

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE**

**Application No.96 of 2015  
AND  
Application No.144 of 2015**

**Application No. 96 of 2015**

Pudiparthi Mallikharjuna Reddy  
S/o Nagi Reddy,  
Chinthavaram, Chillakuru Mandal,  
SPSR, Nellore District.

**.... Applicant**

Vs.

1. The Union of India represented by its  
Director, Ministry of Environment and Forest,  
1A Division, 3<sup>rd</sup> Floor, Vayu Wing,  
Indira Paryavaran Bhavan,  
Jorbagh Road, Aliganj, New Delhi-3
2. The State of Andhra Pradesh, rep. by its  
Principal Secretary, Industries and  
Commerce Department, Secretariat,  
Hyderabad, Telengana
3. The State Level Environmental Impact Assessment  
Authority for the State of Andhra Pradesh  
Rep. by its Member Secretary, Office of the  
Andhra Pradesh Pollution Control Board,  
Paryavaran Bhavan, A-3, 1.E, Sanathnagar,  
Hyderabad, Telengana
4. The Director of Mines & Geology,  
B.R.K.R. Bhavan, Near Tank bund,  
Hyderabad, Telengana
5. The Assistant Director of Mines & Geology,  
Nellore, SPSR Nellore District, Andhra Pradesh
6. M/s. Sri Kumara Swamy Silica Mines,  
Rep. by its Managing Director, V. Kumara  
Swamy Reddy, Momidi (V) Chillakur (M)  
SPSR Nellore District
7. K. Seshagiri Rao & Company rep. by its  
Managing Director Konduru Purandhar Reddy,  
24-1-1432, Street, No.3, J.V.R. Colony,  
Nellore, SPSR Nellore District
8. M/s. Maheswari Silica Mines, rep. by its  
Managing Director S. Bala Siva Kumar  
Addepalli Village, Ballavolu Panchayat  
Chillakur Mandal, SPSR Nellore District.
9. M/s. Bhagyalakshmi Minerals rep. by its  
Proprietor Smt. P. Bhagyalakshmi,  
24-76, Pathakota, Venkatagiri Town, SPSR,  
Nellore District.

10. M.GyanaPrasunamba  
W/o M.NageswaraRao, H.No.37-118/10,  
Neredmet 'X' Roads, Rama Krishnapuram,  
Hyderabad.
11. S.Sulochana, W/o late SL.KanthaRao,  
H.No.123, Seetharam Nagar, R.R.Puram,(P)  
Secunderabad
12. M/s.Renuka Minerals, rep. by its  
Managing Partner T.AnkaBabu,  
Varagali Village,  
Chinthavaram Village,  
ChillakurMangal,  
SPSR Nellore District
13. Sri Sai Sands rep. by its  
Managing Partner PelletiVenkata  
Subba Reddy, Ballavolu (v)  
ChillakurMandal, SPSR Nellore District
14. S.KrishnaRedy, D.No.4-1-26,  
Pothalapattu Road, Naidupet (V & P)  
SPSR Nellore District
15. T.Gopal Reddy S/o late Venkatasubba  
Reddy, LIC Colony, Near RTO Office,  
Nellore, SPSR Nellore District.
16. S.Jayalakshmi, legal heir of S.PrakashRao  
W/o late Sri S.PrakashRao,  
Kommavaripalem (V) Ballavolu (P)  
Chillakuru (M), SPSR Nellore District
17. M/s.Vignesh Minerals rep. by its Managing  
Partner K.GnanaSekhar, Momidi (V)  
Chillakur (M) SPSR Nellore District
18. A.Manjula, W/o VenuGopal Reddy,  
6/54-1, East Gudur, SPSR Nellore District
19. M/s.Sai Krishna Mining Co. Rep. by its  
Managing Partner A.Devika,  
13/92, Raja Street, Gudur,  
SPSR Nellore District
20. M/s.Balaji Mines & Minerals rep. by its  
Managing Partner D.Balaiah,  
6/54-1, East Street, Gudur,  
SPSR Nellore District.
21. V.Rajagopal Reddy, Varagali (V)  
Chillakiur (M) SPSR Nellore District
22. M/s.SriHarsha Minerals rep. by its  
G.BhaskaraRao, D.No.13/128  
Gangammavari Street, Gudur  
SPSR Nellore District
23. M/s.SriSaiChinnamman Mines rep. by its  
Managing Partner S.Balaji

1/153, GNT Road, Karanodai, Chennai 17

24. Sri PattanMahaboobl Sahib, Yeruru (V & P)  
Chillakur (M) , SPSR Nellore District
25. N.Radhika Reddy, W/o N.Jagadeesh  
Kumar Reddy, D.No.26-4-19, 2<sup>nd</sup> Lane,  
Opp.GurramBabaiahKalyanaMandapam,  
Vedayapalem, SPSR Nellore District
26. M/s.Naseeb Mining Company rep. by its  
Managing Partner, PattanMahaboobSaheb,  
Yeruru, (V), ChillakurMadal,  
SPSR Nellore District
27. K.Purandar Reddy, Bungalow Thota,  
Nawabpet, Nellore SPSR Nellore District.
28. M/s.Bhavani Silica Mines rep. by its  
Managing Partner A.Devika,  
13/92, Raja Street, Gudur, SPSR Nellore District
29. K.Anisha C/o N.Rajendra Kumar Reddy  
23/900, Sri SaiDurga Filling Station,  
Wahabpet, Nellore, SPSR Nellore District
30. M/s.Sai Vindhya Silica Mine rep. by its  
Managing Partner P.Dhananjaya Reddy,  
Chinthavaram (V) Chillakur (M) SPSR Nellore Dist.
31. Yashpal Mendon S/o Vaji Mendon  
1<sup>st</sup> Floor, Mineral House, Hampankatta,  
Mangalore 575001, Karnataka
32. P.RameshLingavara (V), Varagali (P)  
ChillakurMangal, SPSR Nellore District
33. V.ChandraMouli S/o V.Muthyalaiah,  
13/80, SatramSandhu, Raja Street,  
Gudur, SPSR Nellore District.
34. Y.Saran Kumar Reddy, Varagali (V),  
Chillakur (M), SPSR Nellore District.
35. D.Balakrishna Reddy, legal heir of  
Smt. D.Bhagya Lakshmi  
D.No.24-1-230, Annadevulavari Street,  
Mulapet, Nellore, Nellore District.
36. Rama S.Mendaon, AshaNivas,  
Matadakani Road, Urava, Mangalore 575006  
Karnataka State West
37. M/s.Mangalore Minerals (P) Ltd. Rep. by its  
Managing Partner Yeshpal Mendon,  
1<sup>st</sup> Floor, Mineral House, Hampankatta,  
Mangalore 575001, Karnataka State.
38. M/s.Shanmuga Minerals rep. by its  
Managing Partner Sri KuarappaGnanasekar,  
23, Kacheri Road, Mylapore, Chennai

