

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

APPEAL NO.60 OF 2024

IN THE MATTER OF:

Minering Aggregates Pvt. Ltd.,
Kerala.

...Appellant

v.

SEIAA, Rep. by its Chairman,
Kerala and Anr.

...Respondents

INDEX

Sl. No.	Description	Page Nos.
1	REPLY STATEMENT FILED BY THE 1ST RESPONDENT	1-6

Dated at Chennai on this 13th day of November, 2024



COUNSEL FOR 1ST RESPONDENT

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REPLY STATEMENT FILED BY THE 1ST RESPONDENT

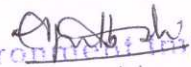
I, Ajitha Kumari V R, aged 49 Years, D/o. Rejeswari Amma, working as Legal Officer, SEIAA at Thiruvananthapuram, do hereby solemnly affirm and sincerely state as follows:-

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 No.1. I crave leave of the Hon'ble Tribunal to file statement as and when additional facts are available to the Respondents.

1. It is submitted that the Environment Clearance application for the mining of Granite building stone quarry project of Sri. Antony S. Alukkal, M/s Minering Aggregates Private Limited, was received *via* PARIVESH on 14th October 2022, for an area of 4.7998 Ha. at Re-Sy Block No.:01, Re-Sy No. 23/1 pt 427, 23/1 pt 426, 23/1 pt 424 & 23/1 pt 375, in Kolathur Village, Kasaragod Taluk, Kasaragod, Kerala. Since the proposed activity is included in the schedule of EIA Notification 2006, as activity 1(a) of category B: the appellant has to procure mandatory prior EC from SEIAA.

2. It is submitted that the proposal was initially placed in 134th SEAC meeting held on 09th to 11th November 2022, the Committee examined the





 State Environment Impact
 Assessment Authority
 4th Floor, KSRTC Bus Terminal
 Thiruvananthapuram - 1

proposal and verified the details and entrusted Subcommittee for field inspection and report. The Subcommittee entrusted by the SEAC conducted field inspection on 02-01-2023 and the SEAC again considered the application in its 142nd meeting held on 11th & 12th May 2023 and the 143rd meeting held on 25th to 26th May, 2023. On verification of the field inspection report, the Committee observed the following:

- There are local protest against the project as seen from the Posters seen in the area
- The proponent suggests new road away from the locations of the the complainants
- An abandoned quarry pit is present at the northern part of the project area.
- The land is under coconut, rubber and teak plantation.
- Soil thickness is around 2.2m
- Distance from River Chandragiri/Payaswini is only 65m
- Old quarry pit is without any benches and waterlogged.
- A small portion of the project area in north-east, fall in medium-hazard zone.
- The location of the site is in the middle side slope.

In order to get more clarification, the committee decided to call for the appellant for the presentation. In the 146th SEAC meeting held on 5th to 7th July, 2023, Committee heard the presentation and directed the proponent to submit the certain additional documents including modified drainage plan and detailed plan for mitigating the adverse impact on the river and riverine ecology, consequent to the proposed mining adjacent to the river. The appellant submitted the documents on 10/09/2023. In the 151st SEAC meeting held on 16th to 18th October, 2023, the Committee verified the additional documents submitted by the appellant and found that mitigation measures for the adverse impacts on the river and riverine ecology proposed are not satisfactory. The quarry is 65 m away from the river Chandragiri, which is the main drinking water source of Kasaṅgod district. Further, there is a check dam at 2 km downstream of the proposed site, from where water is extracted for drinking




 State Environment Impact
 Assessment Authority
 4th Floor, KSRTC Bus Terminal
 Thiruvananthapuram - 1

water supply. The proposed mining activities will be spread over an area of 4.7998 Ha area from where the extraction will be more than 20 lakh ton in 7 years. The proposed site is located on the side of hill with a relative relief of around 100m with moderate slope and significant thickness of soil. The site is also located near a meandering point of the river. The buffer between the river bank and project boundary is not adequate to contain/assimilate the pollution potential. Therefore, the proposed site is highly vulnerable from the point of view of soil erosion, considering the soil thickness of more than 2 m, pollution of drinking water source, loss of vegetation etc. The Hon'ble Supreme Court in a judgment on 3.6.2022 in IA No. 1000 of 2003 underlined the necessity of following the Precautionary Principle as there may arise situations 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. The Committee observed that this is one such case where principle of precaution applies and therefore, decided to recommend rejection of the proposal invoking the Precautionary Principle.

