

**BEFORE THE NATIONAL GREEN TRIBUNAL**

**WESTERN ZONE BENCH, PUNE**

**ORIGINAL APPLICATION NO. 46 OF 2021**

**(Earlier Appeal No. 9 of 2021)**

Dilip Pandurang Koli & Ors.

..Applicants

versus

MoEF-CC & Ors.

...Respondents

**AFFIDAVIT IN REJOINDER ON BEHALF OF THE**

**APPLICANTS TO THE REPLY FILED BY THE RESPONDENT**

**NO.2**

I, Dilip Pandurang Koli, the Applicant no.1 in the present matter, residing at At.Uran Koliwada, Post., Tal.Uran, Dist.Raigad-400702, do hereby solemnly affirm and state as under:

1. I say that I have perused the Reply filed by the Respondent No.2 and am filing this Affidavit in Rejoinder thereto with a view to controvert the contents of the same and place relevant facts on record. I deny the contents of the Affidavit to the extent that the same are contrary to and/ or inconsistent with basic facts and ground realities stated herein. I repeat and reiterate the contentions made in the Original Application.



**Response to contentions on maintainability of the present Application and alleged lack of diligence:**

2. It is denied that the present application is not maintainable or that it is an attempt to circumvent the period of limitation imposed under Section 16 of the NGT Act.
3. It is denied that the Applicants have speculatively filed the Writ Petition before the Bombay High Court as the remedy before this Hon'ble Tribunal was time-barred. The Writ Petition sought to raise vital issues related to the violation of the fundamental right to life and livelihood of fisherfolk and as such was entertainable by the High Court exercising its writ jurisdiction under Article 226 of the Constitution.
4. It is denied that the relief as sought for in the present Application cannot be granted by this Hon'ble Tribunal exercising its jurisdiction under Section 14 and 15 of the NGT Act.
5. The National Green Tribunal has been given wide discretionary powers to secure the ends of justice. This is evident from a reading of Rule 24 of the

NGT Rules 2011 which reads thus:-



*“The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.”*

6. The objective of the NGT Act as set out in its preamble is for effective and expeditious disposal of cases relating to environmental protection and enforcement of any legal right relating to environment. The NGT has thus been entrusted with the responsibility to exercise powers to achieve the objectives of the Act.

7. Alluding to the wide powers that have been given to the NGT to achieve the objectives of the Act, the Supreme Court in the matter of *Municipal Corporation of Greater Mumbai v. Ankita Sinha* [Civil Appeal 12122 of 2018] has held as follows-

*“40. By choosing to employ a phrase of wide import. i.e. secure the ends of justice, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses inter alia, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environment principles and even hauling up authorities for inaction, when need be.*

41. Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of



*moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.”*

8. With respect to the contention raised by the Respondent No.2 that the present Application is time-barred and that this Hon'ble Tribunal ought not to entertain the same, it is submitted that the issue with regard to the delay in the filing of the Appeal No. 9 of 2021 has been dealt with by the order dated 23<sup>rd</sup> June 2021. This Hon'ble Tribunal noted the fact that since there the application raises a substantial question relating to the environment, in the interest of environmental justice the prayer of converting the appeal into an original application was accepted. This Hon'ble Tribunal took note of the fact that the area where the expansion activities are to be undertaken are CRZ-IA areas where construction is prohibited and further noted the violations of the conditions of the EC that had been previously granted, which had been established during previous site investigations. This Hon'ble Tribunal was therefore of the view that there is a substantial question of the environment relating to the enforcement of the CRZ regulation and that the response of the concerned statutory authorities and assessment of the factual situation would be required.



9. It is submitted that as far as the maintainability of the present application is concerned the only question required to be determined by this Hon'ble Tribunal is whether the issues raised in the present application fall within the scope of Section 14 of the NGT Act.

