

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

APPEAL NO.79 OF 2013

CORAM :

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A.DESHPANDE
(EXPERT MEMBER)**

In the matter of:

1. HAZIRA MACCHIMAR SAMITI .

Through its President
Dhansukhbhai Banabhai Rathod,
R/o Hazira Wapar Mohallo,
Halpatiwas Hazira Village,
Taluka CHoryasi, District Surat,
Gujrat.

2. MAHESHBHAI RATHOD

R/o Hazira Wapar Mohallo,
Halpatiwas Hazira Village,
Taluka CHoryasi, District Surat,
Gujrat.

3. HASMUKHBHAI RATHOD

R/o Hazira Wapar Mohallo,

Halpatiwas Hazira Village,
Taluka CHoryasi, District Surat,
Gujrat.

4. VIMALBHAI KHALASI

R/o Hazira Wapar Mohallo,
Halpatiwas Hazira Village,
Taluka CHoryasi, District Surat,
Gujrat.

APPELLANTS

A N D

1. UNION OF INDIA,

Through The Secretary,
Ministry of Environment and Foests,
CGO Complex, Lodhi Road,
New Delhi-110003.

2. DIRECTOR,

IA-III Divison
MINISTRY OF ENVIRONMENT AND FORESTS,
(MoEF)
Paryavaran Bhavan,
CGO Complex, Lodhi Road,
New Delhi-110003.

3. STATE OF GUJARAT,

Through its Chairman,
Sector 10-A, Opposite Air Force Station,

Gandhinagar,
Gujarat-382010.

**4. GUJARAT POLLUTION CONTROL BOARD,
(GPCB)**

Through its Chairman,
Paryavaran Bhavan,
Section 10-A,
Gandhinagar,
Gujarat-382010.

5. GUJARAT MARITIME BOARD, (GMB)

Through its Chairman,
Section 10-A,
Gandhinagar,
Gujarat-382010.

6. ADANI-HAJIRA PORT PVT. LTD(AHPPL)

Through its CEO
M/s Mundra Special Economic Zone Ltd.
Adani House, near Mithakhali Six Roads
Navrangpura,
Ahmedabad,
Gujarat-380001.

7. M/s HAJIRA INFRASTRUCTURES PVT. LTD (HIPL)

Hazira, District Surat,
Gujarat-395006.

...RESPONDENTS

Counsel for Appellant(s):

Ms. Shilpa Chouhan a/w Suresh V. Jadhav, Mr. Shwaguq Siddiqui, Shanahib Siddiqui, Neha Pathak, Amruta Sane, for Appellants.

Counsel for Respondent(s):

Mr. Krishna D. Ratnaparkhi, for Respondent Nos.1,2.

Mr. Parth H. Bhatt Adv a/w Mr. A.M.Chauhan, DEE, Forest & Environment Dept. for Respondent No.3.

Mr. Viral K. Shah a/w Mr. V.R. Ghadge, Sr. Environment Enggr. For Respondent No.4.

Mr. Premal Nanawati a/w Mr. Shasi S. Shetty Mr. Kapil Agrawal for Respondent No.5.

Mr. Vikram Nankarni Sr. Advocate a/w Mr. Faraz Alam Sagar, Mr Aqul, Mr. Vishal Kulkanri, Mr Sachin Jadhav, Radhika Sahay i/b EIZ for Respondent No.6.

DATE : JANUARY 8th, 2016

JUDGMENT

1. By filing this Appeal, Appellants named above, seek to challenge Environmental Clearance (EC) dated May 3rd, 2013, granted by Respondent No.2- Ministry of Environment and Forests (MoEF) for further development of Port activities at Hajira, district Surat. Chief bone of contention of their objection, is that such Port activities, amounting to expansion, in accordance with the

impugned EC, would hinder appropriate, safe and proper access to seawater for the traditional fishermen of village Hajira, to undertake traditional fishing in inter-tidal zone. The Appellants are traditional fishermen folks and are likely to be put to loss due to contemplated expansion of the Port activities, if EC in question is implemented by the Respondent No.6. They further allege that the Respondent No.6, namely, Adani-Hajaria Port Pvt. Ltd (for short, AHPPL), has already caused massive destruction of Mangroves, in order to construct Port Berths as well as for the purpose of reclamation of land in the area for which the impugned EC is granted by Respondent No.2-MoEF. They allege that grant of impugned EC dated May 26.6.2003, is issued, without verification of compliances of conditions stipulated in the EC, which was previously issued to AHPPL, dated 3rd May, 2013 by the MoEF. They, therefore, along with certain other reasons, which are elaborated in the memorandum of Appeal, seek to quash the impugned E.C.

