

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPEAL No. 4/2013 (WZ)**

CORAM:

**Hon'ble Mr. Justice V.R. Kingaonkar
(Judicial Member)
Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

Dileep B. Nevatia,
Shashi Deep, 5-A, Worli
Sea Face, Mumbai – 400 030.

....Appellant

A N D

- 1. Union of India,**
Through The Secretary,
Ministry of Environment & Forest,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi 110 003
- 2. State of Maharashtra.**
Through Chief Secretary,
Mantralaya, Mumbai-400 023.
- 3. Maharashtra Pollution Control Board,**
Through Its Secretary,
Kalpataru Point, 3rd and 4th Floor,
Sion Matunga, Road No.8
Sion circle,
Mumbai- 400 026
- 4. Maharashtra Coastal Zone Management
Authority,**
Through Its Member Secretary,
Environment Department,
Mantralaya, Mumbai-400 032
- 5. Mumbai Metropolitan Region
Development Authority,**
Through Metropolitan Commissioner,
Bandra-Kurla Complex, Bandra (E)
Mumbai 400 051.

.....Respondents

Counsel for Appellant :

In person.

Counsel for Respondent No. 1 :

Mr. K.D. Ratnaparkhi, Adv.

Counsel for Respondent No.2 & 3 & 4:

Mr. D.M. Gupte a/w.

Mrs. Supriya Dangare, Advs.

Counsel for Respondent No. 5 :

Mr. Been Pardesi, Adv.

Kiran Bhagalia, Adv.

DATE : October 15th, 2015

J U D G M E N T

1. This Appeal has been filed challenging CRZ clearance dated July 17th, 2013 granted by Ministry of Environment and Forest (MoEF), Government of India for the construction of Mumbai Trans Harbour Sea Link between Mumbai Island City and mainland of Navi Mumbai (hereinafter referred to as MTHL project) proposed by Mumbai Metropolitan Region Development Authority (MMRDA). The Appellant's concern is that the proposed MTHL project would adversely impact coastal ecology of Mumbai and Navi Mumbai Coastal area besides the mudflats at Sewri and Nhava. The project would also affect the ecologically sensitive area covered by the mangroves and mudflats which support several endangered species of flora and fauna including mangroves, flamingos etc.

2. The Appellant would submit that while approving the Jawaharlal Nehru Port Trust (JNPT) project somewhere around 1992, the Government of India had sought commitment and assurance that no bridges would be further constructed between Mumbai and Navi Mumbai which would increase the traffic flow towards Bombay Island and thereby causing congestion and further deterioration of urban infrastructure in Mumbai. The Appellant would submit that more than 150 birds species including flamingos and other migratory species are observed on these mudflats which also is a habitat for more than 10 (ten) varieties of mangroves. The area was identified as important protected bird area by the Bombay Natural History Society in 2004. The Appellant submits that originally in March 2005, environmental clearance (EC) was granted to this project by Ministry of Environment and Forest (MoEF) and MMRDA could not initiate the work within the validity of the EC i.e. five (5) years. On noticing that in March 2012 MMRDA had initiated the tender process for the project, the Appellant had approached the Tribunal by way of Application No.21/2012 seeking directions to the project proponent to seek fresh environment clearance. The Tribunal by order dated July 24th, 2012 directed the project proponent i.e. MMRDA not to undertake any construction without obtaining fresh environmental clearance from the

competent authority and that the Application for grant of the *de-novo* EC be disposed of in consonance with the Law. The Appellant further states that in spite of such specific directions of the Tribunal, the project proponent and MoEF went on proceeding with the project only on the basis of clearance under the CRZ Notification 2011.

3. The Appellant has raised several contentions objecting to the interpretation of the CRZ Notification, violation of the procedure prescribed for grant of CRZ clearance, both by Maharashtra Coastal Zone Authority (Respondent No.4) and Ministry of Environment and Forest (MoEF). We propose to briefly deal with such contention for better clarity of the issues and grounds raised by the Appellant.

4. The Appellant submits that the Respondents have deliberately misinterpreted definition of the sea link as seen from the internal note-sheets of the MoEF. He submits that the area of the bridge (surface area) is more than 1,50,000 sqm and therefore, it is category 'A' building/construction project as defined in category '8(a) and/or 8(b) of the EIA Notification 2006' and thus require environment clearance. He therefore contends that instead of such categorisation required for the proposed project i.e. building/construction project, the project proponent and Respondent No.1 have misinterpreted the definition of sea link to avoid the requirement of

environment clearance as required under the EIA Notification.

5. The Appellant further refers to the restrictions placed on developmental activities in the CRZ-I area. He submits that the large portion of the MTHL alignment is passing through mangroves, mudflats as evident from the record and this area has been categorized as CRZ-i(a) which has stringent restrictions on the developmental activities. He further contends that the CRZ notification do not prescribe that such project development is not in the permissible list of activities, and the Respondent Nos. 1 and 5 have conveniently interpreted such absence of information on inclusion of permissible activities as a permissible activity, though the MCZMA in its recommendation has clearly pointed out such a concern. He further contends that even otherwise, in case such projects are to be considered, without any prejudice, even then the effect of such activities on the tidal currents of the water needs to be ascertained as per section 8(i)(I) .

6. The Appellant further refers to Clause 4.2 of the CRZ notification 2011 which stipulate an elaborate procedure for considering any Application for clearance under the Notification. He submits that section defines the documents to be attached along with Application which include EIA report, disaster management plan, CRZ map in 1 : 4000 scale by superimposing the project lay-out etc.

