

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI**

**Appeal Nos. 172, 173, 174 of 2013 (SZ)  
and  
Appeal Nos. 1 and 19 of 2014 (SZ)**

**Appeal No. 172 of 2013 (SZ)**

**In the matter of:**

Sreeranganathan K.P.,  
Sreepadam Vadakkkekkottaram (H)  
Aranmula P.O.,  
Pathanamthitta District  
Kerala



Appellant

and

1. The Union of India  
Rep.by its Secretary  
Ministry of Environment and Forests  
CGO Complex, New Delhi
2. The State of Kerala  
Rep. by its Principal Secretary  
Environment Department  
Thiruvananthapuram
3. Kerala State Pollution Control Board  
Rep by its Member Secretary  
Pattom, P.O., Thiruvananthapuram
4. M/s. K.G.S. Aranmula Airport Ltd.,  
No. 43, Besant Avenue Road  
Adyar, Chennai- 600 020.

Respondents

**Counsel appearing:**

M/s. T. Mohan and A. Yogeshwaran, Advocates for appellant  
M/s. C. Sangamithirai, Advocate for respondent No. 1, Shri K.P. Dhandapani,  
Advocate General, State of Kerala assisted by Shri Rohan D. Alexander,  
Government Pleader attached to Advocate General and Suvitha A. S., Special  
Government Pleader for respondent No. 2 Shri M. Ajay, Advocate for respondent No.  
3. Shri T.R. Rajagopalan, Senior Advocate for Shri Sathish Parasaran, Advocate for  
respondent No. 4.

**Appeal No. 173 of 2013 (SZ)**

**In the matter of:**

Padmakumar  
S/o. Achuthan Nair  
Keechemparambil House  
Aranmula P.O., Pathanamthitta District  
Kerala State, PIN: 689 533

..

Appellant

and

1. Government of India,  
Ministry of Environment and Forests  
Rep.by its Director  
Parayavaran Bhavan, C.G.O. Complex  
Lodhi Road, New Delhi- 110 003

2. The Managing Director  
M/s. K.G.S. Ltd.,  
Bhasanth Avenue Road  
Adyar, Chennai  
Tamil Nadu – 600 020.

..

Respondents

**Counsel appearing:**

M/s. Ashok M. Cherian, K. Janardhan Shenoy, Advocates for appellant  
Smt. C. Sangamithirai, Advocate for respondent No.1, Shri T.R. Rajagopalan, Senior  
Advocate assisted by Shri. Sathish Parasaran, Advocate for respondent No. 2

**Appeal No. 174 of 2013 (SZ)**

**In the matter of:**

Aranmula Heritage Village Action Council  
Represented by its Patron Kummanam Rajashekharan  
Thekkenada, Aranmula – P.O.  
Pathanamthitta District

..

Appellant

and

1. State of Kerala, represented by its Chief Secretary  
Kerala State Government Secretariat  
Thiruvananthapuram - 695 001

2. Secretary to Government,  
Revenue Department, Kerala Government Secretariat  
Thiruvananthapuram - 695 001.
3. Secretary to Government,  
Industries Department, Kerala Government Secretariat  
Thiruvananthapuram - 695 001
4. Secretary to Government,  
Agriculture Department, Kerala Government Secretariat  
Thiruvananthapuram - 695 001
5. Secretary to Government,  
Irrigation Department, Kerala Government Secretariat  
Thiruvananthapuram - 695 001
6. Secretary to Government  
Environment Department  
Kerala Government Secretariat  
Thiruvananthapuram - 695 001
7. Agriculture Officer, Krishi Bhavan  
Aranmula, Pathanamthitta – 689 533
8. Agriculture Officer, Krishi Bhavan  
Mallapuzhassery, Pathanamthitta – 689 533
9. Village Officer,  
Aranmula, Pathanamthitta – 689 533
10. Village Officer, Krishi Bhavan  
Mallapuzhassery, Pathanamthitta – 689 533
11. Village Officer,  
Kidanganoor, Pathanamthitta – 689 514
12. Tahsildar, Kozhenchery, Pathanamthitta – 689 641
13. District Collector, Pathanamthitta -689 645
14. Revenue Divisional Officer, Adoor  
Pathanamthitta-691 523
15. Union of India, Represented by its Secretary,  
Ministry of Civil Aviation, New Delhi – 110 001
16. Secretary, Ministry of Defence, New Delhi – 110 001

17. Secretary,  
Ministry of Environment and Forests,  
Paryavaran Bhavan, New Delhi -110 001
18. M/s. KGS Aranmula International Air Port Ltd.  
Registered Office, KGS Corporate House,  
No.43, Basant Avenue Road, Adayar, Chennai-600 020.
19. K.J.Abraham @ Kalamannil Abraham,  
Kalamannil Veedu, Kozhenchery Village,  
Pathanamthitta-689 641
20. Expert Appraisal Committee,  
Ministry of Environment and Forest  
Paryavaran Bhavan, New Delhi – 110 001
21. Taluk Land Board, Kozhencherry,  
Represented by its Chairman,  
Collectorate, Pathanamthitta .. Respondents

Counsel appearing:

M/s. R. Krishnaraj, Advocate for Shri Ramesh Kumar Chopra, Counsel for appellant  
Shri K. P. Dhandapani, Advocate General, Kerala assisted by Shri Roshan D.  
Alexander and Smt. Suvitha, A.S. Advocates for respondent No. 1 to – respondent  
No. 14 and respondent No. 21, Smt. C. Sangamithirai, Advocate for respondent No.  
17 and respondent No. 20, Shri T.R. Rajagopalan, Senior Advocate assisted by Shri.  
Sathish Parasaran, Advocate for respondent No. 18

**Appeal No. 1 of 2014 (SZ)**

**In the matter of:**

P.Prasad, aged 45 years  
S/o Parameswaran Nair  
R. Ravindran Smarakam, Kannankara  
Pathanamthitta, Kerala .. Appellant(s)

and

1. The Union of India represented by Secretary  
Department of Environment and Forest  
New Delhi
2. The Director, Parayavaran Bhavan  
CGO Complex, Lodhi Road  
New Delhi-3

3. M/s. KGS Aranmula International Airport Limited  
Registered Office, KGS Corporate House  
No.43, Basant Avenue Road  
Adayar, Chennai-600 020  
Represented by its Managing Director
4. Kerala State Pollution Control Board  
Represented by its Secretary  
Office of Kerala State Pollution Control Board  
Pattom P.O., Thiruvananthapuram – 695 004
5. Shri. C.P. Mohammed M.L.A.  
Chairman, Committee of Environment  
Kerala Legislature  
Kerala Legislature Complex  
Thiruvananthapuram
6. State of Kerala represented by  
Secretary, Department of Revenue  
Secretariat, Thiruvananthapuram .. Respondent(s)

Counsel appearing:

Shri Ranjith Thamban, Senior Advocate for Shrimathi Rema Smrithi, and Shrimathi Mallika Srinivasan, Advocates for appellant

Smt. C. Sangamithirai, Advocate for R-1 and R-2, Shri T.R. Rajagopalan, Senior Advocate assisted by Shri Sathish Parasaran, Advocate for respondent No. 3, Shri M. Ajay, Advocate for respondent No. 4, Shri K.P. Dhandapani, Advocate General, Kerala assisted by Shri. Roshan D. Alexander, and Smt. Suvitha A.S., Advocates for respondent No. 5 and respondent No. 6

### **Appeal No. 19 of 2014 (SZ)**

**In the matter of:**

K.K.Royson  
(Former President, Pathanamthitta District Panchayat)  
Kaithavana Malayil House  
Thekkamala PO, Kozhencherry  
Pathanamthitta (District)  
Kerala – 689 654

..

Appellant(s)

and



1. The Government of India represented by Secretary  
Ministry of Environment and Forests (IA-III Division)  
Parayavaran Bhavan, CGO Complex, Lodhi Road  
New Delhi-110 003
2. State of Kerala represented by  
Secretary, Department of Environment  
Government Secretariat  
Thiruvananthapuram – 695 001
3. M/s. KGS Aranmula International Airport Limited  
Registered Office, KGS Corporate House  
No.43, Basant Avenue Roa  
Adayar, Chennai-600 020  
Represented by its Managing Director
4. Kozhencherry Charitable Education Society  
Represented by its Chairman  
K.J.Abraham, Kalamannil House  
Kozhencherry, Pathanamthitta  
Kerala – 689 641
5. Enviro Care India Private Ltd  
Represented by its Chairman,  
43, 2<sup>nd</sup> Street, Harvey Nagar  
Madurai, Tamil Nadu – 625 016
6. Kerala State Pollution Control Board  
Represented by its Secretary  
Pattom P.O., Thiruvananthapuram – 695 004
7. The District Collector  
Pathanamthitta, District Collectorate  
Pathanamthitta, Kerala – 689 645 ... Respondent(s)

Counsel appearing:

Shri. Jacob Alex, Advocate for appellat  
Smt. C. Sangamithirai, Advocate for respondent No. 1, Shri K. P. Dhandapani,  
Advocate General assisted by Shri Roshan D. Alexander and Smt. Suvitha, A.S.  
Advocates for respondent No. 2, Shri T.R. Rajagopalan, Senior Advocate for Shri  
Sathish Parasaran, Advocate for respondent No. 3 and respondent No. 7, Shri P.S.  
Raman, Senior Advocate assisted by Shrimathi Pushpa Menon, Advocate for  
respondent No. 5, Shri M. Ajay, Advocate for respondent No. 6

## COMMON JUDGMENT

**Present:**

**(1) Hon'ble Shri Justice M. Chockalingam  
Judicial Member**

**(2) Hon'ble Prof. Dr. R. Nagendran  
Expert Member**

---

**Date: 28<sup>th</sup> May, 2014**

---

**(Hon'ble Shri Justice M. Chockalingam, Judicial Member)**

**Appeal No. 172 of 2013 (SZ)**

This appeal has been preferred by the appellant herein against the order of the 1<sup>st</sup> respondent, Ministry of Environment and Forests (for short 'MoEF') dated 18.11.2013, granting Environmental Clearance (for short 'EC') to the 4<sup>th</sup> respondent, M/s. KGS Aranmula Air Port Ltd., to set up an airport at Mallappuzhasserry, Aranmula and Kidangannur villages in Kozencherry taluk of Pathanamthitta District, Kerala. A writ petition has also been filed in W.P. (C). No. 6004 of 2012 challenging the notification issued by the 2<sup>nd</sup> respondent, the State of Kerala declaring the area as an industrial area and the said writ petition is still pending before the Hon'ble High Court of Kerala. The brief facts of the appeal filed herein are stated as follows:

2. The proposed airport is being set up by the 4<sup>th</sup> respondent on the banks of the holy river Pampa, in an ecologically sensitive and environmentally diverse and rich area. Aranmula is a declared heritage site and gets its name from the centuries old Aranmula Parthasarathy temple and it attracts a large number of devotees. The Aranmula village is situate at the beautiful wetland eco- system on the banks of the

holy river Pampa represents the epitome of Kerala culture and also the apex heritage of Kerala.

3. Mallappuzhasserry, Aranmula and Kidangannur villages where the airport is to be set up are agricultural villages with paddy being the principal crop and the wetlands in the area are major bio-diversity hotspots. The 1<sup>st</sup> respondent, without considering the deleterious effects of the airport on the pristine environment of the area, has granted the impugned EC to the 4<sup>th</sup> respondent. The Environment Impact Assessment (for short 'EIA') submitted by the 4<sup>th</sup> respondent is inadequate, incorrect, misleading and it is a fraud perpetrated by the 4<sup>th</sup> respondent. The EIA has not been prepared by an accredited agency. The public hearing conducted for the purpose of the setting up the airport was conducted in a clandestine and undemocratic manner in violation of EIA Notification, 2006 and the impugned EC dated 18.11.2013 was granted without any application of mind.

4. The area is rich in bio-diversity. The region is the home to hundreds of plants, animal and species. The EIA report submitted by the 4<sup>th</sup> respondent to the 1<sup>st</sup> respondent for obtaining the EC did not provide any details about the flora and fauna in the region except to state that there are no endangered species in the area. The 1<sup>st</sup> respondent without considering the falsity of the statement listing only 22 species of plants and a few grasses as the flora in the region, has granted the impugned clearance. The report of the Salim Ali Foundation clearly states that more than 212 species of plants were recorded in a span of 4 days spent in the field making direct observations. The report further states that 27 of these species were endemic to the Western Ghats, 110 are economically important and 88 were wetland species. The Salim Ali Foundation in addition clearly states that more than 60 species of fishes



and more than 80 species of birds were recorded. The EIA report submitted by the Project Proponent did not reflect any of these facts and instead falsely stated that 34 species of birds were identified and baldly went on to state that there were no endangered species of flora and fauna in the area. The paddy fields and wetlands in Mallappuzhaserry, Aranmula and Kidangannur where the proposed project is to be set up serve as the flood plains of the river Pampa. These wetlands minimize damage to the surrounding areas by serving as a natural flood control mechanism. On the onset of monsoon in the month of June, when the water begins to drain into river Pampa, a large number of fishes migrate upwards against the paddy fields and wetlands which serve as a nursery and hatchery for the fish species. The EIA report had not considered these aspects and the 1<sup>st</sup> respondent erred in granting the impugned clearance when the very eco system of the area was incorrectly assessed by the EIA report based on which the impugned EC was granted. The EIA did not attempt to characterize the ecology of the area including wildlife inhabited in forest land to locate the runway at the proposed project location. The EIA stated that very limited field studies were made on the ecology of the area and the information allegedly collected from the field studies referred to in the EIA report is lacking in all requisite details. It is impossible to identify and understand the potential impact of the proposed airport without knowing the identity of a single mammal or bird species inhabiting that land for giving clearance to the proposed project. The EIA report relied on by the 1<sup>st</sup> respondent/MoEF while granting the impugned EC did not even conform to the MoEF's EIA Guidance Manual for Air Ports which states *inter alia* as follows and none of the criteria was met by the EIA prepared in the instant case based on which the 1<sup>st</sup> respondent granted the impugned EC.

*“Airport operations may cause change in local eco-systems, threaten, endangered species and disturb the movements and breeding patterns of local wildlife. Airports are located within a variety of settings (both urban and rural) which support habitats and species of their own, some of which will have direct interaction with those located on the airport and vice versa. Some local areas designated for their nature conservation value will be affected. The biological environment of the airport should hence be seen as an integral component of the wider landscape scale ecological network. To accomplish this, base line data from field observations for various terrestrial and aquatic systems are to be generated; comparison of the data with authentic past records to understand changes is undertaken; environmental components like land, water, flora and fauna are characterized and the impact of airport development on vegetation structure in and around the project site is to be understood.*

*Data on sensitive habitats, wild and endangered species in the project area also is to be collected from Zoological Survey of India, Botanical Survey of India, Wildlife Institute of India and the Ministry of Earth Sciences. Wildlife symbolizes the functioning efficiency of the entire eco-system. Just as wild flora needs special treatment for preservation and growth, wild fauna as well deserves specific conservatory pursuits for posterity. As per Wildlife Act, 1972 the various wild animals are enlisted in the schedules of the Wildlife Act based on the intensity of threat to them as rare, endangered,*

*threatened, vulnerable etc. Primary data on survey of the wild animals and birds in the study area is collected and identified with the classification into various schedules taken from secondary data.*

5. The 1<sup>st</sup> respondent has failed to consider the impact of filling in paddy lands and wet lands in the area on ground water table. The wetlands and paddy fields serve as a natural reservoir when water level rises in Pampa River and also functions as a natural irrigation system. It helps to maintain the ground water level, ponds and tanks in the surrounding villages. Destruction of paddy fields by the 4<sup>th</sup> respondent will affect the ground water table in the area. Due to the filling of 500 acres of lands allegedly acquired by the 4<sup>th</sup> respondent, the deleterious effects will be felt in all surrounding wetlands as the water path would be blocked leading to the destruction of the intricate natural system.

6. The 4<sup>th</sup> respondent has provided false information about the number of persons likely to be displaced as a result of the present project. The EIA report is based on woefully inadequate study on the impact of the project in this regard. The EIA report has not provided any details regarding the sociological impact on account of the project activities assessed and the impugned EC has been granted without even assessing this aspect. The 4<sup>th</sup> respondent has willfully concealed the fact that a huge number of people will have to be evacuated from the area to facilitate the project and has not addressed the rehabilitation and relocation issues involved with such huge displacement. The evacuation of people historically, culturally and economically connected with the region is violation of the right to life as guaranteed by the Article 21 of the Constitution of India.

7. The respondents have not assessed the impact of exploitation of water resources by the proposed airport. While the EIA report in paragraph 2.8.2 under 'Water' contained the information that the total requirement of raw water for this airport will be 7.55. KLD which will be met from the bore wells and municipal water supply, the EIA report does not discuss the impact of such large scale extraction of water on the water table in the area, especially in the light of the fact that the recharge areas are and have to an extent already been filled up illegally prior to the grant of EC.

8. A four lane approach road is proposed from Alkkara junction to the terminal building for which land needs to be acquired. Similarly, road from Parumootampadi junction to Alkkara junction is also required to be widened for smooth vehicular traffic to the proposed airport. However, the environmental, socio-economic and other impacts of the said road construction have not been addressed by the 4<sup>th</sup> respondent and the 1<sup>st</sup> respondent has mechanically granted the impugned clearance. The land use classification as per the EIA states that the Government has recognized the location of this project site as unclassified land while admittedly, paddy lands have to be filled up and the area is covered by the paddy lands and wetlands. The clearance granted was thus based on false information in the EIA report in this respect.

9. The EIA in paragraph 2.6 (a) and 2.6 (c) read under the captions 'Archaeological Monuments' and ' Cultural Monuments' states that there are no archeological monuments in the 10 km radius. The Aranmula village itself is a heritage village and got its name from the century's old Aranmula Parthasarathy temple on the banks of the holy river Pampa which attracts large number of devotees. The temple has fine murals from the 18<sup>th</sup> century and the entire region is

replete with temples of importance. The Pampa River runs within a few hundred meters of the alleged boundary of the project site described in the EIA. Even according to the 4<sup>th</sup> respondent and Annexure-A1 of the EC, it is an admitted fact that the Aranmula village is declared as heritage village for its peculiar metal mirror 'Aranmula Kannadi' which is unique, patented product which is produced exclusively from Aranmula village by a family of local craftsmen. The representatives of the mirror making family has approached the Hon'ble High Court of Kerala against the proposed project on the ground that filling up of the paddy lands in that area will seriously affect the making of this metal mirror. They have also stated that the mud and clay collected from the paddy lands is one of the main ingredients in the process of making Aranmula metal mirror. The 1<sup>st</sup> respondent, being aware of all the facts did not address any such issues in the EC and instead, falsely stated that this project has no connection with the Aranmula metal mirror.

10. The EIA report does not deal with the quantum of materials needed for filling in the 500 acres of land required for the project. However, the impugned EC, in specific condition No. (iii) states that the soil required for the land filling shall be met from the elevated area of about 14.5 acres available within the site itself. The 1<sup>st</sup> respondent has not considered the fact that the 4<sup>th</sup> respondent even prior to the grant of EC altered the nature of the land and did not take any action against the 4<sup>th</sup> respondent.

11. There is no information in the EIA that would allow one to independently verify where exactly the boundary of the airport would be located and where key components of the airport such as runway would be located. It has been mentioned in Figure 1.2 of the EIA report purport to show the site of the proposed airport and



Figure 1.4 which describes the overall plan of the airport including the 2300 m runway. There is no conceivable way that a 2300 m runway as depicted in Figure 1.4 of the EIA would ever fit into the boundary of the site as depicted in Figure 1.2 of the EIA. The maximum lateral distance between the boundaries indicated in Figure 1.2 when measured with Google Earth is only 515 m. The proposed runway of 2300 m and 2800 m in future could not possibly fit into the site as per Figure 1.2 of the EIA report in respect of which the EIA study has been done. The 1<sup>st</sup> respondent blindly granted the present clearance without even ascertaining the extent of the project boundaries claimed by the 4<sup>th</sup> respondent.

12. The public hearing was not conducted in a proper manner. The access to the public hearing was not facilitated by the project proponent or other stake holders as a result of which a majority of the people who are likely to be affected due to the setting up of the 4<sup>th</sup> respondent project were not provided with an opportunity to voice their grievances. The law requires that the project proponent submits copies of the draft EIA report with the generic structure given in Appendix III including a summary of the EIA report in English and in the local language prepared strictly in accordance with the terms of reference communicated after scoping. In the instant case, the 4<sup>th</sup> respondent applied on 02.02.2011 for conducting the mandatory public hearing. The alleged publication in the dailies did not contain all required information as mandated by the Appendix VI of the EIA Notification, 2006. Even as on date, the EIA is not available for viewing or downloading from the 1<sup>st</sup> respondent's website. The public hearing was scheduled on 10.03.2011. It was rescheduled to 29.04.2011 and again to 10.05.2011 and that the change in the dates was neither publicized as required in law nor published in any local dailies and this fact was brought forth from the minutes of the public hearing held on 10.05.2011. This is in violation of EIA

Notification, 2006 as per clause 3.3 of Annexure IV. Even the time limit between the postponed dates was short of the minimum 30 days as mandated and never publicized and as a result of which the public was prevented from effective participation in the public hearing process. As could be seen from the minutes of the public hearing in Annexure A-4, only 26 persons were able to participate in the public hearing. The tenor of the serious protests held by the people directly affected in the area is not reflected in the public hearing which was also not conducted at the project site or anywhere in close proximity. In the matter of S. Nandakumar Vs. the Secretary to Government, Tamil Nadu, in W.P. No. 10641 of 2009 the Hon'ble High Court of Madras by its order dated 22.04. 2010 observed as follows:

*“33. The public consultative process is, therefore, an essential component in the process of EIA. It is essentially an embodiment of the principles of natural justice. The importance of conducting public hearing in a peaceful atmosphere with opportunity to all the local affected persons and others, who have plausible stake in the environment impacts of the project is evident by the fact that the notification wanted District Magistrate or any other officer not below the rank of an Additional District Magistrate to supervise the conduct of the public hearing. Similarly, while conducting appraisal of the application and the documents submitted by the applicant for EC, the EAC has to consider the outcome of the public consultations, including report of the public hearing proceedings. Therefore, public hearing occupies a pivotal position in the matter of EIA.*

34. *When the notification itself indicates the manner and method of conducting public hearings, the statutory authorities are expected to conduct the hearing by giving reasonable opportunity to all the local affected persons and others who have interest in the particular project or activity. Such public hearings should not be a make belief affair just to comply with the requirements of the notification. It is the responsibility of the District Magistrate or officers of equal status to see that all the affected persons are given audience. The panel of officers conducting the public hearing must remember that such hearings are conducted only to record the views of the affected persons. The statutory panel should hear the views of the affected persons and not those who have assembled in the meeting hall at the behest of the developer with a hidden agenda to block or prevent the opposition to the project. The regulation, therefore, provides for recording the attendance of those who are present at the venue and such attendance register should be forwarded with the minutes of the proceedings. Therefore, the attempt should be to conduct the hearing in an open and transparent manner with an opportunity to express even the dissenting views without fear. The authorities owe a duty to the society to conduct such meetings in the manner prescribed by the statute and if necessary, by taking police assistance. The minutes of the hearing should contain a true note of what has transpired in the meeting. The consultative process is an essential facet of the EIA study and therefore, any violation of the mandatory procedure in the matter of conducting public hearing and recording*

*the views or objections of the affected persons would give the aggrieved a cause of action to challenge the legality and correctness of the public hearing proceedings, without waiting for the final outcome of the impact assessment proceedings.”*

13. In the light of the above judgment describing the importance of the public hearing in the clearance process and the facts of the present case make it evident that the entire process was farce and the 1<sup>st</sup> respondent has not considered any of these facts while granting the impugned clearance.

14. According to EIA Notification, airports are Category-A projects and only duly accredited EIA consultants can appear before the EAC or prepare the EIA report. The present agency is found in Serial No. 47 of the QCI list (in Annexure-A-5) and as per the accreditation, M/s. Enviro Care India Private Limited is authorized only to carry out EIA preparation for Category B projects and the 1<sup>st</sup> respondent has not considered even this aspect while granting the impugned clearance. The 4<sup>th</sup> respondent has submitted false information in the application in Form I submitted to the 1<sup>st</sup> respondent for the purpose of obtaining clearance. The 4<sup>th</sup> respondent has provided false data about the ecology in the area, the resources to be used for the project and overall impact on the environment, including the location of protected nearby area and the presence of wetlands or forests. The 4<sup>th</sup> respondent has provided false data even about the basic information of the project in many of the items in the application form and the 1<sup>st</sup> respondent has not considered these aspects while granting the impugned EC. Instead, additional “terms of reference” was given and based on the incompetent terms of reference to assess the real

environmental impact, the EIA study was conducted and report was prepared and it completely failed to address all the real environmental issues in the area.

15. In accordance with the draft policy of the Ministry of Civil Aviation, no green field airport is permitted within the aerial distance of 150 km of an existing airport without studying the impact of the new airport on the existing airport. However, no such study has been conducted in the instant case. The proposed airport is located between two international airports at Trivandrum and Cochin and the distance between these two international airports and the proposed airport is less than 150 km. The proposed airport is also located at a distance of 44 km from the INS Garuda airfield. The communication from the Ministry of Defence dated 05.04.2010 clearly states that the ministry objected to the setting up of the proposed airport as it would severely restrict the airspace available for military flying operations. . The communication further states that the UAV operations would not only hamper flight operations but also compromise safety.

16. The EAC has recommended the present project for clearance during the 115<sup>th</sup> meeting held during 16<sup>th</sup> and 17<sup>th</sup> August, 2012. It can be seen from the minutes of the meeting that the EAC has discussed a total of 50 items on its agenda. The EAC could not have discussed in detail the various aspects relating to the project as observed in the matter of *Utkarsh Mandal Vs. Union of India and others (W.P. (C).No. 9340 of 2009* by the Hon'ble High Court of Delhi in paragraph 45. The bare perusal of the minutes of the EAC meeting would indicate that none of the issues raised was considered by it.

17. The Wetland (Conservation and Management) Rules, 2010 of the State of Kerala clearly includes in rule 2 (g) "creeks" within the definition of wetlands. The



Kozhithodu which faces obliteration due to the proposed construction is a creek and is protected under these rules. The classification of lands as 'industrial area' was done without following the due process of law. There are no industries in the area and the present classification has been made with the sole reason of facilitating the 4<sup>th</sup> respondent's project. The conditions contained in the impugned clearance have no bearing on the factual matrix of the situation and show the non application of mind on the part of the 1<sup>st</sup> respondent. The respondents have not seen that the Hon'ble Supreme Court of India has held in the matter of *Karnataka Industrial Areas Development Board Vs. Sri C. Kenchappa and others in Appeal (Civil) No. 7405 of 2000 dated 12.05.2006*, wherein it was held that in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development only if the project does not impair the ecology and environment. The action of the respondents is in direct violation of the above orders. The 1<sup>st</sup> respondent's clearance is contrary to the Precautionary Principle and Principles of Sustainable Development vide also reaffirmed by the Hon'ble Supreme Court of India in *Research Foundation for Science, Technology and Natural Resources Policy Vs. Union of India (AIR 2007 SC (Supp) 852* prescribing the 'precautionary principle' and 'sustainable development' in *Vellore Citizens' Forum Vs. Union of India and Andhra Pradesh State Pollution Control Board Vs. Prof. M.V. Naidu reported in (1999) 1SCR 235*.

18. The 4<sup>th</sup> respondent has commenced the airport construction work even prior to the EC being granted in violation of the EIA Notification, 2006 and the letter dated 12.04.2010 of the 4<sup>th</sup> respondent stands as evidence for which the 4<sup>th</sup> respondent is liable to be prosecuted. On 13.07.2013, more than 70 Members of the

Legislative Assembly of the State of Kerala submitted a representation to the Prime Minister of India opposing the project. The 1<sup>st</sup> respondent has not considered the impact of pollution from the airport and the impact of noise on animal and avian lives nor the pollution during combustion of fuel.

19. Hence, the appellant herein seeks to quash the EC granted by the 1<sup>st</sup> respondent in the impugned order dated 18.11.2013, to remove all constructions made and to restore the area to its original pristine state, initiate and direct the 1<sup>st</sup> respondent to initiate appropriate action against the 4<sup>th</sup> respondent, EIA consultant as per law for providing false and misleading data in the EIA report and to direct the 4<sup>th</sup> respondent to pay compensation for the damages caused to the area and restore the ecology of the region.

**Appeal No. 173 of 2014 (SZ)**

20. This appeal has been filed by the appellant herein in his capacity as a social worker as well as a political activist in Pathanamthitta District in Kerala State. He is an ex-Member of Legislative Assembly, Kerala representing Konni Constituency. He is a native of Aranmula in Pathanamthitta District. He is the Secretariat Member of the Patthanamthitta District Committee of Communist Party of India (Marxist) which is a recognized political party in India. This appeal has been filed aggrieved by the EC granted by the 1<sup>st</sup> respondent/MoEF to the 2<sup>nd</sup> respondent, the Managing Director, M/s. KGS Limited, Chennai-20 in Tamil Nadu. Only two respondents have been arrayed by the appellant in this appeal. The facts of the cases that could be made out from the averments of the appeal grounds can be stated as follows:

21. An application was submitted by the 2<sup>nd</sup> respondent to the 1<sup>st</sup> respondent seeking EC under section 3 of the Environmental Protection Act in Form I for developing an international airport on a stretch of land in Kozhencherry Taluk. The proposal involves development of airport at Mallapuzhasserry Aranmula, Kindangannur villages in Kozhencherry Taluk in Patthanamthitta District of Kerala State on a plot area of 500 acres to cater Airbus A-300 aircraft. The airport is proposed to be constructed on land mentioned in Annexure A2 herein which contains paddy land and wetland acquired by the K.J. Abraham, Kozhencherry in the name of a charitable society by name Mt. Zion Charitable Society and reclaimed by him in violation of Kerala Land Utilisation Order, 1967, Kerala Conservation of Paddy Land and Wetland Act, 2008 and Kerala Land Conservancy Act, 1957. The land also comprises of 8.87 acres of Government land encroached upon by the said K.J. Abraham. He had also illegally filled up a natural water course locally known as *Valiyathodu* which is also known as for some distance as *Kozhithode* and which is a tributary to River Pampa. The total length of *Kozhithode* is 12 km. extending from Prakkanam near Pathanamthitta town to River Pampa at Aranmula. The paddy land filled and reclaimed unauthorized by K.J. Abraham is part of a large extent of *puncha* paddy land (*Padashekham*) which are in low lying land that get water logged during monsoon, where paddy is cultivated and drained after monsoon. During the season of cultivation the field will be marshy. *Puncha* paddy fields are thus wetlands and they also serve as flood plains of nearby river and provide to maintain waterbed for the locality as in the case of wetland which is not used for paddy cultivation. The stretch of paddy field proposed to be reclaimed for the said purpose serve for natural flood control in the area when the river Pampa overflows in monsoon seasons. Even without any cultivation in the said land, maintenance of the said lands in its nature as

low lying wetland is essential for controlling the flush of water in river Pampa during monsoon as the river hits the plains at the area mentioned above. Protection of the said area of low lying wetland is essential to maintain water bed so as to provide water in wells of the nearby villages.

22. The revenue authorities have already initiated proceedings against the unauthorized reclamation of paddy land and wetland, as also the encroachment of Government land and for filling natural water streams vide Annexure-A3(a) and Annexure –A4 filed herein which would prove that K. J. Abraham had acquired the land and reclaimed it violating the law of the land. When application dated 28.06.2010 was submitted by the 2<sup>nd</sup> respondent, no land was in their possession or ownership. The land reclaimed by K. J. Abraham in the name of Mt. Zion Charitable Society is said to have been transferred in favour of the 2<sup>nd</sup> respondent on 20.12.2010. Annexures-A3 and A4, however, go to show that no mutation with regard to the said land has been so far effected in favour of the 2<sup>nd</sup> respondent. On submitting the application for EC, the EAC in its 91<sup>st</sup> meeting held on 21<sup>st</sup>-23<sup>rd</sup> September 2010 finalized the Terms of Reference ( for short 'ToR') for the proposed airport and also decided to conduct a public hearing as per the provisions of EIA Notification, 2006. Advertisements regarding the public hearing for the comments on the proposed project were published in '*Malayala Manorama*' and *Mathrubhoomi*, Malayalam dailies and in 'The Hindu' English daily. The hearing as notified in the said dailies did not take place on the date thus notified and the same was postponed to 29.04.2011 and on this day also the hearing was not held. The hearing took place on 10.05.2011. The dates of postponement of the hearing were not published in any newspaper after 06.02.2011 and hence, the public at large had no information of the hearing scheduled on 10.05.2011. As there was no proper notice for the hearing,

only a few persons and organizations took part in the hearing. The views of the public at large were, therefore, not reflected in the so called public hearing purportedly held on 10.05.2011

23. The EAC in its 107<sup>th</sup> meeting held on 15<sup>th</sup>-16<sup>th</sup> December, 2011 without any detailed discussion and without proper consideration of the facts and circumstances recommended the grant of EC for the proposed airport at Aranmula. Meanwhile, 'Salim Ali Foundation' a registered charitable trust with a mission 'Bio-diversity Conservation and Food Security' conducted a thorough study on the impacts of the proposed airport on the bio-diversity and ecology of the wetlands and paddy lands in Aranmula and its adjoining villages along with analyses of the tangible and intangible benefits of the ecosystem. It analyzed (i) EIA conducted by Enviro Care India Pvt. Ltd., for KGS Aranmula Airport Ltd., who proposed the airport, (ii) the need for an airport at Aranmula, and (iii) the inevitable need for restoring the paddy land. The Legislative Committee for Environment of the Kerala Legislature had unanimously recommended against establishing an airport at Aranmula considering the adverse impact it would cause to the environment and ecology of the State. The 1<sup>st</sup> respondent has not considered the findings of the Salim Ali Foundation and has consciously avoided answers the aspects pointed out therein which are major concerns of the public and are most relevant while deciding upon granting EC to a major project like constructing an airport. While issuing the EC, the 1<sup>st</sup> respondent has failed to take into account the need for an airport at Aranmula at the cost of environment and ecology of more than three agrarian villages in Kerala, which are having great traditions. The 1<sup>st</sup> respondent failed to see that Aranmula is located almost at the middle of the International Airports at Cochin and at Trivandrum with a distance of 128 km, 135 km, respectively. If the proposed airport



at Aranmula is expected to serve Pathanamthitta, Kottayam, Idukki and Alappuzha districts, the people from every part of the said districts can reach either the international at Cochin or at Trivandrum within not more than 2 hours by road and roads are made available to have easy access to the international airports to cater the needs of the people from the districts to whom the proposed airport is expected to serve.

24. The 1<sup>st</sup> respondent has not taken into account the need of the land necessary to be acquired for providing infrastructural facilities such as roads leading to the airport from various places. It has also not considered the competitive impact of the new international airport at Aranmula upon the existing international airports causing its impacts upon the environment and ecology of the State including the natural resources already invested to construct them. A localized impact assessment on the environment and ecology while implementing the project is insufficient while granting EC for a major project like the one in hand. The negative externality that would be caused to the society as whole while implementing the proposed airport project was not assessed by the 1<sup>st</sup> respondent. The EC has been granted on the assumption that only a minimum extent of 500 acres of land is required for runway, apron, taxiway etc., and the remaining area will be preserved in its natural form. However, the report of feasibility study conducted by the Airports Authority of India has noted that the developers aim for an ultimate operation of wide bodied aircraft which requires more extent of land and with the present availability of land, the proposed airport can cater only to smaller aircrafts and only for daytime operations. It also mentions the necessity to level the hillocks around the airport site so as to enable the safe landing of aircrafts. Leveling of hillocks is further necessitated when capacity of the airport is required to be increased in future. While EC has been

granted by the 1<sup>st</sup> respondent for establishing the present airport at Aranmula, it has not taken into account the future requirements for expansion of the airport and impacts of such requirements on the environment and ecosystem. The number of families who will be displaced from their abode is much more than what has been stated by the 2<sup>nd</sup> respondent in the application for EC as well as in the subsequent statements.

25. Hence, the appellant herein seeks the indulgence of this Tribunal to set aside the EC granted to the proposed international airport at Aranmula and for directing the 1<sup>st</sup> respondent not to grant EC to the proposed international airport at Aranmula.

**Appeal No. 174 of 2013 (SZ)**

26. This appeal has been filed by the appellant herein, an action council formulated by the Aranmula, Mallapuzhassery and Kidangannoor villages of Kozhenchery Taluk of Pathanamthitta District. The action council has been formulated for resisting the illegal move of the respondents in setting up an airport and other construction by reclaiming the paddy land which will cause serious environmental damage to the entire area and also the residents of the locality. The 17<sup>th</sup> respondent arrayed in this appeal is the Ministry of Environment and Forests (MoEF) of the Central Government. The 18<sup>th</sup> respondent arrayed in this appeal is M/s. KGS Aranmula International Airport Ltd., having its registered office at Chennai in Tamil Nadu and the 19<sup>th</sup> respondent is K. J. Abraham of Kozhenchery village in Patthanamthitta District in the State of Kerala. The 20<sup>th</sup> respondent arrayed in this appeal is the Expert Appraisal Committee, MoEF, New Delhi. This appeal has been filed seeking the indulgence of the Tribunal to set aside the EC granted by the 17<sup>th</sup>

respondent, directions for 17<sup>th</sup> and 20<sup>th</sup> respondents to conduct a proper public hearing as prescribed in the matter of granting EC to 18<sup>th</sup> respondent and for directions to the Government of Kerala to complete the proceedings initiated against the 19<sup>th</sup> respondent for restoring 49.725 acres of paddy land reclaimed to its original form. The brief statement of facts as could be seen from the appeal grounds can be stated as follows:

27. From the reading of the discussions of facts by the 17<sup>th</sup> respondent which led to the granting of the clearance would clearly show that the 17<sup>th</sup> respondent proceeded on the precincts that the entire land in question is either the land already reclaimed or partly developed. This impression was made on the 17<sup>th</sup> respondent by the State Government as well as the 18<sup>th</sup> respondent by twisting and suppressing the material facts. In the application submitted before the 17<sup>th</sup> respondent, the 18<sup>th</sup> respondent has made a false assertion stating that no reclamation is required for the construction of the proposed Aranmula Airport which is a false statement. As per the documents produced by the appellant, in which it can be seen that an extent of 211 acres out of the total 248 acres of land which has been purchased by the 18<sup>th</sup> respondent and earmarked for the construction of the airport is either paddy land or wetland. This fact is supported by the revenue as well as agriculture officers of that area, who are officers of the Government. The Government, instead of submitting these facts before the 17<sup>th</sup> respondent has actually suppressed the facts and has taken an illegal stand to the effect that the properties placed before the 17<sup>th</sup> respondent as the site for the airport has already been reclaimed and reclamations cannot have any legal implication as it was done prior to 2008, in which year the Act had not come into force. This is an illegal stand taken by the State. It is so because, even prior to 2008 which year the Act was promulgated, Kerala Land Utilization

Order was in force and any change in the nature of the land can be made only with the prior permission from the Government. It is an admitted fact that it is under this Land Utilization Order, the 19<sup>th</sup> respondent has submitted necessary application for getting permission to fill paddy field in an extent of 8 acres and it was suppressed before the 17<sup>th</sup> respondent that the authorities have permitted the 19<sup>th</sup> respondent to reclaim the paddy land for construction of an airstrip as part of the Aeronautical College of the 19<sup>th</sup> respondent under this order. It was by misusing the permission; the 19<sup>th</sup> respondent instead of filling 8 acres of land has filled an extent of 49.72 acres of paddy fields. The Revenue Officers of the State Government have initiated legal action against the 19<sup>th</sup> respondent for restoring the above paddy fields to its original form under the Land Utilization Order. In such circumstances, when the officers of the Government have initiated proceedings which are still pending under the Land Utilization Order against the illegal filling and reclamation of the paddy fields by the 19<sup>th</sup> respondent, the Government cannot take a stand that since the reclamation has been made by the 19<sup>th</sup> respondent prior to 2008 and there is no illegality committed.

