

Item No.3:-

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Dated this the 24th day of January, 2024.

(Through Video Conference)

**Appeal No.75 of 2021 (SZ) &
I.A. No.201 of 2022 (SZ) &
I.A. Nos.20, 23, 35, 54, 64 & 65 of 2023 (SZ)**

IN THE MATTER OF

Shoukkath Ali

Aged 34 years,
S/o. C. Mohammed Ali,
Charalil House, North Paloor,
Pulamanthole P.O.,
Malappuram District, Kerala – 679 323.

...Appellant(s)

Versus

1) State Environmental Impact Assessment Authority

KSRTC Bus Terminal Complex,
4th Floor, Thampanoor,
Thiruvananthapuram, Kerala – 695 001.
Rep. by its Chairman.

2) State Expert Appraisal Committee

KSRTC Bus Terminal Complex,
4th Floor, Thampanoor,
Thiruvananthapuram, Kerala – 695 001.
Rep. by its Member Secretary.

3) State of Kerala

Rep. by its Secretary,
Industries Department,
Secretariat, Thiruvananthapuram,
Kerala – 695 001.

4) M.K. Najeeb Ali

S/o. Hassainar, Mannegal Kannamthodi House,
Paloor, Pulamanthole P.O.,
Malappuram District – 679 323.

...Respondent(s)

For Appellant(s):

Mr. Harish Vasudevan &
Mr. Rajan Vishnuraj.

For Respondent(s):

Mr. S. Saravanan represented
Mrs. Vidhyalakshmi Vipin for R1 & R2.
Mr. G. Vignesh represented
Mr. E.K. Kumaresan for R3.
M/s. Philip J Vettickattu, Sajitha George &
Neenu Bernath for R4.

Judgment Reserved on: 27th September, 2023.

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGEMENT

Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member.

- 1.** This is an appeal directed against the grant of Environmental Clearance issued by the 1st Respondent / State Environmental Impact Assessment Authority – Kerala (*hereinafter referred to as 'SEIAA – Kerala'*) in favour of the 4th Respondent / Project Proponent dated 05.03.2021 and the appellant is a resident of Pulamanthole Village in Malappuram District.
- 2.** It is alleged that there is illegal and unscientific mining being conducted by the 4th Respondent in the downhill of Chirattamala hillock. The heavy machinery and trucks used by the 4th Respondent for the transportation of minerals have caused environmental degradation. The 4th Respondent now proposed to carry out mining operations in Block - 5 in Pulamanthole Village, Perinthalamanna Taluk, Malappuram District. The 4th Respondent had made an application on 27.02.2019 and later on 05.07.2019 before the SEIAA - Kerala for carrying out the mining in 0.4497 Hectares in Sy. Nos.1/1B-319, 1/1B-295, 1/1B-296, 1/1B-320, 1/1B-321, 1/1B-322, 1/1B-323 and 1/1B-329 of Pulamanthole Village, Perinthalamanna Taluk, Malappuram District. The area where the quarrying activity is done by the 4th Respondent is locally known as '*Chirattamala*'.
- 3.** It is further alleged by the appellant that the 4th Respondent had suppressed the pendency of several cases and also the Judgments passed earlier by the Hon'ble High Court of Kerala before the authorities.

4. The 2nd Respondent / State Expert Appraisal Committee – Kerala (*hereinafter referred to as 'SEAC – Kerala'*) had called for a presentation from the 4th Respondent. Pursuant to which, the SEAC – Kerala had sought for documents relating to the land use and land farm map within 500 Meters radius, including vegetation, drainage, roads, buildings, etc. and the revised CER considering the revised project cost, implementable action plans for the adjacent areas, monitorable targets, etc. Thereafter, a Field Inspection was conducted by the SEAC – Kerala and the inspection report was accepted by it. However, without any appraisal in the meeting, the SEAC – Kerala had recommended for the grant of Environmental Clearance for the 4th Respondent's project. The SEIAA – Kerala, in its 107th Meeting, based on the recommendation of the SEAC – Kerala, decided to grant the Environmental Clearance to the 4th Respondent with specific and additional conditions.
5. The appellant stated further that even after the expiry of the mining permit, the 4th Respondent continued the illegal mining in violation of all relevant statutes, including the Environment (Protection) Act, 1986.
6. The appellant herein had challenged the mining activity of the 4th Respondent in **W.P. (C) No.7781 of 2015 (W) [Shoukkath Ali Vs. Ministry of Environment and Forest & Ors.]**, wherein the Hon'ble High Court of Kerala found that the 4th Respondent was carrying on illegal mining and ordered to stop the same. Against the said order passed in the writ petition, an appeal has been preferred as **W.A. No.1514 of 2015 [M.K. Najeed Vs. Shoukath Ali & Ors.]**, wherein the Division Bench of the Hon'ble High Court also held that the 4th Respondent cannot continue the mining operation without Environmental Clearance even if he was having a valid mining permit. On 09.12.2016, the 4th Respondent was found to be doing illegal mining with the help of the District Geologist and a contempt proceeding was initiated, which was later dropped in view of the unconditional apology extended by the officer.

