

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

APPEAL NO.51 OF 2024

IN THE MATTER OF:

Siraj Hussain,
Kerala State.

...Appellant

v.

SEIAA Kerala,
Through its Member Secretary,
Thiruvananthapuram and Anr.

...Respondents

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Dated at Chennai on this 12th day of November, 2024



COUNSEL FOR RESPONDENT NOS.1 & 2

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REPLY STATEMENT FILED BY THE 1ST RESPONDENT

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:-

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.1 & 2. I crave leave of the Hon'ble Tribunal to file statement as and when additional facts are available to the Respondents.

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

4. It is submitted that, Sri. Siraj Hussain, applied for Environmental Clearance on, 15th August, 2021 *via* PARIVESH, for the Granite building stone quarry project, for an area of 0.9713Ha, at Re-Sy:- 281/2-3 in Mundakkayam Village, Kanjirappally Taluk, Kottayam with documents such as approved Mining Plan, Pre-Feasibility Report, Environment Management Plan, etc.

5 & 6. It is submitted that, the Mining & Geology Department approves mining plan based on the resource availability. As per section 55(i)(a) of KMMCR mining plan is a "*plan of precise area showing the nature and extent of mineral deposit clearly showing the spot or spots where the excavation is to be done in*



Ajitha

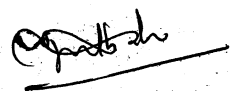
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the first 5 years in the case of quarrying lease or for the entire period in the case of quarrying permit." The Mining & Geology Department will not consider the environmental impact of the area while conducting field verification for approving the mining plan.

7. It is submitted that the proposal of the appellant was placed before the 2nd respondent in its 130th SEAC meeting held on 4th to 06th July, 2022. The Committee examined the proposal and entrusted Dr. Mahesh Mohan and Dr. K.N. Krishnakumar for evaluation of the proposal, studying the documents, carrying out field inspection of the site and report. In the 131st SEAC meeting held on 5th to 06th and 19th to 20th August, 2022. The 2nd respondent examined the proposal, verified the documents and discussed the Field Inspection Report, conducted on 29.07.2022. The site falls in a moderate hazard zone. The nearest house is marked at 69 m. A recent certified survey map is required to understand the distribution of built structures with 200m radius of the project site. It is observed that the CER need modification and the location between BP 2 & BP3 and between BP 1 & BP4 requires protection wall as a safeguard measure. The general land use of the area is rubber plantation. Considering the land fragility of the area and the government direction in the Kerala State Disaster Management Plan 2016, published under Section 23 (1) of the Disaster Management Act, 2005 (Central Act 53 of 2005), the Committee decided that mining project in such an area can be permitted only after getting the approval of the district level crisis management committee for mining constituted vide G.O (Rt) No. 542/14/ID dated 26-05- 2014. Therefore, the 2nd respondent decided to get the following additional documents/details.

- 1) A recent certified survey map indicating distance to the built structures such as buildings, roads, canals, electrical & telecommunication installations etc. with 200m radius of the project site.
- 2) Modified CER as per norms.




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- 3) Safeguard plan for the location between BP 2 & BP3 and between BP 1 & BP4.
- 4) Approval of the district level crisis management committee for mining constituted vide G.O (Rt) No. 542/14/ID dated 26-05-2014.

