



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.07.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.8491 of 2024

and

WMP.Nos.9441 & 9442 of 2024 &
10286, 10288 & 10293 of 2024

S.Jagankumar

... Petitioner

Vs.

- 1.The Secretary to Government,
Government of Tamil Nadu,
Industries Department,
Fort St. George, Chennai -600009.
- 2.The Secretary to Government,
Government of Tamilnadu,
Department of Environment, Forest &
Climate Change Department,
Fort St. George, Chennai - 600009.
- 3.The Member Secretary,
State Level Environment Impact Assessment Authority
Panagal Maligai, Jennis Road
Saidapet, Chennai -600015.
- 4.The Tamil Nadu Pollution Control Board,
Rep by its Member Secretary, Chennai
76, Mount Salai, Guindy, Chennai - 600 032.
- 5.The Commissioner,



W.P.No.8491 of 2024

Department of Geology And Mining, Guindy,
Chennai -600 032.

WEB COPY

6.The District Collector/Chairman District Monitoring Committee,
Tiruvallur District, Thiruvallur -602101.

7. The Assistant Director,
Department of Geology and Mining,
Thiruvallur District -602101.

8.The Revenue Divisional Officer (RDO),
Ponneri, Thiruvallur District -601204.

9.A.Shankar

10.The Secretary,
Ministry of Environment,
Forest and Climate Change,
Government of India, New Delhi.

... Respondents

(R10- Suo motu impleaded as per order dated
05.06.2024 in WP.8491 of 2024 by this Court)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing Respondents 2 to 8 not to permit any mining by the 9th respondent or any person, of minor minerals without mandatory environmental clearance under the EIA Notification, 2006, consent to establish and operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and consequentially prosecute the 9th respondent for carrying on illegal mining at S.No. 69 (Part), Pallavada village, Gumudipoondi Taluk, Thiruvallur District.

For Petitioner : Mr.A.Yogeshwaran



W.P.No.8491 of 2024

For Respondents : Mr.P.Muthukumar, Additional Advocate General
assisted by Mr.Stalin Abhimanyu
Additional Government Pleader
(for R1, R5, R6, R7 & R8)

Mr.S.Rajesh (for R2)
Government Advocate

Mr.V.Chandrasekaran (for R3 & R10)
Senior Panel Counsel

Mr.V.Gunasekaran (for R4)

Mr.T.N.Rajagopalan (for R9)
For Mr.S.V.Vijay Prashanth

ORDER

The petitioner is aggrieved by the alleged illegal mining of gravel by R9 since 20.03.2024 at S.No.69 (Part) Pallavada Village, Gummidipoondi Taluk, Thiruvallur District ('property'/'property in question') without obtaining environmental clearance under the EIA Notification, 2006, and required consents under the Water and Air enactments.

2. At the outset, a query was raised on the maintainability of the writ petition, and the petitioner would respond pointing out that he is resident of the village (Manellur Village), which is directly impacted by the alleged illegal mining operation. Petitioner submits that Manellur village is one of many small agricultural villages that abut the property in question. He complains that



W.P.No.8491 of 2024

R9 is transporting gravel in big trucks on the narrow village roads causing health hazard and pollution, apart from posing a serious public safety hazard to the residents of the village.

3. The history of this matter can be traced by recording a series of docket order passed from the time of its admission on 27.03.2024. Hence orders dated 27.03.2024, 23.04.2023 and 05.06.2024 are extracted below:

Order dated 27.03.2024

'The prayer in this writ petition is for a mandamus directing respondents 2 to 8 not to permit any mining activity presently being carried on by the 9th respondent in S.No.69 (Part), Pallavada village, Gumudipoondi Taluk, Thiruvallur District, allegedly without mandatory environmental clearance.

2.Mr.Stalin Abhimanyu, learned Additional Government Pleader accepts notice for R1, R5, R6, R7 and R8 and Mr.P.Muthukumar, learned Additional Advocate General appears for him. Mr.S.Rajesh, learned Government Advocate accepts notice for R2 and Mr.V.Chandrasekaran, learned Senior Panel Counsel accepts notice for R3.

3.Notice through Court as well as privately to R4 and R9, returnable 02.04.2024. Proof of service be placed on file.

4.The 3rd respondent has circulated a copy of Environmental Clearance issued in Letter No.SEIAA-TN/F.No.7346/1(a)/EC.No:4265/2020 on 30.06.2020, which does not appear to have been uploaded as per applicable regulations.

