

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

(By Video Conferencing)

Appeal No. 39/2020)  
(Earlier Appeal No. 9/2016 (WZ))

Dileep B. Nevatia

Applicant

Versus

Union of India & Ors.

Respondents

Date of hearing: 05.10.2020

Date of uploading : 09.10.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

**ORDER**

1. This appeal has been filed against Coastal Regulation Zone (CRZ) Clearance dated 25.01.2016 granted by the Ministry of Environment, Forest and Climate Change (MoEF&CC) for Mumbai Trans Harbour Link (MTHL) in favour of Mumbai Metropolitan Region Development Authority (MMRDA) under the provisions of the CRZ Notification, 2011, framed under the Environment (Protection) Act, 1986 (EP Act).

2. The appellant claims to be an environmentalist. According to the appellant, the MTHL project will gravely impact Mumbai and Navi Mumbai coastal ecology. The project has been approved in violation of the EP Act, the EP Rules, 1986, the EIA Notification, 2006 and the CRZ, Notification 2011.

**Case of the Appellant**

3. According to the averments in the Memo of Appeal, the project was proposed in the year 1992. It involves construction of a bridge

between Sewri to Nhava, connecting the island city of Mumbai with the southern part of the mainland. The proposal is against the commitment given by the Government of Maharashtra while setting up Nhava Sheva Port (later called Jawahar Lal Nehru Port, JNPT). The additional transport link will increase traffic flow from the main land to Bombay Island and will congest and deteriorate conditions of the city. Mumbai Port Trust (MPT) declared the mangrove swamps of Sewri a protected ecology. The MPT has undertaken to protect this area from any new construction or dredging activity. In 2004, Bombay Natural History Society (BNHS) declared the Sewri mudflats as an Important Bird Area (IBA) holding more than 20,000 water birds. IBAs are recognized all over the world as key sites holding large bird populations and threatened bird species. Atleast 150 bird species have been recorded to visit Sewri every year, including this year. In 1994, Flamingos returned to mudflats after forty years. Ten species of mangroves have been identified in this area. Other fauna include 28 species of butterfly, 9 species of reptiles and 9 species of crustaceans. The Sewri mudflats are home to over 35,000 migratory birds from all over the country and beyond, which include 1500-2000 greater flamingos, 15000 lesser flamingos, 10000 stints and 7000 lesser sand plovers. The flamingos migrate to Sewri around December and stay there until early summer of the following year. In the International Species Recovery Plan for the Lesser Flamingo, the Convention for Migratory Species (to which India is a signatory) has identified Sewri as a key site for Lesser Flamingos in India. It has identified protecting Sewri and safe-guarding it from pollution as 'high priority' actions.

#### **Earlier rounds of Litigation leading to NGT order dated 15.10.2015**

4. Earlier, Environmental Clearance (EC) was granted by the MoEF&CC vide letter No. J-16011/9/92-I.A.III on 11.03.2005 under the EIA Notification, 1994 and CRZ Notification, 1991 but the construction could not commence for five years. The EC lapsed on 11.03.2010. However, MMRDA issued a Press release about the project being initiated against which the appellant filed O.A. No. 21/2012 with the grievance that fresh EC was required to be obtained under the EIA Notification, 2006 for which EIA report was required to be prepared, as per the CRZ Notification 2011, taking into consideration its effect on the tidal flow of water in the areas between Low Tidal Line (LTL) and High Tidal Line (HTL) of CRZ-I Zones. The Tribunal directed, on 20.04.2012, that construction be not undertaken without EC.

5. Thereafter, CRZ clearance dated 19.07.2013 was granted, without considering the damage which the project will cause, in violation of the EIA Notification, 2006, without any public consultation as required. The MTHL project was wrongly assumed to be a bridge over a tidal influence water body. The project should have been categorized as 'township and area development' under Entry 8(b) of the EIA Notification, 2006 for which EC was required. The project was wrongly labeled as 'Sea Link' to exclude EIA Notification, 2006. Coastal areas with mangroves, mudflats, National parks and wildlife habitation fall in CRZ-I which is required to be protected by prohibiting various activities in terms of the Regulation 3, 4 and 8 of the CRZ Notification, 2011. Coastal Zone Management Plans are prepared clearly indicating the areas falling in various zones which are regulated under the CRZ Notification, 2011. Coastal Zone Management Authority (CZMA) has been constituted for protecting and

improving the quality of coastal environment. As per Regulation 8 of the CRZ Notification, 2011, even a Trans Harbour Sea Link can be constructed only if it does not affect tidal flow of water, between LTL and HTL. While constructing such a project, safety measures are to be incorporated and the projects have to be within areas which are not ecologically sensitive. Even in CRZ-IV areas, activities impinging on the sea and tidal influenced water bodies are to be regulated, except for traditional fishing and related activities undertaken by local communities. Such a project is thus not permissible in CRZ-IV area. A permissible project has to follow the procedure laid down under Regulation 4.2. An application is to be made by the project proponent in Form-I with the documents mentioned therein i.e. Rapid EIA Report, Comprehensive EIA, Disaster Management Report, Risk Assessment Report and Management Plan, CRZ map indicating HTL and LTL demarcated by an authorized agency, Project layout superimposed on the map, the CRZ map normally covering 7 km. radius around the project site, the CRZ map indicating the CRZ-I, II, III and IV areas, including other notified ecologically sensitive areas and 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. The documents are to be examined by CZMA and any clearance has to be granted after due evaluation, in accordance with CRZ Notification. The Mumbai High Court vide order dated 26.05.2005 in *Writ Petition (L) No. 3246 of 2004, The Bombay Environmental Action Group and Ors. v. the State of Maharashtra* has issued various directions for conservation of mangroves. The Bombay High Court has also imposed a ban on destruction and reclamation of wetlands. Because of bio-logical richness,

the Sewri mudflats meet the criteria for selection as Ramsar site. The considerable portion of MTHL passes through the wetlands. The impact of the project on the mangroves in inter-tidal mudflats/wetlands in CRZ-I area, which also is the breeding site for the endangered flamingos and other migratory birds, has not been made for the MTHL Project as their presence was not marked on the “CRZ Survey of Greater Mumbai dated 6<sup>th</sup> November 1997 to 20<sup>th</sup> May 1998”, relied upon by the Respondents for granting CRZ Clearance.

