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Date: 2024.03.12
12:10:56 +0530*Corrected as per order dated 8/3/2024***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.8675 OF 2022**

Maharashtra Maritime Board]
 A Statutory Board constituted under]
 the Maharashtra Maritime Board]
 Act, 1996 through the Chief Executive]
 Officer, having office at 3rd Floor,]
 Indian Mercantile Chambers, Ramjibhai]
 Kamani Marg, Ballard Estate,]
 Mumbai – 400 038] Petitioner.

V/s

1] Union of India]
 Through the Ministry of Environment]
 Forest & Climate Change, Paryavaran]
 Bhavan, New Delhi 110002]
 And also at : Aayakar Bhavan, 2nd floor]
 Maharshi Karve Road, New Marine]
 Lines, Mumbai – 400 020]
]
 2] Maharashtra Coastal Zone]
 Management Authority Through the]
 Additional Chief Secretary,]
 Environment Department, 2nd Floor,]
 Room No.217, Annexe Building,]
 Mantralaya, Mumbai – 400 032]
]
 3] State of Maharashtra]
 Environment Department, through the]
 Office of Government Pleader, Bombay]
 High Court, PWD Building, Fort,]
 Mumbai – 400 001]
]

- 4] Chief Conservator of Forest]
(Mangrove Cell), through the Office]
of Government Pleader, Bombay]
High Court, PWD Building, Fort,]
Mumbai 400 001]
]
5] State Level Environment Impact]
Assessment Authority through the]
Office of Government Pleader, Bombay]
High Court, PWD Building, Fort,]
Mumbai – 400 001]
]
6] Bombay Environment Action]
Group 80, 2nd Floor, Empire Building,]
CST Area, Mumbai – 400001] Respondents.

Mr. Saket Mone a/w Ms. Anchita Nair i/b Vidhi Partners for the
Petitioner.

Mr. Nirman Sharma a/w Ms. Sheetal Shah i/b M/s Mehta & Girdharilal
for Respondent-Bombay Environment Action Group.

Ms. Jaya J. Bagwe for Respondent No.2-MCZMA & Respondent No.5-
SLEIAA

Mr. Mr. Arjun Gupta for Respondent No.1-UOI.

Mr. N.C. Walimbe, Addl. G.P. a/w Ms. Kavita N. Solunke, AGP for
Respondent-State.

**CORAM: A.S. CHANDURKAR &
JITENDRA JAIN, JJ.**

DATE: 1ST MARCH, 2024

ORAL JUDGMENT: (Per A. S. Chandurkar, J.)

1] The learned Additional Government Pleader has clarified that
affidavit in reply that was filed in the writ petition No.8672 of 2022

ought to be treated as having been filed in Writ Petition No.8675 of 2022 and *vice versa*.

2] Rule. Rule made returnable forthwith and heard the learned Counsel for the parties.

3] The Petitioner, a statutory Board established under the provisions of the Maharashtra Maritime Board Act, 1996, has filed this Writ Petition under Article 226 of the Constitution of India, seeking leave to undertake the project of constructing a pile jetty and allied activities at Naigaon, District Palghar in the light of the judgment of this Court in *Bombay Environmental Action Group and Another Vs. State of Maharashtra and Another* in PIL No.87 of 2006 and connected Writ Petitions decided on 17/09/2018.

4] According to the Petitioner, the aforesaid project is a part of the Inland Water Transport project that connects Thane, Kalyan and Vasai which has been declared as National Waterway 53. Since there is a lack of proper connectivity from Panju Island to Vasai, a water route has been proposed. Presently, the island can be accessed only from

Naigaon. In this backdrop and especially with a view to undertake various allied activities, the Petitioner has approached this Court.

5] The Maharashtra Coastal Zone Management Authority – MCZMA in its 158th meeting held on 11th and 12th/4/2022 has recommended the proposal from CRZ point of view to the State Environmental Impact Assessment Authority – SEIAA subject to various conditions including the condition that no mangroves should be cut/cleared during construction and operation of the said project. The SEIAA in its 244th meeting held on 14/06/2022, after deliberations, granted CRZ clearance subject to complying with conditions stipulated by MCZMA. By a further communication dated 20/06/2022, the SEIAA has imposed specific conditions including the aspect that mangroves should not be cut/cleared and the creeklet adjacent to the project site should not be reclaimed. The proposed construction was required to be carried out strictly as per the provisions of CRZ Notification, 2011. In the affidavit filed by the Assistant Conservator of Forests dated 21/12/2022 it has been stated that the proposed construction site is not mentioned in Form-I as mangrove reserved forest nor is it a protected forest. It is stated that it has no objection to the construction

of the jetty. On the basis of these permissions, leave of the Court has been sought in terms of paragraph 83 of the decision in *Bombay Environmental Action Group and Another* (supra).

