

**BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), SITTING AT
CHENNAI**

(Under Section 18(1) read with Section 14 of the National Green Tribunal, 2010)

Application No. 155 of 2020 (SZ)

BETWEEN

Vijeesh Kumar, aged 34 years,
S/o Vidhyadharan,
Shailaja Bhavan, Enthivila, Cheeranikkara P.O.,
Vembayam,
Thiruvananthapuram- 695 615.
Email: vijeeshvembayan@gmail.com
Phone: 9633881806

...APPLICANT

-AND-

1. Union of India,
Ministry of Environment, Forest and Climate Change,
Rep. by its Secretary, Indira Paryavaran Bhavan,
Jorbagh Road,
New Delhi- 110 003.
Email: secy-moef@nic.in Phone: 011-24695262

2. State Environment Impact Assessment Authority,
Rep. by its Secretary,
Pallimukku- Kannammoola Road,
Overbridge,
Velakudi,
Thiruvananthapuram- 695 024.
Email: seacseiaakerala@gmail.com Phone: 471-2334265

3. M/s Covenant Stones Pvt. Ltd.,
Rep. by its Managing Director,
Katta, Cheeranikkara P.O.,
Vembayam, Thiruvananthapuram,
Email: info@covenantstones.com Phone:

4. The Director of Mining & Geology,
Pattom Palace P.O., Kesavadasapuram,
Thiruvananthapuram- 695004
Email: director.dir.dmg@kerala.gov.in
Phone: 0471-2447429

...RESPONDENTS

COUNTER AFFIDAVIT FILED BY THE 3RD RESPONDENT

1. The 3rd Respondent submits that it is a private limited company incorporated on 11.03.2011 and is engaged in the business of quarrying granite building stone, which it sells across India.

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2. The 3rd Respondent submits that at the outset, all the averments made by the Applicant in his Application are untrue except for those that are specifically admitted hereunder and the Applicant is put to strict proof of the same. The 3rd Respondent has followed all due procedure and formalities that are required to operate its quarrying business. The Applicant's blanket allegations on the 3rd Respondent being involved in illegal mining are untrue and made without any material basis.

3. The Applicant has himself stated in Paragraph 3 that in order to ascertain the quantity of excessive mining and damages suffered due to the 3rd Respondent, an expert authority is required. Hence it is for the Applicant to explain as to how he was able to arrive at his allegations of the 3rd Respondent being involved in illegal mining and on what basis he has filed the present application, without having the due evidence to substantiate his claims. The Applicant has annexed Google Earth images of the quarry site to support his allegations but these pictures do not in any way provide evidentiary value to back his statements. They are merely aerial views of the quarry site.

4. It is relevant to point out that the applicant has not stated about what the actual topography of the area was at the time of the mining lease being granted to this Respondent. As a matter of record, the mining lease granted to this respondent was not a virgin mine but a mine which had already been mined by another person. Hence, it has to be first seen as to what the actual topography of the area was, what was mined by the earlier licensee and what was then given to this Respondent. Without ascertaining the said facts it would not be appropriate to fasten the liability on this Respondent. Apart from this, while the mining licence was issued to this Respondent, it was clearly stated under the Environment Clearance (hereinafter referred to as

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“EC”) that there would be no damage on the environment or bio diversity as the mine was an existing mine.

5. The Applicant has made numerous claims solely against the activities of the 3rd Respondent without due consideration of the fact that the quarry which was leased to the 3rd Respondent was not a virgin quarry but a pre-existing quarry that had already been mined before. This fact is provided in both the EC given to the 3rd Respondent as well as the Report of the Joint Committee in O.A. 155 of 2020, wherein it had been observed by the Committee that quarrying activity was noticed in 2003 itself, much before the full scale quarrying of the 3rd Respondent began in 2015.
6. The 3rd Respondent had applied for a fresh quarrying lease to the Director of Geology and Mining, Kerala/ 4th Respondent herein in 2011 and was granted a quarry lease for an extent of 8.9367 Hectares of land comprised in Re Sy.No.29/2, 29/3 and 30/4 of Thekkada village, Nedumangad Taluk and comprised in Re Sy.No. 470, 472/5, 472/6, 474/1, 474/1-2, 472/4-1 and 474/1-2 of Manikkal village Nedumangad Taluk, Trivandrum District, Kerala, for mining granite building stone to be utilised for sales purposes. The quarrying lease had been granted to the 3rd Respondent for a period of 12 years, starting from 23.05.2011 to 22.05.2023.
7. The 3rd Respondent had subsequently applied to the State Environment Impact Assessment Authority, Kerala (hereinafter referred to as “SEIAA”) for an EC on 25.03.2014 with respect to the lease area and received a clearance on 27.11.2014 vide proceedings No.237/SEIAA/KL/885/2014, which was valid for a period of 5 years. It has been mentioned in the EC that the 3rd Respondent’s project is categorised as a Category B2 project as per the O.M.No. J-13012/12/2013-IA-II (I), Ministry of