6. CRZ Map submitted by MMRDA has neither disclosed that the bay area of Sewri, including the areas having the Mangroves, Mudflats, etc. are described in the “National Wetland Atlas: Maharashtra” nor considered the impact of MTHL in the Sewri bay.

7. The Bombay High Court by its Order dated 19.3.2014 in Public Interest Litigation No. 87 of 2013, *Vanashakti Public Trust & Ors. v. UOI & Ors.* was of the opinion that it would be necessary to impose total ban on destruction and reclamation of wetlands which are described in the Atlas prepared by the Central Government and ordered that no permission should be granted for destruction and reclamation of wetlands and prompt action including lodging of FIR/complaint be taken by the Collector and also by the Regional Officers of State Pollution Control Board, who have been delegated powers under section 20, 21,23 of the Water (Prevention and Control of Pollution) Act, 1974.

8. The EIA reports are required to be prepared by accredited agencies under National Accreditation Board for Education and Training (NABET) scheme which was not done in the present case. The project proponent filed an application on 31.01.2012 for clearance of the MTHL project without giving relevant information and documents. Built up area was

not mentioned, information about approved alignment was not given, size of the plot was not mentioned. Overlooking the deficiencies, Environment Assessment Committee (EAC) held that EC was not required as construction was less than 20,000 sq. mtr. There was also suppression of CRZ classification of the area. The area is CRZ-I(A) which attracts bar of construction but the same was mentioned as CRZ-I/ CRZ-II. It was also suppressed that the area is protected forest on account of mangroves and mudflats. MCZMA recommended the project overlooking the deficiencies in its 74<sup>th</sup> meeting held on 23.04.2012. The recommendation was without first requiring NOC from the State PCB. Sea Link was taken as permissible activity without seeking clarification of MoEF&CC. The rapid EIA report did not correctly mention the extent of mangroves. No physical verification was undertaken. Forest clearance was granted without verifying the extent of forest involved. The project involves construction of piers/pillars which will affect tidal flow of the water. The EIA study report was prepared by a consultant not having accreditation with Quality Council of India and/or NABET. ToRs were not formulated by the MoEF&CC/EAC but prepared by the project proponent. CRZ maps filed by the project proponent did not meet the statutory requirements and were not prepared by the authorized agency nor on an appropriate scale. The lay out did not depict the alignments for the MTHL properly. Finally, EAC recommended the proposal without EC and without forest clearance and permission of the Bombay High Court. However, conditions were imposed for obtaining such approvals later, which may lead to the situation of *fait accompli*. The study wrongly assumed that the pillars for the viaduct would occupy small area on the mudflats and would not cause any noticeable erosion.

9. The appellant preferred appeal No. 4/2013 against CRZ clearance dated 19.07.2013 which was dealt with by the Tribunal vide order dated 15.10.2015. The Tribunal remitted the matter to MoEF&CC to consider the CRZ application afresh in accordance with the CRZ Notification and also to consider applicability of EC under the EIA Notification, 2006.

**Grant of fresh impugned CRZ clearance and present challenge**

10. The project proponent filed fresh application which was considered in the 107<sup>th</sup> Meeting of the MCZMA held on 07.11.2015 and recommended for approval to the MoEF&CC. The MCZMA opined that EC under the EIA Notification, 2006 was not required. The letter of the MCZMA is dated 26.11.2015. According to the Minutes of the MCZMA dated 07.11.2015, a presentation was made by the project proponent but infact no presentation was placed before the MCZMA. The Central Water and Power Research Station (CWPRS) submitted a technical report relating to Hydraulic Model Studies with respect of tidal flow of water at relevant locations, without carrying out analysis of current flow and waves as laid down by the National Institute of Oceanography. Though the Tribunal vide order dated 15.10.2015 required the issue of applicability of EC to be considered, EAC wrongly assumed that EC was not required and observed that the project will not affect tidal flow of the water. The Sea Link was to be constructed through a road on stilts and pillars and thus EC was required. The BNHS in its report around 26.09.2015 suggested measures for mitigation of hardships to the birds by the project. The suggestions included an alternative route but ignoring the suggestions, the project proponent prepared EMP. The EAC in its 154<sup>th</sup> held on 22.12.2015 and 155<sup>th</sup> meeting held on 30.12.2015 ignored relevant issues of mitigation measures and finally the MoEF&CC granted the impugned CRZ clearance dated 25.01.2016.

11. The appeal was filed before the Western Bench Pune on 17.02.2016 and was admitted on 18.02.2016. Notices were issued to the 8 respondents, MoEF&CC, State of Maharashtra, MPCB, MCZMA, MMRDA, BNHS and National Institute of Oceanography.

### **Response of the Respondents**

12. The project proponent, the MoEFF&CC as well as CZMA are the main contesting parties who have filed their response to the appeal. A brief reference may be made thereto. The MCZMA, respondent No. 4, in its reply filed on 02.05.2016, has stated that project is of great public importance and is for benefit of the citizens residing in city of Mumbai and neighboring villages and town. The project will reduce the distance between the island city and the main land by 15 kms., vis-à-vis the existing Vashi bridge and will also reduce the travel time and fuel consumption. The project is also of great importance for protecting the environment by reducing air pollution. The project proponent, in the light of order of this Tribunal dated 15.10.2015, filed a fresh application seeking CRZ clearance on 06.11.2015 with the relevant documents, namely:-

- i. Duly filled Form I of Annexure IV of the CRZ Notification, 2011 and Executive Summary of the project;
- ii. Rapid EIA report including Environment Management Plan, risk Analysis and Disaster Management Plan;
- iii. CRZ map in the scale of 1:4000 prepared by the Institute of Remote Sensing, Chennai, indicating the alignment of MTHL road;

- iv. Technical Report on Hydraulic Model Studies for proposed MTHL by CWPRS, Pune.

