
(2025) 08 KL CK 0798

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 9795, 13492, 19300, 27035 Of 2023, 4510, 10121, 18741, 19999, 20487, 26197, 27291, 28314, 29509, 29919, 31355, 31398, 35059, Of 2024, 15219, 19599, 21958, 21964 Of 2025

Sudheesh A.T

APPELLANT

Vs

Director Of Mining And Geology Department

RESPONDENT

Date of Decision : 07-08-2025

Acts Referred:

Citation : (2025) 08 KL CK 0798

Hon'ble Judges : C. Jayachandran, J

Bench : Single Bench

Advocate : Philip J.Vettickattu, Sajitha George, Neenu Bernath, M.P.Sreekrishnan, T.P.Sajan?,

Final Decision : Allowed

Judgement

C.Jayachandran, J

1. In this batch of 21 cases, all the writ petitioners essentially seek the same relief, which pertains to a condition incorporated in the Environmental Clearance issued by the State Environmental Impact Assessment Authority ('SEIAA' for short). One such condition, incorporated in the case of petitioner in W.P.(C) No.28314/2024, is extracted here below:

"Condition No.5: Since, the project is located within 10km of Peechi Vazhani Wild Life Sanctuary and Chimmomy Wild Life Sanctuary, the project proponent has to obtain Wild Life Clearance from the SCNBWL as per the OM dated 17/05/20225 of MoEF & CC as per the directions in the Hon'ble Supreme Court judgment dated 26/04/2023 in I.A.13177 of 2022 before the commencement of mining".

In respect of a similar condition imposed in the Environmental Clearance issued by SEIAA, the Hon'ble Supreme Court passed a recent Order dated 29.05.2025 in I.A.Nos.132289/2025, 132290/2025 and 138819/2025 in W.P.(C) No.202/1995. As per the said Order, the operations in the Petitioner's quarry,

which is located 7.5 km away from the Peechi-Vazhani Wildlife Sanctuary, were permitted, repelling the objections of the Ministry of Environment, Forest and Climate Change ('MoEF & CC', for short) in this regard. The petitioners herein seek similar treatment in accord with the said Order of the Supreme Court.

2. Heard the learned counsels for the petitioners; learned Standing Counsel for SEIAA,; learned Central Government Counsel for MoEF & CC; learned Special Government Pleader (Forest) and the learned Government Pleader. Perused the records.

3. As regards the interpretation of the said Order, considerable arguments were advanced by the respective parties. While the petitioners contend that similar condition, imposed by the SEIAA in the Environmental Clearance is the subject matter of these Writ Petitions, wherefore, the above Order dated 29.05.2025 of the Hon'ble Supreme Court would squarely govern the situation, learned Standing Counsel for SEIAA would submit that the above Order cannot substitute the requirements of O.M. dated 17.05.2022 of the MoEF & CC, as also, the directions contained in the earlier Orders passed by the Hon'ble Supreme Court in the same Writ Petition.

4. This Court will straight away refer to the objections raised by the learned Standing Counsel for SEIAA. Learned Standing Counsel would submit that three Orders have been passed by the Hon'ble Supreme Court in In Re: T.N.Godavarman Thirumulpad v. Union of India and Others. The first is one dated 3rd June, 2022 (hereinafter referred to as 'G.V-I'). Reference to various paragraphs of G.V-I is required and it is clarified that the paragraph numbers being referred hereunder are as contained in the Order (G.V-I) downloaded from the Supreme Court portal. Learned Standing Counsel invited the attention of this Court to paragraph no.44 of G.V-I Order, which contains several directions. As per paragraph no.44(a), a minimum distance of 1 km is prescribed as Eco-Sensitive Zone (ESZ) measured from the demarcated boundary of a Protected Forest (National Park or Wildlife Sanctuary) for conducting the activities prescribed in the Guidelines dated 09.02.2011. Paragraph no.44(b) deals with the situations, where ESZ has already been prescribed by law, which goes beyond 1 km buffer zone. In such cases, the wider buffer zone prescribed under the statutory instrument for the particular National Park or Wildlife Sanctuary has to be maintained. Paragraph no.44(d) is a complete prohibition for mining within the National Parks and Wildlife Sanctuaries. Paragraph no.44(e) deals with activities already undertaken within 1 km or the extended buffer zone of a Wildlife Sanctuary or National Park, which does not come within the ambit of prohibited activities as per the Guidelines dated 09.02.2011. Such activities already begun can be continued with the permission of the Principal Chief Conservator of Forests. Paragraph no.44(h) mandates that in respect of Sanctuaries or National Parks, for which proposal has not been given by the State or the Union Territory, a buffer zone of 10 km will be maintained as ESZ. Learned Standing Counsel then invited the attention of this Court to the Second

