

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**WESTERN ZONE BENCH, PUNE****MEMORANDUM OF APPLICATION****(UNDER SECTION 16 OF THE NATIONAL GREEN TRIBUNAL****ACT 2010)****APPEAL NO. 29 OF 2024**

Paramparik Machimmar Bachav)

Samajik Kruti Samittee)

...Appellant

Versus

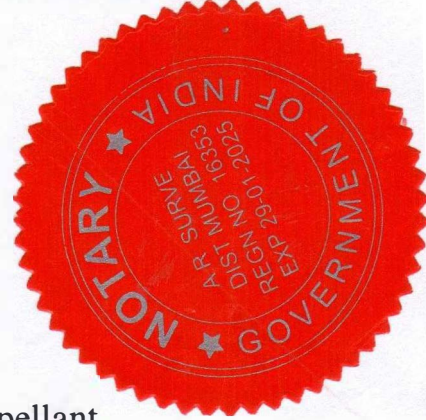
Jawaharlal Nehru Port Authority)

& Ors.)

...Respondents

COMPOSITE AFFIDAVIT IN REJOINDER TO THE AFFIDAVIT IN**REPLY FILED BY THE RESPONDENT NO.1 AND THE RESPONDENT****NO.2**

I, Ramesh Bhaskar Koli, adult Indian inhabitant, authorised representative of the Apellant abovenamed having its office at Post N.S. Karanja, Taluka Uran, District Raigad – 400 704 do hereby solemnly declare and state as under:



1. I say that I am the authorised representative of the Appellant herein. I say that I have read the Affidavit in Reply filed by the Respondent No.1 and Respondent No.2 herein. I am filing the present composite Affidavit in Rejoinder thereto with a view to controvert the contents of the same and place the relevant facts on record. I deny the contents of the Affidavits in Reply unless expressly admitted herein. Nothing stated in the said Reply should be considered admitted for want of specific traverse.
2. A detailed response to the respective Replies follows, but certain preliminary submissions on the basis of the Replies are as follows:
 - a. The present Appeal was filed seeking to assail the joint CRZ and Environmental Clearance granted to Jawaharlal Nehru Port Authority (hereinafter referred to as 'JNPA'), the Respondent No.1 herein, by the Ministry of Environment, Forests and Climate Change (hereinafter referred to as 'MoEF & CC'), the Respondent No. 2 herein, dated 15th March 2024 bearing reference no. 10/48/2023-IA-III for the "*widening of the existing Container Berth at Jawaharlal Nehru Port.*"
 - b. The Respondent No.1 has deliberately and wilfully concealed relevant information in the EIA Report about fishing activities that are widely practiced in the region where the proposed project is



located. Resultantly, the appraising authorities have failed to consider the impact of the proposed project on fishing communities that rely on this area for their livelihood and sustenance.

- c. The Respondent No.1 has not denied that certain portions of the EIA Report dealing with the impacts of dredging were directly lifted and copy pasted from a Detailed Project Report that was prepared in 1981. The OM dated 5th October 2011 issued by the MoEF-CC stipulates as follows-

“In case of those projects where decision has already been taken and environment clearance granted based on copied EIA report, the environment clearance granted would be withdrawn and the procedure for obtaining environmental clearance will be initiated de-novo. Besides these actions, separate action will be initiated to delist such consultants from the list of accredited consultants.”

It light of the fact that it is uncontroverted that the EIA Report contains data that is copied from another report, the impugned EC ought to be set aside in terms of the aforementioned OM.

Para-wise response to the Affidavit in Reply filed by the Respondent No.1:

3. The contents of para 1 to 5.4 do not require a response.



4. With respect to the contents of para 5.5 the contents of the same are denied to the extent that there has been several past demonstrable violations of the conditions of the ECs that have been granted to the Respondent No.1.
5. The contents of para 5.6 to 5.7 do not require a response.
6. With respect to the contents of para 5.8 I say that merely because no large scale construction is envisaged, it does not necessarily follow that the impact on fishing activity will be negligible. Furthermore, it is for the appraising authorities to come to the said conclusion after considering the relevant studies and reports. In the present case, as pointed out by the Appellants, the EIA Report contained false and misleading information with respect to the impact of the project on fishing activities that was directly lifted from a report prepared in 1981. No primary information has been collected and no contemporaneous data has been analyzed. The basis on which appraising authorities arrived at the conclusion that the project would not impact fishing activities was on the basis of secondary data from over 40 years ago.
7. With further reference to para 5.8 I say that a similar argument with regard to the area being a “no fishing zone” was made by the Respondent No1.



