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BEFORE THE NATIONAL GREEN TRIBUNAL (EZ), KOLKATA

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

O.A. No. 93 & 95 of 2024 & M.A. No. 23 of 2024 (EZ)

Ashish Kothari

....Applicant

v.

MoEF&CC and Anr.

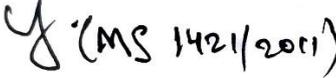
...Respondents

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Dated at Chennai on this the 30th day of November, 2025

Through

 (MS 1421/2025)

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O.A. No. 93 & 95 of 2024 & M.A. No. 23 of 2024 (EZ)**

Ashish Kothari

....Applicant

Vs.

MoEF&CC and Anr.

...Respondents

**SUPPLEMENTARY WRITTEN SUBMISSIONS FILED BY THE APPLICANT IN
LIGHT OF ORDER DATED 21.11.2025** (uploaded on 27.11.2025)

Synopsis

- This Hon'ble Tribunal has held vide order dated 21.11.2025 that "*...we do not intend to go beyond the pleadings and rely upon any part of the report of the High-Powered Committee which is not on record.*"
- No part of the HPC report has been produced before this Hon'ble Tribunal by the respondent MoEF&CC.
- Only reference to findings / conclusions of the HPC are stated in para 20 (a-c) of MoEF&CC's counter affidavit dated 19.09.2024 (page 205) and para 7 (a-c) (page 967) of additional affidavit dated 05.07.2025. Please see page 1700 for detailed submissions qua each stated conclusion.
- On the issue of ICRZ IA areas within project site i.e. where port is located (Galathea bay) etc, in para 20 (c) of counter affidavit dated 19.09.2024 and para 7 (a-c) of additional affidavit dated 05.07.2025, conclusion is based on a report of the NCSCM (visit on 17-18 June, 2023) which concluded that " .. no part of the project area fell under CRZ IA".
- However, a copy of this NCSCM report has not been filed before this Hon'ble Tribunal. The statement in the affidavit qua the report of NCSCM, unsubstantiated by any document in support of such a statement is not evidence and does not conclusively prove any fact. Mere pleadings of a party cannot be treated as substitute for proof. (*Manager, Reserve Bank of India, Bangalore vs. S. Mani, (2005) 5 SCC 100*)
- Government's own records, CZMP, project proponent's own reports, admissions have been produced to show that Galathea bay is a turtle nesting ground, megapode nesting ground and has corals etc. thus protected as CRZ IA. It is submitted that the pleadings of the respondent do not demonstrate that the EC has been revisited as directed by this Hon'ble Tribunal.

It is respectfully submitted on behalf of the Applicant as follows:

1. This Hon'ble Tribunal vide order dated 21.11.2025 (uploaded on the website on 27.11.2025), allowed IA No.108 of 2025 in OA No. 95 of 2025 and IA No. 110 of 2025 in OA No. 93 of 2025 and held as follows,

"Hence, considering the judgments relied upon by Counsel for the Applicant, we do not intend to go beyond the pleadings and rely upon any part of the report of the High-Powered Committee which is not on record. we allow IA No. 108/2025/EZ and IA No. 110/2025/EZ. Consequently, we reject the prayer made in IA No. 109/2025/EZ and IA No. 111/2025/EZ."

2. Detailed written submissions on behalf of the Applicant were filed on 24.11.2025 (page 1685). In light of the order of this Hon'ble Tribunal dated 21.11.2025 (uploaded on 27.11.2025), the following supplementary submissions are filed for the consideration of this Hon'ble Tribunal.
3. The pleadings filed in the present applications have been tabulated at para 5 of the written submissions filed on 24.11.2025 (page 1693).

Pleadings of MoEF&CC

4. MoEF&CC has filed two affidavits with the following annexures:
 - a. Counter affidavit dated 19.09.2024 along with the following annexures (Pg 196)
 - i. Annexure -I – EC dated 11.11.2022
 - ii. Annexure II – Copy of Counter affidavit filed by MoEF&CC in Appeal 29-32 of 2022 dated 22.02.2023
 - iii. Annexure III – Order dated 03.04.2023
 - iv. Annexure IV – OM dated 13.04.2023 constituting the HPC
 - v. Annexure V – Abstract of EIA Guidance Manual for Ports and Harbours dated 05.05.2010

- b. Additional Affidavit dated 05.07.2025 along with the following annexures (Pg 962)
- i. Annexure R1/1 – OM dated 13.04.2023
 - ii. Annexure R1/2 – OM dated 17.08.2023
 - iii. Annexure R1/3 – order dated 02.01.2024 constituting overarching committee and proceedings
5. The MoEF&CC contends that they have complied with the judgment of this Hon'ble Tribunal dated 03.04.2023 and have "revisited" the EC as directed. In order to ascertain the veracity of this claim and whether the stated conclusions of the HPC are legally and factually correct , it is necessary to take note of the assertions and contents of the pleadings on record. The onus is on the Respondents to demonstrate how they carried out the exercise of revisiting the EC, *AFTER* judgement dated 03.04.2023.
6. ONLY pleadings in the affidavit dated 19.09.2024 pertaining to events that transpired subsequent to the judgment of this Hon'ble Tribunal i.e., 03.04.2023 are relevant to determining the lis before this Hon'ble Tribunal i.e., whether the EC was revisited as directed and whether the project is being sited on CRZ IA areas.