28. Though the 18<sup>th</sup> respondent has submitted before the 17<sup>th</sup> respondent that altogether they are in possession of 350 acres of land earmarked for the purpose of the airport, the revenue officials have informed the appellant that only 248.37 acres of lands stand mutated in the name of the 18<sup>th</sup> respondent and out of the total 248.37 acres of land (99.35.20 ha), 85.74.02 ha of land is paddy field/wetland and only 13.61.00 ha is dry land. In effect, the application which was considered by the 17<sup>th</sup> respondent is for a proposal to construct an airport in the paddy field and which can be done only by reclaiming the land. The proposed airport cannot be set up in 33.7 acres of dry land and the airport can be set up only by reclaiming the remaining

portion of the paddy land converting the same as dry land. The application submitted by the 18<sup>th</sup> respondent states that the area in which airport is proposed to be set up is 16, 250 M<sup>2</sup> which comes around 41 acres and even for constructing the terminal building the available dry land will not suffice. The 17<sup>th</sup> respondent was misled by the 18<sup>th</sup> respondent and also the Government in granting permission to the 18<sup>th</sup> respondent to construct an airport in a paddy field. From the stipulation in Clause (iii) of the EC granted to the 18<sup>th</sup> respondent, the contention of this appellant that the 17<sup>th</sup> respondent has proceeded with the assumption that the proposed airport site is a dry land stands proved. Moreover, in this stipulation, it is clearly stated that only the area required for the runway with 1000 m x 150 m (37.07 acres) shall be filled within the site itself and that almost 80% of the soil from the only elevated area has already been utilized for illegal reclamation done by the 19<sup>th</sup> respondent against which action was already been initiated by the revenue officials for restoring the same to its original form of paddy field. The requirement of filling 37 acres at a height of one meter cannot be completed utilizing the remaining soil in the elevated area of 14.5 acres mentioned in the stipulation. From the stipulation, it is very clear that the intention of the 17<sup>th</sup> respondent is only to permit the 18<sup>th</sup> respondent to fill the dry land at a height of one meter to make it an elevated portion for the construction of the runway and all these stipulations were made on the assumption that the entire land is a dry land.

29. Moreover, in the stipulation, it has been stated that necessary permission for leveling should be taken as drawn from Kerala Paddy and Wetland Act into the operation as the filling of paddy land can be made only after obtaining exemption/permission from the Government of Kerala under Section 10 of Act subject to regulation by imposing conditions and on recommendations from the



monitoring committees as constituted under the Act. The officers of the Government have informed the appellant that the local or state level committee has not made any such recommendation to the Government till date for converting the paddy land which forms part of the land earmarked for setting up the airport. The State Legislative Committee on Environment has also observed in the report that the reclamation which was already made by the 19<sup>th</sup> respondent has adversely affected the cultivation of that locality and came to a standstill because of the illegal reclamation of 49.725 acres of land by the 19<sup>th</sup> respondent. Besides that, the appellant has also filed a writ petition in W.P.(C) .No. 8794 of 2013 before the Hon'ble High Court of Kerala for directions to the State Government to take action against the 18<sup>th</sup> and 19<sup>th</sup> respondents under the Kerala Wetland and Paddy Act, 2008 and thereby restoring the land to its original form. Matters being so, the State Government will not be able to grant permission to the 18<sup>th</sup> respondent to fill up the land for reclaiming the paddy field for the construction of the airport. In such circumstances, the permission of the Government is a pre-requisite for the 18<sup>th</sup> respondent to submit an application for EC before the 17<sup>th</sup> respondent. The application submitted without the necessary exemption/permission from the State Government under the Kerala Paddy and Wetland Act, 2008 is defective and therefore, the grant of clearance made by the 17<sup>th</sup> respondent on this defective application itself is illegal. The permission of the Government under the Kerala Paddy and Wetland Act, 2008 is a pre-requisite for the consideration of the applicant by the 17<sup>th</sup> respondent for the grant of EC is evident from the fact that Column No. 22 of the Form I is concerning the existence of a Government order/policy relevant relating to the site in question. So, the application submitted without exemption from the State Government permitting the 18<sup>th</sup> respondent to fill paddy land should not

have been considered by the 17<sup>th</sup> respondent as 211 acres of land out of the total extent of 248 acres which is in the possession of the 18<sup>th</sup> respondent and projected as the site of the proposed airport remains as a paddy field and airport cannot be constructed in 37 acres of land which includes the illegally filled land. In such circumstances, the 18<sup>th</sup> respondent has falsely stated that no Act or order or policy is applicable in the case of the site in hand. The Government has also supported this suppression made by the 18<sup>th</sup> respondent in the application submitted before the 17<sup>th</sup> respondent. In the application submitted before the 17<sup>th</sup> respondent, the 18<sup>th</sup> respondent has made a false statement that no reclamation is required and the 18<sup>th</sup> respondent has presented the property before the 17<sup>th</sup> respondent as developed/semi developed property. This stand taken by the State Government contending that the reclamations have already been made prior to 2008 and therefore, there is no illegality in the reclamation done by the 19<sup>th</sup> respondent since it was prior to the promulgation of the Act, 2008 cannot be accepted since the Land Utilization Order was in force and it was by this order several actions have already been initiated against the 19<sup>th</sup> respondent by the officials of the Government against the reclamation of 49.725 acres of land. The orders passed by the revenue officials directing the reclaimed land of 49.725 acres to be restored to its original form have not been subjected to legal scrutiny till this date. This legal situation is applicable to the 18<sup>th</sup> respondent also and in such circumstance, the 17<sup>th</sup> respondent ought not to have granted EC.

30. The 18<sup>th</sup> respondent has suppressed the fact that Kerala Land Reforms Act is applicable to the case in hand. As per this Act, no person is entitled to hold any land in excess of the ceiling limit prescribed under this Act and the permission from the Government is required to hold any land in excess of the ceiling limit which

can be granted under section 81(3) of the Act in public interest. The appellant has already filed an application before the Government requesting the Government to conduct a public hearing to ascertain the public interest before granting exemption to the 18<sup>th</sup> respondent and the appellant herein has also filed a writ petition in W.P. (C) No. 14220 of 2013 for a direction to Government to conduct a public hearing with due notice to the residents of the 13 *Grama Panchayat* and Pathanamthitta Municipality before granting exemption to the 18<sup>th</sup> and 19<sup>th</sup> respondents which is the subject matter before the Land Board. It is an admitted fact that the application submitted by the 18<sup>th</sup> respondent before the Government for exemption is not yet allowed by the Government. Hence, the holding of the land by the 18<sup>th</sup> respondent is illegal even now. The 18<sup>th</sup> respondent was holding the land which is projected as the site for the proposed airport at the time of making an application before the 17<sup>th</sup> respondent and in effect, the 17<sup>th</sup> respondent was granted EC to the 18<sup>th</sup> respondent for setting up an airport in the property which is illegally held by the 18<sup>th</sup> respondent. In such circumstance, the proposed land cannot be treated as land owned by the 18<sup>th</sup> respondent and the clearance by the 17<sup>th</sup> respondent permitting the 18<sup>th</sup> respondent to set up an airport is illegal and without jurisdiction.

31. From the clearance issued by the 17<sup>th</sup> respondent, it is clear that the 17<sup>th</sup> respondent has not independently assessed the veracity of the claims made by the 18<sup>th</sup> respondent and the State Government. The reports of the Legislative Committee for Environment and the Salim Ali Foundation were not properly analyzed. There is no independent assessment or appraisal of the various contentions and submissions made by the 18<sup>th</sup> respondent and the State Government. The 17<sup>th</sup> respondent has simply reiterated the various contentions and submissions of the 18<sup>th</sup> respondent and the State Government and simply accepted the report of the EAC and granted

license. The 17<sup>th</sup> respondent is, therefore, not justified in granting EC especially when the Writ Petition (C) No. 8794 of 2013 are pending before the Hon'ble High Court of Kerala filed by the appellant herein in this behalf.

32. Hence, based on the above averments the appellant in this appeal has sought for the indulgence of the Tribunal to set aside the impugned EC dated 18.11.2013 granted to the 17<sup>th</sup> respondent, the MoEF, to direct the 17<sup>th</sup> and 20<sup>th</sup> respondents to conduct a proper public hearing as prescribed in the matter of granting EC to the 18<sup>th</sup> respondent for setting up an airport and to direct the Government of Kerala to complete the proceedings initiated against the 19<sup>th</sup> respondent for restoring 49.725 acres of paddy land reclaimed to its original form.

#### **Appeal No. 1 of 2014**

33. This appeal has been filed by the appellant herein challenging the EC granted to the 3<sup>rd</sup> respondent namely M/s. KGS Aranmula International Airport Limited, Chennai by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, namely the MoEF dated 18.11.2013. The Kerala State Pollution Control Board and the Secretary to Government, Department of Revenue of the State of Kerala are arrayed as 4<sup>th</sup> and 6<sup>th</sup> respondents, respectively. The 5<sup>th</sup> respondent, Chairman, Committee of Environment, Kerala Legislature, Kerala is deleted. The facts of the case of this appellant as averred in the appeal grounds raised can be briefly stated thus:

34. The 3<sup>rd</sup> respondent herein as per letter dated 24.6.2011 and subsequent letters has sought EC under the EIA Notification, 2006 for the proposal of the 3<sup>rd</sup> respondent to establish an international airport at Aranmula in Pathanamthitta district, Kerala. The land proposed for construction of the airport and other buildings

are part of a large extent of paddy fields “*Nilam*” covering more than 1200 acres. It is humbly submitted that paddy fields “*Nilam*” apart from providing paddy/rice for human consumption, serves for the upkeep of ecology in the area. Paddy lands, “*Nilams*” serves as reservoirs of rainwater which ensure the availability of ground water in the area, apart from providing drinking and irrigation water in the nearby wells. “*Nilams*” also serve as the breeding ground of a large number of fauna which are necessary for the upkeep of the local ecology. Moreover, *Nilams* also serve as the wind regulators for the local area. As stated in the objects and reasons of the Kerala Conservation of Paddy and Wetland Act 2008, there are indiscriminate and unregulated filling up of paddy land in the State of Kerala, which apart from resulting in food insufficiency has also adversely affecting the entire ecology and environment of the State of Kerala often called as ‘Gods Own country’. Further, the proposed site for the airport is along the banks of one of the major rivers of Kerala, *Pampa* and is situated in an ecologically sensitive and environmentally diverse and rich area. Aranmula is home to the famous ancient “Parthasarathy” temple which is a protected monument by the Archeological Survey of India and which attracts lakhs of devotees across the country. The temple apart from the ancient architecture marvel is also home to 18<sup>th</sup> century murals that are well preserved and is recognized by the United Nations Development Program (UNDP). The temple by itself is surrounded by wetlands and the customs and traditions associated with the temple and its surrounding areas mirror the upkeep of the ecology of the wetland therein. The 3<sup>rd</sup> respondent has continued to refill the wetland more specifically the water body, *Karimaram* channel which an effective water reservoir is collecting all the excess water during flooding of the river Pampa and this is running through the specified area. In consequence, the entire area has become prone to frequent flooding due to



the unnatural filling up of the land and has resulted in serious ecological imbalance. Till the enactment of the Kerala Conservation of Paddy and Wetland Act, 2008 as aforesaid, the filling up of paddy lands in the State of Kerala was regulated by the Kerala Land Utilization Order 1967, which was enacted under the Essential Commodities Act. As per the said order, for converting a paddy land for any other purpose, previous sanction from the District Collector was necessary as can be seen from clause VI of the Kerala Land Utilization Order. As per clause VII of the Kerala Land Utilization Order the District Collector has power to ensure that the illegal conversion of the paddy land is restored to paddy cultivate paddy in the area. Likewise, under the Kerala Conservation of Paddy and Wetland Act there is total prohibition of conversion or reclamation of any paddy land and Sec.13 enables the District Collector to restore the land, illegally reclaimed or converted. The Conservation of Paddy and Wetland Act as the name suggests was enacted seeing the urgent need to put in place legislation that would restrict the rampant conversion of wetlands and paddy lands resulting in widespread loss of ecological balance . The aims and objects of the Act state clearly that the legislation is enacted primarily to promote growth in agricultural sector and preserve the ecological balance of the State of Kerala. The conservation and preservation of wetlands and paddy fields are hand in glove with maintenance of ecological balance. India is a signatory to the *Ramsar* Convention on Wetlands and the *Ashtamudi* wetland which is a designated wetland under the Convention comes within the vicinity of the area proposed for this illegal airport by the 3<sup>rd</sup> Respondent. The 1<sup>st</sup> and 2<sup>nd</sup> respondents are bound to follow the conditions under the Convention which includes detailed studies to be conducted and measures to be undertaken to conserve the biodiversity of the wetland. The 1<sup>st</sup> and 2<sup>nd</sup> respondents have very clearly ignored this fact while giving the impugned

clearance to the 3<sup>rd</sup> respondent. The fact that the land in which the proposed Aranmula Airport is to be established is a paddy land and there is total prohibition of converting any paddy land in the State of Kerala except for governmental public purposes. This aspect is totally suppressed in the proposal for EC made by the 3<sup>rd</sup> respondent. Though these aspects were clearly and unambiguously brought to the notice of respondents 1 and 2, these aspects which are of critical importance for considering the environmental clearance is seen ignored (Annexure AI).

35. The land measuring an extent of more than 350 acres, which is now proposed by the 3<sup>rd</sup> respondent for establishing the airport, was originally owned by one K.J.Abraham @ Kalamannil Abraham, Kalamannil House, Kozhenchery, Pathanamthitta. He had purchased about 350 acres of land in the name of two registered societies in which he was the Chairman and his family members are the office bearers. The aforesaid K.J. Abraham acquired vast extent of paddy field in Aranmula, Mallapuzhassery and Kidangannur village right from 2004 onwards. At that time the land purchased by K.J. Abraham was coming under the provisions of the Kerala Land Utilization Order 1967. The aforesaid K.J.Abraham proposed to the local *Panchayat* that he is intending to start an Aeronautical College and sought permission from the local *Panchayat* to reclaim 8 acres of paddy land. The local *Panchayat* without any authority whatsoever under any provision of law, arbitrarily issued permission for the reclamation of paddy land. On the basis of the alleged illegal permission granted by the local Panchayat, Shri.K. J. Abraham illegally filled up an extent of 49.725 acres of paddy land. This act *prima facie* was done in violation of the Kerala Land Utilization Order and Kerala Conservation of Paddy and Wetland Act 2008. This paddy land reclamation resulted in mass public protest by the local people. The illegal land filling by the said person also resulted in filling up of

irrigation canals which in turn caused flooding and other adverse effects to the nearby paddy fields. Vide letter dated 26.10.07 the Revenue Divisional Officer in his letter to the *Tahsildar* has explicitly stated that the aforesaid K.J. Abraham had illegally reclaimed 3.56 hectares of land and has also trespassed into 8.87 acres of Government land. It is further stated in the above letter that the reclamation of the *Nilams*/paddy fields is done by mining ordinary earth which is a minor mineral from his 5.92 Acres of land in Sy.No. 392/2. No sanction for mining ordinary earth is also obtained by the said K.J. Abraham. The letter dated 03.05.2008 of the Revenue Divisional Officer to the Circle Inspector of Police Aranmula and true copy of letter dated 09.02.2009 of the Assistant Engineer, Minor Irrigation Department to K.J. Abraham is evidencing the above fact. As can be seen from the letter, the Revenue Divisional Officer had directed the Sub Inspector of Police to ensure that there is no illegal filling up of paddy land. By another letter from the Irrigation Department, the said K.J. Abraham was directed to restore the land and the report of the Agricultural Officer would show that paddy cultivation has become impossible in large extent of paddy land because of the illegal filling and encroachment into government land. The above facts will show that there has been widespread illegal filling up of paddy land by the said K.J. Abraham and also encroachment in the irrigation canal. This will show that there is illegal filling up of a big canal to 800 m and the encroachment in the government land by the said K. J. Abraham. This will also show that an estimate of Rs. 19 lakhs as on 19.11.2009 is required for restoring the irrigation canal.

36. It is also clear from the letter dated 03.08.2008 that proceedings under the Kerala Land Utilization Order was initiated by the District Collector for restoring the illegally filled up paddy land. As per letter dated 22.10.2012, the Assistant Director, Agriculture also informed the Principal Agricultural Officer, Pathanamthitta of the

above illegality of filling up of paddy land. This also shows that out of the 315 acres of land possessed by the said Shri K.J. Abraham, about 70 acres are partially and illegally filled up, adversely affecting the irrigation facilities to the rest of the paddy lands. It is also reported that during the rainy season, when the holy river 'Pampa' starting from Sabarimala flows with full capacity, the flood like situation is prevented because the water flows to the paddy fields at Aranmula. Since the free flow of water through Kozhithodu is obstructed, the flood like situation in the area cannot be ruled out. It is also reported that because of the reclamation of paddy land, the ground water table in the area will be lowered and there is possibility of natural disaster as well as drinking water scarcity. Thus, it is clear that there has been illegal filling up of paddy land resulting in environmental degradation. The Joint Land Revenue Commissioner, State of Kerala, in his report dated 25.08.2012 has highlighted the illegalities in filling up of paddy land and has recommended a vigilance enquiry into the entire incident. Thus, it is absolutely clear that the major portion of the land now proposed by the 3<sup>rd</sup> respondent for establishing the Aranmula airport is still paddy land, and the balance portion is wetland. These are illegally filled up in violation of the Kerala Land Utilization Order as well as Kerala Conservation of Paddy and Wetland Act, 2008. It is clear that the revenue authorities are taking action to restore the paddy land, illegally filled up, to its original state. The fact that if the actions against illegal conversion of the paddy land are brought to logical conclusion by revenue authorities, the already filled up lands will become paddy fields again was not even considered. This vital aspect is suppressed by the 3<sup>rd</sup> respondent while submitting an application for EC before the MoEF. As a matter of fact, the District Collector Pathanamthitta has informed the Additional Chief Secretary, Department of Industries by letter dated 23.7.2012 that almost the entire land possessed by the 3<sup>rd</sup>

respondent which was obtained from aforesaid K.J. Abraham are paddy lands. The Legislative Committee on Environment of the Kerala Legislature Assembly in its report has clearly and in unambiguous terms found that major portion of land held by the 3<sup>rd</sup> respondent is paddy land and that the committee cannot agree with the development activity that would destroy water resources, acres of paddy fields which are cultivated for centuries and also would destroy the biodiversity of the area. The legislative committee has also observed that action for the illegally converting paddy land under the Land Utilization Order and Kerala Conservation of Paddy and Wetland Act should be taken. The Environment Committee of the Kerala Legislative Assembly had filed the report after eliciting views of at least 3000 people in the locality whereas the alleged public hearing held for obtaining the EC was attended by just about 80 persons including the officials. Moreover, the entire aspect regarding the illegal filling up of paddy land was enquired by the Joint Land Revenue Commissioner, State of Kerala who filed a report on the land issues connected with Aranmula Airport. This will show that there has been illegal conversion of paddy land as well as illegal filling up of *poramboke*/government '*thodu*'. The Land Revenue Commissioner has recommended a vigilance inquiry into the whole issue. The Government of Kerala has filed a report before the MoEF. As can be seen from 2<sup>nd</sup> page of Annexure A XIV, the government has reported that the allegations made regarding the illegal filling up of paddy land etc., if true, is very grave and that could erode the validity of the environment impact assessment study. However, in spite of Annexure A XIV, not even an enquiry is made regarding the alleged illegal filling up of paddy land and also the proposal for filling up of about 350 acres of paddy land, before issuing EC. In fact, the Government of Kerala has itself brought to the notice of the Union of India that a portion of paddy land has been filled up, and this can



have adverse environmental impact. It is not known whether the agency which conducted the EIA considered this aspect. It is proven that filling up of wetland can adversely affect ground water recharge which would in turn disturb the agricultural activities of the nearby areas. Further, it is true that earth is required for filling up of wetlands to make it suitable for the project. This ought to have been identified before hand and EIA should have looked into that aspect also. However, these aspects were totally ignored while passing EC order.

37. The Kerala State Assembly has got 140 elected members of legislature. Majority of the MLAs of Kerala Legislative Assembly cutting across political affiliations i.e. 72 MLAs have addressed a letter to the Hon'ble Prime Minister of India, stating that there has been illegal filling up of wetland, paddy field as well as canals and that the majority of the MLAs of Kerala Legislature has submitted to the Hon'ble Prime Minister that the project has no moral, legal or scientific ground for existence and it is an impractical project which would cause irreversible damage to the environment. Hence the majority of the MLAs of Kerala Legislative Assembly as well as retired Judges of Hon'ble Supreme Court and High Court of Kerala, religious leaders of all faiths, political leaders of all political parties as well as former diplomats had requested for rejecting the proposal of the airport. These documents will clearly show that the land in which the proposed airport is to be established is a paddy land. These are ignored while granting the impugned EC. In the State of Kerala filling up of paddy land for governmental public purpose is illegal. Annexure A I in the impugned EC mentions that the paddy fields have to be filled for run way, apron, taxi way etc. The Chief Operating Officer of the 3<sup>rd</sup> respondent admits that about 350 acres of uncultivated paddy land is to be filled up for providing public utility service as part of the project. In the feasibility study conducted by the Airport Authority of India,

New Delhi (AAI) it is clearly mentioned that on the date of visit of the Expert Committee i.e., on 15.10.2009, filling up of land for the purpose of runway is going on. Admittedly, the aforesaid filling up activity is done in paddy land, which was prohibited under Sec.3 of the Kerala Conservation of Paddy and Wetland Act. The photographs attached to Annexure A XVII feasibility study would show the illegality perpetuated even after Kerala Conservation of Paddy and Wetland Act 2008 has come into force. As per the copy of the letter dated 10.06.2009 issued by KITCO Limited to the Hon'ble Chief Minister of Kerala, it is necessary to convert 350 acres of paddy land to cater the requirement of the proposed project. Thus, it is absolutely clear that the land proposed is a paddy field and under the present enactment namely Kerala Conservation of Paddy and Wetland Act 2008, there is an absolute and total prohibition of conversion or reclamation of paddy land. Sec.2 (xii) defines paddy land as all types of land situated in the State where paddy is cultivated at least once in a year or suitable for paddy cultivation but uncultivated and left fallow. Thus, the entire land proposed for the project is a paddy land as defined under Sec.2 (xii) of the Kerala Conservation of Paddy and Wetland Act. Sec.3 prohibits reclamation or conversion of paddy land except under Sec.10 which provides for grant of exemption. However, Sec.10 does not enable the government to grant exemption from the provisions of the Act except for any public purpose. Public purposes defined under Sec.2 (xiv) is that the schemes undertaken or financed by the State or Central Governments or statutory bodies or other schemes specified by the government. Thus, only if the project is financed or undertaken by the State Government, the exemption can be granted. In Annexure A I, in order to overcome the Kerala Conservation of Paddy and Wetland Act, the State Government has observed that since approximately 100 acres of land is notified as industrial area and since the

reclamation was before 2008, the Kerala Conservation of Paddy and Wetland Act 2008 is not applicable. Both these grounds do not stand scrutiny of law. The notification SRO.No.185/2011 declaring that the area is an industrial area has absolutely no relevance *vis-a-vis* the Kerala Conservation of Paddy and Wetland Act 2008. Once it is found that the land is a paddy land as defined under Sec.2 (xii) of the Kerala Conservation of Paddy and Wetland Act, there is no escape from the provisions of the Kerala Conservation of Paddy and Wetland Act. The 2<sup>nd</sup> reason stated is that reclamation was done prior to the coming into force of Kerala Conservation of Paddy and Wetland Act 2008. This itself is not correct in view of the report of the KITCO (Annexure A XVIII), feasibility study of the AAI as well as the letter of the 3<sup>rd</sup> respondent Annexure A XVI, which will show that even after commencement of the Kerala Conservation of Paddy and Wetland Act, the paddy lands need to be converted or reclaimed and are being reclaimed as can be seen in the photographs of Annexure A XVII report of the AAI. Apart from that, even if the reclamation of paddy land is made prior to 2008, the law that is applicable is the Kerala Land Utilization Order 1967. It is abundantly clear from documents contained in Annexure A II to X that actions are being initiated by revenue authorities against illegal reclamation of the paddy land both under the Kerala Land Utilization Order as well as under the Kerala Conservation of Paddy Land Act. Hence, the observation made in EC (Annexure A I) that since the area is declared as an industrial area and the reclamation if done before the commencement of the 2008 Act, is not legally sustainable is not tenable. Even in the said observation of the State Government, in Annexure A I paragraph VII (1), it is admitted that paddy field is left fallow and natural irrigation facilities have been encroached upon and blocked at several places by K.J.Abraham who had allegedly sold the property to the 3<sup>rd</sup> respondent. Hence, the

observation in Annexure A I that the Kerala Conservation of Paddy and Wetland Act will not be applicable is not correct.

38. The proposal involves development of an airport in Pathanamthitta district in a plot of area 500 acres. It is revealed that in the meeting held on 21 to 23 September 2010, the ToR was finalized. In the said ToR, the issue regarding filling up of paddy land was not one of the points to be noted. When there was newspaper report and complaints, the project was again reconsidered by the EAC in September 2011. Thereafter, the EAC noticed that there is allegation of inclusion of wetlands and conversion of paddy lands in the project. This was put to the proponent as well as the government. On the basis of the reply filed by the government as well as the proponent it was found that there is no paddy cultivation for past 10 years which is not factually correct. Moreover, even if there is no cultivation of paddy for ten years, it does not take the land out of the purview of Kerala Conservation of Paddy and Wetland Act. As can be seen from relevant pages of the note file of the Government of Kerala (Annexure A XX) in reply to the enquiry made by the MoEF, based on the article in '*The Hindu*', the Additional Secretary has given his observation. As can be seen from Annexure A XX it was mentioned that the enquiry report of the Directorate of Environment and Climate Change does not reveal reclamation of wetland. As for the reclamation of the land where paddy cultivation was there ten years also it requires statutory clearance, it is for the proponent to get the clearance. All these should be examined as a part of EIA Process. However, as can be seen from EC (Annexure A I) none of these aspects was examined. In para 52 of the Annexure A XX, it is admitted that the promoters without obtaining clearance have filled up wetland. It is also reported that commencement of the work without getting clearance from the MoEF is illegal. It is also admitted that filling up of wetland has

environmental impact and that the agency which conducted the environmental study has not considered this aspect. The MoEF was requested to consider this aspect. Further in paragraph 54, it is also admitted that ordinary earth is required for further frilling up of wetland to make it suitable for the project and the EIA should have considered that aspect also. This was also not considered while issuing EC. Moreover, the fact that there is no paddy cultivation and the paddy land is left fallow and uncultivated does not mean that the land goes out of the definition of the paddy land under the Kerala Conservation of Paddy and Wetland Act and also loses the character of natural paddy land except that there is no cultivation of paddy, a paddy land even if left uncultivated for 10 years, serves all other ecological purposes including serving the upkeep of the ground water table, breeding ground and fauna and the balancing factor of the local environment. However, as can be seen from Annexure A XIX, the EAC has brushed aside these allegations even though it is clearly found that filling is required for development of runway, taxi way etc., and the details of area required to be filled, were not addressed in the EIA. However, accepting a vague reply from the 3<sup>rd</sup> respondent, the EAC recommended the proposal for EC. Thus, it is clear that the ToR, was finalized without including the question regarding the existence of paddy fields and filling up of the same.

39. As can be seen from the feasibility study prepared by the AAI, in the suggestion and recommendation in clause VI, it is clearly stated that as the possible approach would be from 34 N, the hillocks situated near the area can be obstruction for navigation aids. Hence, action to acquire and level the hillocks should be initiated. However, in the ToR as well as in EC, the environment impact of removing of these hillocks is clearly omitted.



40. The proposal made by the 3<sup>rd</sup> respondent in Form No.1 would show that there is no necessity for making any new roads or other transportation facility for the purpose. However, as can be clearly seen from the report of the AAI, there is not even an approach road to the site in question where the airport is proposed. The documents produced before the Central Government would show that there is necessity to provide four lane road from the proposed site of airport to a distance of more than 8 km in two directions. Thus, the proposal of the airport and the construction of at least four lane new roads to a distance of 16 km is an integral part of the project. Without roads or other transport facilities, functioning of an airport is impossible. For construction of the aforesaid roads, large extent of paddy fields and wetlands have to be reclaimed and filled up. Apart from causing environmental disaster in the area, the filling up of paddy land needs ordinary earth. Thus, the social impact of the establishment of the airport by the 3<sup>rd</sup> respondent especially the necessity of road connectivity should have been a critical item of ToR, which is not included in ToR, nor is this aspect considered in the EC.

41. The MoEF, as per Notification No. SO 1533 dated 14.09.2006, has issued the notification, prescribing the procedure for getting EC. As a part of the screening, scoping and appraisal of the project, there is a procedure called "public consultation". As can be seen from clause III (ii), the public consultation shall ordinarily have two parts. (i) Public hearing at the site and (ii) responses in writing from other concerned persons having stake in the environment. Appendix 4 of the said notification prescribes the procedure for public hearing. As can be seen from clause 2.3 and 2.4, on receipt of the draft EIA report, the authority shall arrange wide publicity of the report to elicit the views of the public. The State Pollution Control Board has also a duty to conduct a public hearing. Clause 3 of the appendix to the notification shows

that the Pollution Control Board has to advertise in two daily news papers, the exact date, time and venue of the conduct of public hearing and minimum notice period of 30 days shall be provided for furnishing the responses. Clause 3.2 shows that the advertisement shall inform the public about the place where the public could access the report before the public hearing. Clause 3.3 provides that no postponement of the date or time or venue of the public hearing shall be undertaken unless the emergency contingencies mentioned in the clause happen. Clause 3.4 provides that, if the public hearing is adjourned, the procedure prescribed under clause 3.1 has to be again undertaken.

42. In the present case, there had been hasty attempts to conduct the alleged public hearing with the sole purpose of ensuring that the procedure is complied with in a mechanical manner, without holding on to the spirit of the necessity of public hearing. This is clear from the following facts: On 02.02.2011, the 3<sup>rd</sup> respondent requested the Kerala State Pollution Control Board to arrange public hearing on the basis of the EIA report. The next day, in the Pollution Control Board letter dated on 03.02.2011, the Secretary of the Kerala State Pollution Control Board wrote to the District Collector for arranging a public hearing on behalf of the Board. The District Collector immediately made arrangements for public hearing to be held on 10.03.2011 at Collectorate Conference Hall, Pathanamthitta.

- I. As can be seen from Annexure A XXI the public hearing is related to the environmental issues of water, air and sound pollution by construction of the airport in 347 acres of land. No agenda on reclamation of paddy lands or use of illegally filled up paddy lands.

II. The public hearing notice does not make any mention of the conversion of paddy land for the purpose of construction as well as leveling of hillocks and using of ordinary earth, a minor mineral, for filling purpose. It does not mention the issue relating to construction of four lane roads for 16 km.

III. On 04.03.2013, the Pollution Control Board in its attempt to ensure hasty public hearing, requested the Chief Electoral Officer to permit conduct of the public hearing on 10.03.2011 itself. The Chief Electoral Officer informed the Pollution Control Board that the public hearing has to be deferred till the election process is over. The said information is issued as per letter dated 07.03.2011 of the Electoral Officer to the Secretary of the Pollution Control Board.

IV. The Pollution Control Board by letter dated 24.03.2011 in its anxiety to hold public hearing at the earliest again wrote to the District Collector to conduct the public hearing immediately after the election was over i.e., on 13.04.2011, though the election process would be over only after counting and declaration of result.

V. The 3<sup>rd</sup> respondent met the Chief Electoral Officer and obtained permission to conduct the public hearing after the poll process was over on 13.4.2011.

VI. The Pollution Control Board requested the District Collector to convene the Public Hearing on 29.04.2011 at 11 am in the Office of the District Collector. The newspaper publication was

made in 'The Hindu' daily on 27.03.2011 that the Public Hearing for construction of new airport at Aranmula would be held on 29.4.2011. As can be seen from newspaper report dated 27.03.2011 in Annexure A XXII, the advertisement did not reveal whether it was an advertisement in accordance with the prescribed procedure for public hearing for the purpose of EC. In contrast to Annexure A XXI newspaper advertisement did not reveal the purpose of public hearing. It only said the postponed public hearing for construction of airport will be held on 29.4.2011. The said advertisement itself is faulty.

VII. However, no public hearing was held on 29.04.2011 also because of inconvenience of the District Collector. The local land owners have, in the meanwhile, filed objection before the District Collector regarding the aforesaid project. As per the document in Annexure A XXIII, the paddy land is proposed to be filled up for the purpose of airport is not mentioned.

VIII. Since the Public Hearing on 29.04.2011 was not held, the Pollution Control Board by letter dated 06.05.2011 informed the District Collector that the Public Hearing should be held on 10.05.2011 at 11 am in the conference hall of the Collectorate and the details regarding the public hearing should be published. However, to the knowledge of the Appellant, no newspaper advertisement regarding the public hearing scheduled to be held on 10.5.2011 as mandated in the notification of the Union Ministry was published.

43. The appellant is an environmentalist who campaigns against illegal and disastrous exploitation of environment and is in the forefront of the people's agitation against Aranmula Airport and also a member of Wildlife Board constituted by the State Government. In Pathanamthitta District the contest between the rival political fronts was very intense and one of the major issues was the proposed Aranmula airport. The election process in the State of Kerala started on the first week of March 2011 the polling was held on 13.04.2011. The counting of votes was posted on 11.05.2011. This means that on 10.05.2011 - the penultimate day of counting many of the persons who are involved in political activities like the appellant were in the midst of arranging the party workers as the counting agents and other work in the connection of election process. Apart from that, the politically conscious Kerala people were all eagerly waiting for the election results. It is at the midst of this highly contested election, an excuse of public hearing was conducted in order to complete the formalities prescribed without complying with the spirit of the purpose of public hearing. As a matter of fact, the appellant was present for the public hearing on 10.3.2011 as well as 29.04.2011. On both these days the public hearing was adjourned. There was no newspaper advertisement regarding the public hearing on 10.05.2011. The conduct of the public hearing on the penultimate day of counting of votes in the ballot boxes in a politically conscious state is solely for the purpose of avoiding public participation in the public hearing. This is abundantly clear from the fact that in the alleged public hearing held on 10.05.2011 the total number of participants was only 80 persons, whereas in the public hearing conducted by the Environment committee of the Kerala Legislative Assembly on the same issue more than 3000 persons participated.



44. The illegality of public hearing without proper newspaper advertisement can be seen from the copy of the minutes prepared by the Pollution Control Board as per the document in Annexure A XXV. As can be seen from Annexure A XXV, there is no mention regarding the newspaper advertisement of the public hearing held on 10.05.2011. It also shows that only 80 persons including officials participated. Even the copy of minutes of the proceedings would show that many of the participants had raised the issue of illegal reclamation of paddy land though it was ignored as not part of agenda. Hence, it is absolutely clear that the public hearing held on 05.10.2011 is a farce and without proper notice.

45. A reading Annexure A I of EC would show that the proponent had got ownership and title over 350 acres of land in the aforesaid area. This is the impression one gathers from the list of survey number and lands given as annexure to Form No. I. However, this list is the list of lands notified as industrial zone. It has nothing to do with ownership of 3<sup>rd</sup> respondent. In fact, the majority of land mentioned in annexure to Form No. I belong to other persons. Moreover, (i) the claim of the proponent/3<sup>rd</sup> respondent is that they purchased the land as aforesaid from one K.J.Abraham. It is pertinent to note that under Sec.83 of the Kerala Land Reforms Act, no person can hold any property in excess of the ceiling area. Sec.82 of the Kerala Land Reforms Act provides that the maximum land that can be held is 15 acres and the balance excess land automatically vest with the government by fiction of law. In the present case the person who allegedly sold the subject matter of land to the 3<sup>rd</sup> respondent was holding land far above the ceiling area. The land board has booked a ceiling case under the Kerala Land Reforms Act against the aforesaid person. Under Sec.84 of the Kerala Land Reforms Act, any voluntary transfer of property, by any person holding excess land, is invalid. Hence, the 3<sup>rd</sup>

respondent who claims to be the transferee from the aforesaid K.J.Abraham cannot have even title or ownership over the property. Thus Annexure A I and the entire process is based on a wrong factual assumption that the 3<sup>rd</sup> respondent has title to the aforesaid property. This made abundantly clear by the letter issued by the government to the Department of Environment. Annexure A XXVII admits that the land is excess land under the Land Reforms Act. However, it says that exemption can be granted under the Land Reforms Act regarding the ceiling area. It is brought to the notice of the tribunal that no such exemption can be granted under Sec.81(3) of the Land Reforms Act for various reasons especially in favour of 3<sup>rd</sup> respondent who is not even an owner of the land.

46. The details given by the 3<sup>rd</sup> respondent in Form I are misleading and incorrect and for that reason alone the grant of EC is liable to be rejected. As can be seen from the details mentioned in Annexure A XXVII they are either absolutely false or half true. The details are given below.

- I. In column 3 of clause 1.0, it is stated that the proposed area is only 16,250 square meters, which is absolutely false. The area covers at least 10 times the area mentioned in the said entry. In clause 22 of the same table, it is wrongly mentioned that there is no government order or relevant policy relating to the site. As can be seen from Annexure A II to XIV there are various reports of the government and government officials regarding the illegal reclamation of paddy land.
- II. *Entry in clause 24(c) that there is no order or direction of the court is absolutely false.*

III. In clause II serial No.1.1 it is wrongly stated that no permanent or temporary change in land use, land cover or topography including increase in the intensity of land use will be there by construction of the proposed airport. This is absolutely false since large areas of paddy land and wetland will be converted and used and there will be total change in the land use pattern, the land cover and the topography of the land. This will also cause increase in the intensity of land use. Likewise, the documents produced in the above application would show that there is thick vegetation and also there will be threat to the biodiversity in the entire paddy land. Clause 1.2 sways that the vegetation and buildings will be relocated. Likewise, clause 1.3 falsely says that there is no creation of new land uses. Clause 1.10, falsely says that no reclamation work in the project is necessary. This is only to mislead the authority, especially to show that there is no paddy land in the area, which is factually incorrect.

IV. Clause 1.17 wrongly says that no new road for traffic is necessary and already roads exist. This is factually incorrect. There is not even a approach road to the site. Moreover when the operation of the airport commences there will be at least two four lane roads having 8 kilometers length each.

V. The answer to clause 1.24 that there will be no change in the water bodies or land surface affecting drainage or runoff is wrong.

VI. Clause 2.1 falsely says that there is no undeveloped or agricultural land in the project site. The last page of Form No. 1 deals with the pattern of land. It is wrongly stated in serial No. 1 that the

*land in which the project is proposed is not covered by any local legislation for ecological, land scale and other related value. As a matter of fact, the land is clearly covered by the Kerala Conservation of Paddy and Wetland Act, the Kerala Land Utilization Order as well as the wetlands under the RAMSAR convention. It is also wrongly stated that the Pampa River is 2 kilometers away from the project. Pampa River is laying very adjacent to the project.*

*VII. Answer to clause No.8, 9 and 10 are also false. Hence it is absolutely clear that application has been filed by the 3<sup>rd</sup> respondent suppressing material facts. The resultant ToR prepared by the EAC and Annexure AI ecological clearance is also illegal.*

47. The objections of Salim Ali Foundation were totally ignored. Salim Ali Foundation, Ayyappankavu Road, Kanimangalam, Thrissur, which is an organization functioning for the protection of ecology has filed a detailed report regarding the potential ecological, social and economic impacts of the proposed project. The Salim Ali Foundation has pointed out various environment disasters that may occur in the area if the aforesaid project is implemented. This includes the loss of intangible values of wetlands and paddy lands in the proposed site as well as adjoining area. It also points out in paragraph 37 to 42 the net physical value of the land which will be lost by the starting of the proposed project. The total benefits of the paddy fields and wetlands from the proposed airport area will be about Rs. 335 to 440 crore per year because of loss and damage. It also points out the total lack of application of mind in preparation of the Environment Impact Assessment report. However, in the EC, nothing is mentioned about the findings of the report. It brushed aside the said report, on the basis of an observation by the State

Government that there is no wetland as mentioned in the report. In the observation of the government extracted from EC, it is wrongly stated that report has confused paddy land and wetland. At any rate, since the land which is proposed to be used for the said project is a paddy land which not only serves as a food production area but also serves for the recharge of ground water level and upkeep of the local ecology, the question regarding NPV at least have been addressed.

