

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Appeal No. 14 of 2022 (SZ)

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**I.A. No. 54 of 2022, I.A. No.55 of 2022, I.A. No. 66 of 2022, I.A.
No. 68 of 2022 and I.A. No. 178 of 2022(SZ)**

(Through Video Conference)

IN THE MATTER OF

M. Yuvadeeban,

S/o Maragret Lawrence,
Aged about 26 years,
B2, Ramaniyam Marvel, Seshadripuram,
1st main road, Velacherry,
Chennai- 42.

...Appellant(s)

Versus

1. Department of Fisheries,

Government of Tamil Nadu,
Rep by its Executive Engineer,
Fishing Harbour project division,
Nandanam, Chennai- 600035.

2. The Tamil Nadu State Environment Impact Assessment Authority,

Rep by its Member Secretary,
3rd Floor, Panagal Maligai,
No. 1, Jeenis Maligai, Saidapet,
Chennai- 15

3. Principal Chief Conservator of Forests and Chief Wildlife Warden,

Forest Department
Government of Tamil Nadu.

4. Union of India,

Rep by its Secretary to Government,
Ministry of Environment, Forests and Climate Change,
Paryavaran Bhavan, Jorbagh Road,
New Delhi- 110003.

5. Tamil Nadu Coastal Zone Management Authority,

Rep by its Member Secretary,
Department of Environment,
No. 1, Jeenis Road, Panagal Building,
Ground Floor, Saidapet,
Chennai- 15

...Respondent(s)

For Applicant(s):

Mr. A. Yogeshwaran.

For Respondent(s):

Dr. D. Shanmuganathan for R5
Mr. S. Silambabnan, Learned AAG for R1
Mr. Harsharaj for R3.

Mr. G. M. Syed Nurullah Sheriff for R2 and R4.

Mr. G. Vignesh for Mr. Arun M. For I.A. No. 66/2022.

Mr. Kamlesh Kannan for I.A. No. 68/2022

Mr. Amogh Sinha and Mr. Satheesh

Parasaran, Sr. Adv. Along with Ms.

Gayathri for I.A. No. 178/2022.

Judgment Reserved on: 16th March, 2023.

Judgment Pronounced on: 24th August, 2023.

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGMENT

Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member

1. The appellant who is a naturalist and an activist and has written books on topics at intersection of ecology, education and humans has filed this appeal challenging the Environmental Clearance issued by the 2nd respondent, Tamil Nadu SEIAA on 03.11.2021 in favour of the 1st respondent, Department of Fisheries (Fishing harbour project division) in the process of protecting the fragile ecology of Kaluveli wet lands. The Environmental Clearance is issued for the establishment of fishing harbour in Kaluveli water in Sy. No. 49/2 of Alamparaikuppam Village, Chengalpattu District and Sy. No. 23/I, 23/II of Azhagankuppam Village, Villupuram District in the State of Tamil Nadu.
2. The impugned Environmental Clearance permits the establishment of two fishing harbours one in Alamparaikuppam and other in Azhagankuppam with a capacity of 12,000 tonnes per annum each, totalling 24,000 per annum. The location of the proposed harbour is inside the estuary. The clearance has been issued in

complete violation of the EIA Notification, 2006, CRZ Notification, 2011, Wetlands (Conservation and Management) Rules, 2017, the Biological Diversity Act, 2002 without considering the impact on biodiversity of the region, impact on the Kaluveli waters, local life and livelihood and the precautionary principle, principle of intergenerational equity and principle of ecocentrism.

3. It is alleged that the SEIAA has issued the Environmental Clearance without application of mind by just accepting the statement made by the project proponent. The Environmental Clearance is attacked on the following grounds:

- (i) The entire stretch is highly eroding where harbours and such infrastructure are prohibited.
- (ii) The impact on biodiversity of Kaluveli water and Olive Ridley nesting has been suppressed by the project proponent.
- (iii) The EIA report has not provided the actual truth but had given only the outdated information amounting to suppression of material fact.
- (iv) The public hearing proceedings are also vitiated because the final EIA is entirely different from the draft EIA report and the public hearing was conducted only based on the draft EIA report.

The authorities, namely, SEAC and SEIAA have not noticed the suppressions or the shortcomings in the documents presented for clearance and without proper verification and without providing valid reasons for recommending or granting the impugned clearance, the same has been issued.

4. Based on the above grounds, the appellant has sought for quashing of the Environmental Clearance dated 03.11.2021 in favour of the 1st respondent. The appellant also has submitted that the EIA report itself should have been rejected because the same is not in conformity with the TOR issued. The EIA report also had not assessed the impact of the proposed project on the biodiversity and the ecology of the Kaluveli wetlands and estuary. When there is a proposal for construction of training walls and permanent opening of the estuary mouth, the EIA report ought to have assessed the impact of the construction of the training walls. The appellant also had expressed his grievance that public hearing proceedings are vitiated for the reason that it failed to provide opportunity to all the persons to participate and express their grievances. The appellant's main concern is that the project sites are turtle nesting ground, sandy marsh, have mangroves and they are to be classified as CRZ-IA under the CRZ Notification, 2011. Yet another ground raised was that even without obtaining the mandatory 'Consent to Establish' from the Pollution Control Board, the 1st respondent has commenced the construction of roads on the beach by destroying the sand dunes.

5. **The Executive Engineer, Fishing Harbour Division has filed counter on behalf of the 1st respondent.** It is stated that there are 44 fishermen villages along the coastal boundary of 87.2 km in Chengalpattu District having 10 mechanised fishing vessels and about 2200 country craft/outboard motorised boat and about 90 villages along the boundary of 40.70 km in Villupuram having 18 mechanised fishing vessel and 130 OBMs. As there is no fishing

harbour in these districts more than 20 mechanised fishing vessels are being operated from near stream about 300 to 400 m from the seashore and the fish catches are being transported through OBMs to the sea shore for sale causing lot of inconvenience to the fishermen and spending additional manpower and fuel cost. Besides during cyclone season, the MFVs are to be shifted to either Chennai Kasimedu fishing harbour or Cuddalore fishing harbour for safe berthing where already fishermen there are facing congestion, besides the local issues.

6. The Department has further stated that the absence of fishing harbour in Chengalpattu and Villupuram has suppressed the developments in fishery activities leading to unemployment among fishermen community. There are numerous representations given by these fishermen for the construction of the fishing harbour in Kaluveli waters for more than 02 decades which prompted the Chief Minister to make an announcement that the feasibility studies will be conducted for construction of the harbour in Kaluveli waters at Azhagankuppam Village in Villupuram District and Alamparaikuppam Village in Chengalpattu District.

