

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE BENCH AT CHENNAI**

ORIGINAL APPLICATION NO. 160 OF 2020 (SZ)

IN THE MATTER OF:

E.A.S SARMA & ANR.

...APPLICANTS

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

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THROUGH



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**RESPONSE DATED 12.04.2021 TO THE REPORT OF THE JOINT
COMMITTEE ON BEHALF OF THE APPLICANTS**

MOST RESPECTFULLY SHOWETH:

1. That the Applicants have filed the present Original Application under Sections 14 and 15 of the National Green Tribunal Act, 2010. In the Original Application filed by the Applicants the following prayer has been made :-

(i) Direct the respondent No.1 to revoke the Environmental and CRZ Clearance dated 07.03.2019 granted to respondent No.6 along with the transfer letter dated 18.06.2019

(ii) Direct that responsibility be fixed and action be initiated against those persons who started the illegal dredging and discharge of dredge spoil into the mangrove in violation of CRZ Notification of 2011 and 2018.

(iii) Direct that responsibility be fixed and action be initiated against Government – Respondents for having omitted to take any action against discharge of dredge spoil into the mangroves to take place and death of mangroves in the area.

(iv) Direct that action be taken against the officials of Andhra Pradesh Maritime Board for issuing illegal permission/s dated 01.02.2020 and 10.06.2020 when it well known that the whole area in Kakinada Bay is ecologically important and sensitive

(v) Direct that a committee be set up to enable their fact find and reporting to the Hon'ble Tribunal on the issue of damage to the mangroves and illegal dredging and discharge of the spoil into the mangroves being done by the Respondent No.6

(vi) Direct that the entire area be restored to its original condition and the entire bund be broken and removed in order to clear the dredging spoil and to conserve rest of the habitat and bring back the habitat to its original status by applying the Polluter Pays principle at the cost of Respondent No.6

(vii) Direct the 2nd respondent to prepare a management plan for the biological active mudflats present in Kakinada Bay area without delay.

(viii) Direct that the respondent No.1 should notify without delay the Eco-sensitive zone of Coringa Wildlife Sanctuary in a radius of 10 Km from the Coringa Wildlife Sanctuary.

(ix) Direct that the restoration should be done under the supervision of an expert committee comprising of national level institution which has expertise on restoration of marine ecology and specifically mangroves.

2. That vide it's Order dated 27.08.2020 this Hon'ble Tribunal was pleased to appoint a Joint Committee with the following Terms of References in paras 13 to 15 :-

- i. Inspection of the area in question
- ii. Submitting of a factual as well as action taken report, if there is any violation found including assessment of environmental compensation and remedial measures to be taken to restore the damage caused to the environment.
- iii. The Committee was directed to consider the question of nature of damage caused to the mangroves and mudflats due to the activities of the sixth respondent and also on account of the construction of the bund preventing the flow of sea water in that area and the consequential damage caused to the mangroves and the mudflats and its effects on environment and eco-sensitive zone namely, the Coringa Wildlife Sanctuary and if there is any damage caused, the committee was directed to suggest and recommend the remedial measures to be taken to restore the damage caused to the environment apart from assessing the environmental compensation required for restoration of damage caused to the environment.
- iv. The committee was also directed to consider the question as to whether any activity of the sixth respondent has been extended in the prohibited CRZ - I and CRZ - IA areas as alleged in the application.

3. That by an Order dated 20.11.2020 M/s. GMR Energy Ltd., was impleaded as additional 8th Respondent and the fifth respondent was deleted from the array of Parties.

4. That the Joint Committee visited the site and submitted its Report to this Hon'ble Tribunal which was duly considered on 18th February, 2021. The Hon'ble Tribunal directed the Committee to file a further Report on or before 19.03.2021 in the matter and Applicants were permitted to file their Objections to the Joint Committee's Report. Applicants' response to the Joint Committee's Report is as under:-

5. **THE JOINT COMMITTEE HAS FAILED TO ADDRESS THE TERMS OF REFERENCE ADEQUATELY:** It is stated by the Applicants that the Joint Committee has failed to address the Terms of Reference adequately. In its Order dated 18.02.2021 this Hon'ble Tribunal has itself observed in its para 3 as follows:-

"It was mentioned in the report that there was some damage caused to Mangroves and it requires restoration which will have to be undertaken by the Andhra Pradesh Maritime Board. **However, they have not mentioned the extent of damage and required for restoration and the time limit within which the same has to be done.**"

(Emphasis supplied)

6. During the Joint Inspection, the committee found that the Respondent No.8 interfered with the mangroves and the mudflats as stated in the committee's report at page 3 , second paragraph as follows.

