

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

Writ Petition.(Civil).No. 14014 of 2021

K.G.Prathapa SimhanPetitioner

Vs.

Union of India and others.....Respondents

SYNOPSIS

This public interest litigation is filed challenging the reclamation and construction of High Court jetty, Major Terminal (a huge building) as part of Kochi Metro Project in the *Vembanad* Backwaters on the western side of the Cochin Marine Drive walkway. The 3rd respondent obtained CRZ and Environmental Clearances for the entire project wherein they have only allowed constructing of “jetty”. A construction of “jetty” will not affect the free flow of natural water whereas the reclamation for the construction of a terminal building will affect the free flow of natural course of sea water. The first condition of EC itself indicates that it prohibits construction in violation of CRZ, which is being violated. *Vembanad* backwater is reclaimed by disturbing the natural flow of sea water. Activity which is severely damaging the ecology.

CHRONOLOGY OF EVENTS

15-06-2019	2 nd respondent recommending the project of Kochi Water Metro Project to the 1 st respondent. [Ext.P.1]
01-10-2019	Environmental Clearance granted by the 1 st respondent for the Kochi Water Metro Project. [Ext.P.2]

POINTS FOR CONSIDERATION

1. Whether the 3rd respondent has got a right to reclaim the *Vembanad* backwaters and construct building in an area which is classified as CRZ-IVA in the Coastal Zone Management Plan of Kerala prepared as per CRZ Notification, 2011?
2. Whether construction of a terminal is equivalent to jetty which is constructed over the water to reach the vessel or boat?

DECISIONS AND BOOKS RELIED ON:

- Coastal Regulation Zone Notification, 2011

Extracts from various dictionaries: -

Jetty

On open seacoast, a structure extending into a body of water, and designed to prevent shoaling of a channel by littoral materials and to direct a confine the stream or tidal flow jetties are built at the mouth of a river or tidal inlet to help deeper and stabilize a channel. (Glossary of Geology, AGI). *[Extracted from the Manual on High Tide Line and preparation of CZMP of the Coast of India prepared by the Committee on Standardisation of the Methodology for Demarcation of HTL/LTL-2015]*

Jetty. A projection, a kind of pier.

A "jetty" is an approach to a steamer and a landing place for the passengers travelling on such steamer. So a 'jetty' is part of a steamers which is included within the word 'railway' within the meaning of Sec.82-A of the Act. Mohammed Khaliluddin v. Union of Indi. AIR 1962 Pat 109. 112 [Indian Railways Act (9 of 1890). Ss.3 (2), 82A (i)]

[Extract from the Law Lexicon. The Encyclopedic Law Dictionary. 3rd Edition 2012]

Jetty, a 'jetty' is included within the word 'ferry' and as such, it would be considered to be part of a 'steamer' and a landing place for the passengers travelling on such steamer. Mohammed Khaliluddin v. Union of Indi. AIR 1962 Pat 109

[Extract from Whartons Law Lexicon. 15th Edition. Universal Law Publishing Co.]

Decisions relied on: -

S.Jagannath vs Union of India. AIR 1997 SC 811

Vellore Citizens Welfare Forum vs. Union of India AIR 1996 SC 2715=(1996) 5 SCC 647

Kerala State Coastal Zone Management Authority vs State of Kerala. (2019) 7 SCC 248: 2019 (3) KLT 9 (SC)

Dated this the 5th day of July, 2021.

Counsel for the Petitioner

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

Writ Petition.(Civil).No. 1 4 0 1 4 of 2021

BETWEEN

PETITIONER:

K.G.Prathapa Simhan, aged 82 years, Son of Gopala Panickker, A-53, Ashoka Apartments, High Court junction, Ernakulam, Cochin-682031.

Vs.

RESPONDENTS:

1. Union of India, Ministry of Environment, Forests and Climate Change, Represented by its Deputy Director General of Forests (C), Regional Office (SZ), Kendriya Sadan, 4th Floor, E&F Wings, 17th Main Road, Koramangala II Block, Bangalore – 560034.
2. Kerala Coastal Zone Management Authority, Represented by its Secretary, Directorate of Environment & Climate Change Devikripa, Pallimukku, Pettah P.O., Thiruvananthapuram-695024.
3. Kochi Metro Rail Ltd., represented by its Managing Director, Registered Office, 3rd floor, Mathew Sons Building, opposite Vyttila Hub, Vyttila, Kochi-682019.

All process to the petitioner be served on his counsel M/s. P.B.SAHASRANAMAN & T.S.HARIKUMAR, Advocates, Sahasram Associates, Narayaneeyam Buildings, Chittoor Road, 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 most respectfully submits as follows:

1. The petitioner has filed this public interest litigation challenging the construction of building under the guise of constructing a "jetty" by reclaiming *Vembanad* backwaters in gross violation of the Coastal Regulation Zone Notification, 2011 causing serious adverse threat to the coastal ecology. The petitioner is residing in Ashoka Apartments which lies on the eastern side of the said illegal construction. He has not filed any public interest litigation before. On seeing the said illegal reclamation of the backwater and constructions this petitioner has collected materials from the public domain and other resources and filed this public interest litigation.
2. The 3rd respondent is a joint venture company formed with equal contribution from the Government of Kerala and Government of India for the implementation of the "*Metro Rail Project*". The rail works are still going on. While so it has undertaken a project called "*Kochi Water Metro*" project which envisages the plying of vessels and includes construction of 38 jetties across the *Vembanad* backwaters. They are acquiring 9.51 ha of land for the said purpose. As per the Coastal Regulation Zone Notification, 2011 (Notification No. S.O.19 (E), dated 6-11-2011 the waterbody where the jetty is to be constructed falls with the Coastal Regulation Zone (CRZ)

area. It requires CRZ Clearance from the 2nd respondent. The 2nd respondent has sent a letter on 15-06-2021 to the 1st respondent recommending the entire project for Environmental Clearance. A true photostat copy of the letter sent by the 2nd respondent to the 1st respondent, dated 15-06-2019 is produced herewith and marked as **Exhibit.P.1.**

