

Sri Reji Kuriakose S/O Kuriakose vs State Environmental Impact ... on 31 March, 2022

Author: K. Ramakrishnan

Bench: K. Ramakrishnan

Item No.1:

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Appeal No. 07 of 2020 (SZ)
(Through Video Conference)

IN THE MATTER OF

Sr. RejiKuriakose

....Appellant(s)

Versus

State Environmental Impact Assessment Authority, Kerala and Ors.

...Respondent(s)

Judgment Pronounced on: 31st March, 2022.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

For Applicant(s): Mr. Sai Sathya Jith

For Respondent(s): Ms. Vidhyalakshmi Vipin for R1 and R2

ORDER

Judgment pronounced through Video Conference. Appeal is disposed of with directions vide separate Judgment. All pending interlocutory application(s), if any, also stands disposed of, in view of the disposal of the Appeal.

.....J.M. (Justice K. Ramakrishnan)E.M. (Dr. Satyagopal Korlapati) 31st March, 2022. AM.

BEFORE THE NATIONAL GREEN TRIBUNAL SOUTHERN ZONE, CHENNAI (Through Video

Conference) IN THE MATTER OF

1. Sri. RejiKuriakose, S/o Kuriakose, Chirackal House, Thuruthy P.O. Perumbavoor- 683 545
2. Smt. JeevaReji, W/o RejiKurikose, Chirackal House, Thuruthy, P.O. Perumbavoor- 683 545
....Appellant(s) Versus
1. State Environmental Impact Assessment Authority, Kerala Rep by its Member Secretary Pallimukku P.O, Pettah, Thiruvananthapuram- 695 024
2. State Expert Appraisal Committee, Rep by its Member Secretary Pallimukku P.O, Pettah, Thiruvananthapuram- 695 024 ... Respondent(s) For Applicant(s): Mr. Sai Sathya Jith For Respondent(s): Ms. Vidhyalakshmi Vipin for R1 and R2 Judgment Reserved on: 09.03.2022 Judgment Pronounced on:31.03.2022 CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER Whether the Judgement is allowed to be published on the Internet - Yes/No Whether the Judgement is to be published in the All India NGT Reporter - Yes/No JUDGMENT Delivered by Justice K. Ramakrishnan, Judicial Member.

1. The above appeal has been filed against the rejection of the application for Environmental Clearance filed by the appellants for carrying out their mining operations in 3.2537 hectares of land in Survey No. 611/1A-303-147, Keerampara Village and Panchayat, kothamangalam, Taluk, Ernakulam District, Kerala by the 1st respondent by their proceedings no.

144/SEIAA/KL/2745/2013 dated 13.09.2017.

2. It is alleged in the appeal memorandum that the application was considered in 21st SEAC meeting held on 04.11.2014 as item number 21.08 and since the appellants had not provided the cadastral map of the project site duly certified by Village Officer, he was directed to provide the same. The Committee found that Thattekkad Bird Sanctuary is located at 2.5 km which is in proximity of the project site and apprehensive about the noise and dust that may be generated during mining activity that may disturb the migratory birds visiting the sanctuary.

3. For this the project proponent stated that a noise study was conducted earlier to study the impact of landing/turning of flight towards the tunnel in the run way wherein the flight takes a turn above the sanctuary and as per the said study, such activities does not have much adverse impact on the sanctuary. Moreover, as per the observation in the said study, the birds could cope up with the change due to adaptation capability, since blasting is done in pre-fixed timings. However, the SEAC was of the opinion that as per S.O. 3067 (E) dated 01.12.2009, the project is located within 10 kms of National Parks, Sanctuaries, Biosphere Reserves, Migratory Corridors of Wildlife Animals, the project proponent shall submit a map duly authenticated by Chief Wildlife Warden showing these

features vis-a-vis the project location and the recommendations or comments of the Chief Wildlife Warden thereon. The project proponent was directed to provide the same for conducting quarrying activities in the said project site in proximity of the Thattekkad Bird Sanctuary. The Committee also found that as per the WGEEP classification, the project site was located within protected area and the entire land is Government Poromoboke. The Government verified the certificate from the Forest Department submitted by the proponent along with the application stating that the existing quarry operations are in non-forest area. The Committee found that it is not satisfactory as it refers only to the area where activities are going on at present and does not refer to any area where the proponent intends to do quarrying activities later on and it was not clear as to whether any part of the applied land is in forest area.

