

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

SOUTH ZONE BENCH AT CHENNAI

APPEAL NO: 28 OF 2020

IN THE MATTER OF:-

MEENAVA THANTHAI K.R. SELVARAJ

KUMAR MENNAVAR NALA SANGAM

... APPELLANT

VERSUS

TAMIL NADU STATE ENVIRONMENT

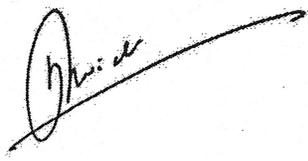
IMPACT ASSESSMENT AUTHORITY

& ORS.

... RESPONDENTS

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THROUGH



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DATE: 07.07.2021

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**SOUTH ZONE BENCH AT CHENNAI****APPEAL NO. 28 OF 2020****IN THE MATTER OF:****MEENA VA THANTHAI K.R. SELVARAJ
KUMAR MENNAVAR NALA SANGAM****... APPELLANT****VERSUS****TAMIL NADU STATE ENVIRONMENT
IMPACT ASSESSMENT AUTHORITY
& ORS.****... RESPONDENTS****REJOINDER TO THE REPLY FILED BY RESPONDENT NO. 2, DEPARTMENT OF
FISHERIES, TAMIL NADU****MOST RESPECTFULLY SHOWETH:**

1. That the Appellant has filed the above titled Appeal challenging the Environmental Clearance dated 05.08.2020 granted by the Tamil Nadu SEIAA to the Department of Fisheries, Government of Tamil Nadu for the development of a Tuna Fishing Harbour in Thiruvottriyur Village, Ennore Taluk, Thiruvallur District.
2. That the present rejoinder is being filed in response to the counter filed by Respondent No. 2, Department of Fisheries, Tamil Nadu. That the Appellant denies all the averments made by the Respondent unless specifically admitted or are matter of record.
3. That the Respondent No. 2, Department of Fisheries has mainly raised the following contentions:
 - A. Chennai Fishing Harbour which is under the administrative control of the Chennai Port Trust is the only fishing harbour for Chennai, Thiruvallur and Kancheepuram districts resulting in huge congestion.

- B. The Chennai Fishing Harbour is overcrowded and the Tuna Fishing Harbour is being built to accommodate the 500 MFVs and OBMs which are overburdening the Chennai Fishing Harbour.
- C. The Department of Fisheries met all the conditions of the TOR and subsequently public hearing was conducted on 25.07.2019.
4. That with regard to the above contentions, the Appellant makes the following submissions:
- A. The cumulative coastline of Chennai, Thiruvallur and Kancheepuram districts is roughly about 153 kms. A copy of the satellite image showcasing the coastline in the three districts is annexed herewith as **ANNEXURE A-1.**
- B. Further, while there is only one fishing harbour for three districts, there is an existing port, the Kamarajar Port Limited (also known as the Ennore Port) which can be expanded to incorporate a fishing harbour. However, the Department of Fisheries has neither considered expanding the existing facilities in the EIA Report as an alternative to the Tuna Fishing Harbour nor has it provided any reasoning for such non-consideration.
- C. Further, the Appellant recently came across a newspaper article according to which the Chennai Fishing Harbour is being revamped and the berthing area is being decongested. Hence, the Appellant submits that with the upgraded facilities there would no need for the Tuna Fishing Harbour.
- A copy of the newspaper article titled "*Chennai fishing harbour to be modernised at cost of Rs 120 crore*" is annexed herewith as **ANNEXURE A-2.**
- D. That the Appellant's main contention is that the impugned Environmental Clearance was obtained without fulfilling all the conditions mentioned in the TOR. The Department of Fisheries, Respondent No. 2 has not provided any explanation or placed any facts before this Hon'ble Tribunal rebutting the non-compliance of TOR raised by the Appellant.
- E. That the Appellant got a copy of the final EIA Report which was not in the public domain after this Hon'ble Tribunal directed the registry to upload it on

the NGT website and found that multiple TORs had not been complied with by the Department of Fisheries. Some of them are as follows:

- i. The EIA Report states that the Environmental Baseline Monitoring was conducted in February, March and April 2016 (*page 48 of the EIA*

Report):

*“III. ENVIRONMENTAL BASELINE MONITORING
3.1. GENERAL*

.....

