



Crl.O.P.Nos.17614, 17616, 19869 & 20877 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 20.09.2024

Pronounced on: 17.10.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.17614, 17616, 19869 & 20877 of 2024
& Crl.M.P.Nos.10462, 10464, 10466, 10467, 11563, 11564,
11993 & 11944 of 2024

Crl.O.P.No.17614 of 2024

M/s. Chettinad Cement Corporation Pvt Limited,
Nakkambadi Lime Stone Mines,
Rep by Mr. R.P. Muthaiah,
Mines Agent,

As per SEIAA-Terms of Reference (ToR) dated 22.06.2023
R.C.No.9533/MM1/2010, dated 05.02.2013 S.F.No.382/1A, 382/IB, 382/IC,
382/ID, 382/5A, 383/1A, 383/IB, 383/IC, 383/2A, 383/2B, 383/2C, 383/3A,
383/3B & 384/ID (P),
Nakkambadi Village,
Sendurai Taluk, Ariyalur District.

.... Petitioner/Accused

/versus/

The Tamil Nadu Pollution Control Board,
Rep by Thiru K. Murali 45/2024,
District Environmental Engineer,
No: 4/326, Trichy Main Road,
Keelapalur Village, Ariyalur Taluk,
Ariyalur District.

.... Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C,
to call for the records pertaining to Private complaint in C.C.No.46 of 2024 on
the file of the Chief Judicial Magistrate, Ariyalur and quash the same as illegal
as against the petitioner alone.



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Crl.O.P.Nos.17614, 17616, 19869 & 20877 of 2024

For Petitioner : Mr.T.Lajapathi Roy, Senior Counsel,
for Mr.K.Thilageswaran

For Respondent : Mr.J.Ravindran, AAG,
Assisted by,
Mr.V.Gunasekar, Standing Counsel,
for TNPCB.

Crl.O.P.No.17616 of 2024

M/s. Chettinad Cement Corporation Pvt Limited,
Kallankurichi Lime Stone Mines,
Rep by Mr. R.P. Muthaiah,
As per SEIAA- Terms of Reference(ToR) dated 24.04.2023,
RC No. 9534/MM1/2010 Dated 05.02.2013,
S.F.No.245/1A, 1B, 2A, 2B, 3, 4, 248/1, 2, 3, 4, 249/1(P), 2, 3, A & 3B,
Nakkambadi Village,
Sendurai Taluk,
Ariyalur District.

... Petitioner/Accused

/versus/

The Tamil Nadu Pollution Control Board,
Rep by Thiru K. Murali 45/2024,
District Environmental Engineer,
No: 4/326, Trichy Main Road,
Keelapalur Village, Ariyalur Taluk,
Ariyalur District.

... Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C,
to call for the records pertaining to Private complaint in C.C.No.47 of 2024 on
the file of the Chief Judicial Magistrate, Ariyalur and quash the same as illegal
as against the petitioner alone.



Crl.O.P.Nos.17614, 17616, 19869 & 20877 of 2024

For Petitioner : Mr.T.Lajapathi Roy, Senior Counsel,
for Mr.K.Thilageswaran

For Respondent : Mr.J.Ravindran, AAG,
Assisted by,
Mr.V.Gunasekar, Standing Counsel,
for TNPCB.

Crl.O.P.Nos.19869 of 2024

M/s.Karuppur Senapathy Lime Stone Mines,

Rep by S.Saravanan,

Managing Director,

As per SEIAA-Terms of Reference (ToR) dated 30.07.2018

G.O.Ms.No.133/Industries (MMA.1) Department Dated 04.05.1998, SF.No.6/4,

8/3, 4A, 4B, 5A, 5B, 5C, 5E, 6A, 6B, 6C, 7&8,

Karuppursenapathy Village,

Ariyalur Taluk,

Ariyalur District.

.... Petitioner/Accused

The Tamil Nadu Pollution Control Board,

Rep by its District Environmental Engineer,

Thiru.Dr.M.Senthil Kumar, 57 year old,

No.4/326, Trichy Main Road,

Keelapalur Village,

Ariyalur District -621 707.

.... Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C, to call for the records pertaining to Private complaint in C.C.No.176 of 2023 on the file of the Chief Judicial Magistrate, Ariyalur and quash the said proceedings.



Crl.O.P.Nos.17614, 17616, 19869 & 20877 of 2024

For Petitioner : Mr.V.Sanjeevi &
Mr.K.Muthukumarasamy

For Respondent : Mr.J.Ravindran, AAG,
Assisted by,
Mr.V.Gunasekar, Standing Counsel,
for TNPCB.

Crl.O.P.No.20877 of 2024

M/s.Crescent Mines and Minerals,
Rep. by Thiru.A.Mohammed Feroz, (M/40),
The Proprietor,
As per SEIAA-Terms of Reference (TOR) dated 26.09.2022,
RC.No.13832/MM4/2000 dated 06.04.2003,
S.F.No.12/11,13/9, 124/1, 2A, 2B, 2C, 2D, 3B, 3C, 4A,
4B, 4C, 4D, 5A, 5B & 5C,
Alanthuraiyarkattalai Village,
Ariyalur Taluk,
Ariyalur District.

.... Petitioner/Accused

/versus/

The Tamil Nadu Pollution Control Board,
Rep. by Thiru.K. Murali, 45 years,
District Environmental Engineer,
Ariyalur,
No.4/326, Trichy Main Road,
Keelapalur Village,
Ariyalur Taluk,
Ariyalur District – 621 707.

.... Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 528 of BNSS,
to call for the records pertaining to private complaint in C.C.No.48 of 2024 on
the file of the Chief Judicial Magistrate, Ariyalur and quash the same as illegal.



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Crl.O.P.Nos.17614, 17616, 19869 & 20877 of 2024

For Petitioner : Mr.P.Tamilavel.

For Respondent : Mr.J.Ravindran, AAG,
Assisted by,
Mr.V.Gunasekar, Standing Counsel,
for TNPCB.

COMMON ORDER

The petitioners facing criminal prosecution under Section 15 read with Section 16 & 19(a) of the Environment (Protection) Act, 1986 are before this Court to quash the complaints on the ground that they have not violated the provisions of the Environment (Protection) Act, since their activity of mining minerals in land measuring less than 5 hectares does not require Environment Clearance. Further, for violation or deviation of the provisions of Environment (Protection) Act, 1986, there cannot be prosecution but only levy of penalty in view of decriminalization under Jan Vishwas Act 2023, with effect from 01.04.2024.

2. The sum and substance of the complaint against these petitioners is that the petitioners were carrying on mining operations without Environment Clearance, from SEIAA which is mandatory as per the



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Notification 141(E) dated 15.01.2016 issued by the Ministry of Environment and Forest, Government of India. As per the said notification, new projects or activities listed in the schedule to its notification entailing capacity addition with change in process and or technology shall be undertaken only after the prior Environment Clearance from the Central Government or, as the case may be, the State Level Environment Impact Assessment Authority SEIAA.

