

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

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**ORIGINAL APPLICATION NO. 26 OF 2012
(M.A. NOs. 868/2013, 47/2014 & 291/2014)**

In the matter of :

1. Goa Foundation
Through
Dinesh George Dias
G-8, St. Britto's Apts. Feira Alta,
Mapusa, Bardez,
Goa - 403507.

2. Peaceful Society
Through
Kumar Kalanand Mani
R/o Peaceful Society Campus
Honsowado-Madkai,
Post: Kundai 403115, Goa

.....Appellants

Versus

1. Union of India
Through the Secretary
Ministry of Environment and Forests
Paryavaran Bhawan, CGO Complex
Lodhi Road, New Delhi - 110003

2. State of Maharashtra
Through its Chief Secretary,
Mantralaya, Mumbai - 400023

3. State of Karnataka
Through the Chief Secretary,
Vidhan Soudha,
Bangalore - 560001

4. State of Goa
Through the Chief Secretary
Government of Goa
Secretariat
Porvoriam, Goa-403001

5. State of Kerala
Through the Chief Secretary

Government Secretariat
Thiruvananthapuram
Kerala - 695013

6. State of Gujarat
Through the Chief Secretary
Gandhinagar – 382020
Gujarat
7. State of Tamil Nadu
Through the Chief Secretary
Secretariat, Chennai 600 009
8. Maharashtra Pollution Control Board
Through the Member Secretary
Kalpataru Point, 3rd & 4th Floor,
Sion Matunga Scheme Road No. 8
Opp. Cine Planet Cinema
Near Sion Circle, Sion (East),
Mumbai – 400 022
9. Karnataka Pollution Control Board
Through the Member Secretary
Karnataka State Pollution Control Board
“Parisara Bhava”, #49, 4th & 5th Floor, Church Street,
Bangalore - 560001
10. Goa State Pollution Control Board
Through the Member Secretary
1st Floor, Dempo Tower, EDC Patto Plaza,
Panaji, Goa – 403 001
11. Kerala State Pollution Control Board
Through the Member Secretary
Plamoodu Junction Pattom Palace
Thiruvananthapuram – 695004 Kerala
12. Gujarat State Pollution Control Board
Through the Member Secretary
Paryavaran Bhawan, Sector-10-A,
Gandhi Nagar – 382043
13. Tamil Nadu Pollution Control Board
Through the Member Secretary
Corporate Office No. 76, Mount Salai, Guindy,
Chennai – 600 032
14. Maharashtra State Level Environment Impact
Assessment Authority
Through the Member Secretary
State Level Environment Impact Assessment Authority

Kalpataru, 3rd Floor, Opp. Cine-Max,
Sion (West), Mumbai.

15. Karnataka State Level Environment Impact Assessment Authority
Through the Member Secretary
7th Floor, M.S. Building, 4th Phase,
Bangalore, Karnataka.
16. Goa State Environment Impact Assessment Authority
Through the Member Secretary
1st Floor, Dempo Tower, EDC Patto Plaza,
Panaji, Goa – 403 001.
17. Kerala State Level Environment Impact Assessment Authority
Through the Member Secretary
Directorate of Environment & Climate Change
Social Forestry Complex
Vattiyoorkkavu P.O.
Thiruvananthapuram – 695013
18. Gujarat State Level Environment Impact Assessment Authority
Through the Member Secretary
Paryavaran Bhawan, Sector-10A
Gandhinagar, Gujarat-382010
19. Tamil Nadu State Level Environment Impact Assessment Authority
Through the Member Secretary
4D, Panagal Maligai,
No. 1 Jeenis Road, Saidapet,
Chennai – 600015
20. Spices Growers Association
Registration No. I-336/2001,
Rep. by General Secy.
Vandanmedu – 685551
21. Fr. Sebastian Kochupurackal
General Convener, High range Samrakshana Samithy
St. George Forona Church, Kattappana,
Idukki Dist., Kerala State.
22. Registered Metal Crusher
Unit Owners Association
23. J. Shaji
Pinkulam Roadarikathu Puthen Veedu
Kakkavila P.O., Neyyattinkara Taluk,
Thiruvananthapuram-695506, Kerala.

