



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/WRIT PETITION (PIL) (WRIT PETITION (PIL)) NO. 4 of  
2023**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA  
AGARWAL**

**and**

**HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

JAKHARIYA SALEMAN MANEK & ANR.

Versus

MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE  
& ORS.

Appearance:

MR AMIT M PANCHAL with MR AGNESH A. PANCHAL for the Applicant(s) No. 1,2

MR MIHIR JOSHI, SR ADVOCATE with MS AISHVARYA(8018) for the Opponent(s) No. 3

MR MAULIK G NANAVATI(3318) for the Opponent(s) No. 2

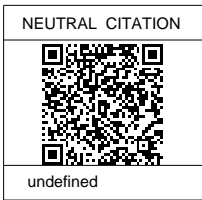
MR PY DIVYESHVAR(2482) for the Opponent(s) No. 1

**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE  
SUNITA AGARWAL**

**and**

**HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

**Date : 04/10/2024**



**ORAL JUDGMENT  
(PER : HONOURABLE THE CHIEF JUSTICE  
MRS. JUSTICE SUNITA AGARWAL)**

1. The present petition in the nature of public interest litigation has been filed with the prayers as follows :-

"A. Issue a writ, setting aside the Environmental and CRZ Clearances that have been granted to Respondent No.3 on 19.12.2016 and 18.2.2020; At Annex A and B

B. Issue a writ, directing Respondent No.1 and 2 to consider the application of Respondent No.3 afresh, in light of the CRZ Notification, 2011 and other applicable laws and norms;

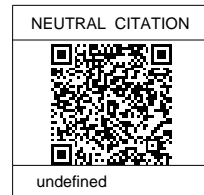
C. Pending the admission, hearing and final disposal of this Petition, this Honourable Court may be pleased to :

a. Direct the Respondents to maintain status quo with regard to the projects for whom the Environmental and CRZ Clearances have been granted on 19.12.2016 and 18.2.2020 till such time as the disposal of the Petition;

b. Direct the Respondent No.3 and/or its officers servants, agents, etc., to not cut any mangrove tree without specific leave of this Honourable Court.

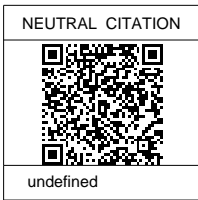
D. Pass such other and further Order/s as may be deemed just and proper;"

2. The main challenge in the Writ petition is to the Environmental and CRZ clearances granted to two projects of respondent no.3, viz. Deendayal Port Authority on the ground that the projects of respondent no.3 are to be carried out on lands containing Mangrove forests. The contention is that the area falls within CRZ-



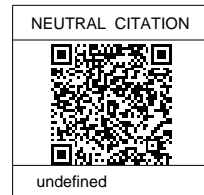
1A category under the CRZ Notification of 2011. However, CRZ clearances illegally has been accorded to respondent no.3 under CRZ-1(B), CRZ-III and CRZ-IV categories. The details of environmental and CRZ clearance, subject matter of challenge herein, are appended as Annexures 'A' and 'B' to the Writ petition.

3. We may note that the CRZ clearance dated 19.12.2016 was for development of 7 integrated facilities (stage 1) within the existing Kandla Port Trust limit at district Kutch on the specific conditions mentioned therein. A perusal of the Environmental clearance dated 19.12.2016 indicates that after holding public hearing, the recommendation of Gujarat Coastal Zone Management Authority (GCZMA) was sent to the Ministry of Environment, Forest and Climate Change (MoEF&CC) under the provisions of the CRZ Notification, 2011. The clearance certificate records that as per CRZ map, demarcation of High Tide Line(HTL), CRZ boundary, etc., the proposed facility falls in CRZ - I (B), CRZ-III and CRZ - IV, the proposal was considered by the Expert Appraisal Committee and the project proponent and EIA Consultant had presented the report as per the Terms of Reference (TOR). The Committee recommended the proposal for Environmental and CRZ clearance.
4. A perusal of the CRZ recommendation letter issued by GCZMA for 7 integrated facilities appended at Annexure 'R2' to the affidavit filed on behalf of respondent no.3

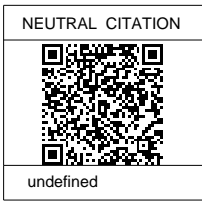


indicates that the authority deliberated on the proposal of Kandla Port Trust, the observations made by the technical committee, report submitted by the District level committee, satellite images submitted and assurance given by the Kandla Port Trust to the Ministry of Environment, Forest and Climate Change, Government of India, with the conditions mentioned therein. The specific conditions mentioned in the said recommendation were to strictly adhere to the provisions of the CRZ Notification of 2011, which included 6 conditions, relevant for our purposes being extracted hereinunder:-