3. The first respondent also granted Environmental Clearance for the project on the basis of Exhibit.P.1 recommendation made by letter on 01-10-2019. This order is not uploaded in the web site of the 3rd respondent till date. A specific condition was put to the effect that construction activity shall be carried out only in accordance with the Coastal Regulation Zone Notification, 2011. A true photostat copy of the Environmental Clearance granted by the 1st respondent for the Kochi Water Metro Project No.F.No.10-39/2017-IA-III, dated 01-10-2019 is produced herewith and marked as **Exhibit.P.2.**

4. The Major Terminal of the Kochi Metro Project is on the western side of the Cochin Marine Drive Walkway. It is named as 'High Court jetty' in their documents. The said construction involves a ground area of 2432 sq meters. Out of which 2376 sq. meters are on the water portion where the backwater is reclaimed for the said purpose. It is on the western side of the present Marine Drive Walkway. A true photostat copy of the "Layout of the High Court Terminal "prepared by the 3rd respondent is produced herewith and marked as **Exhibit.P.3.**

5. It is submitted that the proposed construction of Terminal is on the backwater by reclamation. The said area is categorized as CRZ-IVA in the approved Coastal Zone Management Plan of Kerala, Map. KL-32. As per CRZ Notification, 2011, clause 8 (IV) the activities in such areas are regulated except for traditional fishing and related activities. But Clause 4 regulates certain activities in such areas wherein clearance shall be given for any activity within the CRZ only, if it requires water front and foreshore facilities. The present construction though named as "jetty" is actually a building. Jetty means a long structure that is built out into water and used as a place to get on, get off, or tie up a boat. It is intended to help the people to enter a boat or vessel safely. It does not contemplate the construction of a building like the one which is intended for other purposes which does not require waterfront. A building construction intruding on water does get the protections of an activity which require waterfront and foreshore facilities. The test is whether such an activity can be done without water. The project proponent can construct ticket counter, waiting shed and other places on the land. What is required is only an entry to the boat, which is called as "jetty".
6. Reclamation of land for the construction of buildings is a prohibited activity. Being a prohibited activity the 3rd respondent ought to have out not to have done it. The 2nd respondent being the authority to prevent it has not taken any steps to prevent it.
7. Therefore, it is an undisputed fact that the no construction is possible on the backwater side. Such reclamation will disturb

the natural course of sea water and has adverse effect on the coastal ecology.

8. The 3rd respondent has now started the construction. It is on the water part. What is now constructed is a huge building impinging on the backwater, CRZ-IVA area and not a jetty. Such construction of buildings under the guise of jetty is not contemplated under law. Some photographs of the constructions commenced by the 3rd respondent for the High Court – Major Terminal of Kochi Water Metro Project as on 01-07-2021 is produced herewith and marked as **Exhibit.P.4**.

9. The Government of Kerala is having a water transport system under its State Water Transport Department from 1968. The Kerala Tourism Department has rebuilt the boat jetty on Marine Drive, for providing more berthing facility to boats and to construct an aesthetically-designed office building. The project will help in extending the Marine Drive walkway in a north-westerly direction. A restaurant in the first floor, air-conditioned passenger lounge, toilets and solar lighting are also part of this project. But none of these constructions are made not on the water but at the adjoining land. Some photographs of the Ernakulam Boat jetty at Marine Drive maintained by the State Water Transport Department is produced herewith and marked as **Exhibit.P.5**.

10. It is respectfully submitted that construction of buildings over waterbody will be equivalent to trespassing into waterbody which is not an environmentally viable proposition.

The Cochin Port Trust, Kerala State Tourist Department, and several others who have constructed jetties across the *Vembanad* backwaters. *Vembanad* backwaters is a critically

vulnerable area. The construction of a such a huge building has severe ramifications on the coastal ecology of that area. The entire microorganisms beneath the construction will be destroyed. It is because of the said reason the CRZ Notification does not permit such constructions. Constructions are permitted only on CRZ-II and CRZ-III areas subjected to conditions. The construction of Terminals for keeping passengers waiting and for other facilities does not require any waterbody.

11. The purpose of CRZ notification is to protect the ecological fragile coastal areas and to safe guard the aesthetic qualities and uses of the sea coast. Hon'ble Supreme Court has laid down the rule that the setting up of modern shrimp aquaculture farms right on the sea coast and construction of ponds other infrastructure thereon is per se hazardous and is bound to degrade the marine ecology, coastal environment and the aesthetic uses of the sea coast. Therefore, the Court held that shrimp culture industry is neither "directly related to water front" nor "directly needing foreshore facilities". The setting up of shrimp culture farms within the prohibited areas under the CRZ notification cannot be permitted. [*S.Jagannath vs Union of India. AIR 1997 SC 811*]

12. The CRZ Clearance and Environmental Clearance was obtained suppressing the material fact that construction actually a building by reclaiming backwater and not mere 'jetty'. The respondents 1 and 2 are bound to cancel the said

Clearances granted to them for the sole reason that material facts were suppressed. Fraud has been played on them. The petitioner sent a request to the 2nd respondent to cancel the

CRZ clearance granted to the High Court Terminal granted to them on 01-07-2021. It was sent by email to: kczmasandtd@gmail.com. A true photostat copy of the letter sent by the petitioner to the 2nd respondent by email is produced herewith and marked as **Exhibit.P.6**. Similar letter was also sent to the 1st respondent by email on 1-7-2021. A true photostat copy of the said letter sent by the petitioner to the 1st respondent is produced herewith and marked as **Exhibit. P. 7.**

13. It has come to the knowledge of this petitioner Joe Joseph has filed a writ petition to restrain the construction of the very same building at a height of 18 meters. The said writ petition was dismissed for other reasons. The issue whether the reclamation and construction of Terminal building on the reclaimed land is not being not raised or considered. A true photostat copy of the judgment of this Hon'ble Court in W.P.(C) No.9959 of 2020, dated 13-01-2021 referred to and marked as is produced herewith and marked as **Exhibit.P.8.**

