

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

.....

APPEAL NO. 7 OF 2015

IN THE MATTER OF:

1. Jalbiradari
Office at 220, Saptashringi,
D.N. Nagar,
Andheri(W), Mumbai-400053

2. Vanashakti
Office at 19/21, Unique Industrial
Estate, Twin Towers Lane,
Prabhadevi, Mumbai-400025

.....Appellants

Versus

1. Ministry of Environment & Forests
Through its Secretary, Having its
Office at Paryavaran Bhavan,
CGO Complex, Lodhi Road,
New Delhi 110003

2. Central Water Commission,
Through its Secretary
313(S), Seva Bhavan, RK puram,
New Delhi-110606

3. Maharashtra Coastal Zone
Management Authority,
Environment Department
Room No. 217 (Annex),
Mantralaya, Mumbai-400032

4. The Environment Department,
(Government of Maharashtra),
Through its Secretary,
Having office at Mantralaya
Mumbai 400031

5. Maharashtra Pollution Control Board
Through its Chairman, Having office
At Kalpataru Building,
Sion (East), Mumbai

6. Mumbai Metropolitan Region and Development Authority
Through the Metropolitan Commissioner
Bandra Kurla Complex
Bandra (East), Mumbai-400 051

7. Mithi River Development and Protection Authority
Through its Project Authority
C/O MMRDA, Bandra Kurla Complex
Bandra (East), Mumbai-400 051

.....Respondents

COUNSEL FOR APPELLANT:

Ms. Gayatri J. Singh, Sr. Adv. With Mr. Kartik Nagarkatti, Adv.

Counsel for Respondents:

Mr. Balendu Shekhar with Mr. Akshay Abrol, Advocates for
Respondent no. 1

Mr. B.V. Niren, Adv. Respondent no. 2

Mr. Mukesh Verma Adv. for Respondent no. 3 to 5

Mr. R.P. Bhatt, Sr. Adv., Mr. P.V. Naik, Mr. S. Sukumaran, Mr.

Anand Sukumar and Mr. Anand Sukumar and Mr. Bhupesh Kumar

Pathak Advs. For MCGM i.e. Respondent no. 8

Mr. Bhupesh Pathak, Adv. For Respondent no. 9

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Reserved on: 17th May, 2016

Pronounced on: 31st May, 2016

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

This is a reference under Section 21 of the National Green Tribunal Act, 2010 (for short "NGT Act") The above matter was heard by Western Zone Bench of the National Green Tribunal at Pune, consisting of Justice V.R. Kingaonkar (Judicial Member) and Dr. Ajay. A. Deshpande (Expert Member). The draft judgment was written by the Expert Member. The ld. Judicial Member though agreed on some issues but wrote a separate Judgment on some but

material issues including the reliefs. The Judgments were pronounced on 22nd January, 2015, there being a clear difference of opinion on the material issues including the relief between the Judicial and the Expert Member. The matter was referred to the Chairperson, for making a reference. The reference was made, the parties submitted their respective submissions and concluded arguments on 8th January, 2016.

2. In order to settle the controversy arising from the conflicting judgment of the Hon'ble Members and to determine the real controversy arising in the present case it is necessary for me to refer to the content of the respective judgment. It is not necessary for me to notice facts giving rise to the present reference in any greater details as the facts have been dealt with in some elaboration by the Ld. Members in their respective judgments. Suffice, it to note that the appellant had raised a challenge to the Environmental Clearance Certificate dated 4th December, 2012 issued by the Ministry of Environment, Forests & Climate Change in favour of the Project Proponent and has prayed the following reliefs.