"...As directed by Andhra Pradesh Maritime Board, to avoid mixing of dredging spoil with sea water they constructed a bund in the designated area **for depositing dredging spoils.** Later they realized that the mangrove patch along the road side got affected and removed certain **portion** of bund to allow inflow of sea water into mangrove patch. It is also informed that due to this they have stopped all their activities in that area until further directions."

By implication, the committee was required to determine

- (i) The extent of violation of the conditions precedent to the EC granted to GMR Energy
- (ii) Violation of the requirements for conserving the mangrove/ mudflats
- (iii) Extension of the activities related to dredging and dumping of the dredge wastes in prohibited CRZ I and CRZ IA areas and

(iv) Violation of the requirements of conserving the eco-sensitive zone (already published but yet to be formally notified) of Coringa Wildlife Sanctuary nearby

(v) The extent of damage and action required for restoration and the time limit within which the same has to be done

It is stated that the above issues have not been considered by the Joint Committee.

7. The committee was required to submit a factual report and action taken Report making an assessment of the extent of the violations, the extent of the damage to the environment including the mangroves/ mudflats, the remedial measures needed to restore the same to their pristine form, the liability and the environmental compensation to be made good. The Joint Committee Report has failed in addressing any of these requirements adequately. No Action Taken Report has been filed by the Joint Committee in spite of the direction in para 13 of the Order dated 27.08.2020.
8. In order to address the above mentioned requirements, the Joint Committee ought to have consulted / taken the help from experts having adequate knowledge to be able to quantify the environmental damage, the kind of remedial measures to be taken for restoration, the liability and the environmental compensation to be determined. Apparently, the committee failed to draw upon such expertise.
9. **IN RESPONSE TO THE ISSUE THAT FOR DREDGING, NECESSARY APPROVALS/ CLEARANCE WERE OBTAINED AND THAT TO AVOID MIXING OF DREDGING SPOIL WITH SEA WATER A BUND WAS CONSTRUCTED IN THE DESIGNATED AREA FOR DEPOSITING DREDGING SPOILS:** It is stated by the Applicants that according to the Report, in it's para on Background, page 2 of the Report, it is mentioned that for dredging, necessary approvals/ clearances were obtained, the approval for dredging given by Andhra Pradesh Maritime Board was taken. It is stated that this does not address the question whether such approvals

were consistent with the norms of conserving mangroves/ mudflats/ environment / biodiversity. The Respondent No. 8 cannot take shelter under approvals by the other agencies that ignored such norms of environmental conservation. The so called Master Plan cannot not override the environmental norms. The Joint Committee ought to have looked into the Master Plan and tried to ascertain the factual position, which it failed to do.

10. That in the Report it has been stated that to avoid mixing of dredging spoil with sea water a bund was constructed in the designated area for depositing dredging spoils. It is stated by the Applicants that this is a clear admission on the part of the Respondent No. 8 that it has severely interfered with the seafront, disturbed the sea water flow, thereby causing damage not only to the mangroves/ mudflats/ the associated ecology but also the marine bio-resources of the sea. The Joint Committee ought to have recommended an exemplary Environmental compensation on this ground alone.

11. IN RESPONSE TO THE ISSUE "TO AVOID MIXING OF DREDGING SPOIL WITH SEA WATER RESPONDENT NO.8 CONSTRUCTED A BUND IN THE DESIGNATED AREA FOR DEPOSITING DREDGING SPOILS. LATER THEY REALIZED THAT THE MANGROVE PATCH ALONG THE ROAD SIDE GOT AFFECTED AND REMOVED CERTAIN PORTION OF BUND TO ALLOW INFLOW OF SEA WATER INTO MANGROVE PATCH : It is stated that the above observation has been made by the Committee in para 2 of the Observations, page 3 of the Report. In response it is stated that on 27th May, 2020 District Forest Officer (East Godavari Territorial) Nandini Salaria and Andhra Pradesh Pollution Control Board's (Kakinada) Executive Engineer A.Rama Rao Naidu had conducted a site inspection on the direction of East Godavari District Collector D.Muralidhar Reddy. This fact has been reported by 'The Hindu' published on 30th May, 2020. The media Report states that:-

"On the site, a bund has been erected on the mudflat front. The inflow of water and sand being dredged from the mudflat into the mangrove has been recorded. The GMR authorities

have been directed to stop the dredging activity, and remove the bund by June 1” Ms Salaria said.

