

Item No.4

(Pune Bench)

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

(By Video Conferencing)

ORIGINAL APPLICATION NO.04 OF 2023 (WZ)

Dilip Pandurang Koli & others

.... Applicants

Versus

Union of India and others

....Respondents

Date of hearing: 23.01.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicants : Ms. Meenaz Kakalia, Advocate

Respondents : ---

ORDER

1. This Original Application has been moved with the prayers that respondent No. 2 – Jawaharlal Nehru Port Trust (JNPT) be directed to refrain itself from carrying out any reclamation, dredging, piling and excavation work from the balance work of the 4th container terminal on ecologically sensitive mudflat areas and direct respondent No.4 – MCZMA to conduct site inspection with the assistance of the applicants forthwith in order to demarcate the CRZ-IA and CRZ-IV areas to ensure that no construction activities take place in the CRZ-IA area.

2. The facts of this case, in brief, are that the applicants had earlier filed Original Application No.46 of 2021(WZ) before this Tribunal, wherein the following prayers had been made:-

“(a) That the joint CRZ and Environmental Clearance dated 9th October, 2019 granted to the respondent No.3 for the `balance

work for the 4th Container terminal and marine chemical terminal' be set aside.

- (b) That directions be issued to the respondent No.2 and its agents to allow free access to the fisherfolk for carrying out fishing activities even within the notified port limits.*
- (c) That pending the hearing and final disposal of this Appeal the joint CRZ and Environmental Clearance dated 9th October, 2019 granted to the respondent No.2 for the 'balance work for the 4th Container terminal and marine chemical terminal' be stayed.*
- (d) That pending the hearing and final disposal of this Appeal directions be issued to the respondent No.2 to refrain from carrying out any work pursuant to the joint CRZ and Environmental Clearance dated 9th October, 2019 for the 'balance work for the 4th Container terminal and marine chemical terminal'*
- (e) For ad-interim relief in terms of prayer clause (d)."*

3. After hearing the said Original Application, this Tribunal had disposed it of by order dated 21.02.2022 with following observations:

"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 a 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."

4. Against this judgment, the applicants have preferred Civil Appeal No.4102 of 2022 before the Hon'ble Apex Court, which is still pending; however, one Interlocutory Application bearing I.A. No.174189 of 2022

was filed before the Hon'ble Apex Court by the applicants with the prayer that respondent No.2 be directed to refrain from carrying out any reclamation work for the balance work of the 4th Container terminal on ecologically sensitive mudflat areas and direct respondent to forthwith demarcate the CRZ-IA and CRZ-IV areas to ensure that no construction activities take place in the CRZ-IA area. Upon hearing this matter, the Hon'ble Apex Court has passed the following order on 02.01.2023:

"After the matter was heard for sometime, since the controversy involved is purely factual in nature, learned senior counsel appearing for the applicant made a request to permit withdrawal of this Interlocutory Application with liberty to approach the National Green Tribunal with the grievances raised in this application.

Prayer made is allowed.

The application is permitted to be withdrawn with liberty to approach the National Green Tribunal. It shall be open to both the parties to raise all the questions relating to the dispute before the National Green Tribunal and a decision thereon shall be taken by the National Green Tribunal in accordance with law as expeditiously as possible."

5. It is pursuant to this order that the applicants were permitted to withdraw the aforesaid I.A. with liberty to approach this Tribunal because the Hon'ble Apex Court found the controversy involved purely of factual nature.

6. The learned counsel for the applicants has argued that pursuant to the Environmental Clearance (EC), respondent No. 2 – JNPT has started reclamation work without the CRZ-IA having been demarcated properly. It is further argued by her that CRZ-IA, in fact, stands demarcated in view of the CZMP maps having been finalized. We find it difficult to reconcile that on one hand, the Hon'ble Apex Court had been approached by the applicants in order to get the order of this Tribunal dated 21.02.2022 quashed whereby the EC was upheld subject to the conditions mentioned in the said order and one of the said conditions was that the MCZMA shall demarcate the CRZ-IA area because it was found

that some part of the work being undertaken by respondent No.2 – JNPT was falling within the CRZ-I area.

7. In our opinion, the applicants appear to be seeking execution of that order by again making the same prayer in the present Original Application that respondent No. 4 – MCZMA be directed to conduct site inspection in order to demarcate the CRZ-IA and CRZ-IV, which is nothing but reiteration of the prayer made earlier.

8. Since we find that there is direction of the Hon'ble Apex Court given to the applicants to approach this Tribunal, we carefully deem it appropriate to admit this Original Application because it appears that the main grievance of the applicants is that respondent No.2 – JNPT is carrying out reclamation work which has not been directed to be stopped by the order of this Tribunal dated 21.02.2022 passed in Original Application No.46 of 2021 (WZ). To that extent, we admit this Original Application and direct the Registry to issue notice to the respondents returnable within four weeks.

9. The applicants are directed to provide copies of the Original Application along with annexures thereto for being served to the respondents, within a week.

10. The applicants are also directed to take necessary steps for service of notice upon the respondents by both ways and also through available e-mail.

11. Put up this matter on 16.03.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

January 23, 2023
O.A. NO.04/2023 (WZ)