

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Application No. 263 of 2013 (SZ)

In the matter of:

Jacob George
S/o. K.T. George
Kodiattu House
Muthoor, P.O.
Thiruvalla – 689 107

Applicant

AND

1. Union of India
Minsitry of Environment and Forests
Rep.by its Director
Paryavaran Bhavan
CGO Complex
Lodhi Road
New Delhi- 110 003
2. State of Kerala
Rep. by its Chief Engineer
Public Works Department
Roads and Bridges Department
Musuem .P.O.
Thiruvananthapuram-695 033
3. The Project Director
Project Management Team
Kerala State Transport Project
TC. 11/339, JAGAD Building
Keston Road
Nanthencode, P.O.
Thiruvanathapuram – 695 003

4. The State Environment
Impact Assessment Authority (SEIAA)
Rep. by its Director
Directorate of Environment and
Climate Change
Pallimukku
Pettah P.O.
Trivandrum – 695 024



... Respondents

Counsel appearing:

Applicant ... M/s. P.B. Sahasranamam, T. Mohan and A.
Yogeshwaran, Advocates

Respondents ... Shrimathi C. Sangamithirai, Advocate for respondent
No. 1; Shrimathi Suvitha, A.S. Advocate for
respondent Nos. 2 and 3; Shrimathi Vidyalakshmi,
Advocate for respondent No. 4.

ORDER

Present:

1. Hon'ble Shri Justice M. Chockalingam
Judicial Member
2. Hon'ble Prof. Dr. R. Nagendran
Expert Member

Date: 03 November, 2014

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

The applicant herein has filed this application seeking for direction
to declare the execution of the proposed Tiruvalla Bypass along

Chengannur –Ettumanur Road Highway project for which invitation for bids was made on 02.07.2013 by the 3rd respondent as arbitrary and illegal and to direct 2nd and 3rd respondent to return all the lands acquired for the project to the owners of the land in accordance with law. The brief case as made out from the averments of the application can be stated as follows:

2. The applicant is a permanent resident of Tiruvalla Municipality. He has concern for the protection of the environment and ecology of the area. The area is full of paddy fields and lands used for other agricultural crops. Very few people are residing in the area that has pollution free atmosphere. The 2nd respondent has formulated a project called Kerala State Transport Project (KSTP) which has two stages. The first stage was completed in 2011 and the second stage called KSTP-II is for the formation of Chengannur –Ettumanur-Movattupuzha Road having a total length of 600 km and the said project consists of the construction of Tiruvalla Bypass along Chengannur –Ettumanur Road having a length of 2.3 km and construction of highways, culverts, bridges, side protective works, granular sub-base, wet mix macadam base course, bituminous mix surfacing, side drains, side walls, road markings and road furniture. The 2nd respondent invited the tenders for the formation of said Tiruvalla Bypass in July, 2013. The project attracts the Environment Impact

Assessment (EIA) Notification, 2006 and the procedure contemplated therein ought to have been followed. The project being a state highway project, requires prior Environmental Clearance (EC) as contemplated by the EIA Notification, 2006. EC pertaining to the project was not obtained by the 2nd and 3rd respondents. EIA of the project for the said area has not been conducted. Public hearing was not conducted and consultation was also not done. The 3rd respondent has uploaded Environment Management Plan (EMP) in their web site, giving a heading EIA and EMP for Chengannur –Ettumanur-Moovattupuzha Road, June, 2013. The 2nd and 3rd respondents have not conducted any EIA for the project and the project mentioned in the Annexure-A2 shows some general statement about some portion of the area. There are a lot of paddy fields in the area, which are to be acquired, the conversion of which is prohibited under the Kerala Conservation of Paddy Land and Wetland Act, 2008. No sanction has been granted for the conversion of the said lands. The existence of nearby roads, which can easily be widened, has not been considered. The fact that lands of more than 50 persons have been acquired in this area and they have been forcefully evicted is deliberately suppressed. Some of them have complained and filed writ petitions. The awards have been passed in some cases and they have been threatened for eviction. The Tiruvalla Municipality has better alternative schemes framed under its Development Plan 2002-

2007 which has been ignored and several other alternate cost efficient programmes have been ignored. The present alignment will help a few land owners who seem to have proposals to construct huge hotel complexes in the nearby lands. The 1st and 2nd respondents have ignored the G.O.(P). No. 13/78/HD dated 13.01.1978 which mandates the obtaining of recommendation of the State Committee on Environmental Planning and Co-operation and no EIA was prepared or clearance obtained as contemplated under the said notification.

