

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8670 OF 2022

Maharashtra Maritime Board
Through Chief Executive Officer

...Petitioner

Versus

Union of India
Through Ministry of Environment Forest and
Climate Change & Ors.

...Respondents

Dr. Birendra Saraf, Advocate General, with Mr. Saket Mone,
Ms. Anchita Nair, Mr. Shey Shah, i/b. Vidhii Partners, for
Petitioners.

Mr. Devang Vyas, Additional Solicitor General, i/b. Mr. Ajay
Gupta, for Respondent No. 1

Ms. Jaya Bagwe, for Respondent No. 2

Mr. Nirmom Sharma, with Ms. Sheetal Shah, i/b. M/s. Mehta
and Girdharlal, for Respondent No. 6

Mr. N. C. Walimbe, Addl. G.P. with Mr. A. I. Patel, Addl. GP
and Mr. S. H. Kankal, AGP, for Respondents-State.

**CORAM: K. R. SHRIRAM &
DR.NEELA GOKHALE, JJ.**
DATED: 7th December 2023

PC:-

1. This Petition has been filed in light of the directions issued by
this Court in paragraph 83(viii) of its judgment and order dated 17th
September 2018 in Public Interest Litigation No. 87 of 2006 which
reads as under:

*“83(viii). In view of applicability of public trust doctrine, the
State is duty bound to protect and preserve mangroves. The
mangroves cannot be permitted to be destructed by the State
for private, commercial or any other use unless the Court finds
it necessary for the public good or public interest.”*

PROJECT:

2. Maharashtra Maritime Board (“**MMB**”) has proposed to construct a jetty (92 meters x 6 meters) on concrete piles and a platform, along with allied facilities at Village Satpati, District Palghar (“**said Project**”). Satpati is a fishing Village located on the southern bank of the Satpati Creek in Palghar. Satpati is connected to Village Murbe on Satpati Creek via ferry movement from an existing jetty. The existing jetty is an important connectivity for the local inhabitants of Satpati and Murbe.

3. MMB proposes to demolish the existing jetty and to construct a new jetty, being the said Project, adjacent to the existing jetty as the existing jetty is old and damaged beyond repairs. Further, the existing jetty, being a solid jetty, has been causing siltation in the navigational channel, which in turn has been causing difficulties to fishermen to navigate their boats during low tide. The existing solid jetty has also been obstructing the free tidal flow in the Satpati Creek. The said Project proposes to obviate these issues as it will provide proper berthing facilities to the passenger ferry and will also reduce siltation in navigational channel of the fisheries jetty.

4. This Petition has been filed to seek permission of this Court to carry out the necessary construction works for implementation of the project aforementioned. **No mangroves will be cut in the execution of**

the said Project.

5. The site of the said Project is affected by the Coastal Regulation Zone (“**CRZ**”) Notification dated 6th January 2011, with stretches of the land being classified as CRZ-I(A) and CRZ-I(B). Construction and operation of the said Project, i.e. a jetty, is a permissible activity with regulation under Clause 4(i)(f) of the CRZ Notification dated 6th January 2011 which specifically contemplates construction and operation of *inter alia* jetties as a permissible activity in CRZ area requiring regulation (Page 16-18 of the Writ Petition).

6. The various advantages of the project are summarized as under:

- (a) To replace the existing jetty which is old and damaged beyond repair and which was being used for ferrying passengers from Village Satpati to Village Murbe.
- (b) To prevent stagnation of water occurring near the jetty by constructing a new pile jetty.
- (c) To ensure restoration of Satpati creek.
- (d) Provide berthing facilities to the passenger ferry.
- (e) Reduce siltation in navigational channel of the fisheries jetty.
- (f) Ease the fishing business.
- (g) Access to better supplies, healthcare and education infrastructure.
- (h) Provide eco-friendly transportation systems.
- (i) Provide connectivity for the local inhabitants of Satpati and Murbe.