A detailed environmental survey was initiated during February-March-April 2016 in the project location for assessing the due diligence of Environment of the identified project site.”

- ii. That it is pertinent to note that the ToR for the project in question was granted by the Tamil Nadu SEIAA only on 22.01.2018 with about eighteen specific TORs in addition to the standard ToRs. Thus, the baseline studies for the purpose of EIA should be conducted only subsequent to the grant of ToR. Baseline data of Feb-April 2016 i.e. two years prior to the grant of TOR would not be able to capture the issues and concerns raised by the SEAC and SEIAA in January 2018. Thus, the entire EIA Report is vitiated.
- iii. That this Hon'ble Tribunal in the matter of **T. Mohana Rao v. MOEF (Appeal No. 23 of 2011)**, vide judgment dated 23.05.2012, has held that EIA can only be conducted after grant of TOR. The relevant portion is reproduced as hereunder:

"Scrutiny of the EIA report filed before this Tribunal reveals that ToR was issued on 14th May, 2009 basing on the minutes of discussions of the EAC meeting held on 15-16th April, 2009. Surprisingly, it appears that the same was based upon environmental data which was collected on a much earlier date i.e. on or from 1st March, 2009 i.e. earlier to the grant of TOR. The EIA consultant has not mentioned in the EIA report that necessary permission was obtained from the MoEF to commence baseline data collection prior to award of TOR. It is needless to be said that the environmental base line data are required to be collected only after award of TOR. The minutes of the 44th meeting of the EAC held on 15-16th April, 2009 do

not disclose regarding grant of permission for prior collection of environmental data."

- iv. That the TOR letter had following crucial conditions:-

*"3. Loss to bio diversity anticipated with dredging operation both offshore and onshore may be elaborated.
4. The impact on bio diversity due to infrastructure development like roads, buildings, etc.
5. The anticipated threat for the underwater habitat due to dredging."*

- v. It is submitted that none of these issues have been addressed in the EIA Report. There is no study of assessment of impacts due to the dredging activities, especially on the marine biodiversity. This is clear from the relevant part of the EIA extracted hereinbelow (*Page 175 of the EIA Report*):-

"5.3.5. Biological Environment

No discharge of effluent from FH. There also no discharge of effluent or any emission from the activities in the proposed FH. Hence, no change in coastal biology is foreseen. The strata made out of Rubble/Stone Surfaces of the Break water will host specific species of microorganisms which may lead some change in the amount of specific species like, green algae will profusely grow.

The coastline also no biological sensitivity other than the common coastal biology of flora and fauna. The impact due to infrastructure developments like road and building and construction materials on biodiversity will be negligible. There are no major impacts on under water marine biodiversity due to dredging activities. However, this change on the account of microorganisms and benthic organisms will become acclimatized to the changed environment of physical strata. This will not, anyway, spoil the biological attributes of the shoreline."

- vi. Further, even in the Additional TOR Compliance Report, the Department of Fisheries has made blanket statements without providing any details of the studies conducted to provide the conclusion that there will be no impact on the biodiversity. Relevant portion of the Additional TOR Compliance Report has been reproduced below:

- "3. *Loss of biodiversity anticipated with proposed the dredging operation both offshore and onshore may be elaborated* *The dredging upto -4.00m bed level which forms very less area of the total basin area. The studies show that the site has no biological sensitively other than common flora and fauna. In onshore, the dredged soil will be reclaimed for developing shore based infrastructure, which will not affect the biodiversity of the project area. No dredged materials disposed away from the project area. Hence, there is no considerable loss of biodiversity due to dredging.*
- 5 *The anticipated threat for the underwater habitat due dredging* *The dredging is very meagre due to sudden deep sea bed slope in the proposed area. The study shows that there is no natural under water habitats such as corals, reefs, Oyster are found in the proposed area. Hence, there is no threat to the underwater habitats in the project locations."*

- vii. The TOR granted by the Tamil Nadu SEIAA only on 22.01.2018 requires the EIA Report to be prepared as per the harbor manual prescribed by

the MoEF&CC and through accredited consultants for ports and harbors' sector (*additional TOR Condition No. 2*).

