

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

APPEAL NO.43 OF 2024

IN THE MATTER OF:

Shoukkath Ali,
Kerala.

...Appellant

v.

MoEF & CC Rep. by its Secretary,
New Delhi and Ors.

...Respondents

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Dated at Chennai on this 11th day of September, 2024



COUNSEL FOR RESPONDENT NOS.2 & 3

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REPLY STATEMENT FILED ON BEHALF OF THE 2 & 3RD RESPONDENTS

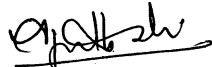
I, Ajitha Kumari V R, aged 49 Years, D/o. Rejeswari Amma, working as Legal Officer, SEIAA at Thiruvananthapuram, do hereby solemnly affirm and sincerely state as follows:-

1. I am well acquainted with the facts of the case from the available records and I am authorized to file this reply statement on behalf of the Respondent Nos.2 & 3. I crave leave of the Hon'ble Tribunal to file statement as and when additional facts are available to the Respondents.

2. It is submitted that the Reply in parawise is traversed herein below:-

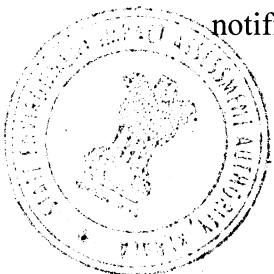
1. It is submitted that, the application for Environmental Clearance was submitted by Sri. Najeeb Ali M.K for the granite stone building stone quarry project for an area of 1.8227 Ha at Sy.No.85pt, Pulamanthole Village, Perinthalmanna Taluk, to DEIAA, Malappuram and during the processing of the application, Shri.Shoukath Ail filed a WP(C) No.41905/2017 (K) before the Hon'ble High Court of Kerala stating that the applicant has evidently concealed several information and submitted misleading information for the appraisal of his project. As per the Judgment dated 11.04.2018 in the above WP (C), the Court had directed SEIAA to consider the application and pass orders within three months and DEIAA has forwarded the application to SEIAA. Considering this, the proposal was then placed in the 87th meeting of SEIAA and 93rd and 94th meeting of SEAC. Consequently, the field inspection was carried out by the SEAC sub committee on 19th April 2019. The sub-




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committee could not locate any of the structures alleged to be closer to the proposed site within the prescribed limit. Shri Najeebali has produced a print of the Google map showing the distances to a mosque, fibre tank and canal, which are beyond 300 meters. The Sub-committee also made an attempt to hear Shri Shoukath Ali, who had submitted the Writ Petition before the Hon. High Court. However, he could not make it to the site during the day.

Accordingly, the Sub-Committee had suggested certain recommendations considering the environment of the project area. Further the proposal was placed in 101st SEAC, 97th SEIAA, 104th SEAC, 107th SEAC, 101st SEIAA, 112th SEIAA, 117th SEIAA, 133th SEAC, 135th SEAC, 138th SEAC, 141st SEAC and 127th SEIAA meetings. During the appraisal of the proposal, complaint from Sri. Chakku against the proposed project was also considered by the Authority and the report with regard to the same from the District Collector, Malappuram was also discussed. The distance criteria for quarries imposed by the Hon'ble NGT in its order dated 21.07.2020 in O.A. No. 304/2019 was also taken into consideration by the Authority. Also, two field inspections were conducted by the Sub-Committee of SEAC as part of the appraisal of the application. Besides, the Project Proponent submitted a Letter dated 03.08.2022, stating that the nearest dwelling unit is at a distance of 100.8 m away from the site and hence requested to reconsider the application for EC, along with the survey map endorsed by the Village Officer. Finally, the Committee recommended EC for the proposed project for the mine life of 12 years with certain specific conditions including the General Conditions for granite quarries. The Authority in its 127th meeting, accepted the recommendation of the SEAC and decided to issue Environmental Clearance initially for a period of 5 years, for the quantity mentioned in the approved mining plan, and then to extend the EC period to cover the project life of 12 years, from the date of execution of mine lease / permit, subject to the review by SEAC at the end of five years, to verify whether the Project Proponent has violated any of the EC conditions and thereby caused any damage to the Environment in the project region. Hence, after due deliberations and appraisal process, the Authority had issued Environmental Clearance to the Project Proponent on 01.07.2023. The SEAC/SEIAA had scrupulously followed all procedures stipulated in the EIA notification for the appraisal and issuance of EC. Since the 5th respondent has



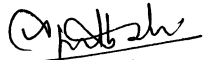
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conducted mining activities before 15.01.2016 with a valid lease/permit up to 25/05/2015, and has approached for EC, the SEAC/SEIAA observed that there is no violation and hence appraised as per norms. During the field verification also, it is noted that the quarry is not working for quite some time as evident from the site. So, the averments of the petitioner is baseless.

