

Item No. 03 & 04

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)
Original Application No. 119/2023(CZ)
(I.A.No.133/2023)
(I.A.No.142/2023)**

Mr. Nitin Saxena Applicant(s)

Vs

Urban Development and Housing Department & Ors. Respondent(s)

WITH

Original Application No. 137/2023(CZ)

Bhopal Citizens Forum through its
Member Shri Arun Gurtoo Applicant(s)

Vs

State of M.P. & Ors. Respondent(s)

Date of Hearing: **11.03.2024**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

For Applicant (s):	Mr. Harshwardhan Tiwari, Adv. Ms. Sarita Chaturvedi, Adv.
For Respondent(s):	Mr. Mehul Bhardwaj, Adv. Ms. Parul Bhadoria, Adv. Dr. Sapna Agarwal, Adv. Mr. Shantanoo Saxena, Adv. (with Ms. Amrita Mishra, Adv.) Mr. Om Shankar Shrivastava, Adv.

ORDER

1. Issue raised in this application as alleged is permission given by the Ministry of Environment, Forest & Climate Change issued by the SEIIA allowing construction within 50 meters of Bhoj Wetland, a Ramsar site, of International Importance, Bhopal by suppressing the material facts of

lower lake and only discussing about the distance from upper lake. Subsequently Urban Development and Housing Department issued the Gazette Notification/Order dated 21st July, 2023 whereby no construction zone near FTL has been reduced from 50 meters to 33 meters. Further the respondents have given illegal permission for cutting of almost 390 trees, out of which many are heritage trees. Thus, the said notification reducing the no construction zone and allowing construction over Ramasr site, illegal felling of trees and contamination of water of Wetland is a gross violation of the provisions of the Environment (Protection) Act, 1986 and the Rules given under the Wetlands (Conservation and Management) Rules, 2017 and the Guidelines for management planning for Ramsar sites. Further, the Bhoj Wetland is rich in bio-diversity. It provides variety of habitats to the water birds and migratory and they occupy these habitats according to their niches.

2. It is submitted that the Member Secretary, Bhoj Wetland Authority vide letter dated 07.06.2023 has communicated the Municipal Corporation to comply section 4 of Wetland Rules 2017 strictly in letter and spirit. Further the communication dated 08.03.2022 issued by the MoEF&CC, Wetland Division in para 6 provides the minimum distance of 50 mtrs. to be observed and further that the green cover must be maintained and the trees should not be felled unless exigencies demand. Old trees should be retained based on girth and age regulations as may be prescribed by the Forest Department and further that where the trees need to be cut with the prior permission from the concerned local authority compensatory plantation in the ratio of 1:10 must be maintained.
3. The matter was taken up by this Tribunal on 04.10.2023 and a committee was constituted on the terms as follows :-

i. In light of the facts as narrated we deem it just and proper to constitute a committee consisting of:- i. One representative from integrated Office MoEF&CC at Bhopal. ii. One representative

from State Wetland Authority, Bhopal. iii. One representative from Central Pollution Control Board iv. One representative from State Environment Impact Assessment Authority,(SEIAA) Bhopal.

ii. The Committee is directed to visit the place and submit the factual and action taken report within six weeks. The committee is further directed to ensure the compliance of the Wetland Rules 2017 and the orders issued by the Hon'ble Supreme Court of India in W.P. No. (C) 230 of 2001.

4. In compliance of the order the members of the committee visited the site and submitted the report as follows :-

i. Shri Avneesh Saxena, Project Architect, made a presentation on the entire Project for ready reference. The Committee was informed that no land development or construction work has been undertaken at site till date. During interaction, the Committee deliberated upon the applicability of Wetlands (Conservation and Management) Rules, 2017, in respect of said Project and decided to seek details of the proposed construction activity to be undertaken within 50 m of the High Flood Line of the Lower Lake. The Committee further deliberated on the criteria for grant of Environment Clearance viz-a-viz the proposed construction area. The Committee observed a deviation in the .kml file of the entire Project uploaded on the Parivesh Portal of MoEFCC and the actual built-up area mentioned in the proposal submitted before the SEAC/SEIAA for grant of Environment Clearance. The Committee decided to seek clarification in the matter through an interactive meeting with the Project Authorities and its EIA consultant and architects.

