

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Appeal No. 15 of 2022 (SZ)
(Through Video Conference)

IN THE MATTER OF

1. Arjun Gopalaratnam,

S/o R. Gopalaratnam,
No. 2, Nerundram Village, Salavakkam Post,
Via Anambakkam- 603 107.

...Appellant(s)

Versus

1. The Tamil Nadu State Environment Impact Assessment Authority,

Rep by its Member Secretary,
3rd Floor, Panangal Maligai,
No. 1, Jeenis Maligai, Saidapet,
Chennai-15.

2. Mr. R. Giridharan,

S/o Rajendran,
No. 12/113, 1st Main Road,
Moogambikai Nagar, Sikkarayapuram,
Extension,
Gerugambakkam, Kancheepuram,
Chennai- 600128.

...Respondent(s)

For Applicant(s): Mr. A. Yogeshwaran,

For Respondent(s): Ms. Me.Sarashwathy for R1.
Mr. Abdul Saleem for R2.

Judgment Reserved on: 28th February, 2023.

Judgment Pronounced on: 20th July, 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. The appellant, who is a retired army officer, now indulged in organic farming and residing at a distance of 600 meters from the quarry site in question has filed this appeal aggrieved by the issuance of the Environmental Clearance in favour of the 2nd respondent.

2. The appellant has alleged several illegalities in the issuance of the impugned Environmental Clearance. The following are the major allegations made by the appellant in impugning the Environmental Clearance dated 20.09.2021.
 - (i) According to the appellant the 2nd respondent, project proponent, had supplied false information regarding several facts.
 - (a) There are three villages, namely, Malaipattu, Vellari and Guduperumbedu. Besides the above, two more villages, namely, Anambakkam and Nerkundram which will be most affected by the explosion, dust pollution, traffic, noise and water pollution. In the Form-I, the applicant has not even mentioned about these two villages.
 - (b) The second misrepresentation by the respondent is stating that Edamachi Reserved Forest as a social forest which is adjacent to the proposed mining site on the eastern site without leaving the buffer belt of 40.2 m by 60.4m as required by the Revenue Board Standing Orders, the 2nd respondent had obtained permission for establishing the quarry.
 - (c) As per the information furnished in the Form-I, the ground water table is at the depth of 48 m below ground level and

the quarry is to be done only till 42m depth. However, it is stated that the ground water table in the village is at 2-8 m below ground level because of which digging should not be allowed below 2-8 meters since it will disturb the ground water level. As the said facts were not disclosed before the authorities, the same was not considered. Thus, the project proponent has suppressed that the project site and its surroundings have high ground water table and the presence of the Edamachi Reserved Forest has also been suppressed.

(d) The proponent had omitted to mention that the Edamachi lake that is adjacent to the proposed quarry neither in the Form-I nor in the EMP report. The Edamachi Lake is said to be third largest lake in Kanchipuram District, which is situated less than 50 m to the project site does not find place in the Form-I. Even in the EMP report, it is stated that the said water body is not mentioned instead it is stated that no surface water body exists near the site.

(e) The 2nd respondent failed to disclose the presence of protected areas, ecological sensitive areas within 50 km aerial distance. In the Form-I, it was declared that there are no protected areas within 10 km areas deliberately suppressing the presence of Karikali Bird Sanctuary at a distance of 12 km approximately. The project proponent had neither disclosed the Edamachi Lake and its surroundings which serve as a nesting ground for a variety of birds including the migratory birds due to proximity to Karikali and Vednathangal Bird Sanctuaries.

(f) The another fact that was suppressed was that when the project site itself is an agricultural land by specifically stating that the site is a non-agricultural land.

(g) The project site has got no access i.e. there are no roads leading to the project site. There is only a path way used for bullock carts. Therefore, the 2nd respondent has to use the Nerkundram village roads for transporting the mined material. If the vehicles carrying the heavy loads of mined material there should be appropriate road designed to bear the heavy loads and the plying of the heavy trucks. Using the village roads for transporting the mined material would only result in a risk to people and cattle etc.

All the above material facts are suppressed by the project proponent in the Form-I.

(ii) The appellant has alleged that in view of the suppression of the above referred material facts, the impact assessment could not have been done in the way it should be done. Without considering the above referred environment impacting aspects, it was conveniently concluded that there is no impact on the environment. Based on the same, the SEAC and SEIAA have recommended for impugned Environmental Clearance. When there are grazing grounds and agricultural and cattle fields without the access road to the project site, the activity for which clearance has been granted would only be detrimental to the public, the cattle and the environment at large.