10. Section 14 of the NGT Act states that the Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to the environment is involved and such question arises out of the implementation of the enactments specified in Schedule I. Substantial question relating to the environment has been defined under section 2(m) of the NGT Act as instances where there is a direct violation of a specific statutory environmental obligation by which the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences *or* the gravity of damage to the environment or property is substantial *or* the damage to public health is broadly measurable. It is submitted that in the present case there has been a blatant violation of the provisions of the EIA notification, 2006 in as much as one of the compulsory stages of the environmental clearance process has been eliminated entirely without any statutory power being

granted to appraising authorities to permit such exclusion. Further, the project is proposed to be carried out in CRZ-IA areas which fact has been

concealed by the Respondent No.1 - the entire application process and



clearance eventually granted proceeded on the footing that it is a CRZ-IV area. Apart from this, concerns of the fisherfolk community, who will be impacted by the proposed work, have not been taken into account while granting the environmental clearance. It can no longer be disputed that the fisherfolk will be adversely impacted by the reclamation and other work proposed to be carried out pursuant to the environmental clearance dated 9<sup>th</sup> October 2019 in light of the report prepared by the Expert Committee appointed by this Tribunal.

11. As such the concerns raised in the present application falls squarely within the scope of section 14 of the NGT Act.

**That the Application is time-barred:**

12. As noted above, the present application seeks to raise substantial questions relating to the environment and as such would be subject to the limitation imposed under section 14 of the NGT Act.

13. This Hon'ble Tribunal is empowered under Section 14 of the NGT Act to entertain all civil cases where a substantial question relating to the environment is involved provided it is made within a period of six months from the date on which the cause of action arose. The Tribunal may also

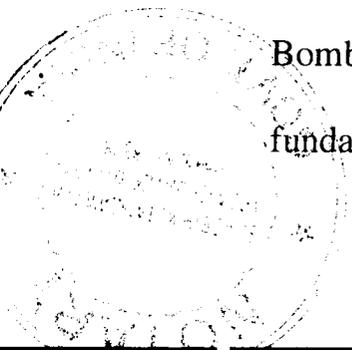


entertain such application within a further period not exceeding sixty days. Thus, the Tribunal exercising its discretion may entertain applications under Section 14 of the NGT Act up to a period of 8 months from the date on when the cause of action first arose.

14. The present application seeks to assail the EC dated 9<sup>th</sup> October 2019.

15. The Applicants herein filed Writ Petition No. 2094 of 2020 on 4<sup>th</sup> February 2020. The said Writ Petition came to be disposed of by an order dated 16<sup>th</sup> February 2021. By the said order of disposal, the High Court observed that a challenge to the EC would lie before this Hon'ble Tribunal. Paragraph 6 of the order stated that the order shall not preclude the Petitioner from approaching the appropriate forum in accordance with law. It is in light of this order that the present proceedings have been filed.

16. In terms of Section 14 of the Limitation Act, 1963, in computing the period of limitation the time during which the plaintiff has been prosecuting with due diligence another civil proceeding shall be excluded where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court without jurisdiction which is unable to entertain it. It is submitted that the Applicants herein filed the said Writ Petition before the Bombay High Court as certain issues relating to the violation of fundamental rights of the Petitioners therein were raised and because the



High Court has in the past entertained such petitions and has also passed orders. The Appellants were thus prosecuting with due diligence the said proceedings in good faith before the Hon'ble Bombay High Court.

17. Therefore, in terms of Section 14 of the Limitation Act, 1963 the period between 4<sup>th</sup> February 2020 and 16<sup>th</sup> February 2021 when the writ petition was pending before the Bombay High Court must be excluded.

18. The present proceedings came to be filed on 12<sup>th</sup> March 2021 and therefore within, effectively, a period of 93 days from the date on which the Gram Panchayat was notified about the EC, i.e. 25<sup>th</sup> October 2019. The present proceedings have therefore been filed within the period of limitation as set out under Section 14 of the NGT Act.

19. The issue-wise reply of the Applicants to the contentions raised in the Affidavit filed by the Respondent no.2 are as under:

**Re: That the impugned EC erroneously proceeds on the footing that the project site is in CRZ-IV:**

20. The Respondent No.2 has contended that the area where the proposed work is to be carried out cannot be said to fall within CRZ-IA as the CZMP map indicates that it is a CRZ-IV area and further that the MCZMA while

considering the application for CRZ clearance has noted, on the basis of the CZMP map, that the area in question falls within CRZ-IV.

21. Notably the Expert Committee constituted by this Hon'ble Tribunal has observed the presence of mud flats within the project site (*Pg. 268, para 3 of the Expert Committee Report*).

