

P.B.SURESH KUMAR, J.

W.P.(C) No.20034 of 2020

Dated this the 8th day of April, 2021.

REFERENCE ORDER

Petitioner is a proprietary concern. They were operating a granite building stone quarry at Edapatta in Malappuram District on the strength of Ext.P1 Environmental Clearance issued to them on 01.12.2017 in terms of the Environment Impact Assessment Notification, 2006 (EIA Notification, 2006) issued under the Environment (Protection) Act,1986 (the Act). The quarry of the petitioner is located near the Silent Valley National Park established under the Wildlife (Protection) Act, 1972. On 18.10.2019, the seventh respondent interdicted the operation of the quarry of the petitioner on the ground that they need to obtain clearance from the Standing Committee of the National Board for Wildlife (the Standing Committee) constituted under Section 5B of the Wildlife (Protection) Act also for operating their

quarry since it is located within 10 kilometres from Silent Valley National Park. Ext.P6 is the notice issued by the seventh respondent to the petitioner in this regard. In Ext.P6 notice, it is stated that the said communication is issued in the light of Ext.P8 office memorandum issued by the Ministry of Environment, Forest and Climate Change, Government of India dated 8.8.2019 insisting clearance from the Standing Committee for mining projects within 10 kilometres from the National Parks. Ext.P6 notice is under challenge in the writ petition. The case set out by the petitioner in the writ petition is that restrictions in the nature of one provided for in Ext.P8 office memorandum can be imposed only in accordance with the provisions of the Act and the Environment (Protection) Rules (the Rules), and the quarry of the petitioner being one located beyond the eco-sensitive zone around the Silent Valley National Park covered by Ext.P10 draft notification issued under Section 3 of the Act and Rule 5 of the Rules, there

cannot be any impediment in law for operating the same.

2. A statement has been filed by the fourth respondent in the matter reiterating the contents of Ext.P6 notice. In addition, it is pointed out in the said statement that it was found in the enquiry conducted pursuant to the complaint lodged by the eighth respondent that the petitioner has been conducting blasting in the quarry in the early hours of the day and therefore, it has been decided to interdict the operation of the quarry on that ground also.

3. Heard Adv.Santhosh Mathew, the learned counsel for the petitioner, Adv.V.R.Rakesh, the learned Central Government Counsel, Adv.Nagaraj Narayanan, the learned Special Government Pleader (Forests) and Adv.K.Mohanakannan, the learned counsel for respondents 8 and 9.

4. The learned counsel for the petitioner reiterated the case of the petitioner that restrictions in the

nature of one provided for in Ext.P8 office memorandum can be imposed only in accordance with the provisions of the Act and the Rules. It was argued by the learned counsel that insofar as the quarry of the petitioner is located beyond the eco-sensitive zone covered by Ext.P10 draft notification issued under Section 3 of the Act, and in the absence of any restriction in the activity undertaken by the petitioner beyond the eco-sensitive zone covered by the said draft notification, there cannot be any impediment in law in operating the quarry of the petitioner. The learned counsel relied on the decision of the Apex Court in **Goa Foundation v. Union of India and others**, (2014) 6 SCC 590 [**Goa Foundation(2)**], in support of the said argument. It was also argued by the learned counsel that Ext.P8 office memorandum applies only to proposals for new projects and development activities within 10 kilometres from National Parks.

5. Per contra, the learned Special Government

Pleader (Forests) submitted that prior to Ext.P8 office memorandum, Ministry of Environment and Forests, Government of India has issued an office memorandum on 02.12.2009 providing that prior clearance from the Standing Committee is required for projects and development activities within 10 kilometres from National Parks, and though Ext.P8 office memorandum is issued in supersession of the said office memorandum, the requirement of prior clearance from the Standing Committee contained in the office memorandum dated 2.12.2009 was retained as it is in Ext.P8 office memorandum as well, for projects and development activities within 10 kilometres from National Parks, if the notifications issued under Section 3 of the Act for declaring eco-sensitive zones around the National Parks are at the draft stage. It was argued by the learned Special Government Pleader, therefore, that in the light of the office memorandum dated 02.12.2009, the petitioner was obliged to obtain clearance from the

Standing Committee for operating the quarry. It was also argued by the learned Special Government Pleader that the Central Government is empowered to impose restrictions in the nature of one imposed as per the office memoranda referred to above under Section 3 of the Act. The learned Special Government Pleader has also pointed out that identical cases have been disposed of by this Court in **George C.G and others v. State of Kerala and others**, 2020(1) KHC 345, holding that prior clearance from the Standing Committee is required for projects and development activities within 10 kilometres from National Parks, and there is no reason for taking a different view in this matter.

