

NDOH: 3.1.2024

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI

O.A. NO. 304 OF 2019

IN THE MATTER OF:

M. Haridasan and Ors

.....Petitioners

VERSUS

State of Kerala.

...Respondent

INDEX

Sl.No.	Description	Page Nos.
1.	Reply/objections/counter on behalf of Respondent Thomsun Aggregates to the report of the Joint Committee.	1-9
2.	Proof of advance service	10



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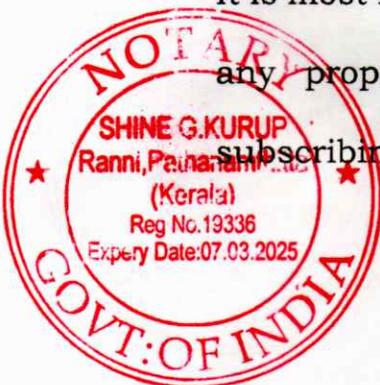
...Respondent

REPLY/OBJECTIONS/COUNTER ON BEHALF OF
RESPONDENT THOMSUN AGGREGATES TO THE REPORT
OF THE JOINT COMMITTEE.

I, KV. Abraham, Managing Partner of 'Thomsun Aggregates'
aged 65 years, S/o. Late KC Varghese, R/o. Kuttipparambil
(H), Vadaathoor P.O., Kottayam District, Kerala State-686010,
do hereby solemnly affirm and state on Oath as under:-

That, I am one of the Respondent in the captioned matter and
well conversant with the facts of the case as such competent
to swear this affidavit.

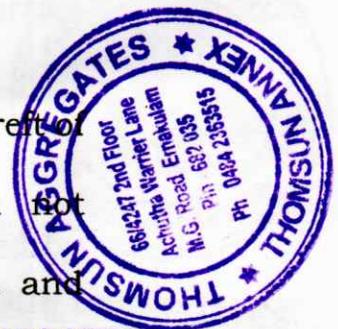
It is most humbly submitted that the report is flawed, bereft of
any proper application of mind, non-scientific and not
subscribing even to the commonly laid down criteria and



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RANNI, PATHANAMTHITTA

For THOMSUN AGGREGATES

MANAGING PARTNER



mandate for collecting the data. The same does not project any sustainable reason so as to interfere with the distance criteria already fixed by the State Government in due consideration of all the relevant factors therein.

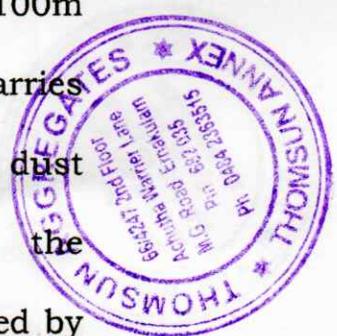
1. Though all the relevant facts and circumstances cannot be pointed out in the present counter, some of such facts, figures and circumstances which will exhibit that the report cannot be relied or acted upon in the wisdom of this Hon'ble Tribunal are pinpointed below:
2. The fallacy of the report is evident from the single factor that as per the report, ambient air quality is better on quarrying day than that of non-quarrying day. As per the report 31.4 percent of PM10 concentrations on non-quarrying days are higher than that on quarrying days and 67.4 percent of the PM2.5 concentrations were higher on non-quarrying days than that of quarrying days. This happened because all the 50m and 100m locations from the 'blasting zone' are within the quarries itself and within the buffer zones and the dust suppression/control systems as specified by the

statutory authorities were being effectively managed by



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the quarry operators. Majority of the 200m sampling points are also inside the quarries or in the land in possession of the quarry owners/operators. This is a serious anomaly that arose out of not measuring distances from the approved boundary of the quarry on all relevant directions. Thus it can be seen that errors have crept in selection of one day's blasting area, measurement of distances to the impact areas and fixation of the approved boundary of the quarry.

3. As per the CPCB Guidelines, it is mandatory to take two sampling stations in the upwind direction and one station in the down wind direction for proper monitoring of wind velocity and wind direction at a sampling site which direction is totally neglected by the committee which even erred in marking the directions in the case of Pathanamthitta district (page no. 990), wherein North and South are marked in the same direction.