4. The proposal was considered in the 63rd meeting of SEAC held on 04.10.2016 and Committee appraised the proposal based on the mining plan (KMMCR-2015), pre-feasibility report and all other documents submitted along with the Form-I application and decided to recommend to reject the proposal as the proposal site is only 2.5 km away from Thattekkad Bird Sanctuary and any quarrying activity will have far reaching adverse impact on the wildlife of the above protected area. The proposal was considered in the 61st meeting of SEIAA held on 30.12.2016, the authorities noted that for obtaining Environmental Clearance for all developmental projects including quarry projects located within 10 km radius of Wildlife Sanctuaries and National Parks the procedure to be followed is explained by MoEF&CC vide O.M. dated 02.12.2009 and 30.03.2015. In the instance case, to comply with the above requirements as prescribed in the above mentioned Office Memorandum the application was submitted online at MoEF&CC and the acknowledgement is submitted to SEIAA on 30.10.2015. Further, the Wildlife Warden, Wildlife Division, Idukki had submitted a copy of the study report of the National Institute of Rock Mechanics and RECESS and as per the said report, it was stated that the functioning of the quarry is not creating harm to the flora and fauna of the Thattekkad Bird Sanctuary. Further on reply dated 05.12.2013 received on another RTI query it was reported by Wildlife Warden, Wildlife Division, Idukki that there is increase in the number of birds for the last 5 years. So they decided to refer back the matter to SEAC for scientific and detailed examination to ascertain the impact of quarry operation on Thattekkad Bird Sanctuary.

5. The proposal was placed before the 68th meeting of SEAC held on 20th -21st February, 2017 and SEAC constitutes some experts in different fields including Wildlife Management after examining all the facts of the proposal, the Committee was of the opinion that the presence of quarry in such proximity of the Wildlife Sanctuary is not conducive to the long term survival of the world famous Thattekkad Bird Sanctuary and the Committee found no reason to change its earlier recommendation and returned the file to SEIAA for consideration. The proposal was considered in the 66th meeting of the SEIAA held on 07.04.2017 and they decided to accept the recommendation of the SEAC to reject the proposal as per the 68th meeting of the SEAC. So, they rejected the application by the impugned proceedings and communicated the same to the appellants. Dissatisfied with the same, the present appeal has been filed on the following grounds: the appellants had submitted a report dated 28.02.2014 prepared by Chief Conservator of Forest and Field Director (Project Tiger) Kottayam and sent to the Principal Chief Conservator of Forests (WL) and Chief Wildlife Warden, Kerala wherein a detailed study and analysis was done about the impact of the appellant's quarry on the Thattekkad Bird Sanctuary. It was stated in the said report that

there was no adverse impact by the operations of the appellant's quarry on the Thattekkad Bird Sanctuary evidenced by annexure-A3.

6. Further, in the reply to the RTI letter dated 05.12.2013 issued by the Wildlife Warden, Idukki, it was mentioned that number of birds in Thattekkad Bird Sanctuary had increased within last 5 years when there were mining operation going on in the same area evidenced by annexure-A4. When the SEIAA on receipt of these additional documents referred the matter to the SEAC without considering the same and expressing their opinion on the Thattekkad Bird Sanctuary, they have simply reiterated that there was no necessity to consider the same as they have experts including wildlife management and according to the appellants the stand taken by them is not correct. They have not correctly appreciated the official memorandum issued by MoEF&CC in this regard. The activity is not a prohibited activity, even according to SEIAA and SEAC but they ought to have considered the precautionary principles to be applied to avoid impact of conduct of quarry on the Bird Sanctuary instead of rejecting the same. Further they have also failed to note the fact that there are number of quarries functioning in that area and the reason given by the SEAC for rejecting the proposal is not justifiable.

