

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

**Application No. 256 of 2013 (SZ)
(W.P (MD) No. 3274 of 2011 of Hon'ble Madurai Bench of the
Madras High Court)**

In the matter of
Ambai Taluk Tamirabarani
Vivasayigal Nala Sangam
Rep. By its Secretary R. Papanasam
No.2/12, North Street
Kodarankulam, Ambasamudram,
Tirunelveli - 16.

.... Applicant/ Petitioner
in W.P.(MD) No.3274 of 2011

AND

1. Union of India
Represented by its Secretary
Ministry of Environment and Forests
New Delhi
2. The Government of Tamil Nadu
Represented by its Secretary,
Department of Environment and Forests
Secretariat, Chennai
3. The Government of Tamil Nadu
Represented by its Secretary,
Department Industries
Secretariat, Chennai
4. The Commissioner of Geology and Mining
Guindy, Chennai

5. The central Pollution Control Board (CPCB)
Represented by its Chairman
New Delhi
6. Tamilnadu Pollution Control Board
Represented by its Chairman
Chennai- 600 002
7. The District Collector
Tirunelveli District
Tirunelveli
8. The State Level Environment
Impact Assessment Authority, Tamil Nadu
Represented by its Member Secretary and
Director of Environment
No:4-D, Panagal Maligai, No:1, Jennis Road
Saidapet, Chennai- 600015
9. The Chairman and Managing Director
Tamil Nadu Mines and Minerals (TAMIN)
Chepauk, Chennai
10. The Chief Engineer
Public Works Department
Chennai
11. The District Forest Officer
Tirunelveli District
Tirunelveli
12. M/s ABM. Granites (India Pvt. Ltd.)
460, Main Road, Perundurai
Erode - 638052.

Counsel appearing:

Applicant:

M/s K. Thilageshwaran, M. Subha and G. Balamaniandan, Advocates.

Respondents:

Smt. C. Sangamithirai, advocate for respondent No.1: M.K. Subramanian and M.R. Gokul Krishnan advocates for respondent Nos. 2, 3, 4, 6, and 7: Smt. Rita Chandrasekar advocate for respondent No. 5: Smt. S. Thamizharasi advocate for respondent No. 8: M/s Abdul Saleem, S. Saravanan advocates for respondent No. 9: Mr. Raja Karthikeyan advocate for respondent No. 10: Mr. R. Karthikeyan advocate for respondent No. 11: Shri V.P. Sengottuvel advocate for respondent No. 12.

Application No. 259 of 2013 (SZ)
(W.P (MD) No. 13266 of 2010 of Hon'ble Madurai Bench of the Madras High Court)

In the matter of
Ambai Taluk Tamirabarani
Vivasayigal Nala Sangam
Rep. By its Secretary R. Papanasam
No.2/12, North Street
Kodarankulam, Ambasamudram,
Tirunelveli - 16.

.... Applicant/ Petitioner in
W.P.(MD) No.13266 of
2010

AND

1. Union of India
Represented by its Secretary
Ministry of Environment and Forests
New Delhi
2. State of Tamil Nadu
Represented by its Secretary,
Industries Department
Fort St.George, Chennai
3. The Secretary
The Department of Revenue
Fort St.George, Chennai
4. The Secretary
The Department of Forests
Fort St.George, Chennai
5. The Member Secretary
Tamilnadu Pollution Control Board
Guindy, Chennai.
6. The District Collector
Tirunelveli District
Tirunelveli
7. The Assistant Director
Department of Geology and Mines
Collectorate Buildings
Tirunelveli District
Tirunelveli

8. The Chief Engineer
The TWAD Board
Chennai
9. The Chief Engineer
Public Works Department
Chennai
10. Tamil Nadu Mines and Minerals (TAMIN)
Chepauk
Chennai
11. M/s P.R.P. Exports Lts,
Represented by its Manager
Therkuthuru
Melur, Madurai District
12. M/s ABM. Granites (India Pvt. Ltd.)
460, Main Road, Perundurai
Erode - 638052. ... Respondents

Counsel appearing:

Applicant: M/s K. Thilageshwaran, M. Subha and G.
Balamaniandan, Advocates.

Respondents: Smt. C. Sangamithirai, advocate for respondent
No.1: M.K. Subramanian and M.R. Gokul
Krishnan advocates for respondent Nos. 2, 3, 4,
6, 7 and 10: Smt. Rita Chandrasekar advocate for
respondent No. 5: Smt. S. Thamizharasi advocate
for respondent No. 8: M/s Abdul Saleem and S.
Saravanan advocates for respondent No. 9: Shri
R. Karthikeyan advocate for respondent No.11:

Shri V.P. Sengottuvel advocate for respondent
No. 12.

COMMON ORDER

Present:

1. Hon'ble Shri Justice M. Chockalingam

Judicial Member

2. Hon'ble Prof. Dr. R. Nagendran

Expert Member

Dated, 5th March, 2015

(Hon'ble Shri Justice M. Chockalingam)

Application Nos. 256 and 257 of 2013 (SZ) (THC)

These applications were taken on file of the Tribunal by an order of transfer of the Writ Petition (MD) No. 3274 of 2011 and W.P. (MD).No. 13266 of 2010 of the Hon'ble Madurai Bench of the Madras High Court. The petitioner to the Writ Petitions has filed the same in his capacity as the Secretary of Ambai Taluk Tamirabarani, Vivasayigal Nala Sangam which is registered under Societies Act. Being involved in public activities he filed the Writ Petition in public interest to protect the Tamirabarani River which plays a vital role in

the life and economy of Tirunelveli, Tuticorin and Virudunagar Districts.

2. The Writ Petitions were filed seeking a writ of mandamus for a directions to respondent Nos. 2, 5 and 10 not to give permission to the respondent No. 11 for the multicolored granite quarrying in survey Nos. 526 to 555 situated at Mela Ambasamudram Village and survey No. 58 at Kodarankulam Village in Ambasamudram Taluk, Tirunelveli District, since the above said lands are very close to the Kalakad-Mundandurai Tiger Reserve and just about situated in the Tamirabarani River bed and also direct the respondent No.2 to take effective steps to protect the Kalakad-Mundandurai Tiger Reserve Eco-system in Tirunelveli District. The above mentioned lands are situated in 5 km radius from the Mundandurai Tiger Sanctuary (Sanctuary in Ambasamudram Taluk. The respondent No. 4 in notification in reference No. K1/19956/92 dated 07.04.1992 has clearly stated that the Government of India has decided not to allow projects to come up in the area located within 10 km boundary of reserve forest or designated ecologically sensitive area within 25 km of the boundary of National Park or Sanctuary without the concurrence of the Central Government. Further, as per G.O. Ms. No.

127 dated 08.05.1988 of the Government of Tamil Nadu has prohibited coming up of any projects, excavations etc., within a radius of 1 km from the rivers Cauvery, Vaigai, Palar, Penaiyar and Tamirabarani to safeguard the river belt. The lands in the above mentioned survey Nos. in Mela Ambasamudram Village and in survey No. 58 of Kodarankulam Village, Ambasamudram Taluk in Tirunelveli District are situated within the radius of 350 m from the Tambarbarani River. More than 10,000 people live near the granite mining site and there is a low tension electric transmission line crossing through the survey No. 525/1. Besides, the pipe lines of Ambasamudram Combined Drinking water Scheme are laid in survey No. 549 which is adjacent to the mining area and through these pipe lines drinking water is supplied to the people of Ambsamaduram Municipality. Peacock, fox, hill snakes and mila, wild boars are living in the nearest area and a rarest tree, namely, yellow wood tree (*Manja Kadambu*) is seen in this area in large numbers.

3. Normally, powerful explosives are used to cut the granites and the granites cannot be mined without blasting. The usage of these explosives also poses a threat to the nearby Manimutharu Dam and the vibration caused by the explosives also affects the flora and

fauna in the surrounding forest. Two hillocks on the way to Manimutharu Dam which were leased out to private quarrying operators for cutting granites have totally vanished. The waste stone from the quarrying are dumped into Tambarabarani River causing damage to the ecology and also endangering underground water. There is an ancient cave temple in survey No. 58 of Kodarangkulam Village which is the habitat for many birds including peacock, cormorants, coot, cranes, storks etc.

