



W.P.(MD)Nos.19637 to 19639 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 30.06.2023

Pronounced on : 21.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)Nos.19637 to 19639 of 2014

- | | |
|---------------|--|
| 1. Sasikumar | ... Petitioner in W.P.(MD)No.
19637 of 2014 |
| 2. Jothimani | ... Petitioner in W.P.(MD)No.
19638 of 2014 |
| 3. K.Chandran | ... Petitioner in W.P.(MD)No.
19639 of 2014 |

versus

1. The Secretary to Government,
Home Department,
Secretariat,
Fort St. George,
Chennai – 9.
2. The Secretary to Government,
Public Works Department,
Secretariat,
Fort St. George,
Chennai – 9.



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3. The Secretary to Government,
Revenue Department,
(Disaster Management),
Secretariat,
Fort St. George,
Chennai – 9.

4. The Chief Engineer,
Public Works Department,
Kamarajar Salai,
Chepauk,
Chennai – 5.

5. The District Collector,
Tiruchirappalli District.
Tiruchirappalli.

6. The District Collector,
Karur District,
Karur.

7. The Superintending Engineer,
Cauveri River bed,
Public Works Department,
Tiruchirappalli District.

8. The Executive Engineer,
Cauveri River bed,
Public Works Department,
Mukkombu (Elamanur),
Srirangam Taluk,
Tiruchirappalli District.



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9. The Inspector of Police,
Pettavaithalai Police Station,
Trichy District.

10. The State Environment Impact
Assessment Authority,
9, Jeenis Road,
Near Government Hospital,
Anna Nagar West,
Saidapet, Chennai.
(R10 is *suo motu* impleaded
by order dated 21.12.2023)

... Respondents

Prayer in W.P.(MD)No.19637 of 2014: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the respondents to pay compensation to the petitioner for the death of his wife Umadevi (31) and daughter Deepa (12) on 29.04.2013 at River Cauveri due to quick sand, near Perugamani, Srirangam Taluk, Trichy District pursuant to the representation dated 11.11.2014.

Prayer in W.P.(MD)No.19638 of 2014: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the respondents to pay compensation to the petitioner for the death of her daughter Praveena (18) on 29.04.2013 at River Cauveri due to quick sand, near Perugamani, Srirangam Taluk, Trichy District pursuant to the representation dated 11.11.2014.



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Prayer in W.P.(MD)No.19639 of 2014: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the respondents to pay compensation to the petitioner for the death of his son Jeevanatham (10) on 29.04.2013 at River Cauveri due to quick sand, near Perugamani, Srirangam Taluk, Trichy District pursuant to the representation dated 11.11.2014.

For Petitioner in all W.Ps.	: Mr.K.M.Boopathy
For R1 to R9 in all W.Ps.	: Mr.R.Baskaran, Additional Advocate General assisted by Mr.G.V.Vairam Santhosh, Additional Government Pleader
For R10 in all W.Ps.	: Mr.Dhilip Kumar, Standing Counsel

COMMON ORDER

W.P.(MD)No.19637 of 2014 has been filed by one Sasikumar for issuance of a Writ of Mandamus, directing the respondents to pay compensation for the death of his wife Umadevi and his daughter Deepa, in the river Cauvery, due to drowning, on 29.04.2013.



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2. Similarly, one Praveena and Jeevanatham, the daughter and son of the petitioners in W.P.(MD)Nos.19638 and 19639 of 2014 respectively, also died in the river Cauvery due to drowning on the same day. Therefore, the other two writ petitions in W.P.(MD)Nos. 19638 and 19639 of 2014 have been filed for the very same relief.