IT IS THEREFORE HUMBLY PRAYED BY THE APPELLANT BEFORE THE HON'BLE TRIBUNAL THAT THIS TRUBINAL MAY BE PLEASED TO

- a. Pass an order to quash and set aside the Environmental Clearance Certificate dated 04.12.2012 at Exhibit B issued by MoEF to Respondent No. 6.
- b. Pass an order staying the Environmental Clearance Certificate dated 4.12.2012 at Exhibit B issued by the MoEF to Respondent No. 6
- c. Pass an order declaring the application dated 18.06.2012 at Exhibit H as null and void.
- d. Pass an order for demolition of retaining wall and any concretisation within the river bed on banks of the

river that have been constructed within the Mithi river and to restore the river to its original position.

e. Pass an order for stoppage of blasting operations being conducted in the Mithi River

f. Pass an order for costs for restoration and restitution of the river to its original pristine state under Section 15(1)(c) read with Schedule II, Clause (g)

g. Pending hearing and final argument, pass an order granting ad interim stay to the Environmental Clearance Certificate dated 4.12.2012 at Exhibit B issued by the MoEF to Respondent No. 6

h. Pending hearing and final argument, pass an order granting ad-interim reliefs and ad-interim reliefs in terms of prayer clause (d), (e) and (f) above;

i. Pass an order granting costs of this Appeal;

j. Pass any other and further reliefs as the circumstances of the case may require.

3. Vide order dated 4th December, 2012 the Ministry of Environment Forests & Climate Change, Government of India granted CRZ Clearance for construction of retaining wall, service road along with the banks of the river Mithi, Mumbai by M/s Mumbai Metropolitan Region and Development Authority (MMRD) i.e. Respondent No. 6 in the Appeal. In the order specific conditions have been imposed upon the Project Proponent which practically has been complied with. It is undisputed at the Bar that nearly 90 per cent of the project had already been completed particularly in relation to the construction of retaining wall on the flood plain of river Mithi which is primarily intended to protect the flooding of the adjacent areas.

4. It is also under no dispute that the area in question falls in CRZ I, II and III respectively, construction of the retaining walls had started in the year 2008. Respondent no. 6 have carried blasting in

Mithi River purposely to deepen the river channel. There was a previous litigation filed in the High Court of Bombay being PIL 131 of 2012 which ultimately came to be withdrawn with liberty to file an Appeal before the Tribunal vide its order dated 5th February, 2013. Within the time of 2 weeks granted by the High Court the Appeal was filed before the Tribunal. As already indicated, I would not be dealing with the facts in any greater detail and would proceed to deal with the main judgment written by the Ld. Expert Member. Various grounds had been taken to challenge the CRZ Clearance by the Appellant including non application of mind by the authorities, violation of the Office Memorandum issued by the Ministry itself and that there was serious environmental damage caused by the project which would be further aggravated if the project was permitted to carry on further activity. One of the main contentions raised before the Tribunal was that the application had been filed after the work of the project had already commenced and the authorities concerned have not followed the due process prescribed under the Notification and the Law, for granting such permission.

5. The Ld. Expert Member after considering facts and respective stands of the parties to the *lis* framed the following issues.

“16. Considering the pleadings and arguments of the learned Advocate for the parties, following issues can be framed for adjudication:

- 1) Whether the Appeal is barred by Limitation as claimed by Respondent No.1?
- 2) Whether due process of granting CRZ clearance have been followed by MCZMA and MoEF?
- 3) Whether necessary safeguards have been incorporated while granting CRZ clearance?

4) Whether the blasting activities conducted by MMRDA have caused environmental damages? If yes, what is the nature and scope of such damages, and what remedial/restoration measures are required to be taken?

5) Whether the steps taken to control water pollution of Mithi river are adequate or any further directions are required to be issued in this regard?

6) Whether the CRZ clearance is liable to be quashed and any specific directions are required to be issued to the Authorities to protect the riverine ecology of River Mithi?"

6. After framing the above issues the reference was also made to the directions that were issued by the High Court in another PIL Writ Petition being Writ Petition no. 2116 of 2005 relating to deepening and widening of the river Mithi and also construction of the retaining wall and service road. The High Court vide its order dated 31st August, 2005 has issued the following directions:

"i. The Respondents are directed to identify all illegal unlicensed commercial units on the banks of Mithi River. The concerned authorities are directed to give them notices within ten days from today and pass a reasoned order in accordance with law within two weeks thereafter. This exercise shall be carried out by the Municipal Corporation of Greater Bombay and Maharashtra State Pollution Control Board.

ii. The Respondents shall take all necessary steps to ensure a check on the daily discharge of waste effluents, dumping activities and prosecute the offenders under the provisions of the Environment Protection Act 1986 and the Water (Prevention and Control of Pollution) Act, 1974. This exercise must be carried out by Respondent No.8 (MPCB). We direct Respondent No.3-BMC to provide proper garbage collection system to prevent people from dumping garbage into Mithi River.

iii. Respondent No.3 is also directed to ensure that no new encroachments or industrial activities on the riverbank are permitted. No new licences from industrial activities on the bank of the River shall be issued without the leave of this Court. Respondent No.3 shall ensure that adequate numbers of temporary latrines are constructed to avoid people using the River/its banks as a public toilet."