39. M/s.ArrVee Mines rep. by its Managing Partner DornadulaSuneel Kumar KalanaiahKandriga (V), BuggaAgraharam (P) Nagari (via) Nidra (M) Chittoor District
40. B.V.Subba Reddy, Chintavaram (V) Chillakur (M) SPSR Nellore District
41. M/s.Seetharama Mining Company rep. by its Managing Partner A.Syamasundara Reddy Kalichedu (V & O), Sydapuram (M) Nellore District.
42. A.Sampath Kumar, AE 114, Anna Nagar, Chennai 600040
43. G.SuneethaKumari, W/o G.Murali Krishna D.No.26-1-121, Street No.4 Gayatri Nagar, SPSR Nellore District
44. M/s.SriRajan Minerals rep. by its Managing Partner V.S.O.B.Nadar 1242, 133th Main Road, Anna Nagar, Chennai
45. P.Venkateswarlu Reddy C/o Pattan MahaboobSaheb, Yeruru (V & P) Chillakur (M), SPSR Nellore District
46. P.UmaMaheswari W/o P.Subba Jetty, W-15-329-IV, Varadha Nagar, Gudur, SPSR Nellore District
47. M/s. Venkata Krishna Minerals rep. by its Managing Partner M.Ravi Prasad, Yeruru (V), Chillakur (M), SPSR Nellore District
- .....Respondents**

**Application No.144 of 2015**

PudiparthiMallikharjuna Reddy  
S/o Nagi Reddy,  
Chinthavaram, ChillakuruMandal,  
SPSR, Nellore District

**.....Applicant**

Vs.

1. The Union of India represented by its Director, Ministry of Environment and Forest, 1A Division, 3<sup>rd</sup> Floor, Vayu Wing, Indira ParyavaranBhavan, Jorbagh Road, Aliganj, New Delhi-3
2. The State of Andhra Pradesh, rep. by its Principal Secretary, Industries and Commerce Department, Secretariat, Hyderabad, Telengana
3. The State Level Environmental Impact Assessment Authority for the State of Andhra Pradesh

Rep. by its Member Secretary, Office of the  
Andhra Pradesh Pollution Control Board,  
ParyavaranBhavan, A-3, 1.E, Sanathnagar,  
Hyderabad, Telengana

4. The Andhra Pradesh Pollution Control Board,  
Santh Nagar, Near Tank Bund,  
Hyderabad, Telengana
5. The Director of Mines & Geology,  
B.R.K.R.Bhavan, Near Tank bund,  
Hyderabad, Telengana
6. The Assistant Director of Mines & Geology,  
Nellore, SPSR Nellore District, Andhra Pradesh
7. D.Sundara Rami Reddy, S/o Pulla Reddy,  
Chintavaram Village, ChillakurMandal,  
SPSR Nellore District.
8. S.V.Ramana Reddy, S/o Venku Reddy  
Ramareddypalem Village, Chillakur  
Mandal, SPSR Nellore District.
9. M/s.Aruna Enterprises, rep. by its  
Managing Director, D.No.47-1, 6<sup>th</sup> Street,  
Kamaraj Nagar, Ennore, Chennai 600063
10. P.Shiva Kumar Reddy, S/o Venku Reddy,  
7/105, Mittaplem Street, Gudur,  
SPSR Nellore District
11. Shiva Enterprises, Prop. P.Shiva Kumar  
Reddy, S/o Venku Reddy,  
7/105, Mittaplem Street, Gudur,  
SPSR Nellore District.
12. P.N.VenkataRamana  
5/162, East Street, Gudur,  
SPSR Nellore District rep. by its  
Power of Attorney holder and  
Authorised Signatory V.Sugunakara Reddy.
13. Y.Pitchi Reddy  
7/26-3A, ChevurivariThota, Kavali  
SPSR Nellore District.
14. M/s.SriVenkateswara Mining Company,  
6/160, East Street, Gudur,  
SPSR Nellore District rep. by its  
Managing Partner P.Vinushitha
15. M/s.Kohinoor Minerals  
6/160, East Street, Gudur,  
SPSR Nellore District rep. by its  
Managing Partner P.Devasena
16. B.Prasanth, S/o Dinakar Reddy,  
15/238, Nehru Nagar, Gudur,  
SPSR Nellore District.
17. Devasena, W/o P.Siva Kumar Reddy,

7/105, Mittapalem Street, Gudur,  
SPSR Nellore District

18. M/s.SriSai Baba Silica Mines rep. by its  
Managing Partner A.Devika& Sri A.Srinivasa  
13/92, Raja Street, Gudur, SPSR Nellore District

19. M/s.SriSai Ram Industries rep. by its  
Managing Partner P.Siva Kumar Reddy,  
5/162, East Street, Gudur, SPSR Nellore District

.....Respondents

**Counsel appearing for the applicant in both the Applications**

M/s.BomidiSanjeevaiah and  
Kambhampati Ramesh Babu

**Counsel appearing for the Respondents**

Smt.C.Sangamithirai for R1

Smt. Yasmeen Ali for R2, R4 & R5 in Appln.No.96/2015 &R2, R5 & R6 in Appln.No.144/2015

Mr.T.Sai Krishnan for R3 in Appln.96/15 &R3& R4 in Appln.144/15

M/s.R.N.Amarnath For R8, R11, R12, R13, R17, R18, R20, R33, R34, R38, R39, R44

Mr.P.V.Sai Kumar Reddy for R14, R28, R30, & R32,

Mr.AvineshWadhvani for R23

Mr.SatishParasaran for R6

Mr.A.Thiagarajan, Senior Counsel for R7

Mr.Rajasekaran for R15, R19, R25, R26, R27, & R45

Mr.Sankar for R29

Mr.R.Madanagopal for R9, R35, & R40 in Appln.NO.96/2015 & R7 & R9 inAppln.No.144/2015

