

BEFORE THE NATIONAL GREEN TRIBUNAL
(PRINCIPAL BENCH)
NEW DELHI

IN

APPEAL No. 29 OF 2013

In the matter of:

M/S Kizhakethalackel Rocks,
Through its Managing Partner,
Sanju George,
Kumily,
P.O.-Attapalam, Idukki District,
Ernakulum-685509

Appellant

Verses

1. Kerala State Level Environment Impact
Assessment Authority,
Through Member Secretary,
Directorate of Environment and
Climate Change
Social Forestry Complex,
Vattiyoorkkavu P.O.,
Thiruvananthapuram-695013.

2. State of Kerala
Through the Chief Secretary
Government Secretariat
Thiruvanthapuram
Kerala-695013

Respondents



Counsel for Appellant:

Dr. Mathew Kuzhalmadan, Advocate along with
Ms. Iram Hassan, Advocate.

Counsel for Respondents:

Respondent No. 1 and 2: Mr. Jogy Scaria,
Advocate

Coram:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

Hon'ble Mr. Justice S. N. Hussain (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Mr. Ranjan Chatterjee (Expert Member)

JUDGMENT

Dated: 13th February, 2014

Hon'ble Mr. Ranjan Chatterjee, (Expert Member)

1. This is an Appeal challenging the decision taken by Kerala State Level Environment Impact Assessment Authority (for short 'SEIAA') in its meeting dated 13th December, 2012, more particularly numbered as Item No. KLA/13.05, refusing the grant of Environmental Clearance (for short 'EC') sought for the quarrying project in Survey No. 65/1pt, Kumily Village, Peermade Taluk, District Idukki, Kerala.



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appellant mining rights over an area of 0.9309 hectares of Patta land comprised in Survey No. 65/1pt of Kumily Village, Peermade Taluk, Idukki District for a period of 12 years from the date of execution of the quarrying lease, subject to certain conditions; one of them being prior EC from Ministry of Environment and Forests (for short 'MoEF'). The appellant further states that on 8th November, 2012, it applied for EC to the SEIAA, the first Respondent herein, with all the required documents. In the wake of this application for securing EC, the appellant states that the technical presentation of the project proposal along with the impact assessment and management plan was given to the first Respondent.

4. According to the appellant, the first Respondent was satisfied with the aforesaid technical presentation as well as impact assessment and management plan and yet did not favourably respond to the plea for grant of EC. On enquiry, the appellant submits, the first Respondent Authority expressed its inability to issue EC for the reason that the decision had been taken not to consider and entertain any application for grant of EC in respect of the lands falling in the zones classified as ESZ-I in Madhav Gadgil Committee Report, namely Western Ghats Ecology Expert Panel (hereinafter referred to as 'WGEEP Report') dated 31st August, 2011. Further, the appellant submits that the first Respondent explained its inability to consider the application for grant of EC on account of the interim Order dated 25th July, 2012 passed by this Tribunal in



2. Item No. KLA/13,05 of the minutes of the above SEIAA meeting, reads as under:

"Application for environmental clearance for the proposed quarry project in Survey no. 65/1 at Kumily Village, Kumily Panchayat, Peermade Taluk, Idukki District, Kerala by M/s Kizhakethalackal Rocks (File No. 40/SEIAA/KL/7084/2012).

SEIAA observed that the proposed project site falls within ESZ-1 of Western Ghats Ecology Expert Panel (WGEEP). Hence it was decided to reject the proposal and direct the proponent to apply afresh, if required, at a later stage if the Gadgil Committee report of WGEEP report is finalized and implemented."