7. The appellant would contend that in view of the above, the application made by the 4th Respondent for Environmental Clearance for a mining project involves violation. Therefore, the grant of Environmental Clearance is now assailed by the appellant on the following grounds:-

- (i) The SEAC – Kerala had not conducted a proper appraisal before granting the Environmental Clearance to the 4th Respondent. Therefore, the same is vitiated.
- (ii) The DSR prepared by the Department of Mining and Geology for the Malappuram District is not in tune with Appendix – X of the EIA Notification, 2006.
- (iii) Even in the Form – I Application, the 4th Respondent had admitted that the proposed area falls under the Moderate Damage Risk Zone as per the Building Materials and Technology Promotion Council (BMTPC), vulnerability atlas seismic zone of India.
- (iv) The report of the Pulamanthole Village Officer would show that the blasting during the mining operations would trigger landslides in the area and would be fatal for the residents living in the lower plane.
- (v) Though the SEAC – Kerala had directed the 4th Respondent to produce the Hazard Zonation Map / Certificate, the same seems to have not been produced.
- (vi) In the absence of the hydro-geological study and appraisal of the same by the SEAC – Kerala, the water table in the appellant's residential area will be affected once the mining operations commence.
- (vii) The SEIAA – Kerala had not issued the Terms of Reference (TOR) with a public hearing, as in other violation cases, the SEIAA – Kerala preferred the public hearing. Therefore, the Environmental Clearance issued without a specific ToR, EIA, EMP, Community Remedial Plan, etc. is illegal and liable to be set aside.

- (viii) As per Regulation 8 (vi) of the EIA Notification, deliberate concealment and/or submission of false or misleading information or data which is material screening or scoping or appraisal or decision on the application shall make the application liable for rejection. According to the appellant, in the instant case, the 4th Respondent had concealed several information and submitted misleading information for the appraisal of the project. Therefore, the Environmental Clearance granted has to be set aside.
- (ix) The SEAC – Kerala failed to consider the quarry location which is an area of hazard and susceptible to landslides. While so, the quarry blasting would increase the probability of triggering landslides.
- (x) There is a first order river having seasonal flow as well as origination of springs in the project site which was deliberately suppressed by the 4th Respondent. The presence of the river / stream in the quarry site and the proximity to it will disentitle him from obtaining the Environmental Clearance.
- (xi) The requirement of DSR which shall form the basis of the Environmental Clearance is not available. There is no DSR for Granite Building Stone which is a mineral. Therefore, in the absence of the DSR, the Environmental Clearance granted is not valid.
- (xii) As the SEAC – Kerala had not given any reasoning in its recommendations, the SEIAA – Kerala ought not to have granted the Environmental Clearance.

8. In the report filed by the 1st Respondent / SEIAA – Kerala, it is stated that as per the EIA Notification, 2006, the DSR shall be prepared for each minor mineral in the district separately which will be then placed in the public domain for 21 days. The comments received shall be considered and if found fit, shall be incorporated in the final report to be finalized within six months by the District Level Environmental Impact Assessment Authority

(hereinafter referred to as '**DEIAA**'). Though it is stated that the DSR for each district is available on the website of the Department of Mining and Geology, there is no specific answer to the allegation of the appellant that there was no DSR prepared for Malappuram District.

9. The SEIAA – Kerala has further stated that even though the project proponent had approached the Soil Conservation Department to get the Hazard Occurrence Certificate since there was no direction from the concerned department, the said certificate was not issued to him and nevertheless, the SEIAA / SEAC – Kerala in the appraisal process of each and every application verifies the proximity of the project area to the nearest hazard zone and ascertain the hazard proneness with the landslide susceptibility and flood proneness maps available in the website of the State Disaster Management Authority. As the Project Proponent had mentioned that there was no litigation pending in Form – I, the application was processed. If there was any violation or imposition of a royalty and market rate of assessing the penalty for excess mining to be done, it is only the Department of Mining and Geology and it is not within the domain of the SEIAA – Kerala.
10. It is further stated by the SEIAA – Kerala that as per the EIA Notification, 2006, the mining projects which are having an area of less than 5 Hectares are to be appraised on the basis of the Form – I, Pre-Feasibility Report, Mining Plan and EMP. In the instant case, there was no need to conduct an EIA Study instead the project proponent had to prepare a site-specific EMP for the appraisal. As the project proponent had submitted the EMP and the other required documents, the SEAC – Kerala had recommended the issuance of Environmental Clearance by appraising the same.
11. **The 4th Respondent / Project Proponent filed its reply** denying the locus standi of the appellant.