Mr.Kulandaisamy for R10 to R18 in Application No.144 / 2015

**QUORUM:**

**Hon'ble Justice Dr.P.Jyothimani(Judicial Member)**

**Hon'ble Prof. Dr.R.Nagendran(Expert Member)**

**ORDER DATED 7<sup>TH</sup> SEPTEMBER 2015**

- 1) Whether the judgement is allowed to be published on the internet ----- yes / no  
2) Whether the judgement is to be published in the All India NGT Report ----- yes / no

1. These applications are filed for a direction against the Ministry of Environment, Forest and Climate Change (MoEF& CC), State of Andhra Pradesh represented by the Principal Secretary, Industries and Commerce Department and the State Level Environmental Impact Assessment Authority (SEIAA), State of Andhra Pradesh to take action against the private respondents viz., respondents 6 to 47 in Application No.96 of 2015 and respondents 7 to 19 in Application No.144 of 2015 for conducting silica mining activity without obtaining prior Environmental Clearance (EC) and also for a direction against the Director of Mines & Geology, Telangana and the Assistant Director of Mines &Geology,

Nellore District, Andhra Pradesh not to allow the said private respondents to extract silica sand in their respective lease hold land, apart from directing the private respondents to restore the lands having heavy pits created in the leasehold lands.

2. The applicant is said to be a farmer in Ponnayolu village which is adjacent to Chintavaram village. The private respondents in both the applications viz., respondents 6 to 47 in Application No.96 of 2015 and respondents 7 to 19 in Application No.144 of 2015 have obtained mining lease in respect of various extent over Government lands/patta lands in Chintavaram, Addepalli, Ballavolu, Kanupur, Momidi, Ponuguntapalem, Thamkinipatnam, Thupukanupuru, Vellapalem and Eruru villages in Chillakuru Mandal and Karlapudi, Kothapatnam and Siddhavaram revenue village in Kota Mandal of Nellore District.
3. The case of the applicant is that these private respondents have not obtained prior EC for the purpose of mining silica sand as per the Environmental Impact Assessment Notification, 1994 followed by Environmental Impact Assessment Notification, 2006. The first respondent MoEF& CC by virtue of an office memorandum dated 12.12.2012 has directed that the violations committed by these private respondents to be dealt with in accordance with law. This was followed by the subsequent office memorandum dated 27.6.2013. As per the said office memorandum, the State Government should initiate credible action by invoking Section 19 of the Environment (Protection) Act, 1986 and the details of the project proponent etc., are to be notified in the website by MoEF& CC for information of the stakeholders. This will also apply to the FSI and in respect of the projects which come under their jurisdiction. According to the applicant, the private respondents have been in persistent violation about which the applicant has made many representations including that of 5.3.2015 to take action against them. In spite of the same, no action was taken. According to the applicant, the private respondents are using heavy machinery for the purpose of extracting silica sand which is being done upto a depth of 10 meters. By virtue of this indiscriminate extraction of silica sand, the ground water as well as irrigation are being affected and it is confirmed by the Executive Engineer, Irrigation and Common Area Development, Gudur. It is also the case of the applicant that no EC was obtained. There was no chance for any one of the public to

ventilate their grievance to prevent the illegal activities committed by the private respondents, as there was no public consultation process.

4. The applicant has also filed a Public Interest Litigation in PIL No.202 of 2013 before the Hon'ble High Court of Andhra Pradesh which was disposed of with a direction to the Director of Mines and Geology to take appropriate steps for the closure of the units. The applicant would state that no action was taken and therefore he has filed the present application praying for the reliefs as stated above.
5. The fourth respondent Director of Mines & Geology has filed a reply on his behalf and on behalf of respondents 2 and 5. According to him, despatch permits are being issued only after verifying clearance like EC and other appropriate clearance by the authorities concerned. The applicant approached the Andhra Pradesh High Court which has resulted in contempt application filed and having got an order in the contempt application he has chosen to file the present application which amounts to forum shopping. According to the fourth respondent, in Nellore coastal area, as on date there are 78 mining leases for silica sand which are spread over an extent of 1223.361 ha out of which 87.556 ha are patta lands and the remaining 1135.085 ha are Government lands. The fourth respondent has also stated that it is not true that all the private respondents have not obtained prior clearance. There are respondents who have obtained EC, consent to establish and consent to operate. According to the fourth respondent, 6<sup>th</sup> and 7<sup>th</sup> respondents who come under "A" category are liable for action as per the OM issued by MoEF & CC dated 12.12.2012. The OM has been issued to stop the mining operation against the sixth respondent by invoking its power under Section 5 of the Environment (Protection) Act, 1986. Challenging the said order of MoEF & CC, the 6<sup>th</sup> respondent filed a writ petition in the Hon'ble High Court of Andhra Pradesh in W.P.14496 of 2014. Pending the writ petition there was an interim order of suspension of operation of the order of MoEF & CC and ultimately the High Court has set aside the impugned order by its order dated 16.6.2014. **However, the High Court has directed the suspension of the order of MoEF & CC to continue, permitting the private respondents to give representation to the authorities concerned who shall pass appropriate orders within four weeks.** This was also the same in respect of the 7<sup>th</sup> respondent who has filed W.P.22168 of 2014 in which the order came to be passed on 4.09.2014. It was in those circumstances that the



5<sup>th</sup> respondent has issued despatch permit to respondents 6 and 7 on obtaining an undertaking that the same is subject to the final decision. According to the fourth respondent, the silica sand is available in large quantities upto a depth of about 33 feet viz., upto 10 meters but no one is quarrying upto the said optimum deposit. In the order in PIL No.202 of 2013 which was disposed on 17.6.2013, based on a report of the Andhra Pradesh State Pollution Control Board (APPCB), there was a direction of closure of the unit after giving notice to the project proponent. The mining operations were closed by the APPCB for want of EC. In the meantime, the APPCB through its Environmental Engineer of the Regional Office inspected the silica sand mines at Chintavaram, Ballavolu and surrounding villages of Kota and Chillakur Mandals and found the following:

- a) there are 47 silica sand mines
- b) silica mining is being done by manual excavation without any mechanised operation
- c) air pollution caused by the silica mining is not significant
- d) there was no source of water pollution due to the silica mining
- e) solid waste generated in the form of top soil was used for internal road formation etc;
- f) some miners are operating for more than 30 years and no action is necessary in respect of them.