22. The Committee at pg. 269 states that "*as per the said approved CZMP, the site of triangular balance reclamation of the 4<sup>th</sup> terminal is situated in CRZ-IV area. Small part of the landing point of triangular balance reclamation work is touching in CRZ IA.*"

(emphasis supplied)

23. Furthermore, a bare perusal of the project layout superimposed on the CZMP map clearly demonstrates that part of the triangular portion of reclamation is on the mud flats and therefore falls within CRZ-IA.

24. This is also evident from the maps at pgs. 177 and 178 of the Original Application. In fact, the application for CRZ clearance in two places (at pg. 93 and pg. 98 of the O.A.) notes that the project falls within CRZ-IA.

This has apparently been explained away as a "typographical error" by

JNPT, as noted in the report of the Expert Committee. It is evident that this is a belated attempt at justifying the deliberate attempts to mislead the authorities.

25. Furthermore the EC granted in 2008 (of which the present impugned EC is claimed to be a continuation) states in no uncertain terms that the reclamation work for the 4<sup>th</sup> Container terminal is to be carried out over mudflats (*Annexure A-3, Pg. 62 of the O.A.*).

26. Assuming that the CZMP map indicates that the project falls within CRZ-IV, the CRZ Notification stipulates that projects are to be appraised not only as per the approved CZMPs but also in accordance with the provisions of the Notification [Paragraph 4.2(ii) of the CRZ Notification, 2011]. Therefore if, as observed by the Expert Committee, the project site contains mudflats, it must be considered as a CRZ-IA area and appraised accordingly, notwithstanding the fact that the CZMP may indicate otherwise.

27. The fact that the discrepancy in the CRZ areas within the application for CRZ clearance has not been noted by the MCZMA and the EAC while recommending the project for CRZ and environmental clearance

respectively is further evidence of the non-application of mind and the impugned EC ought to be set aside on this ground alone.

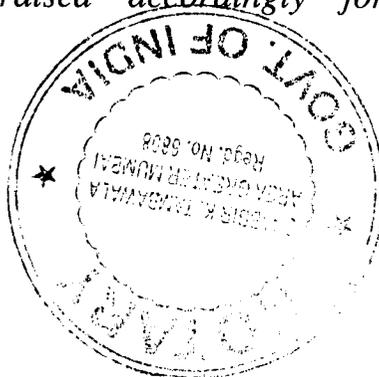


**Re: That the mandatory stage of public consultation has not been carried out:**

28.The Respondent No.2 has contended that the Terms of Reference issued on 13<sup>th</sup> June 2018 by the Respondent No.1 exempted the project from the public hearing stage in terms of paragraph 7(2) of the EIA Notification.

29.Paragraph 7(2) of the EIA Notification reads as follows-

*“All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product –mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance.”*



30. Para 7 (ii) thus pertains to applications seeking prior environmental clearance for expansion, modernisation or change in product mix for which prior environmental clearance has been granted under this EIA Notification, 2006. The present project is neither for expansion, modernization nor change in product mix but is in effect a fresh application for environmental clearance for the balance work of the 4<sup>th</sup> container terminal.

31. The application for fresh environmental clearance has been made on the basis of the directions of the EAC which noted in its 27<sup>th</sup> meeting held on 25<sup>th</sup> January 2018 as follows-

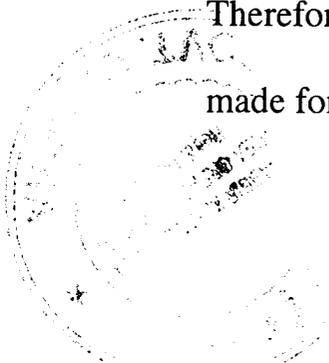
***“The EC&CRZ is valid till 28th July, 2018. Thereafter, if any, works remaining related to the project, the project proponent will have to apply afresh.”***

(Emphasis supplied)

Therefore the joint EC and CRZ Clearance which was due to expire on 28<sup>th</sup> July, 2018 could not be further extended.

32. The EIA Notification contains specific provisions with respect to the validity of the ECs that have been issued. Paragraph 9 stipulates that an EC may be extended for a maximum period of 5 years by the regulatory authority.

Therefore once this extended period expires, a fresh application has to be made for environmental clearance.



33. As such the project must be appraised afresh and the project opponent cannot seek to rely on either the EIA report previously prepared nor the public consultation that may have been held before the grant of the EC of which fresh clearance (and not extension) is sought. Fresh appraisal would entail following all the steps prescribed under the EIA Notification for obtaining an EC, i.e. (i) screening (ii) scoping (iii) public consultation and (iv) appraisal. The EIA Notification does not grant either the EAC or the MoEF-CC the power to exclude any stage of the EC process regardless of whether the application is for completing the balance work of a project for which an EC has been granted previously or otherwise.