24. Sh. Chacko, K.V.
S/o. Varghese K.P.,
Paschimaghatta Jana Samrakshana Samithi,
Kalamparambil House,
Kodenchery P.O.
Kozhikode, Kerala.
25. Malabar Region Small Scale Granite Quarry & Crusher
Co-ordination Committee,
K.M.O. Building, Opp. to Civil Station, Kozhikode,
Kerala.

.....Respondents

Counsel for Applicants:

Mr. Raj Panjwani, Sr. Advocate.
Mr. Ritwick Dutta, Advocate.

Counsel for Respondents :

Mr. Anil Naag, Advocate, for Respondent No. 1
Mr. V.N. Raghupathy, Advocate, for Respondent No.2
Mr. Parikshit P. Angadi, Advocate, for Respondent No.3
Mr. Sidharth Bhatnagar, Advocate, for Respondent No.4
Mr. Krishnan Venugopal, Sr. Adv. along
with Mr. Jogy Scaria, Advocate, for Respondent No.5 & 17
Mr. Parivesh Singh, Advocate, for Respondent No.7
Mr. Mukesh Verma, Advocate, for Respondent No.8 &14
Mr. Devraj Ashok, Advocate, for Respondent No. 9
Ms. Snigdha Pandey Kaushik, Advocate, for Respondent No.10
Ms. Hemantika Wahi, Advocate, for Respondent No.12 &18
Ms. Srikala G.k., Advocate, for Respondent No.13
Mr. Roshan Lal Goel, Advocate, for Respondent No.19
Mr. Maithai M. Paikadey, Sr. Adv. along
with Mr. Bobby Augustine, Advocate, for Respondent No.20 & 21
Mr. Biju P. Raman, Advocate, for Respondent No. 22
Mr. B. Joseph Kuruvathazha and Mr. N. Shamsul Huda, Advocates,
for Respondent No. 25
Mr. Noor Muhammed, Adv. in M.A 868/2013

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice Pratap Kumar Ray (Judicial Member)

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

Hon'ble Prof. A.R. Yousuf (Expert Member)

Hon'ble Dr. R.C.Trivedi (Expert Member)

Dated : 25th September, 2014

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

Applicant No. 1 is a registered society while the Applicant No. 2 is its principal convenor. They both claim to have participated in the 'Save Western Ghats March' on several occasions and in various aspects. According to them, they are responsible for certain landmark events in the environmental activism. Both these applicants have approached the Tribunal with the following prayers:

“(i). Direct the Respondents not to issue any consent/Environment Clearance/NOC/Permission under the Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Forest (Conservation) Act, 1980 and the Biological Diversity Act, 2002 within the Western Ghats area in respect of areas which have been demarcated as ESZ1 and ESZ2 as mentioned in Para No. 19 above;

(ii). *Pass such order/s as this Hon'ble Tribunal may feel fit and proper in the facts and circumstance of the case.*

(iii). *To direct the Respondents to discharge their obligations by exercise of the powers conferred upon them under the respective enactments mentioned in Schedule I of the NGT Act, 2010 for protection and preservation of Western Ghats in the framework as enunciated by the WGEEP in its report dated 31.08.2011."*

2. These prayers are founded on the premise that the Western Ghats cover States like Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu. Nearly 44 districts fall under the eco-sensitive area of the Western Ghats. The areas of Western Ghats have subjected to a rapid erosion of natural capital with the building up of manmade capital, regrettably imposing excessive accepted unnecessary environmental damage in the process, accompanied by a degradation of social capital as well.

3. By relying upon the judgements of the Hon'ble Supreme Court in the cases of **"T.N. Godavarman Thirumulpad Vs. Union of India & Ors."** (2012) 3 SCC 277 and **'M.C. Mehta Vs. Kamal Nath and Ors."** (1997) 1 SCC 388 the contention of the Applicant is that applying the settled principles of environmental justice like polluter pays principles, precautionary principle, equity and the public trust Doctrine, it is obligatory upon the states particularly the MoEF to provide protection to the Western Ghats and ensure

that activities prejudicial to the ecology and environment of the Western Ghats are not permitted to be carried on in that area.

4. As is evident from the prayers made in this application, the Applicants pray that recommendations made in the report submitted by the WGEEP (informally called Dr. Gadgil's Report) are to be implemented to protect the Western Ghats in furtherance to its constitutional obligations emerging from Article-14 and 21 read with Article-48 and 51-(A), (g) of the Constitution of India.