He also points out that as per Clause 4.2(ii) concerned CZMA is required to examine the above documents after receipt of complete Application. He alleges that such a procedure has not been adopted and the MCZMA proceeded to recommend the MTHL project despite receiving totally incomplete Application and documents which is evident from the recommendations of the MCZMA dated June 15th, 2012 addressed to MoEF and also from the minutes of MCZMA dated April 23rd 2012. Many of the important documents, such as provision and plan for noise barriers, flora and fauna study impact on environment, submission of CRZ maps, environmental management plan, pollution management plan etc. have not been considered by MCZMA while examining the proposal. He therefore contends that the MCZMA has mechanically processed the Application without necessary information and documents and has just forwarded the proposal without any “examination” of the environmental impacts. The Appellant further states that though the recommendations of the MCZMA meeting dated April 23rd, 2012 clearly indicated various aspects like area of bridge which is shown to be more than 68,000 sqm, even then, the proposal was recommended to MoEF for only the CRZ clearance and not the environmental clearance. The Appellant further submits that such recommendation was subject to compliance of certain conditions including

requirement of maps, reports. He alleges that in spite of non-availability of such mandatory documents as required under Clause 4.2, the proposal was recommended by MCZMA.

7. The Appellant also submit that the EIA study report was prepared by the Consultant by name ARUP CES KPMG and the said report is not in the terms of MoEF (OM) dated August 4th, 2009 in respect of status of accreditation of the agency, names of experts associated with study, names of Laboratory where analysis has been conducted etc. The Appellant, therefore, contends that the EIA report has been prepared without any terms of reference and also without following the norms prescribed by MoEF besides being prepared by non-accredited Consultants. The report itself is, therefore, invalid and *void ab-initio* and therefore, the Ministry ought not to have accepted or even considered such report for further appraisal.

8. The Appellant further contends that the project involves more than 40 (forty) acres of the project forest land and this fact was suppressed by the Consultants and the project proponent. He, therefore, contends that the orders of the Hon'ble Supreme Court in the matter of Lafarge have been violated by the MoEF.

9. The Appellant submits that though the Application of the project proponent was not in compliance with the requirements stipulated in Regulation 4.2 of the CRZ Notification, which can also be seen from the recommendations of the MCZMA wherein several additional documents and studies were required from the project proponent, the MoEF not only processed application but placed it before the EAC which cleared this project without having the mandatory documents on record including the maps, project lay-out, noise barrier studies, studies related to effect of the project on the tidal flow of water, non-availability of 7 km radius area information, so on and so forth. He contends that EAC-MoEF was fully aware of the sensitive nature of the project, in view of the mudflats, presence of migratory birds, mangroves etc. and therefore, had included specific condition related to mangroves (0.1776 ha), lighting in consultation with Bombay Natural History Society so as to minimise likely impacts on the migratory birds, provision of noise barriers to minimise likely impact on the migratory birds etc. Further, EAC relied upon the submission of the project proponent that the built up area is less than 20,000 sqm though the recommendations of the MCZMA indicate otherwise.

10. The Appellant also states that the MoEF is inconsistent in its approach while dealing with another

similar project of Versova Bandra in Mumbai, wherein comprehensive EIA was sought, and marine impact assessment study, public consultations and traffic dispersion studies at the connectors were made mandatory, though such safeguards have not been adopted in case of the present project which indicate arbitrary, inconsistent approach of the authorities. The Appellant has placed on record several discrepancies in the Application which he claims that should have been addressed by the MoEF while appraising the project. He contends that the construction of this project without proper environmental appraisal including the public consultation will cause irreparable damage to the sensitive coastal eco-system of Sewri and Nhava besides the mudflat. The Appellant has therefore, prayed for quashing and setting aside the CRZ clearance dated 19-07-2013 issued by Respondent No.1 for the Mumbai Trans Harbour Link Project.

11. Respondent No.1, Ministry of Environment and Forest (MoEF) filed affidavit on 5-3-2014 and submits that the proposal involves construction of a bridge across the Mumbai Harbour having length of about 22 kms with 16.5 km. bridge across the sea and 5.5 km along via-duct on the land. The exit and entry into this freeway would be through inter-changes at the end points and at the intermediate points on the Navi-Mumbai side. MoEF

submits the project was considered by MCZMA in its 73rd Meeting on 23rd April 2012 which recommended the project to MoEF. Out of 22 km length of MTHL, 21.5 km of length passes through the CRZ (2.1 km in CRZ-I, 0.5 km in CRZ-II, 4.42 km in CRZ-III and 14.48 km in CRZ-IV). Since the entire sea-link is proposed on via-duct, the area occupied by piers will only be affected. Compensatory mangroves plantation in an area of 30 Ha on Nhava side is proposed for the loss of 0.1776 Ha of mudflat/mangroves. As per version of the MoEF, the EAC considered the project and also the mitigation measures proposed by project proponent and considering that, the competent authority in MoEF granted the clearance under CRZ Notification 2011.

12. Respondent No.1 (MoEF) further submits its stand on the issue of built up area and applicability of EIA notification in para 9 of the said affidavit which is reproduced below :

The contents of para no.13, 14 and 15 are not true. The projects having built up area more than 20,000 sq.m. require EC under the EIA Notification, 2006. According to the Notification S.O. 695(E) dated 04-04-2011, the built up area for the purpose of EIA notification is defined as :

“The built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects.”

