

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

**Original Application No. 04/2023(WZ)
I.A. No. 30/2023(WZ)**

IN THE MATTER OF:

- 1. Dilip Pandurang Koli**
At. UranKoliwada, Post & Tal: Uran,
District: Raigad- 400 702.
- 2. Parmanand Jaywant Koli**
Sarpanch, Hanuman Koliwada,
Hanuman Koliwada, Post N.S. Karanja,
Tal. Uran, District- Raigad- 400 704.
- 3. Nandkumar Waman Pawar**
Pawar House, 3rd floor, M.D. Kini Road,
Bhandup Village (East), Mumbai- 400 042.

.....Applicant(s)

Versus

- 1. Union of India**
through Ministry of Environment, Forests
& Climate Change, Paryavaran Bhavan,
Jorbagh Road, New Delhi, 110 003.
- 2. Jawaharlal Nehru Port Trust,**
Sheva, Navi Mumbai,
Maharashtra- 400 702.
- 3. State of Maharashtra**
through the Environment Department
Room No. 217, New Administrative
Building, Mantralaya,
Mumbai - 400 032
- 4. Maharashtra Coastal Zone Management Authority (MCZMA)**
Environment Department,
Room No. 217, New Admin. Building,
Mantralaya, Mumbai - 400 032.
- 5. District Collector, Raigad**
Alibag, Raigad, 402 201

.....Respondent(s)

Counsel for Applicant(s):

Ms. Gayatri Singh, Sr. Advocate along-with Ms. Meenaz Kakalia, Advocate

Counsel for Respondent(s):

Mr. Saket Mone, Advocate for R-2/JNPT

Mr. Aniruddha Kulkarni, Advocate for R-3/Env. Deptt. & R-4/MCZMA

PRESENT:

Hon'ble Mr. Justice Dinesh Kumar Singh (Judicial Member)

Hon'ble Dr. Vijay Kulkarni (Expert Member)

Reserved on : 21.02.2023

Pronounced on : 16.03.2023

JUDGMENT

1. This application has been filed seeking direction to be issued to Respondent No. 2/JNPT to refrain from carrying out any reclamation, dredging, piling and excavation work for the balance work of 4th container terminal on ecologically sensitive mudflat areas; Respondent No. 4/Maharashtra Coastal Zone Management Authority (MCZMA) be directed to conduct a site inspection with the assistance of the Applicants in order to demarcate the CRZ- IA and CRZ-IV areas to ensure that no construction activities takes place in the CRZ-IA area; and further all reclamation, dredging, piling and excavation activities be directed to be stayed until the CRZ- IA areas are demarcated.

2. The facts in brief of this case are that the Applicants had filed Original Application No. 46/2021 (WZ) before this Tribunal to challenge the EC dated 09.10.2019 granted to Respondent No. 2/JNPT for the "*Balance work of the 4th Container Terminal*". The said Project was envisaged to be implemented in two phases- Phase I involved the construction of a 4th container terminal and marine container terminal and extension of the existing 300 meter liquid cargo berth by 700 meters so as to make a 1000 meter quay length for the new container terminal. Phase II would entail an additional

1000 meter quay length container berth. Apart from this, the project would entail, *inter alia*, dredging, piling and the reclamation of 200 hectares of land. The first EC was granted by the Respondent No. 1/MoEF&CC to Respondent No. 2/JNPT on 29.07.2008, which was valid for a period of 5 years . The construction of Phase-I of the 4th container terminal commenced on 23.12.2014 and was completed in the year 2017. The 4th Container Terminal was eventually commissioned on 22.12.2017. The entire work of the 4th Container Terminal Project was not completed, which was to include 90 hectares out of 200 hectares of reclamation; 1 km. of quay; 5 approaches and public buildings. In the year, 2017, the Respondent No. 2/JNPT moved an application for amendment of specific condition (vi) of the EC dated 28.07.2008. While allowing the said amendment, the Expert Appraisal Committee (EAC) observed that “the EC & CRZ is valid till 28th July, 2018. Therefore, if any, works remained to be completed related to the project, the project proponent would have to apply afresh.”

3. It is further submitted that since the work of the 4th Container terminal was not completed by July, 2018 i.e. when the joint EC and CRZ Clearance was set to expire and a further extension of the joint EC and CRZ Clearance dated 29.07.2008 could not be granted, therefore, a fresh EC would have to be sought, for which the Respondent No. 2/JNPT made an application for a fresh EC for the purported “balance work for the 4th container terminal”. The same came to be granted by Respondent No. 1 on 09.10.2019, which was challenged by the Applicants in Original Application No. 46/2021 (Earlier Appeal No. 09 of 2021) on the following grounds:-