7. Pursuant to the same, Tamil Nadu Government had accorded administrative sanction vide GO D. No. 113, Animal Husbandry, Dairying and Fisheries Department dated 06.06.2018 to carry out the techno-feasibility studies of the project. The DPR was prepared based on the primary and secondary data of tides within the cyclones, soil investigation etc. Numerical analysis on shoreline changes due to construction of the training wall was also conducted and as per the TOR the oil spill management was also

carried out through numerical modelling analysis. EIA studies were also carried out by collecting the baseline field survey from 18.10.2019 to 11.11.2019 and 19.07.2020 to 09.10.2020. It is also stated that the impact of biodiversity on Kaluveli water and sea during pre and post construction phase have been assessed and the environment management as well as monitoring plan have been arrived to mitigate the impact and also redeveloped and maintain the biodiversity have been given in the EIA report. It is reiterated that care is taken to maintain the biodiversity of the locality.

8. The National Centre for Sustainable Coastal Management (NCSCM), MoEF&CC has prepared the coastal regulation zone map in accordance with the approved CZMA, Tamil Nadu showing all the coastal regulation zone categories and their ecological sensitiveness such mangroves, sand dunes etc. The NCSCM has reported that the site proposed for construction of the fishing harbour falls within the permissible activities under the CRZ norms and the proposed sites are not environmentally and ecologically sensitive as per the CRZ Notification, 2011. The District Coastal Zone Management Authority (DCZMA) of Chengalpattu and Villupuram also scrutinised the applications and recommended with permissions to the TNCZMA on 27.02.2020. After obtaining the CRZ clearance an application was made to the Tamil Nadu SEIAA on 03.07.2020 for grant of Environmental Clearance. A presentation was made to the SEAC on 05.09.2020 after which the SEAC had issued the TOR directing the 1st respondent to prepare a comprehensive EIA, public hearing and conducting additional studies such as turtle nesting, mangrove afforestation and Kaluveli

wet lands through academic institutions like Annamalai University, Advance Centre for Marine Biology.

9. The EIA report has been prepared after conducting public hearing meetings on 12.01.2021 which was attended by the public from the local area and NGOs from AP who had welcomed the project and extended their support. It is further stated that online application was submitted to Tamil Nadu, SEIAA on 30.03.2021 for issuance of Environmental Clearance and they made a presentation on 06.07.2021 before the SEAC during its 207th meeting. The SEAC had accepted the presentation and recommended to Tamil Nadu, SEIAA for issuance of Environmental Clearance in its 224th meeting on 22.09.2021. Based on the said recommendations, Environmental Clearance was granted on 03.11.2021. It is also stated that 'Consent to Establish' has been applied with the Kancheepuram and Villipuram District Environmental Engineers online on 16.03.2022 and 17.03.2022.
10. The 1st respondent report has further submitted that Form-I and Form-II have been submitted along with the EIA report for getting the Environmental Clearance which was scrutinised by the DCZMA, TNCZMA and Tamil Nadu, SEIAA and after thorough scrutiny the Environmental Clearance was issued. The EIA study had reported on the impact on ecology, mangrove management and management on the turtle movement etc. The EIA report has adequate information data, analysis and findings, the pros and cons and management plan on diversity etc., and hence allegations of the appellant that the studies were not conducted and

Environmental Clearance has been issued without adverting to the same were all denied.

11. The 1st respondent has further submitted that NCSCM has reported that the site proposed for construction of fishing harbour falls within the permissible activities under CRZ norms and the proposed sites are not ecologically and environmentally sensitive as per the CRZ Notification, 2011. It is stated that there is no sea grass beds, mudflats, sand dunes and salt marshes in the proposed harbour site.
12. The 1st respondent has stated that as directed by SEAC in its TOR the turtle nesting near the project site was studied by the Advanced Centre for Marine Biology, Annamalai University and found that the turtle nesting activities in the area is very sporadic and meagre in number compared to other coasts and suggested to mount the low pressure solar lights for promoting turtle nesting.
13. Regarding the training walls at barmouth where the opening of the mouth takes place during monsoon period, it is stated that the barmouth opening shifts on either side from year to year and also the width of the mouth opening is based on the quantum of surface run off. The barmouth opening takes place at any point in a stretch of about 800m where the turtle nesting is not at all taking place due to continuous exchange of waters during the high and low tides. The data of the rainfall at surface runoff also was collected by the Water Resource Department to ascertain the quantum of runoff from Kaluveli. The 1st respondent also has produced the satellite imagery to show the opening of the

barmouth during various seasons. The 1st respondent has stated that the construction of the training wall will only develop considerable quantum of breach on southern part i.e., in Ahagankuppam Village which will help at large to develop turtle nesting grounds in future.

14. It is further stated that the proposed fishing harbour at Ahagankuppam Village is having the least aerial distance of about 18m from the Kaluveli bird sanctuary declared by the Government of Tamil Nadu on 06.12.2021. Hence it was contended that the construction of fishing harbour at Kaluveli water will certainly help the birds sanctuary by all means and will not cause any impact.

15. Regarding the mangroves, it is stated that based on the studies there was a proposal to carry out mangrove afforestation in about 09 ha., as suggested by the Annamalai University using native and non-native species which would improve the biodiversity of the Kaluveli waters. In view of the above response, it was prayed that the appeal has to be dismissed.

16. In respect of the counter filed by the 1st respondent, the appellant had filed his rejoinder stating that the Kaluveli lake, creek and Yedayanthittu estuary are not separate entities and that they are a single wetland system i.e. impacted by any change in hydrology, pollution etc., and has a unique biodiversity which is extremely vulnerable to increase motorised fishing traffic, coastal erosion and other impacts. He has also assailed the report filed by the NCSCM. In the rejoinder, it is denied that the turtle nesting is only sporadic

though the Annamalai University has confirmed the turtle nesting on this shoreline.

17. **In the 2nd counter filed by the 1st respondent**, it is stated that the ecological sensitivity of the entire wetland system including the Yedayanthittu estuary was assessed by the EIA consulting organisation and also was recognised by the Forest Department for Kaluveli wet land for its ecological significance. The counter further mentioned about the influence of south-west and north-east monsoons. As per the India Meteorological Department, the State of Tamil Nadu benefits from the north-east monsoon or retreating south-west monsoon season which sets during mid October and ends until end of December. The appellant has understood the retreating south-west monsoon as south west monsoon. The baseline data collected by the EIA consultants between 19.07.2020 and 09.10.2020 as acknowledged by the appellant is in compliance with the CPCB norms to undertake baseline studies during non-monsoon season.

18. As the estuary mouth is dynamic in nature and shoreline changes in estuary regions are completely dependent on the flooding from inland in the monsoon period the training walls proposed will have impact on the northern side but as shore protection measure the project proponent has proposed to draw in fields, the dredged material from estuary mouth will be dispersed along the groin field and the dispersed sediments will be held between the groin field which will be later transported within the sediment cell which would nullify the erosion impact on the northern part of the coast line. According to the 1st respondent, the beach nourishment with

the groin field will give better results as the sediments are trapped between the groins and the groin with beach nourishment will be a technically sound option in the present case.

