

BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI

**Dated this the 20th day of December, 2023.**

**Original Application No. 124 of 2021 (SZ)**

**&**

**I.A. No. 18 of 2022(SZ)**

(Through Video Conference)

IN THE MATTER OF

**Sibi Joseph,**

aged 38 years,  
Son of K.S. Joseph,  
Kallammakkal House,  
Dhoni P.O. Palakkad- 678 009.



...Applicant(s)

**Versus**

**1. Union of India,**

Ministry of Environment, Forests and Climate Change,  
Represented by its Deputy Director, General of Forests (C),  
Regional Office (SZ), Kendriya Sadan, 4th Floor, E&F,  
wings, 17th main Road, Koramangala II Block, Bangalore- 560034.

**2. State Environment Impact Assessment Authority,**

Rep by its Member Secretary,  
K.S.R.T.C Bus Terminal Complex,  
4th Floor, Thampanoor,  
Thiruvananthapuram- 695 001.

**3. The Director of Mining and Geology,**

Pattom Palace P.O. Kesavadasapuram,  
thiruvananthapuram- 695004.

**4. State of Kerala**

Rep by its Principal Secretary,  
Environment Department,  
South Sandwich Block, Room- SSBT II,  
4th Floor, Government Secretariat,  
Thiruvananthapuram- 695001.

**5. The District Collector,**

Civil Station, Palakkad- 678 001.

**6. Akathethara Grama Panchayat,**

Akathethara Panchayat Office,  
Malampuzha Road, Palakkad- 678008.

**7. Kerala State Pollution Control Board,**

rep by its Member Secretary,  
Pattom, Plammod Junction,  
Thiruvananthapuram- 695 004.

**8. M/s Royal Sands and Gravels Pvt. Ltd.,**

Represented by its Managing Director,  
Mohammed Fazeel, T.A.,  
Plaza Junction, Dhoni P.O, Palakkad- 678 009.

**9. M/s Mary Matha Granites,**

Represented by its Managing Partner,  
Mohammed Fazeel, T.A.,  
Dhoni P.O, Palakkad- 678 009.

...Respondent(s)

For Applicant(s): Mr. P.B. Sahasranaman

For Respondent(s): Mr. G.M. Syed Nurullah Sheriff for R1.  
Mrs. Vidyalakshmi Vipin for R2.  
Mr G. Vignesh represented Mr. E.K. Kumaresan  
for R3 to R5.  
Mrs. V.K. Rema Smrithi for R7.  
Mr. T. Gowthaman, Sr. Adv. along with Mr.  
Mohammed Sadique, Mr. Muthuchharan  
Sundresh, S. Rohan for R8.  
Mr. Enoch David Simon Joel for R9.

**Judgment Reserved on: 6<sup>th</sup> October, 2023.**

**CORAM:**

**HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER**

**HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER**

**JUDGMENT**

***Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member***

1. Alleging illegal operation of quarries in the Palakkad District by the 8th and 9th respondents against the provisions of the EIA Notification the above application is filed by the applicant seeking a direction to assess the damages that have been caused on account of the illegal quarry operations and not to grant Environmental Clearance if the total quarrying area exceeds 05 ha., in line with the **Deepak Kumar's Judgement- 2012 (4) SCC 629.**

**2.** The applicant, who is a permanent resident of Akathethara Gram Panchayat, has stated that 8th respondent is engaged in quarrying operations and obtained Environmental Clearance from the 2nd respondent 24.05.2014 for 15 years subject to review in every 05 years. The 8th respondent, who is Royal Sand and Gravels Pvt. Ltd was permitted to quarry 3,50,000 MTA of building stone from an area of 9.3928 ha., of land in Sy. Nos. 2, 14, 15 and 16/1 of Akathethara Village. The quarry project is categorised as B2 Category project.

**3.** Similarly, the 9th respondent also had obtained Environmental Clearance for quarry in Sy. Nos. 110/2, 112/1, 112/3, 110/1, 109/1 in Akathethara Village. The sites of the respondents 8 and 9 are located within 03 kms from Malampuzha Dam and Dhoni Forests. There are also other 13 quarries in the Akathethara Gram Panchayat. It is alleged further that quarry operations has damaged the streams and forest. The dust generated has affected the ecology of the area besides the operations have caused several cracks in roads and buildings. The nearby stream is also diverted in view of the dumping of quarried materials. The private respondents are also violating the conditions imposed in the Environmental Clearance and the mining plan. It is stated that there is a waterfall in the Dhoni Forest which lies within 7.5 km from the quarry site. The Malampuzha Dam and its containment area is also within 2.5 km from the quarry site.

