

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (S.Z)

SOUTHERN ZONE BENCH AT CHENNAI

APPEAL No. 15 of 2017 (SZ)

Between

N. Shamsul Huda, Calicut,  
Kerala State.

.... Appellant

-AND-

I. Union of India, Rep by its Secretary

Ministry of Environment, Forest and Climate Change

New Delhi – 110 003

& 3 Others

... Respondents

ADDITIONAL REPLY AFFIDAVIT FILED BY THE 4<sup>th</sup> RESPONDENT

I, E.A. Abdul Kareem, Aged 58 years, (Director, M/s Malabar Aggregates Pvt. Ltd.) S/o Ali Kunju, Edathuruthil House, Vadakkekara (PO), North Paravur, Eranakulam, Kerala (State), having office at Malabar aggregates Pvt. Ltd. Ozhukoor (P.O) Kondotty, Malappuram Dist Kerala.,do hereby solemnly affirm and sincerely state as follows:

1. I am the Director of the 4th Respondent quarry unit and as such I am well acquainted with the facts and circumstances of the case. I am filing this reply as an additional reply to the earlier reply filed by me dated 05.08.2017. I pray for this Hon'ble Tribunal to consider this additional reply as a part and parcel of my earlier reply and the documents I had filed therein, to appreciate the case of this respondent. I have perused the Rejoinder affidavit filed by the Appellant dated 25.10.2017 and I deny each and every averment



For MALABAR AGGREGATES (P) LTD

E.A. Abdul Kareem

DIRECTOR

*(Signature)*

contained therein.

**ALLEGATIONS OF EX-POST FACTO CLEARANCE IS FACTUALLY INCORRECT**

2. I submit that this 4<sup>th</sup> Respondent quarry had been granted Environmental Clearance (hereinafter referred to as EC) vide proceedings dated 31.12.2016 submitted as Annexure No.3 by the Applicant, which is under challenge in the present appeal. I state that the details of the site are as follows: -

EC Location :- Survey No 36/3 (pt), 37/1(pt), 37/2(pt), 37/3 (pt) at Morayoor Village, Kondotty Taluk, Malappuram District, Kerala

EC Extent :- 2.3732 Hectares.

EC date and Expiry :- 31.12.2016 ; 5 years

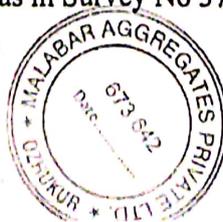
3. I submit that earlier, this respondent had been granted Quarrying Permit, Consent from the Kerala State Pollution Control Board and Explosive license which had been submitted as Annexure 2 to 4 by this Respondent. The details of the permission is as follows :-

Location :- Survey No 37/1, 37/3 at Morayoor Village, Kondotty Taluk, Malappuram District, Kerala

Extent :- 1 Acre

Validity :- Upto 09.01.2015

4. I submit that the area that has been granted Environmental Clearance now is different and a larger extent of lands. Hence the same is only a fresh clearance. Further, the areas in Survey No 37/1 and 37/3 are larger extents of



For MALABAR AGGREGATES (P) LTD

F.A. Abdul Karim

DIRECTOR

lands where a portion of it alone was granted permissions for quarrying earlier. It is most important to note that even those areas where permissions had been granted, the same had been closed and non-functional for almost a period of one year. The same had also been recorded during the site visit by the SEIAA on 30.05.2016. This has also been reflected and referred to in the proceeding granting the Impugned Environmental Clearance to this Respondent.

5. Despite all of the above, the Appellant has alleged that the impugned site was a working quarry as on the date of clearance which is evidently and obviously false. It is a matter of fact and a matter of record that the site was non-operational and closed. The allegation of the Appellant to the contrary in his rejoinder is thus specifically denied.
6. Thus, on the facts and background of the case itself, it has been clearly recorded that the EC is a PRIOR Environmental Clearance. The Appellant while alleging the contrary has not furnished any proof to the same. The Respondent also had stated that same in the earlier reply and by a convenient interpretation, the Appellant, has alleged in the Rejoinder as if this Respondent had stated that the quarry had been functioning. It is specifically denied and has never been admitted. Thus, the case of the Appellant has no iota of merit and is liable to be dismissed.