14. Massive constructions are being carried out by the 3rd respondent by reclaiming the backwaters. Exhibit.P.4 photographs will show how massive the constructions are made. If the constructions are continued it will have severely ramifications on the coastal ecology. The 3rd respondent has no right make constructions damaging the coastal ecology. In these circumstances it is proper that an ad interim order be passed restraining the 3rd respondent from proceeding with the constructions. As this petitioner has no other effective alternate remedy this writ petition is filed so to invoke this Court's

extraordinary jurisdiction under Article.226 of the Constitution of India on the following among other grounds:

G R O U N D S

- A. The 3rd respondent has no right to reclaiming the backwaters restraining the free flow of backwater and construct building on it under the guise of "jetty". Such a construction will have adverse impact over the coastal ecology. The respondents 1 and 2 ought to have taken immediate steps to stop such illegal activities and cancelled the Clearances granted to the 3rd respondent for the Kochi Metro Project. The respondents 1 and 2 have miserably failed in discharging their duties entrusted to them under Art.48A of the Constitution of India.
- B. The water part impinging the Cochin Marine Drive walkway, where the 3rd respondent proposed to construct the "High Court Terminal" is Coastal Regulation Zone area, Category - IVA as per CRZ Notification, 2011. Construction of buildings on such area is not a permitted activity. Only activity which require water front facilities are permitted as per Clause 8 (IV). The 3rd respondent cannot construct a building under the guise of jetty.
- C. There is a difference between terminal and jetty. Jetty is a structure of wood or stone extended into the sea to influence the current or tide, or to protect a harbor or beach. Whereas terminal is a place where people can wait till, they are called for boarding. Such place does not require water front.

D. The place where huge constructions are now carried out are on the *Vembanad* Lake. *Vembanad* in Kerala is referred to as the ecologically sensitive area. It has been found by the Hon'ble Supreme Court of India that *Vembanad* Lake is presently undergoing severe environmental degradation due to increased human intervention. [*Vaamika Islands vs Union of India*. 2013 (3) KLT 677 (SC)] Suo moto proceedings were initiated against several persons who have made constructions by the Hon'ble Supreme Court of India. Subsequently, the said proceedings were transferred to this Hon'ble Court for consideration as writ petition. The said writ petition is still pending consideration before this Hon'ble Court as *In Re Vembanad Lake Kerala*, W.P.(C)No. 25460 of 2016.

E. While granting environmental clearance a condition was imposed to the effect that it should be in accordance with the CRZ Notification, 2011. The present activity of reclamation of backwater and construction on the said land is violation of CRZ Notification, 2011. The respondents 1 and 2 ought to have taken action for doing such illegal activities.

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

RELIEFS

- i. To issue a writ of *certiorari* calling for the records leading to Exhibits.P.1 recommendation and P.2 environmental clearance and quash the same in so far as it allows the reclamation and

construction of 'High Court Terminal' as a part of "Kochi Water Metro Project";

- ii. To issue a writ, direction or order in the nature of *mandamus* commanding the 3rd respondent to remove the constructions which is already made in the backwaters under the guise of High Court Terminal" as a part of "Kochi Water Metro Project" and restore the water body within a time limit failure to which the 2nd respondent be directed to take immediate steps to remove the said construction;
- iii. To issue a writ, direction or order in the nature of *mandamus* or such other appropriate writ, direction or order commanding the 2nd respondent to consider Exhibit.P.5 representation made by this petitioner to cancel the Exhibit.P.1 CRZ clearance granted to the 3rd respondent in so far as it relates to the High Court jetty, Major Terminal as part of Kochi Metro Project;
- iv. To issue a writ, direction or order in the nature of *mandamus* or such other appropriate writ, direction or order commanding the 1st respondent to consider Exhibit.P.6 representation made by this petitioner to cancel the Exhibit.P.2 environmental clearance given to the 3rd respondent in so far as it relates to the High Court jetty, Major Terminal as part of Kochi Metro Project;
- v. Such other relief's which this Hon'ble Court deems fit and necessary in the circumstances of the case and the costs of this case so as to protect the coastal ecology of the *Vembanad* backwaters.

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

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 restraining the 3rd respondent from proceeding with the construction of High Court jetty, Major Terminal as part of Kochi Metro Project pending the disposal of the above writ petition.

Dated this the 5th day of July, 2021.

Counsel for the Petitioner.

Petitioner

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Writ Petition.(Civil).No. 1 4 0 1 4 of 2021

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AFFIDAVIT

I, K.G.Prathapa Simhan, aged 82 years, Son of Gopala Panickker, A-53, Ashoka Apartments, High Court junction, Ernakulam, Cochin-682031, 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 public interest litigation is prepared by my counsel on my instructions. The petitioner is espousing in public cause and he has no personal or private interest other than the public have. There is no authoritative pronouncement by the Supreme Court or the High Court on the question raised and the result of the litigation shall not lead to any undue gain to himself or to anyone associated with him. 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 have 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 5th day of July, 2021.

Deponent:
Solemnly affirmed and signed before me by the deponent who is personally known to me at Ernakulam on this the 5th day of July, 2021.

P.B.SAHASRANAMAN
ADVOCATE, ERNAKULAM

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

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Dated this the 5th day of July, 2021.

Counsel for the petitioner

Presented on:- -07-2021

CONSTRUCTION OF BUILDING AFTER OBTAINING SANCTION FOR "JETTY" BY RECLAMING BACKWATERS –CRZ NOTIFICATION - PIL

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

Writ Petition.(Civil).No. 1 4 0 1 4 of 2021

K.G.Prathapa SimhanPetitioner

Vs.

Union of India and others.....Respondents

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

COURT FEES PAID.....₹.100/-

Counsel for the Petitioner

P.B.SAHASRANAMAN – K/121/1984
T.S.HARIKUMAR – K/782/1989
Advocates

APPENDIX

Petitioners' Exhibits:

Exhibit.P.1. True photostat copy of the letter sent by the 2nd respondent to the 1st respondent, dated 15-06-2019.

Exhibit.P.2. True photostat copy of the Environmental Clearance granted by the 1st respondent for the Kochi Water Metro Project No.F.No.10-39/2017-IA-III, dated 01-10-2019.

