

BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL AT CHENNAI (SZ)

APPLICATION No. 225 OF 2016 (SZ)

BETWEEN:

MEENA VA THANTHAI K.R.SELVARAJ KUMAR
MEENAVAR NALA SANGAM
Represented by its President,
M.R.Thiyagarajan, S/o. Late C. Rajalingam
Office at No.15/8, AJ Colony, Royapuram,
Chennai - 600 013.

....Applicant

And

1. The Chief Secretary,
Government of Tamilnadu,
Secretariat, Chennai-600 009.
2. The State of Tamilnadu,
Rep. By its Secretary to Government,
Fisheries Department, Fort St. George,
Chennai-600 009.
3. The State of Tamilnadu,
Rep. By its Secretary to Government,
Environment Department,
Fort St. George, Chennai-600 009.
4. The State of Tamilnadu,
Rep. By its Secretary to Government,
Public Works Department,
Fort St. George, Chennai-600 009.
5. The District Collector,
Kanchipuram District,
Kanchipuram.
6. The Chairman,
Tamilnadu Pollution Control Board,
No.76, Mount Salai, Guindy,
Chennai-600 032.
7. The Thasildar,
Thasildar Office,
Thirukazhukundram - 603 109
8. The District Environmental Engineer,
Tamilnadu Pollution Control Board,
MaraimalaiAdigalar Street, Maraimalai Nagar,
Kancheepuram District Chennai-603 209.

For GRT HOTELS & RESORTS PVT. LTD.

Authorized Signatory

9. Radisson Blu Resort Temple Bay Mamallapuram
Represented by its Managing Director
No.57, Kovalam Road, Kanchipuram District,
Mahabalipuram, Tamil Nadu 603 104

10.GRT Hotels and Resorts Pvt. Ltd.
Represented by its Managing Director
No- 41, Giriappa road,
T.Nagar, Chennai - 600 017

... Respondents

**REPLY AFFIDAVIT FILED ON BEHALF OF THE 10th RESPONDENT TO THE
REPORT OF THE JOINT COMMITTEE**

I, K. Sathiyarayanan, S/o. P. Krishnaswamy, aged 43 years, Hindu, having office at No.136, Usman Road, T.Nagar, Chennai - 600 017, do hereby solemnly and sincerely states as follows:

1. I am the Authorized Signatory of M/s. GRT Hotels and Resorts Private Limited, and our Hotel owns the Radisson Blu Resort Temple Bay Mamallapuram, the ninth respondent in this application, and as such I am competent and well acquainted with the facts and circumstances of this application.
2. I state that originally, the 9th Respondent was made a party and thereafter, by an order of this Hon'ble Tribunal the 10th Respondent was impleaded, by order dated 12.07.2017, as a party since the 9th Respondent was arrayed incorrectly. I further state that a detailed counter has been filed on behalf of the 9th Respondent already setting out detailed response in relation to the present case. I state that the 10th Respondent hereby adopts the said reply filed by the 9th Respondent in the above application in so far as it relates to this respondent.
3. The answering Respondent states that as per the order of this Hon'ble Tribunal dated 24.01.2020, a Joint Committee was setup and has filed its report and placed before the Hon'ble Tribunal during the hearing on 12.01.2021. Though a copy was not served on this Respondent, the answering Respondent has noted the contents of the same which has also been extracted in the order of this Hon'ble Tribunal dated 12.01.2021.

For GRT HOTELS & RESORTS PVT. LTD.

Authorised Signatory

4. The report of the Joint Committee, *inter alia*, noted that the most of the built-up structures have been established even prior to the introduction of CRZ Regulations and further observes that some additional structures were put up after obtaining due approval from the local authorities. The Joint Committee after inspection of the premises, has stated that there are some structures allegedly put up in excess of the permission granted by the local authority and the same has been stated in the report as follows;

Comparative Statement on the total built up area as per CRZ Clearance obtained from NCZMA, as approved by the Mamallapuram New Town Development Authority and the total built up area of the structures as measured on ground in the area in question

S.No.	Location of the Structures	Total Built up area as per CRZ Clearance accorded by NCZMA (Sq.m)	Total Built up area as per approval of the Mamallapuram New Town Development Authority (sq.m)	Total Built up area as measured (sq.m)	Additional Built up area constructed (sq.m)
1.	200m to 500m from HTL	8291	8441.56	15132.2	6690.64
2.	0m to 200m from HTL	0	10389.14	11489.51	1100.37
Total		8291	18830.70	26621.71	7791.01

Note: Structures in existence prior to CRZ Notification, 1991 does not require clearance under said Notification.