**Re: Impact on fishing activities not considered:**

34. The Respondent No.2 has contended that extensive studies have been conducted prior to the grant of the impugned EC which have considered the likely impact of the project on the marine environment, particularly the impact that dredging, will have on fish and fisheries and mitigative measures.



35. With respect to the likely impact that the project is going to have on fisheries, the EIA Report prepared for the balance work of the 4<sup>th</sup> Container terminal, notes as follows –

*“Due to continuous ship movement, fisheries are not well developed in the area. Hence no significant impacts on fisheries is anticipated. Likewise, at the disposal sites, at present large scale fishing is not observed.....Thus no significant impact on fish fauna is anticipated.”*

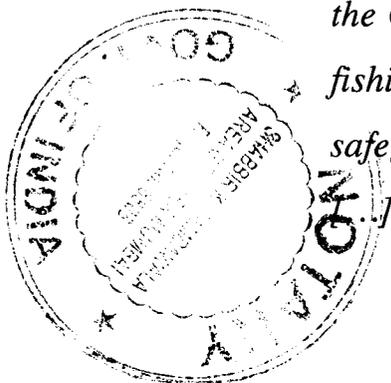
(Pg. 379 of the Affidavit in Reply filed by the Respondent No.2)

36. This is a demonstrably false finding. The Expert Committee constituted by this Hon’ble Tribunal has stated in no uncertain terms that fishing activities will be adversely impacted as a result of the project. The Expert Committee noted as follows-

*“Committee noted that the balance work of 4th CT project will likely impact the traditional fishing in the area. Intertidal fishing is the main livelihood of the local fisherfolks. JNPT need to take into consideration that traditional fishing practices of local fisherfolks should not be hampered due to project, in order to safeguard the livelihood of local fisherfolks.*

[...]

*Committee felt that JNPT shall proactively obtain the suggestions of the Commissioner, Fisheries for safeguarding the local traditional fishing in the area and other related measures with view to safeguard the livelihood of the local fisherfolks.*

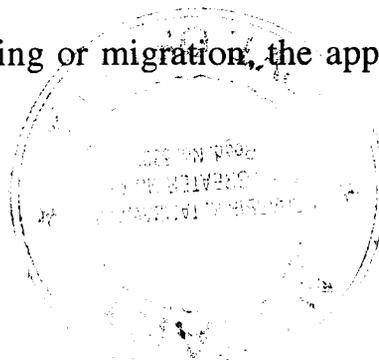


*Committee taking into consideration above concerns raised by the local fisherfolks, noted that the JNPT should ensure the free flow of tidal water into the Nhava creek for safe navigation of fisherfolks boat in the creek and also ensure tidal water reaches to mangrove vegetation & biodiversity in the creek. It is felt that this will help in sustenance of fishing practices of local fisherfolks in the area.”*

37. Furthermore, the letter dated 16<sup>th</sup> September 2021 issued by the State Environment Department in response to the application to amend the EC dated 9<sup>th</sup> October 2021 has noted as follows–

*“The department noted that approved CZMP, 2011 has identified ecologically sensitive areas as CRZ-IA area (biologically active mudflats and mangroves) situated backside of the proposed balance work of 4<sup>th</sup> Terminal in the creek area. **The said ESA areas are habitat for marine life and fisheries and are vital for sustaining fisheries in the area. JNPT to ensure that tidal influx should not be hampered in the said ESA area.”***

38. Notably, in the Form-1 application submitted by the Respondent No.2 for environmental clearance, to the query as to whether the area is sensitive for ecological reasons (whether there is the presence of wetlands, watercourses or other waterbodies etc.) and whether the area is used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, over wintering or migration, the application form says ‘No’.



39. Conspicuous in its absence in the EIA Report is information with regard to the manner in which the marine environment and resultantly the fishing activities have been hampered as a result of the port activities. In the Form-1 application, to the query as to the cumulative effects due to proximity to other existing or planned projects with similar effects, the application falsely says that there are none (*Annexure A-6, Pg. 81 of O.A.*). No such information is provided in the EIA Report prepared by Global Management and Engineering, the consultant engaged by the Respondent No.2.