19. **In the 3rd report filed by the 1st respondent**, it is stated that for the construction of training walls (rock and concrete structures that are built at the mouth of rivers to ensure a safe passage for watercraft) in Ahagankuppam Village, the coastal length to be used is 150m. Due to construction of fishing harbour in Kaluveli back waters, the boats from the potential nesting sites will be shifted to the wharf for berthing, resulting in a length of 1.48 km on the seashore of the potential nesting site which will be made available for the Olive Ridley turtles. It is the contention of the 1st respondent that the construction of the fishing harbour will only improve the increase in the Olive Ridley turtles nesting area.
20. **Yet another report was filed by the 1st respondent on 12.12.2022** wherein it is stated that the barmouth opening of Kaluveli estuary is historically shifted 500m from the south to north and vice-versa due to tidal influences and rain flow. Based on the field visits and studies by reputed institutions like Ocean Engineering of IIT Madras the proposed training wall i.e. artificial embankment can be shifted within 500m range of barmouth opening.
21. **The 2nd respondent, Member Secretary of SEIAA** in its report states that the fishing harbour project division had obtained CRZ clearance from the Tamil Nadu Coastal Zone Management Authority for the development of the fishing harbour at Kaluveli

waters at Alamparaikuppam village and Azhagankuppam village on 15.06.2020 subject to obtaining the Environmental Clearance. Based on the CRZ clearance, the project proponent had applied for the Environmental Clearance and a detailed EIA study was directed to be conducted including the standard TOR along with the additional TOR. The public hearing was also conducted by the Tamil Nadu Pollution Control Board after due deliberations and after it was ensured that the project proponent has complied with all the TOR conditions, the SEAC had recommended the proposal for grant of issuance of Environmental Clearance subject to the specific conditions and in addition to the normal conditions stipulated by MoEF&CC. As per the MoEF&CC, Office memorandum dated 30.09.2020 and 20.10.2020 the project proponent shall furnish the details of EMP mentioning all the CRZ activities for 7.66 crores. The SEIAA had not touched upon the grounds raised by the appellant particularly on the Olive Ridley turtles nesting and the impact on the Kaluveli waters and the local lives and the biodiversity.

22. **The Principal Chief Conservator of Forests (PCCF), who is the 3rd respondent** had furnished a status report dated 22.02.2022 in response of the queries raised by this Tribunal. The report states that no new nesting sites were cited, some old nesting sites in the sand dunes area which were located outside the project implementing area were noticed and it is already marked as CRZ-IA category in the CRZ map. The said location is 500m away from the project site. The project implementing area is not falling within CRZ IA and not an Olive Ridley turtles nesting area according to the PCCF. When the remarks of the Forest

Department was specifically sought for with reference to the Olive Ridley turtles nesting in the project area, it was stated that the proposed jetty site at Azhagankuppam Village of Villupuram is located on the southern bank of the creek which connects the Yedayanthittu estuary in the Bay of Bengal and it is not located in the Olive Ridley turtles site area. However, the proposed artificial digging trench and training wall for the proposed harbour by the fishing department is located in the nesting site of the Olive Ridley turtles.

23. **The 5th respondent which is the Tamil Nadu State Coastal Zone Management Authority** who was impleaded subsequently has filed a reply affidavit. The 5th respondent has given the particulars about the fishing harbour project which is proposing to develop fishing harbours along with two training walls at Kaluveli waters and Alamparaikuppam and Azhagankuppam. The said fishing harbour would handle annual fish catch of 12000 MTPA tonnes each and to accommodate such quantity it is also proposed to develop infrastructure facilities such as auction hall, net mending shed, gear room, power room, sloping yard, Administration building, fresh water sump, electrical control room and electrical generation room, water supply and drainage, overhead tank, STP, Solid waste collection area, parking area, security room, toilet blocks, ice plant and cold storage rooms etc. The 5th respondent states that the project falls in CRZ IB, CRZ II, CRZ IV(A) and CRZ IV(B) and the DCZMA, Villupuram has recommended the proposal to the State CZMA subject to certain conditions.

24. As per the CRZ Notification, 2011 clearance shall be given for any activity within the CRZ only if it requires water front and foreshore facilities. Further the construction of the harbour is permissible activity and the said activity requires clearance from SEIAA as the handling capacity of the fishing harbour is more than 10,000 MT per annum. The Tamil Nadu CZMA can only make a recommendation and cannot give clearance and the clearance should be given only by SEIAA.

25. After the appeal was filed a Joint Committee was appointed by this Tribunal to verify whether the disputed area falls within the CRZ-IA and whether the area is notified as Olive Ridley turtle nesting site. The Joint Committee was directed to find out whether the project will have any impact on the Kaluveli bird sanctuary and will impact the biological diversity including active mudflats, sea grass beds sand dunes salt marshes etc.

26. The issue in the appeal involves establishment of two fishing harbours of capacity 24000 MTPA one on each bank of Azhagankuppam Village of Villupuram District and Alamparaikuppam Village of Chengalpattu District with two training walls of length 600m on the southern side and 400m on the northern side. The impugned Environmental Clearance dated 12.11.2021 issued under B1 category for the project activity scheduled in 7(e) of the EIA Notification, 206 for ports harbours, breakwaters and dredging. The Environmental Clearance is granted by the SEIAA and also under the CRZ notification based on the recommendation of the Tamil Nadu CZMA. Therefore, the clearances for the ports, harbours should be granted by both Tamil

Nadu CZMA and State SEIAA. The Appeal has been filed by the appellant on various grounds including the siting of the harbour.

27. The DCZMA, Villupuram and also the DCZMA, Chengalpattu have recommended for clearance on 13.02.2020 and 24.02.2020 respectively. Subsequently, the Tamil Nadu CZMA also resolved to recommend the project for clearance on 06.06.2020. Accordingly on 15.06.2020 the CZMA had recommended clearances. It would be worthwhile to refer to the proceedings of the Member Secretary, Tamil Nadu CZMA dated 15.06.2020. The clearance specifically states that fishing harbours has been proposed to handle an annual fish catch of 12,000 tonnes. To accommodate the said quantity, it is proposed to develop other infrastructure facilities such as auction hall, net mending shed, gear room, power room, sloping yard, Administration building, fresh water sump, electrical control room and electrical generation room, water supply and drainage, overhead tank of capacity of 50,000 ltrs., 15 KLD capacity Sewage Treatment Plant, Solid waste collection area, parking area, security room, toilet blocks, ice plant and cold storage rooms, two lane internal roads of 1.5 km length with walkway on either side and compound wall around the periphery etc., which are in-situ to the harbour facilities. Water front infrastructure facilities such as diaphragm wall, training wall, slipway, navigation channel with the capital dredging of about 0.4m cu.m of dredge sediment, navigation basin to maintain a water depth of 2.5 from CB of berthing and safe navigation of fishing vessels are proposed as part of the developments.

28. The project proponent also is to construct two training walls on the northern and southern side of the channel with a length of 400m and 600m each. In both the harbours a diaphragm wall (a rigid reinforced concrete wall) of length 550m has been proposed, of which 300 m of wall will be used to dock mechanised boats and 250m motorised boat. The proposed project falls in CRZ-IB, CRZ-II, CRZ-4A and CRZ-4B and the proposed project cost is Rs.235 crores.