7. The Ld. Expert Member in his judgment answered issue no. 1, 2 and 3 in the negative, issue no. 5 in the affirmative and settled issue no. 4 by stating that the expert body that is EAC of MoEF can deal with the apprehensions of the increased sedimentation of downstream of the River particularly the mouth of the creek as blasting activity has caused certain environmental damages which needs to be assessed for its restoration that could be fairly performed by the expert body.

8. The Ld. Expert Member placed reliance upon the recommendations that were made by NEERI on a reference made by the Bench of the Tribunal. NEERI was directed to conduct Environmental Impact Assessment of blasting activity in Mithi River. The report was submitted in March, 2014 and NEERI made the following Recommendations:

“Recommendations :

- The rock blasting operation should be discontinued due to its impact on biodiversity and ecosystem.
- The entire stretch of about 3-4 km (starting from BKC to Mahim bay) has very shallow depth and creation of partial 1-1.5 m depth in limited portion will not yield major improvement in hydraulics. Also for the reason that outside in the bay area, slope is almost similar.
- Due to limited slope, blasting based space creation in the bed, high siltation is likely to take place and therefore, regular cleaning of the water way through traditional mode of dredging will be more desirable.
- Wherever river slope has been sharply cut, it should be rectified so that natural slopes on the river banks are maintained.
- Silt removal in the entire river stretch should be carried out periodically throughout the year and not only once before monsoon. This would prevent any excessive siltation across the river bed.
- The river mouth widening proposal in future should also be examined from an angle that mangrove island

(between Mahim Bandra road bridge and railway bridge) would then come in direct current forces of the sea high tide and high erosion can take place.

- Hutment removal on the bank should also follow creation of natural slopes and not sharp edges.”

9. After noticing the above, the Ld. Expert Member held that the application was not barred by time it noticed that the MCZMA Authority while recommending the project on 26-8-2011 did not have an opportunity to evaluate and appraise the documents as prescribed in Sub Rule 4.2 of CRZ Notification 2011. However, even after submission of such documents by MMRDA vide letter dated 31-5-2012, there is no document on record to show that the Authority had an opportunity to evaluate such document before sending the MCZMA recommendations on 18-6-2012. The MoEF had an opportunity to go through the documents in its EAC meeting but the documents, particularly the minutes referred above, do not reveal any reference to the critical nature of the project, completion of large part of the project before such clearance, provision and adequacy of the environmental safeguards, effect of already existing structure on riverine structure and also the mangroves, adequacy of stretches system for tidal exchange, water quality status of River Mithi, filling of garbage and rubble for the development of service road and other factors. It also deliberated that the CRZ notification requires an examination of the project, by expert bodies like MCZMA and EAC/MoEF, the record must indicate a due and proper application of mind by the Authorities to all aspects of environmental concern. There has to be compliance of the regulatory regime and environmental governance in accordance with

law. The authority must adhere to fair and transparent principles established by law and that the reasons which emanate from the public body must be suggestive of the decision maker having taken into consideration all relevant aspects. Referring to the Law the Ld. Expert Member concluded that in his view the entire consideration does not satisfy the requirements of a transparent, scientific, accountable and responsive decision making process. The serious consequences of the activity of blasting carried on the river bed as a part of deepening and widening of the river bed was also a matter of to which the authorities according to the judgment did not paid proper attention. On this ground the Ld. Member expressed the view that there was need to review the environmental safeguard which have been incorporated in the CRZ Clearance in totality by assessing the adequacy of existing safeguards provided by MMRDA and considering the reports and documents as may be available on record. The project was a comprehensive project and the construction of retaining walls and service roads were the components of the overall project of widening and deepening of Mithi River and such components cannot be considered in isolation when Environmental Appraisal is being done. Such process of isolated appraisal defeats the purpose of Environmental Impact Assessment. The Ld. Member concluded that the blasting activity has caused certain environmental damages which need to be assessed for its restoration. The project of the BMC and MPCB was termed as lackadaisical. The authorities were required to take the domestic sewage issues which were largely responsible for