Copy of the media Report dated 30.05.2020 published in ‘The Hindu’ is annexed as **ANNEXURE-1**.

12. That even after the Order of the DFO no credible action was taken by the Respondent No.8-GMR Energy Ltd and Respondent No.7- Andhra Pradesh Maritime Board which is apparent from Andhra Pradesh Maritime Board Letter No.SE/PP2/05/2020, dated 10.06.2020. In the reference cited, M/s GMR Energy Ltd., Kakinada has submitted a requisition to the Chief Executive Officer, APMB duly stating that ,GMR Energy Ltd. has commenced dredging operations and completed @1.50 lakh cum of dredging and has an action plan to complete the remaining at the earlier in a time bound schedule. Further, it is stated that 2.00 lakh cum of dredging is yet to be carried out and the current permitted location does not have the capacity to hold the quantity and requested to dispose the remaining dredged material in the deep sea by using hopper barges. This clearly shows that Respondent No.8-GMR Energy Ltd and Respondent No.7-Andhra Pradesh Maritime Board have failed to adhere to the Order of the DFO whereby the GMR authorities have been directed to stop the dredging activity, and remove the bund by June 1, 2020.

Copy of the Andhra Pradesh Maritime Board’s Letter No.SE/PP2/05/2020, dated 10.06.2020 is annexed as **ANNEXURE-2**.

13. RESPONSE TO THE ISSUE “THEY ALSO EXPRESSED THEIR WILLINGNESS TO RESTORE THE DAMAGED AREA TO ITS ORIGINAL POSITION UNDER THE SUPERVISION OF ANDHRA PRADESH MARITIME BOARD SINCE THE AREA IS UNDER THEIR CONTROL.”:

In response to this issue of the Committee at page 3, 8th line from bottom of the page of the Report it is stated by the Applicants that the area is admitted to be under control of Andhra Pradesh Maritime Board but the maritime board should have got the necessary approval from MoEF&CC when the site

in question had mangroves and mud flats. The maritime board should also have ensured that there is no violation of EC/ CRZ conditions and ESZ. No impact assessment/study with respect to mangroves and mud flats has been done. Further, the maritime board is not competent to supervise the restoration. Responsibility of the restoration should be done under the supervision of an expert committee comprising of national level institution which has expertise on restoration of marine ecology and specifically mangroves as has been prayed in the Original Application and it is stated that the cost for such restoration should be borne by Respondent No.8.

14. RESPONSE TO THE ISSUE, "THEY ALSO INFORMED THAT APART FROM THE MANGROVE PATCH ALONG THE ROAD THE AREA ADJACENT TO GMR POWER PLANT DID NOT HAVE MANGROVES AS ALLEGED BY THE PETITIONERS, IN FACT IT WAS A RECLAIMED AREA AND ONLY GROWTH OF PROSOPIS PLANTS WAS FOUND EARLIER." : In response to this issue observed by the Committee at Page 3, 4th line from bottom of the page of the Report it is stated by the Applicants that the caption / description of photograph of the annexure II is not given properly. The dried trees are dead mangrove with the back ground still remaining the gravel of the certain removed portion of the Mangroves.

15. That after going through the Counter filed by the Respondent No.8 the following facts are admitted:-

- i. GMR Energy was the company that carried out dredging and dumped the dredged waste on the mangrove area in question
- ii. GMR Energy seems to rely entirely on the two letters issued by AP Maritime Board for dumping the waste, thereby admitting that they did dumping of waste at the site in question
- iii Respondent No. 8 has admitted raising a bund on it's own without an independent expert institution being involved just because it had the permissions by APMB
- iv. Respondent No. 8 has denied that there were pre-existing mangroves at the site and the dredging waste dumped there had not affected the mangroves.

v. The Respondent No. 8's Counter states that apart from the mangrove patch along the road the area adjacent to GMR Power plant did not have mangroves as alleged by the petitioners, in fact it was a reclaimed area and only growth of *Prosopis* plants was found earlier. The photos taken during the site visit is at Annexure-II

16. However, the pictures and maps presented on record at Annexure A8 alongwith Original Application speak volumes of the fact that the mud plains have been damaged as evident from the cracks appearing on the ground. Mangroves can thrive only when there is flow of water over the mudflats and the dredged waste had interfered with the water flow, damaging the mangroves.

