

Item No. 01:

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Original Application No. 28 of 2020 (SZ)

IN THE MATTER OF:

Meenava Thanthai

...Applicant(s)

WITH

The State of Tamil Nadu and others.

...Respondent(s)

Date of hearing: 14.09.2020.

CORAM:

**HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

For Applicant(s):

Sri. Ritwick Dutta along with Sri. Stanley
Hebzon Singh

For Respondent(s):

Sri. S.R. Rajagopl, Additional Advocate
General along with Sri. M. Mani Gopi for
R1, R6 and R7

Sri. M.R. Gokul Krishnan for R2 & R3.

Sri. Kasirajan through M/s. Meena for R4

Sri. Kamalesh kannan for R5

ORDER

1. As per order dated 07.02.2020, this Tribunal had constituted a committee to go into the allegations in the application and submit a factual and action taken report and posted the case to

26.03.2020. On 26.03.2020, the matter was adjourned to 15.07.2020 by notification. On 15.07.2020, at the request of the committee members, the matter has been adjourned to 21.07.2020 for getting the report. On 21.07.2020, this Tribunal had considered the Joint Committee report and also the counter statement filed by the 6th respondent and also directed the committee to assess the Environmental Compensation for the violation if any, committed by the concerned departments in carrying out the work.

2. Further, this Tribunal has also directed State Environment Impact Assessment Authority (SEIAA) to consider and pass appropriate orders, if any application for environmental clearance is pending with them in accordance with law making it clear that the pendency of this application is not a bar for them to exercise their statutory powers and posted the case to today for consideration of further report and also for objection if any, to be filed by the applicant for the same.

3. We have received an additional reply affidavit though it was mentioned as the interim application by the 6th respondent wherein they have stated that they have obtained all necessary clearances including the Environment Clearance as per proceedings No. *SEIAA-TN/F.No.6440/EC/(e)/75/2020* dated *05.08.2020*.

4. We have also received a counter affidavit filed by the 5th respondent almost re-iterating the same contentions raised by the 6th respondent and also stating that have already granted the Coastal Regulation Zone Clearance and Environment Clearance will have to be obtained.
5. The applicant has filed rejoinder to the counter filed by the 6th respondent and also the response to the report of the joint committee.
6. When the matter came up for hearing today through Video Conference, Sri. Ritwick Dutta along with Sri. Stanley Hebzon Singh represented the applicant. Sri. S.R. Rajagopl, Additional Advocate General along with Sri. M. Mani Gopi represented respondents 1, 6 and 7, Sri. Kasirajan through M/s. Meena represented 4th respondent, Sri. Kamalesh kannan represented 5th represented and Sri. M.R. Gokul Krishnan represented respondents 2 and 3.
7. We have received the report of the Joint Committee which reads as follows:

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.

According to the petitioner, it is under CRZ I under the CRZ Notification, 2011 and without getting prior permission any activity in that area is illegal. The petitioner also produced the minutes of the meeting of the State Appraisal Committee dated 16/12/2019 which dealt with that project for appraisal and observed that the presentation and EIA report submitted by the project proponent is not proper and they will have to submit a fresh EIA report on the basis of the directions given by them and necessary presentation will have to be made by consultant to satisfy the appraisal committee to consider the project.

The Petitioner also submitted substantial evidence in the form of photographs taken at the site showing the nature of activities going on in that area.

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 during March, 2020.

2.0 Orders of the Hon’ble Tribunal

The Hon’ble National Green Tribunal 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 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 September 09, 2020.

1.	<i>Dr. R.Sivacoumar</i>	<i>Member, State Expert Appraisal Committee (SEAC), Tamil Nadu.</i>
2.	<i>M.Malaiyandi</i>	<i>Joint Chief Environmental Engineer (Monitoring), Tamil Nadu Pollution Control Board, Chennai Zone.</i>
3.	<i>D.Eswaran</i>	<i>Assistant Conservator of Forests, Department of Environment, Chennai.</i>
4.	<i>V Ravi</i>	<i>Revenue Divisional Officer, Chennai North, Chennai District.</i>

The joint committee held discussions with Department of Fisheries, Government of Tamil Nadu and inspected the project site to verify if any further constructions has been carried out after the previous inspection of the committee and took photographs.

4.0 Assessment of the Joint Committee

During the time of inspection, the committee observed the following in addition to the observations submitted by the committee in the earlier report to the Hon'ble National Green Tribunal, Southern Zone, Chennai.