Counter Affidavit dated 19.09.2024

Para No.	Contents	Comments
1-5	Deponent states that the subject matters are connected and a "combined" counter affidavit is filed	
6	Generic, bald denial	
7 – 9	Paraphrases the reliefs sought in OA Nos. 93, 95 of 2024 and	

	MA No. 23 of 2024 pending before this Hon'ble Tribunal	
10	States that EC & CRZ clearance dated 11.11.2022 and Stage I FC dated 27.10.2022 for the project	
11 and 21	<p><i>"That the answering Respondent, while granting the CRZ Clearance, thoroughly ensured that the proposed construction project is permissible under the Island Coastal Regulation Zone Notification, 2019 (hereinafter referred to as the "ICRZ Notification, 2019) and no part of the project was falling under the prohibited area of ICRZ-IA."</i></p> <p>In para 21, refers to the condition in EC dated 11.11.2022 and the counter filed in Appeal Nos. 29-32 of 2022.</p>	<p>In the judgment dated 03.04.2023 at para 24, the tribunal took notice of the revised recommendation of A&NCZMA dated 08.07.2022 (based on which EC & CRZ clearance dated 11.11.2022 was issued) which expressly stated the extents of CRZ IA areas included in the project area and found at para 33 that a portion of the port was in CRZ IA area where port is prohibited.</p> <p>Thus, the contention in para 11 is false and incorrect.</p> <p>Pertains to events prior to the judgment dated 03.04.2023. Not relevant for the present lis.</p>
12	Refers to the Ministry of Home Affairs letter dated 15.09.2022 to state that the <i>"..the Environmental and CRZ Clearance for the airport</i>	Pertains to the MHA letter concerning the clearances for the airport. Not the entire project.

	<i>component as well as the Stage- I Clearance have not been disclosed in accordance with Clause 8(1) (a) of the Right to Information Act, 2005, vide which the answering Respondent is exempted from disclosure of information."</i>	Pertains to events prior to the judgment dated 03.04.2023. Not relevant for the present lis.
13-14	Mentions the appeals filed in Appeal Nos. 29-32 of 2022, that counter affidavit was filed and the judgment of the Hon'ble Tribunal	Pertains to events prior to the judgment dated 03.04.2023. Not relevant for the present lis.
15-18	Extracts from judgment dated 03.04.2023 and states that HPC was constituted and OM dated 13.04.2023 is annexed as Annexure IV.	
19	Lists the 3 terms of reference issued to the HPC	
20	Mentions that the HPC held 3 meetings and states that " <i>The course of action adopted by the HPC in respect of the aforementioned Terms of Reference and findings of the Committee are as follows:-" and from 20 (a) to 20 (c)</i>	This is the only paragraph where the MoEF&CC has stated the course of action adopted and the findings of the HPC. <i>Whether the MoEF&CC and HPC complied with the judgment can only be tested based on consideration of the averments in paras 19 and</i>

		<p><i>20 of the affidavit of MoEF&CC.</i></p> <p>Elaborate submissions have been made in the written submissions page 1700 to 1728 as to why these stated findings are incorrect and violative of the law.</p>
22-23	MoEF&CC states that they have complied with the judgment of the Hon'ble Tribunal.	
24	States that the report of the HPC is of " <i>strategic, defence and national importance and has confidential and privileged information and has therefore, been categorized accordingly by the competent authority.</i> "	
25-28	States that the applications deserve to be dismissed as " <i>..based on the findings and recommendations made by the HPC, the answering Respondent respectfully asserts that the Order of the NGT has also been complied with, both in letter and spirit.</i> "	Whether the findings of the HPC are legal, valid and whether the project has been revised as directed by this Hon'ble Tribunal is to be tested based on the contents of para 20 (a) to 20 (c) above.

7. Therefore, only para 20 of the affidavit dated 19.09.2024 contains assertions on the course of action adopted by the HPC and the findings of the committee. This is the only relevant assertion in the affidavit that has a bearing on the issues raised in the present lis.

