

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

M.A.No.132 of 2017
in

Application No. 89 of 2014 (SZ)

Application No. 89 of 2014 (SZ)

Applicant(s)

Respondent(s)

Mr. M.S. Thankappan, Thekkady
Idukki Dist.

Vs. Union of India, MoEF, New Delhi and
Others

Legal Practitioners for Applicant(s)

Legal practitioners for respondent(s)

M/s.P.B. Sahasranamam,
S. Kamaleshkannan
Sai Sathya Jith

Mr. M.R. Gokul Krishnan
for R-1 and R-4
Mr. Sandesh Raja for R-2, R-3 and R-5
M/s. M.K.Subramanian &
P.Velmani for R-7
Mr.M.Ajay for R6

M.A.No. 133 of 2017
In

Application No. 212 of 2014 (SZ)

Application No. 212 of 2014 (SZ)

Applicant(s)

Respondent(s)

Mr. Abraham Thomas, Murukady P.O.
Idukki Dist.

Vs. The Secretary, MoEF, New Delhi and
others

Legal Practitioners for Appellant(s)
M/s. Yogeshwaran

Legal Practitioners for Respondents
Mr. M.R. Gokul Krishnan for R-1 and R-4
Mr. Sandesh Raja for R-2, R-3 and R-5
Mrs. Rema Smrithi for R-6
M/s. M.K. Subramanian
E. Manoharan P. Velmani for R-7
M/s. M. Ajay for R-8

M.A.No.132 of 2017

Applicant(s)

Respondent(s)

The Conservator of Forest
Kerala State
Thiruvananthapuram & ors

M.S. Thankappan

M.A.No.133 of 2017

The Conservator of Forest
Kerala State
Thiruvananthapuram & ors

Abraham Thomas & ors

Note of the Registry	Orders of the Tribunal
Item No.	<p data-bbox="407 674 1390 715">Date: 19th September, 2017</p> <p data-bbox="407 747 1390 1446">These applications are filed by the Conservator of Forest, Forest Headquarters, Tiruvananthapuram Kerala Forest Department, the Deputy Director (Project Tiger), Periyar Tiger Reserve, Thekkady and the State of Kerala, represented by its Secretary, Tourism Department who are respondent Nos.2, 3 and 5 and respondent Nos.1, 3 and 5, respectively in the main Application Nos.89 and 212 of 2014 praying for modification of the interim order passed by this Tribunal dated 30.5.2017 thereby permitting the applicants in the M.As to lay inter-locking tiles in the present vehicle parking area at Kumili of the Periyar Tiger Reserve.</p> <p data-bbox="407 1481 1390 1964">2. The main prayer in the Application No.89 of 2014 is to direct the official respondents not to make development and construction activities in the Periyar Tiger Reserve in Thekkedy, Idukki District pursuant to the order of the Ministry of Environment and Forests (MoEF) dated 21.3.2013 granting approval for the Tiger Conservation Plan (TCP) of Periyar Tiger Reserve for the period from 2011 – 12 to 2020 – 21 under the Wildlife (Protection) Act,</p>

1972 and also to direct the MoEF to assess the damages caused to the Periyar Tiger Reserve in Thekkedy by virtue of development and construction activities. Likewise, the prayer in Application No.212 of 2014 is to restore the entire area to its pristine state, to restore the wetlands by removing the earth illegally filled in at Anavachal, to direct the respondents to remove all constructions put up without due permission under various statutes and initiate proceedings against the violators.

3. Pending the said main applications, the Tribunal has passed various orders from 10.3.2014, as we have explained in detail in the order dated 30.5.2017. In the order dated 10.3.2014 the Tribunal passed an order of interim injunction against the official respondents in Application No.89 of 2014 from proceeding with any developmental activities, including construction in Periyar Tiger Reserve. The said order was subsequently modified after hearing the parties on 8.5.2014 permitting the 3rd respondent in Application No.89 of 2014 to complete the construction in respect of Cafeteria. There was further direction on 26.5.2014 permitting the said 3rd respondent to put up anti-poaching sheds and shifting of vehicle parking area from Tiger Reserve to peripheral area which is actually a part of Kumili Town.

