IN THE HIGH COURT OF JUDICATURE, KERALA [SPECIAL ORIGINAL JURISDICTION]

Writ Petition.(Civil).No.....of 2011

T.Antony........Petitioner

Vs.

Union of India & Ors.....Respondents

SYNOPSIS

A fisher, challenging the exemption granted to Ice plant, ice crushing units, fish curing facilities and the like in the Coastal Regulation Zone by virtue of the new notification, 1991. When the Government exercises its powers of subordinate legislation, it must be exercised in consonance of the expert opinion. The opinion of experts by Dr.M.S.Swaminathan, has been muffled and crippled by Government in exercise of its subordinate legislative power. Economic development has been given importance than environment while allowed industries to be set up. International treaties entered into for the protection of environment has been ignored.

CHRONOLOGY OF EVENTS

Date	Event
19-02-1991	CRZ notification issued by the Government of India, Ministry of Environment and Forests.
February, 2005	Report of the Committee chaired by Prof.M.S.Swaminathan on CRZ notification.
10-09-2007	High Court allowing the writ restraining the respondent from operating the Ice Plant.
24-10-2007	Division Bench rejected the appeal filed by the 3 rd respondent.
February,2005	Dr. M.S.Swaminathan Committee report.
06-11-2011	New CRZ notification permitting Ice Plant in the no development zone.

DECISIONS RELIED ON

Indian Council for Enviro Legal Action vs Union of India. (1996)5 SCC 281.

IN THE HIGH COURT OF JUDICATURE, KERALA [SPECIAL ORIGINAL JURISDICTION]

WRIT PETITION (CIVIL).No.....of 2011

BETWEEN

PETITIONER:

T.Antony, Son of Theevis, Arthiyal Purayidom, Marinad, Puthukurichi.P.O., Thiruvananthapuram-695 030.

AND

RESPONDENTS:

- 1. Union of India, Represented by its Principal Secretary, Ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi.
- 2. Kerala Coastal Zone Management Authority, Sasthra Bhavan, Pattom Palace, Thiruvananthapuram.
- 3. L.Michael, Arthial Purayidom, Manianadu, Puthukuruchi. P.O., Thiruvananthapuram-695 030.
- 4. Kadinamkulam Grama Panchayat, represented by its Secretary, Chittattumukku P.O., Thiruvanathapuram-695588.

All process to the petitioner be served on his counsel Shri.P.B.SAHASRANAMAN, T.S.HARIKUMAR, & K.JAGADEESH Advocates, Sahasram Associates, Chittoor Road, Ernakulam, Cochin-682011.

All process to the respondents be sent on their above addresses or on their advocates, if any engaged.

WRIT PETITION FILED UNDER ARTICLE. 226 OF THE CONSTITUTION OF INDIA.

Statement of Facts.

The petitioner above named states as follows:

- 1. The petitioner is a fisher and resident of Puthukurichy, which falls within the Kadinamkulam Grama Panchayat. He depends on the income from the catches made from the nearby sea which has rich resources of various species of fishers. The petitioner is also a social worker and member of the Board of Directors of Fishermen Development Welfare Co-operative Society Limited. The area is a thickly populated and is one of the outstanding natural beautiful areas of the State.
- 2. When the 3rd respondent proposed to set up an Ice Factory at a distance of 25 metres from the high water mark, the petitioner along with another person approached this Hon'ble Court. It is contended by the petitioner that the said land falls within 200 metres from High Tide Level as contemplated under the "Coastal Regulation Zone (CRZ) Notification, 1991". The setting up of Ice Plant, being an industrial activity, is thus prohibited. This Hon'ble Court after hearing all the parties accepted the contention and restrained the 3rd respondent from operating the Ice Plant which was set in the building No. KP/IV/118-B of the *Kadinamkulam* Grama Panchayat. A true copy of the said judgment in WP (C)No. 1876 of 2007 dated 10th September, 2007 of this Hon'ble Court is produced herewith and marked as **Exhibit.P.1**.
- 3. Being aggrieved the 3rd respondent has filed an appeal before the Bench of this Hon'ble Court. This Hon'ble Court was not inclined to admit it and rejected the said W.A.No. 2504 of 2007. A true copy of the said judgment in W.A.No. 2504 of 2007, dated 24-10-2007 of this Hon'ble Court is produced herewith and marked as **Exhibit.P.2**.
- 4. Though this Hon'ble Court restrained the 3rd respondent from running the Ice Plant he conducted it in utter disregard to the direction. Therefore contempt proceedings were initiated as Cont Case (C).No.1374 of 2007 and finally it was closed when the 3rd respondent closed the unit and it is illegal. Thereafter every efforts has been taken by him to see that the Ice Plant is being opened.