11.1 It is stated that the appellant is only a resident of Kannur District which is 200 KM away from the quarry site and he is employed as a teacher. Therefore, his allegation that

once the proposed quarry starts, the appellant would be unable to carry out the agricultural activity on the property is an absolute falsehood. As the appellant is not residing near the quarry site, the grounds raised on the apprehension that his livelihood would be affected are all surmises. Hence, the appellant has come to this Tribunal with unclean hands.

11.2 The 4th Respondent had submitted that the resurvey exercise was not completed in Pulamanthole Village and therefore, individual holdings were not assigned with separate thandaper and survey subdivisions, but were having common location numbers.

11.3 It is stated that Sy. Nos.1/1B and 85 of Pulamanthole Village were comprised of large extent of unsurveyed lands i.e. 275 Acres and 43.60 Acres respectively and they belong to several owners. The lands comprised under Sy. No.1/1B is jointly owned by the Pareekutty Haji S/o. Mannengal Kannamthodi Kunhimoideen, and Shoukath, Noushad and Najeeb, the sons of Mannengal Kannamthodi Hassainar Haji. They jointly purchased a total extent of 93 Cents of land by way of a registered document. After the digitalization process was over, the land covered under the tax receipt produced shows that prior to the assignment of individual thandaper and survey subdivision numbers.

11.4 The 4th Respondent also had produced the composite receipt issued from the Pulamanthole Village for the land tax with respect to the individual thandaper and survey subdivision number comprising various extents of lands. By placing reliance on those documents, it was contended that the land in respect of which Annexure A1 is granted is comprised in Sy. Nos.1/1B-319, 1/1B-295, 1/1B-296, 1/1B-320, 1/1B-321, 1/1B-322, 1/1B-323, 1/1B-329, whereas the lands in respect of which the Annexure A19 to A21 were granted are comprised of Sy. No.1/1B-332 and the land in respect of which Annexures A14 and A15 were granted are comprised in Sy. No.85/1-1, 85/1-8. The lands and the projects are different and distinct and there is no inclusion or overlapping. The above-referred

lands were never subjected to any excavation. Therefore, they cannot be treated as a case of violation.

11.5 According to the 4th Respondent, he had discussed all the relevant facts for consideration by the authorities.

11.6 The SEAC – Kerala had appraised the project by appointing a committee and conducting a site inspection, scrutinizing and verifying the documents submitted by this respondent. The geo-coordinates of the area were also provided. Therefore, the allegation of the appellant that there was suppression and non-disclosure of material facts cannot be accepted.

11.7 Regarding the presence of a river/water stream, etc., there is no such water stream on the land.

11.8 The allegation that the inspection report was prepared in deliberate suppression of material facts about the site is denied by the 4th Respondent. There is no forest anywhere near the quarry; it is only an allegation of the appellant.

11.9 Similarly, the allegation that there were huge landslides occurred in the quarry site and its close proximity alleged to have been suppressed by the 4th Respondent are also denied. Annexure – A14 issued by the Village Officer, Pulamanthole stating that the Sy. No.1/1B is situated on the west of the Chirattamalayil Chola and does not relate to the site covered by Annexures A1 and A2. There were no such landslides ever occurred in the site and the document produced by the appellant under Annexure – A14 is not relevant.

11.10 The allegation that the Zonation Map was directed to be produced by the 4th Respondent is incorrect and what was directed to be produced by the 4th Respondent was only the certificate regarding the Hazard Occurrence in the area from the Soil Conservation Department. As the Soil Conservation Department was not given any instruction by the Government regarding the issuance of such certificate, it could not be produced. The 4th Respondent also produced a copy of the letter from the Department of District Soil Conservation Officer, Malappuram dated 2019 which states that there were no guidelines received from

the concerned Government / Department regarding the issuance of a Hazard Occurrence Certificate.

Hence, the 4th Respondent had prayed for the dismissal of the appeal as a motivated one and devoid of merits.

12. The appellant also has filed a reply affidavit to the counter filed by the Project Proponent/4th Respondent.

13. From the above pleadings, the issue that arises for consideration is

Whether the impugned Environmental Clearance dated 05.03.2021 has to be set aside on the grounds raised by the appellant?

14. Heard the learned counsel for the appellant Mr. Harish Vasudevan, Mrs. Vidhyalakshmi Vipin, the learned counsel for the SEIAA/SEAC – Kerala, Mr. G. Vignesh, the learned counsel for the State of Kerala and Mr. Philip J. Vettickattu, the learned counsel for the Project Proponent.

