BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

APPEAL NO.36 OF 2016 (SZ)

In the matter of

M.P.Muhammed Kunhi
S/o K.P.Khader,
Melepath House, Pamburuthy,
P.O.Narath, Kannur District 670 601 … Appellant

VS

1. Ministry of Environment, Forests & Climate Change,
   Paryavaran Bhawan, CGO Complex,
   Lodhi Road, New Delhi 110003
   represented by its Secretary.

2. State Environmental Impact Assessment Authority, Kerala
   Department of Environment and Climate Change
   Pallimukku, Pettah PO, Thiruvananthapuram 695 024
   Represented by its Member Secretary

3. State of Kerala represented by its Principal Secretary,
   Department of Environment, Secretariate,
   Thiruvananthapuram 695 001

4. District Collector, Civil Station, Kannur 670 002

5. The Kolacherry Grama Panchayath,
   Represented by its Secretary, Kolacherry,
   Kannur District 670 601

6. The Pappiniserry Grama Panchayath,
   Represented by its Secretary, Pappiniserry, Kannur 670601

7. The Natath Grama Panhayath,
   Represented by its Secretary, Narath, Kannur 670601

8. Zakaria P.T.P.

9. Hussain P.P.

10. The Andoor Municipality represented by its Secretary .. Respondents

Counsel appearing for the appellant

M/s. Rajan Vishnuraj, Harish Vasudevan

Mr. A. Yogeshwaran

Counsel appearing for the respondents

Mr.M.R. Gokul Krishnan for R1

Mrs. Vidhyalakshmi for R2

Mr. Abdul Jaleel, Additional Advocate General

Mrs. Suvitha A.S for R3 & R4

Mr. Sunil V. Muhammed & K.A. Abdul Salam for R5, R6 & R7

MrRenjith B. Marar for R8 & R9

M/s.P. Manoj Kumar, J. Lakshmi Narayaan &

P. Mohan Raj for R10

O R D E R

Present

Hon'ble Shri Justice Dr.P. Jyothimani, Judicial Member

Hon'ble Shri P.S. Rao, Expert Member

---- -

10, May, 2016

Delivered by Hon'ble Justice Dr.P. Jyothimani, Judicial Member

----- - - - - -- -

Whether the judgment is allowed to be published o the Internet . Yes/No

Whether the judgment is to be published in the All India NGT Reporter .. Yes/No

This appeal is directed against the order of the 2nd respondent viz., State Environmental Impact Assessment Authority (SEIAA), Kerala dated 17.12.2015, granting Environmental Clearance (EC) to the 4th respondent viz., District Collector, Kannur for river sand mining in Valapattanam river (from Parassinikadavu bridge to Valapattanam bridge) in Kannur District.

2. It is stated that the appellant is a resident of Pamburuthy Island, which is situated in Kolacherry Grama Panchayath in Kannur District, where Pappinisserry and Narath Grama Panchayaths are having river banks. After the enactment of the Kerala Protection of River Banks and Regulation of Sand Act, 2001, sand in Kerala is being removed manually, by using country boats at an alarming rate and it starts from the early morning and goes on till mid night.

3. The appellant has filed a writ petition before the High Court of Kerala to curtail the same and the same was transferred to this Tribunal and numbered as Application No.440 of 2013. The said application came to be disposed of by this Tribunal, by recording the statement of the respective grama panchayat that no sand will be removed from below the water level. The appellant, having come to know about the fact that the 4th respondent has been given EC by the 2nd respondent, has filed the present appeal, stating that the impugned order is passed in total non-application of mind; in

violation of the judgment of the Hon'ble Supreme Court and it perpetuates the illegality. It is also stated that the 2nd respondent has passed the impugned order without any pre-feasibility report, Environmental Impact Assessment Report or Environment Management Plan from any accredited agency. The impugned EC is granted based on the Sand Audit Report of the Centre for Environment and Development, Trivandrum (CED) which is not an accredited agency and which has only given the data on the availability and quantum of sand in a particular area. The MoEF & CC has enlisted certain accredited agencies in the Office Memorandum dated 2.12.2009 and the Centre for Environment and Development (CED), Trivandrum is not one such agency. It is the case of the appellant that the 4th respondent has not proposed with any evidence that there is any river sand available above water level. According to the appellant, the judgment of the Supreme Court in *Deepak Kumar's* case has made clear that the sand mining shall be restricted to 3m/water level, whichever is less. The 4th respondent, having not produced any document about the water level of Valapattanam river, is not entitled to EC to carry on with the river sand mining. It is also the case of the appellant that in the 33rd meeting of SEAC permission was granted, when the quantum of sand projected in the Sand Audit Report was 2m below the summer water level and it is admitted, according to the appellant that sand is available only below 2m of the summer water level and therefore no sand is available above water level for mining. In such circumstances, the grant of EC is in violation of the judgment of the Supreme Court in *Deepak Kumar's* case. Further, in the 44th meeting of the SEAC held on 12/13.8.2015, the 4th respondent has informed that there is no sand available above water level and in such circumstances the SEAC ought not to have suggested mining of river sand without recomputing the quantum of sand or ascertaining the availability of sand above water level.