deterioration of Mithi River water quality matter and necessary directions were issued in that behalf. The Ld. Member did concluded that the CRZ Clearance has been granted without following due process and also, without verifying the environmental impacts and environmental safeguards. There was also a finding that the 90% of construction of the project had already been completed and it was a case of '*fait accompli*'. The Ld. Member also observed that the removal of the retaining wall will cause more significant environmental damage to the local ecosystem, thus, while directing Clearance to be kept in abeyance passed the following directions.

10. It will be appropriate to reproduce hereafter the operative part of the judgment to exactly know the relief granted in the case:

“50. In the result, the Appeal is partly allowed. The impugned order of CRZ clearance dated 04.12.2012 passed by the Respondent No. 1 (MoEF) shall be kept in abeyance for a period of four (4) months hereafter. The matter is remitted to the EAC and MoEF for the purpose of reconsideration of in the light of the discussion made hereinabove. The authorities may relook into the matter; have objective examination/appraisal of the project on the basis of the available material, on basis of ascertaining the physical progress of works, safeguards implemented and impact on environment, and thereafter to take decision on merits. The Appraisal of the project be made and final order may be passed by the concerned authorities within statutory period as provided under CRZ Notification 2011, after receipt of copy of this order.

51. Considering the above, following directions are being issued:

- i) The CRZ Clearance granted through the impugned communication of MoEF dated 4.12.2012, is hereby kept in abeyance for a period of four (4) months and the matter is remanded back to the MoEF to place it before the EAC for the re-appraisal of the project. The EAC is expected to re-appraisal the project, without any prejudice after ascertaining the factual

- physical progress of various works, various reports on the record including CWPRS and NEERI, and other material on record. The EAC or its subgroup shall visit the project area for field inspection before such appraisal and verify the various contentions raised in this Appeal as well as earlier PILs.
- ii) The MoEF EAC is at liberty to seek an independent report/s from NEERI/CWPRS or any other Expert Agency directly, on the specific issues, if required, for stipulating additional safeguards, including tidal exchange capacity, flood flows, effect of blasting in the river bed, sedimentation, mud flats etc.
 - iii) The MoEF shall take decision on the CRZ Clearance for this project within next four (4) months. If no such decision is taken in such period, the CRZ impugned clearance will be deemed as quashed and set aside.
 - iv) MoEF shall particularly identify the damage caused due to blasting activity and submit a detailed report on remediation along with costs within 4 months to this Tribunal.
 - v) MCZMA shall investigate complaints related to destructions of mangroves, dumping in CRZ areas of Mithi river basin and take stringent action as per directions of Hon'ble High Court, within two (2) months. MCZMA shall notify the CRZ area along the Mithi river with its boundaries within next 2 months and both, MCZMA and MCGM shall ensure that this area is regulated strictly as per CRZ notification and also, as per directions of Hon'ble High Court. MCZMA shall also ensure the compliance of directions in Para 48.
 - vi) The Director IIT Bombay is directed to expedite the final recommendations on STP feasibility by reconciling IIT's earlier report of 2006, in next two (2) months and the Commissioner BMC shall ensure that the work on such STPs shall commence in next six (6) months and completed in next two (2) years.
 - vii) MPCB/MCGM shall take action against defaulters, as directed by the Hon'ble High Court in its order dated 31st August 2005 immediately within next 2 months. MPCB shall ensure that the STP works are initiated by BMC in next six (6) months; else MPCB is at liberty to take necessary legal actions as per the directions of Hon'ble High Court against the BMC."

11. As already noticed, the Ld. Judicial Member had to some extent agreed with the findings of the report by the Ld. Expert Member, however, it substantially differed with that judgment in relation to grant of relief and the consequences of non-compliance to the procedure under the CRZ Notification. In the judgment the Ld. Judicial Member frame the following issues:

“9. In the above background, issues which arise for determination, may be culled out as follows:

- i) Whether Phase-II work described at A to D, above and enumerated in the impugned EC, would or is likely to cause damage to Environment?
- ii) Whether blasting activity undertaken by MMRDA and MRDPA (Respondent Nos. 6 and 7), is permissible under the provisions of CRZ and the Explosive (Prevention of Substance) Act?
- iii) Whether reclamation of land and construction of service road amounts to beautification work? If no, whether it is required to be restituted with certain directions?”