15. The appellant herein has challenged the Environmental Clearance broadly on the following grounds:-

- i. No DSR was furnished by the project proponent.
- ii. No appraisal was done by the SEAC – Kerala.
- iii. No application of mind.
- iv. Adding additional conditions.
- v. Mining operations are done by the Project Proponent in the same area.
- vi. The recommendation of the SEAC – Kerala is not based on valid grounds.

Requirement of DSR:-

16. The learned counsel appearing for the appellant pointed out that the project mining is in Pulamanthole Village, Malappuram District. According to the appellant, the District Survey Report of Minor Minerals has not been scientifically prepared by the SEIAA

– Kerala or the State of Kerala in accordance with the provisions of the EIA Notification, 2006. The Environmental Clearance ought to have been considered only on the basis of the DSR which is strictly prepared in accordance with the EIA Notification, 2006. Either the SEIAA – Kerala or SEAC – Kerala had discussed/ considered the DSR of Malappuram District before recommending the issuance of Environmental Clearance. In fact, the DSR is not in the list of documents considered by the SEIAA – Kerala and SEAC – Kerala while deciding to recommend the issuance of Environmental Clearance. Even the alleged DSR prepared by the Department of Mining and Geology in the year 2016 is not in tune with Appendix – X of the EIA Notification, 2006. The District Survey Report of minor minerals other than sand mining or riverbed mining shall be prepared in accordance with Clause II of Appendix – X of the EIA Notification, 2016. The draft notification was not available on the website of the District Collector for comments.

- 17.** It is further stated that the areas prone to natural hazards like landslides are not specifically identifiable in the name sake DSR prepared. As the DSR for Malappuram District is not approved by the DEIAA – Malappuram. Therefore, the reliance on the DSR available as on date for issuance of Environmental Clearance is not correct and on that ground, the Environmental Clearance has to be set aside.
- 18.** The learned counsel for the appellant also pointed out that the DSR shall form the basis for the application for Environmental Clearance, preparation of reports and appraisal of projects. After the said report is placed in the public domain, comments received from the public shall be considered and incorporated in the final report which is to be finalized within six months by the DEIAA. Having not followed the above procedure, the Environmental Clearance granted based on the same was said to be incorrect and proceeding further with the Environmental Clearance would only cause ecological loss.

19. In this regard, the learned counsel appearing for SEIAA/SEAC – Kerala also has stated that vide S.O.141 (E) dated 15.01.2016, the necessity of the DSR and the procedure for preparation and the structure of the DSR was incorporated in the EIA Notification, 2006. Subsequently, the Department of Mining and Geology prepared and published the DSR in November 2016. As per the above notification, the DSR shall be prepared for each minor mineral in the district separately and follow the procedure prescribed in Appendix – X. However, in the State of Kerala, the Hon'ble High Court of Kerala had directed that the certificate issued by the Geologist – Department of Mining and Geology confirming that the DSR 2016 is being applied in the State of Kerala shall be considered by the authorities. Therefore, the DSR prepared in the year 2016 for Malappuram District is sufficient for considering the Form – I Application for issuance of Environmental Clearance.

20. The DSR of minor minerals excepting the river sand of Malappuram District prepared in 2016 is also produced by the SEIAA – Kerala. In the said DSR, Para 11.2.5 defines what is Granite (building stone) and Granite Dimension Stone. As already the Hon'ble High Court of Kerala had accepted the certificate from the Department of Mining and Geology, based on the 2016 DSR of Malappuram District, the said aspect is decided accordingly.

21. It is also relevant to note that the importance of the DSR and its reference is discussed in **Satendra Pandey Vs. Ministry of Environment, Forests and Climate Change & Anr. 2018 SCC Online NGT 2388** which is as follows:-

“**18.** We also find that parameters for consideration while preparing District Mining Plan (DMP) and District Survey Report (DSR) are only for the purpose of ascertaining whether an area is fit for mining which are quite different from the parameters laid down for EIA. The Consideration of the view point of the public by keeping DSR in public domain is not a substitute of public hearing for consideration of the view point of the public for EIA.

... ..

22. For all these reasons, we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of Deepak Kumar (supra) by (i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/SIEAA as well as for cluster

situation wherever it is not provided; (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA; (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance; (iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof; (v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and time frame for replenishment after mining closure in an area; (vi) the MoEF & CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining."