5.On perusal of the licence, the petitioner would shift his stance, pointing out that under Clause 3 of Part A of the licence, which stipulates the conditions to be complied before commencement of mining operations, a no objection certificate



W.P.No.8491 of 2024

ought to have been obtained from the Standing Committee of the NBWL, if protected areas are located within 10 kms from the proposed project.

6. In the present case, the protected area is stated to be Pulicat Bird Sanctuary. Some material is also filed by the petitioner to establish that the Pulicat Bird Sanctuary falls within the limit of 10 kms and reference, in this regard, is made to a decision of the National Green Tribunal in Appeal Nos.32 and 34 of 2020 dated 30.09.2022.

7. Respondent counsel would seek a few day's time to obtain clarity on this aspect of the matter. The litigation now takes a non-adversarial turn as it is the interest of all parties concerned, to ensure that the activity carried on by R9 is in accordance with the licence terms.

8. List on 02.04.2024 at the end of admission list. Counter be filed by the respondents prior thereto with a copy served in advance upon the parties. Till then R9 shall desist from carrying on mining activity in the site in question.'

Order dated 23.04.2024

'The grievance of the writ petitioner is that without obtaining mandatory environmental clearance and without complying with the statutory requirements under various enactments, quarrying operations are permitted by the authorities in violation of the Rules. An interim order of injunction has been granted by this Court at the admission stage.

2. Mr.P.S.Raman, learned Advocate General appearing on behalf of the respondents 1, 5, 6, 7 and 8 would submit that the project site as per the proponent situated beyond 10 Kilometres from the Pulicat Wild Life Bird Sanctuary and therefore, no such clearance is required.

3. Mr.T.N.Rajagopalan, learned counsel for the 9th respondent would submit that the proponent has submitted the



WEB COPY

application in consonance with the provisions of the Act and all requisite mandatory clearances were obtained to carry out quarrying operations. The period of lease was 55 days, which is going to end on 7th May, 2024. On account of an interim order the quarrying operations are not carried on and therefore, the 9th respondent is to be permitted to continue the quarrying operations as per the original lease including the number of days stipulated in the lease.

4. It is not in dispute between the parties that the mandatory requirements as contemplated under the enactments are bound to be complied with.

5. The 3rd respondent / State Level Environment Impact Assessment Authority filed a counter affidavit stating that “Prior clearance from Forestry and Wild Life including clearance from Committee of the National Board for Wild Life as shall be obtained before starting of the quarrying operation, if the project site attracts the NBWL clearance”. Thus, the 3rd respondent is not assertive about the distance between the Wild Life Birds Sanctuary and the project site.

6. This Court based on pleadings at this stage cannot form a final opinion regarding distance criteria as contemplated under the enactments. In order to adopt balanced approach, it is necessary to ascertain the distance criteria for the purpose of permitting the 9th respondent to continue the quarrying operations as per the lease executed.

7. In view of the facts and circumstances, the 3rd respondent / State Level Environment Impact Assessment Authority with the assistance of the competent or relevant authorities under various enactments shall conduct survey, measure the distance from the project to the Pulicat Wild Life Birds Sanctuary and find out, whether the project site situate beyond the distance of 10 Kilometres from the Pulicat Wild Life Birds Sanctuary or not?

8. Thereafter, the 3rd respondent is directed to pass an order regarding the distance criteria and communicate the same to the



W.P.No.8491 of 2024

WEB COPY

petitioner and the other respondents within a period of two (2) weeks from today.

9. If the distance between the project site and the Wild Life Birds Sanctuary is beyond 10 Kilometres, then the 9th respondent lessee is at liberty to commence its quarry operations. In such circumstances, the respondents shall permit the 9th respondent to quarry gravels for the un-operated remaining period and for the number of days when the interim order of this Court was in force. However, quarry cannot be operated beyond the total number of days granted under the lease.

10. If the distance between the project site and the Wild Life Birds Sanctuary is falling within 10 Kilometres, then the 9th respondent is prohibited from quarrying gravels and the authorities in such circumstances shall initiate all appropriate actions to protect the subject property free from quarrying operations and initiate all further actions in accordance with law.

11. The present interim orders are directed to be implemented by all authorities within a period of two (2) weeks from today and the 3rd respondent is directed to file a report before this Court on 05th June, 2024.

12. List the matter on 05.06.2024, under the caption “For Reporting Compliance”.

Order dated 05.06.2024

‘Read this order in continuation of and in conjunction with orders dated 27.03.2024 and 23.04.2024.

