

BEFORE THE NATIONAL GREEN TRIBUNAL (EZ), KOLKATA

(Under Section 18(1) read with Sections 14 & 15 of National Green Tribunal
Act 2010)

Interlocutory Application No. 110 of 2025

in

Original Application No. 93 of 2024 (EZ)

Ashish Kothari

....Applicant/Applicant

v.

MoEFCC and Anr.

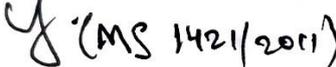
...Respondents/Respondents

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Dated on this the 19th day of November, 2025

Through

 (MS 1421/2011)

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BEFORE THE NATIONAL GREEN TRIBUNAL (EZ), KOLKATA

(Under Section 18(1) read with Sections 14 & 15 of National Green Tribunal Act

2010)

I.A. No: 110 of 2025

in

Application No. 93 of 2024(EZ)

Between:

Ashish Kothari
S/o Rajni Kothari,
G1 Chaitraban Residency, Aundh,
Pune 411007
Email: yogeshwaranadv@gmail.com
Phone No. : 9566254546

....Applicant/Applicant

Vs.

1. The Ministry of Environment, Forest and Climate Change
Rep by its Secretary
Indira Paryavaran Bhavan ,Jor Bagh Road, New Delhi 110003
Email: mefcc.gov.in, Phone: +91-11-23014243
2. Andaman and Nicobar Islands Integrated
Development Corporation Limited (ANIIDCO Ltd)
Rep by its Managing Director
Vikas Bhawan, PB No,1B0,
Port Blair, Andaman & Nicobar Islands
Pin – 744101
Phone : 236086, 234108,
Email : aniidco@gmail.com

...Respondent/Respondents

TO,

**THE HON'BLE CHAIRMAN AND HIS
COMPANION MEMBERS OF THE
NATIONAL GREEN TRIBUNAL.**

HUMBLE APPLICATION SUBMITTED

BY THE APPLICANT ABOVE NAMED

It is respectfully submitted as follows:

1. The present interim application is filed by the Applicant praying that this Hon'ble Tribunal be pleased to expunge the report of the High Powered Committee (HPC) which was circulated by the 1st respondent to the Hon'ble Tribunal in a sealed cover during the course of the hearing of the applications on 30.10.2025 without providing a copy to the Applicants, from the record of the present proceedings in the interest of principles of natural justice and limit its consideration to the pleadings on record filed by the respective parties.
2. It is submitted that during the hearing of the applications on 30.10.2025, at the end of submissions, the learned counsel appearing for the 1st respondent produced a bound volume of the HPC report with annexures and also separate sheets of paper which were described as HPC report. The Bound volume was then returned to the learned counsel for the 1st Respondent by this Hon'ble Tribunal and this Hon'ble Tribunal indicated that they would rely on the recommendations of the HPC.
3. It is submitted that the refusal of the 1st respondent to furnish a copy of report of the High Powered Committee "HPC" constituted vide O.M. dated 13.04.2023 in compliance with the directions of this Hon'ble Tribunal dated 03.04.2023 in Appeals 29-32 of 2022 to the applicant is illegal and violative of principles of natural justice.

4. It is submitted that this Hon'ble Tribunal ought not to rely on any information contained in the HPC report as any decision based on such material would be violative of principles of natural justice, prejudicial to the applicant's rights to a fair trial and the principle of open courts.
5. It is submitted that adjudication in the present matter can only be based on the pleadings and materials on record. In the counter affidavit signed on 19.09.2024 (notarised on 18.10.2024 and filed on 21.10.2024) at para 20 (a-b) and para 7 (a-c) of the additional affidavit dated 05.07.2025 filed by the 1st respondent, the decision of the HPC on the three ToR framed by the 1st respondent has been stated. The correctness of the HPC's decision or whether it is in compliance with the judgment can be adjudged based only on these pleadings and not on the basis of the HPC report received in a sealed cover.
6. It is submitted that the sealed cover process followed ought to be deprecated. The 1st respondent's contention that the HPC report cannot be disclosed because it is of '*strategic and national importance and has confidential and privileged information*' is without merit and contrary to the facts.
7. When the entire clearance process and documents including EIAs, project layout and masterplan etc. are in public domain, how can the exercise to "revisit" the clearance become confidential? This specious claim has been raised only to avoid scrutiny of their actions and judicial review.