**4.** Due to the floods in the years 2018 and 2019 substantial damages has been caused to the nearby areas causing landslides. Of the 45 quarries within the Palakkad Taluk, 13 are located in Akathethara

Gram Panchayat. The respondent nos. 8 and 9 are also having stone crushers adjacent to their quarry site and obtained permission from the Kerala State Pollution Control Board. However, the quarry operations add to the dust generation and add to the pollution caused by the quarry pollution. There are also severe damage caused due to the landslides as the soil from this area is heavily transported for commercial purpose by soil mining which also would lead to land slide of bigger magnitude.

**5.** On the above allegations, the applicant has stated that the Principle of Sustainable Development and Precautionary Principle requires that only sustainable mining is to be allowed and the illegal mining causing environmental degradation has to be stopped and the polluters should be directed to pay the compensation.

**6. The 2nd respondent, SEIAA,** filed its report through the legal Officer which states that the 8th respondent obtained the Environmental Clearance on 24.05.2014 for a period of 15 years subject to renewal in every 05 years. The permissible limit was 3,50,000 MTA of building stone from an area of 9.3928 ha., of land in Akathethara Village. The Environmental Clearance itself stipulates several conditions, namely, (i) leave the statutory distance from the forest land on the north, (ii) limit the quarry to the stream on the eastern side and allow the unhindered flow of the stream, (iii) the stream may be provided with low level check dam to trap slit, (iv) rain water harvesting facility to be provided. It is stated in W.P. No. 14175 of 2020 there was a direction to the SEIAA to take up the matters raised in the said petition.

Accordingly, SEAC was directed to go for an inspection after which the Committee heard the writ petitioner and the project proponent. The complaints received from the present applicant to cancel the Environmental Clearance were also forwarded to the District Collector for necessary action.

**7.** The proposal was placed in the meeting and the representation given by the present applicant was decided to be disposed on priority narrating the follow up action by SEAC and SEIAA. Regarding the 9th respondent, M/s Mary Matha Granites, it is stated that an application was applied online 02.07.2019 for Environmental Clearance for the granite building stone quarry project in Akathethara Village, Palakkad. This project also comes under 'B2' Category. The proposal was considered by SEAC during which the project proponent submitted the documents from the Executive Engineer, Irrigation Division who had issued NOC for 01 year on 28.01.2020. The cluster certificate dated 19.09.2019 stated that there is one quarry situated within 500 m radius of the quarrying lease area of the 9th respondent. It is found on field inspection that the total area of existing operational quarry and the proposed quarry is more than 05 ha., therefore, the proponent was directed to apply for Terms of Reference for conducting an EIA study.

**8.** The 2nd respondent, SEIAA, therefore, submitted that the Environmental Clearance was issued by them only to the 8th respondent on 20.05.2014. As the challenge in the present application is not to the issuance of the Environmental Clearance but to the environmental impact, therefore, the challenge to the

issuance of Environmental Clearance or the conditions after 07 years is not maintainable. Regarding the 9th respondent, it was categorically stated that there was no Environmental Clearance issued to them as they were asked to give Terms of Reference due to the fact that Environmental Clearance was for more than 05 ha. So far no Environmental Clearance is issued to the 9th respondent.

**9. The 3rd respondent/Department of Mining and Geology** had

filed its memo stating that it is part of the Joint Committee constituted by this Tribunal and a report has been filed by the Committee. The 3rd respondent has stated that a quarry lease was granted to one Mr. Sajimon Abraham of Palakkad on 26.05.2010 which was valid up to 10.08.2022 to extract and remove 40,000 metric tonnes of granite building stone per year. The lease is valid on submission of mandatory requirements like consent from Kerala State Pollution Control Board, explosive license and D&O license issued by the Secretary, Gram Panchayat. The said quarry lease was transferred to M/s Mary Matha Granites, 9th respondent, on 17.12.2016 by the proceedings of the Director of Mining and Geology. However, Mary Matha Granites has not obtained the Environmental Clearance. It is specifically stated that the lease of the quarry issued to the 9th respondent was prior to the Judgement dated 27.02.2012 in Deepak Kumar Vs. State of Haryana and hence the quarry can operate without Environmental Clearance. The requirement of Environmental Clearance would arise only while seeking renewal of mineral concession. In this regard, the Division Bench of the Hon'ble High Court of Kerala in All Kerala River Protection Council vs. State of Kerala's case had held that the quarrying/mining/lease which was existing on the

date of issuance of notification dated 14.09.2006 or on the date of issuance of the order dated 18.05.2012 by the MoEF&CC, area less than 05 ha., required no Environmental Clearance with regard to extraction of mines and minerals.

