

BEFORE THE HON'BLE GREEN TRIBUNAL,
WESTERN ZONE BENCH AT PUNE,
APPEAL NO.31 OF 2019

IN THE MATTER OF :

MR. SAYYED MOHAMMED SABIR USMAN ...APPELLANT

VERSUS

UNION OF INDIA THROUGH SECRETARY,
MoEFCC & ORS. ...RESPONDENTS

WRITTEN NOTES OF SUBMISSION ON BEHALF OF ORIGINAL
APPELLANT

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1. It is darkest day in history of Indian Environment Jurisprudence as the common man fighting for environmental case is struggling to get notice to be issued in the present matter of gross intentional violations of environments norms by the Project Proponent with the active help of corrupt bureaucrats misusing the present petition as capital of their illegal money making business at the cost of mother nature.
2. That the PP has initially granted Environmental clearance (hereinafter referred as EC) dated 06.01.2014 for construction of Breakwater (Length:1700 m, Width:75 m at bottom, Height: 10 m. .above CD level), Berth (One No., Length: 350 m, Width: 25 m), Approach Trestle (Length: 2265 m, Width,; 12: m): Capital Dredging of 1,5 Million Cum., Maintenance Dredging or 150,000 cum per annum: development of Coal Stackyard (32. Ha), and allied infrastructure facilities and directed to comply the conditions given therein. (pg no.1187)
3. The PP has obtained Coastal Regulation Zone Clearance (hereinafter referred to as "CRZ Clearance") on 26.04.2013 by the department of Forest and Environment, Government of Gujrat and various conditions were imposed on the PP i.e preparation of conservation plan for wildlife protection in consultation with chief wildlife Warden, Gujrat state, arrangement of funds, its implementation, implementation of Safeguards suggested by the PCCF in it report, preparation of local oil spill contingency and disaster management plan, development of greenbelt, financial contribution socio-economic upliftment activities, furnishing details of above activities to concerned department, creation of separate

Environment management Cell, submission of Environment Audit Report, regular six monthly compliance report etc. The PP have not complied with the condition of CRZ clearance. (Pg 1098).

4. It is important to note that the state government vide letter dated 27.05.2007 denied the permission for Power Project by containing that the area falls under CRZ region.
5. The PP obtained earlier EC on the basis of false information given in EIA report and further did not complied with the conditions of earlier environmental clearance and CRZ clearance. Therefore, Present Appellant challenged the subsequent EC dated 05.03.2019 granted for extension of breakwater of 2800 m (total 1700+ 2800=4500) to achieve required tranquillity condition for operation of LNG terminal with storage and regasification facility. The construction of breakwater will run more or less parallel to the coastline at distance of about 2500m from the shoreline.
6. The Public hearing for earlier project was conducted on 19.11.2010. various issues relating to water extraction from ground, acquisition of agriculture land , impact of project on sugarcane farming, construction of road behind the public school, absence of municipal ground etc. the PP failed to address the objections raised by the local villager.
7. That the PP neither complied with the conditions of EC nor CRZ , did not implemented the recommendation of its own EMP. The Respondent No. 1 illegally waived the public hearing for extension of breakwater despite EIA Notification, 2006 prescribes a mandatory public hearing under Para 7(i)(iii) at the project site. That the PP sought for a waiver of the public hearing requirement which was granted by the EAC-Infra II while granting Terms of Reference in the minutes dated 22.01.2014 (Pg. 54) as follow
“PP requested for waiver of Public Hearing on the ground that Public Hearing was conducted on 19.11.2010 while obtaining the EC/CRZ clearance for the Port and the proposed extension of berth is within Port boundary. Further, the Joint venture which will establish and operate LNG terminal at the proposed berth will go for Public Hearing. The EAC accepted the justification

and recommended for exemption from conducting the Public Hearing for the above proposal."

8. That the location of project changed in hurry therefore as per the law mandatory 3 years survey was not conducted and report was published on the date collected for less than 2 years.(pg 298)
9. That the State Government declared all taluka in the Junagadh over exploited category and dark zone and regular notifications are issued under the S. 33(1) (M) of Bombay Police Act to discourage the extraction of ground water. Despite being watershed area the PP is extracting groundwater.
10. The PP has directed not to acquire land towards east as it has slope towards major water body and probably it will get contaminated, therefore it is necessary to collect the information of Land acquisition. The PP has also acquired graze land which has serious impact on fodder requirement of cattle in the village.
11. That due to construction of approach road to the port construction site water bodies are blocked.
12. As per the CRZ clearance dated 26.04.2013 the dredging will be conducted for 20-24 months This work is going on from last 10 years and Oily waste, sanitary waste, spillage from dredgers, barges and workboats, aqueous discharge is impacting marine and water quality.
13. That in the CRZ clearance it is stated that the construction of Port will not have impact on fishing, but in reality the issues were raised in the Public hearing dated 19.11.2010 that the Fisherman, labourers and agriculture holders have lost their livelihood and export of seafood will be stopped. PP had not made any official commitment on employment of locals as EIA report states that the company will give all work on contract basis. (Pg 295)
14. However, it is submitted that EIA Notification, 2006 under Para 7(i)(iii), does not grant an exemption of public hearing for an expansion project

of this nature. Therefore, the EAC had no authority to grant such an exemption. Further, there was no common EIA Report for the LNG Terminal and breakwater port in the present matter, therefore, the public hearing for the terminal would not be adequate as it would not address the environmental impacts caused by the expansion of the port. Hence, the exemption is illegal and non est in law.