40. Notably, the Supreme Court in the matter of *Hanuman Laxman Aroskar v. Union of India* [(2019) 15 SCC 401] that an environmental clearance is liable to be struck down if false information is provided in Form 1 application-

*'62. ....The depth of information sought in the Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form1 significantly impedes the functioning of the authorities and the process stipulated under the notification.*

[...]

*\*72. We cannot gloss over the patent and object failure of the State of Goa as the project proponent in failing to disclose wetlands, water*



*sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km. as required by Form 1. The disclosure in Form 1 constitutes the very foundation of the process which is initiated on the basis of the information supplied by the project proponent. Following disclosure in Form 1, ToR are formulated, and this leads to the preparation of the EIA Report. A duty is cast upon the project proponent to make a full, complete and candid disclosure of all aspects bearing upon the environment in the area of study. The project proponent cannot profess an ignorance about the environment in the study area. The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1.'*

41. It is emphatically denied that the EIA Report has sufficiently considered the impact that the project is likely to have on fishing activities. The Respondent No.2 has in fact actively concealed the likely impact that the balance work of the 4<sup>th</sup> Container Terminal project will have on fishing activities. The Respondent No.2 is well-aware of this as it has already been pointed out in the Report of the Assistant Commissioner of Fisheries dated 17<sup>th</sup> December 2007 (*Annexure A-17, Pg. 179 of the O.A.*) With reference to the earlier EIA Report prepared at the time of the first application for environmental clearance for the 4<sup>th</sup> Container Terminal, the Report notes the fact that the EIA report prepared for the project incorrectly records the following:

- a. That the areas is not an ecologically sensitive area;



- b. That no traditional fishing areas exist within the project area;
- c. That the number of mangroves that will be affected are not more than a hundred

The report of the Assistant Fisheries Director states that contrary to what is stated in the EIA Report, this is a prosperous fishing areas covering Uran Koliwada, Hanuman Koliwada, Belpada Koliwada and Gavhan Koliwada.

42. In a similar vein, the EIA report prepared for the remaining work of the 4<sup>th</sup> Container Terminal has failed to take into account the following crucial factors while determining the impact that the project is likely to have on the marine environment-

- a. The work of excavation of mud from the navigation channel of JNPT has been going on since the commencement of port activities from this area. Mud flows with the tidal water during the high tide and low tide and sediments spread into the traditional fishing areas/continental shelf in Thane creek, due to which the spread of sedimental mud gets accumulated at the bottom of creek, mud bank, mud flats etc. As a result of this the breeding and spawning grounds, moulting ground, natural nurseries of fish at the seabed are destroyed. Since the mud is in liquidised form none of the marine species can survive as the sediments clogs the fish gills reducing



resistance to diseases, lowering growth rate and affecting fish eggs and larvae development at the bottom of the Thane Creek seabed. This is unrecoverable and irreversible damage to the continental shelf and fishing area, costing the daily survival of fish and as a result fishermen. JNPT has not conducted any detailed study that the project is going to have on fisheries through any qualified institute such as Central Marine Fisheries Institute or National Institute of Oceanography or any other institute specialising in marine ecology.

- b. Importantly, the project entails the construction of a jetty which is to be connected through an approach road. The numbers of piles required to be erected for 1000 metres long and 61 metres wide jetty and the total number of piles for the approach road connecting the berths has not been specified. Therefore the total quantity of expected muck/soil from each pile and its after-effect on marine life, fishing grounds and fishing activities has not been assessed. It is anticipated that the muck/soil will spread in the fishing grounds and areas due to low and high tidal waves and current A large area between the berths and container staking yard will also be impacted thereby adversely affecting the marine life, fishing grounds and fishing activities permanently, which has not be accounted for .
- Hereto annexed and marked as **Annexure A-1** is a satellite image



visually indicating the area where the proposed dredging and reclamation activities will take place.

- c. The depth of the dredging and quantity of muck/soil required to be removed as a result in the extended area adjacent to the jetty is not mentioned. Further, the time span required for this dredging activity is not mentioned. In the event that the work is delayed for one reason or another, the adverse effect of the dredging activities on the ecologically sensitive area and fishing activities will be aggravated. No contingency plan for such delay and the adversities for the fishing activities has been provided. After-effect of dredging of 100-hectare area of seabed is not mentioned, as this will also reduce the scope and area of marine life, fishing grounds and fishing activities permanently.
- d. After-effect of Reclamation of 110-hectare Uran mudflat is not mentioned, as this will also reduce the scope and area of marine life, fishing grounds and fishing activities permanently.