4. After the Government of Tamil Nadu got itself impleaded in Application No.89 of 2014 there was an interim order passed on 5.9.2014 against the 3rd respondent to maintain *status quo* and not to make any further developmental or construction activities in the

Periyar Tiger Reserve in Iduki District till 26.9.2014. The said order dated 5.9.2014 came to be modified by our order dated 30.5.2017 to the effect that the *status quo* order dated 5.9.2014 regarding construction, earth filling or any related developmental activity including Mega Car Parking in the waterspread area of Mullai Periyar Reservoir will apply only in respect of the leased area which is in possession of the State of Tamil Nadu, as it was found that the Tribunal in the order dated 5.9.2014 has restrained the Government of Kerala not to make any further developmental and constructional activities in the entire Periyar Tiger Reserve.

5. In our order dated 17.2.2017, based on a request made on behalf of the Additional Advocate General of the State of Kerala that due to allowing private tourist vehicles to enter deep into the forest to reach the parking area located in the Tiger Reserve, there are instances of accidents and death of animals and damage to environment and therefore it was proposed to have a new vehicle parking area at Kumili Town which is away from the deep forest and taking note of the protection of environment, we have permitted the Government of Kerala to allow parking of vehicles in the proposed site at Kumili Town which is away from the deep forest. While passing such order, we have made it clear that no further development or further filling or laying floor with cement concrete or putting of Tar or laying tiles or any other construction at the site at Kumili Town should be carried out.

6. The present applications are filed for modification of the order

dated 30.5.2017 modifying the order to the effect that the *status quo* in respect of developmental activities including vehicle parking shall be in respect of the area in possession of the State of Tamil Nadu, on the ground that the present parking area which is stated to have been shifted to Kumili Town from 1st March, 2017 onwards by virtue of the interim order dated 17.2.2017, is inadequate and during the recent monsoon season the parking area has got dampened and because of that potholes are created and it became slushy. It is stated that in the parking area there is not only serious congestion but the vehicles are unable to be parked because of the stagnation of rainwater which according to the applicants causes soil and water degradation and other ecological problems. According to the applicants, if such inconvenience of parking vehicles in Kumili Town continues, it will lead to diminishing of tourists' inflow to Periyar Tiger Reserve, affecting the economy. Therefore, in effect, the prayer of the applicants in M.As is to review the order of this Tribunal and permit the applicants to lay inter-locking tiles in the parking area in the interest of public.

7. This is opposed by the Government of Tamil Nadu that the applications for modification will not only amount to review of the earlier orders passed by this Tribunal which have become final but it also amounts to granting the main relief itself. The order of this Tribunal dated 17.2.2017 permitting the Government of Kerala to allow parking of vehicles at Kumili Town, which according to the Government of Tamil Nadu falls in the waterspread area of the

reservoir itself, is purely an interim measure and the said order of the Tribunal made it very clear that no further development of laying floor with the cement concrete etc., should be made and that was on the assurance of the Government of Kerala and therefore it does not require any modification. In fact, the said order of the Tribunal dated 17.2.2017 came to be reiterated in a subsequent order dated 10.3.2017 directing the present applicants to remove developments stated to have been made subsequently. Further, on 18.4.2017 when it was brought to the notice of this Tribunal that Bamboo fencing has been made at the site, the Tribunal has directed removal of the same and report compliance. Therefore, according to the Government of Tamil Nadu, the Tribunal has considered every aspect in detail and passed the said order which does not require any further clarification or modification.

8. The reply also referred to a Final Survey Report of the Two Member Committee submitted to the National Green Tribunal on 1.7.2015 showing spot levels with respect of Bench Mark. According to the Government of Tamil Nadu to make the spot levels on the left side of the road little higher than 155 ft the level has been raised due to the filling done by the State of Kerala in the present parking area. The specific case of the State of Tamil Nadu is that the spot level given by the Two Member Committee shows that the proposed vehicle parking site and other activities are falling in the waterspread area of Mullai Periyar Dam. The State of Tamil Nadu also objects the claim of the applicants in M.As that there has been

increase in the number of vehicles to 1,800 as against 125 within a period of six months. It is also stated that the waterspread area becoming slushy in the monsoon season is natural and it does not warrant laying of interlocking tiles which requires sand filling. It is further stated that already the area has been leveled by filling red earth and there has been a construction of culvert and therefore any further permission of putting up of interlocking tiles would only damage the soil resulting in ecological problems. The problems faced by the tourists in parking their vehicles, according to the State of Tamil Nadu, is because of the wrong planning of the Government of Kerala.