12. While dealing with the widening of river Mithi from 175m to 290m, between Dharavi Bridge to CST Bridge and 490m to 560m at Wakola Nalla and other places was carried out even before the impugned EC was granted to MoEF. Referring to the report of the Expert Committee, it was noticed that even the channelization, creation of holding ponds, dredging river Mithi and Wakola Nalla is not recommended because of lack of space due to earthen enhanced conveyance capacity of river Mithi and Wakola Nalla, to the extent of Powai and Virar reservoirs, which acted as natural holding ponds and existence of wetland of Mahim bay at the downstream. This report was also placed before the Hon'ble High Court of Bombay and suitable measures had to be provided in that behalf. In the

judgment various Public Interest Litigations, including two PIL was also taken note of. The Hon'ble High Court of Bombay in PIL No. 2116 of 2005, had accepted the proposals of MMRDA to implement Mithi river development work in two phases. It also noticed that the report shows that without prior planning the MMRDA decided to start the construction of retaining wall, particularly, without considering measures to protect adjacent areas from floods, by erecting surrounding wall on the river Mithi. The Committee also noticed that creation of service road is leading to illegal activities and therefore, is totally unnecessary.

13. The Ld. Member also referred to the order of the Hon'ble High Court dated 16th April, 2009 passed in PIL No. 137 of 2005, where the following directions were passed:

“1. Be that as it may, we direct that the Executive Engineer, MMRDA, who is present in court shall visit the site along with the petitioner and report on this court:

- a) Whether the outlets as stated to have been constructed by the authorities are at a level which will ensure that the saline water reaches the large Mangroves forest shown in the photographs or not;
- b) Whether it is feasible to provide additional outlet without renovation of the wall at this stage;
- c) Whether the Mangroves on the right of the wall that is abutting the Nalla can be protected and if so, to what extent, even if the Nalla is widened as desired by the authority.

2. Till this report is placed before this court, he concerned authority shall ensure that no Mangroves forest or any part thereof is damaged or removed during the work is being carried out.

3. The Executive Engineer in his report shall submit as to the necessity for construction of this wall and the

purpose sought to be achieved by the wall which has already been constructed. It may be useful for the said authority to also declare as to at how many places such walls are being constructed and the steps taken to ensure flow of saline water to the Mangroves.”

14. While noticing that the Environment Clearance was granted by MoEF on the basis of report submitted by the respondent no. 3, MCZMA. The MCZMA had recommended the project vide its letter dated 18th June, 2012. The Environmental Clearance was granted on 4th December, 2012 and the relevant documents had not been placed. The relevant documents submitted by the project proponent and additional clarification furnished were not available and it was required to see if MCZMA really conducted any scientific hydrological study and prepare Environmental Impact Report, so as to make recommendations of the question study based. The process of granting clearances suffered from basic infirmity and deficiency were ex-facie. In other part of the project, including construction service road, landscaping development, beautification work on either side of the river along with additional widening works.

15. According to the Ld. Judicial Member the process of granting *ex-post-facto* Environmental Clearance to the project which has been largely completed, was unknown to law. The CRZ Notification, 2011 was already in existence when the clearance was required to be obtained from MCZMA and no hydraulic studies had been carried out by MMRDA. No EIA report was sought to ensure that the project was viable and unlikely to cause adverse impact on the river Mithi, flora and fauna, natural tidal movements, internal flow of the

river, illegal industrial units had been closed down and the floodplains has not been occupied by the encroachers. The MPCB took up the stand they could not eradicate the industries due to lack of adequate staff and coordination with other agencies. The Ld. Judicial Member noticed that the Environmental Clearance had been granted without following the procedure of the CRZ Notification of 1991 and 2011 and the project work had been carried on illegally. Noticing that the Precautionary Principle had been totally ignored by the authorities in the present case, the Ld. Judicial Member firmed opinion that as the required process have not been followed and the question of Environmental Clearance surviving would not arise. It will be useful to refer to the concluding findings and the consideration of relief, relevant abstract of judgment read as under:

“38. I have gone through the Judgment prepared by my learned Expert brother (Hon’ble Dr. Ajay A. Deshpande). I do not agree with the finding that the EC granted by MoEF dated 4.12.2012, is required to be kept in abeyance for period of six (6) months and the matter can be remanded to MoEF for afresh consideration. The reason is twofold since the major part of work of Phase-II, is completed, the MMRDA may not seek further EC from MoEF, in respect of remaining small work of 20%, which may be considered as unnecessary and that may be given up by PP. So, for remaining work, EC of the MoEF will not be availed. Learned Hon’ble Expert Member has further directed that the MoEF is at liberty to call independent report of ‘NEERI’/ CWPRS or any other Expert Agency. As a matter of fact, CWPRS’s report is already on record and therefore, MoEF may not call such report afresh. The other directions of Hon’ble Expert Member, are also not agreeable to me, in view of the fact that some of them may not be practical like direction to the Director of IIT to give recommendation on STP feasibility. The Application mainly relates to challenge to EC dated 4.12.2012, on the ground that it was granted without

following due procedure. Once it is found that such procedure was not followed and the EC is illegal, which could not have been illegally granted, there appears no reason to keep it in abeyance. Consequently, I am not in agreement with opinion of Hon'ble Dr. Ajay Deshpande, on his finding given on Issues Nos.4 and 5. In his Judgment. I disagree with him on these issues.

39. Under the circumstances stated above, I have no hesitation in holding that the impugned EC would cause environmental damage and reclamation of the land, construction of service road in the name of beautification work, is illegal activity of the MMRDA. Still, however, the retaining wall may be kept as it is, since it can be regarded as "fate-accomplish situation". The MMRDA is, however, free to improvise the system of the retaining wall as per Expert's opinion to ensure further capacity to get percolation of natural water in the soil. Further, I deem it proper to issue directions in keeping with directions of the Hon'ble High Court, which have been ignored and also in keeping with Section 20 of the National Green Tribunal Act, 2010, as stated hereinabove. Else, punitive action under Section 26 of the National Green Tribunal Act, 2010, maybe taken against concerned Authorities."

16. The basic difference of opinion between the Ld. Members falls within very narrow compose. Both the Ld. Members have written findings on the basis as contemplated in the CRZ Notification 1991 and 2011 has not been followed while granting the Environmental Clearance. There is serious deficiency in all aspects on grant of such Environmental Clearance. The Ld. Members are also *ad idem* that widening of the river and construction of retaining wall has caused adverse environmental impacts. While according to the Ld. Expert Member the Environmental Clearance could be kept in abeyance and the matter can be examined by the appropriate authorities to protect the environment and ecology and fresh condition can be imposed. While according to the Ld. Judicial

Member, prescribed process is not followed. The Environmental Clearance would have stood vitiated and there will be no option with the Tribunal except to quash the Environmental Clearance and stop the project. The project maintains *status quo* as it existed on the date of passing of judgment. I find it difficult to concur with the view of the Ld. Judicial Member, to the extent that every case where post-facto Environmental Clearance is granted and such clearances suffer from errors and procedures of law. The inevitable consequence could be the Tribunal has dealt with quashing of the Environmental Clearance and set the project at in or they be directed to maintain *status quo* as on the date of determination. The Tribunal has dealt with large number of cases filing under the category "*fate-accomplish situation*". There are large numbers of projects which have started their construction activity or other activities without even complying Environmental Clearance and the projects were largely completed and then either Environmental Clearance was granted or their cases for granting Environmental Clearance were delisted. In those cases following the principle of Sustainable Development and Polluter Pays Principle, the Tribunal imposed Environmental Compensation on the project proponent for degrading/damaging the environment for starting the project without complying with the provisions of law and for violating the orders and directions. The works of those projects were stopped and a Committee was appointed to revisit for grant/consideration of the Environmental Clearance and fresh Environmental Clearance orders were issued. Even where demolition was required the same

