

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI
Appeal No.44 of 2024 (SZ)

N. Thangavel,
S/o. Late Shri. Nagappagounder,
No.20, Munnal Padai Veerar Colony,
Bhavanisagar, Satyamangalam Taluk,
Erode District – 638 451.
Email: vinoconstructionstr@gmail.com
Phone: 9443040691

... Appellant

Vs

1. State Level Environment Impact Assessment Authority (SEIAA),

Rep. by its Member Secretary,

3rd Floor, Panagal Maaligai, No.1, Jeenis Road,
Saidapet, Chennai – 600 015.
Email: seiaamstn@gmail.com
Phone No. 044-24359973

2. State Level Expert Appraisal Committee (SEAC),

Rep. by its Chairman,

3rd Floor, Panagal Maaligai, No.1, Jeenis Road,
Saidapet, Chennai – 600 015.
Email: seacchairmantn@gmail.com
Phone No. 044-24359973.

... Respondent(s)

COUNTER AFFIDAVIT FILED ON BEHALF OF SEIAA – TAMIL NADU,
THE 1st and 2nd RESPONDENTS

I, A.R. Rahul Nadh, I.A.S., aged 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, solemnly affirm and sincerely state as follows:

1. I am filing this counter affidavit on behalf of the 1st & 2nd Respondent/SEIAA-TN herein and as such I am well acquainted with



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

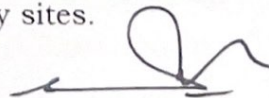
2. I deny all the averments and allegations stated in this Appeal No.44 of 2024 except those that are specifically admitted hereunder and put the applicant to strict proof of the same.
3. It is respectfully submitted that the project proponent, Thiru. N.Thangavel has applied for Environmental Clearance for the proposed Rough stone & Gravel quarry lease over an extent of 2.29.5 ha at S.F.Nos. 271/6, 272/2 (P), 272/3 & 272/4 (P) of Thoppampalayam Village, Sathyamangalam Taluk, Erode District, Tamil Nadu vide online proposal number SIA/TN/MIN/ 226203/2021 dated: 24.08.2021. The project/activity is covered under Category "B2" of Item 1(a) "Mining of Mineral Projects" of the Schedule to the EIA Notification, 2006 as amended.
4. It is respectfully submitted that the proposal was placed in the 267th SEAC meeting held on 28.04.2022. Based on the presentation and documents furnished by the project proponent, SEAC noted that in G.O(MS) No. 295 dated 03.11.2021 the Government in Industries Department has notified the following Rules specifying certain conditions for permitting mining activities near ecologically sensitive areas.

" ... No quarrying or mining or crushing activities shall be carried out within one kilometer radial distance or the protective distance as notified by the Ministry of Environment, Forest and Climate Change, Government of India from time to time, whichever is more, from the boundaries of ecologically sensitive areas, environmentally and ecologically sensitive protected areas such as the National parks, Wild life Sanctuaries, Tiger Reserves, Elephant corridors and Reserve Forests".

The Committee noted that the Velamundi Reserve Forest is located at a distance of 100m from this project site and the proposal is, therefore,

within the distance criteria as per the above G.O. The Committee, therefore, decided not to recommend the proposal.

5. It is respectfully submitted that the proposal was subsequently placed in the 512nd SEIAA Meeting held on 27.05.2022. The authority decided to request the Member Secretary, SEIAA to communicate the SEAC minutes to the project Proponent held on 28.04.2022.
6. It is respectfully submitted that the project proponent Thiru N. Thangavel has applied again for Environmental Clearance to State Level Environment Impact Assessment Authority – Tamil Nadu (SEIAA-TN) for the Proposed Rough Stone and Gravel quarry over an extent of 2.29.5 Ha in S.F.No. 271/6, 272/2(P), 272/3 & 272/4(P) of Thoppampalayam Village, Sathyamangalam Taluk, Erode District, Tamil Nadu vide online proposal No. SIA/TN/MIN/4121322/2022, dated: 26.12.2022. The project/activity is covered under Category “B2” of Item 1(a) “Mining Projects” of the Schedule to the EIA Notification,2006 as amended.
7. It is respectfully submitted that the proposal was placed in the 365th Meeting of SEAC held on 24.03.2023. During the presentation, the SEAC had observed the following:
 1. The proposed quarry site is located in an ecologically sensitive area of Bhavani Sagar Reservoir and is located adjacent to the Velamundi RF.
 2. The proposed quarry was earlier operated in three spells (i.e., 1996 to 1999, 1999 to 2004, 2009 to 2014) and the existing depth of the quarry is 15 m below ground level.
 3. The Quarry operations were stopped due to the requirements of NBWL Clearance from 2014.
 4. Due to existence of R.F at 113 m, the quarry was not opened from 2021 even though the final Notification issued on Sathyamangalam Tiger Reserve due to the existence of TN G.O on protection of R.F within 1 km from the quarry sites.