**10.**The notification dated 14.09.2006 contemplated obtaining of Environmental Clearance only with regard to new projects/new activities. Thus stating the Geology Department had submitted the report that the quarry of the respondents 8 and 9 are operational and only two quarries are functional in Akathethara Panchayat in Palakkad and the aerial distance between the two quarries is more than 01 km. Therefore, there is no cluster situation as alleged in the application.

**11.**Regarding the 8th respondent, Royal Sand and Gravels, admittedly there is a quarry lease in existence from 2014 which is valid up to 21.08.2026 for extraction and removal of 1,00,000 tonnes of granite stone per year. The 8th respondent also has got consent from the Kerala State Pollution Control Board, Explosive License and D&O license from the Secretary, Akathethara Gram Panchayat.

**12.****The Environment Department of Kerala which is arrayed as respondent no. 4** had filed its reply that Pollution Control Board is in coordination with the other members of the Joint Committee constituted by this Tribunal and filed a final action taken report. The 4th respondent also had stated that the 9th respondent was not issued with the Environmental Clearance and was directed to provide TOR as the Environmental Clearance sought for is more than 05 ha.

**13.The District Collector, 5th respondent,** in his report has stated

that a survey was conducted by the Taluk Surveyor from the office of the Deputy Director of Survey along with the Geologist, Mining and Geology Department to ascertain the total quantity of granite building stone extracted from the lease area. As per the report, the mining activities are conducted in the permitted lease area only as the boundary pillars in the field were verified during the survey. The Collector has specifically stated that as per the mining plan no excess extraction of granite building stone is noticed in the quarry survey report regarding the 8th respondent. The total granite stone from the lease area as on 15.11.2021 was only 5,87,294 MT. So far as the 9th respondent, Mary Matha Granite is concerned, the lease deed was originally granted to one Sajimon Abraham on 18.10.2010 which is valid upto 10.08.2022 to extract and remove 40,000 metric tonnes. The consent from the Pollution Control Board was also valid upto 31.06.2022 and the explosive license issued by PESO was valid up to 31.03.2024. The D&O license was also issued which is valid up to 31.03.2022. Later the quarrying lease was transferred to the 9th respondent, M/s Mary Matha Granites on 17.12.2016, the lease holder has mining plan on 30.01.2016. As per the Kerala Minor Mineral Concession Rules, 2015 the total mineable reserve estimated in the mining plan for the remaining years of quarrying lease is 14,67,405 metric tonnes. A detailed survey was conducted in the lease area to ascertain the total quantity of granite building stone extracted from the lease area. It was found that the extraction of granite building stone has been carried out other than the lease area also. As per the survey the total quantity of granite building stone extracted from the



lease area and outside the lease area is calculated as 15,46,065. Therefore, as per the survey, the excess quantity of granite building stone extracted from the lease area is 61,664 MT. The Collector has also stated that there are only two quarries operating in Akathethara Gram Panchayat with valid quarrying license and these quarries are about 01 km apart from each other.

**14.**The 1st report of the Pollution Control Board dated 30.07.2021 has stated that the 8th respondent had obtained consent to operate from the Board which had satisfied the prevailing distance criteria of 100m. The necessary other approvals from the Mining and Geology and Environmental Clearance dated 24.05.2014 were also produced by the 8th respondent. The consent was issued only based on these documents. The Consent to Operate was also renewed on 30.11.2017 and was valid up to 23.05.2019. Again there was renewal application made, pending consideration there were complaint against the air pollution. The project proponent was directed to rectify the defects. After rectification, the site was inspected and the Pollution Control Board found that the natural water flows adjacent to the quarry was provided with check dam which would act as a silt trap. After trapping the silt the clearer water would flow through a concrete pipe of about 200 meters length carrying the natural stream. This pipe is laid below the stacked over burden. The number of sprinklers and the frequency of dust suppression spraying had been increased. The stacking of overburden soil had been flattened over more area. Therefore, the consent to operate was issued which is valid up to 01.12.2023.

**15.**Regarding the 9th respondent, Mary Matha Granites, which also had a valid consent to operate which was applied in 2012. There is a distance criteria of 100 m also maintained. So far as the Pollution Control Board is concerned, both the quarries are working with the valid consent of the Board. The respondent-Board was also member of the Joint Committee along with the Department of Mining and Geology also had filed their report.

**16.**As the water analysis was done with the sampling of water taken when the 8th respondent was not in operation, this Tribunal has once again directed the Pollution Control Board to do the water sample test. Accordingly on 22.10.2022 the quarry was inspected when it was operational and the crusher unit was also operational. The quarry has provided quarry area breakers and haulers which were working. Vehicles carrying boulders were moving. The quarry area was filled with water and hence it was being pumped into the series of settling tanks before reaching the final outlet of quarry premises. The sampling was carried out from the 08 locations and analysis was done. The results were compared with the drinking water specifications and found that all parameters except iron are within permissible limits of drinking water. The concentration of iron was 1.12 mg/L in the earlier sample which is now obtained as 0.45mg/L. The concentration of iron is not due to the operation of quarry but attributed to the geology of the area. It is stated that the 9th respondent has stopped the operation as it does not possess the valid consent to operate as on date.

