

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI.**

REVIEW APPLICATION No: 22 OF 2015(SZ)

IN

APPLICATION No.05 OF 2013 (SZ)

IN THE MATTER OF:

M/s. Pannaiyoor Regional Citizens Welfare Trust

Rep. by its Secretary

22-25, Pannaiyoor

Rajakkamangalam P.O

Kanyakumari District.

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Applicants

Versus

1. The Ministry of Environment, Forests and Climate Change

Union of India

Rep. by its Secretary

CGO Complex, Lodhi Road

New Delhi-110 003.

2. Tamil Nadu Pollution Control Board

Rep. by its Chairman

Anna Salai

Chennai-600 032.

3. The District Environmental Engineer

Tamil Nadu Pollution Control Board

No.30, Kesari Street

Mathias Nagar

Nagercoil.

4. The District Collector

Kanyakumari District

District Collectorate Complex

Kanyakumari.

5. M/s. Rajakkamangalam Thurai Fishing Harbour Pvt. Ltd.

Rajakkamangalam Thurai

Kanyakumari District

Tamil Nadu

6. The Tamil Nadu State Coastal Zone Management Authority

Rep. by its Member Secretary

Panagal Building, Saidapet

Chennai.

7. The Principal Chief Conservator of Forest

Head of Forest Force

Panagal Building

Saidapet

Chennai.

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Respondents

REVIEW APPLICATION No: 23 OF 2015(SZ)

IN

APPLICATION No.04 OF 2014 (SZ)

IN THE MATTER OF:

Mr. Dharmakrishnan

Son of Thangiah Nadar

Pannaiyur

Ethamozhi Post-629 501

Kanyakumari District

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Applicant

Versus

1. The Principal Chief Conservator of Forest

Head of Forest Force

Panagal Building

Saidapet

Chennai.

2. The Secretary to Government

Environment and Forest Department

Government of Tamil Nadu

Fort St. George

Chennai.600 009.

3. The Secretary to Government

Animal Husbandry Dairying and Fisheries (FSI) Department

Government of Tamil Nadu

Fort St. George

Chennai-600 009.

4. The Commissioner of Fisheries

Government of Tamil Nadu

DMS Complex, Teynampet

Chennai-600 006

5. The Managing Director

Tamil Nadu Fisheries Development Corporation Ltd.

DMS Complex, Teynampet

Chennai-600 006.

6. The Task Team Leader

Emergency Tsunami Reconstruction Project

World Bank, Lodi Estate
New Delhi.

7. The District Collector
Kanyakumari District
Nagercoil-629 001.

8. The Revenue Divisional Officer
Nagercoil.

9. The Managing Director
M.A.R.G. Limited
Rajakkamangalam-629 501
Kanyakumari District

10. Rajakkamangalam Thurai Development Trust
Rajakkamangalam Thurai and Post
No.26/40, Arokia Annai Building
Agastheeswaram Taluk
Kanyakumari District
Rep by its Chairman, Mr. G. Soosai Anthony
(Respondent 10 impleaded as per Order dated 19.03.2013 in MM. 01/12)

11. The Chairman
Tamil Nadu Pollution Control Board
Anna Salai
Chennai.32

12. The District Environmental Engineer
Tamil Nadu Pollution Control Board
30, Kesari Street
Mathias Nagar
Nagercoil-620 001.

13. The President

Rajakkamangalam Panchayat

Rajakkamangalam

Kanyakumari District

(Respondents 11-13 impleaded vide Order dated 02.07.2013 In M.P.01/12)

14. The Secretary to Government

Ministry of Environment and Forest

Union of India

CGO Complex, Lodhi Road

New Delhi.110 003

15. The Member Secretary/Director of Environment

Tamil Nadu Coastal Zone Management Authority

Panagal Building, Saidapet

Chennai.

... Respondents

(Respondents 14 &15 impleaded vide Order dated 09.12.2013 in M.P. 01/ of 2013)

ORDER

PRESENT:

1. **Hon'ble Justice M. Chockalingam**

Judicial Member

2. **Hon'ble Shri P.S.Rao**

Expert Member

Dated, 11th January, 2016.

These Review applications are made by the applicants in the Original Applications No. 4 of 2014 and 5 of 2013(SZ) seeking a review of the common order dated 29.09.2015.