48. It is clear from the various reports and documents produced as Annexure A II to VI that the tributary of Pampa River, ValiyaThodu as well as Kozhithode which serve as the irrigation water source to the entire paddy fields have been encroached and filled up by the proponent and his predecessor in interest. Steps have been taken under the Kerala Land Conservancy Act for recovering the aforesaid Government land. However, the Environment Impact Assessment Report ignores these allegations also.

1. As a matter of fact, the appellant herein has filed W.P. (c).No.15101/2013 before the Hon'ble High Court of Kerala seeking direction to restore the illegally filled up paddy land, now in possession of 3<sup>rd</sup> respondent and which is proposed for the construction of airport.

49. Hence, the appellant herein has sought for the indulgence of the Tribunal to:

- i) *Call for records leading to the EC given by the MoEF, Union of India as per letter dated 18.11.2013 in favour of the 3rd respondent.*



*(ii) Direct the respondents to remove all constructions made, excavate the paddy lands and wetlands filled in, remove any and all obstructions to the flow of water and restore the area to its original pristine state. Direct the 3rd Respondent to restore the Karimaram Chaal to its original flow.*

*(iii) Declare that the ToR finalized which resulted in Annexure A I does not cover the core environmental issues relating to the establishment of the proposed Aranmula Airport.*

*(iv) Declare that the public hearing alleged to have been held for the purpose of considering the EC for establishment of the Aranmula Airport is invalid and insufficient.*

**Appeal No. 19 of 2014 (SZ)**

50. The appellant herein is a social worker and a resident of Kozhencherry Taluk of Pathanamthitta District in the State of Kerala, where the proposed Aranmula Airport Project is to be located. He earlier served as the President of the Pathanamthitta District Panchayat and is a Member of Kerala Pradesh Congress Committee at present. The appellant is an activist for protection of environment and promoting paddy cultivation in the Aranmula locality. He is deeply aggrieved by the EC issued to the proposed airport and its allied activities as it will seriously affect the life and livelihood of the people living in Kozhencherry Taluk in particular and Pathanamthitta district in general as it will result in environmental degradation, stoppage of paddy cultivation in *puncha padashekham* (paddy fields) in Aranmula and depletion of ground water. He files this appeal challenging the EC granted to the

Aranmula Air Port Project as a person affected by the project and the negative impact on paddy land, depletion of ground water and environmental degradation will directly affect him as also a committed social and political worker, several other persons affected by the project are also complaining to him about the ill consequences of the project. The appellant has arrayed the MoEF as the 1<sup>st</sup> respondent, State of Kerala as the 2<sup>nd</sup> respondent, M/s. K.G.S. Aranmula Airport Ltd., as the 3<sup>rd</sup> respondent, Kozhencherry Charitable Education Society as the 4<sup>th</sup> respondent, who was subsequently given up during the proceedings of the appeal before this Tribunal, M/s. Enviro Care India Pvt. Ltd., as the 5<sup>th</sup> respondent, Kerala State Pollution Control Board as the 6<sup>th</sup> respondent and the District Collector, Pathanamthitta District in Kerala State as the 7<sup>th</sup> respondent. The short facts of the case leading to the filing of this appeal as could be gathered from the grounds of the appeal filed herein can be stated thus:

51. The impugned EC is issued without considering several environmental, ecological and social aspects. Conversion of *puncha* (paddy fields), its consequences etc., were not even adverted to by the 1<sup>st</sup> respondent/MoEF. Similarly, the aspects relating to leveling of neighboring hills and the development of airport, allied buildings, construction of road etc., etc., were not addressed. The 3<sup>rd</sup> respondent/K.G.S. Aranmula Airport Pvt. Ltd., suppressed several vital details in the application made seeking EC. The EIA report prepared by the 5<sup>th</sup> respondent/Enviro Care Pvt. Ltd., is legally defective and is factually inadequate. The EIA report was not prepared by the competent persons and *ex facie*, the impugned EC is bad for non consideration of relevant aspects and irrelevant considerations. The details given in the application form in Form I seeking EC did not reveal that the proposed construction of the project is going to be made in paddy land and that the land use is

to be changed or that there will be reclamation of paddy land. Suppression of this vital aspect has resulted in fundamental error of EC as at no point of time, the respondents considered the fact of reclamation of paddy land and its consequential impact on the ecology and environment in its proper perspective. There was also no impact assessment study relating to conversion of paddy lands. Rice is a major wetland crop and paddy fields in Kerala are typical wetland eco-systems that serve numerous important ecological and environmental functions and conversion of paddy fields involves irreversible transformation of the wetland agro-ecosystems. The Aranmula *puncha* and other paddy fields in adjacent villages from the flood plains of river Pampa and they serve as natural flood control mechanism. None of these aspects was considered by the 1<sup>st</sup> respondent/MoEF while issuing the impugned EC.

52. In a letter dated 01.06.2013, (Annexure A14), the 2<sup>nd</sup> respondent/State of Kerala specifically brought to the notice of the 1<sup>st</sup> respondent/MoEF about some grave issues raised in the report of the Salim Ali Foundation (Annexure A2), which if true, will erode the validity of the EIA study and requested to examine those issues before granting EC and none of these issues was addressed in the impugned EC by the 1<sup>st</sup> respondent/MoEF due to non application of mind. While the letter dated 01.06.2013 of the 2<sup>nd</sup> respondent was referring to the impugned EC for extracting the views of the 2<sup>nd</sup> respondent/State of Kerala the land in question as wetlands, instead of advertent to the expression used in that latter, the 1<sup>st</sup> respondent/MoEF ought to have considered the true nature and significance of the land in question. The 1<sup>st</sup> respondent/MoEF proceeded on the wrong premise that the reclamation of paddy land by the prior owner, the 4<sup>th</sup> respondent/Kozhancherry Educational Charitable Trust is legal and valid. Till the date of judgment dated 24.02.2005 in W.P.(C ).No. 3917 of 2005 of the Hon'ble Kerala High Court, (Annexure A3), the 4<sup>th</sup> respondent

namely the Kozhencherry Education Trust, the previous owner had no permission to reclaim the paddy land and even subsequent to that date also, no permission was issued by any competent authority to the 4<sup>th</sup> respondent to reclaim the paddy land in controversy and contrarily, the competent authorities found that the reclamation of paddy land by the 4<sup>th</sup> respondent was illegal and ordered to be restored. The legal effect and consequences of those proceedings were not enquired into by the 1<sup>st</sup> respondent/MoEF. The observations of the AAI (Annexure A16) following the inspection held on 02.07.2012 would show that there are obstacles to the proposed runway approach due to location of a hill and rubber plantation and require to be removed after obtaining environmental clearances and these aspects have not been considered by the MoEF/1<sup>st</sup> respondent while issuing EC. The issues relating to leveling of the nearby hills were not made a subject matter for enquiry.

53. There is total non application of mind while permitting reclamation of paddy land for the purpose of runway as the length, orientation etc., were not finalized. As per the paragraphs 2.2.1 in Annexure A 6 and Annexure A 20, the proposed length of the runway is 2800 m in Phase I. In Annexure A 11, the 3<sup>rd</sup> respondent/Aranmula Airport Pvt. Ltd., claimed that the construction of runway to a distance of 1500 m has been already completed and in addition to the existing runway to extend it to another 1000 m. Whereas, after quoting the letter from the 3<sup>rd</sup> respondent/Aranmula Airport Pvt. Ltd., the 1<sup>st</sup> respondent/MoEF has recorded in paragraph 6(iii) of the EC that the previous owner had filled the runway of 1000 x 150 m for airstrip and the only area required for runway 1000 x 150 m will be filed and accorded permission to reclaim 1000 x 150 m. According to the impugned EC, the length of the runway is 2000 m and it is all the more relevant to state that according to the original project report prepared by the Consultant (KITCO), the

proposed length of runway is 3100 m. Going by the documents on record, there is no certainty on the actual length of the runway and the required area of paddy land to be reclaimed. But, as per the observations made by the AAI (Annexure A 16) it is recommended for displacing the threshold of runway by 285 m in view of the obstacle reported due to the existence of temple mast. As such, the 1<sup>st</sup> respondent ought not to have given any permission to reclaim paddy land before finalization of runway orientation and ascertaining its actual length. The issuance of clearance to fill the paddy land at 1000 m and therefore, issuance of piecemeal EC without taking the proposed project as a whole or considering cumulative effect of the project are illegal.

54. Majority of the Members of the Kerala Legislative Assembly and Assembly Committee for Environment pointed out that the proposed airport project that is going to be established in the paddy land to be reclaimed would cause severe environmental degradation. But, none of the aspects pointed out therein were considered in its proper perspective by the 1<sup>st</sup> respondent/MoEF while issuing the impugned EC.

55. The issuance of SRO No. 185/2011 dated 24.02.2011 referred to in paragraph 7(i) of the EC itself is illegal as the EC is not preceded by the EC as required in paragraph 7(c) of the Schedule to the EIA Notification dated 14.09.2006. Moreover, no specific permission is granted to reclaim any paddy land by any of the competent authorities and the reclamation already made by the 4<sup>th</sup> respondent is illegal. Even assuming that the SRO No. 185/2011 dated 24.0.2011 whereby certain areas are declared as industrial area is valid, still permission under Kerala Conservation of Paddy Land and Wetland Act, 2008 is required for filling up any



paddy land. In the instant case, no such permission is given to 3<sup>rd</sup> respondent for filling up paddy land. On this count also, the EC given for filling up the paddy land is illegal and unsustainable.

56. The public hearing that preceded the grant of EC was not conducted in accordance with law. As per the minutes with covering letter dated 13.05.2011 (Annexure A7), initially the public notice of hearing was published in the newspapers on 06.02.2011 after scheduling the date of hearing as 10.03.2011. Later, it was postponed to 29.04.2011 and was ultimately held on 10.05.2011. No notice was issued for the public hearing as required in paragraph 3 of the Appendix IV of EIA Notification, 2006 for the public hearing held on 10.05.2011. Since no proper notice was given, the participation of project affected people in the public hearing was very low and the entire proceedings were concluded within 120 minutes. The appellant was denied the opportunity to participate in the public hearing for want of proper information/notice while hundreds of people participated in the public hearing conducted by the Kerala State Legislative Assembly Committee on Environment.

57. From the reading of the application made by the 3<sup>rd</sup> respondent seeking EC in Form I dated 28.06.2010 (Annexure A4) and the copy of the ToR finalized by the EAC on 13.10.2010 (Annexure A5) with regard to the proposed airport project of the 3<sup>rd</sup> respondent, there was complete suppression of the fact of the establishment of the proposed airport project required filling of paddy land. The report of the Salim Ali Foundation (Annexure A2), report of the Kerala State Legislative Assembly Committee on Environment regarding Aranmula Greenfield International Airport (Annexure A17) and the letter dated 13.07.2013 submitted by the 72 Members of the Kerala State Legislative Assembly to the Hon'ble Prime Minister of India would show

that the issue of paddy land reclamation is very vital to the aspects relating to the EC and is the root cause of public opposition to the project. In the circumstances, the 1<sup>st</sup> respondent/MoEF ought to have ascertained the ground situation by obtaining a proper local inspection report before according any clearance which would have revealed the significance of Aranmula paddy land and the hollowness of the claim by the 3<sup>rd</sup> respondent.

58. By the letter dated 26.06.2012 of the State of Kerala/2<sup>nd</sup> respondent addressed to the 1<sup>st</sup> respondent/MoEF, it has been categorically informed that the portion of land which was paddy land and has been filled, which can have environmental impact. No clearance has been taken for filling up paddy land. According the Kerala State Paddy and Wetland (Conservation) Act, 2008, prior sanction of the Committee authorized for filling such areas is required. But, this crucial aspect was not even probed by the EAC or by the 1<sup>st</sup> respondent/MoEF. The EIA report was not prepared in accordance with "Environmental Impact Assessment Manual for Airports (Annexure A19) and the EIA Report for the construction of new airport at Aranmula prepared by the 5<sup>th</sup> respondent/Enviro Care India Pvt. Ltd., (Annexure A20) are factually misleading.

59. As per the Office Memorandum of the 1<sup>st</sup> respondent/MoEF bearing No. F. No.J-11013/77/2004-IA II (I) dated 30<sup>th</sup> September 2011 (Annexure A 24), the application for accreditation submitted by the 5<sup>th</sup> respondent/Enviro Care India Pvt. Ltd., was rejected by the Quality Council of India. But, however, as per Office Memorandum of the 1<sup>st</sup> respondent/MoEF bearing F.No.J-11013/77/2004-IA II(I) dated 30.06.2011(Annexure 23), the Consultants whose application for accreditation was pending were permitted to submit report/certify documents to appear only upto

September 2011. As such, the EAC went wrong in considering the EIA report prepared by the 5<sup>th</sup> respondent/Enviro Care India Pvt. Ltd., in September 2011, December 2011 and in August 2012 as per the extract of the minutes of the 105<sup>th</sup>, 107<sup>th</sup> and 115<sup>th</sup> meetings of EAC (Annexure A8-A9), respectively and the EAC ought to have rejected the application made by the 3<sup>rd</sup> respondent seeking EC in Form I dated 28.06.2010 (Annexure A4) and the EIA report for the construction of new airport at Aranmula prepared by the 5<sup>th</sup> respondent/Enviro Care India Pvt. Ltd., (Annexure A20) as the application of the 5<sup>th</sup> respondent/Enviro Care India Pvt. Ltd., seeking accreditation was rejected by the Quality Council of India at the time when they considered the EIA report. Hence, the 1<sup>st</sup> respondent/MoEF was completely wrong in issuing the EC based on the EIA report prepared by an incompetent agency.

60. The validity of the EIA report prepared by a Consultant is subject to and is dependent on its accreditation/recognition by the Quality Council India. Pursuant to the Office Memorandum of the 1<sup>st</sup> respondent/MoEF bearing No. F. J-11013/77/2004-IA II (I) dated 02.12.2009 (Annexure 21) and subsequent office memorandums, applications seeking accreditation of Quality Control of India were submitted in early 2010. In view of elaborate procedure for processing the applications, the application submitted by the 5<sup>th</sup> respondent/Enviro Care India Pvt. Ltd., was processed only between June-September 2011 and this would not mean that EIA report prepared by the 5<sup>th</sup> respondent/Enviro Care India Pvt. Ltd., is valid irrespective of accreditation. If the 5<sup>th</sup> respondent/Enviro Care India Pvt. Ltd., is incompetent to submit a report after September 2011, then it is only to be found that they were incompetent throughout. In complete violation of Chapter 12 of Environmental Impact Assessment Manual for Airports (Annexure A19) and

Appendix III of the EIA Notification, 2006, the 5<sup>th</sup> respondent/Enviro Care India Pvt. Ltd., refused to disclose the names of the consultants with their brief resume in the copy of the summary of EIA report circulated by the 3<sup>rd</sup> respondent/K.G.S. Aranmula Airport Ltd., (Annexure A6) as well as the Environmental Impact Assessment Report for the construction of new airport at Aranmula prepared by the 5<sup>th</sup> respondent/Enviro Care India Pvt. Ltd., (Annexure A20) and the persons who prepared the EIA report in respect of the airport project in question were not experts in the relevant sector. Even in 2013 as is evident from minutes of the 94<sup>th</sup> Accreditation Committee Meeting of the Quality Council of India, dated 8<sup>th</sup> January 2013 (Annexure A25), the 5<sup>th</sup> respondent/Enviro Care India Pvt. Ltd., is neither competent to prepare an EIA report for Category A projects nor having any experts in its roll to conduct study in the airport sector and on this count of incompetency/want of expertise of persons who prepared the report also, the same is liable to be set aside.

61. No final report as required under the relevant law was prepared by the 3<sup>rd</sup> and 5<sup>th</sup> respondents (M/s. K.G. S. Aranmula Airport Ltd., and Enviro Care India Pvt. Ltd., respectively). In view of total absence of details of paddy land for reclamation for the proposed airport project, the 1<sup>st</sup> respondent/MoEF ought to have ordered to conduct a final EIA study with special reference to the paddy land reclamation and other allied aspects. The 1<sup>st</sup> respondent/MoEF has therefore went wrong in clearing the project without a final EIA report that covers all relevant environmental aspects.

62. As is evident from the reply made by the representative of the 3<sup>rd</sup> respondent/K. G. S. Aranmula Airport Ltd., (referred to in Annexure A7 'Notes of Public Hearing') they already committed to undertake a comprehensive environmental impact assessment study in continuation of EIA report for the

construction of new airport at Aranmula prepared by the 5<sup>th</sup> respondent/Enviro Care India Pvt. Ltd., (Annexure A20). The 3<sup>rd</sup> respondent/K.G.S. Aranmula Airport Ltd.,). The 1<sup>st</sup> respondent/MoEF was wrong in issuing the impugned EC without obtaining the final EIA report. The terms of reference are insufficient and inadequate. The same went wrong in identifying the significance of *puncha* land where the proposed project was sought to be established. Similarly, the significance of environmental and biological etc., of the area were not even adverted to. The same is vitiated by complete non application of mind.

63. Hence, the appellant herein seeks the intervention the Tribunal:

- i) To set aside the EC granted to the proposed international airport at Aranmula;*
- ii) To set aside the application made by the 3<sup>rd</sup> respondent seeking EC in Form I dated 28.06.2010 (Annexure A4) and the copy of the Terms of Reference finalized by the EAC on 13.10.2010 (Annexure A5); and the Environmental Impact Assessment Report for the construction of new airport at Aranmula prepared by the 5<sup>th</sup> respondent/Enviro Care India Pvt. Ltd., (Annexure A20);*
- iii) To direct the respondents to conduct the public hearing for the proposed Aranmula Airport Project in accordance with law after finalizing fresh terms of reference.*

64. The 1<sup>st</sup> respondent, namely the MoEF, per contra, stated in the reply affidavit and which can be treated as reply to the other appeals also, as follows:



65. According to Form I and EIA report submitted by the project proponent, the site is situate almost 2 km from Pampa River. There is a small rivulet namely *Kozhithodu* passing through the project site which starts from uphill areas and joins the *Pampa* River. Due to poor maintenance over the years, it is blocked at various points creating small water bodies in different parts of the project site. The proponent informed that there is no wetland and due to blockage of the rivulet water logging occurs and forms a few shallow water bodies in the project area. The Minor Irrigation Department of Kerala was entrusted to study and streamline the flow of rivulet and the department has studied and has suggested measures to maintain the rivulet. Conditions have been stipulated in the clearance to implement the measures suggested by the Minor Irrigation Department in letter and spirit. Based on the complaints against the inclusion of wetland and paddy fields in the project and public objections for conversion, a factual report was sought from the Environment Department of Government of Kerala and the project proponent. In the reply dated 01.03.2012, the proponent has stated that the Government has notified 500 acres of land for development of the airport. There is no paddy cultivation for the past ten years. Further, according to the letter dated 26.06.2012 of the State Government, 500 acres of land was declared as an industrial area vides notification in SRO. No. 185/2011 dated 24.02.2011.

66. The Government of Kerala, in its letter dated 01.06.2013, has stated that some factual mistakes in the report of Salim Ali Foundation are worth noting and the report says that there are extensive wetlands in the village. However, there is no identified wetland in Aranmula village as per the report of the Centre for Earth Science Studies which prepared the list of wetlands in Kerala. As per the definition of

the Kerala Conservation of Paddy and Wetlands Act, 2008, paddy land is not wetland and the provisions of the Central Wetland Act are also similar.

67. The averment that the EIA study has not covered flora and fauna is denied. The 1<sup>st</sup> respondent/MoEF states that the same is covered under Chapter-III of EIA report. The location of the site with respect to Vembanad *Kol*, *Ramsar* site and Silent Valley were sought and the Proponent has informed that the site is not located in the upstream of Vembanad and neither silent valley nor ecological diversity areas are located anywhere near the site. The proponent had informed that only minimum area required for runway, apron, taxiway etc., would be filled and the remaining area would be preserved in its natural form. The previous owner had filled the runway of 1000 x 150 m for airstrip and hence only the area required for runway 1000 x 150 m would be filled with 1 m height and the soil required for land filling would be met from elevated area of about 14.5 acres available within the site itself. When a contour map was called for confirming the availability of source for soil within the site, as per the contour map submitted, the level of elevated area varies from 3 m to 11.5 m with average height of 3.5 m. The soil available in 14.5 acres is 205375 m<sup>3</sup> as against the 1,50,000 m<sup>3</sup>. Further, the EAC has suggested the following condition in the above EC:

*“(iii) Though the site is not a wetland, in view of the presence of various plants and species, the proponent shall fill only minimum area required for the runway, apron, taxiway etc., and the remaining area will be preserved in its natural form as committed. Only the area required for runway 1000 x 150 m shall be filled with 1 m height. The soil required for land filling shall be met from elevated area of 14.5*

*acres available within the site itself. Necessary permission for leveling should be taken.”*

68. Denying the allegation with regard to the rehabilitation and resettlement, the 1<sup>st</sup> respondent/MoEF would state that as per letter dated 26.06.2012 of the State Government; the project proponent has stated that seven houses in the proposed area may require rehabilitation, which they have already purchased. The approach road is proposed from Aikkara junction to the terminal building of KGS Aranmula Airport for which the land is to be acquired. Similarly, the road from Parumootupadi junction to Aikkara junction is also to be widened for smooth vehicular traffic to the proposed airport.

69. The ministry brought the accreditation for the consultants to ensure the quality of EIA report and Environment Management Plans (EMP). According to Office Memorandum dated 30.12.2010, 265 consultants including M/s. Enviro Care India Pvt. Ltd., were permitted to certify various documents as consultants such as EIA/EMP and appear before the State Level Expert Appraisal Committee/ State Environment Impact Assessment Authority for Category- B projects and the EAC for Category-A projects till 30.06.2011. The ToR for the project was accorded on 13.10.2010. Public hearing was conducted on 10.05.2011 and the proponent has submitted the final EIA on 26.06.2011 after incorporating the issues raised during the public hearing within 30.06.2011.

70. The project was considered by the EAC in its meeting held from 21<sup>st</sup>-23<sup>rd</sup> September, 2010 and the ToR was finalised including the conduct of public hearing. The ToR for the project was accorded on 13.10.2010. Public hearing was held on 10.05.2011 at Pathanamthitta District Collectorate. Major issues raised during the

public hearing were regarding filling up of paddy fields, restoration of *Kozhithodu*, the tributary of Pampa River etc. The project proponent has committed that minimum area required for runway, apron, taxiway etc., will be filled and the remaining area will be preserved in its natural form while *Kozhithodu* will be maintained in consultation with the Minor Irrigation Department of the State of Kerala. The proposal along with the final EIA report and the minutes of the public hearing were examined by the EAC in its meeting held on 21<sup>st</sup>-23<sup>rd</sup> September, 2011. After deliberation, the EAC sought additional information viz., Noise level modeling impact analysis especially on traffic, waste water treatment and disposal, energy conservation risk management, EMP etc. The details submitted by the project proponent were examined by the EAC in the meeting held on 15<sup>th</sup> -16<sup>th</sup> December, 2011 and the EAC recommended the proposal for grant of EC subject to certain environmental safeguards. While processing the proposal for EC, news items alleging inclusion of wetlands and conversion of paddy fields in the project area had come to the notice and a report in this regard was sought from the State Government and the project proponent. The project proponent submitted reply in letter dated 01.03.2012 according to which the Government has notified 500 acres of land for development of airport and there is no paddy cultivation in the area for the past ten years. However, the project proponent was asked to submit the details of wetlands/water bodies or land having the characteristics of wetlands at or in the vicinity of project site along with their conservation plan and the project required soil filling which was not properly addressed in the EIA report to submit supplementary information reading the details of area requiring filling, source of filling material, it's likely impacts of environment and drainage system, the project proponent submitted the details and the proposal was again referred to the EAC to examine the details submitted by the project proponent. The EAC in the meeting held

on 16<sup>th</sup> -17<sup>th</sup> August, 2012 after deliberations stipulated conditions. As regards the commencement of land filling work even before the grant of EC as alleged in the news reports, there were no developmental works at that site by then. However, the original owner of the site had carried out minor developmental works.

71. All issues have been considered by EAC and MoEF and there have been representations, news items, joint petitions from MLAs and a report from the Salim Ali Foundation against the project. Major allegations are inclusion of wetlands and conversion of paddy fields, filling up of wetlands and paddy fields that will disturb the ecosystems and environmental balance of the area, the project proponent facing criminal and vigilance cases, violation of Central and State Acts like Kerala Land Reforms Act, 1963 ( in regard to the land ceiling provision), Kerala Conservation of Paddy Land and Wetland Act, 2008, findings of the Legislative Committee, commencement of the land filling work at the site prior to EC, non-obtaining of no objection certificate from the Defence, competition to existing airports, inadequate EIA, non-inclusion of source of earth for filling the land, 212 species of plants including 27 that are endemic and 110 that are economically important have been recorded in the area and these are said to have been affected. The comments on the above representations/issues were sought from the project proponent and the State Government of Kerala. The project proponent replied in the letters dated 20.06.2011, 01.03.2012 and 23.08.2012. The comments were also received from the Principal Secretary, Environment Department, Government of Kerala vide letters dated 26.06.2012, 01.06.2013, and 21.08.2013 and from the Additional Chief Secretary, Environment Department, Government of Kerala vide letter dated 13.09.2013. The following issues are noted from the letter of the project proponent:



(i) There are no developmental works at this site by them. However, the original owner of the site had carried out minor developmental works. The semi-developed site was purchased from Mt. Zion Educational Trust.

(ii) Ministry of Defence has granted NOC vide letter No. 19(79)/11(DN-11Ops) (669) dated 24.08.2011.

(iii) There is a small rivulet Kozhithodu passing through the project site. This rivulet collects water from uphill areas and joins with Pampa River. Due to poor maintenance over the years, it is blocked at various points causing small water bodies in different parts of the project site. The Minor Irrigation Department of the Kerala was entrusted with the study to streamline the flow of rivulet and the Department has studied and suggested measures to maintain the rivulet. It is noted from the report of the Minor Irrigation Department of Kerala that after due alterations that are suggested and carried out in the Kozhithodu, the water logging in the upstream paddy fields will not occur.

(iv) Only minimum area required for the runway, apron, taxiway etc., would be filled and the remaining area will be preserved in its natural form. The previous owner had filled the runway of 1000 x 150 m for airstrip. Therefore, only the area required for runway 1000 x 150 m will be filled to a height of one meter and the soil required for land filling will be met from the elevated area of 14.5 acres available within the site itself. When a contour map was called for confirming the availability of source for soil within the site, as per the contour

*map submitted, the level of elevated area varies from 3 m to 11.5 m with average height of 3.5 m. The soil available in 14.5 acres is 205375 m<sup>3</sup> as against the 1,50,000 m<sup>3</sup>*

*(v) Aranmula is declared by the UNDP as a 'heritage village' due to Uthirattadhi Boat Race and Aranmula mirror which are unique to this village and not based on environmental or physical features. This airport once commissioned will showcase these unique cultural aspects globally and will ensure international visibility ensuring tourist flow.*

72. The following are noted from the letters of the Government of Kerala:

*(i) The State Government vide Notification in SRO No. 185/2011 dated 24.02.2011 had declared approximately 500 acres of land as industrial area, the reclamation was done during pre 2008 period when the Kerala Paddy Land and Wetland Conservation Act was not in force there and hence, the above Act is not applicable. The ecological damages which have already set in unmindful river sand mining during the last three decades that lowered the bed of Pampa River to almost below sea level, among other environmental facts causing degradation, resulted in lowering the ground water table in the riparian areas. Putting the blame of lowering the ground water table on the reclaimed portion of the paddy field would be illogical. The paddy field is left fallow and the natural irrigation facilities have been encroached upon or blocked at several places.*

(ii) No instance or details of the criminal/vigilance cases referred to have been furnished. Further in the order dated 29.03.2012 in Writ Petition ( C) No. 3407 of 2012 filed before the Hon'ble High Court of Kerala by the Project Proponent, it has been directed that the Police Department shall maintain law and order at the work site, if disturbance of any nature is caused for any of the works done by the petitioner. Moreover, the Application No. 38 of 2013 (SZ) filed by Aranmula Heritage Village Action Council represented by its Patron Shri Kummanam Rajasekharan, who is also the signatory in the instant petition was withdrawn and the Tribunal awarded a cost of Rs. 25,000/- payable by the applicant to the respondent's side.

(iii) The Legislative Committee on Environment has not categorically expressed any reservation against the project as such, but also on the other hand, it has recommended that the excess land notified in industrial area except the land under the process of KGS Group may be denotified urgently and orders issued.

(iv) The report of Salim Ali Foundation says that there are extensive wetlands in the village, but there is no identified wetland in Aranmula Village as per the report of the Centre for Earth Science Studies which prepared the wetlands in Kerala. As per the definition of the Kerala Conservation of Paddy and Wetlands Act, 2008, paddy land is not wetland. The provisions of the Central Wetland Act are also similar.

(v) The State Government would like to have modern infrastructure facilities in the State with least disturbance to environment and as

*such the State Government is in favour of the project. The objections against the vital infrastructure and employment generating development projects, which would be a boon to the educated unemployed in the State and such employment generating projects in a State like Kerala with its teeming educated unemployed cannot but be welcomed in the larger public interest and the economic interest of the country, of course, subject to all environmental protection measures as per law. The State Government has decided to take 10% equity in this project vide G.O. (Ms).No. 4/2013/Trans dated 16.01.2013.*

73. As regards the allegation by the Salim Ali Foundation that the EIA report is inadequate, did not recognize the fertile, wetlands on the flood plains of River *Pampa* and presence of endemic and economically important species in the area, non-inclusion of source for filling the land, the EAC has suggested ToRs and the EIA has been prepared as per the ToRs. The EAC has sought additional information on noise level modeling, analysis of impact, traffic management, NOC from Civil Aviation etc., before recommending the project. The ministry has also called for additional information on the details of the area required to be filled, source of material, likely impact and referred back to EAC. The EAC again in August 2012 examined and recommended. The EIA study covered the flora and fauna under Chapter III of the EIA report.

74. The 1<sup>st</sup> respondent, therefore, concludes that the EAC after due consideration of the relevant documents submitted by the Project Proponent and additional clarifications furnished in response to its observations, recommended for

the grant of EC to the project and accordingly, the MoEF granted necessary EC for the project as per the provisions of the EIA Notification, 2006 and its subsequent amendments subject to strict compliance of the terms and conditions.

75. At the outset the 2<sup>nd</sup> respondent/Secretary to Government, Environment Department, Kerala Government took preliminary objection with regard to the maintainability of the appeal on the grounds of jurisdiction and *locus standi* and submits that the above appeal is not maintainable either in law or on the facts and circumstances of the case. The appellant has no *locus standi* to file the above appeal and the tribunal has no jurisdiction to decide the same in an application filed by the Appellant.

76. The interim order has been passed not in accordance with the procedure established by law. The appellant herein is a total stranger to the EC proceedings and does not have any right under the statute to challenge the same. In the present appeal, the appellant has not revealed complete facts, suppressed material facts and therefore the appeal itself is liable to be dismissed at the threshold itself. The issue regarding the construction of Airport at Aranmula by the 4<sup>th</sup> respondent and the allied issues are already pending consideration of the Hon'ble High Court of Kerala in W.P.(C)No.6004/2013 filed by the appellant along with others and also in W.P.(C)No.8794/2013, W.P.(C)No.14220/2013, W.P.(C)No.15101/2013 as well as D.B.P No.145/2013 pending before the Hon'ble High Court of Kerala. The grounds raised and the reliefs sought for in the above Writ Petitions and the present appeal relates to the same and the identical matter.

77. The EIA is the important management tool for integrating environmental concerns in development process and for improved decision making. The very EIA notification issued by MoEF on 14.09.2006 as S.O. 1533 purports to impose certain



restrictions and prohibitions on new projects or activities or on the expansion of the existing projects or activities based on their potential environmental impacts as indicated in the schedule to the notification, and as per the procedure specified therein. Environment Impact Assessment Notification of 2006 has categorized the developmental projects in two categories, i.e., Category **A** and Category **B**. The 'Category A' projects are appraised at national level by EAC. The MoEF has constituted the State Level Environment Impact Assessment Authority (SEIAA) and State Level Expert Appraisal Committee (SEAC) to decentralize the environmental clearance process. These institutions are responsible for appraising certain categories of projects, termed as 'Category B' projects, which are below a prescribed threshold level. 'Scoping' is the primary essential element of consideration of the application for prior EIA clearance by which the EAC determine detailed and comprehensive Terms of Reference (ToR) addressing all relevant environmental concerns for preparation of the EIA report in respect of the project for which environmental clearance is sought. Approved ToR shall be displayed in the website of the MoEF. Therefore, the State Government has no role in the environmental clearance regime.

78. The policy understood as declared by MoEF is that the infrastructure shortages of one country has impeded its investment flow and constrained economic growth. Therefore, for ensuring sustainability of the growth process, it is imperative to remove the infrastructure constraints particularly in energy, roads, ports, airports and urban and rural infrastructure. Thus, projects such as airports are possible and necessary as sustainable development projects in the economic interest of the country. In the case of Kerala such development projects compatible to

environmental protection are warranted in consideration of the growing unemployment as well.

79. The Environment Policy of the State (2009) unequivocally declares the matter of environmental considerations in the development process of the State as follows:

*'1.7. The policy has been designed to suit the specific local conditions of the state of Kerala and to help reorient its development in conformity with environmental perspectives so as to make the development sustainable.*

*1.8. This policy document provides a frame work within which conservation and development can be achieved simultaneously with a view to maximise the quality of life for everyone in the state, optimising the ecological load on the natural systems as well as building up the state's economy while minimising environmental degradation.'*

80. Thus, the environmental fall out, if any, of the airport project at Aranmula can be minimised or prevented by appropriate interventions by the measures depicted in EC granted by the MoEF. In the EC itself several measures are prescribed for mitigation and minimising the probable environmental fallouts. There are well settled substantive and procedural guidelines for environmental clearance. It is understood that the application for EC was processed by the 1<sup>st</sup> respondent as per the usual procedure for clearance. The EC will not be accorded to development projects that may result in irredeemable environmental degradation. So also, the

developmental activities facilitating employment generation in the State having high educated unemployed and unlikely to create large scale environmental impacts or which could be mitigated cannot but be implemented. The MoEF has notified the EIA Notification 2006, under the Environmental (Protection) Act 1986 encompassing environmental conservation, sustainable development, generational equity etc. It is the Expert Advisory Committee constituted as per the provisions of the above notification recommended to the Ministry as early as on 16.12.2011 that the application for prior EC for the Aranmula Airport project is eligible for clearance subject to certain conditions. The recommendation of Expert Advisory Committee was after consideration of the duly prepared EIA report and following the due procedure.

81. The EIA study which is a part of the proceedings can be undertaken only by an accredited agency of the MoEF. It is for the project proponent themselves to arrange for the EIA study through an accredited agency and to submit the report to the Ministry. The public hearing and eliciting the response of the general public are integral parts of the proceedings before the report is submitted for clearance. It was after strictly adhering to all the statutory requirements that the report was prepared and decided upon by the statutory agencies. It is the decision of the EAC what matters. It was 24 months after the EAC report; the decision was taken on environment clearance to the project. The Ministry took the final decision in further consultation with the EAC on all aspects including the petitions received and reports in media against the project. The EAC had as early as on 15/16.12.2011 had taken the decision based on the EIA study Report, which duly considered the environmental / ecological aspects as per the ToR. The EIA report is the *sine qua non* in EIA clearance procedure. It is understood that the MoEF has taken the

decision only on objective, statutory and policy considerations, and not overwhelmed by any extraneous considerations. The environmental and ecological considerations to be appraised in such projects are a function of the EAC. This project appraisal was duly and repeatedly complied with. Thereafter, decision favourable to the project was taken but with conditions what was intimated much earlier. In the appraisal of airport projects the EAC is required to consider the required general information at the outset. All the required environmental and ecological aspects of the project will be duly appraised by the EAC. The EIA was on the basis of probable impacts assessed on *in situ* spatial and temporal considerations and not on what the site was a few decades back. In the case of this project the EIA report which is the statutory material on the environmental / ecological status of the location had been considered by the EAC of MoEF and decision communicated to the Ministry. The MoEF has accorded final clearance to the project after religiously following the procedure contemplated. It is worthwhile to extract a portion of the same for reference:

*'Regarding the allegation by the Salim Ali Foundation that the EIA report is inadequate, did not recognise the fertile wetlands on the flood plains of river Pampa, and presence of endemic and economically important species in the area, non inclusion of source of earth for filling the land, it is stated that EAC has suggested ToRs and the EIA has been prepared as per the ToR. EAC has sought additional information on noise level modelling, analysis of impact, traffic management, NOC from Civil Aviation etc, before recommending the project. Ministry has also called for additional information on details of the area in August 2012, source of material, likely impacts and referred back to EAC. EAC again in August 2012*

*examined and recommended. It is noted that EIA study covered the flora and fauna under Chapter –III of the EIA report’.*

82. As regards the contentions of the appellant based on report of Salim Ali Foundation, the circumstances under which such a study was commissioned and the agency to which it is submitted etc., are conspicuously not disclosed in the appeal. It is not an accredited agency to conduct EIA study for environmental clearance. The appellant is estopped from producing or relying on the Salim Ali Foundation report in impugning the EC granted by the MoEF, In so far as his main objection to EC is that the agency that prepared the EIA is not an accredited one by the Ministry of Environment & Forests. The Salim Ali Foundation (Annexure A2) report is prepared only in just 4 days. More importantly, the very report the appellant relies to bring home and to prove his allegations against the EC is seen to have been prepared with the active involvement of the appellant himself as is duly acknowledged in the Salim Ali Foundation Report (at page no. 12 of Annexure. A2). In page No. 5 of Annexure A 2 also, it is stated that ‘the map was prepared by Shri. Sreeranganathan of Aranmula’ (appellant). Annexure A 2 has no evidentiary value and cannot be relied on Annexure A 2 may be rejected outright as biased. The EC (Annexure A 1) would reveal that the apprehensions and the allegations are unfounded. Those not covered by the actual project particulars as given in Annexure A 1 need not be taken for consideration, for whatever works and activities not categorically cleared at the site as per EC have not been considered for EC and cannot be implemented. It is after a detailed study in which environmental and ecological considerations were duly considered and appraised and that the representations against the project were duly examined that the MoEF has accorded final EC to the project. The date of receipt of application for EC was 27.06.2011. It is seen that the EAC had recommended the



project for EC on 16.12.2011 itself. Thereafter, the case has again been recommended on 17.08.2012. It is only after 2 years of the date of receipt for clearance, i.e., on 18.11.2013 that the final clearance was given by the Ministry. It is to be pointed out that the environmental and ecological considerations have been duly taken care of in the EIA in all the matters related to the environmental aspects of the project, what holds the field is the EC.