2. According to the Appellants, inter-tidal zone of Hajira Peninsula, called "Pagariya" is fishing area in addition to fishing area alongside coastal area of Arabian Sea, adjacent to boundary of village Hajira. There are

about eighty (80) fishing families in village Hajira. They are doing traditional fishing business of catching stock of fishes from the seawater by using traditional boats, which are sailed through a creek at the opening of Hajira Port. On April 2nd, 2002, the AHPPL, signed concession agreement with Respondent No.5- Gujarat Maritime Board, which will be referred hereinafter as (GMB), for development of Port at Hajira. At that time, AHPPL was promoted by Royal Dutch/Shell Group, but subsequently, it was supported by total Gaz Electric Holding France collaborated along with Shell Company. The project was to be developed in phase-wise manner at Hajira, including LNG terminal of AHPPL. The AHPPL, applied for CRZ permission. That was granted in 2003, under certain conditions viz. afforestation of Mangroves in area of 550Ha at Kadia Bet in the vicinity of project site. This condition was later on got modified at instance of AHPPL and M/s Nikko Resources Ltd to undertake compensatory afforestation over 200Ha as per the communication dated 19.2.2007, issued by the Additional Director of MoEF.

3. The Appellants allege that the AHPPL had developed additional two (2) container jetties and three (3)

multi-purpose jetties in the non LNG Port area, even prior to transfer of Environmental and Coastal Zone Regulation clearance in favour of Respondent No.6- M/s Hajira Infrastructure Pvt. Ltd (HIPL), which was sought vide Application dated 11.2.2011. The AHPPL commenced construction work in 2010, reclaiming Port backup area, in addition to construction of Berths without transfer of EC or seeking fresh CRZ permission. The validity period of previous clearance had lapsed. There are white back vultures and long billed vultures at the vulture feeding site designated towards conservation efforts. At least, two species of vultures are declared as critically endangered Bird species. There is a component of Railway network, HT transmission line, and internal roads etc., which are not considered while granting the impugned EC. The impugned EC was granted on basis of 'Ex-post Facto' hearing based upon Office Memorandum (O.M) dated 3rd November, 2009, issued by the MoEF. The procedure to grant such an 'Ex-post Facto' hearing, is itself bad in Law, because, it does not give prior opportunity of hearing, which is called 'public consultation', to know objections of members of the public and issues, including R&R, impact of proposed project on life of the objectors, impact of proposed project in the area, including ecology, flora

and fauna etc. The impugned EC is, therefore, illegal, improper and liable to be quashed with directions to the Respondent Nos.6 and 7 to deposit restoration cost as well as cost of environmental damage caused by them.

4. By filing their pleadings, the contesting Respondents resisted the Appeal. According to them, Mangroves have not been destructed to large extent, as alleged by the Appellants. They denied that access to traditional boats of the Appellants, will be closed or hindered due to development of Port activities. They further denied that activities of the Respondent Nos. 6 and 7, have caused any damage to environment in the relevant areas. It is the case of AHPPL (Respondent No.6) that Marine and CRZ Report delineating CRZ area was prepared. The permissions were granted after due consideration of the Environment Impact Assessment (EIA) Report and available material. It is stated by the MoEF that representations of the Appellants and others were called and considered before the impugned EC was issued. According to the contesting Respondents, EIA studies did not record presence of black back vultures and long billed vultures or the vulture feeding site, designated towards conversion of forest. It is denied that

expansion of the Port would cause loss of flora and fauna, including destruction of mudflats in Ecologically Sensitive Zone (ESZ). The contesting Respondents would submit that guidelines laid down in OM dated 12.12.2012, were adhered and, therefore, the EC is legal and proper. Consequently, they sought dismissal of the Appeal.