Order in In Re: T.N.Godavarman Thirumulpad dated 26.04.2023 (hereinafter referred to as 'GV-II'), wherein at paragraph no.66, the directions contained in paragraph no.44(e) (referred to as 56.5 in the SCC edition) of GV-I were replaced with two other clauses. The first clause maintains that the MoEF & CC and the State Governments shall strictly follow the Guidelines dated 09.02.2011, and also, the provisions contained in the ESZ's notifications pertaining to the prohibited activities, regulated activities and permissible activities in the Protected Areas. Clause (ii) of paragraph 66 of GV-II directs that, while granting Environmental and Forest Clearances for project activities in ESZs and other areas outside the Protected Areas, O.M. dated 17.05.2022 has to be strictly followed.

5. Thirdly, learned Standing Counsel invited the attention to the latest Order of the Hon'ble Supreme Court in In Re: T.N.Godavarman Thirumulpad dated 29.05.2025 (hereinafter referred to as 'GV-III'), wherein the impact of the second direction in paragraph no.66 is not considered. According to the learned Standing Counsel, the O.M. dated 17.05.2022 is not stayed by any Court, wherefore, the same will operate per force, which mandates a buffer zone of ten kilometers from the Wildlife Sanctuary/Protected Forest. Therefore, the petitioners cannot be afforded with the relief granted by the Supreme Court, in view of the mandate contained in O.M. dated 17.05.2022, is the submission made. Learned Central Government Standing Counsel and the learned Special Government Pleader (Forest) would adopt the contentions raised by the learned Standing Counsel for SEIAA.

6. Having heard the learned counsel for petitioners, as also, the contesting respondents, this Court cannot find any merit in the submissions made by the respondents. Primarily, this Court finds that the Supreme Court in its latest Order dated 29.05.2025 (G.V-III), has dealt with a similar situation, questioning the validity of a similar condition imposed by SEIAA while granting Environmental Clearance, mandating the project proponent to obtain wildlife clearance from Standing Committee for National Board of Wildlife (SCNBWL) as per O.M. dated 17.05.2022. The said condition is extracted by the Supreme Court in paragraph no.2 of the G.V-III Order in I.A.Nos.132289/2025, 132290/2025 and 138819/2025. The reliefs were sought for to get over the said condition, by seeking a declaration that ESZ shall be treated as the area delineated in the draft notification of MoEF & CC until the final notification is issued; with a further prayer to permit the applicant to continue the operations of its quarry, which is located 7.5 km away from the Peechi-Vazhani Wildlife Sanctuary. In this regard, it is relevant to note that, as per the draft notification, the maximum distance prescribed as ESZ is 6.2 km, as could be seen from Ext.P7 notification produced in W.P.(C).No.28314/2024. The above prayer was opposed before the Hon'ble Supreme Court by the MoEF & CC by placing particular reliance upon the Order of the Hon'ble Supreme in G.V-II, especially to paragraph no.50 thereof, which fact is recorded in paragraph no.3 of the latest G.V-III Order of the Supreme Court. After taking note of the fact that the mining activities of the applicant before the

Supreme Court are conducted at a distance of 8.5 km from the border of the Wildlife Sanctuary, the Supreme Court held in paragraph no.5 that the objection of State, based on paragraph no.51 (it appears that reference to paragraph no.51 is a mistake and the correct one is paragraph no.50) of the G.V-II, as misplaced. Thereafter, the Supreme Court took stock of the fact that the distance of 10 km as a prohibition for mining activities has been reduced to 1 km, as per G.V-II and accordingly in paragraph no.8 (erroneously referred to as 7), the Interlocutory Applications were allowed in terms of prayers (a) and (b), by declaring that the area delineated in the MoEF & CC draft notification shall be treated as ESZ; and permitting the applicant to continue his operations in the quarry, which is located 7.5 km away from the Peechi-Vazhani Wildlife Sanctuary. The fact situation in these Writ Petitions are quite similar, wherefore, the petitioners are entitled to similar treatment.