3. The 2nd and 3rd respondents have no right to acquire the land and evict persons under the guise of executing the project which has no EC from the 1st respondent, Ministry of Environment and Forests (MoEF). If the project is executed, it will adversely affect the nearby paddy fields and will lead to water logging in that area. Several other agricultural lands will become useless in view of the formation of the highway. If the project is allowed, it will also adversely affect the life of the people and the ecology of the area. Though several persons due to necessity of money have surrendered their lands to the 2nd and 3rd respondents, significant extent of land is yet to be acquired for which process is going on. The Hon'ble Supreme Court of India has recently held in the case of *Association for Environmental Protection vs. State of Kerala* reported in 2013 AIR SCW 380 that activities carried out without obtaining EC infringes on the fundamental right of life of the people in

the area and the violation is not to be condoned. Thus, the project referred to is illegal and unconstitutional.

4. *Per contra*, all the respondents have filed their reply affidavits and the Tribunal made anxious considerations on the averments made in the application and also the reply affidavits filed by the respondents along with the materials placed by both sides.

5. As seen above, the applicant who claims to be a social activist for the protection of the environment and ecology has sought for a declaration that the execution of the project of the proposed highway Tiruvalla bypass along Chengannur-Ettumanur road with a length of 2.3 km is arbitrary and illegal and the steps taken for executing the project are void and also for a direction to the respondent/State of Kerala and the Project Director, Kerala State Transport Project shown as respondents 2 and 3 to return all the lands acquired for the project to the owners of the land.

6. On the above pleadings, the following questions are formulated for decision:

1. Whether the applicant is entitled for the declaration that the execution of the project in question is arbitrary and illegal and the steps already taken for the execution of the project are void.

2. Whether a direction has to be issued to the 2nd and 3rd respondents to return the land acquired for the project to the respective owners.

3. To what other reliefs the applicant is entitled?

7. Admittedly, the State of Kerala formulated a project called Kerala State Transport Project consisting of two stages. The first stage of the project was completed in the year 2011. The second stage of the project called Kerala State Transport Project-II is for the formation of Chengannur-Ettumanur-Movattupuzha Road for a total length of 600 km. The construction of Tiruvalla Bypass along Chengannur-Ettumanur road having a length of 2.3 km and connected works thereon which is the subject matter of this application is challenged by the applicant mainly on two grounds, namely (i) the project attracts EIA Notification, 2006 and the procedure therein should have been followed before the execution of the project pertaining to the bypass road, but no EC was given to the project and (ii) no EC as contemplated in G.O.(P). No. 13/78/HD dated 13.01.1978 of the State of Kerala was obtained from the State Committee on Environmental Planning and Co-operation.

Point Nos. 1 to 3:

8. Advancing the arguments on behalf of the applicant, the learned counsel Shri P.B. Sahasranamam would submit that the project in question is a state highway project which requires prior EC as

contemplated by the EIA Notification, 2006, but no such EC was obtained by the 2nd and 3rd respondents for the project. No EIA was conducted for the project in the area, nor public hearing or public consultation was done. It is not correct to state that since it is only a deviation of the bypass and thus, it is neither a new state highway or expansion/upgradation of an existing state highway to fall within the category of 7 (f) Column 4 of EIA Notification, 2006. The term 'highway' includes all bridges, culverts, bridges, side protective works, granular sub-base, wet mix macadam base course, bituminous mix surfacing, side drains, road markings and road furniture which come within the said portion of the road and the same is evident from the tender document marked in exhibit as Annexure- A1. If the said way is vested with the Central Government, it is a National Highway, otherwise it is a State Highway. It is pertinent to point out that the definition given to the 'highway' in National Highways Act, 1956 and the Kerala Highway Protection Act, 1999 do not exclude a bypass or a link road which is declared as a highway. The 'highway' is defined in Section 2 (h) of the Kerala Highway Protection Act, 1999 as any road, way or land declared as a highway under Section 3 and includes any land acquired or demarcated for construction of a highway. Hence, the bypass road is the part of the road falling under the definition of the highway. Thus, the project cannot be excluded from EIA Notification, 2006 merely because

it is a bypass road or a link road. It is also submitted by the learned counsel that the definition of the bypass given in National Highways (Determination of Rates and Collection) Rules, 2008 which defines a bypass as a section of the national highway bypassing a town or city would strengthen the case of applicant that the present project is a part of a highway and a part of Kerala State Transport Project –Phase II which is funded by the World Bank. Hence, the project which requires an EC should not be allowed to be proceeded with. It is true that an amendment dated 22.08.2013 declaring all highway expansion projects covered under entry (ii) in column 3 and 4 under sub item (f) does not require Scoping. But, in the instant case, it is not an expansion of an existing highway which does not require any land acquisition at all. Thus, the present project is a new one and not an expansion of the existing project. It is a new state highway project as found in EIA Notification, 2006 which was amended in the year 2009 by which a new entry ‘all new state highway project’ was inserted. The 3rd respondent cannot claim the benefit of exemption since it invited tenders on 02.07.2013 while the amendment came into effect only from the month of August, 2013.