- viii. In the Additional TOR Compliance report, the Department of Fisheries has stated that they have complied with the manual. Relevant portion has been reproduced below:

"The EIA Report has been prepared as per the guidelines prescribed by the MoEF&CC for ports and harbours, by the centre for Environment, Health & Safety, Annamalai University, which is an accredited consultant for the ports and Harbour sectors."

- ix. However, the Appellant submits that the EIA report does not provide any details on the Analysis of Alternatives (Technology and Site) as stipulated in para 1.7 (General structure of EIA document) in the Ports and Harbour manual. The final report just contain a map (fig 6.1) but does not provide any details of two other site or justification to select proposed site.
- x. Further, the Ports and Harbour manual clearly stipulates requirement of 100 years' historical data for cyclone and tidal surges but the modeling of cyclone threat given in para 4.6 in EIA report (*Page 132 of the EIA Report*) is just based on 2 years cyclone history (*Para 4.6.1*). No chapter in EIA report is able to shows use of 100 years data to tabulate Extreme Cyclone Significant Wave Height for Different Return Periods and Extreme Cyclone Induced Surge Level for Different Return Periods.
- xi. That the Ports and Harbour manual emphasizes in para 5.5.1 on the prediction of fugitive dust emission/air emissions during loading, unloading, transportation and storage of cargo, prediction of point source emissions, prediction of air emissions from the ships in the port area, prediction of air emissions due to increase in traffic, prediction of impact on ambient air quality, emission inventory for critical pollutants with mitigation measures and without mitigation measures, prediction of the impact due to the existing activity on the proposed project, prediction of

impact due to sanctioned/on-going projects in the surrounding area on the proposed project and the ambient environment shall be carried out. However, the Appellant submits that the EIA report does not contain a single chapter on prediction of resultant Ground Level Concentration (GLC) of air quality using any air model.

- xii. The importance of preparing the EIA Report in accordance with the Ports and Harbour manual has been highlighted in manual as follows:

*"1.1 General Information on Ports and Harbor Sector
Ports and harbors are the gateways of maritime trade as also inland transport. Need to enhance the standard of living calls for continual growth in the economy and calls for rapid industrialization and commensurate development of all the associated sectors of the country as a whole. In as much as maritime transport is economical and the only means to transport larger volumes of cargo across oceans, ports and harbors are, therefore, called upon to handle larger volumes of cargo throughputs of both raw material as well as products. Thus demand for handling bigger size ships and deploy state of the art cargo handling systems many a time require augmentation/expansion of facilities at existing ports and development of new ports and harbors. **However, port development and operational activities may create a wide range of impact on the environment through activities like dredging, reclamation, construction work, development of utilities and services, discharges from ships and waterfront industries, cargo operations and other port related activities. The potential adverse effects of port development encompass water pollution, contamination of bottom sediments, damage to marine ecology and fisheries, beach erosion/accretion, current pattern changes, waste disposal, oil leakage and spillage, emission of hazardous gases, air pollution, noise pollution, floodlight effect and other socio-cultural impact. The preparation of EIA report and implementation of EMP are essential to effectively address these adverse effects."***

(Emphasis Added)

A copy of the relevant extracts from the Ports and Harbour Manual is annexed here as **Annexure A-3**.