7. Further, the 1st respondent had issued Gazette Notification dated 27.01.2016 vide S.O. 247 (E) identifying the eco sensitive zone around the Thattekkad Bird Sanctuary intending to prohibit many new activities including commercial mining, stone quarrying and crushing units in Eco Sensitive Zone around the said sanctuary. It was also notified that outer eco sensitive zone is only 100 meters away from the boundary of the Thattekkad Bird Sanctuary and the 1st respondent had no intention to prohibit any new commercial mining outside the eco sensitive zone area from the sanctuary evidenced by annexure A15. Though a review application was filed before SEIAA to reconsider the order passed and since no action was taken, the appellants filed this appeal along with M.A. No. 233 of 2017 to condone the delay in filing the application.

8. It is alleged in the delay condonation application that the application for Environmental Clearance was rejected by proceeding dated 19.09.2017 and it was posted from their office on 18.09.2017 and reached the appellant by registered post only on 19.09.2017. Immediately a review application was filed before the 1st respondent on 25.09.2017 and it was taken up by the 1st respondent on 23.10.2017 and issued notice to the respondents for hearing the matter and hearing was conducted on 16.11.2017 and thereafter no orders have been communicated. So, the appellant filed Writ Petition before the Hon'ble High Court of Kerala as W.P (C) No. 40366/2017 and on 14.12.2017 the Hon'ble High Court of Kerala had directed the appellant to prefer an appeal against Exhibit order before the National Green Tribunal and the present appeal has been filed thereafter. So, according to the appellant there was only a delay of 58 days in filing the appeal.

9. Learned Counsel appearing for the SEIAA submitted that the appeal was filed beyond the condonable period of 60 days after the prescribed period of 30 days provided under proviso to Section 16 of the National Green Tribunal Act, 2010 and the application is liable to be dismissed as it is beyond the condonable period by this Tribunal. This Tribunal by order dated 18.02.2020 after considering the order passed by the Hon'ble High Court of Kerala in W.P (C) No. 40366/2017 with an observation that "taking note of filing of appeal before the National Green Tribunal, I am of the

view that interest of justice would be met by condoning the delay occasioned by the petitioner in filing the appeal and directing additional fourth respondent (National Green Tribunal, Southern Zone Bench) to consider and pass orders in Ex. B14 on merits, after treating the same, as filed within time. In doing so, we make it clear that it is also open to the petitioner to implead the additional fourth respondent Tribunal for obtaining interim orders in the appeal already filed by them. The writ petition is disposed of as above." In view of the observation made by the Hon'ble High Court, this Tribunal felt that the application will have to be allowed and delay will have to be condoned and appeal to be heard on merits though on the date of considering the delay application there was no representation for the appellant and this Tribunal had condoned the delay and directed the Registry to number the appeal and post for admission.

10. The appeal was taken up for admission on 25.02.2020 and this Tribunal had admitted the matter and directed the respondents to file their counter and SEIAA, Kerala was directed to produce the material showing the distance from the proposed quarry to bird sanctuary which was taken as a ground for rejection of the Environmental Clearance before the next hearing date.

11. SEIAA has not filed any reply as such but they have produced the documents relating to grant of Environmental Clearance maintained by SEIAA in this regard.

12. Heard the Learned Counsel appearing for the appellants Mr. Sai Sathya Jith and Ms. Vidhyalakshmi Vipin, Learned Counsel for the respondents 1 and 2.

13. Learned Counsel appearing for the appellants argued that the reasons given by SEAC for recommending for rejection of application is not correct. Further the Thattekkad Bird Sanctuary even though is situated within 2.5km and even as per the Eco Sensitive Zone Notification issued in respect of this Bird Sanctuary, the Eco Sensitive Zone was restricted to 500 meters and certain activities including mining activity was restricted within the Eco Sensitive Zone and not beyond that area. Further, the appellants had produced certain documents obtained from the Wildlife Warden, Kerala when the SEAC had earlier decided to recommend rejection of the application on the ground of proximity to Bird Sanctuary before the SEIAA and SEIAA had decided to refer the matter to SEAC on the basis of the documents produced for further consideration but without considering the documents, the SEAC had reiterated their earlier stand of recommending to reject the application and the SEIAA without proper application of mind accepted the same and passed order rejecting the application which according to the Learned Counsel for the appellants is not correct.