4. In spite of representations to the authorities, no consent or opinion from the local people were obtained before the lease was granted to the respondent No. 10. As per Article 48 (A) of the Constitution of India, the State has to endeavor to protect the environment and safeguard the forest and wildlife of the country and it is the duty of every Indian citizen to protect the environment including forests, lakes, rivers and wildlife under Article 51 (A) (g) of the constitution of India.

5. On the above pleadings the applicant has sought the indulgence of the Tribunal to issue a direction to the respondent Nos. 2, 5 and 10 not to give permission to respondent No. 11 for the

multicolored granite quarrying in survey Nos. 526 to 555 situated at Mela Ambasamudram Village and survey No. 58 at Kodarankulam Village in Ambasamudram Taluk, Tirunelveli District and with further direction to respondent No. 2 to take effective steps to protect the Kalakad-Mundandurai Tiger Reserve eco-system in Tirunelveli District.

6. The 1st respondent, namely the Ministry of Environment and Forests (MoEF) filed the reply which is adopted by the 8th respondent in Application No. 256 of 2013 (THC), namely, the SEIAA, would state in reply that any mining project coming up within the boundary of 10 km of a national park or wild sanctuary should have the clearance from the Standing Committee of the National Board for Wildlife as per the orders of the Hon'ble Supreme Court of India besides Environmental Clearance (EC) from the MoEF under Environment Impact Assessment Notification, 2006 (EIA Notification, 2006). Further, the subject of grant of mining lease lies within the domain of the Ministry of Mines and the respective State Governments. The mining lease area which is 50 ha or more should be obtained after getting prior EC as per the procedure laid down in EIA Notification, 2006. For the area falling within 50 ha (B

Category) the clearance from State Level Environment Impact Assessment Authority (SEIAA) would be necessary. If the area is more than 50 ha, (Category A) the EC from MoEF would be necessary. Any project or activity specified in Category B will be treated as Category A project if located in whole or in part within 10 km from the boundary of the protected areas notified under the Wildlife Protection Act, 1972 and such projects need EC from MoEF as per EIA Notification, 2006. The clearance from the Standing Committee of the National Wildlife Board is also necessary besides EC from MoEF.

7. The 3rd respondent in Application No. 256 of 2013 (SZ) (THC) and the 2nd respondent in Application No. 259 of 2013 (SZ) (THC), namely the Secretary to Government, Industries Department, Government of Tamil Nadu, Chennai has submitted in reply which is adopted by the 2nd, 4th, 7th and 11th respondents, namely, Secretary to Government, Environment and Forest Department, Commissioner of Geology and Mining, State of Tamil Nadu, District Collector, Tirunelveli and District Forest Officer, Tirunelveli, respectively, in Application No. 256 of 2013 (SZ) (THC), that the Tamil Nadu Mines and Minerals Ltd., (TAMIN) arrayed as 9th respondent in Application

No. 256 of 2013 (SZ) (THC) and 10th respondent in Application No. 259 of 2013 (SZ) (THC) preferred an application for the quarry lease in an extent of 22.50 ha in the Government land in Survey No. 58 of Kodarankulam Village, Ambasamudram Taluk in Tirunelveli District for a period of 30 years under the Tamil Nadu Minor Mineral Concession Rules, 1959 (TMMCR, 1959). The District Collector, Tirunelveli, the 7th respondent in Application No. 256 of 2013 (SZ) (THC) and 6th respondent in Application No. 259 of 2013 (SZ) (THC) forwarded the application with certain conditions to be followed with regard to the distance factor on adjacent *patta* lands, power line passing through and the pathway. The Director of Geology and Mining in his letter No. 792/MM2/2008 dated 18.02.2008 concurring with the conditions imposed by the District Collector, Tirunelveli recommended the application with an additional condition that 50 m safety distance should be provided to the tank in Survey No. 60 on the northern side of the area applied for quarry lease.

8. The applicant filed a writ petition in W.P.(MD).No. 2533 of 2008 before the Hon'ble High Court in Madurai Bench against the lease of quarry at the above location. The Writ Petition was disposed on 10.01.2011 with directions to the respondents 1 to 3 therein to

consider every aspect before granting the permission to quarry in respect of the land at the above location with liberty to the writ petitioner to challenge the same in a separate proceeding. After examining all the aspects and on being satisfied, the Government granted the lease on 25.02.2011 and the applicant herein filed another writ petition in W.P.(MD).No. 3570 of 2010 before the Madurai Bench of the Hon'ble Madras High Court. The Hon'ble High Court passed orders on 19.03.2010 on the above writ petition with directions to the 2nd respondent authority therein to consider the various grievances of the writ petitioner while dealing with the permission applied for by respondents 9 to 11 therein before passing any final orders.

9. The applicant filed another writ petition in W.P.No. 13266 of 2010 before the Madurai Bench of Hon'ble Madras High Court praying for directions to the 1st to 4th respondents therein to study the impact of quarrying for granite near Kalakkad-Mundandurai Tiger Reserve (Tiger Reserve) within the boundary of 10 km. The Government order was issued to TAMIN in G.O. (3D).No. 29 dated 25.02.2011 granting the lease subject to the outcome of the orders in W.P.No. 13266 of 2010 before the Madurai Bench of Hon'ble Madras

High Court. This W.P.No. 13266 of 2010 is now pending before this Tribunal on transfer from the High Court as Application No. 266 of 2013 (SZ) (THC).

10. The lease area is situate at a distance of 3.5 km from the Tiger Reserve and 665 m from Tamirabarani River (River) and all the aspects were carefully examined by the Government before granting the lease and the order issued by the Government is sustainable in law. The Government order has been issued subject to the outcome of the orders to be passed in the W.P.(MD).No. 13266 of 2010 which is the Application No. 266 of 2013 (SZ) (THC) pending before the Tribunal. The Notification dated 14.09.2006 was only a draft notification which was further amended by Government of India in S.O.3067 (E) dated 01.12.2009. As per this amended notification the granite is a mineral under the purview of TMMCR, 1959. Further, the Government order dated 08.5.1988 which is relied by the applicant is not applicable to the granite quarrying which will not pollute the water. Due to technological advancement in the quarrying operation, granites are severed from the earth by using latest wire-saw method reducing mineral wastage to a minimum quantity. Since the TAMIN will be quarrying in a systematic way using scientific methods and the

state of art technology with experienced mining personnel and engaging modern machinery, the granite blocks will be extracted without causing any air and noise pollution and water pollution as well and also adhering to the approved mining plan. As the Tiger Reserve is at a distance of 3.5 km from the lease hold area, no harm will be caused to the wildlife and the River also. There will be no damage to the Nathiyunni dam as averred by the applicant. The Government has stipulated safety conditions to be implemented while granting the quarry lease to TAMIN. The local authorities and the administrators of the dam had not objected to the grant of quarry lease to TAMIN and none else objected to the grant of quarry lease to TAMIN. The prior approval of EC as per the Notification dated 14.09.2006 issued by the MoEF under sub rule 3 of rule 5 of Environment (Protection) Act, 1986 (E P Act, 1986) will apply only for major mineral projects and in so far as the lease granted to quarry granite, the same is classified as minor mineral and the above provisions contained in the Notification dated 2006 will not apply to the quarrying of granite. The grant will not come under the ambit of the SEIAA as well. The grant of lease issued in G.O.(3D).No. 29, Industries (MME-1) Department dated 25.02.2011 was only after examining and ensuring that all the

stipulations prescribed in the concerned rules and regulations were complied with. The orders passed by the Hon'ble High Court, Madras in W.P.(MD).No. 3570 of 2010 on 19.03.2010 were taken into consideration by the Government. The decision of the Government in leasing out the quarry to TAMIN is well founded on unassailable facts and materials on records incorporating relevant facts and is, therefore, legally sustainable.