**ALLEGATIONS OF IMPROPER APPRAISAL AND NON-CONSIDERATION OF ENVIRONMENTAL FACTORS IS INCORRECT**



For MALABAR AGGREGATES (P) LTD

E. A. Abdul Rozique  
DIRECTOR

*(Handwritten signature)*

7. It is further submitted **In Arguendo** to the above submissions, this Respondent had obtained the EC only following the due process and existing procedures as per law. The same is explained hereunder: -

**Date of Application for EC: - 29.07.2015**

Date of perusal of the application: - 50<sup>th</sup> SEAC meeting on 30-31/12/2015

Re-consideration of the application: - 52<sup>nd</sup> SEAC meeting on 8-9/02/2016

Recommendation of the application: - 51<sup>st</sup> SEIAA meeting on 29/03/2016

Site Visit : - 30/05/2016

Re-consideration of the proposal: - 54<sup>th</sup> SEIAA meeting on 21/06/2016 .

Compliance of pre-conditions: - 25/08/2016, 26/08/2016 and 24/09/2016

Grant of EC: - 31/10/2016.

Therefore, it is submitted that only after following a rigorous scrutiny and appraisals as mandated per law, the EC had been granted to this Respondent.

8. It is submitted that all relevant factors had been looked into at the time of granting of EC by even conducting site inspections. In fact, the EC was granted after recording the proceedings of the officials namely, Village Officer (Morayur) and Geologist (Malappuram) who have vided communication dated 26.08.2016 & 24.09.2016 respectively, recorded the absence of land slides in the area. Further, this respondent had also given a communication dated 25.08.2016 stating that the dwelling unit nearby had also been demolished.



For MALABAR AGGREGATES (P) LTD

E.A. Abdul Karim

DIRECTOR

*(Handwritten signature)*

9. In addition to the above, the EC had been granted subject to a total of ELEVEN (11) specific conditions and about SIXTY-ONE (61) general conditions. The same had been approved and granted by the competent, scientific and statutory authorities. The Applicant has miserably failed to point out any errors or establish any merits to challenge the impugned EC. On the other hand, merely by raising certain technical objections, the Appeal had been filed which is erroneous.

**ALLEGATIONS OF EX-POST FACTO CLEARANCE IS LEGALLY INCORRECT**

10. It is submitted that originally under the Environment Impact Assessment Notifications (hereinafter referred to as EIA) dated 1994 and 2006, issued under the powers granted under Section 3 and 5 of the Environmental Protection Act, 1986 did not mandate the requirement of EC for mining of minor minerals for an area of less than 5 Hectares.

11. However, by a judgement of the Hon'ble Supreme Court in the case of **Deepak Kumar & Ors Vs. State of Haryana & Ors** in 2012 (4) SCC. 629, it was held that the leases of minor minerals including their renewal for an area of less than five hectares be granted only after getting the environmental clearance from the authorities. Thereafter the Ministry of Environment and Forest had issued an Office Memorandum dated 18.05.2012 to comply with the directions of the Hon'ble Apex Court and decided that all mining projects minor minerals including their renewal, irrespective of the size of the lease would require prior environmental clearance.



For MALABAR AGGREGATES (P) LTD  
C. A. Abdul Kadir  
DIRECTOR

12. Thereafter, certain issues arose amongst the proponents and authorities with respect to the implementation of the above decision. Notably, the Hon'ble High Court of Kerala in the case of **All Kerala River Protection Council vs State of Kerala (2015) 2 KLT 78** had held that EC was required for only new projects/activities. It further held that the decision of the Apex Court in Deepak Kumar case did not contemplate environmental clearance for an area of less than 5 Hectares with regard to existing minor mining lease/permits. The Hon'ble Court also had held that as per Rule 12 of Kerala Minor Minerals Concession Rules, 2015 to the effect that environmental clearance required under Rule 9 shall not be insisted in the case of renewal of quarrying permits in case of quarries which had a valid permit as on 9<sup>th</sup> day of January, 2015.