Exhibit.P.3. True photostat copy of the "Layout of the High Court Terminal" prepared by the 3rd respondent.

Exhibit.P.4. Some photographs of the constructions commenced by the 3rd respondent for the High Court – Major Terminal of Kochi Water Metro Project as on 01-07-2021.

Exhibit.P.5. Some photographs of the Ernakulam Boat jetty at Marine Drive maintained by the State Water Transport Department.

Exhibit.P.6. True photostat copy of the letter sent by the petitioner to the 2nd respondent by email.

Exhibit.P.7. True photostat copy of the letter sent by the petitioner to the 1st respondent.

Exhibit.P.8. True photostat copy of the judgment of this Hon'ble Court in W.P.(C) No.9959 of 2020, dated 13-01-2021.

Exhibit.P.1. (1)

KERALA COASTAL ZONE MANAGEMENT AUTHORITY
Directorate of Environment & Climate Change
4th Floor, KSRTC Bus Terminal, Thampanoor Thiruvananthapuram - 695 001
Ph. 0471-2339696, E-mail: kczmasandtd@gmail.com

No: 3560/A1/2018/KCZMA

Date: 25.02.2019

From

The Member Secretary,
KCZMA.

To

The Director
Ministry of Environment Forest and Climate Change
Govt. of India
J-615, Jal Block
Indira Pariyavaran Bhavan
New Delhi-110003

Sir,

Sub:- KCZMA- Construction of Kochi Water Metro Project-Reg.

- Ref: 1.Letter No. KMRL/WM/EIA Study/2018/F-35/99 dated 28/08/18 from the
General Manager(Water Transport), Kochi Metro Rail Limited.
2. Decision No. 98.03.07 of the 98th meeting of KCZMA held on 15.10.2018

I am to invite your attention to the references cited and to inform you that the General Manager (Water Transport), Kochi Metro Rail Limited (KMRL) had submitted an application for CRZ Clearance regarding Kochi Water Metro Project. The Proposed project recommends fifteen (15) identified routes connecting thirty eight(38) terminals across ten(10) island communities across 78.2km channel length and 2 boatyards. KMRL is proposing to take up development of 7 additional terminals -Info Park-3Nos, Vaduthala, Njarackal, Mulavukad View Point and Embarkation Jetty as a social initiative .The total land to be acquired for the project is 9.51 ha for all terminals. The Proposed area for the Construction of Metro Water Project consists of CRZ IA,CRZ IB, CRZ II,CRZ III and CRZ IV.

In 98th meeting of KCZMA the General Manager, (Water Transport), Kochi Metro Rail Limited (KMRL) made the power point presentation regarding the project and vide agenda no. 98.03.07 discussed the matter in detail and following decision were made;

1. The proposed Jetty in Elankunnapuzha lies in the vicinity of Mangrove buffer zone (CRZ IA) shall be altered.

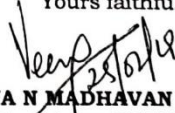
2. The permission from State Wetland Authority Kerala (SWAK) to construct the Jetty in Thanthonnithuruth which lies in Vembanad Wetland, a Ramsar site shall be obtained.
3. The dumping of dredging materials in CRZ area in Varapuzha will not be allowed.
4. The height of proposed building shall not exceed 9m.

As per the decision of KCZMA, M/s Kochi Metro Rail Limited submitted the clearance from State Wetland Authority to construct the Jetty in Thanthonnithuruth which lies in Vembanad Wetland a Ramsar site. In the circumstance, the above proposal of M/s Kochi Metro Rail Limited is recommended and forwarded for your consideration and further necessary action subject to the following conditions.

1. The proposed Jetty in Elankunnapuzha lies in the vicinity of Mangrove buffer zone (CRZ IA) shall be altered.
2. The dumping of dredging materials in CRZ area in Varapuzha will not be allowed.
3. The height of proposed building shall not be exceeded to 9m.

The decision taken by your office on the proposal may kindly be intimated to KCZMA at the earliest.

Yours faithfully,


Dr VEENA N MADHAVAN IAS
Member Secretary, KCZMA

Copy to:-

1. General Manager (Water Transport), Kochi Metro Rail Limited, 8th floor, Revenue Tower, Park Avenue, Kochi, Kerala-682011
2. SF/OC

Encl:

1. The application and supporting documents
2. 98th KCZMA meeting minutes
3. SWAK clearance
4. EIA Report.

This is the true copy of the document referred to and marked as Exhibit.P.1 in the writ petition.

Advocate

EXHIBIT.P.2

F. No. 10-39/2017-IA-III
Government of India
Ministry of Environment, Forest and Climate Change
(IA.III Section)

Indira Paryavaran Bhawan,
Jor Bagh Road, New Delhi - 3

Date: 18th August, 2017

To,

M/s Kochi Metro Rail Limited,
(A Joint venture company of Govt. of India & Govt. of Kerala)
8th Floor, Revenue Tower, Park Avenue,
Kochi, Kerala-682011.
E-mail: watermetro@kmrl.co.in

Subject: Kochi Water Metro Project at Kochi, Kerala by M/s Kochi Metro Rail Limited - Terms of Reference - reg.

Sir,

This has reference to your proposal No. IA/KL/MIS/63548/2017 dated 15th April 2017, submitted the above proposal to this Ministry for seeking Terms of Reference (ToR) in terms of the provisions of the Environment Impact Assessment (EIA) Notification, 2006 under the Environment (Protection) Act, 1986.

2. The proposal for grant of Terms of Reference (ToR) to the project 'Kochi Water Metro Project at Kochi, Kerala promoted by M/s. Kochi Metro Rail Limited was considered by the Expert Appraisal Committee (Infra-2) in its meeting held on 26 - 28 July, 2017.