(iii) The Edamachi Lake which is one of the largest lake is used for irrigation for five of the villages lying on the east. Permitting an open cast mechanised mining very close to the lake would only adversely affect the quality of the water and the hydrology

table. According to the Central Pollution Control Board norms a buffer distance of 100m is to be maintained if there is no blasting and wherever blasting is involved it should be 200m buffer i.e. to be maintained. In the instant case, the quarry site is located adjacent to the Edamachi Lake within the distance of 50m.

(iv) There was no Environmental Impact Assessment done on the true facts. The SEAC had accepted the submission of the project proponent without even verifying the truthfulness and recommended for issuance of the Environmental Clearance and the SEIAA also did not make an independent assessment to disagree with the recommendations of the SEAC and granted Environmental Clearance going by the recommendations of the SEAC.

3. In addition to the above referred grounds, the appellant had also stated that the post environmental clearance monitoring was not done and sought for quashing the Environmental Clearance granted on 20.09.2021.

4. **The SEIAA has filed its counter through Member Secretary** stating that an application was made by the 2nd respondent online seeking the Environmental Clearance for quarrying proposed rough stone and gravel over an extent of 2.77 ha., in Sy. Nos. 367/1, 367/2, 368/1G, 368/1H, 368/1I, 376/1 and 376/2, 376/3, 376/4, 376/5 Edamachi Village, Uthiramerur Taluk, Kancheepuram District.

5. The SEAC had recommended the grant of Environmental Clearance subject to certain conditions. It had restricted the depth of mining to 32 m ultimate depth and quantity of 40,432 cubic meters of rough stone and 6528 cubic meters of gravel for 05 years with a depth of 10m bench height as per the approved mining plan considering the hydrogeology regime of the surrounding area and ensuring substantial and safe mining.

6. The project proponent was directed to submit a hydrogeological study report to SEIAA. While imposing the other conditions, it was also stated that the quarry should not affect the agricultural activities and water bodies near the project and the 50 meters safety distance from water body should be left vacant without any activity.

7. The transportation of the quarried material shall not cause any hindrance to the village people or existing village road. The prior clearance from the forestry and wildlife including clearance from the Committee of the National Board of Wildlife as applicable shall be obtained before starting the quarry operations, if the project site attracts NBWL clearance as per the existing law from time to time. Based on the recommendations sent by the SEAC, SEIAA had issued the Environmental Clearance considering the proposal in its 459th meeting on 09.09.2021 and the Environmental Clearance was issued on 20.09.2021.

8. **The project proponent, who is the 2nd respondent,** has filed his counter stating that he had proposed to establish a rough stone and gravel quarry in patta lands over an extent of 2.77.0 ha., and

taken the subject land on lease from its owner on 19.02.2020 by a registered lease deed. The 2nd respondent also had applied for mining lease on 24.02.2020. After conducting a field inspection by the Assistant Director, Geology and Mining, it was recommended to grant mining lease. Based on the recommendations, on 20.10.2020, the Assistant Director of Geology and Mining had directed 2nd respondent to obtain Environmental Clearance from SEIAA.

9. In the condition no. 4, it was stated that the Edamachi social forest in Sy. Nos. 258 to 274 is located on the eastern side of the subject land. It is stated that only in compliance of the above conditions the respondent had applied for Environmental Clearance under 'B2' category of Item (1a) of mining of minerals projects of the schedule to the EIA Notification, 2006.
10. The project proponent states that the allegation that the ground water table is at depth only 02 to 08 mgl is absolutely baseless as the project proponent had submitted a hydrogeological study report which also found depth of water to be at 43.5 to 45 meters below ground level. Hence, there is no suppression of material fact by the respondent as alleged by the appellant.
11. Regarding the Karikili Bird Sanctuary, which was alleged not to have been mentioned in the Form-I, the project proponent submitted that to declare those protected areas which are within the distance of 10km from the subject site whereas the Karikili Bird Sanctuary is at a distance of more than 10 km from the

proposed site hence it was not mentioned which does not amount to deliberate suppression of fact.

12. The impugned Environmental Clearance is granted on 20.09.2021 for the establishment of rough stone and gravel quarry over an extent of 2.77 ha., in in Sy. Nos. 367/1, 367/2, 368/1G, 368/1H, 368/1I, 376/1 and 376/2, 376/3, 376/4, 376/5 Edamachi Village, Uthiramerur Taluk, Kancheepuram District.

Suppression of vital facts

13. The appellant complained that the quarry is located adjacent to Edamachi Reserved Forest and the Edamachi Lake is 50 meters from the project site which is the third largest lake in the Kancheepuram District. The Survey numbers referred above are all agricultural lands and the entire area is having a tranquil landscape. The 2nd respondent had mentioned that the water table is observed at a depth of 48 meters below ground level and the mining sanction is given to the depth only to 42 meters. Hence there will not be any disturbance to the ground water table. The appellant has produced certain photographs to show that the water level is as low as 02m to 08m below ground level.

