

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

Appeal No. 25 of 2023

Alex Paul

Son of K.C. Paulose aged about 51 years
Kottalil House, Kunnekal Post, Muvattupuzhal,
Ernakulam District, Kerala state - 682316
Email id: alexapaulkoottalil@gmail.com
Phone: 9447107434

..... Applicant

Versus

1. **STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY, TAMIL
NADU (SEIAA),**
Third Floor, Panagal Maligai,
No.1, Jeenis Road, Saidapet, Chennai- 600015.
Phone: 044- 24359973
Email.: mstnseiaa@yahoo.com

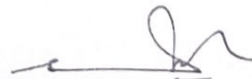
2. **STATE LEVEL EXPERT APPRAISAL COMMITTEE (SEAC),**
Through the Member Secretary
Third Floor, Panagal Maligai,
No.1, Jeenis Road, Saidapet, Chennai- 600015.
Phone: 044- 24359973
Email: mstnseiaa@yahoo.com

.....Respondent(s)

**ADDITIONAL AFFIDAVIT FILED ON BEHALF OF SEIAA - TAMILNADU,
THE FIRST & SECOND RESPONDENTS**

I, A.R. Rahul Nadh, I.A.S., aged about 36 years, working as Member Secretary, State Level Environment Impact Assessment Authority, Tamil Nadu (SEIAA-TN) having office at Third Floor, Panagal Maaligai, Saidapet, Chennai - 600015 do hereby solemnly affirm and sincerely state as follows:

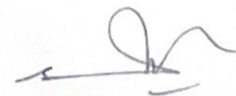
1. I am filing this additional counter affidavit on behalf of the First & Second Respondent/SEIAA-TN herein and as such I am well acquainted



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with the facts and the circumstances of the case from the records available in this office.

2. I deny all the averments and allegations stated in this Appeal No.25 of 2023 except those that are specifically admitted hereunder and put the applicant to strict proof of the same.
3. It is respectfully submitted that the Project Proponent/Petitioner had applied to the State Level Environment Impact Assessment Authority – Tamil Nadu (SEIAA-TN) seeking prior Environmental Clearance for the Rough Stone and Gravel quarry over an extent of 4.52.0 ha in Patta land bearing S.F.Nos. 531/1B (Part) of Ponmanai 'A' Village , Thiruvattar Taluk ,Kanyakumari District, Tamil Nadu under the category 'B2' of item No.1 (a) "Mining of Minerals" of the Schedule to the EIA notification, 2006 vide proposal No.SIA/TN/MIN/408810/2022 dated 01.12.2022.
4. It is respectfully submitted that the proposal was earlier placed in the 364th Meeting of SEAC held on 23.03.2023. SEAC after detailed discussions decided not to recommend this project proposal. Subsequently, the proposal was placed in the 611th Authority meeting held on 12.04.2023. SEIAA accepts the decision of SEAC and decided to request Member Secretary, SEIAA-TN to issue rejection letter to proponent as per the 364th SEAC minutes. In this regard, the rejection letter was issued vide letter dated:25.05.2023 and the same was uploaded in the Parivesh portal. Hence, the above-mentioned file was closed and recorded accordingly.
5. It is respectfully submitted that meanwhile, the Project Proponent/Petitioner had approached the Hon'ble NGT (SZ), Chennai in the matter of Appeal No.25 of 2023 challenging the rejection letter issued by MS-SEIAA vide order dated: 25.05.2023. The Hon'ble National Green Tribunal (SZ) issued order in the matter of Appeal No.25 of 2023 dated: 31.07.2024 which states that,



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“...The letter dated 19.07.2024 from the District Forest Officer makes it clear that the norms required for mining are well within the norms and not as mentioned in the impugned order.

2. At this juncture, at the request of the learned counsel appearing for the SEIAA - Tamil Nadu to verify whether the impugned order may be recalled and fresh order may be passed without intervention of this Tribunal, post the matter on 14.08.2024.”

Based on the above order, the proposal was placed in the 692nd Authority meeting held on 06.02.2024. The Authority after detailed deliberation decided to forward the court direction to SEAC for further course of action and direction.