The project proponent also made presentation during the 107<sup>th</sup> meeting of the MCZMA held on 07.11.2015. Considering the project of public importance, which is a permissible activity in CRZ-I, CRZ-II and CRZ-IV areas, the proposal of Respondent No. 6 was placed before 107<sup>th</sup> meeting of MCZMA held on 07.11.2015, wherein Mr. Khandare, Additional Metropolitan Commissioner, MMRDA presented the proposal before the Respondent No. 4 in terms of its documents, which were submitted along with the proposal. The presentation covered the issues like impact of flamingos, mudflats, mangroves, fisheries etc. and the mitigating measures along with the Environment Management Plan. As per the Coastal Zone Management Plan (CZMP), the 22 kms. 6 Lane carriages long MTHL project passes through CRZ-I, CRZ-II and CRZ-IV. The Sewri end of 1.5 kms alignment, having chainage 1 to 2.5 kms., passes through mudflats, sparse mangroves and abuts flamingos' breeding site. Further, the Nhave end of 0.6km. alignment having chainage of 16.98 to 17.5 kms. also passes through mudflats and sparse mangroves. As per the Report submitted by Respondent No. 6, 14.48kms. (66%) alignment falls under creek water, 2.1kms. (12%) passes through mudflats and 4.92 kms. (22%) alignment is on land. Considering the expanse of the aforesaid project and as well as the mitigating measures suggested by the Respondent No. 6, the Respondent No. 4 decided to recommend the project from CRZ point of view to Respondent No. 1 for appropriate consideration, however, subject to compliance of certain conditions, which are mentioned in Minutes of the 107<sup>th</sup> Meeting of MCZMA dated 07.11.2015. Respondent No. 6 vide its letter dated 09.11.2015, submitted the requisite documents including a

brief Note as regards the point raised by the Authority in its 107<sup>th</sup> meeting held on 7.11.2015. On 26.11.2015, the Respondent No. 4 communicated its recommendation for further consideration by MoEF under the provisions of CRZ Notification 2011, for grant of clearance under the provisions of the said Notification. Respondent No. 4 has taken into consideration the provisions of EP Act as well as the CRZ Notification 2011 and after applying its mind to the effects of the project and also suggesting the mitigating measures, the Respondent No. 4 decided to recommend the present project. Respondent No. 4 also directed Respondent No. 6 to comply with specific as well as general conditions, which are mentioned in the letter dated 26.11.2015. Project was considered by Expert Appraisal Committee (EAC) at the Central Level and thereafter by MoEF under the CRZ 2011 Notification and accordingly, was granted a CRZ clearance on 25.01.2016. The project has been scrutinized by the Authorities concerned under the CRZ Notification 2011 as well as by EAC created under EIA Notification 2006, from all environmental angles, also considering the impact it has on the environment. The project has been approved finally by the MoEF.

Dealing with the permissibility of the project in the CRZ-IV area and applicability of the EIA Notification, 2006, the response of MCZMA is as follows:-

***“A. Permissibility of the MTHL in CRZ-IV area:***

- (i) *The proposed MTHL alignment starts at Sewri at Mumbai side and ends at Chirli at Navi Mumbai side. The alignment of the project passes through CRZ-I, CRZ-II and CRZ-IV areas. The CRZ Notification 2011 provides for activities, which are prohibited and activities which are to be regulated under various CRZ areas classified under the Notification. I state that the CRZ IV has been classified as follows:*

*“(iv) CRZ-IV-*

A. The water area from the Low Tide Line to twelve nautical miles on the seaward side;

B. Shall include the water area of the tidal influenced water body from the mouth of the water body at the sea upto the influence of tide which is measured as five parts per thousand during the driest season of the year.”

ii Clause 8 of the CRZ Notification 2011 provides for regulation of activities permissible under the Notification. Clause 8(iv) provides for activities, which are permissible in CRZ-IV area. The relevant paras of the Notification is reproduced hereinbelow for ready reference:

“(IV) In CRZ-IV areas-

**The activities impugning on the sea and tidal influenced water bodies will be regulated** except for traditional fishing and related activities undertaken by local communities as follows:-

- a. No untreated sewage, effluents, ballast water, ship washes, fly ash or solid waste from all activities including from aquaculture operations shall be let off or dumped. A comprehensive plan for treatment of sewage generating from the coastal towns and cities shall be formulated within a period of one year in consultation with stakeholders including traditional coastal communities, traditional fisherfolk and implemented;
- b. Pollution from oil and gas exploration and drilling, mining, boat house and shipping;
- c. There shall be no restriction on the traditional fishing and allied activities undertaken by local communities.”

iii. Thus, on the plain reading of clause 7(iv) read with clause 8(iv), the project in question is not a prohibited activity in CRZ-IV area. In fact, on the conjoint reading of the aforesaid paras, **the present project is an activity, which will be regulated by the Authorities at the State Level as well as the Central Level.** Further, by very nature of the present project, it will be located in the water area of the sea or the coastal water bodies i.e. in CRZ-IV and thus, the interpretation or the **allegation made by the Appellant that it is a prohibited activity not permissible in CRZ-IV, is clearly misconceived interpretation and a narrow reading of the CRZ Notification 2011.** This is further supported by the fact that under clause 3 of the CRZ Notification 2011, which provides for prohibited activities in CRZ, **the projects of sea link or the projects such as one in question in the Appeal, is not a prohibited activity in CRZ areas.** Hence the same being a regulated activity is a permissible activity in accordance with the Notification.

