Ministry of Environment & Forests
(IA Division)

By Speed Post

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Dated the 2nd July, 2007

CIRCULAR

Sub: Clarification regarding applicability of EIA Notification, 2006 on mining leases of 5 hectare (major minerals) and mining leases of minor minerals which have been operating before 14.9.2006 – Regarding.

Federation of Mining Associations of Rajasthan and others have raised concerns regarding applicability of EIA Notification dated 14th September, 2006 to mining leases of 5 ha for major minerals and mining leases of minor minerals which have been in operation before the said Notification coming into force. The matter has been examined in the Ministry.

It is clarified that all such mining projects which did not require environmental clearance under the EIA Notification, 1994 would continue to operate without obtaining environmental clearance till the mining lease falls due for renewal, if there is no increase in lease area and / or there is no enhancement of production. In the event of any increase in lease area and or production, such projects would need to obtain prior environmental clearance. Further, all such projects which have been operating without any environmental clearance would obtain environmental clearance at the time of their lease renewal even if there is no increase either in terms of lease area or production.

(S.K. Aggarwal)
Director

To

1. Secretary (Environment) of all State / UT Governments
Member Secretary of State / UT Pollution Control Boards / Committees
3. PS to MOS (E), PPS to Secretary (E&F), PPS to SS, PS to JS(JM)
4. All Officers of IA Division.