8. It is submitted that there are more than 300 documents, reports, maps and studies pertaining to the subject project available in public domain. These contain all information about the project, its clearance process and permissions obtained etc. Only after the present OA was filed, the MoEF&CC took the strange, illegal stand in its counter affidavit that the report of the HPC itself is "*strategic and national importance and has confidential and privileged information*".
9. When all information leading to the grant of the clearance is in public domain, challenged in Courts, inadequacy and illegality demonstrated leading to direction of this Hon'ble Tribunal to re-examine the clearance, it is preposterous and utterly without merit to claim that the report of the re-examination exercise has suddenly and magically assumed "*strategic and national importance and has confidential and privileged information*".
10. The following table will demonstrate the absurdity and futility of this claim.

S No	DATE	EVENT	Availability of information
1.	2015	Port Management Board, A&N, publishes an expression of interest document for the establishment of transshipment port & free trade warehousing zone in Andaman & Nicobar Islands. This document quotes a techno-economic feasibility study conducted by WAPCOS in 2009-10	Publicly available

2.	July 2016	AECOM submits a technical report to Ministry of Shipping on the Development Options (FTWZ, Transshipment Hub, Bunkering, Shipbreaking/Building yard, Cruise Facilities) at Great Nicobar and suggests to develop cruise facility and states Transshipment hub is not feasible.	Publicly available
3.	November, 2016	Ministry of Shipping, Indian Ports Association publishes Final report for Sagarmala (Vol. VI) which contains the technical note prepared by AECOM in July 2016	Publicly available
4.	10.08.2018	A presentation by the CEO, NITI Aayog in 2018 mentions the transshipment port at South Bay and an Eco-tourism site at Great Nicobar (pg 30) and states that a committee has been constituted for Little Andaman and Great Nicobar to address 'land issues' for holistic development (pg 17)	Publicly available
5.	May,2019	NIYI Aayog publishes a document titled 'Transforming the islands'	Publicly available
6.	26.12.2019	Tender document by WAPCOS Limited for a 'Traffic Study for Creating Transshipment port at South Bay (Galathea Bay), Great Nicobar Island	Publicly available
7.	2019	NITI Aayog commissions a report to understand the stakeholder's views on the development in Great Nicobar (video report posted on AN Collective's YouTube channel)	Publicly available
8.	11.08.2020	PM announces a transshipment project in Great Nicobar involving an investment of Rs. 10,000 crore	Publicly available

9.	Sep 2020	NITI Aayog issues a 201 page request for proposal (RfP) for 'Preparation of Master Plan for Holistic Development of Great Nicobar Island'	Publicly available
10.	07.10.2020	A&N FD sends the proposal for the diversion of 121.87 sq.km of forest land and 8.88 sq.km of deemed forest for sustainable development in Great Nicobar (Phase-I) to MoEF&CC	Publicly available
11.	05.01.2021	60 th meeting NBWL: Denotification of the Galathea Bay WLS, Megapode WLS approved	Publicly available
12.	March, 2021	Publication by AECOM India Pvt. Ltd of a 126 page pre-feasibility report titled: 'Holistic Development of Great Nicobar Island at Andaman and Nicobar Islands. The client for the same is NITI Aayog	Publicly available
13.	02.03.2021	ANIIDCO application to the 1 st respondent for ToR for the project under EIA and ICRZ Notification	Publicly available
14.	17-18 Mar 2021	258 th meeting of the EAC Infra-I	Publicly available
15.	03.04.2021	Project is listed under 'Investment opportunities under maritime sector' at the presentation at India Maritime Summit	Publicly available
16.	05/06.04.2021	260 th meeting of the EAC Infra-I: The EAC 'recommended" the Great Nicobar proposal for "grant of terms of reference (ToR)" for EIA studies.	Publicly available
17.	25.05.2021	MoEF&CC issues ToR to ANIIDCO	Publicly available
18.	20.06.2021	Proposal for transshipment port is seen on the Investment India Grid website -	Publicly available



19.	August 2021	AECOM submits a Preliminary Engineering design Report for the ICTT at Galathea Bay to NITI Aayog	Publicly available
20.	August 2021	AECOM submitted draft masterplan for the project	Publicly available
21.	26.12.2021	Public hearing announced in local newspaper	Publicly available
22.	28.12.2021	Draft EIA report is uploaded on the ANPCC website along with Report of WII, Report of ZSI and other documents	Publicly available
23.	27.01.2022	Public hearing held in Campbell bay	Publicly available
24.	07.03.2022	ANIIDCO submits the final EIA study and application for environmental and CRZ clearance	Publicly available
25.	17.03.2022	The Airport Authority of India releases a tender for appointing a technical consultant for preparing a DPR for the development of Green field International Airport at Chingen in GNI	Publicly available
26.	24/25.03.2022	293 rd meeting of the EAC Infra-I	Publicly available
27.	09.05.2022	Project proponent submits Additional Details Sought in the 293 rd EAC meeting held on 24th March,2022	Publicly available
28.	25.05.2022	<u>297th meeting of the EAC Infra-I: It is declared for the first time that the airport will be a joint military-civil facility controlled by the Indian Navy; "Ministry of Home Affairs vide letter no. 15020/10/2022 dated 30th March, 2022 mentioned that the Greenfield International Airport proposed at Gandhi Nagar-Shastri Nagar area of Great Nicobar Island as part of the Integrated development of the Island, will be developed as a</u>	Publicly available