4. According to the appellant, the 2nd respondent has authorised the 4th respondent to mine 58,042 lorry loads of sand from six local body areas without application of mind and without ascertaining the availability of sand above water level. Sand is being manually removed to a large extent by sand mafia in country boats. It is also stated that the proposed site of sand mining falls within CRZ area and the 5th respondent

panchayat has not even cared to object such activity, while the 6th and 7th respondents have no objection to the fact that the area falls within CRZ. The impugned EC has been granted without proper mining plan, without mentioning the area to be mined. That apart, the 4th respondent, immediately after the receipt of the impugned EC, within 4 days, has issued permission to various persons to proceed with the sand mining in an unscientific and uncontrolled manner. The appellant came to know about the issuance of the impugned EC only from the newspaper reports. Therefore, the appellant has challenged the impugned EC on various legal grounds, including that the EC was granted without proper application of mind; it is in violation of Article 21 of the Constitution of India; breach of fundamental duty under Article 51A(g) of the Constitution of India; the pre-feasibility report, Environment Impact Assessment Report, Environment Management Plan have not been prepared and merely relied upon a Sand Audit Report of the Centre for Environment and Development, Trivandrum which is not valid. It is also the legal ground of the appellant that the 4th respondent has not submitted any document relating to the availability of sand above water level and in fact even on an earlier occasion permission was not granted to the same area, when the sand level was 2m below water level and therefore, the EC is against the dictum laid down by the Supreme Court in *Deepak Kumar's* case. The impugned EC is against the provisions of CRZ Notification and against the undertaking given before this Tribunal in Application No.440 of 2013 and the 4th respondent has never complied with any of the guidelines and for wrong and misleading statement, the 4th respondent is liable for action, apart from the fact that EC should be set aside.

5. In the reply filed by the 2nd respondent SEIAA, it is stated that the EC itself has been granted based on the decision of this Tribunal in Application No.440 of 2013. The District Collector by his letter dated 21.7.2014 has submitted copies of the government orders, authorising various agencies to conduct sand auditing of various rivers in the State and under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 the Centre for Environment and Development, Thiruvananthapuram is one of the agencies to conduct river bank mapping and sand auditing at Valapattanam river. It is stated that in the 33rd meeting of SEAC it was noted that the quantum of sand

projected in the report is 2m below summer water level and therefore the project proponent had to recompute the quantum of sand above summer water level which is permissible as per OM dated 24.12.2012 issued by the MoEF & CC. It is also stated that the committee recommended, taking of 50% quantum of sand assessed by the CED for a period of four months viz., September to December and in the 35th meeting of SEIAA held on 9.4.2015 it was considered and decided to issue Environment Clearance to mine 50% of quantum of sand, as assessed for each river from each approved Kadavu, subject to various conditions, as enumerated in the impugned order. It was the same condition with which EC was granted on the earlier occasion, which was the subject matter of Application No.440 of 2013 and therefore, the appellant cannot again raise unsubstantiated allegation against the same condition in the present EC. It is stated that the mining of river sand in the extent less than 25 hectares does not require EIA report. In fact, the State Act, referred to above, has been brought out to regulate the uncontrolled removal of sand from the rivers and the scientifically prepared sand data is more exhaustive than the pre-feasibility report. The application for river sand mining under the State Act and under EIA Notification, 2006 is considered as B2 category which does not require pre-feasibility report or mining plan, as they are adequately covered in the sand audit report.