3. The case of the petitioners is that there was a temple festival on 29.04.2013 for Mariamman and Kaliasman Temple in their village and as a part of the festival, Theerthavari (தீர்த்தவாரி) was conducted in the river Cauvery around 06.30 a.m. In the said festival, two hundred (200) persons have participated and taken holy bath in the river Cauvery, at that time, the above four persons got trapped in the quick soil and died due to drowning. On the complaint of one Periyasamy of Nangavaram Village, a criminal case was registered by the Sub-Inspector of Police, Pettavaithalai Police Station, Tiruchirappalli, in Crime No.57 of 2013 on 28.04.2013 at about 09.45 a.m. The petitioners, with a specific averment that the death was



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occurred due to quarry operations in the river Cauvery, filed the writ petitions seeking compensation.

4. The respondents have taken a stand that the victims got trapped due to quick sand and not due to quarry operations. According to them, there was no quarry operations within a radius of 1500 meters from the place of incident.

5. The learned counsel appearing for the petitioners submits that the quick sand itself is a man-made one, due to illicit quarry operations permitted in the river Cauvery. According to the learned counsel appearing for the petitioners, there are so many quarry operations in river Cauvery and the quarry operations are also conducted to the depth of 10 meters without following any guidelines and therefore, there are so many pits in various dimensions in river Cauvery, which has resulted in the death of victims.



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6. The contention of the respondents is that the sand quarries are operated only by quarrying excess hump of sand more than the bed level and also to an extent of one meter below the bed level. These quarries would also be levelled by way of continuous flow of water and therefore, there is no chance for formation of quick sand emanating due to the sand quarry. In fact, while fixing the area for quarrying sand all essential factors have been taken into account and formation of quick sand has nothing to do with quarrying. They have also taken a stand that they have fixed warning boards in that place, depicting the danger and the deceased, without heeding to the warning, ventured into the river moving through quick soil. They further state that as per the legal maxim “VOLENTI NON FIT INJURIA”, the petitioners are not entitled for any relief as claimed by them.

7. This Court has considered the rival submissions made.



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8. There was a festival on 29.04.2013 in the Village and to take

holy bath in the river Cauvery, the people went to the river Cauvery. It is not the petitioners' family alone went to the river Cauvery, around 200 people of that particular village have also accompanied them at the time of incident. Unfortunately, the deceased persons have drowned in the river Cauvery and that incident, according to the petitioners, is due to indiscriminate and illegal quarry operations. The respondents claim that the incident had occurred due to quick sand and they have also placed warning boards to the people from having a dip in that place. If there was any warning board affixed in that place, as claimed by the Department, then, at least, any one of 200 persons, who have accompanied the victims, would have altered and prevented them from taking bath in the river Cauvery. It is not known as to whether this warning board was fixed prior to the incident or after the incident. It is also stated that the villagers have assembled in that place for the temple festival. If 200 persons have assembled in the temple festival, then the police are expected to be there and to be vigilant to avoid any untoward



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incident. It is not known as to whether the police personnel were present at that time or not. The temple festival is also performed every year in that Village. The Village Administrative Officer of that village must be knowing about the festival of Theerthavari on that particular day and if there is no warning board, then, necessary precautionary measures ought to have been taken during the festival.

9. The learned counsel appearing for the petitioners has also relied on a Judgment of the Division Bench of this Court passed in a batch of writ petitions in W.P.(MD)No.4251 of 2017 etc. dated 16.02.2018. In the said batch of writ petitions, a similar claim was made for compensation due to drowning in river Cauvery in W.P. (MD)No.17531 of 2017. The Division Bench of this Court, by order dated 16.12.2018, has allowed the writ petition for payment of compensation. The relevant paragraphs are extracted as under:

“W.P.(MD)No.17531 of 2017 Payment of Compensation

54. The illegal quarrying operation with the



blessings of the authorities concerned contributed for making huge pits to the depth of 30 to 40 feet on the river bed of Cauvery flowing through the district of Karur. The Public Works Department also quarried sand in this area more than the permitted depth. The son of the petitioner drowned in the pit. The incident took place solely on account of the negligence and inaction of the officials of the Public Works and Revenue Department. The area is covered by the mining lease given to the Public Works Department for undertaking sand quarrying operations. The report submitted by the Advocate Commissioners clearly shows that mining operation was undertaken in the area beyond the permitted depth. The permission was to take one metre depth. However, sand was taken 30 to 40 feet below the water level and as a result, huge pit was found. The post-mortem report clearly shows that the death was on account of drowning. The petitioner is therefore justified in his contention that the State is liable to pay him compensation.