5. I further state that the Joint Committee has noted that the total built up area of the structures pertaining to the above said unit as measured exceeds the total built up area in the clearance as accorded by the National Coastal Zone Management Authority and also as approved by Mamallapuram New Town Development Authority violating the provisions of the CRZ Notification, 2011.

For GRT HOTELS & RESORTS PVT. LTD.

Authorised Signatory

6. I respectfully state that the answering Respondent has been compliant with extant laws and has not violated any provisions of law. The answering Respondent operates one of the most sought after resorts in South India and has been functional for over 2 decades. In fact, as already placed before this Hon'ble Tribunal in the reply of the 9th Respondent, the resort was originally run by ITDC and the answering Respondent took over the same by virtue of a tender process. There were existing structures already which were built much prior to the introduction of CRZ Regulations. The answering Respondent has applied and obtained permission for putting up certain additional structures for providing better facilities to guests and tourists, all of which have been approved by the local authorities as well as the MoEF, Govt. of India as has been stated in the 9th Respondent's counter.
7. I state that the answering Respondent has perused the report and states that the additional built up structure as alleged to have been put up between 0-200m measuring about 1100.37 sq.m pertains to additional staff quarters which were put up by the unit. It is pertinent to state that the said building has been existing for almost 2 decades and was built after approvals were obtained by the local authorities. Though the answering Respondent states that the same is not an unauthorized construction, in view of the report filed before the Tribunal and in order to put a quietus to the matter, the answering Respondent is willing to demolish this alleged additional built up area of 1100.37 sq.m pertaining to the additional staff quarters allegedly within the 0-200m. The answering Respondent states that it is a law abiding company with a good reputation and as a responsible company, it is willing to take the above steps by way of abundant caution, in order to ensure that there is no such allegation of violations in respect of its unit now or in future. The answering Respondent also states that it is willing to abide by any order of compensation in this regard, if this Hon'ble Tribunal deems fit.
8. I state that as regards the alleged additional structures in the 200-500m area as set out in the report, the same is not correct for the reason that some open areas have been taken into account while computing the same. It

For GRT HOTELS & RESORTS PVT. LTD.

Authorised Signatory

is pertinent to state that the resort being a sea-side resort, does not have multi storeyed structures and the structures are spread out over a vast area of land. As such, there is extensive open space and it appears that some of the measurements have not taken into account these aspects. Moreover, it has also not been taken into account that almost all the built up structures in the 200-500m zone are prior to coming into force of the CRZ Regulations. The report does not appear to have verified the exact date when the structures were built as per records and differentiated between the structures existing even prior to the CRZ Regulations and those that have been put up additionally thereafter. However, the answering Respondent states that being in the 200-500m area where development and construction is allowed under the CRZ norms itself, by way of abundant caution, it is willing to represent its case before the relevant authorities and seek ratification or regularisation of the same, in accordance with legal procedure. The above suggestions have also been submitted by the answering Respondent to the District CZMA by its letter dated 19.02.2021.

9. It is pertinent to state that by an Office Memorandum dated 19.02.2021 issued by the Ministry of Environment and Forests, Government of India, the issue of procedure for dealing with violations arising due to not obtaining prior CRZ clearance for permissible activities (i.e. within 200-500m zone) has been set out. In respect of construction activity, para 4 of the Office Memorandum specifically sets out that prospective clearance would be permissible where application is made along with required documents to the CZMA as per para 4.2 of the CRZ Notification, 2011. Thereafter, environmental damages may be assessed and a specific recommendation may be made in this regard by the authority. The CZMA is also required to give specific recommendations and certify that there is no violation of CRZ norms while making such recommendations for approval. Thereafter, the project proponent shall apply for clearance to the MoEF, Govt. of India in the online portal with all documents submitted to CZMA and the specific recommendations of CZMA. Upon such submission, the authorities may grant clearance for the same *post-facto*. I state that as per this Office

Memorandum, the answering Respondent has also taken steps in this regard to obtain clearance for the alleged additional structures, by way of abundant caution.

10. I therefore state that the answering Respondent is entitled to seek recourse under law for the alleged additional structures put up between 200-500m and seek ratification/approval for the same based on the above Office Memorandum as well as the CRZ notifications itself.
11. I state that the unit has been functioning for over 2 decades and has gained a stellar reputation and is one of the most sought after resorts in South India. The resort also attracts tourists from across the globe thereby contributing substantially to the revenue of the State. As such, the answering Respondent states that the unit has been functioning with full compliance of all legal requirements and has never been on the wrong. That being the case, the answering Respondent seeks indulgence from this Hon'ble Tribunal to put a quietus to the issue by way of its proposed actions, in accordance with law, which may be considered positively by the concerned authorities.
12. As such, I state that these suggestions if permitted to be carried out, shall absolve the answering Respondent of any such allegation of violation or wrong doing and would absolve the unit of any issues in future. Therefore, it is respectfully submitted that the Application is disposed of on the basis of the above basis.

