

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Application No.415, 418 of 2013, 59, 60, 61 & 264 of 2014

In the matter of

Application No.415 of 2013

1. M.K.Babu
Maruthulla Parambil House
Kozhikode District, Kerala.
2. T.T.Komukutty
Kannamangalam PO, Mallapuram, Kerala

.....Applicants

Application No.418 of 2013 (SZ)

M.A.No.267 of 2014

1. M/s.A-One Sands Pvt. Ltd.
Chammanampathy, Palakkad District
2. Elsa Joy, Managing Partner,
M/s.Golden Granites,
Chammanampathy, Palakkad District, Kerala
3. Paul Joy, Managing Partner,
M/s.Premier Aggregates,
Chammanampathy, Palakkad District, Kerala

.....Applicants

Application No.59 of 2014 (SZ)

M.A.No.121 of 2014 (SZ)

1. O.C.Sadanandan, Proprietor,
M/s.Mooyatti Quarry, Dayanandapuram
Estate House, Achuranam Village, Wynad Dist.
2. T.Mohandas, Thachamvalli House
Chathamangalam Po., Kozhikode District

.....Applicants

Application No.60 of 2014 (SZ)

M.A.No.122 of 2014 (SZ)

1. M/s.Mukkam Granites, Choorani,
Poothampara PO, Kozhikode District
Rep. by its Managing Partner Mr.Abdul Majeed N.C.
2. C.P.Muhammed Abdul Basheer,
Charupadikkal House, Pettithara PO,
Thalakkassery PO, Palakkad District

...Applicants

Application No.61 of 2014 (SZ)

M.A.No.123 of 2014 (SZ)

1. M/s.Kuttiady Jelly Making Industries,
Pakranthalam, Wayanad Road,
Poothampara PO, Kozhikode District
Rep. by its Managing Partner
N.R.Padmanabhan

2. C.T.Hamsa, Chembottuthodi House,
Manneemgode Po., Palakkad DistrictApplicants

VS

1. Government of India, rep. by its Secretary,
Ministry of Environment & Forest,
Pariyavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi
2. Government of Kerala, rep. by its
Principal Secretary,
Department of Environment,
Government Secretariat,
Thiruvananthapuram
3. Kerala State Pollution Control Board,
Plamood, Pattom, ThiruvananthapuramRespondents
1 to 3 in all applications
4. Geologist, Mining & Geology Department,
District Office, Town Bus Stand Complex
Palakkad, KeralaRespondent No 4
In Appln No 418, 59,60 & 61 of 2013

Application No.264 of 2014

1. N.A.Thomas Niattukudiyl House
Pattimattom, Ernakulam District.
2. K.A.Sivan, Kariakudi House,
Perumbavoor, Ernakulam District
3. Eldo Jose, Kottisserikudiyl House,
Perumbavoor, Ernakulam DistrictApplicants

VS

1. Government of India, rep. by its Secretary,
Ministry of Environment & Forest,
Pariyavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi
2. Government of Kerala, rep. by its
Principal Secretary,
Department of Environment,
Government Secretariat,
Thiruvananthapuram
3. Geologist, Mining & Geology Department,
District Office, Town Bus Stand Complex
Palakkad, Kerala

Counsel appearing for the applicant:

M/s.Babu Joseph Kuruvathazha &

N.Shamshul Huda

Counsel appearing for the Respondents:

Smt.C.Sangamithrai for R1

Smt.Suvitha A.S. for R2 & R4

Smt.Rema Smrithi for R3

ORDER

Present

Hon'ble Shri Justice Dr.P. Jyothimani, Judicial Member

Hon'ble Prof.Dr.R. Nagendran, Expert Member

5th January, 2016

In all these applications the permit holders of granite quarry of building stones have challenged the statutory notification issued by the Ministry of Environment & Forests, Government of India dated 13.11.2013 by virtue of the powers conferred in Section 5 of the Environment (Protection) Act, 1986. The directions which are issued in the said proceedings are as follows:

The following category of new and/or expansion projects/ activities shall be prohibited in ESA from date of issue of these directions except those cases which have been received by EACs/MoEF or SEACs/SEIAAs before the date of putting HLWG report on the website of the Ministry i.e., 17.04.2013 and which are pending with EACs/MoEF or SEACs/SEIAAs. Such projects will be dealt under the guidelines and rules applicable at the time of application before the respective EACs/MoEF or SEACs/SEIAAs. Apart from such cases, no pending case or any fresh case shall be considered by the EACs/MoEF or SEACs/SEIAAs from the date of issue of these directions.

- a) Mining, quarrying and sand mining
- b) Thermal Power Plants
- c) Building and Construction projects of 20,000 sq. m. area and above
- d) Township and area development projects with an area of 50 ha and above /or with built up area of 1,50,000/- sq.m. and above.
- e) Red Category Industries. *

(The CPCB list of red category industries would be the minimum list. Industries not included in the CPCB list but mentioned in the Red Category list of the SPCB of the concerned Western Ghat State shall also be categorised as Red Category for that State).*

Therefore, by virtue of the said directions, the activities mentioned therein which includes mining and sand mining etc., are prohibited on the premise that area concerned are categorised as ESA.

2. The learned counsel appearing for the applicant in all these cases would submit that since these directions have been issued under the Environment (Protection) Act 1986, the applicants have approached this Tribunal challenging the said directions. According to him, the directions, in so far as it relate to the statement that the activities are prohibited in ESA, the village concerned in the applications are not covered under the ESA as per the resolutions of the Panchayat. Therefore, it amounts to an environmental issue which has made him to approach this Tribunal.

3. On the other hand, it is the contention of the learned counsel appearing for respondents that when once the Government of India, invoking powers under Section 5 of the Environment (Protection) Act, 1986 issued directions, such directions assumes the statutory character and the validity of the same cannot be questioned before this Tribunal. It is their further case that in these applications questioning the validity of such directions no environmental issue of substantial character has been raised before this Tribunal. In effect, it is their submission that this Tribunal is not having jurisdiction to decide the applications filed under Section 14 of the National Green Tribunal Act, 2010.

4. On perusal of the impugned order, we have no hesitation to hold that the directions issued under the impugned order are statutory in nature, since the same are issued by virtue of the powers conferred under Section 5 of the Environment Protection Act, 1986. The validity or otherwise of statutory notification does not fall within the jurisdiction of this Tribunal. Moreover, as correctly submitted by the learned counsel appearing for respondents, any application filed under Section 14 of the NGT Act should not only relate to any of the Acts contemplated under Schedule -I but also it must raise substantial question relating to environment, including enforcement of any legal right

relating to environment. On the factual matrix of this case, the alleged right of the applicants to have either quarry permit or lease itself cannot be construed as legal right relating to environment. Such right may be contractual or statutory, which cannot be enforced before this Tribunal.

5. If the applicants have any other legal remedy available either under the National Green Tribunal Act or any other law, it is for them to work out their remedies in the manner known to law.

Giving such liberty, these applications stand dismissed. There shall be no order as to cost.

In view of the disposal of the main applications, no order is necessary in the pending M.A.s and accordingly they are closed.



Justice Dr. P. Jyothimani
Judicial Member

Prof. Dr. R. Nagendran
Expert Member

NGT