was directed. All these cases have been decided by the larger bench of the Tribunal and clearly state the binding precedent. References can be made to *S.P. Muthuraman v. Union of India & Ors.*, 2015 ALL (I) NGT REPORTER (2) (DELHI) 170; *Krishan Lal Gera v. State of Haryana & Ors.*, Appeal No. 22 of 2015 (pronounced on 25th August, 2015) & *Forward Foundation & Ors. v State of Karnataka & Ors.*, O.A. No. 222 of 2014 (pronounced on 7th May, 2015). In these judgments, various judgments of the Hon'ble Supreme Court have been considered by the Bench. The purpose and object of the law including CRZ Notification, Environmental Clearance is to strictly regulate the development so as to prevent causing of damage of the nature and ecology. The cases are not the cases of irreparable or irreversible situations. Largely, the 90 per cent of the projects were has already been completed except some other parts of the project. There can be proper regulations on these projects, as otherwise it will only lead to colossal waste of public funds. It will result in dual disadvantage, firstly, wastage of public funds and secondly, and more importantly the demolition of the project itself would generate so much of waste and other materials that this will become a huge environmental hazard itself. The cases are not one, which are incapable of reprisal or re-appreciation. Damage to the environment and ecology to some extent has already been caused. It will be more useful to take remedial and restorative steps. They have acted in breach of the law and carried on with their activity in an unauthorized and illegal manner. However, the project proponent claims that in terms of the orders passed by the Hon'ble High Court,

they were permitted to carry on the activity of their projects. Even if it was so, such permission granted directly or impliedly would have to be subject to compliance with the other law in force. The development activity could be carried on subject to compliance of other laws in force and not while avoiding them. It will be more so when the activity ultimately would lead to degradation of ecology and environment. This is a project with different components and they are primarily intended to widen river Mithi, protect from encroachment and as well as prevent discharging of sewage and industrial waste into it. There are certain limitations implied on the project by the authorities concerned but they have done so in performance of their duties in accordance with law. NEERI in its report had made certain recommendations; similarly, certain permissions were issued by the Hon'ble High Court of Bombay for compliance. All these are primarily intended to protect the environment and ecology. Directions were also given to MMRDA in PIL No. 137 of 2005 to take certain steps and ensure that the level to which the construction was being raised and should not prevent saline water reaching the large forest and no irreparable damage could be caused to the Mangroves. All steps/directions are required to be taken by all the concerned authorities including the project proponent to ensure that there is no irreparable damage to the nature, ecology and environment. Sustainable Development has an inbuilt element of precautionary as well preventive measures. None of them need to be ignored. The view of the Ld. Judicial Member is that the Precautionary Principles have been ignored in the present

case cannot be faulted with, in fact, on this issues both the Ld. Members are *ad idem*. The liability of the project proponent on the Polluter Pays Principals is unquestionable. They have carried on widening of river, construction activity and other allied activities on their project without sanction of law as far as CRZ and EC laws are concerned. They have incurred a direct liability on the basis of this Strict Liability Principle. It is difficult to State this liability with exactitude at this stage and unless the final report is submitted. At this stage, while applying some guesswork, the said project proponent is held liable to pay Environmental Compensation in terms of Section 15 & 16 of the NGT Act, on the principle of strict liability. The acts were known and their adverse impact on environment and ecology were well within the knowledge of MMRDA. The project proponent itself is an expert body. The expert body, i.e., EAC of MoEF and NEERI, both to examine the entire matter again and pass a fresh order granting Environment Clearance with restorative and remedial directions, besides computing the loss of ecology, biodiversity and damage to the environment.

17. In light of the above discussion I am inclined to concur that the view expressed by the Ld. Expert Member however, not without adding certain further directions that in my considered opinion are necessary for the effective decision of the matters in issue before the Tribunal. The Project Proponent and all other concerned

respondents must comply and carryout with the directions stated herein below before commencing the project any further.

