

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI

(Under Section 18(1) read with S. 14, 15 of National Green Tribunal Act 2010)

Original Application No. 45 of 2017 (SZ)

Between:

Thenkeeranur Vivasayigal Nala Sangam
Rep.by.its Secretary G.Srinivasan
Thenkeeranur Village
Villupuram District, Tamil Nadu

... Applicant

AND

1. The Union of India
Rep.by.its Secretary to Government
Ministry of Environment and Forest
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi- 110 003
2. The Secretary to Government
Public Works Department
Government of Tamil Nadu
Secretariat, Chennai – 600 009
3. The Executive Engineer
Vellaru Irrigation Division,
PWD, Viruthachalam, Cuddalore Dt
4. The Southern Railway
Rep.by.its Chief Administrative Officer
No.183, EVR Periyar High Road, Egmore
5. The Chief Engineer, (Construction) Southern Railway
O/o. The Chief Administrative Officer
No.183, EVR Periyar High Road
Egmore, Chennai- 600 008
6. The Deputy Chief Engineer (Constructions)
Southern Railway, Salem Division, Salem
7. The Tamil Nadu Pollution Control Board
Rep.by.its Member Secretary
No.76, Mount Road, Guindy, Chennai 600 032
8. The District Collector,
District Collector Office, Villupuram
9. The Revenue Divisional Officer,
Kallakurichi
10. The Thasildhar,
Thasildhar Office
Kallakurichi

... Respondents

WRITTEN ARGUMENTS FILED ON BEHALF OF THE COUNSEL FOR THE APPLICANT

1. The present Original Application in OA No. 45/2017(SZ) was filed, praying for;

- A. *Permanently Injuncting the respondents (4) to (7) from constructing a broad gauge railway line in Kaniyamur Eri at S. No. 72/4, Kaniyamur Village in an extent of 0.58.50 hectares.*
- B. *Directing the respondents to maintain the Kaniyamur Eri at S.No. 72/4 at an extent of 120 acres free from any construction or encroachment in its pristine nature and Pass such further or other orders in the interest of Justice*

2. It is submitted that the 4th, 5th and 6th Respondent has proposed to construct a railway broad gauge line, in the Kaniyamur Eri (Lake) at S.No.72/4 of Kaniyamur Village, Kallakurichi Taluk, Villupuram District over an extent of 0.58.50 Hectares.

3. It is necessary to state that the Petitioner herein had previously filed an Original Application in OA No. 193/2013 (SZ), praying against the construction of railway line over the Thenkeeranur Lake, which is of an extent of 27.64 hectares. Vide order dated 07.08.2015, this Hon'ble Tribunal was pleased to dispose with the following directions.

"22. At this juncture, the 4th and 5th respondents came forward with an affidavit filed by the Deputy Chief Engineer of the 4th respondent. In the said affidavit, it has been categorically stated that the construction of the said Railway Terminal Station is at the extreme edge and away from the lake and not falling in the limits of the lake, that there would be no environmental and ecological impact due to the new construction and location of the said Railway Station and the land belongs to the private party which would be acquired according to the Land Acquisition Act. It is also further stated in the affidavit that before the commencement of field work necessary approvals would be obtained from various Central and State Government departments. The said affidavit is recorded. In view of the undertaking given by the 4th respondent as recorded above, there cannot be any impediment for issuing a direction to the 4th Respondent Southern Railway not to construct the proposed Kallakurichi Terminal Railway Station on any part of the lake.

23. The Respondent Nos.4 and 5, the Southern Railway, are restrained from constructing the Terminal Railway Station at Kallakurichi on any part of the Thenkeeranur Lake and are also restrained from bisecting the lake by forming bunds or raising culverts for laying railway line but shall lay the railway line in the cross-section of the lake by providing necessary railway bridge or by any other necessary construction ensuring free flow of water in order to maintain the water level on all sides alike.

24. The Respondent No.3, Public Works Department (PWD), is restrained from making transfer or allowing conversion in any part of the said water body namely Thenkeeranur Lake to Respondent Nos.4 and 5, the Southern Railway, beyond 0.31.5 ha which has already been transferred for laying the railway line.

25. The Respondent Nos 4 and 5, the Southern Railway, shall not commence or execute the project without obtaining prior EC from the MoEF or the SEIAA as the case may be and without obtaining all other necessary permissions/ consent from the authorities concerned as required by the law. The said authorities from whom such EC/Consent/Permission is required to be obtained by the Southern Railway, are also directed to take into consideration all the observations made by the Tribunal in the judgment.

26. With the above direction, the application is disposed. No Cost."

4. It is submitted that the impugned lake is of an extent of 75 hectares, which is approximately 3 times bigger than the water body, that was under challenge in OA 193/2013(SZ). It is submitted that the Respondents 4, 5 and 6, are trying to construct a railway line across the impugned lake in order to cost-cut the acquisition of lands, for the said project, which seriously affect the environment and ecology of the said area. Aggrieved by the same this Applicant has approached this Hon'ble Tribunal seeking for protection of environment, under Section 14 of the NGT Act, 2010.

