

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI
Original Application No. 155 of 2020 (SZ)**

IN THE MATTER OF

Vijeesh Kumar,
Thiruvananthapuram

... Applicants

Versus

Union of India and others

...Respondents

**OBJECTIONS BY THE 3rd RESPONDENT TO THE REPORT OF
THE JOINT COMMITTEE**

1. The 3rd Respondent is a Private Limited Company that is engaged in quarrying and allied businesses and was incorporated on 11.03.2011.
2. The 3rd Respondent was granted a quarry lease by the Director of Geology and Mining for an extent of 8.937 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. It is submitted that the quarrying lease dated 23.05.2011 is valid for a period of 12 years i.e. upto 22.05.2023.
3. The State Environment Impact Authority, Kerala issued an Environmental Clearance with respect to the lease area vide proceedings No.237/SEIAA/ KL/885/2014 dated 27.11.2014 valid for a period of 5 years.
4. The 3rd Respondent submits the following objections to the Report of the Joint Committee filed in November 2020.
5. The findings of the Committee in Paras 3.2.101, 3.2.102, 3.2.104, 3.2201, 3.2204, 3.2205, 3.2208, 3.2210, 3.2212, 3.2215, 3.2120, 3.2226, 3.2227, 3.2228, 3.2229, 3.2230, 3.2231, 3.2235 need not be answered as the Committee has reported that this Respondent has complied with the above mentioned conditions.



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6. As regards to the findings of the Committee in para 3.2.103, it is humbly submitted that the finding has been based solely on the study that was conducted by the Department of Mining and Geology and not from the independent survey that was conducted by the Joint Committee on the directions of this Hon'ble Tribunal. The Department of Mining and Geology had based on its finding, issued a demand notice dated 05.08.2020 to the 3rd Respondent, directing it to remit an amount of Rs.6,86,39,420/- (Rupees Six Crores Eighty Six Lakhs Thirty Nine Thousand Four Hundred and Twenty only) towards royalty, price and fine for allegedly excessively mining a quantity of 952973 MT of rock, over and above the permitted quantity from the lease area. A revised demand notice dated 15.09.2020 was served on the 3rd Respondent wherein the amount was corrected to Rs.6,71,08,430/- (Rupees Six Crores Seventy One Lakhs Eight Thousand Four Hundred and Thirty only) as royalty, price and fine for a revised quantity of 931714 MT of rock alleged to have been removed in excess from the lease area. Pursuant to receiving these notices, this Respondent filed W.P.No.28482 of 2020 before the Hon'ble Kerala High Court challenging the demand notice sent by the Department of Mining and Geology. The Hon'ble High Court of Kerala, vide its order dated 07.01.2021, found the order of the Department of Mining and Geology dated 15.09.2020 to be prima facie illegal and directed the same to be treated as a provisional demand notice, pending the Writ Petition proceedings. However, in complete disregard to the same, the Department of Mining and Geology passed an order dated 08.02.2021, without considering any of the objections raised by this Respondent. Aggrieved by the same, this Respondent filed an appeal before the Deputy Secretary to Government, Industries (A) Department under Rule 98(1) of the Kerala Minor Mineral Concession Rules 2015. Since revenue recovery proceedings had been initiated against this Respondent within the statutory period of appeal and pending consideration of the appeal, this Respondent preferred W.P.(C).N0.4138 of 2021 before the Hon'ble Kerala High Court. The Hon'ble High Court vide its order dated 17.02.2021 disposed of the Writ Petition, directing the authorities to dispose of the appeal within a period of 3 weeks from receipt of order copy and not to take any coercive actions against the Petitioner/ the 3rd Respondent herein



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for recovery of the amounts until orders are passed in the appeal. It is humbly submitted that till date no orders have been passed in the appeal filed by this Respondent and therefore, no coercive action should be taken against this Respondent for recovery of the amounts mentioned in the demand notice. Therefore, since the findings of the Joint Committee is based on the findings of Department of Mining and Geology which have been challenged and are pending for disposal, the same cannot be held against the 3rd Respondent.