		<u>joint military-civil, dual-use airport, under the operational control of Indian Navy. This project is for Defense, Strategic, National Security, and Public Purpose. In view of this, the portion of deliberation made for Airport component may not be made public due its strategic nature."</u>	
29.	08.06.2022	Syama Prasad Mookerjee Port is made the nodal agency undertaking development of proposed port project	Publicly available
30.	19.08.2022	Project proponent responds to the Additional Details Sought in the 297th EAC meeting held on 24th May	Publicly available
31.	22.08.2022-23.08.2022	306 th meeting of EAC Infra-I: EAC recommended the project for approval	Publicly available
32.	27.10.2022	MoEF&CC grants Forest Clearance to the Great Nicobar Holistic Development project	Publicly available
33.	04.11.2022	<u>MoEF&CC grants Environmental Clearance and CRZ clearance to the Airport – File No.:10/17/2021-IA.III addressed to ANIIDCO. Clearance states – "This project is for Defence, Strategic, National Security, and Public Purpose to be implemented by M/s Andaman and Nicobar Islands Integrated Development Corporation Ltd".</u>	Publicly available
34.	11.11.2022	MoEF&CC grants Environmental and CRZ clearance for the Township, Port and Power plant.	Publicly available Note: Clearance only for Township, Port and power plant.

35.	December 2022	Appeal No. 32 of 2022 filed within limitation challenging the EC dated 11.11.2022.	Publicly available
36.	22.02.2023	<p>MoEF&CC filed counter affidavit in Appeal No. 32 of 2022. At para 9, even they contended that only the airport was "<i>Defence, Strategic, National Security, and Public Purpose</i>".</p> <p>9. It is pertinent to note that the Ministry of Home Affairs vide letter dated 30.03.2022, communicated to the answering Respondent that the Greenfield International Airport proposed at Gandhi Nagar-Shastri Nagar area of Great Nicobar Island as part of the Integrated development of the Island, will be developed as a joint military-civil, dual-use airport, under the operational control of Indian Navy. This project will be for Defence, Strategic, National Security, and Public Purpose and therefore, the portion of deliberation made for Airport component may be dealt with accordingly as a project of strategic nature"</p>	<p>Publicly available</p> <p>NO CLAIM that the port, tourism township and power plant are "<i>Defence, Strategic, National Security, and Public Purpose</i>".</p>
37.	03.04.2023	Judgment of this Hon'ble Tribunal in Appeal No. 29 to 32 of 2022, directing "Revisit" of the clearance as "some unanswered deficiencies" were there. The Tribunal constituted the HPC and	The judgement is publicly available.

		also stated three issues by way of instance.	
38.	13.04.2023	OM issued by MoEF & CC issuing ToR for HPC and nominating members.	Publicly available
39.	09.07.2023	The Applicant herein addressed a representation to the 1 st Respondent and members of the HPC pointing out that the Office Memorandum setting out the terms of reference of the HPC was contrary to the findings of the Hon'ble Tribunal vide judgement dated 03.04.2023.	No reply received from the MoEF&CC
40.	05.09.2023	Applicant herein once again sent a representation requesting that the respondent hear the Applicant herein and take necessary measures to comply with the judgement of the Hon'ble Tribunal.	No reply received from the MoEF&CC
41.	24.04.2024	OA No. 95 of 2024 filed seeking directions to the 1 st respondent to re-visit the environmental clearance dated 11.11.2022 as directed in its judgement dated 03.04.2023 along with interim relief seeking production of minutes of the HPC, the terms of reference of the HPC, report submitted by the HPC and orders passed on the representations of the Applicant and final orders passed by the Respondent ministry if any.	