7. This Court further finds that the arguments based on Clause no.(ii) in paragraph no.66 of G.V-II is also misplaced. The corresponding discussion, which led to the relief granted vide paragraph no.66 is contained in paragraph no.50 of G.V-II, which discussed the arguments advanced before the Hon'ble Supreme Court. As a matter of fact, the necessity to modify the directions contained in paragraph no.44(e) of G.V-I starts from paragraph no.48 of G.V-II. The necessity to modify the directions in paragraph no.44(e) is discussed in paragraph nos.48 and 49, as also, in paragraph no.50. The discussion in paragraph no.50 specifically takes stock of the O.M. dated 17.05.2022. The requirement of a consideration by the National Board for Wildlife (NBWL) for conducting an activity within 10 km of the National Park or Sanctuary is also taken stock of. Ultimately, in paragraph no.50, the Hon'ble Supreme Court found that the directions in paragraph no.44(e) is impossible to be implemented. The discussion continued in paragraph nos.51, 52 and 53. It is on the strength of that discussion that the Hon'ble Supreme Court, ultimately came out with the directions contained in paragraph no.66, which replaced the directions contained in paragraph no.44(e) of G.V-I. The said replaced conditions are extracted here below:

“(i) The MoEF & CC and all the State/Union Territory Governments shall strictly follow the provisions in the said Guidelines dated 9th February 2011 and so also the provisions contained in the ESZs notifications pertaining to the respective Protected Areas with regard to prohibited activities, regulated activities and permissible activities;

(ii) We further direct that while granting Environmental and Forest Clearances for project activities in ESZ and other areas outside the Protected Areas, the Union of India as well as various State/Union Territory Governments shall strictly follow the provisions contained in the Office Memorandum dated 17th May 2022 issued by MoEF & CC.”

8. In the above referred facts and circumstances, this Court can only consider the second condition, which directs strict adherence to O.M. dated 17.05.2022, as one coming within the scope of the subject matter dealt within paragraph

no.44(e) of G.V-I, inasmuch as it is those directions, which stood replaced by the two directions extracted above, by virtue of the Order of the Hon'ble Supreme Court in G.V-II. Beyond the scope of the topic discussed in paragraph no.44(e), the direction to adhere to the O.M. dated 17.05.2022 cannot be extended. This Court also take stock of the fact that, paragraph no.44(e) of G.V-I Order is preceded by paragraph nos.44(a) and (b) etc. Insofar as Kerala is concerned, we are governed by the directions in paragraph no.44(b), inasmuch as draft notification has already been issued stipulating the ESZ. As could be seen from the draft notification produced at Ext.P7 in W.P.(C) No.28314/2024, the maximum distance prescribed, based on the direction from the boundary of the Peechi-Vazhani Wildlife Sanctuary is only 6.2 km. Admittedly, the project activities of all the project proponents in the subject Writ Petitions are located outside the respective maxima of the ESZ. If that be so, a consideration by the Standing Committee of the National Board for Wildlife (SCNBWL) in terms of the O.M. dated 17.05.2022 cannot be insisted upon.

9. Before parting with the judgment, this Court cannot, but reject the argument of the learned Standing Counsel for SEIAA that the directions contained in O.M. dated 17.05.2022 will operate by its own force, inasmuch as O.M. is not stayed by any court. Such a contention is not any more available in view of the consideration of a similar situation by the Hon'ble Supreme Court in its latest G.V-III Order, wherein this very aspect has been propounded by the State, but rejected by the Supreme Court.

10. In the result, these Writ Petitions are allowed declaring that the petitioners herein are not liable to obtain clearance from SCNBWL; quashing that particular condition in the respective E.Cs warranting clearance from SCNBWL; and directing the Director of Mining and Geology to process and consider petitioners' application for quarrying lease in accordance with law, but without insisting for clearance from SCNBWL. The benefit granted by this judgment will be subject to clarificatory or further Orders, if any, passed by the Hon'ble Supreme Court on the same issue.

Inasmuch as the Writ Petitions are allowed, as indicated above, interlocutory applications, if any, pending will stand closed.