6] Mr. Saket Mone, the learned Counsel appearing for the Petitioner referred to the aforesaid statutory permissions and submitted that since the project was of public importance and the object was to provide an environmental friendly and cost effective alternative to the road and rail commuters, leave of the Court may be granted. It was submitted that during the course of execution of the said project, no mangroves would be cut. Since construction of a jetty was not a prohibited activity within the Coastal Regulation Zone (CRZ) under Notification dated 06/01/2011, the Petitioner was entitled to grant of such leave. To substantiate this contention, the learned Counsel relied upon the orders passed by this Court in Writ Petition (L) No.44 of 2019 (*Maharashtra Maritime Board vs. Union of India and others*) decided on 25/02/2019, Writ Petition No.2710 of 2020 (*Maharashtra Maritime Board vs. Union of India and others*) decided on 07/08/2020 as well as the judgment in Writ Petition No.759 of 2021 (*Maharashtra Maritime Board vs. Union of India, through the Ministry of Environment Forest &*

Climate Change and others) and connected Writ Petitions decided on 29/10/2021 wherein it was held that in the context of CRZ Notification, 2011, the setting up of a jetty was not a prohibited activity but was a regulated activity. Our attention was also invited to the orders passed by the Hon'ble Supreme Court in the proceedings arising out of challenge to the judgment of this Court in Writ Petition No.759 of 2021 referred to hereinabove and it was stated that permission to construct the jetty therein was permitted by keeping the question of law open. Reference was thereafter made to the affidavit dated 18/12/2023 filed on behalf of the Petitioner to submit that alongwith the construction of the jetty with offshore area, ticket counter, security cabin and mooring facility was intended to be carried out in the mangrove buffer zone and other allied activities approved by MCZMA and SEIAA would be constructed at 60 meters or beyond 60 meters of the mangrove buffer zone. It was thus prayed that the leave as sought be granted.

7] Mr. D.P. Singh, the learned Counsel for Respondent No.1, Mr. A.I Patel, the learned Additional Government Pleader for Respondent No.3 and Ms. Jaya Bagwe, the learned Counsel for Respondent No.2 –

MCZMA did not dispute the grant of statutory permissions. Mr. Nirman Sharma, the learned Counsel appearing for Respondent No.6 however submitted that the construction of the jetty alongwith allied activities sought to be undertaken by the Petitioner ought not to be permitted since the same was a prohibited activity under the CRZ Notification, 2011. Reference was made to Clause-3 of the Notification of 2011 to urge that the same was a prohibited activity. Since the jetty was sought to be put up at an ecologically sensitive area, such activity was not permissible under the said Notification. It was further submitted that by undertaking various allied activities, it was likely that the mangroves would be destroyed, thus defeating the object of Notification of 2011. It was also pointed out that besides the allied activities permitted by the statutory authorities, additional activities in the form of ticket counter, security cabin and mooring facility were also sought to be undertaken. It was thus submitted that the leave as prayed for was not liable to be granted even for the additional activities proposed by the Petitioner.

8] We have heard the learned Counsel appearing for the parties and we have perused the documents on record. It is not in dispute that the MCZMA has recommended the proposal moved by the Petitioner from

CRZ point of view subject to various conditions which include the prohibition to cut mangroves or clear them in any way. The SEIAA has also imposed specific conditions to that effect, requiring the construction to be carried out as per the provisions of the Notification of 2011. Considering the fact that the MCZMA as well as the SEIAA have recommended the proposal from CRZ point of view, the prayer made by the Petitioner for grant of leave can be considered.

9] Coming to the contention raised by BEAG, we find that the issue with regard to construction of jetty under the Notification of 2011 has been considered by this Court in its decisions relied upon by the learned Counsel for the Petitioner. We find that very same contentions raised on behalf of the Bombay Environment Action Group had been raised for consideration in Writ Petition No.759 of 2021 and connected Writ Petitions decided on 29/10/2021. In paragraph 23 of the said decision, it has been observed as under:-

“23. Thus, from a combined reading of paragraph 1, 3 and 4, it is clear that the activities which are related to waterfront or directly needing foreshore facilities are expressly permitted under the 2011

Notification. Setting up of a jetty is clearly not seen to be a prohibited activity but a regulated activity, which becomes clear from a reading of paragraph 4(i)(a) and (f).”