3. According to the appellant, it has been in the business of quarrying and crushing granite stone since the year 1990 and has been continuing the said business in an uninterrupted way till date, with all necessary licenses and sanctions. The appellant pleads that on 19th March, 2013 an application for grant of quarrying lease under the Kerala Minor Mineral Concession Rules, 1967 for an area of 1.23.44 hectares of land under its ownership situated in village Kumily was moved; after due inspection and survey of the land, Geologist Idukki forwarded its recommendation dated 19th April, 2012 for grant of quarrying lease in favour of the appellant to the Director, Department of Mining and Geology, Government of Kerala. Thereafter, Government of Kerala allowed the said application and passed an order dated 5th May, 2013 granting the

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25th July, 2012 passed by this Tribunal in Application No. 26/2012 filed by *Goa Foundation* (supra). Though, the Respondents disputed the merits of the technical presentations, they chose not to dispute the fact that the appellant has been in the business of quarrying and crushing stone on the strength of necessary licences and sanctions right from the inception of its business in 1990. According to the Respondents the impugned decision taken by Respondent No. 1 in its 13th meeting dated 13th December, 2012 and the State Level Expert Appraisal Committee (hereinafter referred to as 'SEAC') minutes at annexure A and B annexed to the appeal are in due compliance with the directions of the Hon'ble Supreme Court and this Tribunal as well as instructions of MoEF. However, the Respondents did not dispute various licenses/certificates of registration issued by the local authorities, Pollution Control Board and the State Government from time to time annexed to appeal at annexure A-1 collectively except branding those licenses/certificates of registration as invalid for want of prior EC as directed by the Hon'ble Supreme Court in *Deepak Kumar's* case (supra).

7. The appellant in his Rejoinder submitted that the business of quarrying and crushing granite stone was started in 1990 by Mr. K. I. Varghese, one of the partners in appellant firm and father of the managing partner under the name of Sanju Stone Crushers in the year 1990 which was subsequently, turned into a partnership concern of Mr. K. I. Varghese, his wife, Mrs.

the matter of *Goa Foundation & Anr. Vs. Union of India & Ors.*,
Application No. 26 of 2012.

5. It is the case of the appellant that the first Respondent Authority has erroneously interpreted the interim Order dated 25th July, 2012 passed by this Tribunal as direction to them not to issue EC for any application falling under ESZ-I classified in the WGEEP Report, when neither the recommendations of WGEEP Report nor interim Order dated 25th July, 2013 passed by this Tribunal intends to stop the existing quarrying activities in ESZ-I. Thus, the appellant submits that the Respondents in rejecting the application for grant of EC have acted arbitrarily and illegally.
6. In reply the Respondents, the Kerala SEIAA and the State of Kerala while admitting the role of Respondent No. 1 as a regulatory authority constituted under Sub-section 3 of Section 3 of the Environment (Protection) Act, 1986 for issuance of prior EC to all projects or activities mentioned in the schedule of EIA Notification SO No. 1533 (E) dated 14th September, 2006 have explained that the application of the appellant for grant of prior EC for their quarrying project at Village Kumily was rejected as it suffered the disadvantages arising out of the order of the Hon'ble Supreme Court dated 27th February, 2012 in WP No. 19628-29 of 2009 in *Deepak Kumar Vs. State of Haryana*; the complaint order No. L.11011/47/2011-1A11 (M) dated 18th May, 2012 of the MoEF, Government of India as well as the interim order dated

• Thankamma Varghese and their son, Sanju in the year 2007. The appellant added that the first Respondent being "a regulatory authority under Sub-section 3 of Section 3 of Environment (Protection) Act, 1986, is under an obligation to duly consider the application for grant of EC, but the Respondents have conveniently avoided the actual legal implications arising out of WGEEP report and High Level Working Group (HLWG)/also called the Kasturirangan report) coupled with the orders passed by the Hon'ble Supreme Court and this Tribunal in the matter above mentioned. According to the appellant, neither the report nor the order dated 27th February, 2012 of the Hon'ble Supreme Court and the orders dated 25th July, 2012 and 29th February, 2013 passed by this Tribunal, regulate or direct a complete ban on existing quarrying activities in ESZ-1 area. Rather, the report and orders have only called for proper environmental control for the existing quarrying projects in the region.

