

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

.....

**M.A. NO. 894 OF 2014
IN
O.A. NO. 26 OF 2012**

IN THE MATTER OF:

Goa Foundation & Anr.

....Applicants

versus

UOI & Ors.

....Respondents

AND IN THE MATTER OF:

Coorg Wildlife Society

.....Applicant

versus

1. Union of India
Through Secretary
Ministry of Environment Forests & Climate Change
Indira Paryavaran Bhavan,
Jor Bagh Road, New Delhi-110003
2. Power Grid Corporation of India Limited
Through its Chairman and Managing Director
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110016
3. State of Karnataka
Through its Chief Secretary
M.S. Building, Dr. Ambedkar Veedi,
Bangalore-560001
4. Deputy Commissioner
Deputy Commissioner Office
Fort, Madikeri, Kodagu District,
Karnataka-571201

....Respondents

Counsel for Applicant:

Ms. Pallavi Talware, Advocate

Mr. Sanjay Upadhyay, Ms. Manisha Badoni and Mr. Salik Shafique, Advocates in M.A. No. 894/14

Mr. Raj Panjwani, Sr. Advocate and Mr. Rahul Chaudhary, Advocate for Applicant in main matter

Counsel for Respondents:

Mr. Vikas Malhotra, Mr. Ajay Sharma, Mr. Deepesh and Mr. Kapish Seth, Advocates for Respondent No. 1
Mr. Roshan Lal Goel, Advocate for Respondent No. 19 in main matter.

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

Hon'ble Prof. A.R. Yousuf (Expert Member)

Hon'ble Mr. B. S. Sajwan (Expert Member)

**Reserved on 24th December, 2014
Pronounced on 13th January, 2015**

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

Original Application No. 26 of 2012, titled '*Goa Foundation & Anr. Vs. UOI & Ors.*' was filed before the Tribunal with the prayer that the respondents (Union of India) be directed not to issue any Environment Clearance under the Environmental (Protection) Act, 1986 (for short, 'Act of 1986') and the Pollution Control Boards concerned should not to issue consent under the Water (Prevention and Control of Pollution) Act, 1974 (for short, 'Act of 1974'), Air (Prevention and Control of Pollution) Act, 1981 (for short, 'Act of 1981'). It is the case of the applicant that various States have demarcated areas as Eco Sensitive Zone (ESZ) I and Eco Sensitive Zone (ESZ) II within the Western Ghat Area to protect and preserve the Western Ghat in the framework as enunciated by the Western Ghat Ecology Expert Panel (WGEEP) Report dated 31st August, 2011. Various developments took place

during the pendency of this application, reference to which is not necessary for the decision of the present Miscellaneous Application No. 894 of 2014. Vide judgment dated 25th September, 2014, Original Application No. 26 of 2012 viz. '*Goa Foundation & Anr. Vs. UOI & Ors.*' was finally disposed of, with certain directions. It was noticed in that judgment that MoEF had issued directions under Section 5 of the Act of 1986 on 13th November, 2013 for providing immediate protection in relation to Western Ghats to maintain its environmental integrity and tranquillity. It was for MoEF to consider the rival contentions of various States and objections while declaring and demarcating the eco-sensitive areas of Western Ghats. It was expected that MoEF would not grant such clearances that would adversely impact the eco-sensitive areas. The Ministry was to take a final view in accordance with law expeditiously. It was also noticed that according to the MoEF, directions had been issued under Section 5 of the Act of 1986 on 13th November, 2013, for providing immediate protection to the Western Ghats and to maintain its environmental integrity, which are in force. To the draft Notification, States were required to file their responses before the MoEF, which thereafter was to proceed in accordance with law. Thereafter, the Applicants registered society, with its aim and objective to generate greater awareness amongst the people of Kodagu regarding the importance of conservation of ecology and protection of wildlife habitat, filed the present application with the following prayers:

- 1) “Stay the operation of order dated 10th December, 2014 passed by Deputy Commissioner and District Magistrate of Kodagu District, Madikeri, Karnataka;
- 2) Declare the order dated 10th December, 2014 passed by Deputy Commissioner and District Magistrate of Kodagu District, Madikeri, Karnataka in violation of order dated 25th September, 2014 passed by this Hon’ble Tribunal in Original Application No. 26 of 2012;
- 3) Declare the order dated 10th December, 2014 passed by Deputy Commissioner and District Magistrate of Kodagu District, Madikeri, Karnataka in violation of Section 8 of Karnataka Tree Preservation Act, 1976;
- 4) Declare the order dated 10th December, 2014 passed by Deputy Commissioner and District Magistrate of Kodagu, District, Madikeri, Karnataka in violation of Hon’ble Supreme Court’s order dated 12th December, 1996 passed in W.P. (C) No. 202 of 1995;
- 5) That stay the felling of trees till the NBWL Clearance is obtained; and
- 6) Pass any other such order(s)/direction(s) as this Hon’ble Tribunal deem proper in present facts and circumstances.”