The SEIAA, Maharashtra shall sought a nominated Member of NEERI as a Member of the SEIAA and who would examine the entire matter and submit the final report to the Tribunal in terms of the Judgment, within 3 months from the date of pronouncement of this judgment. Thus, follows the directions:

- a. The project proponent, MMRDA has started the project without compliance to the relevant provisions of law. It caused environmental degradation and even the blasting work was carried in violation to the relevant laws in force. Consequently, the said respondent is liable to pay Environmental Compensation. At this initial stage, it is directed that the project proponent shall pay Rs. 25 lakhs as Environmental Compensation, which will be subject to final adjustment upon submissions of the report by the expert body including the money required for taking restorative and remedial measures.
- b. The project proponent and all concerned authorities shall carry out all the directions that had been issued by the Hon'ble High Court of Bombay in PIL No. 2116 of 2005, PIL No. 1137 of 2005 and PIL No. 137 of 2005. Inter-alia but, particularly, the directions issued by the Hon'ble High Court of Bombay vide orders dated 16th April, 2009 and 31st August, 2005 would read as an integral part of

the judgment and compliance thereto would be mandatory.

- c. All the directions/recommendations made by NEERI and as afore-referred in para 8 shall also be treated as an integral part of these directions and shall be complied with without default.
- d. The SEIAA shall consider the project as it exists as on today and would impose such conditions as may be considered necessary by the said authority. This would include restorative and reformative directions as well. SEIAA shall also compute environmental, ecological and other damage caused by the project and the remedial steps required to be taken in that direction.
- e. The SEIAA shall also state besides imposing terms and conditions in the Environmental Clearance, the amount with possible exactitude that should be imposed upon the project proponent for its defaults, violation of laws and for causing damage and degradation to the environment, ecology and biodiversity of river Mithi and its surroundings.
- f. The SEIAA shall also consider and direct if any part of the project requires to be demolished in the interest of environment and ecology if so than its extent.
- g. The SEIAA shall ensure that the creek of river Mithi at the discharge point is duly protected. Because of the

construction or any other reason the flow of river Mithi should not be adversely affected.

- h. All the following directions issued by the Ld. Expert Member shall apply *mutatis mutandi* to this order as well.
- i) The CRZ Clearance granted through the impugned communication of MoEF dated 4.12.2012, is hereby kept in abeyance for a period of four (4) months and the matter is remanded back to the MoEF to place it before the EAC for the re-appraisal of the project. The EAC is expected to re-appraisal the project, without any prejudice after ascertaining the factual physical progress of various works, various reports on the record including CWPRS and NEERI, and other material on record. The EAC or its subgroup shall visit the project area for field inspection before such appraisal and verify the various contentions raised in this Appeal as well as earlier PILs.
 - ii) The MoEF EAC is at liberty to seek an independent report/s from NEERI/CWPRS or any other Expert Agency directly, on the specific issues, if required, for stipulating additional safeguards, including tidal exchange capacity, flood flows, effect of blasting in the river bed, sedimentation, mud flats etc.
 - iii) The MoEF shall take decision on the CRZ Clearance for this project within next four (4) months. If no such decision is taken in such period, the CRZ impugned clearance will be deemed as quashed and set aside.
 - iv) MoEF shall particularly identify the damage caused due to blasting activity and submit a detailed report on remediation along with costs within 4 months to this Tribunal.
 - v) MCZMA shall investigate complaints related to destructions of mangroves, dumping in CRZ areas of Mithi river basin and take stringent action as per directions of Hon'ble High Court, within two (2) months. MCZMA shall notify the CRZ area along the Mithi river with its boundaries within next 2 months and both, MCZMA and MCGM shall ensure that this area is regulated strictly as per CRZ notification and also, as per directions of Hon'ble High Court. MCZMA shall also ensure the compliance of directions in Para 48.

- vi) The Director IIT Bombay is directed to expedite the final recommendations on STP feasibility by reconciling IIT's earlier report of 2006, in next two (2) months and the Commissioner BMC shall ensure that the work on such STPs shall commence in next six (6) months and completed in next two (2) years.
- vii) MPCB/MCGM shall take action against defaulters, as directed by the Hon'ble High Court in its order dated 31st August 2005 immediately within next 2 months. MPCB shall ensure that the STP works are initiated by BMC in next six (6) months; else MPCB is at liberty to take necessary legal actions as per the directions of Hon'ble High Court against the BMC.

18. The reference is answered accordingly. The applications stand disposed of finally with above directions with no order as to costs.

Swatanter Kumar
Chairperson

New Delhi
31st May, 2016

NGT