5. Points which arise for determination of this Appeal, are as follows:

i) Whether the impugned order of Environmental Clearance (EC) dated May 3rd, 2013, suffers from any illegality, impropriety or irregularities, which makes it liable to be quashed?

ii) Whether it is necessary to direct Adani Hazira Port Pvt. Ltd (AHPPL) and M/s Hazira Infrastructures Pvt. Ltd (HIPL), to pay amount of restoration cost or cost for damage caused to environment due to destruction of Mangroves, illegal expansion of the Port or activities like reclamation without valid EC?

iii) Whether the creek at mouth of the Port area of Hazira, is narrowed down/ constricted/ infracted due to Port activity of the Respondent Nos.6 and 7, which impede fishing activities of the Appellants and hence they had and have suffered financial loss? If yes, what order is required to be passed?

6. Before we proceed to deal with merits of the Appeal, let it be noted that the main role amongst Respondents is that of Respondent No.2- MoEF, to defend the impugned Order of EC dated May 3rd, 2003. It is for the MoEF to justify and demonstrate as to how the EC is legal and proper. The scope of Appeal is rather restricted to examine legality, validity and correctness of the order under challenge. The other Respondents may be stakeholders and may have attempted to corroborate stance of the MoEF, but, they are not decision-makers and they are, therefore, required only to demonstrate if the MoEF, has committed any error while explaining reasons to indicate legality of the administrative action, namely, issuance of EC dated 3rd May, 2003. Even so, we shall refer to the affidavit of Respondent No.6, for some references. On behalf of the Respondent No.6, Mr. Naresh

Kumar Katakam, filed affidavit (P-272), supporting the impugned EC. In his affidavit, he has stated that the AHPPL, was granted EC and CRZ clearance on 26th June, 2003, by the MoEF for construction and operation of multiple cargo facility, which includes construction of twelve Berths and associated backup facilities. Categorically, he states that the AHPPL commenced construction somewhere in the year 2005 and, thereafter, the AHPPL and HIPL- Respondent No.6, entered into an agreement dated 25th November, 2010, for bulk/General Cargo Terminal agreement. According to him, the AHPPL was granted provisional consolidated consent and authorization dated 7th November, 2013 and was granted formal consolidated consent and authorization dated 27th November, 2013 by the Respondent No.4 for operation of multiple cargo Port at Hajira, including Liquid cargo handling facility. The legality of previous EC dated 26th June, 2003, was never challenged by the Appellants and there are no substantial changes caused subsequently, which could give rise to 'cause of action' for filing the Appeal and, therefore, the Appeal is liable to be dismissed. The affidavit, however, clearly states as follows:

“I state that Environmental and CRZ Clearance dated 26th June, 2003, granted to Adani Hajira Port Pvt. Ltd was changed substantially in terms of lay-out on 19th February, 2007. I state that AHPPL started activities like dredging and reclamation in the year 2006 and in accordance with the provisions of EIA Notifications of 1994 and 2006 and also CRZ Notification of 1991. Once HPPL commenced activities for as per environmental and CRZ clearances dated 26th June, 2003, amended/re-issued on 19th February, 2007”.

7. At another place, (Paragraph-15), his affidavit shows that the MoEF, issued OM dated 3rd November, 2009, wherein it is stated that the MoEF had received the report from the Integrated Coastal and Marine Area Management (ICMAM), Ministry of Earth Science, Chennai and the MoEF, accepted report of ICMAM and, therefore, shoreline changes were permitted, including coastal line of Hajira. Secondly, it is further stated that the HIPL obtained separate CRZ clearance dated 26th October, 2012, for development of Railway connectivity and HT power transmission line for multiple cargo Port at