14. Further the application for wildlife clearance filed by the appellant before MoEF&CC is still pending and the clarification notification issued by MoEF&CC will go to show that it is not a pre-condition for producing a clearance from the National Wildlife Board for considering the application. Either they have to defer the matter directing the appellants to produce the same or would have imposed conditions that they should not start quarrying operations without obtaining clearance from the Wildlife Board and the total rejection by the authorities is not proper. He had also relied on the observation made by the Hon'ble High Court of Kerala in W.P.(C) No. 30450/2019 and connected cases dated 18.12.2019 (Chelakkara Granites, Kanimangalam Buildings, Ooramana Post, Ramamangalam vs. Union of India and Ors and connected cases) wherein the High Court of

Kerala had only suspended the operation of the quarry by the quarry owner in whose favour Environmental Clearance was granted without obtaining clearance from the Wildlife Board and directed to start the quarry operation after obtaining the same. So this ought to have been considered by the SEAC and SEIAA before taking decision on this aspect and directed the State of Kerala to forward the documents to MoEF&CC and also directed the MoEF&CC to place the same before the standing Committee of the National Wildlife Board. MoEF&CC as well as Standing Committee were directed to pass appropriate orders within certain time limit.

15. On the basis of the direction issued certain quarries are being operated in that area but the same benefit was not given to the appellants. So, the Learned Counsel wanted the case to be remitted to the SEIAA for further consideration.

16. On the other hand, Learned Counsel appearing for respondents 1 and 2 argued that even as per the notifications relied on by the appellants, it is a pre condition for producing clearance from the National Wildlife Board as it is situated within 10 km from the Bird Sanctuary. Further, the Expert Appraisal Committee itself consists of expert from the Wildlife Management and as such there is no necessity to reconsider the documents produced by the appellant which was forwarded by the SEIAA for their consideration.

17. Considered the pleadings, documents produced and submissions made by both the Learned Counsels.

18. The points that arise for consideration are:

i. Whether the proceedings of the 1st respondent rejecting the application for Environmental Clearance dated 13.09.2017 is liable to be set aside for any of the reasons stated by the appellant in the appeal memorandum.

ii. Whether the matter has to be remitted to SEIAA for further consideration as requested for by the Learned Counsel for the appellant, if this Tribunal is not inclined to set aside the same for fresh consideration. iii. Relief and Costs.

19. It is an admitted fact that the appellants were conducting quarrying mining project with valid mining license at Keerampara Village in Survey No. 611/1A-303-147 on an extent of 1.6795 hectares for the past 6 six years. When they proposed to start a new quarry project in Keerampara Village in Survey No. 611/1A-303-147 over an extent of 3.2537 hectares of land for which they require environmental clearance, they submitted an application before 1st respondent for granting Environmental Clearance on 07.10.2013 as per the provisions of EIA Notification, 2006.

20. The projects of the appellants were taken up in the 21 st meeting of the 2nd respondent held on 04.11.2013 and directed the appellants to produce the map duly authenticated by the Chief Wildlife Warden as well as the recommendations of the Chief Wildlife Warden as according to the 2nd respondent the mining activities were carried out in a non-forest area as communicated by the Forest Department evidenced by annexure A2 minutes. The appellants had submitted a report dated

28.02.2014 prepared by Chief Conservator of Forest and Field Director (Project Tiger) Kottayam and sent to the Principal Chief Conservator of Forests (WL) and Chief Wildlife Warden, Kerala conducting a study of the impact of the appellant's quarry on the Thattekkad Bird Sanctuary and observed that there will not be any adverse impact on the Thattekkad Bird Sanctuary on account of permitting the activity of the appellants evidenced by annexure-A3.

