

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN BENCH, PUNE

ORIGINAL APPLICATION NO.59 OF 2022



IN THE MATTER OF:

Brackish Water Research Centre

.....Applicant

Vs

Deendayal Port Authority and Ors

.....Respondents

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Filed By

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**REJOINDER AFFIDAVIT ON BEHALF OF THE APPLICANT TO THE
AFFIDAVIT-IN-REPLY OF RESPONDENT NO.1**

I, Mohammad Siddique H. Sheikh, Aged about 47 years, S/o Hajimiyan Shaikh R/o Kasba Mohalla Mougul Street AT-Po-Ta OLPAD 394540 Dist Surat, Gujarat do hereby solemnly affirm and state as under:-

1. That I am the President of the applicant in the above-mentioned matter and as such am competent to depose the present rejoinder affidavit.

PARAWISE REPLY

1. That the contents of the para 1 need no reply and the respondent is put to strict proof of the same.
2. That the contents of the para 2 need no reply and the contents of the OA are reiterated in response to the contents of the present para.

(Signature)

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3. That in response to the contents of para 3 it is submitted that the construction of the RO-RO terminal by R-1 was in violation of provisions of the Coastal Regulation Zone Notification, 2011 and EIA, 2006, The Water Act, 1974, Air Act, 1981, Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016 as construction of the RO-RO Jetty in the inter-tidal zone of Hazira Coastline (South of Essar Bulk Terminal Port) at Taluka Choryasi, District Surat had commenced without prior EC or CRZ Clearance.
4. That the contents of the para 4 are denied as wrong and false as the construction started before consent to establish was granted by GPCB. It is stated by R-1 in the para under reply that the consent to establish was granted on 24.06.2022, wherein the construction had already commenced and the applicant vide email dated 14.12.2021 apprised the respondent authorities of the same. It is evident that the construction started prior to obtaining the consent to establish and as such it is in violation of the Water Act, Air Act etc. As per condition SI No. 6(i) of the Environment Clearance dated 06.05.2014 which is sought to be relied upon by R-1 states that "consent for establishment" shall be obtained from GPCB and submitted to MoEF&CC before the start of any construction at the site. In the present case, the consent to establish has been obtained after the construction had commenced at the site. Further, the environment clearance sought to be relied upon by R-1 is for 600 m water front and 24 ha back up area and not for Ro-Pax jetty with ferry infrastructure.



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5. That in response to the contents of para 5 it is stated that EBTL was operating the port facilities at Hazira. It is denied that the infrastructure required for RoPax ferry service would be the same as it would require area for the passengers and parking of the vehicles to be transported by the passenger ferry service.
 6. That the contents of the para 6 are denied for want of knowledge and the R-1 is put to strict proof of the same.
 7. That in response to the contents of the para 7 it is submitted that bi-furcation can be applied for if the existing EC&CRZ clearance have the same components as is required for the present Ro Ferry service to be developed by R-1.
 8. That the contents of the para 8 are denied for want of knowledge and the R-1 is put to strict proof of the same. The contents of the para under reply have come to the knowledge of the applicant by way of the present reply as no information was forthcoming from the respondents when compliant was made to them regarding the construction without requisite permissions.
 9. That the contents of the para 9 are denied for want of knowledge and the R-1 is put to strict proof of the same.
 10. That the contents of the para 10 are denied for want of knowledge and the R-1 is put to strict proof of the same.





That in response to the contents of para 11 it is submitted that the construction had started prior to obtaining the order as the same was granted on 04.04.2022 bifurcating the EC and CRZ clearance dated 06.05.2014 and the consent to establish dated 24.06.2022. So, it is a case of post facto approval and as such action ought to have been taken by GPCB but the same has not been done.

12. That the R-1 is put to strict proof of the contents of the para under reply.

13. That the rejoinder to the reply is as follows:

- (i) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.
- (ii) That the contents of the para are admitted as true and correct. It was specifically stated in the EC&CRZ clearance dated 06.05.2014 in case of change of project profile and implementing agency fresh reference is to be sought. In the present case the existing EC&CRZ clearance dated 06.05.2014 did not have provision for development of Ro-Ro ferry service and as R-1/DPT was the implementing agency, a fresh reference was required, though in the present case only bi-furcation of EC&CRZ clearance dated 06.05.2014 has taken place.
- (iii) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.