2. Today a status report has been filed by the 3rd respondent SEIAA-TN, wherein they state that the distance from the project site to the Pulicat Wildlife Bird Sanctuary is in excess of 10 kms. Some clarity is required in respect of the methodology followed to arrive at the aforesaid measurement. The Court is given to understand that the Decision Support System of the Secretary, Ministry of En-



W.P.No.8491 of 2024

environment, Forest and Climate Change, Government of India, New Delhi will be in possession of the necessary information.

3.Hence, the Secretary, Ministry of Environment, Forest and Climate Change, Government of India, New Delhi is suo motu impleaded as R10 and Mr.Chandrasekaran, learned Senior Panel Counsel accepts notice for R10. He will ensure that the complete records in regard to quantification of the shortest distance between the quarry site and the perimeter of the Pulicat Wildlife Bird Sanctuary and Lake are furnished with supporting material and co-ordinates.

4.The 9th Respondent has been permitted to continue with the quarrying activities after the Report of the SEIAA-TN cleared the distance hurdle. However, and thereafter, Mr.Stalin Abhimanu, learned Additional Government Pleader, for R1, R5, R6, R7 and R8 confirms that the 9th respondent has been directed to refrain from quarrying activities. This position will continue till the next date of hearing.

5.List on 11.06.2024 at 2.15 p.m. '

4. On 18.06.2024, an e-mail containing the following input was placed before the Court:

'2.Today, an email is filed, which contains the following input:

'2.The National Informatics Centre (NIC) of the Ministry of Environment, Forest and Climate Change has informed on the basis of KML file provided by the State Level Impact Assessment Authority, Tamil Nadu (copy enclosed), the shortest distance between the quarry site bearing coordinates Lat, Long (13.4721, 80.0151) and the perimeter of the Pulicat Wildlife Bird Sanctuary and Lake bearing co-ordinates Lat, Long (13.4876, 80.0813) as per the Decision Support System



WEB COPY



W.P.No.8491 of 2024

(DSS) is 7.52 Kms. A copy of the Map is enclosed herewith for reference.'

5. The matter was adjourned to 21.06.2024 at the instance of R9, to enable him to take instructions. On that date, the objections of R9 in regard to the contents of e-mail dated 11.06.2024 were heard. In that e-mail, the Decision Support System (DSS) of the Ministry of Environment, Forest and Climate change has set out the co-ordinates of the quarry and the Pulicat lake and the distance between the two closest points of the quarry and the lake.

6. However, a perusal of the project report reveals that the co-ordinates of the quarry have been set out in degrees, minutes and seconds whereas in e-mail dated 11.06.2024, the co-ordinates are set out in decimals. Since the Court had required some clarity on the method by which the DSS had arrived at the latitude and longitude of the quarry and of the lake, Mr.V.Chandrasekaran, learned Senior Panel Counsel, was asked to produce complete records of the DSS revealing its methodology.

7. In response, compilation dated 26.06.2024 had been filed containing two (2) documents including the analysis of the map furnished by R9 by the National Informatics Centre of the Ministry of Environment, Forest and Climate Change. The specific objection put forth by R9 was that the distance set out in



that map corresponded with only one set of the co-ordinates and the mapping was hence incomplete.

8. The petitioner then produces another map (enclosed with this order as Annexure-1) setting out the co-ordinates of the quarry and Pulicat lake on all four sides. The proceedings of the hearing on 26.06.2024 were recorded as follows:

'3. Mr.Yogeshwaran has filed a map with the distances in respect of all four of the coordinates viz., La:13°28'21"N, Lo:80°00'54"E; La:13°28'15"N, Lo:80°00'49"E; La:13°28'05"N, Lo:80°00'39"E; La:13°27'59"N, Lo:80°00'29"E, as 7.370 kms, 7.560 kms, 7.930 kms and 8.270 kms respectively. Thus, in all four instances, the petitioner states that the distance between the quarry and the Pulicat Reserve is less than 10 kms.'

9. The map filed by the Petitioner reveals that in all the four points plotted, the distance between the quarry and Pulicat Reserve is less than 10 kms, which is in violation of the norms under the EIA 2006 that require a minimum distance of 10 kms to be maintained between the quarry site and ecologically sensitive areas.

10. A twist in the tale has been occasioned pursuant to a report of the District Collector. Consequent on the decision of this Court dated 23.04.2024, the District Collector had sought information from the Range Officer of the Forest Department who had confirmed that the distance between the quarry and the Pulicat Reserve is in excess of 10 kms.