6. It is further stated that the State Act imposes more severe conditions and the standard followed is more than that directed by the Hon'ble Supreme Court in the judgment in *Deepak Kumar's* case. However, the judgment of the Hon'ble Apex Court was considered for taking the decision to grant EC. It is stated that the sand audit report from the non-accredited agency will not deprive the 2nd respondent to consider such report from Centre for Environment & Development (CED) which is the Centre of Excellence on Solid Waste and Waste Water Management, recognised by the Ministry of the Government of India and also an accredited agency of the Government of Kerala. It is also stated that the computation of sand available for removal was on the basis of 2m below water level and the same was not as per the judgment of the Hon'ble Supreme Court and therefore the 2nd respondent directed the 4th respondent to recompute the quantum available above summer water level and therefore it was

decided to permit 50% of the quantum of sand, as assessed for the river from each approved kadavu, subject to other conditions. The condition that if there is no sand available above water level, based on summer water level, as a bench mark, has been incorporated in the impugned EC and in that case, removal of sand is not permissible. Therefore, there is no violation of the undertaking given in Application No.440 of 2013. It is also stated by the 2nd respondent that the 2nd respondent has not permitted mining of 58,042 lorry loads of river sand from six local body areas in Valapattana river and the 5th respondent panchayat has given a specific under standing before this Tribunal in Application No.440 of 2013 that it will never allow quarrying below water level. It is also stated that the 2nd respondent has no objection in preventing removal of sand, if sand mining is in contravention of the conditions imposed in the EC. In so far as it relates to CRZ clearance, the 2nd respondent has made it clear in the application that the CRZ notification is not applicable to the area concerned. It is also stated that in as much as there is no lease granted in Kerala for river sand mining, various OMs stated by the appellant have no relevance. The legal grounds raised by the appellant are also denied.

7. The 4th respondent District Collector, in the reply, while denying all the allegations raised by the appellant, has stated that in Kerala, sand mining is done under the provisions of the State Act, which provide for District Level Expert Committee to monitor the river bank protection activity. It is stated that after the Principal Bench of the National Green Tribunal passed orders in O.A.171 of 2014, the district administration has completed the sand audit in all the rivers through Centre for Environment and Development and the District Collector was authorised to apply for EC, since private individuals are not entitled for sand mining in Kerala and accordingly application was made by the District Collector.

8. The 5th respondent viz., the Kolacherry Grama Panchayath in its reply has stated that the appeal itself is not filed with *bonafide* intention and it is with misleading statements. Pamburuthy forms an integral part of the 5th respondent panchayat and the 5th respondent panchayat has taken all measures to protect it. It is stated that kadavu is a place where mined sand is unloaded and the sand reserve in 41 west

flowing and 3 east flowing rivers in the State is substantially low, when compared to other States and during summer season, due to low level of water, sand beds are created which obstruct the flow of water in the river. It was to avoid indiscriminate sand mining, the government in the year 1993 has issued notification, declaring 9 major rivers as government property, as per the Land Conservancy Act. The State Government has constituted a committee in the year 1997 to study the impact of the same and issued circulars in the year 1998, imposing various conditions, including banning of sand collection 500m from bridges and irrigation projects, appointment of Expert Committee to estimate quantum of sand etc., and the 5th respondent has strictly acted as per the State Act. It is stated that the appellant has earlier challenged the legality of sand mining without EC in Application.No.440 of 2013 and the same came to be closed, after noting that EC has been granted. It is specifically stated that even during the pendency of the previous application, the 4th respondent has closed Mankadavu and Kummaya Kadavu situated within 6th and 7th respondent panchayats, considering their proximity to the Pampuruthi Island. It is stated that the distance from Valapattanam bridge to the sand removing kadavu, known as Kambilkadavu of the 5th respondent panchayat is 1,200m. Further, the sand mining kadavu of the 5th respondent panchayat is approximately 400 m away from the said Kambilkadavu. The nearest kadavu to the Island that comes under Andoor Municipaity lies nearly 1 km away from the Island. Therefore, none of the kadavus presently exist closer to the island so as to cause any harm to it. It is also specifically stated that the 5th respondent panchayat does not come within CRZ notification and therefore it is not necessary to obtain any permission from the authorities under the said notification.