55. The deceased was 19 years. He was a third year student of Engineering in Computer Science at VSB Engineering College, Karur. He was a bright student. The



petitioner lost his son at the age of 19 years. The hope of the petitioner that his son after getting employment would support the family is shattered on account of his untimely death. The State has not filed any counter affidavit in answer to the contentions taken in the affidavit filed in support of the writ petition for awarding compensation. There is nothing on record to disbelieve the case pleaded by the petitioner.

56. The old concept of maintainability of the writ petition under Article 226 of the Constitution for awarding compensation has undergone a sea change. The judicial concern now stands on the footing to provide emergent relief to the aggrieved rather than driving him to the Civil Court. The Courts have awarded compensation in Public Law without relegating the parties to the remedies available in Civil Law. We are therefore of the view that the claim is maintainable before this Court and that the petitioner is entitled to just compensation.

57. The next issue pertains to the quantum of compensation.

58. The multiplier method indicated in the Motor Vehicles Act is the safe method to assess the



compensation in a case of this nature.

59. The issue before the Supreme Court in M.S.Grewal and another v. Deep Chand Sood and others [(2001) 8 SCC 151] was the legality of the claim for compensation on account of the drowning of children studying in 4th standard to 6th Standard. The Supreme Court while confirming the judgment of the High Court granting compensation approved the multiplier method for arriving at the quantum.

60. Most recently, in National Insurance Company Limited v. Pranay Sethi and others [2017 (3) Scale], the Hon'ble Supreme Court indicated the factors to be taken note of including future prospectus by adopting multiplier method, for arriving at a just compensation.

61. Since the age as on the date of death was 19, the applicable multiplier is 16. The deceased was a student of third year Engineering course. He would have completed the course within one year. Taking into account the judgment of the Supreme Court in Pranay Sethi (cited supra), indicating that while determining the income addition of 50% of the actual salary to be included towards future prospectus, we uniformly fix the monthly income at Rs.20,000/-. The annual income



would be a sum of Rs.2,40,000/-. In case, it is multiplied by 16, the total amount would come to Rs.38,40,000/- (Rupees Thirty eight lakhs forty thousand only) If 1/3 is deducted, it would come to Rs. 25,60,000/-. We add Rs.60,000/- on conventional head, namely loss of estate, loss of consortium and funeral expenses. The total amount would come to Rs.26,20,000/- lakhs. We fix the total compensation at Rs.26,00,000/- lakhs (Rupees Twenty six lakhs only) taking into account the entire background facts.

62. The State is vicariously liable for the acts and omissions of its servants.

63. We therefore direct the State to pay a sum of Rupees Twenty Six lakhs as compensation to the petitioner on account of the unfortunate death of his son. This incident should be an eye opener to the State. The State must act as a responsible body to protect the life of the citizens. The Payment shall be made by the first respondent within a period of eight weeks from the date of receipt of a copy of this order along with interest at 9% from the date of filing the writ petition.”



10. In that case, the Division Bench of this Court has appointed an Advocate Commissioner and after considering the issue elaborately, passed orders issuing directions to the State to conduct quarry operations, without affecting the environment and ecology and to ensure the transparency and accountability in sand production and distribution. The directions issued by the Division Bench also would be relevant to be incorporated and the same are extracted hereunder:

“Direction to the State

43. The quarrying operations, even in those quarries where there are shoals of sand, must be undertaken only by abiding the norms and conditions of the environmental clearance. The quarry site shall be closed immediately after removing the available shoals of sand. The area and the depth of the quarry shall be in accordance with the permission granted by the environmental authorities. Such quarrying operations would be subject to the result of the Special Leave Petition pending before the Hon'ble Supreme Court in SLP No.2831 of 2018.