5. During the pendency of this application, the MoEF had taken a conscious decision to constitute another High Level Working Group (HLWG) under the Chairmanship of Dr. K. Kasturirangan. This Committee (informally termed Dr. K. Kasturirangan Committee) submitted its report to the MoEF which in turn initially took a decision to accept the said report in principle and proposed a draft notification under section 5 of the Environment(Protection) Act, 1986 (for short, 1986 Act) and invited objections from all stakeholders including the States.

6. Thereafter, the matter remained pending before the MoEF and various applications came to be filed before the National Green Tribunal claiming reliefs dependent upon the acceptance or otherwise of the report submitted by Dr. K. Kasturirangan Committee or even otherwise. The Applicant continued to persist with the prayer that the areas of Western Ghats, which were not included in the Dr. K. Kasturirangan Committee Report and consequently, not covered by the draft notification should still be

protected as eco-sensitive zone in the interest of the environment and ecology.

7. We may also notice at this stage that Dr. K. Kasturirangan Committee Report excluded substantial parts of the eco-sensitive area of the Western Ghats, which have been included so in the report of Dr. Gadgil. Certain questions in relation to the jurisdiction of the Tribunal and maintainability of the application, which were raised by the respondents, were treated as preliminary objections and disposed of by a detailed judgment of the Tribunal dated 18.07.2013. During the pendency of the proceedings, it came to light that the stand taken by the MoEF was ambiguous, uncertain and did not provide clarity even in relation to the proceedings pending before the MoEF in exercise of its powers under the Act of 1986. Having provided sufficient time to MoEF to make its stand before the Tribunal clear and the Ministry have failed to do so. In the order dated 25.08.2014, the Tribunal specifically noticed that despite specific directions, MoEF had failed to file appropriate affidavit and a vague affidavit has been presented. On 27.08.2014, it was stated on behalf of the MoEF that it does not wish to process Dr. Gadgil Report and would take subsequent action only in relation to Dr. K. Kasturirangan Report. In furtherance to that report, a draft notification had been issued and objections were being considered by the Ministry. On that date, learned Counsel appearing for the MoEF prayed for time to seek instructions in relation to the implementation thereof. After hearing Counsel for the parties and MoEF still persisting its

ambiguity, vide order dated 09.09.2014, the Tribunal passed the following order :-

“Let the Secretary, MoEF shall file a personal Affidavit in relation to the submissions made by the Counsel appearing for the MoEF. In the Affidavit it should be stated whether the areas which are called Eco Sensitive Zone stated in the draft Notification now issued are the areas which shall alone form part of the final Notification and whether the States are at liberty to show any areas, from the notification, can and should be included/excluded, which are not stated in the proposed notification.

In variance to the stand taken by the MoEF earlier on the last date of hearing, the Counsel appearing for MoEF, upon instructions from Mr. Amit Love, Dy. Director, MoEF, has stated that Dr. Kasturirangan Report, in fact has been accepted by the Ministry and the draft notification has been issued in furtherance thereto and the WGEEP is not to be processed by the Ministry any further. In the Affidavit which has been brought before the Tribunal today, again a vague language has been used which suggest that objections may be filed by any person interested on the proposals contained in the draft Notification, including those relating to the area proposed to be brought under the regulation. We may further notice that Press report has been brought to the notice of the Tribunal saying that the MoEF proposes to conduct a new survey on the premises as the two Panels have relied on

satellite data to identify No Development Zone, but the survey will find actual situation on the ground and on that basis a decision would be taken.

It is indicated in the report that if the move would mean overriding the previous recommendations and having huge No Development Zone. Before we proceed any further, it will be appropriate that a definite stand is taken by the MoEF. Thus, we direct the Secretary, MoEF to file an Affidavit on this aspect within one week from today.

List this matter for hearing on 22th September, 2014.”

8. From the above order, it is clear that unambiguous and clear stand of the MoEF was required to be placed before the Tribunal, before the Tribunal would pass any appropriate order in accordance with law.

9. In furtherance to the above order, Secretary, MoEF filed an affidavit dated 19.09.2014. Usefully, we can make reference to the relevant part of the said affidavit.