- 5. While so the Government of India has constituted an Expert Committee to review and make recommendations with regard to implementation of CRZ notification. The said Committee after studying all the aspects has submitted a report on 19th July, 2004. The committee has found that certain fishery and allied activities can be permitted in CRZ areas, other than in ecosensitive zones. The Committee has made it clear that fishing jetties and harbours can be permitted but allied facilities like storage halls, **ice factories**, ice crushing units, fish processing units, workshops, storage units, fish warehousing are not permissible. A true photostat copy of the said Report of the Expert Committee on Coastal Regulation Zone Notification, 1991 Chaired by Prof.M.S.Swaminathan, submitted in February, 2005 is produced herewith and marked as **Exhibit.P.3**.
- 6. On the basis of Exhibit.P.3 the 1st respondent has issued a draft notification for the purpose of amending the present restrictions imposed by CRZ notification in 2008. The same has been subjected to severe criticism. Therefore the 1st respondent has appointed another Committee headed by the same persons who Committee Exhibit.P.3 report. The headed Prof.M.S.Swaminathan has again submitted report on 16th July, 2009. But in so far as Ice Plants no change was recommended Exhibit.P.3 report. On the basis of the recommendations, the 1st respondent has again issued a draft notification on 15th September, 2010.
- 7. Ice Plants are industries which do not require any "foreshore" facilities are neither directly nor indirectly require "water front". For making Ice only fresh water is required. This dictum was laid down by the Hon'ble Supreme Court of India in the decision reported as S.Jagannath vs Union of India. AIR 1997 SC 813. The practice of setting up of industries other than which require saline water is to be prohibited. This fact was brought to the notice of the respondent by this petitioner and several others by representations and objections.

- 8. The 1st respondent has now issued a new notification, S.O.19(E), dated 6th January, 2011. The notification is similar to the earlier one in most of the areas. But it has given relaxations to many industries which includes Ice Plant. In CRZ-III areas areas upto 200 metres from High Tide Level (HTL) are no development zones. In the said no development zone under the guise of providing facilities for local fishing communities such as fish drying yards, auction halls, net mending yards, traditional boat building yards, ice plant, ice crushing units, fish curing facilities and the like. A true copy of the said notification issued by the 1st respondent dated 6th January, 2011 is produced herewith and marked as **Exhibit.P.4**.
- 9. It is respectfully submitted that the first respondent has taken undue advantage of the need of the fishers community as a shield to promote industries boat building yards, ice plant, ice crushing units, fish curing facilities and the like. The name of the traditional fisher folks has been used to promote various industries in the ecologically sensitive areas. The fishers will not be getting by the establishment of those industries in the nodevelopment zones. The present notification will encourage setting up of innumerable industries in the no-development zone though their activities do not require sea front. The fisher folk houses in many areas are located about 100 metres from the shore. Fishers will be denied their access to the shore if these type of industries are allowed to use the shore. Mere fact that a fisher requires the same an industrial activity which does not require saline water shall not be allowed in the no-development zone. If such industries are allowed to be set up in coast the same will give opportunity to set up more industries in the ecologically friendly no-development zone. The international agreements entered into for the protection of the environment has been ignored by the first respondent. The fact that global warming has started adversely affecting the planet has been ignored. The delegated power to make legislations has been ignored by the 1st respondent. If the notification is allowed to take place it will aggravate the climate change and other ecological disasters. The 1st respondent has forgotten its duty to protect the environment of the country.

- 10. Now the 2nd respondent is taking hasty steps to allow industries like that of the 3rd respondent forgetting the fact that it is in violation of 1991 notification. The fact that new Notification contemplates the fresh classification identification of coastal regulation zones have been forgotten by the 2nd respondent. It may also be noted that the new notification specifically prohibited the regularization of old violations. If the persons like the 3rd respondent are allowed to continue with their illegal trade, it will be like opening the gate for new industries in the no-development zone. The fact that nodevelopment zone is an ecologically fragile area has been forgotten by the 2nd respondent. Economic development shall not be allowed to take place at the cost of ecology or by causing destruction. widespread environment The notification in so far as it allows the setting up of Ice Plant in nodevelopment zone will degrade the ecological balance of the coastal areas.
- 11. Since the new notification has already been published in the Gazette, this petitioner has no other remedy than to invoke this Court's extraordinary jurisdiction under Article.226 of the Constitution of India on the following among other grounds:

GROUNDS

A. CRZ notification is a subordinate legislation. The said power is conferred for the protection of the environment and not anti environment polluting industries. When an expert body headed by renowned experts like Dr. M.S.Swaminathan restrained the setting up of industries like Ice Plant, overcoming the same by exercise of the power conferred under Sec.3 of the power granted by the Environment (Protection) Act, 1986 is arbitrary and not in the interest of the protection of the environment and ecology. Such an overruling of the opinion of expert body opinion is contrary to constitution and law. Supreme Court of India has deprecated such practice is the decision reported as *Indian Council For Enviro-legal Action vs. Union of India*. (1996)5 SCC 281.