4. The disparities in actual distance totally negatives the correctness of KSPCB selected locations claimed to be at 50m,100m,200m and 500m as while checking the same with GPS coordinates shared in the report and plotting

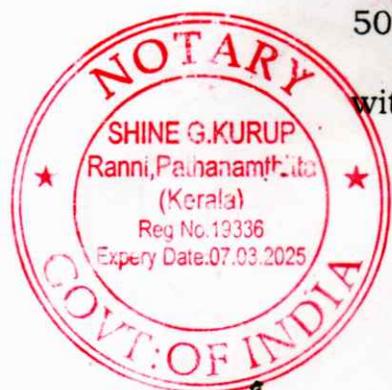


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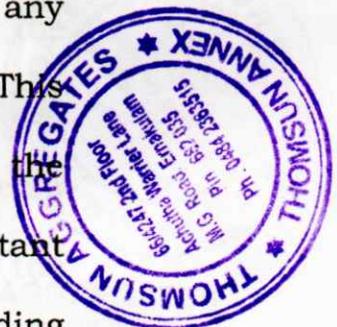
S.P.
11/1/2024

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the locations for all the sampling locations, the same are found to be wrong in more than 90% of instance. To cite some, in the quarry monitored in Pathanamthitta district, the distance of location SE100 (supposed to be 100m away) from the blasting zone is actually 90m. Also the distance of SE200 (supposed to be 200m away) from the blasting zone is only 139m. Similarly, in the quarry monitored in Ernakulam district, the distance of location NE100 (supposed to be 100m away) from blasting zone is actually 60.8m and that of SE200 is actually 178.64m. Such serious disparities discredits the Report in its entirety as accuracy and correctness of data is much crucial and relevant in the present case wherein a delicate balance has to be carved out to facilitate sustainable development.

5. The committee erred in relying upon a journal (Dhar et. al.) which is not available in the public domain or any other details of the journal are unavailable. This assumes importance as the same is taken by the committee as the basis for an important recommendation, disregarding a nationally binding



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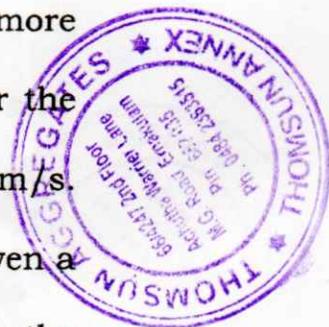


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circular (DGMS(Tech)(S&T) circular no.7 of 1997 dated 29th August 1997) issued by the same authority who has done the monitoring. Thus the recommendation that the Peak Particle Velocity (PPV) greater than 5mm/s shall be considered as noticeable is totally flawed.

6. Similarly, the committee arrived at its own conclusions, sidelining the limits prescribed by DGMS is clear from the fact that even though less than three percent of the measurements are found in the Dominant Excitation Frequency range of 8-25 Hz, the total scenario can be considered as in the same classification for which the limit for PPV stipulated by the DGMS is 10mm/s. The highest PPV value reported during the study was 10.42 mm/s at a distance of 28m which is well within the limit as per the DGMS circular referred above, since the corresponding Dominant Excitation Frequency was more than 25 Hz. The highest value of PPV reported for the classification with DEF range of 8-25 Hz is 1.867mm/s. Hence it is clear that in both the DEF ranges not even a single measurement exceeded the limit prescribed by the DGMS.



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11/1/2024

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7. Similarly, despite the fact that CPCB is the leading member, the conditions imposed by CPCB were overlooked and violated by the committee as can be seen from the deviation of the guidelines for sampling and monitoring of ambient air quality (NAAQMS/36/2012-13 dated 18th May 2012). The condition that the inlet of the monitoring equipment should be at 15m away from the source/traffic artery was not complied. Similar is the violation of the condition that the height of the inlet shall be between 3 and 10m or double the height of the nearby wall or obstructions and the elevation angle shall be less than 30 degree. In almost all the cases the air quality sampling instruments were placed close to walls (less than 15m distance) of mined areas and over 200 litre barrels (so that the air inlet height never exceeded 2m from the ground level).

8. It is essential that external impacts are excluded and measures are taken for the same to ensure accuracy.

Admittedly, generator sets were used as power sources.