29. The Tamil Nadu CZMA refers to the recommendation of the project by the Villupuram, DCZMA dated 13.02.2020 issued subject to certain conditions. The Chengalpattu District, CZMA also has decided to recommend the project on 24.02.2020 on the same conditions. The proceedings of the Tamil Nadu CZMA further states that an Original Application no. 04 of 2013, (O. Fernandes vs. Union of India) is pending before the National Green Tribunal (SZ) wherein instruction was given to prepare a comprehensive shoreline protection management plan/scheme for the entire coast of Tamil Nadu especially with reference to erection of groynes, sea walls, training walls etc. Accordingly, Tamil Nadu CZMA also prepared a comprehensive shoreline protection management plan by engaging IIT Madras and the copies of the said plan has been submitted to the MoEF&CC and also to the National Green Tribunal for approval which is awaited. In the above referred Original Application this Tribunal had on 04.09.2015 specifically ordered that PWD or any other agency shall not proceed with any work either by putting up of sea wall or groyne until further orders from the Tribunal.

30. As per clause 41(a) of the CRZ Notification, 2011 a clearance can be given for any activity within the CRZ only if it requires water front and foreshore facilities. Though, the construction of harbour is permissible activity under clause 41(f) of the CRZ Notification, 2011 the said activity requires clearances from SEIAA as per Clause 4(2)(ii)(c) of the CRZ Notification, 2011 as the handling capacity of the fishing harbour is more than 10,000 TPA.

31. The proposal was circulated to the members of the Tamil Nadu, CZMA and it was resolved to grant the clearance for the project under 4(i)(a) and 4(i)(f) of the CRZ Notification, 2011 subject to the conditions prescribed therein. One of the conditions is that the activity should not have any adverse impact on the marine organisms. The impact on the corals, marine organisms, turtle nesting etc., due to the above constructions, in long run, should be evaluated and monitored through a panel of experts, in which ecologists should be included. The condition (k) is that "in application no. 4 of 2013 in the matter of O. Fernandes vs. Union of India pending before the National Green Tribunal, (SZ) Chennai has issued orders on 04.09.2015 that the *PWD or any other agency shall not proceed with any work either by putting up sea wall or groyne until further orders from the Tribunal. Hence shore protection work on the coast of Tamil Nadu should be carried out as per the final orders of the Tribunal in the above said application*". Finally it mandated that the Environmental Clearance should be obtained from State SEIAA. It is not stated whether the comprehensive shoreline protection management plan prepared by the Tamil Nadu CZMA was approved by MoEF&CC.

32. As cleared by the Tamil Nadu CZMA the proposed project falls under CRZ-IB, CRZ-II, CRZ-IV(A) and CRZ-IV(B). Whether the above referred zones are prohibited area and the said project can be sited there? In this regard a useful reference can be made to Clause 3(viii) of the CRZ Notification, 2011 which reads as follows:

3. Prohibited activities within CRZ:- The following are declared as prohibited activities:

1.....

2.....

3(viii) Port and harbour projects in high eroding stretches of the coast, except those projects classified as strategic and defence related in terms of EIA notification, 2006 identified by MoEF based on scientific studies and in consultation with the State Government or the Union Territory Administration."

33. CRZ-IA are given in Clause 7(1)(A) of the CRZ Regulation, 2011 which classifies the ecologically sensitive and the geomorphological features which play role in the maintaining of the integrity of the coast. The relevant entry for the present case are mangroves, mudflats, which are biologically active, salt marshes and turtle nesting grounds, sea grass beds, area or structures of archaeological importance and heritage sites.

34. The Joint Committee report dated 08.04.2022 has observed that the project is being executed in the specified area as mentioned in the Environmental Clearance and as per the project level, CRZ map prepared based on the approved CZMAP map of Tamil Nadu, CRZ Notification, 2011 by the NCSCM for the purpose of getting Environmental Clearance to this project and noticed that the project area is not falling in CRZ-IA category. The Joint Committee has stated that the project implementing area is not falling in CRZ-IA and it is not a Olive Ridley Turtle nesting area as observed by the Joint Committee during the visit. However, it is stated that

some old nesting sites in sand dunes area which are located outside the project implementing area and is already marked as CRZ-I category in the CRZ map which is about 500m away from the project site. The Joint Committee also noticed in Alamparaikuppam mangroves plants but had reported that the density may not be enough for classifying an area as CRZ-IA category. However, at Azhagankuppam some dense mangrove plants were observed by the Committee and the Committee also noticed that these mangrove areas are already classified as CRZ-IA category. Here also, it is stated that no damage would be caused to these mangroves since it is not falling in the project implementing area.

35. The behaviour of the creek mouth is also compared across different months using satellite imagery taken from Google earth. In general the mouth remains open during October to March and close during the remaining months. The fresh water flow during the monsoon season from October to December helps in keeping the mouth open, the shoreline devoid of any coastal structures presently which implies that any behaviour is due to natural phenomena. The Joint Committee also observed that there are no active mudflats, seagrass beds, sand dunes and salt marshes at the proposed construction site. However, sand dunes and mangroves having area greater than 1,000sqm with buffer zone are seen outside the project implementing area which is marked as CRZ-IA category in the CRZ map. No damages were made to these sand dunes and mudflats by the project proponent at present.

36. The Tamil Nadu CZMA also stated that clearance shall be given for any activity within the CRZ only if it requires water front and foreshore facilities. As the construction of a harbour is a permissible activity as per Clause 4(i)(f) of the said notification, the clearance was granted which is subject to further clearance from Tamil Nadu, SEIAA. The requirement of clearance from SEIAA is mandatory as it exceeds 10,000 MT per annum. The SEIAA, who is the 2nd respondent also had not examined independently the clearance granted by the Tamil Nadu CZMA and has just proceeded by examining the other aspects excepting the coastal zone aspects.

37. Even as per the Joint Committee report mangroves are found in Azhagankuppam and Alamparaikuppam, and the existing sand dunes should not be disturbed. There are also old turtle nesting sites at sand dunes area found by the Joint Committee. Besides the area is between low tide line and high tide line. When it is evident that there were turtle nesting, sea grass, sand dunes were found and also mangroves which are dense in Azhagankuppam, the CZMA should have examined it in detail before granting clearance under CZMA.

38. Clause 8(1) (2) of the CRZ Regulation, 2011 provides the list of activities that are permissible in areas which are not ecologically sensitive. In clause 8(1)(2)(b) jetties are permitted, however, necessary safety measure will be incorporated while permitting the same to be operated. But in Clause 8(1)(1) though the exemption are granted for the permitted activities. Ports and harbour are not permitted activities in the areas which are ecologically sensitive.

Hence the setting for the project itself is impermissible under the CRZ Regulation, 2011.