15. That further the EAC infra-II in the minutes of the 131st meeting dated 25- 27.05.2017 accepted the earlier waiver while carrying out the appraisal:

“The proposal was earlier considered by the EAC in its 15th meeting held on 12th -14th April, 2017, wherein the Committee observed that exemption from Public hearing was granted by the earlier EAC because the proposed extension of berth was within the project area and the joint venture which will establish and operate the LNG Terminal at the proposed berth was to go for public hearing. The committee felt that since this proposal is linked to the project ‘Development of LNG storage and regasification terminal at village Chhara Taluka Kodinar, District Gir Somnath, Gujarat promoted by M/s HPCL Shapoorji Energy Ltd’, therefore any further consideration will only be possible after satisfactory submission of the additional information sought by the Committee in case of the project ‘Development of LNG storage and regasification terminal....’ The EAC, on being satisfied with the submissions of the project proponent in response to its earlier observations, recommended the project for grant of environmental and CRZ clearance and stipulated the following specific 141 conditions along with other environmental conditions while considering for accord of environmental clearance.”

16. However, it is submitted that the EAC has failed to carry out an appraisal as per the EIA Notification, 2006 which mandates a “detailed scrutiny” of the documents to provide a “categorical recommendation” for the recommendation of the grant or rejection of the environmental clearance.

17. PP submitted the application dated 27.09.2016 for or prior EC for extensions of breakwater and LNG Storage and Regasification terminal EC after ToR & EIA Report March- 2016. The query was raised and proposal was resubmitted. Despite previous EC dated 06.01.2014, no monitoring report was filed by the MoEF & CC.

18. That the EIA/ EMP of project dated March-2016 is filed on January-2017 to EAC without incorporating conditions or recommendations dated 02.02.2017 provided by GCZMA after lapse of Two years validity of ToR dated 18.06.2014.
19. Proposed construction activities of LNG unit within port are shown in CRZ-III in HTL & LTL Demarcation report which is totally false. Activity of LNG unit is in shoreline and prohibited zone of CRZ-I.
20. the proposal for prior EC for LNG Storage and Regasification terminal is considered by EAC in its 15th meeting dated 12.04.2017 meeting at item no. 15.4.2 and in its 18th meeting dated 25.05.2017 meeting at item no. 18.3.10.
21. That the MoEF & CC granted EC and CRZ clearance dated 05.03.2019 for development of LNG storage and regasification terminal include 1 no. LNG Jetty with 3 Nos. unloading arms, approach trestle of length 1225 m with pipelines, 6 mooring and 4 berthing dolphins, LNG transfer lines from jetty to storage tanks, vapor return line from tankages to jetty, utilities for firewater, 2 nos Storage Tanks of 200,000 cum each (gross capacity}, re-gasification facilities comprising of BOG Compressor, HP Pumps, Shell and Tube Vaporizers, Submerged Combustion Vaporizer and air heaters, Glycol water tanks and circulation system, Re-condenser, U/G LNG Drain drum, LNG Send out facilities comprising truck loading, LNG Metering station, Weigh bridge, TLG Control room, Truck parking, Security Watch Tower and Security Gate.
22. That the Public hearing for project of Development of LNG storage and regasification terminal was held on 18.11.2015 and the translated minutes meetings are given on pg. no. 365 to 183. On the perusal of this issues raised by villagers, it is clear that the even in the year 2015, the issues raised in the earlier public hearing dated 19.11.2010 was not addressed. The company did not comply with the conditions of earlier EC and CRZ.
23. That the Hon'ble Supreme Court *Keystone Realtors Pvt Ltd. v Anil V. Tharthare and Ors.* reported in (2020) 2 SCC 66 has held that the EIA Notification was adopted with the intention of restricting expansion of

projects until their environmental impact could be evaluated and understood, and further, that an incremental increase in project size cannot be permitted without any oversight from the proper EAC:

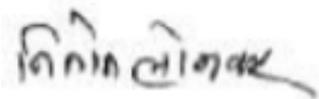
“19. In a case where the text of the provisions requires interpretation, this Court must adopt an interpretation which is in consonance with the object and purpose of the legislation or delegated legislation as a whole. The EIA Notification was adopted with the intention of restricting new projects and the expansions of new projects until their environmental impact could be evaluated and understood. It cannot be disputed that as the size of the project increases, so does the magnitude of the project’s environmental impact. This Court cannot adopt an interpretation of the EIA Notification which would permit, incrementally or otherwise, project proponents to increase the construction area of a project without any oversight from the Expert Appraisal Committee or SEAC, as applicable.”