3. Crl.O.P.No.17614 of 2024 (C.C.No.46 of 2024 on the file of Chief Judicial Magistrate, Ariyalur), is the complaint against the M/s.Chettinad Cement Corporation Private Limited and having a Lime Stone Mines at Nakkambadi Village. They have license for mining from 05.02.2013 to 04.02.2033. The petitioner project falls under Serial No.1(a) - Mining of Minerals with list of projects or activities requiring prior Environmental Clearance specified under the Environmental Impact Assessment Notification, 2006 (EIA) dated 14.09.2006 and Notification 141 (E) dated 15.01.2016. The District Collector, Ariyalur issued demand notice dated 20.08.2019 to the petitioner company to pay 100% costs of the mineral mined during the violation period i.e., 15.01.2016 to 10.01.2017 as per the judgment of the Hon'ble Supreme Court dated 02.08.2017 rendered in W.P.(Civil).No.114 of 2014.



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4. The petitioner company submitted application for Environmental Clearance to the State Environmental Impact Assessment Authority (SEIAA) *vide* letter dated 13.04.2018. Later, they gave a letter dated 28.12.2022 informing that they have not pursuing further the process of obtaining the Environmental Clearance since they have decided to surrender the mining lease to IBM and submitted the final mine closure plan.

5. The petitioner company falls under violation category since it continues the quarrying operations without obtaining Environmental Clearance till 02.01.2017. The State Environmental Impact Assessment Authority requested to initiate action against the unit invoking powers under Section 19 of Environmental (Protection) Act, 1986 since the mining activity continued by the petitioner company after 15.01.2016 without obtaining Environmental Clearance and fall under violation category. Consequently, the Additional Chief Secretary to Government, Environment, Climate Change and Forest Department *vide* letter dated 20.09.2023 has addressed the Chairperson, Tamil Nadu Pollution Control Board to take credible action against the unit on the violation by invoking powers under Section 19 of the Act. Thus, the petitioner company had violated the provisions of Environmental Impact Assessment Notification 2006 and guilty of committing an offence under Section 15(1) r/w



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Section 16(1) of Environment Protection Act, 1986 and show cause notice was issued on 21.03.2024 for violating the provisions of Environmental Protection Act, after due inspection of the unit on 20.03.2024.

6. The cause of action for the complaint is stated as below:-

The cause of action arose at RC.No.9533/MMI/2010 Dated 05.02.2013, SE.No.382/1A, 382/1B, 382/1C, 382/1D, 382/5A, 383/1A, 383/1B, 383/1C, 383/2A, 383/2B, 383/2C, 383/3A, 383/3B & 384/1D(P), Nakkambadi Village, Sendurai Taluk, Ariyalur District when the unit has carried out quarrying activity without obtaining prior Environmental Clearance Violating the provisions of EIA Notification, 2006 enacted under the Environment (Protection) Act, 1986. It is pertinent to state that such ignorance of law is not acceptable before any court of law and such actions of the Accused should be punishable.

7. In the petition to quash the complaint, it is stated that on 22.04.2013, the petitioner company entered a lease agreement with the District Collector, Ariyalur for a period of 20 years from the date of registration for mining Lime Stone and Marl in respect of land in 14 survey numbers extending 4.99.5 hectares in Sendurai Taluk, Ariyalur District. The lease was neither



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covered by Environmental Notification of the year 1994 nor notification dated

14.09.2006 which classifies mining lease of more than 50 hectares as Category

'A' and less than 50 hectares to 5 hectares as Category 'B'. The petitioner unit

had mining lease for 4.92 hectares and therefore, when he applied for

Environmental Clearance, the Pollution Control Board replied that

Environmental Clearance not required for mining of major minerals in area less

than 5 hectares and also advised to obtain only consent to operate. After

obtaining consent to operate, the Limestone mine was carried on between

15.01.2016 to 10.01.2017 with Valid Royalty Slips (Transport permit) issued

by Department of Mines and Geology, Government of Tamil Nadu. The

Limestone were transported as per law. Royalty of Rs.80/- per metric ton and

out of which 30% for District Mineral Foundation and 2% for National Mineral

Exploration Trust were paid by the petitioner company. In said circumstances,

the Hon'ble Supreme Court in ***Common causes -vs- Union of India*** reported in

2017 (9) SCC 499 vide its judgment dated 02.08.2017 in the context of

discussing illegal mining of major minerals like iron, magnesium etc., issued

certain directions to be taken. It also discussed about the Environmental Impact

Assessment Notification dated 27.01.1994 issued by the Government of India,

Ministry of Environment and Forest. The Hon'ble Supreme Court has held that

if any mining was carried out without Environmental Clearance, the same



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would attract recovery of 100% of price extracted mineral and 100% compensation. The said judgment applies only for major mineral mining projects above 5 hectares. The notification dated 04.09.2013 under which the complaint is instituted does not empower the complainant for preferring the complaint for violation of mining.

8. Crl.O.P.No.17616 of 2024 (C.C.No.47 of 2024), which is filed by M/s.Chettinad Cement Corporation Private Limited, Kallankurichi Limestone Mines. As per the proceedings of Mines and Minerals Department, the petitioner company was granted lease from 05.02.2013 to 04.02.2033 for Mining Limestone at Kallankurichi Village, Ariyalur Taluk. The accused project falls under Serial No.1(a) - Mining of Minerals of the list of projects of activities requiring prior Environmental Clearance specified under the Environmental Impact Assessment Notification 2006, hence ought to have been given Environmental Clearance for the mining activity from 15.01.2016. However, they continued to mine without Environmental Clearance from 15.01.2016 to 10.01.2017. Therefore, it falls under violation category as per the judgment of the Hon'ble Supreme Court dated 02.08.2017 in W.P.(Civil).No.114 of 2014.



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9. The District Collector, Ariyalur issued Demand notice dated

20.08.2019 to the petitioner company to pay 100% costs of minerals mined during the violation period besides collection of penalty. The unit was inspected on 04.01.2024 and issued show cause notice on 21.03.2024 for carrying out mining activities without obtaining prior Environmental Clearance which is considered to be in violation under Environmental (Protection) Act. The State Environment Impact Assessment Authority as well as Additional Chief Secretary to the Government insisted to take credible action against the petitioner unit by invoking its powers under Section 19 of the Environmental (Protection) Act.

10. The cause of action for the complaint is stated as below:-

The cause of action arose at SF.No.245/1A,1B,2A,2B,3,4,248/1,2,3,4, 249/1(P),2,3A& 3B Kallankurichi Village, Ariyalur Taluk, Ariyalur District when the complainant inspected the project site on 4.1,2024 and issued show cause notice on 21.03.2024 and it was found that the accused unit has carried out mining activity without obtaining prior Environmental Clearance violating the provisions of EIA Notification, 2006 enacted under the Environment (Protection) Act, 1986; that on 25.11.2023 when the accused unit admitted and wrote to the Complainant that the accused unit has carried out



mining activity without obtaining prior Environmental Clearance and on all subsequent dates when the cause of action continues till how, within the jurisdiction of this Hon'ble Court. It is pertinent to state that such ignorance of law is not acceptable before any court of law and such actions of the Accused is punishable.

11. Based on the complaint, a demand notice for Rs.3,14,24,900/- issued to the petitioner company towards the costs of mineral excavated 100% from the mine. The said cost not paid by the petitioner company till date.