Area which is not covered or any area which is open to sky/cut out/duct should not be

counted in the calculation of built up area. Hence, the EIA Notification, 2006 does not apply to the project.

13. MoEF also states that the contention of the Applicant that the roads in CRZ-IV area are not a permissible activity is wrong. According of para 8(i)(IV) of the CRZ notification, the activities impinging on the sea and tidal influenced water bodies will be regulated except for traditional fishing and related to activities undertaken by local community. The roads even in CRZ-I(A)-eco-sensitive areas are permissible, without affecting the tidal flow. The MoEF further contends that the objection of the Applicant that the Consultant is not accredited, is not relevant in the present case. According to para 4.2(b), “no rapid or comprehensive EIA is required for construction project”. MoEF further states that the CRZ notification 2011 does not specify of formulation TORs before considering the grant of clearance. MoEF further states that as per the OM dated 19th March 2013, the pre-requisition of Forest Clearance for grant of environmental clearance to the linear projects has been dispensed with.

14. MoEF further states that the CRZ map of 1: 4000 scale was called and only after verification thereof, the final clearance was issued. MoEF further states that in order to ensure that there are no adverse impacts on the migratory birds due to lighting on road and traffic noise,

the project proponent has been directed to approach BNHS to get suitable recommendations on lighting and also to provide noise barriers.

15. MoEF further states that the comparison of the present project with Varsova-Bandra sea-link is not at all correct and stipulation of the conditions may differ based on the nature of the project and location etc. The MoEF therefore, contends that there is no infirmity in the appraisal of the project and sufficient mitigatory measures have been specified for compliance by the project proponent and the said clearance has been granted in accordance with procedure prescribed in CRZ Notification-2011 after taking into account all relevant facts.

16. No affidavit is filed on record on behalf of Respondent No.2 i.e. State of Maharashtra.

17. Respondent No.3 filed an affidavit dated 20th January 2013 and submitted that the Respondent No.5 has not applied for fresh consent to establish for the proposed project, though said project was earlier granted consent to establish in the year 1998, the same has already expired after five (5) years and thereafter, no further consent to establish has been obtained.

18. Respondent No.4-Maharashtra Coastal Zone Management Authority (MCZMA) filed an affidavit on 1st April, 2014. MCZMA states that the Respondent No.5 i.e.

MMRDA submitted an application vide letter dated 31st January 2012 for the proposed MTHL project for CRZ clearance with certain documents. MCZMA in its 74th meeting held on April 23rd, 2012 deliberated on the proposal and considering the documents on record decided to recommend the proposal to MoEF from CRZ point of view, subject to, compliances of various specific conditions. MCZMA further states that the MoEF has considered the said proposal in detail and thereafter, the CRZ clearance for the MTHL project was granted vide communication dated 17th July 2013.

19. Respondent No.5- Mumbai Metropolitan Region Development Authority (MMRDA) filed affidavit dated 6th February 2014. The MMRDA submits that the Application suffers from delays and project received its first environmental clearance in the year 1995. MMRDA submits that after completing all the necessary procedure and documentation, the regulatory authorities of MCZMA and MoEF have scrutinized and appraised the MTHL project and thereafter the CRZ clearance has been granted by stipulating various environmental safeguards. The MMRDA has proposed to develop this project by taking all such necessary safeguards including mangroves restoration plan, noise barriers, use of prestressed concrete, adopting appropriate construction technology, so on and so forth. MMRDA submits that as per the EIA

notification 2006, only State or national highways or certain specific expansion project are covered under the schedule of notification. The proposed project does not fall in any of the category of Schedule Annexed to EIA Notification 2006 and therefore, EC is not applicable to the said project. However, CRZ clearance as per the requirements of CRZ Notification 2011 has been obtained for the project. MMRDA further states that clause No.8(a)/(b) of EIA Notification is applicable to building and construction project only. The proposed MTHL does not fall under this clause. Hence, the criteria of surface area as mentioned by the Appellant is not applicable to this project. MMRDA further submits that all the technical details of the project including the alignment, construction technology, details of foundation etc. have been shared with the regulatory authorities alongwith the CRZ maps in the prescribed format and therefore, only on such satisfactory submission of the documents and information, the authorities have granted the CRZ clearance. MMRDA further submits that it has already initiated process of obtaining forest clearance and the construction of MTHL project would be taken up only after obtaining all the necessary clearances including forest clearance and permission of Hon'ble High Court. MMRDA submits that the pillars of the via-duct would occupy small area on the mudflat and would not cause any noticeable erosion. The

matter has also been referred to the expert body CWPRS and advice is obtained about the design of the bridge so as to ensure that no adverse effects are caused to the hydraulics of the area and tidal flows. MMRDA submits that the project would be executed in accordance with the advice obtained from the expert agencies from time to time. MMRDA further submits that the rapid EIA report is prepared as per CRZ notification 2011 and hence, accreditation with Quality Council of India, and/or National Accreditation Board for Education and Training (NABET) is not required and hence not applicable. MMRDA further submits that appropriate noise containing barriers would be provided in mudflat area and entire bridge is planned on the via-duct and no reclamation or embankment is proposed within CRZ-I and CRZ-II area. MMRDA, therefore, strongly opposed the Application.

20. Considering the pleadings and arguments of the contesting parties, the points which need adjudication in the present Appeal are culled out as under:

- 1)** Whether Appeal is filed within the prescribed period of Limitation as per NGT Act, 2010 ?
- 2)** Whether the proposed project would attract provisions of Environmental Clearance Regulation, 2006 ?
- 3)** Whether necessary prescribed procedure has been adopted while granting the clearance under CRZ notification, 2011 ?
- 4)** Whether the impugned clearance suffers from serious infirmities in examining the proposal from environmental considerations and therefore issued arbitrary, without proper examination? If yes, whether, the clearance needs to be set aside?