- 1) The provisions of the CRZ notification of 2011 shall be strictly adhered to by the KPT. No activity in contradiction to the provisions of the CRZ Notification shall be carried out by the KPT.
- 2) The KPT shall have to ensure that there shall not be any damage to the existing mangrove area.
- 3) The KPT shall prepare an emergency plan to protect existing mangrove in case of any eventuality/accident.
- 4) The KPT shall have to make a provision that mangrove areas get proper flushing water and free flow of water shall not be obstructed.
- 5) The KPT shall have to abide by whatever decision taken by the GCZMA for violations of CRZ Notifications 2011.
- 6) There shall not be violations of order dated 9-12-2013 passed by the national Green Tribunal and accordingly, there shall be no mangrove destruction take place in KPT area.



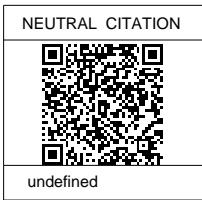
5. It is noted therein that as per the CRZ map duly demarcation of HTL, CRZ boundary etc. prepared by the Institute of Remote Sensing, Anna University, Chennai, proposed facility falls in CRZ-I(B), CRZ-III and CRZ-IV categories.
6. It is demonstrated before us by the learned counsel for the respondent no.3 that out of 13 projects submitted by the respondent no.3, fresh proposal was directed to be submitted by respondent no.3 for some projects and other projects were dropped.
7. Be that as it may, after the recommendation of GCZMA dated 01.07.2015, the proposal proceeded and evaluated by MoEF&CC and finally, the Environment Assessment Committee, in the month of February 2016 respondent no.3 was directed to submit a fresh proposal for environmental clearance/CRZ clearance as per the recommendation of GCZMA. On submission of the fresh application in the prescribed format on the online portal, vide communication dated 04.05.2016, the MoEF&CC issued the approved terms of reference in respect of 7 integrated facilities for which the revised application was submitted. Public hearing was exempted as the same was earlier conducted by the Gujarat Pollution Control Board (GPCB) for 13 projects, which included 7 projects cleared by the Ministry.
8. After completion of the necessary formalities, on the recommendation of the Environment Assessment



Committee to the MoEF&CC for grant of environmental clearance and CRZ clearance, it was granted on 19.12.2016 on the conditions in the letter of grant at pages '39' and '40' of the paper book. One of the conditions no. (xxvii) at page '39' is relevant to be noted hereinunder :-

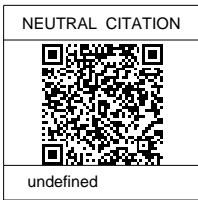
"(xxvii) Mangrove plantation in an area of 100 ha. shall be carried out by KPT within 2 years in a time bound manner. Action taken report shall be submitted to the Regional Office of MoEF&CC"

9. It is pointed out by Mr. Mihir Joshi, learned Senior counsel appearing for respondent no.3 that the letter of clearance also contains a condition that any appeal against this clearance shall lie with the National Green Tribunal within a period of 30 days as prescribed under Section 16 of the National Green Tribunal Act, 2010.
10. As regards the grant of second environmental clearance dated 18.02.2020, subject matter of challenge, we may note that the said environment and CRZ clearance pertains to 3 integrated facilities. The letter of clearance appended as Annexure 'B' records that the Expert Appraisal Committee had deliberated on the proposal and after detailed deliberation, recommended the project for grant of environmental and CRZ clearance. Public hearing was exempted by the Ministry as per para 7(ii) of the Environment Impact Assessment (EIA) Notification, 2006 because public hearing had already been conducted by the GPCB on 18.12.2013. The project involves three components for development



of 3 remaining integrated facilities (stage 1) within the existing Kandla Port Trust.

11. A preliminary objection has been taken by the learned Senior counsel for respondent no.3 that the Writ petition suffers from inordinate unexplained latches on the part of the petitioners and moreover, the petitioners having alternative remedy to file appeal under Section 16 of the National Green Tribunal Act, 2010, the Writ petition filed in the year 2023 to challenge the environmental and CRZ Clearances dated 19.12.2016 and 18.02.2020 can not be entertained.
  