- B. Promoting industries like boat building yards, ice plant, ice crushing units, fish curing facilities and the like in the no-development zone by Exhibit.P.2 notification is contrary to Articles 48A and 51A (g) of the Constitution of India.
- C. The power delegated to the 1st respondent is to make subordinate legislation in accordance with law. Such power casts a duty on the 1st respondent to follow the recommendations of the experts of the field. By the recommendations of the Report of expert, the 1st respondent has forgotten its duty enshrined under the Act and the Constitution to protect the environment of the country. Now the report of expert has been given as a shade to violate the parent Act and the constitutional duty.
- D. Malafide intention is clear in excluding the boat building yards, ice plant, ice crushing units, fish curing facilities and the like from the purview of the CRZ notification, 2011. The fisher's community name has been used without utilized to grant benefit to a section of industrial units. The activities now allowed on the assumption that it be being used by a particular class of people. Such classification is contrary to Art. 14 of the Constitution of India.
- E. The new notification, 2011 can be implemented only after drawing a new Coastal Zone Management Plan. The intention of the 2nd respondent to allow the setting of industries in contravention of 1991 notification, before the drawing of the new Coastal Zone Management Plan is arbitrary and illegal. The new notification will have impact only if the new Coastal Zone Management Plan is drafted in a proper manner as contemplated therein. Till such time the old violations cannot be allowed to take place.
- F. The exemption granted to Ice Plant is contrary to international agreements entered into for the protection of the environment and abatement of global warming. The amendment which allows the setting up of Ice Plant in no development zone is not an eco friendly activity, but is an economic activity.

For the reasons set out above and in the affidavit filed herewith the petitioner prays that the following :

RELIEFS

- To declare that the permission granted for the setting up of ice crushing units, fish curing facilities and the like in nodevelopment zones of CRZ-III, in the Coastal Regulation Zone notification, 2001 (Exhibit.P.4) is arbitrary and illegal;
- ii. To issue a writ of certiorari calling for the records leading to Exhibit.P.4 in so far as it permits the setting up of ice crushing units, fish curing facilities and the like in no-development zones of CRZ-III, in the Coastal Regulation Zone notification, 2001 (Exhibit.P.4) and quash the same;
- iii. Such other relief's which this Hon'ble Court deems fit and necessary in the circumstances of the case so as to protect the environment of the country and the costs of this case.

Court Fees paid under the Kerala Court Fees and Suits Valuation Act. Schedule-II, Art-(I)11 (I)(2)(iii).. `.100/-.

Dated this the 15th day of January, 2011.

Counsel for the Petitioner

Petitioner.

INTERIM RELIEF

For the reasons stated in the writ petition and the accompanying affidavit it is humbly prayed that this Hon'ble Court be pleased to pass an interim order directing 2nd respondent not to grant any permissions for the setting up of industries in accordance with the Coastal Regulation Zone Notification, 2011 (Exhibit.P.4) till the Coastal Zone Management Plan as contemplated therein is drawn, pending the disposal of the above writ petition.

Dated this the 15th day of January, 2011.

Counsel for the Petitioner

IN THE HIGH COURT OF JUDICATURE, KERALA [SPECIAL ORIGINAL JURISDICTION]

W.P.(C).No..... of 2011

T. Antiony	Petitioner
,	Vs
	vs.
Union of India and others	Respondents

AFFIDAVIT

- I, T.Antony, aged 48 years, Son of Theevis, residing at Arthiyal Purayidom, Marinad, Puthukurichi.P.O., Thiruvananthapuram-695 030, do hereby solemnly affirm and state as follows:-
- 1. I am the petitioner in the above case. I know the facts of this case.
- 2. The accompanying writ petition is prepared by my counsel on my instructions. I have gone through the petition and state that the facts stated therein are true and correct to the best of my knowledge and belief. I also declare that I have not filed any petition seeking similar relief's in respect of this cause of action.
- 3. The Exhibits produced along with the writ petition are true copies which has been provided by me to my counsel. If the interim prayer as prayed for it not granted petitioner will be put to irreparable loss and injury.

What is stated above are true and correct to the best of my knowledge, information and belief.

Dated this the 15th day of January, 2011.

Deponent:

Solemnly affirmed and signed before me by the deponent who is personally known to me at Ernakulam on this the 15th day of January, 2011.

ADVOCATE ERNAKULAM

IN THE HIGH COURT OF JUDICATURE, KERALA [SPECIAL ORIGINAL JURISDICTION]

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Dated this the15th day of January, 2011l.

Counsel for the petitioner

Presented on: - 17-01-2011

CRZ NOTIFICATION, 2011 - ALLOWING SETTING UP OF ICE PLANTS IN NO DEVELOPMENT ZONE CHALLENGED - MISC

IN THE HONOURABLE HIGH COURT OF KERALA At Ernakulam.

WRIT PETITION (CIVIL).No.....of 2011

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WRIT PETITION FILED UNDER ART.226 OF THE CONSTITUTION OF INDIA

COURT FEES PAID .\.100/-

Counsel for the Petitioner

P.B.SAHASRANAMAN [S-34]
T.S.HARIKUMAR [H-60]
&
K.JAGADEESH [J-451]
Advocates