Filed on: 02.10.2024

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI

MEMORANDUM OF APPEAL

(Under Section 18(1) read with Section 16 of the National Green Tribunal Act, 2010)

APPEAL No. 43 of 2024

SHOUKKATH ALI ……..…….…….…… **APPELLANT**

Versus

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE & ORS**. ……. RESPONDENTS**

REJOINDER AGAINST THE REPLY AFFIDAVIT FILED BY THE RESPONDENTS No. 2 & 3

HARISH VASUDEVAN (H-253) [K/779/2013]
RAJAN VISHNURAJ (R-1268) [K/653/2010]

Counsel for the appellant

Amicus **A**dvocates

II Floor, Chundanal Monarch, K.K Padmanabhan Road, Kochi-18

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BETWEEN

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I, Shoukkath Ali, aged 40 years, S/o Muhammed Ali. C, Charalil House, North Paloor, Pulamanthole P.O, Malappuram District, do hereby solemnly affirm and state as follows:

1. I am the appellant in the memorandum of appeal and as such I am conversant with the facts of the case. I am competent to swear this affidavit. This rejoinder is filed against the reply affidavit dated 11.09.2024 filed by the 1st Respondent reserving right of this appellant to file a detailed rejoinder in future, if so warranted. A copy of the reply affidavit was received by the appellant on 01.10.2024 only and hence this rejoinder is filed today.

2. The Appellant vehemently denies all allegations and averments made by the 2nd and 3rd respondents in paragraphs 2-18 of their reply affidavit, as it is not true and hence denied by the appellant. Most of the narrations made are either utter false or wrong understanding of law. It will be described in the subsequent paragraphs.

3. The curious stand taken by the 2nd and 3rd Respondents is that they couldn't find any violations of the 5th Respondent in their field visits. Whether the application of the 5th Respondent involves violation or not was not at the option of the 2nd Respondent. The said question was already addressed and settled by the Hon'ble High Court through Annexure A2 order inter parte in favor of the appellant. Judgment was passed in WPC 41905 of 2017 on 14.06.2019 agreeing that application has to be dealt with Annexure A3, allowing the said contention of the appellant.

4. While Annexure A2 order was passed, SEIAA did not have the power to consider mining projects less than 5 Hectare. As per notification dated 15.01.2016, it was only DEIAA who can grant EC for such projects. The said position is made clear by the Hon'ble High Court in WPC No.41905v of 2017 and in Paristhithi Samrakshana Janakeeya Samithy Ekm and Anr vs SEIAA reported in **2018 (1) KHC 955**. SEIAA had power to deal with a less than 5 Ha mining project **only if it is a violation case**. The transfer of files from DEIAA to SEIAA was ordered by the Court only because Annexure A3 notification is applicable to the 5th Respondent. This fact was never disputed. Later SEIAA cannot dispute the applicability of Annexure A3 on the application of R5.

5. No prior notice was given by the SEIAA or SEAC to appear before them at any point of time before the filed visit and therefore SEIAA cannot blame the appellant for any absence.
6. Averments made in para 2 are false and hence denied. SEIAA processed the application without even following any provisions in Annexure A3. The illegal mining in the project area after 2014 is an admitted fact by the 5th Respondent. Any further application is a case involving violation. This was agitated and found in favor of the appellant in Annexure A2 order. SEIAA had no power or authority to reverify or modify the said position. Instead of asking for the documents from the Geology Dept for the proven violation and compounding / fine paid by the 5th Respondent, some members of SEAC with ulterior motive and undue financial gain, and reported a false narrative. This resulted in a totally false narration and illegal granting of an EC.
7. It is an admitted position of the SEIAA that Annexure A6 is not a new application, but a repetition of the old one. If so, Annexure A3 order is applicable to Annexure A6 also. Then there should have been an application for ToR along with an EIA report, EMP report and several other documents to process. None of the criteria have been fulfilled by the 5th Respondent. Even then, the appraisal was done in a namesake manner and EC was granted. 1st Respondent failed to explain as to why they have not sought sufficient materials as mandated by Annexure A3 notification despite specific court direction. Averments in para 3 are absolutely false and hence denied. Office memorandum
8. It is submitted that, EMP was not prepared by any accredited Consultant. It was not an EMP prepared as per any statutory notification. Preparation of EMP has to be done as per EIA Manual for Mining