12. In the petition to quash the above said complaint, it is stated that on 22.04.2013, the petitioner Company entered into a lease agreement with the District Collector, Ariyalur as per the proceedings of the Commissioner of Geology and Mining, dated 05.02.2013, for a period of 20 years, from the date of registration. The District Collector, Ariyalur agreed as per the lease agreement. The District Collector, Ariyalur agreed that the petitioner company is permitted to mine Lime stone and Marl in respect of lands in 14 survey numbers extending 4.92.5 hectares in Kallankurichi village, Ariyalur Taluk. While granting lease, no condition prescribed in the lease deed regarding prior Environmental Clearance. The quarrying project been less than 5 hectares. It is



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not covered under the Environmental Notification 1994 nor notification dated

14.09.2006. When the petitioner company applied for Environmental Clearance on 05.12.2012, the Pollution Control Board replied that Environmental Clearance not required for mining of major minerals in area less than 5 hectares and advised to obtain only consent to operate. Therefore, after obtaining consent to operate, mining of limestone and the transport was carried on by the petitioner company between 15.01.2016 and 10.01.2017. Royalty amount of Rs.80/- per metric ton as prescribed under the statute were duly paid. After the judgment of the Hon'ble Supreme Court in ***Common cause -vs- Union of India*** reported in ***2017(9) SCC 499***, delivered on 02.08.2017, which discussed about illegal mining of major minerals like iron, magnesium etc., issued certain directions to the Authorities for continuing the mining operations and the new projects. One of the direction was to obtain Environmental Clearance. The petitioner unit which was carrying on mining of major minerals in a land measuring less than 5 hectares not required to obtain Environmental Clearance. While so, contrary to the Notification and by misinterpretation of the Hon'ble Supreme Court judgment, prosecution is launched against this petitioner.



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13. Crl.O.P.No.19869 of 2024 is filed by the Managing Director

of M/s.Karuppur Senapathy Lime Stone Mines, Ariyalur District to quash the complaint by the District Environmental Engineer, Ariyalur taken on file by the Chief Judicial Magistrate, Ariyalur in C.C.176/2023 for offences under Sections 15 r/w 16 and 19(a) of the Environmental (Protection) Act,1986.

14. The complaint reads as below:-

The Accused Company M/s.Karuppur Senapathy Lime Stone Quarry granted mining license as per G.O.Ms.No:133/Industries (MMA.1) Department, dated 04/05/1998 in S.F.Nos: 6/4, 8/3, 4A, 4B, 5A, 5B, 5C, 5E, 6A, 6B, 6C, 7 & 8 of Karuppur Senapathy Village, Ariyalur District. The lease is valid upto 20/12/2035. The Ministry of Environment and Forest *vide* its Environmental Impact Assessment Notification, 2006 (EIA) and Notification 141 (E), dated 15/01/2016 mandates that on and from the date of its publication, the required construction of new projects or activities listed in the schedule to its notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after prior environmental clearance from the Central Government or as the case may be, the State Level Environmental Assessment Authority (SEIAA).



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15. The accused project falls under Sl.No:1(a), which requires prior Environmental Clearance specified under the Environmental Impact Assessment Notification, 2006. The project of the accused falls under Category 'B' hence the Environmental Clearance has to be obtained from SEIAA. For want of environmental clearance from SEIAA, the officials of Mines and Geology Department declined to grant transport permit to the accused company from 20/02/2017 and was informed that mining mineral without prior environmental clearance will be considered as violation case and proceeded as per S.O.141 (E) dated 15/01/2016.

16. As per the direction of the Hon'ble Supreme Court order dated 02/08/2017, the District Collector issued Memorandum dated 20/08/2019 to the accused company to pay 100% cost of the mineral mined during the violation period i.e., 15/01/2016 to 10/01/2017. The SEIAA *vide* its communication informed that the mining activity which continue to operate after 15/01/2016 without obtaining Environmental Clearance shall be considered as violation case and instructed to initiate credible action against those units invoking power under Section 19 of the Act. The complainant issued show cause notice to the accused on 05/01/2023 for its mining activities without prior



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environmental clearance which is in violation of the notifications issued in the year 2006. The accused company replied to the show cause notice referring the license given by the Government of Tamil Nadu on 04/05/1998 for mining lime stone in the land measuring 4.67.0 ha and the lease deed dated 07/02/2006 executed by the District Collector on behalf of the Government permitting mining upto 10/01/2017, stated that it stopped the mining operation from 20/02/2017 after denial of transport permit. Further on the receipt of the demand notice dated 20/08/2019, the accused company admitting lime stone mining after 15/01/2016 till 10/01/2017 without prior Environmental Clearance paid 100% of the mine value as penalty. It also sought for prior Environmental Clearance for its future mining operation. The petitioner therefore requested not to take any further action.

17. Not satisfied with the above said explanation, the complaint for offences under Section 15 and 16 of the Environment (Protection) Act, 1986 preferred before the Chief Judicial Magistrate, Ariyalur and same taken on file as C.C.No.176/2023.

18. The accused in its petition for quash claims that, the petitioner Company involved in mining lime stone which is a major mineral in the area



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leased, measuring less than 5.00.0 hectares. At the time when mining lease executed, there was no requirement of obtaining Environmental Clearance. For the first time in ***Deepak Kumar and others -vs- State of Haryana and others***, the Hon'ble Supreme Court directed that the lease of minor mineral including renewal for an area less than 5.00.0 hectares be granted only after getting Environmental Clearance from Ministry of Environment and Forest. To implement the Hon'ble Supreme Court direction, Ministry of Environment and Forest amended the notification of the year 2006. However, for major minerals Environmental Clearance not insisted and transport permit continue to be issued till 10/01/2017 after collecting royalty. That being the case, the Collector, through memorandum dated 02/08/2019 demanded cost of the mineral based on the judgment of the Supreme Court rendered in ***Common cause -vs- Union of India*** case which in fact not applicable to major minerals mined in less than 5 hectares. The misapplication of the law and misinterpretation of the Supreme Court judgement has caused hardship to the petitioner and forced to face trial for an act which was not an offence at the time of committing the act of mining. Further, after substituting Section 15 to 17 of the Environment (Protection) Act, 1986 by Jan Vishwas Act, 2023 with effect from 01/04/2024, any contravention of the provision under the Environment (Protection) Act is to be adjudicated by the Authority notified by



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the Central Government for imposing penalty and it is no more an offence.

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19. Crl.O.P.No.20877 of 2024 (C.C.No.48 of 2023 on the file of Chief Judicial Magistrate, Ariyalur), the complaint is that the petitioner is running a company in the name and style of M/s.Crescent Mines & Minerals at Alanthuraiyarkattalai Village, Ariyalur Taluk and the lease was valid from 06.04.2003 to 13.05.2023. They started mining activities without obtaining the requisite Environmental Clearance. After 15.01.2016, the mining activities without obtaining prior Environmental Clearance is violation of Notification 141(E) issued by Ministry of Environment and Forest. The unit was inspected by the District Environmental Engineer, Ariyalur, on 21.03.2024 and it was ascertained that the accused has been carrying out mining activity without obtaining prior Environmental Clearance by violating the provisions of EIA Notification 2006 and thereby, punishable under Sections 15(1) r/w 16(1) of the Environment (Protection) Act.