Issue No.1 :

21. Respondent No.5-MMRDA submits that the MTHL project received its first clearance in 1995 and the Appellant could have raised all the issues in the current Appeal at that time only. The project was put up to bid by the MMRDA on PPP basis in the year 2007. Learned Advocate for MMRDA contended that the present Appeal has been filed belatedly because though the CRZ clearance was granted on 19-7-2013 yet the present Appeal has been filed on 10-10-2013. She contends that in the first round of litigation, the Appellant had moved this Tribunal based on the newspaper information wherein the Tribunal had directed MMRDA to get afresh EC. The Appellant is well aware about the procedures required for CRZ/EC clearances and has filed several environmental petitions and therefore, he cannot claim ignorance or non-availability of the information in public domain regarding grant of such clearance. The Appellant has filed this Appeal belatedly for certain reasons and hence it deserves to be dismissed as barred by Limitation. Advocate for MMRDA Mrs. Bagalia argued that this particular project is a major infrastructure project planned by the Government of Maharashtra and numerous studies have been conducted for preparation of project report and also, significant resources in terms of money and manpower have been utilized for conceptualising this project. She,

therefore, contends that the Tribunal needs to consider the point of equity, as even, earlier EC was challenged by the Appellant and this project involves the interest of public at large and is also in the interest of Nation. We are not much inclined to deal with this aspect of equity in the present Appeal in view of the fact that no work of physical nature has been initiated so far and as per the submissions of MMRDA itself the bid processes of 2007 and 2008 were inconclusive and the fresh bid process has not been completed. Further the scope of proceedings under Appeal is limited, just to examine whether the order under challenge is issued as per due procedure, authority and by application of mind.

22. Now, coming to the question of limitation, it would be relevant to consider the pleadings of the Appellant which are as under :

Paras 51 and 52 at page Nos.45 and 45-A.

51) That despite the binding directions of this Honourable Tribunal to the Ministry of Environment & Forests by its Order dated 14-3-2013 in "Save Mon Region Federation and another Versus Union of India and others" that the MoEF shall, within seven days of passing of Order of Environment Clearance, upload it on its website, the CRZ Clearance dated 19-7-2013 was not uploaded on the MoEF website even after a period of over two months.

The copy of the snapshot taken by the Appellant on 24-9-2013 of the "Infrastructure and Miscellaneous Projects & CRZ" of Maharashtra, granted Environment Clearance in year 2013 is hereto annexed and marked as Annexure A.23.

52. That on 19-9-2013 the Appellant came to be aware of the CRZ Clearance dated 19-7-2013 for the MTHL Project when the Central Public Information Officer,

Ministry of Environment & Forests vide his letter dated 10/11th September, 2013 forwarded to the Appellant a copy of the said CRZ Clearance, alongwith other documents.

The copy of the letter dated 10/11th September 2013 of the CPIO of MoEF is marked and annexed as Annexure A-24.

In terms of limitation, the Appellant has further stated at :

Page Nos.56 and 57 :

The present Appeal is being filed within thirty days from the date on which the CRZ Clearance dated 19-7-2013 granted to the MTHL project and the Appellant came to be aware of the same when he received the copy of the same on 19-9-2013 from the Central Public Information Officer, Ministry of Environment & Forests vide his letter dated 10/11th September 2013. The Appeal is therefore filed within time and is therefore in accordance with the NGT Act.

23. The Appellant has also enclosed the snapshot of the website of MoEF which indicates that the CRZ clearance document hosted on the website describes the uploaded file which has a file name incorporating 30th September 2013 in the name file. The Appellant submits that it is a common practice in internet hosting protocol that such hosting of the information/data is generally prefixed or suffixed with the date to demonstrate the date of internet hosting. The term communication as mentioned in section 16 of NGT Act has been dealt and clarified in various judicial pronouncements, and particularly, Hon'ble Principal Bench of NGT has already dealt with concept of "Communication" as required under section 16 of the NGT Act in Save Mon as well as Medha Patkar Judgments, wherein it has been held that the

process of communication will be complete only when the three (3) modes of communications i.e. hosting of the clearance on MoEF website, publishing of clearance copies in newspapers and also, at the respective authorities office are completed and early one of it will trigger “cause of action”. The submissions made by the Appellant pertains to hosting of clearance information on the website. It is observed from the record that a copy of this clearance was made available to the Appellant by the MoEF vide letter dated 10th September 2013 which was received by the Appellant on 19th September 2013. MMRDA has also not placed any details of the newspaper advertisement, if it has been published according to the conditions of the CRZ clearance or hosting of such clearance on their own website. In absence of any factual information on hosting of the CRZ clearance on MoEF’s website and the newspaper advertisement, we do not find any reason for rejecting contention put-forth by the Appellant about the date of communication, particularly hosting of the CRZ clearance on the MoEF website. In view of the above discussion, even considering the first date of knowledge i.e. availability of information of CRZ clearance to the Appellant on 19th September, 2013, we do not find any reason to consider that the Appeal is outside the limitation prescribed of one (1) month from the date of communication. In any case, the Appeal has been filed

within 90 days from the date of clearance i.e. 17.7.2013, as such it is within total available period i.e. 90 days, considering original 30 days and grace 60 days, if the Tribunal thinks it fit to condone the delay in filing the Appeal. Accordingly, we hold that the Appeal is within limitation and will proceed further.