- a) *That the joint EC and CRZ Clearance proceeds on the wrong footing that the CRZ area comprised of the project site is CRZ-IV, while it actually falls within CRZ-IA, where no fresh construction activities are permitted as per the CRZ Notification, 2011;*
- b) *That the mandatory stage of public consultation under the EIA Notification, 2006 has been foregone, without any valid basis;*
- c) *That there has been a rich history of fishing activities in Uran Taluka, and the project impact assessment that preceded the grant of the impugned joint EC and CRZ Clearance has disregarded this completely;*
- d) *That JNPT has violated the conditions of previous Environmental Clearances.*

4. Further, it is submitted that as a part of project, 110 ha. of ecologically sensitive mudflat areas were proposed to be reclaimed. The fact that this area comprises mudflat areas was noted in the EC dated 29.07.2008 and the same fact is also contained in a number of site inspection reports prepared by Maharashtra Coastal Zone Management Authority (MCZMA) on the directions of this Tribunal in Original Application No. 19/2014. The Respondent No. 4/Maharashtra Coastal Zone Management Authority (MCZMA) conducted a site inspection on 31.10.2012 of several locations in urban area which also included the site of the proposed 4th container terminal, which demonstrated that there was mangrove degradation as well as illegal dumping of debris and landfilling. The site inspection report noted the fact that there have been sightings of migratory birds and flamingos in this region. The said report further noted that the Project Proponent has made large scale destruction of ecologically sensitive areas. Another site inspection was conducted by the Respondent No. 4/Maharashtra Coastal Zone Management

Authority (MCZMA) on 12.11.2012 and it was observed that *“Reclamation of about 200 hectares is proposed on the site. The site has ecologically sensitive features. The site has mudflats and fertile fish breeding grounds. Due to proposed marine and chemical terminal, all ecologically sensitive areas will be permanently lost and will affect the livelihood..”* A map of the Jawaharlal Nehru Port Trust was prepared by the Naval Hydrographic Office, which shows the existence of mud flats adjacent to the JNPT port area where reclamation is currently ongoing. Vide order dated 23.06.2021 in Original Application No. 46 of 2021, a four member Joint Committee was constituted to give an independent factual report in the matter with respect to the allegations of destruction of mudflats and impact of the project on fishing activities within 3 months, which had submitted its report on 13.09.2021 before NGT, in which it has been observed that there were mudflats within the project site and that the project has adversely impacted the fishing activities, therefore, it was recommended that in the fresh EIA report, a detailed chapter should be included to deal with this aspect and it also recommended that JNPT should proactively obtain the suggestions of the Commissioner Fisheries for safeguarding the livelihood of the local fisher folk. The Project Proponent ought to have obtained NOC from the Commissioner of Fisheries. By the final order dated 21.02.2022, the Tribunal accepted the report of the Expert Committee and passed following order:-

“8. With regard to area falling in CRZ-IA, we accept the report which is backed by the Coastal Zone Management Plan (CZMP), duly approved by MoEF&CC on 18.08.2018. As per report, a small part of landing point of the reclamation work touches CRZ-IA area. The project should not cover such area in view of mandate of law. The MCZMA may clearly

demarcate the area of CRZ-IA which is part of the project so that the project is confined to CRZ-IV area since CRZ-IA which is ecological sensitive area where the project is not permitted, as already observed and rightly pointed out by the applicants as well as the Committee.

9. With regard to the impact on traditional fisheries by the local fisherfolks, we accept the view of the Committee that free flow of tidal water into the creek has to be ensured to enable navigation of boats to sustain fishing practices. We direct the MCZMA and the MoEF&CC to incorporate these conditions in the EC by way of an addenda and also direct the PCB to incorporate such conditions in the consents. We direct the Project Proponent to ensure that free flow of tidal water be maintained and the project be designed and operated in a manner so as not to adversely affect such free flow and fishing practices.”

5. Further, it is submitted that although the NGT has upheld the EC and CRZ clearance dated 09.10.2019 but it has categorically stated that the project should not cover any CRZ-IA area since the construction in these areas was barred by the CRZ Notification, 2011, hence it had directed the MCZMA to clearly demarcate the CRZ-1A areas.

6. Further, it is submitted that the Applicants have challenged the order dated 21.02.2022 passed by this Tribunal before the Hon'ble Supreme Court *vide Civil Appeal No. 4102 of 2022*, which is presently pending. Interlocutory Application (IA) No. 174189 of 2022 was filed by the Applicants before the Hon'ble Supreme Court seeking urgent direction to Respondent No. 2/Project Proponent to refrain from carrying out reclamation work for the balance work of the 4th Container Terminal on ecologically sensitive mudflat areas and further to direct the Respondents to demarcate the CRZ-IA and CRZ-IV areas, where-on order dated 02.01.2023 was passed by the Hon'ble Supreme Court permitting the withdrawal of the said I.A.

and granting liberty to the Applicants to approach this Tribunal for redressal of their grievances.

