

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

**Original Application No.508/2019**

**Applicant**                    :::                    **Usha A**  
**C/o Chantharan**  
**Pachayilkonam, Vazhapara**  
**Pacha, Paluvally, Nanniyode**

**Vs**

**Respondent(s)**                :::                    **State of Kerala & Others**

**REPORT FILED BY THE ASSISTANT ENVIRONMENTAL  
ENGINEER, KERALA STATE POLLUTION CONTROL BOARD  
DISTRICT OFFICE, THIRUVANATHAPURAM IN ORIGINAL  
APPLICATION NO 508/2019**

**Adv.JogyScaria**

**ADDITIONAL STANDING COUNSEL**



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

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**VOLUME 1**

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Dated this the 8<sup>th</sup> day of September 2020.

**JogyScaria** Advocate

Additional Standing Counsel







In compliance with the order, Chief Environmental Engineer, KSPCB Regional Office, Thiruvananthapuram convened a meeting on 19/2/2020 and decided to conduct a joint inspection comprising of officials from KSPCB, Department of Mining and Geology and Nanniyode Grama Panchayat at the alleged quarry in order to verify the compliance of consent/permit/ Environmental Clearance conditions and to assess damage to the environment by illegal operation of the quarry in question.

Accordingly the site was visited on 27/02/2020. The quarry was operational. It was noted that, by this time, the unit had obtained quarrying permit from the Department of Mining and Geology dated 20/11/2019 with validity upto 19/11/2020 which is submitted and marked as **Annexure (I)**.

The unit was quarrying exposed rock from the permitted area. The unit is surrounded by rubber plantation. There is an array of rubber trees between the boundary of the quarry and nearby residences including the residence of the applicant of the Original Application. No social infra structure buildings, rivers, sensitive ecosystems or historical monuments of archelological importance were noticed in close proximity to the quarry. There is a temple under construction at the entrance at distance of more than 100m from the quarry. No other place of worship was seen nearby.

Three residences which were nearest to the quarry including the residence of the applicant situated at distance of more than 50m from the quarry were visited for assessing damages to property due to quarrying activities



Quarry site



Fencing provided at the boundary of the quarry facing petitioner's house

Google Maps



Google map of the area



Quarry site- a view inside the quarry

  
Bincy B.S.

Assistant Environmental Engineer



### Specific observations based on the site visit:

- During the site visit it was noticed that the quarry was operational. Quarrying was carried out in exposed rocks
- There was no top soil excavation carried out in the unit. There was no deposition of tailings anywhere within or around the premises
- The unit is surrounded by rubber plantation. There was no visible damage to these trees in the surrounding area due to quarrying. No evergreen plants were seen around the quarrying area.
- There is a Temple at a distance of more than 100m from the quarrying area which is under construction.
- The roads upto the quarry entrance was tarred. Roads inside the quarry were not tarred. Manual sprinkling of water for suppression of dust was seen carried out in the unit and premises.
- The products from the quarry were seen covered during transportation.
- Pillars exhibiting location of Border Points (B.P) have been provided. Fencing was provided between Border points 2 and 3 i.e on the side of the quarry facing the applicant's house
- Blasting times were seen displayed.
- The unit owner informed that rain water is stored in quarry depression and is used for sprinkling. Being summer season, during the visit there was no water in the depression.
- No separate account is maintained for CSR activities. But the unit owner has submitted details of Rs 30000/- remitted towards Chief Minister's Distress Relief Fund and Charity fund for Nanniyod Pain and Palliative Care Society.
- The explosives are stored in the licensed magazine

As per CPCB guidelines, Environmental Compensation has been calculated using the following formula, subject to the condition that the general environmental compensation for a violation shall be a **minimum of Rs 5000/- per day** and a **maximum of Rs 60,000/- per day**.



$$EC = PI \times N \times R \times S \times LF$$

Where, EC = is Environmental Compensation in Rupees

PI = Pollution Index of industrial sector

N = Number of days during which violation took place

R = Factor in Rupees for deriving the EC, which may be a minimum of 100 and maximum of 500 (usually taken as 250).

S = Factor for scale of operation which could be based on small/ medium/ large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units

LF = Location factor

### Violations noticed during joint inspection

1. The unit had not obtained permit from the Department of Mining and Geology for a period of 112 days, and during this time illegal quarrying and mining is assumed to be take place and which is in violation of condition 5.4 of the Integrate Consent to Operate issued by the Board. The unit had later obtained the permit from the Department of Mining and Geology on 20/11/2019.
2. Fencing was not provided which is in violation of condition 5.4 of the Integrated Consent to Operate issued by the Board.