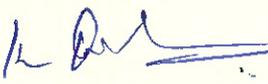
For the reasons stated therein this Honourable tribunal may pleased to take on record the present affidavit and pass appropriate orders and thus render Justice.

For GRT HOTELS & RESORTS PVT. LTD.

Authorised Signatory

Solemnly affirmed at Chennai on this the 16th day of March, 2021 and he having signed his name in my presence

BEFORE ME

 MS 2336/2005

ADVOCATE, CHENNAI

K. Chandrasekaran,
No. 8, 8th Street, Dr RK Salai
Mylapore, Chennai - 4

VERIFICATION

I, K. Sathiyarayanan, S/o. P. Krishnaswamy, aged 46 years, having office at No.136, Usman Road, T.Nagar, Chennai-600 017, the Authorized Signatory of the 10th Respondent, do hereby solemnly and sincerely affirm that contents in paras 1 to 6 of the above affidavit are true and correct to the best of my knowledge and belief through records.

For GRT HOTELS & RESORTS PVT. LTD.


Authorized Signatory

10th RESPONDENT

F.No.19-27/2015-IA.III
Government of India
Ministry of Environment, Forest and Climate Change
IA-III Division (CRZ)

Indira Paryavaran Bhawan
Jor Bagh Road,
New Delhi-110003
Dated: 19th February, 2021

OFFICE MEMORANDUM

Subject: Procedure for dealing with violations arising due to not obtaining a prior CRZ clearance for permissible activities –regarding.

For the purpose of protecting and improving the quality of the coastal environment and abating coastal environmental pollution, it is necessary that all entities not complying with Coastal Regulation Zone notifications be brought under compliance of the environmental statutes in an expedient manner. This Ministry has received several requests from the coastal state governments for proposals, under Coastal Regulation Zone (CRZ) Notification, 2011, for considering CRZ clearance in respect of permissible activities which have commenced work without a prior CRZ clearance due to inadequate knowledge of the regulatory regime and other factors. Bringing such projects and activities in compliance with the environmental laws at the earliest point of time is therefore essential, rather than leaving them unregulated and unchecked, which will be more damaging to the environment.

2. Reference is invited to order dated 28th November, 2014 of the Hon'ble High Court of Jharkhand in the matter of Hindustan Copper Limited Versus Union of India, wherein the High Court held that the conditions laid down under Office Memorandum dated 12th December, 2012 in paragraph No. 5 (i) and 5 (ii) were illegal and unconstitutional and had further held that action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance could not await initiation of action against the project proponent. The Hon'ble Court further ruled that the proposal for environment clearance must be examined on its merits, independent of any proposed action for alleged violation of the environmental laws. Also, Hon'ble Supreme Court of India in Civil Appeal No. 1526 of 2016 Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors., in its order dated 1st April, 2020, has mentioned that the closure of the industries are not warranted, however, order for payment of compensation as a facet of preserving the environment in accordance with the precautionary principle has been imposed and proposal for environment clearance must be examined on its merits, independent of any proposed action for alleged violation of the environmental laws.

3. To this effect, it is therefore necessary to establish a process for appraisal of such cases of violation arising due to not obtaining of prior clearance for permissible

activities in CRZ areas and for prescribing adequate environmental safeguards on such entities and provide an enabling process to deter violation of provisions of CRZ Notification, 2011 and the damage to environment is adequately compensated for.

4. The Ministry hereby, prescribes the following procedure for dealing with violation arising due to not obtaining a prior CRZ clearance for permissible activities as under:

- i. All activities, which are otherwise permissible under the provisions of Coastal Regulation Zone Notification, but have commenced construction without prior clearance, would be considered for prospective clearance only in such cases wherein the project proponent applies for such a clearance to the concerned Coastal Zone Management Authority (CZMA) along with required documents as given in para number 4.2 of the said CRZ Notification, 2011 such as: (a) Form-I; (b) CRZ map in 1:4000 scale drawn up by any of the agencies identified by the Ministry of Environment, Forest and Climate Change *vide* its Office Order number J-17011/8/92-IAIII, dated the 8th August, 2019; (c) Marine EIA Report and/or Terrestrial EIA Report, as may be applicable; (d) NOC from SPCB, as may be applicable etc.
- ii. As the project commenced construction and / or operations without a prior CRZ clearance, the CZMA shall assess the environmental damages caused by such an action and shall give **specific recommendation** in respect of activities, corresponding to the environmental or ecological damage assessed, to be taken up by the project proponent within a period of three years from the date of clearance, under Compensatory Conservation Plan (CCP) and a Community Resource Augmentation Plan (CRAP). The said plans may comprise of indicative activities as in the **Annexure**. The cost for assessment of environmental damage, if any, may be guided by the Ministry of Environment, Forest and Climate Change *vide* O.M No. 19-125/2019-IA.III, dated 05/03/2020 and / or project specific assessment by the CZMA.
- iii. The CZMA shall also give **specific recommendations** and shall certify that there is no violation / contravention of the CRZ norms, while making such recommendations and that the project is in consonance with the approved CZMP as per CRZ Notification, 2011.
- iv. On fulfilment of the provisions as prescribed above, the project proponent shall apply for consideration of clearance to the Ministry of Environment, Forest and Climate Change, in the 'PARIVESH' online portal, along with all documents as submitted to the concerned CZMA and the specific recommendation of the CZMA.
- v. The project thereafter will be appraised for appropriate recommendation by the Expert Appraisal Committee (CRZ) constituted by the Ministry of Environment, Forest and Climate Change.
- vi. The Expert Appraisal Committee shall examine the adequacy of the Environmental Management Plan, Comprising Compensatory Conservation Plan and Community Resource Augmentation Plan and endorse the specific recommendation of SCZMA in this regard and suggest other suitable remedial measures, if any. The Expert

ANNEXURE

INDICATIVE LIST OF ACTIVITIES:

1. Activities for Compensatory Conservation Plan:

- (a) Mangrove replantation / regeneration;
- (b) Sea grass replantation / regeneration;
- (c) Protection of sand dunes, mudflats;
- (d) Measures for regeneration of beach sand;
- (e) Soil remediation;
- (f) Setting up of small infrastructure for coastal erosion control measures;
- (g) Construction and maintenance of cyclone shelters;
- (h) Protection measures and maintenance of heritage sites located in coastal areas;
- (i) Setting up of solar and other non-conventional energy source at village or habitations;
- (j) Restoration of water bodies and setting up of rain water harvesting systems;
- (k) Beach cleaning and development of beach amenities etc.

2. Activities for Community Resources Augmentation Plan:

- (a) Adoption of nearby coastal village and providing civic amenities;
- (b) Creation of Self Help Group and Cooperative Society for marketing of local community produce;
- (c) Creation of micro financing for vocation of the local community, in particular fishermen community;
- (d) Identification and training of unemployed youth in the nearby villages for eventual absorption in the company;
- (e) Sustainable community solid waste management strategy and programme;
- (f) Installation and maintenance of organic waste collector;
- (g) Disbursement and disposal of fishing nets with financial incentives;
- (h) Renovation and maintenance of village wells etc.

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- Appraisal Committee shall also decide the percentage of total project cost required to be utilized for implementation of the above said plans.
- vii. The concerned CZMA / State Environment Department shall oversee implementation and enforcement of the Compensatory Conservation Plan and Community Resource Augmentation Plan.
 - viii. Further, action should be taken by the respective State Government or Union Territory Administration or SPCB or UTPCC, as the case may be, under respective provisions of the Environment (Protection) Act, 1986, for violation of not taking prior approval.

This issues with the approval of the Hon'ble Minister (EFCC).



(Dr. Sujit Kumar Bajpayee)
Joint Secretary to the Government of India

To,

1. **The Principal Secretaries (Environment) of all Coastal States / UTs.**

Copy to:

1. PS to Minister (EFCC)
2. PS to MoS (EFCC)
3. PPS to Secretary (EFCC)
4. PPS to AS (RSP)/AS (RA)/AS(UD)
5. The Member Secretaries, CZMAs
6. The Member Secretaries, IA Division, MoEFCC
7. The Chairman, EAC (CRZ & Misc Projects)
8. Office copy / Guard file.

BEFORE THE NATIONAL GREEN
TRIBUNAL
SOUTHERN ZONE BENCH

Application No. _____ of 2016

Affidavit of R-10

M/s. R. PARTHASARATHY
RAHUL BALAJI
MADHAN BABU &
VISHNU MOHAN

Counsel for the Respondent

No. 8, 8th Street, Dr. Radhakrishnan Salai,
Mylapore, Chennai – 600004
9940073044