- 1. Two more temporary sheds were found at the project site as shown in the Photographs.*
- 2. Two gigantic grins were seen at the site one near the northern approach road and the other one at the southern break water facility.*

3. *Many Solid gryones weighting 4 MT were seen inside the project area as well all along the shore line in the southern direction.*
4. *No construction/dredging/reclamation activities related to fishing harbour were carried out within the project site.*



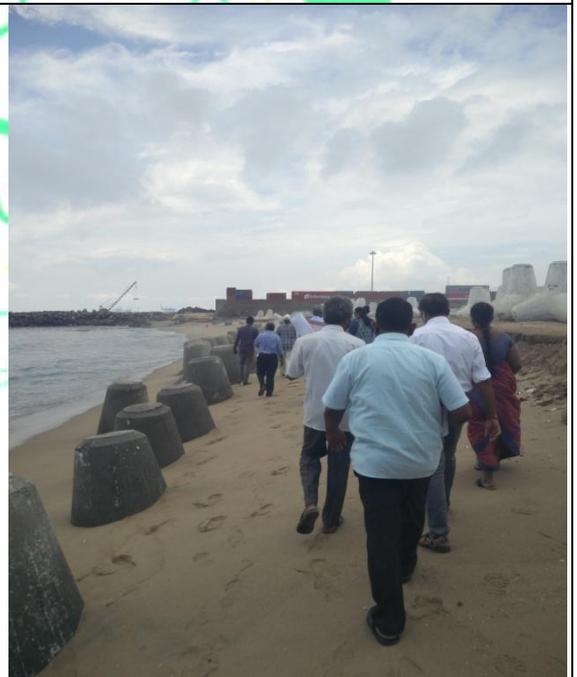
Shed and Weighing Bridge inside the Project Site



Crane Activities at the Project Site



Gryones Lying at the Project Site



View of Sea Shore inside the Project Site with the presence of Groynes

5.0 Conclusion and Recommendation of the Joint committee

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.

*Dr.R. Sivacoumar
Member, State Expert Appraisal
Committee (SEAC), SEIAA,
Tamil Nadu.*

*M. Malaiyandi,
Joint Chief Environmental Engineer (M),
Tamil Nadu pollution Control Board,
Chennai Zone .*

*D.Eswaran, Assistant Conservator of
Forests, Department of Environment,
Chennai.*

*V. Ravi,
Revenue Divisional Officer,
Chennai North.*

8. It is mentioned in the report that in order to assess the damage caused to the environment on account of the work done by the Department of Fisheries of Government of Tamil Nadu to the Environment/Coastal area without obtaining environmental clearance from State Environment Impact Assessment Authority (SEIAA) of Tamil Nadu and its assessment of consequent compensation resulting from the damage caused, the Joint Committee opined that it needs to be carried out by a reputed institute/organisation working in these fields.

9. The learned counsel appearing for the applicant submitted that, in view of the objections filed by the applicant, if the department

is permitted to carry out their work, it will not be possible for the committee to assess the compensation for the purpose of enabling this Tribunal to decide the matter in accordance with law.

10. The learned Advocate General appearing for the State Department submitted, since the monsoon is fast approaching and the project will have to be proceeded with as necessary clearances have already been obtained from the concerned authorities, they may be permitted to proceed with the work subject to this Tribunal enquiring in to the question of damage, if any, caused to the environment and imposition environmental compensation if any, required after getting the further report of the committee and they have no objection even deputing any other expert agency along with the committee to assist them and get the necessary data for this Tribunal to decide the matter in accordance with law.

11. It is an admitted fact that there were some activities done by the Fisheries Department namely, 6th respondent for the purpose of proceeding with the proposed project without getting the necessary Environmental Clearance under EIA Notification 2006.

12. The learned Additional Advocate General submitted that as per the counter statement of 5th respondent, it is clearly

mentioned that on 06.10.2016, an environmental clearance was issued to Public Works Department (PWD) to construct series of 19 Groynes from Ennore to Ernavoorkuppam by the 2nd respondent and only they are carrying out that work alone.

13. They also mentioned in the counter statement that the Coastal Zone Management Authority also granted necessary clearance under CRZ Notification 2011, for this purpose. But the allegation in the application was that they are proceeding with the construction work of the project without getting necessary environment clearance especially when the application filed by them for that purpose was pending with the authority and this Tribunal has only taken cognizance of the application in respect of the work being carried out without obtaining necessary clearance which is required for that project.

14. Even for the construction of the road etc., or making preparations for the project as per EIA Notification, 2006, prior environment clearance is required. If any work has been done in violation of the EIA Notification, 2006 then, this Tribunal is entitled to go into the question regarding the nature of damage caused to the environment, on account of this violation and also fixing the liability of the payment of environmental compensation if any, caused on the person/department responsible for the same.

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 for 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.

18. We have only recorded the undertaken given by the learned Additional Advocate General that they will not precede with the work of the project without getting the necessary environment clearance from the authorities.
19. So under such circumstances, we don't think that there is any necessity for us to pass any interim order regarding the proceeding with the project as such. However, the right of the applicant to challenge the environmental clearance in accordance with law is left open.
20. The Registry is directed to communicate this order to Anna University, to depute an expert from Institute of Remote Sensing under their University to assist the committee appointed by this Tribunal for the things mentioned above and also the committee members, so as to enable them to comply with the direction of assessing environmental compensation and submit a further report in this regard.
21. The committee is granted one month time for this purpose.
22. The committee is directed to submit the report to this Tribunal on or before 28.10.2020 by e-filing along with necessary hard copies as per rules.

23. For consideration of further report, post on 28.10.2020.

.....J.M.
(Justice K. Ramakrishnan)

.....E.M.
(Shri. Saibal Dasgupta)

O.A. No. 28 of 2020
14th September, 2020
Sr.

