

Item No. 07

Court No. 1

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

(By Video Conferencing)

Execution Application No. 19/2019
IN
O. A. No. 597/2018

(With additional affidavit dated 19.03.2020)

Goa Foundation

Applicant(s)

Versus

Union of India

Respondent(s)

Date of hearing: 28.09.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant(s) in

EA 19/2019:

Mr. Saurabh Rajpal, Advocate

Respondents:

Mr. K.K. Singh, Advocate for MoEF&CC

ORDER

1. The issue for consideration is the remedial steps for protection of ecology of Western Ghats, which is an eco-sensitive area within the meaning of the relevant notification under the Environment (Protection) Act, 1986. The need for safeguarding such erosion has been highlighted *inter alia* in *T.N. Godavarman Thirumulpad v. Union of India & Ors. (2012) 3 SCC 277* and *M.C. Mehta v. Kamal Nath and Ors. (1997) 1 SCC 388*. Since the notifications have validity period and fresh exercise has to be undertaken periodically, the Ministry of Environment, Forest and Climate Change (MoEF&CC) appointed High Level Working Group (HLWG) (Dr. K. Kasturirangan Committee). The said Committee gave its report which was accepted in principle by the MoEF&CC. The

recommendations were for excluding some area from the eco-sensitive area. There is demand for more and more exclusion by those who claim the need for 'development' while need for 'environment protection' does not allow acceptance of such demands. This aspect needs to be finalized and has been pending consideration for the last about eight years.

2. The matter has been earlier considered on several occasions in the light of earlier order dated 08.09.2017 in OA 26/2012, *Goa Foundation v. Union of India*. The Timeline laid down in the earlier order, for compliance, was extended vide order dated 24.08.2018. Vide order dated 22.11.2019, the Tribunal observed:

"4. Since the above timeline were not adhered to, the present application was filed on 07.05.2019. The Tribunal sought a report about the status of compliance from MoEF&CC. Thereafter on 03.09.2019, it was observed that the State of Gujarat has not furnished its response which was the cause of delay. The matter was listed for today to consider the progress.

5. The Advisor, ESZ Division, MoEF&CC is present in person and states that the matter is being processed and will be positively finalized before 31.03.2020.

6. Having noted the earlier delay and violation of undertaking given to this Tribunal and need for speedy finalization of the notification, we direct that if there is a further default and delay beyond 31.03.2020, the Advisor, ESZ Division will not be entitled to salary till compliance. We further direct that the draft notification will be deemed to the final notification from 01.04.2020."

3. In pursuance of the above, an additional affidavit has been filed by the MoEF&CC on 19.03.2020 as follows:

"6. That in compliance to the above said Order of this Hon'ble Tribunal, the submissions of all the States have been examined keeping in view the recommendations of the HLWG. The analysis of the response from the States, inter-alia, reveals the following:

- i. That there is a concern of the States about prohibition of certain activities having implications on medical care, health care and education;*

- ii. That there is concern of States about certain areas within proposed notification that have since the time of submission of Gadgil Committee report and HLWG, undergone demographic, infrastructural changes. The HLWG report, published in 2012 was based on Census 2001, whereas in the intervening period Census 2011 is available and Census 2021 is due;
- iii. The States have, therefore, excluded certain areas that are otherwise included in the draft notifications and HLWG report. However, some of the States have proposed new areas, in lieu of the proposed exclusions to compensate the overall area for ESA;
- iv. Overall matrix of response by the States is as under:

| State(s) | Area proposed in draft notification Sq.km 3.10.2018 | Area Excluded (Sq.km)** | New Area proposed (Sq.km) | Total area now proposed (Sq.km) |
|-----------------|--|--------------------------------|----------------------------------|--|
| Kerala | 9993.7 | 1337.24 | - | 8656.46 |
| Gujarat | 449 | 129 | - | 320 |
| *Maharashtra | 17,340 | 2570.88 | 1740 | 15,359.49 |
| Karnataka | 20,668 | 1571 | - | 19,097 |
| Tamil Nadu | 6914 | 24.53 | - | 6,665.47 |
| ** Goa | 1461 | 754 | - | 707 |
| Total ESA | 56,825 | 6386.65 | 1740 | 50,805.42 |

*inclusion and exclusion does not match with the proposed area.
 ** calculated based on the information furnished. Proposed to include 69 villages and exclude 37 villages.
 ***calculated based on the information furnished by the States.

7. That the Government of Karnataka has recently, vide letter dated 20th January, 2020, represented that the draft Western Ghats notification dated 3.10.2018 be withdrawn. A copy of the State Government letter is attached at Annexure-I.
8. That from the above submissions, it is evident that the States have called for either alteration in the draft notification or its complete withdrawal.
9. That this Hon'ble Tribunal vide order dated 24th August, 2018 inter alia directed that "any alternation in the draft notification dated 27.02.2017 may seriously affect the environment and especially in view of recent incidents in Kerala, we direct that no changes be made to reduce the area of Eco-Sensitive Zone in terms of notification dated 27.02.2017, without the same being considered by this Tribunal".
10. Keeping in view the reservations of the States, the Hon'ble Minister, Ministry of Environment, Forest & Climate Change proposes to call for meeting of the respective State leadership in

March, 2020 to further deliberate on the issue and to arrive at a consensus for notifying the Western Ghat Eco-Sensitive Area. This is more so in view of the fact that the effective implementation of the conditions in the ESA Notification shall be possible only when the concerned States are on board.”

4. During the hearing, Notification dated 22.09.2020 issued by the MoEF&CC has been produced for excluding the time for publication from 25.03.2020 to 31.05.2020 on account of lockdown.

5. Even if lockdown period is to be excluded, there is no justification for continued delay merely because the States have sought exclusion of area from eco sensitive zone. Let the needful be done now before 31.12.2020. For any default thereafter, direction to stop salary of the Advisor, ESZ Division, MoEF&CC will be operative.

6. A compliance report may be filed to this Tribunal before the next date by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

List again on 11.02.2021.

In view of above and earlier orders, pending MA 121/2019 and IA 703/2019 will also stand disposed of.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

September 28, 2020
Execution Application No. 19/2019
IN O. A. No. 597/2018
(M.A. No. 121/2019 & I.A. No. 703/2019)
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