- That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.
- (v) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.
- (vi) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.
- (vii) That in response to the contents of the para under reply it is stated that fresh EC&CRZ clearance was required to be taken as the EC&CRZ clearance dated 06.05.2014 which was sought to be bi-furcated for the Ro-Ro/Ro-Pax ferry service was not included in the project activities for which the clearance was accorded.
- (viii) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.
- (ix) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.
- (x) That in response to the contents of the para under reply it is submitted that construction cannot start prior to seeking approvals which were admittedly granted after the construction started for the Ro-Ro Ferry service.
- (xi) That in response to the contents of the para under reply it is submitted that the EC&CRZ clearance dated 06.05.2014 did not have provision for development of Ro-Ro Ferry service so bi-

use of

bifurcation of existing EC would be permissible if the activities to be developed are same as in the existing EC&CRZ clearance.

- (xii) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.
- (xiii) That in response to the contents of the para under reply it is submitted that the EC&CRZ clearance dated 06.05.2014 did not have provision for development of Ro-Ro Ferry service so bifurcation of existing EC would be permissible if the activities to be developed are same as in the existing EC&CRZ clearance.
- (xiv) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.
- (xv) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.
- (xvi) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.
- (xvii) That in response to the contents of the para under reply it is submitted that the EC&CRZ clearance dated 06.05.2014 did not have provision for development of Ro-Ro Ferry service so bifurcation of existing EC would be permissible if the activities to be developed are same as in the existing EC&CRZ clearance which is not the case presently. The EC&CRZ clearance dated 06.05.2014





cannot be transferred as in the present case as is evident from the contents of the present para, the EC&CRZ clearance dated 06.05.2014 was bi-furcated between 2 different entities. Transfer of EC take place when one implementing agency steps into the shoes of an existing implementing agency and takes over the project activities and is solely responsible for the compliance of the EC conditions. In the present case, there would be 2 different implementing agencies for the same EC&CRZ clearance dated 06.05.2014. The EC&CRZ clearance dated 06.05.2014 makes no provision to address the environmental impacts that would be a result of the operation and construction of the Ro-Ro ferry as the same requires passenger terminal so these components were not part of the existing EC&CRZ clearance dated 06.05.2014.

(xviii) That the contents of the para are denied as wrong and false as the approvals for development of Ro-Ro Ferry terminal/service was not part of EC&CRZ clearance dated 06.05.2014 so it cannot be stated that it was already in existence.

(xix) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.

(xx)-(xxi) That the contents of the para under reply actually support the contention of the applicant that the construction started prior to approvals being obtained and R-1 in their response is admitting that on the date of inspection i.e. 18.01.2022 construction was



going on and the CTE and order of Bifurcation was obtained afterwards.

That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.

(xxiii) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.

(xxiv) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.

(xxv) That in response to the contents of the para under reply it is submitted that the EC&CRZ clearance dated 06.05.2014 did not have provision for development of Ro-Ro Ferry service so bifurcation of existing EC would be permissible if the activities to be developed were same as in the existing EC&CRZ clearance which is not the case presently. The EC&CRZ clearance dated 06.05.2014 makes no provision to address the environmental impacts that would be a result of the operation and construction of the Ro-Ro ferry as the same requires passenger terminal so these components were not part of the existing EC&CRZ clearance dated 06.05.2014. The applicant became aware of the bifurcation by way of the present reply. At the time applicant made complaints to the respondent authorities there was no response either from the R-1 or its contractor as regards to the facts that are now stated in the reply. The underlying aspect of the matter is that present is a case of post facto approval as admittedly CTE was granted on 24.06.2022 and construction started in Nov-December, 2021 and the EC&CRZ clearance dated 06.05.2014





which is sought to be relied upon has a condition that CTE has to be obtained before start of construction at the site. The GPCB/R-2 has not taken any action against the R-1 for starting the activity of construction prior to grant of CTE. The R-2/GPCB ought to have levied environment compensation after assessing the violation caused by R-1.