- ii. *A Second Meeting of the Committee was held in the Regional Office of MoEFCC, Bhopal, on 14.11.2023 (Attendance Sheet). In addition, the Committee, also undertook a site visit and to areas adjoining Lower Lake on 14.11.2023. The Committee visited locations likely to fall within the 50 metres of the Lake FTL (Full Tank Level) of the proposed construction sites.*
- iii. *During the deliberations on 14.11.2023, Representative of EPCO (representing MP State Wetland Authority) reported the non-availability of the actual .kml file of the Lower Lake with EPCO as the same was finalized under the supervision of T&CP. A letter dated 22.12.2022 was therefore, addressed to T&CP by MP State Wetland Authority to Environment Department, Govt. of MP, requesting T&CP to provide copies of 3 maps, .shp files of Wetland boundary, 50 m from FTL, Zone of Influence and digital elevation of the Bhoj Wetland, which was awaited at that time. Therefore, the Committee decided to obtain the .kml file of the Lower Lake during the third Meeting proposed in the first week of December, 2023. Meanwhile, the matter was adjourned to 23.01.2024 on the application of Shri Shantanu Saxena Learned Counsel for Respondent no. 2.*
- iv. *To gain access to the .shp files from T&CP, Bhopal, the Third Meeting was held on 02.01.2024 at MoEFCC, Regional office. During this Meeting representative of T&CP Shri Hariom Maheshwari assured the Committee to provide the .shp files, finalized by MPCST, within 3 days' time.*

During the said Meeting, the Committee also discussed deviations in the .kml file submitted to SEIAA/SEAC. The actual project conceptualized by MP Housing and Infrastructure Development Board and desired to discuss the actual proposal

submitted by the Environmental Consultant of the Project (i.e., M/s. In-situ enviro care) to the SEIAA/SEAC to seek grant of Environment clearance.

- v. Accordingly, the fourth Meeting was held on 09.01.2024, which was attended by all stakeholders including, representatives of In-situ enviro care, the Environmental Consultant of the Project. Representatives of In-situ enviro care presented a brief on the .kml file of the project furnished to the SEIAA/SEAC and the representative of T&CP provided the copies of .shp files to the Committee. The Committee, with the assistance of representative of EPCO, superimposed the .shp files of Lower Lake and the .kml files of the Project on Google Earth for further analysis. Based on the said superimposition and analysis, the distance of the boundaries of the Project from the FTL of the Lower Lake were earmarked and the same is enclosed. Based on the Google Earth imagery data and the deliberations held with representatives of MP Housing Board, their project architect ARCONS and their environmental consultant In-situ enviro care.*
- vi. Section 3 (a) of Wetland (Management and Conservation) Rules, 2017 mentions that these rules shall apply to the following wetlands or wetlands complexes, namely, wetlands categorised as 'wetlands of international importance' under the Ramsar Convention. Bhoj Wetland, Bhopal comprising of Upper Lake and Lower Lake, is one of the internationally recognized Ramsar site.*

Further, Section 4 (2) (vi) of Wetland Rules, 2017 clearly indicate that “any construction of a permanent nature, except for boat jetties, within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules; and,” is one of the “Prohibited activities in a notified wetland”. Accordingly, in the proposed

Collectorate Complex building project, some parts of the proposed construction site falls within the 50 m distance from the mean HFL of Lower Lake of Bhoj Wetland, a Ramsar site and permanent construction of the same is a prohibited activity under Wetland Rules, 2017.