W.P.No.8491 of 2024

11. The State was asked to produce the records on the basis of which the Range Officer had made this assertion. The complete records were produced and the Court is unable to locate any material on the basis of which the Range Officer could have arrived at such a conclusion. Hence, communication from the District Collector, dated 07.05.2024 upon which R9 places great reliance, is found to be misconceived and misplaced. Clearly, the information provided by the Range officer is unilateral and bereft of the support of any scientific method or material, to have led to such a conclusion.

12. The Supreme Court had considered the integrity of projects in violation of Environmental Impact Assessment in the case of *Hanuman Laxman Aroskar v. Union of India*¹. That case dealt with a challenge to the grant of environmental clearance for the development of a Greenfield International Airport at Goa. The National Green Tribunal by judgment dated 21.08.2018 had concluded that there was no violation of environmental norms, adding however certain safeguards for better environmental protection as against which order an appeal was filed.

13. While deciding the challenge, the Supreme Court had specifically noticed the application form filed by the applicant seeking project clearance, in Form-1 or Form-1A, as applicable. This Environmental Impact Assessment

¹ 2019 (15) SCC 401



report is the basis on which the authority would proceed to consider the grant of clearance and at paragraph 62, the Bench has this to say in the context of the importance of the information provided under Form-1:

‘The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 Notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately. Clause (vi) of Para 8 of the notification provides thus:

“Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.”’

14. They thus conclude that there can be no manner of doubt that Form-1 is an important ingredient in the process of environmental clearance envisaged under the 2006 Notification. If an applicant is thus found to have provided



W.P.No.8491 of 2024

erroneous or misleading information or data or deliberately concealed information which is material to screening, scoping or appraisal of the application, such an act shall render the application liable for rejection leading to cancellation of any environmental clearances granted prior thereto. Such is the importance that has been attributed to the declaration / verification in Form-1.

15. In light of this, I now examine Form-1 filed by the petitioner, placed at page 42 onwards in compilation dated 27.03.2024. The Form contains a specific requirement that due disclosure be made of '*Factors which should be considered (such as consequential development) which could lead to environmental effects to environmental effects or the potential for cumulative impacts with other existing or planned activities in the locality [Environmental Sensitivity]*'. One of the stipulations thereunder is to the effect that the project site should not be proximate or within the prohibited distance from any Reserve.

16.R9 has, at serial no. 1, stated that the Pulicat Lake is at a distance of 10.06 kms from the project site. Clause 3.2 in the project report under the head 'PROJECT DESCRIPTION' reads as follows:

'3.2 Location (map showing general location, specific location, and project boundary & project site layout) with coordinates



WEB COPY



W.P.No.8491 of 2024

- *The project lease area is about 4.41.18Ha.*
- *The project area is located at Pallavada. It is a Government land.*
- *The area falls in GSI Toposheet no. 57 O/14, 15, 66 C/2, 3.*
- *The Latitudes for Block-I is between 13°27'59"N to 13°28'05"N & for Block-II is between 13°28'15"N to 13°28'21"N.*
- *Longitudes for Block-I is between 80°00'29"E to 80°00'39"E for Block-II is between 80°00'49"E to 80° 00'54"E.'*

17.The above co-ordinates have been taken for earmarking of the distance between the quarry site and the Pulicat lake per the map at paragraph 8 above. Hence, the Declaration in the Form that the project is compliant with EIA norms is apparently incorrect. The petitioner has, by means of a demonstration in the Court, explained the manner in which the measurements between co-ordinates have been made.

18.The demonstration of the mapping of the distances at four points concluded, on all four occasions, adverse to R9, as the distance was in excess of 10 kms. R9, has indicated in the Project report that professional assistance had been obtained in completion of the Form as it called for technical and scientific data. In such circumstances, it is a mystery as to how the report concludes that the proposed project is compliant with the norms.

19.In fact, R9 was also afforded sufficient opportunity to explain the methodology used by it to come to the conclusion that the distance between the



W.P.No.8491 of 2024

Pulicat Reserve and lake was less than 10 kms. However, there has been no explanation provided. The mere fact that the distances were in decimals in one case and degrees, minutes and seconds in the other does not appear relevant as in the ultimate analysis the distance between the Reserve/Lake and the quarry site exceeds 10 kms.

20. In light of the fact that the distance as projected in Form-1 is incorrect, there is a misdeclaration by R9. The consequence of this, as per the judgment of the Supreme Court, is the cancellation of the licence itself. In light of the detailed discussion as aforesaid, the petitioner's prayer for mandamus to the respondents to prevent R9 from mining without mandatory environmental clearance is seen to have merit. Let the needful be done by the respondents in this regard, forthwith.

