

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN**

**Thursday, the 1st day of September 2022 / 10 th Bhadra, 1944
WP(C) NO. 27593 OF 2022**

PETITIONERS:

1. HOWE ENGINEERING PROJECTS (I) PVT. LTD, HAVING REGISTERED OFFICE AT AMDC, SHANTIGRAM, NR. VAISHNODEVI CIRCLE, SG HIGHWAY, AHMEDABAD, GUJARAT-382 421 AND HAVING BRANCH OFFICE AT HOWE OFFICE, VIZHINJAM SEA PORT, MULLOOR P.O., VIZHINJAM, THIRUVANANTHAPURAM, KERALA – 695 521 REPRESENTED BY ITS AUTHORISED SIGNATORY AND PROJECT DIRECTOR ETHIRAJAN RAMACHANDRAN - 695521
2. ETHIRAJAN RAMACHANDRAN, AGED 56 YEARS S/O. G. RAMACHANDRAN, AUTHORISED SIGNATORY AND PROJECT DIRECTOR. HOWE ENGINEERING PROJECTS (I) PVT. LTD, VIZHINJAM SEA PORT, MULLOOR P.O., VIZHINJAM, THIRUVANANTHAPURAM, KERALA - 695521
3. ROHIT CHAUHAN AGED 40 YEARS S/O. RASHMI KANT CHAUHAN, SENIOR MANAGER PROJECTS. HOWE ENGINEERING PROJECTS (I) PVT. LTD, VIZHINJAM SEA PORT, MULLOOR P.O, VIZHINJAM, THIRUVANANTHAPURAM, KERALA - 695521
4. SUNIT MOZUMDER AGED 50 YEARS S/O. LATE MR. SANDIP MOZUMDER, GM- CONSTRUCTIONS, HOWE ENGINEERING PROJECTS (I) PVT. LTD, VIZHINJAM SEA PORT, MULLOOR P.O., VIZHINJAM, THIRUVANANTHAPURAM, KERALA - 695521

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695043
2. VIZHINJAM INTERNATIONAL SEAPORT LTD., (VISL). (A GOVT OF KERALA UNDERTAKING) 9TH FLOOR, KSRTC BUS TERMINAL COMPLEX THAMPANOUR, THIRUVANANTHAPURAM-695 001. REPRESENTED BY ITS MANAGING DIRECTOR.
3. PRINCIPAL SECRETARY TO GOVERNMENT, DEPARTMENT OF PORTS, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695043
4. PRINCIPAL SECRETARY TO GOVERNMENT, DEPARTMENT OF FISHERIES, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695043
5. STATE POLICE CHIEF & DIRECTOR GENERAL OF POLICE, POLICE HEAD QUARTERS, CV RAMAN PILLAI ROAD, VELLAYAMBALAM, THIRUVANANTHAPURAM, KERALA - 695010
6. DISTRICT COLLECTOR, COLLECTORATE, THIRUVANANTHAPURAM - 695043
7. COMMISSIONER OF POLICE, THIRUVANANTHAPURAM CITY, THIRUVANANTHAPURAM - 695033
8. ASSISTANT COMMISSIONER OF POLICE, FORT SUB DIVISION, THIRUVANANTHAPURAM - 695014
9. THE STATION HOUSE OFFICER & INSPECTOR OF POLICE, VIZHINJAM POLICE STATION, THIRUVANANTHAPURAM - 695521
10. THE STATION HOUSE OFFICER & INSPECTOR OF POLICE, VIZHINJAM COASTAL POLICE STATION, THIRUVANANTHAPURAM - 695521
11. REV. DR. THOMAS J. NETTO, METROPOLITAN ARCHBISHOP OF TRIVANDRUM, LATIN ARCHBISHOP'S HOUSE, VELLAYAMBALAM, P.B. NO. 805, THIRUVANANTHAPURAM, KERALA, INDIA - 695033