## **B. Applicability of EIA Notification 2006**

i. I state that the Appellant has raised an issue in the present Appeal that the project attracts the EIA Notification 2006 and no

environmental clearance has been accorded for the same, the same is violative of the EIA Notification 2006. I state that the issue raised by the Appellant was considered by the Respondent No. 4 in its 107<sup>th</sup> meeting and **the Respondent No. 4 was of the view that the project in question does not attract the provisions of EIA Notification 2006, however, considering that it being only a recommendatory Authority under CRZ Notification 2011 and a final clearance has to be granted by MoEF, the issue as regards applicability of EIA Notification 2006 was left for consideration by the MoEF.**

ii. Without prejudice to the aforesaid submission, I state that, in law, the present project does not attract the rigors of EIA Notification 2006 as the activity is not falling in any of the schedule of the EIA Notification 2006. I state that **clause 8 of Schedule of EIA Notification 2006 concerns building and construction projects and township and area development projects where a built-up area concept is required to be seen** for the purpose attracting the provisions of EIA Notification 2006 and also for considering it for grant of environmental clearance. I state that, **the MoEF, by issuing a Notification dated 04.04.2011, defined the concept of built-up area, which means the built-up area for the purpose of EIA Notification is the built-up or covered area on all floors put together including basement(s) and other service areas, which are proposed in building/construction projects.** Thus, on the plain reading of the Notification dated 04.04.2011, the concept of built-up area applies to any building/construction project, which is covered from 4 sides. Thus, the project in question not being a building/construction project where a built-up area can be measured, does not attract the rigors of EIA Notification 2006. I therefore, state that the issues as regards EIA Notification 2006 as raised by the Appellant, are nothing, but misreading the provisions of the Notification and is completely misconceived.”

13. The MoEF&CC, vide its response dated 18.12.2006, stated that Civil Appeal No. 6111/2016, *Mumbai Metropolitan Region Development Authority v. Dileep B. Nivetia & Ors.* is pending before the Hon'ble Supreme Court against earlier order of the Tribunal on which Notice has been issued on 08.07.2016. The Expert Appraisal Committee (EAC) in the Ministry for appraisal 'Infrastructure Development, CRZ, Building / Construction and Miscellaneous Projects' in its meeting held on 22-23 December, 2015 and again on 30<sup>th</sup> December, 2015 duly appraised the project and approved the same upon which the impugned clearance has been granted.

14. In response of the project proponent – respondent No. 6 filed on 04.05.2016, it is submitted that project is not **township and area development project** and is not covered by EIA Notification 2006 Entry 8(b), which has been clarified on 04.04.2011. In any case clearance under CRZ Notification takes into account all aspects of environmental protection in the same way as it is done in granting EC. The project is of immense public importance to reduce air pollution and hardship to public by saving travel time and fuel and energy and meets the norms of sustainable development. The project was recommended as part of the Draft Development Plan in 1970. Studies were undertaken in 1972-1978 for alternative transportation links across Mumbai Harbour. A steering group was constituted under Mr. J.R.D. Tata in February, 1981. In 1982, an international consortium of consultants led by Peter Fraenkel and partner, UK was appointed by the Steering Group to carry out a feasibility study and to prepare detailed project report for the proposed project. In this background, the alignments were considered. The project was part of sanctioned development plan for 1981-2001 for Municipal Corporation, Greater Bombay. There was further proposal in 1993 and in 2007 by the State Road Development Corporation. The project received various clearances as follows:-

1. The Archaeological Survey of India vide its letter dated 4<sup>th</sup> April, 2005, subject to the alignment being more than 3 kilometres from Elephanta Island.
2. Maharashtra Maritime Board, which has jurisdiction over the water bodies that the alignment will be built over, vide its letter dated 31<sup>st</sup> August, 2012.
3. JNPT vide its letter dated 4<sup>th</sup> March, 2013.
4. BARC, vide its letter dated 12<sup>th</sup> March, 2013.

5. Mumbai Port Trust (“MbPT”) vide its letter dated 30<sup>th</sup> March, 2013.
6. Respondent No. 1 has vide its letter dated 22<sup>nd</sup> January, 2016 has granted in principle permission for diversion of 47.4170 h of Forest Land for the project.
7. Respondent No 1 vide its Office Memorandum dated 21<sup>st</sup> March, 2016 clarified that no EC under the EIA Notification 2006 is required for the present Project.

Consultancy hired for the project is (i) reviewing the earlier Techno-Economic and environmental impact studies carried out on the Project, (ii) updating the Techno-Economic feasibility study (iii) studying various Technical proposal (iv) suggesting a technical and financial model for the project (v) preparation of an environmental impact assessment; and (vi) assisting the Respondent No. 6 in getting the CRZ clearance and bid process management for the project. Further technical experts were hired for the purpose for assistance. The agency has NABET accreditation certificate. Harbour Sea Link project is permissible in CRZ as per Clause VIII, subject of approval of CZMA and subject to its not affecting tidal flow of water between LTL and HTL. The zones attracted in the process of the project are as follows:-

<b>Zone</b>	<b>Distance Traversed</b>
CRZ-I	2.1 km
CRZ-II	0.50 km
CRZ-IV	14.48 km
Total	17.08 km (the remaining 4.92 km do not from a part of the CRZ area)

15. After the judgment of the Tribunal, the project proponent filed a fresh application with relevant documents and made its presentation

before the EAC which recommended the clearance of the project leading to the impugned clearance. The State Wildlife Board (SBWL) approved the original alignment on 04.12.2015, considering habitats of the flamingos. SBWL recommended approval under the Forest Act, 1927 on 11.12.2015. BNHS granted 'in principle' approval suggesting certain precautions to be taken, which were duly taken by the project proponent. Total provision of Rs. 335 crores has been made by the Respondent No. 6 towards the EMP, including towards the mitigation measures for effect on flora and fauna, which plan forms a part of the Impugned CRZ Clearance. The Respondent No. 6 in its above application dated 9<sup>th</sup> November, 2015 has stated that it is making a provision of approx. 2% of the Project cost towards mitigation measures, restoration and conservation of mangroves/birds/flora/fauna. An amount of Rs 25 crores has been provided towards contribution to the mangrove fund. Further, the Respondent No 6 undertakes to comply with all conditions laid down by Respondent Nos. 1 and 4 in the Impugned CRZ Clearance and the letter dated 26<sup>th</sup> November, 2015 respectively. Further, an amount of Rs 6.9 crores has already been deposited by Respondent No 6 with the forest department, towards compensatory afforestation and net present value of the forest land.