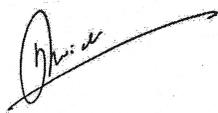
17. That the vegetation in Annexure II of the site visit is Mangroves only. They are Not *Prosopis* plants as claimed by Respondent No. 8. The Applicants are filing few more Photographs adjacent to the GMR plant which clearly show the Mangrove plants and bunds with gravel. As the area was inundating regularly earlier before disturbance it was mangroves. *Prosopis* will not grow if regular inundation occurs. It will be in elevated areas which will not get tidal flushing. *Prosopis* can be seen along the Road side up to the Director of Port Office and immediate adjacent of GMR Plant. In the map annexed with the Original Application as Annexure-A4 it is visible that the area was low lying with regular tidal inundation and continuation of mangroves from North to south up to GMR power plant. In photographs annexed as Annexure-A6 and A7 to the Original Application the arrangements to dispose the dredged spoil can be seen and dredged spoil is also seen as desposed. Few photographs showing proximity of the Mangroves with GMR Plant are annexed as **ANNEXURE-3 (Colly)**.

18. In view of the importance of this area this entire area, the original status with mangrove and mud flat needs to be restored. It is also important to protect present mangroves and its biodiversity out side the sanctuary.

19. That it is stated by the Applicants that the Respondent No.7-Andhra Pradesh Maritime Board and Respondent No.8 GMR Energy Ltd. are the main violators responsible for destroying the mangroves, mudflat and the rich biodiversity of Kakinada bay area. Instead of addressing this violation and penalty the committee suggested the supervision of restoration of Mangroves to Andhra Pradesh Maritime board.

In view of the Joint Committee's Report and above submissions it is prayed that:-

- (i) Prayers as mentioned in the Original Application may be granted in favour of the Applicants and against the Respondents.
- (ii) Action be taken against Respondent Nos.7 and 8
- (iii) Respondent No.8 should also be directed to bear the environmental cost/damages for restoration of the area to its original condition
- (iv) Any other or further relief may kindly be granted in favour of the Applicants



RITWICK DUTTA



SAURABH SHARMA

**G.STANLY HEBZON SINGH
ADVOCATES**

GMR Energy asked to stop dredging in Kakinada mudflat

HINDU.

Bund close to its plant should be dismantled by June 1, says official

30-05-2020

T. APPALA NAIDU
KAKINADA

The Forest Department has directed the GMR Energy Limited authorities to stop dredging activity in the Kumbabhisekham mudflat with immediate effect. It has also ordered the removal of the bund around the mangrove cover adjacent to the company's 220 MW barge-mounted power plant on the Kakinada coast.

The action comes in response to a report published in these columns on May 22 detailing the threat to the mudflat and the mangrove cover and destruction of the prime habitat of endangered Great Knot (*Calidris tenuirostris*) and Vulnerable Indian Skimmer (*Rynchops albirostris*).

The dredging was being carried out by GMR Energy Limited to shift the existing installations.

On May 27, District Forest Officer (East Godavari-Territorial) Nandani Salaria and AP Pollution Control Board



A bund erected around the mangrove cover by GMR Energy Limited to deposit the dredged material, at Kumbabhisekham mudflats in Kakinada.

(Kakinada) Executive Engineer A. Rama Rao Naidu conducted site inspection on the directions of East Godavari Collector D. Muralidhar Reddy.

"On the site, a bund has been erected on the mudflat front. The inflow of water and sand being dredged from the mudflat into the mangrove cover has been re-

corded. The GMR authorities have been directed to stop the dredging activity, and remove the bund by June 1," Ms. Salaria said.

Campaign by activists

"The bund is an immediate threat, impacting the soil topography and salinity on the site being levelled with the dredged material," Ms. Sala-

ria added.

Former Union Power Secretary E.A.S. Sarma, wetland expert K. Mruthynjaya Rao, and conservation biologist J. Eswar Narayana have documented the destruction of the Kumbabhisekham mudflat due to the dredging and sought the intervention of the State and the Ministry of Environment and Forests.



ANDHRA PRADESH MARITIME BOARD

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N.P.RAMAKRISHNA REDDY
CHIEF EXECUTIVE OFFICER

Port Administrative Building
Beach Road, P.B.No.11,
KAKINADA -533007

To
M/s GMR Energy Limited,
701, 7th Floor, Naman Centre,
Plot No.C-31, BandraKurla Complex,
(Opp: Dena Bank), Bandra East,
MUMBAI -400051,
MAHARASTRA

Lr.No.SE/PP2/05/2020, dt. 10.06.2020

Dear sir,

Sub: Andhra Pradesh Maritime Board – GMR Energy Limited – Approval for dredging of Channel for towing the Barge out of mooring basin and Approval for disposal of dredged sand to location Specified–Permission - Issued – Reg.