- (j) Exponentially decrease travel time between Satpati and Murbe from 1 hour to 10-15 minutes and distance from 30 km to 0.45 km.
- (k) Cheaper alternative to travel as the tickets in the ferry will cost lesser than taking the road.
- (l) Overall positive social and economic impact.
- (m) Improve connectivity with public amenities.
- (n) Increase areas of interest and tourist importance of the village.
- (o) Generate employment opportunities for the local populace.
- (p) Least impact on environment, lowest cost for domestic travel, enormous capacity reserves and least energy consumption.

7. On 16th and 22nd February 2021, the proposal of the said project was considered for the first time by Maharashtra Coastal Zone Management Authority (“**MCZMA**”) in its 152nd meeting wherein MCZMA directed MMB to submit an Environment Impact Assessment (“**EIA**”) Report prepared by an accredited consultant.

8. On 20th May 2021, MMB submitted the EIA Report prepared by an accredited consultant to MCZMA. Copy of the EIA Report is produced at Exhibit-B of the Writ Petition.

9. In May 2021, MMB made an application to MCZMA under Form I in compliance with the provisions of CRZ Notification 2011 for grant of CRZ Clearance. Copy of the Application is produced at Exhibit-C of the Writ Petition.

10. On 11th April 2022, MMB made a presentation for grant of CRZ Clearance for the said project before MCZMA. Copy of the presentation is produced at Exhibit-D of the Writ Petition.

11. On 11th and 12th April 2022, the proposal of MMB was considered by MCZMA in its 158th meeting wherein after due consideration of the details of the said Project and the presentation duly juxtaposed with the provisions of the CRZ Notification 2011, was pleased to recommend the said Project for grant of CRZ Clearance subject to the certain terms and conditions:

“...the Authority after deliberation decided to recommend the proposal from CRZ point of view to SEIAA subject to following conditions:

- 1. The proposed construction should be carried out strictly as per the provisions of CRZ Notification, 2011 (as amended from time to time) and guidelines/ clarifications given by MoEF from time to time.*
- 2. MMB to ensure that mangrove should not cut/cleared or anyway harmed during construction and operation phase of the project. Prior High Court permission should be obtained since proposed activities are situated within 50 m buffer zone area.*
- 3. Recommendation of the CWPRS should be followed for the construction of piled jetty.*
- 4. Debris generated during the construction activity should not be dumped in CRZ area. It should be ensured that debris is processed in a scientific manner at a designated site.*
- 5. Natural course of Satpati creek should not be hampered due to proposed activities. Considering the siltation problem in the creek, MMB to ensure that during construction phase, construction debris should not be dumped at the creek.*
- 6. Environment Management Plan should be implemented effectively during construction and operation phase of the project.*
- 7. All other required permission from different statutory authorities should be obtained.”*

Copy of the 158th Minutes of MCZMA is produced at Exhibit-E of the Writ Petition.

12. On 14th June 2022, the proposal of MMB along with the recommendation of MCZMA was placed before State Environment Impact Assessment Authority (“**SEIAA**”) at their 244th meeting and after due consideration and deliberation, SEIAA decided to grant CRZ Clearance for the said project subject to terms and conditions contained therein. Copy of the 244th Minutes of SEIAA is produced at Exhibit-F of the Writ Petition.

13. On 20th June 2022, SEIAA was pleased to grant CRZ Clearance in respect of the said Project. It was noted by SEIAA that mangroves would not be cut for the said project. Copy of the CRZ Clearance is produced at Exhibit-G of the Writ Petition.

14. Respondent No. 4 has filed its Affidavit in Reply dated 21st December 2022 wherein it has been clarified that the proposed construction site is not notified under the Indian Forest Act, 1927 as Mangrove Reserved Forests, there is no objection to the construction of the said project subject to forest laws and compliance with orders of the High Court. Respondent No. 2, Maharashtra Coastal Zone Management Authority has filed its Affidavit in Reply dated 17th July 2023 stating that the proposed project is essential as the existing jetty is old and damaged beyond repair and has stated that the construction of the proposed jetty is a permissible activity under CRZ Notification 2011.