8 & 9. It is submitted that in the 138th SEAC meeting held on 16th to 17th February, 2023. The committee deferred the item for detailed scrutiny in the next meeting. In the 139th SEAC meeting held on 3rd to 4th March 2023. The Committee examined the proposal, verified the documents and discussed the Field Inspection Report. The Committee observed that the project area is 0.9713 Ha having mineable reserve of 1,63,340 MT, production capacity of 32,668 MT and mine life of 5 years. The nearest built structure is 69m from the project boundary and the depth to water table is reported as 8m below ground level (BGL). The site falls in an extensive moderate hazard zone on the upper slope of a hillock, the hillock having high relative relief from 120m to 500m above MSL (as per google imagery). The elevation of the site varies from 330m to 360m above MSL. The entire region in which the site is located is highly vulnerable to landslides. The area was also a major hotspot of natural hazards during the devastating flood incidences of 2018 and 2019. Considering the severe hazard potential of the region in which the site is located, the Committee decided to recommend rejection of the proposal based on precautionary principle, as of the judgment of the Hon'ble Supreme Court in IA No.1000 of 2003. Another proposal, adjacent to the site with File No. SIA/KL/MIN/204998/2021 was also rejected based on the same reason.

10. It is submitted that the appellant submitted a request letter dated 27.03.2023 before the 1st respondent to reconsider the decision to reject his proposal. The proposal was placed in the 125th SEIAA meeting held on 28th & 29th March 2023. The 1st respondent accepted the request of the appellant to defer the project till the receipt of the report from the District Crisis Management Group. On receipt of the report, the 2nd respondent shall relook the matter.



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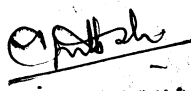
11. It is submitted that the proposal was placed in the 142nd SEAC meeting held on 11th to 12th May. The committee deferred the item for detailed scrutiny in the next meeting. The proposal was later placed in the 143rd SEAC meeting held on 25th to 26th May 2023. The Committee noted the direction of the SEIAA in its 125th meeting and considering that the report from the DCMG is not received, the Committee decided to defer the item.

12. It is submitted that proposal was placed in the 145th SEAC meeting held on 19th June, 2023. The Committee verified the documents submitted by the proponent and decided to recommend rejection of the proposal considering the "Precautionary Principle" as per the observation and decision in the 139th SEAC meeting.

13. It is submitted that the project proponent filed a WP(C) No. 22929 of 2023 before the Hon'ble High Court of Kerala seeking to direct SEIAA, not to act upon the recommendation of 139th & 145th SEAC meeting to rejecting the proposal. The Judgment dated 31-07-2023, the Hon'ble High Court of Kerala disposed the case as the application of the petitioner was considered by SEIAA in its 129th meeting held on 26th and 27th of July, 2023 and it has been decided to place the petitioner's application before the SEAC, to hear the petitioner and to make a final recommendation. The proposal was placed in the 129th SEIAA meeting held on 26th & 27th July, 2023. The Authority decided to refer back the case to SEAC to give a final recommendation after hearing the project proponent.

The proposal was placed in the 150th SEAC meeting held on 07th to 08th September, 2023. As directed by the Authority in its 129th meeting, the Committee invited the proponent for hearing. The 2nd respondent heard the appellant. The project proponent intimated that he complied with all the directions given by the District Crisis Management Committee and obtained the NOC. The Committee decided to direct the project proponent to submit a detailed hearing note with all supporting documents within 7 days. The project




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proponent submitted the hearing note with supporting documents *via* Parivesh on 07/10/2023.

14. It is submitted that, the proposal was placed in the 151st SEAC meeting held on 16th to 18th October 2023. The Committee verified the hearing note submitted by the project proponent and observed that the project proponent submitted NOC from the District Crisis Management Committee. The Committee entrusted Dr.R.Ajayakumar Varma, Dr.Mahesh Mohan, Dr.K.N.Krishna kumar and Sri.Sheik Hyder Hussain to conduct one more field verification and report for the Committee to take a final decision. Field Inspection was conducted on 8.11.2023. The following are the findings of the Subcommittee.