Diesel generator sets are major sources of air pollution

particularly due to the emission of PM10, PM2.5, Carbon

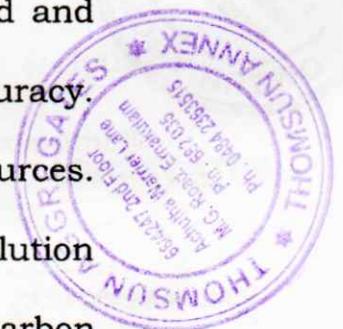
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11/1/2024

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monoxide, dioxide etc. At every location the diesel generator set was installed at distance of less than 10m from the air sampler and noise level meter. This fact is clearly seen from picture of the Wayanad monitoring location (Vengapally, Lat 11.628828, Long 76.043982). Such an unscientific approach of not taking measures to nullify the impact of Generator Sets on ambient air quality and noise levels from the part of the monitoring team including KSPCB, resulted in to inflated readings and erratic conclusions.

9. Despite clear directions to monitor the noise level during the blasting activities at distances 50 m, 75 m, 100 m, 125 m, 150 m, 200 m and 250 m, the study was conducted at distances of 50 m, 100 m and 500 m only, around blasting zone. While the committee concluded that 150 m is the ideal distance, the report does not contain any noise level reading that was taken from monitoring at a distance of 150 m, which raises serious concerns about acting upon non-existent or assumed data.



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10. While the Noise Pollution (Regulations & Control) Act 2000 specifies noise limits for specified areas like Industrial Area, commercial area, Residential Area and Silence zone, the noise level was not taken from any of the residential buildings or houses outside the boundary of any of the quarries that were monitored to see the impact of the blasting operations on human beings. The limit stipulated for Residential Area is 55 dB(A)Leq for residential areas. It is to be noted that that the noise standards are applicable only at the boundary of the quarries which was admitted by nodal officer Mr. Krishnan MN during the joint committee meeting on 16.2.23.

11. Paragraph 5.2 of the report makes it clear that the monitoring team has not compared the noise levels with the standards prescribed under the Noise Pollution (Regulation & Control) Rules 2000, amended in January 2010, because the 'primary aim of the monitoring is to determine whether the noise contributed by any source is increasing the ambient noise level by 10 dB(A) or

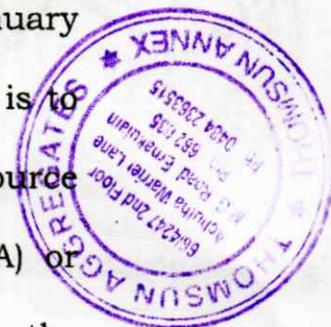
more'. Thus it was conveniently interpreted that the

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study was only for assessing the difference in noise level without quarrying operation and with quarrying operation, which is quite an uncalled for comparison. The '10 dB(A) or more' provision mentioned in the Rules (ie. Rule 7) is for reinforcing the right of the person to make a complaint on noise pollution to the authority and the obligation of the authority to take action to redress the complaint. Hence the noise level readings should have been taken at the distances specified by the Hon'ble Court and no deviation was permissible.

In the above circumstances it is humbly submitted that this Hon'ble Tribunal may review the order in view of the report of the Joint Monitoring Committee being found manipulated and prejudiced, based on unscientific monitoring and without following the guidelines and standard procedures and be pleased to hold that the no restriction other than the prevailing ones are warranted in the present matter.



Dated this at _____ on the 01st day of January 2024

Solemnly affirmed and signed before me by the deponent whom I know personally on this the 1st day of Jan 2024 At my office at Rany

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Sayooj Mohandas <adv.sayoojmohandas@gmail.com>

Service of Reply by Thomsun Aggregates in O.A. No. 304 of 2019

1 message

Sayooj Mohandas <adv.sayoojmohandas@gmail.com>

Tue, Jan 2, 2024 at 12:18 PM

To: nishtha@nklaw.co.in, Nishe Shonker <nrshonker@gmail.com>

Respected All,

Please find attached herewith the copy of the reply filed by the Thomsun Aggregates (Respondent) in O.A. No. 304 of 2019.

Thanking You
Mr. Abhilash.M.R and Mr. Sayooj Mohandas.M
Advocates for the Respondent

 **Reply by Thomsun Aggregates.pdf**
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