7. During the pendency of the Original Application No. 46 of 2021, a revised application dated 02nd September, 2021 was made by the Respondent No. 2/JNPT for environmental clearance on account of the alleged change in the layout of reclamation for the project in question. While recommending the project for CRZ clearance, the Environment Department of the State of Maharashtra laid down certain conditions vide letter dated 16.09.2021. Specific condition nos. 2 & 3 of which are as follows:-

“2). JNPT to ensure that ecologically sensitive areas like mangroves & biologically active mudflats are situated behind the 4 Terminal, as identified in approved CZMP, 2011 should not be disturbed and free flow of tidal influx is ensured in the region.

3) As recommended by committee constituted by Hon'ble NGT, JNPT should ensure that fishing practices of the local fisherfolks and livelihood of local fisherfolks shall not be hampered due to proposed project.”

8. Even the recommendation for revised EC contains condition to the effect that “JNPT should obtain NOC from Commissioner, Fisheries with a view to safeguard the local traditional fishing and livelihood of fisherfolks”. It is further emphasized that general condition no. (1) stipulated that if the conditions are not complied with by the JNPT/Project Proponent then it may revoke the recommendation.

9. Further, it is submitted that Ministry of Environment, Forest and Climate Change accorded its sanction for the amendment in the environmental and CRZ Clearance for the balance work of the project in question stipulating specific condition, which is as follows:-

"Mudflats of Uran and adjoining areas of JNPT region requires systematic monitoring with specific focus on the migratory birds. Wetland division of Salim Ali Centre for Ornithology and Natural History (SACON) should undertake the migratory bird monitoring studies including minimum 5 years post construction period and develop long term mudflat and mangrove management and improvement plan with specific focus on migratory birds in consultation with State Forest Department..."

10. Further, it is submitted that despite categorical directions of the NGT that the project area must exclude CRZ-IA areas, the Respondent No. 2/JNPT has commenced the reclamation and dredging activities for the project in question on ecologically sensitive mudflat areas, which falls under the category of CRZ-IA under the CRZ Notification, 2011. The MCZMA despite having been clearly directed by the NGT to demarcate the CRZ-IA and CRZ-IV areas and not to allow any construction activities to take place in the CRZ-IA area, has not done any exercise in this regard. The Applicants made number of representations for this illegal reclamation but to no avail.

11. It is further submitted that Mudflats are fertile fish breeding grounds, essential for traditional fishing practices and that the reclamation and dredging activities being carried out by the Respondent No. 2/Project Proponent is damaging creeks, estuaries, mudflats and mangroves. Hence the above prayers have been made.

12. The matter was first heard by us on 19.01.2023 and thereafter on 23.01.2023, notices were directed to be issued to the Respondents. The service affidavit has been filed, as per which the service of notice is sufficient on all the Respondents.

13. From the side of Respondent No. 2/JNPT, a reply affidavit dated 17.02.2023 has been filed, which has been submitted against

Interlocutory Application for interim stay, in which it is stated that the Applicants were granted leave by the Hon'ble Apex Court vide order dated 02.01.2023 to withdraw the Interlocutory Application No. 174189 of 2022 filed in Civil Appeal No. 4102 of 2022 and granted liberty to the Applicants to approach this Tribunal. Therefore, it is apparent that there was no direction from the Hon'ble Supreme Court for this Tribunal to entertain this application. The withdrawal was voluntary act on the part of the Applicants. The Order of the NGT dated 21.02.2022, which was passed in Original Application No. 46 of 2021, has been challenged in the Hon'ble Supreme Court in the above appeal. The Answering Respondent has obtained amended Environmental & CRZ Clearance from MoEF&CC on 18.10.2021 by following due process of law, which has not been challenged. It is apparent that the Applicants have raised following allegations about the said project:-

- “ i). Allegations with respect to the construction being carried out in CRZ IA area;*
- ii). Allegations with respect to impact on the livelihoods of fisherfolk community;*
- iii). Allegations with respect to impact on migratory birds.”*

14. With respect to allegation pertaining to construction in CRZ-I, it is submitted that the project in question is to be completed in two phases. Phase-I (quay length of 1000M) is operational and Phase-II (quay length of 1000M) is expected to be fully operational by April, 2025 with a total quay length of 2,000 meters, adding an annual capacity of 4.8 million TEUs. The work of Phase-I was completed along with 90 ha. reclamation out of 200 ha, 1 km of quay, 5 approaches, dredging and public buildings including gate complex

and facilities commissioned on 18th February 2018. The Answering Respondent is taking up construction of Phase-II facilities in order to handle the capacity of 2.4 MTEUs as a balance work. The Central Water and Power Research Station (CWPRS) has already conducted Hydraulic model/studies and has recommended the layout taking into consideration all aspects. MoEF&CC has accorded Environmental & CRZ Clearance on 9th October, 2019 and amended the same on 18th October, 2021.