83. The project site was a paddy land years ago and now waterlogged. A portion thereof has been reclaimed during the pre 2008 periods when the Kerala Paddy land and Wetland Conservation Act, 2008 was not there. The Principal Agricultural Officer Pathanamthitta has reported that due to the increased seepage from the Pampa Irrigation Canal there is permanent water logging in the paddy fields of Aranmula, Kidangannoor and Mezhuveli villages which resulted in a situation where paddy fields became unfit for cultivation. The biodiversity of the area is typical of the middle stream of river *Pampa*. There are no endemic species in Aranmula puncha (fields). It is due to the environmental degradation of Pampa river and encroachment of canals and streams that connected the paddy fields which were spawning grounds of fishes, to the river that the native aquatic biodiversity dwindled. It is submitted that all the relevant environmental concerns expressed in the EIA report and the petitions filed against granting clearance have been duly taken care of and remedies were stipulated in the final Environmental Clearance. The MoEF has consented the project with 20 specific conditions, ensuring mitigation of the environmental concerns so far raised, with other 7 conditions on maintenance of the rivulet, (*Kozhithodu*), passing through the site. The rivulet portion coming under runway is directed to be constructed with three spans of 15 m x 3.2 m vent. As for biodiversity, the condition is as follows:

*'Though the site is not a wetland, in view of the presence of various plant species proponent shall fill only minimum area required for runway, apron, taxiway etc. and the remaining area will be preserved in its natural form as committed. Only the area required for runway 1000 x 150 m shall be filled with 1 m height. The soil required for land filling shall be met from elevated area of about 14.5 acres available within the site itself. Necessary permission for levelling shall be taken'.*

84. Thus, the project has been environmentally cleared only with stringent impact minimisation conditions, and makes those justifiable in the context of the verifiable ground situations. The clearance stipulations take due care of the environmental and ecological implications if any that may manifest. Whatever environmental concerns now being raised against the project had been flagged in the public hearing and duly recorded. Initially there was not much opposition at the local level and it is subsequent to the public hearing that the opposition to the project was orchestrated. All the aspects that had to be appraised have been duly considered and mitigation or remedial actions stipulated in Annexure A1. It may be seen from Annexure A1 that all the objections and media reports against the project subsequent to the public hearing on environmental matters had been duly examined by the Ministry in consultation with the EAC and appropriate impact minimisation measures suggested to be implemented.

85. The statement that the proposed airport area is 'mainly paddy land and wetland,' which essentially is the flood plains of river Pampa' is not fully correct and hence denied. Wetlands cannot be reclaimed, whereas paddy lands may be filled up

for public purpose in accordance with the procedure in the 2008 Act. A place cannot be paddy land and wetland at the same time. Due to the ecological damages already set in, in river Pampa nearby now there is no regular flooding of the plains as earlier, as the flood water confines to the river channel itself, and such paddy fields are unable to function in such situations as flood plains of the river. As regards loss of ecosystem services, the site is now a degraded land. That the fallow land by its ecosystem services would sustain a larger section of the people than 'the meager benefits of a few people for their comforts' is only an unduly speculative and biased approach. It may be noted that it is the owners of the paddy fields (who apparently had no benefits out of the land) that sold it by their own for non- agricultural activities.

86. The contention that the airport being set up at Aranmula for which EC is given is on the banks of river pampa is not fully correct. It is true that the river is near to the site. The Aranmula Parthasarathy temple referred in the memorandum comes in between the site and the river . The site has no special significance than any other similar paddy fields in the surrounding areas left fallow. The further contention that the project site is a 'pristine environmental area' is not correct. It was a fallow paddy land now abandoned and waterlogged. It is not a paddy field where paddy cultivation is going on. Paddy cultivation had been discontinued in the entire area for years due to various reasons. It is on consideration that it is a project that does not create irreparable environmental damages that the EAC of the MoEF has recommended the project with conditions and all necessary conditions incorporated in the EC. The appellant has no case that the conditions and mitigation measures enumerated in the EC are ineffective or insufficient to remediate the probable environmental impacts at the site.

87. The Kerala State Biodiversity Board has reported that there are no endemic species in this area. The Board also has proposed mitigatory measures which could take care of the probable ecosystem impacts. The repeated reference to 'wetlands' in the Salim Ali Foundation Report (Annexure A2) report might be with reference to the rivulet. Wetland does not include paddy land and river. No such wetlands have been identified here in the wetland map specially prepared for the purpose of the Wetland Conservation Rules 2010. As per Section 2 (xii) of the Kerala Conservation of Paddy land and wetlands Act, 2008, *'Paddy land' means all types of land situated in the State where paddy is cultivated at least once in a year or suitable for paddy cultivation but uncultivated and left fallow, and includes its allied constructions like bunds, drainage channels, ponds and canals.* It may be the ponds (Chaal, Thalakkulam etc.) in the vast paddy fields which are natural or constructed water storage and drainage structures forming part of the paddy land that is being mistaken as 'wetlands'. The intangible ecosystem services of wetlands as mentioned in Annexure A2 report seem wholly irrelevant at the site. The contention that the project area could fetch fish worth Rs.335 - 440 Crore per year from paddy fields which would be dry at some spells (if the drainage system functions) and flooded at other by the river waters are not correct and hence denied. The other statements on dislocation of families, loss and damage to ancestral heritage, etc are not borne out by facts and cannot refute a scientifically prepared EIA report following the ToR.

88. The environmental safeguards stipulated by the MoEF in the EC would enable the proposed project with the least disturbance to the ecology and providing more tangible social and economic benefits than leaving the land fallow. The airport projects get EC, on being assessed by experts and decided by the Ministry of Environment and that the impacts as identified that will not cause grave

environmental problems could be mitigated. The comparative benefits are what matters in such cases. The State Government would like to have modern infrastructure facilities in the state having appreciable employment generation opportunities with least disturbance to environment and as such the state Government has recommended the project. In this context, it is relevant to point out that the Ministry has already granted EC to the Greenfield Airport at Kannur. The objection against the vital infrastructure and employment generating development project which would be a boon the educated unemployed in the state, on arbitrary environmental considerations is ill-advised and baseless. Such employment generating projects in a state like Kerala with its teeming educated unemployed cannot but be welcomed also in the larger public interest and the economic interest of the country, subject of course to all environmental protection measures as per law. While recognizing that environmentally disagreeable activities in ecologically pristine locations shall not be permitted, the environmental fall out of this project, if at all any, can be duly mitigated, through balanced and nuanced measures, creating an enabling process to promote the environmentally sound development project that benefit local livelihoods and economy, than leaving the once fertile paddy lands fallow and abandoned causing more grave environmental problems. The comparative gains of the proposed project would favour its establishment for which the central Government has already consented under the relevant statutes with necessary conditions.

89. In consonance with the avowed policy of State Government for Care and Development, State Government is keen to ensure that the development needs of the State are complimentary to the appurtenant environmental considerations. There cannot be development ignoring environment and State cannot develop until it grows



sustainably incorporating environmental concerns in developmental aspects. Towards this end, greater scientific rigour has been incorporated into environment impact assessment of projects. A project environmentally cleared following all the statutory proceedings and extra examination in further consultation with the EAC of the MoEF may not be assailed on biased, arbitrary and speculative considerations. The second respondent is of the stand that the project could be allowed at the site complying with all the environmental and other conditions stipulated in the EC. Hence, the 2<sup>nd</sup> respondent herein prays that the impugned EC may be upheld and to dismiss appeal.

90. The 6<sup>th</sup> respondent, namely the Secretary to Government, Environment Department of the State of Kerala would state in reply to Appeal No. 174 of 2014 (SZ) and adopted in other appeals as well as below:

91. By virtue of Annexure A 1 order, the 18<sup>th</sup> respondent/MoEF accorded EC for the Airport project as per the provisions of EIA Notification, 2006. The Appellant also further seeks for a direction against respondents 17 and 20 to conduct a public hearing. The appellant also seeks for a direction directing the State Government to complete the proceedings initiated against 19<sup>th</sup> respondent, namely K.J. Abraham of Kozhencherry Village in Pathanamthitta District in the State of Kerala for restoring the reclaimed paddy land. All the allegations raised in the memorandum of appeal are denied except to the extent to which they are admitted hereunder.

92. At the outset the 6<sup>th</sup> respondent/Secretary to Government, Environment Department, Kerala Government took preliminary objection with regard to the maintainability of the appeal on the grounds of jurisdiction and *locus standi* and submits that the above appeal is not maintainable either in law or on the facts and

circumstances of the case. The appellant has no *locus standi* to file the above appeal and the tribunal has no jurisdiction to decide the same in an application filed by the Appellant. The appellant herein is a total stranger to Annexure A 1 proceedings and does not have any right under the statute to challenge the same. In the present appeal, the appellant has not revealed complete facts, suppressed material facts and therefore the appeal itself is liable to be dismissed at the threshold itself. The issue regarding the construction of airport at Aranmula by the 18<sup>th</sup> respondent is already pending consideration of the Hon'ble High Court of Kerala in W.P.(C)No. 8794/2013 and W.P.(C)No. 14220/2013 filed by the appellant herein before the Hon'ble High Court of Kerala and also in W.P.(C)No. 6004/2013, W.P.(C)No. 15101/2013 as well as D.B.P No.145/2013 pending before the Hon'ble High Court of Kerala. The grounds raised and the reliefs sought for in the above Writ Petitions and the present appeal relates to the same and identical matter.

93. Moreover, the appellant herein has already filed an application in Application No. 38 of 2013 (SZ) before this Tribunal to stop all construction activities in Aranmula in which contentions regarding filling up of wetland, proceedings under Land Reforms Act etc were advanced. However, after hearing the State, the appellant withdrawn the application in which he was directed to pay cost of Rs. 25,000/- to the respondents. The appellant has also filed writ petition Nos. 8794/2013 and 14220/2013 before the Hon'ble High Court of Kerala raising various contentions including direction against Government of India not to grant EC also the State Government to resume excess land. It is submitted that appellant is abusing the process of the Court under the garb of a public spirited person before this Tribunal which is the creation of a Statute. Primarily, the appellant has no *locus standi* to challenge the present order. Secondly, the prayers raised in the appeal

cannot be brought under the jurisdiction of this Tribunal as per Section 16 of the National Green Tribunal Act.

94. The impugned EC has been issued by Government of India after analyzing the pros and cons of the project. The EIA report, which is in fact the primary requirement for obtaining EC, had been placed before the Government of India on 16.12.2011. However, the final clearance was issued by the Ministry only on 18.11.2013. i.e., only after two years of the date of receipt of EIA that the final clearance was given by the Ministry. Therefore, the challenge raised against Annexure A 1 on the grounds like non-application of mind is absolutely false and hence denied.

95. The EC is self-explanatory. In the opening paragraph itself, it is stated that the proposal has been appraised as per the prescribed procedure in the light of the provisions of the EIA Notification, 2006 on the basis of mandatory documents. As per Annexure A1, the EAC met on 21<sup>st</sup> to 23<sup>rd</sup> September 2011, 15<sup>th</sup> to 16<sup>th</sup> December 2011 and 15<sup>th</sup> to 16<sup>th</sup> August 2011. It was also explained in Annexure A1 that the project was considered by the EAC in its meeting held on 21<sup>st</sup> to 23<sup>rd</sup> September 2011 and the ToR was finalized including the public hearing. It was also stated in Annexure A1 that ToR for the project was accorded on 13.10.2010 and public hearing was conducted on 10.05.2011 at District Collectorate, Pathanamthitta. It is stated in the EC that major issues in public hearing were about filling up of paddy field, restoration of Kozhythodu a tributary of Pampa River etc. As per the EC, the Project Proponent committed the minimum area required for runway, apron, taxi way etc., and the remaining area will be preserved in its natural form while Kozhythodu will be maintained in consultation with the Minor Irrigation Department, Government of Kerala. It was stated in the EC that representations, news items,

joint petition from MLAs and also a report from Salim Ali Foundation against the project were considered and comments on the issues projected in the representations were sought from the project proponent and Government of Kerala. Comments were provided promptly by Government of Kerala and the issues raised in the representations were considered by Government of India before issuing the EC. The EC was issued only after considering the various objections raised against the project. Therefore, the primary argument of the appellant that the EC was issued without considering the various allegations against the project is not correct.

96. The Government of India has issued the EC considering the fact that the EAC after due consideration of the relevant documents submitted by the project proponent have recommended for the grant of EC for the project. The EC was issued subject to the strict compliance of the terms and conditions set forth therein. Accordingly, the EC depicts in paragraph 10, twenty specific conditions and in paragraph 11, thirty one general conditions. Among the specific conditions, Government of India has directed conditions to prevent any degradation to environment. The specific conditions stipulated as per paragraph 10 of EC are as follows:

*(i) The consent to establish shall be obtained from the Kerala State Pollution Control Board and a copy shall be submitted to the Ministry before starting construction work at the site.*

*(ii) Despite the proponent informed absence of any wet land, the Minor Irrigation Department of the State of Kerala was entrusted to study and streamline flow of Kozhithodu riverlet and on the result of such study, the measures recommended by the department to*

*maintain the riverlet (rivulet) was directed to be carried out with (in) letter and spirit.*

*(iii) Despite the finding of absence of any wet land, in view of the presence of various plant species proponent was directed to fill only minimum area required for runway, apron, taxi way etc. and the remaining area was directed to be preserved in its natural form. (Area required for runway = 1000x150 metres at 1 metre height). Soil required for filling shall be met from the elevated area within the site itself and necessary permission for leveling should be taken.*

*(iv) Prohibition of disposal of solid or liquid waste in Kozhithodu.*

*(v) State Government shall consider the observation of 'Legislative Committee on Environment' about de-notification of excess land except land under the possession of the KGS Group and appraise the Ministry.*

*(vi) Project proponent shall have a master plan for the project and other related facilities. Other facilities shall be considered by the competent authority after a cumulative Environment Impact Assessment is carried out.*

*(vii) Commitments like Maintenance of Kozhithodu, minimum filling of site etc. made through public hearing shall be strictly complied with.*

*(viii) Sewage and other liquid flow generated from the airport should be treated as per the norms laid down from the Pollution*



*Control Board and recycled. Auto conservation fixtures shall be provided.*

*(ix) Solid waste generated shall be properly collected, segregated and disposed as per the provisions of Solid Waste Management and Handling Rules 2000.*

*(x) Recommendations of Environmental Impact Assessment (EIA), Environmental Management Plan (EMP) and Disaster Management Plan shall be strictly complied with.*

*(xi) Installation and operation of DG Sets, if any, shall comply with the guidelines of Central Pollution Control Board.*

*(xii) Energy Conservation Measures shall be taken up as per Energy Conservation Building Code (ECBC) 2009.*

*(xiii) Parking provision shall be provided as per National Building Code of India 2005.*

*(xiv) Switches used for outdoor lighting, generally do not take variation and hence the timer should be used as sensitive to season variations and on the basis of actual length of day/night.*

*(xv) All cooling equipments should meet the minimum efficiency requirements as specified in Energy Conservation Building Code 2007.*

*(xvi) Terminal building shall incorporate features of local architecture in and around area as well as special measures to highlight the Indian antiquity through a museum like corner depicting the same.*

(xvii) *Land use around the airport complex shall be recollected through a plan to control unauthorized development, which may create problems in the operation of the airport.*

(xviii) *Necessary permission shall be obtained for flowing of ground water from competent authority prior to the construction or operation of the project.*

(xix) *Legal action shall be initiated against the project proponent if it was found that construction was started without obtaining Environmental Clearance.*

(xx) *Project proponent will set up separate environmental management cell for effective implementation of the stipulated environmental safeguards under the supervision of a senior executive.*

97. Therefore, the EC was issued after considering the entire objections raised from various quarters and after incorporating preventive and mitigating measures to ensure least environmental degradation.

98. As per Section 16 of the National Green Tribunal Act, the Tribunal can exercise its appellate jurisdiction only in the circumstances enumerated under Sections 16(a) to 16(j) of the Act. The prayers sought by the appellant as prayers b and c at paragraph 7 of page 32 of the memorandum of appeal cannot be considered in an appeal filed under Section 16 exercising the appellate jurisdiction of the Hon'ble National Green Tribunal. As regards prayer (a) sought by the appellant, such prayer cannot be raised by a person like the appellant as per Section 18 of the NGT Act, 2010. The appellant has not sustained any injury by virtue of Annexure A1. No damage has been caused to appellant's property, no death has been resulted

from damage if any, appellant is not an agent duly authorized by any owner of such property or any of the legal representatives of the deceased, appellant is not at all a person aggrieved. Though the appellant purports to challenge the order granting environmental clearance, majority of the averments pertains to disputes relating to the nature of the land, filling of the land, application of Conservation of Paddy Land and Wet Land Act, 2008, invocation of Kerala Land Reforms Act, nature of public hearing etc. None of the grounds raised on the basis of nature of land, application of various state statutes like Conservation of Paddy Land and Wet Land Act, 2008, application Kerala Land Reforms Act etc cannot be agitated and maintained in the present appeal since such matters are not covered under the NGT Act, 2010. Moreover, all the allegations pertaining to the state statutes and nature of land etc., are repeatedly alleged and agitated by the appellant before the Hon'ble High Court of Kerala in W.A. No. 8794/2013 as well as in W.P.(C) No. 14220/2013.

99. As per *Bhopal Gas Peedith Mahila Sangathan Vs. Union of India, 2012(8) SCC 326*, the Hon'ble Supreme Court has declared that only those environmental issues and matters covered under the National Green Tribunal Act, Schedule-1 should be instituted and litigated before the National Green Tribunal. It has been declared that such approach is necessary to avoid likelihood of conflict of orders between the High Courts and NGT. However the Hon'ble Supreme Court did not transfer a case which required administrative supervision connected to Bhopal Gas tragedy to the NGT in the above case. Therefore, the issues raised in the appeal need not be considered by this Tribunal since the appellant has already invoked the Hon'ble High Court of Kerala on the same and similar set of facts regarding allegation of operation of State statutes. As already pointed out appellant cannot

agitate any contentions against the EC since he is not a person aggrieved as per the Act.

100. The appellant has not raised any grounds against the conditions on which EC has been given. On the other hand, the allegations raised by the appellant revolves around factors regarding reclamation of land, application of Kerala Land Utilization order, finding regarding non existence of any wetland, application of Conservation of Paddy Land and Wet Land Act, actual extent of land possessed by the proponent, exemption under the Kerala Land Reforms Act etc. Primarily, in the matter of grant of EC, the pivotal issue is the report of the EAC. The report of the committee cannot be assailed on the basis of any authority or organization who are not competent to comment on ecological matters. It is pertinent to point out that the EAC has already been apprised of the fact that the project site was in paddy land, which required reclamation. The aspect that the proposed site is a paddy land is already intimated to EAC as reflected in EC. Further, the 6<sup>th</sup> respondent/Department of Environment, State of Kerala had corresponded with EAC, the 17<sup>th</sup> respondent i.e., Department of Environment of Forest, Government of India. By the letter dated 26.06.2012, the 6<sup>th</sup> respondent had categorically informed that it is to be examined by the Government of India that whether the mitigative measures, if any suggested would be sufficient. Apart from the above, as regards the alleged depletion of ground water level due to filling it was reported that there were water recharge methods. These factors have been duly included in the final environmental clearance issued and the EC permits reclamation of paddy land with necessary permission to the extent of 1000 x 150 meter x 1 meter (height) in addition to the land already filled up and sold by the 19<sup>th</sup> respondent. Therefore, the Government of India has duly considered the representations, petitions, comments etc, received for and against

the project, and the important environmental concerns were addressed as reflected in the EC. The appellant has no case that the specific conditions as per paragraph 10 and general conditions as per paragraph 11 thereto are not sufficient or relevant so as to mitigate the probable environmental degradation.

101. The allegation raised by the appellant that Government of India has proceeded on the assumption that the proposed site is a dry land is not correct and hence stoutly denied. The allegation that the word 'wet land' is used opposite to the word dry land is misconceived. It is submitted that the term 'wet land' is defined under the (Wet Land Conservation and Management) Rules 2010 as per Rule 2(g). According to Section 2(g) Wet Land means .....*"an area of marsh, fen, peat land or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh brackish or salt, including areas of marine water, the depth of which at low tide does not exceed 6 metres and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wet land and zone of direct influence on wet lands that is to say the drainage area or catchment region of the wet lands as determined by the authority, but does not include many river channels, paddy fields and the coastal wet land covered under the notification of the Government of India in the Ministry of Environment and Forest, S.O. number 114(E) dated the 19<sup>th</sup> February 1991 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub Section (ii) dated the 20<sup>th</sup> February 1991."*

102. The Wet Land Conservation Management Rules has been notified by the Central Government as per the Gazette Notification No. GSR 951(F) dated 04.12.2010 to enhance the wetland conservation and management efforts in the country. These rules have been issued in exercise of powers conferred by



Environment (Protection) Act 1986. As per Rule 8(2) of the Rules, the State Government had designated the Department of Environment and Climate Change as the nodal agency for regulating the use of wetlands in the State as per GO (Rt) No. 51/11/Env. Dated 30.05.2011. As per Rule 6(2) of the Wet Land Conservation Management Rules, the State Government shall prepare within a period of one year from commencement of rules, a 'brief document' identifying and clarifying the wetlands within their respective territories in accordance with the criteria specified under Rule 3. Rule 3 stipulates those wetlands which shall be regulated under the rules and their classifications. Therefore, by virtue of notification dated 30.05.2011, the Department of Environment and Climate Change has prepared an inventory by incorporating the guidelines such as geographical dealiation of wetlands, demarcation on the basis of the zone of influence along with proper maps, calculated the size of the wetland and given an account of preexisting rights and privileges consistent or not consistent with the ecological health of the wetland. It is worthwhile to mention that proposed project site for which the EC clarification has been granted under the Annexure A1 is not a wetland as per the inventory prepared under the Wetland Conservation Management Rules, 2010. The project site is only a paddy land which is now waterlogged and degraded and which was lying as unfit for paddy cultivation for the past so many years. It is also stated that the EC has been issued after considering all the relevant facts and circumstances of the environmental issues and for issuance of EC, no orders and consent of the State Government other than those required as per the notification dated 14.09.2006 on enviornmental clearence is necessary. It is submitted that the EIA proceedigns are completed and *de novo* hearing is not requiried. The aspects of public hearing narrated by the petitioner were already considered for the EC and Governemnt of India has

considered not only the report of the environmental assessment committee but also the objection raised from various quarters by sending representations, petitions etc., to various departments of the Government of India. The EC also reflects consideration of the same.

103. As per the instructions from the Kerala State Pollution Control Board, public hearing was fixed for 10.03.2011 by the KSPCB after consulting with the District Collector of Pathanamthitta. Wide publicity was given on 06.02.2011, in a national and two regional vernacular dailies, in the manner and within the time specified in the Notification. More than 30 days' time was given between the date of publication and the date of hearing and the notice was published in the dailies. However, due to the declaration on 01.03.2011 about the forthcoming Elections to the Kerala State Legislative Assembly on 13.04.2011, the date of public hearing was postponed to 29.04.2011 by the answering respondent after consulting the District Collector. Wide publicity was again given through the same national and regional vernacular dailies on 27.03.2011. More than 30 days time was again given between the date of publication and the date of hearing. The date of public hearing had to be again postponed to 10.05.2011 due to a *hartal* call at Pathanamthitta on 29.04.2011. This postponement was also given wide publicity through the same National and Regional vernacular dailies. This publication was made on 28.04.2011.

104. The soft copies of the draft EIA report and the Malayalam and English versions of its executive summary were made available for public scrutiny in the State Pollution Control Board's website [www.keralapcb.org](http://www.keralapcb.org) and its hard copies were made available at the following offices:-

*a. District Collectorate, Pathanamthitta*

- b. District Industries Centre, Kozencherry*
- c. District Panchayat, Pathanamathitta*
- d. Elanthoor Block Panchayat*
- e. Aranmula Grama Panchayat*
- f. Mezhuveli Grama Panchayat*
- g. Mallapuzhassery Grama Panchayat*
- h. Science Technology & Environment Department, Thiruvananthapuram*
- i. Pollution Control Board, Pathanamthitta District Office*
- j. Pollution Control Board, Head Office, Thiruvananthapuram*

105. The Draft EIA report and the Malayalam and English versions of its executive summary were made available for public scrutiny at the above places for more than eighty days from 06.02.2011 to 10.05.2011. Thus, the documents were made available for more than the mandatory 30 days for the public to furnish their responses. The Public Hearing as announced was held at 11.00 AM on 10.05.2011 at the Conference Hall of the Pathanamthitta District Collectorate. The venue was selected considering its proximity to the project site and the facilities available at the Conference Hall to conduct the hearing. The distance from the project site to the venue was only 15 km. There were 80 participants in the public hearing and most of them were from Aranmula and adjoining areas. The hearing was presided over by the District Collector. The proceedings of the public hearing, representations in original received before and during the hearing and video recording of the hearing were forwarded to the MoEF as required under the EIA Notification, 2006. The proceedings of the public hearing were prominently displayed at the Head Office and Pathanamthitta District Office of the State Pollution Control Board and action was also taken to similarly display the Proceedings at the offices listed above. Thus, it is

submitted that the allegation that the public hearing was not conducted in accordance with rules is not correct and hence denied.

106. Hence, the 6<sup>th</sup> respondent in this appeal, namely the Secretary to Government, Department of Environment, Government of Kerala states that the EC has been issued after following the procedure established by law and seeks to dismiss the appeal.

107. M/s. K.G.S. Aranmula International Airports Ltd., has filed a common reply affidavit in respect of all the appeals referred to above and the gist of the reply of this respondent can be stated thus:

108. The State of Kerala is internationally renowned for its lush, green vegetation, its untouched and pristine forests as well as its ancient temples and hoary tradition. The state lies along the coastline, to the extreme south west of the Indian peninsula, flanked by the Arabian Sea on the west and the mountains of the Western Ghats on the east. The Western Ghats, bordering the eastern boundary of the state, form an almost continuous mountain wall, and as such, almost the entire state is characterized by hilly terrain. The backbone of the economy of this densely populated state has always been tourism, and the emphasis on the same has only intensified over the recent past.

109. The above unique features of the state have made better transport facilities fundamental to the sustained growth and development of Kerala. The hilly terrain of the state means that undulating and winding roads are a feature of road travel in Kerala, frequently traversing steep and narrow sections of ghat roads. The roads are also frequently subject to monsoonal storms, and as a result, travelling on

these roads takes far longer than similar distances elsewhere and is also far more dangerous and strenuous for passengers. In the Pathanamthitta District of Kerala lies the temple of Lord *Ayyappa* in Sabarimala, which is one of the most important and 2<sup>nd</sup> most visited religious centre in the world. The annual pilgrimage to Sabarimala undertaken by devotees has been estimated as the largest in the world. Hence, the need and demand for improved connectivity and accessibility to the area is not merely a state priority, but also assumes national and international significance. The location of an airport near the town of Sabarimala is therefore, not only a necessity in the context of the needs of devotees, the spurt to the local economy and the convenience for every stakeholder. The development of the area immediately surrounding the *Ayyappa* temple is impossible as the entire hill and indeed, the surrounding areas are of immense religious, cultural and historical significance as well as being densely forested. In fact, a significant extent of the entire district is covered by forest. As such, there remain very few locations which can even be considered for the construction of an airport. Moreover, the region is also home to a large population of emigrant *Keralites* who have settled in foreign lands and hence, the need for an international airport in the area is widely felt in the local as well as nonresident communities. The need for the present project and the objections that have been raised against the same have to be considered in the above context. The fundamental principle of environmental law in general is that of sustainable development. It is submitted that the law of environmental protection does not insist that man ought not to change the surroundings he lives in to his advantage. It is only necessary that the same is tempered with and balanced by due regard to protecting vitally important aspects of the environment.



110. In the state of Kerala, which as explained above, is a small but fertile region, an insistence on an extent of 500 acres of contiguous lands without vegetation as a precondition for any large development, however necessary, is unreasonable and impracticable. The project is one of national importance as evinced by the announcement of approval for the Aranmula Airport Project by His Excellency, the President of India in his address of the joint session of both the Houses of Parliament on 21.02.2013. The land for the proposed project has been carefully selected as one where there is no irreparable damage caused to the environment. The land required for the project was bought from the land owners directly by this Respondent by paying the market price without involving any eviction or compulsory acquisition or displacement of any houses, commercial areas or places of worship. The proposed international airport will generate direct employment to 1500 and indirect employment to more than 6000 people. The project will provide a boost to the State of Kerala in the field of tourism, pilgrimage, trade and industry and other spheres, thereby bringing sizable sum of revenue to the State and local Government departments, and shall be advantageous to the numerous expatriates who are hailing from the Central Travancore. The airport location is close to multiple tourist destinations such as Kumarakom, the backwaters of Alappuzha and high ranges. This proposed Airport is only one hour drive from Sabarimala, the second largest pilgrim centre in India and fourth largest in the world with annual pilgrims of around 4.5 crore. This airport facility will considerably reduce the traffic and related pollution during the peak season. The majority of non-resident Indians (NRI) passengers and non-resident Keralites (NRK) passengers of Trivandrum and Kochi Airport originate within 50 km radius of this site. 40% of the Kerala air traffic is

hailing from the influential zone of the airport. It is expected to serve four districts in Kerala State namely Pathanamthitta, Kottayam, Idukki and Alappuzha.

111. This airport will considerably reduce the road traffic to Kochi and Thiruvananthapuram. The consequential benefits of the airport will extend to poorer devotees and pilgrims to Sabarimala as well in as much as the demand for and traffic in other forms of public transport such as rail and road transport will reduce. The airports play a vital role in the development of industry and commercial trade as they offer crucial services for transportation of goods and passengers from one place to another. They are also essential for domestic and international tourism, where limitation of time is the key factor. While airports play catalyst to economic development, the economic developments in turn generate demand for the former. As a result, the aircraft fleets of airlines are growing at a rapid speed with improved technology, better speed, time, capacity, etc., to cater to ever-increasing demand. Thus, continuous improvement of airports needs airport management for planning, developing and operating efficiently and profitability to meet the present and future need of air travel; both, domestic and international. It is submitted that the people of Kerala would like to have modern infrastructure facilities in the State with least disturbance to environment and as such the State Government, representing the public interest, is in favour of this project. The objections against the vital infrastructure and employment generating development projects, which would be a boon to the educated unemployed in the State, are baseless. Such employment generating projects in a State like Kerala, with its teeming educated unemployed, cannot but be welcomed in the larger public interest, and in the economic interest of the Country as a whole and the respondent is following the guidelines and procedure for setting up of this Greenfield Airport. There is phenomenal growth in air traffic that

has been enabled by liberalized policies of the Government of India. The growth rate of passenger traffic has steadily increased. This rapid growth in passenger traffic has put enormous pressure on airport infrastructure causing severe congestion at major airports. The anticipated investment in airport development during the Eleventh Plan is over Rs 40,000/- crore, both from public and private sources, including for Greenfield airports according to Greenfield Airports Policy adopted by the Central Government. The project is supported by an overwhelming majority of persons living in and around Aranmula and that only a few persons with vested interests are opposed to the same. The present appeals under reply are not maintainable either on law or on facts. The appellants have no *locus standi* to file the present appeals. Smt. Sugathakumari, Shri. Sreerenganathan and Shri. Induchoodan have already approached the Hon'ble High Court of Kerala in WP (C) No. 6004/2012 challenging the same matter, wherein this Appellant (in Appeal No. 172/2013) is the 2<sup>nd</sup> Petitioner in the said case. In the Relief Portion, the Relief No. 2 Prayer "to declare 9th Respondent (this Respondent herein) or others have no authority to establish a Green Field Airport at Aranmula in the land covered by the notification declaring the project area as industrial area and environmental clearance if any, obtained by the 9th Respondent (this Respondent herein) is neither legal nor valid or sufficient raising almost the same environmental issues raised in this Appeal. The said matter is an issue pending consideration by the Hon'ble High Court which had arisen directly and substantially between the parties or their privies. This is a clear abuse of the process of law. The filing of this case itself is oppressive. These appeals lack bona fides and are frivolous, vexatious & oppressive and will result in miscarriage of justice. This Appellant (in Appeal No. 172/2013) is *sub silentio* regarding the 2<sup>nd</sup> Relief sought in WP (C) No. 6004/2012 pending before the Honourable High Court of

Kerala. The Proposed Airport as stated by the Appellants is not on the banks of River Pampa. The said Airport is situated almost 2 Kms from the Pampa River as can be clearly seen in the EIA Report and will be located at Aranmula, Kidanganoor and Mallapuzhassery Villages, Kozhencherry Taluk, Pathanamthitta District. Aranmula was declared by the UNDP as a "Heritage Village" due to *Uthirattathi* Boat Race and Aranmula Mirror which are unique of this Village and not based on environmental or physical features. This Airport project once commenced will showcase these unique cultural aspects globally and will ensure international visibility, ensuring tourist flow. This respondent will definitely preserve the rich heritage of the area and the sanctity of Sree Aranmula Parthasarathy Temple. Further, it is submitted that the fears of damage to the structure of the temple are completely unfounded and speculative. These allegations have been made even though they fall outside the scope of the enquiry of this Hon'ble Tribunal in a mischievous attempt to prejudice this Hon'ble Tribunal. This Respondent has purchased the fully developed land where no agricultural operation was being conducted. The statement to the effect that Mallapuzhassery, Aranmula and Kidanganur Villages where the airport is to be set up are agricultural villages with paddy being the crop is incorrect and misleading. The property was purchased by this respondent as completely reclaimed with no agricultural operation, for the last 3 decades, as is certified by the Agricultural Officer, besides the dry land and Rubber Plantations. A portion of the water logged land might have been filled about ten years back by the prior owner. Therefore, any legal action ought to be taken only against the prior owner and the present respondent cannot be punished for the same. The appellants were aware of the said situation at that time but were silent regarding the said conversion at that time and did not raise any objection regarding

the said conversion before any authority. The State of Kerala vide GO (MS) No. 30/12/Agri dated 16/02/2012 granted permission for filling up an area of 429.28 ares (10.62 acres) in the adjoining "Aranmula *Punja*", declaring the so called wetland as not cultivatable. This was because the character of the land had been permanently altered and no agricultural activities were done for several years and permission was therefore granted for the purpose of starting Cape Engineering College and it is also learnt that District level Committee has also recommended for filling an area of 10 acres for Aranmula Vasthu Vidya Gurukulam in the same Aranmula *Punja*. The Agricultural Officer, Pathanamthitta by its letter dated 29/02/2012 certified that the said 429.28 ares of land is not cultivatable and without any agricultural activities whatsoever for the last so many years. The present proposal involves development of the airport at Mallapuzhassery, Aranmula and Kidanganoor Villages, Kozhencherry Taluk, Pathanamthitta District, Kerala on a plot area of 500 Acres which includes certain water logged fallow land, dry land and Rubber Plantations. After purchasing the land, this respondent had not converted or reclaimed any part of land in its possession or made any attempt to fill up the land. M/s Enviro Care India Pvt Ltd is an ISO Certified company approved by the MoEF. At the time of presentation, there was no QCI implemented accredited Scheme (NABET) and all the consultants enlisted and approved by the first respondent were eligible for conducting EIA. The Office Memorandum issued by Government of India, MoEF clearly provides accreditation of the EIA Consultants and after the review of the accreditation progress by the QCI/NABET, the competent authority has approved a list of 265 consultants, wherein said Enviro Care India Pvt. Ltd., is arrayed as Sl.No. 73 and they are permitted to appear before State Level Expert Appraisal Committee/State Environment Impact Assessment Authority (SEAC/SEIAA) for



Category "B" Projects and the EAC for Category "A" Projects till 30th June 2011. These 265 Consultants will also be permitted to certify various documents, as consultants, such as EIA/EMP. The MoEF after evaluating the EIA Report submitted by Enviro Care India Pvt. Ltd is completely aware that the said agency is competent to prepare an EIA report since the said agency already submitted EIA reports for Chennai, Raipur and Vadodara Airports. Hence the statement to the effect that EIA has not been prepared by an accredited agency and the EIA submitted by the present Respondent is inadequate, misleading and is a fraud perpetrated by this Respondent, is totally false, misleading and is denied *in toto*.

112. The Kerala State Pollution Control Board conducted public consultation as provided in Clause 111 stage 3. As provided thereunder a public hearing was conducted by the Kerala State Pollution Control Board with the District Collector, Pathanamthitta in Chair. The Kerala State Pollution Control Board issued public notices in vernacular dailies *Malayala Manorama* dated 06.02.2011, *Mathrubhumi* daily dated 06.02.2011 and *Kerala Kaumudi* dated 06.02.2011 about the hearing to be held on 10.03.2011 at Collectorate Conference Hall, Pathanamthitta. The notice was published in English daily as well. The notice was also published in the website of the Kerala State Pollution Control Board. On 10.03.2011, the public hearing has been adjourned and the same has been published in the daily dated 09.03.2011. Since the General Election to Kerala Legislative Assembly 2011 was declared, public hearing was adjourned to 29.04.2011 (because a *harthal* has been declared on that day by the Left Parties) and again to 10.05.2011 on the basis of the direction of Election Commission, since the Model Code of Conduct is enforced from the date of announcement of election schedule by the Election Commission and only on the basis of the directions given by the Election Commission, Public hearing was

conducted on 10.05.2011. For the adjourned hearing also public notices were published in news papers dated 28.04.2011. The notice of hearing was affixed in all public places like Village Office, Panchayat Office, Collectorate and so on. The notices were published at public places by hoardings and banners. The public hearing was conducted on 10.05.2011 at Conference Hall, Collectorate, Pathanamthitta with the District Collector in chair. In the meeting, representatives of the people and public were present. Hence the statement to the effect that the Public Hearing conducted for the purposes of the Airport in a clandestine undemocratic manner in violation of the EIA Notification, 2006 is absolutely false and denied *in toto*. The appellants were aware of the entire proceedings and did not raise any objection regarding the non participation in public hearing before any authority or in the Writ Petition pending before High Court of Kerala in WP (c) No. 6004/2012. The date of public hearings and its adjourned hearings are clearly notified in news papers. The Order of the Taluk Land Board declaring 232 acres of land purchased from the previous owner as excess land has been set aside by the Hon'ble High Court in CRP (LR) No. 187/2013 on 27.11.2013 and the Hon'ble Court has directed the Taluk Land Board to hear the matter afresh. Since the appeal is pending before Government of Kerala to exempt the land required for the airport project under Section 81 (3) of KLR Act, the Hon'ble High Court has directed this respondent not to construct in 232 acres, which form part of a larger extent, till the decision of TLB is taken within six months or otherwise terminated. The statement to the effect that we have not disclosed about the cases pending before the High Court is absolutely false and denied. The Aranmula Heritage Village Action Council in page No. 10 of their Appeal have admitted that whatever litigations stated to have been filed against this Respondent were not pending at the time of submitting the application on

28.06.2010. As per the impugned order, only the minimum area is required for filling. Moreover, all the cases mentioned in the Writ Petitions are not admitted so far and also no interim order also passed against this Respondent. Moreover in paragraph 5 of the Appeal filed by the Aranmula Heritage Village Action Council, they have also admitted that only the Hon'ble High Court of Kerala has got jurisdiction to entertain any issue relating to the State Acts. For the proposed project, the EIA Report was prepared and ToR finalized on 13<sup>th</sup> October 2012. The public hearing was held at District Collectorate, Pathanamthitta on 10<sup>th</sup> May 2011 and the EAC recommended the project for clearance on 15.12.2011. This Respondent has also furnished periodical information called for by the Ministry of Environment & Forests from time to time and answered all queries raised by the Ministry in this regard. The issues dealt with are briefly summarized herein under.