3. It is submitted that the proposal was placed in the 135th SEIAA meeting held on 22nd & 23rd December, 2023. The 1st respondent also noted that the project proponent has filed a WP(C) No. 40603 of 2023 before the Hon'ble High Court of Kerala with a prayer to stay all further proceedings pursuant to Ext. P8 (True copy of the decision No. 151st SEAC meeting), pending disposal of the writ petition. The project proponent also prayed that he hadn't been given an opportunity for hearing before rejecting the proposal. Under these circumstances, pending decision in WP(C) No. 40603 of 2023, the 1st respondent, the SEIAA decided to give an opportunity of hearing to the appellant in the next meeting. The proposal was placed in the 137th SEIAA meeting held on 29th & 30th January, 2024. As intimated by the Authority, Sri. Sany representing the project proponent and the Consultant Sri. Cyriac Joseph attended the hearing on



[Signature]
 State Environment Impact
 Assessment Authority
 4th Floor, KSRTC Bus Terminal
 Thiruvananthapuram - 1

29.01.2024. After hearing, the 1st respondent directed the project proponent to submit a detailed hearing note within 7 days with necessary supporting documents to substantiate his claims. Also, the Judgment in WP(C) No. 40603 of 2023 dated 19-01-2024 was received. The Hon'ble High Court disposed of the writ petition with a direction that SEIAA to consider the claim of the appellant afresh, after affording an opportunity of being heard to the petitioner as decided in Ext.P9 (Minutes of the 135th SEIAA meeting) in the 135th meeting of the SEIAA held on 23.12.2023.

4. It is submitted that the Proposal was placed in the 138th SEIAA meeting held on 27th & 28th February, 2024. The 1st respondent noted the Judgement in WP(C) No. 40603 of 2023. The SEIAA noticed that the appellant has not submitted the hearing note so far. The Authority decided to give one more chance to submit the same within 15 days. Thereafter, the appellant submitted the hearing note dated 19.03.2024. The proposal was placed in 141st SEIAA meeting held on 29th and 30th April 2024. On verification of hearing note submitted by the appellant, the 1st respondent noticed that the appellant proposed setting ponds for collecting the drainage water and after treatment the water will be used for agricultural usage. The 1st respondent noted that the mitigation proposals as suggested by the appellant are not suitable or viable to nullify the possible contamination of the Chandragiri River, the drinking water source to public. Besides, the hearing note doesn't address the other aspects observed by the SEAC in its 151st meeting. Hence, the 1st respondent accepted the recommendation of the 151st SEAC to reject the project proposal based on Precautionary Principle. Rejection proceedings was issued to the appellant vide Order dated 13.06.2024.

5. It is respectfully submitted that, the river is a major drinking water source for the population in downstream any mining activity in its premises even if by adopting precautionary/ preventive measures will affect the drinking water quality. Normally, the mining project shall provide garland drain with silt traps, settling ponds, etc before discharging the drainage and storm water to natural



[Signature]
 State Environment Impact
 Assessment Authority -
 4th Floor, KSRTC Bus Terminal
 Thiruvananthapuram - 1

stream or drains. But this is not sufficient for maintaining the drinking water quality, especially in these cases of hearing rainfall occasions.

6. It is submitted that, in addition to the proximity to river the project area the soil thickness of the area is around 2.2m which is very thick and there is an abandoned quarry pit without benches and protection measures in the northern part of the project area. Besides there is public protest against the project too. The project area is located near the meandering point of the river. The buffer between the river bank and project boundary is not adequate to contain/assimilate the pollution potential. Therefore, the proposed site is highly vulnerable from the point of view of soil erosion, pollution of drinking water source, loss of vegetation etc. The Committee also noticed that the Hon'ble Supreme Court in a judgment on 3.6.2022 in IA No. 1000 of 2003 underlined the necessity of following the Precautionary Principle as there may arise situations 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. The Committee observed that this is one such case where principle of precaution applies and therefore, recommended rejection of the proposal invoking the Precautionary Principle. The SEIAA further noted that, the mitigation proposals as suggested by the appellant are not suitable or viable to nullify the possible contamination of the Chandragiri River. Besides, the hearing note submitted by the appellant doesn't address the other aspects observed by the SEAC in its 151st meeting. The slope of the proposed project area is towards the river. Hence, the 1st respondent rejected the project proposal based on Precautionary Principle.

7. It is submitted that the 1st respondent being responsible to safeguard the environment is not in a position to give environmental Clearance to the appellant's quarry project, as there is a water body at 65 m having drinking



[Handwritten Signature]
 State Environment Impact
 Assessment Authority
 4th Floor, KSRTC Bus Terminal
 Thiruvananthapuram - 1

water facility. The SEAC/SEIAA gave ample opportunity for the appellant to present his observations and documents. The respondents took the decision as part of the responsibility bestowed on them to safeguard the environment by considering the precautionary principle.

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 13th day of November, 2024.

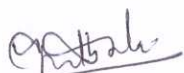

1st RESPONDENT

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 13th day of November, 2024.




1st RESPONDENT
State Environment Impact
Assessment Authority
4th Floor, KSRTC Bus Terminal
Thiruvananthapuram - 1.