16. The project proponent has disputed and denied the apprehension of the appellant by submitting that due process was followed in making the application and in grant of CRZ clearance on recommendations of the MCZMA, after due appraisal of all relevant parameters. The EIA Notification 2006 is not attracted to the project nor there is any violation of CRZ Notification, 2011. The Bombay High Court, vide order dated 27.01.2010 in Writ Petition (L) 3246 of 2004, *the Bombay Environment Action Group & Anr. v. The State of Maharashtra & Ors.* modified the

earlier direction and authorized statutory authorities to give permission even in mangrove areas. Accordingly, the project proponent was given permission for diversion of the forest area and before implementing the project, project proponent will take further leave of the High Court. There is insignificant level of bio-diversity in the area covered by the project. Neither the area is notified as wetland nor is Ramsar Site. Requisite maps have been prepared through an authorized agency 'IRS' clearly showing mangrove and mudflat areas, flamingo breeding sites and important installations of BARC, MBPT, JNPT, Tata Power, Hindustan Petroleum Corporation Limited, Bharat Petroleum Corporation Limited etc.

Report of the CWPRS clearly states that **the project will not have any adverse impact on the overall tidal hydrodynamics in the area under consideration** and hence CWPRS has recommended the same. No reclamation is proposed in the project and the project is not comparable to Bandra Worli Sea Link (BWSL) where such work is involved. The CRZ maps are not required to be appraised by the EAC. Moreover, the project proponent has got the map approved from an authorized agency and submitted the same. EMP prepared by the Project Proponent meets all parameters. The project is neither 'township project' nor 'highway'.

The mitigation measures proposed by the project proponent are:-

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- a. *Construction methodology in mud flats shall use temporary steel bridge jetty parallel to the permanent structure in the Right of Way for transportation of men, construction material, precast elements and machinery etc. on either ends, so as to cause minimal disturbance to eco sensitive mud flats.*
- b. *Entire bridge alignment is proposed as sea link and viaduct, no embankment is envisaged. Only the fact print area occupied by piers/ piles will be affected.*
- c. *Compensatory mangrove plantation is also proposed to be done through the forest department.*

- d. *It is proposed to use pre-cast/ fabricated units for superstructure to avoid effect on mudflats by minimizing construction activities and also to avoid supporting system from sea bed.*
- e. *All construction equipment will be fitted with mufflers / exhaust silencer to contain the noise with the provision of enclosures and intake silencers.*
- f. *Diesel Generator sets, if used, will adhere to the noise standards of Respondent No. 1*
- g. *Span size for piers is generally about 50 m.*
- h. *As far as possible, construction machinery movement (barges etc.) would 1. bypass the locations having habitation of migratory birds during construction.*
- i. *Illumination of bridge carriageway is proposed at low level (inner side of railing/noise barrier) to avoid disturbance to bird habitats at night.*
- j. *Excavated soil will be disposed of at designated /approved dumping site j. which is far from the mudflat area.*
- k. *No burning of waste in open air will be allowed during construction*
- l. *Surveillance management and monitory program during construction to prevent any adverse impact on migratory birds*
- m. *No Cable stayed bridge proposed for free movements for birds.*
- n. *Mangrove restoration program in suitable areas will be taken up by the Respondent No. 6 through the Forest department.*
- o. *Appointment of Bird Monitor during construction and even after completion of the project till baseline levels are achieved creation of Environment Monitoring Cell comprising of the Respondent No. 6's officials and Experts to monitor the impacts on environment during construction as well as during operations.”*

The appraisal of the project has been duly being undertaken and there is no question of violation of Precautionary principle for treating the project as fate accompany.

17. In pursuance to order dated 21.09.2020 of the Pune Bench the matter has been placed before this Bench. Written submissions have also been filed by the parties which are primarily based on the pleadings referred to the above.

### **Questions for Consideration**

18. In view of the pleadings of the parties, supplemented by written submissions and oral arguments, following questions need to be considered:-

- I. Whether the EC is required treating the project as 'township project' as per EIA notification 2006 ?
- II. Whether due process has been followed in granting the CRZ clearance ?
- III. Whether environmental aspects with regard to protection of mangroves, mud flats and flamingos have been duly considered and addressed?
- IV. Whether interference is required with the impugned CRZ clearance?

**Order of Hon'ble Supreme Court dated 4.11.2019 against NGT order dated 15.10.2015 in the first round**

19. Before proceeding further, we may note that Civil Appeal No. 6111/2016, *Mumbai Metropolitan Region Development Authority v. Dileep B. Nivetia & Ors.* against judgment of this Tribunal dated 15.10.2015 came up for final hearing on 04.11.2019. The order of the MoEF&CC dated 21.03.2016 that no EC was required, the impugned fresh CRZ clearance and pendency of present appeal were duly noted by the Hon'ble Supreme Court. The appeal was disposed of after observing that the order of this Tribunal in the earlier round had become academic and will not come in the way of this Tribunal in dealing with the present appeal against fresh CRZ Clearance.

**Discussion and Findings**

20. We now proceed to consider the questions framed for consideration in *seriatim*.

**Re: I. Whether the EC is required treating the project as 'township project' as per EIA notification 2006 ?**

21. The appellant has submitted that EC is required and clarification of the MoEF&CC dated 21.03.2016 cannot be taken as final. The project

falls under Entry 8(b) of the EIA Notification, 2006. Reliance has also been placed on grant of EC by SEIAA for another project called Versova Bandra Sea Link (VBSL) which according to the appellant is identical.