9. While it is the case of the learned Additional Advocate General of the State of Kerala, representing the applicants in M.As that when the vehicle parking is permitted to be shifted to Kumili Town which is within the territorial limits of Kerala, it is only consequential to modify the said order permitting the applicants to put up interlocking tiles for the convenience of the tourists and according to the learned Additional Advocate General laying of such inter locking tiles cannot cause any environmental damage and in any event being a temporary arrangement, the same can always be removed any time. In effect, it is his contention that the order of the Tribunal permitting shifting of car parking site to Kumili Town cannot be accomplished unless suitable modifications are made as stated in these M.As, particularly during the monsoon season.

10. Per contra, it is the contention of the learned Additional

Advocate General of the State of Tamil Nadu that the modification applications relate to the earlier order of this Tribunal permitting shifting of vehicle parking site which cannot be modified. He has also heavily relied upon the report of the Committee, as stated above, indicating about the raising of water level of Mullai Periyar Dam. According to the learned Additional Advocate General of the State of Tamil Nadu, this is also a waterspread area which is a known factor. Such point having not been raised at the appropriate time, cannot be permitted to be raised at this stage and that amounts to modifying the order which ultimately amounts to thwarting the prayer in the main applications. It is his submission that the applicants have not been bona fide since inspite of the interim order, developmental activities were made and even after permitting shifting of vehicle parking site there has been bamboo fencing which was directed to be removed by this Tribunal and in such circumstances according to the learned Additional Advocate General of Tamil Nadu, these applications for modification deserve to be dismissed.

11. After hearing the learned Additional Advocate General of both the States of Kerala and Tamil Nadu and referring to our earlier order, we are of the *prima facie* view that the present place wherein the car park area has been shifted at Kumili is also admittedly a water spread area. In the interest of environment and ecology, there should not be any further development, either for any construction, laying floor whether in the form of interlocking tiles or otherwise.

Even our order dated 17.2.2017 permitting the Government of Kerala to allow parking of vehicles at Kumili Town was an order passed purely on the basis of protecting the environment to save wild animals from being killed and prevent human interference and pollution by allowing vehicles in the forest area. By applying the same ratio of maintaining and protecting environment and balancing the protection of ecology, on the factual matrix of this case, we are of the view that the present status should be maintained till the final disposal of the main applications which in fact was the view of the Tribunal even on 17.2.2017 wherein we have made it very clear in the following terms:

“However, we make it clear that no further development and no further filling or laying floor with cement concrete or putting of tar or laying tiles or any other construction at the site should be carried out.”

12. When the said order has become final, we are of the view that the present applications filed in August, 2017 virtually amount to reviewing our order particularly when the said order dated 17.2.2017 has become final even though it is an interim measure. In our order dated 30.5.2017 the modification was granted only to enable the Government of Kerala which was virtually prevented by the order dated 5.9.2014 from carrying on any activities including the activities approved in TCP for protecting forest and wildlife and nothing more than that. It is only in the order dated 17.2.2017 we have allowed parking of vehicles, as an interim measure at Kumili Town. Therefore, in effect, the present prayer in the M.As are to modify our

order dated 17.2.2017 and not the order dated 30.5.2017.

13. For the above said reasons, we are of the considered view that there is no necessity for this Tribunal at this stage to consider modification of our order dated 17.2.2017 or 30.5.2017. Accordingly, M.A.Nos.132 and 133 of 2017 stand dismissed.

Post the main applications on 30.10.2017.

....., JM

(Justice Dr. P. Jyothimani)

....., EM

(Shri P.S. Rao)

NGT