15. With respect to the work being done in CRZ-I or CRZ-IV, it is submitted that *Appeal No. 09 of 2021 (I.A. No. 18/2021) (Dilip Pandurang Koli vs. Union of India & Ors.)*, the Tribunal vide Order dated 23.06.2021 constituted a Committee, which visited the site along-with the parties on 08th September, 2021 and submitted its report, recording that “as per the said approved CZMP, the site of triangular balance reclamation of the 4th Terminal is situated in CRZ-IV area. Small part of landing point of triangular balance reclamation work is touching the CRZ-IA area. The Project Proponent’s officials further informed that layout of the triangular reclamation is now revised and submitted an application to MoEF&CC for amended EC”. The Respondent No. 2/JNPT/Project Proponent have got conducted HTL-LTL demarcation through Institute of Remote Sensing (IRS), Anna University (approved Government Agency of MoEF&CC) in the month of August, 2021 for revised layout of 4th CT amendment of Environment & CRZ Clearance. As per the approved CZMP, the site of triangular balance reclamation of the 4th Terminal is situated in CRZ-IV area and that a part of landing point of triangular balance reclamation work was

touching in CRZ-IA area. The said area is now not incorporated in the project area. Therefore, as per the observation made by the Committee in final layout, the landing point of triangular balance reclamation work, which was touching CRZ-1A area has been excluded. The reclamation shape is modified. The project falls in CRZ-IV category as per the report of Institute of Remote Sensing (IRS), Anna University and that there is no mudflat area under Phase-II facilities and the same is recommended by MCZMA on 16th September, 2021. Subsequently, on 18th October 2021, MoEF&CC had issued amendment in Environmental and CRZ Clearance for the revised layout of Phase-II facilities.

16. With respect to fishermen folk community being adversely impacted, it is submitted by the Answering Respondent that on 16.09.2021, a Meeting was held with the Commissioner, Fisheries to discuss the issues of Fisherman Folk. The Respondent No. 2/Project Proponent had deposited their share of Rs. 66.63 Crores in Hon'ble Supreme Court as per the Order of NGT in the year 2015 with respect to the livelihood of the affected fishermen. On 14th December, 2022, the Hon'ble Supreme Court allowed the Project Proponent to withdraw its appeal bearing Civil Appeal Nos. 4455-4456 of 2015. The Hon'ble Supreme Court directed that the Demand Draft be handed over to the Standing Counsel for the State of Maharashtra, who in turn, shall remit the same to the Collector, Raigad.

17. With respect to the adverse impact on migratory birds, it is submitted by the Answering Respondent that in compliance to the conditions of Environmental Clearance, it had appointed CSIR-

National Institute of Oceanography & Gujarat Institute of Desert Ecology (GUIDE) for monitoring of Marine Biodiversity Management Plan and for bird migration study respectively for project area and for regular monitoring of environmental parameters and that the project is progressing strictly in accordance with the norms.

18. Having mentioned above facts, the prayer is made that Interlocutory Application should be dismissed with heavy cost.

19. We have heard the arguments of the learned Counsel for the Applicants as well as the learned Counsel for the Respondent No. 2/JNPT/Project Proponent on interim application regarding stay in the present matter. When the arguments were concluded by the respective learned Counsels, they agreed that the same arguments should be treated to be valid for the disposal of the main application as well.

20. During argument, the learned Counsel for the Respondent No. 2/JNPT/Project Proponent has also brought to our notice a recommendation of Maharashtra Coastal Zone Management Authority (MCZMA) dated 14.02.2023 on the proposal for balance work of 4th container terminal and marine container terminal, Navi Mumbai, District: Raigad by JNPT/Respondent No. 2. This recommendation was read out in open Court by the learned Counsel for the Respondent No. 2 and some part of it was also read out by the learned Counsel for the Applicant. We reproduce these recommendations in totality for the sake of convenience:-

“The Maharashtra Coastal Zone Management Authority in its 163rd meeting held on 2nd & 3rd February, 2022 deliberated the subject proposal for balance work of 4th

container terminal and marine container terminal, Navi Mumbai, District Raigad gad.

2. The Authority noted that proposal is for balance work of 4th container terminal and marine container terminal by M/s JNPT, Navi Mumbai with a request to consider the matter as per observations of the EAC meeting. Earlier, the project i.e. 4th Terminal received the Environment clearance (EC) dated 28th July, 2008 under CRZ Notification, 1991 and EIA Notification, 2006, by MoEF, New Delhi for 200 Ha reclamation. The validity of the said EC was upto year 2018. Further, for balance work of 4th Terminal (Phase II), the JNPT applied to MCZMA, as per recommendations of the TOR granted by the MoEF&CC, New Delhi. The MCZMA in its 130th meeting deliberated the proposal and vide letter dated 12th June, 2019 recommended the proposal to MoEF&CC, New Delhi from CRZ point of view. The MoEF&CC, New Delhi vide letter dated 9.10.2019 granted CRZ and EC for the balance work of 4th Terminal.