9. The newly added 8th and 9th respondents who have moved the High Court of Kerala by filing a writ petition against the interim order passed by this Tribunal, in which a direction was given on 1.3.2016, permitting them to file application to modify the interim order, which will be decided by the Tribunal, have stated that the appeal itself is mischievous and the islanders, like the appellant, are the major reason for illegal and unauthorised sand mining, inspite of the fact that the mining has been done manually in the State of Kerala and the authorisation to mine is given only to the government

agencies, through the Collector. According to the said respondents, by virtue of the interim order passed by this Tribunal, a large number of workers who are living below poverty line and who are engaged by the officials of the government have been rendered jobless and the illegal mining is mostly done by the islanders.

10. The 10th respondent Andoor Municipality, which was subsequently impleaded, in its reply, has stated that it is false and baseless to state that the Pamburuthy island is sinking on account of sand mining in Valapattanam river. It is also stated by the said Municipality that the SEIAA has considered the aspects in detail, before granting EC, wherein it is clearly stipulated that the sand mining below water level should be prevented. The appellant, who has not chosen to challenge the previous EC, has chosen to file this appeal against the impugned EC, which is on the same terms and conditions of the previous EC. It is also stated that the residents of Pamburuthy island have constructed illegal bund across Valapattanam river, affecting free flow of water in the river. The sinking of Pamburuthy Island, if at all, is attributable only to the bund created by the islanders. The Kadavus are not covered under the CRZ notification. It is stated that two kadavus viz., Thundiyil Kadavu and Nanicheri kadavu are situated about 5 km away from the Pamburuthy Island and beyond the Parassinikadavu bridge. The other kadavu viz., Kambil Kadavu is 1.5 km away from Pamburuthy Island. It is stated that the municipality is more concerned about the revenue, which is to the tune of Rs.7.5 lakhs to 8.5 lakhs per month, out of which Rs.72,000/- is spent for the workers, who are engaged in sand mining operation and therefore incurred huge loss of revenue on account of the ban of sand mining. It is also stated that the 10th respondent Municipality will never allow anybody to carry on sand mining against the conditions of Environmental Clearance.

11. Mr. Harish Vasudevan the learned counsel appearing for the appellant has raised the following grounds for assailing the impugned order passed by the 2nd respondent. According to him, when the 33rd meeting of SEAC has found that sand is available only 2m below summer water level, it is not known as to how in the absence of any evidence based on scientific study that sand is available above water level, the SEIAA has issued the EC. He would also submit that even if it is considered that

sufficient safeguards are taken to the fact that no sand mining below water level is allowed, on the factual matrix, there is no sand available as on date above water level; especially in the absence of such scientific study through an accredited agency and therefore, it is not legal for the 2nd respondent to issue the impugned EC. It violates the conditions imposed by the Hon'ble Supreme Court in *Deepak Kumar's* case. He would also submit that even otherwise, there is no jurisdiction on the part of the 2nd respondent, permitting removal of 50% of kadavu wise quantity estimated and on that score also the EC is liable to be set aside. He would also submit that SEIAA has not even considered the actual extent for which the sand mining is permitted under the impugned order and that shows the non application of mind. According to him, it is only if the extent is considered, it can be decided as to whether the project will come under B1 category or B2 category. He would also state that according to his client, it is more than 25 hectares and therefore, it should be treated as B1 category, which requires EIA study and report. He has also submitted that the reliance, if it is placed, on the sand audit report of CED, Trivandrum, the same is not permissible in law and therefore it cannot be said to be proper application of mind. In so far as it relates to the point that the place is covered under CRZ notification, he has not chosen to press the same, in the light of the facts and circumstances of the case.

12, Per contra, it is the contention of Mr. Abdul Jaleel, the learned Additional Advocate General of State of Kerala that it is not as if the 2nd respondent has blindly issued EC in favour of the Collector; but the order is a detailed one and the very fact that the order refers to the sand audit report of CED, Trivandrum shows that the authority viz., the 2nd respondent has considered the contents of the said report. One cannot argue that the consideration of a report by a statutory authority must be as per his desire and the decision of a statutory authority cannot be presumed to be improper, unless illegality is proved. On the facts of the present case, when there is no bar for SEIAA in referring to a report of CED, whose authenticity cannot be disputed by any one, it is not open to the appellant to make false allegations, including that of non application of mind. He has also submitted that the very fact that the place is not covered under CRZ notification, which is known to the appellant and inspite of it he has

mechanically shown as if there is a violation of CRZ notification indicates some bad intention on the part of the appellant. The learned Additional Advocate General would also submit that the impugned EC is not opposed to the judgment in *Deepak Kumar's* case and SEIAA has never allowed sand mining below water level. By virtue of the interim order granted by this Tribunal, a large number of daily wage workers are rendered jobless and therefore he has prayed not only dismissal of the appeal but also vacating the interim order.