14. The hydrogeological report submitted by the project proponent is prepared by the NABT/QCI accredited consultant for the subject matter. The report shows that the two resistivity soundings one near old well and one near proposed project site were conducted to get information on the subsurface geology and the ground water potential. To evaluate the ground water potential and to access the chargeability of this region various parameters such as rainfall,

water level, drainage, slope, geomorphology, top soil, weathered zone and depth to bed rock data are used. Well inventory survey data recording around 01km radius was also furnished which says that the total depth of the well is only 12m below ground level in Edamachi Village, the geophysical survey done by the consultant in the site at two points. Based on the hydrogeological surveys and well inventory data as well as water yield and quality of existing well in nearby area, the moderate quality of water is inferred in the project site.

15. The report concluded stating that there are 24 wells around 01 km radius and subsoil water level is 03 to 06m depth which were used by the agricultural purpose due to influence of monsoon only adjacent to Edamachi lake. Subsoil water is getting yielded between fracture of weathered top soil and hard formation. The report stated further that the ground water table with high recuperation is expected at 43.5-45m below the ground level as per Geophysical surveys. But in the Form-I, it is mentioned that the ground water table is observed at a depth of 48m below ground level whereas mining proposed to a depth of 42 meters only from the top. The information regarding the ground water table is contrary to the information furnished in the Form-I. Water quality in the area is said to be good and potable in the report.

16. It is alleged by the appellant that the suppression and misrepresentation of the ground water table in Form-I is significant which has influenced the SEAC and SEIAA to recommend and issue the impugned Environmental Clearance.

17. **In the counter by the 1st respondent** the recommendations of the SEAC in its 223rd meeting dated 30.07.2021 was furnished. The 1st condition says the depth of the mining only upto 32m ultimate depth for 05 years with the bench height of 10m as the per the approved mining plan considering the hydrogeological regime of the surrounding area as well as to ensure sustainable and safe mining.

18. When the hydrogeological report states that the sub-soil level is 03 to 06m and the total depth of the well in the inventory survey data in and around 01 km radius of project site is only 12m without verifying the same, the SEAC ought not to have recommended for the issuance of the Environmental Clearance. This is evident from the fact that SEAC had not even adverted to the details in the hydrogeology report and the EMP with regard to the ground water levels and recommended for Environmental Clearance without application of mind.

Edamachi Lake.

19. The appellant is vehement in his statement that the Edamachi Lake is spread across several acres which is only 50m from the quarry site. While so, the 2nd respondent had not even mentioned about the existence of this Edamachi Lake. The 2nd respondent had deliberately suppressed its existence. The 2nd respondent further had stated that there is no surface water body near the site.

20. The SEAC in its recommendation had also stated that the project proponent shall submit the hydrogeological particulars of the tank located nearby at a distance of 150m. The SEAC also should have inspected the property to find out whether there was any water body much less when it is located within 50 meters. The 2nd respondent in his counter has not stated anything about the existence of the Edamachi lake which is the main objection of this appellant.

21. The next allegation is about the fact that there is no access road to the project site. It is only stated that the existing road to the main road to the quarry is in good condition. As already stated the subject land is primarily agricultural lands and there are only pathways for bullock carts to be used. Even as per the Village Field Map book, there is no road to the project site excepting a footpath. In the absence of a proper road for transporting the mined material the 1st respondent ought not to have issued the impugned Environmental Clearance.

22. The next important ground raised by the applicant is that the location of the Edamachi Reserved Forest which has been stated by the 2nd respondent as social forest. The presence of a reserved forest ought to have been specifically stated by the project proponent. In the counter also it has been stated by the 2nd respondent that the Edamachi forest is a social forest as has been stated by the Assistant Director of Geology and Mining Department in its proceedings dated 20.10.2020.

23. From the proceedings of the Assistant Director of Geology and Mining as well as the admission made by the project proponent it is beyond dispute that there is a forest which is described as social forest by the project proponent and as reserve forest by the appellant. One of the conditions issued by the SEAC is that the prior clearance issued from the forest and wildlife including the clearance from the Committee of the NBWL as applicable shall be obtained before starting the quarry operations. If only the project proponent had obtained the required clearance it would have made it clear whether it is reserved forest or a social forest.

24. In this regard, the appellant has produced the information obtained under RTI furnished by the District Forest Officer, Chengalpattu, Kanchipuram in which it is stated that the Edamachi Reserved Forest is situated in SY. Nos. 258, 260 to 274, 339 to 346 and 17. Perusal of the FMB also shows that these survey numbers are adjacent to the project site which is within the prohibited distance. Curiously in Form-I column 21, the project proponent had specifically stated that the Edamachi Social Forest is situated on the eastern site, the Kavanipakkam RF is situated about 930m on north eastern side and the Marutham RF is situated at 5.7 km on south-west side but without mentioning the distance for the Edamchi Forest alone.

