

(2017) 02 KL CK 0029

In the High Court Of Kerala

Case No : W.P.(C). Nos. 561, 3399, 4689 and 5016 of 2017

G. Madhavan Kutty

APPELLANT

Vs

District Environmental Impact Assessment Authority

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Environment (Protection) Act, 1986 — Section 3

Citation : (2017) 1 KLT 874

Hon'ble Judges : Mr. A.K. Jayasankaran Nambiar, J.

Bench : Single Bench

**Advocate : Sri. Rajan Vishnuraj and Sri. V. Harish, Advocates, for the Petitioner;
Sri. Renil Anto Kandamkulathi, Government Pleader, for the Respondent**

Final Decision : Disposed Off

Judgement

Mr. A.K. Jayasankaran Nambiar, J.—Environmental litigation in our country has been fairly enthusiastic in the last three decades, and with it has come a realisation that we simply cannot take nature for granted any more. It was the great Mahatma Gandhi who warned our people that while nature offers enough to satisfy human need, it does not offer enough to satisfy human greed. Relentless and unscientific exploitation of our natural resources has left us grappling with myriad environmental problems such as higher pollution levels in our cities, a significantly reduced quantity of water for our daily needs and a climate that is becoming increasingly hostile to human habitation. The situation calls for practical and meaningful measures to be adopted while regulating developmental activities that could impact the environment.

2. While legislative measures that exist in our country are largely the outcome of international treaty obligations, which our country was obliged to honour through domestic legislative expressions of its commitments to the cause of environment, it is the judiciary that has played a significant, and arguably dominant, role in shaping the regulatory mechanism that is now in place. By invoking the doctrine

of public trust and using it to forge the principle of sustainable development, the precautionary principle, the polluter pays principle and the principle of inter-generational equity, environmental jurisprudence in our country has now evolved to a level where no developmental activity is seen as worth pursuing if it has the propensity to adversely impact the environment. And so it must be, if we are to progress from being just another nation that looks at its Gross Domestic Product (GDP) as a measure of prosperity, to one that is keen to ensure a Gross Domestic Happiness (GDH) of its people.

3. The interpretation of a regulatory provision that is designed to safeguard the environment has necessarily to be a meaningful and purposive one that ensures that the object of the regulatory measure is given effect to in full measure. The present batch of writ petitions present such an instance, where this court is called upon to interpret the provisions of the Environment Impact Assessment Notification 1996, as amended by the Notification of 2016, to discern whether a resident of an area, where quarrying activities in respect of minor minerals (granite metal, in these cases) is contemplated, has a right to be heard in respect of the objections raised by him to the grant of an Environment Clearance Certificate to the project proponent.

4. The petitioners, in all these writ petitions claim to be residents of those localities where the project proponents, who are arrayed as respondents, intend to set up a quarrying unit. The details of the applications preferred by the project proponents concerned are not important for deciding the issue that arises in these cases. It would suffice to note that, in all these cases, an application seeking environmental clearance for the quarrying project has been filed by the project proponent, in proper form and with supporting documents, before the appraising authority (the District Level Expert Appraisal Committee (DEAC) or the State Level Expert Appraisal Committee (SEAC), as the case may be) and the appraising authority has recommended the case of the project to the Assessing authority (the District Level Environment Impact Assessment Authority (DEIAA) or the State Level Environment Impact Assessment Authority (SEIAA), as the case may be). The Assessing authority is now seized of the matter and, if the recommendations of the appraising authority are found acceptable, an environment clearance certificate could be granted to the project proponent. It is at this stage, that the petitioners have approached this court seeking a direction to the assessing authority to consider their objections to the grant of environmental clearance to the project in question. The question posed is "do they have a right to be heard at this stage?"

5. It is pointed out, by the respondent project proponents, that the notifications do not contemplate such a right to the petitioners and further, even a public consultation is not contemplated for projects, such as those involved in these writ petitions, where the mining area is less than 5 Hectares. It is further pointed out that, the petitioners are not without any remedy against an environmental clearance certificate granted to the project proponents, for they can appeal to

the National Green Tribunal against such a grant. It is argued that conceding a right to be heard to the petitioners at this stage would result in delaying the process of environmental clearance to the project, and this cannot be the intention of the notification that prescribes strict timelines for the certification process that is done through two stages.