12. REV. DR. CHRISTUDAS RAJAPPAN AUXILIARY BISHOP, LATIN ARCHBISHOP'S HOUSE VELLAYAMBALAM, P.B. NO. 805. THIRUVANANTHAPURAM, KERALA, INDIA - 695033
13. REV. MSGR. EUGINE H. PEREIRA, VICAR GENERAL, LATIN ARCHBISHOP'S HOUSE VELLAYAMBALAM, P.B. NO. 805 THIRUVANANTHAPURAM, KERALA, INDIA - 695003
14. FR. LAWRENCE KULAS, METROPOLITAN ARCHBISHOP OF TRIVANDRUM, LATIN ARCHBISHOP'S HOUSE, VELLAYAMBALAM, P.B. NO. 805, THIRUVANANTHAPURAM, KERALA, INDIA., PIN - 695003
15. FR. GEORGE PATRIC, SHANGUMUKHAM CHURCH, THIRUVANANTHAPURAM - - 695007
16. NICKSON LOPAS, THENNORKONAM, KOTTAPPURAM P.O, VIZHINJAM, THIRUVANANTHAPURAM - 679513
17. SHERLY, NEAR ST. THOMAS CHURCH, POONTHURA P.O., THIRUVANANTHAPURAM - 695026
18. FR. PHIOVIOUS DECRUZ LATIN ARCHBISHOP'S HOUSE, VELLAYAMBALAM, P.B. NO. 805 THIRUVANANTHAPURAM, KERALA, INDIA - 695003
19. FR. MICHAEL THOMAS , PARISH PRIEST, VELLAYAMBALAM CHURCH THIRUVANANTHAPURAM - 695010
20. 20. FR. SHAJIN, THUMPA CHURCH, THIRUVANANTHAPURAM - 695022
21. FR. ASHMIN JOHN TSSS DIRECTOR, ARCHBISHOP'S HOUSE, SH 2, ALTHARA NAGAR, VELLAYAMBALAM, THIRUVANANTHAPURAM, KERALA - 695003
22. FR. SAJAS IGNATIUS VALIYATHURA CHURCH, THIRUVANANTHAPURAM - 695008
23. REV. MSGR. C. JOSEPH LATIN ARCHBISHOP'S HOUSE, VELLAYAMBALAM, P.B. NO. 805, THIRUVANANTHAPURAM, KERALA, INDIA., PIN - 695003
24. FR. ANTONY PULLUVILA CHURCH THIRUVANANTHAPURAM - 695526
25. FR. A. R. JOHN PARISH PRIEST, ST. THOMAS CHURCH POONTHURA. P.O, THIRUVANANTHAPURAM. - 695026 सत्यमेव जयते
26. UNION OF INDIA, THROUGH ITS MINISTRY OF FINANCE, DEPARTMENT OF ECONOMIC AFFAIRS (PPP CELL), ROOM NO. 129-B, NEW DELHI - 110001(INDIA). REPRESENTED BY ITS SECRETARY - 110001
27. SECRETARY, MINISTRY OF HOME AFFAIRS, DEPARTMENT OF INTERNAL SECURITY, GOVERNMENT OF INDIA, NORTH BLOCK NEW DELHI - 110001, INDIA - 110001
28. DIGP, CENTRAL RESERVE POLICE FORCE (CRPF), OFFICE OF THE DIGP, GROUP CENTER, CRPF, PALLIPURAM, THIRUVANANTHAPURAM - 695316

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct Respondents 1 to 10 to afford effective and adequate police protection:

(i) to the life of Petitioners 2 to 4 and other employees of 1st Petitioner, employees of its contractors and the security staffs;

(ii) for continuing the construction Vizhinjam International Seaport Project covered by Exts.P5 and P9 Environmental & CRZ clearance and the concession agreement dtd. 17.08.2015 entered into between Government of Kerala and M/s.Adani Vizhinjam Port Pvt. Ltd;

(iii) to the machineries, vehicles, constructions, structures and other properties of the 1st Petitioner and its contractors in and around the project site of the Vizhinjam Port Project;

(iv) for unhindered ingress and egress of lorries, other vehicles and machineries to the Project site of the Vizhinjam Port Project; from the obstruction and threat caused by Respondents 11 to 25, their henchmen or anybody acting under them so as to prevent/delay commissioning of Vizhinjam International Seaport Project, pending disposal of the Writ Petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI.G.SREEKUMAR,M/S.ROSHEN.D.ALEXANDER, TINA ALEX THOMAS & HARIMOHAN, Advocates for the petitioners and of GP FOR R1,R3-R10,SRI.V.J MATHEW,VIPIN.P.VARGHESE,ADARSH MATHEW,KEVIN MATHEW GEORGE,MEERA ELSA GEORGEAND MERLIN MATHEW FOR R2, SRI. JAMES KURIAN ALONG WITH ATHUL TOM FOR R14 AND R24,ASSISTANT SOLICITOR GENERAL OF INDIA for R26 to R28, the court passed the following:



ANU SIVARAMAN, J.

W.P.(C) Nos.27571 and 27593 of 2022

Dated this the 1st day of September, 2022

ORDER

These writ petitions are filed seeking police protection for the life of the petitioners, employees and staff as well as sub-contractors and their employees for continuing the construction of the Vizhinjam International Seaport Project in pursuance to the agreement dated 17.8.2015 entered into between the 1st petitioner in W.P.(C) No.27571/2022 and the Government of Kerala.