11. The Government has taken into consideration the area applied for the grant of quarry lease, the existence of permanent structures in and around the area, safety distance to be provided to the existing permanent structures, the local objections, if any, and the recommendations of the District Collector and the Commissioner of Geology and Mining in favour of the TAMIN over the subject area and granted the quarry lease, besides the directions issued by the Hon'ble High Court in MP (MD).No. 1 of 2008 in W.P.(MD).No. 2533 of 2008. Moreover, the Government has stipulated that TAMIN should restrain its mining activities by fencing and sealing the leased out area to avoid any damage to the structures like Tamirabarani river course, Nathiyunni dam, habitations and temples nearby apart from leaving the statutory safety distance to tank, power-lines, track

(*pathai*) etc. The Government has also directed to form a Monitoring Committee comprising of Assistant Director/Deputy Director of Department of Geology and Mining to implement the above conditions which are included in the lease deed. The Monitoring Committee will also ensure protection to the Tiger Reserve with due precaution while quarrying. The Government has also imposed another condition that the quarry lease is subject to the outcome of the W.P. (MD).No. 13266 of 2010 pending before the Hon'ble High Court in Madurai Bench. Though granite is classified as a minor mineral, it is governed by the Granite Conservation and Development Rules, 1999 which stipulates that the quarrying operation should be carried out in accordance with an approved mining plan. The environmental management plan in respect of the area to be granted on quarry lease is a part of the mining plan submitted before the Commissioner of Geology and Mining for approval and only after the approval of the mining plan, the Government has granted the quarry lease to TAMIN and the TAMIN should carry out the quarrying operation in accordance with the approved mining plan. In as much as all the aspects relating to protection of environment and ecology has been incorporated in the approved mining plan, the quarrying

operation by TAMIN will not be detrimental to the environment and ecology and therefore, the averments of the applicant in the writ petition have got to be rejected. The quarrying of granite would not cause any water pollution and it cannot be termed as an industry more so a polluting industry and therefore, the G.O. No.127 dated 08.05.1998 of the Environment and Forest Department of the State of Tamil Nadu is not applicable to the granite quarrying. Hence, the 3rd respondent in Application No. 256 of 2013 (SZ) (THC) and the 2nd respondent in Application No. 259 of 2013 (SZ) (THC), namely the Secretary to Government, Industries Department, Government of Tamil Nadu, Chennai seeks to dismiss the writ petition (Application).

12. The 5th respondent in Application No. 256 of 2013 (SZ) (THC), namely, the Central Pollution Control Board (CPCB) would state in reply that the TNPCB has been empowered and made responsible to implement the provisions of the Air Act and Water Act in the State of Tamil Nadu in respect of prevention and control of water and air pollution from various sources. The standards notified under the E P Act, 1986 are also enforced by the State Pollution Control Boards in the respective states. The CPCB's primary role are (i) to propose standards to Central Government which, when notified

by the Central Government are to be implemented by the State Pollution Control Boards and (ii) to coordinate the activities of the State Pollution Control Boards. The CPCB does not issue consent/NOC/EC and the prior EC for the project is issued by the MoEF and concerned SEIAA depending upon the category of project as specified in EIA Notification dated 14.09.2006 as amended from time to time. The consent to establish/operate under the Water Act and Air Act are issued by the State Pollution Control Boards/Pollution Control Committee and the CPCB has no role to play in this matter. As the subject matter of the Application is mainly concentrated on the mining activity, land acquisition, hazard to eco sensitive area, water body and wildlife does not fall under the purview of the CPCB, the CPCB is merely a *proforma* respondent. Hence the 5th respondent in Application No. 256 of 2013 (SZ) (THC) prays that it will abide by any directions passed by the Tribunal.

13. The 6th respondent in Application No. 256 of 2013 (SZ) (THC) and the 5th respondent in Application No. 259 of 2013 (SZ) (THC), namely, the Tamil Nadu Pollution Control Board (TNPCB) in reply to Application No. 259 of 2013 (SZ) (THC) would state that the applications received from TAMIN in 4 locations seeking Consent

Order from the TNPCB under Water (Prevention and Control of Pollution Act), 1974 (Water Act) and Air (Prevention and Control of Pollution) Act, 1981 (Air Act) have been returned for want of EC and they have not yet been resubmitted while the 11th respondent or any other agencies was not granted with the Consent by the TNPCB for quarrying multi coloured granite in the survey numbers listed in the affidavit. The activity of granite quarrying is not listed in Annexure I (list of highly polluting industries) as per the G.O.Ms.No. 213, Environment and Forest Department dated 30.03.1989 or G.O.Ms.No. 127, Environment and Forest Department dated 08.05.1998. Though the Tamirabarani river is included in the G.O.Ms.No. 127, Environment and Forest Department dated 08.05.1998, the activity of the multi-coloured granite quarrying has not been included in the list of highly polluting industries as per Annexure I of the G.O. dated 08.05.1998. Hence, the 6th respondent in Application No. 256 of 2013 (SZ) (THC) and the 5th respondent in Application No. 259 of 2013 (SZ) (THC), namely, the Tamil Nadu Pollution Control Board (TNPCB) seeks to pass such further order in the matter.

14. The 9th respondent in Application No. 256 of 2013 (SZ) (THC) and 10th respondent in Application No. 259 of 2013 (SZ) (THC), namely, the TAMIN would state in reply that the area in Survey No. 58 in Kodarankulam Village granted to TAMIN is classified as un-assessed waste (*parai*) *poromboke* and no permanent structures such as buildings, places of religious and archeological importance etc., are located in the area or in the adjacent and surrounding fields. The area is not entered in the Prohibitory Order Book. Besides, there is no objection from the public while calling for A1 notice and *tom tom* announcement by the Revenue Officials. Based on the recommendations of the Revenue Authorities, the District Collector, Tirunelveli sent proposals to the Government for the grant of quarry lease to TAMIN. The Government passed a Government order granting the lease for quarrying granite in the above mentioned area for a period of 30 years under rule 8 C of TMMCR, 1959 and the grant was subject to the outcome of W.P. (MD).No. 13266 of 2010 pending on the files of the Hon'ble Madurai Bench of the Madras High Court and also subject to safety precautions stipulated. The quarry lease was obtained by TAMIN comprised in Survey Nos. 58, of Kodarankulam Village only and the other Survey Nos. 526 to 555 are

in Mela Ambasamudram Village and there is no contiguity between the Survey Numbers in Mela Ambasamudram Village and S.F.No.58 of Kodarankulam Village which was granted to TAMIN for quarrying granite.

15. There is no connection between the lease applied area in Kodarankulam Village and the Tiger Reserve in any manner. However, the consent of the TNPCB has to be obtained only at the time of quarrying operations. Besides, TAMIN always is carrying out the quarrying operations in a systematic and scientific manner by using the state of art quarry techniques by employing well experienced mining personnel and by engaging the modern machinery, i.e., diamond wire saw machines in extracting the blocks without causing any air or water pollution and as per the mining rules and regulations more eco friendly and without affecting the environment in all its leasehold areas in Tamil Nadu and the apprehension raised by the applicant is not correct. As per the statutory provision in rule 36(1) general restriction in respect of quarrying operation stipulated in the TMMCR, 1959, safety distance of 50 m is sufficient for any quarrying activity, whereas the Kodarankulam Village is situated at a distance of 1 km away from the

quarrying site. Since the TAMIN will be quarrying in a systematic and scientific methods using the using the state of art technology with experienced mining personnel and engaging modern machinery, the granite blocks will be extracted without causing any air and water pollution and noise against the norms prescribed in G.O.No. 127. The Tiger Reserve is also situate at a distance of 7 km from the leasehold area and no harm will be caused to the wildlife. It will not affect the Tamirabarani River and there will not be any danger or development of cracks in Nathiyunni River. The Government has clearly fixed the safety conditions to be implemented by TAMIN while passing the Government order to all these structures including fencing and sealing. Hence, the contentions of the applicant are against the facts. There were no objections for the grant of quarry in favour of the TAMIN from the local authorities and administrators of the dam and there were no objections from any corner which would prove that the grant of quarry in favour of TAMIN is sustainable in law.