22. On the other hand, learned counsel for the project proponent and MoEF&CC submitted that EC was not required. Entry 8 of the Schedule to the EIA Notification, 2006, applicable to the township and area development projects is not attracted. Reliance has been placed judgment of the Hon'ble Supreme Court in *Anand Arya & Anr. v. UOI & Ors*<sup>1</sup>. Therein, the challenge was to construction of Noida Memorial Complex. The Court discussed the meaning of the expressions 'building and construction' and 'area and township development'. Observations of the Hon'ble Supreme Court are :

**“65. It is extremely difficult to accept the contention that the categorisation under Items 8(a) and 8(b) has no bearing on the nature and character of the project and is based purely on the built-up area. A building and construction project is nothing but addition of structures over the land. A township project is the development of a new area for residential, commercial or industrial use. A township project is different both quantitatively and qualitatively from a mere building and construction project. Further, an area development project may be connected with the township development project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other civic infrastructure. Or an area development project may be completely independent of any township development project as in case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park.**

**67. In light of the above discussion it is difficult to see the project in question as a “building and construction project”. Applying the test of “dominant purpose or dominant nature” of the project or the “common parlance” test i.e. how a common person using it and enjoying its facilities would view it, the project can only be categorised under Item 8(b) of the schedule as a township and area development project”. But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 ha) is less**

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<sup>1</sup> (2011) 1 SCC 744

than 50 ha and its built-up area even if the hard landscaped area and the covered areas are put together comes to 1,05,544.49 sq m i.e. much below the threshold marker of 1,50,000 sq m. The inescapable conclusion, therefore, is that the project does not fall within the ambit of the EIA Notification S.O. 1533(E) dated 14-9-2006. This is not to say that this is the ideal or a very happy outcome but that is how the notification is framed and taking any other view would be doing gross violence to the scheme of the notification.”

**(emphasis added)**

Entry 8 of the Schedule to the EIA Notification 2006 is as under:

“	8	<i>Building/Construction Projects/Area Development Projects and Townships</i>			”
	8(a)	<i>Building and construction projects</i>	<i>≥20000 sq mtrs and &lt;1,50,000 sq mtrs of built-up area#</i>	<i>[The built-up area for the purpose of this 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]</i>	
	8(b)	<i>Townships and Area Development projects</i>	<i>Covering an area ≥50 ha and or built up area ≥1,50,000 sq mtrs**</i>	<i>**All projects under Item 8(b) shall be appraised as Category B1</i>	

In the present case, if dominant purpose test is to applied, neither ‘construction of housing’ is involved nor ‘area development and construction of township’. Undoubtedly, area development may be involved, but that may generally be in every project. For entry 8(b), area development is to be read with townships. Mere incidental falling of the project in entry 8(b) is not enough when predominantly it is covered by another entry. In the present case, the project is trans harbour link i.e. construction of a bridge between the mainland and the island, expressly mentioned in para 8(i)I(i)(e) of the CRZ notification 2011 i.e. **‘construction of trans harbour sea link’**. The VBSL project, with which

parity is sought, was also not classified as 'area development' but as 'Highway'. That project involved reclamation of land, which is not so in this project. It is not even appellant's case that this project is 'Highway'. Moreover, there is no authoritative pronouncement of requirement of EC even for that project, except that factually EC was taken. The order of this Tribunal taking a different view earlier has been considered by the Hon'ble Supreme Court and has been held to be not binding in dealing with the present appeal. On due consideration, we hold that entry 8 (b) of EIA notification 2006 is not attracted to the project in hand nor the project is 'Highway' as somewhat similar project was held to be on account of reclamation of land involved therein. The project is **'construction of trans harbour sea link'** covered by para 8(i)(I)(e) of the CRZ notification 2011.

There is another aspect. The project in question being expressly covered by Para 8(i)(I)(e) of CRZ Notification, which mentions construction of Trans Harbour Sea Link and provides for regulatory mechanism for assessing the impact of such project on the environment in the course of CRZ Clearance. Once subject is expressly covered by a special provision, a general provision relating to area developments, will not be attracted, in the circumstances.

Thus, the project does not require EC but impact assessment is required as per procedure laid down in the CRZ notification and not EIA notification, 2006 which by and large involve same parameters. CRZ clearance has been granted in the present case. The question is answered accordingly.

**Re: II. Whether due process has been followed in granting the CRZ clearance ?**

23. As shown above, the project proponent, after order of this Tribunal dated 15.10.2015, made a fresh application on 05.11.2015 along with all relevant documents in accordance with the CRZ Notification. The documents include Rapid EIA, EMP and CZMP. The EIA has been prepared by the accredited agency. It covers all relevant aspects. Map has been duly prepared, mitigation measures have been duly listed. The proposal was appraised by the EAC MCZMA in 117<sup>th</sup> meeting. In pursuance of the deliberations therein, the project proponent furnished relevant documents which included certificate of accreditation, recommendations of the CWPRS, CZMP maps prepared by IRS, Chennai and proposal for mitigation measures with regard to the migratory birds. On consideration of the entirety of matter, recommendation was made by the EAC on 26.11.2015 in its 155<sup>th</sup> meeting. SBWL considered the issue of birds habitats on 04.12.2015. Forest clearance was granted on 11.12.2015. On 30.12.2015, EAC decided that no EC was required. In principal Stage – I clearance for the diversion of the forest land was granted. Finally, on 25.01.2016 CRZ clearance was granted subject to relevant and specific general conditions with institutional mechanism for monitoring compliance of such conditions.

24. We have noted the stand of the project proponent that requisite amount for compensatory afforestation was deposited on 22.03.2016, amount for restoration of mangroves was deposited on 09.05.2016. An application was filed before the Bombay High Court on 07.07.2016. Deposit was made on 17.10.2015 for restoration of mangroves. The Bombay High Court on 28.11.2016 permitted construction of the project in PIL No. 81/2006, *Shri Sharad Chandrakant Murde v. Alandi Municipal Council, through its Chief Executive Officer and Anr.* Deposit for water pollution study was made with the IIT on 25.12.2016. Further clearance

by the CCF for non-forest activity was granted on 22.03.2017. On 06.09.2017 payment was made to IIT Bombay for water pollution study and related issues. Reports of the BNHS were submitted in October, 2019 and March, 2020 which mention that there is no adverse impact on the flamingos. On 11.09.2020, mangrove and marine biodiversity conservation foundation confirmed receipt of the requisite amount.

