

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

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**Appeal No.25/2013(T_{HC})
(M.A No.166/2013)**

In the matter of :

- 1) Smt. Octavia Albuquerque**
Through wife of the late Cyril Albuquerque
Aged 88 years
Residing at 'Sea View',
Hoige Bazaar, Bolar,
Mangalore-575 001
- 2) Shri Felix Britto**
Through Son of the late J. A. Britto
Aged 72 years
Residing at Hoige Bazaar, Bolar,
Mangalore- 575 0001
- 3) Smt. Marjorie Britto**
Through Wife of Shri Felix Britto
Aged 69 years
Residing at Hoige Bazaar, Bolar,
Mangalore- 575 0001
- 4) Dr. A. Dinesh Rao**
Through Son of the late Dr. A. V. Rao
Aged 64 years
Residing at Hoige Bazaar, Bolar,
Mangalore- 575 0001
- 5) Shri B. Sunder**
Through Son of the late J. A. Britto
Aged 72 years
Residing at Hoige Bazaar, Bolar,
Mangalore- 575 0001
- 6) Shri Clifford Alvares**
Through Son of the late J. A. Britto
Aged 50 years
Residing at Hoige Bazaar, Bolar,
Mangalore- 575 0001
- 7) Smt. Cecilia Albuquerque**
Through Son of the late J. A. Britto
Aged 72 years

Residing at Hoige Bazaar, Bolar,
Mangalore- 575 0001

....Petitioners

Verses

1. Union of India,

Department of Animal Husbandry,
Dairying and Fisheries,
Ministry of Agriculture,
Krishi Bhavan,
New Delhi-110 001

2. State of Karnataka

Through its Secretary सत्यमेव जयते
Public Works, Ports & Inland
Water Transport Department,
4th Floor, Vikasa Soudha,
Ambedkar Veedhi,
Bangalore -560 001

3. Animal Husbandry and Fisheries Department

Through its Secretary
Government of Karnataka,
4th Floor, Vikasa Soudha,
Ambedkar Veedhi,
Bangalore -560 001

4. Directorate of Fisheries in Karnataka

3rd Floor, Podium Block,
Visveshvaraiyah Centre,
Bangalore – 560 001

5. Assistant Executive Engineer

Ports and Fisheries Sub- Division,
Fisheries Wharf, Bunder,
Mangalore

6. Executive Engineer

Public works, Ports & Inland Water,
Transport Department,
Ports and Fisheries Department,
Bananje, Udupi.

- 7. Central Institute of Coastal Engineering for Fishery**
Ministry of Agriculture,
Government of India,
HMT Post, Opp ISRO Quartrs,
Jalahalli,
Bangalore – 560 031
- 8. Ministry of Environment & Forest**
Government of India,
Paryavaran Bhawan,
CGO omplex, Lodhi Road,
New Delhi – 110 003
- 9. Department of Forests, Environment and Ecology**
Government of Karnataka,
M. S. Building,
Ambedkar Veedhi,
Bangalore – 560 001
- 10. Regional Director (Environment)**
Department of Forest, Ecology and Environment
1st Floor, MCC Commercial Complex,
Lalbagh, Mangalore
- 11. State Level Environment Impact Assessment Authority**
Karnataka,
Department of Ecology and Environment,
M. S. Building,
Ambedkar Veedhi,
Bangalore – 560 001
- 12. National Coastal Zone Management Authority**
Ministry of Environment and Forests,
Government of India,
Paryavaran Bhavan, CGO Complex,
Lodhi Road,
New Delhi – 110 003
- 13. Karnataka State Coastal Zone Management Authority**
Department of Forest, Ecology and Environment,
Multistoried Building,
Ambedkar Veedhi,
Bangalore – 560 001
- 14. Karnataka State Pollution Control Board**

Parisara Bhavan,
No. 49,
Church Street,
Bangalore – 560 001

15. Magalore Urban Development Authority

Urva,
Mangalore

16. Mangalore City Corporation

M. G. Road,
Lalbagh,
Mangalore – 575 003

17. Mangalore Old Port

Bunder,
Mangalore – 560 001

18. M/s Yojaka India Pvt. Ltd.,

A private limited Company,
incorporated under the provisions
of the Companies Act, 1956,
having its office at D. No. 3-28/43,
'ABCO Trade Centre',
2nd Floor, N. H. 17,
Kottara Chowki,
Magalore,
Represented by its CEO
Shri B. Vijay Kumar.