- Ref: 1) M/s GMR Energy Limited Lr.No.GMR/GEL/KKD/BP/7.12/4221, Dt.21.12.2019.
2) This Office Lr.No.SE/PP2/05/2020, Dt.27.01.2020.
3) Govt., Memo.No.INC01-PORT/15/2020, Dt.30.01.2020.
4) This Office Lr.No.SE/PP2/05/2020-1, dt.01.02.2020.
5) M/s GMR Energy Limited Lr.No.GMR/GEL/KKD/BP/7.12/4242, Dt.06.02.2020.
6) Govt., Memo.No.INC01-PORT/15/2020, Dt.06.03.2020.
7) This Office Lr.No.S.E./PP2/02/2020, Dt.23.03.2020.
8) Govt., Memo.No.INC01-PORT-15/2020, Dt.04.05.2020 along with GMR/GEL/KKD/BP/7-12/4277, Dt.29.04.2020.
9) This Office Lr.No.SE/PP2/05/2020, Dt.09.05.2020.
10) GMR Lr.No.GMR/GEL/KKD/BP/7.12/4285, Dt.26.05.2020.
11) Port Officer, Kakinada Lr.No.PC/Traffic/GMR/2020, Dt.28.05.2020.

Attention is drawn to the references cited. In the reference 10th cited, M/s. GMR Energy Ltd., Kakinada has submitted a requisition to the Chief Executive Officer, APMB duly stating that, GMR Energy Ltd. has commenced dredging operations and completed @1.50 lakh cum of dredging and has an action plan to complete the remaining at the earlier in a time bound schedule. Further, it is stated that 2.00 lakh cum of dredging is yet to be carried out and the current permitted location does not have the capacity to hold the quantity and requested

to dispose the remaining dredged material in the deep sea by using hopper barges.

In this connection it is to inform that, Government in the ref.3rd cited have approved the proposal for the dredging of Channel for towing the Barge out of mooring basin and for disposal of dredged spoil in location as proposed and requested the APMB vide reference 2nd cited and shall take necessary action accordingly.

The APMB in the ref. 4th cited, has issued orders with the conditions as stated therein.

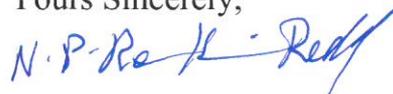
Now, M/s GMR Energy proposes to dispose the remaining quantity @2.00 lakhs cum dredging material in the deep sea by using hopper barges. After careful examination, the permission is hereby accorded subject to the following conditions in addition to the conditions laid in the reference 4th cited.

- 1) The dredged material shall be dumped in the dedicated dumping area as shown in the Navigation Chart 3009 (Copy enclosed).
- 2) M/s GMR Energy shall take all precautions so as to protect the mangroves in the area while dumping the dredged spoil in the low laying area in the North side of existing GMR Energy Limited site opposite to Port Administrative Building on East side of ADB Road. They are also requested to utilize the maximum capacity at this location to reclaim the area without causing any damages to the mangroves.
- 3) The activity of the dredging should not hamper the movement of Barge / Boats, and other Traffic including Fishing boats through the commercial channel while plying from dredging area to dumping area and vice-versa.
- 4) During the course of dredging work, no Government property should be damaged. If any damage occurs to any of the Government properties, it should be repaired to its original normalcy with firm's cost.
- 5) The Department may hold the permission on administrative or other reasons at any time or on weather reasons. No compensation or claim will be entertained in this regard whatsoever for any reason.

Further, it is to inform that M/s GMR Energy Limited shall take further necessary action in consultation / co-ordination with the Port Officer, Kakinada and Executive Engineer, Marine Division, Kakinada.

Encl: Drawing

Yours Sincerely,



Chief Executive Officer,

Andhra Pradesh Maritime Board.

Copy to Port Officer, Kakinada for information
and
Copy to Executive Engineer, Marine Division,
Kakinada

} to follow the instructions issued
vide this Office Memo No.
SE/PP2/05/2020-2,
Dt.01.02.2020 and report the facts
from time to time to this office.

ANNEXURE - 3