24. That the appraisal of the project is not as per the Office Memorandum dated 24.12.2010. The Office Memorandum dated 24.12.2010, mandates that interlinked projects must prepare a common EIA report and hold a common public hearing *“(iii) The proponent shall prepare a common EIA report covering all the sectors comprehensively and hold public hearing based on the EIA report so prepared, for each component as per provision of EIA Notification, 2006.”*
25. Thereafter, the respective EACs for each sector will give their recommendations based on the overall impact of the project: *“(v) The respective EACs will consider the sector specific proposals based on the common EIA Report and will make their, recommendations relating to that particular component. However, in doing so, the overall impact of the project as a whole will also be considered.”*
26. It is submitted that the LNG Terminal and the present breakwater project are ‘interlinked projects’ and the same has been accepted by the project proponent while seeking an exemption of the requirement of a public hearing. Further, the MoEFCC in their reply, para nos. 15-17 have stated that the projects come under ‘Development of port infrastructure’ and are admittedly interlinked projects. However, the MoEFCC has incorrectly stated that *“the said Office Memorandum dated 24.12.2010 is not applicable in the present case, since both the projects are covered under item 7(e) i.e. Port and Harbours to the schedule of the EIA Notification, 2006.”*

27. It is submitted that this interpretation is completely incorrect because as per the Schedule to EIA Notification, 2006, the expansion of the Breakwater port is categorized under Category 7(e) i.e. Ports, Harbours, break waters, dredging and the LNG Terminal is categorized under Category 6(a) i.e. Oil & Gas transportation pipe line (crude and refinery/petrochemical products), passing through national parks/sanctuaries/coral reefs/ecologically sensitive areas including LNG Terminal. Thus, the breakwater project and the LNG Terminal are directly are categorized in distinct and separate 'Project and activity' Categories as per the EIA Notification, 2006, and accordingly ought to have been appraised by different Sectoral EACs.
28. It is submitted that the LNG Terminal would be within the purview of 'EAC on Industry-2 Projects', but it has been appraised by the 'EAC on Infrastructure and Miscellaneous Projects + CRZ (Infra-2)', along with the breakwater, and thus, both the ECs granted to the impugned breakwater and the LNG Terminal have been granted in violation of the EIA Notification, 2006, and the O.M. dated 24.12.2010.
29. That further, if the projects are interlinked and part of 'port infrastructure' then there has to be a common EIA Report and a determination of the cumulative impact of the projects so as to enable the EAC to determine what conditions are to be imposed to mitigate the impacts of both the projects, separately and together.
30. The EIA Report does not adequately address the impact on the environment as report itself is based on false information. During monsoon season, waves high up to 3 to 5 m are reported in this region. Stability of any ship without breakwater during this period is low and vulnerable for accidents. Even in the presence of breakwaters also there are chances of accidents in the vessels, viz, collision or grounding. According to the past data, most of the accidents occurred during monsoon period. Therefore, this season is crucial for the spill study. In the EIA study, spill movement during monsoon (June - September) is not presented despite it is being all weather port.

31. It is submitted that the construction of the additional breakwater extension would lead to a circulation pattern and increase in turbidity of the water which would directly impact the aquatic biodiversity and the fishing community in the region, which has neither been studied in the EIA Report nor has it been considered by the EAC during appraisal.
32. At present PP is meeting his demand on onshore metal requirements from illegal quarry / mine established in the eco-sensitive area of Gir Forest as the stone required for construction of breakwater is also quarried from the quarry situated in eco-sensitive zone and nearby eco sensitive zone. There is clear cut violation of terms and condition of EC as the stone is quarried from the illegal quarries and mines.
33. That the movement of ships carrying dumping material of stone & rock is not regulated and affecting fishing activity. During the fish breeding season also the dredging had been carried out.
34. That the project site is hatching ground of migratory birds and have nests of sea turtles and also known for wildlife movement.
35. The Present Appellant has raised other grounds on pg 33 to 40 of Appeal.
36. The competent authorities failed to record the compliance of conditions of EC dated 06.01.2014 and CRZ dated 26.04.2013 and mechanically granted the EC dated 05.03.2019 for extension of breakwater at Chhara - Sarakhandi Port.
37. That therefore it is submitted that in light of the above arguments, the Appeal be allowed and the Environment Clearance dated 05.03.2019 be set aside.

FILED BY



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