2. The applicant referred to the report of WGEEP as well as to the report Western Ghats High Level Working Group, in relation to area sensitivity and ecology of the Western Ghats. The applicant also referred to the judgment of the Tribunal in Original Application No. 26 of 2012, which held that the MoEF is expected to maintain environmental tranquillity and ecology of the areas comprising Western Ghats and not to allow irreversible alteration of the areas in question, by granting Environmental Clearance or permitting activities which would have an adverse impact on the eco-sensitive areas. It is the case of the applicants that the Deputy Commissioner and the District Magistrate of Kodagu District, Madikeri, Karnataka, on 10th December, 2014, passed an order in relation to 400 KV D/C Transmission Line project from Kozhikode (in Kerela) to Mysore (in Karnataka) under Section 68

of the Electricity Act, 2003 read with Sections 10 & 16 of the Indian Telegraph Act, 1885 permitting felling of 1358 trees within the Margolly Estate. According to the applicant, the order of the Deputy Commissioner is in violation of the order of the Tribunal dated 25th September, 2014 in the case of '*Goa Foundation (supra)*'. Further, it is pleaded that the said order of the Deputy Commissioner is in total ignorance and violation of Section 8 of the Karnataka Preservation of Trees Act, 1976, which imposes restriction on the felling of trees, and of the order of Hon'ble Supreme Court dated 12th December, 1996, passed in the case of *T.N. Godavarman v. Union of India & Ors.*, (W.P (C) No. 202/1995), the area being a 'forest land'. According to the applicant, he further submitted that the area is also a crucial elephant habitat and Reserve Forest. According to the applicant, the order is also violative of the National Board for Wildlife Guidelines. Therefore, it is prayed that the impugned order passed by the Deputy Commissioner should be stayed.

3. The applicant has fairly stated that for the above project, the Power Grid Corporation of India Ltd. had been granted Forest Clearance under the provisions of Forest Conservation Act vide order dated 1st March, 2012 under Section 2 of the Forest Conservation Act, 1980. The said order was challenged by the applicant before the Southern Zone Bench of the National Green Tribunal, vide Application No. 414 of 2013, which came to be dismissed vide order dated 7th July, 2014 by the Southern Zone Bench, on the technical ground of limitation. The applicant

thereafter preferred a Civil Appeal before the Hon'ble Supreme Court of India, being Appeal No. 34107 of 2014, which was filed on 16th October, 2014, but has not been heard yet. The apprehension of the applicant is that, in furtherance to the order of the Deputy Commissioner, a total 50,000 trees shall be felled in private lands in the Virajpet Taluk of District Kodagu, Karnataka, which is an Ecologically Sensitive Area of the Western Ghats and thus, the order dated 10th December, 2014 shall be very prejudicial to the environment.

4. Upon notice, the respondents appeared and contended that the present application is not maintainable and is an abuse of the process of law. According to them, the applicant is filing multifarious litigation in regard to the same matter, particularly, when the Civil Appeal No. 34107 of 2014 before the Hon'ble Supreme Court is pending against the order of the Southern Zone Bench of this Tribunal; they averred that the Tribunal should not entertain the present application. According to them, the application is also not maintainable on the principles of *res judicata*, as the pleas in Original Application No. 414 of 2013 before the Southern Zone Bench of this Tribunal and even before the High Court of Karnataka in Writ Petition No. 23456 of 2013, have since been decided.

5. We have heard the Learned Counsels for the parties at some length. In our view, firstly, the application is not maintainable and secondly, the Tribunal should not exercise its jurisdiction in the

facts and circumstances of the present case, *inter alia*, for the following reason:

- (a) Original Application No. 26 of 2012, in which the M.A. No. 894 of 2014 has been filed, has already been disposed of. The Tribunal is *functus officio* as far as the main application is concerned, except to the extent that liberty has specifically been granted to the parties to approach the Tribunal. In fact, even as of today, the MoEF has not issued a final Notification in relation to the Western Ghats. Original Application having been finally concluded, the application which is apparently beyond the ambit and scope of the main petition itself, cannot lie before this Tribunal, especially with the kind of prayers made. Furthermore, as far as the violation of the judgment of the Tribunal passed in Original Application No. 26 of 2012 is concerned, we are of the considered view that there is no violation of the directive contained in paragraph 14 of the judgment. There, it has been observed that the MoEF is expected to maintain environmental tranquillity and ecology of the areas under consideration and should not allow irreversible alteration of the areas in question by granting Environmental Clearance or by permitting activities which would have an adverse impact on the eco-sensitive areas. As already noticed, the Eco-Sensitive areas have not been notified by the MoEF as of yet. In the present case, the Forest Clearance and permission for change of land use, in relation to 'Forest

Area' or carrying on of non-forest activity, in terms of Section 2 of the Act of 1980, had been granted on 1st March, 2012, i.e. even prior to the pronouncement of the judgment in O.A. No. 26 of 2012. In light of this, we are of the considered view that there is no violation of the directions of the Tribunal, as recorded in Paragraph 14 of the judgment in *Goa Foundation v. UOI* (supra).