12. The contention of the petitioners in the affidavit-in-rejoinder that the petitioners came to know about the proposed project in the month of January 2022 when the tender was released and hence, the Writ petition was filed in the month of January 2023 has been assailed on the aforesaid ground is false. The Writ petition lacks bonafide on the part of the petitioners. It was contended by the learned Senior counsel for the petitioners that as far as the presence of mangroves in the coastal area in the vicinity of the project site is concerned, the respondent no.3 has taken permission from the concerned authorities, which was granted after due diligence and following due procedure on perusal of all pertinent documents and relevant informations including CRZ map of the integrated facilities prepared by the Institute of Remote Sensing, Anna University, Chennai (one of the authorised agencies by MoEF&CC) based on

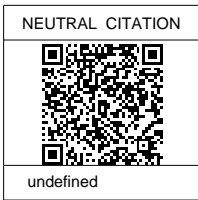


ground truthing and satellite imagery. The respondent no.3 has contributed to immense mangrove plantation of 1500 hectares since 2007. It was contended that at the time of scrutiny of the application of the respondent no.3, the technical committee of GCZMA had called for various details along with the exact details of the mangrove area to be affected. On submission of the desired details to the GCZMA, a site visit was also carried out by the Committee. The GPCB had conducted public hearing under EIA Notification, 2006 for 13 integrated projects on 18.12.2013 on the basis of the draft EIA report submitted by respondent no.3 to the GPCB.

13. As regards the contention of the learned Senior counsel for the respondent no.3 that the petitioners had participated in public hearing held on 18.12.2013, pertinent is to note the averments of the petitioners in the affidavit-in-rejoinder dated 23.03.2023, which reads as under :-

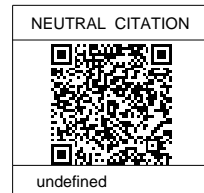
"8. It is pertinent to note that on 18.12.2013, during first round of clearance, public hearing was conducted by the Gujarat Pollution Control Board on the basis of Environment Impact Assessment (EIA) report prepared for 3 integrated facilities only. This EIA report was prepared on the basis of the Terms of Reference granted by Respondent No. 1 vide order dated 22 May 2012/Therefore, the stand of Respondent No.3 that public hearing was completed for 13 integrated facilities is false and misleading. It is therefore submitted that subsequent consideration for granting exemption in public hearing vide letter dated 4 May 2016 and 6 June 2017 by Respondent No. 1 was actually





based on the false submission/s made by Respondent No. 3 and the exemption granted for these two Projects are therefore not valid. It is submitted that public hearing was required to be conducted for these projects. It is pertinent to note that specific question was asked during the public hearing as to whether the present Projects falls in CRZ IA or IB. However, it is submitted that Respondent No. 3 replied during public hearing that the proposed Projects fall in CRZ IB. The map prepared by Indian Remote Sensing (IRS) and submitted by Respondent No. 3 clearly indicates that the Projects component are falling within CRZ IA. It is submitted that the impugned area comprises of mangroves and mudflats which are CRZ-IA as per CRZ Notification 2011. The Road and railway corridor which are proposed in the impugned Projects are essential Projects components for evacuation of cargo from the back-up area and the same undoubtedly pass through CRZ IA area. Hence, it is clear that Respondent No. 3 has made a false declaration during Public Hearing, which was obviously done with ulterior motives to suppress the substantial and correct information and material facts from the public."

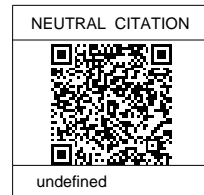
14. In response to the contentions of the petitioners that impact and mitigation measures of reclamation near the ecologically sensitive areas are not identified, EIA report does not identify the need for construction of road and railway structure for connecting the back-up area and as per the procedure laid down in CRZ Notification, 2011, the map is accompanied by a report which details the components of the project for which CRZ mapping is carried out and the same is not disclosed, it was submitted based on the averments in paragraphs '16' and '17' of the affidavit at page '850' and '851', extracted hereinbelow :-



"16. It is humbly submitted that separate EIA reports were also submitted before the Environmental Clearances under challenge were issued. It has been categorically mentioned by Respondent No. 3 in its Affidavit-in-Reply that in the month of June, 2016, the final EIA report with respect to the 7 integrated facilities was submitted and in the month of September, 2017, the final EIA report with respect to 3 integrated facilities was submitted by Respondent No. 3. In the EIA report, submitted by Respondent No. 3 for 13 integrated facilities it has been mentioned that wherever land levelling is required, reclamation will be done along with bridges, and viaducts, and the road corridor at some junctions will be developed on stilts. Respective impacts and mitigations along with the Environment Management Plan were improvised over the three EIA Reports i.e., for 13 Projects, 7 Projects, and 3 Projects.