7. It is submitted that as per the study conducted by the Department of Mining and Geology, the allegation made against this Respondent is that it had quarried in excess of the permitted quantity from the lease area. It is pertinent to note that the allegation made did not state that the Respondent had excavated from beyond the lease area. Hence, the entire issue of illegal/ excessive mining is sub-judice before a statutory authority and it would not be appropriate for this Hon'ble Tribunal to dwell upon the same for the present, as any finding on that issue will be substantially affect the right of this Respondent before the Appellate authority. And if the Appellate authority comes to a contrary conclusion, it would affect the order of this Hon'ble Tribunal.
8. As regards to the finding in Para 3.2.105, it is humbly submitted that most of the boundary pillars are made of concrete. The few metallic pillars which are made of flex sheet and lettering were put up in accordance with the instructions of the Department of Mining and Geology, as the Geologist wanted to ease the viewing of boundary pillars in inaccessible areas. This is an instruction followed by almost all the quarries in Trivandrum for the past 3 years. The allegation that in couple of places the boundary pillars is missing or dilapidated is vague and incorrect. The Committee ought to have specified the details and particulars in which places the boundary pillars were missing and which boundary pillars were dilapidated. In the absence of the same, the said allegation cannot be sustained. As mentioned in the report itself, the boundary pillars were inaccessible due to overgrowth of shrubs as the quarry was not functioning for more than a year, not missing. It is also pertinent to note that the mining activities were not being carried on from 07.03.2020 and except for the security guard, all other workers do not turn up for the upkeep of the boundary pillars. It is



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further pertinent to note that the State of Kerala has seen heavy rains and floods during the past few years leading to the washing away of certain structures and the same could not be reconstructed due to the inaccessibility to the exact location. Further, it is not the case of the Committee that this Respondent has mined beyond the area of the alleged missing pillars.

9. With respect to the findings in Para 3.2202, it is humbly submitted that the Committee has come to the conclusion that as no records were produced in that regard by the personal assistant. The Joint Committee erred in giving such a finding as a compliance report is submitted to the Environmental Clearance Committee every 6 months and the same is a part of the records with the statutory authorities.
10. With respect to the findings in Para 3.2203, it is submitted it is a vague finding as the Committee has neither stated as to how many trees were to be planted and how many trees have been planted, without such any such factual finding, it is not open to the Committee to give a finding that the General Condition 3 has been partly complied with.
11. With respect to the findings in Para 3.2206, it is wrong for the Joint Committee to have given a finding that General Condition 6 was not complied with. A progressive mining closure plan was submitted and the same was approved by Department of Mining And Geology on 29.04.2015, and same was submitted to the State Environment Impact Authority, Kerala. It is pertinent to note that the lease period still subsists and the Application for renewal of Environmental Clearance is still pending before the statutory authority.
12. As regards to the findings in Para 3.2207, it is submitted that sufficient plantation of indigenous plant species that are eco-friendly have been carried out in compliance of the condition. Further, the said finding is a vague statement without any details whatsoever.
13. With respect to the findings in Para 3.2208, it is humbly submitted that the Committee has come to the conclusion as no records were produced in that regard by the personal assistant. The Joint Committee erred in giving



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such a finding as a compliance report is submitted to the Environmental Clearance Committee every 6 months and the same is a part of the records with the statutory authorities. Further, the said finding has been arrived at on the basis that no supporting documents were produced before the Committee. When no documents were produced before the Committee, it is not known as to how the Committee has given a finding that the activities carried out are not as per the activities listed in the proposal.