before this Ld. Tribunal in *Ramdas Janardhan Koli v. JNPT & Ors.* [O.A. 19 of 2013] It was urged by the Respondent No.1 that the fisherfolk have no legal right to claim entry within the port area. While rejecting the said contention, this Ld. Tribunal held that the Fisheries Department has recognised the traditional right of the fisherfolk living in and around the port to have free, unhindered and appropriate passage through the Nhava Sheva creek in order to enjoy traditional right to fishery. This Ld. Tribunal further recognised that the right of the fisherfolk was in the nature of a custom and that they had therefore acquired a customary easement under Section 18 of the Indian Evidence Act. This Ld. Tribunal noted as follows-

“The economy of fishermen folk, has nexus with their right to enter the seawater, collect fishes by using traditional boats, using net/mesh, as per the norms of the State Government and do business for daily earnings. They cannot be deprived of bread and butter for no much fault on their part.”

This judgment of the Tribunal was challenged by the Respondent No.1 and was later withdrawn as noted in the order dated 14th December 2022 passed by the Supreme Court. (*Annexure 16, pg. 443 of the Appeal*). As such, the observations contained in the said order in this context have attained finality.



8. The contents of 5.9 are a matter of record and as such do not warrant a response.
9. With respect to the contents of para 5.10 I deny that the MCZMA has properly applied its mind while considering the proposal of the Respondent No.1. The MCZMA has failed to take note of the fact that the EIA Report and the report prepared by NIO contain contradictory information with respect to the impact of the project on fishing activities. Further, while recommending the project for CRZ Clearance the MCZMA has noted the portion of the EIA Report which has been copy pasted from the 1981 DPR viz. that due to continuous ship movement, fisheries are not well developed in the area. The NIO Report notes that due to the permanent damage caused to the bottom biota there is a potential risk to fishery resources. It further notes that the proposed construction would have an adverse impact on benthic habitats which would be destroyed in the areas directly destroyed.
10. The contents of para 5.11 to 5.20 are a matter of record and do not require a response.
11. With respect to the contents of para 5.21 I say that the EAC failed to properly apply its mind in considering the impact of the project on the environment. A perusal of the minutes of meeting held on 6th February



2024 will demonstrate that the EAC has merely reproduced the submissions made by the Respondent No.1 in its application seeking environmental clearance. No deliberations on the EIA Report or the report prepared by NIO on the impact of the project on marine biodiversity took place. It may be noted that the Terms of Reference dated 1st September 2023 specifically stipulated that details of fishing activity and likely impacts on fishing activity due to the project must be submitted. However, as is evident from the minutes of meeting, no discussions were held on this aspect. The documents submitted by the project proponent are required to be examined strictly with reference to the ToR. The process of appraisal is defined to mean "a detailed scrutiny" by the EAC of the application and other documents. In the present case, there has been no analysis of the EIA Report.

12. The contents of para 5.22 are a matter of record and do not require a response.

13. With respect to the contents of para 5.23 I deny that the process of grant of environmental clearance has been strictly followed. In this regard the contents of the Appeal are reiterated and not reproduced for the sake of brevity. I say that there have been many lapses on the part of both, the MCZMA and the EAC, in appraising the project. Consequently, the



damage likely to be caused particularly to fishing activities has not been assessed. While reflecting on the crucial role that the EAC plays, the Supreme Court in *Hanuman Laxman Aroskar v. MoEF & Ors.* [(2019) 15 SCC 401 noted as follows-

“The EAC is an expert body. It must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment. It is not bound by the analysis which is conducted in the EIA Report. It is duty bound to analyse the EIA Report. Where it finds it deficient it can adopt such modalities which, in its expert decision-making capacity, are required.”

In the present case, although one of the specific terms of reference issued by the Respondent No.2 was that the impact of the proposed project on fishing activities be determined. Although the EIA Report prepared by the consultants of the Respondent No.1 failed to do so, the EAC failed to take note of this fact. Further, a careful scrutiny of the EIA Report would clearly demonstrate that the contents thereof are copy pasted from another report.

14.The contents of para 5.24 to para 6.1 do not require a response.