42.	24.04.2024	OA No. 93 of 2024 filed seeking a direction to the 1 st Respondent to exclude and delete the following admitted extents of ICRZ-IA areas from the project of the 2 nd respondent ANIIDCO	
43.	19.09.2024	MoEF&CC filed counter affidavit before this Hon'ble Tribunal (notarised on 18.10.2024 and filed on 21.10.2024), for the first time stating at para 24 that " <i>the report of the HPC is of strategic and national importance and has confidential and privileged information and has therefore been categorized accordingly by competent authority.</i> "	MoEF in this counter affidavit claims that the HPC report " <i>is of strategic and national importance and has confidential and privileged information</i> " and " <i>has therefore been categorized accordingly by competent authority.</i> " HPC REPORT NOT PLACED IN PUBLIC DOMAIN.
44.	05.07.2025	MoEF&CC filed additional affidavit stating at para 9 that (it) " <i>has forwarded the HPC report to the project proponent and to the chief secretary, Andaman and Nicobar Administration for taking appropriate action in the matter. The OM concluded that, the</i>	HPC report not filed. HPC report however sent to project proponent etc.

		<p><i>conclusions and recommendations of this report need to be taken note of by the project proponent for implementation together with the conditions mentioned in the Environmental clearance dated 11.11.2022'</i></p>	<p>States at para 12 "the report of the HPC along with relevant documents has been brought In a sealed envelope for the kind perusal of this Hon'ble tribunal"</p>
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Denial of natural justice and the right to a fair trial – this Hon'ble Tribunal ought not to rely on the HPC report submitted in a sealed cover

11. It is submitted that the Hon'ble Supreme Court in a series of judgements deprecated the practice of sealed cover jurisprudence and has held that the same is contrary to the established principles of natural justice and fair hearing.

12. In the case of **Manohar Lal Sharma vs Union of India & Ors.** ((2023) 11 SCC 401), it was held that:

"53. It is on the strength of the above exception carved out that the Respondent Union of India has justified its non-submission of a detailed counter affidavit, viz., by citing security concerns. It is a settled position of law that in matters pertaining to national security, the scope of judicial review is limited. However, this does not mean that the State gets a free pass every time the spectre of "national security" is raised. National security cannot be the

bugbear that the judiciary shies away from, by virtue of its mere mentioning. Although this Court should be circumspect in encroaching upon the domain of national security, no omnibus prohibition can be called for against judicial review.

54. Of course, the Respondent Union of India may decline to provide information when constitutional considerations exist, such as those pertaining to the security of the State, or when there is a specific immunity under a specific statute. However, it is incumbent on the State to not only specifically plead such constitutional concern or statutory immunity but they must also prove and justify the same in Court on affidavit. The Respondent Union of India must necessarily plead and prove the facts which indicate that the information sought must be kept secret as their divulgence would affect national security concerns. They must justify the stand that they take before a Court. The mere invocation of national security by the State does not render the Court a mute spectator.

55. In the present matter, as we have indicated above, the Petitioners have placed on record certain material that prima facie merits consideration by this Court. There has been no specific denial of any of the facts averred by the Petitioners by the Respondent Union of India. There has only been an omnibus and vague denial in the "limited affidavit" filed by the Respondent Union of India, which cannot be sufficient. In such circumstances, we have no option but to accept the prima facie case made out by the Petitioners to examine the allegations made."

13. In the case of **Amit Kumar Sharma vs Union of India**, ((2023) 20 SCC 486), the Hon'ble Supreme Court held that:

"25. The elementary principle of law is that all material which is relied upon by either party in the course of a judicial proceeding must be disclosed. Even if the adjudicating authority does not rely on the material while arriving at a finding, information that is relevant to the dispute, which would with 'reasonable probability' influence the decision of the authority must be disclosed. A one-sided submission of material which forms the subject matter of adjudication to the exclusion of the other party causes a serious violation of natural justice. In the present case, this has resulted in grave prejudice to officers whose careers are directly affected as a consequence.

26. The non-disclosure of relevant material to the affected party and its disclosure in a sealed-cover to the adjudicating authority (in this case the AFT) sets a dangerous precedent. The disclosure of relevant material to the adjudicating authority in a sealed cover makes the process of adjudication vague and opaque. The disclosure in a sealed cover perpetuates two problems. Firstly, it denies the aggrieved party their legal right to effectively challenge an order since the adjudication of issues has proceeded on the basis of unshared material provided in a sealed cover. The adjudicating authority while relying on material furnished in the sealed cover arrives at a finding which is then effectively placed beyond the reach of challenge. Secondly, it perpetuates a culture of opaqueness and secrecy. It bestows absolute power in the hands

of the adjudicating authority. It also tilts the balance of power in a litigation in favour of a dominant party which has control over information. Most often than not this is the state. A judicial order accompanied by reasons is the hallmark of the justice system. It espouses the rule of law. However, the sealed cover practice places the process by which the decision is arrived beyond scrutiny. The sealed cover procedure affects the functioning of the justice delivery system both at an individual case-to case level and at an institutional level. However, this is not to say that all information must be disclosed in the public. Illustratively, sensitive information affecting the privacy of individuals such as the identity of a sexual harassment victim cannot be disclosed. The measure of nondisclosure of sensitive information in exceptional circumstances must be proportionate to the purpose that the non-disclosure seeks to serve. The exceptions should not, however, become the norm."