- (b) In the prayer clause, the applicant had specifically prayed that order dated 10th December, 2014, i.e. the impugned order, is in violation of the orders of the Tribunal and therefore, its operation should be stayed. In the garb of this prayer, what the applicant actually prays is setting aside of the order dated 10th December, 2014. Whether the said order is violative of the judgment of the Supreme Court in the case of *T.N. Godavarman v. Union of India & Ors.* (supra) or the provisions of the Karnataka Tree Preservation Act, 1976 or for that matter any other law, is certainly not for this Tribunal to decide. The Tribunal has to exercise its jurisdiction within the framework of the provisions of the National Green Tribunal Act, 2010 (for short, 'NGT Act), the statute which has created this Tribunal. Section 16 provides for appeals to the Tribunal. Clause (a) to (j) of Section 16 prescribes the orders against which an appeal would lie to the Tribunal. The intent of the legislature in excluding other orders, being appealed before the Tribunal, is implicit in section 16 of the NGT Act. Admittedly, the

order dated 10th December, 2014, has been passed under Section 68 of the Electricity Act, 2003 read with Sections 10 and 16 of the Indian Telegraph Act, 1885. These acts are not made appealable in terms of Section 16. Furthermore, none of these Acts find a place in Schedule I to the NGT Act, that provides the enactments, in relation to which, environmental disputes are to be dealt with by the Tribunal. Once the appeal does not lie to the Tribunal against a given order, it will not be appropriate for the Tribunal to exercise such jurisdiction under Section 14 or any other provision of the NGT Act.

(c) The Learned Counsel for the applicant contended that the present application raises a substantial issue relating to environment and therefore the Tribunal should step in and pass appropriate orders on merits. We are not impressed with this contention at all. Even Section 14 contemplates that the dispute or civil case, should be relating to a substantial question relating to environment or enforcement of a legal right relating to environment and should arise in relation to implementation of any or all of the enactments specified in Schedule I to the NGT Act. The only Act which can be referred to and related within the present case is the Act of 1980, which finds a place in Schedule I to the NGT Act.

(d) This brings us to the discussion of the merit of the contention of the respondents that the Forest Clearance

was granted on 1st March, 2012 which was assailed before the Southern Bench of the National Green Tribunal in Original Application No. 414 of 2013 and has already been dismissed. It cannot be disputed and in fact has not been disputed that the applicant has raised a challenge not only to the Forest Clearance dated 1st March, 2012 in Original Application No. 414 of 2013, but had also raised various questions in regard to the route and alignment of the transmission line under the project and alternative thereto. The applicant had also raised the question of felling of 50,000 trees, as a result of laying of this transmission line and its impact on the ecology and environment of the Eco-Sensitive areas in village Kozhikhode in District Kodagu. All these questions were deliberated and commented upon by the Southern Zone Bench of the National Green Tribunal in its Judgment dated 7th July, 2014, in the case of 'Coorg Wildlife Society (that is the applicant herein). Though, finally the application was dismissed as being barred by time and latches the applicant had preferred a civil appeal before the Supreme Court which, as already noticed, is pending for hearing.

- (e) The issues and controversies raised in the present application had been specifically and materially raised and/or ought to have been raised in previous proceedings (Original Application No. 414 of 2013), which have been finally decided even *inter se* the parties. The present

application, if not an abuse of the process of the Court, is certainly hit by the principles of *res judicata* and/or *constructive res judicata*. First of all, different pleas were raised by the applicant, including the impact of cutting of trees and route alignment of the transmission line. Even if the same had not been specifically raised when they ought to have been raised, the presumption would be that such pleas were raised and rejected by the Tribunal. Keeping in view the pendency of the appeal before the Hon'ble Supreme Court, in no event the present application can lie before the Tribunal.

- (f) The impact of grant of Forest Clearance to the Project Proponent would be a permission to convert the land use from forest to non-forest activity. On the strength of the granted permission, the project proponent would be entitled to carry the project activity in the reserved forest area and it has to be understood that authorities were conscious of the eco-sensitivity of the area while granting such permission. Attempt of the present applicant is to indirectly challenge the Forest Clearance dated 1st March, 2012 which has already been finally dealt with and disposed of vide Judgment dated 7th July, 2014. It is a settled Principle, that, what you cannot do directly, you cannot be permitted to do indirectly.

6. Thus, we have no hesitation in holding that the present application is neither maintainable nor is a case where this

Tribunal should exercise its jurisdiction. We make it clear that we have only dealt with the question of maintainability of the application and therefore, this order would not, in any way, affect the right of the applicant to take such other appropriate remedy as may be available to them for challenging the order dated 10th December, 2014, in accordance with law.

7. The present application is dismissed without any order as to costs.



The seal of the National Green Tribunal, New Delhi, is centered in the background. It features the State Emblem of India at the top, with the motto 'सत्यमेव जयते' (Satyameva Jayate) below it. The central part of the seal depicts a pair of scales of justice and a stylized human figure with arms raised. The text 'NATIONAL GREEN TRIBUNAL, NEW DELHI' is written around the perimeter of the seal.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Prof. A.R. Yousuf
Expert Member

B.S. Sajwan
Expert Member

New Delhi
13th January, 2015

NGT