20. The cause of action for the complaint is stated as below:-

“The cause of action arose at S.F.Nos.12/11, 13/9, 124/1, 2A, 2B, 2C, 2D, 3B, 3C, 4A, 4B, 4C, 4D, 5A, 5B & 5C, Alanthuraiyarkattalai Village, Ariyalur Taluk, Ariyalur District when the accused unit was inspected on 21.03.2024, ascertained that the accused had carried



mining activity without obtaining prior Environmental Clearance violating the provisions of EIA Notification, 2006 and on 26.04.2022 when the accused had submitted application for Violation category Environmental Clearance. It is pertinent to state that such ignorance of law is not acceptable before any court of law and such actions of the Accused should be punishable.”

21. In the petition to quash the complaint, the petitioner stated that the private complaint *per se* is illegal since, while granting lease, the petitioner company falls under Category 'B', which is less than 50 Hectares. As per the notifications issued in the year 1994 as well in the year 2016, Environmental Clearance or Environmental Impact Assessment is not required. As soon as the memorandum received from the District Collector dated 21.10.2023 to stop their mining without EC, the petitioner had stopped the mining activities.

22. A detailed counter been filed by the respondent/Tamil Nadu Pollution Control Board. The sum and substance of the counter is that the mining operations of the petitioners fall under the Category “B” which requires prior Environmental Clearance as per the Environmental Impact Assessment Notification, 2006. The proceedings for recovery of penalty for mining in



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violation of the Act initiated by the Department and same are pending. The penalty imposed for illegal mining is 100% of the costs of the mine explored and the said action is in compliance of the Hon'ble Supreme Court Judgment dated 02.08.2017. The petitioner realising about the act of violation, applied for Environmental Clearance but later withdrawn it and reported that they have stopped quarrying operations. However, between 15.01.2016 till the date of seizing the quarrying operation, they have violated the notification and liable to be prosecuted under Section 15 of Environment (Protection) Act for the activity of illegal mining after 15.01.2016 till the date of the seizure of the operation.

23. The complaint filed after inspection of plant and affording show cause notice to explain. It is incorrect to claim that for mining operation of major minerals in area less than 5 hectares only consent to operate from the Board is required. Whether the minor mineral or major mineral, after the Hon'ble Supreme Court judgment, the Environmental Clearance from 15.01.2016 is mandatory.

24. The Environmental Impact Assessment Authority Notification stand amended time to time. The notification of the year 1994 dealt only with mining of projects concerning major minerals with extend of more than 5



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hectares. The subsequent notification dated 14.09.2006 prior Environmental Clearance was required for the projects listed in the schedule to be notified. In this notification, mining operations were classified into two categories viz., “A” & “B” categories. For “A” category projects, Environmental Clearance has to be issued by the Ministry of Environment and Forest by the Central Government. For the “B” category projects, Environmental Clearance has to be issued by the State Environmental Impact Assessment Authority. “B” category projects were further divided into two categories viz., B-1 and B-2. B-1 category projects require Environmental Impact Assessment Report, whereas B-2 projects do not require the Environmental Impact Assessment report.

25. In *Deepak Kumar -vs- State of Haryana* reported in 2012 (4) SCC 629, even mining activity including minor/major minerals below 5 hectares have to obtain Environmental Clearance which includes renewal. The clarification was sought by the Karnataka Government whether Environmental Clearance is necessary for major minerals of the size of lease area land less than 5 hectares. The Hon'ble Supreme Court issued a clarification letter dated 04.01.2013, wherein it was stated that there was no need to obtain prior Environmental Clearance for mining projects of major minerals with lease area of less than 5 hectares. Later, amendment was brought to the Environmental



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Impact Assessment Notification wherein all new mining operations were required to obtain prior Environmental Clearance for mining of major minerals as well as mining lease area of less than 5 hectares. At the stage of renewal of mining of lease or enhancing the production capacity, the National Green Tribunal, Principal Bench, New Delhi in its order dated 13.01.2015 in ***Himmat Singh Shekhawat's -vs- State of Rajasthan and others*** issued several directions including expeditious disposal of the applications for prior Environmental Clearance made in respect of minor minerals of lease area less than 5 hectares. Subsequently, again it has been clarified by Ministry of Environment and Forest that after 07.10.2014, all mining operation require prior Environmental Clearance and for existing mines, Environmental Clearance has to be obtained at the time of renewal of mining leases. Following this clarification, fresh notification dated 15.01.2016 was issued referring the judgment of the Hon'ble Supreme Court in ***Deepak Kumar -vs- State of Haryana*** and the order of the National Green Tribunal, Principal Bench, New Delhi in ***Himmat Singh Shekhaswat -vs- State of Rajasthan***.

26. In order to comply with the order and directions of the Hon'ble Supreme Court as well as National Green Tribunal, the Commissioner of Geology and Mining vide letter dated 11.01.2017 issued direction to all District



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Collectors and District Officers of the Department of Geology and Mining to ensure the compliance of the directions of the Hon'ble Supreme Court of India and National Green Tribunal in letter and spirit accordingly the issuance of transport permit was stopped for mining and quarrying lease which are not having Environmental Clearance. The Ministry of Environment and Forest further clarified through letter dated 03.04.2017 that all mining operation including project less than 5 hectares which were operating before 15.01.2016 are required to stop their mining activity and apply to Ministry of Environment and Forest and CC/SEIAA/DEIAA seeking Environmental Clearance. The proponent with mining lease continues to operate without obtaining Environmental Clearance after 15.01.2016, shall be considered as violation cases and the same shall be dealt with in accordance with the violation policy under Environmental (Protection) Act notification 2006.

27. Oral submission putforth by the Learned Counsels

Referring the judgments of the Hon'ble Supreme Court and National Green Tribunal and the Notifications, the Learned Additional Advocate General appearing for the Pollution Control Board/respondent contended that the prosecution against these petitioners are well within law and fortified by the directions of the Hon'ble Supreme Court. Referring the



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clarification given by National Green Tribunal, Principal Bench, New Delhi

vide order dated 30.06.2020 wherein, it made clear that all mining lease either major or minor even less than 5 hectares area has to apply and get Environmental Clearance as per the amended EIA Notification dated 15.01.2016. This will apply to the existing mining lease as well. The review application filed by the Association was also dismissed. When the matter was brought as an appeal before the Hon'ble Supreme Court by the Tamil Nadu Small Mine Owners Federation, the Hon'ble Supreme Court has held that there is no error in the order of National Green Tribunal dated 30.05.2020 and 18.08.2020, hence the prosecution of the petitioner is legally valid.

28. Regarding the objections of complaint initiated by jurisdictional District Environmental Engineer, it is contended by the Pollution Control Board that *vide* proceedings dated 04.09.2013, the District Environmental Engineer being a public servant within the meaning of Section 21 of I.P.C been authorised to launch prosecution under Section 19(a) of Environmental Protection Act.



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29. It is contended by that as per notification S.No.394(E), dated 16.04.1987:-

The Chairman/Member Secretary, as well as the Regional Officers of the State Pollution Control Board are authorized to take legal action for the indicative violation under the provisions of the Environment Protection Act and as the jurisdictional District Environmental Engineer, I have been authorized vide Board proceedings No.58, dated 04.09.2013 to launch prosecution u/s.19(a) of the Environment Protection Act, 1986 on behalf of the Tamil Nadu Pollution Control Board, hence this compliant. The District Environmental Engineer, is a public Servant within the meaning of Section 21 of the Indian Penal Code as per the provisions contained u/s.50 of the water (Prevention & Control of pollution) Act, 1974, Section 44 of the Air (Prevention & Control of pollution) Act, 1981 and u/s. 21 of the Environment (Protection) Act, 1986 and Rules made there under.