6. It is seen that restrictions exist now for projects and development activities around National Parks as per the directions issued by the Apex Court in **T.N.Godavarman Thirumulpad v. Union of India and Others**, (2010) 13 SCC 740 and in terms of the provisions of

the Act and the Rules. The restrictions as per the directions issued by the Apex Court in **T.N.Godavarman Thirumulpad** apply only to 1 kilometre area around National Parks and there is no dispute to the fact that the quarry of the petitioner is located beyond the said 1 kilometre limit. Ext.P10 is the draft notification issued under Section 3 of the Act and Rule 5 of the Rules declaring the eco-sensitive zone around the Silent Valley National Park. There is no dispute to the fact that the quarry of the petitioner is located beyond the eco-sensitive zone covered by Ext.P10 draft notification also. The petitioner however admits that their quarry is within 10 kilometres from the boundary of the Silent Valley National Park. The specific case of the petitioner is that restrictions can be imposed on the activity undertaken by the petitioner only in accordance with the provisions of the Act and the Rules, and that in the absence of any restriction in the activity undertaken by the petitioner beyond the eco-sensitive zone covered by Ext.P10

draft notification, there cannot be any impediment in law in operating the quarry of the petitioner. The official respondents, however, contend that the Central Government is empowered to regulate projects and development activities beyond the eco-sensitive zones notified under Section 3 of the Act, and it is in exercise of the said power that office memoranda dated 02.12.2009 and Ext.P8 have been issued. The question arising for consideration, in the circumstances, is whether the direction in Ext.P8 office memorandum insisting prior clearance of the Standing Committee for projects and development activities within 10 kilometres from National Parks applies to the project of the petitioner and if so, whether the direction aforesaid in Ext.P8 is sustainable in law.

7. As rightly pointed out by the learned Special Government Pleader, Ext.P8 is one issued in supersession of a similar office memorandum issued by the Ministry of Environment and Forests, Government of India on 02.12.2009.

The said office memorandum has been produced by the learned Special Government Pleader along with the argument note filed by him in the matter on 19.03.2021 as Annexure B. Annexure B provides that while granting Environmental Clearance for projects located within 10 kilometres of National Parks, a specific condition shall be incorporated therein that the Environmental Clearance is subject to their obtaining prior clearance from the Standing Committee. The petitioner had obtained environmental clearance when Annexure B office memorandum was in force. The learned counsel for the petitioner contended that there was no requirement in the EIA Notification, 2006 to obtain environmental clearance for mining projects operating in lands measuring less than 5 hectares when Annexure B office memorandum was issued; that such a requirement was introduced for the first time only in terms of the judgment of the Apex Court in **Deepak Kumar and Ors v. State of Haryana and Ors**, (2012) 4 SCC 629; that

Annexure B was not modified after the judgment of the Apex Court in the said case and Annexure B does not, therefore, apply to the case of the petitioner. Annexure B office memorandum is one issued by the Government of India prescribing the procedure to be followed for considering proposals for grant of environmental clearance in terms of the EIA Notification, 2006 for projects and development activities involving forest lands and/or wildlife habitats. Annexure B provides categorically that while granting environmental clearance to projects located within 10 kilometres of National Parks, a specific condition shall be stipulated that the environmental clearance is subject to the project proponent obtaining prior clearance from the Standing Committee or National Board. The relevant portion of Annexure B office memorandum reads thus:

“However, while granting environmental clearance to projects involving forestland, wildlife habitat (core Zone of elephant/tiger reserve etc) and or located within 10 km of

the National Park/ Wildlife Sanctuary (at present the distance of 10 km has been taken in conformity with the order dated 4.12.2006 in writ petition no. 460 of 2004 in the matter of Goa Foundation vs. Union of India), a specific condition shall be stipulated that the environmental clearance is subject to their obtaining prior clearance from forestry and wildlife angle including clearance from the Standing Committee of the National Board for Wildlife as applicable.”