- 1) *The land under application having an area of 0.9713 Ha falls in the Sy No. 282/2-3 in Mundakkayam Village. There is an abandoned quarry on the southeastern side and land under lease to the Proponent extends to the northwest side under Sy. No. 281/1-2. The thickness of overburden in the project area is reported as 0.5 to 1.5m. The thickness of soil is minimal at the southeastern side of the project area at the abandoned quarry side and it increases significantly towards northwest. The general slope of the project site is moderate and there is a break-in-slope adjacent to the southwestern boundary of the proposed project site almost along a pathway. The slope southwest of the proposed project site is very steep with average slope around 37°. The thickness of soil is also very high on the very steep slope area southwest of the break-in-slope region, characterizing the area as very vulnerable to landslide in the changing climatic scenario.*
- 2) *As per the minutes of the 131st meeting of the SEAC, the Proponent was hopeful of clearing the proposal from the environmental angle after submission of the approval of the DLCMC. This decision was based on the environmental data obtained from the application, essential documents provided by the proponent and the field inspection report (FIR). It is also to be noted that the FIR was prepared considering only the proposed area (0.9713 Ha) located on the summit of the ridge and it did not even report*

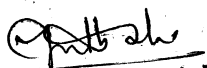


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that the site is falling in the moderate hazard zone. The SEAC, in its proceedings do not take decision based on the details and recommendation provided in the FIR alone but consider various other information such as the landslide hazard zonation map of the Disaster Management Authority, Satellite imagery of the location, the details provided by the proponent in his application as well as essential documents submitted, additional documents sought from the Proponent and environmental data attributable to the area from authenticated sources. Hence the decision of the SEAC is not exclusively based on the recommendation of the subcommittee entrusted by the SEAC, though it assists in the decision making of the SEAC. In the present case also, the SEAC adopted the same practice.

- 3) When the additional documents were produced before the 139th meeting of the SEAC held during March 3-4, 2023, the critical nature of the site was more evident as the committee perused the landslide hazard zonation map, the climatic, climate variability, hydrologic, physiographic and landform characteristics and nature of slope from the satellite imageries etc. The Committee then observed that the site falls in an extensive moderate hazard zone on the upper slope of a hillock, the hillock having high relative relief from 120m to 500m above MSL (as per google imagery). The elevation of the site varies from 330m to 360m above MSL. The high hazard zone is at a distance of 3.7km and the entire region in which the site is located is highly vulnerable to landslides. The area was also a major hotspot of natural hazards during the devastating flood incidences of 2018 and 2019. These observations, along with the input of the subcommittee who have been to the location enabled the committee to assess the hazard potential of the region, including the site as severe. Based on the findings, the Committee unanimously decided to apply precautionary principle to the site and recommend rejection of the application for environmental clearance in the 139th and 145th meeting.
- 4) The decision to recommend rejection of the proposal was taken without waiting for the NOC from DLCCM is due to the findings of the SEAC that the




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site is highly vulnerable to landslides and that the Precautionary Principle applies to the area.

5) In cases like this, it is important to invoke the 'Precautionary Principle'. "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".

6) Hon'ble Supreme Court of India in a recent judgement in IA No.1000 of 2003 dated 3rd June 2022 has underlined the necessity for following the Precautionary Principle. The judgement 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 judgement that it is not always necessary that there should be direct evidence of harm to the environment."

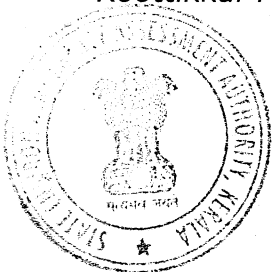
7) In the case of this quarry, there is every reason to suspect the risk potential in the context of extreme events due to Climate Change and proximity to hazard zones. The ravages of extreme events due to Climate Change has been conspicuously present in Kerala over the past few years, particularly in the high-altitude regions. Hence, the greatest caution has to be exercised while deciding about intrusive interventions, including mining in such areas.