3. The details of the project, as per the documents submitted by the project proponent, and also as informed during the above said meeting, are under:-

- (i) Kochi Metro Rail Limited (KMRL) in line with the directives of the Ministry of Urban Development, Government of India has spearheaded the task of setting up an integrated transportation system for Kochi city.
- (ii) The proposed project recommends sixteen (16) identified routes connecting thirty eight (38) jetties across ten (10) island communities across a 76 km route network. The identified routes and jetties are represented in the figure. Of these 38 jetties, 35 are existing jetties where boat services from Kerala State Water Transport Corporation and private agencies are currently being operated. Eighteen (18) jetties proposed to be developed as major jetties or main boat hubs while the remaining twenty (20) jetties shall be developed as minor jetties for water transit services.
- (iii) The entire Inland Water Transport project is proposed to be realised over a period of four years between 2017 and 2020. The project shall be implemented to cater to daily ridership, which is estimated to increase to 40,000 by 2019; 54,000 by 2025 and 86,000 by 2035. The project involves the renovation of jetties, boatyard and access roads around, providing parking facilities, maintenance dredging activities etc.
- (iv) Almost all the boat channels identified for the Kochi Water Metro Project are current ferry routes. The dredging shall be limited to maintenance dredging for removal of silt deposits. At present Inland Waterways Authority of India (IWAI)



and Kerala Irrigation Department are carrying out maintenance dredging to a depth of 1-2 m. The proposed draft for the boats for KWMP is about 0.9 m and a channel depth of 1.5 m which would suffice for safe operation. Present dredging arrangements shall continue and KMRL also would take up dredging on need basis to ensure uninterrupted ferry services

- (v) The total water required for passengers and staff is expected as 3870 KLD. Out of which, 1720 KLD will be used for domestic purpose (20 lpcd) while 2150 KLD for flushing (25 lpcd). The source of water is Kerala Water Authority. The major stretch of proposed waterway is connected by road network. The proposed project developments, will lead to acquisition of few buildings, petty shops, land.
- (vi) Cost of the project is about Rs. 747.28 crores with core water transport infrastructure estimated at Rs. 435.37 crores.
- (vii) Kochi Water Metro Project is an integral link in the perceived Urban Metropolitan Transportation Model for Kochi, wherein the Metro rail, land feeder services, earmarked pavements for cycle and pedestrian movement and water metro would be integrated to ease the traffic congestion and reduce the pollution in the city. Implementation of the Kochi Water Metro Project would provide the following advantages:
 - Facilitate better connectivity of the islands around Kochi with mainland. This has been a long-standing requirement of the islanders and could be only partially mitigated through the Gosree bridges and International Container Transit Terminal road.
 - Drastically reduce the road traffic by diverting the passengers to water transport. In turn, it would assist in reducing the road congestion on the roads.
 - Reduction in the atmospheric pollution from land vehicles and carbon footprint of Kochi City.
 - Impetus to tourism in and around Kochi providing easy access to the scenic islands around. This would lead to the development of all the islands connected by the Water Metro Project.

4. The EAC, in its meeting held on 26-28 July, 2017, after detailed deliberations, recommended the project for grant of ToR. As per the recommendation of the EAC, the Ministry of Environment, Forest and Climate Change hereby accords ToR to the project 'Kochi Water Metro Project at Kochi, Kerala promoted by M/s. Kochi Metro Rail Limited for preparation of the Environment Impact Assessment (EIA) Report and Environment Management Plan (EMP) with the following specific and general conditions in addition to Standard ToR provided at Annexure -1:

- (i) Importance and benefits of the project.
- (ii) Submit a copy of layout superimposed on the HTL/LTL map demarcated by an authorized agency on 1:4000 scale.
- (iii) Recommendation of the SCZMA.
- (iv) NBWL clearance is required.
- (v) Various Dock and shipbuilding facilities with capacities for existing and proposed project.
- (vi) Study the impact of dredging on the shore line.



- (vii) A detailed impact analysis of rock dredging.
- (viii) Study the impact of dredging and dumping on marine ecology and draw up a management plan through the NIO or any other institute specializing in marine ecology.
- (ix) A detailed analysis of the physico-chemical and biotic components in the highly turbid waters round the project site (as exhibited in the Google map shown during the presentation), compare it with the physico- chemical and biotic components in the adjacent clearer (blue) waters both in terms of baseline and impact assessment and draw up a management plan.
- (x) Details of Emission, effluents, solid waste and hazardous waste generation and their management in the existing and proposed facilities.
- (xi) The existing project should avail of and submit consent to operate from the State Pollution Control Board.
- (xii) Requirement of water, power, with source of supply, status of approval, water balance diagram, man-power requirement (regular and contract).
- (xiii) Wastewater management plan.
- (xiv) Details of Environmental Monitoring Plan.
- (xv) To prepare a detailed biodiversity impact assessment report and management plan through the NIOS or any other institute of repute on marine, brackish water and fresh water ecology and biodiversity. The report shall study the impact on the rivers, estuary and the sea and include the intertidal biotopes, corals and coral communities, molluscs, sea grasses, sea weeds, subtidal habitats, fishes, other marine and aquatic micro, macro and mega flora and fauna including benthos, plankton, turtles , birds etc. as also the productivity. The data collection and impact assessment shall be as per standard survey methods.
- (xvi) Disaster Management Plan for the above terminal.
- (xvii) Layout plan of existing and proposed Greenbelt.
- (xviii) Status of court case pending against the project.
- (xix) A tabular chart with index for point wise compliance of above TORs.
- (xx) Public hearing to be conducted and issues raised and commitments made by the project proponent on the same should be included in EIA/EMP Report in the form of tabular chart with financial budget for complying with the commitments made.

General Guidelines

- (i) The EIA document shall be printed on both sides, as far as possible.
- (ii) All documents should be properly indexed, page numbered.
- (iii) Period/date of data collection should be clearly indicated.
- (iv) Authenticated English translation of all material provided in Regional languages.
- (v) The letter/application for EC should quote the MoEF&CC File No. and also attach a copy of the letter prescribing the ToR.