6. The Supreme Court in its order dated 27.02.2012 in the case reported in DEEPAK KUMAR Vs. STATE OF HARYANA (2012) 4 SCC 629 has held that all mining projects for mining minerals irrespective of the size of lease would henceforth require EC. The APPCB has requested the 5<sup>th</sup> respondent Assistant Director of Mines not to issue permit/work orders in respect of all the mining units unless they obtained EC from MoEF & CC. The 4<sup>th</sup> respondent would submit that the Contempt Application No.1517 of 2013 filed in PIL.No.202 of 2013 came to be restored which was dismissed for default and in the meantime the fourth respondent issued a memo dated 25.10.2014 directing the 5<sup>th</sup> respondent to implement the order of the High Court dated 17.6.2013 passed in PIL.No.202 of 2013. Accordingly, “stop” notice was issued and no despatch slip was issued thereafter. The Hon’ble Andhra Pradesh High Court has issued a direction on

27.11.2014 appointing the District Judge, Nellore to find out as to whether despatch slips were issued or not. The learned District Judge in the report has stated that despatch slips were not issued against the order of the High Court and on the basis of the said report, the contempt application came to be closed on 11.12.2014. Similarly, there were many writ petitions filed by the mining operators which were also disposed of in terms of the Division Bench order of the Hon'ble Andhra Pradesh High Court on 29.12.2014. It is stated that in the meantime, the Hon'ble Andhra Pradesh High Court has taken *suomotu* contempt proceedings at the instance of mining operators for not issuing despatch permit to silica mining lease holders. It was in those circumstances that the fourth respondent has directed the 5<sup>th</sup> respondent on 19.3.2015 to issue despatch permit against the stock available at the mine site as per their monthly returns of December, 2014 and ensure to continue the same. In the meantime there was a committee constituted for demarcating the mining area which is in progress.

7. The 6<sup>th</sup> respondent in the reply has stated that he has obtained the lease for mining silica sand in an extent of 136.944 ha in Survey Nos.695/22 and 696 of Momidi Village, ChillakurMandal originally for 20 years from 1975. It was renewed for an extent of 338.39 acres for another 20 years which is invalid upto September, 2015. According to the 6<sup>th</sup> respondent, which is also the case of the 7<sup>th</sup> respondent that EIA Notification 1994 as well as Notification, 2006 are not applicable to them as they are the existing units even before the EIA Notification 1994 came into force. It is also stated by the 6<sup>th</sup> respondent that PIL.No.332 of 2013 was filed against the mining operations which were carried on without EC. The Hon'ble Division Bench has ordered on 8.07.2013 directing the APPCB to take action in accordance with law after serving notice. It is stated that the 6<sup>th</sup> respondent has made a representation on 26.7.2013 to the Director of Mines. It was referred to the APPCB who in its letter dated 1.8.2013 has stated various points as enumerated above. The MoEF& CC in the Notification dated 14.9.2006 has stated that in respect of extension, modernisation of the existing projects also EC is required. According to the 6<sup>th</sup> and 7<sup>th</sup> respondents, the activity of silica mining is not included in the EIA Notification 2006. In spite of the stand taken by the respondents 6 and 7 that EIA Notification 2006 is not applicable to them it is stated that the 6<sup>th</sup> respondent has applied for EC on 23.11.2013 and the 7<sup>th</sup> respondent has applied for EC on 29.9.2014 as a matter

of abundant caution. However, the MoEF& CC passed order directing the said respondents to close the mining activities. The 6th respondent filed W.P.14490 of 2014 in the Hon'ble Andhra Pradesh High Court which was disposed of on 21.4.2014 suspending the order of MoEF& CC and permitting the project proponents viz., respondents 6 and 7 to make representation within a fortnight from the date of receipt of the order which was directed to be considered by the MoEF& CC within four weeks there from. The interim order of suspension was ordered to continue till then. It appears that both the respondents 6 and 7 as per the direction of the Hon'ble High Court of Andhra Pradesh have made representations on 23.11.2013 and 29.9.2014, respectively. The Director of Mines has issued a letter on 9.1.2015 directing the Assistant Director of Mines and Geology, Nellore to implement the order of the Hon'ble High Court of Andhra Pradesh. However, it is the case of 6<sup>th</sup> and 7<sup>th</sup> respondents that in so far as those respondents are concerned there is no necessity for EC and their activities cannot be prohibited.

8. Similarly, in respect of the 7<sup>th</sup> respondent, by virtue of G.O.No.87 dated 21.3.2006 a lease deed was executed for mining in respect of 125 acres in Survey No.638 – A of Kothapatnam for a period of 20 years from 8.8.2007 to 7.8.2027. In PIL No.332 of 2013 which was filed against several mining operators, the Hon'ble Andhra Pradesh High Court has ordered on 8.7.2013 that the mining operations be closed after issuing notice. On 8.8.2013 the APPCB passed the order, as stated above, indicating that the pollution level is not that much affecting the people's life as such. It is stated that prior EC is not required as stated above. It is further stated that the MoEF& CC has issued a notice on 11.7.2014 to stop mining activities in respect of 6<sup>th</sup> and 7<sup>th</sup> respondents. The 7<sup>th</sup> respondent has also filed Writ Petition No.22168 of 2014 to declare the said order of MoEF& CC dated 11.7.2014 as void. The Hon'ble Andhra Pradesh High Court has set aside the said order of MoEF& CC on the ground that the principles of natural justice has not been followed and directed the 7<sup>th</sup> respondent to make representation within a fortnight from date of receipt of a copy of the order and thereafter within four weeks orders shall be passed. In the meantime, the order of MoEF& CC was directed to be kept under suspension, as stated above. The 7<sup>th</sup> respondent has made a representation on 29.9.2014 and a personal hearing was fixed on 11.12.2014 which was stated to have been

received by the 7<sup>th</sup> respondent on 10.12.2014. Therefore, the 7<sup>th</sup> respondent requested for further time and thereafter the MoEF & CC has not passed any orders. In the meantime, based on the Hon'ble Andhra Pradesh High Court order, the Andhra Pradesh Government has passed orders on 20.1.2014 directing the Assistant Director to issue despatch permit as there was no hindrance in the High Court order. Accordingly despatch slips were issued for the removal of the mined materials. According to 6<sup>th</sup> and 7<sup>th</sup> respondents after their filing the application for EC 105 days have already lapsed and therefore there is a deemed provision which is applicable in their favour and they are deemed to have been issued EC. In respect of the said respondents EC is not required since their activities do not include expansion, addition or modernisation. The 7<sup>th</sup> respondent has also stated that he is not using heavy machinery and the mining area is 18 km away from the applicant's village.