14. With respect to the findings in Para 3.2209, the Committee has not specifically stated which area has not been fenced. The entire lease area has been fenced at all places. Hence, the finding of the Joint Committee without any specific details should be ignored by this Hon'ble Tribunal.
15. With regards to the findings in Para 3.2211, it is submitted that the following measures have been taken by the 3rd Respondent:

NOISE POLLUTION CONTROL:

- A. Personnel who are exposed to critical locations in the quarry will be provided with PPE's.
- B. Quarrying operations will be carried out only during day time
- C. Drilling by jack hammer-compressor combination will be adopted, compressor shall be located where men are not exposed by the noise generated by the compressors.
- D. Fitness of all the transport and HEMMs will be ensured
- E. Acoustic enclosures will be provided for 250KVA DG set,
- F. Corrective & preventive maintenance will be carried for all HEMMs so that they operate effectively.
- G. Effective blast design so that there will be minimal noise and ground vibrations during blasting.
- H. Greenbelt will be developed, which will act as an acoustic barrier for noise transmission



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VIBRATION RELATED POLLUTION:

A. Scientific methods will be adopted to while drilling

B. Proper spacing and burden will be adopted during blasting

C. Controlled blasting will be carried out to avoid noise levels and also to control the PPV

The mining operations were stopped on 07.03.2020, till such date there have been inspections by the Pollution Control Authority and there were no allegations from any quarters whatsoever regarding noise pollution or vibration related pollution.

16. With regards to the findings in 3.2213, it is submitted that the Committee has come to the conclusion as no records were produced in that regard by the personal assistant. The Joint Committee erred in giving such a finding as a compliance report is submitted to the Environmental Clearance Committee every 6 months and the same is a part of the records with the statutory authorities. The blasting carried on in the mining area is noneal blasting as per the instructions of the Department of Mining and Geology and under the supervision of competent persons.
17. With regards to the findings in 3.2214, it is submitted that the blasting operations carried out in the mine are done under the supervision of competent persons i.e. one first class manager, second class manager, foreman and two mates. A compliance report in this regard with all records including copies of licenses and employment details is submitted to the EC committee every 6 months. The said fact has also been accepted in this report and therefore the allegation made in the report cannot be sustained.
18. With regards to the findings in 3.2216, it is humbly submitted that it is a vague statement to state that the condition has been partly complied, without delving into what aspects have been complied with and what have not been complied with. It is not the case of the Joint Committee that the overburden materials have been stored in a place other than the leased area.



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19. With regards to the findings in Para 3.2217, it is humbly submitted the finding is contradictory as it mentions that the condition of the height of benches not exceeding 5m and width not being lesser than 5m of the benches have not been complied with in accordance with the conditions stipulated by the EC while at the same time mentioning that all the benches have been removed. This finding is therefore incorrect and not sustainable.
20. As regards to the findings in Para 3.2218, it is submitted that the said condition no.18 has been strictly complied with during the operation of the mine.
21. With respect to the findings in Para 3.2219, it is submitted that there is no mention of the measurements or study conducted by the committee to arrive at the conclusion. Hence, the Committee should not have determined the same. It is also pertinent to note that the quarry was not a virgin quarry and has been mined even prior by some other persons. It is also not the case of the Joint Committee or anyone that this was the exact topography that was handed over to this Respondent and based upon which to come to a conclusion that the Respondent has mined an excessive depth.
22. With respect to the findings in Para 3.2121, it is humbly submitted a compliance report in this regard with all records, inclusive of license copies and employment details are regularly submitted to the EC committee every 6 months.
23. With respect to the findings in Para 3.2222, it is humbly submitted that the condition has been strictly complied with during the operation of the mine.
24. As regards the finding in Para 3.2223, it is submitted that the findings of the Committee are as vague as possible and confusing. The Committee has reported on one hand that a drain is being used as duct for cables and is not maintained properly while on the other hand given the finding that the drain is being used to drain mine drainage.. It is submitted that a garland drain with clarifiers were maintained to channelize storm water. As the mining operations were stopped on 07.03.2020 and no workers turned



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up for work since then, the said garland drains were not maintained and hence, they were in a state as reported by the Joint Committee. Hence, the Hon'ble Tribunal may ignore the same.