8. Of the 5 annexures filed along with the affidavit dated 19.09.2024, only annexure IV - the OM constituting the HPC (page 554) relates to events post the judgment dated 03.04.2023.

9. Annexure V is referred to in para 20 (b) to justify that only one season data is required by the EIA guidance manual for ports. Elaborate submissions on why this contention is wrong and that the EIA manual itself requires multi-season data has been stated in page 1703 of the written submissions filed on 24.11.2025.

Additional Affidavit dated 19.09.2024 (page 964 of file)

Para No.	Contents	Comments
1 - 3	States that the affidavit is filed in compliance with the order of this Hon'ble Tribunal dated 24.03.2025.	
4	Extracts para 33 of the judgment dated 03.04.2023	
5	Mentions that HPC was constituted in compliance and once again OM dated 13.04.2023 annexed as annexure R1/1.	
6	Mentions that the HPC held 3 meetings	

7	States that " <i>.. the HPC .. based on the mandate of the OM dated 13.04.2023 has re-looked the EC</i> " and proceeds to state how these issues were addressed from para (a) to (c)	This is the only paragraph where the conclusions of the HPC have been stated. This is similar to the contents of para 20 (a) to 20 (c). This is the only relevant paragraph to ascertain whether the respondent has complied with the judgment dated 03.04.2023 and examined the EC and whether CRZ IA areas have been excluded as directed by this Hon'ble Tribunal.
8	States that the HPC deliberated on issues relating to implementation of the EC / CRZ clearance, committees etc.	This has no relevance to the "revisit" directed by the Hon'ble Tribunal.
9	Refers to OM dated 17.08.2023 communicating the report of the HPC to the project proponent and copy of OM marked as annexure R1/2.	This has no relevance to the "revisit" directed by the Hon'ble Tribunal.
10	Mentions that an overarching committee was constituted on 02.01.2024. OM annexed as Annexure R1/3.	This has no relevance to the "revisit" directed by the Hon'ble Tribunal. Committee again consists of the same project proponent and authorities who granted clearance.
11	Repeats the above contentions	

12	States that the report of the HPC has been brought in a sealed envelope for the perusal of the Hon'ble Tribunal.	This entire attempt is illegal and the report ought not to have even been circulated to this Hon'ble Tribunal on 30.10.2025.
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Statement on affidavit needs to be proven by production of evidence

10. The MoEF&CC's statements in para 20 (a-c) of the affidavit dated 19.09.2024 and para 7 (a-c) of the affidavit dated 05.07.2025 on the findings / conclusions of the HPC, which are cited as compliance of the directions of this Hon'ble Tribunal in the judgment dated 03.04.2023 needs to be proven by producing evidence, especially the assertion in para 20 (c) and 7 (c) respectively.

11. It is trite that pleadings are not a substitute for evidence / proof. Please see (***Manager, Reserve Bank of India, Bangalore vs. S. Mani***, (2005) 5 SCC 100). That a document which is sought to be relied upon, has to be produced is a fundamental principle. Assertions about the contents of a document are insufficient. In ***S.P Chengalvaraya Naidu Vs Jagannath*** (1994) 1 SCC 1), the Hon'ble Supreme Court has held, " A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage over the other side, then he would be guilty of playing a fraud on the Court as well as on the opposite party."

12. In the case of *Gopal Krishnaji Khetkar Vs. Mohammed Haji Latif & Others* (AIR 1968 SC 1413), the Hon'ble Supreme Court held:

"It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof."

The court cited with approval, the following passage from *Murugesam Pillai v. Manickavasaka Pandara* where Lord Shaw observed as follows:

"A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough — they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, in Their Lordships' opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition."

In the present case, MoEF&CC has miserably failed by not providing an iota of evidence to aid the adjudication of the issues in controversy, and has not even produced the NCSCM report. An affidavit is only a statement in favour of a party and is alone not sufficient evidence.

13. **Order VIII Rule IA** of the CPC casts a duty on the defendant (the MoEF&CC herein) to produce the document on which their defence is based upon. While Section 19 (1) of the NGT Act, 2010 states that this Hon'ble Tribunal is not bound by the procedure laid down by the CPC, it has the same powers as a civil court in respect of matters listed under Section 19 (4) .

14. From page 1700 to 1728 of the written submissions dated 24.11.2025, elaborate submissions have been made to show that that the HPC's conclusions are not based on facts and law but contrary to the law and evidence.

Report of NCSCM is NOT on record

15. In response to the ToR No.3 qua the location of the port in ICRZ IA area (para 20 (c) of affidavit dated 19.09.2024 and para 7 (c) of affidavit dated 05.07.2025), MoEF&CC relies solely on a report of the NCSCM (date of visit :17,18 June, 2023) to state that "no part of the project falls within CRZ IA".