6. I have heard the learned counsel for the petitioners and respondents in all these writ petitions. On a consideration of the facts and circumstances of the case, and the submissions made across the bar, I find that while it may be a fact that the notifications per se do not expressly provide for a right, to the petitioners herein, to have their objections considered by the assessing authority, or to be heard by the said authority in that regard, the notification does provide for a post facto enquiry in respect of the grant, and if it is found that the project proponent has obtained the clearance through submission of false or incorrect data, then the clearance certificate issued can be recalled and cancelled after notice to the project proponent.

Clause 8 (vi) of the Notification reads as follows:

"8 (vi). Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

7. While the said provision in the notification also does not provide for the consideration of any objections, I am of the view that in environmental matters, where the likelihood of a project proponent, who has obtained clearance, commencing quarrying activities almost immediately after getting such clearance, is very high, introducing a procedure of hearing objections at a stage just prior to the grant of clearance might well advance the object of the provision referred above, especially when the provision is one that is designed to guard against the grant of any clearance based on incorrect data. The assessing authority, before whom the objections are filed, would be aided in its task of verifying whether the data furnished by the project proponent, in its application for environment clearance, was factually correct and further, whether all relevant information that was required to be furnished, was in fact provided. For this limited verification, prior to the grant of any clearance to the project, I feel the petitioners should be conceded a right, to be heard on their objections before the assessing authority. It might also be mentioned at this stage that, instances have been brought to the notice of this court where the multidisciplinary scrutiny of applications for environment clearance, that is envisaged before the appraising authorities (DEAC/SEAC), sometimes does not materialise on account of the absence of some of the members of the committee at the hearings. I also note that the Central Empowerment Committee (CEC) constituted at the instance of

the Supreme Court has, in a report submitted before the Supreme Court in 2013, indicated that, notwithstanding the prescription of procedures in the Notifications referred above, "effective steps to ensure timely action against erring project proponents are by and large lacking" and that "this defeats the very purpose of the entire process of environmental clearances prescribed in the EIA Notification, 2006". (See : Larger bench decision of the NGT dated 19.02.2016 in Jatinder Singh & Anr v. Union of India and Anr ? OA 495/2015). The above facts would mandate that greater emphasis be given to measures that will prevent an erroneous clearance being granted, rather than those that envisage a monitoring of the project proponent after the grant.

I, therefore, dispose these writ petitions with the following directions:

i. The DEIAA/SEIAA concerned shall afford a personal hearing to the petitioners in these writ petitions, for considering their objections, as detailed in the following representations preferred by them before taking a final decision with regard to the grant of environmental clearance to the project proponents.

? Ext.P6 in W.P.(C) No. 561/2017

? Ext.P11 in W.P.(C) No. 3399/2017

? Ext.P1 in W.P.(C) No. 4689/2017

? Ext.P5 (relying on Exts. P2 to P4 reports) in W.P.(C) No. 5016/2017

ii. The petitioners shall produce a copy of their writ petitions, together with a copy of this judgment before the respective DEIAA/SEIAA, for further action.

It is made clear that the hearing accorded to the petitioners shall be for the limited purpose of enabling the DEIAA/SEIAA to determine whether the facts stated, in the applications submitted by the respective project proponents, are factually correct, and to ensure that material aspects that have a bearing on the grant of environment clearance have not escaped the attention of the assessing authority. If the DEIAA/SEIAA has, during the pendency of these writ petitions, taken a decision to grant environmental clearance to any of the project proponents herein, the said decisions shall not be given effect to until the hearing that is directed in this judgment is completed and a decision taken thereafter by the DEIAA/SEIAA on the aspects mentioned in this judgment. It is also made clear that this Court has not expressed its opinion on any of the other legal contentions urged in the various writ petitions and the said contentions are left open for the petitioners to advance before an appropriate forum, should the need arise.