25. As regards to the finding in Para 3.2224, it is submitted that this Respondent has strictly complied with the conditions in accordance with law.
26. As regards to the finding in Para 3.2225, it is humbly submitted that the mine that was leased to the Respondent was not a virgin mine and was pre-existing mine. Hence, there arises no question of any loss of plantation that had occurred for replacing it with 5 times of the loss. The said aspect has been clearly mentioned in the Environmental Clearance certificate dated 27.11.2014.
27. With respect to the findings in Paras 3.2232, 3.2233 and 3.2234, no responses are required.
28. With respect to the findings in Para 3.2236, it is humbly submitted that the same is a vague statement stating that the condition has been partly complied with, without specifying as to which authority the Respondent had failed to send the clearance letter to and what compliance is pending. The said finding therefore cannot be accepted.
29. With respect to the findings in Paras 3.2237, 3.2238, 3.2239 and 3.2240, no responses are required.
30. As regards to the finding in Para 3.3, it is submitted that in order to determine whether any excess quarrying has been carried out and to know the quantity of such excess quarrying, it is necessary that detailed ground surveys are conducted. However, it appears that the Committee has arrived at its findings by placing reliance on the on the study conducted by the Department of Mining and Geology instead of conducting an independent ground survey. The Department of Mining and Geology had based on its finding, issued a demand notice dated 05.08.2020 to the 3rd Respondent, directing it to remit an amount of Rs.6,86,39,420/- (Rupees Six Crores Eighty Six Lakhs Thirty Nine Thousand Four Hundred and



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Twenty only) towards royalty, price and fine for allegedly excessively mining a quantity of 952973 MT of rock, over and above the permitted quantity from the lease area. A revised demand notice dated 15.09.2020 was served on the 3rd Respondent wherein the amount was corrected to Rs.6,71,08,430/- (Rupees Six Crores Seventy One Lakhs Eight Thousand Four Hundred and Thirty only) as royalty, price and fine for a revised quantity of 931714 MT of rock alleged to have been removed in excess from the lease area. Pursuant to receiving these notices, this Respondent filed W.P.No.28482 of 2020 before the Hon'ble Kerala High Court challenging the demand notice sent by the Department of Mining and Geology. The Hon'ble High Court of Kerala, vide its order dated 07.01.2021, found the order of the Department of Mining and Geology dated 15.09.2020 to be prima facie illegal and directed the same to be treated as a provisional demand notice, pending the Writ Petition proceedings. However, in complete disregard to the same, the Department of Mining and Geology passed an order dated 08.02.2021, without considering any of the objections raised by this Respondent. Aggrieved by the same, this Respondent filed an appeal before the Deputy Secretary to Government, Industries (A) Department under Rule 98(1) of the Kerala Minor Mineral Concession Rules 2015. Since revenue recovery proceedings had been initiated against this Respondent within the statutory period of appeal and pending consideration of the appeal, this Respondent preferred W.P.(C).NO.4138 of 2021 before the Hon'ble Kerala High Court. The Hon'ble High Court vide its order dated 17.02.2021 disposed of the Writ Petition, directing the authorities to dispose of the appeal within a period of 3 weeks from receipt of order copy and not to take any coercive actions against the Petitioner/ the 3rd Respondent herein for recover of the amounts until orders are passed in the appeal. It is humbly submitted that till date no orders have been passed in the appeal filed by this Respondent and therefore, no coercive action should be taken against this Respondent for recovery of the amounts mentioned in the demand notice. Therefore, since the findings of the Joint Committee is based on the findings of Department of Mining and Geology which have been challenged and are pending for disposal, the same cannot be held against the 3rd Respondent. Moreover, it is humbly submitted that the allegation in the study by the Department of Mining and Geology is that the Respondent-3 had quarried in excess of the permitted quantity from the