Issue No. 2 :

24. The Appellant presented his own case and stated that the project is major bridge of more than 22 km length and as per the information given in the CRZ Application itself, the area of the bridge is far more than 1,50,000 sqm in total, as the area in CRZ-I and CRZ-II zone which is only about 3 km itself is more than 1,17,000 sqm and the area of the bridge in CRZ-IV and on land which covers about 18.90 km. has not been disclosed by MMRDA. In any case, the area will be much more than 1,50,000 sqm, well beyond 20,000 sqm which is within category of 8(a)/(b) entries of the schedule of EIA notification. Appellant also submits that the project is going to develop new connectivity between main land Mumbai and Nhava/Chirle side of Navi Mumbai. Definitely, this bridge, when constructed, will result into massive area development on the Nhava/ Chirle side and needs to be considered as area development project. His contention is that this bridge starts somewhere near Worli, passes through the mainland Mumbai before crossing the creek/sea and landing

towards Chirle side of Navi Mumbai. Such massive construction project will not only have impact on coastal eco-system but also, will result into major area development on both sides of the bridge. He also relied on the judgment of the Hon'ble Principal Bench of NGT in "Vikramkumar Tongad Vrs. Delhi Tourism and Transportation Corporation and others, in O.A. No. 137/2014" wherein a similar construction project of a bridge across river Yamuna was challenged. He contends that the Hon'ble Principal Bench after considering various aspects in detail including the judgment of Hon'ble Supreme Court in case of construction of park at Noida "New Okhala Bird Sanctuary Vrs. Union of India and another (2011) 1-SCC-744", has held that construction of a bridge or similar activities covering a built up area > 1,50,000 mtr. and/or covering an area of > 50 H. would be covered under entry 8(b) of the schedule of Environmental Clearance Regulation 2006. He also submits that another sea-link proposed by Maharashtra State Road Development Corporation called Versova-Bandra was challenged by him before the Principal Bench of NGT in Appeal No.11/2013 and on February 2015 and Principal Bench of NGT has again held that this project would need environmental clearance and the Appeal was accordingly disposed of. The Appellant further contended that both these projects referred to above i.e. Yamuna bridge and

Varsova Bandra sea link are comparatively smaller than the present project in question and would pass through environmentally sensitive areas of mangroves, mudflats and flamingo habitats which are of major environmental concern and consequences.

25. Per contra, Advocate Mrs. K. Bagalia for MMRDA contends that the "Tongad judgment" (supra) of the NGT has not laid down any specific ratio and it will be too much to say that construction of a bridge can be construed as an area development project. Her contention is that such an interpretation is strenuous but may be necessary in that particular case as there was no review or consideration of the project from environmental point of view. But in the present case, the project has already been appraised and reviewed by expert bodies like MCZMA and MoEF and only thereafter, CRZ clearance has been granted. The learned Advocate further contends that the NGT in **Tongad** case has adopted a liberal approach and expanded meaning of the word "construction" based on precautionary principle only due to the fact that there was no consideration/review of the project from environmental angle. She further contends that the Appellant has failed to show and demonstrate what additional precautions would be needed to seek the environmental clearance over and above the CRZ clearance. In any case, the building construction projects would not require public consultation and further

the terrestrial components of traffic dispersion, stone quarries, source of sand etc. have already been covered in the CRZ clearance. It is her contention that the CRZ Notification 2011 is a restrictive notification which puts more than stringent conditions and safeguards when compared with Environmental Clearance Regulation 2006 which is inclusive and not an obstructive regulation. It is her contention that considering the above aspects, the project has already got the CRZ clearance and therefore, there is no need of the environmental clearance in any case.

26. We have gone through the pleadings as well as arguments and both the judgments referred to above. The Hon'ble Principal Bench of NGT in OA No.137/2014 has dealt with a similar bridge project and has considered following question of Law :

“Whether, constructing “bridge” across Yamuna is a “project” or “activity” that shall require prior environmental clearance from the regulatory authority, particularly with reference to entry 8(a) and /or 8(b) of the Schedule II environmental clearance regulation 2006 ?”

27. The Hon'ble Principal Bench in the above judgment has dealt with argument in respect of ambiguity in the wordings of entry No.8(a) and 8(b) which was also noticed by the Hon'ble Supreme Court in the case of “Okhala Bird Sanctuary” wherein the Apex Court observed that entries could be described with greater precision and clarity and

expression “built up area with facilities open to the sky” needs to be freed from its present ambiguity and vagueness. Hon’ble Principal Bench also noted that the township and area development project is an expression which would take within its ambit the projects which may be specific with relation to an activity, or may be, they are general area development project which would include construction and allied activities. Hon’ble Principal Bench after considering various legal aspects, finally held that the construction of a bridge or similar activity covering a built up area of > 1,50,000 sqm. and/or covering an area of > 50 Ha would be covered under entry 8(b) of the schedule appended to the EIA Regulations of 2006. This declaration itself is a ratio which was again reiterated by the Hon’ble Principal Bench while disposing of the Appeal No.11/2013 (Dileep Nevatia Vrs. Union of India and others) related to Bandra Versova sea link. Considering the above judgment of the Principal Bench which has not been varied or modified further by the Competent Court, we are of the opinion that the project in question need to be examined by the authorities, regarding applicability of environmental clearance as per Environmental Clearance Regulation 2006 based on the criteria stipulated in the said regulations. The issue is accordingly answered in AFFIRMATIVE.