13. The above issue was again considered by another Division Bench of the Hon'ble Kerala High Court in **M.K.Najeeb vs MOEF & Ors** in its order dated 15.07.2015 in W.A. No.1514 of 2015 which had also held that in respect of quarries which have valid permit as on January, 2015 have to be read in accordance with the law as has been noticed and laid down in the earlier Judgement.

14. Thereafter all the issues were dealt with by this Hon'ble Tribunal in various decisions with respect to the time frame for application of EC and processing of EC and finally a time frame to obtain EC with regard to minor minerals was laid down in the order dated 18.02.2016 pronounced on 04.05.2016 in O.A.No.34 of 2016 in **NarashZargar Vs. State of Madhya Pradesh & Others**. This Hon'ble Tribunal had held that all the minor mine



For MALABAR AGGREGATES (P) LTD

A. Abdul Karim

DIRECTOR

*(Signature)*

owners which have not submitted their applications as on 31.03.2016 will not be permitted to carry on any activity and directed the authorities to dispose off such applications by 31.05.2016. Therefore, even existing minor mineral operations had to submit to the regime of EC and apply for grant of EC to the authorities on or before 31.03.2016.

15. This view was also upheld by this Hon'ble Bench in the order dated 18.03.2020 pronounced on 30.06.2020 made in O.A.No.136 of 2017 in Tamil Nadu Small Mine Owners Federation vs MOEF & Ors. This Hon'ble Bench had also laid down that the applications for grant of EC which were pending as on 31.03.2016 have to be treated as normal applications and not violation applications and directed the authorities to dispose the applications.

16. Thus, I am advised to state that by virtue of all the above, existing minor mining operations were permitted to apply and obtain EC by making applications latest by 31.03.2016. Though the case of this respondent is that the impugned EC was only a fresh project as the same had been recorded noting the closure of operations for over a year, assuming, that this respondent has to be treated as an existing project also, the application for grant of EC had to be made within the above cutoff date. The application for EC by this respondent as stated above was made on 29.07.2015. Thus, there is no illegality or procedural infirmity in the grant of the impugned EC and the appeal is liable to be dismissed.

17. In any event, the EC granted to this respondent is, as a matter of record, only a fresh EC and the operations as under the impugned EC could be



For MALABAR AGGREGATES (P) LTD

E A Abdul Kousim

DIRECTOR

*[Handwritten signature]*

commenced only after obtaining the same and as such the grant of EC or the activities under the impugned EC are perfectly valid and the only ground raised by the appellant that the same is ex-post facto clearance is clearly erroneous, illegal and liable to be dismissed.

18. Thus, it is submitted that this respondent is a law-abiding unit and has been undertaking business only after obtaining proper permissions as per existent law. On the other hand, even though it is a known fact that there are a number of illegal operators in the state of Kerala, even after the Appellant himself had pointed out several others, only this respondent had been targeted to be litigated against. In fact, there are a number of illegal operators who are causing one trouble or another to lawful units such as this respondent and the present litigation is a continuation in the series of problems faced by this respondent.

Therefore, it is respectfully prayed that this Hon'ble Tribunal may be pleased to dismiss the above Appeal as devoid of merits and pass such further or other orders as this Hon'ble Tribunal may deem fit and thus render justice.

Dated this the 5<sup>th</sup> day of November, 2020.



For MALABAR AGGREGATES (P) LTD

EA Abdul Kariem

DIRECTOR

*Abdul Kariem*

Solemnly affirmed and signed before me at my office at Manjeri on this the 5<sup>th</sup> day of November, 2020.

*Abdussamad K.K*

ABDUSSAMAD.K.K  
ADVOCATE  
Roll No: K/1085/03  
MANJERI