Turtle Nesting grounds

39. The Joint Committee in its report has stated that when the Committee visited it had not seen Olive Ridley turtle nesting area in the proposed project sites. However noticed some old nesting sites at sand dunes area which are located outside the project implementing area and is already marked as CRZ-IA category in the CRZ map which is about 500m away from the project site.
40. The 5th respondent, who is the Tamil Nadu CZMA has not stated anything about this Olive Ridley turtle nesting zone and has recommended and issued clearance under CRZ regulation based on the recommendation from the DCZMA authorities of Villupuram and Chengalpattu.
41. However, the appellant specifically contended that the sea shore on the Alamparaikuppam and Azhangankuppam where the proposal was cleared by the Environmental Clearance are classified as Olive Ridley turtle nesting grounds which are protected under the CRZ notification. It is specifically pointed out the 1st respondent had admitted the presence of the Olive Ridley turtles in the Form-II. The Annamalai University report has stated that the Forest Department of the State Government maintains the data regarding the turtle nesting along the coast. It is stated that there is sporadic nesting is found in this region. There is always a threat from the domestic and wild animals to the eggs and the hatchlings

in the nesting sites as dead carcasses were observed during the survey. There is also 70 to 80 cases of incidental mortality of mature turtles happening every year in this region as they get entangled in the gill and trawl nets operated in this region. The nesting activities in the area surrounding the proposed site are sporadic when compared to Gahimatha coast of Orissa where the intensity is high.

42. The PCCF was also directed to file a report on the Olive Ridley turtle nesting in the proposed project area. The PCCF has categorically stated that the proposed fishing jetty site at Azhagankuppam Village of Villupuram District is located on the southern bank of the Creek which connects the Yedayanthittu and Estuary in the Bay of Bengal and it is not located in the Olive Ridley turtle nesting site area. However, the proposed artificial digging trench and retaining wall for the proposed harbour by the Fisheries Department is located in the nesting site of Olive Ridley sea turtle.

43. While furnishing the further details the PCCF has stated that during 2021-2022 at the shore of Alagankuppam Village, 33 numbers of nests have been identified and 3717 numbers of eggs have been collected and translocated to hatcheries. The status report filed on 25.01.2023 by the PCCF, it is reported that Alambaraikuppam, Thandumari Amman Koil, Velambur are the places where training wall of fishing harbour is proposed. Turtle nesting is common along the coast of Chengalpattu District. Thus, suitable mitigation measures should be taken up by the Fisheries Department in consultation with the Forest Department and expert organisation in

turtle conservation and coastal conservation to minimise impact of the project on turtle nesting and other marine wildlife. The Fisheries Department should also implement mitigation plan including mangrove restoration activities at Alamparaikuppam to strengthen ecological resistance. So from the above report of the PCCF it is also evident that turtle nesting is significant and cannot be considered sporadic.

Sea grass bed

44. Sea grass bed are also protected by the CRZ-IA as per the clause 7(1)(a). Sea grass are one of the most valuable and bio-diverse habitat which provide multiple benefits to the Environment. Sea grass beds are the meadows which help in climate change by absorbing huge amount of carbon. The sea grass beds reduce the indirect effect of coastal erosion through their capacity to stabilise and maintain sediments on the sea grass. They also improve the water clarity and quality by capturing organic material, sediment and nutrients that flow in the water through meadows.

45. The Joint Committee in this regard has stated that there are no sea grass beds in the project proposed area. The 1st respondent had relied on the Annamalai University report on ecology and biodiversity study which indicates that only sporadic occurrence of sea grass at few patches of the creek which are not comparable with that of the large grass mats observed near Tuticorin area. It has further stated that the propulsion used by the fishing boats will be small when compared with large vessels operated in ports such as 05 to 10 MW and hence the net mechanical turbulence due to

operation of the fishing harbours on the marine ecosystem especially sea grass will be less significant.

46. Learned Counsel appearing for the appellant would point out that the existence of the sea grass is not denied by the respondents. Though they admit that are seen in patches and not in beds. Had the respondent not dumped and reclaimed that area, even that area will be covered by sea grass bed. Therefore, it was contended that the sea grass bed are also entitled to get protection under law and the construction of the harbour or dredging will destroy the sea grass beds and the benefits of the sea grass bed will be denied to the marine mechanism.

Mangroves

47. Mangroves are also protected under CRZ-IA as they are the best form of coastal bio-shield. The EIA report also admits that in the proposed site at Alamparaikuppam there is scattered mangrove vegetation. Merely because they are scattered, it cannot be destroyed as if they are left undisturbed, they will thrive and grow. The EIA report also states that the proposed site at Alamparaikuppam in habitats scattered mangrove vegetation of 01m in height and the impact is high. The clearing of the site in pre-construction phase would lead to loss of mangroves. The mangroves present a rich and diverse living resource and are valuable both to the economy and protection of the coastal environment. The mangroves vegetation in the core areas of the buffer zone of the present project site deteriorates due to anthropologic impacts, possible threats and future development

activities. Though it is stated that to maintain the genetic diversity in the ecosystem it is proposed to plant multiple species from other places such practice is discouraged by the biologists because of the well documented risk of introducing harmful species not native to the site. Once it is found that there are mangroves, automatically it entitles the site to protection as CRZ-IA. Therefore, it would not be proper for the respondents to either destroy them or have a management plan for the same.

Kaluveli Wetland

48. As per the wetland atlas under the National Wetland Inventory and Assessment Programme, the Kaluveli Lake has been mapped. The entire area has been classified as inter-tidal mudflats. The appellant has stated that the Yedayanthittu Estuary, Uppamkali creek and kaluveli Lake together have been marked as wetland of international importance by the MoEF&CC. The said Kaluveli wetland has considerable presence of oyster reefs which are very important ecosystem function filtering 100s of litre of water per day. It is surprising that none of these aspects were mentioned in the EIA study and it is also silent about the same.

EIA Study

49. Learned Counsel appearing for the appellant would submit that a comprehensive EIA study should have been done based on three seasons data as mandated by law. Attention was invited to Clause 4.2(i)(c) of the CRZ Notification which prescribes the procedure for clearance of permissible activities. Sub-Clause (c) reads "comprehensive EIA with cumulative studies for project in the

stretches classified as low and medium eroding by the MoEF&CC based on scientific studies and in consultation with the State Governments and Union Territory Administration”.

50. There is a distinction between the comprehensive and a detailed study which means that the study should be based on minimum of three season baseline data. In the given case, no such comprehensive study was prepared and the data collected is also inadequate for the said purpose. The Terms of Reference does not say only one season of data collection is sufficient for comprehensive EIA report. The comprehensive study would mean that study of the existing environmental baseline especially with regard to the biodiversity and ecology which differs from season to season. Considering the biodiversity of the area, the migratory birds etc., the SEAC should have asked for a comprehensive report before recommending issuance of the Environmental Clearance. The EIA report of June, 2020 goes to show that the data collection was between 18.10.2019 and 11.11.2019. The second EIA report was based on the data line collected during 19.07.2020 to 09.10.2020. A comprehensive report means the impact on biodiversity, ecology both marine and estuary and terrestrial. In the absence of the EIA study as mandated, the SEIAA should not have granted the clearance.