16. The prior approval of EC as per the Notification dated 14.09.2006 issued by the MoEF under sub rule 3 of rule 5 of Environment (Protection) Act, 1986 (E P Act, 1986) will apply only for major mineral projects and in so far as the lease granted to quarry

granite, the same is classified as minor mineral and the above provisions contained in the Notification dated 2006 will not apply to the quarrying of granite. The granite will not come under the ambit of the SEIAA as well and it is not necessary to obtain EC from MoEF or SEIAA. Only after examining and ensuring that all the stipulations prescribed in the concerned rules and regulations were complied with and taking into consideration of the orders passed by the Hon'ble High Court, Madras in W.P.(MD).No. 3570 of 2010 on 19.03.2010, the order of grant of lease was issued in G.O.(3D).No. 29, Industries (MME-1) Department dated 25.02.2011. The applicant is in the habit of filing numerous petitions one after another under the guise of public interest with an ulterior motive to affect the interest of the State at large.

17. The Government have taken into consideration the area applied for the grant of quarry lease, the existence of permanent structures in and around the area, the safety distance to be provided to the existing permanent structures, the local objections if any, for the grant of quarry lease and the recommendations of the District Collector, Tirunelveli and the Commissioner of Geology and Mining in favour of TAMIN over the subject area and granted the quarry lease.

The State Government has taken into consideration every aspect before granting permission to TAMIN as per the directions issued by the Hon'ble Division Bench of Madras High Court in W.P.(MD). No. 2533 of 2008 and in M.P.(MD).No. 1 of 2008. TAMIN received the said Government order on 25.02.2011 and on the strength of the same and in accordance with the stipulations contained in the Government order issued tender notification on 27.02.2011 by following the procedure laid down in the Tamil Nadu Transparency in Tender Act, 2005 calling for prospective bidders to operate certain portion of the quarry in Survey No. 58 of Kodarankulam Village which has been granted lease and the lease deed was executed and registered on 01.03.2011 with the District Collector, Tirunelveli. There is no impropriety on the part of the TAMIN to call for tenders from prospective bidders in as much as by virtue of the orders the Government and the lease deed executed subsequently, the TAMIN acquired already a statutory right over the subject area as per the provisions of TMMCR, 1959. The Government order granting the lease to TAMIN is in accordance with the rules and in no way illegal. It is reiterated that the quarrying operations by TAMIN will not be harmful to the wildlife as well as the environment and to Tamirabarani

River as made out by the applicant. The Government has also directed that the TAMIN should form a Monitoring Committee comprising the officials of the Geology and Mining to implement the conditions and other safety parameters imposed in the Government order. The Monitoring Committee shall ensure protection to the Tiger Reserve also by taking due precautionary measures while quarrying. The Government has also specified another condition that the quarry lease is issued subject to the outcome of the W.P.No.13266 of 2010 filed by the same applicant. While carrying out similar quarrying operations already, the TAMIN has taken utmost care in doing scientific and systematic quarrying without affecting the environment and ecology and will do so in the present quarrying in the same manner without affecting environment and ecology. The apprehension of the applicant is baseless and hence, the TAMIN should be permitted to carry on the quarrying operations as per the conditions laid down in the Government order and undertakes to abide by the directions that are to be passed in the W.P.No. 13266 of 2010.

18. The 11th respondent in Application No. 259 of 2013 (SZ) (THC) (W.P. (MD).No. 13266 of 2010, namely the M/s. P.R.P.

Exports, Melur, Madurai District would state in reply that the 11th respondent submitted an application to the concerned authorities for the grant of granite quarrying in its *patta* lands and the same is under preliminary stage and it has the preliminary right to have its application considered by the authorities for the grant of quarry. The applicant cannot maintain the (writ) Application restraining the statutory authorities from acting or processing the application of the 11th respondent in accordance with law and the Application is premature and liable to be dismissed and the applicant is seeking a blanket relief restraining the statutory authorities from acting or processing any application in accordance with law which is against the TMMCR, 1959, GCD Rules, 1999. The applicant merely placed reliance upon Notification in Ref. No. K1/19956/92 dated 07.04.1992 issued by the 4th respondent, namely, the Forest Department, Government of Tamil Nadu and the said notification is only a draft notification calling for objections from the public. Thereafter, final notification came to be issued in S.O.60(E) dated 27.01.1994 where in the stipulation relied upon by the applicant in the draft notification did not find place. Subsequent thereto, the final notification repealed by the EIA Notification, 2006. There are several amendments to the

said notification. The authorities are bound to act on statutory enactments while processing any application for grant of permission and giving clearance for establishing any industry. All the averments made by the applicant are imaginary, vexatious, invented and are untenable and devoid of merits. The EIA Notifications and all Environmental Acts do not prescribe public hearing for all types of industries. The public hearing is prescribed only for red category industries. So far as the granite industry is concerned, it is classified as Orange category and on clearance from the statutory authorities; the granite industry can come up. In so far as the 11th respondent is concerned, the application made for granting quarry lease is under scrutiny at the preliminary stage and all the contentions of the applicant are unsustainable in law, untenable and tainted with an illegal motive. Hence, the 11th respondent in Application No. 259 of 2013 (SZ) (THC) (W.P. (MD).No. 13266 of 2010, namely the M/s. P.R.P. Exports, Melur, Madurai District seeks to dismiss the Application No, 259 of 2013 (SZ) (THC) (W.P. (MD).No.13266 of 2010)

19. The 12th respondent, namely, M/s ABM Granites (India) Pvt. Ltd. in both the Application Nos. 256 of 2013 (SZ) (THC) and 259 of

2013 (SZ) (THC) would state in reply that the 12th respondent is a company incorporated in year 2006 under the provisions of the Companies Act, 1956. The major activities of the company are extraction/quarrying of granite rough blocks on behalf of valid quarry lease holders. The company is also in the business of purchase and sale of granite rough block in the domestic and export market. The company has its own specialized mining equipment and employs sizeable work force skilled and well experienced for a systematic and scientific operation of the quarrying with utmost care to ensure safety in work place and to keep the environment unpolluted.

20. Pursuant to the grant of lease to quarry multi-coloured granite in an extent of 22.5 ha. in S.F. No. 58 of Kodarangulam Village, Ambasamuthiram Taluk, Tirunelveli District to TAMIN in G.O.(3D) No.29 Industries Department dated 25.02.2011, TAMIN floated tender for raising cum sale agency for production of granite blocks with respect to 4 locations which include demarcated portion – I for an extent 6.00.0 ha, Portion II for an extent of 5.00.0 ha, out of total extent of 22.40.0 ha comprised in S.F.No. 58, of Kodarangulam Village, Ambasamuthiram Taluk, Tirunelveli District. The 12th respondent tendered for the above two locations. The TAMIN after

scrutiny of tender documents of the 12th respondent invited the 12th respondent for discussion and negotiation. The TAMIN accepted the 12th respondent's tender/offer for raising cum sale agency provisionary for operating the quarry in the above two portions for a period of three years from the date of agreement subject to the outcome of W.P.No. 13266 of 2010 and work can be commenced only after vacating the Court stay in W.P.No. 3274 of 2011 dated 11.07.2011.

21. Subsequently, the TAMIN in its proceedings in Rc.No. 2603/P3/2011-1 dated 21.09.2011 for the Portion – I and proceedings in Rc.No. 2603/P3/2011-2 dated 21.09.2011 for the Portion – II, issued orders granting raising cum sale agency for production and purchase of Granite Blocks. It is submitted that subsequent to the award of RCSA, the 12th respondent herein submitted all the necessary documents and bank guarantees to satisfy the requirements of TAMIN to enter into an agreement. The 12th respondent and TAMIN on 22.09.2011 entered into a contract agreement for granite quarries raising cum sale agency with respect to demarcated Portion I and II of S.F.No. 58 of Kodarangulam. In clause 52 – special conditions of the agreement, the TAMIN imposed

several conditions with respect to safety guidelines to protect agricultural activities in the neighbouring *patta* lands, pathway etc. The 12th respondent having become a raising cum sale agency of TAMIN with respect to the locations – demarcated Portion –I and II of S.F.No.58 of Kodarangulam Village, Ambasamuthiram Taluk Tirunelveli District, is not in a position to commence quarry operation in view of the orders of the Hon'ble High Court.