In the light of the extracted provision, according to me, mining projects in lands measuring less than 5 hectares located within 10 kilometres from National Parks would automatically fall within the scope of Annexure B office memorandum, when environmental clearance was made compulsory for such projects in terms of the EIA Notification, 2006. In other words, the environmental clearance obtained by the petitioner is one deemed to have been issued subject to the condition that the petitioner should obtain clearance from the Standing Committee. As rightly pointed out by the learned Special Government Pleader, though Ext.P8 office memorandum is

one issued in supersession of Annexure B office memorandum, the requirement of obtaining prior clearance from the Standing Committee contained in Annexure B was retained as it is in Ext.P8 as well for projects and development activities within 10 kilometres from National Parks, if the notifications issued under Section 3 of the Act for declaring eco-sensitive zones around the National Parks are at the draft stage. In other words, there is no merit in the contention advanced by the petitioner that Ext.P8 office memorandum does not apply to the project of the petitioner.

8. Now I shall examine the question whether insistence in Ext.P8 office memorandum that clearance of the Standing Committee is necessary for projects and development activities within 10 kilometres from the National Parks is unsustainable in law. In order to examine the question aforesaid, it is necessary to refer to Section 3 of the Act, which reads thus:

“3. Power of Central Government to take measures to protect and improve environment.—

(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:—

(i) co-ordination of actions by the State Governments, officers and other authorities

(a) under this Act, or the rules made thereunder;

or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or

discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of

environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures

so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.”

It is evident from sub-section (1) of Section 3 of the Act that the Central Government is empowered in terms of the said provision to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. Sub-section (2) of Section 3 of the Act provides that in particular, and without prejudice to the generality of the provisions of sub section (1), the various measures mentioned therein can be taken by the Central Government. Clause (v) of sub-section (2) of Section 3 empowers the Central Government to take measures imposing restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain

safe guards. Rule 5 of the Rules reads thus:

"5. Prohibition and restriction on the location of industries and the carrying on processes and operations in different areas.-(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas:-

(i) Standards for quality of environment in its various aspects laid down for an area.

(ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.

(iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.

(iv) The topographic and climatic features of an area.

(v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.

(vi) Environmentally compatible land use.

(vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

(viii) Proximity to a protected area under the

Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.

(ix) Proximity to human settlements.

(x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central government may deem necessary from time to time, given notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such

notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of processes or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may within five hundred forty five days from such date of publication impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.

(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3)."

As evident from the extracted rule, the Central Government has to take into consideration the factors mentioned in sub-

rule (1) while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas. Sub-rule (2) is categorical in its terms that while prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure mentioned in the Rule. Sub-rule 3(a) of Rule 5 provides that whenever it appears to the Central Government that it is expedient to impose prohibition or restriction on locations of an industry or the carrying on of processes and operations in an area, it may, by notification in the official Gazette, and in such manner as the Central Government may deem necessary from time to time, give notice of its intention to do so. Sub-rule (3)(b) of Rule 5 provides that every notification under clause (a) of sub-rule (3) shall give a brief description of the area, industries, operations and processes in that area about which such notification pertains to and also specify the reasons for the

imposition of prohibition or restriction on the locations of the industries and carrying on the processes or operations in that area. Clause (c) of sub-rule 3 provides that any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette. Clause (d) of sub-rule (3) provides that the Central Government shall, within a period of 120 days from the date of publication of the notification in the official Gazette, consider all the objections received against such notification and may, within 545 days from such date of publication impose prohibition or restrictions on location of such industries and carrying on any process or operations in an area. Sub-rule (4) confers authority on the Central Government to dispense with the requirement of notice under Clause (a) of sub-rule (3), only if it appears to the

Central Government to do so in public interest. Having regard to Section 3 of the Act and Rule 5 of the Rules, the Apex Court has held in **Goa Foundation**(2), in the context of prohibiting mining operations around National Parks, that until the Central Government takes into account various factors mentioned in sub-rule (1), follows the procedure laid down in sub-rule (3) and issues a notification under Rule 5 prohibiting mining operations in an area, there can be no prohibition under law to carry on mining activity beyond 1 km of the boundaries of National Parks prohibited by the Apex Court in **T.N.Godavarman Thirumulpad**. The relevant portion of the judgment reads thus:

“52. Sub-rule (1) of Rule 5 lists the number of factors, which the Central Government has to take into consideration while prohibiting or restricting the carrying on of processes and operations in different areas. Sub-rule (2) of Rule 5 provides that before prohibiting the processes and operations in the area the Central Government has to follow the procedure laid down in sub-rule (3). The procedure in sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 includes giving

notice of the intention of the Central Government to prohibit the carrying on of processes and operations in the reserved area, giving brief description of the area, the operations and processes in that area relating to which the notification pertains and also specifying the reasons for the imposition of the prohibition on carrying on of the processes or operations in that area, and an opportunity to the persons interested in filing an objection against the imposition of such prohibition on carrying on of processes or operations by the Central Government. These procedural checks have been made in Rule 5 because a notification issued by the Central Government prohibiting an operation or a process will have serious consequences on the rights of different persons. For example, persons who are carrying on the process or operation and those who are directly or indirectly employed in the process or the operation may be affected by the proposed prohibition of the process or the operation in the entire area. Therefore until the Central Government takes into account various factors mentioned in sub-rule (1), follows the procedure laid down in sub-rule (3) and issues a notification under Rule 5 prohibiting mining operations in a certain area, there can be no prohibition under law to carry on mining activity beyond 1 km of the boundaries of national parks or wildlife sanctuaries”.

In the light of Section 3 of the Act and Rule 5 of the Rules as also the decision of the Apex Court in **Goa Foundation(2)**, I

have no doubt that unless the Central Government chooses to dispense with the said procedure in Rule 5 in public interest, the procedure prescribed in the said Rule is to be followed even for restriction of an operation that would fall within the scope of Rule 5 of the Rules in an area.

9. If the insistence in Ext.P8 office memorandum that prior clearance of the Standing Committee is mandatory for projects and development activities within 10 kilometres from National Parks, if the notifications issued under Section 3 of the Act for declaring eco-sensitive zones around the National Parks are at the draft stage, is a restriction falling within the scope of Section 3(2)(v) of the Act, there cannot be any doubt that such an insistence can be made only in accordance with the procedure laid down in Rule 5 of the Rules. The question remaining to be considered is whether insistence aforesaid in Ext.P8 office memorandum is a restriction falling within the scope Section 3(2)(v) of the Act.

While the learned counsel for the petitioner asserts that the same is a restriction falling within the scope of Section 3(2)(v) of the Act, the learned Special Government Pleader takes the stand that it is not a restriction falling within the scope of the said provision, but it is only a regulation of the projects and activities within the area specified therein, and the Central Government is empowered under Section 3 of the Act to make such regulations.

10. The question aforesaid is essentially a question relating to the scope of the word "restriction" in Section 3(2)(v) of the Act. Going by the plain meaning of the words used in Section 3(2)(v) of the Act, it can be seen that in terms of the said provision, Central Government is empowered to prohibit any operations or processes in any area or in the alternative, permit any operations or processes in any area, subject to safeguards for the purpose of protecting and improving the quality of environment and preventing,

controlling and abating environmental pollution. The word "safeguards" used in Section 3(2)(v) of the Act would only mean "necessary precautionary measures" in the context. In other words, the provision empowers the Central Government to permit any operation or processes in any area after taking necessary precautionary measures. Reverting to the facts, Ext.P8 office memorandum does not prohibit any project or development activity in any area beyond the notified eco-sensitive zone. The office memorandum only insists that prior clearance of the Standing Committee shall be obtained for projects and development activities beyond the notified eco-sensitive zone, but within 10 kilometres of the National Parks, if the notifications issued under Section 3 of the Act for declaring eco-sensitive zones around the National Parks are at the draft stage. The insistence aforesaid in the office memorandum, according to me, can be regarded only as a safeguard imposed by the Government for projects and

activities within 10 kilometers. If one understands the scope of the word "restriction" in Section 3(2)(v) of the Act in the above background, I have no doubt that the insistence in Ext.P8 office memorandum that prior clearance of the Standing Committee is mandatory for projects and development activities within 10 kilometres from National Parks, if the notifications issued under Section 3 of the Act for declaring eco-sensitive zones around the National Parks are at the draft stage, is certainly a restriction falling within the scope of Section 3(2)(v) of the Act. In other words, such an insistence cannot be made without following the procedure laid down in Rule 5 of the Rules. If that be so, since the said procedure has not been followed, the insistence aforesaid in Ext.P8 office memorandum is unsustainable in law.

