

JOINT COMMITTEE REPORT AS PER
THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI
ORDER DATED 14/09/2020 IN O.A.NO.28 OF 2020.

Submitted to
Hon'ble National Green Tribunal (SZ)
Chennai

December, 2020

1.0 Preamble

The Petitioner Meenava Thanthai K.R. Selvaraj Kumar, Meenavar Nala Sangam prayed to the Hon'ble National Green Tribunal that to initiate appropriate action against the 6th respondent Department of Fisheries, Government of Tamil Nadu for their illegal unauthorized constructions, reclamation and dredging activities of Tuna Fishing Harbour in CRZ Zone at S.F.No.7/4,39,40,41,42 & 49, Thiruvottriyur Kuppam Village, Ennore Taluk, Thiruvallur District, Tamil Nadu without obtaining the prior Environmental clearance as laid down under the Category "B" of Item.7(e) "Port, Harbour, Fishing Harbour" of the Schedule to the EIA Notification, 2006 and CRZ Clearance under CRZ Notification 2011."

It is alleged in the petition that Department of Fisheries, Government of Tamil Nadu is establishing a Tuna Fishing Harbour in CRZ Zone at S.F.No.7/4,39,40,41,42 &49, Thiruvottriyur Kuppam Village, Ennore Taluk, Thiruvallur District without obtaining necessary clearances and also Coastal Regulation Zone Clearances as required under EIA Notification 2006 and CRZ Notification 2011.

In order to ascertain the present status of the project, Hon'ble National Green Tribunal, Southern Zone, Chennai in its order dated 07/02/2020 vide para-9 constituted a Joint Committee comprising of District Collector, Thiruvallur, the Tamil Nadu State Pollution Control Board, State Environment Impact Assessment Authority and Senior Officer from the Tamil Nadu State Coastal Zone Management Authority to inspect the area in question and submit the factual and action taken report including any violations found before the Tribunal within a period of one month.

The Hon'ble National Green Tribunal, Southern Zone, Chennai also directed State Environment Impact Assessment Authority (SEIAA) to act as the nodal agency for co-ordination and also for providing necessary logistics for this purpose.

As per the above said directions of the Hon'ble NGT (SZ), the joint committee filed its first inspection report in March, 2020.

Subsequently, the Hon'ble National Green Tribunal in its order dated 21/07/2020, has directed that

11. "On going through the report, we find that no environment compensation has been assessed, and whether any damage has been caused to the environment / coastal area has not been mentioned. So, we feel it appropriate to direct the committee to assess the environment compensation as well and the question as to whether it has to be awarded or not can be considered by this Tribunal after hearing both sides on that aspect later.

13. The committee is directed to submit further report as directed within a period of one month from today to this Tribunal i.e, on or before 14.09.2020 through email or by e-filing at ngtszfilling@gmail.com. "

The Joint Committee has again inspected the project site of TUNA Fishing harbour by the Department of Fisheries, Government of Tamil Nadu located at Thiruvottriyur Kuppam Village, Ennore Taluk, Chennai District in the presence of Thiru Murugesan, Executive Engineer, Department of Fisheries on September 09, 2020 and submitted second inspection report during September 2020 with a following recommendation.

"In order to assess the damage caused by the Department of Fisheries, Government of Tamil Nadu to the environment / coastal area before obtaining Environmental Clearance (EC) from the SEIAA of Tamil Nadu and its consequent compensation resulting from the damages caused, the Joint committee is of the opinion that, it needs to be carried out by reputed institute/organizations working in these field".

