

**BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT
PUNE**

MEMORANDUM OF APPLICATION

(Under Section 18(1) read with Sections 14 and 20 of the National Green Tribunal Act, 2010)

Application No. 64 of 2021

BETWEEN :

Zoru Darayus Bhatena)	... Applicants
<i>Versus</i>		
State of Maharashtra and Ors.)	... Respondents

WRITTEN SUBMISSIONS

1. The Present Application concerns the illegal construction of a 1.2 kilometre long Reinforced Cement Concrete (RCC) wall, under the guise of anti-sea erosion work, on the Versova Beach and the dumping of construction debris and tetrapods, effectively taking over 31 metre width (37000 Sq Mtrs) of beach sand. The said construction is in violation of the Coastal Regulation Zone clearance dated 27.08.2018, pursuant to which the purported construction at the Versova beach is currently underway and is in breach of the provisions of Coastal Regulation Zone Notification, 2011. The said clearance has been granted as per the recommendation of the Maharashtra Coastal Zone Management Authority (MCZMA, Respondent No.3 herein) and the Project Proponent (Respondent No.1) has undertaken the present construction in blatant disregard of the same. The Respondent No.1 has also conducted only a summary Environment Impact Assessment study, which is in stark contrast to the EIA studies done for other anti-sea erosion bunds, as shown in the pleadings to the present application.

2. It is pertinent to note that the present Application does not seek to challenge the grant of CRZ clearance or the said clearance itself. The Application specifically challenges non-compliance, as is evident from, inter alia, grounds A,D,F of the present Application, of the MCZMA recommendation and thereby, of the CRZ Clearance. The Applicant submits that MCZMA, the present Respondent No.3, specifically recommended that “*After deliberation, the Authority decided to recommend the proposal of reconstruction of existing anti-sea erosion wall to SEIAA subject to compliance of following conditions*” The specific conditions were made *sine qua non* to the CRZ Clearance and the Project Proponent was obligated to follow them.
3. The said conditions, listed at paragraph 18 of the application, inter alia, provide that the proposed **reconstruction of anti-sea erosion wall** should be in accordance with provisions of the CRZ Notification, 2011 (as amended from time to time) and that any walkway was not permitted on the anti-sea erosion bund as it was not permissible activity in CRZ I intertidal area. The said conditions also stated that the location/design of the bund should be in such way that there would be minimum reclamation on the beach (i.e. CRZ I area)
4. The Applicant states that the CRZ clearance is simply for reconstruction/repair of the existing compound wall. The applicant states that no Environmental Impact Assessment (hereinafter referred to as EIA) study was conducted for an anti-sea erosion wall and the CRZ permission itself shows that permission is granted based on the MCZMA’s recommendations. The Applicant submits that there is no CRZ clearance for construction of a new anti-erosion wall at a different location, in the middle of the sandy beach, nor has any permission been

granted for placing cement tetrapods on the leeward side of the illegally built wall. The Applicant states that the MCZMA recommendation forms the basis of the CRZ Clearance as recorded in the Minutes of the SEIAA approval. The Applicant states that a breach of the MCZMA recommendation amounts to a breach of the CRZ Clearance and it is apparent that the present construction, as evident from Exhibits L and BB to the application, is in breach of the same. The Applicant states that what has been undertaken, under the guise of reconstruction/repair, is a wholesale redevelopment of the entire area.

5. The Applicant states, that as is evidenced from the cross section plans attached to Exhibit V to the Affidavit in Reply filed by the Respondent No.1, the present construction is no manner or form comparable to the repair/reconstruction contemplated under the MCZMA recommendation. The said cross-section plans show that the said construction envisages a 31m reclamation of the sandy beach. Additionally, the construction seeks to split the beach in two and places a whole new wall of nearly 10m in height. The leeward side of the said new wall clearly creates a virtual walkway, which was specifically prohibited by the MCZMA recommendation.
6. The Applicant submits, that the modified design, as submitted by the Respondent No.1, is virtually the same as the original design of the project. The modified designs, at Exhibit Y to the Affidavit in Reply of the Respondent No.1, shows that the project continues to authorise a new “retaining wall”, along with a virtual promenade of 5.5m width. It is submitted that the project proponent also fails to disclose, and justify,

the dumping of tetrapods for a further width of nearly 27m into the beach.