14. In **S.P. Gupta vs UOI**, (AIR 1982 SC 149), a seven-judge bench of the Hon'ble Supreme court held that:

"78. Now as we have already pointed out above, it is for the court to decide the claim for immunity against disclosure made under Section 123 by weighing the competing aspects of public interest and deciding which, in the particular case before the court, predominates, the court is not bound by the affidavit made by the minister or the secretary because the minister or the secretary would be concerned primarily and almost exclusively with the assertion of the public interest which would be injured by the disclosure of the document and he would have very little concern,

if at all, with the public interest in the fair administration of justice and in fact he would not be in a position to appreciate and assess the relative importance of the two competing public interest so as to be able to judge as to which in the particular case before the Court should be allowed to prevent.....

...

80. Bearing these observations in mind, we must now proceed to examine the claim for immunity against disclosure in respect of the correspondence between the Law Minister, the Chief Justice of Delhi High Court and the Chief Justice of India in regard to non-appointment of S.N. Kumar. It was a class immunity which was claimed in respect of this correspondence and the protected class was said to consist of correspondence between the Law Minister or other high level functionary of the Central Government the Chief Justice of the High Court, the Chief Minister or the Law Minister of the State Government and the Chief Justice of India in regard to appointment or non-appointment of a High Court Judge or a Supreme Court Judge or transfer of a High Court Judge and the nothings made by these constitutional functionaries in that behalf. The argument was that the documents belonging to this class are immune from disclosure, irrespective of their contents, because it is in national interest and also necessary for maintaining the dignity of the judiciary and preserving the confidence of the people in the integrity of the judicial process that documents belonging to this class should be withheld from disclosure. Now there are a few prefatory remarks we would like to make before embarking upon an examination of this argument. In the first place, it is necessary

to bear in mind that the burden of establishing a claim for class immunity is very heavy on the person making the claim. Lori Reid pointed out in Eeg. v. Lewes Justices, Ex Parte Home Secy. 1973 AC 388 (supra) that the speeches in Conway v. Rimmer 1968 AC 910 (supra) made it clear that there is a heavy burden of proof on any authority which makes a claim for class immunity. The claim for class immunity is an extraordinary claim because it is based not upon the contents of the document in question but upon its membership of a class whatever be its contents and therefore the court should be very slow in upholding such a broad claim which is contradictory, if not destructive, of the concept of open government. Secondly, it is true, as pointed out earlier, that classes of documents to which the immunity may be accorded are not closed and in the life of a fast changing society rapidly growing and developing under the impact of vast scientific and technological advances new class or classes of documents may come into existence to which the immunity may have to be granted in public interest, but that should only be as a highly exceptional measure. It is only under the severest compulsion of the requirement of public interest that the court may extend the immunity to any other class or classes of documents and in the context of our commitment to an open government with the concomitant right of the citizen to know what is happening in the government, the court should be reluctant to expand the classes of documents to which immunity may be granted. The court must on the contrary move in the direction of attenuating the protected class or classes of documents, because by and large secrecy is the badge of an

authoritarian government. We may point out once again, though it be at the cost of repetition, that even in regard to documents belonging to the class which has been judicially recognised as entitled to immunity, the law must now be taken to be well-settled that the immunity is not absolute. The public interest in nondisclosure of a document belonging to this class may in an appropriate case yield to the public interest that in the administration of justice, the court should have the fullest possible access to every relevant document and in that event, the document would be liable to be disclosed even though it belongs to the protected class. The executive cannot by merely invoking the scriptural formula of class immunity defeat the cause of justice by withholding a document which is essential to do justice between the parties, for otherwise the doctrine of class immunity would become a frightful weapon in the hands of the executive for burying its mistakes, covering up inefficiencies and sometimes even hiding its corruption. Every claim for immunity In respect of a document, whatever be the ground on which the immunity is claimed and whatever be the nature of the document, must stand scrutiny of the court with reference to one and only one test, namely, what does public interest require— disclosure or non-disclosure. The doctrine of class immunity is therefore no longer impregnable; it does not any more deny judicial scrutiny, it is no more a mantra to which the court pays obeisance, Whenever class immunity is claimed in respect of a document, the Court has to weigh in the scales the one aspect of public interest which requires that the document should not be disclosed against the other that the court

in performing its functions should not be denied access to relevant document and decide which way the balance lies. And this exercise has to be performed in the context of the democratic ideal of an open government.”