- vii. So far, no land development work or construction in the Project, envisaged in the Environment Clearance letter dated 17.07.2023, has been started on site. General abstract for construction and development works on 6.90 hac. land of collectorate campus and 13.00 hac. land of professor colony Bhopal under reidentification scheme is enclosed.
- viii. Perusal of the 654th SEAC meeting minutes dated 16.06.2023 reveals a submission of non-applicability of Wetland Rules, 2017 by the project proponent of the said Project. However, the geographical survey map, khasra map, proposed road map and building map were submitted by the Madhya Pradesh Housing and Infrastructure Development Board (MPHIDB), Bhopal vide letter dated 10.01.2024 clearly indicate that “Re-densification of Collectorate Complex and Professor’s colony” developed by Madhya Pradesh Housing and Infrastructure Development Board (MPHIDB) proposed is being implemented within the 50-meter distance from High Flood Line of Lower Lake and is in contradiction with the clarification submitted by the project proponent on Parivesh Portal on 12.06.2023. Further, the Committee noted that the Project site 1 is 302.55 metres and Project site 2 is 281.38 metre from the Upper Lake and the distances from the lower lake were not mentioned.
- ix. The Committee opines that there is a big technical lapse at the end of EIA consultant namely, M/s. In-situ enviro care, Bhopal in not assessing the Project from an environmental angle, despite

knowing the international importance of a Ramsar Site and the applicable Wetland Rules.

- x. Thus, the Committee finds that the environment clearance to the Project was granted based on the false/fabricated data and as per Standard Condition no. 6 of the Environment clearance dated 17.07.2023, the Environment clearance for the Project needs to be revoked and a fresh appraisal be undertaken taking into consideration the Wetlands Rules, 2017 and ensuring the surface drainage of the area is not disturbed.
- xi. *The Committee recommends appropriate action against the EIA consultant M/s. In-situ Enviro Care, Bhopal for not being serious in evaluating the Project from the perspective of protection of Bhoj Wetland, which is an internationally renowned Ramsar Site and the lifeline of Bhopal. It appears that no study was conducted with regard to the impact on water-quality of the Lower Lake which is of vital importance.*
- xii. *The initial presentation made by the Project Architect envisaged a phase-wise development of the entire area around the Lower Lake, different from the project for which environmental clearance was sought. Taking into consideration the vital importance of Ramsar Site Lower Lake, the entire project needs to be comprehensively evaluated instead of piecemeal and the subsequent infrastructure development shall ensure compliance with the Wetland Rules, 2017 and the Zone of Influence.*
- xiii. *Taking into consideration the vital importance of Bhoj Wetland and the enormous environmental impact from traffic and commercial activities generated around a public oriented Collectorate/Commissionerate/UAD Complex and changes in the surface drainage pattern from the concrete structures/roads to be created as a part of the re-densification project, the*

Committee is of the opinion that an alternative site away from the Bhoj Wetland may be explored by the project proponent (MPHIDC).

During the site visit, the Committee observed a large number of very old trees present in the area, which are either to be felled or transplanted. The alternative site arrangement will also save these and avoid large scale deforestation as a result of the execution of the said re-densification project.

- xiv. The Committee also observed that the area known as the Professors' Colony where this Project is proposed has, besides Government quarters, private houses by hundreds, school, city forest, etc also. Having brought up as a residential colony, building such a project would affect their overall quality of life promised by the Government itself.*
- xv. During its site visit, the Committee also observed several government and religious structures of a permanent nature constructed within the 50 m buffer zone from the HFL of Lower Lake. As the .shp files are made available to the EPCO, which is the state nodal agency under State Wetland Authority, high resolution satellite imagery of the 50-metre buffer zone from the mean High Flood Line needs to be obtained and frozen. Any future construction activities in the buffer zone needs to be strictly prohibited by quarterly review of high-resolution satellite imagery to be obtained in consultation with agencies like NRSA/ISRO. Dedicated cell with qualified manpower to review the satellite imagery data and appropriate budgetary allocations to strengthening remote monitoring of 50 m buffer zone needs to be created under the aegis of EPCO. This action may be complemented by erecting sign boards (currently not seen during*

the site visit) regarding restriction of construction activity within 50 m distance from the HFL of Upper/ Lower Lake to bring awareness among the public. Necessary action in this respect needs to be undertaken by the local authorities.