It has been further held that the object of the Notification of 2011 was not merely to protect the environment but also to promote development in a sustainable manner. By referring to principle of sustainable development, it was held that leave was being granted to execute the work of proposed passenger jetty in the said case. It is true that this decision is the subject matter of challenge before the Hon’ble Supreme Court. While modifying the initial interim orders, the jetty constructed was permitted to be used by keeping the question of law open.

10] Having perused the decision of the co-ordinate Bench in Writ Petition No.759 of 2021, we are in agreement with what has been held therein insofar as the aspect of construction of jetty under the Notification of 2011 is concerned, that it was a regulated activity rather than a prohibited activity. We are therefore inclined to follow the ratio of the aforesaid decision insofar as construction of the jetty is

concerned. We have also noted that in the affidavit filed by the Assistant Conservator of Forests dated 21/12/2022, it has been stated that the proposed construction site is not mentioned in Form-I as mangrove reserved forest nor is it a protected forest and that it is at a distance of 10-15 meters from the nearest mangrove which would be within 50 meters of the buffer zone. It has been stated that since there were no mangroves on the site and area was not notified as a reserved forest, there was no objection to the construction of the jetty, subject to compliance of forest laws and the leave of this Court. It has been stated that since there were no mangroves on the site and area was not notified as a reserved forest, there was no objection to the construction of the jetty, subject to compliance of forest laws and the leave of this Court.

We find from the material on record that the project intends to reduce the traffic congestion and vehicular pollution that is caused by the use of road net work by providing an alternate water route. The object is to provide connectivity between Mira-Bhyandar and Dombivali-Kalyan. It is stated that the project would have a positive effect on tourism in the adjoining areas. We therefore find that there

being no private interest sought to be achieved by the Board and the aim being to satisfy larger public interest coupled with the fact that no destruction of any mangroves is necessitated, the Board is found entitled to grant of leave in terms of paragraph 83 (viii) of the decision in the *Bombay Environmental Action Group & Anr* (Supra) as regards the activities mentioned by it in its application.

11] In the affidavit filed on behalf of the Petitioner on 18/12/2023 further allied activities such as construction of ticket counter, security cabin and mooring facility are sought to be undertaken in the mangrove buffer zone area. Undisputedly, these additional activities were not a part of the application that was moved by the Petitioner while seeking clearance for the said project. For this reason, the allied activities such as ticket counter, security cabin and mooring facility do not find place in the recommendation by the MCZMA and that recommendation is only for the proposed activities that have been referred to in the application moved by the Petitioner. The Board has not furnished relevant details as regards the exact area that would be occupied by the ticket counter, security cabin and mooring facility. So also the proposed location of these activities is also not indicated except

for stating that the same would be in the mangrove buffer zone area. No doubt, these activities could be treated to be ancillary to the construction of the jetty but in the absence of the same being made part of the application moved by the Board before the statutory authorities and finer details of the same also not having been placed on record, we are inclined to permit the Board to take appropriate statutory approval for these activities in the light of the fact that the same are sought to be undertaken in the mangrove buffer zone area. Granting leave as sought by the Petitioner without the actual dimensions and location of these facilities would not be permissible in the light of the ratio of the decision in the *Bombay Environmental Action Group & Anr* (supra). To that extent, the Board would be required to take requisite steps.

12] Hence, for aforesaid reasons the Writ Petition is allowed in terms of prayer clause (a) which reads as under:-

“a) This Hon’ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of mandamus under Article 226 of the Constitution of India, thereby directing the Respondent Authorities to permit the Petitioner

to execute the proposed pile jetty at Naigaon Village, Vasai Taluka, Palghar District in view of the public importance of the project by granting leave as contemplated in paragraph 83(viii) of the Judgment and Order dated 17th September 2018 in *PIL No.87 of 2006*,”

The Board shall within a period of two weeks from today file on record an affidavit of its responsible Officer undertaking to comply with all the conditions imposed by the MCZMA, SEIAA as well as the Mumbai Mangroves Conservation Unit.

Insofar as the activities of construction of ticket counter, security cabin and mooring facility are concerned, the Board is at liberty to take such steps as are found necessary and obtain necessary permissions/clearance from the statutory authorities in accordance with law. In case such request is made by the Board, the concerned authorities shall consider that application in accordance with law expeditiously considering the larger public interest involved.

13] Rule is made absolute in the aforesaid terms leaving the parties to bear their own costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]