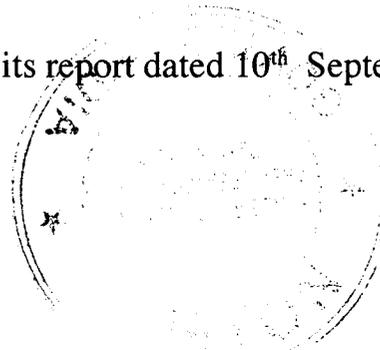
43. Notably, one of the conditions of the environmental clearance is that a detailed marine biodiversity management plan is to be prepared on the rivers, estuary and the sea and include the intertidal biotopes, corals and cora communities, molluscs, sea grasses, sea weeds, subtidal habitats like



fishes other than marine and aquatic micro, macro and mega flora and fauna including benthos, plankton turtles, birds, fishing activities etc. (Pg. 405 of the Reply). It is therefore evident that no such assessment was conducted *before* the EC came to be granted and what is proposed is in-effect *post-facto* studies.

44. It is submitted that without such studies being undertaken and without a cumulative assessment of the impact of all development activities of JNPT there can be no meaningful assessment of the impact that the present project is likely to have on fisherfolk.

45. It would not be out of place to note the impact that previous expansion activities of the port have had on fishing activities. The map at Pg. 374 of the Reply demonstrates the original size and shape of Nhava and Sheva islands. In the centre between the two islands a mouth like shape can be seen. This mouth or opening connected the creek to a vast network rivulets and sub-creeks with covers on around area of 200 sq kms. Between Nhava and Sheva islands, the continuous and step-by-step reclamation for the port, has resulted in the narrowing the original mouth of the creek thereby creating a bottle neck at the mouth of the creek. This has also been noted in the report of the Assistant Commissioner of Fisheries which is annexed to the O.A. The Expert Committee in its report dated 10<sup>th</sup> September 2021



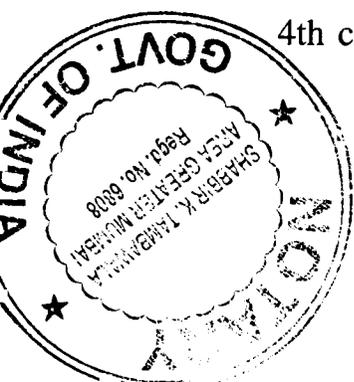
has noted the above obstruction and has recommended to remove the obstacles created by the reclamation on the mouth of this Creek.

**Re: That the Respondent No.2 has violated the conditions of the previous environmental clearance:**

46. That Respondent No.2 has contended that *vide* letter dated 4<sup>th</sup> May, 2019 the point-wise compliance report of the EC was submitted and considered by the EAC and only after such compliance was found satisfactory did the EAC recommend the grant of EC.

47. It is submitted that a perusal of the minutes of meeting of the EAC where it recommended the grant of environmental clearance as well as the environmental clearance dated 9<sup>th</sup> October 2019 issued by the MoEF will demonstrate that no discussions or deliberations were held with regard to the compliance of the conditions of the previous EC of which violations had been noted by the regional office of the MoEF.

48. That these conditions continue to be brazenly violated is further evident from the fact that admittedly fishing activities have been hampered by the 4<sup>th</sup> container terminal project (as noted in the Expert Committee report)

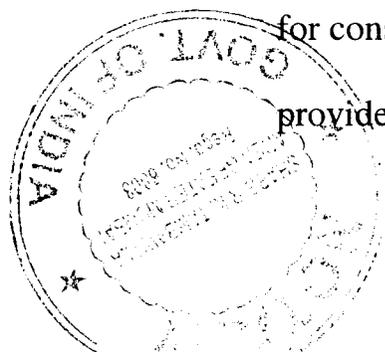


while one of the specific conditions of the EC dated 29<sup>th</sup> July 2008 was that the livelihood of the fisherfolk should not be hampered.

49. The Respondent has failed to deal with the specific averments made in the Original Application with regard to rehabilitation of the fisherfolk, which, as argued, form part and parcel of the condition that the livelihood of fisherfolk should not be impacted.