15. In **Madhyamam Broadcasting Ltd v Union of India**, (2023 13 SCC 401), it was held that:

"195. In view of the discussion above, the appeals are allowed and the order of the MIB dated 31 January 2022 and the judgment of the High Court dated 2 March 2022 are set aside. We summarise our findings below:

"195.1. Security clearance is one of the conditions required to be fulfilled for renewal of permission under Uplinking and Downlinking Guidelines;

195.2. The challenge to the order of the MIB and judgment of the High Court on procedural grounds is allowed for the following reasons:

195.2.1. The principles of natural justice were constitutionalised by the judgement of this Court in Maneka Gandhi (supra). The effect is that the courts have recognised that there is an inherent value in securing compliance with the principles of natural justice independent of the outcome of the case. Actions which violate procedural guarantees can be struck down even if non-compliance does not prejudice the outcome of the case. The core of the principles of natural justice breathes reasonableness into procedure. The burden is on the claimant to prove that the

procedure followed infringes upon the core of procedural guarantees;

195.2.2. The appellants have proved that MBL's right to a fair hearing has been infringed by the unreasoned order of the MIB dated 31 January 2022, and the non-disclosure of relevant material to the appellants, and its disclosure solely to the court. The burden then shifts on the respondents to prove that the procedure that was followed was reasonable and in compliance with the requirements of Articles 14 and 21 of the Constitution. The standard of proportionality has been used to test the reasonableness of the procedure.

195.2.3. The judgments of this court in Ex-Armyemen's Protection Services (supra) and Digi Cable Network (supra) held that the principles of natural justice may be excluded when on the facts of the case, national security concerns outweigh the duty of fairness;

195.2.4. Though confidentiality and national security are legitimate aims for the purpose of limiting procedural guarantees, the state has been unable to prove that these considerations arise in the present factual scenario. A blanket immunity from disclosure of all investigative reports cannot be granted;

195.2.5. The validity of the claim of involvement of national security considerations must be assessed on the test of (i) whether there is material to conclude that the non-disclosure of information is in the interest of national security; and (ii) whether a reasonable prudent person would draw the same inference from the material on record;

195.2.6. Even assuming that non-disclosure is in the interest of confidentiality and national security, the means adopted by the

respondents do not satisfy the other prongs of the proportionality standard. The non-

disclosure of a summary of the reasons for the denial of security clearance to MBL, which constitutes the core irreducible minimum of procedural guarantees, does not satisfy the suitability prong;

195.2.7. The courts assess the validity of public interest immunity claims, which address the same harms as the sealed cover procedure, based on the structured proportionality standard. The power of courts to secure material in a sealed cover when contradistinguished with the scope of assessment of public interest immunity claims is rather unguided and ad-hoc. The standard of review that is used by the courts in public interest immunity claims and the lack of such a standard in sealed cover proceedings to protect procedural safeguards indicates that public interest immunity claims constitute less restrictive means. Additionally, while public interest immunity claims conceivably impact the principles of natural justice, sealed cover proceedings infringe the principles natural justice and open justice;

195.2.8. The courts could take the course of redacting confidential portions of the document and providing a summary of the contents of the document to fairly exclude materials after a successful public interest immunity claim; and

195.3. The challenge to the order of MIB is allowed on substantive grounds. The non-renewal of permission to operate a media channel is a restriction on the freedom of the press which can only be reasonably restricted on the grounds stipulated in Article 19(2) of the Constitution. The reasons for denying a security clearance to

MBL, that is, its alleged anti- establishment stance and the alleged link of the shareholders to JEI-H, are not legitimate purposes for the restriction of the right of freedom of speech protected under Article 19(1)(a) of the Constitution. In any event, there was no material to demonstrate any link of the shareholders, as was alleged."

16. In the instant case, there is no ground or reason furnished by the MoEF&CC to support their contention that the HPC report is of "*strategic and national importance and has confidential and privileged information.*", save the bald statement in the affidavit as stated above. As held by the Hon'ble Supreme Court, the MoEF&CC can claim no such immunity at its whims and fancies. In the instant case, as demonstrated by the materials available in public domain and the peculiar, convenient moment when the claim of confidentiality is made to escape judicial scrutiny and a fair trial, makes it clear that the claim of the respondent is without merit and they are not entitled to arbitrarily deny production / publication of the HPC report and justify providing this Hon'ble Tribunal a copy in a sealed cover.