11. Let us now examine the submission made by the learned Special Government Pleader that identical cases have been disposed of by this Court in **George C.G**, holding

that prior clearance of the Standing Committee is mandatory for the petitioners therein to operate their quarries. I have gone through the judgment in **George C.G.** True, a batch of identical cases have been disposed of by this court in terms of the said judgment on the premise that prior clearance of the Standing Committee is mandatory for operating the quarries of the petitioners therein, in the light of the order passed by the Apex court in **Goa Foundation v. Union of India**, (2011) 15 Supreme Court Cases 791 [**Goa Foundation** (1)]; that the order of the Apex Court in **Goa Foundation** (1) is an interim order in the matter in which **Goa Foundation** (2) was rendered; that Ext.P8 office memorandum being one issued in the light of the order of the Apex Court in **Goa Foundation**(1), the same would apply to all cases where environmental clearances have been issued after **Goa Foundation** (1). That apart, after holding that prior clearance of the Standing Committee is mandatory for the petitioners to

conduct their quarrying operations in the light of the order in **Goa Foundation (1)**, this court in **George C.G** directed that the stop memos issued to the petitioners therein will remain in force only during the period prescribed by this court in the said judgment for compliance of the various directions issued to the State Government, Ministry of Environment and Forests and the Standing Committee.

12. A close reading of the decision of this court in **George C.G** indicates that the factual premises on which the said judgment proceeds are incorrect. First of all, **Goa Foundation (1)** is an interim order passed by the Apex court on 04.12.2006 in W.P.(C) No.460 of 2004 filed by Goa Foundation. The registry has informed that the said writ petition is still pending before the Supreme Court, whereas **Goa Foundation (2)** is the final judgment in a batch of cases instituted in the year 2012 and thereafter. It is seen that arguments were in fact raised in **George C.G.** on the aforesaid

incorrect premise including that **Goa Foundation** (1) has merged with **Goa Foundation** (2) and in order to get over the said argument, this court has even held in **George C.G** that **Goa Foundation** (1) was intended to operate as an independent direction as long as final notification of the eco-sensitive zones has not been made in respect of the areas around National Parks. The said finding is also incorrect, as **Goa Foundation** (1) was an order passed by the Apex Court long before the Ministry of Environment and Forests, Government of India issued draft notifications under Section 3 of the Act for declaring areas around National Parks as eco-sensitive zones. Further, as noted, the judgment in **George C.G.** proceeds on the assumption that Ext.P8 has derived its soul from **Goa Foundation** (1). Though there is a reference about the order of the Apex court in **Goa Foundation** (1) in Ext.P8 office memorandum, a close reading of Ext.P8 would show that the same is not one issued in the light of the order

of the Apex Court in **Goa Foundation** (1). The operative portion of **Goa Foundation** (1) which is referred to in Ext.P8 reads thus:

“5. The MoEF would also refer to the Standing Committee of the National Board for Wildlife, under Sections 5-B and 5-C(2) of the Wildlife (Protection) Act, the cases where environment clearance has already been granted where activities are within 10 km zone.”

The order aforesaid does not stipulate that clearance of the Standing Committee needs to be obtained for projects and development activities within 10 kilometres from National Parks. The said fact has been affirmed by the Apex Court in **Goa Foundation** (2) also in the following words :

“50. When, however, we read the order dated 4-12-2006 of this Court in *Goa Foundation v. Union of India* [*Goa Foundation v. Union of India*, (2011) 15 SCC 791] , we find that the Court has not prohibited any mining activity within 10 kilometre distance from the boundaries of the national parks or wildlife sanctuaries. The relevant portion of the order dated 4-12-2006 [*Goa Foundation v. Union of India*, (2011) 15 SCC 791] is

quoted hereinbelow: (SCC pp. 792-93, paras 4-5)

“4. The Ministry is directed to give a final opportunity to all States/Union Territories to respond to its Letter dated 27-5-2005. The State of Goa also is permitted to give appropriate proposal in addition to what is said to have already been sent to the Central Government. The communication sent to the States/Union Territories shall make it clear that if the proposals are not sent even now within a period of four weeks of receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21-1-2002, namely, notification of the areas within 10 km of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment and having regard to the precautionary principles. If the States/Union Territories now fail to respond, they would do so at their own risk and peril.