44. The State must take immediate measures to remove the approach roads and close the quarry sites at



Thiruvasi, Kiliyanallur, Unniyur, Kariamankam, Alambadi, Manamedu. The removal of the approach roads and the closure of the sand quarry must be personally monitored by the Project Director.

45. The Government must undertake a scientific study with the help of experts to identify the mineral deposits and its exact location. The State must excavate the minerals only from the places identified by the experts and by following the conditions imposed by the environmental authorities. Interlinking roads inside the river must be removed to check the illegal mining and transportation of minerals. The levelling of roads inside the river shall be done on a phased manner and giving priority. The sand mining shall not be undertaken in respect of locations where illegal sand mining has already been carried out.

46. The State must ensure that the sand quarries would adhere to the norms regarding extent and depth. The boundary of the quarry shall be demarcated by following the procedure set-out under Clause 2 (ii) of the conditions imposed by the environmental authority.

47. The Project Director must ensure robust monitoring of the sand mining. In case of any violation



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of the conditions prescribed by the environmental authority, the same shall be reported by the field official to the Project Director. The Project Director must take immediate action for suspension of the quarrying operations pending enquiry.

48. The officer in-charge of the sand quarry must be made personally accountable for violation of any of the conditions. Both legal and departmental action should be taken against the officials indulging in illegal quarrying or excess quarrying in collusion with the lifting agents and transport operators.

49. The present procedure of engaging sand lifting contractors must be abolished. The lifting contractors must be appointed through e-tender by following a transparent procedure. The endeavour of the licensee must be either to hire or purchase necessary equipments for sand lifting from the quarry. The existing lifting contractors must be directed to backfill the pits at all quarry sites to level the quarried area and to avoid ponding and visual effect. Need for Surveillance

50. The Court Commissioners have observed that clearance from the State Environment Impact Assessment Authority (SEIAA) has been routinely



obtained for river sand mining without divulging the material factors like existence of Bridge, Water supply system etc. The SEIAA without conducting field inspection and cross checking the details permitted quarrying. There is no mechanism now to ascertain as to whether the conditions imposed by the SEIAA have been complied with by the licensee. This issue must be addressed by the Government and SEIAA. Before granting permission for the sites, where sand is available, the SEIAA must visit the place indicated in the application for sand mining. The boundaries of the site must be shown in the mine plan and excavation must be within the boundaries. The Project Director must fix the pucca permanent pillar boundaries for excavation. The Project Director must ensure that stones are erected at 50 metre intervals along the boundaries with the marking of Shoal height, River Bed Height and depth to be excavated. The State must streamline the entire process right from site selection to operation of quarry and supply of sand in an ecologically friendly and environmentally sustainable manner. The entire quarry sites must have CCTV. There must be IP cameras set up in all the poclains for monitoring the overloading. The



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State must include environmental experts from reputed Central/State Institutions preferably from Indian Institute of Technology to be part of the District Task Force. It must be the responsibility of the concerned District Collector to oversee, monitor and streamline the functioning of the sand quarrying. The Taluk and District level task force must be sensitized. The officials of the Public Works Department and others involved in the process must be given training periodically in relation to environmental and legal aspects of sand quarrying. The Government must fix liability on officials, who are violating the conditions of the clearance or permitting excess quarrying. The jurisdictional Revenue, Police, Geology and Transport department officials must be taken to task in case of illegal quarrying or transportation of sand without permission. The State Appellate Forum constituted by the order in G.O.Ms.No.27 Industries Department dated 17 February 2015 must be a vibrant body. The Government must set up a centralised control room to monitor sand quarrying operations, one at Chennai and the other at Trichy as undertaken in the affidavit. The Centralised Monitoring through CCTVs must be taken up through live streaming from the control



room. There must be a Customer Care Centre to receive complaints and take action on such complaints. The action taken report must be sent to the complainant and it must be available on line.