### Calculation of Environmental Compensation

$$EC = PI \times N \times R \times S \times LF$$

Where, EC = is Environmental Compensation in Rupees

PI = Pollution Index of industrial sector = 80 (Quarry being a red category, which may be a minimum of 60 and maximum of 100. Average pollution index is taken as 80 )

N = Number of days during which violation took place = 112\*\* (Calculation is detailed below)

R = Factor in Rupees for deriving the EC = 250 ( which may be a minimum of 100 and maximum of 500, (usually taken as 250))

S = Factor for scale of operation which could be based on small/  
medium/ large industry categorization, which may be 0.5  
for micro or small, 1.0 for medium and 1.5 for large  
units=0.5(Since this is a small scale industry with Capital  
Investment less than Rupees One Crore)  
LF = Location factor=1(Since population is less than one million)

**\*\*Number of days of violation took place(N)**

Total number of days for which the pollution takes place. In this case we can consider it as the number of days for which the unit functioned without valid permit from Department of Mining and Geology ie. Number of days from the date of expiry of the permit up to the day of Inspection of the Joint committee i.e 112 days ( from 13/05/2019 to 02/09/2019).

$$EC = 80 \times 112 \times 250 \times 0.5 \times 1 = 11,20000/-$$

Thus the Environmental Compensation (EC) to be levied is assessed as Rupees 11,20,000/- (Rupees Eleven Lakh Twenty Thousand only)

Subsequently, Board Chairman convened a hearing of the quarry owner on 18/03/2020 in compliance with the order and it was decided to issue notice for Environmental Compensation and assess the environmental damage caused by illegal quarrying. But it is humbly informed that immediate after the meeting, Nationwide lockdown was declared on 23/03/2020 due to the Spread of Covid-19 Pandemic and the show cause notice could be served on 22/6/2020. Copy of notice issued is submitted herewith and marked as **Annexure (II)**. Reply to the showcause notice has been received and further action is underway.

In order to evaluate the environmental damage, an expert committee with 5 members was constituted vide proceedings dated 25.08.2020. Copy of the proceedings is produced herewith and marked as **Annexure (III)**. Field investigations could not be carried out due to the Spread of

Covid-19 Pandemic and the district was under lock down. In these circumstances it is humbly prayed to allow two months' time for the assessment of Environmental Damage.

All stated above are true to the best of my knowledge, information and belief.

**Dated this the 8<sup>th</sup> day of September 2020**



**Bincy B.S.**

Assistant Environmental Engineer  
Environmental Engineer (I/C)  
Kerala State Pollution Control Board



**Bincy B.S.**

Assistant Environmental Engineer





## Annexure (I)

### FORM M

(See sub-rule (2) of rule 9)  
(For all type of quarrying permits)

**GOVERNMENT OF KERALA  
DEPARTMENT OF MINING & GEOLOGY  
DISTRICT OFFICE, THIRUVANANTHAPURAM**

**QUARRYING PERMIT FOR EXTRACTION OF GRANITE BUILDING STONE/LATERITE BUILDING STONE/ORDINARY SAND (OTHER THAN SAND USED FOR PRESCRIBED PURPOSES)/ ORDINARY CLAY/LIME SHELL/SEASHELL GRANTED UNDER RULES 3(1), 9 AND 10 OF THE KERALA MINOR MINERAL CONCESSION RULES, 2015**

No. 6/2019-20/GBS/QP/1433/DOT/ML/2019

Dated : 20-11-2019

Sri. Vijayamohan.T.H, Kovilvilakath Veedu, Vazhappara, Pacha, Paluvally .P.O., Nedumangad, Thiruvananthapuram is hereby permitted to extract and remove Granite (Building Stone) (Name of mineral) from an area of 0.5023 Hectares in Survey No.11/1 of Kurupuzha Village of Nedumangad Taluk of Thiruvananthapuram District, Kerala State under Rule 3(1) and 9 of the Kerala Minor Mineral Concession Rules, 2015 subject to the conditions mentioned in Rule 10.

Quantity of extraction of mineral permitted:  
(Not applicable in the case of CRP System) : 17737 MT

Whether the permit holder opted CRP System: : No

Number of mineral transit passes to be issued : NIL

Name and address of the owner of the land under mineral concession/particulars of consent/NOC received from the occupier of the land (if applicable) : Own Land

Date of expiry of permit : 19-11-2020

Details of fee remitted:

Item	Chalan No. & Date	Amount	Name of Treasury
Application fee	KL01582593201920M Dtd. 09-08-2019	Rs.1,000/-	ST, Govt. Secretariat
Royalty	KL005728926201920M Dtd. 05-08-2019	Rs. 4,25,688/-	ST, Medl. College
S/R	KL005729027201920M Dtd 05-08-2019	Rs. 251/-	ST, Medl. College
DMF	NIL Dtd 05-08-2019	Rs. 42569/-	ST, Medl. College

Office Seal  
To

Sri. Vijayamohan.T.H  
Kovilvilakath Veedu, Vazhappara  
Pacha, Paluvally .P.O.  
Nedumangad, Thiruvananthapuram.