5. MoEF would also refer to the Standing Committee of the National Board for Wildlife, under Sections 5-B and 5-C(2) of the Wild Life (Protection) Act, the cases where environment clearance has already been granted where activities are within 10 km zone.”

It will be clear from the order dated 4-12-2006 [*Goa Foundation v. Union of India*, (2011) 15 SCC 791] of this Court that this Court has not passed any orders for implementation of the decision taken on 21-1-2002 to notify areas within 10 km of the boundaries of national parks or wildlife sanctuaries

as eco-sensitive areas with a view to conserve the forest, wildlife and environment. By the order dated 4-12-2006 [*Goa Foundation v. Union of India*, (2011) 15 SCC 791] of this Court, however, the Ministry of Environment and Forests, Government of India, was directed to give a final opportunity to all States/Union Territories to respond to the proposal and also to refer to the Standing Committee of the National Board for Wildlife the cases in which environment clearance has already been granted in respect of activities within the 10 km zone from the boundaries of the wildlife sanctuaries and national parks. There is, therefore, no direction, interim or final, of this Court prohibiting mining activities within 10 km of the boundaries of national parks or wildlife sanctuaries.”

If the operative portion of the order is understood in the said background, it is evident that the directions therein to the Ministry of Environment and Forests, Government of India, to refer to the Standing Committee the cases where environmental clearances have already been granted was for the purpose of enabling the National Board for Wildlife constituted to discharge its functions under Section 5C of the Wildlife (Protection) Act, 1972. That apart, if the requirement to obtain prior clearance from the Standing Committee

stipulated in Ext.P8 office memorandum is incorporated in the light of the order of the Apex Court in **Goa Foundation(1)**, it is not clear from the judgment as to how this Court would be justified in ordering that an interdictory order passed based on an order of the Apex Court would remain in force only for a particular period. In the circumstances, I am constrained to hold that the decision of this court in **George C.G** needs a re-look.

13. If a Bench of coordinate jurisdiction disagrees with the view taken by another Bench of coordinate jurisdiction on identical facts, according to me, it is appropriate that the matter be referred to a larger Bench for decision rather than rendering a conflicting judgment creating confusion. See **Dr.Vijay Laxmi Sadho v. Jagdish**, (2001) 2 SCC 247. In the said view of the matter, according to me, it is only appropriate that this matter be heard and decided by a larger Bench.

14. Should the petitioner be permitted to operate

their quarry till the disposal of the writ petition is the next question. In so far as it is found that the insistence in Ext.P8 office memorandum that prior clearance of the Standing Committee is mandatory for projects and development activities within 10 kilometres from National Parks, if the notifications issued under Section 3 of the Act for declaring eco-sensitive zones around the National Parks are at the draft stage is illegal, I am of the view that Ext.P6 notice be stayed till the disposal of the writ petition. I take this view having regard to the order in **George C.G** that the stop memo issued to the petitioners therein need not have to be in force beyond the time limit prescribed by this court in the said judgment for compliance of the various directions issued to the official respondents in the case.

15. Registry, in the circumstances, is directed to place this matter before the appropriate bench, after obtaining orders from the Honourable the Chief Justice. It is also ordered

that having regard to the facts and circumstances of the case, Ext.P6 notice will remain stayed till the disposal of the writ petition. It is, however, made clear that this order will not preclude the District Collector, Malappuram, from considering Ext.R4(a) request made by the Geologist in accordance with law. It is also made clear that this order will not preclude the eighth respondent from availing appropriate remedies for redressal of the grievances voiced by him against the quarrying operations of the petitioner. Similarly, this order will not preclude the Ministry of Environment, Forest and Climate Change, Government of India in placing the environment clearance obtained by the petitioner before the Standing Committee, as directed in **Goa Foundation** (1).

**P.B.SURESH KUMAR
JUDGE**

YKB