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5. The Quarry was operated earlier with the conventional drilling & blasting activities and a scientific study was carried out by the Department of Mining Engineering, Anna University Chennai as per the direction of the District Collector in 2011 to determine the impact of blasting operations in the cluster of mines situated within 10 km distance from the Bhavani Sagar Dam structure & embankment and it was recommended to carry out the blasting operations with the prescribed maximum charge per delay in every round under the direct supervision of statutory competent person appointed under the provisions of MMR 1961.
6. Accordingly, the quarry was in operation involving the blasting operation as the District Collector had granted the permission with stipulating the recommendations of the aforesaid scientific studies as the conditions to be followed scrupulously.
7. However, as per the KML file uploaded by the proponent in online through Parivesh portal, it is ascertained that,
 - i. The quarrying operations are proposed at a distance of 300 m from the catchment area of the Bhavani Sagar Reservoir in the Upstream Side.
 - ii. The existing quarry is located at a distance of 3.8 Km from the Bhavani Sagar Dam structure in the upstream side.
 - iii. The existing quarry is situated at a distance of 5.32 Km approximately from the highly protected Sathyamangalam Tiger Reserve.
 - iv. The starting point of embankment structure of Bhavani Sagar Dam is located at a distance of 879m only from proposed mine lease area.

Based on the above facts, SEAC after detailed discussion and taking into consideration the safety of Bhavani Sagar Dam Structure and environmental setting of the site (Tiger Reserve) decided not to recommend this project proposal.



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8. It is respectfully submitted that the proposal was subsequently placed in the 612th SEIAA Meeting held on 17.04.2023 & 18.04.2023. SEIAA accepts the decision of SEAC and decided to request Member Secretary, SEIAA-TN to grant rejection letter to proponent as per the 365th SEAC minutes.
9. It is respectfully submitted that based on the above, the rejection letter was granted to the project proponent vide Letter No. SEIAA-TN/F.No.9694/2022 dated 25.05.2023.
10. It is respectfully submitted that again, the Proponent had filed a new application vide Proposal No. SIA/TN/MIN/440129/2023, dated 11.08.2023 for obtaining EC, the Proponent was informed vide Letter dated:21.11.2023 that the rejected proposals will not be reconsidered at SEIAA-TN.
11. It is respectfully submitted that the project proponent filed an appeal in the Hon'ble National Green Tribunal in the matter of Appeal No.41 of 2023. The Hon'ble NGT disposed the case with the following order dated 10.01.2024

"18. In view of the above, we are inclined to set aside the impugned order and remit it back to the SEIAA – Tamil Nadu for fresh consideration. The SEIAA – Tamil Nadu is directed to consider the appellant's proposal bearing Proposal No.SIA/TN/MIN/ 440129 dated 11.08.2023 afresh without being influenced by any of the comments made in this order within the statutory time prescribed."

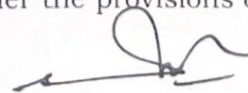
12. It is respectfully submitted that based on the above, the proposal was again placed in the 689th Authority meeting held on 12.01.2024. The Authority noted that the Hon'ble National Green Tribunal (SZ) in its order dated 10th January, 2024 of Appeal No.41/2023 has directed the SEIAA-TN to consider the Proponent's proposal afresh bearing Proposal No.SIA/TN/MIN/440129 dated:11.08.2023. After detailed discussions, the Authority decided to forward the proposal to SEAC-TN based on the court direction for further course of action.