Hajira. In other words, case of the developers of the Port, is that between EC of 2003 and the impugned EC, there are minor changes which do not cause illegality in the impugned EC that goes to the root thereof. They further submit that they have implemented afforestation programme, as required under the impugned EC. Perusal of the record reveals that several material issues were not considered by the MoEF, while granting the impugned EC to the AHPPL. A letter communication dated 7th April, 2011, addressed to the Deputy Manager (Environment Cell) AHPPL, (P-393) of MoEF, shows that the AHPPL would require re-alignment of M/s Nikko's existing effluent pipeline as a part of proposal of Port development and M/s Nikko Resources has to obtain separate clearance. Separate Terms of Reference (ToR) was finalized, in this context in 98th Expert Appraisal Committee (EAC), meeting held on 3 and 4th March, 2011. We do not find any material from the record as to whether process of public consultation was held in respect of impact of re-alignment of Railway-line. The effluent pipeline is a part of the project of AHPPL and cannot be segregated from the project. The hot and dry effluents would be drifted in saline water of the Port area, which may have adverse impact on the marine life. This

is a possible fact, which is not assessed, evaluated and considered by the MoEF. Another communication dated 19th October, 2011, Annexure-‘E’, (P-399), issued by the AHPPL, reveals that inadvertently, the status-report was not forwarded to show compliances to the MoEF in respect of the EC. The proposed to change reduction of 300Ha of afforestation of Mangroves area is also without substantial reasons. As a matter of fact, unless and until the terms and conditions of previous EC dated May 3rd, 2003, are complied with and duly found to be in order, new proposal could not be favourably considered.

8. We have carefully perused the maps, which are placed on record by the Appellants. In fact, we directed the MoEF to examine these maps with earlier authentic maps and get superimposed status map, in order to demonstrate whether a bottle-neck is artificially created due to reclamation of land and the Port activities of AHPPL, which could cause denial of access to the traditional boats of fishermen folks of Hajira. We also desired to examine whether the then available area is covered by the Mangroves before grant of EC dated June 26th, 2003 and the present status of Mangroves after expansion of the Port due to Port activities is destructed

substantially as per averments of the Appellants. It is explicit from the record that the AHPPL was permitted to develop cargo Port with supportive units and infrastructure facilities of twelve (12) Berths out of them seven (7) Berths were developed in first five years plan, two Container Berths, one Coal Berth, one Liquid Berth, three multipurpose Berths for handling bulk, break bulk cargo etc. Dredging up to 15.0m instead of earlier proposal of 13.5m, Liquid cargo handling facilities.

9. This was, of course, subjected to re-location of M/s Nikko's existing effluent pipeline and outfall, proposed reclamation to the tune of 225.30Ha at north side of Port limit and 84Ha at south side of the Port limit. The maps filed on record go to show that most of Mangroves area, is destructed. The creek situated in north-east corner is narrowed down due to reclamation of land, as a result of port/cargo activities and Port expansion activities. What we find from the record is that instead of expanding Port work in phase-out manner, expansion was already practically done almost without obtaining EC and CRZ clearance. Obviously, AHPPL labored under impression that it can manage with the authorities to alleviate the problems. One of the example, which we can see from the

record is that the AHPPL sought modification of terms of the earlier EC dated May 3rd, 2003, without any reasonable explanation and without any prior study of environmental impact. By communication dated 19th February, 2007, the MoEF changed conditions by substitution of new conditions. Thus, instead of afforestation programme of 450Ha by HIPL and M/s Nikko Resources Ltd monitored by the Sub-Committee, constituted by GCZMA, it was changed to say that the Mangroves plantation in 200Ha, will be by AHPPL and 250Ha by M/s Nikko Resources Ltd. It is evident from the affidavit of Deputy Conservator of Forest date 6.1.2015, that this area, which once had abundance of Mangroves stretches as per MoEF's own record, presently do not have any Mangrove vegetation, clearly indicating the environmental degradation and damage. A diversion of land for backup facility of the Port was also permitted as per communication dated 30th August, 2011, to the extent of 244Ha. Let it be noted that the MoEF changed earlier conditions of EC or diluted the conditions of EC in many a ways on basis of OM dated November 3rd, 2009 (Annexure-A/30). The OM shows that the State-Govt. shall identify Eco-Sensitive Area (ESA) or areas, categorize them as CRZ-I and water bodies with high bio-

diversity, shall not be considered for locating Ports and Harbours. The communication reveals that fishing facilities for local communities could be set up with an Environment Impact Assessment (EIA) as per EIA Notification, 2006. It is but obvious that, the Port activities in CRZ-I, area could not have been permitted without following due process of Law. All said and done, the OM dated 3rd November, 2009, cannot override provisions of [the Environment \(Protection\) Act, 1986](#), nor can it override the Coastal Regulations. An enactments or regulations stand on higher pedestal than such OM, which can be treated only as an internal communication for guideline of the authorities.