30. This point of law is no more *res integra* in view of the judgment of this Court TRIL Info Park Limited -vs- Tamil Nadu Pollution Control Board and M/s.VLB Trust, Rep. by its Chairperson and others -vs- TNPCB. In these two cases, the High Court of Madras had upheld the competency of the District Environmental Officer to launch prosecution.



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31. Regarding the decriminalization of Pollution Act by *Jan*

Vishwas Act 2023, the Learned Additional Advocate General for the respondent submitted that the said decriminalization can be given only prospective effect and not retrospective effect. For the said purpose, the date of commission of crime is to be taken note of and not the date of the complaint.

32. Referring to Section 4 of Jan Vishwas (Amendment of Provisions) Act, 2023, the Learned Additional Advocate General for the respondents submitted that this act came into effect from 01.04.2024. The complaint filed on 28.03.2024, i.e., prior to the Jan Vishwas Act came into force. Being a private complaint, the date of filing has to be reckoned. Since exploitation of natural resource is a crime against the progeny, Section 4 of the Act cannot be given liberal interpretation.

Heard the Learned Counsels for the petitioners and the Learned Additional Advocate General for the respondent/Tamil Nadu Pollution Control Board.

33. In common, the petitioners/accused are the holders of mining lease for lime stone. The extend of land leased to them for mining is below 5



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hectares. Under Mines and Minerals (Development and Regulation) Act 1957, the schedule classifies Limestone as minor mineral. However based on the end use, it may fall under major mineral. Lime Stone is considered as a minor mineral when it is used in kilns to make lime for building materials. Other examples of minor minerals include decorative stones, boulder, shingle and chalcedony pebbles. It is considered a major mineral when it is mined and put to use for other industrial purposes or for export to other countries.

34. As far as the petitioners herein, they were mining lime stone for industrial purpose particularly, for the manufacturing of cements. Therefore, they claim that it is a major mineral for the purpose of application of the Notifications issued by the Ministry of Environment and Forest. In fact, the Directorate of Geology and Mining as well as the Pollution Control Board also held the same view. Hence when the lease granted to these petitioners for mining lime stone, in the proceedings issued by the Director of Geology and Mining, there was a specific clause stating that the mining lease is for an extent not exceeding 5.00.0 hectares. Hence, the requirement of clearance from Environment and Forests Department does not arise.



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35. In the proceedings of the Commissioner of Geology and Mining dated 05/02/2013, issued for M/s.Chettinad Cement Corporation Limited (petitioner in Crl.O.P.No.17614 of 2024 and Crl.O.P.No.17616 of 2024) for its Nakkambadi Village operation and Kallankurichi Village operation at Clause (vii) it is mentioned as below:-

“The Government of India, Ministry of Mines in their office Memorandum dated 04/01/2013 have clarified that mining projects of major minerals of the size of the lease area less than 5.00.0 hecets. will not be under the purview of the orders of the Hon'ble Supreme Court dated 27.02.2012 and the Office Memorandum No.L-11011/47/2011-JA-II (M) dated 18.5.2012 issued by the MOEF. Therefore, there is no need of prior Environmental Clearance for the mining projects of major minerals of lease area less than 5.00.0 hecets. as per EIA Notification 2006, either from the State Government or from the Central Government. Since the area applied for mining lease is over an extent of 4.99.5 hecets. which is less than 5.00.0 hecets. clearance from the State Environment Impact Assessment Authority is not required.”

36. The Office Memorandum dated 04/01/2013 issued by the Ministry of Environment and Forest and referred in the lease deeds after



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referring the direction of the Hon'ble Supreme Court in *Deepak Kumar* case,

has clarified that, mining project of major minerals of the size of the lease area less than 5 hectares will not be under the purview of the above referred order of the Hon'ble Supreme Court dated 27/02/2012 and the Office Memorandum No:L-11011/47/2011-JA-II (M) dated 18/05/2012 issued by MoEF. Hence there is no need of prior Environmental Clearance for the mining projects of major minerals of lease area less than 5 hectares as per EIA Notification 2006, either from the State Government or the Central Government. However, such mining operations shall need to obtain the consent to operate from the State Pollution Control Board under the provisions of Air Act, 1960 and Water Act, 1970.

37. Based on this Office Memorandum of Ministry of Environment Forest, the Member Secretary of State Level Environment Impact Assessment Authority, *vide* its letter dated 29/01/2013 addressed to the M/s.Chettinad Cement Corporation Limited stating that Lime Stone being a major mineral and in the light of the clarification issued by the MoEF, there is no necessity to issue prior Environment Clearance for the above project (mining area less than 5 hectares), however, they were requested to obtain consent to operate from the Tamil Nadu Pollution Control Board.



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38. The notifications of the MoEF issued earlier came up for scrutiny before the National Green Tribunal, Principal Bench, New Delhi in ***Himmat Singh Shekhawat's -vs- State of Rajasthan and others.*** The classification of minor and major minerals and the classification based on area of mining were found fault by the National Green Tribunal.

39. The National Green Tribunal, Principal Bench, New Delhi in its order dated 13.01.2015 in ***Himmat Singh Shekhawat's -vs- State of Rajasthan and others*** has held that:

I. For the reasons afore recorded, we hold and declare that the Notification dated 9th September, 2013 is invalid and inoperative for non-compliance of the statutorily prescribed procedure under the Environment (Protection) Rules, 1986 and for absence of any justifiable reason for dispensation of such procedure.

II. We also hold and declare that the Office Memorandums dated 24th June, 2013 and 24th December, 2013 to the extent aforeindicated are invalid and inoperative being beyond the power of delegated legislation.



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III. All the Office Memorandums and Notifications issued by MoEF i.e. 1st December, 2009, 18th May, 2012 and 24th June, 2013 and 24th December, 2013(except to the extent afore-stated) are operative and would apply to the lease mine holders irrespective of the fact that whether the area involved is more or less than 5 hectares.

IV. We further hold that the existing mining lease right holders would also have to comply with the requirement of obtaining Environmental Clearance from the competent authorities in accordance with law. However, all of them, if not already granted Environmental Clearance would be entitled to a reasonable period (say three months) to submit their applications for obtaining the same, which shall be disposed of expeditiously and in any case not later than six months from pronouncement of this judgment.

40. As a consequence, the Ministry of Environment and Forest issued notification S.O.No.141 (E) on 15/01/2016. The relevant portion of the notification reads as below:-

And whereas, in pursuance to the order of Hon'ble Supreme Court dated the 27th February, 2012 in I.A.No.12-13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of Deepak Kumar



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etc. Vs. State of Haryana and Others etc., prior environmental clearance has now become mandatory for mining of minor minerals irrespective of the area of mining lease.

And whereas, as a result of the above said Order of Hon'ble Supreme Court, the number of cases which are now required to obtain prior environmental clearance has increased substantially;

And whereas, the Hon'ble National Green Tribunal, vide its order dated the 13th January, 2015 in the matter regarding sand mining has directed for making a policy on environmental clearance for mining leases in cluster for minor minerals;

Schematic Presentation of Requirements on Environmental Clearance of Minor Minerals including cluster situation.