3. The Authority further noted that due to change in layout of reclamation, the JNPA (erstwhile JNPT) sought amendment in EC & CRZ clearance has uploaded application for amendment in EC & CRZ clearance due to revise layout & submitted to MoEF & CC on 16.08.2021. The Environment Dept (in absent of MCZMA) deliberated the proposal and noted that as per the CZMP approved under CRZ Notification, 2011 by MoEF&CC, New Delhi, site of balance work of 4th CT project is situated in CRZ IV area. The JNPT has submitted the CRZ survey report and CRZ map in 1:4000 scale prepared by IRS, Chennai (MoEF authorized agency). As per the said CRZ map, the site for proposed revised layout of 4th Terminal (Phase II) at JNPT, Navi Mumbai falls in CRZ IVA and CRZ IV B area as per existing approved CZMP under CRZ Notification, 2011.

Accordingly, the Environment Dept vide letter dated 16th Sep, 2021 recommended the proposal to MoEF&CC, New Delhi. Amendment in Environmental clearance for revise layout was granted on 18.10.2021 by MoEF&CC, New Delhi.

4. The Authority noted that the JNPT officials presented that while deliberating on the proposal, EAC, Delhi took note of the order passed by the Hon'ble National Green Tribunal in Dilip Pandurang Koli & Ors Vs Union of India & Ors matter. EAC states the experts of Hon'ble NGT order as follows:

“While regard to area falling in CRZ-IA, we accept the report which is backed by the Coastal Zone Management Plan (CZMP), duly approved by MoEF & CC on 18.08.2018. As per report, a small part of landing point of the reclamation work

touches CRZ-IA area. The project should not cover such area in view of mandate of law. The MCZMA may clearly demarcate the area of CRZ-IA which is part of the project so that the project is confined to CRZ-IV area since CRZ-IA which is ecological sensitive area where the project is not permitted, as already observed and rightly pointed out by the applicants as well as the Committee.

With regards to the impact on traditional fisheries by the local fisher folks, we accept the view of the Committee that free of tidal water into the creek has to be ensured to enable navigation of boats to sustain fishing practices. We direct the MCZMA and MoEF & CC to incorporate these conditions in the EC by way of an addenda and also direct the PCB to incorporate such conditions in the consents. We direct the project proponent to ensure that free flow of tidal water be maintained and the project be designed and operated in a manner so as not to adversely affect such free flow and fishing practices”

5. The Authority noted that the EAC taking into account the submission made by the project proponent had a detailed deliberation in its 300th meeting on 15th June, 2022. The EAC suggested JNPA to apply to MCZMA in view of the orders of the Hon'ble NGT. The necessary amendments shall be made once recommendation from MCZMA are received. Proponent shall also apply for Name Change/ Transfer of EC from JNPT to JNPA for their existing ECs.

6. In response to EAC minutes, the Authority noted that the JNPT vide letter dated 6.7.2022 submitted the followings:

1. As per revised layout project fall under CRZ IV A and B, the MCZMA recommended the revised proposal on 16th Sep, 2021 to MoEF&CC, New Delhi and amendment in EC for revised layout received on 18th Oct, 2021 as per revised layout.

2. Amendment of Consent to Establish is received from MPCB. The free flow of tidal water is maintained and fishing practices area not denied.

3. It may be noted that, JNPA had deposited their share of Rs. 66.63 Crores in Hon'ble Supreme court as per order of NGT in the matter of Shri Ramdas Koli and others 2015 regarding livelihood of affected fishermen and JNPA challenged the same in Supreme Court. To come with way forward, a meeting was held by the Chairman JNPA with Commissioner (Fisheries) on 16th September, 2021 and Commissioner (Fisheries) had also suggested that the amount due may be settled at the earliest.

7. Commissioner Fisheries suggested as under:

i. Appeal of JNPA in above said matter may be withdrawn so that beneficiary's fishermen can get their dues