25. In view of the above, we conclude that due process of law has been followed in grant of CRZ clearance. The question is answered accordingly.

**Re: III. Whether environmental aspects with regard to protection of mangroves, mud flats and flamingos have been duly considered and addressed?**

26. In the course of above discussion, it is clear that major environmental issues involve protection of mangrove, mudflats and flamingos. Further issue is whether the project has impact on tidal flow. The said issues have been duly addressed by concerned statutory authorities and requisite clearances have been granted. Necessary safeguards have been taken for protection of the mangroves, mudflats and flamingos. Proviso of Rule 3 of the Wetlands (Conservation and Management) Rules 2017 dealing with the applicability of wetlands specifically excludes the applicability of Rule 2 areas falling under the CRZ Notification, 2011. There is an expert study that over all tidal hydrodynamics are not adversely affected.

27. Specific and general conditions and the recommendations of the MCZMA forwarded to the MoEF&CC vide order dated 26.11.2015 (which have been finally incorporated in the impugned clearance) are as follows:-

“5. During presentation on EIA report & other documents, the Authority observed that typically major construction work will be done in sea area by water transportation. The approach jetties at the two ends will be in the form of piled-jetties falling less obstruction to water flow. Large number of precast units will be used. As regards to CWPRS report, it was noted that i) the hydrodynamic model was well validated. With actual tide, current observations ii) the centre to centre distance between two piers is large (typically 50 meters) causing minimum obstruction to the flow. Further, only small reduction in the current strength immediately upstream and downstream (upto 400 m or so) of the bridge piers was seen. From the consideration of current only Pir Pau Jetty may face maximum 10% reduction. iii) Most of the vital installations in the harbor channel and thane creeks, such as Mumbai and JN port, BARC Jetty, Mazgoan Dock, Oi jetties of the Jawahar dweep are less likely to get affected in terms of water levels, tidal flux and currents. As the strength and pattern of the current may not appreciably change beyond the vicinity of the MTHL piers. The sediment transport process at vital installations may not get affected.

6. The Authority further observed that **to protect the bird habitat and ensure minimize damage into the mudflat area, viaducts are proposed, instead of embankments in the mudflat area. The piers for the viaduct would occupy small area on mudflat and hence would not cause serious erosion.** However, these pillars would alter biological diversity and invite large variety of benthic algae enabling formation of secondary community as result of ecological succession. **To minimize disturbance to ecological important mudflats, it is observed that operations in the mudflats or intertidal zones would be done by using temporary jetty which will be parallel to permanent structure in the Right of Way for the transportation of labour, construction material, precast elements, machinery etc on the either ends. As per the report presented, in order to avoid the disturbance to mudflats & bird habitat especially flamingos, no reclamation in mudflats or the water area on Sewri and Navi Mumbai side is proposed. As per the report, it is observed that all construction equipments fully fitted with mufflers and exhaust silencers to contain the noise levels. Machinery used during construction should be properly maintained to minimize the air and noise emissions. MMRDA has also proposed noise barriers of 3 m height on both side of the sea link passing through mudflat area. It is also proposed that construction machinery movement would bypass the locations having habitation of migratory birds during construction.**

7. The Authority further observed that **post construction vegetation of the mangroves below viaduct in mudflat area on either side will be conserved and protected to maintain ecosystem further observed that post construction vegetation**

**of the mangroves below integrity. MMRDA would develop a corpus fund for restoration of mudflat and bird habitat.**

**Further, bird monitoring and management plan is proposed to be evolved before construction monitoring during pile driving and other construction activities etc. Mangroves restoration programme compensatory afforestation on 7 Ha. Suitable areas will be taken by MMRDA through Forest Dept Mangroves cell. The Authority also observed that casting yard is proposed in CRZ I (mangroves) and CRZ If area and opined that casting yard to be shifted from CRZ I mangroves area).**

8. The Authority also discussed the applicability of the Environment Clearance under EIA Notification, 2006 and opined that though activity per se is not covered in EIA Notification, 2006, however, considering the scale and ecological settings of the project area, MoEFCC, New Delhi may decide appropriately on the applicability of the EC for the said project.

9. After detailed deliberation on the submissions of the MMRDA & directions of the Hon'ble. NGT, Pune, the Authority decided to recommend the project from CRZ point view under the provisions of CRZ Notification. 2011 to MoEFCC. New Delhi for appropriate consideration subject to compliance of following conditions:

**Specific conditions:**

- i. MMRDA to ensure that mangroves restoration on the identified areas is undertaken immediately through Mangroves Conservation Cell. Mumbai.**
- ii. MMRDA to explore the possibility of increase in the distance between two piers of viaduct in the mudflat area, which may be more than 50 m. This will minimize the disturbance in ecologically important mudflats and bird habitat area.**
- iii. The Sewri End of the Jetty should be used for transportation of construction material to avoid disturbance to the mudflats.**
- iv. No reclamation is allowed in CRZ I& CRZ IV area except for viaducts & piers. MMRDA should ensure the same.**
- v. MMRDA to install noise barriers of 3 m height on both side of the Sealink passing through CRZ I( mudflat & mangroves area) and CRZ IV area.**
- vi. Casting yard proposed on 16.15 ha on mangroves area on Navi Mumbai side should be shifted from CR7.I (mangroves area).**
- vii. MMRDA to ensure that Construction activities near flamingo habitat area may be restricted to the season when flamingos are not on the site or not in larger flocks.**
- viii. MMRDA to ensure that all construction equipments are fully fitted with mufflers and exhaust silencers to contain the noise levels. Machinery used during construction should be properly maintained to minimize the air and noise emissions.**