<i>Area of Lease</i>	<i>Category</i>	<i>Requirement of EIA/EMP</i>	<i>Requirement of Public Hearing</i>	<i>Requirement of EC</i>	<i>Who can prepare EIA/EMP</i>	<i>Who will apply for EC</i>	<i>Authority of appraise/ grant EC</i>	<i>Authority to monitor EC Compliance</i>
EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease								
0-5ha	'B2'	Form – IM, PFR and Approved Mine Plan	No	Yes	Project Proponent	Project Proponent	DEAC/DE IAA	DEIAA SEIAA



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41. Incidentally, after the publication of the above notification, the batch of petitions before the National Green Tribunal challenging the earlier notification dated 14/09/2006 of MoEF classifying various activities and projects under the Category 'A' and/or 'B' of the notification and mandating prior Environmental Clearance (in short 'EC') came to be disposed on 19/02/2016 with the following direction:-

“It shall be mandatory for all the applicants to seek EC for carrying on of mining activity of minor or major minerals, even if the lease area is less than 5 hectares. In other words, MoEF, SEIAA and all other authorities would adopt uniform practice for issuance of EC in regard to the mining area of less than 5 hectares notwithstanding the fact that environmental impact of mining of minor minerals is no way less than that of the mining of major minerals. The Judgment of the Hon'ble Supreme Court in the ***Deepak Kumar -vs- State of Haryana*** reported in **2012 (4) SCC 629**, is applicable to both minor and major minerals.”

42. It is to be noted that as early as 2012 in *Himmat Singh Shekhawat's* case, it was held that all mining operation requires prior



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Environmental Clearance. However, in most of the State the said dictum was not followed. Hence, in the review petition filed by Ramakant Gautham in *Himmat Singh Shekhawat's* case, National Green Tribunal in its order dated 04/05/2016 made the following observation:-

“4. Illegal and unauthorized mining has been a matter of concern for all concerned stakeholders. Besides carrying on illegal and unauthorized mining, various mine lessees/miners had successfully frustrated the laws in force by bringing down the area of the mine lease to less than five hectares, even in adjoining areas with the object and purpose of escaping the requirement of obtaining EC in accordance with the provisions of the Environmental (Protection) Act, 1986 (for short ‘Act of 1986’) and Environment Clearance Regulations, 2006 (for short ‘Notification of 2006’). Keeping in view the large-scale avoidance of law and serious degradation of environment and ecology, the Supreme Court in the case of Deepak Kumar v. State of Haryana(2014) 4 SCC 629 mandated that all mine owners, even if carrying on mining operations below five hectares, would be liable to seek EC from the competent authority. The dictum of the Supreme Court was not followed by various States in its true spirit and substance. While some of the States did not enforce the directions, there are some other States which have issued Notifications/Government Orders to overreach the



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directions given by the Supreme Court in exercise of their executive powers. These directions/Office Memorandums were contrary to the orders of the Supreme Court and in fact, some of them were even set aside by the Tribunal.

5. Following the judgment of the Supreme Court in Deepak Kumar's case (supra), various cases, particularly in relation to the States of Haryana and Rajasthan were decided by the Tribunal where all concerned were mandated to comply with the judgment of the Supreme Court and it was also stated that even the existing units did not have any right to continue to pollute. The Tribunal dealt with all the issues raised before it in the case of Himmat Singh Shekhawat v. State of Rajasthan and passed a detailed judgment dated 13th January, 2015 in Original Application No. 123 of 2014.

6. In this Judgment the Tribunal held that the existing mining lease holders should have complied with the requirements of obtaining EC from the Competent Authority in accordance with law. They were provided reasonable time of 3 months to make applications for obtaining the EC, which applications were directed to be disposed of within 6 months from 13th January, 2015.

7. These directions were passed even in relation to disposal of the applications of the private respondents or other persons seeking EC, expeditiously and not later than



3 months from the date of the Judgment. The authorities, including SEIAA, were directed to dispose of the applications for obtaining EC for mining purposes within the stipulated period in accordance with law and more particularly in light of the observations and directions stated in the Judgment.

....

....

12. Now we will be comprehensively dealing with the various applications as already noticed in the opening part of this Judgment. From the bare reading of the above order, it is clear that the outer limit for disposal of the applications was 31st December, 2015. It was more particularly in relation to the applications that were pending as on 1st September, 2015. Some of the applicants as well as the authorities have taken undue advantage of the order passed by the Tribunal on 24th July, 2015 in the case of M.P. State Mining Corporation v. Ministry of Environment & Forest In Himmat Singh Shekhawat v. State of Rajasthan being Review Application No. 18 of 2015 and have continued to operate indefinitely even till date.

13. It is unfortunate that it is to be recorded that this order has been misconstrued by the authorities as well as by the applicants. The purpose of this order was not to grant indefinite period for operation of mines but within the outer limit, i.e., 31st December, 2015. Even as on date,



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the applications have not been disposed of and the mining activity is still going on. As already noticed, some applications are for extension of time while others are for clarification that mining activity can be carried on even when the EC has not been granted. Strangely, the State of Madhya Pradesh on 14th December, 2015, on the basis of an opinion sought, issued a circular to all its collectors in relation to order dated 10th December, 2015 stating that applicants who have already moved an application for EC prior to 31st December, 2015, their applications would be considered immediately and till decisions the mine owners can operate their mines if their application is errorless.

.....

.....

16. The official and private respondents have violated the orders of the Supreme Court and the Tribunal which has caused damage and degradation of the environment. We would have normally invoked the “Polluter Pays Principle” but for the fact that there is no data before the Tribunal. There is no information as to what is the extent and period of illegal mining or mining without obtaining the EC and what are its effects on environment. At the same time, we have to direct the concerned respondents to take proper steps without further delay and that they should not permit mining without ECs any further.



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43. In its above order, National Green Tribunal had come down heavily on the officials as well the private individuals who had adopted all dialectic tactics to delay the process of obtaining EC for the mining activities which has caused twin adverse effects, one leading to illegal and unauthorised mining and another leads to irreparable damage to the environment and ecology of the area. In this order among other directions, National Green Tribunal directed: a) all the district level authorities, DEIAA and DEAC are directed to dispose of all the applications pending with them by 31st May, 2016 positively. No further extension of time will be granted. b) All the mine owners which of them have not submitted the applications as on 31st March, 2016 to SEIAA, DEIAA and DEAC, shall be shut down forthwith and will not be permitted to carry on any mining activity in any manner whatsoever.

44. It is disheartening to note that even after the categorical pronouncement and caustic observations against the officials by National Green Tribunal, Principal Bench *vide* its order dated 4th May, 2016, the Principal Secretary of the Industrial Department in Government of Tamil Nadu had addressed the Ministry of Environment, Forests and Climate change impact assessment division seeking clarification whether EC for major mineral below 5 hectares is required. For this letter seeking clarification, the Director at



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Ministry of Environment and Forest *vide* letter dated 03/04/2017 had responded

as below:-

“Sir,

Kindly refer to above seeking clarification on Requirement of Environmental Clearance for Major Minerals below 5 Hectare.