21. The appellant also produced a letter from the Wildlife Warden, Idukki as reply to the RTI application dated 05.12.2013 stating that there was increase in number of birds within the last 5 years in that sanctuary, in spite of the fact that several quarries are operating in that area but the 2nd respondent in their 63rd meeting held on 04.10.2016 without considering the study report submitted by the appellants and decided to recommend rejection of proposal on the ground that it is within 2.5 km from the Bird Sanctuary without providing any opportunity to the appellants to explain their case. When this was taken up in the 61st meeting of the 1st respondent held on 30.10.2016. They have produced annexure-A3 and A4 and also a study report from National Institute of Rock Mechanics and RECESS submitted by Wildlife Warden, Wildlife Division, Idukki opining that there will not be any adverse effect on Thattekkad Bird Sanctuary on account of the operation of the appellants quarry.

22. It is also an admitted that fact the SEIAA had considered the documents in their 61st meeting held on 30.10.2016 and decided to refer the matter back to SEAC for further consideration. But SEAC on receipt of the files considered the proposal in their 68th meeting held on 20th -21st February, 2017 without giving any reason for not accepting the report, observed that since sufficient numbers of experts from different fields including wildlife management are there in the SEAC, there was no need to change their earlier recommendation and denied the opportunity sought for by the appellants to produce further documents and recommended to reject the proposal and accordingly impugned order was passed by the 1st respondent.

23. As per the minutes of the 21st meeting of the SEAC held on 04.11.2013, directions were given to the appellants to produce the following documents by their letter dated 08.01.2014:

i. Cadastral map of the project site duly certified by Village Officer.

ii. Map duly authenticated by Chief Wildlife Warden showing the features (National Parks, Sanctuaries, Biosphere Reserves,, Migratory Corridors of Wild Animals) vis-à-vis the project location and the recommendations or comments of the Chief Wildlife Warden for conducting quarrying activities in the said project site in proximity of the Thattekkad Bird Sanctuary. iii. Certificate from Forest Department Citing the coordinates of the proposal as to whether any forest land is involved in the present project.

24. It is seen from the file produced by the SEIAA that there was a memorandum issued by MoEF&CC vide F. No. J-

11013/41/2006-IA-II(I)(part) dated 20.08.2014 for consideration of development projects located within 10 km of National Parks and Sanctuaries seeking Environmental Clearance under EIA Notification, 2006. They have clarified as follows " with a view to facilitating early decision making by the Standing Committee of NBWL in respect of development projects requiring prior Wildlife Clearance and located within 10 km of protected areas/within the eco sensitive zones around protected areas the following procedure has been decided:

i. While prescribing TORs for such projects requiring prior Environmental Clearance henceforth, additional ToRs as per annexure shall be mandatorily incorporated in the ToRs. ii. Copies of ToRs issued to such projects shall be endorsed to the Wildlife Division of the Ministry.

iii. After examining a proposal for environmental Clearance, the concerned EAC would make appropriate recommendations and in case it recommends the proposal for Environmental Clearance, it would forward the case along with issues as brought out in the annexure, to the Wildlife Division who would get the matter placed before the Standing Committee of NBWL for obtaining their recommendations on the proposal. In the meetings of Standing Committee of NBWL wherein such proposal will be considered, the Standing Committee may invite the Chief Wildlife Warden of the concerned State to give views on the proposals in the meeting.

iv. The Wildlife Division may thereafter record the recommendations of the Standing Committee of NBWL on the proposal and return the case to the IA Division for further processing and obtaining approval of the Competent Authority on the issue of grant of Environmental Clearance to the project.

25. It is also seen from the file that SEIAA, Kerala by their letter no. 144/EC3/2745/2013/SEIAA dated 13.04.2015 directed the appellants to make available the approved mining plan in accordance with the Kerala Minor Mineral Concession Rules, 2015 before the State Appraisal Committee.

26. As per the 35th Meeting of the SEIAA held on 09.04.2015, they have observed that as per general conditions in the Schedule to the EIA Notification, 2016 any project or activity specified in Category B will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) protected areas notified under the Wildlife Protection Act, 1972, (ii) critically polluted areas as notified by the Central Pollution Control Board from time to time, (iii) notified eco sensitive areas, (iv) inter-State boundaries and international boundaries that they have no jurisdiction to grant Environmental Clearance in this case.