13. Mr. M.R. Gokul Krishnan, the learned counsel appearing for SEIAA as well as Mrs. Suvitha A.S appearing for other official respondents, including the learned counsel appearing for the 5th respondent panchayat Mr. Sunil Mohamed, while adopting the arguments of the learned Additional Advocate General of Kerala, would submit that there is no defect in the impugned EC which cannot be held to be illegal. The environmental issues which are raised by the appellant are only for the reasons best known to him, especially in the light of the stand taken by the 10th respondent Municipality as well as the private respondents that the islanders, out of whom the appellant is one, are mainly responsible for the illegal mining of sand and therefore they have insisted that the appeal is totally *malafide* and abuse of process of law and liable to be dismissed.

14. On our direction, the learned counsel appearing for SEIAA has also produced the original proposal given by the 4th respondent in Form – I while applying for EC.

DISCUSSION AND CONCLUSION:

15. We have heard the learned counsel appearing for the appellant as well as the respondents, including the Additional Advocate General of Kerala extensively, referred to the pleadings and various documents filed, apart from the original records produced by the learned counsel appearing for SEIAA and given our anxious thought to the issue involved in this case.

16. On such consideration, the point to be decided is as to whether the impugned order of the 2nd respondent is valid in law or liable to be set aside.

17. Before considering to the merits of the case, there are certain indisputable facts which are to be adverted to. It is common ground that in Kerala, river sand mining is not permissible to any private individual and the same is entrusted only to the governmental authorities. This is really a welcome stand taken by the Government of Kerala, considering the ecologically sensitive character of most parts of the State, including the water bodies and need to protect the environment and preserve the ecology in the area. However, it cannot be disputed that mining of sand, which is a natural resource, is to be exploited for the benefit of the people, if not, as a commercial avocation, however, the same has to be in a regulated manner. Prevention of any private individual from exploiting the river sand and authorising only the governmental authorities by a special law, is definitely the stand taken to achieve the above said goal. We are also informed that in fact, the State Government, on an analysis of all the rivers in the State, has banned sand mining in some of the Districts, which is again a proper perspective for the government in its administration for protecting the pristine nature of the rivers. It is also not disputed that even the government agencies are not permitted to do mechanised mining of sand and the same must be only manual.

18. Under the impugned EC granted by the 2nd respondent SEIAA in favour of the 4th respondent District Collector, permission is granted for the river sand mining in Valapattanam river from Parassinikadavu bridge to Valapattanam bridge in Kannur District and the EC is valid only upto 16th June, 2016 from the date of issuance viz., 17.12.2015. Even though the validity period of EC is upto 16th June, 2016, it is admitted that when once the monsoon sets in Kerala, which is normally after the mid May every year, sand mining by the government agencies cannot be proceeded with. It is under the above said admitted facts, we should approach the issue.

19. We have passed an interim order of stay of the impugned EC on 29.1.2016 which continues as on today. It is not out of place to mention here that on the private respondents viz., respondents 8 and 9 approaching the High Court of Kerala by filing W.P.(C).No.7857 of 2016 against the said interim order of this Tribunal, the High Court in the order dated 1st March, 2016 has stated that if the said private respondents herein, who are the writ petitioners, filed any application to modify the interim order, the

Registry of the Tribunal should list the application and the Tribunal to consider such request without any delay. It is also appropriate to state that on a writ petition filed by one, Dinesan Nambiar in W.P.(C).No.4847 of 2016, the closure/stopping of kadavus in Muzhappilangad Panchayath and also Mullappram, Moidupala and Mamakunnu Panchayats, the High Court of Kerala in the order dated 15.2.2016 has granted interim order for a period of one month. It is clear on facts that permission of river sand mining in Kerala is seasonal and when once monsoon sets in, there is no such permission. Therefore, even the government authorities cannot obtain EC from SEIAA for mining during the off season. It is stated that Valapattanam river from Parassinikadavu bridge to Valapattanam bridge, for which EC is granted for river sand mining, covers four panchayats, including respondents 5 to 7 and the 10th respondent Andoor Municipality and the Pamburuthy Island, in respect of which the present appeal appears to have been restricted, since it is the case of the appellant that by indiscriminate sand mining the island will be affected which is situated within the 5th respondent panchayat viz., Kolacherry Grama Panchayat.