2. In this regard, I am directed to refer to the notification S.O. 141(E) dated 15.01.2016 and inform that all the mining leases (major mineral as well as minor mineral) operating in the country are required to obtain Environmental Clearance (EC) after 15.01.2016 as per the provisions contained in Environmental Impact Assessment Notification, 2006 as amended. Further, no mining lease shall operate without prior EC and all such mines (including less than 5 Hectares) which were in operation before 15.01.2016 are required to stop their mining activity and apply to MoEFCC at Central Level/State Environment Impact Assessment Agency at State Level/District Environment Impact Assessment Agency at District level for seeking EC. The mine leases which continue to operate without obtaining EC after 15.01.2016 shall be considered as violation cases and the same shall be dealt in accordance with the violation policy under Environmental Impact Assessment Notification, 2006 as amended.”



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45. Being aggrieved by the above clarification, the Tamil Nadu

Small Mine Owners Federation filed Original Application No.136/2017 before the National Green Tribunal, South Zone to quash the communication as violative of EIA notification dated 15/01/2016 and to formulate an appropriate scheme for obtaining Environmental Clearance for both minor and major minerals and to declare the existing mines in operation prior to the EIA notification dated 07/10/2014 shall be required to obtain 'EC' only at the time of renewal or expansion or increasing the production capacity.

46. The National Green Tribunal (South Zone) disposed the above application on 30/06/2020 with the following observations and directions:-

76. So, under these circumstances, we find no reason to set aside the Office Memorandum dated 3.4.2017 in toto. However, we can clarify that those persons who have already filed application for Environment Clearance as on 31.3.2016 cannot be treated as violator, as the Principal Bench of the National Green Tribunal had permitted them to comply with application and consider those applications in accordance with law. Only those persons who have filed application thereafter will have to be treated as violator. Merely because the mining activities of the members of the applicant



federation have come to a standstill, is not a ground to dilute the procedure for obtaining Environment Clearance, even in respect of mining activities of major minerals of less than 5 hectares.

77. So under these circumstances, the application can be disposed of, giving the following directions:-

(i) The applications which are pending as on 31.3.2016 for Environment Clearance have to be treated as normal applications and not violation applications and the authorities are directed to dispose of those applications in accordance with law.

(ii) The persons who have not filed applications on or before 31.3.2016 and filed thereafter, can be treated as violation applications and the MoEF & CC/SEIAA is directed to dispose of those applications as violation cases in accordance with law.

(iii) It is also made clear that all mining leases, either major or minor, even less than 5 hectares area, has to apply and get Environment Clearance as per the amended EIA Notification dated 15.1.2016. This will apply to the existing mining leases as well. The points are answered accordingly.

Point No. 4;—

The application is disposed of as follows:



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(i) The applicant is not entitled to get a declaration to quash Circular dated 3.4.2017 as prayed for but can be clarified as detailed as per direction No.(ii) onwards.

(ii) The applications which are pending as on 31.3.2016 for Environment Clearance have to be treated as normal applications and not violation applications and the authorities are directed to dispose of those applications in accordance with law.

(iii) The persons who have not filed applications on or before 31.3.2016 and filed thereafter can be treated as violation applications and the MoEF & CC/SEIAA is directed to dispose of those applications as violation cases in accordance with law.

(iv) It is also made clear that all mining leases, either major or minor, even less than 5 hectares area, has to apply and get Environment Clearance as per the amended EIA Notification dated 15.1.2016. This will apply to the existing mining leases as well. Without obtaining necessary Environment Clearance irrespective of area, no mining, both minor/major, shall be permitted to operate.

47. Not satisfied with the above order, the Tamil Nadu Small Mine Owners Federation, filed a review petition before the National Green Tribunal



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against the order and after the dismissal of the Review Petition filed Civil Appeal Nos.1789 -1790/2021 before the Supreme Court. The said Civil Appeal came to be dismissed on 23/07/2021 holding that, “there is no error in the orders of the National Green Tribunal dated 30/06/2020 and 18/08/2020 in the Original Application and Review Application respectively.

48. The petitioners herein, though filed application for EC, did not pursue their application. They all fall under the category of violators. They stopped mining much after the cut off date. However, despite clear directions from the National Green Tribunal and Ministry of Environment Forest to take action against the violators, the officials in the Department of Geology and Mining as well as Pollution Control Board for reasons best known did not proceed against them till the Government of India, through its Ministry of Environment, Forests and Climate Change sought for details of action taken against the illegal miners.

Section 15 and 16 of the Environment (Protection) Act, 1986 reads as under:-

**15. PENALTY FOR CONTRAVENTION OF
THE PROVISIONS OF THE ACT AND THE RULES,
ORDERS AND DIRECTIONS.-**



(1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

16. OFFENCES BY COMPANIES.-

(1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any



such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation--For the purposes of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals;

(b) "director", in relation to a firm, means a partner in the firm.

49. The Learned Senior Counsel Mr.T.Lajapathi Roy, relying on the Jan Viswas Act which has decriminalised offences under the Environment (Protection) Act, 1986 and the penalty proceedings already initiated against the



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petitioners for recovery of 100% value of the mineral mined without EC, submitted that, since the Jan Viswas Act has mollified the rigour of punishment, the beneficial construction has to be applied in favour of the petitioners/accused. On the date of taking cognizance of the complaint in C.C.No.46/2024 and C.C.No.47/2024 by the Chief Judicial Magistrate, Ariyalur, for alleged offences under Sections 15 and Section 16 of the Environment (Protection) Act, 1986, the said provisions were not in force. They were repealed and substituted with provisions which envisages only penalty to be determined by Adjudicating Officer appointed by the Central Government.

50. Relying on the judgment of the Hon'ble Supreme Court in *T.Barai -vs- Henry Ah Hoe* reported in (1983) 1 SCC 177 and followed in *A.K.Sarkar & Co and another -vs- The State of West Bengal & others (2024 INSC 186)*, the Learned Senior Counsel submitted that the benefit of the new amended provisions of the Environment (Protection Act) decriminalising the contravention of the Act by substituting it with penalty has to be taken into consideration.

51. In response to this submission, Mr.J.Ravindran the Learned Additional Advocate General for Pollution Control Board draw the attention of



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this Court to Section 4 of the Jan Vishwas Act, 2023 which saves the repealed provisions. He also submitted that the offence of exploiting natural resource unmindful of the impact on environment cannot be let free in view of the subsequent change in law. The violation is not against any individual but against the mankind. After series of direction by the Hon'ble Supreme Court, High Court and National Green Tribunal, the penal action for contravention been initiated. This is not a case fit to show leniency contravening Section 4 of the Jan Vishwas Act, 2023.

Section 4 of the Jan Vishwas Act, 2023 reads asunder:-

4. The amendment or repeal by this Act of any enactment shall not affect any other enactment in which the amended or repealed enactment has been applied, incorporated or referred to; and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof, or any release or discharge of, or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;



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52. The amendment to the Environment (Protection) Act, 1986 in view of Jan Vishwas Act, 2023 was given effect from 01/04/2024. By the said amendment Sections 15 to 17 of the Act been repealed and substituted with new Sections 15, 15A, 15B, 15C, 15D, 15D, 15E and 15F. Through this amendment, imprisonment for contravention of provision simplicitor is deleted and substituted with penalty and additional penalty. Only in case of failure to pay penalty or additional penalty, imprisonment for a term upto 3 years and or with fine is prescribed.