21. The petitioner has also seeks a direction to the respondents to prosecute R9. The Court finds merits in this plea as well in light of the discussion supra. There is thus a direction to the respondents to initiate proceedings in this regard, and in accordance with law and extant regulations.

22. A footnote. The manner in which environmental clearances are being issued, mostly in an automated and mechanical fashion, has been adversely commented upon by the National Green Tribunal, Southern Zone in *D.Ranjith*



W.P.No.8491 of 2024

*Kumar and another v. Union of India and others*². In that matter, the grant of environmental clearance was challenged in circumstances similar to the present matter. In that matter too, the project proponent had stated that there was no environmentally sensitive/ protected area within the 10 kms range of the proposed quarry site and the support of the decision support system was obtained which had opined that the sanctuary was located 5.5 kms from the site.

23. In the course of that order, the National Green Tribunal has deprecated the methodology adopted by the Ministry of Environment, Forest and Climate change in bifurcating the procedure for obtaining environmental clearances, and wildlife clearances for appraisal of a project. They have specifically opined that where clearance from the National Bureau of Wild Life (NBWL) was required, such clearance must be obtained at the first instance prior to consideration of the application for environmental clearance. At paragraph 38, the National Green Tribunal states as follows:

'38.We also depreciate the methodology adopted by the MoEF&CC in bifurcating the procedure for obtaining these two clearances viz., EC and Wildlife Clearance for the purpose of appraisal of the project which are likely to come within the eco-sensitive zone or default eco-sensitive zone. It is always better that if clearance from the NBWL is required that must be obtained prior to the application of EC, so that if the NBWL did not accord

² Appeal No.32 of 2020 (SZ) dated 30.09.2022



W.P.No.8491 of 2024

WEB COPY

clearance, there is no necessity for conducting any further studies in this aspect as required under the EIA Notification and that can be avoided. Further, the EAC as well as the issuing authority viz., the MoEF&CC also will get an opportunity to evaluate the conditions imposed by the NBWL in such cases so that that can also be incorporated and deliberated and further stringent conditions (if any) required for protection of environment can also be imposed by them while recommending the project and issuing the EC. So, this may be revisited by the MoEF&CC and take appropriate decision in this regard in order to protect the environment and also waste of time by the EAC to consider the aspect in eco-sensitive zone, if the NBWL did not grant the clearance, there is no necessity for further study to be conducted in this regard.'

24. The Tribunal has opined that where wildlife clearance is required, such clearance must be obtained first, such that if the proposal fails on that score, there is no necessity to proceed with the environmental clearance at all. The observations of the Tribunal would apply to the present matter as well, as the procedure by the authorities, of wildlife and environmental clearances, has been mutually exclusive instead of integrated, as directed by the Tribunal.

25. In light of the detailed discussion as above, this writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

31.07.2024

VS



W.P.No.8491 of 2024

Index : Yes

Speaking Order

Neutral citation :Yes

Note: Registry to issue this order with the map in colour as Annexure-1.

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Industries Department,
Fort St. George, Chennai -600009.
- 2.The Secretary to Government,
Government of Tamilnadu,
Department of Environment, Forest &
Climate Change Department,
Fort St. George, Chennai - 600009.
- 3.The Member Secretary,
State Level Environment Impact Assessment Authority
PanagalMaligai, Jennis Road
Saidapet, Chennai -600015.
- 4.The Member Secretary,
Tamil Nadu Pollution Control Board, Chennai
76, Mount Salai, Guindy, Chennai - 600 032.
- 5.The Commissioner,
Department of Geology And Mining, Guindy,
Chennai -600 032.
- 6.The District Collector/Chairman District Monitoring Committee,
Tiruvallur District, Thiruvallur -602101.



W.P.No.8491 of 2024

7. The Assistant Director,
Department of Geology and Mining,
Thiruvallur District -602101.

8. The Revenue Divisional Officer (RDO),
Ponneri, Thiruvallur District -601204.

9. The Secretary,
Ministry of Environment,
Forest and Climate Change,
Government of India, New Delhi.



WEB COPY



W.P.No.8491 of 2024

DR.ANITA SUMANTH,J.

VS

WP.No.8491 of 2024 and
WMP.Nos.9441 & 9442 of 2024 &
10286, 10288 & 10293 of 2024

31.07.2024



W.P.No.8491 of 2024

WEB COPY