**17.****The 8th respondent**, who is a permanent resident of Akathethara Panchayat states that there are only 04 quarries in whole of the

Palakkad Taluk out of which two quarries have already expired and out of balance two only the 8<sup>th</sup> respondent has a valid Environmental Clearance issued by the 2<sup>nd</sup> respondent. The major objection of the applicant is that there are cluster of mines within the limits of the panchayat which is detrimental to the environment. In fact the distance between the two quarries run by this respondent and the 9<sup>th</sup> respondent is more than 01 km aerially. Therefore, the allegation of the applicant is with malafide intention. This respondent has valid Environmental Clearance, Consent and other required documents for carrying on the quarrying activities.

**18.** The 8<sup>th</sup> respondent stated further that those quarry operators prior to 2012 were operating the same on the strength of short-term permits for an area of 0.6 to 1 ha. After this respondent had taken over the land and the quarry he applied for Environmental Clearance for an area of 9.3928 ha., and got the same under 'B2' Category. The brother to the applicant, who is also the resident of the village had given a representation seeking cancellation of the Environmental Clearance granted in favour of the 8<sup>th</sup> respondent which was after the period of limitation. He had also preferred W.P. No. 14175 of 2020 based on which a detailed survey inspection was conducted and observed that there was no substance in the complaint made by the brother of the applicant, herein. The 8<sup>th</sup> respondent has also produced several documents in support of his contention to state that he has got all the valid licenses, approvals and clearances for running the quarry.

**19. The 9<sup>th</sup> respondent, who is M/s. Marymatha Granites** had originally filed their reply on 04.10.2021. The 1<sup>st</sup> objection raised by them was on the question of limitation. According to them the application having being filed under Section 14 and 15 ought to have been filed within the time prescribed therein whereas the appeal is filed in the year 2021 is beyond the period of limitation. This respondent also had stated that there was a personal rivalry as the applicant was compelling him to purchase the property belonging to him at a very exorbitant price which this respondent could not oblige and the application has come as a counter blast to the same. This respondent stated further that he has got all the necessary permission by all statutory authorities concerned for the quarry operation in 2.7721 ha., of land in Sy. Nos. 110/1 and 110/3 in Akathethara Village, Palakkad and it is also running a crusher unit. Originally the quarry lease was issued on 11.08.2010 which was valid till 10.08.2022 in favour of one Sajimon Abraham. The said lease was transferred in favour of the 9<sup>th</sup> respondent on 23.01.2017. The 9<sup>th</sup> respondent also had obtained the consent to operate in his name from the Pollution Control Board. The panchayat license for the quarrying operations, crushing operations, sanitary certificate issued by Akathethara Primary Health Centre, license under the Factories Act etc., are in favour of the 9<sup>th</sup> respondent. According to the 9<sup>th</sup> respondent, it is not required to obtain an Environmental Clearance, as the quarry lease was obtained prior to 2012. According to the approved mining plan there are two quarries that are functioning in Akathethara Panchayat and the statement of the applicant that there are 13 quarries functioning are absolutely false.

**20.**The allegation that a nearby stream is diverted in view of the dumping of the quarried material are all denied. As the stream is situated at a distance of 05 km from the boundary of the quarry. The surface water flow from the quarry site is managed within the quarry area with the silt trap and to delay rain water harvest tank. The area is also protected using brick walls on all sides in order to avoid seepage and erosion of any water from the quarry. All the conditions and the norms prescribed by the Pollution Control Board are strictly followed by the 9<sup>th</sup> respondent. So far as the blasting operations are concerned, they are strictly in accordance with the licenses and using controlled blasting method (NONEL technology) so as to mitigate and adverse effects. The quarry unit is at a distance of 01 km from Dhoni Forest and more than 05 km from the river. The Malampuzha Dam is situated at a distance of more than 2.5 km from the quarrying site. The mining project of the 9<sup>th</sup> respondent is a small scale project functioning with the mining approval plan. Besides there are no other quarry within the 05 aerial distance. There was another objection filed by the 9<sup>th</sup> respondent to the Joint Committee report dated 26.07.2022.