Issue Nos.3 & 4 :

28. Before entering into the thickets of the procedural aspects of the CRZ clearance we would like to reproduce certain provisions of the CRZ notification.

3. Prohibited activities within CRZ,

The following are declared as prohibited activities within the CRZ,-

- (i) -----
- (ii) -----
- (i) -----
- (ii) *Land reclamation, bunding or disturbing the natural course of seawater except those,-*
 - (a) *Required for setting up, construction or modernisation or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sealink, road on stilts, and such as meant for defence and security purpose and for other facilities that are essential for activities permissible under the Notification;*
 - (b) -----
 - (c) -----

4.2 Procedure for clearance of permissible activities :

All Projects attracting this Notification shall be considered for CRZ clearance as per the following procedure, namely

- (iii) *The Project proponents shall apply with the following documents seeking prior clearance under CRZ Notification to the concerned State or the Union territory Coastal Zone Management Authority,--*
 - (a) *Form-1 (Annexure-IV of the Notification);*
 - (b) *Rapid EIA Report including marine and terrestrial component except for construction Projects listed under 4(c) and (b).*
 - (c) *Comprehensive EIA with cumulative studies for Projects in the stretches classified as low and medium eroding by MoEF based on scientific studies and in consultation with the State Governments and Union territory Administration;*
 - (d) *Disaster Management Report, Risk Assessment Report and Management Plan;*
 - (e) *CRZ map indicating HTL and LTL demarcated by one of the authorised Agency (as indicated in para 2) in 1:4000 scale;*
 - (f) *Project layout superimposed on the above map indicated at (e) above;*
 - (g) *The CRZ map normally covering 7 km radius around the Project site.*

- (h) The CRZ map indicating the CRZ-I, II, and IV areas including other notified ecologically sensitive areas;
- (i) No objection Certificate from the concerned State Pollution Control Boards or Union territory Pollution Control Committees for the Projects involving discharge of effluents, solid wastes, sewage and the like;
- (iv) The concerned CZMA shall examine the above documents in accordance with the approved CZMP and in compliance with CRZ Notification and make recommendations within a period of sixty days from date of receipt of complete application,-
- (a) MoEF or State Environmental Impact Assessment Authority (hereafter referred to as the SEIAA) as the case may be for the Project attracting EIA Notification 2006;
- (b) MoEF for the Projects not covered in the EIA Notification, 2006 but attracting para 4(ii) of the CRZ Notification;
- (v) MoEF or SEIAA shall consider such Projects for clearance based on the recommendations of the concerned CZMA within a period of sixty days.

29. The Appellant has pleaded that though the CRZ Notification 2011 elaborately describe the procedure for consideration of any Application for CRZ clearance in Clause 4.2 of the Notification, the authorities of MCZMA and MoEF have not ensured the compliance of such procedure. He has listed several such inconsistencies/ variations in his Application, mainly on the grounds as indicated below :

- EIA report is only rapid and not comprehensive.
- EIA report is not prepared by accredited consultants
- Required CRZ maps in 1 : 4000 scale and covering 7km area not available.
- The project layout and alignment is varying in two maps.
- Original maps do not indicate HTL/LTL.
- Provision and plan for noise barriers along with the via-duct so on and so forth.

- Studies related to impacts on tidal water currents not done
- Marine studies, impact on Flamingos is not studied.

30. It is manifest from the above provisions, particularly, the clause 4.2(ii), the concerned SCZMA was required to “examine” the specified documents in accordance with the approved CZMP and notification and make recommendations, only after receipt of complete Application. It is the case of Appellant that in spite of specific provisions of the CRZ notification, MCZMA authorities went ahead by considering the incomplete application and recommended the proposal to MoEF with certain specific recommendations. On perusal of the minutes of the 74th meeting of MCZMA held on 23rd April 2012, it is manifest that the proposal was recommended with following conditions :

1. *No reclamation to be allowed even of landing points, in CRZ I, CRZ II, CRZ III areas and land link should be in the form of bridge up to non-CRZ areas.*
2. *MMRDA to submit CRZ map indicating HTL, LTL, mangroves, mudflats, eco-Sensitive zones, CRZ I, II, III, IV demarcated by one of the MoEF authorized agency in the scale 1 : 4000.*
3. *Project layout superimposed on the CRZ map as above indicating activities in CRZ IA, CRZ IB, CRZII, CRZ III and CRZ IV, Sewari Mudflat, eco-sensitive zones etc.*
4. *Disaster Management plan, Risk Assessment plan and Environment Management Plan should be submitted to MCZMA and MoEF.*
5. *Pollution management plan during construction, debris disposal plan, post construction restoration plan, needs to be prepared and submitted to MCZMA and MoEF.*
6. *Mangrove re-plantation plan indicating place identified, survey number, area, present status of the area & suitability of the site for mangrove plantation programme etc. should be submitted to MCZMA and MoEF.*

7. *Provision and plan for noise barriers along the via-duct since it is passing through Sewri wetland and protected forest area should be submitted.*

8. *Forest and Hon'ble High Court permission for construction through mangroves, Sewri wetland etc. before commencement of the work.*

9. *Flora and Fauna study, impact of proposed activity on avifauna, mitigation plan & cost benefit analysis etc. from reputed CSIR Institute. Copy of the same should be submitted to MCZMA and MoEF.*

