

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONAL BENCH AT CHENNAI
ORIGINAL APPLICATION NO.52 of 2024

IN THE MATTER OF:-

NATIONAL ENVIRONMENT CARE FOUNDATION ...APPLICANT

VERSUS

MANGALURU SMART CITY LIMITED & OTHERS ...RESPONDENTS

RESPONSE ON BEHALF OF THE APPLICANT

1. That the above-titled Application has been filed under Section 14 and 15 of the National Green Tribunal Act, 2010 highlighting the issue of non-compliance with the conditions of the CRZ Clearance dated 07.10.2022 granted to Mangaluru Smart City Project Limited by Karnataka State Coastal Zone Management Authority for '*Waterfront promenade development on Netravathi River Bank of Thota and Jappinamogaru village*' in Mangalore, Dakshin Kannada district, Karnataka.
2. That the Original Application was filed on the ground that the project proponent has undertaken construction activities in CRZ-IB area, even though CRZ Clearance was granted only for CRZ-II under CRZ Notification, 2011.
3. That the CRZ Notification, 2011 defines CRZ I-B and CRZ-II area as following:

"7. Classification of the CRZ – For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely:

(i) CRZ I-,

...

B. The area between Low Tide Line and High Tide Line;

ii) CRZ-II,- The areas that have been developed upto or close to the shoreline.

Explanation- Expression "developed area" is referred to as that area within the existing municipal limits or in other existing legally designated urban areas which are substantially built-up and has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains."

4. That the Joint Committee submitted a Report dated 20.06.2024 in compliance with the directions of this Hon'ble Tribunal.

Conflict of Interest of the nodal officer of the Committee

5. That the Hon'ble Tribunal vide Order dated 05.03.2024 in Original Application No. 191 of 2023 had directed for constitution of a Joint Committee comprising of (i) Member Secretary, CPCB (ii) MoEF&CC (iii) District Magistrate- Dakshina Kannada Mangalore (iv) Representative of Director, National Centre for Coastal Research. District Magistrate- Dakshina Kannada Mangalore was made the nodal officer for coordinating the works of Committee.
6. That the Joint Committee was directed to undertake the following tasks by this Hon'ble Tribunal vide Order dated 05.03.2024:

"8. The Committee will visit the site, ascertain the true factual position and the extent of violation of environmental norms in execution of the project and submit the report before the appropriate Bench of the Tribunal atleast one week before the next date of hearing."

7. It is the submission of the Applicant that District Magistrate, who is part of the Joint Committee designated to conduct a site visit and ascertain the extent of violation of environmental norms in execution of the project, is part of the Board of Directors of Mangalore Smart City Limited i.e. the project proponent and the entity undertaking activities of the impugned project.

Copy of screenshot taken from the website of Mangalore Smart City Limited showing the District Collector as part of Board of Directors is annexed herewith as **ANNEXURE A-1**.

8. That there is bias on the part of District Collector, for they are also part of the Board of Directors of the entity undertaking the project work.
9. That the composition of the Board of Directors of the project proponent was not known to the Applicant at the time when the Joint Committee was constituted by this Hon'ble Tribunal. It was only after further enquiries that the Applicant got to know that District Collector is also part of the Board of Directors of the project proponent. Further, following two orders stated below also clearly show this is in clear violation of the settled principle of law.
10. That Hon'ble Supreme Court in the case of ***Bonani Kakkar vs. Oil India Limited & Ors., Civil Appeal No. 2201/2021*** had observed that no person against whom there are allegations should be allowed to be part of the Joint Committee, as it would result in them becoming a judge in its own cause:

*"The NGT was in error in allowing the presence of the Managing Director of OIL as a member of the Committee. The terms of reference to the Committee include assessment of the damage to and restoration of Dibru Saikhowa National Park and Maguri-Motapung Wetland. Besides, the Committee is to take over all surviving issues from the earlier Committee. **The presence of a representative of OIL as a Member of the Committee would lead to a conflict of interest and would not contribute to the fairness of the outcome. An entity against whom there are allegations of a dereliction obligations under the law cannot sit in judgment over its own conduct. OIL can be heard by the Committee, but permit the presence of one of its senior officers would make it a judge in its own cause. OIL should not be a member of the Committee.**"*

11. That it is a violation of principles of natural justice to allow a person to sit as a judge in their own cause.

12. That this Hon'ble Tribunal, in the past, has also rejected Reports filed by Joint Committees with such conflict of interest. In the case of ***Jheel Sanrakhan Samiti v. State of Rajasthan & Ors (Original Application No. 14 of 2023 (CZ))***, this Hon'ble Tribunal had directed for a fresh Report to be filed by a newly constituted Joint Committee on this ground:

"1. Learned Counsel appearing for applicant has filed objections to joint Committee report dated 17.04.2023, stating that Committee included District Collector, Udaipur who is also Vice Chancellor and Member of the Board of Udaipur Smart City Limited, therefore, being interested person, report submitted by such Committee should not be accepted. Reliance is placed on Supreme Court's judgment dated 23.01.2023 in Civil Appeal No. 2201/2021, Bonani Kakkar vs. Oil India Limited & Ors.