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- 8) The Proponent submitted NOC No. DC/KTM/8916/2022-DM dated 17.4.2023 from the DLCMC for initiating quarrying operation in orange zone (Moderate Landslide Hazard Zone) for an area of 3.8415 Ha under Survey No. 281/1-2 and 282/2-3 of Mundakkayam Village, Kanjirappalli Taluk. The nature of possession of the land by the applicant is under Lease deed valid up to 2033. The NOC is valid until the DLCMC suspends, withdraws or cancels it.
- 9) As per the Report of the District Geologist of the Mining & Geology Department to the District Collector, Kottayam vide Lr. No. 3404/DOY/ML/2022 dated 17.1.2023, it is reported that Letter of Intent was issued to Mr. Siraj Hussain for hard rock mining vide Lr. No. 2286/DOY/ML/2018 dated 23.5.2019 for an area of 6.9713 Ha in Sy. No. 281/1-2 and 281/2-3 of Mundakkayam Village. It is observed that the Proponent Sri. Siraj Hussain has submitted a different Letter of Intent along with the application vide Lr. No. 1307/DOY/ML/2018 dated 5.7.2018 for an area of 0.9713 Ha in Sy. No. 281/2-3 of Mundakkayam Village. The number and area of extent shown in both the LoI are different.
- 10) The Report of the Geologist also stated that there are residential houses on both sides of the approach road to the proposed quarry and the houses are on the hill slope. Therefore, the residence there have to be shifted from there, considering that the houses are in the moderate hazard zone and on the hill slope.
- 11) The Tehsildar of Kanjirappally Taluk vide his letter no. TLKKPY/6277/2022-J1 dated 14.11.2022 reported that the mining is proposed in the lease land of Smt. Seleenamma in Sy No. 281/1-2 and 281/2-3 in Block 2 of Mundakkayam Village having an area of 1.1115 Ha and 2.7300 Ha. The report also stated that there is an old quarry, and mining is proposed on the adjacent land. Though the proposed site is located in an elevated area, the rear side of the proposed site is plain. The proposed site has rubber trees and that there are no natural drainages. During the flood incidences in Koottikkal-Mundakkayam areas in 2021, no landslides or other natural



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hazards were reported in this region. It is also reported that no disasters were reported in the area in the previous years. It may be recalled here that the Sub Committee of SEAC also did not assess the site with an area of 0.9713 Ha as disaster prone or having a significant adverse environmental impact.

12) The Proponent submitted that he has widened the road as per the direction of DLCCM by investing huge amount and satisfied the safeguards recommended by the SEAC subcommittee but the SEAC has rejected the application by stating Precautionary Principle. It is to be noted that the statement by the proponent that he satisfied the safeguards recommended by the SEAC subcommittee is not correct. It is to be noted here that the Proponent did not reveal that he had an intent to mine larger area than what was proposed in the application for environmental clearance to the subcommittee or during the presentation before the SEAC. The intent of the proponent to mine large area is evident from the report of the Tehsildar and District Geologist and the NOC issued by the DLCCM.

13) It is pertinent to note that the Proponent has applied for environmental clearance for an area of 0.9713 Ha irrespective of the fact that he got Letter of Intent for an area of 6.9713 Ha from the District Geologist and NOC from the DLCCM for an area of 3.8415 Ha. It is to be examined legally whether it involves splitting of projects in accordance with the order of the Hon. Supreme Court dated 27.2.2012 in Deepak Kumar etc. Vs State of Haryana etc.

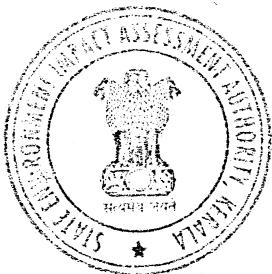
15. It is submitted that the proposal was placed in the 155th SEAC meeting held on 18th & 19th December, 2023. The Committee discussed the field inspection report conducted on 08.1.2023 and examined all the findings for and against the project. It is observed that the disadvantages to the environment are much more than the economic benefits. Considering the anticipated environmental harm and uncertainty, the Committee felt it necessary to invoke precautionary principle as protection of environment should have precedence