**21.**The Joint Committee opined that in the case of the 9<sup>th</sup> respondent, Environmental Clearance is not necessitated in compliance to the Judgement of the Hon'ble High Court of Kerala and that the 9<sup>th</sup> respondent was functioning with all valid licenses except an Environmental Clearance. However the Member of the MoEF filed a dissenting note stating that Environmental Clearance is mandatory in the case of the 9<sup>th</sup> respondent and as the 9<sup>th</sup> respondent does not possess an Environmental Clearance it should

be treated as a case of violation from 15.01.2016 and penalty should be levied on them.

**22.**In this regard, it is to be noted that in the State of Kerala stop memos were issued to quarry units which do not possess a valid Environmental Clearance based on the judgement of the Deepak Kumar's case. The Division Bench of the Hon'ble High Court of Kerala in All Kerala River Protection Council vs. State of Kerala dated 23.03.2015 held that Environmental Clearance is not necessary for quarrying units which were granted prior lease prior to 18.05.2012. Environmental Clearance becomes mandatory only when the quarry leases or permits come up for renewal. It is on that strength the quarrying units who were granted quarry lease in the year 2012 were functioning in the State of Kerala.

**23.**Even for this respondent, the stop memo was issued by the Geologist on the ground that the 9<sup>th</sup> respondent had not obtained their Environmental Clearance. The same was challenged before the Hon'ble High Court of Kerala by filing W.P. No. 13609 of 2015 and an interim order was obtained on 08.05.2015 permitting the 9<sup>th</sup> respondent based on the Judgement of the Division Bench. The 9<sup>th</sup> respondent was permitted to continue operations till 10.08.2022 by virtue of the order of the Hon'ble High Court and beyond that date it can operate only after obtaining an Environmental Clearance. Therefore, operation of quarry by the 9<sup>th</sup> respondent without an Environmental Clearance was valid till expiry of the quarry lease in the light of the Judgement of the Hon'ble High Court of Kerala. Therefore, according to 9<sup>th</sup> respondent, the operation of the quarry is not against any law and

it is only pursuant to the order of the Hon'ble High Court and that the dissenting note of the Member of the MoEF is not correct.

**24.** Heard all the Learned Counsels.

**25.** The applicant has sought for assessing the damages that have caused on account of the illegal quarry carried out by the 8<sup>th</sup> and 9<sup>th</sup> respondent in the Akathethara Gram Panchayat in Palakkad District and levy compensation.

**26.** A Joint Committee was appointed by this Tribunal on 10.06.2021 to ascertain the violations, if any, committed by the authorities or by the 8<sup>th</sup> and 9<sup>th</sup> respondent, the quarry owners, in procuring quarry permits, Environmental Clearance, etc. and also for the consequential damages caused to the environmental on account of the same.

**I. 8<sup>th</sup> respondent - Royal Sand and Gravel Pvt. Ltd.**

(1) The observations of the Joint Committee regarding the 8<sup>th</sup> respondent was that it was issued with the quarry lease on 02.08.2014 which was valid upto 21.08.2026 to extract and remove 1,00,000 MT of granite building stone per year from an area of 7.0655 ha., in the survey number referred in the Akathethara Village.

(2) The Environmental Clearance dated 24.05.2014 was issued by the SEIAA which was valid up to 23.05.2019 and was renewed on 16.02.2019.

(3) The consent to operate from the Kerala State Pollution Control Board was issued on 30.11.2017 and is valid upto 01.12.2023.

- (4) The Explosive License from PESO was issued on 07.01.2021 and is valid upto 31.05.2025.
- (5) D&O license issued by Secretary of Akathethara Village is also valid upto 31.05.2025.
- (6) The metal crusher unit situated in Sy. Nos. 13 and 14 in Akathethara Village is registered as Registered Metal Crusher Unit (RMCU) dated 30.03.2022 of the Director of Mining and Geology, Thiruvananthapuram for the financial year 2022-23.

**II. Allegation of excess and unscientific mining of two quarries**

- (1) There are natural streams which enter the quarry area and streams are disturbed by the quarry activities. Dust and silt from quarry premises reach the natural streams flowing from the area and polluted water reaches downstream. Originally the water was utilised for drinking and bathing but now it has become unusable after the quarrying operation started.
- (2) During dry months the air pollution from quarrying area is grave.
- (3) Surface runoff from the premises of the crusher adjacent to the quarry is polluted by the presence of dust and silt from the raw materials and products heaped in these premises. This polluted water also reaches the downstream.

**III. Breach of Environmental Conditions:**

- (1) One of the conditions of the Environmental Clearance is to maintain the bench height not more than 05m and width not less than 05m. However, proper working benches as prescribed in the approved mining plan are not seen on the northern side or on the south-western side of the quarry.