Signature & Address of the issuing authority

- Copy to:
1. District Collector, Thiruvananthapuram
  2. Tahsildar, Nedumangad
  3. Village Officer, Kurupuzha
  4. Sub Inspector of Police, Palode
  5. Secretary, Nanniyode Gramapanchayath

  
Bincy B.S.

Assistant Environmental Engineer

(1)



Annexure (II)



General: 0471- 2312910, 2318153, 2318154, 2318155 Chairman: 2318150 Member Secretary: 2318151  
e-mail: ms.kspcb@gov.in FAX: 2318152 web: www.keralapcb.gic.in

KERALA STATE POLLUTION CONTROL BOARD

കേരള സംസ്ഥാന മലിനീകരണ നിയന്ത്രണ ബോർഡ്

Pattom P.O., Thiruvananthapuram – 695 004



PCB/HO/TVM/GEN/2014

Date: 22/06/2020

NOTICE UNDER ENVIRONMENTAL (PROTECTION) ACT, 1986

Sub: Unauthorized operation of rock quarry without consent to operate from the Board

- Ref: 1. Order dated 07.01.2020 of Hon'ble National Green Tribunal in O.A. No. 508/2019  
2. Minutes of the hearing conducted on 18.03.2020 in the chamber of the Chairman of the Board.

WHEREAS the Central Government notified the Environmental (Protection) Act, 1986 for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water;

WHEREAS the Hon'ble National Green Tribunal, in the matter of O.A. 593 of 2017 (W.P (Civil) No. 375/2012 by the Paryavaran Suraksha Samiti and another Vs. Union of India and Ors.), directed the "CPCB may take penal action against those who are accountable for not setting up and maintaining STPs, CETPs and ETPs and CPCB may also assess and recover compensation for damage to the environment and the said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment";

WHEREAS the NGT vide Order dated 12/03/2019 in O.A. No. 710/2017, directed that the State Pollution Control Board's are also authorized to recover compensation from the polluters or laying down their own scale which should not be less than the scale fixed by Central Pollution Control Board;

Bincy B.S.

Assistant Environmental Engineer

(2)



WHEREAS the Hon'ble National Green Tribunal, Principal Bench, New Delhi in the order dated 22/11/2018 in O.A No. 353/2016 clarified that apart from prosecution, the statutory authorities under the Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974, must, in exercise of their incidental powers, prescribed scale of compensation to be collected from the polluters on the "Polluter Pay's Principle". Such scale which may be laid down at various levels, having regard to the local condition or as per direction in the hierarchy of the authorities. In various other application also, the Hon'ble NGT passed similar order, for instance, in the Order dated 20/11/2018 in O.A No. 117/2014, 499/2014 and 102/2014 the Hon'ble NGT noted as; "Needles to say that statutory authorities under the Environment (Protection) Act, 1986, Air (Prevention and Control Pollution) Act, 1981 and the Water (Prevention) and Control of Pollution Act, 1974 are entitled to assess and recover damages "Pollution Pays Principle" exercise of incidental powers to protect environment".

WHEREAS in pursuant to Hon'ble National Green Tribunal, in the matter of O.A. 593 of 2017 CPCB has developed a "Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund";

WHEREAS the methodology developed by the CPCB for Assessing Environmental Compensation is as follows;

$$EC = PI \times N \times R \times S \times LF$$

Where,

EC - Environmental Compensation in Rs.

PI - Population index of industrial sector (PI of 80, 50 & 30 may be taken for Red, Orange and Green respectively)

N - Number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the delay of compliance verified.



(3)

  
Bincy B.S.  
Assistant Environmental Engineer

R- Factor in Rupees, which may be a minimum of 100 and maximum of 500

It is suggested to consider R as 250 as the Environmental Compensation in case on violation.

S – Factor for scale of operation (Suggested to take 0.5 for micro and small, 1 for medium and 1.5 for large units)

LF – Location factor based on population of city/town and location of industrial unit with in Municipal boundary or up to 10 km distance for the municipal boundary of city/town (1 for less than 1 million population, 1.25 for population 1 million to < 5 million, 1.5 for population 5 million to less than 10 million and 2 for population 10b million and above.)