“(J). That the Ecologically sensitive area as stated in the draft notification S.O. No. 733(E) dated 10.03.2014 forms the basis for demarcation ESA by physical verification by the State Governments of Western Ghats region. The State Governments of Western Ghats region, may after undertaking demarcation of ESA by physical verification, propose the exclusion/inclusion of certain areas from/in the Ecologically Sensitive Area as stated in the draft notification S.O. No. 733(E) dated 10.03.2014. Such

proposals of the State Governments received after physical verification, would be examined by the Ministry before taking a view on further appropriate action including inter-alia issuing a fresh draft notification, if required, to seek objections from the public on the proposals received from the State Governments of Western Ghats.

(I). That the Direction issued under Section 5 of the Environment (Protection) Act, 1986, on 13th November, 2013 for providing immediate protection to the Western Ghats and maintain its environmental integrity is in force.”

10. We accepted the stand taken by the MoEF in the affidavit filed by the Secretary, MoEF as the clear and unambiguous stand of the Government of India for finally settling this crucial issue which remains pending for years and in fact, pending before this Tribunal since the year 2012.

11. In view of the affidavit filed by the Secretary, MoEF, we are of the considered view that there is no occasion for the Tribunal to keep this main and other applications pending any longer. MoEF is expected to discharge and perform its statutory obligations expeditiously and in accordance with law. According to the affidavit of the Secretary, MoEF particularly the portion as re-produced above, MoEF is considering exclusion/inclusion of certain areas from/in the ecological sensitive areas, as stated in the draft notification dated 10.03.2014. In other words, MoEF has decided to

examine all aspects regarding the ecologically sensitive areas before issuing final notification in terms of section 3 of the Act of 1986.

12. Most importantly, it has also been stated in the affidavit that the Ministry is going to take further appropriate action inter-alia issuing fresh draft notification in that behalf.

13. We are of the considered view that it is not for this Tribunal to pass any anticipated orders or to provide any limitations in the exercise of statutory power vested in the Ministry in terms of the Act of 1986. It is for the Ministry to take all the initiatives in relation to defining the eco-sensitive areas in the Western Ghats region and take it to its logical end by issuing final notification. The only pious hope that we express in the order is that the Ministry should act with utmost expeditiousness and ensure that the interests of the States, individuals, and all concerned stakeholders are not jeopardised any longer. The MoEF itself has stated in paragraph-I of its affidavit that directions under section 5 of the Act of 1986 have been issued on 13.11.2013 for providing immediate protection to the Western Ghats to maintain its environmental integrity, which is in force. It will be in the interest of all the stakeholders, including MoEF, that the matters are not further complicated and third party interest are not put into jeopardy that these directions will operate to the entire eco-sensitive area of the Western Ghats and no fresh Environmental Clearance or permissions are issued by the MoEF till it issues the final notification in terms of section-3 of the Act of 1986.

14. Thus, it is now exclusively for the MoEF to determine and decide the rival contentions, and the period for which the restrictions as issued by the MoEF in its order dated 13.11.2013 should remain operative. It is the duty expected of the MoEF to maintain the environmental tranquillity and ecology of the areas under consideration, in the condition as they exist today, and not to allow irreversible alteration of the areas in question by granting Environmental Clearance or permitting activities which would have an adverse impact on the eco-sensitive areas.

15. We may also notice that on behalf of the State of Kerala, it was specifically contended before us that they have already submitted not only their objections but even their physical measurements of the area that could be declared as “eco-sensitive area” and the matter is pending with the MoEF now for a considerable time. All that we can direct is that this matter should also be dealt with by the MoEF with utmost expeditiousness. It will be obviously open to the MoEF to declare the ecologically sensitive areas, State-wise or collectively, for the entire Western Ghats which is relatable to all six the states afore-indicated.