- (2) The specific condition is to quarry to the stream on the eastern side and to provide low level check dam for settling of silt. Another condition is to provide garland drain with clarifier in lower slopes to channelize the storm water. In the approved mining plan also has provided for construction of storm water drains with silt trap along the periphery of the pit to divert storm water and not to disturb the existing drainage pattern.
- (3) On the date of inspection, it was found that the three seasonal streams entering the quarry area from the surrounding hills were ending up in the mine pit and the quarry operations have disturbed the natural course of the seasonal streams and the natural drainage pattern.
- (4) These three streams which enter the large quarry pit in the area which is being quarried now. From this quarry pit, it is pumped into another quarry pit, called setting tank 1, by the 8<sup>th</sup> respondent. From this pit it reaches, by gravity, a check dam constructed with concrete. This portion is called settling tank 2. According to the 8<sup>th</sup> respondent the dust and silt in the water settles down in these settling tanks. From tank 3, water flows through a pipe. The pipe is placed under the overburden storage. The overburden is stabilized by planting various plant species. The pipe opens into a pond called Kokkomi which is named settling tank 4. Finally the water from this settling tank overflows into its natural course out of the quarry area.
- (5) One of the natural stream in eastern side directly falling into mine pit designated as settling pond 1 as a small waterfall has been intentionally concealed by an arrangement of vegetation on a coir net. This is a malafide attempt to conceal or suppress facts before the regulatory authorities.

**27.**The Joint Committee has observed that there are only two quarries operating with valid quarry leases and they are situated more than 01 km apart from each other. Therefore, the complaint of the applicant that there is an alleged cluster of quarry operations is rejected.

**28.**Regarding the 8<sup>th</sup> respondent which was found that in the approved mining plan the total quantity can be extracted in the lease area is 18 lakh metric tonnes per year. As per the survey, the total quantity of granite building stone extracted from the lease area is only 6,25,000 MT. Therefore, there is no excess extraction of granite building stone.

**29.** Finally, the Committee has observed that the 8<sup>th</sup> respondent is carrying on the mining within the permitted lease area as per the approved mining plan. The total quantity extracted is below the permitted quantity. The quarry has been working with valid license including the Environmental Clearance.

**I. 9<sup>th</sup> respondent - M/s Mary Matha Granites.**

(1) The observation regarding the 9<sup>th</sup> respondent is that the 9<sup>th</sup> respondent was issued with a quarry lease on 11.08.2010 which is valid up to 11.08.2021 to extract and remove 40,000 MT of granite building stone per year from an area of 2.7721 ha., in Sy. Nos. 110/3, 110/1 in Akathethara Village.

(2) The consent to operate from the Pollution Control Board was valid upto 31.07.2022.

(3) Explosive license from PESO is valid upto 31.03.2024.

(4) The D&O license issued by Secretary, Akathethara Gram Panchayat is valid upto 31.03.2022 and renewed upto 10.08.2022.

(5) The original lease was in favour of Mr. SajimonAbramin and later it was transferred in the name of 9<sup>th</sup> respondent on 17.12.2016 by the Director of Mining and Geology.

(6) The metal crusher unit is also registered as Registered Metal Crusher Unit.

## **II. The Joint Committee's observation:**

(1) The joint committee had observed that since the 9<sup>th</sup> respondent had a valid lease upto August, 2022, the Mining and Geology had not insisted on the Environmental Clearance for the area less than 05 ha. Since, the 9<sup>th</sup> respondent had a valid quarry lease till August, 2022 the requirement of Environmental Clearance will arise only while seeking the renewal.

(2) Dust and silt from the quarry premises reaches the natural stream flowing from area and polluted the water downstreams.

(3) During the dry months, air pollution from quarrying area is grave.

(4) Surface runoff from the premises of the crusher adjacent to the quarry is polluted by the presence of dust and silt from the raw materials and products kept in these premises.

## **III. Violations**

(1) Proper bench height and width as required in the approved mining plan is not maintained in the quarry.

(2) 7.5m buffer area is not maintained from the boundary pillars of the quarry area.

(3) Proper green belt is not maintained in the buffer area.

- (4) Freshly planted trees and plants were observed on the boundary of the quarry area.
- (5) The lower portion through which the runoff from the area flows out was identified and it was seen that a kuccha drain has been made which takes the water to an abandoned quarry pit.
- (6) On the date of inspection, seasonal streams, drains, runoff and storm water were detected as ending up in the mine pit and the quarry operations has disturbed the natural drainage pattern. The over flow of the mine pit is being discharged to the adjacent land where it gets settled into natural depressions.