50. Due to the construction and operation of the port, the fishermen were forcefully evicted from their erstwhile houses at Sheva Village to make way for development of the port activities. However, the fisherfolk have, till today, not been rehabilitated in its true sense and are living in subhuman conditions due to the negligence of the Respondent No.2. It is submitted that Rehabilitation and habitable living conditions are an integral part of earning a livelihood. Moreover, the traditional means of their livelihood being fishing, it is essential that rehabilitation is carried out in an appropriate area close to the shore.

51. It is submitted that the fisherfolk were assured that they would be allotted an area of 16.82.30 hectares out of which 6.32.77 hectares was to be used for construction of houses and 10.49.53 hectares land was to be utilized to provide the basic amenities.



52.The Chairman of Respondent No. 2 vide letter dated 20th February 2016 has admitted that out of an area of 16.88.4 hectares acquired for rehabilitation of Hanuman Koliwada merely an area of 2 hectares has been utilised (*Annexure A-24 of O.A., Pg. 234*). However it appears that the Respondent No. 2 has shifted the responsibility of providing alternate land for rehabilitation of Village Hanuman Koliwada upon the State Government.

53.Pertinently, for nearly 4 decades, JNPT has not resettled / rehabilitated and compensated the project effect traditional fishermen and their families, neither have they been given any interim assistance for alternative employment.

**Amendment of impugned EC:**

54.The Respondent No.2 has now sought an amendment in the EC dated 9<sup>th</sup> October 2019 allegedly on account of the proposed change in the shape of reclamation.

55.The Expert Committee constituted by this Hon'ble Tribunal has suggested that while deliberating the application for amendment of the EC, the



concerned authorities must look into the aspect of revised reclamation on the traditional fisherfolk (*Pg. 272 of the Report*). It has been suggested that the EIA Report for revised reclamation should cover a detailed chapter on impact of reclamation on local and traditional fisherfolk and remedial measures if any.

56. Without any such assessment being carried out, it appears that the State Environment Department acting in lieu of the MCZMA has recommended the amendment of the EC *vide* letter dated 16<sup>th</sup> September 2021.

57. Notwithstanding the above, the vital issue that is required to be determined by this Hon'ble Tribunal is whether *post facto* studies on the impact that a project is likely to have can be permitted in cases where environmental clearances have already been granted and the implementation of the project is treated as a foregone conclusion. In other words whether the assessment by the appraising authorities can be said to have been thorough and based on the consideration of all environmental impacts at the time when the clearances came to be granted, if the information required to make such an assessment was not before the authority.

58. It is submitted that from the above it is clear that there has been non-application of mind on the part of the MCZMA and MoEF in granting the joint EC and CRZ Clearance dated 9<sup>th</sup> October 2019.



59. The analysis and appraisal has been perfunctory and discloses abdication of duty on the part of the MCZMA, the EAC and consequently the MoEF. It is submitted that on account of the above, the entire process stands vitiated. In *Hanuman Laxman Aroskar vs. Union of India & Ors.* [(2019) 15 SCC 401] the Supreme Court while deliberating on the function of the EAC has held as follows-

*“129. ...In the absence of a critical analysis, EAC failed in discharging its duties under the 2006 notification. The recommendations of the EAC furnish a guide for the MoEFCC. Indeed, the 2006 Notification stipulates that the recommendations of EAC would normally be accepted. Consequently, a failure of due process before EAC, as in the present case, must lead to the invalidation of EC.”*

60. It is therefore submitted that in light of the above, the joint EC and CRZ Clearance dated 9<sup>th</sup> October 2019 cannot be sustained and ought to be set aside by this Hon'ble Tribunal.

Solemnly affirmed at Mumbai )

Dated this 20<sup>th</sup> day of November 2021 )

  
Dilip Koli

(Original Applicant No.1)



Identified by me

*[Handwritten signature]*

Meenaz Kakalia

Advocate for the Applicant

Before me

*[Handwritten signature]*  
**BEFORE ME**  
**S. K. TAMBAWALLA**  
 ADVOCATE, HIGH COURT  
 B-23, Taheri Manzil  
 Nesbit Road, Mazgaon  
 Mumbai - 400 010  
 20/11/24

**NOTARY & REGISTERED**  
 2795 20/11/24  
 Sr. No..... dt.....