A. Aranmula, Pathanamthitta District is connected by a good network of State Highway Roads. These roads have two-line riding surface of minimum 35ft with adequate space on the sides for future expansion. Following are the four vital arteries that pass through Aranmula:-

*(a) Pathanamthitta-Aranmula.*

*(b) Thiruvalla-Aranmula.*

*(c) Chengannur-Aranmula.*

*(d) Pandalam-Aranmula.*

B. Good connectivity from Alappuzha, Kottayam and Idukki Districts exists towards Pathanamthitta District. They further gain importance due to non-resident

Malayalies of above four districts, Sabarimala pilgrims during season, Sabarimala pilgrims proceeding to shrine every month, pilgrims converging at *Maramon* Convention every season, tourists (domestic and foreign) and regular traffic. The Airport will have a proper network of road communication around it. The allegation that the EIA must also include within its scope roads that may or may not be built in future by the State or Central Governments, which are completely different entities and which are governed by different norms and regulations, is clearly unsustainable. It is submitted that providing roads is a public function which is governed by different standards and policies and there is no requirement of an EC for such state activities.

C. Airport Land is interspersed with a small rivulet '*Kozhithodu*' which is crossing the runway. This rivulet eventually merges with the famous Pampa River. A cross vent of 20 x 2.5 m underneath the runway is planned to maintain free flow of water in *Kozhithodu*. General lay of the land is towards *Kozhithodu* from South and North which facilitates free flow of water from both ends of run way towards *Kozhithodu* and the proposed drain.

D. Energy Conservation methods:

Energy conservation is a global concern and this Respondent will endeavor to implement all energy saving programmes conforming to nation's clean energy future while undertaking Airport construction.

Following are certain measures proposed to be implemented:-

(a) *Solar energy. It is one form of energy which helps in maintaining the ecological balance. Maximum use of Solar Energy will be*

*adopted through PV system and solar power plant processes for external/internal electrification.*

*(b) Buildings are responsible for 40% of energy use in India and they are said to be major contributors to global emissions. Essential guidelines at micro level in line with the proposed Energy conservation building code will be complied with in respect to internal lighting, refrigeration, electronic/electrical gadget usage etc., through a Standard Operating Procedure (Dos & Don'ts).*

*(c) Construction sector has enormous environmental impact. Current trend of making structures "green" will be transplanted in true spirits on to ground while carrying out the Airport construction. Primary focus will be on salient aspects like preserving terrain, retention of green coverage, maximising natural cooling/natural lighting and minimum use of unsustainable building materials. Wastewater recycling, eliminating reliance on external source like water harvesting etc. Moreover, periodic energy audit by experts will be in place to monitor the programme.*

#### **E. Land Filling:**

The Company has purchased about 300 acres of land in a single block, from the owners in a more or less developed form, the development of which was completed in 2000-2004. The area required for building the runway to a distance of almost 1500 meters have already been developed as part of the original plan by the then owner of certain lands to have a flying club in the area. Certain areas of the



project land purchased by us are dry land and Rubber Plantations. There is not and never has been any proposal to fill up the entire project area (500 acres) and our filling will be restricted to runway and terminal building sites, leaving the remaining in its natural form.

F. Plan for site filling:

The present respondent will be developing an additional area of 1000 meters for the runway with a maximum width of 150 meters and to a height of 1 meter. The soil required for this filling is calculated as under;  $1000 \times 150 \times 1 = 150000$  m<sup>3</sup> of soil.

G. Source of Soil:

There is an elevated portion at the site which is the source for filling. This elevated area is around 10 to 12 acres of land, with an average height of 3 to 5 metres. Quantity of Soil available by leveling this elevated portion will be about 2 million cubic meters. The soil available at this elevated place is laterite and identical with the soil at the site. Hence there is no need to bring soil from outside. The Appellants claim that the present respondent is leveling hills for the purpose of leveling the surface is completely fanciful and is denied. No such leveling has been carried out by the respondent.

H. Impact of filling:

As the present project requires filling the bare minimum area required for safe airport operation, leaving the remaining area in its natural form, there will be no environmental impact due to this activity. The recharge also remains unaffected. On

the whole, the minimum filling with the local material ensures environmental homogeneity and produces no impact on environment.

I. Wetland Conservation:

There are a few patches of water logged area at this site, due to poor flow. There is no notified wet land in the project site. But, there is an accumulated water body which remains scattered in different parts of the project site. This is mainly due to the fact that for the last more than 30 years, there was no agricultural operation in the area, which has resulted in frequent flooding during rainy seasons and remaining as wasteland during summer. Further, there is a small rivulet (*Kozhithodu*) which is passing through the project site. This rivulet collects water from uphill areas and joins the Pampa River, down below. The flow in this rivulet due to poor maintenance over the years is blocked at various points causing small water bodies in different parts of the project site. The flow in this rivulet is also blocked by silting and by growth of African weeds. In fact it is submitted that it was at the instance of the present respondent that the Minor Irrigation department, Government of Kerala has cleared the blockage of *Kozhithodu* by dredging for about 8 km from uphill upto the Pampa River. When the present respondent purchased the land from the original owner, the whole area was remaining wasteland with patches of water bodies and some of the portion of *Kozhithodu* (rivulet) partially blocked. It was the present respondent which ensured minimum interference with the environment and topography of the area. To ensure smooth flow of water through *Kozhithodu* (rivulet), this respondent has entrusted the work to the Minor Irrigation Department of Government of Kerala to study the topography, water flow, and to ensure that the accumulated water in the project site is systematically collected and smoothly flows through the *Kozhithodu*

(rivulet) down to Pampa River. This will increase the water table in the vicinity. Accordingly, the Department has devised ways and means to ensure smooth flow of water to Pampa River and to avoid flooding of the area during monsoon. The expenses required will be met by this respondent as per Government norms. This project design will be put in place during the implementation of the project. In order to protect and preserve the natural flow of *Kozhithodu* (rivulet), which will be cutting across the runway, it has been designed in such a way that this *Kozhithodu* (rivulet) passes right under the runway without any hindrance. This respondent has also planned excellent drainage system along the runway and around the terminal building to ensure traffic safety coupled with protection of environmental factors. These measures will ensure a comprehensive conservation plan for the water flow in the area and a systematic drainage system so that there is no flooding in and around the airport, which is an imperative security prerequisite. The water requirement will be only 7550 litres/day which is not on large scale as specified. The present ground water potential is sufficient for the water requirement. The area receives plenty of rainfall and natural recharge will take care of water replenishment. The proposed project has been planned with utmost care to ensure minimum interference with the environmental factors. The present respondent also undertakes that this project will be implemented with extreme care and with comprehensive conservation plan with strict adherence to the guidelines issued by the MOEF and in accordance with the MoEF's Environmental Impact Assessment Guidance Manual for Airports. The allegations that data on sensitive habitats, wild or endangered species in the project area is to be collected from Zoological Survey of India (ZSI), Botanical Survey of India (BSI), Wildlife Institute of India (WII) and Ministry of Earth Sciences is wholly misleading as there is no data to show that any such species or habitats are native

to the project site. The proposed airport is in the public interest and for the development of the country. There will not be any destruction of any ecosystem. The recommendations made by the Salim Ali Foundation report do not reflect the actual prevailing environmental situation of Aranmula. It depends largely upon certain suppositions and conjectures in arriving at the conclusion and highly arbitrary and without any proper scientific basis. The particular land, which is a fallow land, could be productively used for this ambitious airport project. Salim Ali Foundation appears to have taken up the study about the environmental impact of Aranmula Airport *suo motu*. Unfortunately, it is not a competent agency recognized by the Airport Authority of India, to study the environmental impact of Airports in India. The Report by Salim Ali Foundation on the whole is too vague, superficial, incomplete and most unscientific. The report *per se* reflects distorted background of the project, whims and fancies of the researchers and does not explain the research methodology, which has been adopted for this study. This very fact makes this project report totally unscientific, biased and hence cannot be relied up on. The list of flora and fauna recorded as part of the study is all of generic nature, which is available throughout the State of Kerala and hence have no preservative value. It is a mere reproduction of standard material with little relevance to the project site. The Salim Ali Foundation report does not disclose the size of the population, sample collected, sampling technique adopted and the reasoning for arriving at any definite conclusion, which are most crucial to any scientific report.

113. The criticism about the EIA report prepared by the Enviro Care in light of the supposed findings of the Salim Ali Foundation is superficial and without any basis in data, statistical analysis and qualitative appreciation. It is also pertinent to note that none of the members of the Salim Ali Foundation had cared to associate

with this Project during the EIA study, Public hearing or in any other way till this date, and to ventilate their points/concerns, for reasons best known to them. The gross inadequacies, total lack of systematic research methodology presumptions and assumptions have been summarized as 14 recommendations submitted at the end of the study by Salim Ali Foundation. All these recommendations are mere suggestions without any scientific background or substantiating evidence. It appears to be a more emotional report on hearsay evidence, false press reports, inadequate or total ignorance about airport projects and above all without even an attempt at a scientific approach to the whole issue. There is not a single recommendations substantiated by scientific data or authenticated reports. The commercial viability of a fifth airport, flight frequency etc., as mentioned in the recommendations of the Salim Ali Foundation are commercial questions which are irrelevant to the appellants. The very fact that the entire funding is met by the investor without a single Rupee of public fund makes these contentions totally baseless and irrelevant. The utilization of the land for Airport project where there was no agricultural operation for more than two decades and which has been lying as a fallow land for more productive, employment oriented and infrastructural development project for the overall development of the State of Kerala with special reference to Pathanamthitta District is a boom to economic growth of the State. This respondent have taken every care and caution to protect and preserve the natural habitat, flora and fauna, rivulets and such other natural features, in the best possible form, with least interference during the implementation of the Airport Project. The Government of Kerala after evaluating the whole project in *toto*, developmental contribution, employment potential, better connectivity and nature friendly has taken 10% stake in this Greenfield Airport Project. The appellants



have attempted to claim that there are wetlands in the area which will be affected by the project. But there is no identified wet land in Aranmula Village as per the Report of the Centre for Earth Science Studies (CESS). The CESS has prepared a report on wetlands in Kerala in which there is no mention of any wetland in the Pathanamthitta district. Thus, the allegation that the present Respondent has purchased consent for the proposed project is vehemently denied. It is submitted that the irresponsible manner in which such serious allegations have been made by the appellants is indicative of the frivolous nature of the present appeals. As the definition of the Kerala Conservation of Paddy and Wet Land Act, 2008, Paddy Land is not wet Land. The provisions of Central Wet Land Act are also similar. Therefore, it seems the authors of the Report of Salim Ali Foundation have confused Paddy Land with Wet Land.

114. Regarding the allegation raised by the appellants based on the Salim Ali Foundation Report that the EIA Report is inadequate, did not recognize the fertile, wetlands on the flood plains of river Pampa and presence of endemic and economically important species in the area, non inclusion of source of earth filling the land, it is stated that that EAC has suggested ToR's and the EIA has been prepared as per the TOR's. EAC has sought additional information on Noise level modeling, analysis of impact, Traffic management, NOC from Civil Aviation etc, before recommending the Project. The MOEF has also called for additional information on the details of the area required to be filled, source of material, likely impacts and referred back to the EAC. The EAC, again in August 2012 examined and recommended the approval of the project. It is noted that the EIA study conducted by Enviro Care India Pvt., Ltd., covered the methodology of EIA, scope of EIA, study

period, air environment, noise environment, water environment, land environment, eco-system, socio-economic development, project description, disaster management plan, basic infrastructure required, existing environmental status, ambient air quality, noise environment, water quality, soil quality, land environment, biological environment, socio-economic environment, identification and prediction of impacts, positive environmental impacts, negative environmental impacts, environmental management plan, environmental impact statement etc., by adopting sampling locations, micrometeorology, temperature, rainfall, relative humidity, wind direction, wind speed, dust fall etc., These were all dealt with extensively by the report and the attempt of the appellants to contradict the findings of this extensive study on the basis of flimsy material is clearly untenable. A habitat or an area comprises of different kinds of Plants and animals within its boundary. The distribution of flora and fauna in the given area represents the biological environment. The biological portion of the environment includes, what is present in the study area, its values, and its responses to impacts description of community uniqueness, the dominant species, and an evaluation of rare or endangered species. The study was conducted by Enviro Care Pvt. Ltd., like the field monitoring stations were installed in four different locations in 10 km radius area. The bio-diversity studies were carried out in seventeen transacts point of 10 km radius. Thus, the EIA study covered the flora and fauna under Chapter-III of the EIA Report. The EAC, after due consideration of the relevant documents submitted by this respondent and additional clarifications furnished in response to its observations, have recommended for the grant of EC for the project as per the provisions of EIA Notification, 2006 and its subsequent amendments,

subject to strict compliance of the terms and conditions envisaged in the impugned order. The impugned order passed by the MOEF is a speaking order and this respondent declares that it will adhere and follow strictly the specific conditions laid down in the said order. The said order is not given overnight, but was granted after a detailed and exhaustive analysis of all the environmental aspects. The method of assessment of impact including studies carried out, modeling techniques adopted to assess the impact where pertinent has been elaborated in the EIA Report. The report details the impact of the baseline parameters, both during the construction and operational phases and suggests the mitigation measures to be implemented by this respondent. The report also covers the planned environmental monitoring program and has provided the overall justification for implementation of the project and has explained how the adverse effects will be mitigated. It is submitted that therefore factors such as noise pollution, which are a natural consequence of any human activity, especially airports, have been duly considered before granting the impugned E C . All efforts will be made to mitigate these effects but it is humbly submitted that the principle of sustainable development governs the decision to permit a project in the public interest such as the present project and the application of the said principle by the MoEF in the present case has been most satisfactory. The allegation that more than 50 items were taken up on the day and that hence, there could be no application of mind is clearly incorrect in so far as the additional material which was specifically requested by the MoEF before clearance was granted shows that the decision was taken over a period of time and that only the formal approval was finally given on the same day. The decision making process was carried on over a long period and over elaborate deliberations. The Ministry of

Civil Aviation published the Greenfield Airport Policy enabling private establishments to establish and operate airports in India and accordingly this respondent had decided to establish an airport at Aranmula, Kozhencherry Taluk, Pathanamthitta District. By virtue of Clause 2.4 (b) of Greenfield Airport Policy, a company registered under the Companies Act, 1956 and having its place of business in India and having the criteria prescribed thereunder is an "Airport Company" entitled to set up an airport. This respondent satisfies all the conditions in Clause 2.4 of Greenfield Airport Policy and is an Airport Company defined thereunder. The appeal for setting up of an airport at Aranmula under the Greenfield Airport Policy was submitted to the proper authority. The Airports Authority of India by the letter dated 15.10.2009 recommended the site for the International Airport. This Respondent then applied to the State of Kerala for a *No Objection Certificate* for establishing Airport at Aranmula. This respondent after cabinet clearance by order dated 08.09.2010 issued No objection Certificate for establishment of the airport. The respondent State of Kerala in exercise of powers conferred under Sections 2 and 5 of Kerala Industrial Single Window Clearance Boards and Industrial Township Development Act, 1999 (Act 5 of 2000) declared the proposed area in which the Airport is to be established as an Industrial area of the State and constituted a Single Window Clearance Board for the said area to be known as "*Greenfield Airport, Aranmula Single Window Clearance Board*" for the purpose of speedy issue of various licenses, clearances or certificates required under the various State enactments and constituted 15 Member Board. The Government has appointed the Secretary to Government (Industrial Promotion), Industries Department to be the Chairman of the Board and the Managing Director, KINFRA as convener. On

12/11/2010, Government of Kerala after evaluating the comprehensive developmental impact which this Airport project will bring to the State of Kerala were pleased to give direction to the District Collector to initiate every action to commence the construction of the project including the registration of the land in the name of this Respondent and based on this District Collector has given direction to the Additional Tahsildar, Kozhencherry for mutating the property in the company's name. Accordingly this respondent purchased the land required for the project and mutation was effected in the Company's name, based on the permission given by the District Collector, Pathanamthitta. The District Collector also gave direction to the Sub Registrar, Aranmula to effect registration of properties in the name of this Respondent.

115. The Ministry of Defence, Government of India by its proceedings dated 24.08.2011 addressed to the MoEF gave NOC for setting up of airport at Aranmula. Since the proposed airport is within 150 km within the existing airports, the respondent obtained consent from the MoEF for establishing the Green Field Airport at Aranmula. It is submitted that if the proposed Airport is beyond 150 km of an existing Civilian Airport prior approval of the Central Government is not necessary by virtue of Clause 9.1 of Exhibit R4 (b) Policy. Clause 9.1 of Exhibit R4 (b) Policy makes it clear that the Director General of Civil Aviation (DGCA) is the competent Authority to give clearance for the setting up of a new Airport within 150 km from an existing civilian airport. Thus, the Exhibit R4 (j) consent issued by the MoEF satisfies the requirement under Clause 9.3 of Exhibit R 4 (b) Policy. Kerala Traffic has grown five times in last eight years from two million to 10 million. Kerala economy depends on foreign remittance of Rs 60,000 crores per year. One out of three Keralite uses Airport facility and out of 3 crore population, 1



crore people has travelled by air. Recently, the first respondent has given Environmental Clearance for the Kannur Airport in Kerala, which is situated only Eighty Five Kilometers from the existing Calicut and Mangalore Airports. This respondent has purchased the fully developed land where no agricultural operation was being conducted. The property was purchased by this Respondent as completely reclaimed with no agricultural operation, for the last 3 decades, as is certified by the Agricultural Officer, besides the dry land and Rubber Plantations. The State of Kerala vide GO (MS) No. 30/12/Agri dated 16/02/2012 granted permission for filling up an area of 429.28 ares (10.62 acres) in the adjoining "Aranmula Punja", declaring the so called wet land as not cultivatable. This was because the character of the land had been permanently altered and no agricultural activities were done for several years and permission was therefore granted for the purpose of starting Cape Engineering College and it is also learnt that District level Committee has also recommended for filling an area of 10 Acres for Aranmula Vasthu Vidya Gurukulam in the same Aranmula Punja. The Agricultural Officer, Pathanamthitta by its letter dated 29/02/2012 certified that the said 429.28 Ares of land is not cultivatable and without any agricultural activities whatsoever for the last so many years. The statement to the effect that construction of the airport is in violation of the provisions of the Kerala Conservation of Paddy and Wet Land Act, 2008, Kerala Land Reforms Act, 1963, Environment Protection Act, 1986, Land Acquisition Act etc are false and denied *in toto*. In any event, the present Tribunal is not concerned with alleged violations of state enactments as they fall beyond the purview of the Scheduled enactments to the National Green Tribunal Act. This respondent does not make any representation of facts and it is the

appellants which are continuously suppressing material facts and defaming the image and reputation of this respondent through media and unnecessarily dragged this respondent into litigation with ulterior motive. This respondent has purchased the property starting from 27.12.2010 from Kozhencherry Charitable Educational Society and others. In that deed the nature of property is stated as "dry land". At the time of purchase of the property itself, the nature of land which was purchased from Kozhencherry Charitable Educational Society was in a developed state. The major portions of the land are rubber plantations. After purchasing the land, this respondent had not converted or reclaimed any part of land in its possession or made any attempt to fill up the land. This respondent has not done anything whatsoever till this date to fill/reclaim the purchased land or convert any *poramboke thodu* or filled any *Kozhithodu* (rivulet) as alleged by the appellants. The revenue authorities also confirmed that that this respondent has not filled any land. The present respondent had purchased certain lands, which were already converted prior to enactment of Conservation of Paddy Land and Wet Land Act, 2008. The Aranmula Grama Panchayat has passed a resolution dated 22.09.2004 and also issued a letter to the Prior owner of certain lands supporting conversion of land. The Kozhencherry Charitable Educational Society owned 232 Acres of land spread over in three villages- Aranmula, Mallapuzhassery and Kidanganoor Villages in Pathanamthitta District. This respondent cannot be held liable for the conversion of land by a prior owner before the enactment of the Act. Hence, the allegation to the effect that this respondent is continuing the illegal activity of filling paddy and wet lands is denied in *toto*.

116. This respondent had approached the Hon'ble High Court of Kerala for granting adequate and sufficient police protection for its employees and workers in their duties in connection with the establishment of Aranmula airport project. The Hon'ble High Court vide its order in W.P.( C).No. 3407 of 2012 dated 15.02.2012 has directed the police authorities to give necessary and adequate protection to proceed with the work, after examining all the documents/sanctions received from both Central and State Governments and hearing the Advocate General. In the aforesaid judgment, the Hon'ble High Court has reiterated that the very establishment of International Airport at Aranmula is for "public utility". The Writ Petition filed by this appellant before Hon'ble High Court as W.P. (C). No.6004/2012 has been tagged together along with W.P. (C).No. No. 3407/2012 and the Hon'ble High Court have again reiterated that sufficient police protection should be granted for any construction work being done in our property.

117. The present project has received support from all government at every level as evidenced by the letter of the Government of Kerala dated 26.09.2011 addressed to the Ministry of Civil Aviation expressing its support to the establishment of the Airport at Aranmula. This respondent who is implementing the project has purchased the land in a more or less developed form and we have obtained all clearances as per the Greenfield Airport Policy, promulgated by the Government of India. Considering the statutory and constitutional position of the State Committee, this respondent has agreed to carry out all the recommendations, applicable to this respondent in letter and spirit. This respondent is committed to do this developmental infrastructure project strictly in accordance with law, absolute transparency and all out protection to the nature

and environment.

118. The Kerala State Pollution Control Board conducted public consultation as provided in Clause 111 stage 3. The Kerala State Pollution Control Board had issued the summary of the details of the proposed project and public consultation including the details of executive summary and EIA Report of the project and made available for reference in the following offices like District Collector, Pathanamthitta, District Industries, Kozhencherry, District *Panchayat* Office, Pathanamthitta, Elanthoor Block *Panchayat* Office, Elanthoor, Pathanamthitta, Aranmula Grama *Panchayat* Office, Aranmula, Pathanamthitta, Mallapuzhassery Grama *Panchayat* Office, Pathanamthitta, Science, Technology & Environment Department, Sasthra Bhavan, Pattom, Thiruvananthapuram, District Office, Kerala State Pollution Control Board, Makkamkunnu, Pathanamthitta and Head Office, Kerala State Pollution Control Board, Thiruvananthapuram. In the said notification, it is clearly mentioned that all concerned persons are welcome to communicate comments on environmental aspects of the project within 30 days of the date of publication or to participate in Public Consultation. As provided there under a public hearing was conducted by the Kerala State Pollution Control Board with the District Collector, Pathanamthitta in the Chair. The Kerala State Pollution Control Board issued public notices in vernacular dailies *Malayala Manorama* dated 06.02.2011, *Mathrubhumi* daily dated 06.02.2011 and *Kerala Kaumudi* dated 06.02.2011 about the hearing to be held on 10.03.2011 at Collectorate Conference Hall, Pathanamthitta. The notice was published in English daily as well. The notice was also published in the website of the Kerala State Pollution Control Board. The environmental public hearing was scheduled on 10.03.2011. But due to the announcement of the date for General Election to Kerala Legislative

Assembly 2011, the Chief Electoral Officer instructed to defer the public hearing till the election process was over. In accordance with that, the public hearing was postponed to 29.4.2011. Since a *harthal* has been declared on that day by Left Parties, the Public Hearing has been re-adjourned to 10.05.2011. Since the General Election to Kerala Legislative Assembly 2011 was declared, public hearing was adjourned to 29.04.2011 (because of *harthal*) and again to 10.05.2011 on the basis of the direction of the Election Commission, since the Model Code of Conduct is enforced from the date of announcement of election schedule by the Election Commission and only on the basis of the directions given by the Election Commission, public hearing was conducted on 10.05.2011. The Election Commission is entitled to issue such directions under Article 324 (1) of the Constitution of India as it thinks fit, for conducting free and fair elections and for maintaining the purity of election process. Election Commission is a constitutional authority under Article 324 of the Constitution having plenary of power and directed to defer till the election process is over. For the adjourned hearing also public notices were published in newspapers. The notice of hearing were affixed in all public places and public places like Village Office, Panchayat Office, Collectorate and so on. The notices were published at public places by hoardings and banners. The public hearing was conducted on 10.05.2011 at Conference Hall, Collectorate, Pathanamthitta with District Collector in the chair. In the meeting representatives of the people and public were present. This respondent who is implementing the project has purchased the land in a more or less developed form and we have obtained all clearances as per the Greenfield Airport Policy, promulgated by the Government of India. Considering the statutory and constitutional position of the State



Committee, this respondent has agreed to carry out all the recommendations, applicable to this respondent in letter and spirit. This respondent is committed to do this developmental infrastructure project strictly in accordance with law, absolute transparency and all out protection to the nature and environment.

119. The entire meeting was video graphed and sent to the MoEF. Amongst 250 people participated in the hearing of whom 80 persons signed in the minutes book. Moreover, there is no prescribed quorum for the public hearing as contemplated under the Appendix IV of 6.2 of the procedure for conduct of Public Hearing. It is submitted that in pursuance of the public hearing held on 10.05.2011 and on the basis of the minutes of the meeting and all relevant records and the subsequent detailed scrutiny by the EAC recommendations were made to the MoEF, the first respondent. On the basis on the recommendation made by the said Board, the EAC, Government of India has recommended the EC for the airport project. After hearing and perusing documents, video and other connected records, E A C recommended the project for EC to the first respondent, MoEF. Thus, the stipulations in Exhibit R 4 (b) have been fully complied with and also as per Schedule-IV for the Procedure for Public Hearing and since the Model Code of Conduct is enforced in the State of Kerala by the Election Commission and only on the basis of their directions only, Public hearing was conducted on 10.05. 2011. This appellant failed to file any objection or raise their concerns regarding the said Public Hearing or any environmental impact, if any to the Kerala State Pollution Control Board within 30 days of the date of publication of the notice which have been already produced and marked as Exhibit R 4 (q). The impugned order has been passed by the MoEF after reviewing the adequacy of the consultation process and examined the procedure followed as

per MoEF notification.

120. There will not be any environmental hazard as alleged by the appellants. M/s Enviro Care India Pvt. Ltd., is an ISO certified company approved by the Airport Authority of India. The said Company conducted detailed impact study on the establishment of the airport at Aranmula and submitted report. This respondent made the presentation about the environmental aspects before the Expert Appraisal Committee of Ministry of Environment and Forests. After satisfying that the proposed Airport does not have any environmental impact, recommended to the Government as per Exhibit R 4(O). The procedure adopted is an elaborate one. There are several stages for obtaining EC. Firstly, we have to identify an agency approved by Airport Authority of India, who is competent to study environmental impact assessment and submit an EIA report. M/s Enviro Care is an ISO Certified Company and approved by Airport Authority of India at that time. Secondly, the company so engaged will conduct a field study for one year touching all aspects of nature, climatic conditions, flora and fauna, water, air, pollution aspects, noise, visibility, rainfall etc. Thirdly, based on the primary data collected in the year, they will prepare EIA. This will be submitted to MoEF, the first respondent through Kerala State Pollution Control Board. The first respondent after examining the EIA report and evaluating our presentation before them will finalize the ToR. These aspects will be again studied and report will be submitted to EAC along with this respondent's presentation. If the report and presentation based on the ToR is approved by EAC, then they will direct for holding a public hearing at the District Headquarters after giving wide publicity through print and publishing media including hoardings, newspaper advertisements etc. During the public hearing, any person of the locality

who has any interest whatsoever in the project can come and present his point of view regarding the project and all such points will be addressed satisfactorily. Thereafter, the minutes of the meeting prepared by District Collector, Pathanamthitta, will be read out and was unanimously passed by the Public so assembled. This minute along with the video recording of the proceedings will be forwarded to MoEF, the first respondent, by the Kerala State Pollution Control Board to EAC. The EAC after scrutiny of the minutes and attending the presentation by us, if satisfied will recommend the project for clearance to the MoEF. The present respondent has undertaken the whole process satisfactorily and successfully. The impugned order has been passed by the MoEF after reviewing the adequacy of the consultation process and examined the procedure followed as per MoEF notification.

121. The statement to the effect that evacuations of families will take place as a result of the project are totally baseless, false and far from truth. Not a single person was evicted so far and this is a deliberate false propaganda to create fear psychosis among the local people and to provoke them to agitate against this project, which will definitely bring sustainable development to the State of Kerala. The statement to the effect that there are more than 1000 families residing in the said region is absolutely false and denied *in toto*. The major portions of the land are rubber plantations and fallow lands. The averments that there are about 700 houses in the proposed airport land are false and hence denied. There will not be any eviction, acquisition or displacement of any houses. As directed by the Government, this respondent has negotiated with land owners and land has been purchased in conformity with the prevailing market value in the locality. The Google Map produced pertains to the entire locality consisting of

more than 3000 Acres. The proposed airport area is limited to 500 Acres. Hence, the question regarding evacuation of people historically, culturally and economically connected with the region does not arise and there is no violation of the right to life as guaranteed by Article 21 of the Constitution of India. The Government of Kerala after evaluating the project *in toto* including connectivity, infrastructure development, employment potential and comprehensive development to the State were pleased to take 10% equity in the project and also ordered that Government *puramboke* land essential for the operations of the airport shall be given to the Company after levying market price vide G.O (Ms) No. 04/2013/Trans dated 16/01/2013. In fact, the local people are in favour of this airport. The Governments have given permission to proceed with this airport project and is a continuing policy of both the Governments. Persons having vested interest are raising objections. Already employment for several persons has been given by the Company. Several skilled and unskilled workers are working for the Company for the purpose of establishing this Airport. The impugned EC has been issued by the 1<sup>st</sup> respondent only after a proper study of the extensive EIA submitted by this respondent. The allegations that the EIA Report is invalid as M/s Enviro Care Pvt. Ltd., is not a qualified agency is clearly untenable. True Copies of the Office Memorandum issued by Government of India, Ministry of Environment and Forest dated 28.06.2010 and dated 31.12.2010 regarding accreditation of EIA consultants is produced. The allegations regarding the basic information submitted by this respondent are absolutely false and denied. At the time of giving basic information on 28.06.2010, what all are stated in the information are true and correct. As already stated, the present respondent has purchased the land in a developed state

and most of the lands are lying as water logged fallow land, dry land and Rubber Plantations. The previous owner Kozhencherry Charitable Educational Society owned 232 acres of land spread over in three villages- Aranmula, Mallapuzhassery and Kidanganoor Villages in Pathanamthitta District. As per the Wetlands (Conservation and Management) Rules, 2010, List of Wetlands in India Identified as *Ramsar* Sites under *Ramsar* Convention on Wet Land, wherein no portion of the airport project has been identified as “Wet Land” in the appended Schedule. Moreover, there is no protected Wetland in the Project area as per the said rules. It is true that there is no pending litigation against this respondent at the time of submission of information in Form I of the appeal. Hence, the statement to the effect that this respondent had made false statement regarding the pending litigation against the Project at the time of submission of the appeal is absolutely false. There is no local land use plan. Moreover, there is no zonal classification in the airport area and hence the land will be used only for the airport purpose with strict adherence to the conditions stipulated in the impugned order. There is no need for any demolition as there is no structure in the project area. There is no need for any further reclamation as the project area has been purchased in a developed state. There is no need for any reclamation work in this project. Most of the project site is in a developed form/rubber plantation and dry land. The purpose regarding the sensitive man-made land uses (like hospitals etc) are to be interpreted as items directly or indirectly affecting the operation of the airport. It is necessary to identify the presence of such obstructive structures, for which the present respondent has separately conducted Obstruction Study before embarking on the project, after the submission of the basic information. This will complement the appeal. The aerial



distance is for the purpose to identify any man- made structures like hospital that would interfere the operation of the Airport. This study was conducted by a comprehensive and mandatory obstruction study by M/s. Aero Survey, G-11, Second Floor, Green Park Extension, and New Delhi, who is a recognized agency for conducting Obstacle Study for Airport Project by Civil Aviation, Airport Authority and DGCA. There is no protected monument within the area which will be affected by the proposed project. Hence, there was no misrepresentation by the respondent. Kaviyoor temple, Aranmula temple and other monuments are not affected by the temple and are not monuments officially protected by the Archeological Survey of India.

122. Challenging the very same grounds raised by the appellants, an appeal was filed by Aranmula Heritage Action Council represented by its Patron Sri Kummanam Rajasekharan, who has also challenged the same before the First Respondent, as Appeal No. 38/2013 before this Tribunal has been withdrawn and this Tribunal awarded a cost of Rs 25000/- payable to the respondent's side. Further, the Kerala State Legislative Committee on Environment has not expressed any reservation against the project as such but on the other hand, it has recommended that the excess land notified as Industrial Area, except the land under the possession of this respondent is to be de-notified and orders issued. The Committee consisting of 8 Members of the Legislative Assembly under the chairmanship of Shri C.P. Mohammed examined the allegations and submitted their report on 12.06.2012. The main findings and recommendations of the Committee have been answered by this respondent to the MoEF, the first respondent which is as follows:-

123. A. The project should be implemented after considering the Topography environmental study and discussion with the concerned departments:-

This Project has complied with all the above recommendations. The EIA study was carried out by Enviro Care India Pvt. Ltd, Madurai, which is a recognized agency for conducting and preparing EIA report. Thereafter, the ToR were formulated by the EAC in the 91<sup>st</sup> EAC Meeting held on 21<sup>st</sup> to 23<sup>rd</sup> September, 2010 and intimated to us vide MoEF Letter No. 10-51/2010-IA.III dated 30<sup>th</sup> October 2010. The public hearing was held on 10.05.2011 with the District Collector, Pathanamthitta in the Chair and cleared by the EAC on 21<sup>st</sup> to 23<sup>rd</sup> September 2011. Thereafter, based on the article in news paper "The Hindu" dated 02.01.2012, the issues raised were again re-examined on 105<sup>th</sup> Meeting of the EAC held on 16<sup>th</sup> to 17<sup>th</sup> August 2012 and cleared the project. Hence, all the formalities stipulated by the first respondent has been complied with.

B. The opinion of the local public has to be considered:

Public hearing which was held on 10.05.2011 with the District Collector in chair was attended around 250 local people and all of them have unanimously supported the project. The minutes of the meeting has been submitted along with video graph by the Kerala State Pollution Control Board vide Kerala Pollution Control Board vide Letter No. PSB/HO/PTA/04/2011 dated 13.05.2011. Further, it has been certified by the Agricultural Officer, Pathanamthitta that there is no paddy cultivation in that area for so long and hence the land identified for

the project is waste land.

C. There is a Government land in the project site and action should be initiated to recover the same:

The Government *vide* G.O. (Ms) 04/2012/Trans dated 16.02.2013 has already taken 10% stake in the project and have decided to transfer the Government land within the project site to this respondent at market price.

D. The rivulet (*Kozhithodu*) passing through the project site is seen blocked due to silting. This may be addressed and natural flow restored.

This respondent has conducted a Hydrological study of rivulet (*Kozhithodu*) with reference to Aranmula airport through the Department of Minor Irrigation, Government of Kerala and as per their recommendations, the blockade in the *Kozhithodu* has been removed and natural flow restored.

E. Efforts to be made for reviving agriculture in the area which has been lying as wasteland due to shortage of water:

No Economic Agriculture/Operation is possible in the area as the land has already been reclaimed and the local farmers abandoned the agriculture for the past so many years.

F. The Kerala Government should hold discussion with all connected departments before declaring any areas Industrial Zone.

The project area has been declared as Industrial area as per G.O. (P) No.

54/11/ID dated 24.02.2011, after observing all formalities. The recommendation of the committee has been accepted by the Government.

G. The Government may examine the various judgments by High Court of Kerala regarding the filling of Agricultural land and earnest efforts must be made to implement the same.

The Government has accepted this recommendation.

H. The Government should initiate action against persons who has filled and blocked the *Kozhithodu*.

Action has already been initiated against the miscreants who had filled and blocked the *Kozhithodu*. An agreement has signed between the KGS Group and the Assistant Executive Engineer, of Aranmula Minor Irrigation sub division and as per the agreement; dredging has already been done for smooth running of water.

I. The area outside the project which has been notified as Industrial area may de-notified:

The Government has already initiated action to de-notify the excess land from the notified area.

J. The action has to be initiated against person who had converted agricultural land in the area:

The Government has already initiated appropriate action against the persons as directed.

K. The EAC of the State Government has not conducted any study about the project

site. Hence, the Govt .may examine the circumstances under which the State Pollution Board has recommended theProject to Government of India.

124. The Pollution Control Board has recommended this Project after observing all the formalities and after examining the EIA Report prepared by the Enviro Care India Pvt. Ltd., Madurai. The public response recorded during the public hearing, after visit to the site and perusal of all the connected records.

125. All these suggestions have been taken on board by the present respondent and that the proposed project will be constructed strictly in accordance with the provided by the MoEF and the terms thereof. The project area has been declared as "Industrial Area" by the Government of Kerala under due process of Law thereby stipulating all formalities. The appeal period for challenging the notification is 30 days and nobody till date has challenged the said notification within the stipulated period. The statement to the effect that the MOEF had granted the impugned order without application of mind is vague and totally false and frivolous. There is no acquisition of land as alleged by the Appellants.

126. The suggestion that the proposed runway cannot possibly be constructed in the proposed site is plainly absurd which is based upon an early map of a much smaller extent of land. The proposed project is within a 500 acre area and the same can easily accommodate a 2800 m runway and the detailed plans of the proposed project clearly demonstrate the same.

127. The present respondent has not violated the EIA Notification, 2006 as alleged. The airport has been proposed in an area of 500 acres, of which this



Respondent had purchased more than 350 acres as preliminary step. Simultaneously, this respondent have to work out the orientation of the runway, lay out for the taxiway, apron, fire and rescue facility etc which are primary aspects associated with the implementation work. The preliminary work includes feasibility study, financial viability, hydro graphic study, land survey, budgetary allocation and identification of suitable site etc. The impugned order passed by the MOEF is a speaking order and has been passed after considering all relevant environmental factors, and after due consideration of the relevant documents submitted by this respondent and additional clarifications furnished in response to its observations. The EIA has only thereafter recommended the grant of Environmental Clearance for the project as per the provisions of EIA Notification, 2006 and its subsequent amendments, subject to strict compliance of the terms and conditions as envisaged in the impugned order. The present respondent hereby undertakes that it will comply with the specific conditions envisaged in the impugned order in letter and spirit.

128. On the above grounds, the respondent namely M/s. K.G.S. Aranmula Airport Projects Pvt. Ltd., seeks to dismiss the appeals.

129. M/s. Enviro Care India Pvt. Ltd., the 5<sup>th</sup> respondent in Appeal No. 19 of 2014 (SZ) in reply would state as follows:

This respondent is a company who has been actively involved in developing cleaner environment throughout the country, more particularly in the region since 2004 and an I.S.O 9001 certified company having Bureau of Indian Standards (BIS) accreditation and having laboratory facilities accredited by National Accreditation Board for Testing and Calibration Laboratories (NABL) and the Department of

Science and Technology for chemical and biological testing. The company is having National Accreditation Board's certification for Education and Training (NABET) from Quality Council of India (QCI) and the respondent is also doing consultancy services such as EIA/EMP study, risk assessment, detailed project report proposals and environmental audit and training for several turnkey projects.

130. The EIA study conducted by this respondent for the airport project covered recognized and accepted methodology of EIA, scope of EIA, study period, study period, air environment, noise environment, water environment, land environment, eco-system, socio-economic development, project description, disaster management plan, basic infrastructure required, existing environmental status, ambient air quality, noise environment, water quality, soil quality, land environment, biological environment, socio-economic environment, identification and prediction of impacts, positive environmental impacts, negative environmental impacts, environmental impact assessment, environmental management plan, environmental impact statement etc by adopting sampling locations, micrometeorology, temperature, rainfall, relative humidity, wind direction, wind speed, dust fall etc., This respondent has already EIA reports for Chennai, Raipur and Vadodara airports and it was based on these reports the said projects were successfully completed.