2.0. Orders of the Hon'ble National Green Tribunal

The Hon'ble National Green Tribunal, Southern Zone, Chennai in its order dated 14/09/2020 directed that,

15. Since, the committee members have mentioned that they don't have the expertise to assess the environmental damage and they wanted assistance of an expert agency, we feel that it is necessary to include an expert in remote sensing for the purpose of identifying the area prior to the activities and what is the nature and extent of the damage caused and also what is the amount required for restoring the same to its original position as these details will have to be taken into account by this Tribunal these proper disposal of this case.
16. So, for that purpose we include an expert from the Institute of Remote Sensing, Anna University, Chennai as additional Member in the committee so that, the committee can with the help of the expert collect data regarding the prior position of the area. Time series satellite data from July, 19 till date can be procured for appearing the appropriate period of commencement of construction and to what extent this has been done and the committee is directed to assess the environmental compensation based on the available data and submit the further report to this Tribunal.

17. We have not issued any interim order of injunction restraining them from doing proceeding with the work.

The copy of the order is enclosed as **Annexure-I**.

3.0 Joint Inspection of the Committee

The Joint Committee comprising of the following members have again inspected the project site of TUNA Fishing harbour by the Department of Fisheries, Government of Tamil Nadu located at Thiruvottriyur Kuppam Village, Ennore Taluk, Thiruvallur District in the presence of Thiru Murugesan, Executive Engineer, Department of Fisheries on October 16, 2020.

1.	Dr. R.Sivacoumar	Member, State Expert Appraisal Committee (SEAC), Tamil Nadu.
2.	M. Malaiyandi	Joint Chief Environmental Engineer (Monitoring), Tamil Nadu Pollution Control Board, Chennai Zone.
3.	D. Eswaran	Assistant Conservator of Forests, Department of Environment, Chennai.
4.	V.Ravi	Revenue Divisional Officer, Chennai North, Chennai District.
5.	Dr.R.Vidhya	Professor, Institute of Remote Sensing, Anna University, Chennai.

The Joint committee held discussions with Department of Fisheries, Government of Tamil Nadu and during inspection, the extension of breakwater structures was found to be in progress.

4.0 Assessment of Status Report by IRS, Anna University

Accordingly, the Institute of Remote Sensing(IRS), Anna University, Chennai has prepared the report for the period between July 2019 and September 2020 using Time series satellite Data and furnished the report under title "Assessment of status in the vicinity of Tuna Fish Landing site at Ernavur, Thiruvottriyur kuppam Village, Ennore Taluk, Thiruvallur District, Tamilnadu".

In the report, it was concluded that

- A silo and one temporal structure has been erected around June 2019.
- Activities such as strengthening of groynes and other permanent structures are not seen till June 2019.
- The groynes A and C, supposedly the part of proposed Tuna Fish landing harbour are strengthened after June 2019, whose lengths had been increased by 235m and 153m by Feb 2020.
- Production of tetra pods using the silo must have been started around June 2019.

- The seaward distance of the coastline from the HTL varies between 5.40m to 67.2m at different points as depicted in the Map 2 of the IRS, Anna University.
- No evidence of other construction activity found during the field visit.

The copy of the report is enclosed as **Annexure-II**.

5.0 Assessment of Environmental Compensation

The Executive Engineer, Fishing Harbour Project Division, Department of Fisheries, Government of Tamil Nadu vide his letter dated 10/09/2020 (Copy enclosed as **Annexure-III**) has reported that the Fisheries Department has stopped all the activities of Tuna Fishing Harbour on 07/02/2020.

As directed by the Hon'ble National Green Tribunal, the Joint Committee opined that the Environmental Compensation (EC) has to be calculated from the date of commencement of construction activity to the date of stoppage of construction activity by the Fisheries Department.

The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of OA No.593/2017 (WP (CIVIL) No.375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. has directed the Central Pollution Control Board (CPCB) to arrive methodology for assessing Environmental Compensation(EC) and action plan to utilize the fund. Accordingly the CPCB has formulated the methodology for assessing Environmental Compensation (EC) to be levied on industrial units in Chapter -I in which it is reported that the following cases can be considered for levying Environmental Compensation(EC).

- a) Discharges in violation of consent conditions, mainly prescribed standards / consent limits.
- b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
- c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
- d) Accidental discharges lasting for short durations resulting into damage to the environment.
- e) Intentional discharges to the environment – land, water and air resulting into acute injury or damage to the environment.
- f) Injection of treated/partially treated/untreated effluents to ground water.