22. The 12th respondent will commence the quarry operations in a systematic and scientific manner by using the state-of-the-art techniques and employing experienced mining personnel and by deploying modern machinery in extracting blocks without causing any air and water pollution and avoiding noise by adhering to the mining rules and regulations, more eco-friendly and without effecting the environment. Latest technology to extract the granite blocks without using the explosives will be adopted which will not have any impact on environment. By adopting this technology there will not be any air or water pollution. The 12th respondent will strictly follow Clause 52 – special conditions of the contract agreement apart from satisfying general restrictions envisaged under Rule 36 of the TMMCR, 1959.

Obtaining prior EC as envisaged in EIA Notification, 2006 will apply only to major minerals. As granite is classified as minor mineral under the provisions of TMMCR, 1959, it is not necessary either for the Government of Tamil Nadu or TAMIN to obtain EC from the MoEF.

23. The Government of Tamil Nadu while framing TMMCR, 1959 in exercise of powers conferred under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act, 1957) imposed general restrictions in respect of quarry operations under rule 36 and as per rule 36(1A) the Government thought it fit to specify that no lease shall be granted for quarrying stone within 300 m from any inhabitant site taking into account that quarrying operations will use blasting etc., which would cause both air and water pollution. Therefore, the distance restrictions are applicable only to stone quarries and not related to granite quarries as the same is governed by the Granite Conservation and Development Rules, 1999 (GCDR,1999). Since the 12th respondent is going to extract granite by using modern equipment and techniques, this will not cause any air or water pollution. Moreover, the method of granite quarrying is governed by Chapter VI of Systematic and Scientific Mining of the GCDR, 1999.

24. The applicant is in the habit of filing frivolous writ petitions one after another with respect to the same subject by raising different grounds at different point of time. The applicant filed the W.P.(MD).No. 2533 of 2008 for forbearing the respondents 4,5,8 and 10 herein from carrying out any work in respect of quarry operations in S.F.No. 58 in an extent of 22.50.0 ha at Kodarankulam Village of Ambasamudram Taluk in Tirunelveli District on the ground that the said land is surrounded by cultivating lands and there is a cave temple which is a historic monument and there is an integrated water body from where the water is flown to Kodarankulam and where the area is residential. The Hon'ble High Court disposed of the said writ petition with directions to the 1st to 3rd respondents therein to consider every aspect before granting permission to quarry in the above location and if the permission is granted and if aggrieved, it would be open to the petitioner thereto to challenge the same in a separate proceedings. Even though the grounds of attack raised by the applicant in the writ petition on hand were available even at the time of filing the earlier W.P.No. 2533 of 2018, he failed to raise the said grounds and therefore, the present writ petition would attract the Principles of constructive *res judicata*.The

applicant has selectively filed the above writ petition as a Public Interest Litigation (PIL) challenging the grant of quarry lease only with respect to the land in S.F.No. 58, Kodarangulam Village, Ambasauthiram Taluk, Tirunelveli District, when it failed to come forward against other granite quarries operating in the very same area, would go to show that the present writ petition is filed at the instance of the existing quarry operators and to prevent the entry of new quarry operator into their area of operation. The above writ petition is filed for extraneous considerations. There are oblique motive behind filing the PIL. The 12th respondent reliably understands that there are some granite quarries in operation for several years just adjacent to Tamirabarani River in the very same area and the applicant has not agitated the same which would establish that the PIL has been filed to support the existing granite quarry operators in the very same area. On the above pleadings, the 12th respondent seeks to dismiss the Applications.

25. The 8th respondent in Application No. 259 of 2013 (SZ) (THC) (W.P. (MD). No. 13266 of 2010), namely, the Chief Engineer, Tamil Nadu Water Supply and Drainage Board, Chennai and the 10th respondent in Application No. 256 of 2013 (SZ) (THC) (W.P.(MD).No.

3274 of 2011) and 9th respondent in Application No. 259 of 2013 (SZ) (THC) (W.P.(MD). No. 13266 of 2010, namely, the Chief Engineer, Public Works Department, Chennai have not filed their replies to the Applications concerned with them.

26. Advancing the arguments on behalf of the applicant, the learned counsel would submit that while Application No. 256 of 2013 (SZ) (THC) (W.P.(MD).No. 3274 of 2011 for quashing the grant of lease to the 9th respondent, TAMIN to quarry the multi-coloured granite in an extent of 22.50.0 ha in S.F.No.58, Kodarankulam Village in Ambasamudram Taluk, Tirunelveli District in the State of Tamil Nadu in G.O.(3D).No. 29 dated 25.02.2011 by the 3rd respondent, Application No. 259 of 2013 (SZ) (THC) (W.P.(MD).No. 13266 of 2010) is filed seeking directions to the Secretary, Industries Department, State of Tamil Nadu, Member Secretary, TNPCB and TAMIN who are shown as 2nd, 5th and 9th respondents, respectively, therein not to give permission to 11th respondent thereto, namely, M/s. P.R.P. Exports Ltd., Melur, Madurai for multi-coloured granite quarrying from the lands in S.F.Nos. 526 to 555 of Mela Ambasamudram Village and also at S.F.No.58, Kodarankulam Village both in Ambasamudram Taluk of Tirunelveli District and also to take

effective steps to protect the Tiger Reserve eco system. The lands covered under the above survey fields belong to the Government and mining of the multi-coloured granite in the said lands would adversely affect the Tiger Reserve ecosystem and hence mining operations should not be allowed. It also requires EC from MoEF as per the EIA Notification, 2006 made under Section 3 read with rule 5 of the E P Act, 1986 dated 01.12.2009. The procedure laid down in EIA Notification, 2006 should be strictly followed. Under the above said Notification, mining lease of 50 ha and above is categorised as Category A project for which EC from the MoEF is required and mining of lease less than 50 ha of non-coal mining would be treated as Category A if located in whole or in part within 10 km from the boundary of the protected area notified under the Wildlife Protection Act, 1972 (WLP Act, 1972). The 3rd respondent has admitted that the mining site is situate at a distance of 3.5 km from the boundary of Tiger Reserve, a protected area notified under WLP Act, 1972 and hence it should not be allowed. Equally, the MoEF has also submitted the same in its reply. The 6th respondent, TNPCB has claimed in its reply that the application made by TAMIN was returned for want of EC from MoEF under EIA Notification, 2006. The stand taken by the

TNPCB thus strengthens the case of the applicant. It is the case of TAMIN that the said Tiger Reserve is situate at a distance of 3.5 km from the reserved area and they would apply necessary technologies for extracting granite and no EC is required for extracting granite which is classified as minor mineral. The 12th respondent contractor has stated that the applicant has no *locus standi* and they would use state of art technologies for extracting granite which would not harm the environment in any way. While the lease for quarrying granite is granted at a place which is located within 3.5 km from the Tiger Reserve, the EIA Notification, 2006 amended on 01.12.2009 makes EC a must from MoEF and the respondents cannot be allowed to quarry within 10 km radius from the Tiger Reserve. Moreover, as per the Government order dated 08.05.1992. Further, there cannot be any polluting industry within 5 km from the River Tamirabarani.