20. The appeal filed herein against the EC granted by SEIAA is in accordance with Section 16(h) of the National Green Tribunal Act, 2010. Since it is an appeal filed against the order of SEIAA in granting EC to the 4th respondent, such right of challenging the EC is given to “person aggrieved”. In addition to that, the appellant has to establish a substantial question relating to environment and ultimately while dealing the case, the Tribunal, either in it is original or appellant jurisdiction should apply the principles of Sustainable Development, the Precautionary Principle and Polluter Pays Principle. Even though the appellant has chosen to state that by the grant of impugned EC, the Pamburuthy Island, in which he is living, is damaged by the indiscriminate sand mining, it remains a fact that he has not shown as to how he is aggrieved and what is the degradation of the environmental status etc.

21. Be that as it may, as it is the duty of this Tribunal to act as per Section 20 of the National Green Tribunal Act, 2010 based on the three guiding principles stated supra, we do not propose to examine about that aspect. In our considered view, as an Appellate Authority, we have to consider the validity or otherwise of the impugned EC,

in the light of the guiding principles. Much has been elaborately argued based on the judgment of the Hon'ble Apex Court in DEEPAK KUMAR AND OTHERS V. STATE OF HARYANA AND OTHERS (2012) 4 SCC 629 which is a landmark judgment under the Environment (Protection) Act. The Hon'ble Supreme court while deciding about the mining of minor minerals, has given various directions to the State Governments to make necessary amendment in their regulations framed under the Mines and Minerals (Development and Regulation) Act, 1957. It is also observed that sand mining on either side of the rivers, upstream and instream, is one of the causes for environmental degradation and also a threat to the biodiversity. While considering about the lack of planning and sand management in the country which cause disturbance of marine eco-system, the Hon'ble Supreme Court further observed that over the years, India's rivers and riparian ecology have been badly affected by the alarming rate of unrestricted sand mining which damage the ecosystem of rivers and the safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers etc. The concern of the highest judiciary of the ecological imbalance is expressed in the following words:

> "9. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, instream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both instream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand."

22. On a direction from the Hon'ble Supreme court, the MoEF & CC constituted a Core Group to look into the environmental aspects associated with the mining of minor minerals with the following Terms of Reference:

(i)To consider the environmental aspects of mining of minor minerals (quarrying as well as riverbed mining) for their integration into the mining process.

(ii) Specific safeguard measures required to minimise the likely adverse impacts of mining on environment with specific reference to impact on water bodies as well as groundwater so as to ensure sustainable mining.

(iii) To evolve model guidelines so as to address mining as well as environmental concerns in a balanced manner for their adoption and implementation by all the mineral-producing States.

23. The Core Group has brought up various issues like, the need to relook the definition of minor mineral, minimum size of lease for adopting eco-friendly scientific mining practices, period of lease, cluster mine approach, for addressing and implementing EMP in case of small mines, depth of mining to minimise adverse impact on hydrological regime, requirement of mine plan for minor minerals, similar to major minerals, reclamation of mined out area, post mine land use and progressive mine closure plan etc.

24. The Hon'ble Supreme Court has called for inputs from various States and Experts for consideration of MoEF & CC. Based on the inputs, a Draft Report was prepared for consideration for MoEF & CC. The MoEF & CC to which the report was sent, has considered the issue and made the following recommendations regarding the river bed mining, which is the subject matter of the present appeal:

a) In the case of mining leases for riverbed sand mining, specific river stretches should be identified and mining permits/lease should be granted stretchwise, so that the requisite safeguard measures are duly implemented and are effectively monitored by the respective Regulatory Authorities.

b) The depth of mining may be restricted to 3m/water level, whichever is less.

c) For carrying out mining in proximity to any bridge and /or embankment, appropriate safety zone should be worked out on case–to-case basis, taking into account the structural parameters, locational aspects, flow rate, etc. and no mining should be carried out in the safety zone so worked out.

25. The Hon'ble Supreme Court has also taken note of the letter of the Minister for Environment and Forest dated 1.6.2010 addressed to the Chief Ministers of States and highlighted the portion of the letter, reiterating the following key recommendations:

(1) Minimum size of mine lease should be 5 ha.
(2) Minimum period of mine lease should be 5 years.
(3) A cluster approach to mines should be taken in case of smaller mine leases operating currently.