- (vi) The copy of the letter received from the Ministry on the ToR prescribed for the project should be attached as an annexure to the final EIA-EMP Report.
- (vii) The final EIA-EMP report submitted to the Ministry must incorporate the issues mentioned in ToR and that raised in Public Hearing. The index of the final EIA-EMP report, must indicate the specific chapter and page no. of the EIA-EMP Report where the specific ToR prescribed by the Ministry and the issue raised in the Public Hearing have been incorporated. Questionnaire related to the project (posted on MoEF&CC website) with all sections duly filled in shall also be submitted at the time of applying for EC.
- (i) Grant of ToR does not mean grant of EC.
- (ii) The status of accreditation of the EIA consultant with NABET/QCI shall be specifically mentioned. The consultant shall certify that his accreditation is for the sector for which this EIA is prepared.
- (iii) On the front page of EIA/EMP reports, the name of the consultant/consultancy firm along with their complete details including their accreditation, if any shall be indicated. The consultant while submitting the EIA/EMP report shall give an undertaking to the effect that the prescribed ToRs (ToR proposed by the project proponent and additional ToR given by the MoEF&CC) have been complied with and the data submitted is factually correct (Refer MoEF&CC Office memorandum dated 4th August, 2009).
- (iv) While submitting the EIA/EMP reports, the name of the experts associated with/involved in the preparation of these reports and the laboratories through which the samples have been got analysed should be stated in the report. It shall clearly be indicated whether these laboratories are approved under the Environment (Protection) Act, 1986 and the rules made there under (Please refer MoEF&CC Office Memorandum dated 4th August, 2009). The project leader of the EIA study shall also be mentioned.
- (v) All the ToR points as presented before the Expert Appraisal Committee (EAC) shall be covered.

5. The above ToR should be considered for the project 'Kochi Water Metro Project at Kochi, Kerala promoted by M/s. Kochi Metro Rail Limited, in addition to all the relevant information as per the 'Generic Structure of EIA' given in Appendix III and IIIA in the EIA Notification, 2006.

6. A detailed draft EIA/EMP report should be prepared in terms of the above additional ToR and should be submitted to the State Pollution Control Board for conducting Public Hearing. Public Hearing to be conducted for the project in accordance with the provisions of the EIA Notification, 2006 and the issues raised by the public should be addressed in the Environmental Management Plan. The Public Hearing should be conducted based on the ToR letter issued by the Ministry and not on the basis of Minutes of the Meeting available on the web-site.

7. The project proponent shall submit the detailed final EIA/EMP prepared as per ToR to the Ministry for considering the proposal for environmental clearance within 3 years as per the MoEF&CC O.M. No.J-11013/41/2006-IA-II(I) (P) dated 08.10.2014.

8. The consultants involved in preparation of EIA/EMP report after accreditation with Quality Council of India/National Accreditation Board of Education and Training

(QCI/NABET) would need to include a certificate in this regard in the EIA/EMP reports prepared by them and data provided by other Organization(s)/ Laboratories including their status of approvals etc. vide Notification of the MoEF&CC dated 19.07.2013.

9. The prescribed ToR would be valid for a period of three years for submission of the EIA/EMP Reports.


(Kushal Vashist)
Director

Copy to:

The Member Secretary, Kerala Pollution Control Board, Head Office, Pattom. P. O, Thiruvananthapuram - 695004, Kerala (INDIA).

Annexure - I

7(e): STANDARD TERMS OF REFERENCE FOR CONDUCTING ENVIRONMENT IMPACT ASSESSMENT STUDY FOR PORTS, HARBOURS AND INFORMATION TO BE INCLUDED IN EIA/EMP REPORT

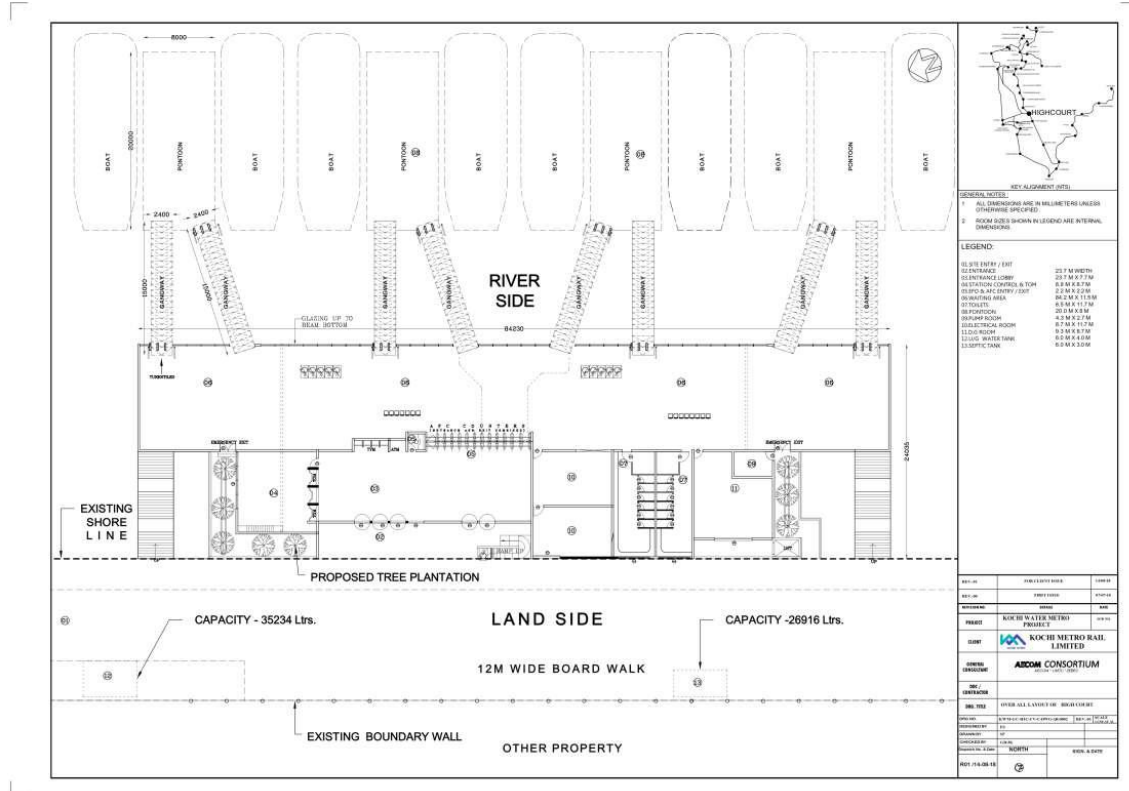
- i. Reasons for selecting the site with details of alternate sites examined/rejected/selected on merit with comparative statement and reason/basis for selection. The examination should justify site suitability in terms of environmental angle, resources sustainability associated with selected site as compared to rejected sites. The analysis should include parameters considered along with weightage criteria for short-listing selected site.
- ii. Details of the land use break-up for the proposed project. Details of land use around 10 km radius of the project site. Examine and submit detail of land use around 10 km radius of the project site and map of the project area and 10 km area from boundary of the proposed/existing project area, delineating project areas notified under the wild life (Protection) Act, 1972/critically polluted areas as identified by the CPCB from time to time/notified eco-sensitive areas/interstate boundaries and international boundaries. Analysis should be made based on latest satellite imagery for land use with raw images.
- iii. Submit the present land use and permission required for any conversion such as forest, agriculture etc. land acquisition status, rehabilitation of communities/villages and present status of such activities.
- iv. Examine and submit the water bodies including the seasonal ones within the corridor of impacts along with their status, volumetric capacity, quality likely impacts on them due to the project.
- v. Submit a copy of the contour plan with slopes, drainage pattern of the site and surrounding area.
- vi. Submit the details of terrain, level with respect to MSL, filling required, source of filling materials and transportation details etc.
- vii. Examine road/rail connectivity to the project site and impact on the existing traffic network due to the proposed project/activities. A detailed traffic and transportation study should be made for existing and projected passenger and cargo traffic.
- viii. Submit details regarding R&R involved in the project.
- ix. Submit a copy of layout superimposed on the HTL/LTL map demarcated by an authorized agency on 1:4000 scale along with the recommendation of the SCZMA.
- x. Submit the status of shore line change at the project site
- xi. Details of the layout plan including details of channel, breakwaters, dredging, disposal and reclamation.
- xii. Details of handling of each cargo, storage, transport along with spillage control, dust preventive measures. In case of coal, mineral cargo, details of storage and closed conveyance, dust suppression and prevention filters.
- xiii. Submit the details of fishing activity and likely impacts on the fishing activity due to the project. Specific study on effects of construction activity and pile driving on marine life.
- xiv. Details of oil spill contingency plan.



