

BEFORE THE HONOURABLE NATIONAL GREEN

TRIBUNAL SOUTH ZONE AT CHENNAI

O A 27 of 2019 c/w O A 254 OF 2020

Between

Sri Kishore kumar & another Applicants

And

Union of India and twelve others Respondents

WRITTEN ARGUMENTS SUBMITTED ON BEHALF OF THE

10TH RESPONDENT IN O A No. 27 of 2019

1. The application mentioned above is not maintainable either on facts or on the question of law.
2. The applicants have filed this application on imaginary facts and circumstances without any support of law or facts.
3. The applicants have stated that the Industry is located in a CRZ 1 zone, while the fact is that the unit of this Respondent is located in Pitrody Industrial area, and is presently classified as CRZ 2 zone, hence the allegation of the applicants does not hold water. The document in support of the same has been produced as Annexure A2 by this respondent along with the preliminary objections dated 27th Nov. 2019.



4. This Respondent has obtained all the required permissions from the under the Air (Prevention of Pollution and control) Act and also under the Water (Prevention of Pollution and control) Act, from the concerned authorities, which are currently valid.

5. The place where the Industry of this Respondent is situated is the last point where the river joins the Arabian sea. The water at this place is always brackish and is saline. The water at this spot can not be classified as fresh water .

6. This honourable tribunal based on the submissions made by the appellants was pleased to constitute a committee with regard to the alleged Pollution caused by fish meal Industry in Udayavara of Udupi district, Karnataka. The committee carried out the inspection on 10th & 11th December 2019 and filed their report. The findings of the committee are all contrary to the claims made by the applicants.

7. The findings of the committee are that Udayavara town is not having a sewerage network. The people are having individual septic tank and soak pit. Some of the people residing on the river bank are practicing insanitary latrines. Apart from this the village itself has no solid waste management system.

8. The river water quality as per the observations of the committee are all within the permissible limits.



9. The allegation that the unit of the Respondent is functioning without a trade license as it was cancelled by the gram panchayat, has been held to be not exactly correct and that the order of cancelation has been stayed by the honourable high court of Karnataka, at Bangalore and hence has no force of law.

10. The committee has further examined all the documents pertaining to the consent for Establishment and consent for operation issued to this Respondent by Pollution control authority and found them to be true and valid.

11. The only observation made by the committee with regard to this respondent is that the unit has not installed flow meter for recording water consumption. The installation of a flow meter is not a pre requisite under the permission granted under Water (Prevention of Pollution and control) Act.

12. The committee has further observed that this Respondent has not obtained N O C from the Karnataka Ground Water Authority (KGWA) for usage of ground water for Industrial usage. The permission from KGWA according to the act is required not in the entire state of Karnataka but only in notified areas. As per the available data Udyavara is not a notified area since the rainfall in this place is very high and there is no depletion of ground water sources.

The act itself has been enacted to conserve ground water where there is scanty rain fall and fortunately in Udayavara open wells



over flow during the rainy season, which proves the heavy rain fall and abundance of ground water.

That in absence of the place being not a notified area the question of obtaining N O C from KGWA does not arise.

13. The applicants have alleged that this respondent manufactures fish meal and fish oil also, while the unit manufactures only fish meal in powder form. This fact also has been substantiated in the report of the committee at paragraph 5.2(G).

14. The E T P established by this respondent is the most modern and is designed for zero discharge of effluents since the treated water is used for the boiler, cooling tower, floor washing and any excess water is used for gardening.

15. That earlier, the unit of the Respondent had permission to discharge the treated water in to the open sea through a specially laid pipe line which has also been accepted by the committee and however now there is no discharge due to up gradation of the E T P.

16. The committee has stated that the actual water consumption and effluents generated are exceeding the permitted capacity. This runs contrary to the earlier statement of the committee where in it is stated that this respondent has not installed flow meter of the water and in the absence of the



allegation that the flow meter has not been installed, it is surprising to note how the readings are mentioned.

17. The treated water from the E T P has been tested and found the parameters have more than been met as the contents are well below the permissible limits. The observation of the committee is that the treated effluent is meeting the discharge standards prescribed by KSPCB.

18. There has not been any other remarks and regarding the boiler and chimney which is 30 meters high and has a cyclone dust collector, they also meet the all the requirements.

19. The committee has observed that only ETP, toilets and cooling tower are falling under CRZ II zone as per 2011 notification but fell under CRZ I under the 1991 notification. The report does not mention when the construction has taken place and in the absence of any document to show that the construction has taken place earlier to 2011, it can not be presumed to be earlier to 2011, which is already 11 years old. The order of the government of India which provides for even obtaining the permission after construction is produced as Document No.1. The application filed by the respondent regarding regularization is produced as document No.2.

20. The committee has recommended and have calculated environmental damages which are not supported by any of the observations made in the report and regarding environmental

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damages due to non obtaining of N O C for using ground water, it can not be levied as the unit is not located in a notified area under the Karnataka Ground water Authority.

21. That regarding the report of the Doctor of the Primary Health Centre who had given the report has not been accepted by the committee and the report of the doctor refers to open wells in some other villages and not in the area where the unit of the Respondent is located. The Applicant has to explain how the Industrial unit can be held responsible for the alleged death of fish when no effluents or treated water is discharged by the Respondent in to any of the water bodies.

WHEREFORE it is PRAYED that this honourable Tribunal may be pleased to dismiss both the applications with exemplary costs in the interest of justice and equity.

These written arguments may also be considered for O A no. 254 of 2020, since this respondent has been arrayed as 21st Respondent and it is a common report.

Place: Bangalore

Date: 2nd March 2022



Advocate for

Hindusthan Marine Industries

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

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.

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Date:.....

To,

Date: 30-07-2019

The Special Director (Technical Cell)
Department of Forest, Ecology and Environment
Karnataka State Coastal Zone Management Authority
Room No. 710, 7th Floor, IV Gate
M S Building, Vidhana Veedhi
Bangalore 560 001.

Respected Sir,

Sub:- Application for NOC for Effluent Treatment Plant in Sy. No. 193 of Udyavara Village, Udupi Taluk & District.

Reference:-I. Order of the National Green Tribunal in Appeal No. 56/2018 dated 08-02-2019.

I have preferred the above appeal before the NGT against the Letter dated 15-03-2018 and the Hon'ble NGT was pleased to direct me to approach you afresh as the Udyavara Village is included in CRZ-II of draft Coastal Zone Management Plan as per Coastal Regulation Zone Notification 2011, it is permissible to construct building and Effluent Treatment Plant in Sy. No. 193 of Udyavara Village, within Pitrody industrial area of Udupi District. Even though order of the NGT was passed on 08-02-2019, I could not approach you earlier as the order of the NGT was not uploaded in the website and I was not received the copy of the order. Recently, I came to know the directions issued by the Hon'ble NGT hence immediately on coming to know about the direction issued by the NGT, I am approaching you as per the order of the NGT.

Hence please issue No Objection Certificate to the Effluent Treatment Plant. I am ready to bear the application processing fees and also ready to provide the necessary particulars.

Yours Faithfully
For HINDUSTAN MARINE INDUSTRIES

M. K. Balraj
M. K. BALRAJ
Proprietor

Copy to : Regional Director, Coastal Regulation Zone, 1st floor, 'C' block,
Rajathadri, Manipal, Udupi District.

D.No. 12 -42 A, FISHING INDUSTRIAL AREA, UDYAVARA - 574 118, UDUPI (KARNATAKA)
Phone : (0820) 2533545 Mob : 98452 43480, 9901744885 E-mail : mkbajk@gmail.com

30/07/2019