- ii. *Further amount determined of Rs. 50 lacs and restoration cost as per JNPA share as per NGT order to be given to Collector for activities of mangrove plantation, ensuring free passage of tidal current etc. in consultation with Maharashtra Coastal Zone Management Authority (MCZMA)*
 - iii. *Even after distribution of this amount to these fishermen, if any further grievances of the affected fishermen, the same shall be examined by the Expert Committee as per the prevalent policy for resolution.*
1. *Commissioner Fisheries informed that on compliance with above suggestions, there is no separate NoC required from the Commissioner, Fisheries*
 2. *Accordingly, JNPA has decided to withdraw an appeal filed in the Hon'ble Supreme Court Civil Appeal No. 4455-4456/2015 in the matter of NGT case of Shri Ramdas Koli & Ors in pursuance to meeting held with the commissioner (Fisheries) on 16th Sep, 2021. Interim Application was filed to withdraw the Civil Appeal No. 4455-4456 of 2015 before Hon. Supreme Court in March, 2022 which is pending for listing before Hon. Supreme Court.*
 3. *The NGT order in the matter of Shri Pandurang Koli Vs Union of India was placed before 300th meeting of EAC by MOEF&CC and EAC in its meeting held on 15th June, 2022 directed MoEF&CC that JNPA shall approach MCZMA and subsequently it will be endorsed by EAC. The EAC minutes are received. It was also mentioned that the proponent shall also apply for Name Change / Transfer of EC from JNPT to JNPA for their existing ECs. The necessary amendments to EC shall be made once recommendations from MCZMA are received.*
 8. *The Authority asked JNPT whether the construction of balance work is proposed in CRZ IV or CRZ IA area. The JNPT officials presented that the site of balance work is situated completely in CRZ IV area. The CRZ & EC clearance dated 18th Oct, 2021 granted for revised layout of balance work of 4th terminal by the MoEF&CC, New Delhi also clearly stated that the project site is in CRZ IVA area.*
 9. *The Authority further asked about the compliance of the Hon'ble NGT order with respect issues of fishermen. The JNPT officials informed that free of tidal water into the creek is ensured to enable navigation of boats to sustain fishing practices. Moreover, the JNPT is committed to compensate for fishermen. JNPA had deposited their share of Rs. 66. 63 Crores in Hon'ble*

Supreme court as per order of NGT in the matter of shri Ramdas Koli and others 2015 regarding livelihood of affected fishermen.

10. Taking into consideration the submission of the JNPT, the Authority asked the JNPA to submit the undertaking stating the followings:

- Balance work of 4th terminal is carried out in CRZ IV area and not in CRZ IA area*
- Free of tidal water into the creek is ensured to enable navigation of boats to sustain fishing practices.*
- Directions of the Hon'ble NGT order has been complied with.*

Accordingly, the JNPA has submitted an undertaking stating that:

- 1. The port is taking care to comply conditions of NGT order as well as court order*
- 2. The ongoing work is in progress in CRZ IV as per the environmental, CRZ clearance and the port is complying with conditions of EC/ CRZ and following EMP in consultation with concessionaire*
- 3. JNPA confirms that the port is maintaining the free flow of tidal water in the port area.*
- 4. JNPA undertake and confirm that the fishing is allowed by the port in the harbour except in the navigational channel due to safety norms.*
- 5. JNPA comply with the recent Supreme Court order dated 14th Dec, 2022.*

11. In the light of above, taking into account the observations of the Hon'ble NGT and minutes of EAC, New Delhi, the Authority after deliberation decided to recommend the matter to MoEF&CC, New Delhi with following additional points:

Specific Conditions:

- i. Matter is recommended for change in name from JNPT to JNPA*
- ii. Free of tidal water into the creek should be ensured by JNPA to enable navigation of boats to sustain fishing practices.*
- iii. Observations/ Directions of the Hon'ble NGT order with respect to livelihood of local fishermen should be complied with.*
- iv. Earlier conditions stipulated in CRZ clearance granted by MCZMA/ MoEF&CC shall remain unchanged.*

- v. *Project activities shall be carried out in CRZ IV area only and not in CRZ IA area.*

General Conditions:

a) Construction Phase:

- i. *Any hazardous waste generated during construction phase should be disposed of as per applicable rules and norms with necessary approvals of the Maharashtra Pollution Control Board.*
- ii. *The diesel generator sets to be used during construction phase should be low sulphur diesel type and should conform to Environments (Protection) Rules prescribed for air and noise emission standards.*
- iii. *PP to strictly adhere to all the conditions mentioned in Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 as amended during the validity of Environment Clearance.*
- iv. *Vehicles hired for transportation of Raw material shall strictly comply the emission norms prescribed by Ministry of Road Transport & Highways Department. The vehicle shall be adequately covered to avoid spillage/leakages.*
- v. *Ambient noise levels should conform to residential standards both during day and night. Incremental pollution loads on the ambient air and noise quality should be closely monitored during construction phase. Adequate measures should be made to reduce ambient air and noise level during construction phase, so as to conform to the stipulated standards by CPCB/MPCB.*
- vi. *Regular supervision of the above and other measures for monitoring should be in place all through the construction phase, so as to avoid disturbance to the surroundings by a separate environment cell / designated person.*

b) Operation phase:

- i. *A separate environment management cell with qualified staff shall be set up for implementation of the stipulated environmental safeguards.*
- ii. *Separate funds shall be allocated for implementation of environmental protection measures/EMP along with item-wise breaks-up. These cost shall be included as part of the project cost. The funds earmarked for the environment*

protection measures shall not be diverted for other purposes.

c) General MCZMA Conditions:

- i. In case of any change in project profile, the project would require fresh appraisal by the MCZMA.*
- ii. The MCZMA reserves the right to revoke this recommendation, if the conditions stipulated are not complied with to the satisfaction of the MCZMA.*
- iii. The MCZMA or any other competent authority, concerned planning authority may stipulate any additional conditions subsequently, if deemed necessary, for environmental protection, which shall be complied with.*
- iv. The clearance accorded to the project under CRZ notification shall be valid for a period of seven years from the date of issue of such clearance: Provided that the construction activities shall commence within a period of five years from the date of the issue of clearance and the construction be completed and the operations be commenced within seven years from the date of issue of such clearance.*
- v. The recommendation from CRZ point of view is being issued without prejudice to the action initiated under EP Act or any court case pending in the court of law and it does not mean that project proponent has not violated any environmental laws in the past and whatever decision under EP Act or of the Hon'ble court will be binding on the project proponent. Hence this recommendation does not give immunity to the project proponent in the case filed against him, if any or action initiated under EP Act.*
- vi. PP has to strictly abide by the conditions stipulated by the MCZMA.*
- vii. If applicable Consent for Establishment" shall be obtained from Maharashtra Pollution Control Board under Air and Water Act and a copy shall be submitted to the Environment department before start of any construction work at the site.*
- viii. Under the provisions of Environment (Protection) Act, 1986, legal action shall be initiated against the project proponent if it was found that construction of the project has been started without obtaining MCZMA clearance.*

- ix. *No further Expansion or modifications, other than mentioned in the CRZ Notification, 2011 / 2019 and its amendments, shall be carried out without prior approval of the MCZMA. In case of deviations or alterations in the project proposal from those submitted to MCZMA for clearance, a fresh reference shall be made to the MCZMA as applicable to assess the adequacy of conditions imposed and to add additional environmental protection measures required, if any.*
- x. *This MCZMA clearance is issued subject to obtaining NOC from Forestry & Wild life angle including clearance from the standing committee of the National Board for Wild life as if applicable & this MCZMA clearance does not necessarily implies that Forestry & Wild life clearance granted to the project which will be considered separately on merit.*
- xi. *PP to submit an indemnity bond to the MCZMA for any future litigation.*
- xii. *MCZMA reserves the right to cancel / revoke CRZ permission in case of any violation of CRZ Notification, 2011 /2019 issued by the MoEF&CC, New Delhi amended from time to time without prejudice to any liability on MCZMA.*
- xiii. *The MCZMA clearance is being issued without prejudice to the action initiated under EP Act or any court case pending in the court of law and it does not mean that project proponent has not violated any environmental laws in the past and whatever decision under EP Act or of the Hon'ble court will be binding on the project proponent in the case filed against him, if any or action initiated under EP Act.*
- xiv. *This MCZMA Clearance is issued purely from an environment point of view without prejudice to any court cases and all other applicable permissions / NoCs shall be obtained before starting proposed work at site.*
- xv. *In case of submission of false document and non-compliance of stipulated conditions, MCZMA will revoke or suspend the MCZMA Clearance without any intimation and initiate appropriate legal action under Environment Protection Act, 1986.*
- xvi. *The above stipulations would be enforced among others under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981, the Environment*

(protection) Act, 1986 and rules there under, hazardous Wastes (Management and Handling) Rules, 1989 and its amendments, the public liability Insurance Act, 1991 and its amendments.

- xvii. Any appeal against this MCZMA clearance shall lie with the National Green Tribunal (Western Zone Bench, Pune) New Administrative building, 1st floor, D wing, Opposite Council Hall, Pune, if prepared, within 30 days as prescribed under section 16 of the National Green Tribunal Act, 2010.*

12. Agenda item & minutes of the meeting is available on the website of MCZMA i.e. <http://mczma.gov.in>.”

21. After having read out above recommendations, it is argued vehemently by the learned Counsel for the Respondent No. 2 that the CRZ map in 1:4000 scale prepared by IRS, Chennai in August, 2021, was submitted to Maharashtra Coastal Zone Management Authority (MCZMA) on 16.08.2021 with an application. When query was made to the learned Counsel for the Respondent No. 2 as to whether this map was prepared before the passing of the Judgment of NGT dated 21.02.2022, it was replied that it was already prepared but this map was not placed before the Committee, which was constituted by the NGT, based on which Judgment dated 21.02.2022 was passed, which has been assailed before the Hon'ble Supreme Court.