- xiii. The Appellant submits that the EIA Report does not provide all the details as required by the TOR. Some of these are enumerated below:

Standard TOR	Observations by Appellant
<p>Details of the land use breakup for the proposed project. Details of land use around 10 km radius of the project site. Examine and submit detail of land use around 10 km radius of the project site and map of the project area and 10 km area from the boundary of the proposed/ existing project area, delineating project areas notified under wildlife (protection) act,1972. Critically polluted areas as identified by CPCB from time to time I notified eco sensitive areas interstate boundaries and international boundaries. Analysis should be made based on latest satellite imagery for land use with raw images.</p>	<p>No detailed description about land use pattern.</p>
<p>Examine and submit the water bodies including the seasonal ones within the corridor of impacts along with their status, volumetric capacity, and quality likely impacts on them due to the projects.</p>	<p>The Appellant submits that this condition has not been complied with as the consultant has considered water body of project site only and did not looked into overall impact on other water bodies likely to be impacted by the proposed project.</p>
<p>Submit the details of fishing activity and likely impacts on the fishing</p>	<p>No specific study provided with regard to fishing activity and likely</p>

<p>activity due to the project. Specific study on effects of construction activity and pile driving on marine life</p>	<p>impacts on the fishing activity due to the project.</p>
<p>Details of oil spill contingency plan</p>	<p>The Appellant submits that consultant has ignored chance of soil spillage in spite mentioning the fact that the proposed harbour envisaged to handle about 300 FRP boats, 300 Trawlers and 200 Tuna boats (<i>as mentioned on page no. 221 of the EIA Report</i>) on regular basis which will require storage of HSD to run the boats.</p>
<p>Details of rain water harvesting and utilization of rain water</p>	<p>The Appellant submits that no detailed plan for run water harvesting is given. Para 11.9h (Page no. 216 of the EIA report) just mentions that the area under green corridor will be provided with rain water collection pits (one in every 100 m). The drainage pattern of the land will be made to have the run off towards the green corridor to facilitate the run off to charge these pits.</p>
<p>Submit details of a comprehensive risk assessment and Disaster Management Plan including</p>	<p>The Appellant submits that no detailed comprehensive risk assessment and Disaster</p>

<p>emergency evacuation during natural and manmade disasters</p>	<p>Management Plan including emergency evacuation during natural and manmade disasters are given in para 8.3 and 8.4 of the EIA report (<i>Page no. 189 of EIA Report</i>). Both para just contain a very generalize statement which are not specific to the proposed project. Given the vulnerably of coastal areas to sea level rise and increase in cyclones due to climate change, it was important to carry out such an assessment.</p>
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- xiv. Under Condition 31 certain additional TORs had been given. The Appellant submits that the Department of Fisheries has not been able to comply with them. These conditions are as follows:

<p>Additional TOR under Condition No. 31</p>	<p>Observations by Appellant</p>
<p>One of the major environmental issues concerning the project is that 2 lakhs m³ of sea bed material will be dredged and proponent says that this will be used for shore line management. The characteristics of the dredged materials should be furnished along with the possible adverse impact of the dumping of the dredged material for shoreline management.</p>	<p>The Department of Fisheries has stated that Chapter IV of the EIA report addresses this condition. However, the Appellant submits that Chapter IV only describes details about the various models used in different studies. No details regarding the characteristics of the dredged materials are furnished along with the possible adverse impact of the dumping of the</p>

	dredged material for shoreline management.
Another issue will be impact of diesel spillages from the boats on the sea water quality.	The Department of Fisheries has without any study or analysis simply stated that the impact will be negligible. However, the Appellant submits that the proposed Harbour will handle about 300 FRP boats, 300 Trawlers and 200 Tuna boats as mentioned in the EIA report. Hence, there is a possibility of an oil spill and the effect of it can in no way be considered negligible.
The proponent should prepare a comprehensive line diagram in which all the facilities to be created should be marked. Then for each facility, the probable effluent generation and waste generation should be indicated with quantity and quality. Finally, the methodology for collection, treatment and reuse/disposal of the liquid and solid waste should be indicated. Specific attention should be paid to be the marine discharges.	The Department of Fisheries claims that it has complied with this requirement. However, the Appellant submits that no line diagram has been provided in the EIA report.
The sampling should be done in grid pattern and every one kilometer the sample (air, water, sediment and	The Appellant submits that this condition has not been complied with as the number of samples for