2. We are of the view that the issue of substantial question relating to environment, raised in this application, is a serious one. Act of concretization of river bed is involved. Hence, we should obtain a fresh factual report for which purpose, we constitute a joint Committee comprising (i) Integrated Regional Office, MoEF&CC, Jaipur, (ii) a nominee of Vice Chancellor, University of Roorkee who is expert in River Hydrology, (iii) Central Pollution Control Board (hereinafter referred to as 'CPCB') and (iv) a nominee of Central Water Commission, Government of India, who is expert in the field of River Hydrology."

13. That without prejudice to the above contention, the Applicant submits that the above act reflects the attempt on the part of the respondents to continue work while violating the environmental norms and also to undermine the violations undertaken by them. The Report submitted by the Joint Committee is faulty due to the bias. Following are a few illustrations from the Joint Committee Report to show that the site visit was conducted and Report was filed, in the background of bias and conflict of interest in the position of the nodal officer of the Joint Committee.

A. Mangroves present at the project site have been damaged

14. That the area where the project is being undertaken has abundance of mangroves. However, the project proponent has destroyed the mangroves in the area, in an attempt to undertake construction of permanent nature. The Applicant has visited the site and seen that haphazard construction is being undertaken, without considering presence of mangroves in the area.

15. That constructions are taking place with no regard to the presence of mangroves and they have been felled down, without obtaining Forest Clearance under Forest (Conservation) Act, 1980.

16. That the Mahazar Report (annexed at page 80) has also noted that vegetation in the area has been cleared and the Regional Director (Environment) issued directives to ensure that no harm is caused to any of the mangroves and trees in the area.

17. That however, in spite of such directives, no care was taken for protection of mangroves in the area, which is clear from the photographs annexed with this Response.

B. No information given on the number of trees present on site before commencement of the project

18. That the Joint Committee Report (at Page 4 of the Report), in response to the allegation that tree cutting and dumping of soil has been done at the project site to create a 9-metre wide cycle track and walk path states that a total of 133 trees were found at the site. Relevant excerpt from the Report is as follows:

“Out of the total stretch of 2.1 km, currently, a 1.6 km stretch has been completed in patches. It was noted that the Forest Department, based on the representation received by the applicant, counted the number of trees in the project area on 01-01-2024 and found a total of 133 trees.”

19. That the Joint Committee has given the information that 133 trees were found at the site as on 01.01.2024. However, it fails to clarify how many number of trees were present at the site, before commencement of project work, before large number of trees were felled.

20. That by not providing this information, the Joint Committee has failed to clarify the allegation raised by the Applicant that there was large scale tree felling being undertaken on the site, which is in violation of the CRZ Clearance as well as Forest (Conservation) Act, 1980.

21. That the activity of tree felling and destruction of mangroves is being undertaken without obtaining prior Forest Clearance under Forest (Conservation) Act, 1980, as is clear from the PARIVESH portal of MoEF&CC that shows that no such application made by the project proponent.

C. Height of the retaining wall was increased, in violation of the CRZ Clearance

22. That the Joint Committee Report (at Page 6 of the Report), while providing the compliance status of the conditions of CRZ Clearance regarding construction of permanent/ concrete structures, states that:

"As per EIA report submitted for the project approval, the project proponent had proposed for restoration of old stone masonry along the river to raise up to HFL to protect the area from floods.

It was observed that the project proponent has increased the height of the existing old dry boulder revetment wall by 600mm above HFL as per their EIA report (Photos of revetment wall attached separately).

The committee is of the view that increasing height of old retaining wall along the river bank is intended to prevent erosion, stabilize the bank, and protect the adjacent areas from inundation."

23. That the Joint Committee has acknowledged that there are constructions of permanent nature being undertaken at the project site, which has been specifically prohibited under the conditions of CRZ Clearance.