131. At the time of submission of the report and presentation, there was no QCI implemented accredited scheme (NABET). As per the provisions of law and other regulations governing the conduct of environmental study and consequent submission of the EIA report, all consultants enlisted and approved by the MoEF are eligible for conducting EIA and this respondent is also an enlisted and approved by

the MoEF. The Office Memorandum issued by the MoEF clearly provided accreditation of the EIA consultants listed therein and after the accreditation process by the QCI/NABET, the competent authority has approved a list of 265 consultants wherein this respondent is arrayed as serial No. 73. These 265 consultants are also permitted to certify various documents such as EIA/EMP in their capacity as recognized and accredited consultants.

132. This respondent has conducted a detailed impact study regarding the establishment of an airport at Aranmula and submitted a detailed report to the authorities. The said report is submitted based on the ToR approved by EAC. This respondent had also attended the public hearing held at the conference hall of the District Collector, Pathanamthitta. This respondent had done a field study from July 2010 to October 2010 for collection of base line data. After submission of the application on 02.07.2010 by the Company, this respondent had started the study from July itself for one season (three months) which is also included in the ToR. This respondent had conducted field studies touching all the aspects of nature, climatic conditions, flora and fauna, water and air pollution aspects, noise, visibility rainfall etc., The EIA study was conducted covering prescribed methodology of EIA and etc., as aforesaid and adhered to the ToR prescribed by the EAC. A habitat or an area comprises of different kinds of plants and animals within its boundary. The distribution of flora and fauna in the given area represents the biological environment. The biological part of the environment includes, what is present in the study area, its values, and its responses to impact description of community uniqueness, the dominant species and an evaluation of rare or endangered species. During the course of the study conducted by this respondent, field monitoring stations were installed in four locations in 10 km radius area. The bio diversity

studies were carried out in seventeen transacts points of 10 km radius and the EIA study carried by the respondent covered the flora and fauna under Chapter-III of the EIA report. The EAC consists of experts in disciplines such as eco system management, air/water pollution control, water resources management, flora and fauna conservation and management, land use planning, social sciences/rehabilitation, project appraisal, ecology, environment health and other subjects area specialists and other representatives. The said Committee twice recommended for the EC for this airport project after satisfying themselves after viewing the presentation and the EIA report of this respondent and after due consideration of the relevant documents submitted by various parties, agencies and other authorities and after additional clarifications were furnished in response to the observations/queries raised by various persons/organizations and authorities as the case may be. The appellant is trying to give an impression that approval was granted in a lackadaisical manner which is false. This process is going on for years and this respondent has done a valid and thorough study of environmental impact of setting up the said airport at the location to the ecology, environment, flora and fauna, land etc., and submitted the report which presents the correct position and the generalities as it exists at the location of the study.

133. The EAC has recommended for the grant of EC for the project as per the provisions of EIA Notification, 2006 and its subsequent amendments. The EIA study has been conducted and report submitted based on the ToR pertaining to Aranmula site. This report covers the planned environmental monitoring programe and provided overall justification for implementation of the project and it also explained how the adverse effects can be mitigated. This respondent has downloaded the Google Map and enclosed in the EIA report to give the actual

status of the present condition of the site and to mention the lie of the land and nature of the site. The entire field study was made during July 2010 to October 2010 and the same covers all the relevant aspects. The water requirement is only 7550 litres/day which is not on a large scale and the present ground water table potential is sufficient for the water requirement. The area receives plenty of rainfall and the natural recharge will take care of water replenishment. The designed capacity of the actual sewage is 7M<sup>3</sup> per day and after taking into account the future expansion, the designed capacity of STP is 50 M<sup>3</sup> per day. As per the EIA Notification, 2006, the study area should be within 10 km radius of the site and the study has been conducted based on ToR and as per Chapter IV regarding description of EIA guidelines for airports. The method of assessment of impact includes studies carried out, modeling techniques adopted to assess the impact which has been elaborated in the EIA report. The report gives the details of baseline parameters, both during construction and operational phases and suggests mitigation measures to be implemented by the airport company. The air sampling equation was done and is set out in page No. 62 of the report and followed the necessary parameters as set out in page No. 74. As per clause 3.9.3 of the report, particulate matter-PM 10, PM 25, Sulphur di oxide and oxides of nitrogen are within limits in and around the project site. Carbon monoxide is very limited in the area and this respondent has conducted the ambient air quality standards as per the new norms. The hydrocarbons can be reduced by developing a green belt and air environment and noise impact have been mentioned at page No. 101 and 102 of the report. The disposal of hazardous waste and the solid waste generation can be made as per the guidelines prescribed from time to time. In any case, the airport company has to obtain necessary consent to establish and consent to operate from the Kerala State



Pollution Control Board. The ToR has been prepared for the airport sector after duly catering to the commonly expected environmental concerns and the identification of specific issues by the proponent company and the ToR has been prepared the EIA report upon the approval of the ToR by the EAC and this respondent in the EIA report has studied various environmental parameters which would occur during construction and operational phases of the airport project for assessment of the impact on the surrounding environment. No part of the project area of 500 acres is wetland and the revenue records would evidence to this effect. There is no need to reclaim any part of the said area and further no cultivation has taken place in that area for several years. As per the Wetlands (Conservation and Management Rules), 2010, a list of wetland in India identified as *Ramsar* Sites under the *Ramsar* Convention of Wetland is set out and no portion of the land included in the Aranmula airport project is found in the identified wetland and the repeated contention of the appellants that the project site consists of wetland is not supported by record.

134. The rivulet which was identified as passing through the land was blocked and clogged and water was not flowing for years and the water was flowing in the said rivulet now and the same has been and will continue to be safeguarded. The paddy lands can be reclaimed for public purposes as per Kerala Conservation of Paddy land and Wetland Act, 2008. The project land is a degraded land with water logging and invasive plant species affecting native bio diversity and the project site has no ecological/geographical significance other than the fact that the said land was paddy land more than 20 years ago and is now a fallow, water logged land unfit for paddy cultivation as is evident from the report of the Agriculture Officer. The paddy lands are not wetlands.

135. The area is not a heritage site due to any aspect of the land or the people and the heritage status has not been granted for any of the environmental sectors. The heritage status is granted to the area only due to 'Uthirattadhi Boat Race' and the 'Aranmula Mirror' which are unique to this village and which will not be affected by the establishment of an airport in the project area. There are no protected monuments in the project area which will be affected by the establishment of an airport and though the temple and the mast are not monuments protected by the ASI, they will be protected and will not be affected by the airport project. The alleged issues raised in the report of the Salim Ali Foundation could erode the validity of the EIA study are denied by this respondent.

136. The ToR along with the compliance report is clearly mentioned in the EIA report after examining the following aspects:

- (i) baseline environmental quality along with projected incremental load to the proposed project activities such as ambient air quality,*
- (ii) analysis and submission of details of comprehensive risk assessment and disaster management plan including emergency evacuation during natural, man-made disaster integrating with airport such as fire detection and fighting, bomb threats, earthquake, and oil spillage,*
- (iii) Examining separately the details of construction and operational phases both for Environmental Management Plan and Environmental Monitoring Plan with cost and parameters,*
- (iv) Examining road/rail connectivity to the project site and impact on the traffic due to the proposed project/activities,*

- (v) *Examining the details of aforestation measures indicating land and financial outlay, landscape plan, green belts and open spaces, and a thick green belt has been planned all around the nearest settlement to mitigate noise and vibration etc., if any,*
- (vi) *Examining and submitting the details of noise modeling studies and mitigative measures,*
- (vii) *Examining the details of water requirement, use of treated waste water, preparation of a water balance chart and source of water vis-à-vis waste water to be generated along with treatment facilities to be proposed.*
- (viii) *Details of rain water harvesting proposals which should be made with due safeguards for ground water quality by maximizing recycling of water and utilization of rain water,*
- (ix) *Examining the details of solid waste generation treatment plant and its disposal,*
- (x) *Identification, prediction and assessing the environmental and sociological impacts on account of the project/activities and*
- (xi) *Submission of details of corporate social responsibilities etc.,*

137. In view of the above mitigative measures are more than adequate dealt with and hence, the averments contained in the appeal grounds are nothing but a figment of the appellant's imagination and this respondent has provided required Environment Monitoring Programme as required in the Manual.

138. This respondent has dealt with all issues arising out of Chapter 7 of the Manual. In any case, additional studies have been conducted by the company

through various qualified experts qualified to conduct the study such as feasibility study by KITCO, a comprehensive and mandatory obstruction study by M/s. Aero Survey, New Delhi which is a recognized agency for conducting obstacle study for airport project by Civil Aviation, Air Ports Authority and Director General of Civil Aviation wherein experts have dealt with the steps taken regarding the obstructions providing adequate remedial measures whereby it was suggested to displace the threshold of the runway by 285 m.

139. The Office Memorandum dated 1<sup>st</sup> September 2010 and 30<sup>th</sup> November 2011, the period for getting accredited has been extended from 30<sup>th</sup> June 2010 to 1<sup>st</sup> October 2011. An anomalous situation occurs if the interpretation given by the appellant to these office memorandums in that an unqualified person whose accreditation is rejected and if he gives a report before 1<sup>st</sup> October 2011, the said report is valid whereas this respondent who is qualified to do Category A projects, but chooses not to do them in future and applies for accreditation only for Category B projects, when they give a report after 30<sup>th</sup> June 2010, the same will be considered invalid.

140. The accreditation memo is not signed by a competent authority and hence, is not binding on this respondent. In as much as there exists no terms which provides for accreditation, the same cannot be imposed by way of an office memorandum. The said memo is not even an executive instruction under Article 73 and Article 162 of the Constitution of India, being issued not by the State or the Union but by an instrumentality. Even assuming that the office memorandum is binding on the respondent, it is merely a procedural formality which is directive in nature and unless the appellant proves that this respondent is incompetent and that

hardship has been caused to him by virtue of the lack of accreditation to the respondent for Category A project. Procedural provisions are directory and it can be enforced to set aside the order only in the eventuality of hardship being proved by the party alleging the same. In any case, this project was commenced by this respondent well before the office memorandum regarding accreditation was issued and they submitted the report in the month of October 2010. In spite of being adequately qualified and having satisfactorily submitted reports in the construction of airports at Chennai, Raipur and Vadodara and various other prestigious projects, merely because this respondent applied for accreditation for Category B projects, more particularly for thermal projects for purely techno-commercial reasons, the same does not disqualify this respondent from giving a valid EIA for a project assigned to them even before the issuance of the office memorandum introducing accreditation for the consultants. Hence, denying the averments made in the appeal that it was incompetent on the part of this respondent to submit EIA report based on that the impugned EC was made, this respondent, namely Enviro Care India Pvt., Ltd., seeks to uphold the EIA report submitted by them for the said project.

141. The Kerala State Pollution Control Board, arrayed as 3<sup>rd</sup> respondent in Appeal No. 172 of 2013 (SZ), 4<sup>th</sup> respondent in Appeal No. 1 of 2014 (SZ) and 6<sup>th</sup> respondent in Appeal No. 19 of 2014 (SZ) states in the reply affidavit as follows:

142. The Project Proponent, the fourth respondent, requested the Kerala State Pollution Control Board (KSPCB) to organize the public hearing as part of the Environmental Clearance process for their project on 02.02.2011 to construct a new airport at Aranmula in Ptahtanamthitta District of Kerala along with sufficient copies of the draft EIA and Malayalam and English version of its executive summary. In



consultation with the District Collector of Pathanamthitta. The public hearing was fixed at 11.00 AM on 10.03.2011 at the conference hall of the District Collectorate at Pathanamthitta. Wide publicity was given on 06.02.2011 in a national and two regional vernacular dailies in the manner and within the time specified in the notification. More than 30 days 'time was given between the date of publication and the date of hearing.

143. However, due to the declaration on 01.3.2011 of elections to the Kerala State Legislative Assembly on 13.04.2011, the date of public hearing had to be rescheduled by the District Collector with approval from the Election Commission. The public hearing was postponed to 29.04.2011 and Wide publicity was again given through the same national and two regional vernacular dailies on 27.03.2011. More than 30 days' time was again given between the date of publication and the date of hearing. On account of a sudden call for *hartal* in Pathanamthitta on 29.04.2011, the public hearing had to be postponed further and it was decided to hold it on 10.5.2011 at 11.00 AM at the Conference Hall of District Collectorate, Pathanamthitta. This postponement was also published on 28.04.2011 in the same dailies.

144. The soft copies of the draft environment impact assessment report and the Malayalam and English versions of the executive summary were made available for public scrutiny in the Board's website and its hard copies were made at the District Collectorate, Pathanamthitta, District Industries Centre, Kozhencherry, District Panchayat, Pathanamthitta, Elanthoor Block Panchayat, Aranmula *Grama* Panchayat, Mezhuveli *Grama* Panchayat, Mallapuzhassery *Grama* Panchayat, Science, Technology and Environment Department, Thiruvananthapuram. Pollution Control Board, Pathanamthitta District Office and Pollution Control Board, Head

Office, Thiruvananthapuram and the draft environmental report in Malayalam and English versions of its executive summary were made available for public scrutiny at the above places for more than eighty days from 06.02.2011 to 10.05.2011. Thus the documents were made available for more than the mandatory 30 days for the public to furnish their responses.

145. The public hearing was held at 11 am on 10.05.2011 at the conference hall of the Pathanamthitta District Collectorate. The venue was selected considering its proximity to the project site and the facilities available at the conference hall to conduct the hearing. The distance from the project site to the venue was only 15 km. There were 80 participants in the public hearing and most of them were from Aranmula and adjoining areas. The hearing was presided by the District Collector. The proceedings of the public hearing, representations in original received before and during the hearing and video recording of the hearing were forwarded to the MoEF as required under the EIA Notification, 2006. The proceedings of the public hearing were prominently displayed at the head office and Pathanamthitta District Office of the Board. Action was also taken to similarly display the proceedings at the offices listed above. Thus, the KSPCB has faithfully discharged the obligations under the EIA Notification, 2006. Hence, the KSPCB seeks to dismiss the appeal.

146. As seen above, all these appeals challenge the EC given by the MoEF of the Union of India dated 18.11.2013 in favour of M/s. K.G.S. Aranmula International Airport Ltd. and for consequential direction to the authorities. Hence, all the appeals are taken up jointly. Since the array of the parties varies in each of the appeals, for the sake of convenience, the array of parties is shown hereafter as found in Appeal No. 19 of 2014. On the pleadings of the parties, following questions are formulated

for consideration by the Tribunal:

- (1) Whether the appeals are not maintainable since the appellants are neither persons aggrieved nor have any *locus standi* to prefer the appeals and also on the grounds of the Tribunal not having the jurisdiction.
- (2) Whether the EC is to be set aside on the grounds that the EIA is prepared by an unqualified agency.
- (3) Whether the Form I submitted by the 3<sup>rd</sup> respondent/Project proponent suffers due to inadequacy and false statements.
- (4) Whether the impugned EC is liable to be set aside on the ground that as the public hearing was not conducted as per the mandatory provisions of the EIA Notification, 2006.
- (5) Whether the EC granted to the 4<sup>th</sup> respondent, M/s. Aranmula International Airport Pvt., Ltd., by the 1<sup>st</sup> respondent/MoEF is liable to be set aside for non application of mind of the EAC in making the approval.

147. Elaborate arguments were made by Shri T. Mohan, the learned counsel appearing for the appellant in Appeal No. 172 of 2013 (SZ), Shri Asok M. Cherian, learned counsel for the appellant in Appeal No. 173 of 2013 (SZ), Shri R. Krishna Raj, the learned counsel appearing for the appellant in Appeal No. 174 of 2013 (SZ), Shrimati Mallika Srinivasan, learned counsel appearing for the appellant in Appeal No. 1 of 2014 and Shri Harish. V the learned counsel appearing for the appellant in Appeal No. 19 of 2014 (SZ). Heard also the learned Advocate General of the State of Kerala Shri K.P. Dhandapani, appearing for the respondent No. 2 and 4, State of Kerala and the District Collector, Pathanamthitta District, Kerala State , Shrimathi C. Sangamithirai, learned counsel appearing for the 1<sup>st</sup> respondent/MoEF, Shri T.R. Rajaogpalan, the learned Senior Advocate appearing for M/s. Aranmula International

Airport Ltd., respondent No. 3, Shri P.S. Raman, learned Senior Advocate appearing for M/s. Enviro Care India Pvt., Ltd., 5<sup>th</sup> respondent and Shri M. Ajay, learned counsel for the Kerala State Pollution Control Board, 6<sup>th</sup> respondent. The 4<sup>th</sup> respondent, namely Kozhencherry Charitable Education Society was given up during the course of the proceedings. The Tribunal also paid its anxious considerations to the averments made in the grounds of appeals and the materials made available.

**148. Point No. 1:** Whether the appeals are not maintainable since the appellants are neither persons aggrieved nor have any *locus standi* to prefer the appeals and also on the grounds of the Tribunal not having the jurisdiction.

i) At the outset, Shri K. P. Dhandapani, the learned Advocate General of the Government of Kerala questioning the maintainability of all the appeals, would submit that the appeals are not maintainable either in law or on facts. Under the circumstances of the case, the issues raised by the appellants can be broadly classified into two broad categories. (i) Challenge is made in the appeals which would fall under the Kerala Land Reforms Act, Kerala Conservancy of Land Act, Kerala Conservancy of Paddy Land and Wetland Act, which cannot be raised and agitated before this Tribunal for lack of jurisdiction, (ii) Challenge made in the appeals would fall in Appellate Jurisdiction conferred under section 18 of the National Green Tribunal Act, 2010. The first set of appeals is outside the purview of the jurisdiction of this Tribunal and hence, they cannot be considered. In so far as the 2<sup>nd</sup> set of appeals is concerned, the appeals can be initiated only by a person aggrieved. But, the appellants are not aggrieved persons and hence, all the appeals have got to be dismissed. An aggrieved person is a person who has a legal right to enforce and whose rights are adversely affected or jeopardized. In order to

substantiate his contentions, the learned Advocate General relied on the decision of *Ayubkhan Noorkhan Pathan Vs. State of Maharashtra, 2013(4) SCC 465*. After the analysis of the various provisions of the Administrative Tribunal Act, the Hon'ble Apex Court held in *Dr. Duryodhan Sahu Vs. Jithendra Kumar Mishra reported in 1997 SCC 273* that a Tribunal can be approached by a person aggrieved by an order as defined. Placing reliance on the above decision, the learned Advocate General would state that the appellants are total strangers to the proceedings in issuing the EC and did not have right under statutes to challenge the same. None of the appellants own even an inch of land in the present site and hence, all the appeals have to be got dismissed on that ground.

ii) Answering the above contention, the counsel for the appellants would submit that the appellant in Appeal No. 1 of 2014 (SZ) is Aranmula Heritage Village Action Committee while the appellants in other appeals though are individuals, all are working for the protection of natural resources and ecology of Pathanamthitta district including Aranmula where the proposed airport project is being set up. They constitute a social and environment group with the objective of working for the welfare of the local community and small land holders and have been creating awareness on environmental issues. Hence, the contention putforth by the respondents that the appellants do not own any land in that area or they did not participate in the public hearing has to be rejected. When the EC to the project proponent is likely to affect directly or indirectly, the organization or every citizen can prefer an appeal since they are aggrieved persons and hence the appellants can well maintain the appeals. Equally in so far as the contention that the Tribunal has no jurisdiction to enquire the appeals, each and every averment made in the appeals would clearly indicate that the EC has been granted for the airport project to the



applicant without taking into consideration the ecological impact and environmental degradation which would be caused by the project and hence, the issues to be decided in all the appeals would fall squarely within the jurisdiction of the Tribunal. Hence, the said contention put forth by the respondents' side has to be rejected.

iii) As seen above, the 2<sup>nd</sup> respondent/State of Kerala has raised two preliminary objections questioning the jurisdiction of the Tribunal to enquire the appeals apart from stating that the appellants cannot maintain the appeals since they are not aggrieved persons as envisaged under the provisions of the NGT Act, 2010. Speaking on the jurisdiction of the Tribunal, section 14 of the NGT Act, 2010 reads as follows:

*“14. Tribunal to settle disputes: - (1) The Tribunal shall have the jurisdiction over all civil cases where substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such questions arises out of the implementation of the enactments specified in Schedule I.*

*(2) The Tribunal shall hear the disputes arising from the question referred to in sub-section (1) and settle such disputes and pass order thereon”.*

iv) A reading of the above would make it clear that this clause confers on the Tribunal a very wide jurisdiction can cases where a substantial question relating to environment including enforcement of legal rights relating to environment is involved. No doubt, such question should arise out of the implementation of enactment specified in Schedule I of the Act. In Schedule I to the NGT Act, 2010, 7 enactments are enumerated which are:

1. The Water (Prevention and Control of Pollution) Act, 1974
2. The Water (Prevention and Control of Pollution) Cess Act, 1977
3. The Forest (Conservation) Act, 1980
4. The Air (Prevention and Control of Pollution) Act, 1981
5. The Environment (Protection) Act, 1986
6. The Public Liability Insurance Act, 1991
7. The Biological Diversity Act, 2002

v) Pointing to the above provisions, the learned Advocate General, Kerala State would contend that the appeals are with respect to the other State Acts such as, Kerala Land Reforms Act, Kerala Land Conservation Act, Kerala Conservancy of Paddy Land and Wet land Act etc., which fall outside the jurisdiction of seven enactments shown in Schedule I of the NGT Act, 2010 and hence, the appeals would fall outside the jurisdiction of the Tribunal. Attractive though, the argument put forth as above at the first sight, it will not stand the scrutiny of law. All these appeals as seen above have been filed challenging the grant of EC for the impugned airport project. While assailing the same on different grounds *inter alia*, it is averred and contended by the appellants that for the purpose of ascertaining the environmental impact, a definite idea about the nature of the land in which the proposed airport was going to be set up should have been formed. It is the specific stand of the appellants that there is a serious dispute regarding the nature of land. The project proponent purposefully has suppressed the material facts, but has placed incorrect and false information and by doing so, the project proponent did not place necessary facts enabling the EAC or MoEF to come to an independent conclusion about the environment impact. In order to substantiate their contentions, the appellants have produced various reports of the revenue officials, agriculture officers, district collector

and proceedings of the Taluk Land Board. Relying on those documents, the counsel for the appellants pointed out that the predecessors of the project proponent, converted a part of the proposed site illegally and due to such conversion the cultivation in the entire area adjacent to the proposed site became impossible due to environmental impact caused by the reclamation of the portion of the proposed site. It cannot be disputed that the reports made and the proceedings initiated against those alleged acts are under a number of enactments like the Kerala Land Reforms Act, Kerala Land Conservation Act, Kerala Conservation of Paddy Land and Wetlands etc. It is pertinent to point out that none of these appeals has been preferred under any one of these enactments. All these appeals concentrate in challenging the EC granted in respect of the Aranmula airport project. Basing their cases on all the environmental impact if the project is allowed to be setup as per the grant of EC, it leaves no doubt that the appellants have raised substantial question relating to environment and the issues involved remain to be decided by the Tribunal and the said questions arise out of the implementation of the enactments specified in Schedule I to the Act and it will be futile to contend that the challenges are made by appellants with respect to other State laws mentioned above and hence, the contention put forth by the respondent/State of Kerala that the appeals are not maintainable before the Tribunal for lack of jurisdiction has to be rejected as devoid of merits.

vi) Equally so is the other contention that the appellants cannot maintain the appeals since none of the appeals is preferred by a person aggrieved. The NGT Act, 2010 came into force by the repealing the National Environment Appellate Authority Act, 1997 Under appeals to authority in sections 11(1) and 11(2) the reading is as follows:

*“11. Appeals to Authority:- (1) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carryout or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed:*

*Provided that the Authority may entertain any appeal after expiry of the said period of thirty days but not after ninety days from the date of aforesaid, if it is satisfied that the appellant was prevented by sufficient cause from filing of the appeal in time.*

*(2) For the purposes of sub-section (1), “person” means-*

*(a) any person who is likely to be affected by the grant of environmental clearance;*

*(b) \*\*\**

*(c) any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment;*

*(d) \*\*\**

*(e) \*\*\**

From the reading of the above provisions, any person ‘aggrieved’ by the EC can prefer an appeal before the NEAA within the time stipulated therein. According to Section 11(1), the word ‘person’ employed in Section 11(1) would mean not only

any person who is likely to be affected, but also an association of persons likely to be affected by such an order and functioning in the field of environment. In the instant case, both the appellants are association of persons and have been functioning in the field of environment for a long time. While so, the appellants must be able to show they are 'likely to be affected'.

By repealing the NEAA Act, 1997, the NGT Act, 2010 came into force. Speaking of the appellate jurisdiction, Section 16 of the NGT Act, 2010 reads as follows:

*"16. Tribunal to have appellate jurisdiction:- Any person aggrieved by.-*

- (a) \*\*\*\**
- (b) \*\*\*\**
- (c) \*\*\*\**
- (d) \*\*\*\**
- (e) \*\*\*\**
- (f) \*\*\*\**
- (g) \*\*\*\**
- (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under Environment (Protection) Act, 1986 (29 of 1986);*
- (i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance*



*for carrying out any activity or operation or process under the Environmental (Protection) Act, 1986 (29 of 1986);*

*(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of Biological Diversity Act, 2002 (18 of 2003), may within a period of thirty days from the date on which the order, or decision or direction, or determination is communicated to him, may prefer an appeal to the Tribunal;*

*Provided that the Tribunal may, if it is satisfied that the appellant was not prevented by sufficient cause from filing the appeal within the said period allow it be filed under this section within a further period of not exceeding sixty days.*

149. Both under Section 11 of the NEAA Act, 1997 and Section 18 of the NGT Act, 2010 any person aggrieved by the grant of EC as shown above can maintain an appeal. The 'aggrieved person' as contemplated in the Act came up for interpretation before the Tribunal in a number of cases. An aggrieved person contemplated in the above provisions would refer to the substantial grievance as to denial of some personal, pecuniary or property right or imposing an obligation on a person. The grievance so ventilated should not be either fanciful or sentimental, but must be substantial. A person calling himself as an 'aggrieved' must have suffered a legal grievance that he has been wrongfully deprived of something or refused wrongfully. The aggrieved person can either be aggrieved either directly or indirectly. In so far as the environmental matters are concerned, it cannot be stated

that the person really aggrieved should alone be permitted to initiate an action. It is not necessary that the person, who initiates action, is a resident of that particular area wherein the proposed industrial site is located. It is true that the appellants have not participated in the proceedings of the public hearing. It is true that it is necessary to scan the credentials of the appellants as to their intention and motive. Even assuming that the appellants have not participated in the proceedings of the public hearing, they would not lose their right to challenge the approval or the EC. If the appellants come forward with a case apprehending damage and danger to environment and ecology if the project in question was not properly envisaged and did not satisfy the Principles of Sustainable Development and Precautionary Principle, they can maintain the appeal and be allowed to agitate as to the correctness of the study made in respect of ecology and environment. In the instant case, nothing substantial has been demonstrated in order to doubt the credentials of the appellants. What are all stated by the respondents is that the appellants are not residents of that area or they do not have any piece of land and hence they are not aggrieved persons. The appellant in Appeal No. 174 of 2014 (SZ), namely the Aranmula Village Heritage Action Council is an organization while other appellants are individuals. It is contended by them that they are social activists with the objective of working for the welfare of the local communities for creating awareness on environmental issues. While in the matter of ecology and environment everyone is directly or indirectly affected and also interested person in exercise of his right can prefer and maintain an appeal ventilating the grievance. It is specifically alleged that the EC granted to the project proponent is likely to affect either directly or indirectly and can prefer an appeal ventilating the grievance. Hence, the appellants are to be termed as aggrieved persons as envisaged under the provisions of the

NGT Act, 2010 who can maintain appeal and thus, the question is answered in favour of the appellants.

150. Hence, for the reasons stated above it is held that the appellants can well maintain the appeals and this Tribunal has jurisdiction to entertain the appeals.

**151. Point No. 2:** Whether the EC is to be set aside on the grounds that the EIA is prepared by an unqualified agency.

i) Criticizing strongly the EIA prepared by the 5<sup>th</sup> respondent, M/s. Enviro Care India Pvt. Ltd., Madurai, Shri T. Mohan, counsel would submit that according to the EIA Notification, 2006, the airport projects would fall under Category A and only a duly accredited EIA consultant could appear before the EAC or prepare the EIA report. The present agency is found in Serial No. 47 of the QCI list (Annexure A-5). As per the accreditation, the 5<sup>th</sup> respondent was authorized only to conduct an EIA for Category B projects. This aspect was never considered by the 1<sup>st</sup> respondent/MoEF while granting the impugned EC. The 1<sup>st</sup> respondent has placed reliance of the Office Memorandum dated 30.12.2012 to state that the consultants who had applied including the 5<sup>th</sup> respondent were permitted to act as consultant and certify EIA/EMP and appear before the State Level Environment Appraisal Committee (SEAC) and State Level Environment Impact Assessment Authority (SEIAA) or EAC as the case may be. But, in the instant case, the 5<sup>th</sup> respondent/Consultant did not even apply for certification for airport category, but has applied only for thermal power projects which fact is admitted by the 5<sup>th</sup> respondent in the reply affidavit. The present EIA report has been prepared by an organization that was not qualified to do so. In any case, Annexure A-15 filed by the applicant/consultant made it clear that the application itself was submitted only on

21.11.2011. Hence, it would be clear that the 5<sup>th</sup> respondent/consultant did not make the application that resulted in accreditation for Category B projects pending during the time when the EIA report was prepared and submitted. Even the application made by the 5<sup>th</sup> respondent/consultant was also rejected. A person who has merely applied for certain sectors cannot be said to have blanket power to prepare EIA reports and appear in respect of all categories and sectors without reference to the category applied for and the consequent accreditation. Whether the consultant had prepared the EIA report for those sectors earlier had no relevance and it is open to the 5<sup>th</sup> respondent/consultant to challenge the issue as to whether the accreditation is legal or not in the present petition. It is not correct to state that at the time of presentation, there was no QCI implemented accreditation scheme. From 2009, the Ministry has imposed guidelines on preparation of EIA and presentation to EAC. The fact that the 5<sup>th</sup> respondent/consultant was found in the list of 255 applicants would not entitle him to certify the reports pertaining to the sectors unconnected to their application. It is also evident from the Annexure submitted along with the appeal memo in Appeal No. 19 of 2014 (SZ) that the application of the 5<sup>th</sup> respondent/consultant was rejected and subsequently a new application was made. Hence, the pendency of the application which was rejected cannot even be considered as a factor that would qualify the consultant to prepare the said EIA report. The EIA report prepared by an unqualified consultant cannot form basis of grant of the impugned EC which the 1<sup>st</sup> respondent ought not to have granted and it liable to be set aside.

ii) The learned counsel Shri. Jacob P. Alex appearing for the appellant in Appeal No. 19 of 2014 (SZ) would submit that the 5<sup>th</sup> respondent/consultant did not have the competence or expertise to prepare the EIA report for the airport project.

Chapter XII of EIA Guidance Manual for Airports would show that it is mandatory to disclose the accreditation details of the consultants. But, in this case there was no disclosure of consultants engaged as mandated. The minutes of the accreditation committee meeting dated 08.01.2013 would show that the 5<sup>th</sup> respondent/consultant was granted accreditation to Category B projects that too not in airport sector. Similarly, the list of experts in Annexure A-25 would show that the 5<sup>th</sup> respondent/consultant did not employ any expert who is competent to prepare the EIA report for airport projects. The scheme of accreditation of EIA consultants can apply only to a maximum of 5 sectors for accreditation. Accordingly, the 5<sup>th</sup> respondent/consultant had already applied for 5 sectors. But, he did not apply for accreditation in airport sector.

iii) Countering the above contention of the appellant's side, the learned Senior Advocate Shri P.S. Raman would submit that the 5<sup>th</sup> respondent/consultant was not competent to submit EIA report is incorrect and unfounded. The Hon'ble Apex Court in the judgment of *T.N. Godhavarman Thirumalpad Vs. Union of India and others (2014) 4 SCC 61* delivered in the year 2013 has declared that the provision of compulsory accreditation was prospective. The concept of accreditation was suggested by the Hon'ble Supreme Court of India in *Lafarge Umiam Mining (P) Ltd., Vs. Union of India (2011) 7 SCC 388* and the judgment in *T.N. Godhavarman Thirumalpad Vs. Union of India and others (2014) 4 SCC 61* set out the guidelines for future cases. The Hon'ble Supreme Court of India issued directions for appointment of a regulator. But, the regulator is yet to be appointed. A perusal of the office memorandum issued subsequently on 01.11.2010, 31.12.2010 and 30.09.2011 would show that the last date of filing of the application for accreditation was extended till 31.12.2011 and all the applications submitted till then were valid.



The 5<sup>th</sup> respondent/consultant was registered with the QCI as a qualified EIA consultant and successfully completed two green field airports in the past at Raipur and Vadodara and they were the consultants for the construction of phase II of the Chennai airport. Therefore, the 5<sup>th</sup> respondent/consultant has experience in the field of airport projects and more particularly in Greenfield Airports. The 5<sup>th</sup> respondent/consultant has expressly stated in the reply that an ISO certified company who has been actively involved in developing cleaner environment throughout the country, more particularly in the region since 2004. The 5<sup>th</sup> respondent/consultant is an ISO 9001 certified company having BIS accreditation and having laboratory facilities accredited by NABL and Department of Science and Technology for chemical and biological testing. The 5<sup>th</sup> respondent/consultant is having National Accreditation Board Certification for Education and Training (NABET) from QCI. It is also doing consultancy services such as EIA, EMP, Risk Assessment, Detailed Project Reports and Environmental Audit and Training and has done several turnkey projects. The 5<sup>th</sup> respondent/consultant though being adequately qualified and having satisfactorily submitted the reports in the construction of airports at Chennai, Raipur and Vadodara and various other prestigious projects, pursued their application for accreditation for Category B projects alone, more particularly for thermal projects for purely commercial reasons and it did not meant that the 5<sup>th</sup> respondent/consultant from giving a valid EIA report for a project assigned to them even before the issuance of the office memorandum introducing accreditation for the consultants. It is highly ironic and ridiculous on the part of the appellant to suggest a party who has filed to secure accreditation in Category A on merit can issue a valid report for the airport sector till December, 2011. Whereas the 5<sup>th</sup> respondent/consultant who has ample experience in the

airport sector and issued well within December, 2011 was not valid because for the future the 5<sup>th</sup> respondent/consultant wanted to restrict themselves to thermal power sector for purely commercial reasons.

iv) When the project proponent enquired with the AAI for guidance for appointment of an EIA consultant, the AAI for the above reasons recommended the 5<sup>th</sup> respondent/consultant to the project proponent. Even assuming while denying that there was a need for compulsory accreditation even prior to the appointment of the 5<sup>th</sup> respondent as a consultant for the project, the 5<sup>th</sup> respondent/consultant submits that the accreditation memo was not signed by a competent authority and hence, it was not binding on the 5<sup>th</sup> respondent/consultant. In as much as there existed no norms which provided accreditation, the same cannot be imposed by way of an office memorandum. The said memorandum is not even an executive instruction under Articles 73 and 161 of the Constitution of India. The office memorandum is merely a procedural formality which is directory in nature. Unless the appellant proves that the 5<sup>th</sup> respondent/consultant was incompetent and that hardship has been caused to him by virtue of lack of accreditation of the 5<sup>th</sup> respondent/consultant for Category A projects, the contentions put forth by the appellant have to be rejected. Thus, the report of the 5<sup>th</sup> respondent/consultant was valid and lack of accreditation was a subsequent event which has no consequence to the EIA report submitted them. Equally the 2<sup>nd</sup> argument of the appellant's side that the EIA report is not valid since ToR was issued on 13.10.2010, the study was conducted by the 5<sup>th</sup> respondent/consultant for collecting primary data for the period July, 2010 to October, 2010 is not correct since as soon as the process for issuance of the ToR started, the project proponent engaged the 5<sup>th</sup> respondent as the consultant and the 5<sup>th</sup> respondent started collecting samples as per the usual

practice. When the ToR was issued by the authority, the investigation was underway and the 5<sup>th</sup> respondent/consultant also took into account the parameters set out in the ToR prior to preparation of EIA report. Hence, no illegality was committed in the manner and conduct of investigation and the EIA report cannot be attacked on that ground. Therefore, the 5<sup>th</sup> respondent/consultant was competent to give the EIA report and the same was given by them as per the guidelines and also in good faith and the EIA report has got to be upheld.

v) All the appellants have vehemently attacked the EIA report prepared by the 5<sup>th</sup> respondent/consultant as invalid and unsustainable and in view of the same, the EAC should not have acted upon the same and granted the impugned EC. Among other grounds, the appellants have challenged the EIA as the one prepared by an unqualified agency. Admittedly, according to the EIA Notification, 2006, the airport projects fall under Category-A. From the available materials, it is seen that the 3<sup>rd</sup> respondent/project proponent has submitted the application on 02.07.2010 and the same was considered by EAC in the 91<sup>st</sup> meeting on 21.09.2010. The ToR was finalized on 13.10.2010. According to the 5<sup>th</sup> respondent/consultant the field study was done during July-October 2010 and the EIA report was submitted as per the reply of 5<sup>th</sup> respondent/consultant in October, 2010. While the matter stood thus, the 1<sup>st</sup> respondent/MoEF decided only two consultants who had applied for accreditation till 30.11.2010 be permitted and certify the documents before SEAC, SEIAA and EAC till 30.11.2011. Office Memoranda were issued on 01.11.2010, 31.12.2010 and 30.09.2011 which would show that the last date of filing the application for accreditation was extended till 31.12.2011. While it is contended by the appellants' side that the 5<sup>th</sup> respondent/consultant was not competent and he should not be allowed to have the benefit of pendency of the application for

accreditation. Contrarily, the 5<sup>th</sup> respondent/consultant would submit that they were competent to prepare EIA report in view of the office memoranda of the 1<sup>st</sup> respondent/MoEF extending the date for filing application for accreditation till 31.12.2011 and also the effect of that report till then is valid. In the instant case, the 5<sup>th</sup> respondent/consultant has prepared the EIA report, participated in the public hearing and also has appeared before the EAC which recommended the EIA report given by the 5<sup>th</sup> respondent/consultant for grant of EC for Aranmula airport project. The Tribunal is afraid whether it can agree with the contention of the 5<sup>th</sup> respondent/consultant that it was competent to prepare the EIA report. It is not in controversy that as per the EIA Notification 2006, the airport projects would come under Category A. Needless to say that placing the projects and categorizing them as A and B should have importance and significance. Expectation of accreditation for the consultant with a view to ensure that the EIA coordinator and functional area expert is a person with sufficient skill and experience in the relevant field. It is not the case of the 5<sup>th</sup> respondent/consultant is found in serial No. 47 of the QCI list. As per the accreditation, the 5<sup>th</sup> respondent/consultant was authorized to prepare EIA reports only for Category B projects. It is true that the 1<sup>st</sup> respondent/MoEF 255 consultants who applied for accreditation till 30.09.2011 to appear or certify documents to SEAC, SEIAA and EAC till 30.09.2011. It is also true that the last of the submission of the said applications was extended to 31.12.2011. The 5<sup>th</sup> respondent/consultant cannot be permitted to take advantage of this permission granted by the 1<sup>st</sup> respondent/MoEF for the simple reason that the application made by the 5<sup>th</sup> respondent/consultant for accreditation was rejected on 30.09.2011 and the EAC recommended for EC on 16.08.2012. It is true that the 5<sup>th</sup> respondent/consultant made another application on 15.12.2011 after the first

application for accreditation was rejected. Under the said application, the 5<sup>th</sup> respondent/consultant sought for accreditation and was granted the same for Category B project which did not include the airport sector.

vi) As per the scheme of accreditation of EIA consultants, an EIA consultant can apply to a maximum of 5 sectors for accreditation. It is candidly admitted by the 5<sup>th</sup> respondent/consultant that though he applied for the 5 sectors, his application did not include airport projects. The only explanation tendered by the 5<sup>th</sup> respondent/consultant is that in view of commercial reasons he did not apply for accreditation for airport sector though he has sufficient experience in the field. This explanation cannot be accepted even for a moment. Admittedly, the 5<sup>th</sup> respondent/consultant has not applied for accreditation for airport projects falling under Category A. Mere pendency of an application for accreditation for Category B projects would not cloth him with a right to make a study, field survey and preparation of EIA reports in respect of the airport projects which according to notification is categorized as Category A. If this contention has to be accepted, the very purpose of importance and significance of placing airport projects under Category A itself would be defeated. It is contended by the 5<sup>th</sup> respondent/consultant that the guidelines manual is only recommendatory and not mandatory. But that is not the case in so far as EIA Notification, 2006 is concerned. Much was contended by the 5<sup>th</sup> respondent/consultant that he has completed studies on two green field airports at Raipur and Vadodara and he was the consultant for the construction in phase II of Chennai airport and his experience in the field would speak volumes of his competence. This contention has to be rejected for two reasons. Firstly, the competence of the 5<sup>th</sup> respondent/consultant has to be tested from the view point of EIA Notification, 2006 which governs the



field. While airport project is categorized as A to which neither the 5<sup>th</sup> respondent/consultant has applied for nor was granted any projects under Category A and in particular the airport projects. On the contrary, he applied twice and obtained accreditation only for the projects under Category B. Hence, he is incompetent. Secondly, in so far as the alleged experience of the 5<sup>th</sup> respondent/consultant is concerned, there are no materials placed before the Tribunal to indicate the nature of works that was undertaken by the 5<sup>th</sup> respondent/consultant in respect of the three airport projects. Even assuming that the 5<sup>th</sup> respondent/consultant had experience, that would not qualify him as a competent consultancy agency in view of the mandatory provisions of the EIA Notification, 2006. Hence, it has got to be held that the 5<sup>th</sup> respondent/consultant was not competent to make a study and prepare an EIA report for the airport project. As rightly pointed out by the appellants, the EAC at the time of meeting never considered this vital aspect of the matter, but has recommended for the issuance of EC. This would certainly shake the very bottom of the recommendation made by the EAC since it was based on the EIA report given by the 5<sup>th</sup> respondent/consultant, an incompetent agency.