S.O.3194 (E) dated 14.07.2022 of the MoEF&CC:

51. The above S.O. was issued taking into account the livelihood and security of the fishermen involved at fishing handling ports and harbours and the less pollution potential of these ports and harbours compared to others and that such exclusive ports cater to

the small fishermen whose boats have lesser pollution potential had thought it fit to increase the exemption threshold for fish handling capacity of ports and harbors which exclusively handle fishes from 10,000 TPA to 30,000 TPA under Item 7 (c) of the schedule in EIA Notification, 2006.

52. The learned counsel for the 1st Respondent submitted that the present project is of two harbours with each fish handling capacity of 12,000 TPA with a total capacity of 24,000 TPA. Now that the said project falls below the threshold limit of 30,000 TPA, the entire exercise of adjudicating the validity of the EC has become academic as on date, since the project is yet to commence.

53. In this regard, it is to be seen that the impugned EC is for the fishing harbours as mandated by law both under the EIA Notification as well as CRZ Notification. The above referred S.O. amends only the EIA Notification whereas, all harbours irrespective of the size require clearance under the CRZ Notification, for which, a comprehensive Environmental Impact Assessment is required.

54. Besides, the amendment dated 14.07.2022 is only prospective and by any stretch of imagination cannot be retrospective as delegated legislation is not retrospective. Unless it is specifically provided for the rules or regulations cannot operate retrospectively. The impugned EC was issued on 03.11.2021 and the work had commenced much before the issuance of the impugned amendment. It is at the instance of this Tribunal, the work was stopped at Azhagan Kuppam site where the reclamation work had already commenced. Therefore, the amendment which relates

only to the EIA Notification and the requirement under the CRZ Notification remains undisturbed.

55. The grounds that were raised by the appellant while challenging the EC are the presence of Olive Ridley Turtle nesting sites, mangroves, mudflats, sea grass bed, etc. which all would go to show that the entire stretch is eco-sensitive as defined in the CRZ Notification, 2011. Therefore, the above referred amendment would be of no help to the 1st Respondent.

Policy Decision of the Government:

56. The 1st Respondent who is the project proponent had stated that in response to the numerous representations to the Government for more than 25 years for the construction of a fishing harbor in Kaluveli Waters where they are operating the fishing boats, to protect their boats during cyclones and other calamities and also to develop the socio-economic status by developing the fishing activities, an announcement was made by the Hon'ble Chief Minister of Tamil Nadu that the feasibility studies will be conducted for the construction of fishing harbours in Kaluveli Waters at Azhagan Kuppam in Villupuram District and AlamparaiKuppam in Chengalpattu District on 30.08.2017.

57. Pursuant to the same, the Pre-Feasibility Report for development of the fishing harbor in Kaluveli Waters was prepared in December 2017 and the Government of Tamil Nadu vide G.O. (D) No.113 Animal Husbandry, Dairying and Fisheries (FS-1) Department dated 06.06.2018 accorded sanction for a sum of Rs.1 Crore for a Detailed Project Report (DPR) for the development of fishing

harbours in Kaluveli Waters. Pursuant to the DPR, vide G.O. (Ms) No.28 Animal Husbandry, Dairying and Fisheries (FS-1) Department dated 06.02.2020, an administrative sanction for a sum of Rs.235 Crores for the construction of fishing harbours in Azhagan Kuppam and Alamparai Kuppam was sanctioned.

58. It is a settled principle that the policy decisions of the States are not to be disturbed or interfered with unless they are found to be grossly arbitrary or irrational. Even the Constitution of India is based on the basic principle of separation of powers. The three wings of the States viz., Legislature, Executive and Judiciary have the power to act in their own sphere of activity. Making policies and executing them comes within the sphere of activities of the executive and it is not within the power of the Judiciary.

59. On the other hand, the executive has experts, professionals, administrators, advisors, etc. in the given field and has the expertise to make the policies after taking into consideration all aspects of the matter. Therefore, the scope of judicial review when examining a policy of the government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. So, it is only the legality of the policy and not the wisdom and honest of the policy which is sought to be reviewed.

60. The intention of the Government to provide a harbour is not faulted as malafide or unreasonable or arbitrary. It is only pointed out by the appellant that it violates the CRZ Notification, 2011. The

construction of twin harbours on the coastline would only impact the eco-sensitive zone which would become irretrievable even later if the executive wants to withdraw their policy. It is only in the interest of the damage being caused to the shoreline by the construction of the twin harbours, the appellant has moved this Tribunal to save the eco-sensitive zone.

61. It is also well settled that any judicial review is only against the decision making process and not the merits of the decision itself. In this case, as has been pointed out earlier, the shoreline management plan is yet to be prepared and till such time, the Public Works Department or any other agency was prohibited from putting up any construction on the coastline. When it is admitted that the shoreline management plan is not yet ready and approved by the MoEF&CC, the Government ought not to have proceeded with this project before doing the detailed study. If the power has been exercised on a non-consideration or non-application of mind to the relevant factors, the exercise of power will be regarded as manifestly erroneous and makes the entire process vitiated.

62. Besides, the Tamil Nadu State Coastal Zone Management Authority has specifically quoted the order of this Tribunal not to proceed with any work by putting up of seawall or groyne until further orders pending preparation of the shoreline management plan.

63. In its report dated 12.12.2022, the 1st respondent has stated that the barmouth opening of Kaluveli estuary is historically shifted 500m from south to north and vice-versa due to tidal influences and rainflow. Based on the field visit and studies by reputed

institutions like Ocean Engineering of IIT Madras, the proposed training wall can be shifted within 500m range of the barmouth opening. It is stated that as part of the mitigation for erosion control measures, it is proposed with series of 03 groynes in the north of northern training wall. The EIA report states that dredged material from the navigation channel between the two training wall will be deposited in the groyne field area. The material later will be transported within the sediment cell would nullify the erosion impacts on the northern part of the coastline. The periodical monitoring of shoreline change will be assessed by reputed shoreline experts from time to time and beach nourishment will be done by the Fisheries Department.

64. The said report also stated that the stretch between Mamallapuram and Puducherry there is very low nesting site of Olive Ridley turtles. To ensure the protection of the Olive Ridley Turtles, during nesting and breeding season of the turtles the lighting in the harbour area will be strictly restricted with standard operating procedure norms with time limit required for laying of eggs from November to March.

65. The Forest Department in the past few years have never recorded GPS coordinates of the nesting sites and only for the year 2022 collected the GPS coordinates using the mobile GPS app. The Forest Department is not well equipped with GPS measuring tools and devices. They have also furnished the reports in support of their contentions by the forest ranger near the proposed training wall to state that they never collected eggs in the barmouth area and the proposed training wall.

66. The Learned AAG also has contended that in G.O Ms. No. 146 dated 27.09.2016, the Alamparaikuppam village was declared as turtle nesting site where fishing activities were prohibited up to 05 nautical miles during January to April. As per Clause 4.2(ii) which is a procedure for clearance for permissible activities, it is provided that the concerned CZMA shall examine the above documents in accordance with approved CZMP and in compliance with CRZ notification and make recommendations within period of 60 days from the date of receipt of the application for the projects attracting EIA Notification, 2006 and for projects attracting Para-2(iv) of CRZ Notification. Clause 4.2(i)(h)(iii) empowers MoEF&CC or SEIAA to consider such projects for clearance based on the recommendations of the concerned CZMA within a period of 60 days. It is claimed by the State that the harbours are exempted from the prohibited activities within the CRZ as per the CRZ Notification, 2016.