9. The 13<sup>th</sup> and 18<sup>th</sup> respondents have also reiterated that they have already mined 35,000 tonnes of silica sand and the same is being kept on the floor since no despatch permit was issued. According to the said respondents they have been carrying on the operation from 10.7.2005. This is the factual matrix.

10. Mr. Bommidi Sanjeevaiah, the learned counsel appearing for the applicant has vehemently submitted that in as much as the mining operations have been included within the purview of the requirement for prior EC, the same has to be treated as mandatory and no one of the private respondents is entitled to carry on any of the mining activities without obtaining EC. He has also submitted that in respect of silica sand already excavated, the same was illegal and the private respondents are not entitled for getting despatch slip and they have to be forfeited to the Government. He has also submitted that by illegal mining by the private respondents the local population is worst affected. The private respondents are to be directed to carry on the restoration activity at their cost.

11. Mr. R. Thiagarajan, the learned Senior Counsel as well as Mr. Sathish Parasaran the learned counsel appearing for the respondents 7 and 6, respectively heavily relied upon the order of the Hon'ble Andhra Pradesh High Court suspending the order of MoEF & CC dated 19.7.2014 by which closure order was passed. During the time the closure order was suspended excavation was not done which cannot by any stretch of imagination be

called illegal. Therefore, according to them whatever silica sand which are excavated as per the suspension order of the High Court of Andhra Pradesh belong to the respondents 6 and 7. According to them as per the order of the Division Bench of the Hon'ble Andhra Pradesh High Court they have made representation immediately after receiving the copy of the order and MoEF& CC has not passed any order and therefore the fault is not on their part. In fact Mr. Sathish Parasaran, the learned counsel for the 7<sup>th</sup> respondent would submit that based on the representation made by them the Terms of Reference (TOR) has also been issued in respect of the 7<sup>th</sup> respondent but no further action has been taken. According to them they have applied for EC and as per the provisions of EIA Notification, after the expiry of 105 days EC is deemed to have been granted. They have also submitted that the Assistant Director of Mines, based on the Hon'ble Andhra Pradesh High Court order and also the order of the Government of Andhra Pradesh has issued despatch slip. They are entitled to lift the already excavated silica and they are entitled to continue the mining activity also as per the High Court order. Mr. Sathish Parasaran would submit that they excavated the sand by manual operation and they never used mechanical device for the purpose of mining operation. His client has been operating mining for the past 30 years and there was no complaint of any water pollution.

12. Mr. Avinesh Wadhvani, the learned counsel for the 23<sup>rd</sup> respondent would submit that in respect of his client, the lease was granted in the year 2002 and the MoEF& CC's direction of closure was suspended and it was during that time quarrying activities have been done and that cannot be said to be illegal by any stretch of imagination. He also submits that the application is filed to harass the respondents. He would fairly submit that as on today 23<sup>rd</sup> respondent is not carrying on mining operation and he would submit that since the applicant has applied for EC, it is deemed to have been granted. He would submit that he should be permitted to lift the excavated silica sand. According to him, the relief claimed by the applicant does not survive and his client is entitled for cost for harassment.

13. Mr. R. N. Amarnath, the learned counsel appearing for respondents R8, 11, 12, 13, 17, 18, 20, 33, 34, 38, 39 and 44 in Application No.96 of 2015 would submit that the units are closed in 2013. He has also brought to the notice of this Tribunal that as per the direction of the Director, the Assistant Director of Mines has taken the stock situation on

13.3.2015. The respondents should be permitted to remove the already mined silica sand as per the stock taken by the Assistant Director of Mines dated 13.3.2015. He would also submit that the prayer in the application is not maintainable and the same has become infructuous and therefore the applicant is not entitled to any relief and the application is liable to be dismissed.

14. Mr. Sai Kumar Reddy the learned counsel appearing for respondents 14, 28, 30 and 32 would also submit on the lines of the learned counsel for the respondent No.6 & 7. He would submit that in as much as the memo issued by the MoEF& CC is set aside and during that time the mining operation was done, whatever mineral excavated have been done legally and the said respondents are entitled to removal on despatch permit. According to him, the respondents applied for EC on 29.1. 2013. In fact the despatch permit was issued on 19.3.2015 and that came to be suspended because of the order of this Tribunal. According to the learned counsel, the EIA Notification, 2006 is not applicable to his case as he has obtained mining lease before the EIA Notification 2006 and there is no expansion or modernisation of their activities. He has also submitted that in spite of the fees received the authorities are not permitting to lift the stock.

15. Mr. Rajasekaran, the learned counsel appearing for the respondents 15, 19, 25, 26, 27 and 45 would fairly submit that in respect of respondents 15, 19, 27 and 45 the SIEAA has rejected the application. However, in respect of respondents 25 and 26, they are covered by the High Court order which has suspended the order of MoEF&CC in closing the units. He would also submit that in respect of respondents 25 and 26 they are entitled for the removal of the silica sand which has already been excavated.

16. Mr. Sankar, the learned counsel appearing for the 29<sup>th</sup> respondent has submitted that in respect of his client EC was granted on 21.8.2015.

17. Mr. Madhanagopal, the learned counsel appearing for the respondents 9, 35 and 40 in Application No.96 of 2015 and respondents 7 and 9 in Application No.144 of 2015 also submits that his clients are covered by the judgment of the Hon'ble High Court of Andhra Pradesh which has suspended the operation of the order of the MoEF& CC. That is also the case of Mr. Kulandaisamy who appears for respondents 10 to 18 in Application No.144 of 2015.