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Environment and Forests dated 24.12.2013. A joint reading of the aforementioned office memorandum dated 24.12.2013, along with the Environmental Impact Assessment Notification, 2006 (hereinafter referred to as "EIA Notification 2006") would show that projects that come under Category B2 do not require an Environment Impact Assessment (hereinafter referred to as "EIA") report for receiving an EC. Therefore, the Applicant's allegations in Paragraphs 6 and 7, that the 3rd Respondent had been illegally granted the EC without any EIA, are ignorant and devoid of merit.

8. The Applicant in the column for Limitation has asserted that the present dispute arose on 11.02.2020 when the SEAC detected the fraud committed by this Respondent. A thorough reading of his Application would show that the dispute arose much earlier, as early as in the year 2014 when the Applicant alleged that there was no EIA made before granting EC to the Respondent, apart from alleging that there was a forged mining plan that was submitted by this Respondent. Hence, the present Application filed by the Applicant is barred by the limitation provided under Section 14(3) of the National Green Tribunal Act, 2010. This Respondent craves leave of this Hon'ble Tribunal to decide the maintainability of this Application as it is barred by Section 14(3) of the National Green Tribunal Act, 2010 as a preliminary issue before proceeding any further. Without prejudice to the issue of limitation, this Respondent is advertent to the averments made in paragraphs 1 to 20 and Grounds I to VI of the Application.

9. With respect to the averments made by the Applicant in Paragraphs 1 and 2, this Respondent submits that they are facts on record except the facts relating to the distance of the houses from the mines. It is submitted that there are no houses within

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the prohibited distance as alleged by the Applicant. The other averments are not answered to at the present.

10. This Respondent denies the averments made in Paragraph 3 of the Application. It is totally denied that there are nearby residences as alleged by the Applicant. It is reiterated that there are no illegal mining activities that are being carried out by this Respondent which have caused any environmental damages as alleged by the Applicant. The Applicant has made a bald and sweeping allegation that in the State of Kerala, there are no methods to ascertain excessive mining and the damages that are caused to the environment. It is false to state that there are frequent landslides because of the mining activities. It is also false to state that papers are being created in an arbitrary manner for mining plans, environment management plan and EIA, which the specialised authorities in mechanical manner accept and pass orders. This averment is far-fetched and the Applicant is put to strict proof of the same. This Respondent craves leave of this Hon'ble Tribunal to read Paragraph 6 of the Application filed by the Applicant, wherein he has specifically pleaded that this Respondent has submitted a mining plan along with his Application for EC, which was issued by the Authority on 27.11.2014. The Applicant is purging facts to suit his needs in order to make reckless and baseless allegations.

11. This Respondent denies the averment made in Paragraph 4 of the Application. The Applicant has not in his application stated the distance between the house of the alleged Sulochana and the mine. It is also false to allege that the excessive mining made by this Respondent has been the cause for the damages. It is also false to alleged, without any documents that, the properties of several individuals have been encroached upon. It is pertinent to note that the mining lease agreement was executed

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between this Respondent and the Department of Mining and Geology only on 23.05.2011 and after all other necessary steps taken for beginning of the mining operations, this Respondent company started actual mining only in the year 2013. Hence, this Respondent was not the cause for the incident that had taken place on 09.06.2011.

12. This Respondent denies the averments made in Paragraph 5 of the Application. It is humbly submitted that the alleged illegal excavation as assessed by the mining department has been challenged by this Respondent and is the subject matter of an appeal before the Appellate authority.

13. The averments made in Paragraph 6 are matters of record and hence, are not adverted to by this Respondent at present.

14. The averments made in Paragraph 7 of the Application are wholly false and the allegations that are made therein are denied. It is false to allege that this Respondent managed to get EC without a mining plan and EIA. The Applicant himself had specifically averred that this Respondent had submitted a mining plan along with his application in Paragraph 6 of his Application. It is submitted that this Respondent's quarry has been classified as coming under Category B2 as per the EC certificate, referring to O.M.No. J-13012/12/2013-IA-II (1), Ministry of Environment and Forests dated 24.12.2013. This fact would in itself clearly establish that the Applicant has been making false allegations and purging material facts to sustain his case.

15. The various averments made in Paragraphs 8 and 9 of the Application are matters of record and hence, are not adverted to by this Respondent at present.