27. The appellant filed review petition on 24.04.2015 to review the situation. The mining plan prepared as per Kerala Minor Mineral Concessions Rules, 2015, cluster certificate issued by the District Geologist, Mining and Geology Department and acknowledgement along with the wildlife report and the application received on

submission of application for Wildlife Clearance from NBWL at MoEF&CC and asked to reconsider the application.

28. On the basis of the documents produced, SEIAA in its 61 st meeting held on 30.11.2016 decided to refer the matter to SEAC for a scientific and detailed examination to ascertain the impact of the quarry operation with respect to Thattekkad Bird Sanctuary.

29. SEAC in its 63rd meeting held on 04.10.2016 simply decided to reject the proposal as the project site is only 2.5 km away from the Thattekkad Bird Sanctuary and any quarrying activity will have far reaching adverse impact on the wildlife of the protected area and also in its 68th meeting of SEAC after getting back the file as directed by the SEIAA, they came to the conclusion that the presence of quarry in such proximity to the wildlife sanctuary is not conducive to long term survival of the birds in Thattekkad Bird Sanctuary and so they found no reason to change the earlier recommendation and it was forwarded to SEIAA. It is based on this they passed the impugned order.

30. 1st respondent had produced the notification issued by Government of Kerala notifying Thattekkad Bird Sanctuary as a protected Bird Sanctuary under Section 18 of the Wildlife (Protection) Act, 1972. The Ministry had issued Office Memorandum dated 30.03.2015 deciding to withdraw the Office Memorandum dated 28.08.2014 and directed the procedure for proposal of Environmental Clearance which are located within 10 km of National parks, Sanctuaries shall be dealt with as per Office Memorandum no. J-11013/41/26-IA-I(I) dated 02.12.2009 wherein it was observed as follows:

No.J.11013/41/2006-1A.II(I) Government of India Ministry of Environment & Forests Paryavaran Bhawan CGO Complex, Lodhi Road, New Delhi - 110003 Telefax: 24362434 Dated the 2nd December, 2009 OFFICE MEMORANDUM Sub: Procedure for consideration of proposals for grant of environmental clearance under EIA Notification, 2006, which involve forestland and or wildlife habitat Regarding.

The issue regarding the procedure to be followed for consideration of proposals for grant of environmental clearance under EIA Notification, 2006, which involve forestland and or wildlife habitat has been under consideration of this Ministry. The issue has been discussed and deliberated at length and the provision of EIA Notification, 2006 as contained in Para 8(v) or the said notification have also been considered.

2. It has now been decided that the following procedure shall be adopted in dealing with such cases.

(i) The proposals for environmental clearances will not be linked with the clearances from forestry and wildlife angle even if it involves forestland and or wildlife habitat as these clearances are independent of each other and would in any case need to be obtained as applicable to such projects before starting any activity at site.

(ii) While considering such proposals under EIA Notification, 2006, specific information on the following should be obtained from the proponent:

(a) Whether the application for diversion of forestland involved in the project has been submitted? If so, what is the status of grant of forestry clearance? It would be essential that in such cases, the application for diversion of forestland has been submitted by the project proponent before they come for environment clearance and a copy of the application submitted for forestry clearance along with all its enclosures should also be submitted by the proponent along with their environment clearance application.

(b) Information about wildlife clearance as applicable to the project should also be obtained. The project proponent should submit their application for wildlife clearance / clearance from Standing Committee of the National Board for Wildlife to the Competent Authority before coming for environment clearance and copy of their application should be furnished along with environment clearance application.