22. The learned Counsel for the Applicant has vehemently argued that this map said to have been prepared by IRS, Chennai, was already in existence and was also considered earlier by this Tribunal while passing the Judgment dated 21.02.2022, therefore, whatever has been stated based on that map, is nothing but reiteration of the same arguments, which were made before the NGT at the time when the Judgment dated 21.02.2022 was passed. In fact, Maharashtra Coastal Zone Management Authority (MCZMA) was directed by this

Tribunal vide Judgment dated 21.02.2022 to determine the area of CRZ-IA, where-in part of the project in question was said to be falling and it is apparent that no exercise has been done on their part till date. It is further emphasized that without identifying the CRZ-IA area, the Respondent No. 2/Project Proponent blatantly in violation of the norms is carrying out dumping in mudflat areas, which is prohibited area and for this, the learned Counsel for the Applicants has placed before us today colored photographs. The learned Counsel for the Applicants has also drawn our attention to page no. 124 of the paper book, which contains the Google map, where-in it is alleged by her that the area shown by green colour is mud flat area on which dumping is being done by the Respondent No. 2/Project Proponent and it also shows pin area where the project lies.

23. The learned Counsel for the Applicants has also emphasized that the map at the scale 1:4000 was already available even at the time of 1st environmental and CRZ clearance because without the same being available, no such permission could have been granted and for this, she has drawn our attention to the Annexure-I of the CRZ Notification, 2011, which pertains to Guidelines for preparation of Coastal Zone Management Plans and under head 'B' of which there is provision for preparation of CZM Maps and our attention is also drawn to head 'C', which pertains to Local level CZM Maps at Serial no. 13, it provides for Cadastral (village) maps in 1:3960 or the nearest scale, which shall be used as a base maps for preparing the CZM Maps. It is hammered by the learned Counsel for the Applicants that there was no Cadastral map used on the scale 1:4000 in the present case, in order to ascertain as to whether any part of the

project in question fell in CRZ-IA area or not and that without the said map being used, it is being stated by the learned Counsel for the Project Proponent that any part of the project is not lying in CRZ-IA area, rather the same is absolutely lying in CRZ-IV(A) and CRZ-IV(B) areas. In this regard, our view is that it is apparent from the affidavit of Respondent No. 2 in para no. 9 that the area of the project in question, which was being found to touch CRZ-IA area, was small area, has been excluded from the final layout, therefore, now to say that any part of the project in question is falling in CRZ-IA area, is not correct. It is also apparent from the Environmental Clearance (EC) dated 18.10.2021, annexed at page nos. 118-120 of the paper book that the shape of Reclamation is in stepped shape as compared to triangular shape. Since there is no affidavit in rebuttal filed against the affidavit of Respondent No. 2, therefore, the version given by the Respondent No. 2 that the part of the project which was found lying in CRZ-IA area has now been excluded, should be taken to be correct and therefore, in that regard, no grievance should be left with the Applicants.

24. There is no evidence before us that the map which is said to have been prepared by IRS, Chennai on the scale 1:4000, was placed before the Committee which was constituted by the NGT in Original Application No. 46/2021 or before the NGT for consideration.

25. As regards the fishermen being adversely impacted, the learned Counsel for the Applicants has vehemently emphasized that NOC from the Commissioner, Fisheries should have been taken but in this regard in the recommendation dated 14.02.2023 made by the

Maharashtra Coastal Zone Management Authority (MCZMA) regarding proposal of the balance work of 4th container terminal, copy of which has been provided by the Respondent No. 2, it is submitted that Commissioner, Fisheries has informed that there is no separate NOC required from the Commissioner, Fisheries. Further from the affidavit of Respondent No. 2, it is clear that the same recommendation also indicates that Project Proponent is also being asked to confirm that fishing activities are allowed by the Port in the harbor except in navigational channel due to safety norms. We believe, the said undertaking would certainly be honored by the Project Proponent pursuant to these recommendations and final call is yet to be taken by the MoEF&CC. The same recommendation also contains that the Project Proponent shall ensure free flow of tidal water into the creek to enable navigation of boats to sustain fishing practices. These stipulations we expect, the Respondent No. 2 to carry out which would certainly take care of the fishing folk, regarding which apprehension is expressed by the Applicants. Besides that, we also find that Respondent No. 2/Project Proponent in its affidavit has clarified that amount of Rs. 66.63 Crores has already been deposited, which has been directed to be transmitted to the District Collector, Raigad for disbursement among the fishing folks on proper identification, in order to meet out their losses in the form of compensation.

26. Therefore on merits, we are of the view that the interim application as well as the main petition, both do not have any force. Moreover, we are also of the view that since the EC was challenged before this Tribunal in Original Application No. 46/2021, which was

rejected by the Tribunal, against which the Hon'ble Supreme court has been approached where the matter is under consideration and as per the facts mentioned in the present Original Application, the grounds on which the EC was challenged, which are already cited by us above, are the same grounds which appear to have been challenged by the Applicant again before us, it would be inappropriate for us to give any finding with regard to these aspects because of the matter being pending before the Hon'ble Supreme Court.

27. Accordingly, this I.A. as well as Original Application stand disposed of.

Dinesh Kumar Singh, JM

Dr.Vijay Kulkarni, EM

March 16, 2023
Original Application No. 04/2023(WZ)
I.A. No. 30/2023(WZ)
P.kr.