- (xxvi) That in response to the contents of the para under reply it is submitted that the underlying aspect of the matter is that present is a case of post facto approval as admittedly CTE was granted on 24.06.2022 and construction started in Nov-December, 2021 and the EC&CRZ clearance dated 06.05.2014 which is sought to be relied upon has a condition that CTE has to be obtained before start of construction at the site. The GPCB/R-2 has not taken any action against the R-1 for starting the activity of construction prior to grant of CTE. In the present reply, R-1 has categorically stated that the CTE was obtained post commencement of construction and it was granted when the construction stood nearly completed as R-1 applied for CTO on 27.07.2022, so the exercise of obtaining approvals is a farce and eyewash with no consideration to the environmental statutes.
- (xxvii) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.
- (xxviii) That the contents of the para are denied for want of knowledge and the R-1 is put to strict proof of the same.



REJOINDER TO THE PATRAWISE REPLY

14. That the contents of the para need no reply and the corresponding para of the OA are reiterated as true and correct.

15. That the contents of the para are denied as wrong and false and the it is submitted that the construction of the RO-RO terminal by R-1 was in violation of provisions of the Coastal Regulation Zone Notification, 2011 and EIA, 2006, The Water Act, 1974, Air Act, 1981, Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016 as construction of the RO-RO Jetty in the inter-tidal zone of Hazira Coastline (South of Essar Bulk Terminal Port) at Taluka Choryasi, District Surat had commenced without prior EC or CRZ Clearance.

REJOINDER TO THE REPLY TO THE FACTS

16. That the contents of the para need no reply and the corresponding para of the OA are reiterated as true and correct.
17. That the contents of the para need no reply and the corresponding para of the OA are reiterated as true and correct.
18. That in reply to the contents of the para it is submitted that the construction of the RO-RO terminal by R-1 was in violation of provisions of the Coastal Regulation Zone Notification, 2011 and EIA, 2006, The Water Act, 1974, Air Act, 1981, Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016 as construction of the RO-RO Jetty in the inter-tidal zone of Hazira Coastline (South of Essar Bulk Terminal Port) at Taluka Choryasi, District Surat had commenced without prior EC or CRZ Clearance.





That in reply to the contents of the para the corresponding para of the OA are reiterated as true and correct. The construction commenced without the necessary approvals and it is later on that the approvals were accorded so it is a case of post facto approval.

20. That in reply to the contents of the para the corresponding para of the OA are reiterated as true and correct. The construction commenced without the necessary approvals and it is later on that the approvals were accorded so it is a case of post facto approval.
21. That the contents of the para need no reply and the corresponding para of the OA are reiterated as true and correct.
22. That the contents of the para need no reply and the corresponding para of the OA are reiterated as true and correct.
23. That in response to the contents of the para under reply it is submitted that the underlying aspect of the matter is that present is a case of post facto approval as admittedly CTE was granted on 24.06.2022 and construction started in Nov-December, 2021 and the EC&CRZ clearance dated 06.05.2014 which is sought to be relied upon has a condition that CTE has to be obtained before start of construction at the site. The GPCB/R-2 has not taken any action against the R-1 for starting the activity of construction prior to grant of CTE. In the present reply, R-1 has categorically stated that the CTE was obtained post commencement of construction





and it was granted when the construction stood nearly completed as R-1 applied for CTO on 27.07.2022, so the exercise of obtaining approvals is a farce and eyewash with no consideration to the environmental statutes.