(iii) The proposal from environmental angle will be appraised by the respective Expert Appraisal Committee and recommendations made on the same which will be processed by the IA Division and approval obtained from the Competent Authority. However while granting environmental clearance to projects involving forestland, wildlife habitat (core zone of elephant/tiger reserve etc.) and or located within 10 km of the National Park Wildlife Sanctuary (at present the distance of 10 km has been taken in conformity with the order dated 4.12.2006 in writ petition no 460 of 2004 in the matter of Goa foundation Vs Union of India), a specific condition shall be stipulated that the environmental clearance is subject to their obtaining prior clearance from forestry and wildlife angle including clearance from the Standing Committee or the National Board for wildlife as applicable. Further it will also be categorically stated in the environment clearance that grant of environmental clearance does not necessarily implies that forestry and wildlife clearance shall be granted to the project and that their proposals for forestry and wildlife clearance will be considered by the respective authorities on their merits and decision taken. The investment made in the project if any, based on environmental clearance so granted in anticipation of the clearance from forestry and wildlife angle shall be entirely at the cost and risk of the project proponent and Ministry of Environment & Forests shall not be responsible in this regard in any manner.

(iv) A copy of the clearance letter, besides others, shall also be endorsed to (i) IGF(FC), MoEF, (ii) IGF(WL), MoEF, (iii) PCCF of respective States and (iv) Chief

Wildlife Warden of the State.

Note: There will not be any need to refer the files relating to grant of environmental clearance from IA Division to FC Division and or Wildlife Division during consideration of proposals under EIA Notification, 2006 as done at present in view of the course of action stipulated at paras 2(i)-(iv) above.

This issues with the approval of the Competent Authority.

(S.K. Aggarwal) Director All the Officers of IA Division Copy to:-

1. PPS to AS(JMM)
2. PPS to ADG(F)
3. PPS to ADG(Wildlife)
4. IGF(FC)
5. Advisor(GKP)
6. Advisor(NB)
7. Director (PLA) with a request to issue necessary instructions to all the SEIAAs/SEACs to follow the above instructions.
8. Website of the Ministry.
31. The MoEF&CC also issued another Office Memorandum no.

F.No. 22-43/2018/-IA-3 dated 08.08.2019 in respect of procedure for consideration of development project located within 10 km of National parks, Wildlife Sanctuary seeking Environmental Clearance which reads as follows:

32. They also issued another Office Memorandum No. F. No. 6-

60/2020WL Part(I), Government of India, Ministry of Environment, Forest and Climate Change, Wildlife Division dated 16.07.2020 to all Chief Secretaries which reads as follows:

33. It will be seen from the Office Memorandum dated 02.12.2009 that the proposal for Environmental Clearance will not be linked with the clearance from the Forest and Wildlife angle even if it involves forest land and or wildlife habitat as these clearances are independent of each other and in any case need to be obtained as applicable to such projects before starting any activity at site. Further, in such cases

while deciding to grant Environmental Clearance the conditions will have to be incorporated that Environmental Clearance is subject to obtaining prior clearance from the Forest and Wildlife angle including clearance from the Standing Committee or the National Board of Wildlife as applicable and further clarification was issued by MoEF&CC by proceedings no. F. No. 22-

43/2018-IA.3 dated 08.08.2019 which is extracted above.

34. It was mentioned therein that in respect of proposals which are located within the notified eco sensitive zone and covered under schedule to EIA Notification, 2006 prior clearance from Standing Committee of National Board of Wildlife is mandatory and in such cases, the project proponent shall submit the application simultaneously for grant of terms of reference as well as wildlife clearance but clause II of the same say that proposal involving departmental activity project located outside the stipulated boundary limit of notified eco sensitive zone and located within 10 km of National Park/Wildlife Sanctuary prior clearance from the Standing Committee of National Wildlife may not be applicable however such proposal from Environmental angle including impact of development activity/project on the wildlife habitat, if any, would be examined by the sector specialist expert appraisal committee and appropriate conservation measures in the form of recommendations shall be made. These recommendations shall be explicitly mentioned in the Environmental Clearance letter and shall be ensured by Member Secretary concerned.

35. Proposal involving departmental activity/project located within 10 km of National Park, Wildlife Sanctuary wherein final eco sensitive notification is not notified or eco sensitive zone notification is in draft stage prior clearance from Standing Committee for National Wildlife Board is mandatory. In such cases the application will have to be submitted simultaneously.