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lease area. However, it is pertinent to note that there is no allegation to the effect that the 3rd Respondent had excavated from beyond the lease area. It is submitted that the 3rd Respondent having a quarry lease is also a holder of a Registered Metal Crusher Unit wherein it is liable to pay royalties in accordance with the Consolidated Royalty Payment System, at the rates specified under Schedule IV instead of Schedule I of the 1967 Rules. Accordingly, this Respondent had been paying the royalties in accordance with the Consolidated Royalty Payment System since 2013. The distinguishing feature of Consolidated Royalty Payment System is that in the said system, royalty is calculated not on the basis of actual quantity of excavation but on the basis of the size of the jaw crusher unit. Therefore, the idea of computation of royalty on the basis of actual quantity mined is totally alien to the scheme of Consolidated Royalty Payment System as provided for under Rule 48P r/w Schedule IV of the Rules 1967 and its corresponding provisions under Rules 2015. In the scenario where there is no question of measuring the excavation done on the basis of actual quantity excavated under Consolidated Royalty Payment System, the allegations of excess quarrying or quarrying beyond permitted quantity is paradoxical/ antiethical to the very scheme of Consolidated Royalty Payment System. Under such circumstances, the very allegation of excavation of excess quantity is irrational, baseless and unsustainable as the said scheme in itself does not contemplate the same. Moreover, it is submitted that the entire issue of illegal/ excessive mining is sub-judice before a statutory authority and it would not be appropriate for this Hon'ble Tribunal to dwell upon the same for the present, as any finding on that issue will be substantially affect the right of this Respondent before the Appellate authority. And if the Appellate authority comes to a contrary conclusion, it would affect the order of this Hon'ble Tribunal.

31. With respect to the findings in Para 3.31, no response is required as the Report of the Committee itself states that environmental compensation could not be worked out due to various factors.
32. As regards to the finding in Para 3.4, it is submitted that a progressive mining closure plan was submitted and the same was approved by Department of Mining And Geology on 29.04.2015, and same was submitted to the State Environment Impact Authority, Kerala. It is pertinent



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- to note that the lease period still subsists and the Application for renewal of Environmental Clearance is still pending before the statutory authority.
33. With respect to the findings in Para 3.5, it is submitted that the Respondent has applied for an extension of lease period and also renewal of Environmental Clearance which is pending before the statutory authorities. The issue of rehabilitation and reclamation can be resorted to only after the closure of the mines and hence the findings that the same have not been complied with are without any basis. The findings are therefore untenable.
34. As regards to the findings in Para 3.6, it is humbly submitted that even according to the Report, there was quarrying as early as from the year 2003, much before the lease was granted in favour of this Respondent. Further, the findings need not be responded to as the Joint Committee has specifically found that there is an insignificant impact on the flora and fauna and has suggested a systematic and scientific environmental management plan, post mine-closure.
35. As regards to the findings in Para 3.7, it is submitted that the Committee had arrived at the conclusion that the impact of the quarrying operations on the environment and ecology was insignificant and within the permissible limits. A field survey of the nearby houses was conducted by the Committee and the details of the same have been enumerated in Table 5. The Report concludes that the results of the parameters analyzed showed that the parameters as prescribed by the Bureau of Indian Standards (2007) were well within the permissible limits except for PH Minor cracks found in very few of the neighboring houses, although the same could be due to numerous external factors such as the quality and age of the houses constructed. The same cannot be solely attributed to the mining activities of the 3rd Respondent. With respect to the concerns of dust pollution and vibrations due to the movement of large trucks, it is submitted that there are several other quarries operating in the vicinity, the liability of the same cannot be fastened only on the 3rd Respondent. Moreover, the Committee has mentioned compliance with respect to the roads near the quarry having been properly blacktopped and maintained regularly to reduce the dust pollution. In the report, the Committee has acknowledged



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the socio-economic benefit of the mine being operated and has been rightly observed that approximately 180 persons in the locality were dependent on the operations of the quarry in order to sustain their livelihood and that as such the need of the hour was not to close the quarry but to ensure that strategies adopted in carrying on quarrying activities integrated the environmental concerns that had been raised. It is pertinent to note that what was leased to this Respondent was not a virgin quarry but a pre-existing quarry. As stated supra, this Respondent cannot be held solely liable.