53. The complaint against M/s.Karuppur Senapathy Lime Stone Mines (petitioner in Crl.O.P.No.19869/2024) presented before the Chief Judicial Magistrate, Ariyalur on 13th June, 2023. The complaint taken cognizance in C.C.No:176/2023.

54. The complaint against M/s.Chettinad Cement Corporation Ltd, Nakkambadi unit (petitioner in Crl.O.P.No.17614/2024) presented before the Chief Judicial Magistrate, Ariyalur on 26th March, 2024. The complaint taken cognizance in C.C.No:46/2024.



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55. The complaint against M/s.Chettinadu Cement Corporation Ltd, Kallankurchi unit (petitioner in Crl.O.P.No.17616/2024) presented before the Chief Judicial Magistrate, Ariyalur on 26th March, 2024. The complaint taken cognizance in C.C.No:47/2024.

56. The complaint against M/s.Crescent Mines and Minerals, Alanthuraiyarkattalai Village (petitioner in Crl.O.P.No.20877/2024) presented before the Chief Judicial Magistrate, Ariyalur on 26th March, 2024. The complaint taken cognizance in C.C.No:48/2024.

57. The allegation against the petitioners is in spite of notification by the Ministry that the existing mining operation must get EC on or before 14/01/2016 to continue their operation, the petitioners without Environmental Clearance continued their mining operation till the transport permit stopped or on receipt of the show cause notice. The proceedings initiated for recovery of 100% cost of the mineral mined illegally as compensation is not an alternate action for prosecution to attract Article 20(1) of the Constitution. The pre-amended provisions of Environmental (Protection) Act, envisages both penal



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provision for contravention as well as recovery of compensation for the mineral mined illegally. It is a settled law that prosecution under penal provisions and adjudication for recovery of loss by way of penalty are distinct and separate actions. The principle of double jeopardy has no application when prosecution and adjudication are initiated simultaneously or consecutively.

58. In the instance case, at the relevant point of time contravention was considered as offence and punishable under Section 15 and 16 of the Act, beside adjudication for recovery of 100% of the value of the mineral extracted. The Board has initiated recovery proceedings against the petitioners under the unamended Act and the prosecution is launched before the amendment came into force. Both the actions are saved by Section 4 of the Jan Vishwas Act.

59. In *T.Barai -vs- Henry Ah Hoe* case, the Hon'ble Supreme Court has explained what is prohibited under Article 20(1) of the Constitution in the following words:

“22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be



convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense. This finds support in the following passage from Craies on Statute Law, 7th Edn.

“A retrospective statute is different from an ex post facto statute. “Every ex post facto law...” said Chase, J., in the American case of Calder v. Bull [3 US (3 Dall) 386: 1L Ed 648 (1798)] “must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and



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may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction....There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime.”

60. If the benefit of the amendment to be extended to the petitioners for the contravention, they should be proceeded under the amended provisions and penalty must be levied. In the instant case, that option is not permissible since, the Department has already initiated adjudication proceedings under the unamended provision and one of the petitioner herein (M/s.Crescent Mines) had paid the compensation. Further, the new law which has substituted penal provision with more rigour penalty cannot be imposed in lieu of imprisonment or fine prescribed under the preamended provision, since it will be contended that it violates Article 20(1) of the Constitution.



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61. As submitted by Learned Additional Advocate General, the general rule is violator of law has to be punished as per the law in force at the time of committing the offence. Exception to the general rule is possible only in case if, *ex post facto law* is beneficial to the accused and the law permit to proceed against the violator under the *ex post facto law* which has mollified the offence. If action under *ex post facto law* is neither permissible nor possible, the violator cannot be let free simply for the reason that *ex post facto law* had decriminalised the violation. More so, when the action taken under pre amended provision is saved under Section 4 of the Jan Vishwas Act, 2023.

62. In the case in hand, the facts and law indicates that the prosecution is launched against the petitioners for violation of the provisions of law as it stood before amendment. After amendment, for the contravention of the Environment (Protection) Act, Sections 15 to 17 is repealed and substituted with Sections 15, 15A to 15F. The consequence of the amendment is that, the Trial by Court and sentence of imprisonment and fine is substituted with adjudication by the Authority notified and imposition of penalty. If the violator fail to pay penalty or additional penalty, he is liable to be sentenced for imprisonment to an extend of three years. The amendment has not



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decriminalised the contraventions in *toto*, but had only conditionally postpone the punishment and also saves the old provisions for the contraventions committed prior to the amendment.

63. In the considered opinion of this Court, the impugned complaints discloses that the petitioners have violated and contravened the provisions of Environment (Protection) Act and Notification issued there under. They were prosecuted as per the law which was in force on the date of committing the offence. The substitution of Section 15 to 17 of the old Act by new provisions had not erased those Sections but saved under Section 4 of the Jan Vishwas Act, 2023. Contravention or non-compliance of the Act, Rules, Orders and Directions are still actionable. The old rights and liability are not destroyed. If the petitioners wants the benefit of the amendment, he must be amenable for action under the amended provision. The judgements including *in re: T.Barai* cited supra, does not endorse the submission of the petitioners to make an unlawful act a lawful, by giving retrospective effect to a *ex post facto* law.

64. In *B.Manna -vs- State of West Bengal* reported in (AIR 1955

SC 84), the Hon'ble Supreme Court applied the principle, 'where the fresh



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legislation brought on the same subject, the line of enquiry would be not whether the new Act expressly keeps alive, old rights and liabilities but whether it manifest an intention to destroy them’.

65. The above test if applied to the facts of the case in hand, certainly the intention of the legislators could not be to treat the mining minerals without prior Environmental Clearance as a lapse to be adjudicated by a in-house process or it manifest any intention to destroy the liability. If that was the intention, the legislators would not have included the repeal and saving provision under Section 4 of the Jan Vishwas Act. Also, prescribing rigorous penalty for contraventions is a clear indication that the legislators intention is not to destroy the liability but to provide an alternate procedure and penalty for contravention.

66. This Court is of a firm view that, if the contention of the petitioners is accepted and retrospective effect is given to the Environment (Protection) Act, it will render Section 4 of the Jan Vishwas Act otise and meaningless. Benefit of *Ex post facto law* cannot be extended at the cost of causing injury to the provision of the said law. The statute (Jan Vishwas Act) has to read as a whole and not selectively.



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67. As a result of the above discussion, these Criminal Original Petitions Nos.17614, 17616, 19869 & 20877 of 2024 are dismissed. Consequently, connected Miscellaneous Petitions are closed.

17.10.2024

Index :Yes.

Internet :Yes.

Speaking Order/Non-Speaking Order.

bsm

To:-

1. The Chief Judicial Magistrate, Ariyalur.
2. The District Environmental Engineer,
The Tamil Nadu Pollution Control Board,
No: 4/326, Trichy Main Road,
Keelapalur Village, Ariyalur Taluk,
Ariyalur District.
3. The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery common order made in
Crl.O.P.Nos.17614, 17616, 19869 & 20877 of 2024

17.10.2024