(4) Mine plans should be made mandatory for minor minerals as well.
(5) A separate corpus should be created for reclamation and rehabilitation of mined out areas.
(6) Hydrogeological reports should be prepared for mining proposed below ground water table.
(7) For riverbed mining, leases should be granted stretchwise, depth may be restricted to 3m/water level, whichever is less, and safety zones should be worked out.
(8) The present classification of minerals into major and minor categories should be re-examined by the Ministry of Mines in consultation with the States.

26. It was after consideration of those aspects regarding quarrying of river sand, especially instream mining, the Hon'ble Supreme Court has expressly felt that such instream mining lowers the stream bottom of the rivers leading to bank erosion. The following paragraph of the judgment can be useful which is reproduced in this regard.

> "25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive instream sand and gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics."

27. Ultimately, the Hon'ble Supreme Court has issued a direction to the State Governments to make necessary amendment to the Mineral Concession Rules of the States, taking into consideration of the exhaustive recommendations submitted by the Core Group and MoEF & CC.

28.Therefore, it is clear that regarding the river bed mining, lease should be granted stretchwise, depth may be restricted to 3m/water level, whichever is less and the safety zone should be worked out.

29. The State of Kerala is stated to have enacted Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. It is stated that under the said Act a District Level Expert Committee is constituted for each of the Districts in the State to monitor the mining activity. The District Collector in his reply has stated that after the orders are passed by the Principal Bench of the National Green Tribunal in O.A.171 of 2013 the district administration has completed the sand audit of all the rivers through Centre for Environment and Development. It is based on such sand audit, the District

Collector is empowered to submit application for Environmental Clearance before SEIAA and by virtue of the same, the 4th respondent has applied to the 2nd respondent for issuance of EC and accordingly the impugned EC came to be issued. It is also incidentally relevant to note that the appellant herein, has originally filed W.P.(C).4407 of 2012 in the High court of Kerala in which he is the first petitioner which was subsequently transferred to this Tribunal and numbered as Application No.440 of 2013 stating that in respect of the same area, without EC, sand quarrying is being done. Even though it was the contention of the learned counsel appearing for the applicant therein who is also the counsel here, that the EC relied upon therein was relating to some other place, it remains a fact that even in that EC also it was made clear that sand mining below water level shall not be carried out, as it was clearly observed by the Hon'ble Supreme Court in *Deepak Kumar's* case, referred to above. While disposing of the said application in the order dated 12th May, 2015, this Tribunal has recorded the undertaking given by the learned counsel appearing on behalf of the 3rd respondent therein, which is the 5th respondent in this appeal viz., Kolacherry Grama Panchayath that the panchayath will never allow quarrying below water level in the area and the application was closed with a direction to the 3rd respondent to scrupulously follow the undertaking and also directing the other panchayats viz., 4th and 5th respondents not to permit any quarrying below water level.

30. In the present appeal, the grievance of the appellant, as pointed out by the learned counsel, is that there is no sand available above summer water level and therefore the proposal for the EC should have been rejected. Unfortunately, there is nothing on record placed by the appellant to show that no sand is available above summer water level. Even otherwise, it is not as if, by the impugned EC, the 2nd respondent has allowed sand mining below water level. Paragraph 5 of the impugned order, even though recommends that certain lorry loads of sand in six local body areas may be permitted to be removed, has made it abundantly clear that the quantum need to be recomputed and the admissible quantum above summer water level be reported.

31. Therefore, in our considered view, the 2nd respondent is very clear in its order that sand mining below water level shall not be permitted. When that is the case, the

recommendation in the 45th meeting of SEIAA for removal of 50% of kadavu wise quantity, which is also expressly stated to be subject to the conditions imposed by the Hon'ble Supreme Court in Deepak Kumar's case (3m/water level whichever is less) and as agreed by the local body before this Tribunal in Application No.440 of 2013, we do not see any illegality in the impugned order of the 2nd respondent. Whether such mining is possible or not, is not for this Tribunal to decide. If it is found by the appellant or anybody else who is aggrieved that inspite of such specific order of EC by the 2nd respondent, any one including the government authority or even outsiders illegally excavated sand below water level, it is for such person to specifically make out a case and seek appropriate relief before the proper forum. Mere impossibility cannot be a ground on the facts and circumstances of this case, to set aside the impugned EC.