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13. It is respectfully submitted that subsequently, the proposal was placed for reappraisal in the 445th meeting SEAC held on 15.02.2024. During the meeting, the Committee carefully examined the points put forth by the PP and the EIA Coordinator, engaged by the PP. The Committee noted that the same proposal was considered by the SEAC in its 365th meeting of SEAC held on 24.03.2023 in file No.9694 and the Committee decided not to recommend observing the following ecologically sensitive issues,

1. The proposed quarry site is located in an ecologically sensitive area of Bhavani Sagar Reservoir and is located adjacent to the Velamundi RF.
2. The proposed quarry was earlier operated in three spells (i.e., 1996 to 1999, 1999 to 2004, 2009 to 2014) and the existing depth of the quarry is 15 m below ground level.
3. The Quarry operations were stopped due to the requirements of NBWL Clearance from 2014.
4. Due to existence of R.F at 113 m, the quarry was not opened from 2021 even though the final Notification issued on Sathyamangalam Tiger Reserve due to the existence of TN G.O on protection of R.F within 1 km from the quarry sites.
5. The Quarry was operated earlier with the conventional drilling & blasting activities and a scientific study was carried out by the Department of Mining Engineering, Anna University Chennai as per the direction of the District Collector in 2011 to determine the impact of blasting operations in the cluster of mines situated within 10 km distance from the Bhavani Sagar Dam structure & embankment and it was recommended to carry out the blasting operations with the prescribed maximum charge per delay in every round under the direct supervision of statutory competent person appointed under the provisions of MMR 1961.

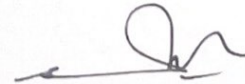


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6. Accordingly, the quarry was in operation involving the blasting operation as the District Collector had granted the permission with stipulating the recommendations of the aforesaid scientific studies as the conditions to be followed scrupulously.
7. However, as per the KML file uploaded by the proponent in online through Parivesh portal, it is ascertained that,
 - i. The quarrying operations are proposed at a distance of 300 m from the catchment area of the Bhavani Sagar Reservoir in the Upstream Side.
 - ii. The existing quarry is located at a distance of 3.8 Km from the Bhavani Sagar Dam structure in the upstream side.
 - iii. The existing quarry is situated at a distance of 5.32 Km approximately from the highly protected Sathyamangalam Tiger Reserve.
 - iv. The starting point of embankment structure of Bhavani Sagar Dam is located at a distance of 879m only from proposed mine lease area.

Based on the above facts, SEAC after detailed discussion and taking into consideration the safety of Bhavani Sagar Dam Structure and environmental setting of the site (Tiger Reserve) decided not to recommend this project proposal. Further the committee noted that the proponent has filed a new proposal without any change in the area or any other environmental factors pointed out by the committee.

During the presentation, EIA Coordinator made a mention about the *“Scientific Study of Blasting in Blue Metal Quarries of Thoppampalayam on Bhavanisagar Dam”* carried out by the Dept. of Mining Engg, Anna University in the year 2011 on the impacts of mining activity on the *Bavani Sagar Dam* which is one of the oldest earthen Dams in the word. *There is a caution stressed in the study report which is as follows,*



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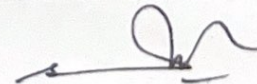
“...It is concluded from the study that blasting can be carried out in the blue metal quarries of Thoppampalayam Village and its surroundings without adversely affecting the Bhavanisagar dam, Perumal Temple and other structures in the area by following the recommendations given in this report.

However, blast induced ground vibrations can cause damage to the Bhavanisagar Dam, Perumal Temple, etc. and pollute environment, if indiscriminate blasting of huge charges of high explosive (more than what has been recommended in this report) per delay without resorting to delay blasting is carried out.”