17. The MoEF&CC has failed the test laid down by the Hon'ble Supreme Court to establish that non-disclosure is in the interest of national security and a reasonable prudent person will draw the same inference from the material on record. This Hon'ble Tribunal cannot take the HPC report furnished in a sealed cover on record and render any findings in the present proceedings on the basis of the report unless a copy is furnished to the applicant and an opportunity is provided to respond to the same. If this is not done, it would result in serious prejudice, make the process of

adjudication vague and opaque. It would result in a denial of a legal right to effectively challenge any order since the adjudication has proceeded on the basis of unshared material provided in a sealed cover, tilt the balance of power in the litigation in favour of the respondent and render the applicant's right to a fair, impartial adjudication otiose.

18. It is submitted that it is trite that the mere invocation of the terms "national security" by the MoEF&CC does not render Courts mute spectators, as held by the Hon'ble Supreme Court. The MoEF & CC ought to "necessarily plead and prove the facts which indicate that the information sought must be kept secret as their divulgence would affect national security concerns. They must justify the stand they take before a Court." (Manohar Lal Sharma vs Union of India). In the instant case, no such attempt has even been made and the MoEF&CC cannot now make such an attempt to improve their case.
19. However, though the onus is not on the person seeking disclosure to demonstrate that the disclosure is in public interest and will not affect national security, in the present case, the table presented above shows that information about the project, the clearance process, studies submitted, appraisal by authorities has always been in public domain and transparent and only when illegality was made evident, the MoEF & CC resorted to arbitrarily claiming that the HPC report revisiting the clearance process cannot be disclosed. There is no public interest or national interest in keeping the HPC report a secret.
20. The subject case concerns the protection of one of the most biodiverse, sensitive, untouched ecosystems in the world. The case concerns

ensuring legal compliance of applicable laws with an aim to safeguard this fragile ecosystem and protecting the people's right to clean environment and participating in environmental decision making. It is an enquiry into whether the MoEF&CC, which is entrusted with the task of protection of the environment and enforcement of the law has discharged its duties. It is an enquiry into whether prohibitions in law have been respected and turtle nesting grounds, corals, megapode nesting grounds and other ecologically sensitive areas are protected and extended the protection they are afforded by the law. The island is home to the Shompen, an uncontacted tribe and is a biodiversity hotspot. An enquiry into these issues is in great public interest. Ensuring the environmental rule of law is of greatest public interest and the inalienable right of people to participate in environmental decision making.

21. It is submitted that even embarking on an exercise to determine the considerations the HPC ought to have reasonably undertaken in light of the ToR it was tasked with and the conclusions it has arrived at as stated in the Counter affidavits, shows that absolutely no enquiry or determination of issues of national security could be involved.

22. The HPC was tasked with three ToR framed by the MoEF&CC.

5. The Terms of Reference of the Committee shall be as follows :

- i. To review the proposal related to coral translocation submitted by the project proponent and regulatory provisions under ICRZ Notification, 2019 with respect to corals.
- ii. To review the data collection requirement for the project as per the EIA Notifictaion, 2006.
- iii. To review CRZ boundaries of the port project with respect to ICRZ Notification, 2019.

23. To comply with the 1st ToR, HPC would be required

- a. to take note of the admitted coral translocation plan of the project proponent. (This report is already in public domain and permissions are also available in public domain)
- b. to take note of the provisions of the ICRZ 2019 with respect to corals.
- c. Review the proposal to see if it is legally permissible i.e., whether the ICRZ Notification 2019 permits the destruction of corals or the translocation of corals to facilitate establishment of a port and other activities.
- d. Conclusion of HPC: para 7 (a) of MoEF&CC affidavit dated 05.07.2025, HPC reviewed the coral translocation plan and directed its implementation. No discussion of legality / permissibility.
- e. There is not a single aspect of this exercise that would require consideration of confidential information or decisions as the information is available in public domain.

24. To comply with the 2nd ToR, HPC would be required

- f. To look at the EIA reports and other studies to ascertain the period of data collection. (All reports are already in public domain).
- g. Ascertain the requirement for period and manner of data collection under the EIA Notification, 2006 and the ICRZ Notification, 2019, Sector specific EIA manual for ports and the OM dated 3.11.2009 specifically dealing with siting of ports and harbors inter alia in Andaman and Nicobar Islands.

- h. Conclusion of HPC: At para 7(b) of the MoEF&CC's additional affidavit dated 05.07.2025, the MoEF&CC states that the HPC with the assistance of EAC Infra 1 concluded that the EIA Notification, 2006 does not prescribe either rapid or comprehensive EIA studies, and that the EIA guidance manual for ports and harbors mentions "One season data should be monitored as per CPCB norms."
- i. The HPC consulted EAC infra – I and has based its conclusion on the EIA Notification, 2006 and the EIA guidance manual published by the MoEF&CC. Both these documents are in public domain.
- j. There is not a single aspect of this exercise that would require consideration of confidential information or decisions as the information is available in public domain.