6. It is respectfully submitted that in view of the above the proposal was placed in the 493rd meeting of SEAC held on 30.08.2024 in deference to the Hon'ble Tribunal's direction issued in the matter of Appeal No.25/2023 vide order dated: 31.07.2024. Based on the order of the Hon'ble Tribunal, the Committee reexamined the proposal afresh. The Committee noted that the earlier decision of the Committee was based on the following reasons,

- i. The proposed quarry site is located in an ecologically sensitive area of Western Ghats and is surrounded by thick vegetation.*
- ii. Further, the proposed mine lease area is at the top of a hill which appears to be a watershed which will in turn have implications on the contribution of surface runoff.*
- iii. The proposed site is at a distance of approximately 2.75km from Kanniyakumari Wildlife Sanctuary.*
- iv. There is a National Highway located at a distance of 443 m from the foothill of the proposed mine lease area which falls within 500 m danger zone as stipulated by the DGMS for the blasting operations and it could possibly pose a threat to the vehicles plying on the Highway.*



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v. *The quarrying operation may cause depletion of fertile topsoil which will lead to environmental degradation to flora and fauna in and around the area.*

7. It is respectfully submitted that the Committee had noted that the proposed site was located outside the ESZ of Kanniyakumari Wildlife Sanctuary and the decision was based on other ecological factors as listed above.
8. It is respectfully submitted that the Committee in its earlier order had used the terminology as "ecologically sensitive AREA of the Western Ghats..." only as a matter of narration that the proposed area has to be given serious environmental concern. It is submitted that the presentation of eco sensitive ZONE was purely an inadvertence. It is reiterated that the Committee had anyways only mentioned eco-sensitive AREA.
9. It is submitted that based on directions of Hon'ble Tribunal, the Committee reexamined the matter. It is submitted that, even though the norms as per law could have been complied with by the proponent, that alone is not the only aspect that the Authority is duty bound to consider.
10. It is submitted that in the appraisal of any project the foremost consideration is whether there is any legal bar or prohibition under any norms for the project or the site area. Then when that has been satisfied, the committee and the authority are duty bound to appraise the project on the basis of the environmental risk, possibility of impact and the mitigation measures that are possible. It is submitted that even with the mitigation measures, if it is an area and project nature where the environmental concerns outweigh, the authority is duty bound to reject the project application.
11. It is submitted that in the instance case, as explained above, it was felt that once the file was placed and deliberated, it was felt to stress the importance of the rejection order. Only by way of assistance to the

Hon'ble Tribunal, several more factors of the project site which weighs in favour of the environment were bound to be added for getting a better picture of the area for better appreciation of the case of this respondent.

12. It is submitted that all the additional points or reasons are only a description of the area and are all factors which are anyways existing and present. It is submitted that the proponent is also aware of the region of the site as he has proposed the project having fully understood the environmental factors of the area.

13. Accordingly, the respondent, had noted in addition as follows: -

- i. The site proposed is in the ecologically sensitive area of Western Ghats region in the Kanniyakumari District.
- ii. Western Ghats of Kanniyakumari District is one of the seven agro-climatic zones of Tamil Nadu.
- iii. The location of the proposed site & proposed mining activity will cause considerable damage to the ecology of area which has rich biodiversity.
- iv. The risk and accident proneness of the mining activity is extremely high in the site with significant presence of boulders, steep to very steep slope and transportation through fragile narrow High Range roads.
- v. Western Ghats is globally considered as a "hottest of hot spots" of biodiversity (Myers) and listed as World Heritage Site. Several endemic taxa have been reported in the Western Ghats of Tamil Nadu in the last two decades, which calls for attention to conservation.
- vi. The Committee also considered whether mitigation measures can be prescribed for overcoming the above factors. The Committee after detailed discussions concluded that the expected adverse

- effects cannot be resolved through mitigation measures and the damage caused to the ecology will be difficult to reverse.
- vii. The Committee also noted that there is National Highway within the distance of 500m which is considered to be danger zone by the Director General of mines safety vide Circular No.2 of 2003 dated:31.01.2023.
- viii. The site is located on the rocky escarpment region of the Western Ghats and it constitute a unique geological entity and have outstanding geological value of global importance and therefore needs to be preserved for posterity. The rocky stretches may also have unique floral assemblages that are narrowly endemic to that region. Recent botanical expeditions to the areas around the quarry site region (rocky surfaces at an altitude of 700--1500m) could uncover species (Argostemma quarantena, Impatiens stolonifera), that are found only in this particular area in the entire globe. Once lost, it is gone forever.
- ix. In cases like this, it is important to invoke the concepts of "Precautionary Principle" that has been incorporated in the Nation's Environment Policy.