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16. This Respondent denies the allegations made in Paragraphs 10 and 11 of the Application. It is false to submit that this Respondent has resubmitted the earlier mining plan with changes in the first few pages, at the time of the renewal of EC. The mining plan was submitted as per the requirements based on physical features of the mining area. The same cannot be alleged to be a tailor made mining plan without any substantial evidence and the Applicant is put to strict proof of the allegations in respect of Paragraphs 10 and 11 of the Application.
17. With regards to the averments made in Paragraph 12, it is respectfully submitted that this Respondent has filed an appeal against the orders of the Department of Mining and Geology, fastening this Respondent with a liability on the allegations of excessive mining without any basis.
18. With regard to the averments made in Paragraph 13, they are false allegations made without any material basis and with malafide intentions.
19. This Respondent denies the averments made in Paragraph 14 of the Application as false and imaginary. It is submitted that the mine that was granted by way of lease to this Respondent is not a virgin mine and has already been mined by some other person prior to 2011. Even while considering the request for grant of EC, the authority has specifically stated that there will be no loss of any biodiversity and the continuation of the mine will not affect the native species in general.
20. The averments made in Paragraph 15 of the Application are denied as false. This Respondent has not forged any mining plans. The mining plan originated from the

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Proponent/ this Respondent and the same is approved by the authorities. Hence, submission of a forged mining plan by this Respondent for EC does not arise. It is submitted that no action has been initiated by the authorities on the complaint of submission of fraudulent documents. The Applicant has approached this Tribunal either without verifying the actual facts or is suppressing material facts to suit his needs. It is submitted that the authority has forwarded the said complaint to the Police Vigilance and an enquiry is pending. Even while the proceedings are pending before the Police Vigilance, the Applicant has taken to declaring the 3rd Respondent guilty and a criminal, who is liable to be prosecuted for illegal mining and to pay damages. Moreover, in a Writ Petition that was pending before the Hon'ble Kerala High Court in W.P.(C).No. 10035 of 2020 pertaining to the mining done by the 3rd Respondent, the Hon'ble Court had held in paragraph 4 of its judgement that "*it is only better in the fitness of things that the said authorities examine those complaints so as to take appropriate action in accordance with law and therefore it cannot be right and proper for this Court to enter into the merit of the controversy in any manner*". The Applicant's present petition is also premature in the sense of the above judgement as there are already proceedings raising the same concerns that are already pending before statutory authorities.

21. The averments made in Paragraphs 16, 17 and 18 of the Application are not within the knowledge of this Respondent and hence, are not adverted to for the present. The further averments that as the provisions of the various pollution control enactments and the Environment Protection Act, 1956 that there are no proper offices empowered to take action is for the authorities to answer and hence, this Respondent is not adverting to the same for the present.



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22. The averments made in Paragraphs 19 and 20 of the Application are denied as false. It is submitted that this Respondent has not mined any excessive quantity or mined in any other area other than the licensed area. This Respondent will face any action that is being proceeded for any contravention whatsoever as it has not factually violated either the mining lease or any of the Environment Protection Act, 1956 provisions or pollution control enactments and guidelines.
23. With respect to the averments made in paragraph 20 and Ground I by the Applicant, it is reiterated that the Applicant is making baseless allegations without proof or data as to since when mining has been taking place in the quarry site. The Applicant is placing all the burden on the 3rd Respondent, only for the reasons best known to him.
24. With respect to the averments made in Ground II, the Applicant's allegation that the 3rd Respondent has full influence on the 2nd and 4th Respondents is groundless and uncalled for. When making such serious allegations of corruption against the State officials, the Applicant is liable to put forth evidence substantiating the same and cannot merely pass such defamatory remarks.
25. With respect to the averments made in Ground III, the 3rd Respondent submits that while engaging in the business of mining, it has ensured to do its part in protecting the environment by undertaking steps to minimise ecological damage while balancing the need for the mined materials. This Respondent reiterates that it has been carrying on mining operations as per the guidelines and various other instructions that have been given time to time and it has not violated any of the provisions of law.

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26. With respect to the averments made in Grounds IV and V, they do not pertain to the 3rd Respondent and therefore have not been adverted to at present

27. With respect to the averments made in Ground VI, it is submitted that while making such sweeping statements against the 3rd Respondent, the Applicant is liable to produce evidence to substantiate the same. With regards to allegations of the 3rd Respondent causing damage to the environment, it is pertinent to note that while granting the original EC dated 27.11.2014, the SEIAA had specifically stated that the biodiversity would not be affected as the quarry was already pre-existing and the continuation of its use would have no impact on the biodiversity.

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Chairman & Managing Director

Solemnly affirmed at
on this the 14 day of September 2021
and signed his name in my
presence.

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Before me,

Advocate :: Madras