5. Vide order dated 18.02.2021, this Hon'ble Tribunal was pleased to constitute a joint committee;

"17.However, in order to ascertain these facts, we feel it appropriate to appoint a Joint Committee comprising of (1) the District Collector, Kallakurichi District, (as the area now falls in Kallakurichi District) (2) the Executive Engineer, Vellaru Irrigation Division, (3) the Executive Engineer from the Irrigation Department of concerned area, (4) the Superintending Engineer of Public Works Department (PWD) who is in-charge of that area and (5) a Senior Officer from the Ministry of Environment, Forests & Climate Change (MoEF&CC), Regional Office, Chennai to inspect the area in question and consider the project in detail and submit a report to this Tribunal as to whether the Environmental Clearance (EC) is required or not for this project, whether the proposed construction will obstruct the free flow of water in the water body in question viz., Kaniyamoor Lake and whether there is any modification required, if they feel that it is likely to affect the ecology of the lake, if the project has to be proceeded with.

18. The committee is also directed to go into the question as to whether any portion of the lake is encroached by the applicants or their relatives through which the project is likely to be commissioned."

6. It is submitted that based on the order of this Hon'ble Tribunal an inspection was done by the joint committee on 23.03.2021. The said committee had mentioned the following as observations in the said inspection, through their report:
 - a. The extent of tank as 75 hectares.
 - b. Earthen embarkment with box culverts in the impugned site.
 - c. Length of railway track inside the water body is 118 Meters (apprx.).
 - d. Area of construction with the water body is 4,130 Sq. Meters.

7. Apart from the above mentioned, the committee had failed to observe several other material facts, such as the Ayacut of the Lake, the cost difference between the style of construction adopted and the other available choices, etc. The committee had also failed to denote the extent of water body that had been occupied/converted from lake area to construction. And whether the place is specially marked as "water spread area" or as "Lake" on the revenue records.

8. It is submitted that the committee had found that, the source of water to the impugned tank from Mayura River is only through the side where the 6th Respondent is constructing the Railway line. It is necessary to state that, since the source of water to the lake is through the area where the railway line is being constructed without RCC pillars, the same shall severely affect the inflow of water to the lake, resulting in severe environmental degradation in the area.

9. It is submitted that the grievance of the Applicant is against the construction of railway line across the water body and that too by adopting to the method of filling the waterbody with bund and making provisions of water to flow from

one end to another. The 6th Respondent had failed to even consider the style of RCC pillar bridge, across the lake, which is a better method making a minimum damage to the lake than the method proposed. Though it is feasible to make RCC style construction, the 6th Respondent has chosen to construct the railway line, inside the water body, by using earthen embankment with box culverts. The said method of construction shall affect the water body severely, where the catchment nature in the said area can be altered. Further, the earth embankment can block the natural springs inside the water tank and result in altering the nature of the water body which shall further affect the ecology. It is submitted that this Hon'ble Tribunal in OA 135/2016(SZ) had observed that the RCC pillar bridge across the waterbody is a feasible method which shall have lesser impact in the waterbody. It is to be noted that in WRIT PETITION (ST.) NO.22364 OF 2019, the Hon'ble HIGH COURT OF JUDICATURE AT BOMBAY, had categorically noted that the change from bund styled bridge to RCC style is for public good and in public interest.

10. Further, it is necessary to state that the Apex court had repeatedly observed in various judgments such as, Hinch Lal Tiwari v. Kamala Devi and others (AIR 2001 SC 3215), that,

".....

14. It is important to note that material resources of the community like forests, tanks, ponds, hillocks, mountain etc. are nature's bounty. they maintain delicate ecological balance. They need to be protected for a proper and health environment which enable people to enjoy a quality life which is essence of the guaranteed right under Articles 21 of the Constitution....."

and in *Jagpal Singh v. State of Punjab*, (2001 (11) SCC 396),

".....17. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached

to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

18. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.

.....

22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/ unauthorized occupants of Gram Sabha/ Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village..."

that these resources shall be protected with almost care, but the 6th Respondent had chosen to make the impugned construction inside the Kaniyamoor tank through earth embankment style, even when there is an alternate better method of construction available. The said method, adopted now, is nothing but typically filling the water body with provisions for water from one end to reach the other.

11. It is humbly submitted that, though the project is a necessary one, the objection of the Applicant is only against the method of earth embankment style, adopted to construct the bridge across the Lake. Even as per the principles of sustainable development, the 6th Respondent shall adopt to carry out the construction using RCC Pillars. The Apex Court in the case of **Enviro-Legal Action v. Union of India, [1996 (5) SCC 281]**, was pleased to observe that

"While economic development should not be allowed to take place at the cost of ecology or by causing widespread environmental destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment should go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of the environment."

Hence this development, at the cost of environment, is against law

12. It is submitted that, even the joint committee had observed that the style of construction adopted by the 6th Respondent shall cause obstruction in case of heavy rain. Further, the construction of railway line dividing the farm lands near the water tank shall also restrict the water flow to either side resulting in stagnation of water outside the water spread area, causing severe environmental degradation.

13. It is necessary to state that the 6th Respondent is trying to dilute the seriousness of bund construction inside the water body terming it as construction in water spread area. The revenue records of the impugned site where the construction of 4,130 Sq. meters of railway line, would clearly show that it is a water body and differentiation between catchment area and water spread area shall not arise.

14. Hence for the arguments written above it is prayed that this Hon'ble National Green Tribunal may be pleased to allow the Application and pass such further or other orders as deemed fit and thus render Justice.



COUNSEL FOR THE APPLICANT

**BEFORE THE NATIONAL GREEN
TRIBUNAL (SZ) CHENNAI**

Original Application No. 45 of 2017 (SZ)

WRITTEN ARGUMENTS

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COUNSEL FOR THE APPLICANT