27. The sketch furnished by the Tamil Nadu Forest Department would clearly indicate that the said Tiger Reserve is situated within a radius of 3.5 km from the quarry site. The said Tiger Reserve is located in the South Western Ghat and the same is listed among 18 bio-diversity hot spots. The said Tiger Reserve is the only area in the Western Ghat which has a longer rainy period, about 8 months in a

year. The said rich forest has 14 rivers and streams which form the back bone of irrigation network and drinking water for the people of Tirunelveli, Tuticorin and Kanyakumari Districts. 7 major dams owe their existence to these rivers and streams from the said Tiger Reserve. The Papanasam Reserve Forest at Chengampatti and ex-*Zamindari* Forest of Tirunelveli were declared as Tiger Reserve in the year 1962. The WLP Act, 1972 came into force in the State of Tamil Nadu during 1974 and all the existing sanctuaries were deemed sanctuaries under the WLP Act, 1972. The Kalakkad-Mundanthurai Tiger Reserve is the 17th tiger reserve in the entire State of Tamil Nadu created in the year 1988-89. According to a comprehensive census taken in the year 1997, the said forest has 73 tigers, 79 leopards, 1718 wild dogs, 123 sloth bears, 37 lion tailed macaque, 61 crocodiles besides a substantial population of elephants, lesser mammals and birds including Malabar hornbills, King cobras, reticulated pythons and flying lizards. It is a fragile eco system and even a small disturbance to the environment would decimate the flora and fauna of the locality which would in turn make the forest barren. According to the precautionary principle, it is well settled that the Tribunal can interfere even if there is an apprehension

that there would be damage to environment. Hence, the project posing a potential danger to environment has to be stopped. The learned counsel relied on the decision of the Hon'ble Apex Court in *M.C. Mehta vs. Union of India and others* (2004 12 SCC118). Pointing to a decision of the Hon'ble Apex Court in *T.N.Godhavarman Tirumalpad Vs. Union of India* reported in 2012(12) SCC 297 , the counsel would submit that the Apex Court has prohibited even the removal of boulders manually by the local inhabitants outside the Valmiki Wildlife Sanctuary.

28. Added further the learned counsel that the argument put forth by the respondents that the new notification issued by the MoEF in Office Memorandum No. 13012/12/2013 dated 24.12.2013 superseding the earlier notification has already been stayed by the Principal Bench of the National Green Tribunal in the case of *Promilla Devi Vs. State and others*. Hence, the previous memorandum dated 01.12.2009 has to be applied to the present factual position and the same would require prior EC in case of location of any project within 10km from the wildlife reserve and hence both the applications have to be allowed granting the reliefs asked for.

29. Countering the above contention, the learned counsel on behalf of the 9th respondent would submit that both the writ petitions have been filed as PIL which are not maintainable since the applicant has chosen selectively for granting the reliefs while there are hundreds of mining operations going on without EC. The applications have to be dismissed since they are targeted against the respondents and hence they cannot be termed as PIL.

30. The case of the applicant that all the lands in the said survey fields are located near the Tamirabarani river and at a distance of 3.5 km from the Tiger Reserve and as per the EIA Notification, 2006 under the E P Act, 1986, EC has to be obtained from the 1st respondent, MoEF and only thereafter quarrying operations have to be undertaken has to be rejected since the State Government after considering the relevant facts and in particular the claim that the quarrying operation of granite by the 9th respondent was to be carried out in a systematic and scientific manner by engaging modern machinery which would not cause any pollution has passed orders in the G.O. No.29 granting the lease to quarry multi-coloured granite in an extent of 22.50.0 ha. The granite is classified as a minor mineral. Section 18 of the MMDR Act, 1957

enables the Central Government to make rules for protection of environment to prevent or control any pollution which might be caused by mining operations. In exercise of powers conferred under Section 18 of the MMDR Act, 1957 the Central Government framed Granite Conservation and Development Rules, 1999 (GCDR Rules, 1999) which clearly stipulate the manner in which the granite was to be quarried. The said rules take note of all environmental aspects and provided for an Environment Management Plan (EMP) which is to be approved by the Government. Since all the aspects relating to protection of environment and ecology is dealt with under GCDR Rules, 1999 the same have to be followed in the matter of quarrying granite. It is pertinent to point out that the environmental aspects relating to granite have been specifically earmarked and dealt with by the Central Government under the above special law, i.e., GCDR Rules, 1999. A perusal of Chapters IV, V, and VI would clearly go to show that the mining of granite has to be undertaken in terms of a mining plan which takes into account of the protection of environment, precautions against the air pollution, water pollution and all aspects pertaining to environment. Hence, while the E P Act, 1986 and the Notification issued there under constitute the general

law pertaining to environment, the GCDR Rules, 1999 read with Section 18 of the MMDR Act, 1957 is a special law relating to environmental aspects of quarrying of granite. It is a well settled law that the special rules would exclude the general and the GCDR Rules, 1999 are subsequently made in the year 1999 under Section 18 of the MMDR Act, 1957 which constitute a special law. Hence, the EIA Notification referred to by the applicant would have no application to the mining of granite. In order to substantiate his contention, the learned counsel relied on the judgment of the Apex Court in *M.P.Vidyut Karmachari Sangh vs. M.P. Electricity Board* reported in (2004) 9 Supreme Court Cases 755.

31. The learned counsel in his further arguments would submit that even assuming that the EIA Notification, 2006 would apply to the present facts of the case, the contention of the applicant that the EC is required from the Central Government since the lands in question are located within 3.5 km from the Tiger Reserve is without substance. Admittedly, the area in question is less than 50 ha and hence the project would fall under Category B. It is only if the area is located within 10 km from the boundary of the protected area notified under WLP Act, 1972 that the project would be considered

as falling under Category A. According to Section 2 (24A) of the WLP Act, 1972 the 'protected area' means a National Park, a Sanctuary, a Conservation Reserve or a Community Reserve notified under Section 17, 35, 36 A and 36 C of the Act. It is pertinent to point out that the Tiger Reserve in question is neither a natural park nor a sanctuary nor a conservation reserve nor a community reserve as notified under the Act. On the other hand, the Tiger Reserve is notified under Section 38 (V) of the WLP Act, 1972. Thus, it would be clear that the Tiger Reserve does not fall within the definition of the 'protected area' as defined in Section 2 (24A). In these circumstances, even if the Tiger Reserve is within 10 km since the same is not a protected area, the project in question falling under Category B cannot be treated to fall under Category A. Hence, even assuming that the EC is required it will be only from the SEIAA and not otherwise.

32. The learned counsel would further add that the quarrying of granite in accordance with the approved mining plan by the Government would cover all the environmental aspects. That apart, the quarrying operations would be undertaken in a systematic and scientific manner by engaging the most modern machinery with

diamond wire saw machine which would extract the blocks without causing any water or air pollution. It is true that the 9th respondent made an application for EC. But, the mere filing of an application would not preclude the issue being raised by the 9th respondent or being decided by the Tribunal. It is well settled that consent does not confer jurisdiction and there cannot be estoppel against the statute. Hence, the applications are devoid of merits and have got to be dismissed.

33. The learned counsel for the 12th respondent put forth his submissions which stood on the same lines of the arguments advanced by the learned counsel for the 9th respondent and recorded as above. The learned counsel for the 12th respondent relied on the following decisions:

- (i) 2005 (1) SCC 590: *Datta Raj Nathuji Thaware vs. State of Maharashtra*;
- (ii) 2010 (3) SCC 402: *State of Uttaranchal vs. Balwant Singh Chaufal and others*;
- (iii) 2000 (4) SCC 405: *Allahabad Bank vs. Canara Bank and another*;

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- (iv) 2005 (8) SCC 190: *Rajasthan State Financial Corporation vs. Official Liquidator*;
 - (v) 2012 (4) SCC 148: *Raheja Universal Ltd., vs. NRC Ltd. And others*;
 - (vi) 2012 (4) SCC 629: *Deepak Kumar and others vs. State of Haryana*;
 - (vii) 2001 (8) SCC 676: *Bharathidasan University and another vs. All India Council for Technical Education and others*;
 - (viii) 2006 (6) SCC 543: *Susetha Vs. State of Tamil Nadu and others*;
 - (ix) 2008 (6) CTC 1: *M. Nizamudeen Vs. Chemplast Sanmar Ltd., and others*;
 - (x) 2008 (4) LW 220: *K. Balamurugan and 7 others Vs. State of Tamil Nadu and six others*;
 - (xi) 2005 (1) LW 13: *O. Fernandez vs. Tamil Nadu Pollution Control Board and eleven others*.