9. Added further, the learned counsel for the applicant on the second ground of contention that it is candidly admitted by the 3rd

respondent that no EC was obtained from the State Committee on Environmental Planning and Co-operation as mandated by the G.O.(P).No. No. 13/78/HD dated 13.01.1978. It is contended by the respondents that the said Government order of the year 1978 has been rescinded by a subsequent Government order dated 21.05.2014 cannot be accepted since the later Government order came into effect only on 21.05.2014 before which the 3rd respondent has invited tenders on 02.07.2013. Hence, the Project Proponent cannot be allowed to take advantage of the same. Apart from that, the Hon'ble Apex Court considered the Government order of the year 1978 in the case of *Association for Environment Protection vs. State of Kerala reported in 2013 AIR SCW 380* and has held that the activities carried out without obtaining EC as contemplated in 1978 Notification infringes on the fundamental right of life of the people in the area and the violation was not to be condoned and hence the project in question has to be declared as illegal and unconstitutional. Apart from the above, a lot of paddy lands in the area and Muzhavangad Chira, the only water source for Tiruvalla town are to be acquired for reclamation and conversion which is prohibited under the Kerala Conservation of Paddy Land and Wetland Act, 2008. No sanction has been granted for conversion of the said lands. The existence of nearby roads which can easily be widened has not been considered. The acquisition of land and forcible eviction of 50

persons in the area are deliberately suppressed. Some of them filed writ petitions and awards have been passed in some cases. The Tiruvalla Municipality has better alternative scheme framed under the Development Plan 2002-2007 which has been ignored. The present alignment would help a few land owners who seem to have proposals to construct huge hotel complexes in the nearby lands. The only proper solution is to conduct a proper EIA and get appraised by the 3rd respondent in a manner contemplated under law. The Project Proponent has no right to acquire the lands and evict persons under the guise of executing the project which has no EC from the 1st respondent. If the project is executed in the present form, it would adversely affect the nearby paddy fields and would lead to water logging in that area. Several other agricultural lands would become useless in view of formation of the highway. If the project is allowed to take place, it would adversely affect the lives of the people and ecology of the area. Pointing to the decision of the *Hon'ble Apex Court in Karnataka Industrial Areas Development Board vs.C. Kencheppa, reported in 2006 AIR SCW 2547*, the learned counsel would submit that before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the land acquired for development should not gravely impair ecology and environment and these principles squarely apply to the facts of the present case. Hence,

the proposed project of the bypass road along Chengannur-Ettumanur road has to be declared as arbitrary and illegal and the reliefs sought for have to be granted.

10. Countering the arguments of the applicant's side recorded above, the learned counsel appearing for the 3rd and 4th respondents flatly denied all the above by stating that the application is misconceived and the grounds raised attacking the impugned project are unfounded both factually and legally. The project in question does not require EC as envisaged in EIA Notification, 2006 and also it does not require any EC from the State Committee on Environment Planning and Co-operation as per the Government order dated 13.01.1978. Equally, the contention of the applicant's side in respect of the acquisition of paddy lands has got to be rejected in view of the earlier proceedings before the Hon'ble High Court of Kerala and hence, the application has got to be dismissed.

11. As noticed above, the case of the applicant that the project in question requires prior EC as contemplated in EIA Notification, 2006 is based on the premise that the project is a state highway project. In order to substantiate the contention, the learned counsel for the applicant relied on the definition of 'highway' as per the National Highway Act, 1956 and also the Kerala Highway Protection Act, 1999 apart from the definition of the bypass as found in National Highways (Determination of