projects. This was not done by the 5th Respondent and never bothered by the 1st Respondent. In annexure A6 application, (page 68 in Appeal) the Applicant specifically states that there is NO WATER COURSES or OTHER WATER BODIES within 5km radius of the project site. **The presence of natural water channel in the project site is an admitted fact by the SEIAA in EC and in para 3 of their reply.** Only on this deliberate suppression of material facts, this application ought to have been rejected by the SEIAA. SEIAA and SEAC took everything in a mechanical manner is evident even from the reply affidavit.

9. It is respectfully submitted that no statutory distance has been preferred from the river / natural water channel. Mining was never asked to be revised based on the prohibitory distance with natural water channel / river.

10. As per CPCB Guidelines dated 12.05.2020 recommending distance Criteria for stone quarry units, 200 meter is the minimum distance to be kept for a Stone quarry project from the nearby inhabited sites / rivers. This was never considered by the SEIAA while granting Annexure A1. A true photocopy of the CPCB Guideline dated 12.05.2020 is produced herewith and marked as **Annexure A17**.

11. Para 13 of the reply would show the utter ignorance / careless attitude / incapacity of the SEIAA and SEAC in understanding the cluster situation. It is an admitted fact that another quarry falls within 500 m of the project in question. Cluster ought to have been formed and all documents should have been prepared for the entire cluster. Cluster situation is applicable irrespective of the size of the quarry site. The judgments referred to in para 14,15,16 is not connected to Malappuram District or facts of this case and hence denied.

12. Annexure R5(o) submitted by the 5th Respondent would make it clear about the project site. It is a forest like thick vegetation area. As per the rapid Biodiversity Assessment Report, flora and fauna which are protected under the Schedule 1 and 2 of the Wildlife (Protection) Act 1972 are very much seen and available at the project site. **Pavo Cristatus (Indian Peafowl) in the list of Birds and Varanus Bengalensis (Bengal Monitor Lizard) in the list of reptiles are two species included in Schedule 1 of the Wildlife (Protection) Act 1972.** Pachliopta hector with a common name as Crimson Rose is a protected Schedule 2 Butterfly as per WP Act 1972. These are all admittedly available flora and fauna in the site, that too in a rapid assessment. These material facts were deliberately suppressed by the 5th Respondent in Annexure A6 (page 68 of Appeal). It was falsely stated in item 5 that **NONE within 5 km**.

13. If a proper EIA is done in the project site and 5km around, as mandated in Annexure A3, hundreds of such protected species can be found out. **Clearing of a forest like wet evergreen vegetation for mining and blasting will destroy the said eco-system permanently**. **It is as good as permitting hunting of these species, which is prohibited by Section.9 of the WP Act**. SEAC has not even bothered to do any such assessment or appraisal. Even a layman like the appellant can point out such mistakes in appraisal. This is criminal negligence from the part of SEAC members who did appraisal and site visit.

14. All these facts only support the Appeal Memorandum. Annexure A17 is necessary for deciding this Appeal and it may be accepted as a part of this Appeal. In the light of the abovementioned facts, the Appeal may be allowed, the impugned EC be set aside and award Rs.50,000 as cost of the litigation to the Appellant who spent money from his pocket to

rectify the mistakes done by the statutory authority in EIA Process, and who saved Environment.

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

Dated this the 2nd day of October, 2024

DEPONENT

Solemnly affirmed and signed before me by the deponent whom I know on this the 2nd day of October, 2024 in my office.