34. As seen above, pursuant to an order of transfer of the two writ petitions, namely, W.Ps. (MD).No. 3274 of 2011 and 13266 of 2010, these writ petitions were taken on file. Both the applications were filed as PIL by Ambai Taluk Vivasayigal Sangam. Pending the application,

the 12th respondent, contractor came to be impleaded as a party respondent. The Application No. 256 of 2013 (SZ) (THC) (W.P. (MD).No. 3274 of 2011) is filed for the following relief:

To call for the records pertaining to the grant of the lease to the 9th respondent to quarry multi-coloured granite in an extent of 22.50.0 ha in S.F.No.58, Kodarankulam Village in G.O.(3D).No. 29 dated 25.02.2011 by the respondent 3 and quash the same as illegal and consequently forbearing the Respondent No. 9 or its agents or persons claiming through the Respondent No. 9 from quarrying at S.F. No.58, Kodarankulam Village, Ambasamudram Taluk, Tirunelveli District without obtaining EC from the Respondent No. 1 and also for directions to Respondent Nos. 1 and 2 to take effective steps to protect the Kalakkad-Mundanthurai Tiger Reserve ecosystem in Tirunelveli District.

35. The Application No. 259 of 2013 9SZ) (THC) (W.P.(MD).No. 13266 of 2010 was filed for the following relief:

To direct the Respondent Nos. 2,5,and 10 not to give permission to the Respondent No. 11 for multi-coloured granite quarrying in Survey Nos. 526 to 555 situated at Mela Ambasamudram Village and Survey No. 58, situated at Kodarankulam Village, Ambasamudram Taluk, Tirunelveli District and also for directions to the Respondent No. 2 to take effective steps to protect Kalakkad-Mundanthurai Tiger Reserve Ecosystem in Tirunelveli District.

36. Thus, while the writ petition filed in W.P.(MD).No. 13266 of 2010 (Application No.259 of 2013) seeking a direction to the Respondent Nos. 2, 5 and 10 thereto not to give permission for Respondent No. 11 for multi-coloured granite quarry in Survey Nos. 526-555 at Mela Ambasamudram Village and Survey No. 58 of Kodarankulam Village in Ambasamudram Taluk of Tirunelveli District, the later W.P.(MD).No. 3274 of 2011 (Application No. 256 of 2013) was for quashing the permission granting lease to TAMIN, 9th respondent thereto to quarry multi-coloured granite in Survey Nos. 526-555 of Mela Ambasamudram Village and 58 of Kodarankulam Village, Ambasamudram Taluk of Tirunelveli District granted in the

Government order dated 25.02.2011 by the 3rd respondent. In both the applications the applicant has sought for a direction to 1st and 2nd respondents to take effective steps to protect the Tiger Reserve ecosystem. The reliefs sought for in both the applications are on the same contentions and grounds. It is a pleaded case of the applicant as contended by the learned counsel for the applicant as recorded above that the mining of mineral requires prior EC from the MoEF as per the EIA Notification, 2006. The procedure laid down in the EIA Notification, 2006 is mandatory in the lands covered in the above survey fields in respect of which the quarry lease was granted belong to Government and if the mining of the multi-coloured granite in the said lands is allowed, it would adversely affect the ecosystem of the Tiger Reserve. Admittedly, in the instant case, no EC was obtained from MoEF. Apart from that, the mining lease of 50 ha and above though categorised as A project, the EC becomes necessary even if it is falling below 50 ha as the mining will be treated as Category A if located in whole or part of the boundary of the protected area notified under WLP Act, 1972. Pointing to the reply filed by the respondents, it is urged by the applicant's side that the proposed mining site is

situate at a distance of 3.5 km from the boundary of the Tiger Reserve, a protected area notified under WLP Act, 1972.

37. In defence, the 9th respondent in whose favour the lease has been granted to quarry the granite in the aforesaid lands and newly impleaded 12th respondent who had entered into a contract with the 9th respondent has raised three contentions which are as follows:

- (1) EC from MoEF is not required for quarrying granite since EIA Notification, 2006 has no application to the mining of granite.
- (2) Even assuming that the EIA Notification, 2006 would apply, the project has to be considered as Category B since the area of mining though situated within 10 km from Tiger Reserve cannot be construed within 10 km from the boundary of the protected area notified under WLP Act, 1972.
- (3) Both the applications are not *bona fide* and cannot be treated as PIL.

38. Admittedly, the Government of Tamil Nadu shown as the 3rd respondent passed the impugned G.O. 29 dated 25.02.2011 and granted lease to the 9th respondent TAMIN to quarry multi-coloured

granite in S.F. No.58, Kodarankulam Village for a period of 30 years under rule 8C of TMMCR, 1959 subject to the conditions enumerated therein. The first ground on which the Writ Petition was filed was about the lease granted in favour of the 9th respondent TAMIN for quarrying the granite in the land in the above said survey fields without obtaining the prior EC under EIA Notification, 2006 and without following the mandatory provisions therein. Admittedly, the lands in question belong to the State Government who has passed orders in G.O.No.29 granting the quarry lease for extraction of granite in an extent of 22.50.0 ha. It is not in controversy that the granite is classified as a minor mineral. From a perusal of the Schedule to the EIA Notification, 2006, it could be seen the list the projects and activities requiring prior EC has been set out. As against the projects/activities categorization of mining of minerals for satisfying the condition with regard to the extent of area as laid down for obtaining prior EC, it has been set out that the limit <50 ha >5 ha for mining lease areas in respect of coal mine shall have prior EC. It is submitted by the learned counsel for the respondents that the Notification issued under the E P Act, 1986 cannot said to be attracted for the grant of lease for granite quarrying. The E P Act,

1986 and the Notification issued thereunder cover various aspects of environment for several industries also include the provisions of WLP Act, 1972, Air Act, 1981 and Water Act, 1974, Noise level etc. Thus, it cannot be disputed that they are general in nature. It is pertinent to point out that under Section 2 of the MMDR Act, 1957; it is expedient in the public interest that the Union should take under its control the regulation of mines and development of minerals. Section 18 of the said Act provides that it shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development in India for protection of environment by preventing and controlling any pollution which may be caused by prospecting mining operations. Thus, it would be quite clear that it is within the ambit of powers of the Central Government to take all the necessary steps for protection of environment by preventing and controlling any pollution which may be caused by the prospecting mining operations. In exercise of the powers referred to above under the said enactment, the Central Government framed rules for conservation, systematic development and scientific mining to conserve the granite resources by framing GCD Rules, 1999.

39. Chapters IV, V, VI of the said rules would clearly mandate that the mining of granite is to be undertaken in terms of a mining plan which takes into account the protection of environment and precautions against air pollution, water pollution and all aspects pertaining to environment. Thus, while the MMDR Act, 1957 and the E P Act, 1986 were in force, the GCD Rules, 1999 were framed. Hence, while the general law under the enactments is available, the rules, namely, the GCD Rules, 1999 came to be framed on the strength of the powers conferred on the Central Government under Section 18 of MMDR Act, 1957. No doubt, the rules have to be termed as a special law. Since the special law relating to environmental aspects of granite would prevail in the instant case, it cannot be stated that the EC from MoEF is required or mandatory procedure envisaged should be followed. We are unable to agree with the above contention since the State Government is well within its legislative competence to frame the TMMCR, 1959 and it is also in conformity with the GCD Rules, 1999 framed by the Central Government. The same question, namely, whether the TMMCR, 1959 are in violation of the MMDR Act, 1957 or provisions of GCD Rules, 1999 or beyond the legislative competence arose for

consideration before the Hon'ble High Court, Madras in W.A. No. 716 of 2010 in the matter of Gem Granites, Chennai Vs. State of Tamil Nadu and others, where it was held that the said rules cannot be said to be *ultra vires* of MMDR Act, 1957 and beyond legislative competence conferred under Section 15 of the Act. The excerpts from the above judgment are reproduced below:

“17. Now we are to examine whether TN MMC Rules is ultra vires Section 15 of MMDR Act and repugnant to GCD Rules. It is well settled that a subordinate legislation can be challenged when there is (a) lack of legislative competence to make it; (b) violation of fundamental rights guaranteed under the Constitution of India; (c) violation of any provision of the Constitution of India (d) failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act; (e) repugnancy to the laws of the land, that is, any enactment and (f) manifest arbitrariness/unreasonableness. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms

to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But, where the contention is that the inconsistency or non conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity. The validity of a subordinate legislation is open to question if it is ultra vires the Constitution or the governing Act or repugnant to the general principles of the laws of the land or is so arbitrary or unreasonable that no fair minded authority could ever have made it. A subordinate legislation would not enjoy the same degree of immunity as a legislative act would. It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out object of the enactment and then see if the Rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed.