24. That such violations by the project proponent have also been duly noted in the letter dated 21.04.2023 written by the Regional Director (Environment), Mangalore to Mangalore Smart City Limited (annexed as ANNEUXURE A-12 of the OA), wherein it was noted that:

"However, at the mentioned site it is observed that the plants are cut, the land has been levelled, and the pitching work has been done with rock stones. This amounts to the violation of conditions in the CRZ approval."

25. That similarly, another letter dated 06.06.2023 written by Regional Director (Environment), Mangalore to Principal Secretary (Environment)

(annexed as ANNEXURE A-13 of the OA) stating that there is violation of conditions of CRZ Clearance at the project site. The letter noted:

"During the inspection it was found that the Mangaluru Smart City Ltd. Waterfront promenade development project is in progress, at the site plants- bushes are removed and land is levelled, and rock stones are filled at the riverbanks for pitching works. This is a clear violation of norms and conditions imposed in the CRZ approval and a letter Ref (4) has been communicated to Mangaluru Smart City Ltd. for clarification regarding the aforesaid matter."

26. That however, construction of retaining wall of 600 mm (60 cm) is being undertaken, not only in violation of the condition provided in CRZ Clearance but also leading to irreversible damage in the CRZ area. Therefore, the conclusion of the Joint Committee Report that such increase in height is to prevent erosion, stabilize the bank and protect the area from inundation cannot be accepted.

27. It is settled principle of law that when law requires something to be done in a certain manner, then it must be done in that manner alone or nothing at all. Therefore, no deviation from the CRZ Clearance conditions can be allowed to be undertaken under the pretext of protection of the area from erosion.

D. No observation given on the unauthorised dumping of construction debris into Netravati River at Mulihithulu

28. That the Joint Committee (at Page 5 of the Report), in response to the allegation that there is unauthorised dumping of construction debris into Netravati River at Mulihithulu, has stated that dismantling of the unauthorised structures abetting the railway bridge has been initiated.

29. That the Joint Committee has failed in differentiating the location of Mulihithulu and the railway bridge. It is submitted that Railway Bridge is the starting point and Mulihithulu is ending point of project and are located far away from each other.

30. That the allegation raised in the Original Application concerned unauthorised dumping of construction debris into Netravati River at *Mulihithulu*, while the Joint Committee Report has given observations with respect to the construction at the *Railway Bridge*.
31. That the Joint Committee has failed in clarifying the position of the unauthorised structures at Mulihithulu and has intentionally tried to mislead this Hon'ble Tribunal by stating that dismantling work of the structures are ongoing.
32. That the above facts make it clear that the Joint Committee Report has been prepared with clear bias in favour of the project proponent. This is the reason that the Joint Committee has failed to highlight any violations on the part of the project proponent, even though sufficient information to the contrary has been provided by the Applicant.
33. In light of the above facts and circumstances and in the interest of justice, this Hon'ble Tribunal may be pleased to pass appropriate directions and direct for constitution of a new Joint Committee.

Through



G. Stanly Hebzon Singh
Advocate,
Counsel for the Applicant

Dated:- 05.09.2024



BOARD OF DIRECTORS

Sr.No	Name of Director	Designation	Nomination
1.	Shri. L K Atheeq, IAS	District In-Charge Secretary, Dakshina Kannada	Chairman (Gok)
2.	Shri. Lakshmikanth Reddy G, IAS	Managing Director, KUIDFC	Nominee Director (Gok)
3.	Smt. N Manjushree , IAS	Directorate of Municipal Administration	Nominee Director (Gok)
4.	Shri. Sharat B, IAS	Managing Director, KUWSDB	Nominee Director (Gok)
5.	Shri. Jitendar Kumar Mehan	Government of India, MoHUA	Nominee Director (Gol)
6.	Shri. Mullai Muhilan M P, IAS	Deputy Commissioner, Dakshina Kannada District	Nominee Director (Gok)
7.	Sri Raju.K. KAS	SLAO, KIADB and Managing Director, MSCL	Managing Director (Gok)
8.	Shri. Ananda C L, KAS	Commissioner, Mangaluru City Corporation	Nominee Director (ULB)
9.	Shri. Sudheer Shetty Kannur	Mayor, MCC	Nominee Director (ULB)
10.	Shri. D.B.Mehta	Finance Background	Independent Director
11.	Smt. Dr. Amba Shetty	Engineering Background	Independent Director
12.	Shri. Premananda Shetty	Corporator – 1, MCC	Nominee Director (ULB)
13.	Shri. Lohith Amin	Corporator – 2, MCC	Nominee Director (ULB)