Considering all above, the Committee is of the view that reasons for not recommending the proposal remains the same. The reasoning of the Committee is also supported by the aforesaid comments made in the study report submitted by the Anna University during the year of 2011. Therefore, the Committee decided not to recommend the case for all the reasons mentioned above.

14. It is respectfully submitted that the proposal was placed in the 703rd SEIAA meeting held on 13.03.2024. Further, the Authority noted that the site is located in an ecologically sensitive area surrounded by vegetation. Also, the site is very close to waterbody and sensitive wildlife. The working in the area may lead to erosion, siltation and disturbance to the surrounding environment. The Authority, after detailed discussions, decided to accept the decision of SEAC and decided to request Member Secretary, SEIAA-TN to grant rejection letter to proponent as per SEAC minutes.
15. It is submitted that the project proponent although has applied multiple times with no or very minor changes, the environmental concerns which outweigh the project remain the same on the site and the respondent has thus taken a consistent stand with reference to the project. It is submitted that the overall review of the project site would show that the

Member Secretary



environmental risks and the safety of dam etc., in collaboration really warrant a rejection of the project.

16. It is submitted that the reason of safety of the Dam at nearby distance and the project being even more closer to the water area of the dam elevates the impact of the project. In fact, the study conducted by the Dept. of Mining Engg, Anna University itself would show that if the proper charge during blasting is not maintained it would impact the structural stability of the Dam. Even though usually every project is allowed on the basis of conditions to be complied which are also subject to monitoring, the present project involves a grave risk concerning the structural stability of the Dam due to vibrations. The grant of clearance and conditions imposed would carry a disastrous risk in the event of violation by the unit and the risk is devastating to apply the principle of Precaution in such a situation.
17. Also, it can be noted that the project is within the proximity to Reserve Forest area. There is also a Tiger Reserve at the proximity of the site. Therefore, the overall study and impression of the area, in terms of the environmental significance adds to the reason to not allow the project on principles of precaution. On the one hand there is a safety issue of the dam and significantly elevated by an environmental impact on reserve forest and tiger reserve as well.
18. It is submitted that there is no right that is vested with the appellant to carry on the business at a particular site and the grant of clearance is subject to the administrative and scientific discretion and appraisal by the respondent. It is submitted that even though the site was earlier permitted, the same had been stopped for very same reasons and for grant of approvals. In such a scenario, the authority has to exercise due care and scientific assessment to allow again in an area where the depth is already 15 metres.
19. It is submitted that the authority apart from being duty bound to impose conditions on projects that are allowed/permitted also has to be subjectively satisfied on an overall assessment that the environmental

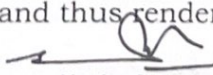


risks do not overrun the grant of clearance with conditions. There are multiple escalating and contributing factors such as safety of dam with reference to proximity and already existing depth and the reserve forest area including a tiger reserve at a proximity.

20. It is further contended that the site being utilised before does not automatically vest any right on the appellant to seek for a clearance again and the appellant has not relied upon any such provision of law or statutory right or any judicial precedent and thus failed to establish his case that he is entitled to operate a quarry at the proposed site. The assessment of an area varies from time to time and an already operated mine naturally changes even the baseline data. However, the respondent is well empowered by authority of law to appraise the project on its own merit and prevailing situation and has the statutory discretion to decide on the grant or rejection of the project.
21. It is reiterated respectfully that only in the better interest of the environment and considering the fact that the risk of the project is very serious, especially in the event of a violation, and the areas surrounding the project all contribute to the decision of the respondent to not allow the project at the proposed site.
22. It is respectfully submitted that in this regard, the rejection letter was granted to the project proponent vide Letter No. SEIAA-TN/F.No.10317/2022 dated 10.04.2024.

Therefore, humbly prayed that this Hon'ble Tribunal may be pleased to record and pass orders 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.

Solemnly affirmed in Chennai
On this the day of 27th November 2024
signed his name in my presence


Member Secretary
STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY - TN
Panagal Maligai, No.1, Jeeris Road,
Saidapet Chennai - 15,

Advocate, Chennai

Before Me
Kausia Tamilkuzli
M/S 3347/202
High Court
Madras.