67. It is pointedly argued that even presuming that the training wall would fall within CRZ-IA, there is no blanket prohibition for making the development in the CRZ-IA and the facilities that are essential for activities permissible under CRZ-I cannot be stopped. It is beyond doubt that the training wall is an essential component of the project which is being constructed and without training wall the project cannot be commenced. So far the CRZ-IA is concerned, Clause 8 provides that the development or construction activity in different categories of CRZ shall be regulated by the concerned CZMA in accordance with the norms specified therein. New construction in CRZ-I is prohibited with the exemption clause. In

the areas between low tide line and high tide line which are not ecologically sensitive necessary safety measures will be incorporated while permitting the construction of roads, jetties etc.

68. The activities directly related to water front or directly leading foreshore facilities like ports and harbours, jetties are permissible constructions. However, it is the objection of the appellant that there is no comprehensive EIA study and that there is a violation of ToR. The appellant has made out a prima facie case to the extent that there exists mangroves, Olive Ridley turtle nesting zone, sea grass bed and sand dunes are present in the proposed project area which is also supported by the report of the PCCF. If only the comprehensive seashore protection management plan as directed by this Tribunal in the year 2015 was conducted in the year 2015 and the same was approved by the MoEF&CC or the EIA is conducted pursuant to the said shoreline management plan there would not be a challenge to the Environmental Clearance granted.

69. As referred supra, the proceedings of the Tamil Nadu, CZMA refers to the comprehensive shoreline protection management plan being prepared by engaging IIT Madras and the copies of the said plan have been submitted to MoEF&CC for approval. It is now stated that MoEF&CC has constituted an expert committee and the committee recommended the draft plan and circulated the same to the other coastal States. In the meantime, MoEF&CC constituted a sub-committee with the officials from the MoEF&CC and made the site inspection between on 7th and 9th of April, 2022 along with the CZMA of Tamil Nadu for approving the shoreline protection

management plan. The Committee had inspected the sites from Ennore to Puducherry border coast from 07.04.2022 to 09.04.2022.

70. In the meanwhile this Tribunal on 11.04.2022 had passed the following order:

“Shoreline Management Plan (SMP) shall be prepared as illustrated by NIOT for such erosion prone areas. Pending preparation/updation of such SMPs by the coastal States/UTs, no further hard structures for erosion control be raised or constructed.”

71. Hence, IIT Madras and the National Centre for Coastal Research (NCCR) were requested to send the proposal for preparing/ updating the Shoreline Management Plan and they have also submitted the proposal. The Expert Committee also scrutinized the proposal and submitted a report on 07.11.2022. While so, the Government had issued orders for preparing SMP through NCCR, vide G.O. (Ms.) No. 69 dated 29.03.2023. Based on the above G.O, Work Orders has already been issued to NCCR for preparation of SMP on 12.04.2023. Accordingly, it is now stated that the preparation of SMP is under progress.

72. In view of the above subsequent developments till the comprehensive shoreline protection management plan is approved and when this Tribunal has specifically prohibited or injuncted either the PWD or any other agencies not to proceed with any work either putting up sea wall or groyne until further orders from the Tribunal, the CZMA should not have granted approval.

73. It is contented by the Learned AAG that training wall which is the only component in the project which would come up on the coast

line, is sought to be put up in its current changed location in front of Alamparai fort where there is already a natural opening of the barmouth. Citing the fort which is dilapidated, it is contended that there could not be erosion as alleged by the appellant. It may not be right to say that the fort is still there but only the remnants are there as the fort has been washed away by the high tides.

74.A quick reference to the dates from which the project commenced would go to show that EIA assessment was done at a rapid pace. On 06.02.2020 the administrative sanction was issued and the DCZMA of Villupuram and Chengalpattu gave the recommendations on 13.02.2020 and 24.02.2020 respectively. On 15.06.2020, the Tamil Nadu CZMA recommends for clearance. None of these recommendation have taken note of the ecological sensitiveness and the geomorphological features which play a role in maintaining the integrity of the coast, namely, the mangroves, mudflats, turtle nesting grounds, sea grass beds etc.

75.The existence of the mangroves or the turtle nesting grounds were all not denied. Clause 4.2(i)(b) provides for rapid EIA report including marine and terrestrial component except for construction projects listed under Clause 4(c) and 4(d). 4(c) relates to housing schemes in CRZ as specified in paragraph 8 of this notification and Clause 4(d) states that Construction involving more than 20,000sq mts built-up area in CRZ-II shall be considered for approval in accordance with EIA notification, 2006. However, for projects less than 20,000sq mts built-up area shall be approved by the concerned State or Union territory Planning authorities in accordance with this notification after obtaining recommendations

from the concerned CZMA and prior recommendations of the concerned CZMA shall be essential for considering the grant of environmental clearance under EIA notification, 2006 or grant of approval by the relevant planning authority.

76. In this case, as per the Environmental Clearance for Alamparaikuppam, the construction of the infrastructure is 22,021 Sq.m. and for Azhagankuppam also 22,021.642 and all the development activities are happening in CRZ-IB and CRZ-II. Therefore, as per Clause 4.2(C) and 4.2(i)(c) a 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 the Union Territories Administration are to be conducted.

77. As noted supra, the area is very ecologically sensitive and has geomorphological features which play a vital role in maintaining the integrity of the coast. The presence of mangroves, mudflats, turtle nesting grounds, sea grass beds, etc., may have to be taken into account for classification of the CRZ-I area and if required the current CRZ-IB and CRZ-II areas may have to be revised. Admittedly, there are challenges to the CRZ notification, 2019 and also to CZMP draft map. Therefore, in the absence of comprehensive EIA studies done scientifically as stipulated in the notification and ensure that its recommendations covers all the issues in terms of eco-sensitive nature of the area in question and the likely loss of an estuarine eco-system and its impact, the Environmental Clearance granted has to be kept in abeyance. It is also relevant to mention that the Hon'ble High Court of Madras in

W.P No. 29928 of 2019 and 7019 of 2018 has already directed that the Tamil Nadu Government to revise its CZMP in view of the errors that have crept in to the approved CZMP in some areas.

I.A. Nos.66, 68 & 178 of 2022 (SZ):

78. This interlocutory application [I.A. No.66 of 2022 (SZ)] was filed by the resident of Alamparaikuppam who is also a member of Sri Thandumariamman Alamparaikuppam Nirvagigal Grama Panchayat Sabhai seeking to implead himself as a party respondent in the appeal.

79. Similarly, an interlocutory application [I.A. No.68 of 2022 (SZ)] was filed by the residents of Azhagan Kuppam seeking to implead themselves as a necessary party to the appeal. The first applicant is the head of the village and councilor and the second applicant is the owner of fishing boats.