152. For the discussions made above, it is held that the 5<sup>th</sup> respondent/consultant was not competent to prepare the EIA or appear before the EAC in respect of the Aranmula airport project.

**153. Point No. 3:** Whether the Form I submitted by the 3<sup>rd</sup> respondent/project proponent suffers due to inadequacy and false statements.

i) The contentions put forth by the appellants' side that the proposed site for Aranmula airport is a wetland is not correct both factually and legally. According to

Section 2(g) of the Wetland (Conservation and Management) Rules, 2010 'wet land' means .....*"an area of marsh, fen, peat land or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh brackish or salt, including areas of marine water, the depth of which at low tide does not exceed 6 meters and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wet land and zone of direct influence on wet lands that is to say the drainage area or catchment region of the wet lands as determined by the authority, but does not include many river channels, paddy fields and the coastal wet land covered under the notification of the Government of India in the Ministry of Environment and Forest, S.O. number 114(E) dated the 19<sup>th</sup> February 1991 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub Section (ii) of dated the 20<sup>th</sup> February 1991."* . The Wet Land Conservation Management Rules has been notified by the Central Government as per the Gazette Notification No. GSR 951(F) dated 04.12.2010 to enhance the wetland conservation and management efforts in the country. These rules have been issued in exercise of powers conferred by Environment (Protection) Act 1986. As per Rule 8(2) of the Rules, the State Government had designated the department of environment and climate change as the nodal agency for regulating the use of wetlands in the State as per GO (Rt) No. 51/11/Env. Dated 30.05.2011. As per Rule 6(2) of the Wet Land (Conservation Management) Rules, the State Government shall prepare within a period of one year from commencement of rules, a 'brief document' identifying and clarifying the wetlands within their respective territories in accordance with the criteria specified under Rule 3. Rule 3 stipulates those wetlands which shall be regulated under the rules and their classifications. Therefore, by virtue of notification dated 30.05.2011, the department of Environment and Climate Change has

prepared an inventory by incorporating the guidelines such as geographical dealiation of wetlands, demarcation on the basis of the zone of influence along with proper maps, calculated the size of the wetland and given an account of preexisting rights and privileges consistent or not consistent with the ecological health of the wetland. It is worthwhile to mention that proposed project site for which the environmental clarification has granted is not a wetland as per the inventory prepared under the Wetland Conservation Management Rules 2010. The Project site is only a paddy land which is now waterlogged and degraded and which is lying as unfit for paddy cultivation for the past so many years. It is also worthwhile to point out that EC has been issued after considering all the relevant facts and circumstances of the environmental issues. It was further contended by the learned Advocate General that in as much as the Appellants contended that the site is wet land they tried to mislead the Hon'ble Tribunal. Concealment of material facts amounts to suppression of facts which is actually abuse of process of the Tribunal. In such an event, as held by the Hon'ble Supreme Court in *K.D. Sharma v. SAIL, 2008(12) SCC 481*, that if there is no candid disclosure of relevant and material facts or the Petitioner is guilty of misleading the Court , his petition may be dismissed at the threshold.

ii) State of Kerala supports the Project for several reasons including the job opportunities it can provide. Therefore, the State Government as a policy supports the project and wanted the project to be finished in a time phased manner. A balance has to be struck down between public opinion, national policy, economic growth and apprehension. A balance has to be struck down between public opinion, national policy, economic growth and apprehension, however legitimate it cannot override the justification of the project as held by the Hon'ble Supreme Court in *G. Sundarrajan vs. Union of India, 2013 (6) SCC 620*.

iii) The Project Proponent has taken every care and caution to protect and preserve the natural habitat, flora and fauna, rivulets and such other natural features, in the best possible form, with least interference during the implementation of the Airport Project. The Government of Kerala after evaluating the whole project *in toto*, developmental contribution, employment potential, better connectivity and nature friendly had taken 10% stake in this Greenfield Airport Project. This by itself speaks about the essentiality and importance of this Airport to the State of Kerala. Some factual mistakes in the report of the Salim Ali foundation are worth noting. The report says that there are extensive wetlands in the village. But there is no identified wet land in Aranmula Village as per the Report of the Centre for Earth Science Studies (CESS). As the definition of the Kerala Conservation of Paddy and Wet Land Act, 2008, paddy Land is not wet Land. The provisions of Central Wet Land Act are also similar. Therefore, it seems the authors of the Report of Salim Ali Foundation have confused Paddy Land with Wet Land. This Respondent had purchased the land in a developed state and most of the lands are lying as water logged fallow land, dry land and rubber plantations. The Company has purchased certain lands, which was already converted prior to enactment of Conservation of Paddy Land and Wet Land Act, 2008. The Prior owner Kozhencherry Charitable Educational Society owned 232 Acres of land spread over in three villages- Aranmula, Mallapuzhassery and Kidanganoor Villages in Pathanamthitta District. If the land was converted prior to enactment of Act, nature of property cannot be looked into taking into consideration of ground reality existing. The legal position remains settled through various decisions of the Honourable High Court of Kerala. As per the Wetlands (Conservation and Management) Rules, 2010, List of wetlands in India identified as *Ramsar* Sites under *Ramsar* Convention on Wet Land, wherein no portion of the

Airport Project has been identified as “wet land” in the appended Schedule. Moreover, there is no protected Wetland in the Project area as per the said Rules.

iv) The project proponent required filling the bare minimum area required for safe airport operation, leaving the remaining area in its natural form, there will be no environmental impact due to this activity. The recharge also remains unaffected. The soil required for this filling is calculated as under;  $1000 \times 150 \times 1 = 150000 \text{ m}^3$  of soil. On the whole, the minimum filling with the local material ensures environmental homogeneity and produces no impact on environment. Paddy lands can be reclaimed for public purposes as per the provisions of Kerala Conservation of Paddy Land and Wetland Act, 2008. Instead it has become a degraded land with water logging and invasive plant species affecting native bio diversity. The project site has no ecological or geographical significance other than it was a paddy field more than 20 years ago, and now a fallow water logged land unfit for paddy cultivation, as is evident from the report of Principal Agricultural Officer, mentioned in Page Nos. 71-75. The report shows the tragic situation in the area where not even 5 cents of the paddy land could be made under paddy cultivation. As per the Act, paddy land does not include wet land. Certain areas of the paddy field are lying as fallow and certain fallow land is lying as degraded water logged area. In Annexure A –XXIII, petition of the Land Owners’ Association, the true situation of the project area is stated that “it is flourishing with mosquitoes, leeches, pythons and in the locality skin affections in the people have made life very difficult. There are many instances of leeches entering the nostrils of cattle resulting in their death. If the project complies with the condition in environment clearance, it could be executed whereby water logging can be removed, the remaining paddy fields restored, and the rivulet could be rejuvenated. A paddy land, which is not cultivable, cannot be left unutilized and would not ensure



to benefit of either the State, the parties or the public and not at all advance the avowed objective of preserving the environment and maintaining ecological balance.

v) In answer to the above the learned Senior Advocate would submit that the contentions made by the appellants side relating to the Aranmula Parthasarathy temple and the mast and rituals thereon are unfounded. The project will not have any effect in the rituals as contended by the appellants' side. Famous temples such as the Devi Temple at Sanghumukham and Sree Padmanabha Swamy Temple are in the close vicinity of Thiruvananthapuram Airport. The 'Arattu' Possession of Sree Padmanabha Swamy Temple is through the Airport. There are many Airports in India where Temples, Churches, Masjids and other places of worship are located directly below the flight path (Approach funnel) of airports, and aircraft are regularly flying over such places of worships. KITCO had conducted feasibility report (project report) about the Airport Project. This study was supplemented by a comprehensive and mandatory obstruction study by M/s Aero Survey, G-11, Second Floor, Green Park Extn, New Delhi who is a recognized agency for conducting Obstacle Study for Airport Project by Civil Aviation, Airport Authority and DGCA. In page 5 of their Obstacle Study Report they have also noted the following obstructions with remedial measures whereby it was suggested to displace the threshold of the runway by 285 meters due to the presence of flag mast of Shree Parthasarathy Temple. Airport Officials visited the site and had discussions with the Company on the obstacle Survey and Company agreed to displace the threshold by 285 m so as to protect the rich heritage and sanctity of the Temple. This project will bring glory to the Temple.

vi) Attacking the contentions made by the counsel for the appellants to the effect that the project proponent has made false statements regarding the site

pending litigations against the project, at the time of submission of the application, the learned counsel for the respondents would submit that they were absolutely false. The project proponent placed basic information on 26.10.2010. It was clearly stated that the project proponent has already purchased the land in a developed state and most of the lands are lying as water logged fallow land, dry land and Rubber Plantations. The project proponent purchased a part of the lands, which was already converted prior to enactment of Conservation of Paddy Land and Wet Land Act, 2008 and hence, they conversion cannot be attacked with the aid of the provisions of the enactment. It is pertinent to point out that no portion of the airport project was identified as wetland. Moreover, there was no protected wetland in the project area as per the rules. It cannot be disputed for the pending litigation against the project proponent/3<sup>rd</sup> respondent at the time of submission of the application in Form I. There was no local land use plan and there was no zonal classification in the airport area and hence, the land could be used only for airport project with strict adherence to the conditions attached to EC. This airport project area has been declared as an industrial area by the Government of Kerala. Hence, the statement made by the project proponent/3<sup>rd</sup> respondent is falsely interpreted by the appellants to suit to their convenience. There is no need for any further reclamation as the Project area has been purchased in a developed state. There was no need for any reclamation work in this Project. Most of the Project sites were in a developed form/Rubber Plantation and dry Land. Aranmula, Pathanamthitta District is connected by a good network of State highway roads. These roads have two-line riding surface of minimum 35 ft with adequate space for future expansion on the sides. Good connectivity from Alappuzha, Kottayam and Idukki Districts exists towards Pathanamthitta District. It was more clear that minimum number of vehicles

for transporting raw materials. The same would not affect the existing traffic movement and hence, there is no need for any new road or other transport infrastructure during construction or operation or widening of the existing roads.

vii) There was no need for any impoundment, damming or culverting, realignment or other changes to the hydrology of water course or aquifers. Airport land is interspersed with a small rivulet '*Kozhithodu*' which is crossing the runway. This rivulet eventually merges with the famous *Pampa River*. A cross vent of 20 x 2.5 m underneath the runway is planned to maintain free flow of water in *Kozhithodu*. General lay of the land is towards *Kozhithodu* from South and North which facilitates free flow of water from both ends of run way towards *Kozhithodu* and the proposed drain. The project proponent has thoroughly examined all the minor channels/canals/streams/rivulet in and around the project site and has taken due precaution to protect and preserve water flow so as to ensure free flow of accumulated water and preservation of water table in the area.

viii) The statement regarding flora and fauna are made according to the whims and fancies of appellant by which they attempted to false acquisition. The same is vague and unscientific without mentioning specific flora and fauna probably to be affected. As per the Tropical Botanical Centre and Zoological Survey of India, there are no specific studies regarding flora and fauna conducted in Pathanamthitta District. The EAC would list out a few cases for consideration during its sittings which were for two to three days continuously and every environmental aspects associated with the project would be discussed in detail before recommending sanction. The ToR are based on the actual state of facts and on ground reality and based on which, EIA was prepared in true sense. After hearing and perusing documents, video

and other connected records, EAC of MoEF recommended the project for environmental clearance to the 1<sup>st</sup> respondent vide its minutes dated 16.12.2011 and again recommended the project for EC in its minutes dated 17.08.2012. Thus, the project was cleared twice by the EAC and the matter was referred to the 1<sup>st</sup> respondent/MoEF for final clearance. Thus, the contentions put forth by the appellants are totally false and frivolous. A reading of the impugned order EC would indicate that it is a speaking order and considering all the pros and cons of the environmental impact and after due consideration of the relevant documents submitted by the 3<sup>rd</sup> respondent, project proponent and additional clarifications furnished in response to its observations. Only after doing so, the EAC has recommended for the grant of EC for the project as per the provisions of EIA Notification, 2006 and its subsequent amendments, subject to strict compliance of the terms and conditions as envisaged in the impugned order. The 3<sup>rd</sup> respondent/project proponent undertakes that they would comply with the specific conditions envisaged in the EC in letter and spirit. The purpose regarding the sensitive man-made land uses, like hospitals etc., are to be interpreted as items directly or indirectly affecting the operation of the airport. It is necessary to identify the presence of such obstructive structures, for which the 3<sup>rd</sup> respondent/project proponent has separately conducted obstruction study before embarking on the project, after the submission of the basic information. This would complement the application. The aerial distance is for the purpose to identify any man-made structures like hospital that would interfere with the operation of the airport. This study was conducted by a comprehensive and mandatory obstruction study by M/s Aero Survey, New Delhi, who is a recognised agency for conducting the said study.

ix) In so far as the vigilance enquiry ordered by the Court of Enquiry Commissioner & Special Judge (Vigilance), Kottayam is concerned, it has been stayed by the Hon'ble High Court of Kerala in Crml M.A No. 318/2014 in CrI MC No. 247/2014.

x) Answering to the contentions put forth by the appellants in respect of sustainable development and precautionary principle, the learned counsel would submit that if both the doctrines are applied to the present factual position of the case, the EC attached with necessary conditions has to be upheld. The 3<sup>rd</sup> respondent hereby undertakes that he would follow the specific conditions laid down in the impugned order and will be a touchstone of sustainable development and its impact on ecology has been taken care of following all national and international principles. While balancing the benefit of establishing airport, if the 3<sup>rd</sup> respondent strikes a balance, such infrastructure facilities are of extreme importance for the economic growth of the country, alleviate poverty, generate employment etc. While setting up of a project of this nature, the 3<sup>rd</sup> respondent have taken into account an overall view of larger public interest rather than unsustainable objections and allegations raised in this appeal and there is no violation of Article 21 of the Constitution. The hue and cry raised by the appellants about the possible impact of environment was fully addressed by the 1<sup>st</sup> respondent/MoEF in their impugned order. This airport project shall be on the concept of welfare and safety for the purpose of development. The employment of potential-skilled, semi-skilled and unskilled labour both during construction and operational phases of the project with specific attention to employment potential of local population is necessary for this airport Project. Socio-economic benefits of the Project mainly include provision of additional Revenue generation, triggering growth in the region, provisions of



additional employment, development of ancillary industries and trade centres, improvement in quality of life etc. Needless to say, it has to be totally guided by the conception of public safety and welfare of the citizens. The term “welfare” is always related to the living generation and generations to come. Promotion of development and Protection of development are to be harmonized at the same time. By applying the principles of sustainable development, the impugned order is a balance between the developmental needs and the environmental degradation.

xi) It is quite evident from the available materials, the 3<sup>rd</sup> respondent/project proponent, while making an application for the airport project in Form I has provided false data about the ecology in the area, resources to be used and overall impact on the environment and presence of wetland or forests. Along with the feasibility report, Form I was submitted by the 3<sup>rd</sup> respondent/project proponent on 28.06.2010. In that said Form I, the following are noticed:

1. Basic information under item No. 1.0, Sl. No. 22 states “Whether there is any Government order/policy relevant/ relating to the site. The answer given was “N.A” which means Not Applicable. On that day, when such information was given, there was a declared policy and a statute passed by the Legislature of Kerala to protect paddy lands and wetlands of the State. The Kerala Conservation of Paddy Lands and Wetlands Act, 2008 was specifically passed to for that purpose.
2. There is a Government order, namely Kerala Land Utilistion Order, 1967 which prohibits conversion of paddy lands without prior sanction of the Government. The project proponent has stated the whole of acquired land shall not be reclaimed and rest of the land other than that used for

construction of runway including wetlands, paddy lands etc., shall be protected to the maximum extent. Here is an admission made by the project proponent, that the project site included paddy land and wetland and thus this was under the clutches of the above order/statute on the day when the Form I was filed. But, this fact was suppressed by the project proponent.

3. In sector 'basic information' under item No. 1, Sl. No. 24 to the question, "*Whether there is any litigation pending against the project and/or land in which the project is proposed to be set up (a) Name of the Court, (b) Case No. (c) Orders/directions of the court, if any and its relevance with the proposed project*", the answer given by the project proponent was "N.A.". A Division Bench of Hon'ble High Court of Kerala has already directed the owner of the land that the filling of the paddy land and wetlands should be done only in accordance with law and only after getting necessary statutory clearances from the authorities concerned. For illegal filling of paddy lands by the predecessor as well as the present project proponent, a number of cases were registered in respect of encroachment of public land, public streams, filling up of paddy lands etc., All these information were suppressed.
4. Under sub-heading 'Activity' in item No.2, Sl.No. 1.1, it is stated that there is 'no' permanent or temporary change in the land use, land cover or topography including increase in the land use. Admittedly, the project area included paddy land and wetlands. Needless to say, construction of airport and other facilities, would cause a permanent change in the land use.
5. Under the sub-head 'Activity' in item No. 2, Sl.No.1.10, the project proponent has stated that there was no reclamation work in the project site; this cannot

but be false since it is admitted by the project proponent that there was reclamation of paddy lands and wetlands.

6. Under the sub-head 'Activity, item No. 2, Sl. Nos. 1.17, 1.18 and 1.19, the project proponent has declared that there will be 'no' new road or other transport infrastructure during construction or operation, there will be 'no' closure or diversion of existing transport routes or infrastructure leading to changes in traffic movements. No doubt, the operation of the airport would definitely increase the traffic and without widening the existing roads no airport operation can be done.
7. In item No. 2, Sl. No.2.1, the project proponent has stated that there is 'no' land especially underdeveloped or agricultural land. This information is a concealment of the fact that part of the project site is agricultural lands.
8. Under sub-head 'Environmental Security' in item No. 10, Sl. No. 2, the project proponent has declared that there is only River Pampa and that too situate at a distance of 2 km away from the project site. Admittedly, there are vast areas of wetlands in and around the project site which was acknowledged by the project proponent and recorded in the minutes of the public hearing.
9. Equally, in item No. 10, Sl. No. 9, the project proponent has declared that there were no lands occupied by the sensitive manmade land uses like hospitals within 15 km aerial distance from the proposed project location boundary. Admittedly, the Aranmula Parthasarathy temple is situate at 100 m away from the project location boundary. Thus, while filing the Form I along with the application, the project proponent has not only suppressed the existing true state of affairs, but also furnished false information in order to obtain EC for the project.

The following environmental issues related to airport project have not been addressed in the EIA report.

## **I. AIR**

- i) Prediction of emissions from combustion of aviation fuel (unburnt fuel droplets are a source of volatile organic compounds and give rise to odours) and their impact in the zone of influence.
- ii) Vehicular emissions inside the airport and from ground service equipment (tugs for aircraft and baggage, fuel and catering Lorries, buses and vans that transport passengers etc.).
- iii) Prediction of VOC emission from fuel storage tanks and transfer facilities and its management
- iv) Impacts of pollution from Aircraft and airfield maintenance activities
- v) 5. Airport activities and Climate change

## **II. BIOLOGICAL**

- i) Habitat loss and habitat degradation due to 'changed' and 'different' activities in the zone of influence.
- ii) Bird strikes/hits- prevention and management plan (Measures to control birds also extend beyond the airport boundary)
- iii) The sensitivity of wildlife and local domesticated animals to the noise of aircraft, airport ground operations and airport access roads.

### III. NOISE

- i) Prediction of Noise from aircraft and from traffic going to and from airports – modelling studies. Mitigation of effects and management.
- ii) 2. Prediction of noise generated from taxiing aircrafts, the application of reverse-thrust (an optional braking aid on landing), engine tests and on-site vehicular traffic. Mitigation of effects and management
- iii) It is true that the ToR issued for the EIA study do not include the above. Notwithstanding this fact, the EIA consultant who claims long experience and expertise in the field should have addressed these issues. Undoubtedly, these issues deserve attention and analysis. Such an approach would have served the cause of environmental management at large.

154. Hence, it is held that the Form I in the application filed by the 3<sup>rd</sup> respondent/project proponent before the 1<sup>st</sup> respondent/MoEF for the Aranmula airport project was inchoate and invalid for false and suppression of materials and for inadequacy.

**155. Point No. 4:** Whether the impugned EC is liable to be set aside on the ground that as the public hearing was not conducted as per the mandatory provisions of the EIA Notification, 2006.

- i) Advancing the arguments on behalf of the appellants, the learned counsel



would submit that the public hearing is mandatory and it should be strictly in accordance with the procedure specified in EIA Notification, 2006. In the instant case, the 3<sup>rd</sup> respondent, the project proponent has neither conducted the public hearing in accordance with law nor in a proper manner. The access to the site of public hearing was not facilitated by the project proponent or other stake holders. As a result, a majority of the people who are likely to be affected due to the setting up of the project, namely the airport were not provided an opportunity to voice their grievances. The 4<sup>th</sup> respondent applied on 02.02.2011 for conducting the public hearing, but the alleged publication in the dailies did not contain all required information as mandated by Appendix-VI of the EIA Notification, 2006. Even on that date, the EIA report was not made available for viewing or posted in the website. The public hearing was originally scheduled on 10.03.2011 and was rescheduled to 29.04.2011 and again to 10.05.2011. But, the change in the date of public hearing on 29.04.2011 and 10.05.2011 was not publicized. This fact also was borne out from the minutes of the public hearing conducted on 10.05.2011. This is in clear violation of EIA Notification, 2006 as the EIA Notification under clause 3.4 of Annexure IV clearly states that the procedure in clause 3.1 has to be followed in case of postponement. It is seen that the time difference between the postponed dates was not 30 days which is the minimum mandatory time provided and the answer given by the respondents that the period of time between the postponement was less than 30 days and hence, the postponement was not publicized cannot be accepted since this led to a situation where the public was prevented from participation effectively in the public hearing process. The minutes of the public hearing would indicate that only 26 persons were able to effectively participate in the hearing which can hardly be called participative and democratic. The tenor of the serious protests held by the people of

the area was not reflected in the public hearing minutes and thus, this is violation of law by denying effective participation of the people directly affected by the project. Apart from that the public hearing was neither conducted at the project site nor anywhere in the close proximity, but a distance of more than 15 km from the project area and from the villages affected. The fact that only 80 people participated in the hearing of a project of this magnitude is indicative of both inconvenience caused by the venue and lack of adequate publicity for the same. In order to substantiate their contentions, the learned counsel relied on the judgment of Hon'ble Gujarat High Court reported in (i) *Centre for Social Justice Vs. Union of India and others (AIR 2001 Guj.71)* and (ii) *S. Nandakumar Vs. The Secretary to Government, Tamil Nadu in W.P. No. 10641 of 2009 and etc., dated 22.04.2010*. The above judgments clearly described the importance of the public hearing in the clearance process and the facts of the present case makes it evident that the entire process was farce. The 1<sup>st</sup> respondent/MoEF has not considered any of the facts in the impugned clearance in view of the violation of mandatory provisions in respect of the public hearing; the EC has got to be set aside.

ii) Arguing for the respondents' side on the question of above issue, the learned counsel for the respondents would submit that the public hearing in respect of the project in question was convened and conducted in accordance with the EIA Notification, 2006. As per the EIA Notification, 2006 and as per Annexure IV, the public hearing should be completed within a period of 45 days from the date of receipt of complete documents as required in paragraph 1. The total number of days as per the said schedule is 90 days for completing the Process vide Notification dated 04.02.2011 and written comments are sought within 30 days of the date of publication or to participate in public consultation. The date of first public hearing was

fixed on 10.03.2011 and by the letter dated 07.03.2011 a direction was issued by the Chief Electoral Officer to defer the public hearing and by another letter it was directed to be conducted after 13.04.2011. The date of 2<sup>nd</sup> public hearing was scheduled to 29.04.2011 and adjourned due to hartal. Notice of publicity was made. The public hearing was actually conducted on 10.05.2011 and 2 copies of the minutes of the public hearing were addressed to the MoEF by the Kerala State Pollution Control Board. It is pertinent to note that the time period for completion of public hearing was 45 days and for the first public hearing, 10 days time was given. The period of election process has to be excluded to comply with the 45 days period. The public hearing was conducted on 10.05.2011 and hence there was no violation in so far as the notice period is concerned. Equally in so far as the place of public hearing is concerned, the contentions put forth by the appellants side are baseless, since after giving wide publicity through print and public media including hoardings, newspaper advertisements etc. The public meeting was conducted at the District Collectorate, Pathanamthitta district. It cannot be disputed the District Headquarters (Collectorate) is centrally located at Pathanamthitta, which is about 10 Km from the Project site and people from the Airport locality can reach the Collectorate within 15 minutes by bus and 10 minutes by car. The public hearing was conducted by the State authorities in compliance with the requirements of the EIA Notification, 2006 and hence, the contentions put forth by the appellants are devoid of merits.

iii) The learned counsel appearing for the 6<sup>th</sup> respondent, namely the Kerala State Pollution Control Board would submit that the project proponent, the 3<sup>rd</sup> respondent, requested the Kerala State Pollution Control Board (KSPCB) to organize the public hearing as part of the Environmental Clearance Process for their project on 02.02.2011 along with sufficient copies of the draft EIA and Malayalam and

English version of its executive summary. In consultation with the District Collector, Pathanamthitta, the public hearing was fixed at 11.00 am on 10.03.2011 at the conference hall of the District Collectorate at Pathanamthitta. The time and venue was fixed considering the lack of adequate facilities near the proposed airport and the convenience, facilities available and ease of travel to the District Collectorate, Pathanamthitta. The publications regarding the time, date and venue of the public hearing were made on 06.02.2011.

iv) However, due to the declaration on 01.03.2011 of the elections to the Kerala State Legislative Assembly on 13.04.2011, the date of public hearing had to be rescheduled by the District Collector with approval from the Election Commission. The public hearing was postponed to 29.04.2011 and publication was made in the same dailies on 27.03.2011 about the new date of public hearing at the same time and at the same venue as earlier notified. On account of a sudden call for *hartal* in Pathanamthitta on 29.04.2011, the public hearing had to be postponed further and it was decided to hold it on 10.05.2011 at 11.00 AM at the Conference Hall of District Collectorate, Pathanamthitta. This postponement was also published on 28.04.2011 in the same dailies. There have been no complaints made by anyone regarding the public hearing and its postponements at any time before these appeals have been filed before this Tribunal. Neither the appellant before this Tribunal nor anyone else had approached the KSPCB stating that they needed additional time to file their objections, collect materials etc., Neither were there any complaints made whatsoever by anyone that the venue fixed for the public hearing was inconvenient, unsuitable or against the norms prescribed. These allegations have been raised for the first time at the appellate stage by appellants who had not even participated in the public hearing process.

v) In the EIA Notification, 2006 issued by the Government of India, Clause 7 deals with the stages in the Prior Environmental Clearance Process. Stage III deals with Public Consultation. A reading of the above would make it clear that one of the components is that the public hearing should be held in the vicinity of the project for ascertaining concerns of local affected persons and the other component is obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project. 30 days time is mandated for “other affected persons” to send in their responses and not for “local affected persons” to attend the public hearing as argued by the appellants. The provisions under Clause 3.1 stipulates that the Member Secretary of the KSPCB shall finalize the date, time and venue of the public hearing and advertise the same in one major national leading and one regional vernacular daily. Thereafter, it is provided that a minimum notice period of thirty days shall be provided to the public for furnishing their responses. Clause 3.3 stipulates that the postponements of date, time and venue if necessitated shall be published in the same national and regional dailies. The provisions under Clause 3.4 stipulate that the postponements shall be notified afresh as per the procedure under Clause 3.1. It is therefore clear that what is provided in the notification of 2006 is that the public hearing shall be conducted for ascertaining the views of the local affected persons and a minimum time of thirty days shall be given for other concerned persons to file their responses. Clause 3.4 does not mandate that in the case of postponement a further period of thirty days has to be granted for the public hearing. It only stipulates that if there is postponement of time, venue and date it shall be published in the same manner as provided in Clause 3.1, namely publication through the same dailies which originally published the notice. In the instant case a total of 85 days was available for any concerned persons to file their



written responses while the Notification only prescribes a minimum period of thirty days for such objections. The period of thirty days is not remotely intended for anyone to make travel plans to the venue of the public hearing which in this case was in the same District at the District Headquarters in Pathanamthitta under fifteen kilometers from the Project site and very well connected to and from the vicinity of the Project site and from elsewhere. This is in conformity to Clause III (ii) (a) which stipulates public hearing at the site or in its close proximity, district wise. In the instant case, the public hearing was conducted in the same District at its Headquarters. The KSPCB also factored in the stipulation of time limits to complete the public hearing as set out in the Notification. If the KSPCB was found wanting, the Regulatory Authority has ample powers reserved to conduct the public hearing through any other agency as provided in Clause III. (iv) of the Notification. The fact that the procedure adopted by the KSPCB was not found fault with by the Regulatory Authority leads further credence to the legality of the public hearing process adopted by the KSPCB. Having not complained about the inconvenience or prejudice suffered by the appellants at any time before, such contentions are raised now and hence, this contention put forth in respect of the public hearing conducted by the KSPCB deserves to be dismissed.

vi) The issues and concerns raised during the public hearing were actually noted in the minutes of the meeting and all such issues and concerns were answered satisfactorily by the project proponent. Only after carefully examining and after obtaining necessary additional information, final EIA, minutes of the public hearing and due deliberations, the EAC recommended for the EC and after considering all parameters, the 1<sup>st</sup> respondent/MoEF granted EC subject to certain environmental safeguards. The MoEF, after making a thorough scrutiny of the EAC

report and also all the materials made available and satisfied that it was a fit case for granting EC. Accordingly, the 1<sup>st</sup> respondent/MoEF issued the EC in favour of the 3<sup>rd</sup> respondent/project proponent for setting up the airport project. Hence, the appeals have to be rejected as devoid of merits.

vii) It is specifically pleaded case of the appellants that the public hearing conducted in respect of the impugned airport project of the 3<sup>rd</sup> respondent/project proponent was not in accordance with law and hence the EC is liable to be set aside on that ground. Contrarily, it is contended by the respondents that the public hearing was conducted strictly in accordance with law. The EIA Notification, 2006 on the public hearing mandates as follows:

“3.3. No postponement of the date, time, venue of the public hearing shall be undertaken, unless some untoward emergency situation occurs and only on the recommendation of the District Magistrate, the postponement shall be notified to the public through the same national and regional vernacular dailies and also prominently displayed at all the identified offices by the concerned State Pollution Control Board or Union Territory Pollution Control Committees.”

Clause 1.0 in Appendix IV of the notification clearly lays down the guidelines in relation to the conduct of public hearing as follows:

“The public hearing shall be arranged in a systematic, time bound and transparent manner ensuring widest possible public participation at the project site(s) or its close proximity, district wise by the concerned State Pollution Control Board or the Union Territory Pollution Control Committee.”

Apart from the above, the project proponent should give copies of the draft EIA report with generic structure given in Appendix III including the summary of EIA report in English and in the local languages prepared strictly in accordance with the ToR after scoping.

156. As could be seen from the available materials made available by the 5<sup>th</sup> respondent/project proponent, a notice of public hearing was published on 06.02.2011 announcing the date as 10.03.2011. On 10.03.2011, it was informed by the District Collector, Pathanamthitta that the hearing was adjourned to 29.04.2011. Even on 29.04.2011 also, the public hearing was not conducted. Admittedly, the public hearing was conducted on 10.05.2011.

157. A careful scrutiny of the available materials would clearly indicate that the public hearing conducted on 10.05.2011 was not in accordance with law and has to be declared as invalid in the eye of law for more reasons than one

158. Appendix IV of the EIA Notification, 2006 as seen above specifically mandates that the public hearing should be arranged in a systematic, time bound and transparent manner ensuring widest possible participation. The words 'widest possible public participation' are of wide import and necessarily include people who are likely to be affected by the environmental degradation due to the proposed airport project to be setup at Aranmula. At the very least, the public hearing should include the people living within the study area. Needless to say, the exclusion of people within the study area from effective participation is contrary to the EIA Notification, 2006. This position is emphasized by cardinal judgments of the Hon'ble Apex Court and other higher Courts speaking on the principles of sustainable development and precautionary principle. In the instant case, no material is

available to indicate the issuance of any notice or information that the public hearing was to be conducted on 10.05.2011 though it is claimed that it was published in the newspapers. Materials of the public hearing in the instant case would show that only 80 persons participated in the public hearing and the entire proceedings were concluded within two hours. Admittedly, the public hearing was conducted at the Collectorate, Pathanamthitta which is situate at a distance of 15 km from the project site. Concedely, the public hearing on 29.04.2011 was postponed to 10.05.2011 on which date the public hearing was conducted. This would clearly indicate that it is in violation of EIA Notification, 2006 in respect of the mandatory time required to hold public hearing even in a case of postponement from the original date as per Clause 3.3. of Annexure IV of the EIA Notificaion, 2006 as read above.

159. Thus, from the above position it is clear that the EIA Notification, 2006 mandates even in the case of postponement of the date, the procedure as laid down in Clause 3(1) has to be followed, which would mean that the time interval between the announced date and postponed date should be 30 days. Thus, the minimum mandatory time of 30 days should be provided. But, in the instant case, the date of public hearing from 29.04.2011 was postponed to 10.05.2011 which is in violation of the mandatory provisions. Thus, it would be quite clear that instead of taking measures for the public to participate effectively in the public hearing process, the public has been prevented from participating in the public hearing process to voice their concern and place their objections on the environmental issues by not following the mandatory procedure. It is a case, where there were serious protests held by the people of that area. The procedure followed in the instant case by not following the mandatory provisions in respect of place and notice, the public was denied and deprived of effective participation in the public hearing and the same

would vitiate the proceedings and this can also be added as a ground to scrap the impugned EC.

160. Therefore, it is held that the entire public hearing proceedings is vitiated in view of violations of mandatory procedure as envisaged in EIA Notification, 2006.