No appraisal was done by the SEAC – Kerala, No application of mind, Adding additional conditions and the recommendation of the SEAC – Kerala is not based on valid grounds:-

- 22.** The allegation of the appellant is that the SEAC – Kerala should have appraised the facts and scrutinized the documents furnished by the project proponent in the proper perspective.
- 23.** The learned counsel for the appellant invited our attention to the Minutes of the 113th Meeting of the SEAC – Kerala held on 15th – 17th September 2020. In the Minutes of the Meeting, the decision taken was "*The committee entrusted Dr. S. Sreekumar and Dr. P.S. Easa for field inspection*". Thereafter, in the 116th Meeting of the SEAC – Kerala held on 2nd, 3rd and 7th December, 2020, it is recorded that the committee discussed and accepted the Field Inspection Report and directed the project proponent to submit the following documents:-

"i) Recent survey map showing distance to residential / public buildings, inhabited sites, canals, roads, electric lines, mobile towers, religious places etc. within 200 m radius of the lease boundary certified by the Village Officer concerned.

ii) Detailed mitigation plan for slope stability.

iii) Revised EMP with site specific mitigation measure including compensatory afforestation and incorporating the specific CER activities in physical terms to be undertaken by the proponent in consultation with the stakeholders as stipulated in the OM No.22-65/2017-IA.III dated 30.09.2020 and OM No.22-65/2017-IA.III dated 20.10.2020 of the MoEF&CC, GOI instead of allocation of funds under CER. The CER activities incorporated in the EMP should be undertaken during the first two years of validity period of the EC so as to ensure that the maintenance of the interventions undertaken can be done

by the proponent during the remaining validity period of the EC.”

- 24.** Thereafter, in the 118th Meeting of the SEAC – Kerala held on 1st – 3rd February 2021, the decision recorded is

“The committee scrutinized the additional details submitted by the proponent. The committee decided to recommend the issuance of EC with project life of five years subject to the following specific condition:

The suggested CER activities for Rs.5 Lakhs may be completed within two years and an amount of Rs.1.5 Lakhs must be included for the next three years for maintenance.”

- 25.** Thereafter, the subject proposal was paced before the SEIAA – Kerala in its 107th Meeting held on 18th – 19th February, 2021. The SEIAA – Kerala noticed that the SEAC – Kerala had appraised the proposal based on the Form – I, Pre-Feasibility Report, additional details/documents obtained from the Project Proponent during appraisal, Mining plan and the Field Inspection Report. After the due appraisal, the SEAC – Kerala had recommended for issuing the Environmental Clearance subject to certain conditions. Accordingly, the SEIAA – Kerala had decided to issue the Environmental Clearance for a project life of five years as estimated and recommended by the SEAC – Kerala for the quantity mentioned in the approved mining plan subject to the specific conditions in addition to the general conditions, which are as follows:-

“1. As per OM No. F.No.22-65/2017-IA.III dated 30th September 2020, the project proponent shall prepare an Environment Management Plan (EMP) as directed by SEAC during appraisal, covering the issues to address the environmental problems in the project region, indicating both physical and financial targets year wise. The EMP shall be implemented in consultation with District Collector. The indicated cost of CER shall be not less than 2% of the project cost depending upon the nature of activities proposed. The follow up action on implementation of CER shall be included in the half yearly report which will be subjected to field inspection at regular intervals.

2. The proponent shall carry out quarrying as per the approved Mining Plan and the proponent should strictly follow the Kerala Minor Mineral Concession Rules, 2015 and amendments thereby.

3. In the wake of occurrence of large scale landslides in the State, as per the information provided by the Department of Mining & Geology, it is directed to use only NONEL (Non Electrical) technology for blasting to reduce the vibration of the ground, which is one of the causative factors that triggers landslides, formation of cracks in the surrounding buildings and disturbance to human and wildlife.

4. As per the directions contained in the OM F.No.22-34/2018-IA.III dated 16th January 2020 issued by MoEF&CC, in obedience to the directions of the Honourable Supreme Court, the Project Proponent shall undertake re-grassing the mining area and any other area which may have been disturbed due to his mining activities and restore the land to a condition which is fit for growth of fodder, flora, fauna, etc. The compliance of this direction shall be included in the half yearly compliance report which will be monitored by SEAC at regular intervals."