**30.** Regarding the 9<sup>th</sup> respondent before the transfer in favour of the Mary Matha already 3,12,455 MT of granite building stone was already extracted. As per the survey, the total quantity of granite building stone extracted from the lease area and outside the lease area is calculated as 15,46,065 MT. As per the record the quantity permitted for extraction is 14,84,401 MT only. Hence the excess quantity of granite building stone extracted from and outside the lease area as on 16.10.2021 is calculated as 61,664 MT.

**31.** Mary Matha Granite Pvt. Ltd., which is the 9<sup>th</sup> respondent, the quarry is operating with a valid quarry lease but without an Environmental Clearance. The Joint Committee observed that since the lease has a validity till August, 2022 the requirement of Environmental Clearance will arise while seeking a renewal. Hence, the quarry working days from 15.01.2016 without Environmental Clearance are calculated as 2363 days as on 07.07.2022.

**32.** It is interesting to note that there is a dissenting note from the member representative of the MoEF. The dissenting note states that the 8<sup>th</sup> respondent had conducted quarry within the permitted lease area as per the approved mining plan and no excess material is extracted. Further, the quarry has been working with valid licenses like Environmental Clearance, consent from Pollution Control Board, Explosive license, mining lease and Panchayat clearance and there is no violation or excess mining noticed.

**33.** Regarding the 9<sup>th</sup> respondent it is noted that the quarry operation is without the Environmental Clearance. It is also reported that they have extracted excess quantity of 61,664 MT of material as on 16.10.2021 and the Director of Mining and Geology has initiated appropriate action for recovery of the same. The 9<sup>th</sup> respondent is carrying out mining operation after 15.01.2016 till date only on the basis of the mining lease obtained during August, 2010 which is to be considered as illegal as they are liable to pay Environmental Compensation for the quantity mined which has to be assessed by the Mining and Geology Department. The mining operation from 15.01.2016 without obtaining the Environmental Clearance is a violation and it is liable to pay the Environmental Compensation.

**34.** The point for consideration is **whether the 8<sup>th</sup> and 9<sup>th</sup> respondent had operated the quarry illegally and in violation of the environmental norms.**

**35.** On 14.09.2006 the EIA Notification, 2006 was published making the Environmental Clearance mandatory for mining above 05 ha.

While so, the Hon'ble Supreme Court of India in Deepak Kumar vs. State of Haryana- (2012) 4 SCC 629 had made the Environmental Clearance mandatory for all the mining projects irrespective of the area.

**36.** In this regard there was an office memorandum issued by MoEF on 18.05.2012 stating inter alia that all the mining projects of minor mineral including renewal irrespective of the size of the lease would henceforth require prior Environmental Clearance under the project of minor minerals with the lease area less than 05 ha., would be treated as category 'B' as defined under EIA Notification, 2006 and will be considered by the SEIAA.

**37.** The above notification was also upheld by this Tribunal in O.A. No. 244 of 2017 dated 27.05. 2021. However, it was submitted by the 9<sup>th</sup> respondent that the Division Bench of the Hon'ble High Court of Kerala in All Kerala River Protection Council Vs. State of Kerala reported in (2015) 2 KLD 78 held that Environmental Clearance is not mandatory for quarry leases which are issued prior to 18.05.2012. In the above judgement it was found that:

- (i) in cases where quarry lease which was existing on the issuance of the Notification dated 14.09.2006 or on the date of order issued dated 18.05.2012 by the Government of India, MoEF with regard to area less than 05 ha., no Environmental Clearance with regard to extraction of minor mineral is required. The notification dated 14.09.2006 contemplated obtaining Environmental Clearance only with regard to new projects/new activities.

**38.** On the strength of the above referred Judgement, it was submitted that the 9<sup>th</sup> respondent who had got the mining lease transferred

from Mr. Sajimon Abramin during the subsistence of the lease contented that it is only in continuation of the existing lease and not a new lease in favour of the 9<sup>th</sup> respondent which requires Environmental Clearance. In the meanwhile, based on the "Deepak Kumar Case" stop memos were issued to quarry activities on the ground that he had not obtained Environmental Clearance. Challenging the same, the 9<sup>th</sup> respondent had preferred a W.P (C) No. 13609 of 2015 and obtained an interim stay on 08.05.2015.

**39.** The above challenge could not be brought to the logical conclusion as when the matter was taken up finally on 20.06.2022 the quarry lease and the quarry permit had expired and that further renewal can be done only on production of the Environmental Clearance. Therefore, the writ petition was closed specifically observing that the writ petitioner who is the erstwhile lease holder can operate the quarry only after getting the Environmental Clearance from the authority concerned.