8. Learned advocate for the appellant submitted that the WGEEP report as well as HLWG report have genesis in administrative orders passed by the MoEF for the study of environmental concerns relating to Western Ghat Region and as such have no binding force but are rather of recommendatory nature and it was obligatory on Respondent No. 1 to have considered the merits of the application made for grant of EC by the appellant and not thrown out the said application merely for the reason that the quarrying project was situated in ESZ-1 area as



classified by the WGEEP report, particularly when the business for which such EC was sought was a pre-existing one. According to him, the documents annexed as annexure A-1 collectively, amply reveal that the business of the appellant was being carried out initially as a proprietary concern and later on as a partnership concern of the family members of Mr. K.I. Varghese since 1990 at the place in question. He further pointed out from the order of the Hon'ble Supreme Court in *Deepak Kumar's* case (supra) as well as the order passed by this Tribunal that the regulatory authority, that is Respondent No. 1 herein, was under an obligation to duly consider the application moved by the appellant for grant of EC and to pass orders on the merits of the said application with reference to the recommendations in the WGEEP report. He submitted that the said recommendations exhorted the authority concerned to effectively control the existing quarrying activities for environmental and social impact immediately and did not recommend any blanket ban on such quarrying activities.

9. Learned advocate for the Respondents submitted that the appellant has freshly applied for grant of EC and going by the recommendation in WGEEP report that no new license should be given to quarrying and sand mining in ESZ-1 area, Respondent No. 1 had rightly rejected the application of the appellant for grant of EC. He argued that the Respondent No. 1 had passed the order in deference to the order passed by the

Hon'ble Supreme Court in *Deepak Kumar's* case and this Tribunal in *Goa Foundation* case. He, therefore, urged for rejection of this appeal.

10. The controversy thus raised, begs a few questions; firstly, whether the rejection of the proposal for grant of EC was the result of proper application of mind or not and secondly, what could have been the approach of the regulatory authority in a matter of such kind.

11. To answer these questions, one has to first understand the factual scenario from the pleadings and the documents annexed to the appeal at annexure A-1 collectively. The certificate of 'no objection' issued to M/s. Sahju Stone Crushers dated 22nd December, 1990 at annexure A-1 collectively reveals that Mr. K.I. Varghese, Kizhakethalackel, Kumily had made an application dated 12th October, 1990 to the Kerala State Pollution Control Board for its 'no objection' to set up a stone crusher at Survey No. 65/1 at village Kumily and such 'no objection' was granted, subject to several conditions prescribed mainly to contain air, water and land pollution. There is also on record, a copy of the Kumily Panchayat license granted to Mr. K.I. Varghese for running stone crusher at the said land on 3rd October, 1991. This license was granted under Sections 96, 97 and 98 of the Kerala Panchayat Act, 1960 and was to be renewed further.

These documents give credence to the appellant's contention that the business of quarrying stone was being carried on at

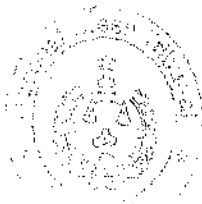


the land in question since 1990 or thereabout. A copy of the certificate of permanent registration as small scale industry unit granted in favour of Shri K.I. Varghese, Kizhakethalackel dated 28th October, 1993 by the Department of Industry and Commerce, Government of Kerala also signifies the merits of the said contention.

12. It appears from the record that the quarrying lease in respect of portion of land measuring 1.801 ha of certificate No. 65/1pt at village Kumily, Idukki District was granted in favour of Mr. K.I. Varghese for the period commencing from 10th October, 2001 to 6th September, 2011 by the State of Kerala vide quarrying lease dated 10th October, 2001. Now, the appellant, a partnership firm M/s Kizhakethalackel Rocks comprising of partners Mr. K.I. Varghese, his wife, Mrs. Thankamma Varghese and their son, Sanju George were seeking EC for quarrying works at 0.93 ha of portion of land at Survey No. 65/1pt admeasuring 2.1651 ha of land at the Village Kumily.