**161. Point No. 5:** Whether the EC granted to the 4<sup>th</sup> respondent, M/s. Aranmula International Airport Private Limited by the 1<sup>st</sup> respondent/MoEF is liable to be set aside for non application of mind of the EAC in making the approval.

i) Advancing the arguments on behalf of the appellants Shri T. Mohan, the learned counsel would submit that the EIA report contained, incorrect, false and misleading data, but the same were accepted by the 1<sup>st</sup> respondent/MoEF which resulted in granting the impugned EC. The non application of mind and lack of diligence both on the part of the EAC and the MoEF/1<sup>st</sup> respondent is clear from the materials placed by the respondents. The available materials would clearly indicate that the EAC at all stages during the consideration of the project in question was overburdened and over extended by having to consider scores of projects during each of the meetings. During the meeting on 21/22.09.2011, the present project figured as item No.4.42. The EAC considered 4 old projects, 45 new projects, 5 recommended projects and one other item. On 15/16.10.2011, the present project is shown as item No. 3.2. In that said meeting, the MoEF considered 4 old projects, 15 new projects, 4 extra items and 12 recommended projects. During the meeting, the instant project was provisionally cleared subject to compliance of 3 conditions mentioned therein. In the meeting held on 16-17<sup>th</sup> August, 2012, the EAC considered more than 50 proposals. There is nothing to indicate whether any sub committee was formed to consider this controversial project in teeth of several serious



allegations against the project proponent in the interregnum between the EAC meetings. This would be indicative of the fact that the EAC could not have considered any project with required diligence since they were functioning under severe constraints. The EAC has not taken note of the fact the project proponent had provided different claims even on data collection. At page No. 9 of EIA, it was claimed that the baseline data was collected during July-October, 2010. But, at page No. 16, the collection of base line data was shown as October, 2010. At page No. 45, it was claimed that the majority of data on water quality, vegetation, air and noise quality were collected during field studies in August-October 2010. But, it was claimed that the AAQ monitoring was carried out during July-October, 2010 at page No.73. The runway length was shown differently; originally as 2300 m and subsequently shown as 2800 m. But, an aircraft cannot land and take off with the runway lengths of 2300 m or 2800 m. Nowhere, there is any mention about what would be the length of runway in Phase-II. The terminal design in Phase I was stated to be for 60 incoming and 60 outgoing passengers during peak hours at page 2, 21, 22 of the EIA. But, contrarily at page No. 23, it was shown that design during Phase -I as 50 incoming and 50 outgoing passengers. Table 2.8.2 provided water requirement at 12 KLD in Phase-I and 58 KLD in Phase-II while Figure 2.3 provided 7.55 KLD in Phase-I and 31KLD in Phase-II. The EIA provided different claim in respect of STP capacity. Figure 2.2.3 at page No. 24 differs from Figure 2.6.2 at page No. 29 for parking.

ii) Even in respect of the land use, at page No.28 of EIA it is stated that the lands were unclassified. But, contrarily at page No. 97, it states as an airport zone. The entire EIA was confined to 10 km radius of the site beginning at page No. 15, Figure 1.8. But, at page No. 10 in the topographic map it was shown as 15 km. It is

pertinent to point out that Chapter IV of the MoEF's Environmental Impact Assessment Guidance Manual for airports requires that secondary data is to be collected within 15 km aerial distance for parameters at 9 (III) of Form I of the EIA Notification. No attempts were made to measure emission from aircraft as required in page No. 17 (4.4) of the sector manual. The AAQ standards mentioned in Table 3.9 at page No. 73 of EIA were of the year 1998. But, they have been replaced by more stringent standards on 18.11.2009. A reading of the EIA would indicate that substantial portions were devoted to sewage treatment, solar lighting, and other peripheral issues and their likely impacts. Even blank is noticed at page No. 22 in the EIA report which reads "the city of.....is located ...". There was no discussion on how the hazardous waste was to be handled and the solid waste generation was understood to be 27 kg/day. It is clear that the EIA proceeded on the basis that it was a factory which fact would be clear at page No. 102 (4.4.8) while discussing 'within the plant building' and at the nearest plant boundary at page No. 102 (4.4.6). The non-application of mind on the part of the MoEF is evident since it has acted on a EIA which was prepared by the consultant who was neither qualified to prepare the EIA report for the airport project nor was an accredited consultant and was also not entitled to either prepare the EIA or represent the project proponent at the EAC meeting. The EAC has also taken note of the fact that the public hearing was not proceeded in accordance with the mandate as found the EIA Notification, 2006. The project site was environmentally sensitive and diverse supportive to flora and fauna and any disturbance to maintain the ecological balance would lead to the loss of irreplaceable resource. This fact was not taken into consideration by the EIA. The EIA had no information on animals in the area which was pointed out by the Salim Ali Foundation report. But, the same has been disregarded by the 1<sup>st</sup>

respondent/MoEF on flimsy grounds. No attention was paid to rehabilitation and resettlement though the land acquisition was contemplated in the project. The project in question would affect the water flow in the area due to blocking of the water bodies. It is pertinent to point out that the website of the project proponent stated that the Aranmula airport is an international airport when the EIA report at page No.1 stated as domestic airport. Thus, most of the information on which clearance was given was relying on self serving assertions made by the project proponent. No reasoning is given why EAC did not undertake a site visit or required in-depth third party verification on the claim made by the project proponent when there was a threat to bio-diversity, wetland area and in particular, when EIA did not provide adequate information to reach a conclusion on the allegedly benign nature of the project. The EIA report did not assess the impact of proposed activity on land, water, area and did not provide details of those as mandated by law. A mere reading of the EIA would make it apparent that it has not considered or assessed any impact whatsoever, both during construction and operational phases. In respect of each parameter of the EIA report, contains not more than 4 sentences, which is demonstrative of the manner in which the entire exercise has been carried out. This would clearly speak as to the inadequacy of the EIA report. But, the respondents have no explanation to offer on all or any of the matters.

iii) The learned counsel would further submit that the EIA report contained many false and misleading data and the entire report was a farce which should have been rejected by the MoEF. A mere perusal of the Form No. I submitted by the project proponent would indicate that the project proponent suppressed the material facts before the MoEF. The facts that were sought to be furnished in the application as essential for MoEF to come to the conclusion are necessarily to be provided so as

to come to an independent conclusion about the environmental impact. In the said process, the role of the State Government was that of an agency that is expected to assist the MoEF in coming to a fair and correct decision with regard to the environment impact. The State Government is expected to provide necessary factual and legal inputs so that the MoEF could analyse various aspects of the matter to ascertain whether the claim of the proponent was correct or not. But in the instant case, the State Government has not pointed out the suppression of material facts by the project proponent nor submitted actual facts before the MoEF. The project proponent has suppressed several material facts and has also made false statements which have direct and serious bearing on the outcome of the proceedings of the MoEF in granting EC. In the application, the project proponent has stated that there were no Government orders or policies relevant to the site in question when it required exemption under Kerala Land Reforms Act and Kerala Paddy Land and Wetland Act for utilizing the property. The project proponent has stated in the application that there were no permanent change in the land use, land cover and topography including increased intensity of land use. But, the instant project can be implemented only by converting the paddy land and wetland by filling the same. The project proponent has stated that there was no reclamation work in the project when he admitted to the reclamation of paddy land and wetlands. The project proponent has also made a wrong statement that there were absolutely no changes in the water bodies or the land surface affecting the drainage or runoff. These false statements were made when the land required reclamation and the same would seriously affect the water containment of that area affecting the drainage. The project proponent has falsely stated in the application that there was absolutely no land undeveloped or agricultural. It is an admitted fact that except the

area 42 acres filled illegally by the predecessor of the proponent when the land remained undeveloped and the same included agricultural land also. In so far as the environment sensitivity was concerned, the project proponent has stated that there are no areas to be protected under international convention, national or local legislation for their ecological landscape, agricultural or other related value. This false statement was made when the entire area was declared as a heritage site by the United Nations and there was Kerala Paddy land and Wetland Act as far as the ecological landscape value of the property was concerned. The project proponent further stated that the area is not occupied by manmade land uses such as hospitals, schools, places of worship etc., It is pertinent to point out that Aranmula Parthasarathy temple is situate within 100 m from the boundary of the proposed site and less than 400 m from the runway of the proposed airport. There are other hospitals, schools, etc., situate adjacent to the property in question. The project proponent has stated that the area does not contain important high quality or scarce resources such as ground water, surface water source, forestry, agriculture, fisheries, tourism, minerals etc., and the area is not subjected to pollution or environmental damage, when the reports of the officials of the State Government show that the illegal filling of 42 acres of land had already caused damage to the environment. Thus, not only the project proponent has made false statement but also the State Government officials have failed to point out the same and instead of pointing out the above, they have connived with the project proponent before the MoEF.

iv) The counsel would further add that as far as the nature of the land is concerned, from the materials available and from the stand taken by the project proponent, as well as the State Government, it can be see that major portion of the



land in question is either paddy or wetland. The only contentions put forth by the project proponent and the State Government is that the paddy land cannot be considered as the wetland and since there was no cultivation in the land for so many years, the lands remain shallow. Hence, the question to be considered is that whether there would be any environmental impact, even assuming that the shallow land was reclaimed and whether such reclamation would have an adverse impact in the remaining paddy land of that area. This is the most important criteria fixed by the Legislature in Kerala Conservation of Paddy land and Wetland Act for granting permission to fill paddy land or wetland. The officers of the revenue and agricultural departments of the Government of Kerala categorically stated that the reclamation of 42 acres of land has already caused serious damage to the cultivation in the adjacent paddy land. When such is the situation, there should have been a proper study conducted by the MoEF before granting clearance for setting up the airport with permission to reclaim paddy or wetland or shallow land. From the EC, it could be seen that the airport cannot be set up without reclaiming the land. There are disputes regarding the extent of land required to be filled. But, it is an admitted fact that reclamation was required. Even if the permission is granted by the MoEF for reclamation of land, the project proponent cannot reclaim the land without getting permission under the Kerala Paddy Land and Wetland Act. If such permission for reclamation is to be granted under section 10 of the said Act, recommendation of the Local Level Monitoring Committee with the report of the State Level Committee constituted under the Act stating that no alternate land is available and such conversion or reclamation will not adversely affect the cultivation of paddy in the adjoining paddy land and also ecological condition in the area. In so far as the alternative land is concerned, the proponent has admitted in the Application made in

Form I that it did not propose for an alternate land. It is pertinent to point out that the Local Level Monitoring Committee has already reported to the Government that the illegal reclamation of 42 acres of paddy land has already caused serious damage to ecological conditions and has adversely affected the paddy cultivation in that area and has reported further that any further reclamation will have serious adverse impact on cultivation. Without considering the same, the MoEF has granted the EC, thereby permitting the project proponent to fill the paddy and wetland. No independent study was conducted on the nature of the land and environment impact the reclamation might cause, but permission was granted for reclamation. From the minutes of the EAC and order of the MoEF granting the EC, it is clear that both the bodies have not applied their mind independently and have not collected any inputs so as to arrive at a proper decision. The authorities simply relied on the data provided by the project proponent and the State Government, but have not taken any step to independently verify the veracity of the claim. The minutes of the meeting of the EAC and the order of the MoEF would reveal that they have simply reiterated the contentions of the project proponent as well as the State Government believing the entire version as true and thus it would be quite clear that the EC has been granted without assessing the actual environment impact since sufficient materials were not placed to ascertain the same. From the report of the 5<sup>th</sup> respondent/Enviro Care India Pvt. Ltd., the agency which was entrusted with the study of environment impact, it could be seen that that no study whatsoever, was made about the adverse impact on environment or the reclamation might cause. But, it is admitted that the main engagement of the people in the locality was paddy cultivation. If the reclamation affects the paddy cultivation of the locality, the project cannot be allowed at all. The fact that the temples protected by the Archeological Department of the

State Government as well as the Central Government exist nearby the site was suppressed by the project proponent. No study whatsoever has been conducted to assess the impact that might have on Aranmula Parthasarathy temple if the proposed airport is set up. Admittedly, the said temple is 1500 years old and is situated in less than 400 m from the runway of the proposed airport. High frequency sound of the aircraft would break vibration that is created while chanting *mantras* which creates a molecular ordained system and in consequence it would have serious impact to the divinity of the temple. The structure of the temple is very ancient architecture with heritage value and this structure would be damaged due to the noise created by the aircraft. The temple mast is situated in the flight path and very near to the runway. If the height of the temple mast is reduced or lighting is done to the temple mast, it would seriously affect the religious sentiments of thousands of devotees of the temple and would adversely affect the divinity of the temple. Thus, there would be absolutely no material available before the MoEF to come to an independent conclusion about the environmental impact the project might cause.

v) An affidavit has been filed by the Director General of Police/Kerala before the Hon'ble High Court of Kerala in a petition filed to quash the First Information Report registered in the vigilance case initiated against the project proponent and the officials of the State Government, from which it can be seen that serious irregularities have been committed by the State Government officials and the project proponent which include suppression of material facts and forgery of documents for obtaining the EC. It is pertinent to note that the project proponent has not even acquired the title of the lands in question and the Taluk Land Board has already initiated proceedings under the Kerala Land Reforms Act to take possession of the lands in

question treating the same as excess lands. The documents by which the project proponent has purchased the land itself is void as per the provisions of the Kerala Land Reforms Act. Thus, there was absolutely no justification in the action of the MoEF in granting the EC without properly assessing the environment impact the project might cause and hence, it is liable to be set aside. Thus, appraisal of the project carried out by the EAC is vitiated due to non-application of mind to relevant considerations. The minutes of the EAC recommending the grant of EC is in complete violation of law. The reading of the minutes would show that there was no detailed scrutiny of the issues involved. 13 aspects were pointed out during the public hearings which were not even addressed by EAC in its meetings. The EAC has blindly approved the explanation of the project proponent. In support of his contentions the learned counsel placed reliance of the Judgments of this Tribunal in *Samata Vs. Union of India and others in Appeal No. 9 of 2011* and the judgment in *Utkarsh Mandal Vs. Union of India of the Delhi High Court in W.P. (Civil).No. 9340/2009*.

vi) Advancing the arguments on behalf of the 1<sup>st</sup> respondent/MoEF, the learned counsel Smt. C. Sangamithirai would submit that the EIA report submitted by the project proponent was taken for consideration in three meetings of the EAC and following all the procedural formalities. The EAC after considering the pros and cons, recommended for EC and the same has been correct and accepted by the 1<sup>st</sup> respondent/MoEF and the impugned EC was granted in favour of the 3<sup>rd</sup> respondent/project proponent. The contentions putforth by the appellants are unfounded and cannot be accepted both factually and legally. The EIA study has covered the flora and fauna in Chapter 3 of its report. The case in so far as the contentions of the appellants that the project site included wetland and paddy fields

and also that there are public objection to the conversion of the paddy fields and wetlands, a factual report was sought for from the Environment Department of the Kerala Government. The project proponent also sent reply on 01.03.2012 stating that the Government had notified 500 acres of land for development of the airport. There was no paddy cultivation for more than 10 years. A letter dated 26.06.2012 sent by the Government of Kerala and approximately 500 acres of land has been declared as an industrial area by a notification in S.R.O. No. 185/2011 dated 24.02.2011. Much reliance was placed by the appellants on a report of Salim Ali Foundation to the effect that there are extensive wetlands in the village. Contrarily, no wetlands were identified in Aranmula Village as per the report of the Centre for Earth Sciences which prepared the report for Kerala. As per the definition of the Kerala Conservation of Paddy and Wetlands Act, 2008, paddy land is not wetland and it is pertinent to point out that the provisions of the Central Wetland Act are also similar. The project proponent has informed that the site is not located in the upstream of Vembanad and neither silent valley nor ecological diversity areas are located anywhere near the site. The proponent had informed that only minimum area required for runway, apron, taxiway etc., would be filled and the remaining area would be preserved in its natural form. The previous owner had filled the runway of 1000 x 150 m for airstrip and hence, only the area required for runway would be filled with 1 m height and the soil required for land filling would be met from elevated area of about 14.5 acres available within the site itself. In order to confirm the statement, all the available source of soil and a contour map was called for, the same was submitted and the statement of the project proponent was found to be correct. In this regard, a specific condition was imposed in the EC. The contentions putforth in respect of rehabilitation and resettlement is totally unfounded. In view of the letter dated 26.02.2012 that only



7 houses in the proposed area might require rehabilitation.

vii) Countering the above contentions put forth by the appellants side, that the EC has been granted by the MoEF without any application of mind and without any due diligence, the learned counsel for the respondents would submit that the EC has been granted by MoEF after being satisfied on the recommendations of the EAC which was done after due consideration of relevant documents submitted by the project proponent. It is not a case where EC has been granted without conditions. The EC was issued subject to strict compliance of the terms set forth therein. Annexure I depicts in paragraph 10, 20 specific conditions and in paragraph 11, 31 general conditions which would clearly indicate the fact that the EC has been granted only with proper application of mind and due diligence.

viii) Arguing for the project proponent, the 3<sup>rd</sup> respondent namely, M/s. K.G.S. Aranmula International Airport Ltd., the learned Senior Advocate Shri T.R. Rajagopalan, would submit that the appellants have contended that the impugned order has been passed without adequately considering the environmental issues that arise in the construction of an airport such as the existence of paddy lands, a minor rivulet flowing through the airfield and the existence of a temple in the vicinity. A bare perusal of the impugned order would demonstrate that all the concerns raised by the appellants have already been addressed by the MoEF in the impugned order. The EC was granted to this respondent after three meetings of the EAC. Each meeting involved the discussion of fresh issues and the various concerns raised both in the report and the public hearing. Finally, a series of special conditions have been imposed on the respondent and the clearance made subject to the strict compliance with these conditions. These conditions address every issue

that has been raised in the present case. Thus, the impugned order has been passed after much deliberation and careful consideration and the same has taken into account and adequately addressed all environmental concerns. It is well settled that this Tribunal does not sit in appeal over the policy decision of whether an airport is necessary in the region. The State and Central Governments have decided that there is a need for such an airport and have adequately addressed environmental concerns through the conditions imposed on the clearance granted. As such, the present appeals are liable to be dismissed in *limine*.

ix) On scrutiny of the entire records made available by both sides, the following are noticed by the Tribunal which would clearly adumbrate the non-application of mind and lack of expected diligence on the part of the EAC which recommended the proposal for the grant of EC by the MoEF to the 3<sup>rd</sup> respondent/project proponent.

x) This Bench of NGT had an occasion to consider the role and responsibility of EAC while recommending an EIA for grant of EC by MoEF in *Samata and another v. The Union of India and others* reported in 2014 ALL(I) NGT Reporter (1)(SZ)1. The relevant portions of the said judgment are extracted below:

*“43. In so far as the question as to non-application of mind by both the EAC and MoEF, it would be better to look into necessary provisions in the Notification and also decision of the higher courts thereon before considering the merits or otherwise of the rival contentions. Speaking on the stages on the prior EC process for new projects, paragraph 7 of the EIA Notification, 2006 which is ruling the*

*entire field states that it would comprise of maximum of 4 stages, which are:-*

- (1) Screening ( only for Category B and activities),*
- (2) Scoping,*
- (3) Public Consultations*
- (4) Appraisal,*

*44. Stage-IV, Appraisal: (1) Appraisal means together with the reasons for the same. The plain meaning of the word 'appraisal' is to 'appraise the thing'. The word 'appraisal' in legal forlorn is defined in Black's Law Dictionary as follows:*

*"Appraisal: (1) The determination of what constitutes a fair price, valuation, estimation of work, (2) the report of such determination-also term 'appraisement'.*

*45. Thus, the appraisal of the project requires not only evaluation, but also estimation of works in order to make an assessment or determination of the same. The process of appraisal would certainly require application of mind independently and make evaluation of the available materials to make an approval to regulatory authority to grant EC or place before the regulatory authority with the report to refuse EC. The notification makes it mandatory not only a scrutiny but also a detailed scrutiny to the EAC or SLAEC of the application and other documents like final EIA report, outcome of the public consultation including public hearing proceedings submitted by the Project Proponent. The word 'scrutiny'*

should have been employed in the Notification by the Legislature with clear intention that a critical observation or examination of all the available materials before submitting a recommendation to the regulatory authority. The Notification requires a categorical recommendation from the EAC or SLEAC on conclusion of the proceedings of appraisal. Hence, the appraisal cannot be a mere formality or a simple ritual to pass on. The Hon'ble High Court, Delhi in **Utkarsh Mandal Vs. Union of India ( 2009 X AD (Delhi) 365** has held as follows:

“We, therefore, hold in the context of EIA Notification dated 14 September 2006 and the mandatory requirement of holding public hearings to invite objections, it is the duty of the EAC, to whom the task of evaluating has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent were considered and the reasons why any or all of such objections were accepted or negated. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non application of mind to relevant consideration and therefore arbitrary. (Para 4).”

46. The Hon'ble Apex Court in **Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi (1991) 2 SCC 716** has held as follows:

“21. Thus, it is settled law that the reasons are harbinger between the minds of the maker of the order to the controversy in question

*and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. The order when it affects the right of a citizen or a person, irrespective of the fact, whether it is quasi judicial or administrative fair play requires recording of germane and relevant precise reasons. The recording of the reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aid the appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of this Court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person.”*

**47. The NGT in Appeal No. 20/2013 in Rudresh Naik Vs. Goa State Coastal Zone Management Authority** has held as follows:

*“ It is settled rule that administrative authorities which are dealing with the rights of the parties and are passing orders which will have civil consequences, must record appropriate reasons in support of their decisions. Certainly, these decisions must not be like judgments of the courts, but they must provide insight into the thinking process of the authority as to for what reasons it accepted or rejected the requests of the applicant. (Para 12, 13 and 14)”*

162. The application filed by the project proponent seeking EC in Form I for the proposed airport did not reveal the true, correct and complete disclosure of



factual details and it also suffered by suppression of facts and with false statements as detailed infra:

1. The EIA report placed before the EAC was prepared which was by a thoroughly unqualified and incompetent agency for the reasons supra.
2. Even before the ToR was finalized on 13.10.2010, the 5<sup>th</sup> respondent/consultant collected data, both primary and secondary and admittedly, conducted the field study between July to October 2010.
3. The EAC did not raise any query regarding the competency and also the commencement and completion of field study even before the finalization of ToR.
4. The EIA was made a thorough deviation and was prepared in violation of the EIA Guidance Manual for Airports issued by the MoEF on vital aspects. The EIA Guidance Manual for Airports requires that the primary data should cover one season other than monsoon and while the secondary data should be collected for one full year. Contrarily, the entire data were collected only during monsoon. The EIA placed before the EAC would clearly indicate that the entire data was collected covering a distance of 10 km radius of the site, while the sector specific manual states at page No. 10 about topo map for 15 km radius. Apart from that, Chapter 4 of the Manual states that the secondary data should be collected covering 15 km aerial distance for parameters at 9 (III) of Form I of the EIA Notification. Clause 4.4 of the sector manual requires the measurement of the emission from the aircraft has to be taken into account. But, no attempt was even taken during the study towards this. It is true that AAQ standards are mentioned in Table 3.9 at page No. 73 of the EIA report, but they were

of the year 1998. Those AAQ standards have been replaced by standards on 18.11.2009 which are more stringent. There is nothing to indicate in the EIA report that there was any study made with airport related issues, such as, aircraft noise, emission of hydrocarbons and their likely impact. No discussion is found as to how the hazardous waste is to be handled. The solid waste generation shown as 27 kg/day which cannot but be an understatement. It casts a doubt whether the EAC had in its mind a plant or a factory instead of an airport project while considering the EIA. The words 'plant, plant site, plant building, plant operators' are used in paragraphs 3.12.1, 3.15.1, 4.3.7, 4.4.6 and 4.4.8. Paragraph 4.4.8 of the EIA reads as follows:

*"Elaborate green belt and aforestation will be developed along peripheral and other vacant portions of the factory premises, which will considerably enhance the floristic density in the area."*

Para 5.1.1 reads *"... by implementing better technology, the factory can often take advantage of the dual benefits of reduced waste generation and a more cost efficient operation."*

Similarly, paragraph 4.4.5 reads, *"The increase in traffic density due to transportation of raw materials and products will be very low by means of lorries and truckers 120-180 times per month."*

No doubt, all the above are out of context and irrelevant and made without any application of mind. Probably, the same might be a verbatim copy of some other report for a factory or plant.

5. As could be seen from the EIA Notification, 2006, there is a mandate for the preparation of a draft EIA report initially and after finalization of ToR and summing up of such draft EIA report has to be necessarily placed during Public Consultation as required under paragraph 7. III – Stage (3). In paragraph 7.III(vii) of the EIA Notification, 2006 reads, “ *After completion of public consultation, the applicant shall address all the material environmental concerns expressed during this process and make appropriate changes in the draft EIA/EMP. The final EIA report so prepared shall be submitted by the applicant to the concerned regulatory authority for appraisal.*” The 5<sup>th</sup> respondent/consultant has categorically admitted in his reply that they submitted the EIA report in October, 2010, which is only a draft EIA report. The 3<sup>rd</sup> respondent/project proponent has filed a report which incorporated the minutes of the public hearing details which are not only insufficient, but also cannot be termed as final EIA report as envisaged above. Thus, in the instant case, no final EIA report was ever prepared or submitted by the applicant before the concerned regulatory authority.
6. At the time of the public hearing, as seen from the minutes of the hearing the local people who participated in the public hearing voiced their concerns and objections to the draft EIA report. But, none of the objections was addressed in the EIA report. It is pertinent to point out that when those objections and concerns were voiced by the participants during the public hearing, the 3<sup>rd</sup> respondent/project proponent had given clear undertaking that a detailed EIA study would be conducted later. But, no material was placed to indicate that any detailed EIA study was conducted later. Apart

from that, the EIA report would show that no such subsequent study was conducted. If the undertaking given by the 3<sup>rd</sup> respondent/project proponent at the stage of public hearing to conduct a detailed EIA study was not done, the EAC should have rejected the EIA report as incomplete for want of a detailed EIA study. This would also be indicative of non-exercise of due diligence on the part of the EAC. The EAC has thoroughly forgotten that it could only appraise a final EIA report and nothing less than that, since paragraph 7.IV of the EIA Notification, 2006 requires the EAC to scrutinize only a final EIA report.

163. Thus, in the instant case, even without a final EIA report, the other materials were taken up for appraisal and hence, both the appraisal by EAC and consequent clearance by MoEF have to be termed as faulty.

164. The EIA report did not assess the impact of the proposed activity of the 3<sup>rd</sup> respondent/project proponent on land, water air, environment and ecology of the area and it did not provide the required details in these respect as mandated by law, thereby enabling the EAC to make a scrutiny and take an independent decision on the issues of environment. The inadequacy of the EIA report is demonstrated by the fact that it has not considered details about the flora and fauna. The EIA report did not provide any details about the flora in the region except stating that there are no endangered species in the area. A report of the Salim Ali Foundation clearly states that there are more than 212 species of plants. The report also states that there are more than 60 species of fishes and more than 80 species of birds. But, the EIA report did not reflect the same. The EIA has not made any attempt, whatsoever to characterize the ecology of the area including wildlife that inhabits forested lands

which required to be cleared for providing a long runway at the proposed airport. The crucial aspects relating to filling up of paddy lands and its impact on the environment were not considered though objections were raised in that regard.

165. The EIA report never cared to consider the environmental impacts of converting Aranmula paddy lands, in particular, the reclamation of those lands and its consequences. The EAC has not considered the materials placed in respect of conversion of part of paddy lands which according to the 3<sup>rd</sup> respondent/project proponent the same was done by his predecessor in his interest. But, admittedly, a number of proceedings were initiated in both and criminal courts and even by vigilance department of the State of Kerala which were all pending during the relevant period. It is admitted by the 3<sup>rd</sup> respondent/project proponent that the entire are of 500 acres of land required for the airport project and consists of both paddy lands and wetlands and it is also added by the 3<sup>rd</sup> respondent/project proponent that the lands remained shallow for decades and hence it can be put into better use of construction of the airport. It is also true that the conversion of the land - both paddy lands and wetlands already done and proposed to be done are actually the subject matter of the proceedings before different fora in Kerala State, which fall outside the jurisdiction of the Tribunal. But, the pendency of those proceedings does not impede the Tribunal to consider the impact of such conversion and alleged degradation of environment. In the instant case, admittedly, a part of the paddy fields/wetlands was converted while the remaining is to be converted by the 3<sup>rd</sup> respondent/project proponent for the proposed airport. The conversion of paddy fields and wetlands, its impact on the ground water resources in the area, the impact of the rivulet and streams, namely, *Kozhithodu*, and *Karumaramchaal* were never taken into consideration by the EAC.



166. The EIA report has not spoken anything about the impact of the project on the displacement of the people as a result of the present project. The EIA report does not even mention the number of houses in the area or population that will be displaced as a result of acquisition of the land for the project and the filling up the wetlands.

167. In so far as the water requirement is concerned, the EIA report under '2.8.2 Water' states that the total requirement of raw water for the airport is 7.55 KLD which will be met from own bore wells and municipal water supply. But, it does not discuss the impact of extraction of water on the water table in the area. The EIA mentions under '2.3.7 under 'Approach Road' that a four lane approach road with 23 m width is proposed from Aikkara junction to the terminal building for which land needs to be acquired. Similarly, road from Parumootumpadi junction to Aikkara junction is also required to be widened for smooth vehicular traffic to the proposed airport. But, the EIA has not addressed on environment, socio-economic and other impacts of the said road construction. The contention of the 3<sup>rd</sup> respondent that these roads do not form the part of the proposed airport is not acceptable. Needless to state that the roads would not be laid in the absence of the airport project and therefore, the environmental impact of the road laying must have been included in the EIA report. The EIA at paragraph '2.6(n) Land Use Classification' states that Government has recognized the location of this project site as unclassified land. But, the said statement is falsified by the admission of the fact that part of the paddy land has been filled up. The EIA has given false statements on archeological and cultural monuments. The EIA in paragraph 2.6(a) reads thus: *"The location does not have any archeological monuments in nearby 10 km radius"* and at 2.6 (c) - *Cultural Monuments- This project does not have any cultural monument within the area of 10*

*km radius*. It is pertinent to point out that the Aranmula village itself is a heritage village and got its name from the centuries old Aranmula Parthasarathy Temple which is dedicated to Lord Sri Krishna. The said temple on the banks of River Pampa attracts large devotees throughout from India. Entire region is with temples of importance. The holy Pampa River is described as the boundary of the project site in EIA, reported.

168. The practice of collecting data even before the finalization of ToR by the EAC and the communication of the same to the project proponent is untenable in the eyes of law and it also sends wrong procedural signals. Accepting such a procedure is bound to set very unhealthy precedent. Instead of deprecating the practice, the EAC, in the instant case, has given its seal of approval. We direct the concerned officials of MoEF to take note of this and initiate procedural reform(s) to discourage this practice.

169. **'Environmental Clearance document'** is certainly not a piece of official note conveying the decision of the authorities to the Project proponent. It is a document which reflects the intent and policy of governance *vis-a-vis* the economic development and natural resources management of the country. Even a cursory scrutiny of the impugned EC would reveal the mechanical mindset and total lack of application of mind on the part of the authorities issuing such an important document of utmost sanctity. We now cite some glaring examples below:

170. The EC issued in the instant case lists two sets of conditions for strict compliance by the project proponent. While Paragraph 10 lists 20 "Specific conditions" Paragraph 11 lists 31 'General conditions'.

Specific condition 10 – (vi) reads as follows:

**‘Project proponent shall have a Master Plan for the project and other related facilities if any. Such other facilities shall be considered by the Competent Authority only after a Cumulative Environment Impact Assessment is carried out’.**

171. The above condition refers to the carrying out of **Cumulative Environment Impact Assessment**. The instant project namely the airport project in the proposed site does not require any **Cumulative Environment Impact Assessment study** from any angle of environment. No reference to the need for such a study has been made in any of the documents produced before the Tribunal by any of the respondents including the MoEF. We have not come across any indication and mention of it in the minutes of the EAC also.

172. General Condition 11 - (viii) reads as follows:

**‘Ambient noise levels should conform to residential standards both during day and night’**

173. We are shocked to see the imposition of a condition referred to above, to say the least. We are at a loss to understand the rationale of expecting **‘residential standards of noise’** in the airport area. Amazing indeed!

174. General Condition 11 - (ix) reads as follows:

**‘Fly ash usage shall be explored as building material in the construction as per the provisions of Fly Ash Notification of September, 1999 and amended as on 27<sup>th</sup> August 2003’.**

175. We wonder whether any observation on the above condition in the context of “Airport Project” needs to be made by the Tribunal at all. At best, this is an example of making a mockery of EC conditions.

176. General Condition 11 - (xvi) reads as follows:

**“Treated affluent emanating from STP shall be recycled / reused to the maximum extent possible. Treatment of 100% grey water by decentralised treatment should be done. Discharge of unused treated effluent shall conform to the norms and standards of the Uttar Pradesh State Pollution Control Board. Necessary measures should be made to mitigate the odour problem from STP”**

177. We find it difficult to see the relationship between the project in question and the **Uttar Pradesh State Pollution Control Board**. In our opinion, the officials responsible for making a blunder as above owe an explanation to their own selves.

**178. We are of the considered view that the “conditions” cited above are typical examples of the (in)famous “Copy and Paste” from the list of conditions appended to the EC of some other project(s), without any application of mind and ‘non-verification’ of the document before placing the same for signature by the authorized signatory. We direct the MoEF to take steps to restore the sanctity of important documents such as the EC.**

179. We have made a scrutiny of the 'Terms of Reference' and also the subject coverage in the EIA report. In our view, the ToR for EIA are not as exhaustive and project specific as they should have been. The EAC, whose role is of great significance in the decision making process, should have demonstrated its collective wisdom and professional acumen by being more "Project specific" while framing the ToR. We hope that the EAC would note this for future reference.

180. The proposal in respect of the airport project of the 3<sup>rd</sup> respondent/project proponent was taken up for consideration by the EAC in its 107<sup>th</sup> meeting held on 15<sup>th</sup> and 16<sup>th</sup> of December 2011. The relevant part is found in paragraph 3.2 which reads as follows:

*"The project was again considered by the EAC in its meeting held on 21<sup>st</sup> and 23<sup>rd</sup> September, 2011 and sought additional information. The details submitted and presented were examined by the committee.*

*During discussion, the following points emerged:*

- (i) Quantify the water conservation taking into the water from RWH, water efficient fixtures and reuse of treated wastewater and resubmit the water balance.*
- (ii) Quantify the energy savings as per ECBC norms and resubmit*
- (iii) Submit the details of manpower requirement/proposed for Risk Environment management team.*
- (iv) Apart from CSSR, the Hospital as proposed shall be built up.*



*(v) All the recommendation of the EMP shall be complied with letter and spirit.*

*(vi) The wastewater from hangers shall be tested for presence of heavy metals in any and shall be treated in STP. The treated waste water shall be used for gardening/flushing.*

*The Committee recommends the proposal for EC after submission of the information at (i) to (iii) to Ministry with the above conditions in the clearance letter for strict compliance by the project proponent.*

181. A reading of the above would make it abundantly clear that it is bereft of reasons either for negating the objections and concerns in the public hearing nor for accepting the response, information and clarifications provided by the project proponent. What are all stated is the gist of the original application of the project, the main issues raised at the public hearing and except the above, it was recorded that there was submission of response by the project proponent to the issues raised and based on information and clarifications, the Committee recommended the project for EC subject to the specific conditions stated therein.

182. It is not in controversy that at the time of public hearing many objections and concerns were raised and the same were also recorded in the minutes of the public hearing. As rightly pointed out by the learned counsel for the appellants, all issues raised at the time of public hearing were not even stated in the above recordings of the minutes. The detailed scrutiny as required by the notification in order to make an evaluation of the project has not been done since there is nothing to indicate in the minutes of the meeting that in respect of the issues raised at the time of public hearing in respect of each issue i.e., objections raised at the public

hearing and what was the correspondence and clarification made by Project Proponent thereon and why and for what reasons those objections were negated and the clarifications of the project proponent were accepted. Thus, the Tribunal is able to notice a thorough failure on the part of the EAC in performing its duty of proper consideration and evaluation of the project by making a detailed scrutiny before approving the same. The contentions put forth by the learned counsel for the respondents that number of specific condition were stipulated by the EAC at the time of recommendation and without proper consideration of both objections and concerns at the time of providing and proper responses made by the Project Proponent, those conditions could not have been stipulated cannot be countenanced. It is true that the EAC while recommending the project for the grant of EC has stipulated conditions. Mere stipulation of specific conditions *ipso facto* cannot be an answer, while the minutes recorded above clearly indicate that there was no appraisal wherein an evaluation by detailed scrutiny of the project is required as per the mandatory provisions of EIA Notification, 2006. The Central Government, in its wisdom thought it fit and necessary and circumstances also warranted issuance of the EIA Notification, 2006 superseding the earlier Notification, 1990 whereby EAC has been constituted for all projects in Category A and SEAC for Category B for the purpose of screening, scoping and appraisal of the projects.. The EAC is constituted consisting of a Chairman and number of members who are experts from different fields only with the sole objective of national interest in order to ensure establishment of new projects or expansion of already existing activity without affecting the ecological and environmental conditions. Thus, a duty is cast upon the EAC or SEAC as the case may be to apply the cardinal and Principle of Sustainable Development and Principle of Precaution

while screening, scoping and appraisal of the projects or activities. While so, it is evident in the instant case that the EAC has miserably failed in the performance of its duty not only as mandated by the EIA Notification, 2006, but has also disappointed the legal expectations from the same. For a huge project as the one in the instant case, the consideration for approval has been done in such a cursory and arbitrary manner even without taking note of the implication and importance of environmental issues. On the same day the EAC took for appraisal not only the airport project in question, but also other projects which would be indicative of the haste and speedy exercise of its function of appraisal of the project. It casts a doubt that whether the EAC would have accepted the response made by the Project Proponent in respect of the objections and concerns raised at the time of public hearing as a Gospel Truth. Thus, the EAC has not conducted itself as mandated by the EIA Notification, 2006 since it has not made proper appraisal by considering the available materials and objections in order to make proper evaluation of the project before making a recommendation for grant of EC.

183. The EAC is a High Level Committee entrusted with the task of evaluating the projects, which exercise it has to do with its wisdom, experience and expertise of the members. Needless to say, while doing that exercise for such evaluation, the Committee should keep wider interest of the nation as paramount in its mind. A duty is cast upon the EAC to strike a balance between the development on one side and ecology and environment on the other, thereby ensuring larger interest of the society of the State. While such vital and indispensable task is entrusted with the fervent hope and expectation, shirking of responsibility in a hasty or evasive manner would not only be against the objective of its constitution, but also defeats the purpose for which the Committee is functioning. Where a particular

point is not decided unanimously, specific noting should be prepared and scientific reasons for accepting the majority view should be recorded and maintained for future reference. It should not be forgotten by the EAC that either the acceptance or rejection of a proposal should be the result of a proper and purposeful exercise on the recommendations of which the regulatory authority can safely act and take a correct decision thereon.

184. The learned counsel for the respondents in their final attempt of getting a support of the Doctrine of Sustainable Development would submit that the Aranmula airport project is one of the national importance whose approval will lead to a large development to the State of Kerala directly and indirectly. The airport project, if allowed to be set up as approved, would play a vital role in industrial development and commercial trade and it would offer crucial services for transport of goods and passengers. Apart from that, it would be useful for domestic and international tourism when limitation of time is a key factor. It would play as catalyst to economic development. In turn, it would generate demand for the former. The people of Kerala would like to have modern infrastructure in the State with least disturbance to environment. The State Government representing the public interest has supported and lent its full favour for this project. This project would be an employment generating development which in turn would be a boon to the educated and unemployed in the State and this would be welcomed in a larger public interest of Kerala and economic interests of the country as a whole. In the instant case, environmental issues were fully taken up both by EAC and also MoEF. On being satisfied with the project and finally MoEF accepting the recommendations made by the EAC, has granted the EC. Had not the objections and concerns raised by the public been considered, by the MoEF, number of specific and special conditions in

respect of the environmental issued could not have been attached to the EC. This fact would be indicative of the consideration of all environmental and ecological issues and hence the EC has got to be upheld.

185. It is not as if the Tribunal is unmindful of its duty that a balance has to be struck between ecology and development in order to uphold the principles of sustainable development and precautionary principle as envisaged under section 20 of the NGT Act, 2010. Needless to say, striking a balance between the ecology and development is a difficult task. But, at the same time, it cannot be forgotten that for one's sake other should not be sacrificed. A balance has to be struck whereby a compromise is made in order to achieve the development without causing environmental degradation and damaging ecology. Ordinarily, the contention putforth by the learned counsel for the appellants that if not the environmental issues and concerns were not considered, the conditions specified in respect of the particular project would not have been attached to the EC. But, in the instant case, all mandatory principles and guidelines as envisaged by the EIA Notification, 2006 have been violated by (1) Form I along with the application for EC. (2) incompetency of the consultant who prepared the EIA which is the basis for the grant of EC, (3) public hearing and public consultation and (4) non-application of mind and lack of due diligence.

186. In a democracy like ours, all natural resources are wealth of the country and in the custody of the State as a Trustee. They are all meant for public use and enjoyment and the public at large is the beneficiary of the same. The State as a Trustee is under legal obligation to protect them. We hope that the recommending



body EAC and the regulatory agency MoEF are aware of the above concept of public trust and issue clearance for the development projects in tune with this concept.

187. Under such circumstances, the Tribunal is of the considered opinion that there is no option but to scrap the impugned EC granted by the MoEF to the 3<sup>rd</sup> respondent/project proponent for setting up the Aranmula airport.

188. In the result, the appeal Nos. 172-174 of 2013 (SZ) and 1 and 19 of 2014 (SZ) are allowed granting only the following reliefs.

189. It is declared:

1. That the 5<sup>th</sup> respondent, Consultant namely, M/s. Enviro Care India Pvt. Ltd., was not competent to prepare the EIA or appear before the EAC in respect of the proposed Aranmula Airport Project.
2. That the public hearing conducted for the proposed Aranmula Airport Project is in violation of the mandatory provisions of the EIA Notification, 2006 and it is vitiated.
3. That the recommendation of the EIA made by EAC for the grant of EC in respect of the proposed Aranmula Airport Project as invalid.
4. The EC granted by the 1<sup>st</sup> respondent/MoEF in F.No. 10-51/2010-IA.III dated 28.11.2013 is set aside and consequently, the 3<sup>rd</sup> respondent/Project Proponent namely, KGS Aranmula International Airport Ltd., is restrained from carrying out any activities either constructional or otherwise in respect of the Aranmula Airport Project on the strength of the above environmental clearance.

190. In all other respects, the appeals are dismissed and all connected MAs are closed.

The parties to bear their respective cost.

Before concluding, the Tribunal feels it fit and necessary to record its appreciation for the effective and efficacious assistance rendered by M/s. T. Mohan, A. Yogeshwaran, Ashok M. Cherian, K. Janardhan Shenoy, R. Krishnaraj, Ramesh Kumar Chopra, Ranjith Thamban, Senior Advocate, Rema Smrithi, Mallika Srinivasan and Jacob Alex, Advocates appeared for the appellants and M/s. K.P. Dhandapani, Advocate General, State of Kerala, T.R. Rajagopalan, Senior Advocate, P.S.Raman, Senior Advocate, Pushpa Menon, C. Sangamithirai, Standing Counsel for MoEF, Rohan D. Alexander, Government Pleader, State of Kerala, M. Ajay, Sathish Parasaran, Suvitha. A.S., Special Government Pleader, State of Kerala appeared for respondents for adjudicating the matters.

(Justice M. Chockalingam)  
Judicial Member

(Prof. Dr. R. Nagendran)  
Expert Member

Chennai,  
28<sup>th</sup> May 2014

NGT



# NGT