

Item No. 01:

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Original Application No. 34 of 2022 (SZ)

(Through Video Conference)

IN THE MATTER OF:

K.G. Prathapa Simhan,  
Ernakulam,  
Cochin.



...Applicant(s)

Versus

Union of India,  
MoEF & CC,  
Rep. by its Deputy Director General of Forests,  
Bangalore and others.

...Respondent(s)

Date of hearing: 21.03.2022

CORAM:

HON'BLE Mr JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

For Applicant(s):

Mr. P.B. Sahasranaman &  
Mr. S. Sai Sathya Jith

For Respondent(s):

ORDER

1. The grievance in this application is regarding the violations committed by the 3<sup>rd</sup> respondent/Kochi Metro Rail Limited in executing their Kochi Metro

Water Project in respect of encroachment into the Vembanad backwaters by reclaiming the same for making some constructions which is not permissible under the CRZ Notification without getting proper clearance. Even in the CRZ clearance and the Environmental Clearance (EC) obtained by them, they have not mentioned the nature of construction that they are going to make in the proposed area.

2. According to the applicant, it cannot be treated as a foreshore facility like jetty and as such it is a clear violation of the CRZ Notification and also the clearances granted. They can only make construction towards the land side and not towards the back water side. But for the purpose of proposed construction, they are reclaiming certain portion of Vembanad backwaters in the disputed area and trying to construct bridges which will have impact on the entire marine ecology. Though, they filed Writ Petition before the Hon'ble High Court of Kerala challenging the recommendations made by the Kerala Coastal Zone Management Authority (KCZMA) and also Environmental Clearance (EC) granted, the Hon'ble High Court of Kerala disposed the application stating that the representations filed by them in this regard is pending with the authorities and direction was granted to the authorities to consider and pass appropriate orders within one month in their representation.
3. According to the applicant, that may not be a bar for the applicant to file this application, as this Tribunal can go into the violations of the Environmental

Clearance (EC) granted. So the applicant filed this application seeking the following reliefs:-

1. *Allow the application by directing the 3<sup>rd</sup> respondents to remove all the constructions which was made on the Vembabad estuary which lies on the seaward side of the Cochin Marine Drive, Kochi Water Metro Terminal, Kochi Water Metro Project within a time limit and to restore the coastal ecology in the same manner as lied before;*
2. *To appoint an appropriate authority to assess the damages that has been caused to the ecology on account of the constructions made by the 3<sup>rd</sup> respondent for the Kochi Water Terminal, as stated above and recover the said damages from the concerned persons responsible for the same and use the same for maintaining the coastal ecology;*
4. On going through the allegations made in the application, we are satisfied that there arises a substantial question of environment which requires the interference of this Tribunal for resolving the same. So, the application is admitted.
5. Issue notice to the respondents by Registered post with acknowledgement due, by e-mail and also by dusthi if possible and produce proof of service on them, by filing proof affidavit as per rules.
6. The applicant is also directed to produce necessary requisites along with postal cover and the necessary postal stamps before this Tribunal within a week, so as to enable this Tribunal to send notice to the respondents through

Tribunal, to ensure service on them and proceed against them, if they did not appear, in their absence in accordance with law.

7. In order to ascertain the genuineness of the allegations made in the application, we feel it appropriate to appoint a Joint Committee consisting of (1) a Senior Officer from Ministry of Environment, Forests and Climate Change (MoEF & CC), Regional Office, Chennai (2) a Senior Officer from Kerala Coastal Zone Management Authority (KCZMA) and (3) an Officer from National Centre for Earth Science Studies (NCESS) Marine Division, Trivandrum to inspect the area in question and submit a factual as well as action taken report if there is any violation found.
8. The committee is directed to ascertain as to;
  - i) Whether there was any violation of the Environmental Clearance (EC) and the Coastal Zone Clearance granted for the 3<sup>rd</sup> respondent/Kochi Metro Rail Limited,
  - ii) Whether there was any suppression of material fact made by the 3<sup>rd</sup> respondent while explaining their project to obtain the clearance,
  - iii) Whether the activity that is proposed to be done by the 3<sup>rd</sup> respondent is a permissible activity in that area as per the CRZ Notification, 2011,
  - iv) If there is any violation or it is an impermissible activity and anything done by the 3<sup>rd</sup> respondent if they had an

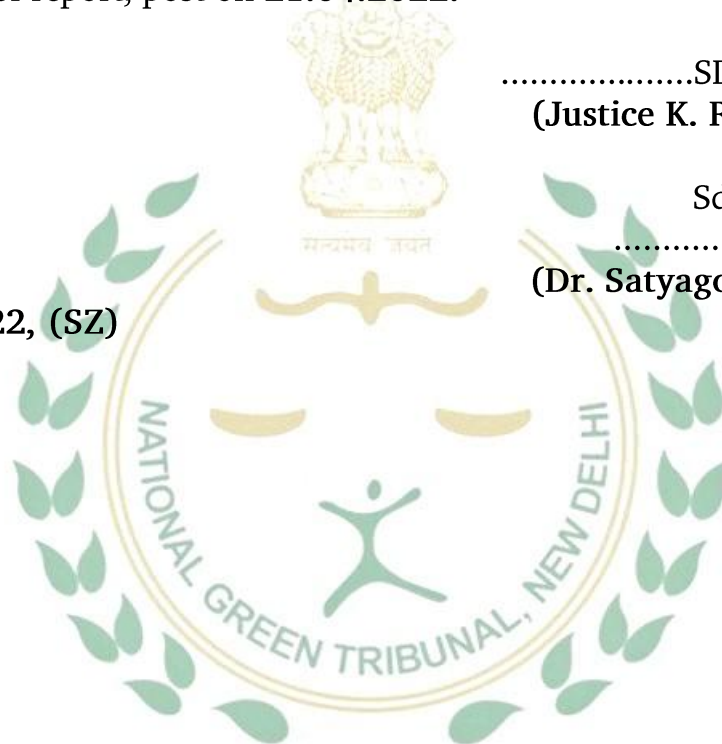
impact on environment, then assess the damage caused to the environment and also to assess the environmental compensation for the violations and also for cost required for restoration of damage caused to the environment.

9. The Kerala Coastal Zone Management Authority (KCZMA) will be the nodal agency for co-ordination and providing necessary logistics for this purpose.
10. The applicant is also directed to serve a copy of the application along with the documents produced to the members of the Joint Committee within a week, so as to enable them to comply with the direction of filing the report without delay.
11. It is made clear that any construction or activities made by the 3<sup>rd</sup> respondent in the disputed area will be subject to final outcome of this Original Application.
12. If the committee is not able to finalise report, at least they are directed to file an interim report showing the nature of violation, (if any) of the conditions imposed and the CRZ Notifications before the next hearing date.
13. Considering the nature of urgency raised by the applicant, the committee is directed to inspect the area without further delay immediately on receipt on the set of papers and submit a report to this Tribunal on or before **21.04.2022** by e-filing in the form of searchable PDF/OCR Supportable PDF and not in the form of Image PDF along with necessary hardcopies to be produced as per rules.

14.The Registry is directed to communicate this order to the members of the committee as well as the official respondents immediately through e-mail, so as to enable them to comply with the direction and for filing their independent response to the allegations made in the application and also for filing their independent report as directed by this Tribunal.

15.For appearance of parties, filing their independent response and also for consideration of report, post on **21.04.2022**.

O. A. No. 34/2022, (SZ)  
21.03.2022,Sr.



.....SD/.....J.M.  
(Justice K. Ramakrishnan)

Sd/-

.....E.M.  
(Dr. Satyagopal Korlapati)