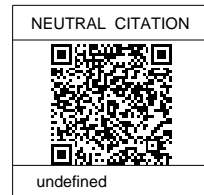
17. At this stage, it is also pertinent to mention that as per the requirement of the CRZ Notification, 2011, DPA carried out CRZ Mapping by superimposing the project layout, through Institute of Remote Sensing, Anna University, Chennai and submitted it to the concerned authorities for obtaining EC & CRZ Clearance along with other requisite details. The said CRZ Maps clearly demarcated the area covered under various CRZ categories viz. CRZ I, II, III, IV, etc. which includes HTL, LTL, Mangrove area, creeks, Mudflats, waterbodies, saltpans, roads, railways, etc. Institute of Remote Sensing, Anna University, Chennai had also prepared CRZ Map (1:4000 scale) for each project along with a report. The said CRZ Maps along with the report are incorporated in the EIA Report prepared for 7 Integrated Facilities and 3 remaining integrated facilities, which were submitted to the concerned authority."

15. In response thereto, it was vehemently argued by Mr.Amit Panchal, learned counsel for the petitioners that the Writ petition which raises a serious issue relating to damage to environment, which is a continuing wrong



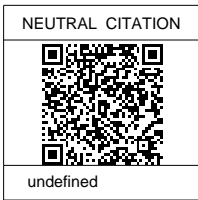
and the action of the respondent no.3 amounts to violation of right to life under Article 21 of the Constitution cannot be dismissed on the ground of delay and laches. It was vehemently argued that the petitioners came to know about the environmental clearances only after the tender dated 24.06.2022 was released and the Writ petition which was filed after collection of documents in the month of January 2023 cannot be said to be barred by delay or laches.

16. Reference has been made to the decision of the Apex Court in **Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan**[1959 SCC OnLine SC 68] to submit that an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury, constitutes a continuing wrong.
17. Further, the reliance is placed on the judgment of the Apex Court in **Assam Sanmilita Mahasangha v. Union of India** [(2015) 3 SCC 1] to submit that when it comes to violation of fundamental right to life and personal liberty, delay or laches by itself without more would not be sufficient to shut the doors of the court on any petitioners. This observation was followed by the Apex Court in the subsequent decision in **Sunil Kumar Rai v. State of Bihar** [2022 SCC OnLine SC 232].
18. About the contention of the respondent no.3 regarding availability of statutory remedy of appeal under Section 16 of the national Green Tribunal, 2010, it was argued



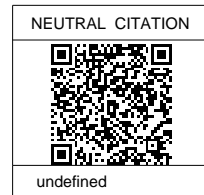
that the existence of statutory remedy does not bar a writ petition in cases governing violation of fundamental rights. Reference has been made to the decisions of the Apex Court in **State of U.P. v. Mohd. Nooh [1957 SCC OnLine SC 21]** and **Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1]**.

19. Reliance is placed on the decision of the Apex Court in **M.P. High Court Advocates Bar Assn. v. Union of India [2022 SCC OnLine SC 639]** to submit that nothing contained in the NGT Act either impliedly or explicitly ousts the jurisdiction of the High Courts under Articles 226 and 227 and the power of judicial review remains intact and unaffected by the NGT Act.
20. It was, thus, argued that mere existence of a remedy under the NGT Act does not oust the jurisdiction of this Court to entertain the Writ petition. Based on the averments made in the affidavit filed on 03.04.2024, it is argued by learned counsel for the petitioners that only after pursuing the Request for Qualification (RFQ) that the petitioners realised that the project will actually be implemented on the CRZ-1A area. Until that stage, the petitioners had no knowledge that the project would be implemented on CRZ-1A area.
21. In the public hearing conducted on 18.12.2013, specific question was asked to the representatives of the respondent no.3 as to whether the project falls under CRZ-1A or CRZ-1(B) and it was specified by respondent no.3 that the project passes through CRZ-1(B). The



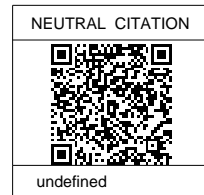
statement in the affidavit of the petitioners dated 03.04.2024 is that all those who participated in the public hearing, there was no reason for them to doubt and cross verify the statement made by the representatives of respondent no.3 at that point of time. There was no reason for any person who attended the public hearing or followed the appraisal process till grant of environmental clearance to mount a challenge. There is challenge to the exemptions granted for public clearance for development of three remaining integrated facilities within the Kandla Port Trust on the ground that the public hearing was already held in the year 2013.