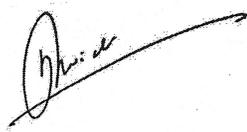
<p>biological samples) within the 10km of radius. At least 10 samples should be studied in detail.</p>	<p>each sampling site is less than 10 samples. At each sampling location only eight sample for air (six site), one sample each for surface water (three site), sub surface water (two site), noise (five site) and soil (five site) were studied. Further, no details about number of sampling sites were given for floral and faunal survey in the EIA report.</p>
<p>Heavy metals studied in water and sea surface sediments can be studied</p>	<p>The Appellant submits that no study has been conducted for heavy metal in sea surface sediments. Even for water samples (both surface and sub-surface) specific analysis for heavy metals were not undertaken.</p>

5. That despite the above non-compliances, Respondent No. 2, Department of Fisheries has made a blanket statement that it has complied with all the conditions of the TOR.
6. That with regard to the public hearing, it is pertinent none of the studies which the Department of Fisheries has claimed to have conducted with respect to marine biodiversity or impact on tourism, traditional fishing etc. (required to be part of the EIA Report as per the TOR letter) were actually placed before the public for their information as part of the public consultation process. Hence, it is submitted that the Department of Fisheries failed to uphold the true spirit of the public hearing process as required under the EIA Notification, 2006.

7. Therefore, it is submitted that the Department of Fisheries failed to rebut the contentions raised by the Appellant and the impugned Environmental Clearance is liable to be set aside as it has been granted in complete violation of the EIA Notification, 2006.

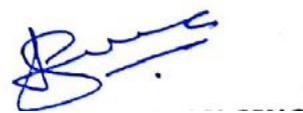
APPELLANT

THROUGH



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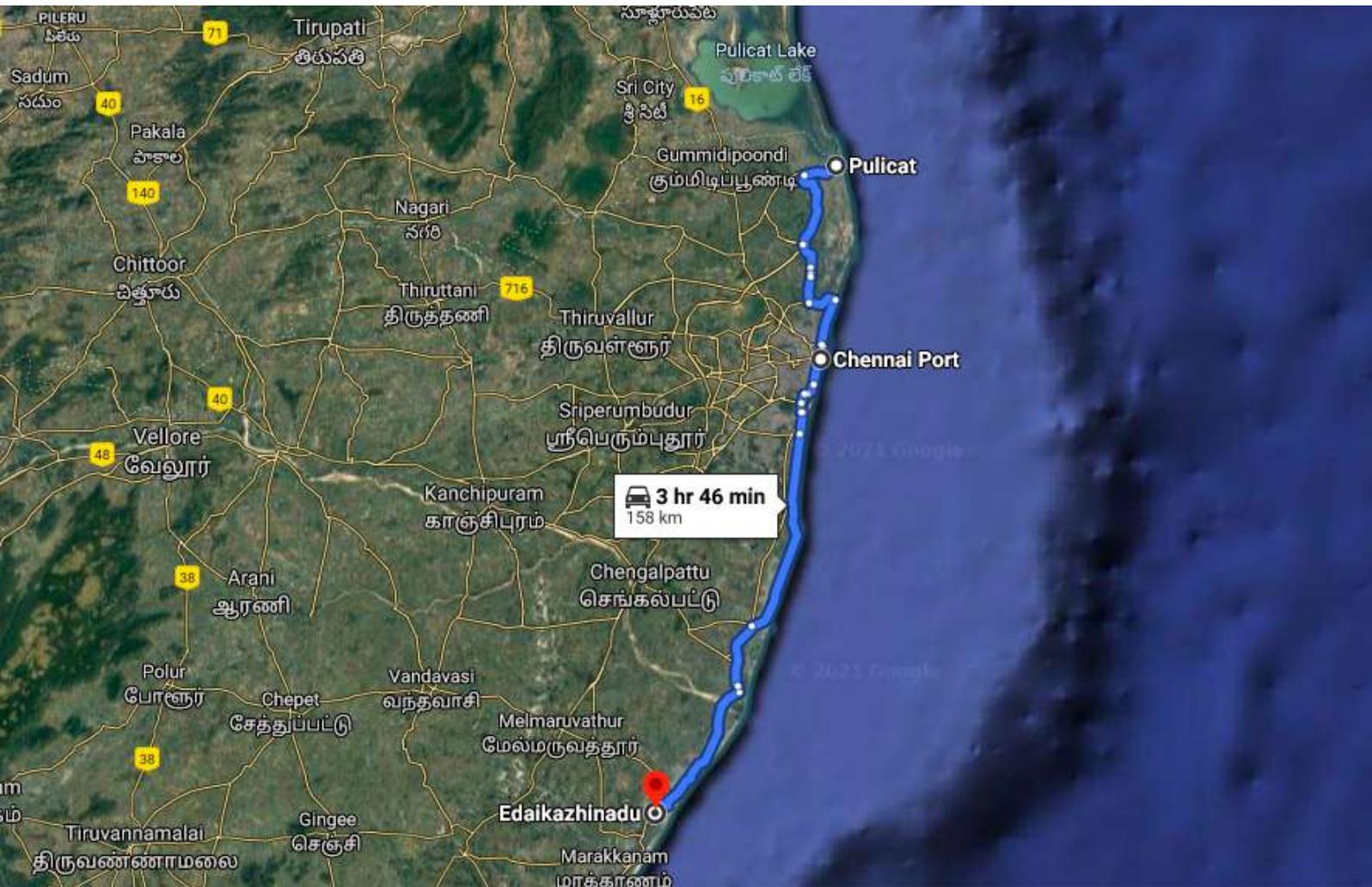
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DATE: 07.07.2021