25. To comply with the 3rd ToR, HPC would be required

- k. To obtain the boundaries of the proposed port at Galathea bay.
- l. Compare the area with reports available on the CZMP, report on delineation of HTL / LTL, the CZMP and the overwhelming publication and evidence of turtle nesting, megapode bird nesting, corals, mangroves etc.
- m. **HPC conclusion** : It is seen from para 7(c) of the affidavit dated 05.07.2025 that the 1st Respondent has claimed that the HPC has concluded that no part of the project area falls under CRZ IA since the National Centre for Sustainable Coastal Management (NCSCM) visited the project site and nearby areas on 17-18 June, 2023 and concluded that "no part of the project fell in CRZ IA."

- n. The layout of the port and its location, the port boundaries etc. are already in public domain and available in the EIA report and several subsequent publications.
 - o. The documents and evidence to ascertain presence of ecologically sensitive areas under ICRZ 2019 like Mangroves, Turtle nesting grounds, nesting grounds of birds, corals etc in Galathea bay is also available in public domain.
 - p. What NCSCM saw in its alleged two day visit on 17-18 June, 2023 is and cannot be top secret – as no secret project has been constructed at the Galathea Bay yet and they could have only reported their observations and the basis for their conclusions.
 - q. There is not a single aspect of this exercise that would require consideration of confidential information or decisions as the information is available in public domain.
26. Therefore, the HPC was not tasked with carrying out any top-secret exercise by this Hon'ble Court, nor by the ToR specified by the MoEF & CC. The claims of the MoEF&CC are without merit and are only a convenient attempt to escape scrutiny of their actions, which are illegal, as evident by an examination of the conclusions the HPC stated by the MoEF& CC on affidavit.
27. The balance of convenience is in favour of the applicant and allowing the application as prayed for. Since this Hon'ble Tribunal received the report at the end of the hearing on 30.10.2025 and it is not known whether copies of the report were retained by the Hon'ble Tribunal, the interest of justice requires that this Hon'ble Tribunal eschew all consideration of the sealed



cover documents from the adjudication of these proceedings and restricts its consideration only to the pleadings on record as served and filed by the respective parties. The applicant reserves the right to file a more detailed application/affidavit if necessary and if advised so.

PRAYER:

It is therefore prayed that this Hon'ble Tribunal be pleased to

- A. Expunge the report of the High Powered Committee which was circulated by the 1st respondent to the Hon'ble Tribunal in a sealed cover during the course of the hearing of the applications on 30.10.2025 without providing a copy to the Applicants, from the record of the present proceedings in the interest of principles of natural justice and limit its consideration to the pleadings on record filed by the respective parties and thus render justice.
- B. Issue such further order or orders as this Hon'ble Tribunal deems fit and thus render justice.

Y (MS 1421/2025)

Counsel for the Applicant/ Applicant

Ashish Kothari
x

Applicant/ Applicant

VERIFICATION

I, Ashish Kothari, the applicant herein, do hereby verify that the contents in the above paragraphs are true to the best of my knowledge and based on legal advice and that I have not suppressed any material fact.

Date : 18/11/2025

Place : Pune

NOTED AND REGISTERED
SERIAL NUMBER.....1018/2025
Date.....18 NOV 2025.....

Ashish Kothari
x

Applicant

BEFORE ME

Shaur
ADV. SHANUR SHAKIL SHAIKH
NOTARY GOVT. OF INDIA
PUNE DIST.
REG.NO. 30107





~~20~~

Raghunandan Sriram <raghunandan.sriram.adv@gmail.com>

Service of two (2) Interlocutory Applications in O.A. No. 93 of 2024 (EZ)

1 message

Raghunandan Sriram <raghunandan.sriram.adv@gmail.com> 19 November 2025 at 15:21
To: legumjure@gmail.com, lmc.moefcc@gov.in, aniidco@gmail.com, andaman@legaloptions.in, office@rschambers.net, suhasini@rschambers.net, rashmibothra24@gmail.com, Amrita Pandey <amritalegal@gmail.com>
Cc: Poongkhulali B <poongkhulali.b@gmail.com>, Yogeshwaran Amarneethi <yogeshwaranadv@gmail.com>

Respected Sir/Ma'am,

Please find attached two (2) Interlocutory Applications filed in the captioned Original Application. Kindly treat this email as service of the said I.A.s on the Respondents.

Regards,
Raghunandan Sriram
On behalf of Yogeshwaran A
Counsel for Applicant

--
Raghunandan Sriram
Advocate
Chennai

2 attachments

 **IA in OA 93_2 final.pdf**
659K

 **IA in OA 93_1 final.pdf**
612K