

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Execution Application No. 54/2018

In

O.A. No. 110/2018

(Earlier O.A. No. 45/2016(WZ))

Bombay Environment Action Group

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 23.08.2019

CORAM:

HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER

HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER

For Applicant(s):

Mr. Sanjay Upadhyay, Advocate

For Respondent (s):

Mr. Balendu Shekhar, Advocate

Mr. Mukesh Verma, Advocate

Mr. Thakur Sumit, Advocate

Mr. Anjuman Tripathy and Mr.

Jaivir S. Dhant, Advocates with

Ms. Pallavi Paranjape, Sr.

Planner (A/c)

Dr. Veenu Joon, MoEF& CC

Mr. Subrata Bose, MoEF& CC

ORDER

This execution application has been filed by the applicant for compliance of order dated 23.08.2018.

For the sake of convenience and to specify the relevant facts, we would like to reproduce hereunder extracts of the order of 23.08.2018:-

“The primary issue raised in this application is with regard to finalization and issuance of Zonal Master Plan for Eco Sensitive Zone of Matheran Hill Station in the State of Maharashtra. A Notification in this regard was issued by MoEF on 04-02-2003. Since then respondent no.1 is awaiting further information from the State which has to take steps with regard to preparation of Zonal Master Plan for Eco Sensitive Zone. The State of Maharashtra has all throughout seems to be processing the matter. Today we have been informed that a draft has been sent to MoEF in the month of June, 2018.

It is noteworthy that as per law, after issuance of notification, as in the instant case on 04-02-2003, the final Zonal Master Plan is to be finalized within two years.

It a classic case, relating to an area namely Matheran Hill Station, where initiation with regard to Zonal Master Plan for the Eco Sensitive Zone was undertaken prior to 2003. Despite of limitation prescribed under law, Zonal Master Plan of the said area, which was to come within two years, have not been completed, despite of passage of more than 15 years. The nonseriousness about the issue by the Ministry as well as the State Government clearly reflects with no iota of doubt. In the meanwhile the area has been exploited by the private parties by raising constructions and using it for their vested interest and running business.”

After having considered, herein above, the mandate of law in respect of finalization of Zonal Master Plan for Eco Sensitive Zone which was not at all followed by the respondents/authorities despite of the fact that 15 years had passed, we had directed the MoEF to finalize the same within a period of two months. We had also made it clear that it shall be the responsibility of the Ministry to call for information, if required, from the State of Maharashtra.

Besides, considering the facts and circumstances and the inordinate delay caused by respondent in the present case relating to eco sensitive zone, we had imposed a cost of Rs. 1 lakh on them which was to be deposited with the CPCB within a period of two weeks from that day i.e. 23-08.2018. Further, we had ordered that in case the plan is not finalized within two months

i.e. by 23.10.2018 then a cost of Rs. 10,000/- per day till finalization of notification, shall be liable to be paid by the officers concerned of MoEF or the State Government, whosoever are found to be responsible for further delay.

It would be relevant to mention here that in order to ensure that Zonal Master Plan for Eco Sensitive Zone is finalized at the earliest, we had directed the Ministry to do the needful and also fasten the responsibility on them to call for any information, if required, from the State of Maharashtra.

A letter dated 23.07.2019, issued by the Ministry, has been placed on record. When we had specifically asked the author of this letter namely Dr. Subrata Bose, Scientist-F, who is present before us, as to when the Zonal Master Plan was finally approved by the Ministry, the answer given was on 23.07.2019.

A bare perusal of the letter of 23.07.2019 shows that it does not categorically mentions the date on which the master plan was finally approved. It is only by way of inference that it can be so gathered from the language of the letter, as for instance:

“The Competent Authority in the Ministry has also approved the ZMP (2016-2036) for Matheran ESZ in Maharashtra.”

Another submission made by the officer to corroborate the fact that Zonal Plan was approved on 23.07.2019, is from para 6 of the letter of 23.07.2019:

“Accordingly, the Ministry hereby communicates its approval to ZMP...”

It would suffice to say that by the said averment, it only reflects that the Ministry is communicating its approval but the fact regarding the date when the approval was granted, has still not been mentioned there.

Moreover, having considered the aforesaid submissions made by the officer present before us, we hold that it is very clearly reflected from the letter of 23.07.2019 that the version given before us is not correct because the subsequent part of para 6 further gives the suggestions made by the Expert Committee on 03.06.2019. Subsequently, in para 7, it has been stated:

“The Zonal Master Plan (2016-2036) of Matheran, Maharashtra, modified as per the above suggestion shall be submitted to the Ministry for reference.”

In other words, the said direction was to the State Government to modify the Master Plan, in light of the suggestions given by the Expert Committee. This leaves no room of doubt that so far as finalization of Master Plan by Ministry is concerned, the same had not been done till 23.07.2019 when the aforesaid letter was issued. Even if in the earlier part of the letter a mention has been made about approval of ZMP but the directions given to the State Govt. at the end of the letter for modification, as per the suggestions of the Expert Committee clearly establishes that it was only after such modification by the

State the Zonal Plan was to be referred to the Ministry. Thereafter, the finalization of the plan was to be done by the Ministry.

However, the officer present before us as well as the Learned Counsel for Ministry have submitted that the Zonal Master Plan for eco-sensitive zone has been finalized from their side. Even if it is so assumed, there is a clear cut non-compliance of the order passed by this Court on 23.08.2018, as the time prescribed for execution of the same was of two months.

In so far as, cost of Rs. 1 Lakh is concerned, we have been informed that the same has been deposited. Even taking 23.07.2019 as the date of finalization of Zonal Master Plan by the Ministry, the inevitable conclusion is that the same was done beyond a period of nine months of the time granted to the Ministry for doing the needful. It is significant to note here that in the present case, eco-sensitive zone for the Master Plan for Matheran Hill Station was initiated prior to the year 2003.

Considering the fact that the compliance has been made beyond the period granted to the Ministry, they are liable to pay the recurring cost of Rs. 10,000/- per day from 23.10.2018 to 23.07.2019. Accordingly, the total amount comes to be Rs. 27 Lakhs. The said amount is to be deposited by the Ministry with the Central Pollution Control Board within a period of two weeks from today.

We may mention here that the Learned Counsel for the applicant has vehemently argued that even the so called Zonal Master Plan for the eco-sensitive zone which the Ministry is said to have finalized on 23.07.2019 is not complete. It is submitted that the said plan does not incorporate:

- a) the sub-Zonal Master Plan outside Municipal Areas
- b) Heritage Plan etc.
- c) Forest Management Plan
- d) Area Development Plan etc.

It would suffice to say that in this execution proceedings, initiated through the Execution Application (54/2018), the primary concern of the Tribunal is the compliance of the order of 23.08.2018. However, if the compliance made by the Ministry by way of finalizing the Zonal Master Plan for eco-sensitive zone is not in accordance to law, it would be open to the petitioner to raise his grievance against it, in accordance to law before the appropriate forum.

Consequently, Execution Application (54/2018) is disposed of, with no order as to cost, with regard the expenses of the proceedings.

Raghuvendra S. Rathore, JM

Dr. Satyawan Singh Garbyal, EM

August 23, 2019
JG