10. *Details of length, width and area of proposed sea link falling in CRZ.*

31. It is seen from the above that many of the critical documents like project layout superimposed on the CRZ maps, the CRZ maps in 1 : 4000 scale prepared by MoEF authorised agency, debris management, mangroves, re-plantation plan, flora-fauna study, impact of proposed activity on aqua-fauna and avifauna, length, width and area of the proposed project falling in CRZ etc. were not available and MCZMA directed the MMRDA to submit the same to MCZMA/MoEF. It is further observed that the project proponent i.e. MMRDA submitted some documents after the meeting of MCZMA and thereafter, the said proposal was recommended to MoEF by Member Secretary, MCZMA on 15th June 2012. It is prima facie observed from the trail of communication that the documents which were subsequently submitted by MMRDA in response to the decision in MCZMA meeting were not placed before MCZMA authority for "examination" in pursuance to conditional recommendations as described in the minutes. Rather, the letter forwarding the proposal to MoEF as per the decision of 74th meeting of MCZAMA held on 23rd April

2012, can be construed to infer that the MCZMA has not examined such documents, which were submitted to MCZMA. In other words, the MCZMA has not evaluated and examined the documents which were called from the project proponent independently for its correctness and adequacy. It is evident from the description of such documents itself that they are pertinently relevant to the coastal eco-system, impact on eco-system which were required to be examined by the MCZMA as per clause 4.2. The Appellant relied heavily on this aspect in order to establish that the authority (MCZMA) has not applied its mind and was not in possession of required documents while recommending the proposal.

32. Appellant's further contention is that the MoEF while appraising the proposal has not dealt on the recommendations of the MCZMA and has not verified whether the documents which were required to be produced by the project proponent have been submitted and whether they are scientifically correct and adequate for the appraisal of the project. The minutes of the Expert Appraisal Committee dated 19th to 21st September 2012 just refer the recommendations of MCZMA. The Appellant further alleges that in spite of such clear conditional recommendation of MCZMA, the EAC has skirted the important issues of mangroves, mudflats and aqua-fauna. It can be seen from the minutes that there is no reference

to any studies related to flora, fauna studies, impact of proposed activities, avifauna, mediation plans and provisions of plan for noise barriers, the required CRZ maps etc. were placed before the Committee. The Appellant also highlighted that though the area statement of the bridge given by MCZMA clearly indicated that area of the bridge, the EAC has not considered this aspect and relied on the information of the project proponent that the built up area is < (less than) 20,000 sqm.

33. We have also perused the contention of the Appellant that the MoEF had applied the different yardsticks for evaluating the two similar projects i.e. MTHL and Varsova-Bandra Bridge. The MoEF has submitted that the evaluation criteria may vary from the project to project. We do not agree with the contention of MoEF inasmuch as both the projects are of construction of bridge/via-duct across the coastal waters. Needless to say that though the microscopic issues of both projects will vary but the overall structure and protocol of evaluation of similar types of projects cannot be varied diametrically in short span of time. We also agree that with the increased understanding of environmental issues related to a particular sector, the evaluation criteria can evolve or can be most stringent but such criteria needs to be objective, quantifiable, transparent and reproducible. In the instant case, the variation seems to be in terms of public

consultation, marine impact studies, traffic dispersal study etc., which are within the basic parameters of evaluation for any environmental appraisal including the CRZ. However, we leave it to MoEF to consider such aspects to bring in uniformity, consistency and transparency in the appraisal process while evaluating similar projects of different project proponents. We are sure that with the expertise available within MoEF and also with the Expert Appraisal Committee, such frame work can be developed which can be put in public domain to avoid such claims/objections regarding subjective evaluations/appraisals.

34. Learned Advocate for the project proponent strenuously argued that the non-submission of such documents to MCZMA cannot be considered as substantive crucial lapse as the MCZMA is required only to “examine” the documents before making recommendations. It is the MoEF and the Expert Appraisal Committee of MoEF who have to appraise the project and grant the clearance. All the required documents were submitted to the MoEF well within time and only after completion of such documentation, the CRZ clearance has been granted. She also contends that such omission cannot be deemed as a factor adversely affecting the appraisal.

35. During the interim period of hearing, the Appellant has submitted that the MMRDA has approached the authorities for the necessary Forest Clearance for diversion of 47.4170 Hec. of forest land for the non-forest activity with respect to MTHL project. The Appellant has relied on the form 'A' submitted by MMRDA seeking such forest clearance. He emphasised to demonstrate that MMRDA while submitting this Application was fully aware that the MTHL project construction would involve diversion of 38.5754 Ha of mangrove areas along with 8.8416 Ha of forest land. He therefore contends that though the MMRDA authorities were fully aware that the substantial mangrove area, which is also a protected forest, is likely to be affected due to proposed project and they have deliberately suppressed this information while seeking the CRZ clearance, by declaring that only 0.117 Ha of mangrove area is likely to be affected, the CRZ clearance is vitiated due to fraudulent suppression of material fact. The principal "*supresio veri, opprucio*" is squarely applicable to the facts of this case, He, therefore, contended that the MMRDA has deliberately suppressed such massive destruction of mangroves and kept the authorities in the dark. He further contended that the competent authorities of MCZMA and MoEF have also not verified these facts on their own. The documents would reveal that the Forest Advisory Committee of MoEF has

also appraised the matter and PCCF Maharashtra has submitted that the project lies within 10 km from boundary of Karnala Sanctuary and would require prior clearance from the National Board for Wildlife. The FAC has in fact directed State Government to submit a report to be prepared by BHNS or WII Dehradun regarding impact of this project on the existing mangroves as well as flamingo population. There cannot be any dispute that the flamingos are part of coastal eco-system of Mumbai and Navi-Mumbai and therefore, assessment of the impact of proposed project on the coastal habitat of the flamingos as well as environmentally sensitive areas mudflats/mangroves, are the essential steps in appraisal of CRZ application for clearance.