**40.** It is also stated that the SLP filed against the All-Kerala River Protection Council vs. State of Kerala was dismissed by the Hon'ble Supreme Court on 02.12.2016. On 30.06.2020 in O.A. No. 136 of 2017 this Tribunal had held that in view of the S.O No. 141 (E) Notification dated 15.01.2016 all mining leases have to obtain the Environmental Clearance to operate the quarry. There was a review application in R.A. No. 07 of 2020 was filed against the above Judgement dated 30.06.2020 which was dismissed on 18.08.2020. Civil Appeal Nos. 1789-90 of 2021 were filed against the O.A. No. 136 of 2017 were also dismissed by the Hon'ble Supreme Court on 23.07.2021.

**41.** In the meanwhile one Sibi Joseph filed O.A. No. 244 alleging certain irregularities in conducting the quarry without obtaining Environmental Clearance was filed. The said Original Application was numbered as O.A. No. 244 of 2017 and was disposed of holding that continuing the operation of the quarry on the basis of the old lease is illegal and unauthorized without obtaining the Environmental Clearance. The said order was passed on 27.05.2021. A Civil Appeal No. 4643 of 2021 filed against the same was also dismissed by the Hon'ble Supreme Court. A review petition against the said Civil Appeal was also dismissed by the Hon'ble Supreme Court on 14.12.2021. Curiously on 15.06.2022 the order of this Tribunal in O.A. No. 244 of 2017 was stayed by the Hon'ble High Court of Kerala in W.P No. 13221 of 2021 at the behest of the State of Kerala.

**42.** When two of the orders of this Tribunal were upheld by the Hon'ble Supreme Court by dismissing civil appeals it only goes to show that after the Judgement of the Deepak Kumar and OM issued on 18.05.2012 it is mandatory on the part of every lease holder to obtain Environmental Clearance before commencing their operation. In this case, though the 9<sup>th</sup> respondent is only a transferee of the subsisting lease, the Mining and Geology Department ought not to have transferred the same without a valid Environmental Clearance. Even otherwise, it is clearly and categorically found by the Joint Committee that the 9<sup>th</sup> respondent is in violation of the general and specific conditions and has done excess mining for which it is liable to pay the Environmental Compensation.



**43.** In the result,

- (i) It is declared that the mining operation done by the 9th respondent-M/s. Mary Matha Granite Pvt. Ltd., in the disputed area after 15.01.2016, till 07.07.2022 (2363 days) on the basis of the old lease is illegal and unauthorized and they are liable to pay environmental compensation for the quantity of mined articles which has to be assessed by the Kerala Pollution Control Board after ascertaining the illegally and unlawfully mined quantity by Mining and Geology Department.
- (ii) The Department of Mining and Geology is directed to assess the excess mining and collect royalty lost to the exchequer for excess and illegal mining from 15.01.2016 besides collecting market rate of the quantity mined and penalty as directed by the Hon'ble Apex Court in **Common Cause. Vs. Union of India and Ors-(2017) 9 SCC 499** on the basis of the old lease and take steps to recover the amount from 9<sup>th</sup> respondent in accordance with law.
- (iii) The Mining and Geology Department is also directed to ascertain as to whether the 9<sup>th</sup> respondent had complied with the closure plan provided while executing the mining lease of 2010 and if he had not complied with the same, take appropriate action against them for enforcing the mining closure plan and recover the damage, if any, caused on account of the same to the environment from the 9th respondent in accordance with law.

- (iv) It is open to the 9<sup>th</sup> respondent to continue with the quarry operation only after obtaining prior Environmental Clearance and all the valid licenses and approvals required from the authorities concerned.
- (v) The 8<sup>th</sup> respondent is directed to strictly follow the General and Specific conditions given in the Environmental Clearance.
- (vi) For the concealment of the natural stream by the 8<sup>th</sup> respondent, we impose a penalty of Rs. 10 lakhs on the 8<sup>th</sup> respondent payable to Kerala State Pollution Control Board within four weeks. On such deposit, the amount may be utilised for remediating the same.

**44.** In view of the above, the Original Application is disposed of.

**45.** In view of the disposal of the Original Application, I.A. No. 18 of 2022 is also disposed of.

.....J.M.  
(Smt. Justice Pushpa Sathyanarayana)

.....E.M.  
(Dr. Satyagopal Korlapati)

Internet – Yes/No  
All India NGT Reporter – Yes/No

O.A. No.124/2021(SZ)&  
I.A. No. 18/2022(SZ)  
20<sup>th</sup> December, 2023. (AM)

**Before the National Green  
Tribunal  
Southern Zone (Chennai)**

**O.A. No. 124 of 2021 (SZ)  
&  
I.A. No. 18 of 2022(SZ)**



Sibi Joseph,  
Vs.

Union of India & Ors.



O.A No. 124/2021(SZ)&  
I.A. No. 18/2023(SZ)  
20<sup>th</sup> December,2023. (AM)