- 26.** The learned counsel for the appellant would contend that when the SEAC – Kerala had not discussed in detail in its meetings regarding the scrutiny of the documents produced by the project proponent and simply had recommended the project, the SEIAA – Kerala ought to have directed the SEAC – Kerala to duly reappraise the project. However, without doing so, the SEIAA – Kerala had added additional conditions as stated supra.
- 27.** The report of the inspection team is assailed by the appellant by calling it is as a 'Name Sake Field Visit Report', as it has made a favourable recommendation to grant Environmental Clearance to the project proponent. The appellant has specifically pointed out that the report of Dr. P.S. Easa was challenged by the local residents and objections were made before the SEAC – Kerala. He also stated that the SEAC's Chairman and Members had visited the site and made serious objections against the proposed mining. However, the Field Inspection Report prepared by Dr. P.S. Easa was in collusion with the then quarry owner and many material facts were suppressed while preparing the Field Inspection Report. The report of Dr. P.S. Easa was also rejected by the SEIAA – Kerala. There was yet another incident where the report prepared by Dr. P.S. Easa was not accepted by the SEIAA - Kerala. Therefore, the learned counsel for the appellant would submit that the Field Inspection Report done by Dr. P.S. Easa and Dr. S. Sreekumar cannot be relied on, as the above said inspection report was submitted with malafide intentions to cause illegal and unfair financial benefits.
- 28.** In this regard, the report of the inspection team may be adverted to. The observations and recommendations made in the report dated 17.11.2020 are as follows:-

"Observations:

- The highest elevation of the proposed area is 100 M MSL and the lowest is 65 M MSL. The general slope of the terrain is towards South West.
- The site is a rubber estate with sparse growth of other tree species.
- Boundary pillars are not clearly marked with geocodes.
- Distance from the proposed quarry to the nearest house is more than 600 M. No buildings were seen nearby.
- O.B. site is located near border pillar BPI.

Recommendations:

1. Boundary pillars must be clearly labelled with Geocodes and photos submitted.
2. The revised EMP incorporating the CER need to be submitted."

29. Therefore, the appellant would contend that the entire appraisal process was done by the SEAC – Kerala, only based on the facts stated by the 4th Respondent, without application of mind and against the provisions of the EIA Notification, 2006.

30. In this regard, it is pointed out that the SEAC – Kerala had not conducted any proper appraisal with regard to the existence of the plant biodiversity or flora and fauna of rare species in the project site of the 4th Respondent. The loss of biodiversity aspects and the presence of rare and threatened species prior to the starting of illegal mining were not considered by the SEIAA – Kerala before issuing the Environmental Clearance.

31. Therefore, in the absence of a proper assessment of the impact on the environment, EIA, EMP, remedial plan, etc., the appraisal could not have been done and clearance should not have been recommended. Merely imposing additional general conditions or specific conditions will not legalize the Environmental Clearance granted, as the clearance granted is violating the principles of **'Sustainable Development', 'Precautionary Principle'** and **'Doctrine of Public Trust'**.

32. Even as per the application made by the project proponent, the topography of the permit area is hilly. The highest elevation of the permit area is 100 Meter MSL and the lowest is 65 Meter MSL. In Form – I, with reference to the areas susceptible to natural hazards which could cause the project to present

environmental problems (earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions), it is furnished by the project proponent that it is an earthquake zone, Zone – III, Moderate damage risk zone as per BMTPC, Vulnerability atlas seismic zone of India. Though the said point was considered by the SEIAA – Kerala, it has been incorporated as an additional condition that in view of the large scale landslides in the State as per the information provided by the Department of Mining and Geology, the project proponent was directed to use the NONEL (Non Electrical) technology for blasting to reduce the vibration of the ground, which triggers the landslides. However, whether the said additional conditions would amount to a safety measure when the Pre-Feasibility Report has specifically recommended that for safety, the permit holding area shall be fenced with proper gates which shall be guarded by security personnel. So, the above precautionary measure ought to have been suggested by the SEIAA – Kerala having found that it is a landslide prone area.

- 33.** In this regard, it has to be seen that the Field Inspection Report filed is inadequate besides there have been complaints about the person chosen for the field visit and about their reports even on earlier occasions. In that event, it would not be appropriate for the SEAC – Kerala to send the same person for the field inspection much less rely on the same which is not a comprehensive one.

Mining operation done by the Project Proponent in the same area:-

- 34.** The project location is situated in Re-Survey Nos.1/1B-319, 1/1B-295, 1/1B-296, 1/1B-320, 1/1B-321, 1/1B-322, 1/1B-323 and 1/1B-329 of Pulamanthole Village. It is the case of the appellant that the said Sy. No.1/1B which is having an extent of 185 Acres is not re-surveyed or not subdivided into subdivisions yet. The said land is shown as Sy. No.1/1B in the basic tax register of Pulamanthole Village. The appellant was trying to demonstrate that the said Sy. No.1/1B was never subdivided by

placing his reliance on the report which he obtained through the Right to Information Act. As per the report, there were no re-survey proceedings started in Pulamanthole Village and Sy. No.1/1B of Pulamanthole Village was neither subdivided nor any changes made in the Government records. Besides, it is stated that there is a stream situated within 50 Meters periphery on the northern side of the quarry situated in Sy. No.1/1B.