13. Substantially, therefore, the mining operations were being carried on by Mr. K.I. Varghese initially as a proprietor and later as a partner in business at Survey No. 65/1pt or in different portions thereof at village Kumily.

14. In this backdrop, it needs to be examined whether the first Respondent exercised its jurisdiction as a regulatory authority under Environment Clearance Regulations of 2006 properly or not, in exercise of the powers conferred by Sub-section (1) and



clause (v) of Sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986. The Central Government made it obligatory from date of notification SO No. 1533 (E) dated 14th September, 2006 for every new project or activity of expansion or modernisation of existing project or activity or existing capacity addition with change process and technology listed in the schedule to the said notification to obtain EC from the Central Government or from the SEIAA, duly constituted by the Central Government under Sub-section (3) of Section 3 of the said Act, as the case may be.

15. Before the judicial pronouncement in *Deepak Kumar's* case (supra), no environmental land clearance was required for mining lease of areas less than 5 hectares vide entry 1(a) in schedule to the Environmental Clearance Regulations, 2006. When faced with the situation where extraction of alluvial material within or near river bed has an impact on rivers, physical habitat characteristic and mischief in getting mining licenses for extraction of sand and other mining minerals in blocks of less than 5 hectares for dispensing with the necessity of an appropriate environmental assessment plan, the honourable apex court in order to curb such mischief, directed that licenses of mining minerals including other renewable minerals for an area of less than 5 hectares be

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granted by the States/Union territories only after getting environmental clearance from MoEF/SEIAA.

16. In the light of this judicial mandate, Kerala State Pollution Control Board granted consent to operate under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 dated 17th September, 2012 to the appellant on the condition that necessary EC for such quarrying work shall be obtained. The appellant, therefore, moved application dated 8th November, 2012 in the prescribed form as given in the Form-I at Appendix 1 to the Environmental Clearance Regulations, 2006 to Respondent No. 1.

17. A reading of the minutes of the 13th meeting of Respondent No. 1 held on 13th December, 2012 reveals that the authority decided to reject the proposal for grant of EC coming within ESZ-I at the initial stage itself and direct the proponent to apply afresh at a later stage when the WGEEP report is finalised and implemented. What made Respondent No. 1 to reject the proposals given within ESZ-1 in the initial stage itself can be gathered from the following paragraphs drawn from the said minutes.

"The Chairman proposed that SEIAA reconsider its earlier decision on EC proposals for the mining projects which come under ESZ-1 of WGEEP report. As per the directions of the Tribunal, the existing provisions of the WGEEP report should



be complied with. It is noted that the WGEEP report does not permit any mining activity in the sites within ESZ-1. After holding elaborate discussions on the issue, SEIAA decided to reject the proposals coming within ESZ-1 in the initial stage itself and direct the proponent to apply afresh, at a later stage when the Western Ghats Ecology Expert Panel (WGEEP) report is finalised and implemented.

To implement the above decision, SEIAA directed modification in the questionnaire for mining projects to be made effective immediately and the proponents be requested to make a declaration whether their project site falls within ESZ-1 of Gadgil Committee report of WGEEP or not. It was decided that in such cases where the proponent declares the site to be within ESZ-1, the Secretariat may reject the application for Environmental Clearance at the preliminary stage of scrutiny itself and inform the project proponent accordingly. SEIAA may be kept informed of such rejections. On the other hand, if the proponent has not indicated in the questionnaire the location of the site specifically, the proposal may be forwarded to SEAC for appraisal after verification of all other requisite documents. If SEAC finds that the site falls within ESZ-1, SEAC may recommend for rejection of the proposal, without further processing. SEIAA may subsequently reject the application based on SEAC recommendations".