36. In our considered opinion, the disclosure of MMRDA in Forest clearance application that about 40 Ha of mangrove area is likely to be affected when MMRDA itself disclosed such area to be only about 0.117 Ha before CRZ authorities is a matter of serious concern. We do not know the reason for such significant variation in the information, may be due to genuine error or any fraud or deliberate attempt to hide the vital information. Learned advocate for MMRDA also was not able to clarify the discrepancy. With such significant variation in affected mangroves area coupled with the fact that there is non-evaluation of impacts on important coastal ecosystem

features like mudflats, flamingos etc., we are of the opinion that the present CRZ clearance has been granted without proper examination/appraisal of such important aspects of the project besides non-adherence of the procedure provided in CRZ notification.

37. In view of the above discussion, it is difficult to appreciate the argument of learned counsel for MMRDA about the validity of the clearance order irrespective of the fact that no reason or findings have been recorded in the minutes of EAC on various issues flagged by MCZMA and there is no independent examination or appraisal by the EAC or MoEF and the minutes go to show that the submissions made by the project proponent have been accepted on face value of it. It is not within the domain of this Tribunal to verify the technical compliances and appraisal as it would amount to usurpation of power which is not available with this Tribunal under the N.G.T. Act. It is the duty of the concerned regulatory authority to take appropriate decision. Nobody will deny that the development of infrastructure impact is necessary for overall social and regional development. In view of the above, the question remains to be seen “whether the impugned order dated 17th July 2013, deserves to be quashed in toto ?” We appreciate and note the submissions made by the learned counsel for MMRDA that lot of resources and public funds have been utilized for

conceptualising and planning of this particular project and therefore, any adverse order of quashing of the CRZ clearance will cause loss of public funds. At the same time, we also have to ensure that any such major infrastructure development has to be within the precincts of Sustainable Development based on Precautionary Principle. Nobody will deny that the environmental features like mangroves, mudflats and associated avifauna habitat are critical features of the coastal eco system that are linked in the present case and therefore, any infrastructure development in this area has to be in consonance and in complementary manner with the natural eco system.

38. We would like to refer the approach adopted by the Principal Bench of NGT in *Appeal No. 47 of 2012 "Gauraksha Hitarakshak Manch Vrs. Union of India"* in similar matter wherein the Hon'ble Bench observed the following :

39. *At this juncture, we deem it proper to refer certain observations in "State of Punjab & Ors. Versus Dr. Harbhajan Singh Greasy" (1996) 9 SCC 322. In that case, departmental enquiry was held against Dr. Harbhajan Singh Greasy (Respondent therein). He admitted the charge for being absent from duty in the emergency of attending the flood victims. On the basis of the alleged admission, which was subsequently reverted by the delinquent, the Enquiry Officer passed order of penalty. The Apex Court observed :-*

"It is now a well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement of the delinquent with consequential benefits. Matter requires to be remitted

to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law.”

40. *True, the above observations are made in the context of subject of departmental enquiry. Still, however, the observations of the Apex Court are applicable to the present case by analogy. The stage for correction, reconsideration and reappraisal may be restored without calling upon the Project Proponent to undergo the entire exercise of the screening, scoping and public hearing. For example, if there is no electricity in a house one will have to first go to see whether the fuse connection is in order. Perhaps nobody will immediately rush to the Distribution Centre or the Power Grid. It is pertinent, therefore, to go to the stage of fault and permit re-examination of the entire material from that point onwards, instead of going back to square-A.*

41. *In our considered view, therefore, it is necessary to keep the impugned order in abeyance for the present with direction to the MoEF and EAC to appraise the project afresh and pass the necessary reasoned order either for approval thereof or for the rejection, whatsoever it may be found necessary, on merits thereof. The authorities shall not be influenced by any discussion made hereinabove. We clarify that we have not given any opinion on merits of the matter concerning Stage (4)-Appraisal. It will be open to the authorities to consider the relevant aspects and if so required by making comparison with the measures adopted by the other such ports located elsewhere in the country for avoiding the adverse impact on environment and the surrounding area.”*

39. In the result, we allow the Appeal and set aside the impugned order of CRZ clearance, after its suspension period, unless replaced by afresh CRZ clearance, and direct further to remit the matter to MoEF to consider the CRZ clearance application of the project proponent (in question) afresh, as per provisions of the CRZ notification, particularly in view of the issues related to applicability of Environmental Clearance Regulation, 2006, effect on

mangroves, flamingos and mudflats, besides other impacts. We direct that MoEF shall take decision independently on merits, without influenced by any of the observations made in this order, and such a decision be taken in eight (8) weeks. In the meantime, the CRZ clearance granted to the project by the impugned order stands suspended and kept in abeyance for six (6) months hereafter.

The Appeal is accordingly allowed.

The Respondent No.5 i.e. MMRDA to pay costs of Rs.20,000/- (Rs. Twenty thousand) to the Appellant and bear its own.

The other Respondents to bear their own costs.

.....,JM
(Justice V. R. Kingaonkar)

....., EM
(Dr. Ajay. A. Deshpande)

Date : October 15th, 2015.

ajp