35. The 4th Respondent contends that the re-survey was not completed in Pulamanthole Village and the result of which, separate Thandaper/ Survey Subdivisions were not allotted to the individual holdings by the Revenue Authorities and the entire survey block was assigned with a common number i.e. Sy. No.1/1B comprising 185 Acres and 90 Cents of land. The said common survey number was in prevalence when permits were issued. Subsequently, separate subdivisions were assigned to each holding and the impugned areas were given Sy. No.1/1B as Sy. No.1/1B – 332 whereas the land in respect of the subject matter has been assigned as Sy. Nos.1/1B – 319, 320, 321, 322, 323, 329, 295 and 296 and these lands were not subject to any quarrying operations.

36. It is also pointed out that the mining activity was going by using excavators earlier in the same area and a large extent of the area was mined out from 2012 to 2018 without obtaining prior Environmental Clearance. The very same area where already mining was done only with a permit and without Environmental Clearance is now sought to be done with the Environmental Clearance which is impugned. The Project Proponent also states that the application for Environmental Clearance for the site falls under Sy. No.85/Part was directed to be transferred from DEIAA to SEIAA by the orders of the Hon'ble High Court, considering the allegations of the appellant that the applied area there under includes excavated area and therefore, the same should be appraised by the SEIAA instead of DEIAA as per the norms. The impugned Environmental Clearance if allowed to stand would amount to the regularization of the illegal functioning of the quarry.

37. This is also evident from the fact that **W.P. (C) No.7781 of 2015 (W) [Shoukkath Ali Vs. Ministry of Environment and Forest & Ors.]** before the Hon'ble High Court of Kerala which was filed by the appellant herein to direct the respondent authorities to stop the quarry operation of the 6th Respondent without obtaining proper statutory clearances and consent. The 6th Respondent referred to therein is the project proponent/4th Respondent herein. An interim order was granted by the Hon'ble High Court of Kerala observing that the permit for quarry expired as early as on 09.02.2015, despite which quarrying operations are being carried out by the project proponent and therefore, the interim order stopping further operations was granted.

38. Aggrieved by the same, an appeal was preferred by the project proponent in **W.A. No.1514 of 2015 [M.K. Najeeb Vs. Shoukath Ali & Ors.]**, which also confirmed the Single Judge's order and refused to modify the interim order. Thereafter, the final order was passed in W.P. No.7781 of 2015 on 09.12.2016 and the writ petition was allowed, the relevant portion of the order is as follows:-

"3. In the context of the above facts, subsequent to the order passed, there could be no quarry operations carried on by the 6th respondent without an Environmental Clearance, and hence the writ petition has to be allowed. The learned Counsel for the petitioner, however, submits that despite the interim order the quarry was carried on. The further contention is based on the affidavit, now directed to be placed on record as per the directions of this Court, which states about the Geologist having noticed the functioning of the quarry and the closure made on such inspection. It is also submitted that the Geologist has been permitting such violations and then compounding the offences. It is also submitted that, despite the order of this Court, Ext.P5 permit dated 17.02.2016 has been issued by the Geologist, District Office of Mining & Geology, Mini Civil Station, Manjeri, Malappuram District. Separate proceedings are taken suo motu for contempt against the said officer.

4. The writ petition would stand allowed, directing the official respondents to ensure that no quarrying operations are carried on by the 6th respondent without an Environmental Clearance and without proper permits issued under the Mines and Mineral (Development and Regulation) Act, 1957 (for short 'MMDR Act') Kerala Minor Mineral Concession Rules 2015 (for short 'KMMC Rules') and the D&O license by the local authority, as also the 'Consent to Establish and Operate' issued by the Kerala State Pollution Control Board."

- 39.** The above orders only go to show that the project proponent had been quarrying prior to obtaining Environmental Clearance based on the permit and even after the expiry of the permit.
- 40.** The specific case of the appellant is that the aspect of illegal mining is suppressed by the project proponent in the Form – I application. Even when there was an interim order by the Hon'ble High Court, the Project Proponent conducted the mining operations in Sy. Nos.1/1B and 85 Thani of Pulamanthole Village. It is also mentioned that a contempt proceeding was initiated against the District Geologist for allowing the illegal mining operations in the above-mentioned survey numbers.
- 41.** All the above aspects would go to show that not only the project proponent had suppressed certain vital facts while applying for Environmental Clearance, but also had suppressed that he was already mining in the very same survey numbers without an Environmental Clearance with the permit which was not valid after 2015.
- 42.** It was further contended that S.O. 804 (E) dated 14.03.2017 and O.M. dated 30.05.2018 of the MoEF&CC provides for regularization of the projects and activities which commenced without Environmental Clearance and that is not applicable to a new project in a virgin area and that the above-mentioned S.O. and O.M. do not provide for any blacklisting of project proponents who have commenced projects / activities without Environmental Clearance. It is trite law that in the absence of any law blacklisting cannot be resorted to.
- 43.** With reference to this issue, it was stated by the SEIAA – Kerala that "... .. As far as SEIAA/SEAC is concerned, the application was for the prior EC for a new project. Moreover, the imposition of royalty and market rate for assessing the penalty for excess mining that occurred in the adjacent quarries/areas, if any is the mandate of the Mining and Geology Department."
- 44.** The contention of the SEIAA – Kerala is completely unacceptable and it is their responsibility to examine whether the project involved attracts a violation category or not. It is also the