2. Sri.S.Sreekumar, the learned Senior Counsel appearing for the petitioner in W.P.(C) No.27571/2022 submits that the construction of the port is in its last stages and that from 16.8.2022 onwards, several hundreds of people under the leadership and instigation of respondents 11 to 25 have started an agitation in front of the project site and the access of the petitioners to the project site is being blocked and the project is brought to a standstill due to the high handed acts of the protesters instigated by respondents 11 to 25. It is submitted that the project has all required clearances and is a prestigious joint venture project between the State and Central

W.P.(C) Nos.27571 and 27593 of 2022

-: 2 :-

Governments with 67% of the cost being borne by the State Government. It is submitted that public money amounting to thousands of Crores of rupees is at stake and that the obstruction caused to the completion of the project is causing irreparable loss and injury not only to the petitioners and the State Government but also to the larger public interest. Ext.P6 judgment of the National Green Tribunal has considered all the contentions of the public and it stands affirmed by the Apex Court. It is submitted that raising several demands, most of which are unconnected with the project in question, the respondents 11 to 25 are instigating a public protest and outcry and holding the project to ransom without any justification. It is further contended that in spite of the direction issued by this Court to see that law and order is maintained in the vicinity of the project site, no steps have been taken by the police to see that the petitioners are granted free ingress and egress to the project site and enable to carry out the work in question.

3. Similar contentions are raised in W.P.(C) No.27593/2022 by Sri.G.Sreekumar, the learned Senior Counsel appearing for the petitioners. The 1st petitioner therein is a private limited company which is the Engineering Procurement and Construction Contractor of the Concessionaire and it is

W.P.(C) Nos.27571 and 27593 of 2022

-: 3 :-

contended that the agitations have been ongoing from 16.8.2022. On 19.8.2022, the agitators breached the barricades installed by the police and entered the project site. On 22.8.2022, a protest from land and the sea was launched and serious damage to the properties of the site was caused. The lock of the main gate was broken open and several mast lights in the port area were destroyed.

4. The learned State Attorney appearing for the State Government would contend that the State Government is taking earnest steps to see that the grievances of the local residents are appropriately redressed and produces the copy of a reply given by the Chief Minister in the Assembly in support of his contention.

5. Sri.V. J. Mathew, the learned Senior Counsel appearing for the 2nd respondent contended that the estimated project cost of the Vizhinjam Project is an amount of Rs.7,700/- Crores and that the Vizhinjam Port is envisaged as the only deep sea port of its magnitude in the country. It is submitted that Crores of rupees of public funds are at stake and that the protesters have been taking law into their own hands at the instigation of respondents 11 to 25.

W.P.(C) Nos.27571 and 27593 of 2022

-: 4 :-

6. The learned Senior Counsel appearing for the 12th respondent submits that these writ petitions are not maintainable since the prayers raised are vague and that in the case of competing interests, the larger public interest is to be considered. It is contended that the conditions contained in Ext.P5 Environmental Clearance as well as the orders of the National Green Tribunal stand blatantly violated by the petitioners and that a judicial commission appointed to look into the complaints had specifically found that the construction of the port is causing sea erosion in the neighbouring areas.

7. The 15th respondent has placed a counter affidavit on record stating that the conditions on which Environmental Clearance was granted for the project as also the conditions imposed by the National Green Tribunal while considering the challenge to the Environmental Clearance are observed only in their breach by the project proponents and that the fisher folk of the area are forced to live in inhuman conditions which is the reason for their staging of protest against the project.

8. Sri.D. Sreekumar, the learned counsel appearing for respondents 13, 22, 23 and 25 would contend that the fisher folk in the locality are agitating against the pathetic living conditions in which they are forced to survive on account of loss of their

W.P.(C) Nos.27571 and 27593 of 2022

-: 5 :-

houses and lands due to sea erosion. It is submitted that several families are forced to live in animal like conditions in a cement godown and are facing starvation and complete loss of livelihood due to the inhuman acts of the State and its complete neglect to the problems raised by the fisher folk. It is submitted that the poor people who have lost their lands and livelihood due to sea erosion and shore changes are entitled to contend that they have a right to live with human dignity and that the same is being denied by the State and its machinery.

9. The 20th respondent submits that there is no law and order situation at present and the issue is with regard to the right to life of the persons of the locality and there is blatant violation of the conditions on which the Environmental Clearance stood granted.

10. Respondents 14 and 24 as well as the 19th respondent seek time to place a counter affidavit on record. The 19th respondent also seeks the appointment of a committee by this Court or the appointment of an Amicus Curiae to ascertain whether the conditions provided in the Environmental Clearance as well as the order of the National Green Tribunal have been complied with.