80. Yet another interlocutory application [I.A. No.178 of 2022 (SZ)] was filed by one Mr. P. Arjunan, a Member of Legislative Assembly for Constituency No.72, Tindivanam seeking to implead himself as a party respondent in the appeal.

81. The following common grounds were raised by the applicant in the above mentioned interlocutory applications:

82. According to the applicants, in and around the project area, there are several villages that are fishing hamlets and major beneficiaries of the project. According to them, the next nearest

fishing harbor on the Northern side is Chennai and on the Southern side is Puducherry which is 100 Km and 45 Km respectively. As the project of the fishing harbor is only for the benefit of the fishermen, the applicants directly benefited from that and hence, they become a proper party if not a necessary party in the public interest litigation.

83. The applicant also denied the contention of the appellant that the project area is an eroding coast. However, it is admitted that it is a dynamic coast. Due to the fact that the mouth of the river has a drift of almost 60 m from North and South in a year, it cannot be termed as eroding coast. It was submitted that the Office Memorandum dated 03.11.2009 has got no applicability to the project area. The said Office Memorandum refers to

(A) Expansion of the existing ports, harbours, jetties, etc. within their notified port limits shall be undertaken subject to the condition that (i) the hydro dynamic studies indicate that the expansion activities of the existing port do not have significant impact to the shoreline abutting the project and (ii) has no significant impact on the ecologically sensitive areas along the stretch.

(B) New projects to be located at the sites indicated in Table - 1 shall be subjected to a Comprehensive Environment Impact Assessment based on a minimum of three season data and an Environment Impact Assessment Report prepared based on the actual field measurements, appropriate modeling studies, etc.

(C) With regard to hotspot stretches viz., those areas which are prone to high erosion above 1 meter per year (identified by the concerned State/Central Government Agencies), locations identified within 10 Km on either side of the eco-sensitive areas categorized as Coastal Regulation Zone - I (1) and water bodies with high biodiversity shall not be considered for locating ports and harbors. However, fishing jetties/embarkation facilities for local communities could be set up with EIA as per the EIA Notification, 2006.

84. According to the applicant, the project site is not prone to high erosion which is proved by the study made by the Ministry of Earth Sciences and National Centre for Coastal Research, Chennai in July 2018 on "National Assessment of Shoreline Changes along Indian Coast". The applicants further admitted that the project site is located at the mouth of the creek which requires dredging similar to the river mouths where there will be a sand deposit, affecting the flow of water. Since the mouth is dynamic and moves North and South, there are always possibilities of sand accumulation and due to this, dredging has to be done every year.

85. The next aspect highlighted by the applicant is about the turtle nesting area. It is stated that the training wall at the estuary mouth is the only place where the alleged turtle nesting site is there. The said training wall is proposed to be constructed only at the estuary mouth where the shore is dynamic shifting to about 60 m distance in a year. The applicant emphatically denied that the impugned site is not suitable for turtle nesting and the allegation of the appellant is false. Thus, the applicant has put forth his arguments submitting that the development on the coast is only at the cost of negligible damage to the environment balancing between economic and social needs to the environmental impact which is the fundamental concept of law and termed as 'Sustainable Development'.

86. The intention of issuing the CRZ Notification itself is to ensure livelihood security for the fishermen's communities on the coast. Therefore, the impugned project shall improve the standards of the

fishermen and the project should be allowed to be proceeded with.

87. The said interlocutory applications were resisted by the appellant stating that it is not an original proceeding where the applicant can seek themselves to be impleaded, as it is an appeal specifically challenging the EC granted in favour of the 1st Respondent. The interlocutory applicant cannot, as a matter of right, get themselves impleaded. The proposed parties are not privy to the impugned EC. It is also pointed out by the appellant that the applicants have not specifically met the allegations or averments raised by the appellant in the appeal, excepting to state that they are the beneficiaries of the proposed project. As already the official respondents have given their reply to the grounds in the appeal and if the applicants are beneficiaries of the project, they need not be impleaded as parties. If the official respondents are able to sustain the EC issued, automatically it will endure the benefit of the applicants.

88. Therefore, the above said interlocutory applications **[I.A. Nos.66, 68 & 178 of 2022 (SZ)]** for impleadment are dismissed as unnecessary.

89. In such view of the matter, in the absence of revision of CZMP as directed by the Hon'ble High Court of Madras in W.P. No. 29928 of 2019 and 7019 of 2018 and in the absence of the comprehensive EIA report regarding the eco-sensitive aspects, the 1st respondent ought not have hurried to apply for the Environmental Clearance without revision of the CZMP at least in the project area and

without a proper EIA study. Therefore, it would be appropriate for this Tribunal not to permit the project to proceed further till the errors that have crept into the CZMP are rectified at least in respect of the project area and the comprehensive shoreline protection management plan is approved as per TNCZMA order.

90. Moreover the Learned AAG representing the project proponent submitted that the location of the training wall will be changed in front of Alamparai fort where there is already a natural opening of the barmouth which amounts to change in scope of the project for which Environmental Clearance has been granted by SEIAA.

91. In the result:

- (i) The Environmental Clearance dated 03.11.2021 issued by Tamil Nadu, SEIAA in favour of 1st respondent-Department of Fisheries, which is under challenge is kept in abeyance.
- (ii) It is open to the project proponent to submit a fresh application to the appropriate authority in view of the change in scope of the project.
- (iii) Department of Environment and Climate Change and CZMA are directed to undertake revision of the existing CZMP, 2011 at least in the project area as expeditiously as possible pending the finalization of the CZMP, 2019 for the entire State and only after the revision of the CZMP consider the project for Environmental Clearance.
- (iv) In case the project involves erosion control measures, then the proposal should be considered only after the Shoreline Management is finalized by NCCR.
- (v) NCCR to finalize the Shoreline Management Plan as expeditiously as possible as already ordered by National Green Tribunal.

92. As a corollary, I.A. No.54 of 2022 (SZ) for inserting additional paragraphs in the appeal and I.A. No.55 of 2022 (SZ) for inserting additional grounds are closed.

.....J.M.
(Smt. Justice Pushpa Sathyanarayana)

.....E.M.
(Dr. Satyagopal Korlapati)

Internet – Yes/No
All India NGT Reporter – Yes/No

Appeal. No.14 /2022(SZ)&
I.A. Nos. 54, 55, 66 &68/2022(SZ)&
I.A. No. 178/2022(SZ)
24th August, 2023. (AM)



**Before the National Green
Tribunal
Southern Zone (Chennai)**

**Appeal No. 14 of 2022&
I.A. No. 54 of 2022, I.A.
No.55 of 2022, I.A. No. 66
of 2022, I.A. No. 68 of 2022
and I.A. No. 178 of 2022(SZ)**

M. Yuvadeeban,

Vs.

Department of Fisheries and
Ors.

Appeal No. 14/2022(SZ)&
I.A. No. 54 & 55/2022&
I.A. No. 6& 68/2022&
I.A. No.178/2022(SZ)
24th Augut, 2023. (AM)