25. In this regard it is worthwhile to refer to the Judgement of the Hon'ble High Court of Madras rendered in W.P. 10224 of 2022 on 04.01.2023. This is a case where a writ petition was filed relating to the order of the District Collector, Kanchipuram with respect to the rough stone and gravel quarry in certain survey numbers in

Mampudur Village, Uthiramerur Taluk and quashed the same. In the instant case also the quarry site is in the Uthiramerur Taluk in Edamachi Village excepting the names of the villages the sites are situate in Uthiramerur Taluk of Kanchipuram district.

26. In the said judgement, the Hon'ble High Court has adverted to G.O Ms. No. 295 Industries (MMC-1) Department dated 03.11.2021 has introduced an amendment to the Tamil Nadu Minor Mineral Concession Rules, 1959. In the said Government Order Clause e has been added to Rule 36 (1A) as follows:

"(e) Notwithstanding anything contained in any law for the time being in force, no quarrying or mining or crusing activities shall be carried out within one kilometer radial distance or the protective distance as notified by the Ministry of Environment, Forest and Climate Change, Government of India from time to time, whichever is more, from the boundaries of ecologically sensitive areas, environmentally and ecologically protected areas such as the National Pars, Wild Life Sanctuaries, Tiger Reserves, Elephant Corridors and Reserve Forests."

27. The above G.O also prohibits a distance of 01km. So far as the 2nd respondent is concerned, they have not mentioned the distance. Whereas the distance is less than 01 km in the Edamachi Social forest and it is less than 01 km in Kavanikappam Reserved Forest, the Environmental Clearance should not have been issued. The reason for introduction of the above G.O is to protect forests which save the hydrology of the region. Droughts experienced in forest areas have a direct impact on the hydrology which is the reason to have a hydrogeological study before the grant of mining lease. Indiscriminate mining/quarrying can disturb the aquifer and can have direct impact on the hydrology, even leading to draining of water from water bodies and affect their irrigation potential.

28. The other grounds raised by the appellant are that there are surrounding villages which would be affected by the explosion, dust pollution, traffic and also impact on ground water besides the noise pollution and contamination of agricultural land and water bodies. These aspects have not been considered in the Environmental Impact Assessment Study. The project site itself is agricultural field besides it is located very close to the lake which has got prime agricultural lands in the surrounding areas. This aspect was also not taken note by the 1st respondent.

29. As already had observed there are no proper access roads to transport the mined minerals to be carried away to the main road. There are no black topped roads for the heavy vehicles to move around excepting the cart tracks. It is also not known whether the 2nd respondent had obtained consent from the Tamil Nadu Pollution Control Board for their compliance of the mitigative measures of dust pollution, noise pollution including the fugitive emission and also water contamination.

30. From the above discussions, it is evident that the SEAC before recommending the issuance of Environmental Clearance had not made a thorough study by doing a physical inspection and verifying the material facts, the Environmental Clearance appears to have been granted simply based on the information furnished by the project proponent. When there are more than one criteria which are not satisfied by the project proponent, the Environmental Clearance ought not to have been issued. This seems to be a yet another classic case of SEAC and SEIAA clearing the projects for issuance of Environmental Clearance in a

mechanical manner with non-application of mind. When it involved agricultural lands in and around one of the largest lake, the authorities ought not to have issued the Environmental Clearance without the hydrogeological study. When the presence of reserved forest was mentioned as a social forest, the authorities should have taken little care to verify the facts from the appropriate authorities and by making a spot inspection before recommending these projects which would have a detrimental impact on the ecology.

31. It is needless to say that when the project site is very close to a water body and agricultural lands, it would automatically have ground water impact. Even presuming that the project proponent has not furnished all the relevant material facts, it is the authorities which issue the clearance should strictly abide by the procedure before the grant of the same. When there is a drought it affects both forest and non-forest areas. When agriculture fails, forest is the only source of livelihood as loss of crops would affect the agriculture. The disappearance of forest produce will affect the forest dwellers. Mining near the ecologically protected area would directly impact the forest dwellers and forest produce. Therefore, we are convinced that the Environmental Clearance has been issued without application of mind and without considering the vital facts which determine the grant of Environmental Clearance.

32. Therefore, the Environmental Clearance is set aside and remanded back to the SEIAA and the same should reconsidered and assessed afresh again without being influenced by this order and pass

appropriate orders based on the merits within a period of 03 (three) months.

33. In view of the above directions, the Appeal is allowed and remitted back to the 1st respondent.

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

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

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

Appeal No.15/2022(SZ)
20th July, 2023. (AM)



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The Tamil Nadu, SEIAA and
Ors.



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