"The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not be triggered by the suspicion of concrete danger but also by justified concern or risk potential."

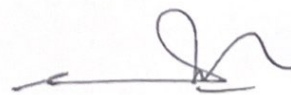
Hon'ble Supreme Court of India in a recent judgment in I.A. No.1000 of 2003 dated 3rd June 2022 has underlined the necessity for following the Precautionary Principle. The judgment states that

“...a situation may arise where there may be irreparable damage to environment after an activity is allowed to go ahead and if it is stopped, there may be irreparable damage to economic interest....”

The Hon'ble Court held that in case of a doubt, protection of environment would have precedence over economic interest. It was further held that precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on reasonable suspicion. Further, the Hon'ble Court emphasizes in the said judgment that it is not always necessary that there should be direct evidence of harm to the environment.

After considering all the above factors, the Committee decided not to modify the recommendation already made.

14. It is respectfully submitted that the subject was placed in the 754th authority meeting held on 16.09.2024. During the meeting, the authority noted by looking into the documents available, SEAC minutes and the KML that the proposed site is in the Eco Sensitive Area which needs special protection and attention due to its unique ecosystem and biodiversity. It also holds high conservation value. The goods and services from such area are very high. Tampering such site results in loss of such services & jeopardize the ecological value of the site. Further, the site falls under important water shed, catchment & includes perennial waterbodies. Considering the sensitivity of the area, the surrounding environment covered by various vegetation, horticulture/agriculture crops and biodiversity rich tract which is a source of water resources, the Authority, after detailed discussions, decided to accept the decision of SEAC and decided to request Member Secretary, SEIAA-TN to communicate minutes of SEAC and Authority to the Hon'ble Tribunal.




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15. It is submitted that there is no vested right on the appellant for mining at a particular site. The ownership of the land or the grant of patta is only a possession over the land and not the subsurface minerals. The minerals belong to the public and held in trust by the State. The law bestows a duty on the Authority to exercise its wisdom in allowing a project and rejecting a project and such discretion is vested upon the Authority by force of law. Therefore, the appellant has failed to point out any legal error or violation of any legal provision in the rejection order. Further the appellant has also failed to point out any scientific error or violation of principles of science in the impugned order.

16. Therefore, the appellant has only presented a case on alternative approach for mitigation measures which are not at all maintainable. The appellant being the beneficiary can't make a case that the project can be allowed with certain mitigation measures. The appellant having failed to point out any legal error or error in science has merely made averments which are only to suit his convenience.

17. It is submitted that in the absence of a vested right, the appellant could not compare any other project nearby or not, for making a case for grant of EC. In fact, the position of law makes a duty on the authority to independently appraise the case on its own merits even if a similar project is allowed or rejected in an area which is nearby or not. It is submitted that there is reliance on any legal provision or judicial pronouncement by the appellant that due to the grant of some other project, the appellant is automatically entitled for the grant of the present project site. At the risk of repetition, the Appellant has to justify the illegality or the unscientific nature of the impugned order. It is submitted that the impugned order was made by the Authority only on the better and larger interest of environment. The reasons are more elaborated in the next meetings and the appellant has terribly failed to point out any error.

Therefore, humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the present appeal as this Hon'ble Tribunal may deem to fit and proper in light of the facts and circumstances of this case and thus render justice.



Member Secretary
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Before me,

Solemnly affirmed in Chennai

On this the 27th day of November 2024

And signed his name in my presence

Subramanian
No. 2654/19.
No. 104, Additional Court
Chamber, High Court
Advocate, Chennai