Chennai fishing harbour to be modernised at cost of Rs 120 crore

TNIE [newindianexpress.com/cities/chennai/2021/jan/24/chennai-fishing-harbour-to-be-modernised-at-cost-of-rs-120-crore-2254377.html](https://www.newindianexpress.com/cities/chennai/2021/jan/24/chennai-fishing-harbour-to-be-modernised-at-cost-of-rs-120-crore-2254377.html)

Home Cities Chennai

The Chennai fishing harbour is likely to be revamped further — with a proposal to decongest the berthing area and minimise the crowd in selling areas — at a cost of Rs 120 crore.

Published: 24th January 2021 04:53 AM | Last Updated: 24th January 2021 04:53 AM
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Boats docked at Kasimedu fishing harbour in Chennai | Shiba Prasad Sahu

By Express News Service

CHENNAI: The Chennai fishing harbour is likely to be revamped further — with a proposal to decongest the berthing area and minimise the crowd in selling areas — at a cost of Rs 120 crore.

The proposal to modernise the harbour includes an additional wharf near easter breakwater to a length of 300 m, finger jetty to a length of 150 m, lower-level wharf for 100 m, fish-processing hall, public utility complex, 120 retail shops, a computerised vessel monitoring system, solar power system and water supply arrangements.

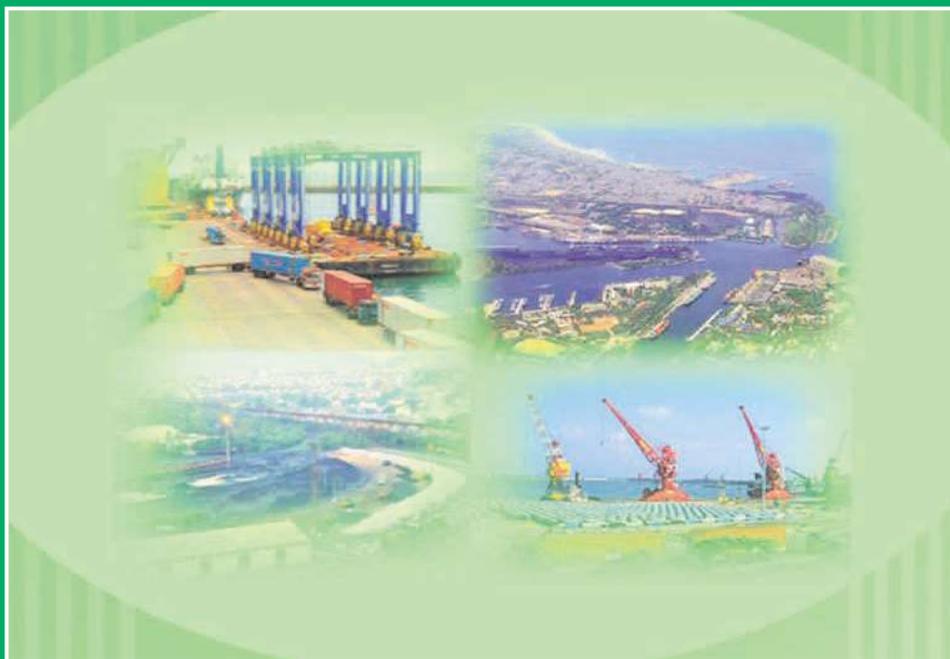
The modernisation proposal also includes cold-chain facilities, a boat repair yard, marketing centre to interact with buyers and other facilities, according to a release. This comes after Union Minister of Fisheries, Animal Husbandary and Dairying Giriraj Singh met Chief Minister Edapaddi K Palaniswami on Friday in the presence of Fisheries Minister D Jayakumar, Animal Husbandary Minister Udumalai K Radhakrishnan and Milk and Dairy Development Minister K T Rajendra Balaji. At the meeting, the CM stressed the importance of developing the Kasimedu Fishing Harbour further. The Union Minister also visited the Chennai fishing harbour.



जहाँ है हरियाली ।
वहाँ है खुशहाली ॥

Ministry of Environment & Forests
GOVERNMENT OF INDIA, NEW DELHI

Environmental Impact Assessment Guidance Manual
for
PORTS & HARBORS



Prepared by



Administrative Staff College of India
Bellavista, Khairatabad, Hyderabad

February 2010

INTRODUCTION

1.0 Preamble

Environment plays a vital role in overall development of the country. Recognizing the importance of environmental protection and sustainable development, the Ministry of Environment and Forest, Government of India had formulated policies and procedures governing the industrial and other developmental activities to prevent indiscriminate exploitation of natural resources and to promote integration of environmental concern in developmental projects.