7. The Applicant submits that any design proposed by the Central Water Power and Research Station (CWPRS) cannot go beyond, or be incompatible with the MCZMA recommendation. The Applicant submits that MCZMA is an expert body and has a statutory and constitutional duty to ensure compliance with the CRZ Notification, 2011, as stated in paragraphs 3,8 of the reply filed by the Respondent No.3. Therefore, it cannot be the Respondent's case that the CWPRS proposed design can subvert what has been explicitly provided under the MCZMA recommendation & CRZ Clearance.

8. The Applicant submits the MCZMA, in its Affidavit in Reply, has clearly reiterated that the conditions imposed in the original recommendations and stated that *“Considering the coastal hazards, protection of existing residential building along the coast and permissibility of the activity, the MCZMA granted the CRZ recommendation to the proposal of reconstruction of existing anti-sea erosion wall subject to certain conditions. It is binding on the PWD to carry out the activities within the framework of the CRZ clearance granted to the project.”* It is pertinent to note that the MCZMA has specifically reiterated the word “reconstruction.” It is submitted that this, in itself, shows that the MCZMA recommendation did not envisage any fresh construction or development work.

9. Considering the facts and documents on record, this Hon'ble Tribunal, on 06.12.2021, passed an order recording that it was of the prima facie view that a walkway/road has been created and that the same was in breach of the MCZMA recommendation. Accordingly, the Respondent No.1 was directed to file an additional affidavit to answer specific queries. In the said additional affidavit, the Respondent Project Proponent has clearly stated that what is being constructed is a fresh construction. The Respondent No.1 has sought to contend that the use of the phrase "seawall" would be inclusive of any anterior construction, including tetrapods. At paragraph 7 of the said affidavit, the Respondent has contended that a new wall "had to be" constructed to protect the existing retaining wall.

10. Notwithstanding the contention that no document has been brought on record to indicate that the MCZMA was made aware of the said new well and the anterior construction, it is submitted that what has been recommended by the MCZMA can anyway not be interpreted to include such a vast development. The Applicant submits that the MCZMA specifically included conditions to minimise beach reclamation and consciously used the word "reconstruction/repair of existing wall." The Applicant submits that it would do utter violence to the recommendation of the MCZMA.

11. The Applicant submits that, notwithstanding the above contentions, the EIA report, at Exhibit I to the Affidavit in Reply of the Respondent No.1, is not a comprehensive EIA study for the purposes of the CRZ Notification, 2011. The purported EIA report does not cover any issues with regard to the coastal ecology, marine life, tidal patterns and other

allied concerns with respect to the construction of the purported anti-sea erosion wall. The purported EIA report only deals with the construction phase of the said project and the immediate polluting and non-polluting effects of the construction. The minutes of MCZMA meeting(s) annexed at Exhibit K to the original application shows the various headers that the MCZMA has considered for anti-sea erosion work.

12. Notwithstanding the contention that the EIA report relied upon by the Respondent No.1 is wholly inadequate and impermissible, it is submitted that the summary nature of the said EIA report shows that the original intended construction was only of a repair/reconstruction nature.

13. The Applicant submits that the construction undertaken so far has been in blatant disregard to the said considerations, as covered in the EIA report for usual anti-sea erosion constructions. The present construction has proceeded without taking into effect the long term effects of distorting natural wave patterns, shortening the available length of sandy natural beach, the presence of Olive Ridley turtles (as shown at Exhibit A to the Application) and other concerns with regard to terrestrial flora and fauna.