15.With respect to the contents of para 6.2, I say the Respondent has stated that the Appellants have chosen to rely on a report prepared by the Assistant Commissioner of Fisheries in the year 2007 to negate the contents of the EIA Report which is “Extremely old and outdated.”.



Ironically, the EIA report itself seeks to rely on a report prepared in the year 1981 to show that the proposed project will not have any impact on fishing activities. The report prepared by the Assistant Commissioner of Fisheries is prepared much later in time. Moreover, the findings of the said report have been accepted by the this Ld. Tribunal in *Ramdas Koli*. Furthermore, while withdrawing its Civil Appeal filed against the judgment in *Ramdas Koli*, the Respondent has been directed to pay the compensation amount determined in accordance with the findings of the report of the Assistant Commissioner of Fisheries.

16. With respect to the contents of para 6.3 I say that the passages relied upon by the Appellant were to demonstrate the contradictory findings between the EIA Report and the report prepared by NIO. While the EIA Report claimed that no fishing activities are carried out in this region, the NIO report acknowledged that proposed project is likely to have some permanent impact on benthic fauna and fishing activities. The issue, therefore, is of the appraising authorities failure to note these contradictory findings reflecting the lack of application of mind. It is telling that the Respondent has not been able to justify or explain these contradictions that have been pointed out by the Appellant and have in fact not denied that they exist.



17. With respect to the contents of para 6.4 I say that the EAC is required to submit reasons for its recommendation. Its recommendation must reflect that the relevant considerations were taken into account. In this regard, the Supreme Court in the matter of *Hanuman Aroskar* (supra) observed as follows-

“The reasons furnished by EAC constitute a live link between its processes and the outcome of its adjudicatory function. In the absence of cogent reasons, the process by its very nature, together with the outcome stands vitiated.”

18. With further reference to para 6.4 it is denied that the Appellants have not produced any technical data to negate/ counter the reports and studies of the Respondent No.1. The report of the Assistant Commissioner of Fisheries controverts the finding of the EIA Report that fisheries is not developed in the area in question. The Appellants have also demonstrated that the contents of the EIA Report have been copy pasted from another report which the experts of the MCZMA and EAC have failed to note. Further, these experts also failed to take any exception to the fact that the Respondent no.1 sought to rely on a report that was prepared in 1981 and did not produce any primary data in support of its findings that fisheries would not be impacted by the proposed project. Thus it is not just a matter



of possessing the requisite expertise that is crucial, but thoroughly considering the relevant material and arriving at a decision based on that.

19. With respect to para 6.5 I say that regardless of whether the proposed extension is on the landward side or sea-ward side, the only relevant consideration is whether it will have an impact on the environment of the area in question. With respect to the contention that the area in is a “no fishing area” I reiterate what is stated by me in para 7 above.
20. With respect to para 6.6 I say that the non-compliance with the conditions of the previous environmental clearances that have been granted to the Respondent No.1 have been referred to by the Appellants to demonstrate the past conduct of the said Respondent and its wilful and deliberate failure to adhere to the conditions imposed upon it by the appraising authorities. I say that the Appellants have provided the necessary details and particulars to substantiate these grievances which are contained at paras 45 to 54 of the Appeal.
21. With respect to para 6.7 I say that the non-compliances of the conditions of ECs on the part of the Respondent No.1 have been noted by this Ld. Tribunal in great detail in *Ramdass Koli* (supra). Upon the Respondent no.1



withdrawing its Civil Appeal against the said judgment, the said observations have attained finality.

22. With respect to para 6.8 to 6.13 the Respondent appears to have imagined a prayer that has not in fact been made in the present Appeal. The contentions contained in the paras under reference are thus entirely irrelevant to the present challenge. While the activities being conducted by JNPA generally and its past conduct are relevant factors to be considered, it is denied that the Appellants prayers are premised on these grounds alone. The Appellant has sought the setting aside of the joint EC and CRZ Clearance on the ground that the reports the EIA Report on the basis of which the impugned clearance has been granted contained false and misleading information. As pointed out in the Appeal, the entire section on impacts of dredging and "Modification of Existing Current Patterns" on the marine environment (internal pgs. 129-130 of the EIA Report) has been lifted from the Detailed Project Report prepared when the Nhava Sheva Port was commissioned in 1981. No primary data has been collected and no contemporaneous information has been analysed.

23. With further reference to paras 6.8 to 6.13, it is reiterated that the Appellant has not sought the payment of compensation in the present matter.