15. The said project is proposed as the existing jetty at Village Satpati, Palghar district has become old and damaged beyond repair and new pile jetty is suitable to prevent stagnation of water occurring near the old jetty which in turn will ensure restoration of Satpati Creek. The said project is being executed by the Petitioner under the Budget Scheme under the District Planning Committee (“DPC”), Palghar which is a government undertaking, for the benefit of the citizens and which would reduce problems of traffic congestion and vehicular pollution and have a positive socio-economic impact. The existing travel distance from Satpati and Murbe via road will be reduced after the construction of the new pile jetty. It will reduce the travel time from one hour to 10-15 minutes and the distance will be reduced by 30 km to 0.45 km.

16. All requisite permissions and clearance have been obtained for the project and all civil contracts are in place. The project cost of the said project is estimated at Rs. 4,99,79,000/-. It is assured to the Court that there will be no cutting of any mangroves for the purpose of the said Project and no part of the mangroves will be destroyed. This is accepted as an undertaking to the Court. The work is clearly for public good and in public interest.

17. This Court has considered similar public utility projects and in light of the finding at Paragraph 83(viii) of the judgment and final order dated 17th September 2018 in Public Interest Litigation No. 87 Shivgan

of 2006 and has been pleased to grant leave as contemplated therein in favour of MMB granting leave to execute similar jetty projects in:

- (a) Judgment and Final Order dated 25th February 2019 in Writ Petition (L) No. 44 of 2019.
- (b) Judgment and Final Order dated 7th August 2020 in Writ Petition No. 2710 of 2020.
- (c) Judgment and Final Order dated 29th October 2021 in Writ Petition No. 759 of 2021.

18. Judgment and final order dated 29th October 2021 passed in Writ Petition No. 759 of 2021 was challenged by Bombay Environment Action Group, Respondent No. 6 herein before the Apex Court vide SLP (C) Diary No. 29692 of 2022. The Supreme Court vide Order dated 10th October 2022 stayed the directions contained in Order dated 29th October 2021 till the next date of hearing. Thereafter, on 24th February 2023, the Apex Court *inter alia* directed as follows:

“It is pointed out that the jetty at Narangi has been constructed, but in view of the stay order passed by this Court, construction of the Kharwadeshwari jetty has been stalled. Consequently, the jetty at Narangi cannot be utilised. In view of the urgency, need and benefits explained, leaving the question of law open for the time being, we permit the respondent(s) to construct the jetty at Kharwadeshwari.”

19. Thereafter, on 1st May 2023, the Supreme Court in the SLP passed the following order:

“Notwithstanding the pendency of the present special leave petitions, the High Court may hear and pass appropriate orders on the applications/proceedings pending before it, on their own merits.”

20. In view of the above, notwithstanding the objections of Respondent No.6 that these are ecologically fragile areas and permission be not granted, we pass the following order:

ORDER

(a) We permit Petitioner to execute the project of construction of jetty (92 meters x 6 meters) on concrete piles and a platform, along with ticket sale counters on land at Village Satpati, District Palghar in view of the public importance of the project, subject to the following directions:

(i) The Petitioner shall comply with all the conditions imposed in the clearances/permissions granted by Respondent Authorities.

(ii) The CEO of Petitioner shall file an undertaking before this Court within a period of ten days of the uploading of this order binding the Petitioner to comply with all the conditions in the clearances/permissions and will file an affidavit on completion that all the conditions in the permissions are complied with.

21. We accordingly permit Petitioner to execute work of the project of construction of jetty (92 meters x 6 meters) on concrete piles and a platform, along with ticket sale counters on land at Village Satpati, District Palghar in mangrove area and its buffer zone in view of the public importance of the project, subject to Petitioner complying with

the conditions imposed in the clearances/permissions granted by Respondents Authorities and the undertaking mentioned herein.

22. The aforesaid order is subject to the condition that the CEO of Petitioner files an undertaking before this Court that Petitioner shall comply with undertakings as set out in the various permissions/clearances granted by various Authorities and shall strictly comply with the conditions as imposed by the various Authorities that have granted permissions/clearances as well as the undertaking referred therein.

23. All Authorities that have granted permissions shall regularly monitor and ensure strict compliance of the conditions and undertakings recorded in the permissions and clearances granted as well as in this order.

24. Writ Petition, accordingly, stands disposed. No order as to costs.

(DR.NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)