

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

MEMORANDUM OF APPLICATION

**(UNDER SECTION 14 OF THE NATIONAL GREEN TRIBUNAL ACT
2010)**

ORIGINAL APPLICATION NO. 4 OF 2023

Dilip Pandurang Koli & Ors.) ...Applicants

Versus

Union of India through the)

Ministry of Environment, Forests)

& Climate Change & Ors.) ... Respondents

**BRIEF WRITTEN SUBMISSION ON BEHALF OF THE ORIGINAL
APPLICANTS:**

I. Work being carried out without the requisite environmental clearance:

Pursuant to the order dated 21.02.2022 passed by this Ld. Tribunal in O.A. 46 of 2021 (pg.102), the Expert Appraisal Committee (EAC) of the MoEF directed JNPA to apply to the MCZMA in view of the said order of the Tribunal. Accordingly, JNPA applied for fresh sanction from the MCZMA. It appears that the MCZMA has granted its sanction by a document dated 14th February 2023 (tendered at the time of arguments on 21.02.2023). This is in the nature of a recommendation to the EAC for clearance – the final sanction has to be granted by the EAC of the MoEF, which has still not been received. Despite that, work commenced in October 2022. **Thus, as of today, the work for the 4th container terminal project is being carried out unlawfully without the requisite clearance**

from the MoEF. This Ld. Tribunal must take serious view of the matter and take action against the officers responsible.

II. **JNPA seeks to re-open an issue that was considered by this Ld. Authority in O.A.46/2021:**

Respondent No.2 seeks to re-argue contentions that were raised earlier and considered by this Ld. Tribunal when it passed the order dated 21.02.2022 including the contention of JNPA that as per the approved CZMP the area falls in CRZ-IV. All these arguments were advanced earlier and considered by this Ld. Tribunal as reflected from the order dated 21.02.2022 (Pg.103, para 2; pg.104, un-numbered para 2). JNPA has not challenged the said order. As such, it has no basis to resist the prayer for the CRZ demarcation to be carried out.

III. **Project area demonstrably falls within CRZ-IA:**

Notwithstanding the fact that the arguments about the CRZ status of the area were heard and considered by this Ld. Tribunal earlier, there is sufficient material to show that the area where the present work is being carried out is located in mudflat areas and therefore falls under CRZ-IA:-

- EC dated 29.07.2008 (pg. 31, para 2 – “*with regard to 200 ha, reclamation, it was indicated that the reclamation would be carried out on the Uran mudflat areas...*”).
- Report of Expert Committee (Pg. 91) notes that “*small part of landing point of triangular balance reclamation work is touching CRZ IA*”. Although the Respondent No.1 has claimed that this layout has since been revised, it has not produced any documentary evidence to show that the layout no longer covers CRZ-IA areas.
- Site inspection of the Fisheries Department dt. 01.02.2023 (compilation of documents dt. 21.02.2021, pg.6) notes that debris is being dumped in the water area which is muddy. It is submitted that, based on the other

information provided, it must be necessarily inferred that it is the mudflats that is being referred to.

- Map of the Naval Hydrographic Office (Pg. 87) which shows the area in question as “URAN MUDFLATS”. The guidelines on preparation of CZMP maps stipulate that these maps must be relied upon for the terminology used to classify water bodies.¹.

It is reiterated that this Ld. Tribunal found merit in the contention raised by the present Applicants that the area in question falls in CRZ-IA and therefore directed that the CRZ-IA areas be clearly demarcated so that the CRZ-IA be left out of the project. *This demarcation has not yet been undertaken.*

IV. JNPA has mislead the authorities as to the CRZ status of the project area earlier:-

It may be noted that the Reply filed by JNPA states that the reclamation area has been revised taking into consideration findings of the Expert Committee. The Expert Committee noted that some part of the project “touches CRZ-IA”. It may be noted that JNPA has effectively conceded the fact that what was stated to be CRZ-IV by JNPA and was accepted by both the MCZMA and MoEF previously, was in fact CRZ-IA. It is therefore even more crucial that the assertions made by JNPA that the project falls within CRZ-IV be tested and that the CRZ-IA areas be clearly mapped and left out of the project area. Until this is done, the reclamation, piling, excavation work that is presently ongoing should be stopped.

V. Compensation amount does not amount to permission to violate conditions of EC:

¹ Para II, Clause 9 of Annexure 1 – “The water areas of CRZ IV shall be demarcated and clearly demarcated if the water body is sea, lagoon, backwater, creek, bay, estuary and for such classification of the water bodies the terminology used by Naval Hydrographic Office shall be relied upon.”

Each EC granted to JNPA for the 4th Container terminal project contained a condition stipulating that the livelihood of the fisherfolk should not be affected (refer to sr. no. 1, 6 and 7 of List of Dates). The Expert Committee appointed by this Ld. Tribunal noted that the 4th Container Terminal Project will impact the livelihood of traditional fisherfolk and has stated that a detailed assessment should be done of this impact and mitigation measures should be suggested (pg. 93-94). JNPA has chosen not to comply with these directions and instead has relied upon a compensation amount that was directed to be paid pursuant to an NGT order in 2015. It is submitted that the payment of this compensation amount does not amount to approval to destroy areas that are vital to fishing practices or to not comply with the conditions of the Environmental Clearances that have been granted so far. It certainly does not amount to permission to disregard the orders of this Ld. Tribunal. Moreover, a perusal of the Supreme Court order would show that it was an unconditional withdrawal and did not dispense with the requirement of obtaining an NoC from the Commissioner of Fisheries as directed by the Expert Committee constituted by this Ld. Tribunal.

Conclusion:

Given the fact that large amounts of debris are being dumped on ecologically sensitive areas (Pg. 121-123 of OA, Pg. 15-19 of I.A.) which are vital to sustain fishing practices of the traditional fisherfolk in the area and further the fact that JNPA does not presently have the requisite permission of the MoEF to undertake this work, it is essential that all reclamation, dredging, piling and excavation work be stopped pending a conclusive exercise of demarcating the CRZ-IA areas.

Dated 22.02.2023

Advocate for the Original Applicants