16. However, a copy of this site visit report has not been filed along with the affidavit and produced before this Hon'ble Tribunal.

17. It is submitted that submissions have been made at page 1708 onwards of the written submissions dated 24.11.2025 to show that this statement that "no part of the project falls within CRZ IA" is entirely false and that Galathea bay (including the eastern flank) is marked in the CZMP as a turtle nesting ground, Megapode nesting ground, coral reefs etc., and overwhelming evidence including admission by the project proponent on these aspects has been presented along with the Government's own data / records.
18. It is submitted that in the absence of the NCSCM report which forms the basis of the MoEF&CC's assertion that "no part of the project falls within CRZ IA" , the statement on affidavit has no evidentiary value by itself. An assertion of this nature is no substitute for the production of the report which formed the basis of this assertion. This statement is liable to be rejected.
19. It is submitted that this Hon'ble Tribunal is essentially weighing the statement of the MoEF&CC that "no part of the project falls within CRZ IA" (in support of which even the NCSCM report has not been filed) on one hand, against the overwhelming evidence on record.
20. The mere assertion on affidavit without evidence cannot be countenanced. CRZ IA areas do not disappear. The respondent cannot by a stroke of its pen deny existing ecologically sensitive areas where siting of a port is prohibited.
21. ESAs under the ICRZ Notification are entitled to protection and to be protected by virtue of their existence. MoEF&CC cannot decide they do not exist because it is inconvenient. The law does not permit it. Once the presence of ESAs protected as CRZ IA is shown, the area is entitled to the full protection of the law, irrespective of the MoEF&CC's contentions.
22. MoEF&CC has not claimed that the NCSCM site visit report is confidential and a matter of national importance.

Pleadings of ANIIDCO

23. The 2nd Respondent ANIIDCO (project proponent) had filed a counter affidavit dated 23.03.2024, wherein at para 17 the "conclusion of the HPC" have been stated. In para 20, the 2nd respondent admits that CRZ IA areas are included within the project area. Para 20 is extracted below.

20. I say that pursuant to the conclusion and recommendations made by the HPC, it has been determined that there is no requirement to exclude areas classified as the CRZ IA in the approved CZMP as the General and Specific Conditions stipulated in the EC letter were self sufficient and dealt with all the environmental concerns that were raised by the Applicant herein in Appeal No. 32/2022.

24. Thus, the project proponent has clearly admitted that CRZ IA areas continue to be included within the project area and that it was "*determined that there is no requirement to exclude areas classified as CRZ IA in the approved CZMP*". It is submitted that all the proposed activities are prohibited in CRZ IA areas. Grant of clearance itself is illegal and hence these areas have to be excluded. The justification that conditions in the EC are sufficient is irrelevant as no conditions can be imposed for an activity that is prohibited in law.

25. In any case, the project proponent cannot justify the actions of the MoEF&CC and claim that the MoEF&CC has complied with the judgment, which can be tested only on the basis of the MoEF&CC's pleadings and evidence produced and this issue has been addressed above.

26. It is therefore submitted that a consideration of pleadings and documents on record, makes it evident that,

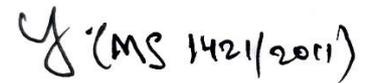
- a. The EC has not been revisited as directed by this Hon'ble Tribunal and the "deficiencies" found and acknowledged by this Hon'ble Tribunal in the judgment dated 03.04.2023 have not been rectified.
- b. That even the admitted, acknowledged ESAs protected as CRZ IA under the ICRZ Notification, 2019 have not been excluded from the project

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area *after* the judgment dated 03.04.2023 and instead the MoEF&CC now magically (and falsely) claims that no part of the project is located in CRZ IA areas.

It is therefore prayed that this Hon'ble Tribunal may allow the applications as prayed for, which will only result in the law being followed in the form of proper assessments and legal siting of projects. Upholding the rule of law is of the greatest public interest.

Dated this the 30th day of November, 2025 at Chennai

 (MS 1421/2011)

Yogeshwaran A
Counsel for the Applicant

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

Service of Supplementary Written Submissions filed by the Applicant | OA No 93 of 2024 (EZ)

1 message

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

30 November 2025 at 21:40

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>
Bcc: Iraiyanbu Prasad <iraiyanbup14@gmail.com>

Respected Sir/Ma'am,

Please find attached the Supplementary Written Submissions filed by the Applicant in light of the order dated 21.11.2025 (uploaded on 27.11.2025) in the captioned Original Application. Kindly treat this email as service of the submissions.

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

--
Raghunandan Sriram
Advocate
Chennai

 **Supplementary Written Submissions in OA 93 of 2024.pdf**
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