REJOINDER TO THE REPLY TO THE GROUNDS

24. That in response to the contents of the para under reply it is submitted that the underlying aspect of the matter is that present is a case of post facto approval as admittedly CTE was granted on 24.06.2022 and construction started in Nov-December, 2021 and the EC&CRZ clearance dated 06.05.2014 which is sought to be relied upon has a condition that CTE has to be obtained before start of construction at the site. The GPCB/R-2 has not taken any action against the R-1 for starting the activity of construction prior to grant of CTE. In the present reply, R-1 has categorically stated that the CTE was obtained post commencement of construction and it was granted when the construction stood nearly completed as R-1 applied for CTO on 27.07.2022, so the exercise of obtaining approvals is a farce and eyewash with no consideration to the environmental statutes. It is submitted that the EC&CRZ clearance dated 06.05.2014 did not have provision for development of Ro-Ro Ferry service so bi-furcation of existing EC would be permissible if the activities to be developed were same as in the existing EC&CRZ clearance which is not the case presently. The EC&CRZ clearance dated 06.05.2014 makes no provision to address the environmental impacts that would be a result of the operation and construction of the Ro-Ro ferry as the same





requires passenger terminal so these components were not part of the existing EC&CRZ clearance dated 06.05.2014.

25. That in reply to the contents of the para it is submitted that it was reiterated in the OA 111/2018, Kutch Camel Breeders Association wherein the specific direction was issued that if there is any activity which is in violation of the CRZ Notification, 2011, the GCZMA will immediately take action in accordance with the law. The GCZMA had so far not initiated any enquiry or actions against the activities undertaken by the R-1/DDPT despite the violations were brought to its notice by the Applicant of the construction without the requisite approvals.

26. That the contents of para are denied as wrong and false as it is submitted that the underlying aspect of the matter is that present is a case of post facto approval as admittedly CTE was granted on 24.06.2022 and construction started in Nov-December, 2021 and the EC&CRZ clearance dated 06.05.2014 which is sought to be relied upon has a condition that CTE has to be obtained before start of construction at the site. The GPCB/R-2 has not taken any action against the R-1 for starting the activity of construction prior to grant of CTE. In the present reply, R-1 has categorically stated that the CTE was obtained post commencement of construction and it was granted when the construction stood nearly completed as R-1 applied for CTO on 27.07.2022, so the exercise of obtaining approvals is a farce and eyewash with no consideration to the environmental statutes.



27. That the contents of para are denied as wrong and false and the contents of the para the corresponding para of the OA are reiterated as true and correct. The construction commenced without the necessary approvals and it is later on that the approvals were accorded so it is a case of post facto approval.
28. That the contents of para are denied as wrong and false and the contents of the para the corresponding para of the OA are reiterated as true and correct. The construction commenced without the necessary approvals and it is later on that the approvals were accorded so it is a case of post facto approval.
29. That the contents of the para need no reply and the corresponding para of the OA are reiterated as true and correct.
30. That the contents of para are denied as wrong and false and the contents of the para the corresponding para of the OA are reiterated as true and correct. The construction commenced without the necessary approvals and it is later on that the approvals were accorded so it is a case of post facto approval.
31. That the contents of para are denied as wrong and false and the contents of the para the corresponding para of the OA are reiterated as true and correct. The present OA is filed under section 14 and 15 of NGT Act and it is within the period of limitation. The prayer in OA refers to restitution of the coastal environment and as such limitation as prescribed under section



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15 NGT Act also applied. The cause of action arises when action that ought to have been taken is not initiated even though the same was brought to the attention of the respondent authorities.

32. That the contents of para are denied as wrong and false and the contents of the para the corresponding para pertaining to the prayers in the OA are reiterated as true and correct.

[Signature]
President
British Water Research Centre
DEPONENT

VERIFICATION

Verified at Surat on 29th day of January, 2023 that the contents of above affidavit is true and correct to the best of my knowledge and understanding and nothing material has been concealed there from.



[Signature]
President
British Water Research Centre
DEPONENT



**SOLEMNLY AFFIRMED
BEFORE ME**

**ASHOK C. PANCHAL
NOTARY
GOVT. OF INDIA**

29 JAN 2023

**ASHOK C. PANCHAL
ADVOCATE & NOTARY
30, Vihar Society,
Ved Road, SURAT-395004.**

Ashok C Panchal