W.P.(C) Nos.27571 and 27593 of 2022

-: 6 :-

11. The learned Additional Solicitor General of India would contend that in case respondents 1 to 3 are unable to maintain law and order in and around the project area, it is for them to inform the Central Government and seek aid from the Centre by deploying its paramilitary forces for the maintenance of law and order and it is only in such circumstances that such personnel can be deployed by the Central Government. It is submitted that no such request has been received from respondents 1 to 3.

12. I have considered the contentions advanced. From the materials placed on record by the respondents, it appears that the project has obtained Environmental Clearance which of course is subject to specific conditions. The grant of the Environmental Clearance was under challenge before the National Green Tribunal and Ext.P6 judgment has been rendered by the National Green Tribunal after considering each and every contentions raised by the appellants therein. The National Green Tribunal has also provided conditions under which the project proponent shall proceed with the project. From the contentions urged before me and the materials on record, it appears that the essential contention of respondents 11 to 25 is to the effect that the conditions on which the Environmental

W.P.(C) Nos.27571 and 27593 of 2022

-: 7 :-

Clearance has been granted as also the condition provided in Ext.P6 judgment of the National Green Tribunal are not being complied with. If that be so, the residents of the locality definitely have a right to raise such contentions before the appropriate authorities and to seek redressal of their grievances in accordance with law. The contention of the respondents that the fisher folk who had to be evicted from their places of residence due to sea erosion are entitled to a decent life and livelihood also are matters which cannot be disputed. In case there are specific complaints even against the port project, it would be open for the residents of the locality to carry out peaceful protest to bring the matter to the notice of the authorities in question. However, I have no doubt in my mind that the right to agitate or protest against any matter including the apathy or neglect of the Government cannot confer any right either on respondents 11 to 25 or any of the protesters to contend that they have a right to obstruct the activities which have due permissions or to trespass into the project site and cause damage to public property. In case they have any contention with regard to the violation of any of the conditions as provided either in the Environmental Clearance or in Ext.P6 judgment of the National Green Tribunal, it is for them to raise

W.P.(C) Nos.27571 and 27593 of 2022

-: 8 :-

such issues appropriately before the competent authorities in accordance with law. In these writ petitions, the question raised is not with regard to the validity of the permissions granted for the project. The only aspect which requires consideration is the breach of peace and the illegal obstruction being caused by the protesters. The respondents cannot be heard to contend that they or any of the protesters have the right to violate the law or create a situation where the project proponent is disabled from going forward with the project. This Court has time and again considered the issue of competing interests in the matter of grant of police protection and has held that a right to protest can only mean a right to protest peacefully and there can be no right to obstruct the legally permitted project or activity in the guise of a protest whatever be the reason for the protest.

13. The public protest, in which respondents 11 to 25 are admittedly involved, at least in an advisory capacity, cannot extend to obstructing ingress and egress of the petitioners', its sub-contractors, employees or officials to and from the project site or obstruct the activities of the project without any authority of law.

There will, accordingly, be a direction to respondents 1 to 3 to see that necessary police protection is granted to the

W.P.(C) Nos.27571 and 27593 of 2022

-: 9 :-

petitioners in these writ petitions to carry out the activities permitted in accordance with the contracts entered into by them with the project proponent. All necessary protection for providing free ingress and egress to such persons for carrying out the necessary activities in connection with the project shall be afforded by the police. The public protest as evidenced by Ext.P10 can go on peacefully, but without causing any obstruction and without any trespass being permitted into the project area. In case respondents 1 to 3 are unable to see that law and order is maintained in the locality, necessary steps shall be taken to seek appropriate assistance from the Central Government.

For completion of pleadings and further arguments, post on 27.9.2022.

**Sd/-
ANU SIVARAMAN
JUDGE**

Jvt/31.8.2022

APPENDIX OF WP(C) 27593/2022

Exhibit P5

TRUE COPY OF ENVIRONMENTAL AND CRZ CLEARANCE FOR THE DEVELOPMENT OF VIZHINJAM INTERNATIONAL DEEPWATER MULTIPURPOSE SEAPORT ISSUED BY GOVERNMENT OF INDIA THROUGH ITS MINISTRY OF ENVIRONMENT AND FOREST (MOEF) WHICH IS NUMBERED AS F. NO. 11-122/2011-IA.III DTD. 03.01.2014.

Exhibit P6

TRUE COPY OF THE JUDGMENT DTD. 02.09.2016 IN O.A NO. 74 OF 2014.

Exhibit P10

TRUE COPY OF PHAMLETS DISTRIBUTED BY THE AGITATORS.

