

**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

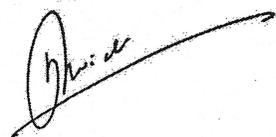
UNION OF INDIA & ORS.

...RESPONDENTS

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THROUGH




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RESPONSE DATED 23.06.2021 TO THE REPORT OF THE JOINT COMMITTEE ON EXTENT OF DAMAGE/COST REQUIRED FOR RESTORATION 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. In its Order dated 18.02.2021 this Hon'ble Tribunal observed, "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 cost required for restoration and time limit within which the same has to be done." Accordingly, the Committee was directed to file another Report explaining this aspect before the next hearing date. Subsequently, a Report has been filed by the Committee giving the extent of damage/cost required for restoration. This Report has recommended a cost of Rs. 20 Lakhs for restoration of the mangroves.

The Joint Committee came to the conclusion, on the basis of visual inspection and on the basis of a survey conducted by the Kakinada Port, that the extent of the area under mangroves, damaged by the dredging operations, is only 5 acres. This needs to be reviewed for the following reasons:-

5. That the Applicants' contention is that dumping of dredge waste had far more extensive damage, not only in terms of the mangroves but also the mudflats and the associated biodiversity. The Committee's report made no mention of the mudflats and biodiversity. Dredge wastes would have significantly altered the soil characteristics and the cost of restoration of either the mudflats or the mangroves. Therefore, the actual costs would be far higher than the unit costs indirectly derived from the Swaminathan Foundation study which was conducted in 1991, when the perception of the cost of environmental damage was different. The Swaminathan Foundation had in fact cautioned that the cost of restoration would depend critically on the site conditions, mangrove ecosystem, tidal amplitude and topography of the area chosen for restoration. Therefore, it is somewhat unrealistic to apply the same yardstick of cost determination to the present case.

6. That *in the first Joint Committee report, it was mentioned that "to avoid mining of dredging spoil with seas water, they constructed a bund in the 'designated area' for depositing dredging spoils. Later they realised that the mangrove patch along the roadside 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. They also informed that they have taken necessary steps for the regeneration/restoration of the affected mangroves by appointing an Expert Consultant for this purpose. However the petitioner demanded for the complete removal of the bund and the Respondent No. 8 has agreed up on".*

It is stated that the depth of the bund which was made of gravel and raised from the seabed was around 11feet or so. The gravel needs to be removed fully upto the seabed, as otherwise the sea water flow would continue to be obstructed adversely affecting the mudflats and the mangroves. Also, the dumped dredge wastes, which have a layer of around 5-6 feet thick, should be fully removed both from the mangrove area and the mudflat area, in order to restore the entire extent to its pristine status, permitting restoration of the associated biodiversity. Only an institution like EGREE which has an intimate knowledge of the area can assess the environmental costs consequent to this.

7. That on the issue of violations of EC conditions by the project within the ESZ area the Joint Committee in it's Report states:-

"Regarding the project activity fall under the default zone of 10 Km distance from Eco Sensitive Zone of Coringa Wildlife Sanctuary, the present activity is coming under 7(e) of the schedule to EIA Notification, 2006 and it is stated that "maintenance dredging is exempted provided it formed part of the original proposed for which Environment Management Plan (EMP) was prepared and environment clearance obtained".

8. The Applicant states that the Joint Committee has accepted the above contention of the Respondent No.8 without verifying whether the Respondent No.8's was doing maintenance dredging as per it's original

proposal for which Environment Management Plan (EMP) was prepared and environmental clearance obtained by Respondent No.8. There is no document filed by the Committee or Respondent No.8 to support and prove this point and hence this para of the Report of the Committee cannot be accepted for want of necessary documents.

9. That it is stated that in response to this issue at Page 3, 4th line from bottom of the page of the First 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.
10. That 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.
11. That it is stated that the vegetation in Annexure II of the site visit filed with the first report is Mangroves only. They are Not *Prosopis* plants as claimed by Respondent No. 8. The Applicants had filed 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) alongwith the earlier response filed by the Applicants to the first Report of the Committee.

12. That it is stated that the committee had no experts in assessing the damage to mangroves, mudflats and loss of biodiversity. By and large, it went by a visual observation confined to the mangroves and the version provided by the Respondents. It would have been more meaningful had the Committee coopted an expert from a professional institution such as the East Godavari Estuarine ecosystem (EGREE) Foundation who conducted a Marine Biodiversity Study. EGREE which worked in the area for 5-7 years, has knowledge of the mangroves/ mudflats/ biodiversity in the area and they can readily assess the pre- and post-dredging extents of damage on the basis of which the total environmental costs could be determined.

13. In view of the importance of this area this entire area, the original status with mangrove and mud flat needs to be restored. The bund also needs to be removed and no ecologically dangerous activity be permitted within the ESZ. It is also important to protect present mangroves and its biodiversity out side the sanctuary.

14. 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.

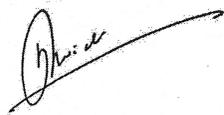
In view of the Joint Committee's Report and above submissions it is prayed that:-

- (i) Prayers as mentioned in the Original Application may be granted in favour of the Applicants and against the Respondents.

- (ii) The original status with mangrove and mud flat needs to be restored
- (iii) The cost of restoration may be reviewed and increased in view of the above submissions.
- (iv) Bund to be removed forthwith.
- (v) Action be taken against Respondent Nos.7 and 8
- (vi) Respondent No.8 should also be directed to bear the environmental cost/damages for restoration of the area to its original condition

Any other or further relief may kindly be granted in favour of the Applicants

Dated at Chennai on this 23rd day of June, 2021



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ADVOCATES
COUNSELS FOR APPLICANT