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It appears that SEIAA was prompted to take the decision in question, firstly, for the reason of our directions and secondly, due to recommendations of the WGEEP report.

18. Referring to our directions dated 25th July, 2012 passed in the matter of *Goa Foundation* case (*Goa Foundation & Ors. vs Union of India & Ors.*, Original Application no. 26 of 2012, pending before us which reads as under:

"We direct that as and when the Ministry considers the applications for granting EC in respect of other areas falling in ESZ-1, they shall take note of WGEEP report and take decision only in consonance with the provisions made therein. The State Level EACs shall also adhere to the same restriction in respect of ESZ-1 zone."

It is not difficult to discover that there is no blanket ban imposed on the discretion to be employed by the authority concerned in the matter of grant of EC to the projects falling in ESZ-1.

19. It is correct that WGEEP report as well as HLWG report have genesis in administrative orders passed by the MoEF for the study of environmental concerns relating to Western Ghats region and as such have no binding force but are rather of recommendatory nature giving advice to the Government concerned. Both these reports shed light on environmental concerns relating to Western Ghats region and it is for the authority to take appropriate decisions in the matter of grant of

ECs to the projects falling in Western Ghats region in the light of such studies, in order to safeguard the environment and at the same time, promote sustainable development.

20. Para 13 of the WGEEP report deals with proposed guidelines/summary recommendations for sectorwise activities in the words of WGEEP graded or layered approach, with regulatory as well as promotional measures, appropriately fine-tuned to local ecological and social context within the broad framework of Regions of highest sensitivity Zone which is ESZ-1, Regions of high sensitivity ESZ-2, and Regions of moderate sensitivity ESZ-3, is advocated and is tabulated in table (6) at para 13. As regards quarrying and sand mining in ESZ-1, it does recommend effective control of existing quarrying and sand mining activity for environmental and social impacts immediately. No blanket ban on the existing quarrying and sand mining activity in ESZ-1 has been prescribed. Needless to say that assessment of environmental and social impact is clearly a step to exercise effective control over the existing quarrying and sand mining activities in ESZ-1 region.

21. In the instant case, SEAC in its 10th meeting held on 26th and 27th November, 2012 dealt with the proposal for EC moved by the appellant as under:-

"Before the presentation of the proposal by the project proponent, the Committee held detailed discussions on the



proposed project site as it falls within 10 Kms of state boundary between Kerala and Tamil Nadu, Periyar Wildlife Sanctuary. The proposed area comes under the Eco Sensitive Zone 1 (ESZ-1) of WGEEP report. The proponent was then allowed to make a presentation of their proposal. The proposed project site falls within 9°38'N and 77°08'E. The Committee was of the opinion that since the elevation difference of the site is more than 1000 m, it is definitely eco-sensitive. It was pointed out by the proponent that although the project site as evident from the google image indicated thick forest vegetation, it is actually rubber plantation. The proponent was asked to revise the local geology given in the write up as it varied much from geology of the proposed site. The proponent has not provided practical measures to contain noise during blasting operation. The proponent was of the opinion that since they adopt delayed electrical controlled blasting, the impact is very less compared to traditional blasting. Since the proponent has not suggested specific plans towards Corporate Social Responsibility, the Committee suggested conducting free medical check-ups for people around 300 m around the project site who are willing for the same as part of medical camps which can be conducted once in a year. The Committee also asked whether the existing roads are capable of withstanding 20 T trucks for transporting the excavated material. To this end the proponent stated that the plying of trucks is within the campus only for which the



private road maintained by them is being used. Even after the clarification from the proponent regarding the queries raised by SEAC, the Committee was concerned about the site coming under ESZ-1 of WGEEP report. With this in view, the Committee decided to defer the proposal for the time being. It was further decided to inform the proponent to approach SEAC for environmental clearance at a later stage after the finalization of the WGEEP report, specifically demarcating various ESZs, if required, in the light of the National Green Tribunal orders. In addition to scrupulously following the general conditions suggested for all mining projects, the Committee resolved to insist on the proponent for compliance of the following specific conditions:

1. Revise local geology of the project site.
2. Provide details regarding depth upto which the geological resource is found.
3. Consent from the people inhabiting the area 100 m around the edge of the core zone of the project area for conducting quarrying activities.
4. Landscape plan with index of species of plants to be provided.
5. Specific methodology adopted for drilling and blasting including the technical details regarding the geometry of drill holes to be provided to SEAC before initiating any activity.

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6. A perspective view and plans of reclamation activities to be provided before initiating any activity."

22. As observed earlier the mining activity was being carried on by Mr. K. I. Varghese, firstly, as a proprietor and later on as a partner in the business with his family members at Survey No. 65/1pt village Kumily, Peermade Taluk District Idukki, Kerala. As an existing work in ESZ-I, it was incumbent upon the SEAC to have used its discretion in the light of environmental and social impact study after having duly considered the environmental and social impacts of the quarrying works at the site in question. The SEAC was free to recommend either the grant or rejection of EC sought for by the appellant considering the fact that the quarrying works are ongoing since 1990. Unfortunately, this has not been done by the SEAC and has merely chosen to defer the proposals for the time being. Pertinently, the first Respondent, SEIAA towed the line of SEAC and failed to exercise its jurisdiction as a regulatory authority under the Environmental Clearance Regulations, 2006.

23. With a view to protect the legacy of nature as bequeathed in Western Ghats region in the face of onslaught in the name of economic prosperity and to strike a balance between conservation of nature's legacy and development, the Government of India initiated the aforesaid study called WGEPP as well as a study under the chairmanship of Dr. K. Kasturirangan, also called HLWG.



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The HLWG was also tasked with the mandate to take a holistic view of the issue and to bring synergy between protection of environment and biodiversity and the imperatives of equity for the indigenous residents of the Western Ghats area, particularly the disadvantaged sections of society, so that their rightful aspirations for inclusive growth and sustainable development are also protected and addressed.

However, it is to be borne in mind that the work of development ought not to be stalled indefinitely waiting for the Government to take a final stand in the matter of operationalizing the recommendation of WGEEP report and HLWG report. We also reserve our comments as to which of the two reports-WGEEP report or HLWG report serves the object of the said studies, keeping in mind the said object and the mandate of the Environment Clearance Regulations, 2006, to dispose of the application for grant of EC in the stipulated time frame. The SEAC and SEIAA shall remain under obligation to freshly consider the application of the appellant for the grant of EC and to take appropriate decision in the matter.

24. Hence the order:

- a. The impugned decision refusing to grant the EC for the quarrying project of the appellant in survey no. 65/1pt village Kumily, Taluk Peermade, District Idukki, Kerala dated 13th December, 2012 is set aside.



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- b. The case is referred back to SEIAA/SEAC, Kerala for fresh consideration of the application for EC moved by the appellant in accordance with law.
- c. The appellant shall comply with all such prescribed directions and conditions stipulated by the SEAC/SEIAA in the process of considering the proposals for grant of EC.
- d. The application thus stands disposed of with no order as to costs.

Hon'ble Mr. Justice Swatanter Kumar
(Chairperson)

Hon'ble Mr. Justice U.D. Salvi
(Judicial Member)

Hon'ble Mr. Justice S. N. Hussain
(Judicial Member)

Hon'ble Dr. D.K. Agrawal
(Expert Member)

Hon'ble Mr. Ranjan Chatterjee
(Expert Member)



New Delhi
February 13, 2014

"Certified that this is a true and accurate copy of the document of order as in the case file (Application / Appeal No. 29/2013) and that all the matters appearing therein have been legibly and accurately copied with no modifications" 20

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For Registrar (NGT)

Signature 12/14