Recommendations:

Taking into consideration the observations noted above, the Committee recommends the following:

- i. The Project, comprehensively examined, violates the Wetland Rules, 2017 leading to much environmental damage to a vital part of Bhoj Wetland, a Ramsar Site of International importance. Taking this into consideration, the entire Project around the lower lake, if needed, be comprehensively evaluated instead of piecemeal evaluation and the subsequent infrastructure development shall ensure compliance with the applicable Wetlands rules, 2017.*
- ii. An alternative site away from the Bhoj Wetland may be explored by the project proponent (MPHIDC) or the appropriate/concerned authority. This alternate site arrangement will also save very old trees and avoid large scale deforestation resulting from the execution of the said re-densification project.*
- iii. SEIAA/SEAC may take appropriate action against the EIA consultant M/s. In-situ enviro care, Bhopal for not being serious in evaluating the Project from the perspective of protection of Bhoj Wetland, an internationally renowned Ramsar site and the lifeline of Bhopal.*
- iv. Any construction activities in future in the buffer zone needs to be strictly prevented and monitored by quarterly reviews through high-resolution satellite imagery data, to be*

obtained in consultation with agencies like NRSA/ISRO. Dedicated cell with qualified manpower to review the satellite imagery data and appropriate budgetary allocations to strengthen the remote monitoring of 50 m buffer zone needs to be created under the aegis of SWA/EPCO.

- v. Appropriate sign boards by concerned Urban Local Body (currently not seen during site visit) be put up to ensure no construction activity of a permanent nature takes place within 50 m distance from the HFL of Upper/ Lower Lake and to bring awareness among the public of the importance of Bhoj Wetland.*
- vi. Environment clearance for the project needs to be revoked by SEIAA/SEAC and a fresh appraisal of the project, if required, needs to be undertaken taking into consideration the Wetland Rules and ensuring the surface drainage of the area (Zone of Influence) is not disturbed.*
- vii. As per Section XIV (70) of Guidelines issued by MoEFCC for implementation of Wetland Rules, 2017, “A Management Plan should be in place which is duly endorsed by the Ministry for all Ramsar sites”. Accordingly, an Integrated Management plan should be in place for Bhoj Wetland as well and SWA/EPCO needs to take appropriate action in the matter.”*

5. Through perusal of the report following irregularities have been found by the committee :-

- i. The .kml file of the entire project uploaded on the Parivesh Portal of MoEF&CC and the actual built-up area mentioned in the proposal submitted before the SEAC/SEIAA for grant of

environmental compensation has various deviations on different angles.

- ii. Some of the proposals are in violation of Section 4(2)(vi) of Wetland Rule, 2017 i.e. within the prohibited activities.
- iii. The proposed project is within the prohibited zone.
- iv. The developer has failed to clearly mention the exact location and distance from the lower lake.
- v. There are big technical lapses at the end of EIA consultant namely M/s In-situ Enviro Care, Bhopal for not assessing the project from an environmental angle, despite knowledge that the international importance of a Ramsar Site of the lake.
- vi. The committee has found that the environmental clearance to the project was granted based on the false and fabricated data and as per Standard Condition No. 6 of the environmental clearance dated 17.07.2023, the environmental clearance for the project needs should be revoked and fresh appraisal be undertaken immediately.
- vii. Appropriate action against the consultant. The EPCO and the State Wetland Authority is required to have a measurement by means of high resolution satellite imagery of the 50 mtr. buffer zone from the mean high flood level and it needs to be obtained and frozen. Any future construction activities in the buffer zone needs to be strictly prohibited and there must be quarterly review of high resolution satellite imagery to be obtained in consultation with agencies like NRSA/ISRO.
- viii. Dedicated cell with qualified manpower to review the satellite imagery data and appropriate budgetary allocation to strengthening remote a monitoring of 50 mtr. buffer zone needs to be created under the aegis of EPCO.

ix. SEIAA and SEAC may take appropriate action against the consultant.

x. The State Authorities must follow the guidelines issued by the MoEF&CC for implementation of Wetland Rules, 2017 (as per Section XIV (70)).

6. In view of the above directions, the SEIAA/SEAC is directed to take necessary action according to rules. State Pollution Control Board is further directed to take necessary action according to rules and submit its report within three weeks.

7. Learned counsel for the State Pollution Control Board has submitted that the reply of the SEIAA has been filed today. Put up with action taken report.

List it on **30th May, 2024.**

Sheo Kumar Singh, JM

Dr. A. Senthil Vel, EM

11th March, 2024
O.A No. 119/2023 (CZ)
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PN