Harish Vasudevan
ADVOCATE

VERIFICATION

I, Shoukkath Ali, aged 40 years, S/o Muhammed Ali. C, Charalil House, North Paloor, Pulamanthole P.O, Malappuram District, do hereby verifies that the contents of the above paragraphs 1 to 14 are true to the best of my knowledge and I have not suppressed any material facts.

SIGNATURE OF THE APPELLANT

DATE: 02.10.2024
PLACE: Ernakulam.

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
CENTRAL POLLUTION CONTROL BOARD
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय भारत सरकार
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE GOVT. OF INDIA

E-Mail

No. CPCB/IPC-II/NGT-OA 304 of 2019/2020/ May 12, 2020

To,

The Member Secretary,
State Pollution Control Boards / Pollution Control Committees,
(As per list enclosed)

Sub.: In reference to Hon'ble NGT OA No. 304/2019 order dated-28.02.2020-reg.

Sir/Ma'am,

Hon'ble NGT in its order dated-09.10.2019 in OA No. 304/2019 observed that the Kerala SPCB has permitted stone quarrying beyond 50 m from residence and public roads, and directed the SPCB to revisit the existing criterion based on an appropriate study. Further, in its order dated-28.02.2020 the NGT noted that "a report has been filed by the Kerala State PCB on 17.12.2019 reitreating the distance criteria of 50 mtrs. and mentioning that no study is available with the CPCB", and the NGT expressed that "We are of the view, as earlier observed that the distance of 50 mtrs. for stone quarry, particularly when blasts are involved, is highly inadequate and can have deleterious effect on noise and air pollution, environment and public health.", and directed CPCB to examine and lay down more stringent conditions and appropriately longer distance within one month and convey the same to the State Boards.

Accordingly, in compliance of Hon'ble NGT Order dt.-28.02.2020 in OA No. 304/2019, CPCB has examined the matter and prepared a report on Distance Criteria for Permitting Stone Quarrying, which is enclosed for consideration and adoption by SPCB in consent mechanism.

Yours faithfully,

12/5/20

(Nazimuddin)
Additional Director &
Divisional Head - IPC - II

Encl.: As above

DISTANCE CRITERIA FOR PERMITTING STONE QUARRYING

1.0 Preamble:

Hon'ble National Green Tribunal vide order dated-28.02.2020 in the matter of M. Haridasan & Ors. Vs. State of Kerala in OA No. 304/2019 observed that a distance of 50 metres for stone quarry, particularly when blasts are involved, is highly inadequate and can have deleterious effect on noise and air pollution, environment and public health and accordingly, directed Central Pollution Control Board (CPCB) to examine and lay down more stringent conditions and appropriately longer distance.

2.0 Stone Quarrying:

Stone is classified as minor minerals under Section 3(e) of the Mines and Minerals (Development and Regulations) Act, 1957. As per provisions of MMDR Act, the administrative and legal control over minor minerals vests with State Governments and empowered to make rules to govern minor minerals.

Stone Quarrying / Mining is an activity where extraction of stone is done from hillocks or mountain or ground surface having geological mineral deposits. The stone extracted from stone quarry are used either as construction materials or in stone crushers to produce rori/bajri and dust.

Systematic Mining (formation of benches) is done by blasting and drilling, to loosen up the rock materials followed by fragmentation of large size into smaller size. The reduced size material is then loaded and transferred to stone crushers for further processing in order to obtain necessary sizes required for final use. The blasting and drilling during mining operation have environmental impacts and requires mitigation measures to minimise the impacts on environment and nearby habitations.

3.0 Minor Mineral Concession Rules

As per sub-section (1) of section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957), State Government has to make Rules for regulating the grant of quarry lease, mining lease/permit, mineral concessions and purposes connected in respect of minor minerals.