The Ministry of Environment & Forest has made prior environmental clearance (EC) for certain developmental projects mandatory through its notification issued on 14th September 2006 and as amended on 1st December 2009. The Office Memorandum of MoEF, Dt 3rd Nov 2009 on new policy on expansion of existing ports and initiation of new projects along the coastline is to be followed for development of ports and harbors. The categorization of the developmental projects / activities is specified in the EIA Notification 2006 and its amendment.

1.1 General Information on Port and Harbor Sector

Ports and harbors are the gateways of maritime trade as also inland transport. Need to enhance the standard of living calls for continual growth in the economy and calls for rapid industrialization and commensurate development of all the associated sectors of the country as a whole. Inasmuch as maritime transport is economical and the only means to transport larger volumes of cargo across oceans, ports and harbors are, therefore, called upon to handle larger volumes of cargo throughputs of both raw material as well as products. Thus demand for handling bigger size ships and deploy state of the art cargo handling systems many a time require augmentation/ expansion of facilities at existing ports and development of new ports and harbors. However, port development and operational activities may create a wide range of impact on the environment through activities like dredging, reclamation, construction work, development of utilities and services, discharges from ships and waterfront industries, cargo operations and other port related activities. The potential adverse effects of port development encompass water pollution, contamination of bottom sediments, damage to marine ecology and fisheries, beach erosion/ accretion, current pattern changes, waste disposal, oil leakage and spillage, emission of hazardous gases, air pollution, noise pollution, flood light effect and other socio-cultural impact. The preparation of EIA report and implementation of EMP are essential to effectively address these adverse effects.

Major Sources of Environmental Impact in Respect of Port and Harbor Projects

Major sources of the adverse effects on account of development of port and harbor projects can be categorized into the following types:

- ▶ Location of port
- ▶ Construction, dredging and reclamation
- ▶ Port operation, including ship traffic and discharges
- ▶ Cargo handling, storage and transport