22. It is further contended that the RFQ document contains a map of the proposed project activities. Based on the petitioners' knowledge of understanding about the geography of the place at which the project is to be implemented, it *prima facie* appeared that some of the project components like project corridors will definitely pass through mangroves.
23. It is, thus, vehemently submitted that on perusal of the documents leading to grant of environmental and CRZ clearances for the projects, it became clear that respondent no.3 had never applied for environmental and CRZ clearance for CRZ-1A category. The relevant authorities did not appraise project being for CRZ-1A category. EC and CRZ clearance was never granted for CRZ-1A category.
24. On perusal of the map attached with the RFQ, the



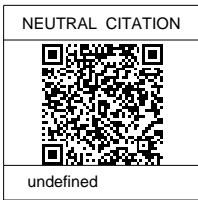
petitioners for the first time apprehended that certain components of the project would be implemented in CRZ-1A area causing widespread destruction of mangroves. The project cannot be implemented without certain components passing through CRZ-1A area. It is, thus, vehemently argued by the learned counsel for the petitioners that in case the project is allowed to go as per the current CRZ clearance under CRZ-1(B), CRZ-III and CRZ-IV categories, it shall cause large scale damage to the ecology of the region.

25. Taking note of these rival submissions made by the learned counsels for the parties, we may note that the subject matter of controversy in the present petition filed on 25.01.2023 is at the stage of tender for development of container terminal at Tuna off-Tekra on BOT basis. As per the details placed before us, LOA was issued on 27.01.2023 to M/s. Hindustan Infralog Private Ltd. and Concession Agreement of the project was awarded to M/s. Hindustan Gateway Container Terminal Kandla Private Ltd., the concessionaire. The road till back-up area has already been constructed but construction activity has yet not started with the construction area.
26. For another project of Multipurpose Cargo Terminal at Tekra-off-Tuna on BOT basis, the same is at tender stage and no construction activity has started. It is stated before us that 3 projects out of 13 have been dropped by the respondent no.3 considering environmental



sensitivity of the area.

27. The crux of the challenge is that the projects of respondent no.3 are to be carried out on lands containing mangrove forests and the same falls within CRZ-1A category under the CRZ Notification of 2011, whereas CRZ clearance has been given under under CRZ-1(B), CRZ-III and CRZ-IV categories.
  
28. From the above contentions of the petitioners that this is a case of violation of CRZ notification issued under Section 3 of the Environment Protection Act, 1986, which would also result in penal consequences under Section 15 of the Act, we are of the considered opinion that the issues raised would require factual inquiry which would not be possible within the scope of Article 226 of the Constitution of India. To examine the contention raised by the petitioners, not only the entire record pertaining to grant of clearance would have to be examined but some more evidence would be required, which may include recording of oral evidence as well. In this situation, on the contention of the learned counsel for the petitioners that environmental clearance granted on 19.12.2016 and 18.02.2020 for the projects of respondent no.3 is liable to be cancelled on the mere assertion that the area falls within CRZ-1A category under the CRZ notification of 2011, enquiry within the scope of Article 226 of the Constitution of India would not be permissible nor possible.



29. As regards the contention of Mr. Mihir Joshi, learned Senior advocate for respondent no.3 that the Writ petition lacks bonafide, we do not find any reason to deliberate, inasmuch as, we are of the view that the inquiry as required is impermissible within the scope of Article 226 of the Constitution of India.
30. On the further submission of the learned Senior counsel for respondent no.3 that the petitioners cannot approach National Green Tribunal to file appeal under Section 16 of the National Green Tribunal Act, 2010, we do not find any reason to deliberate. It may be open for the petitioners to approach the National Green Tribunal for redressal of their grievances as the primary issue raised is of grant of clearance in violation of CRZ Notification of 2011. We may not be understood in holding that the limitation for filing appeal under Section 15 of the National Green Tribunal Act, 2010 has been condoned by us. As the question of limitation under the National Green Tribunal Act, 2010 is not before us, we do not find any reason to deliberate on the subject.
31. With the above, the Writ petition stands disposed of with the observation that it would be open for the petitioners to avail appropriate remedy available in law.

**(SUNITA AGARWAL, CJ )**

**(PRANAV TRIVEDI,J)**

BIJOY B. PILLAI