14. The Applicant submits that the effect of anti-sea erosion construction has been deprecated by the Hon'ble National Green Tribunal in *C.H. Balamohan v. Union of India and Ors.* Original Application No. 04/2013(SZ) WITH Appeal No.18/2017(SZ). In its consideration of issues and findings, the court recorded "*We have given due consideration to the issue of protection of the beaches from human*

induced erosion caused by hard structures. It is a fact that these hard structures may prevent erosion at the said stretch temporarily but the adverse impact of such measures are felt upstream or downstream where erosion starts. Thereby such hard measures only transfer the problem of shoreline change until and unless a holistic study is undertaken keeping in view that sediment cells and appropriate scientific measures taking into consideration both soft and hard. The problem exhaustively highlighted by the applicant, noted above raises substantial question of environment. We are satisfied that the same needs to be addressed by all coastal States/UTs for protection of beaches from human induced erosion caused by hard structures. We find that Puducherry model of SMP based on report of NIOT submitted in March 2015 addresses the issue comprehensively and can be adopted subject to any suitable change based on further study in terms of the recommendations in the said report. As suggested in the report, there is need to replace hard structures like seawalls, Groynes etc. with softer options such as beach nourishment, sand bypassing, dune planting, offshore submerged reefs, etc. Thus, the general principle of “working with nature” would be a better approach for cost-effective and sustainable coastal protection measures. There is no objection to the said model by any of the appearing parties. Further, the Tribunal also notes that depiction of high, Medium and low erosion stretches along the coast line is mandatory in the CZMPs. The CRZ Notification, 2019 regulates foreshore developmental activities based on these parameters as well. Like ports and harbours are prohibited in high erosion stretches. We also note that inspite of the CRZ Notification being issued in Jan, 2019, the CZMPs have not been finalized and approved for 11 State/UT. This is gross violation of Hon’ble Supreme Court judgment in Indian Council For Enviro Legal ... vs Union of India & Ors., (1996) 5

SSC 281. Accordingly, we direct Chief Secretaries of the Coastal State/UT to finalise the CZMP and get them approved by MoEF within 2 months. The approved CZMP shall contain the parameters as listed in the CRZ 2019 Notification including High, Medium and Low erosion stretches for such erosion prone areas. SMP shall be prepared as illustrated by NIOT for such erosion prone areas. We further direct preparation/updation of their SMPs for such identified eroding stretches shown in the CZMPs within six months. Pending preparation/updation of such SMPs by the Coastal States/UTs, no further hard structures for erosion control be raised or constructed.”

15. The Applicant further submits that the Respondent No.1 has failed to respond to the contentions in the application with regard to the public trust doctrine. The Applicant states that the present Respondent No.1 holds and governs the sandy beach in trust for the general public and is constitutionally obliged to protect and preserve the same. The Applicant states a natural sandy beach, with a particular marine ecology and environmental significance, cannot be sacrificed for the protection of a private compound wall. In the present case, the entire public beach has been sought to be repurposed.

16. The Applicant submits that the Project Proponents documents, including the letter from a Member of Legislative Assembly annexed at Exhibit E to the reply, shows that the said project was conceived as a road project. The Applicant submits that despite the explicit rejection of the MCZMA of a walkway and promenade, the project is still being constructed with a plan for a walkway/promenade.

17.The Applicant submits that the Project Proponent's submission that the said wall is being constructed to protect existing zig-zag walls and the leeward side constructions of the said zig-zag walls is entirely untenable. The authorised compound walls on Versova Beach have an absolute straight line. Any zig-zag in the walls is only due to unauthorised encroachment, and such illegal encroachment cannot be protected/regularised by building a new wall in front of it. The Applicant submits that protection of existing private construction cannot justify the loss of over 37,000 square meters of natural sandy beach, which is held in public trust.

18.Notwithstanding the above contentions, it appears that the Respondent No.1 is required to obtain a No Objection Certificate from the Maharashtra Maritime Board, Respondent No.7. It is relevant to state that the Shoreline Management Plan issued by Respondent No 7 (Maharashtra Maritime Board) identifies that no anti-soil erosion measures are required at Versova Beach (Exhibit S to the Application).

19.In these circumstances, the Applicant submits that a fit case for removal of unauthorised construction and restoration of natural sandy beach has been made out.

Date : 28.01.2023



Adv. VG Sreeram, for the Applicant