18. Mr. Sai Krishnan the learned counsel appearing for the respondent 4 has ultimately submitted the following facts:

1. In respect of Application No.96 of 2015, the respondents 29, 34, 43 and 44 are granted EC and in respect of Application No.144 of 2015 the 19<sup>th</sup> respondent has been granted EC.
  2. In respect of respondents 6 and 7, since the lease mining area is more than 50 hectares, the matter is pending with MoEF& CC which has to grant the approval and the same is pending before the first respondent
  3. In respect of respondents 25, 26 and 45 SEIAA had returned the application with a direction to submit revised proposal and it is pending at that stage.
  4. In respect of respondents 11, 12, 14, 19, 22, 23, 27, 32, 33, 38 and 39 SEIAA has rejected the proposal.
  5. In respect of respondents 15, 18, 20, 28, 30, 35 and 40 the applications have been refused for want of materials. He has also submitted that silica sand was earlier classified as major mineral which was subsequently categorised as minor mineral in the year 2015.
19. We have heard all the respective counsel appearing for all the parties and applied our mind to the issues involved in this case.

The questions which are to be decided are:

1. Whether the private respondents are liable to get prior EC as per the EIA Notification 2006 which is the continuation of EIA Notification 1994?
  2. Whether the private respondents in whose favour there has been order of the High Court in suspending the stop work issued by MoEF& CC are entitled for the clearance of the excavated silica sand by issuance of despatch permit?
20. EIA Notification, 2006 which was issued by the Government of India by virtue of the powers conferred under Section 3 of the Environment (Protection) Act, 1986 is a statutory Notification and it is the continuation of the earlier EIA Notification, 1994 which was also issued under the Environment (Protection) Act, 1986. The EIA Notification, 2006 in Schedule has given the list of projects or activities which require prior EC. Clause 2 of

the EIA Notification, 2006 makes it mandatory that the projects which require prior EC shall be cleared by the MoEF& CC in respect of projects which are categorised as Category A and by the SEIAA in respect of the projects categorised as category B in the Schedule. It is also stated in Clause 2 that the prior EC is required for

1. All new projects or activities listed in the schedule to the notification
2. Expansion and modernisation of the existing projects or activities listed in the schedule to the notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernisation
3. Any change in product-mix in an existing manufacturing unit included in the Schedule beyond the specified range

21. The mining of minerals has been included by an amendment which was carried out on 1.12.2009 to the EIA Notification, 2006. Therefore, from 1.12.2009 mining of minerals, if they are done in the extent of land which are more than 50 hectares of mining lease area in respect of non-coal mine and more than 150 ha of mining lease area in respect of coal mine areas, are covered in 'A' Category. The mining lease area in respect of noncoal mine in less than 50 hectares of mining lease areas and coal mine less than 150 hectares and more than 50 hectare are categorised as 'B' category. The silica sand which was originally categorised as major mineral has subsequently become minor mineral in 2015. In so far as EIA Notification, 2006 is concerned, it makes no difference, since any mining activity is categorised based on the extent of land in which mining activity carried on to treat it as either A category or B category. Therefore, by applying Clause 2 of EIA Notification, 2006, prior EC is a condition precedent for any mining activity.

22. The Hon'ble Supreme Court, in DEEPAK KUMAR V. STATE OF HARYANA reported in (2012) 4 SCC 629 has directed the State Governments to make necessary amendment in the mining Regulation based on various guidelines issued therein, including the constitution of Monitoring Committee, Core Committee etc., and held in clear terms that till such amendments are carried out in accordance with directions, irrespective of the extent, prior EC is required. The Hon'ble Supreme Court has stated thus:



*“We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF. Ordered accordingly.”*

It is not in dispute that all the private respondents have applied for EC. It is for the MoEF& CC to decide as to whether they are liable for EC and if so on what terms and conditions.

23. In so far as it relates to the issuance of EC, it is true that as per Clause 8, the Regulatory Authority shall consider the recommendations of the Expert Appraisal Committee (EAC) or State Level Expert Appraisal Committee (SEAC) concerned and convey its decision to the applicant within 45 days of the receipt of the recommendation of the EAC or SEAC or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report. Therefore, after the filing of the final Environment Impact Assessment Report which has to be done by the project proponent, if within 105 days final orders are not passed by the Regulatory Authority, either MoEF& CC or SIEEA, then there is a deemed provision which will operate. In these cases, it is not in dispute that based on the Terms of Reference given by MoEF& CC or SIEEA the project proponents have not prepared their final Environment Impact Assessment Report. The deemed provision will come into operation only after the EAC report is completely prepared and presented to the MoEF& CC or SIEEA concerned which is possible only after the project proponent submits its final EIA Report. It is not as if by simply filing the proposal in Form No. 1, after expiry of 105 days the deemed provision will come into operation. Therefore, the contention raised by the learned Senior Counsel as well as Mr. Sathish Parasaran that there is a deemed consent in these cases, has no legal basis to stand. Accordingly there is no difficulty for this Tribunal to conclude that prior environmental clearance is a condition precedent in respect of the private respondents.
24. In so far as it relates to the contention raised by Mr. Sathish Parasaran that EIA Notification is not applicable to the respondent No.6, we are of the considered view that the said contention is also not acceptable. First of all, as we have stated earlier, the requirement of prior Environmental Clearance was not propounded for the first time under the EIA Notification, 2006. Even before that, under the Environment Impact

Assessment Notification, 1994 which was again a statutory notification issued by the Government of India by virtue of the powers conferred under Rule 5(3) of the Environment (Protection) Rules, 1983, the requirement of prior EC was made mandatory, of course, in respect of major minerals. Further, the National Green Tribunal Act, 2010 itself has succeeded the National Environment Appellate Authority Act, 1997. This is evident by Section 38 of the National Green Tribunal Act, 2010. It also states that all cases pending before the National Environment Appellate Authority established under the National Environment Appellate Authority Act, 1997 on or before the establishment of National Green Tribunal Act, 2010 are automatically transferred to the National Green Tribunal constituted under the Act. National Environment Appellate Authority Act, 1997 has also similar provisions as that of the National Green Tribunal Act, 2010 and have been dealing with the validity or otherwise of the EC, however as an Appellate Authority. Therefore one cannot say that prior EC is the concept which is newly created for the first time under the EIA Notification, 2006. That apart, even under the EIA Notification, 2006, as we have stated earlier, Clause 2 makes it very clear that the said EIA Notification, 2006 applies not only to the new projects but also activities listed in the Schedule to the notification which means that when once the Schedule has included the activities from the date when such activities are included they are bound by the provisions of the EIA Notification, 2006. Therefore, even if the existing mining activities originally not included in the Schedule but subsequently included for the first time with effect from 1.12.2009 by applying Clause 2(i) being the activities listed in the Schedule, the said activities of mining will be bound by the Environmental Clearance Notification, 2006, however, from the date of its incorporation viz. 1.12.2009. Therefore, in our view the mining operations even in respect of the existing operators will be covered by the EIA Notification, 2006 from the date of the amendment viz; 1.12.2009. (Emphasis supplied)

