

**BEFORE THE NATIONAL GREEN TRIBUNAL****WESTERN ZONE BENCH AT PUNE****APPEAL 50/2019 (WZ)****IN THE MATTER OF:**

Protection of Environment

and Public Service Committee

..... Appellant

Versus

M/s Simar Port Pvt. Ltd. and Ors.

..... Respondents

**INDEX**

<b><u>Sr No.</u></b>	<b><u>Particulars</u></b>	<b><u>Page</u></b>
1.	Written Submissions on behalf of the Appellant	139-144

THROUGH


**RITWICK DUTTA****RAHUL CHOUDHARY****MAITREYA GHORPADE****ADVOCATES**

COUNSELS FOR THE APPLICANT

N-71, Lower Ground Floor,

Greater Kailash, New Delhi- 110048

Mobile: 9312407881

Email: litigation.life@gmail.com

**Date: 16.03.2021****Place: New Delhi**

**BEFORE THE NATIONAL GREEN TRIBUNAL**

**WESTERN ZONE BENCH AT PUNE**

**APPEAL 50/2019 (WZ)**

**IN THE MATTER OF:**

Protection of Environment

and Public Service Committee

..... Appellant

Versus

M/s Simar Port Pvt. Ltd. and Ors.

..... Respondents

**WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANT**

**PRELIMINARY SUBMISSIONS:**

1. That the present Appeal has been filed under Sections 18(1) read with Section 16 of the National Green Tribunal Act, challenging the Environment Clearance and CRZ Clearance dated 5.03.2019 (hereinafter referred to as 'EC') for the construction of a 2800 metre breakwater extension project which is part of Phase-II of Chhara Port to M/s Simar Port Pvt. Ltd. by the Ministry of Environment, Forests and Climate Change.
2. That an LNG storage and Regasification Terminal has also been granted Environment Clearance and CRZ Clearance on 5.03.2019 which is part of the same project on Chhara Port and has been separately challenged by the Appellant in Appeal No. 49 of 2019 (WZ).
3. That the main grounds of challenging the environment and CRZ clearance are as follows:
  - a) The EC has been granted without conducting a public hearing as per the EIA Notification, 2006;
  - b) Appraisal of the project is not as per the Office Memorandum dated 24.12.2010 issued by the MoEFCC regarding the appraisal of integrated and interlinked projects;
  - c) The EIA Report does not adequately address the impact on the aquatic biodiversity.

#### 4. Illegal waiver of the public hearing requirement:

- a. That the EIA Notification, 2006 prescribes a mandatory public hearing under Para 7(i)(iii) at the project site, but this has not been carried out in the present case.
- b. That the project proponent 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**):

*"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."*

- c. 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.
- d. 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.
- e. That further the EAC infra-II in the minutes of the 131<sup>st</sup> 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 -14<sup>th</sup> 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*

*conditions along with other environmental conditions while considering for accord of environmental clearance."*

- f. The Ministry of Environment, Forests and Climate Change in their reply dated 5.11.2019 in para nos. 10-12 (**Pg no. 89**) have simply stated that the "EAC after being satisfied with the submissions of the project proponent in response to its earlier submissions, recommended the project for environment clearance." 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.
- g. 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."*

**5. Appraisal of the project is not as per the Office Memorandum dated 24.12.2010:**

- h. The Office Memorandum dated 24.12.2010, as annexed on **Pgs. 48-49**, 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."*

- i. 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.”*

- j. Finally, the recommendations are processed by the Competent Authority for a final decision.
- k. 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.
- l. 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.”* (**Pg. 92**).
- m. 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. 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.

- n. 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.

**6. The EIA Report does not adequately address the impact on the aquatic biodiversity:**

7. 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.
8. That therefore it is submitted that in light of the above arguments, the Appeal be allowed and the Environment Clearance dated 5.03.2019 be set aside.

FILED BY



**RITWICK DUTTA**

**RAHUL CHOUDHARY**

**MAITREYA GHORPADE**

**ADVOCATES**

COUNSELS FOR THE APPELLANT

N-71, Lower Ground Floor,

Greater Kailash, New Delhi- 110048

Mobile: 9312407881

Email: litigation.life@gmail.com

**Date: 16.03.2021**

**Place: New Delhi**