- ix. **MMRDA to ensure that minimum damage is caused to mangroves ecosystem.**
- x. **MMRDA to ensure that operations in the mudflats or intertidal zones will be done by using temporary jetty which will be parallel to permanent structure in the Right of Way for the transportation of labour construction material, precast elements, machinery etc on the either ends.**
- xi. **MMRDA to declare entire MTHL as "No Honking area.**
- xii. **MMRDA to ensure that no hoardings are allowed to displayed on the MTHL to avoid disturbance due to light illumination to Marine flora, fauna and birds during night."**

28. The above conditions duly take care of protection of mudflats, mangroves and flamingos habitat. The project proponent in written submission has given status of mitigation steps takes as follows:-

*"The Respondent No. 6, has accordingly implemented the following mitigation measures:*

- a. *With a view to minimize and protect the mud flats, a temporary jetty supported on steel piles with a total length of about 5.5 kms. (including lengths on Mumbai and Navi Mumbai sides in inter tidal areas) had been erected for transportation of men and machinery at the constructed location in inter tidal areas. This complies with the clearance to ensure that the impact on the mud flats, if any, would be completely minimized.*
- b. *During the construction of temporary jetty, special care has been taken to ensure that mudflats are not disturbed, and the execution team are given clear and detailed instructions during the toolbox talk at site. [See Photographs at Exhibit JJ, Vol. III, page 588 of Affidavit of Respondent No. 6 dated 19 September 2020]*
- c. *Entire bridge alignment is proposed as sea link and viaduct, no embankment is envisaged. Only the footprint area occupied by pile foundation will be affected.*
- d. *Compensatory mangrove plantation is being done through the Forest department.*
- e. *Pre-cast / fabricated units for superstructure are being used to avoid effect on mudflats by minimizing construction activities and also to avoid supporting system from seabed.*
- f. *All construction equipment will be fitted with mufflers / exhaust silencer to contain the noise with the provision of enclosures and intake silencers. [See Photographs at Exhibit V, Vol. II, page 371 of Affidavit of Respondent No. 6 dated 19 September 2020]*

- g. Diesel Generator sets will adhere to the noise standards of Respondent No. 1.
- h. Spacing between peers in marine and intertidal areas is generally more than 50 m.
- i. As far as possible, construction machinery movement (barges etc.) would bypass the locations having habitation of migratory birds during construction.
- j. Illumination of bridge carriageway is proposed at low level (inner side of railing/noise barrier) to avoid disturbance to bird habitats at night.
- k. Excavated soil will be disposed off at designated/approved dumping site which is far from the mudflat area.
- l. No burning of waste in open air will be allowed during construction
- m. Surveillance management and monitory program during construction to prevent any adverse impact on migratory birds.
- n. No Cable stayed bridge proposed for free movements for birds.
- o. Mangrove restoration program in suitable areas is being taken up by the Respondent No. 6 through the Forest department.
- p. Bird Monitor has been appointed during construction and even after completion of the project till baseline levels are achieved. **[See Photographs showing flamingos near the construction sites at Exhibit U Vol. II, page 330 of Affidavit of Respondent No. 6 dated 19 September 2020]**
- q. Creation of Environment Cell and Environment Monitoring Committee comprising of the Respondent No. 6's officials and experts to monitor the impacts on environment during construction as well as during operations.
- r. Special lighting system has been provided to ensure that the birds and aquatic life which are sensitive to light are not affected in any manner whatsoever. Warm white coloured 3000 K. temperature lights has been provided in the temporary jetty. These eco-friendly lights have been used specially because the Project is passing through Sewri mudflats which is an ecologically sensitive area. All necessary steps for the purpose of protection of all ecologically sensitive areas whether it is mangroves, mudflats or the bird and aquatic life have been taken in consultation with various authorities. These measures protect the environment and are meant for the purpose of ensuring that there is no serious damage caused to the ecologically sensitive areas. **[See Photographs regarding installation of special lighting system at Exhibit KK, Vol. III, page 589 of Affidavit of Respondent No. 6 dated 19 September 2020]**

- s. *Even after the construction is completed noise barriers are to be used along the length of the bridge passing through flamingo sites to cause minimum disturbance to the migratory birds and for the same purpose special lighting will be used on the bridge.”*

29. The project proponent has also filed an affidavit on 19.09.2020 undertaking to take all mitigation measures and to comply with all the environmental norms.

30. In view of the above, we are of the view that all requisite safeguards have been incorporated in the CRZ clearance. The mechanism for monitoring compliance of conditions of EC has been laid down in the impugned clearance as follows:-

- “11. Status of compliance to the various stipulated environmental conditions and environmental safeguards will be uploaded by the project proponent on its website.*
- 12. A copy of the clearance letter shall be sent by the proponent to concerned Panchayat, Zilla Parishad/Municipal Corporation, Urban Local Body and the Local NGO, if any, from whom suggestions/representations, if any, were received while processing the proposal. The clearance letter shall also be put on the website of the company by the proponent.*
- 13. The proponent shall upload the status of compliance of the stipulated EC conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB.*
- 14. The project proponent shall also submit six monthly reports on the status of compliance of the stipulated EC conditions Including results of monitored data (both in hard copies as well as by e-mail) to the respective Regional Office of MoEF&CC, the respective Zonal Office of CPCB and the SPCB*
- 15. The environmental statement for each financial year ending 31<sup>st</sup> March in Form-V as is mandated to be submitted by the project proponent to the concerned State Pollution Control Board as*

*prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance of EC conditions and shall also be sent to the respective Regional Offices of MoEFCC by e-mail.”*

The question is answered accordingly.

**Re IV. Whether interference is required with the impugned CRZ clearance?**

31. In view of answers to questions I to III, we are satisfied that no interference is called for with the impugned CRZ clearance.

Accordingly, the appeal is dismissed.

All pending applications will also stand disposed of.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

October 09, 2020  
Appeal No. 39/2020  
(Earlier Appeal No. 9/2016 (WZ))  
A