WHEREAS in any case, minimum Environmental Compensation shall be Rs, 5000/day;

WHEREAS in Kerala, for city/town having population of below 1 million (LF-1), the Environmental Compensation calculated for all type of units are below;

Sl. No.	Type	Environmental Compensation Calculated	Environmental Compensation to be levied
1	Green-Micro/Small	3750	5000
2	Green- Medium	7500	7500
3	Green – Large	11250	11250
4	Orange – Micro/Small	6250	6250
5	Orange – Medium	12500	12500
6	Orange – Large	18750	18750
7	Red- Micro/Small	10000	10000
8	Red- Medium	20000	20000
9	Red- Large	30000	30000



  
Bincy B.S.  
Assistant Environmental Engineer

WHEREAS Smt. Usha A. has registered a case before the Hon'ble National Green Tribunal against your illegal quarrying in Sy.no. 11/1 at Nedumangad, Thiruvananthapuram

WHEREAS the Hon'ble NGT has directed the Kerala State Pollution Control Board to assess the environmental compensation for the past violation considering the quantity of rock extracted.

WHEREAS the Board Officers inspected the quarry premises and based on the inspection a hearing was conducted on 20.03.2020 in the chamber of the undersigned;

WHEREAS it has come to the notice that you have operated quarry without any consent /mining permit for 112 days;

WHEREAS based on the methodology developed by CPCB for assessing Environmental Compensation is calculated as Rs. 10,000/- per day of non-compliance with effect from 13.05.2019;

Now therefore, in exercise of the powers vested under Section 5 of Environment (Protection) Act, 1986, the unit is hereby directed to; Showcause within 15 days of receipt of this notice as to why the unit shall not be directed to deposit an Environmental Compensation of Rs. 11,20,000/- (Rs. Eleven lakh and twenty thousand only) for 112 days from 13.05.2019 to 02.09.2019.

  
CHAIRMAN

To

Shri. Vijayamohan T.H.,  
Kovil vilakath Veed, Vazhappara  
Pacha, Puluvali P.O., Nedumangad



(5)

  
Bincy B.S.  
Assistant Environmental Engineer

Copy to:

1. Chief Environmental Engineer,  
Regional Office,  
Thiruvananthapuram
  
2. Environmental Engineer,  
District Office,  
Thiruvananthapuram



  
Bincy B.S.  
Assistant Environmental Engineer

**Annexure (III)**  
**PROCEEDINGS**

Sub: - O.A.No. 508/2019- Illegal quarrying at Vazhappara,  
Thiruvananthapuram- Assessment of environmental damage  
caused- Constitution of committee- Orders issued

**KERALA STATE POLLUTION CONTROL BOARD**

No. PCB/HO/TVM/GEN/2014

Dated, Thiruvananthapuram

25.08.2020

Read:- Hon'ble NGT order dated 07.01.2020 in O.A.No. 508/2019

**ORDER**

The Hon'ble National Green Tribunal (NGT) has registered Original Application no. 508/2019 filed against illegal quarrying at Vazhappara, Thiruvananthapuram, owned by Sri.Vijayamohanan T.H. The Board had filed status of the stone quarry.

The Hon'ble National Green Tribunal considered the report of the Board and vide Order read above, directed the Board to take steps to restore the damage to the environment by illegal operation of the quarry. For assessing the damage caused due to the illegal activity, an expert committee is constituted with the following members.

1. Chief Environmental Engineer, Regional Office, Thiruvananthapuram - Member
2. Senior Officer from Directorate of Mining and Geology - Member
3. Village Officer, Kuruppuzha Village - Member
4. Senior Officer from Ground Water Department - Member
5. Environmental Engineer, District Office, Thiruvananthapuram- Member Convener

The committee shall inspect the area, assess the damage caused and submit a report within two weeks. Copy of the order is enclosed for necessary action.

The expenditure in this regard shall be met from the head of account- Non plan "Contingency" from the current year's budget.

sd/-

**CHAIRMAN**

To

1. Chief Environmental Engineer, Regional Office, Thiruvananthapuram - Member
2. Senior Officer from Directorate of Mining and Geology - Member
3. Village Officer, Kuruppuzha Village - Member
4. Senior Officer from Ground Water Department - Member
5. Environmental Engineer, District Office, Thiruvananthapuram- Member Convener

Copy to:-

1. Accounts Officer, Head Office

**FORWARDED/BY ORDER**

**CHIEF ENVIRONMENTAL ENGINEER**

Bincy B.S.

Assistant Environmental Engineer



(7)