bounden duty of the SEIAA – Kerala to examine whether the project proponent who has indulged in illegal activity can submit an application in a new subdivision as a new project for being considered for a grant of Environmental Clearance.

45. In case, the contention of the Project Proponent that the S.O. and O.M. are applicable to projects and it does not amount to blacklisting of project proponents, if accepted is fraught with serious threats to the environment since it will be open for all the illegal miners to get a virgin area subdivided from an area where illegal mining was carried out and seek Environmental Clearance negating the objective of obtaining prior Environmental Clearance and also the concept of '*Polluter Pays*' principle.
46. No doubt, the S.O. and O.M. do not prohibit the project proponents, who indulged in illegal mining, from applying for an Environmental Clearance. However, the opportunity is given to those who indulged in illegal mining to submit their claims under the violation category with conditions to pay royalty, market rate and environmental compensation prior to the grant of Environmental Clearance.
47. It is to be noted that the need for collecting the royalty, market rate and environmental compensation has been directed by the Hon'ble Supreme Court in ***Common Cause Vs. Union of India & Ors. (2017) 9 SCC 499***. In the instant case, having come to know that the project proponent was involved in illegal mining in an adjoining survey number after subdivision, the SEIAA – Kerala ought to have imposed environmental compensation after getting the necessary details from the Department of Geology and Mining prior to the examination of the present case, treating it as a new project. We are also surprised to note how the mining plan was approved by the Department of Geology and Mining for the project proponent who indulged in illegal mining without collecting the royalty, market rate, etc.
48. Moreover, it is also noted that, as admitted by the project proponent, the original subdivision was subject to quarry through a permit system with and without Environmental Clearances and the SEIAA – Kerala has failed to examine the need for

considering the impugned application as a part of cluster and granted it as a stand alone quarry project which defeats the purpose of the Judgment of the Hon'ble Supreme Court in *Deepak Kumar's* case.

- 49.** The inspection carried out by the SEAC – Kerala subcommittee ought to have brought out the need for a cluster approach but the report appears to be silent on this issue and the SEAC – Kerala has stated that they have relied only on the certificate issued by the District Geologist.
- 50.** Moreover, it is noted that the authority decided to issue the Environmental Clearance for the project life of five years and imposed a condition that the project proponent shall prepare an EMP as directed by the SEAC – Kerala during the appraisal and that the EMP shall be implemented in consultation with the District Collector, which clearly shows that the Revised EMP was not examined either by the SEAC – Kerala or by the SEIAA – Kerala.
- 51.** The grant of Environmental Clearance without examining the Revised EMP negates the very concept of obtaining prior Environmental Clearance since the authorities have granted the Environmental Clearance without examining the Revised EMP to check whether the EMP prepared includes all the required measures to be undertaken to protect the environment.
- 52.** While so, the SEAC – Kerala and SEIAA – Kerala which are the regulatory bodies ought to have considered all these aspects and conducted an elaborate field inspection before recommending for grant of Environmental Clearance. Having failed to do so, the Environmental Clearance which is under challenge, if allowed to stand, would occasion a failure of justice. Hence, the same has to be set aside and remitted back to the SEIAA/SEAC – Kerala to consider the application afresh and do a thorough appraisal before passing any order.
- 53.** In the result, the appeal is allowed and the impugned Environmental Clearance dated 05.03.2021 is set aside and remitted back to the SEIAA/SEAC – Kerala to consider the proposal afresh.

54. The pending interlocutory applications [**I.A. No.201 of 2022 (SZ) & I.A. Nos.20, 23, 35, 54, 64 & 65 of 2023 (SZ)**] are considered and dealt with accordingly.

Sd/-
Smt. Justice Pushpa Sathyanarayana, JM

Sd/-
Dr. Satyagopal Korlapati, EM

Internet – Yes/No

All India NGT Reporter – Yes/No

Appeal No.75/2021 (SZ)
I.A. Nos.201 of 2022, 20, 23, 35,
54, 64 & 65 of 2023 (SZ)
24th January, 2024. Mn.