2) The applicants have averred that the orders have got to be reviewed since the Tribunal has disposed of the main applications holding that nothing survives to be adjudicated in the matter but did not take notice of the fact that the breakwaters in eastern and western side were already constructed by the 5th respondent on the strength of the CRZ Clearance and the same should be removed and the site has got to be restored to its original state. The Tribunal by an interim order of injunction dated 12.02.2013, restrained the 5th respondent from proceeding with the construction activity at the site. Subsequently, on an application filed by the 5th respondent, the Tribunal modified the order and permitted the 5th respondent to construct tetrapod in order to safeguard the breakwater constructed by them. The 5th respondent has also admitted in the monthly report for the period October-March, 2013 dated 25.07.2013, filed before the 1st respondent, Ministry of Environment, Forests & Climate Change(MoEF&CC), that they had constructed both the eastern and western breakwaters for a particular length. In view of the stay granted by the Tribunal, they have not proceeded with it and the breakwater of 50 meters in length remained at the site since the remaining got washed away by the high tide. Thus, though the clearance granted by the 1st respondent has now been revoked, the breakwater constructed by the 5th respondent on the strength of the clearance originally granted, still exists at the site. The illegally constructed breakwater is interfering with the long shore drift and affecting the littoral drift along the coast, leading to accretion on one side and erosion on the other side thereby affecting the integrity of the coast. Though the clearance granted by the MoEF&CC was revoked, the existing breakwater has to be removed and the site has to be restored to its original state. But, the Tribunal has not taken into consideration the existence of the breakwater and also the fact that the site has got to be remediated and restored to its previous state. Hence, the reliefs in that regard

have to be granted. In view of the same, order of the Tribunal dated 29.09.2015 has got to be reviewed and necessary orders have got to be passed.

3) Both the review applications are placed on circulation. Averments along with the grounds are considered. The Tribunal is of the considered view that the common order dated 29.09.2015 made in Applications No. 4 of 2014 and 5 of 2013 does not warrant any review. Admittedly, both the applications concentrate on the cancellation of the CRZ Clearance dated 18.07.2011 granted for the construction of Rajakkamangalam Fishing Harbour at Needakarai 'B' Village, Agastheewaram Taluk, Kanyakumari District. It is true that pending the progress of the construction work, an interim order of injunction was granted restraining any further construction activities and subsequently the said order was also modified in both the Applications No. 4 of 2014 and 5 of 2013 along with Application No.69 of 2015 (SZ) whereby, a show cause notice issued by the MoEF&CC was challenged by the project proponent, were pending enquiry and arguments were part heard. The Counsel for the MoEF&CC filed an order dated 11.09.2015 issued by the MoEF&CC cancelling the CRZ Clearance dated 18.07.2011 which is a subject matter of challenge in both the Applications No.4 of 2014 and 5 of 2013. A perusal of the order, dated 11.09.2015, a detailed one, issued by the MoEF&CC cancelling the CRZ Clearance, would indicate that the MoEF&CC has taken into consideration all the facts and circumstances and has recorded the plea put forth by the project proponent also. It is pertinent to point out that the existing construction of breakwaters was also brought to the notice of the Ministry and the same is also recorded in the order.

4) While Application No. 5 of 2013 has sought for the revocation of clearance accorded to the 5th respondent dated 18.07.2011, Application No.4 of 2014 was originally a Writ Application before the Hon'ble High Court of Madras

(Madurai Bench) and has sought for quashing the proceedings pertaining to the grant of the CRZ Clearance. It remains to be stated that all other reliefs sought for in both the applications are consequential in character. The grant of those reliefs depended on the grant of the first relief namely the revocation of the Clearance accorded to the 5th respondent dated 18.07.2011, the subject matter in challenge in both the applications. While the Clearance sought to be revoked was cancelled by an order issued by the granting authority namely the MoEF&CC, the consideration of the grant of main relief namely the revocation of impugned clearance would arise when a copy of the said order was filed before the Tribunal. The same was recorded and the applications were disposed of. In view of the disposal of the said applications recording that nothing survives to be prosecuted in the applications in view of the revocation of the impugned clearance dated 18.07.2011, the consideration of the consequential reliefs and grant of the same would not arise while cancelling the CRZ Clearance dated 18.07.2011 issued to the 5th respondent. The existence of pending restriction was taken note of by the authority as noticed in the order of cancellation of the impugned CRZ Clearance. Hence, it is for the authority to pass suitable orders thereon in that regard, if felt necessary. Thus, the review applications do not make out any ground for review of the common order made by the Tribunal in the main applications.

(Justice M. Chockalingam)

Judicial Member

(Shri.P.S.Rao)

Expert Member

Chennai.
11th January, 2016.