2. It is submitted that the Authority had complied with the interim order in W.P (C) 41905/2017 to consider the application and pass order within the stipulated time period. As per the direction, of the Hon'ble Court, the DEIAA, Malappuram had forwarded the application to SEIAA in physical form, which further appraisal was carried out by SEIAA. The entire appraisal was carried out by the SEIAA on the basis of the documents received from DEIAA and also by ascertaining the possibility of violation done in the area to verify whether the processing of the application comes under the norms of the OM issued by MoEFCC on 30.05.2018 based on the SO issued dated 14.03.2017 and later amended by the MoEFCC dated 08.03.2018. During the appraisal process, the SEAC conducted field verification on 19.04.2019 and observed that an old abandoned quarry site was seen in the proposed quarry site. From the records produced by the project proponent, it is seen that the project proponent had quarrying permit and the District Geologist has extended the existing permit for quarrying in 24 cents land under Survey No. 85 up to 25/05/2015. The quarry seems to have been not worked for quite some time as evident from the site and from the condition of the road used for transportation. The Committee based on the judgment of the Hon'ble High Court verified the applicability of the OMs issued by MoEFCC regarding violation and ascertained that "the Committee has not observed violations in the case of the site proposed by Shri Najeeb Ail and hence do not consider to be dealt under above mentioned OM".

From the report of the District Collector and the survey sketch of the Village Officer, it is observed that there is no houses within 100m from boundary of the project area and the SEIAA to continue with the appraisal of application of the 5th respondent and as part of that the SEAC again conducted a field verification to ascertain the applicability of the OMs of the MoEFCC and the distance norms. After due appraisal the SEAC recommended for EC in its 138th meeting held on 16th and 17th February 2023. Since, the application has to be processed online through Parivesh Portal, the project proponent was requested to apply in Parivesh




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portal so that e-processing of the application for EC can be done according to MoEF&CC in OM No.IA-3-19/95/2021-IA-III dated 06.10.2021. The proponent submitted the application in Parivesh portal on 20.03.2023 vide Proposal No.SIA/KL/MIN/422595/2023 and the same was considered in 141st meeting of SEAC held on 11th to 12th & 18th to 19th April 2023. The Committee adhered to its decision taken in the 138th SEAC meeting to recommend the item with the conditions stipulated therein. So, neither fresh application has been received from the Project Proponent and nor the application has been withdrawn by him. Hence, there is no violation of the said judgment as mentioned by the petitioner.

3. It is submitted that the averments of the petitioner are baseless. The entire appraisal was carried out by the SEIAA on the basis of the documents received from DEIAA and any other additional documents received from Project Proponent and also by ascertaining the possibility of violation done in the area to verify whether the processing of the application comes under the norms of the OM issued by MoEFCC on 30.05.2018 based on the SO issued dated 14.03.2017 and later amended by the MoEF&CC dated 08.03.2018. During the appraisal process, the SEAC conducted field verification on 19.04.2019 and observed an old abandoned quarry site in the proposed quarry site. From the records produced by the project proponent, it is seen that the proponent had quarrying permit and the District Geologist has extended the existing permit for quarrying in 42 cents land under survey No. 85 up to 25/05/2015. The sub committee also reported that the quarry seems to have been not worked for quite some time as evident from the site and from the condition of the road used for transportation. The Committee based on the judgment of the Hon'ble High Court verified the applicability of the OMs issued by MoEFCC regarding violation and ascertained that "the Committee has not observed violations in the case of the site proposed by Shri Najeeb Ali and hence do not consider to be dealt under above mentioned OM".

As per the field inspection conducted by the Sub-Committee on 19th April 2019, the sub-committee could not locate any of the structures alleged to be closer to the proposed site within the prescribed limit. Shri Najeebali has also produced a print of the Google map showing the distances to a mosque, fiber tank and canal, which are beyond 300 meters. Also, the Sub-committee made an attempt to hear Shri Shoukath Ali, who had submitted the Writ Petition before the Hon'ble High Court. However, he could not make it to the site during the day



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The Environment Management Plan was produced by the Project Proponent during the appraisal process. The Environment Management Plan included the details of noise, air, land and water environment of the project area. In the water management plan, storm water contamination with silt was dealt and its mitigative measures were proposed by the Project Proponent. The impacts due to ground vibrations and blasting hazards were also addressed in the plan.

Further, another sub-committee had conducted a field inspection on 03.11.2022 and thus found the presence of the channel running through the middle of the site and a protection plan for the same was sought by the committee as part of the appraisal. Hence, the specific conditions were also imposed by the Authority in the Annexure-A1 EC as;

'6. Drainage system incorporating garland canal, silt traps, siltation pond and outflow channel connecting to the nearest natural drain should be provided prior to the commencement of mining.