25. The next question that has arisen for our consideration is whether the private respondents who have admittedly excavated the silica sand by virtue of the order of suspension of the order passed by the MoEF & CC in effecting stoppage of quarrying operation are entitled to have the benefit of the said mined minerals. As we have stated earlier, which is also not in dispute that the Division Bench of the Hon'ble Andhra Pradesh High Court has kept under suspension, the order of MoEF & CC dated 21.4.2014, on 15.5.2014 and that

suspension continued till the writ petition was disposed of by the Division Bench which was on 6.6.2014 and even in the final judgment, the Hon'ble Division Bench has directed the suspension of the order of MoEF& CC to be continued, however, subject to the condition that the project proponents should make their representation within a fortnight from the date of receipt of the copy of the order and thereafter directing the MoEF& CC to pass appropriate orders within 4 weeks time. It is nobody's case that the respondents have not made representation in accordance with the directions within the fortnight from the date of receipt of the copy of the order of the High Court. When that is so, it is the bounden duty of the MoEF& CC to pass appropriate orders. Except in one case where pursuant to the representation, ToR has been issued by the MoEF& CC and in another case where the date was fixed for hearing but no order was passed. Admittedly, the MoEF& CC has not made any further progress in this regard. Therefore, one cannot arrive at a conclusion that the slackness on the part of the MoEF& CC is attributable to the private respondents in this case and the quarrying effected during the period when the MoEF& CC order of closure was kept under suspension cannot be, in our considered view, said to be illegal in nature. When that is so, naturally the persons who have mined the silica sand are entitled to have its possession, of course, on payment of the seigniorage fee and other fees to which the Government is entitled to.

Now the question is on what basis the mined and minerals are to be removed?

26. There is a statement prepared by the Assistant Director of Mines, Government of Andhra Pradesh dated 13.3.2013 as per the direction issued by the Director of Mines and Geology wherein he has shown particulars of mining lease for silica sand quantum and in column No.11 he has shown the available stock in Cbm.

NGT

The statement made by the Assistant Director of Mines and Geology dated 13.3.2013 reads as follows:

Name	S.No.	Village	Extent Hects.	From	To	Stock Cbm.
Maheswari Silica Mines	8/1	Addepalli	2.914	9.8.2000	9.7.2020	3366
Bhagalakshmi Minerals	45	Addepalli	3.238	29.6.02	28.6.2022	Nil
M.GyanaPrasunamb a	8/2,8/2A&10	Addepalli	10.639	31.8.02	30.8.2022	Nil
S.Sulochana	34/5	Addepalli	9.150	14.11.02	13.11.2022	6100
Renuka Minerals	17/2,33	Addepalli	9.235	18.6.05	17.6.2025	2143
Sri Sai Sands	496/1P	Ballavolu	8.498	29.8.05	28.8.2025	7498
Sri Venkateswara Mining Co	515/P	Ballavolu	8.523	18.12.04	17.12.2024	3072
S.Krishna Reddy	515/P	Ballavolu	17.940	31.7.03	30.7.2023	12928
Nishitha Mines & Minerals	515/3&515/5	Ballavolu	16.269	5.10.200 5	5.9.2025	2989
M/s.Nishitha Mines & Minerals	515/P	Ballavolu	16.999	15.12.94	14.12.2004	7085
T.Gopal Reddy	515/P	Ballavolu	12.877	27.9.99	26.9.2019	2961
R.V.Subba Reddy	515/P	Ballavolu	20.235	3.1.2003	28.2.2023	37,89 6
D.Sundhar Rami Reddy	366	Chinthavaram	20.235	3.1.2003	28.2.2023	55,26 2
Aruna Enterprises	366/p	Chinthavaram	14.170	25.2.83	24.2.2003	24399
P.N.VenkataRamana	366/P	Chinthavaram	7.446	24.10.05	23.10.2025	2509
S.V.Ramana Reddy	403/2,405/2,	Chinthavaram	10.477	17.10.20	16.10.2020	7409

	425/2	varam		00		
Shiva Enterprises	448 & 449/3	Chinta varam	5.022	24.5.02	23.5.2022	1205
Nishitha Mines & Minerals	454 etc	Chinta varam	15.087	18.6.03	17.6.2023	4027
Y.Pitchi Reddy	475 & 476	Chinta varam	5.700	7.6.2002	7.5.2022	6541
M/s.Kohinoor Minerals	396,397,398, 410 to 413, 420 & 421	Chinta varam	38.843	26.2.200 0	25.2.2020	12045
S.Jayalaxmi,	1-13	East Kanukur	10.927	5.3.2005	5.2.2025	1373
M/s.Vignesh Minerals	87/1 & 2,88/1&2 and 170/P	East Kanukur	10.886	28.8.98	27.8.2018	5876
A.Manjula	160/P,238/P etc	East Kanukur	8.689	10.7.200 5	10.6.2025	25,96 6
M/s.Sai Krishna Mining	232 to 235	East Kanukur	11.246	25.7.02	24.7.2022	701
M/s.Southern Silica Mine	421 & 422	Momidi	6.285	9.10.200 4	9.9.2024	174
M/s.Balaji Mines & Minerals	494, 495,500A, 500B,500C & 501	Momidi	6.155	11.11.20 04	11.10.2024	50,23 6
M/s.Nishitha Mines & Minerals	526, 527/P,529,534/ P, 535/P,704/P,54 1,542, 546/P,706,705/	Momidi	17.693	21.1.06	20.1.2026	3646