- xv. Details of bathymetry study.
- xvi. Details of ship tranquillity study.
- xvii. Examine the details of water requirement, impact on competitive user, treatment details, use of treated waste water. Prepare a water balance chart.
- xviii. Details of rainwater harvesting and utilization of rain water.
- xix. Examine details of Solid waste generation treatment and its disposal.
- xx. Details of desalination plant and the study for outfall and intake.
- xxi. Examine baseline environmental quality along with projected incremental load due to the proposed project/activities.
- xxii. The air quality monitoring should be carried out according to the notification issued on 16th November, 2009.
- xxiii. Examine separately the details for construction and operation phases both for Environmental Management Plan and Environmental Monitoring Plan with cost and parameters.
- xxiv. Submit details of a comprehensive Risk Assessment and Disaster Management Plan including emergency evacuation during natural and man-made disasters
- xxv. Submit details of the trees to be cut including their species and whether it also involves any protected or endangered species. Measures taken to reduce the number of the trees to be removed should be explained in detail. Submit the details of compensatory plantation. Explore the possibilities of relocating the existing trees.
- xxvi. Examine the details of afforestation measures indicating land and financial outlay. Landscape plan, green belts and open spaces may be described. A thick green belt should be planned all around the nearest settlement to mitigate noise and vibrations. The identification of species/ plants should be made based on the botanical studies.
- xxvii. The Public Hearing should be conducted for the project in accordance with provisions of Environmental Impact Assessment Notification, 2006 and the issues raised by the public should be addressed in the Environmental Management Plan. The Public Hearing should be conducted based on the ToR letter issued by the Ministry and not on the basis of Minutes of the Meeting available on the web-site.
- xxviii. A detailed draft EIA/EMP report should be prepared in accordance with the above additional TOR and should be submitted to the Ministry in accordance with the Notification.
- xxix. Details of litigation pending against the project, if any, with direction /order passed by any Court of Law against the Project should be given.
- xxx. The cost of the Project (capital cost and recurring cost) as well as the cost towards implementation of EMP should be clearly spelt out.
- xxxi. Any further clarification on carrying out the above studies including anticipated impacts due to the project and mitigative measure, project proponent can refer to the model ToR available on Ministry website "<http://moef.nic.in/Manual/Port and harbour>".



LAY OUT OF THE HIGH COURT TERMINAL



This is the true copy of the document referred to and marked as ExhibitP.3 in the Writ Petition.

Advocate

Exhibit.P.4 (1)

**Photographs of the constructions commenced by the 3rd
respondent for the High Court – Major Terminal of Kochi
Water Metro**





EXHIBIT.P.5.





EXHIBIT.P.6.

Request to cancel the CRZ Clearance No. 3560/A1/2018/KCZMA, DATED 15-06-2019

A RAJASIMHAN <advocaterajasimhan@gmail.com>
to kczma@kczma.org

6:37 PM (3 minutes ago)

To

The Chairman

Kerala Coastal Zone Management Authority

Directorate of Environment and Climate Change

4th Floor, KSRTC Bus Terminal, Thiruvananthapuram-695 001

Sir

Sub: Request to cancel the CRZ Clearance No. 3560/A1/2018/KCZMA, DATED 15-06-2019.

M/s. Kochi Metro Rail Limited has formulated a project of Water Metro Project. The project envisages a water transport project which requires the construction of 38 jetties in various places. One of such places where the jetty is proposed to be constructed near the High Court. The High Court terminal is having a height of 8.80 meters with two floors. The overall height of the roof comes to 18.9 meters. The plinth area of the building is more than 2000 sq mts. All these constructions are proposed over the pillars laid on backwater.

In this it is profitable to note that the proposed construction is above water on pillars. The said area is categorized as CRZ-IVB in the approved Coastal Zone Management Plan of Kerala, Map. KL-32. As per CRZ Notification, 2011, clause 8 (IV) the activities in such areas are regulated except for traditional fishing and related activities. But Clause 4 regulates certain activities in such areas wherein clearance shall be given for any activity within the CRZ only, if it requires water front and foreshore facilities.