7. Garland drain, silt-traps, siltation ponds and outflow channel should be desilted periodically and geo-tagged photographs of the process should be included in the HYCR.'

Besides, the sub-committee found neither the alteration of natural drainage systems, nor the fragmentation of natural habitat due to the removal of vegetation in the project area. Moderate impact on the biodiversity has been observed and for protecting the nearby inhabitants, a specific condition was insisted as 'A temporary wall on the southern side of the proposed quarry should be set up to prevent any impact on the houses located on the southern side' by the Authority in the Annexure. A.1 All the environmental safeguards were imposed while recommending the EC for the project by the Authority.

4 & 5. It is submitted that the entire appraisal was carried out by the SEIAA on the basis of the documents received from DEIAA and the additional documents provided by Project Proponent and also by ascertaining the possibility of violation done in the area to verify whether the processing of the application comes under the norms of the OM issued by MoEFCC on 30.05.2018 based on the SO issued dated 14.03.2017 and later amended by the MoEF&CC dated 08.03.2018. During the appraisal process, the SEAC conducted field



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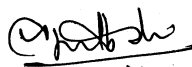
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verification on 19.04.2019 and observed an old abandoned quarry site in the proposed quarry site. From the records produced by the proponent, it is seen that the proponent had had quarrying permit and the District Geologist has extended the existing permit for quarrying in 42 cents land under survey No. 85 up to 25/05/2015. The quarry seems to have been not worked for quite some time as evident from the site and from the condition of the road used for transportation. The Committee based on the judgment of the Hon'ble High Court verified the applicability of the OMs issued by MoEFCC regarding violation and ascertained that "the Committee has not observed violations in the case of the site proposed by Shri Najeeb Ali and hence do not consider to be dealt under above mentioned OM". Hence, the averments of the petitioner is baseless.

6. It is submitted that the Annexure-A5 was based on the distance criteria for quarries imposed by the Hon'ble NGT in its order dated 21.07.2020 in OA.No. 304/2019 and the Annexure is stated only about the consideration of application for that particular time period due to the matter was sub-judice. It indicates that the application was kept in abeyance and the Annexure-A5 is not a rejection order. The entire appraisal was carried out by the SEIAA on the basis of the documents received from DEIAA and the additional documents received from Project Proponent and also by ascertaining the possibility of violation done in the area to verify whether the processing of the application comes under the norms of the OM issued by MoEFCC on 30.05.2018 based on the SO issued dated 14.03.2017 and later amended by the MoEF&CC dated 08.03.2018. Further on receipt of the legal opinion regarding the said order in OA No. 304/2019, and in the light of the OM of the MoEF&CC, No.IA-3-19/95/2021-IA-III dated.06.10.2021 the Project Proponent was requested to apply in Parivesh portal so that e-processing of the application for EC can be done accordingly. Hence, the Project Proponent submitted the application in Parivesh portal on 20.03.2023 vide Proposal No. SIA/KL/MIN/422595/2023. So, the averments of the petitioner is baseless.

7. It is submitted that, since the SEAC had not found any violation in the said project area, the averments of the petitioner is baseless. The entire appraisal was carried out by the SEIAA on the basis of the documents received from DEIAA and the additional documents received from Project Proponent and also by ascertaining the possibility of violation done in the area to verify whether the processing of the application comes under the norms of the OM issued by MoEFCC on 30.05.2018 based on the SO issued dated 14.03.2017 and later



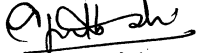

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amended by the MoEF&CC dated 08.03.2018. The Annexure-A6 was a formal application submitted later by the project proponent based on the OM of the MoEF & CC, No.IA-3-19/95/2021-IA-III dated 06.10.2021 through which the Project Proponent was directed to apply in Parivesh Portal so that e-processing of the application for EC can be done accordingly. Hence, the Project Proponent submitted the application in Parivesh Portal on 20.03.2023 vide Proposal No.SIA/KL/MIN/422595/2023. The SEAC/SEIAA had scrupulously followed all procedures stipulated in the EIA Notification for the appraisal and issuance of EC. The Authority considered the application documents, field inspection reports and ground realities during the appraisal stage and found no suppression of facts at that time.

8, 9 &10. It is submitted that the Annexure-A6 was a formal application based on the OM of the MoEF&CC, No.IA-3-19/95/2021-1A-III dated 06.10.2021 through which the Project Proponent was directed to apply in Parivesh portal so that e-processing of the application for EC can be done accordingly. The entire appraisal was completed in the physical files forwarded by DEIAA, in the 138th SEAC meeting held on 16th & 17th February 2023. Since MoEF&CC had insisted online processing of the application, the direction was given to the Project Proponent to apply online. Consequent to the submission of the same on 20.03.2023, the proposal was placed in the 141st SEAC meeting and the Committee adhered to its earlier decision to recommend the EC with certain specific conditions and General conditions. Hence it was not necessary to go with the appraisal again in the application. So, the Project Proponent had submitted the application in Parivesh portal on 20.03.2023 vide Proposal No. SIA/KL/MIN/422595/2023 and the committee recommended based on the appraisal carried out in the physical file. Also, the Authority agreed the recommendation of SEAC and decided to issue EC for 5 years in the 127th SEIAA meeting.