10. Coming to the impugned EC, it would be necessary to examine the minutes of 117th Meeting of the EAC, in which CRZ clearance for the AHPPL, was considered. The Minutes would show that the detailed plan with budgetary provisions for CSR, shall be submitted to the Ministry. It was further observed that transport of cargo shall be in close system and dust control viz. water sprinkler along conveyer and transport points shall be provided. The monitoring of few water quality at the outlet and discharge standards, qua impact to marine,

was also one of the points, which needed verification during course of discussion. There appears no such verification and compliances and the points were only noted during course of the Minutes. Least to say, it is indicative of casual approach of EAC, to recommend the proposal which was approved further by Environmental Impact Assessment Authority i.e. MoEF while granting the impugned EC.

11. The record shows that hazardous products/material is likely to be brought to the Port and will be stored in storage facility which is shown in the maps. The Hazardous Chemical (Storage & Handling) Rules, 2000, ought to be duly complied with and for such purpose, Pollution Control Board (PCB), is required to certify due 'consent to establish' the hazardous material storage and various facilities, to avoid any future mishap besides specific disaster management plan. This care is not taken by the MoEF, while issuing the impugned EC.

12. We had enquired with MoEF whether any compliance monitoring was carried out by MoEF, as far as EC of 2003, is considered, before grant of EC of 2013, as per the procedure prescribed by MoEF, itself by OM dated 20.5.2012, which was found to be not carried out

as per the affidavit of MoEF dated 5.3.2015. Secondly, by interim orders, MoEF was asked to delineate the project activities as per 2003 and 2013 EC, as observed during the consideration of grant of EC. Both these aspects were found to be in negative, as per the records submitted by MoEF. It is evident from records that Tribunal had to spend lot of time to get such information from MoEF and only after coercive actions, such information was placed on record by MoEF.

13. Considering above deficiencies, we do not find it necessary to examine whether five years period of earlier EC had expired or it could be extended beyond five years. The fact, however, remains that undaunted by absence of EC and absence of CRZ clearance, the AHPPL proceeded with expansion work after 2007 and did not care for any adverse order or adverse impact on environment. Such irresponsible attitude of the AHPPL, must be deprecated. In this view of the matter, we are of the opinion that the Respondent Nos. 6 and 7, shall be made liable to pay amount of Rs.25Crore (Rs. Twenty five Crore), as an amount of penalty for restoration as well as shall be restrained from closing/narrowing down mouth of the creek or narrowing down access of the boats of traditional

fishermen in the seawater through mouth of the creek, which is situated in north-east corner of the Port area. It follows, therefore, that the impugned EC, is illegal and must be set aside. Resultantly, the Appeal succeeds and we pass the following order:

a) The Appeal is allowed and impugned Environmental Clearance, is set aside.

b) The Respondent Nos.6 and 7, shall deposit amount of Rs.25Crore (Twenty Five Crore) with the Collector, Surat, within four (4) weeks, which shall be kept in Escrow Account till further directions for utilization thereof, may be towards compensation and restoration under Rule 36 of [the National Green Tribunal \(Practices & Procedure\) Rules, 2011](#), are passed, as and when the Collector, will report compliance about-deposition of such amount, by the above Respondents.

c) The Respondent Nos.6 and 7, shall pay costs of Rs.2Lakh (Rs. Two Lakhs) each, to the Appellants, as litigation costs and bear their own costs.

d) In case of non-compliance of above directions, work carried out reclamation in the area of 25Ha, around circle of the creek, shall be demolished by the Collector, Surat and the land be restored.

e) A report be called from the DSLR and Conservator of Forest, as to whether afforestation of Mangroves is actually implemented, as per the conditions of EC, issued in 2003, as well as impugned EC in six (6) weeks. In case of non-compliances, if so found, the further construction activity or the Port activity of the expansion under the impugned EC shall be stalled henceforth, thereafter.

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(Justice V. R. Kingaonkar)

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(Dr.Ajay A. Deshpande)

DATE: JANUARY 8th, 2016.
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