24. With respect to para 7 I say that the present Appeal raises questions about the manner in which the impugned joint CRZ and environmental clearance came to be granted, specifically the lack of application of mind by the appraising authorities. As such the contents of the said para are of no relevance to the present Appeal.

25. With respect to para 8 and 9 I say the mitigation measures suggested are not referable to the specific harms that the report prepared by NIO has stated are likely to occur. The NIO Report noted that permanent damage will be caused to the bottom biota leading to potential risk to fishery resources. It has also noted that this can lead to water quality deterioration and adversely affect the marine and coastal ecology. It has further noted that there will be an adverse impact on benthic habitats which would be destroyed in the area where the piling work is proposed to be carried out. No specific mitigation measures have been suggested in the EIA report or in the impugned EC and CRZ Clearance to address these impacts of the proposed project.

26. With respect to para 10 I say that the present Appeal is concerned with the validity of the joint EC and CRZ Clearance itself and not with the violation of the conditions of the EC. As such the said contents of the para are of no relevance.



27. With respect to para 11 I say that the present Appeal raises a grievance with respect to the manner in which the impugned joint EC and CRZ clearance came to be granted. As such, expounding the concept of sustainable development does not take the case of the Respondent No.1 any further.

28. With respect to the contents of para 12 I say that the Respondent has failed to demonstrate that the impugned EC and CRZ Clearance were validly granted after taking into consideration all relevant factors. The present Appeal thus ought to be allowed and impugned EC and CRZ Clearance dated 15th March 2024 be set aside.

Para-wise response to the Affidavit in Reply filed by the Respondent No.1

29. The contents of paras 1 to 12 are a matter of record and do not require a response.

30. With respect to the contents of para 13 I say that the answering Respondent has merely reiterated what is stated in the EIA Report. The said Respondent has failed to respond to the contention of the Appellants that the information that has been repeated in the said para was copy pasted from an earlier report prepared in 1981.



31. With respect to para 14 I say that while the report on the study of the impact of the proposed project on marine ecology and biodiversity was submitted to the EAC, a perusal of the minutes of the 356th meeting held on 6th and 7th February 2024 to consider the application of the Respondent No.1, will show that this report was not considered at all. Consequently the findings of the report that the project will lead to permanent damage to the bottom biota and the potential risk to fishery resources has not been deliberated upon.
32. With respect to the contents of para 15, it is denied that the EAC has taken into account all factors and mitigation measures. The EAC has failed to take note of the contradictory findings of the EIA Report and the report prepared by NIO. The minutes of the meeting of the EAC do not reflect any analysis of the reports that were submitted to it. As such, the EAC's appraisal is perfunctory and discloses a lack of application of mind on the part of the Committee.
33. The contents of para 16 are a matter of record and do not require a response.
34. With respect to the contents of para 17 and 18 the contents of para 25 above are reiterated.



35. With respect to the contents of para 19 it is denied that the environmental and CRZ Clearance for the project has been granted taking all the aspects of conservation into account. The Respondent No.2 has failed to respond to the specific contention that the EIA Report contains false and misleading information and therefore in terms of the O.M. dated 5th October 2011, the environmental clearance granted must be withdrawn and the environmental clearance must be initiated de-novo.

36. With respect to the contents of para 20 I say that the Appellants have demonstrated the failure of the Respondent No.2 to and Respondent No.4 to adequately apply their minds to the application made by the Respondent No.1 for EC and CRZ Clearance.

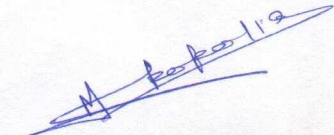
37. The contents of para 21 do not require a response.

Solemnly declared at Mumbai)
On this 25th day of September 2024)


Ramesh Koli

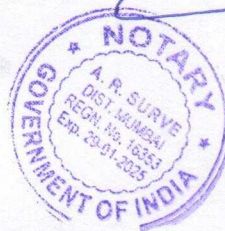
(authorised representative of
Appellant)

Identified by me,



Meenaz Kakalia
Advocate for the Appellant

BEFORE ME
Before me,
A. R. SURVE
ADVOCATE & NOTARY
GOVT OF INDIA
REG. No 16353



Seen Original
AN / Aadhar / Election
Card - Driving License,
Card - Passport / POA
Bearing No. 315909064604
Dated: 25 SEP 2024
For Verification _____

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Date 25 SEP 2024