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over economic interest. Therefore, the Committee recommended rejection of the proposal due to the following reasons:

- 1) The thickness of overburden in the project area is reported as 0.5 to 1.5m which increases significantly towards northwest. The general slope of the project site is moderate, but the slope of the adjacent area southwest of the proposed project site is very steep beyond the break-in-slope region adjacent to the southwestern boundary of the proposed project site. The very high thickness of overburden on the very steep slope area southwest of the break-inslope region, characterizes the area as very vulnerable to landslide in the changing climatic scenario.
- 2) The critical nature of the site is evident from the landslide hazard zonation map, the climatic data, climate variability of the region evident from the devastating flood incidences of 2018 and 2019, hydrologic, physiographic and landform characteristics and nature of slope, high relative relief from 120m to 500m above MSL of the hill on which the site is located.
- 3) The principle of precaution is applicable in this case in anticipation of environmental harm and high-risk potential and therefore requires anticipatory action to be taken to prevent harm.
- 4) The NOC No. DC/KTM/8916/2022-DM dated 17.4.2023 from the District Level Crisis Management Committee submitted by the Proponent is for initiating quarrying operation in orange zone (Moderate Landslide Hazard Zone) for an area of 3.8415 Ha under Survey No. 281/1-2 and 282/2-3 of Mundakkayam Village, Kanjirappalli Taluk. Though the project area proposed in the application at present is only 0.9713 Ha, it is evident that the mining may extend to the steep slope region with thick over burden in future leading to anticipated severe environmental harm and increased high-risk potential.
- 5) As per the Report of the District Geologist of the Mining & Geology Department to the District Collector, Kottayam vide Lr. No.



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3404/DOY/ML/2022 dated 17.1.2023, the risk potential further increases as the residential houses on both sides of the approach road to the proposed quarry are on the hill slope and in the moderate hazard zone.

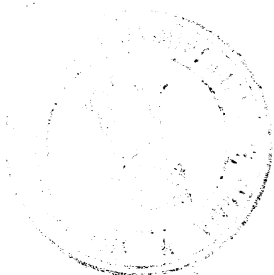
Proposal was placed on 137th SEIAA meeting held on 29th and 30th January 2024. The Authority perused the project proposal, studied various documents, NOC of District Disaster Management Committee, Kottayam and recommendations of SEAC. After a detailed deliberation, the 1st respondent decided to accept the recommendation of 2nd respondent to reject the project proposal. Accordingly, rejection order was issued on 06.03.2024.

16. It is submitted that State Level Environment Impact Assessment Authority is constituted to process the application for granting/rejecting the mandatory Environmental Clearance for category 'B' projects mentioned in the Schedule of EIA notification, 2006 and its subsequent amendments. Various environmental parameters including ecological and geographic features are assessed during the appraisal of the project by the State level Expert Appraisal Committee. It is also submitted that the committee conducted the field visit twice to ascertain the field reality. The decision to reject the application was done after thorough appraisal of the documents by following all the appraisal procedures as the EIA Notification 2006.

Since the proposed area is environmentally very much fragile and hazardous in nature, the authority being responsible to safeguard the environment is not in a position to give environmental Clearance to the proposal. The 1st Respondent and 2nd Respondent gave ample opportunity for the petitioner to present his observations and documents. The decision of the authority was intimated to the petitioner. The respondents took the decision as part of the responsibility bestowed on them to safeguard the environment. Therefore, the appeal may be dismissed as such.

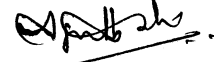
Under the above circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the plea and pass such order or orders as this Hon'ble


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tribunal may deem fit and proper in circumstances of the case and thus render justice.

Dated at Chennai on this the 30th day of October, 2024.

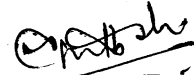


RESPONDENT NOS.1 & 2

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 30th day of October, 2024.



RESPONDENT NOS.1 & 2

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