51. The Government has undertaken to evolve an "APP" like "OLA Cabs" and "UBER" to assist the sand lorries with GPS fixed in all such vehicles. The process must be implemented forthwith to check on illegal transportation of sand.

52. The Government must issue an order incorporating the measures to be taken to prevent the excess mining and illegal mining. It should cover all the aspects of the River sand mining for ensuring safe and orderly mining without affecting the environment and ecology and to ensure transparency and accountability in sand production and distribution. The Government Order must include all the measures indicated in the affidavit filed by the Principal Secretary to the Government for a foolproof system of mining in an ecologically friendly and environmentally sustainable manner.”



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11. The quality of sand in river Cauvery is high, which is being exploited by the Government. From a data of the year 2014-2015, which is available from the web-site of Ministry of Environment and Forests, there were 85 sand quarries in the State of Tamil Nadu, out of which, 29 leases were less than 10 hectares, 14 leases were within 10 to 15 hectares and 42 leases were more than 15 hectares.

12. Considering the facts and circumstances of the case, this Court, by order dated 27.06.2023 directed the respondents to furnish the following details:

“(i) as to the number of deaths that had occurred in the river Cauvery for the past ten years, on account of the alleged quick sand;

(ii) what is the mechanism adopted by PWD to identify the places where there is a possible of quick sand; and

(iii) in how many places, caution boards have been affixed across river Cauvery.”



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13. In response to the same, the Executive Engineer, Water Resources Department, R.C.Division, Trichy, has filed a report that as per the police report dated 21.06.2023, from the year 2013 to 2022, seven people were died due to drowning in river Cauvery.

14. With regard to the second query, the Executive Engineer has replied that while discharging the huge quantum of water in the river, the sand and silt particles will also travels from place to place and got settles at various places; this loose sand will be fully saturated condition and it will form quick sand; it is unable to predict the location of quick sand; it will differ from place to place; and as the river length is more than 205 k.m., it is unable to watch and ward frequently.

15. For the third query, the Executive Engineer has stated that in nine places, caution boards have been affixed in Mayanoor Barrage, Mukkombu Barrage and Kambarasampettai Check dam.



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16. From the report available, apart from the kith and kin of the petitioners, several other persons have also died in river Cauvery due to drowning. Compensation was already provided by the Division Bench of this Court in W.P.(MD)No.17531 of 2017 etc. (batch cases), by order dated 16.12.2018.

17. The criminal case which was registered in Cr.No.57 of 2013 on 28.04.2013 has not been closed. Though the 9th respondent/the Inspector of Police, Pattavalithalai Police Station, Trichy District, has filed a counter affidavit, there is no reference about the criminal case which has been registered in the year 2013 and there is no reference about the outcome of the investigation in the report and in the additional typed set of papers filed on behalf of the Government on 30.06.2023.

18. After the queries made, the 8th respondent has come forward to pay reasonable compensation in accordance with the procedure



established by law for the loss which was occurred to the petitioners

herein. The relevant paragraphs are extracted as under:

“9. I further submit that despite the abovesaid negligent act of the petitioner's family, being a Welfare State, the Government Machinery has taken a sympathetic and humanitarian approach towards the case in hand. Hence, the Government is ready to pay the reasonable compensation in accordance with the procedure established by law, for the loss which was occurred to the petitioner herein, whereas, since the matter is subjudice before this Hon'ble Court, the matter was kept in abeyance till further orders from this Hon'ble Court.

10. I further submit that a reasonable compensation would be provided to the petitioner for his loss in obedience to the orders of this Hon'ble Court in the manner known to law and the State is ready to comply with the directions, if any.