The present construction though named as "jetty" is much more than that. Jetty means a long structure that is built out into water and used as a place to get on, get off, or tie up a boat. It is intended to help the people to enter a boat or vessel safely. It does not contemplate the construction of a building like the one which is intended for other purposes which does not require waterfront. A building construction intruding on water does not get the protections of an activity which require waterfront and foreshore facilities. The test is whether such an activity can be done without water. The project proponent can construct ticket counter, waiting shed and other places on the land. What is required is only an entry to the boat, which is called as "jetty". Such type of jetties can be very well found in many places including in the nearby places.

Construction of buildings over back water which is categorized as CRZ-IVB is a prohibited activity. Such commercial constructions are prohibited under law. In this regard it is profitable to note that when a project for the construction of a bridge with facility to construct buildings over it, the KCZMA has rejected the proposal to construct two flyovers over the Chilavanoor backwaters Cochin Corporation, State of Kerala with permission to construct a building in an extent of 1,58,142.5 sq.m to realise the project cost for the reason that it violates CRZ Notification. The said order was upheld by the National Green Tribunal, Southern Zone, Chennai in Application No.35 of 2015, dated 12-05-2016.

What is now constructed is a huge building impinging on the backwater, CRZ-IVB area and not a jetty. Such construction of buildings under the guise of jetty is not contemplated under law. Therefore, it is requested that the CRZ Clearance granted to the above person be revoked immediately and the constructions, if any made be demolished.

Yours Sincerely

K.G.Prathapa Simhan

B-53, Ashoka Apartments, High Court Junction,

Marine Drive, Ernakulam-682031

Mob: 9846004509

Reply

Forward

Request to cancel the Environmental Clearance No. F.No. 10-39/2017.IA-III, dated 01-10-2019.Kochi Water Metro Project

A RAJASIMHAN <advocate@rajasimhan@gmail.com>
to: rdsz.sing-met

6:38 PM (2 minutes ago)

To

The Principal Secretary
Government of India
Ministry of Environment and Forests
Indira Paryavaran Bhavan,
Jor Bagh Road, New Delhi

Sir

Sub: Request to cancel the Environmental Clearance No. F.No. 10-39/2017.IA-III, dated 01-10-2019.Kochi Water Metro Project

M/s. Kochi Metro Rail Limited has formulated a project of Kochi Water Metro Project. The project envisages a water transport project which requires the construction of 38 jetties in various places. One of such places where the jetty is proposed to be constructed near the High Court. The High Court terminal is having a height of 8.80 meters with two floors. The overall height of the roof comes to 18.9 meters. The plinth area of the building is more than 2000 sq mts. All these constructions are proposed over the pillars laid on backwater.

In this it is profitable to note that the proposed construction is above water on pillars. The said area is categorized as CRZ-IVB in the approved Coastal Zone Management Plan of Kerala, Map. KL-32. As per CRZ Notification, 2011, clause 8 (IV) the activities in such areas are regulated except for traditional fishing and related activities. But Clause 4 regulates certain activities in such areas wherein clearance shall be given for any activity within the CRZ only, if it requires water front and foreshore facilities.

The present construction though named as "jetty" is much more than that. Jetty means a long structure that is built out into water and used as a place to get on, get off, or tie up a boat. It is intended to help the people to enter a boat or vessel safely. It does not contemplate the construction of a building like the one which is intended for other purposes which does not require waterfront. A building construction intruding on water does get the protections of an activity which require waterfront and foreshore facilities. The test is whether such an activity can be done without water. The project proponent can construct ticket counter, waiting shed and other places on the land. What is required is only an entry to the boat, which is called as "jetty". Such type of jetties can be very well found in many places including in the nearby places.

Construction of buildings over back water which is categorized as CRZ-IVB is a prohibited activity. Such commercial constructions are prohibited under law. In this regard it is profitable to note that when a project for the construction of a bridge with facility to construct buildings over it, the KCZMA has rejected the proposal to construct two flyovers over the Chilavanoor backwaters Cochin Corporation, State of Kerala with permission to construct a building in an extent of 1,58,142.5 sq.m to realise the project cost for the reason that it violates CRZ Notification. The said order was upheld by the National Green Tribunal, Southern Zone, Chennai in Application No.35 of 2015, dated 12-05-2016.

What is now constructed is a huge building impinging on the backwater, CRZ-IVB area and not a jetty. Such construction of buildings under the guise of jetty is not contemplated under law. If this is allowed tomorrow onwards you are bound to give consent to make similar constructions across the country to make such huge buildings over the water.

The above facts were suppressed when the application was submitted. The Kerala Coastal Zone Management Authority also colluded with the project proponent in suppressing the fact that what is constructed is building and not jetty. Such constructions are illegal.

Therefore, it is requested that the Environmental Clearance granted to the above person be revoked immediately and the constructions, if any made be demolished.

Yours Sincerely

K.G.Prathapa Simhan
A-53, Ashoka Apartments, High Court Junction,
Marine Drive, Ernakulam-682031
Mob: 9846004509

The above are the true photographs, referred to and marked as Exhibit.P.4 in the writ petition

**Advocate
Exhibit.P.5.**

Photographs of the Ernakulam Boat jetty at Marine Drive maintained
by the State Water Transport Department

Exhibit.P.5(2).

Photographs of the Ernakulam Boat jetty at Marine Drive maintained
by the State Water Transport Department

This is the true photograph referred to and marked as Exhibit.P.5 in the writ petition

**Advocate
EXHIBIT.P.5.**





EXHIBIT.P.5(2)



This is the true photograph referred to and marked as Exhibit.P.5 in the writ petition

Advocate

Writ Petition.(Civil).No. _____ of 2021

K.G.Prathapa SimhanPetitioner

Vs.

Union of India and others.....Respondents

I,

K.G.Prathapa Simhan, aged 82 years, Son of Gopala Panickker, A-53, Ashoka Apartments, High Court junction, Ernakulam, Cochin-682031.

.....Petitioner