Accordingly, State Governments have framed rules and defined the criteria of minimum distance of minor mineral mining from different locations based on the type of mining used. **(Annexure I).**

Minimum distance prescribed by various states is vary with respect to mining operation of minor mineral involved. In general, minimum distance prescribed by states such as Rajasthan, Madhya Pradesh, Punjab, Tamil Nadu, Orissa, Bihar, Uttar Pradesh, Himachal Pradesh, West Bengal, Sikkim, Meghalaya and Manipur are:

- In the range of **45 - 200 m** from any reservoir, canal, public works such as public roads and **buildings**
- In the range of **45 - 100 m** from any railway line / area
- In the range of **60 - 100 m** from National Highway, State Highway and other roads and **10 m** from village roads

Various states have further prescribed minimum distance based on the use of blasting in mining operation of minor mineral, as follow:

Kerala:

When blasting is involved, no mining within a range of **50 – 100 m** from the boundary line of any railway line, bridges, reservoirs, tanks, **residential buildings**, Government protected monuments, canals, rivers, public roads having vehicular traffic, any other public works or the boundary walls of places of worship whereas, when no blasting is involved, range of **50-75 m** is prescribed as minimum distance.

Karnataka, Maharashtra, Goa, Gujarat:

When blasting is involved, no mining within a distance of **200 m** from the boundary line of any railway line reservoir, tank bund, canal, or other public works and **public structures** or any public road or building whereas, when no blasting is involved, minimum distance of **50 m** is defined.

Jammu & Kashmir:

When blasting is involved, no mining within a distance of **500 m** from the outer periphery of the defined limits of a National Highway, Railway line, State Highway, Major District Roads (MDR) and Other District Road (ODRs) whereas, when no blasting is involved, minimum distance of **150 m** is defined.

Assam:

When blasting is involved, no mining within a distance of **250 m** from the outer periphery of the defined limits of any **village habitation**, National Highway, State Highway and other roads whereas, when no blasting is involved, minimum distance of **50 m** is defined.

Note: Distance criteria defined by various states, has been defined from the outer edge of the cutting or outer edge of the bank, as the case may be and in the case of a building horizontally from the plinth thereof.

4.0 Criteria of Danger Zone: Directorate General of Mines Safety

As per Directorate General of Mines Safety circular no. - DGMS (SOMA)/ (Tech) Cir No. 2 of 2003 Dt. 31/01/2003 **(Annexure II)**, on subject of **Dangers due to blasting projectiles**, all places within the radius of **500 m** from the place of firing to be treated as danger zone and accordingly, all person in danger zone to take protection in substantially built shelter at the time of blasting.

Further, mine manager to control the throw and to prevent ejection of flying fragments within a safe distance with the use of refined blasting practices as well as developed explosives and accessories such as controlled blasting Technique with milli-second delay detonators / electric shock tubes/ cord relays or use of sequential blasting machines or by adequately muffling of holes etc.

5.0 Criteria of no blasting distance around blast sites: Indiana Department of Natural Resource, USA

(Source: Citizen Guide to Coal Mine Blasting in Indiana)

Indiana Department of Natural Resource, USA has stated that the blasting not to be conducted within **300 feet (~ 91 m)** of an **occupied dwelling** or school, church or hospital, public building, community or institutional building.

6.0 Conclusion:

In view of available information, following minimum distance criteria may be considered for permitting stone quarrying by SPCBs:

Mining Type		Minimum Distance	Locations
A.	When Blasting is not involved	100 m	Residential/Public buildings, Inhabited sites, Protected monuments, Heritage sites, National / State Highway, District roads, Public roads, Railway line/area, Ropeway or Ropeway trestle or station, Bridges, Dams, Reservoirs, River, Canals, ~~or~~ Lakes or Tanks, or any other locations to be considered by States.
B.	When Blasting is involved	200 m **	

****Note**: *The regulations for danger zone (500 m) prescribed by Directorate General of Mines Safety also have to be complied compulsorily and necessary measures should be taken to minimise the impact on environment.*

However, if any states is already having stringent criteria than the above for minor mineral mining (i.e. more prescribed distances than the above), the same shall be applicable.

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