Rates and Collection) Rules, 2008. It is not in controversy that in continuation of the construction of the Phase -I under Kerala State Transport Project Phase-II, 361 km of state highway was identified under seven road projects to improve the road infrastructure of the State. It is contended by the learned counsel for the 3rd respondent that the project in respect of 6 roads is being taken up for a length of 361 km under Phase -II and the land acquisition for the above said purpose has been completed. It is also not in dispute that the construction of the present road is only a bypass. The contention put forth by the applicant's side that the said bypass is a part of state highway seems to be factually incorrect. In order to provide an additional deviation road with a view to relax the very high traffic density and congestion of the highway during day time, the present bypass road having a length of 2.3 km was proposed which is very close to the township as a link road from the state highway. The state deviation road was named as Tiruvalla bypass which is entirely a different road work estimated at a cost of Rs. 30.80 crore and procurement for the contract was started by inviting bids through newspapers. After the tenders were received, the evaluation was also completed. The work was also assigned to a particular contractor to whom the letter of acceptance of the tender was issued on 29.10.2013 and agreement was also executed on 29.11.2013. It is also submitted by the learned counsel for the 3rd respondent that the land

acquisition process was started way back in the year 2005 and all necessary lands were acquired and they are in exclusive possession of the department and hence it would be quite clear that the project in respect of the bypass, a link road, is a separate, distinct and independent work which has nothing to do with the state highway. Needless to say, to fall within the category 7 (f) column 4 of the EIA Notification, 2006, it should be a new state highway or expansion or upgradation of an existing state highway. Hence, it is not a case where EC is required as contended by the counsel for the applicant. Apart from the above, the highway specification issued by the Ministry of Shipping, Road Transport and Highways published by the Indian Road Congress has classified roads in India into 6 categories which are:

1. Expressways are roads to cater for heavy volumes of motor traffic at high speeds.
2. National Highways are main highways running through the length and breadth of the country connecting major ports, highways of neighbouring countries, state capitals, large industrial and tourist centres etc.,
3. State Highways are arterial routes of a state lining district headquarters and important cities within the state and connecting them with national highways or the neighbouring states.

4. Major District Roads are important roads within a district serving areas of production and markets and connecting these with each other or with the main highways.
5. Other District Roads are roads serving rural areas of production and providing them with outlet to market centres, *talukas/tehsils* headquarters, block development headquarters or other main roads.
6. Village roads are roads connecting villages or group of villages with each other and to the nearest road of a higher category.

If the above classification is applied as rightly contended by the learned counsel for the 3rd respondent, the Tiruvalla bypass road being a link road with a length of 2.3 km would fall only under category 'Major District Road' and it would be futile on the part of the applicant to contend the Tiruvalla bypass as a part of state highway and hence it would attract the provisions of the EIA Notification, 2006 and its subsequent amendments.

12. In so far as the contention putforth in respect of acquisition of land is concerned, it does not require any consideration in view of the fact that the aggrieved land owners moved before the Hon'ble High Court of Kerala in W. P. (C). No. 19015/2010 and W. P.(C). No. 13954/2010 which were dismissed not only by the learned Single Judge, but also in the appeals by the Division Bench of Hon'ble High Court of Kerala. It was also recorded therein that the lands required for the said

purpose have already been acquired and they are in the exclusive ownership of the State. Hence, the contention in respect of the land acquisition, conversion of paddy fields and connected reliefs sought for with the same and for restoration of the lands to the previous owners are worth to be ignored at this stage.

13. The contention of the applicant's side that as per G.O.(P). No. 13/78/HD dated 13.01.1978 the respondents should have obtained EC from the State Committee on Environmental Planning and Co-operation which is mandatory, has to be negated for more reasons than one. (1) As could be seen from the Government order, it was issued by the Health Department of the Government of Kerala, in order to take efforts by the State to protect the environment and health of the people of the State. It is pertinent to point out that the Environment (Protection) Act, 1986 with the sole objective of providing protection and improvement of environment was enacted by the Central Government in the year 1986. Section 3(3) has empowered the Central Government to constitute authorities charged with mandates to prevent pollution to environment in all forms and to tackle the environmental problems. In view of the power vested under Section 5 of this Act, State Pollution Control Boards were established who are vested with powers to enforce the standards as contemplated in EP Act, 1986, the MoEF issued EIA Notification, 2006

categorizing the projects or activities and incorporating the details which require prior EC from the concerned regulatory authorities. It is also pertinent to point out that the said notification and subsequent amendment mandate to get prior EC for new National or State Highway. Hence, no significance can be attached to the Government order of the Health Department of the State of Kerala of the year 1978 at this stage. Even assuming that the said Government order has got any relevance, the recommendation of the State Committee on Environmental Planning and Co-operation is applicable only for the projects which require EC as per EIA Notification, 2006 and subsequent amendments. But, in the instant case, the project in question does not require EC for the reasons stated above.

14. For all the above reasons, the Tribunal is unable to notice any merits in all or any of the grounds raised by the applicant on which reliefs were sought for. The application is dismissed.

No cost.

(Justice M. Chockalingam)
Judicial Member

(Prof. Dr. R. Nagendran)
Expert Member

Chennai
Dated, 03 November, 2014