36. As regards to the findings in Para 3.8, it is submitted as follows:
1. For clause 1 regarding buffer zones, the same is contrary to the findings in Para 3.2104, 3.2228 and 3.2229 wherein there are specific findings that sufficient buffer zones have been complied with.
 2. As regards to clause 2 pertaining to garland canals, the objections in para 24 may be treated as objection to this finding.
 3. As regards to clauses 3 and 4, the findings are in favour of the Respondent.
 4. As regards to clause 5 relating to the finding in Para 3.2215 and the same has been complied with.
 5. As regards to clause 6 relating to noise pollution, the objections in para 22 may be treated as objection to this finding.
37. As regards to the findings in Para 4, it is humbly submitted that the concluding remarks and suggestions that have been provided are completely untenable. The Joint Committee had visited the quarry site at a time when it had not been in operation for a long period and as such several aspects could not be verified, leading to the various findings that were arrived at by them to be based on assumptions and presumptions. Moreover, the findings stated in the report have not been based on the independent survey that was conducted by the Joint Committee as per the directions of this Hon'ble Tribunal, but have been made by placing reliance



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on hearsay and studies conducted by external agencies which are already under challenge before the Hon'ble High Court of Kerala/statutory authorities. The report of the Joint Committee, not being an independent report as directed by this Hon'ble Tribunal, is therefore liable to be rejected. Several adverse findings have been put forth solely on the allegation that the Personal Assistant has not produced any records in this regard, despite of the fact that compliance reports with all records are submitted to the EC committee every 6 months. Yet, the same has neither been considered nor has an opportunity of hearing been given to the 3rd Respondent to submit their explanation along with the necessary documents. It is observed that many of the findings are also vague and non-speaking allegations, bereft of details, reasons or specifications and as such, these allegations cannot be accepted. No measurements or study has been conducted by the Committee to arrive at the conclusion. The Joint Committee has not conducted any scientific study but rather has arrived at its conclusions by placing reliance on several assumptions, presumptions, hearsay etc. The entire conclusion arrived at by the Joint Committee is wholly contrary to the findings in Para 3.6 and 3.7, wherein the Joint Committee has conclusively found that the quarrying operations had no significant impact of any of the parameters that have been discussed in the same. In fact with respect to the hydrologic environment, the Committee had held that the drainage from the working quarry that was flowing into the rainwater harvesting tank served as a pollutant absorbant and that the rain harvesting pond was recharging nearby wells through the secondary fracture systems in the bedrock. With regards to the biological environment, it has been observed in the Report that the impact of the quarrying operations on the flora and fauna is assessed to be insignificant. As for the ground water quality, it has been observed that the parameters were found to be well within permissible limits prescribed by the Bureau of Indian Standards. The positive impact of the socio-economic development of the people living in the vicinity of the quarry was also acknowledged. The Report expressly mentions that there is the need to develop strategies to better manage the quarrying operations and protect the environment. It does not in any manner suggest that there is a need to close operations of the mine.



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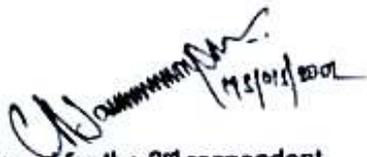
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38. For the foregoing reasons, these findings are liable to be rejected as being self contradictory, without proper inspection and supported by materials.

Dated at _____ on this the 14 day of September, 2021

For Covenant Stones Pvt. Ltd.

Chairman & Managing Director


Counsel for the 3rd respondent