In this case, the 6th respondent Department of Fisheries, Government of Tamil Nadu has extended the break water structures in the southern & northern direction of the project site from

the existing groins and formation of roads by violating the condition no “p) Clearance under the EIA Notification 2006 should be obtained from the SEIAA” of CRZ clearance obtained from the Tamil Nadu State Coastal Zone Management Authority vide Proceeding No.PI/2204/2016 Dated 10/03/2017. Hence the committee decided to assess the Environmental Compensation (EC) as per the following CPCB methodology as directed by the Hon’ble Nation Green Tribunal(SZ).

Environmental Compensation Formula

$$EC= PI \times N \times R \times S \times LF$$

where

EC-Environmental compensation

PI-Pollution index of industry sector

N-Number days of violation took place

R-A factor in Rs for EC

S-Factor for scale of operation

LF- Location Factor

Note:

- i) The industrial sectors have been categorized into Red, Orange and Green based on their pollution index in the range of 60-100, 41-59 and 21-40 respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental compensation for Red, Orange and Green Categories of industries respectively.
- ii) N, number of days for which violation took is the period between the day of violation observed/ due date of directions compliance and the day of compliance verified by PCB/SPCB/PCC.
- iii) R, is a factor in rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of Violation.
- iv) S could be based on small/medium/large industries categorization which may be 0.5 for micro or small, 1 for medium and 1.5 for large units.
- v) LF, could be based on the population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 Km distance from the municipal boundary of the city/town, following factors (LF) may be used.

Sr.No	Population (Million)	Location Factor(LF)
1	Less than 1	1.0
2	1 to <5	1.25
3	5 to <10	1.5
4	10 and above	2.0

Calculation of Environmental Compensation to the 6th respondent as per the CPCB Guidelines

The day of violations commenced (Date of break water structures installation noticed as reported in the report of Remote sensing Department, Anna University).	-	01.07.2019
The day of violations stopped (Date of construction activities stopped by the Fisheries Department and reported).	-	07.02.2020
The number of days of violations took place (From 01.07.2019 to 07.02.2020)	N	222
Pollution Index for Red category industries as per CPCB Guidelines (Ports and harbour, jetties and dredging operations comes under the red category (1046) as per CPCB letter dated.07.03.2016).	PI	80
Factor in Rs for EC as per CPCB Guidelines	R	250
Factor for scale of operation as per CPCB Guidelines	S	1.5
LF as per CPCB Guidelines (Population of Greater Chennai Corporation is 7.1 Million – Source Greater Chennai Corporation Website).	LF	1.5
Environmental Compensation(EC)	$PI \times N \times R \times S \times LF = 80 \times 222 \times 250 \times 1.5 \times 1.5$ $= 99,90,000/-$	

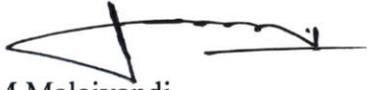
5.0 Recommendation:

The 6th respondent, Department of Fisheries, Government of Tamil Nadu had obtained CRZ clearance from the Tamil Nadu State Coastal Zone Management authority vide Proceeding Dated.10.03.2017 under the Coastal Regulation Zone Notification, 2011 and subsequently obtained Environmental Clearance from the Tamil Nadu State Environmental Impact Assessment Authority (SEIAA) vide Proceeding Dated.05/08/2020 under the EIA Notification, 2006.

Nevertheless, the Fisheries Department has extended the existing groins and formed the temporary roads without obtaining the Environmental Clearance under the EIA Notification, 2006 as the establishment of Tuna Fishing Harbour is a public welfare scheme and delay in execution will affect the general public in getting their basic rights in time and also escalation in project cost.

By considering the above facts, the Hon'ble Tribunal may pass appropriate order(s)/directions(s) as deemed fit.


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Tamil Nadu.


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Joint Chief Environmental
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V.Ravi,
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