11. It is pertinent to be noted that neither the petitioner approached the concerned authorities nor filed any new representations in order to process the compensation after filing this Writ. Moreover, since the



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case is pending for disposal before this Hon'ble Court, the authorities were hesitant too in processing the compensation to the petitioner.

Therefore, in the light of the abovesaid facts and circumstances, it is evident that the respondents being a Welfare State is always ready to comply with the orders and directions which are to be issued by this Hon'ble Court.”

19. In view of the specific stand taken by the respondents that they are prepared to pay compensation on sympathetic and humanitarian consideration, these writ petitions are allowed with a direction to the respondents to pay compensation to the victims as provided in a similar case in W.P.(MD)No.17531 of 2017 etc. (batch cases), within a period of 12 weeks from the date of receipt of a copy of this order.

20. Before parting with, it is pertinent to note that Rule 38-A of the Tamil Nadu Minor and Minerals Concessions Rules 1959 was



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brought into force by the Government on the recommendations of the High Level Committee, which was constituted pursuant to the allegations of indiscriminate mining in the river Cauvery. The object of Rule 38A of the Tamil Nadu Minor and Minerals Concessions Rules 1959 is to eliminate any quarry operation by any private individual in sand mining. But, the object of the rule has been defeated by allowing quarry operations through private individuals. The PWD Water Resources Department is the Government Agency permitted to conduct sand quarry. But, the sand quarries are operated only through the Lifting Contractors (private individuals). The Lifting Contractors are exploiting the same and conducting quarry operations without following the mining plan which was submitted by the Public Works Department for grant of lease and also the conditions stipulated by the State Environment Impact Assessment Authority, since there is no accountability on them.

21. The State Environment Impact Assessment Authority, which



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was constituted pursuant to the orders of the Hon'ble Supreme Court in the case of ***Deepak Kumar vs. State of Haryana & Others***, reported in ***2012 (4) SCC 629***, is granting Environment clearance with certain conditions. There is no mechanism available to ensure that the quarry operations are conducted in accordance with the conditions imposed by the State Environment Impact Assessment Authority. The State Environment Impact Assessment Authority is also not having any manpower to monitor the quarry operations after the grant of lease and the conditions imposed by them appears to be an empty formality. The spirit of the order of the Hon'ble Supreme Court in ***Deepak Kumar's*** case is not implemented. Seven persons said to be died due to drowning in river Cauvery. All of them make allegations that it was due to sand quarry permitted in river Cauvery.

22. Considering the consequences arising out of the quarry operations, this Court *suo motu* impleads the State Environment Impact Assessment Authority, Tamil Nadu, as one of the party to these writ



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petitions and directs Mr.Dhilip Kumar, learned Standing Counsel for the State Environment Impact Assessment Authority, to take notice for the newly impleaded respondent. The State Environment Impact Assessment Authority, which grants environment clearance for quarry operations with certain conditions, is also expected to monitor these quarry operations by constituting a Committee and to ensure that the conditions imposed by them particularly in sand quarries are complied with scrupulously by the lessee or licensee. No costs.

21.12.2023

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

To

1. The Secretary to Government,
Home Department,
Secretariat, Fort St. George,
Chennai – 9.

2. The Secretary to Government,
Public Works Department,
Secretariat, Fort St. George,
Chennai – 9.

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3. The Secretary to Government,
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Tiruchirappalli District.
8. The Executive Engineer,
Cauveri River bed,
Public Works Department,
Mukkombu (Elamanur),
Srirangam Taluk, Tiruchirappalli District.
9. The Inspector of Police,
Pettavaithalai Police Station,
Trichy District.



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10. The State Environment Impact
Assessment Authority,
9, Jeenais Road,
Near Government Hospital,
Anna Nagar West,
Saidapet, Chennai.

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Pre-delivery order made in
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21.12.2023