32. As far as the point raised that only the accredited agency's report should be taken note of by SEIAA, that being a matter of convenience, there is certainly no bar on the part of the SEIAA to take note of the report of any other reputed agency. On the facts of the present case, it is seen that the State Government has, infact, by a notification, referred the matter to Centre for Environment and Development, Trivandrum, which is a reputed autonomous ISO 9001 – 2008 certified institution and when the 2nd respondent has taken note of the contents of such exhaustive sand audit report, it is not for this Tribunal to direct the statutory authority not to follow any Expert Opinion. On the other hand, it only shows that the 2nd respondent has relied upon the studies made by a reputed scientific institution, recognised by the Government of India and we cannot find fault with such study. It is true, as submitted by the learned Additional Advocate General of State of Kerala that when the impugned EC makes it clear that SEIAA has considered the sand audit report of June, 2015 referring Valapattanam river in Kannur District, admittedly contained the distance between Parassinikadavu bridge to Valapattanam bridge, it is not for us to come to a conclusion, as if the statutory authority has not taken note of the distance, to set aside the order as null and void. That itself, in our view, cannot be considered as non application of mind.

33. Further, the impugned EC makes it very clear that the 2nd respondent has considered the project as B category, being below 25 hectares and therefore it should come under B2 category and taking note of the fact that mining is not carried out by mechanised process but only manually, we see no illegality in the order of the 2nd respondent, by considering the mining project proposal as B2 category. If that is so, there is no question of any EIA or EMP study required.

34. There is another aspect which is relevant viz., that the 2nd respondent has consciously considered the minutes of the 33rd meeting of SEAC, wherein there was a recommendation to permit sand quarry below summer water level and virtually rejected the same by directing the project proponent to recompute and it was only after satisfying the subsequent proposal dated 27.6.2015 made by the District Collector for sand mining in the remaining portions, the impugned EC came to be passed. Therefore, one cannot say that it is by non application of mind.

35. In so far as it relates to CRZ applicability, admittedly, it is not covered under CRZ Notification and therefore the learned counsel appearing for the appellant has also not pressed the same. In such view of the matter, we see no reason to interfere with the impugned EC granted by the 2nd respondent SEIAA, as there is no illegality or impropriety in the order.

35. In view of the same, the appeal fails and the same is dismissed. Consequenty, the interim order passed by this Tribunal dated 29.1.2016 stands vacated. No order as to cost. However, the District Collector is directed to ensure that the conditions prescribed in the EC, particularly with reference to maintaining safety zone near bridges/embankment and preventing instream mining are scrupulously followed. A Senior Officer of PWD may be deputed to regularly monitor the activity and report.

36. Before parting, we feel it appropriate to observe about the nature of duty imposed on the SEIAA and the way in which the same is to be implemented, especially in cases relating to grant of EC for river sand mining operation, which is of grave concern felt nationwide. It is true that the 2nd respondent in this case has referred to a study made by an expert body like Centre for Environment and Development, Trivandrum. But it would be more appropriate for SEIAA if it has

expressly taken note of the distance factor and the extent of the place to which the permission for sand quarrying is sought for. The SEIAA, in our view, should take a pragmatic view in deciding the issue precisely by taking the distance factor so as to arrive at a conclusion about the extent to which sand mining is sought for, in order to come to a conclusion as to whether the proposal will be treated as B1 category or B2 category. This is because if it is upto 50 hectares in respect of sand mining of minor mineral, it should be treated as B1 category, in which event EIA study is a mandatory requirement and if it is more than 50 hectares, it will be treated as A category, in which event EIA Notification, 2006 empowers MoEF & CC to consider the proposal after appraisal by the EAC. Particularly, the above said observation, in our view, is relevant in the light of the latest notification of the Government of India, by making amendment to EIA Notification, 2006 dated 15.1.2016, wherein below 5 hectares in respect of sand mining it should also be treated as B2 category, but to be considered by the District Expert Appraisal Committee (DEAC) and if it is 5 hectares to 25 hectares, the jurisdiction lies with SEIAA which is to treat the project as B2 category and if it is 25 hectares to 50 hectares, it should be treated as B1 category and the SEIAA to exercise its jurisdiction. Such accurate consideration of extent would have been more proper for the SEIAA to make its order perfect. This observation, we make it clear that the SEIAA shall follow in all future cases.

Justice Dr.P. Jyothimani

Judicial Member

Shri P.S. Rao

Expert Member