36. Decisions relied by the appellants in W.P No. 30450 of 2019 is not applicable to the facts of this case. That was a case where the Environmental Clearance was granted without obtaining prior clearance from the Standing Committee of National Wildlife Board and the Hon'ble High Court had directed the Committee to consider the proposal and till that period the operation was directed not to be conducted.

37. So considering the circumstances, we feel that without going into the merits of the case, we feel it appropriate to direct the SEIAA to refer the matter to SEAC again and SEAC on the basis of the office memorandum issued by the MoEF&CC in this regard take appropriate independent decision by giving reasons as to whether they want to recommend the project with conditions or reject the project and make the recommendation to the SEIAA and SEIAA on that basis is directed to consider and pass appropriate orders. When SEIAA had directed the SEAC to consider the project on the basis of the documents produced, they were expected to go into the issue and give their reasons as to why they are not satisfied with the documents produced by the appellants and if they want further document to be produced, they ought to have granted an opportunity to the appellants to produce the same and thereafter should have taken appropriate decision. So under such circumstances, we feel that the appeal can be disposed of as follows:

- i. The proceedings of SEIAA rejecting the Environmental Clearance as per annexure A1 produced along with the appeal with proceeding no. 144/SEIAA/KL/2745/2013 is set aside and the same is remitted to SEIAA, Kerala for further consideration.
- ii. On receipt of the Judgement of this Tribunal, the SEIAA is directed to refer back the matter to SEAC again for consideration and on receipt of the same the SEAC is directed to give an opportunity to the appellant to explain the project and if they did feel that further documents are to be produced, then give them a reasonable opportunity to produce the same and after considering the office memorandums issued by the MoEF&CC regarding the Wildlife Sanctuaries and consideration of the projects and subject matter of obtaining clearance from the Standing Committee of National Wildlife Board, take appropriate decision by giving reasons for recommending or not to recommend the project and place such recommendation before SEIAA for further consideration.
- iii. On receipt of such recommendations, the SEIAA is directed to take appropriate decision in accordance with law after giving an opportunity to the appellant and communicate the decision to the appellant in accordance with law.
- iv. If any application has already been filed by the appellants before the MoEF&CC for prior wildlife clearance and if it is not granted, then the right of the appellant to approach appropriate forum seeking necessary directions, if any, for consideration of such application is left open. The points are answered accordingly.

38. In the result, the appeal is allowed and disposed of with following directions:

- I. The proceedings of SEIAA rejecting the Environmental Clearance as per annexure A1 produced along with the appeal with proceeding no. 144/SEIAA/KL/2745/2013 is set aside and the same is remitted to SEIAA, Kerala for further consideration.
- II. On receipt of the Judgement of this Tribunal, the SEIAA is directed to refer back the matter to SEAC again for consideration and on receipt of the same the SEAC is directed to give an opportunity to the appellant to explain the project and if they did feel that further documents are to be produced, then give them a reasonable opportunity to produce the same and after considering the office memorandums issued by the MoEF&CC regarding the Wildlife Sanctuaries and consideration of the projects and subject matter of obtaining clearance from the Standing Committee of National Wildlife Board, take appropriate decision by giving reasons for recommending or not to recommend the project and place such recommendation before SEIAA for further consideration.
- III. On receipt of such recommendations, the SEIAA is directed to take appropriate decision in accordance with law after giving an opportunity to the appellant and communicate the decision to the appellants in accordance with law.

IV. If any application has already been filed by the appellants before the MoEF&CC for prior wildlife clearance and if it is not granted, then the right of the appellant to approach appropriate forum seeking necessary directions, if any, for consideration of such application is left open. V. Consideration the circumstances, the parties are directed to bear their respective costs in the application. VI. Registry is directed to communicate this Judgement to SEIAA, Kerala immediately by e-mail so as to avoid delay in taking decision and direct them to take back the file relating to issuance of Environmental Clearance produced before this Tribunal at the earliest.

39. With the above directions and observations the appeal is allowed and disposed of accordingly.

.....J.M. (Justice K. Ramakrishnan)E.M.
(Dr.SatyagopalKorlapati) 31st March, 2022. AM.