	P,528					
M/s.Seetharama Mining Co	50, 629,630& 631 or 629 to 631	Momidi	10.300	26.8.01	25.8.2021	Nil
V.Rajagopal Reddy	665/P	Momidi	6.512	18.12.01	17.12.2021	Nil
A.Sampath Kumar	423/1	Ponuguntapalem	23.335	19,2,2000	18.2.2020	879
Sri Harsha Minerals	327/3AP	Tamminapatnam	17.000	22.3.05	21.3.2025	14198
P.UmaMaheswari	13	Tamminapatnam	7.287	9.11.81	9.10.2001	54
M/s.A.P.M.D.C.Ltd	52, 632, 634 & 635	Varagali	13.189	18.1.99	17.1.2019	5222
M/s.SriSaiChinnaman Mines	256	Vellapalem	10.117	3.4.04	3.3.2024	8693
M/s.SriSai Baba Silica Mines	256/p	Vellapalem	16.779	28.2.01	27.2.11	2064
P.Venkateswarlu Reddy	256/P	Vellapalem	12.546	31.3.99	30.3.2019	3965
PattanMahaboobSahab	256/P	Vellapalem	9.207	23.8.03	22.8.2023	7448
N.Radhika Reddy	256/P	Vellapalem	20.235	1.8.04	1.7.2024	10220
M/s. Naseeb Mining Co	256/P	Vellapalem	10.117	14.10.05	13.10.2025	7821
M/s.SriSaiChinnaman Mines	256/P	Vellapalem	10.121	22.4.02	23.4.2022	12487
K.Purandar Reddy	256/1P	Vellapalem	8.499	9.5.05	9.4.2025	16603
M/s.Bhavani Silica Mines	257/P &263/P &271/P	Vellapalem	16.487	27.8.05	26.8.2025	1461
S. Lavanya	285, 290 &	Vellapalem	6.868	17.5.05	16.5.2025	3630

	291					
M/s.Venkata Krishna Minerals	162/1A,1128 to 1133,1157/1, 1158 & 1159	Yeruru	19.470	16.8.91	15.8.2011	1049
M/s.Southern Silica Mines	1154/1,1155,1 160,1161	Yeruru	11.060	20.1.02	19.1.2022	988
P.Sivakumar Reddy	1162, 1163 & 1164	Yeruru	6.973	5.3.05	5.2.2025	1700
M/s.Sai Vindhya Silica Mine	1176	Yeruru	6.232	3.2.06	2.2.2026	4425
Yashpal Mendon	1	Karlapudi	11.797	1.5.05	1.4.2025	135
P.Devasena	321/P	Kathapatna m	20.639	5.3.2005	5.2.2025	Nil
K.SeshagiriRao Co	628/A	Kothapatna m	50.600	8.8.07	8.7.2027	45565
P. Ramesh	783 & 788	Kothapatna m	16.734	31.3.06	30.3.2026	12317
V.ChandraMouli	788	Kothapatna m	22.663	19.8.05	18.8.2025	6734
D.Balakrishna Reddy	2	Siddavaram	11.514	8.4.04	8.3.2024	16574
Rama S. Mendon	2	Siddavaram	52.760	16.7.05	15.7.2025	534
M/s.Mangalore Minerals	20 & 38	Siddavaram	105.22 1	9.9.03	9.8.2023	7915
M/s.Shanmug Minerals	38/P	Siddavaram	30.352	18.6.04	17.6.2024	56573
B. Prasanth	38	Siddavaram	12.140	16.12.03	15.12.2023	17123
M/s.ArrVee Mines	68	Siddavaram	13.132	15.4.05	14.4.2025	17370
M/s.SriKumaraswam	695/22 etc	Momidi	136.94	9.4.95	9.3.2015	29527

y Silica Mines			5			
Modern Minerals	1	Karlapudi	14.19	31.7.04	30.7.2024	9036
Rajan Minerals	256/P	Vellapale	8.09	24.1.02	26.6.2019	35597

The above statement shall be the basis for the purpose of allowing the private respondents to remove the mined minerals by issuance of despatch permit and also subject to the condition that necessary fee is paid to the Government. It is relevant to note that the said statement has been confirmed by the Government in its letter dated 19.3.2005. Therefore, we are of the view that the said statement shall be the basis for the purpose of despatch subject to the issuance of despatch slip. We make it clear that while issuing such despatch slip, the Assistant Director shall verify the quantum in proper manner and despatch should be allowed strictly in accordance with the quantum mentioned in the despatch slip with natural variation, if any. We also make it very clear that the private respondents are not entitled to quarry without obtaining EC. We issue such direction to the Assistant Director of Mines and Geology to issue despatch permit on the ground that any exploited mineral has to be utilised, failing which that itself may cause environmental hazard. Moreover, while deciding about sustainable development, we cannot allow the extracted material to remain waste to undergo natural loss and the same has to be put to its legitimate use on payment of fees to the Government.

27. Basing on the said reason and also taking note of the Hon'ble Andhra Pradesh High Court judgment, we allow the removal of the silica sand already mined. In this regard we hold that the contention of the learned counsel for the applicant that the mined mineral shall not be allowed to be taken away by any individual is not acceptable. When once the Hon'ble High Court has granted suspension and it was during that time, with due permission, extraction has been done, we cannot close our eyes and say that the mined minerals are illegal and the same must be forfeited to the Government especially when the valid lease which has been granted to the private respondents are in existence. We also make it clear that even after issuance of despatch permit both during loading and transportation the respondents shall ensure that no environmental damage is caused by such activities and no excess minerals are removed. The authorities shall ensure that nobody without environmental clearance is permitted to carry on excavation activity and



in any event nobody is permitted to use any mechanised device for the purpose of extraction of silica sand except those respondents who have got EC and who are specifically permitted in that regard. In respect of those private respondents to whom EC has been granted, we make it clear that they are entitled to act as per the terms and conditions of EC. It relates to respondents 29,34, 43 and 44 in Application No.96 of 2015 and respondent 19 in Application No.144 of 2015. In cases where application for EC is pending before the MoEF& CC/SIEEA, the authorities shall expedite the process and take a final decision which shall be completed within a period of 12 weeks. Wherever the Assistant Director has not ascertained the quantum, the same shall be done by way of inspection afresh within a period of 10 days from today and issue despatch permit, as stated above. In respect of those private respondents who have paid seigniorage fee but not allowed to lift the sand, necessary despatch permit shall be issued in the above terms. Accordingly the interim orders passed by this Tribunal stand modified in terms of this order.

These applications stand disposed of accordingly.

7<sup>th</sup> September 2015  
Chennai

Justice Dr. P. Jyothimani  
Judicial Member

Prof. Dr. R. Nagendran  
Expert Member

NGT