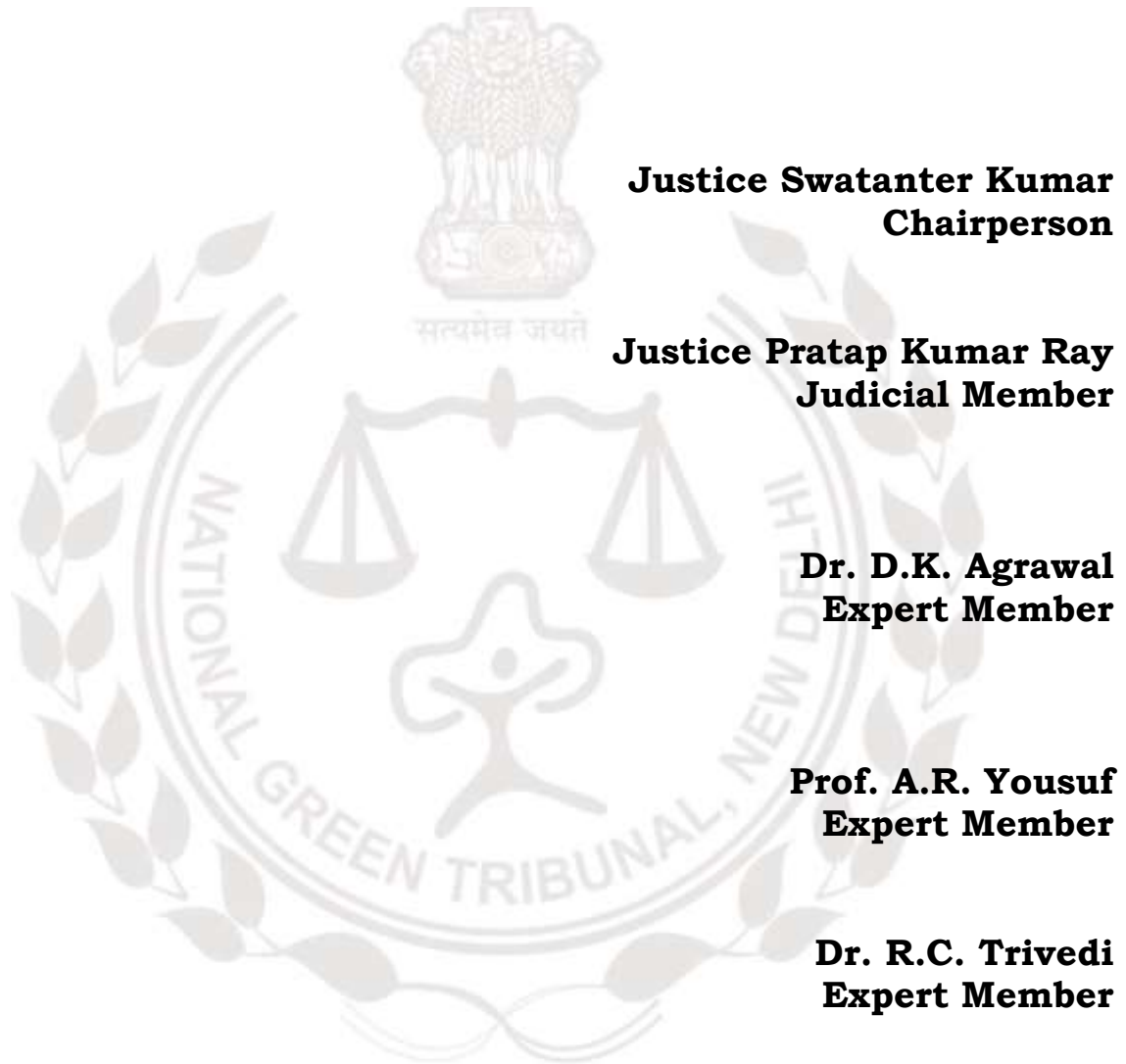
16. Thus, with the above directions, we dispose of the main Application No. 26 of 2012 while leaving the parties to bear their own costs.

M.A. Nos. 868/2013, 47/2014 and 291/2014

In view of the fact that we have disposed of the main application, all these miscellaneous applications have render

infructuous and are disposed of as such. We make it clear that this order is without prejudice to the rights and contentions of the parties concerned.

M.A. Nos. 868/2013, 47/2014 and 291/2014 stand disposed of accordingly.



New Delhi
September 25, 2014

NGT

Contd.

At this stage, all the Learned Counsel appearing for the parties submit that they may be granted liberty to approach the Tribunal, if there is an occasion for seeking any clarification or further directions in consonance with the judgment of the Tribunal.

Liberty granted.