11 & 12. It is submitted that, since the 5th respondent had conducted mining activities before 15.01.2016 with a valid lease/permit up to 25/05/2015, and has approached for EC before SEIAA, the Authority observed that there is no violation and hence appraised as per norms. During the field verification also, it is noted that the quarry is not working for quite some time as evident from the site. So, the averments of the petitioner is baseless. However, the Authority had considered the report of the District Collector on a complaint received from Sri Chakku and with regard to the distance criteria followed by SEIAA at that time and the matter was sub-judice, the proposal was not considered for the issuance of EC. Later, after




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obtaining the legal opinion on the distance criteria only, further proceedings were carried out on the project proposal. Hence the averments of the petitioner is baseless.

13. It is submitted that as per the latest cluster certificate by the District Geologist, dated 30.01.2023, a single authorized working granite quarry was situated within the 500m radius of the proposed quarry. Also, the SEAC sub-committee had not found any cluster situation that warrants EIA or Public Consultation that cluster constitutes 5 Ha or more. Hence the averments of the petitioner is baseless.

14, 15 & 16. It is submitted that the Mining & Geology Department has prepared and published the DSR as per EIA Notification in 2016 and is available in the website of the Department of Mining & Geology. The existing DSR was prepared as per the Appendix X issued by the MoEF & CC vide Annexure-A11 SO141 (E) dated 15.01.2016 and is to be revised every 5 years. Later, the MoEF & CC vide Annexure-A12, issued the revised guideline for the preparation of DSR and based on that Mining & Geology Department is preparing DSR for this State. Since the revision of the DSR is under progress and till that period the existing DSR can be used for the appraisal of EC application as per judgment in W (C) No.5209/2022 Ananthu Sunil Vs. State of Kerala and Ors., dated 16.02.2022. The 5th respondent has submitted the District Survey Report of the Malappuram District along with the online Application Annexure-A6 and the same was also considered by SEAC while appraising the application for EC. Besides, the majority of the documents are certified by the concerned department/agencies, and hence the SEAC has to trust on that. Hence the averments of the petitioner are baseless.

17. It is submitted that the Authority made sufficient precautionary measures and took appropriate environmental safeguards to mitigate the impacts due to the operation of this proposed quarry in the said area by insisting certain specific and general conditions in the Annexure-A1 EC. Also, the violation of any of the conditions stated in the Annexure- A1 may lead to the cancellation of the Annexure-A1. Hence, the Authority had assessed the project proposal in a comprehensive way considering the potential impacts due to the quarrying activity. Also, the SEAC/SEIAA had scrupulously followed all procedures stipulated in the EIA notification for the appraisal and issuance of EC.



(Signature)

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18. As per the judgment in Appeal No.75/2021 dated 24.01.2024 by the Hon'ble NGT, the mater was placed before the 137th Authority meeting held on 29 & 30th January, 2024 and decided to issue cancellation order of the EC No.09/Q/2021 dated 05/03/2021. The order was issued vide. No.1323/EC2/2019/SEIAA on 12.03.2024, directing the Project Proponent to submit the fresh application in Parivesh Portal.

Since the Authority had complied with the interim order in WP(C)No.41905/2017 and found that the proposed project can't be dealt with said OMs in the interim order as there were no violations identified, and appraised the project scrupulously following the EIA-Notification 2006, based on the documents submitted by the Project Proponent in addition to two site inspections to this project site, the Appeal may be dismissed with the cost of the petitioner. Besides, the Environmental Clearance was issued to the 5th respondent taking sufficient environmental safeguards and imposing stringent environmental conditions by the Authority for the sustainable operation of the quarry.

Under the above circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the plea and pass such order or orders as this Hon'ble Tribunal may deem fit and proper in circumstances of the case and thus render justice.

Dated at Chennai on this the 11th day of September, 2024.

VERIFICATION

I, Ajitha Kumari V R, aged 49 Years, D/o. Rejeswari Amma, Working as Legal Officer, SEIAA at Thiruvananthapuram, do hereby verify that the contents of paras are true to the best of my personal knowledge and paras believed to be true on legal advice and that I have not suppressed any material fact.

Verified at Chennai on this the 11th day of September, 2024.



(Signature)

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(Signature)

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