36. As pointed out earlier, as per Rule 4 of the GCD Rules, no lease shall be granted by the State Government unless it is satisfied that there is

evidence to show that the area for which the lease is applied for has been prospected earlier for granite or the existence of granite therein has been established otherwise. To put it precisely, Rule 4 of CGD Rules contains two limbs:

(i) Evidence to show that the area for which the lease is applied for has been prospected earlier for granite; or

(ii) The existence of granite therein has been established otherwise.

The expression used is “or”, that is two limbs being disjunct. Thus, as per Rule 4 of CGD Rules, for grant of lease by the State Government, the area applied for has been prospected earlier for granite or the existence of granite therein has been established otherwise. The existence of granite could be established either by prospecting or otherwise i.e., by the report of the experts/Geology and Mining Department. The State Government has opted for the second limb i.e., “existence of granite therein has been established otherwise”. As per sub-rule (3) (a) of Rule 8-A, the District Collector shall publish a notice in the District Gazette for grant of lease of areas where the existence of granite has been established to quarry the mineral. As per the recommendation of the expert committee, State

Government has consciously adopted the option “establishing the existence of granite deposits otherwise.”

38. Regulation of mines and mineral applications can be divided into three phases: (1) Pre-lease (2) Procedure of grant of lease (3) Post-lease monitoring and control. Prospecting license relates to pre-leasing period. While examining the contention of the respondents, it is necessary to bear in mind the nature of activity in the granite mining. Unlike any other mining, in granite mining/quarrying, it is not actually digging pits; but cropping and mining of the tops of hillocks and mountains, thus destroying and scarring the landscape forever. If a prospecting license is to be granted, it is for the exploring or locating or proving the granite deposits. While so exploring for granite deposits, though prospecting has to be executed in accordance with the scheme, the granite miners would certainly crop and cut the hillocks and mountains.

41. The power of the State Government in the matter of grant of lease, contracts, licenses and Rules framed under TN MMC Rules are only in response to environmentally damaging granite

mining. Article 48-A of the Constitution of India states that the state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Under Article 51-A of the Constitution, one of the fundamental duties on every citizen is the duty to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. It is for the State Government to decide how the deposits should be exploited and environment considerations and how the industrial requirement should be satisfied. The State Government has to balance by having greater control and vigil and at the same time strike a balance between the preservation of environment and utilization of the granite. While State Government foresees in terms of Revenue, at the same time greater responsibility lies upon it to preserve the precious mineral for future generations. The Committee constituted by the Government examined in detail the GCD Rules and also TN MMC Rules and the Committee made suggestion. Based on the advice of the Committee, the Government has amended the Rules by introducing tender-cum-auction for the Government owned lands, where existence of granite has been established and at the same time, distinguishing

patta lands. Rule 8-A of TN MMC Rules is in consonance with the GCD Rules in its letter and spirit. As such, we do not find any inconsistency of Rule-A with the Central Rules.

42. The granite is a natural precious mineral. Rules are framed mainly for conservation and systematic development of and scientific mining to conserve the granite resources and to prescribe a uniform frame-work with regard to systematic and scientific exploitation of granite throughout the Country. Under Section 15, when the State is conferred with the powers to frame Rules as to grant of mining lease and regulating the same, the State is enjoined with a duty to ensure scientific mining to conserve the natural resources. Environmental protection, being a constitutional mandate, in respect of Government lands, State Government is well within legislative competence in not opting for prospecting licence and the Respondents cannot demand for prospecting for prospecting license.

47. Insofar as the Government owned lands, for grant of quarry lease, tender-cum-auction procedure contemplated is only to ensure transparency and to augment the revenue of the State. The procedure of tender-cum-auction

introduced in respect of Government lands is also well within the legislative competence. Under Section 15 of the Act, the State Government may make Rules for regulating the grant of quarry lease, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. As pointed out earlier, as per Section 15 (1-A), the State Government may make Rules in respect of minor minerals on any one of the matters-(a) the person by whom and the manner in which, Applications for quarry leases, mining leases or other mineral concession may be made and the fees to be paid therefore; (b) the time within which, and the form in which acknowledgement of the receipt of any such Applications may be sent; (c) the matters which may be considered where Applications in respect of the same land are received within the same day; (d) the terms on which, and the conditions subjected to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed; (e) the procedure for obtaining quarry leases, mining leases or other mineral concessions; (f) (g).... (h).... (i)..... (j)..... (k)..... (l)..... (m).... (n) (o).....

78. Learned Advocate General has also placed reliance upon another Divisional Bench decision of this court dated 27.04.2009 in *D. Sivakumar vs. Government of Tamil Nadu*, W.P. Nos. 23317 and 24211 of 2008 whereby the Division Bench of this court has upheld Rule 38-B of the TN MMC Rules by which right to exploit sand in the State of Tamil Nadu became vested with the Government through the Public Works Department. Holding that such Rule was intended to eliminate indiscriminate and scientific sand quarrying and also to protect environment invoking Doctrine of Public Trust, the Division Bench, referring to the other decisions, observes as under:

“17. Doctrine of Public Trust

In State of Tamil Nadu vs. Hindu Stone, 1981 (2) SCC 205, it has been held as follows:

“6. Rivers, Forests, Minerals and such other resources constitute a nation’s natural wealth. These resources are not to be fritted away and exhausted by one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is interest of the nation...”

Thus, the Hon’ble Supreme Court has evolved the Principle of Doctrine of Public Trust. As of the

said theory, the natural resources are not only meant for the present generation but should be preserved for the posterity. The Government and the present generation act as trustees for the future generation. The said principle was also followed by the Hon'ble Supreme Court in T.N. Godavarman Thirumulpad vs. Union of India, 2006 (1) SCC 1 wherein the Supreme Court was pleased to hold that the natural resources are the assets of the entire nation, that is the obligation of all concerned including the Union Government and the State Government. Therefore, under the Principle of Public Trust doctrine also, the impugned rule will have to be sustained.....”

82. In our considered view, the purpose of the object behind the Rules of insisting to have an industry in the State of Tamil Nadu and to use the excavated minerals in own industry in the State of Tamil Nadu is only to encourage the export/inter-State sale of value added product viz., polished granite so that the Rule provides for total purpose of active quarrying and also encouraging industrial activity of polishing and generating employment opportunity within the State of Tamil Nadu.

83. *Sustainable development can be achieved only by caring for involvement by scientific quarrying. Primarily the State is concerned to consider the importance of minerals and also impose appropriate conditions in preserving environment and at the same time ensuring industrial development. When the State Government has imposed the condition of utilization of mineral in own industry set up in Tamil Nadu to promote the industries within the State of Tamil Nadu and in furtherance of its industrial policy, it cannot be said to be ultra vires the MMDR Act or beyond the legislative competence of the State Government's power conferred under Section 15 of the Act. In our considered view, Rule 8-A, sub-rule (2) (a) (iii), and sub rules (6), (7), 8, 9(g) and (h) of Rule 8-A are not in violation of MMDR Act or the provisions of GCD Rules or cannot be said to be beyond the legislative competence of the State Government and not in any way repugnant to the GCD Rules.*

40. In view of the decision that in the instant case obtaining of EC from MoEF is neither required nor mandatory as envisaged under EIA Notification, 2006 is to be followed, the other question, namely, whether the mining site is within the protected area as found in the EIA Notification, 2006 will not arise for consideration.

41. Therefore, in view of the discussions made above, both the applications are dismissed as devoid of merits.

42. Miscellaneous Applications, if any pending are closed.

No cost.

(Justice M. Chockalingam)
Judicial Member

(Prof. Dr. R. Nagendran)
Expert Member

Chennai
5th March, 2015

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