... Respondents

Counsel for Appellant:

Ms. Srishti Govil, Adv.

Counsel for Respondents :

Ms. Divya Prakash Pandey, Adv. for respondent No. 1

Mr. V. N. Raghupathy and Mr. Parikshit P. Angadi, Advs. for
respondent nos. 2-6, 9-11, 13 & 17.

Mr. K. Josheph and Mr. Sanath Kumar, Advs. for respondent nos. 19-
20

Mr. Devraj Ashok, Adv. For the State of Karnataka.

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Dr. D. K. Agrawal (Expert Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 26th November, 2015

Pronounced on: 3rd May, 2016

- 1. Whether the judgment is allowed to be published on the net?**
- 2. Whether the judgment is allowed to be published in the NGT Reporter?**

Justice M.S Nambiar (Judicial Member)

1. Appellants originally filed *W. P. No. 4124/2002* before the High Court of Karnataka at Bangalore under Article 226 of Constitution of India to issue a writ of certiorari or other appropriate directions for quashing: i) Sheet No. 28 of the Coastal Zone Management Plan approved on 27.04.1996. ii) Proceedings of the Karnataka State Coastal Zone Management Authority dated 16.04.2010 (FEE 17 CRZ 2010), on Agenda No.5 iii) Communication of the Karnataka State Level Environment Impact Assessment Authority dated 05.06.2010, granting Environment Clearance and iv) the Notification in F. No. 11-74/2010-IA.III dated 06.06.2011 of the Ministry of Environment and Forest (in short MoEF), in so far as they relate to the proposed additional fishery harbour facilities to the south of the existing fishery harbour along Gurupur riverside, known as the Mangalore Fisheries Harbour III Stage Expansion to old Mangalore Port at Hoiege Bazaar, Bolar. While the matter was pending before the High Court by order dated 05.02.2013, it was

transferred to the Tribunal. On transfer, it was numbered as Appeal No. 25/ 2013.

2. The appellants in their petition contended that they are residents of Hoiege Bazaar, Bolar, the oldest Municipal ward of Mangalore City and are aggrieved by the Mangalore Fishery Harbour (old Mangalore Port), III Stage Project being undertaken by the respondent no. 4 - Directorate of Fisheries in Karnataka in so far as it relates to the expansion in the non-contiguous land situated at Hoiege Bazaar in Bolar, which is a critical ecologically sensitive wet land area within the contemplation of Coastal Regulation Zone 2011, (in short CRZ), where the natural Creek which is incidentally an area between the Low Tide Line (in short LTL) and the High Tide Line, (in short HTL), will be filled up and storm water drains to the sea will be blocked and hygiene and sanitation issues will crop up. Their case is that Mangalore city situate at the confluence of Gurupur and Nethravathi Rivers, joining the Arabian Sea. The administration of the Old Mangalore Port now vests with the Directorate of Ports and Inland Water Transport in Karnataka. The new Mangalore Port is situate at Panambur, to the north of Mangalore City. Opposite to the Old Mangalore Port at Bunder, on the western bank of Gurupur River is a long sand spit containing the Bengre fishing village. The old Mangalore Port Authority is in possession of a large extent of land in Bengre. The whole of Bengre is ideally suited for being developed as a Fish Processing Complex. To the South of Old Mangalore Port at Hoiege Bazaar, there are

centuries old private tile factories, functioning from their own warg lands and also reclaimed lands adjacent to natural Creek, which is popularly known as 'Felis Erna Todu' meaning Felix Creek, named after the late Shri Felix Albuquerque Pai, the pioneer tile manufacturer. The Government of Karnataka proposed extension of Old Mangalore Port, Bunder, called the 'Mangalore Fishery Harbour III Stage Expansion Project', requiring a total extent of 85,000 Sq. mtrs of land (28,000 Sq. mtrs on the southern side(from the creek to the boat building yard), 51,000 Sq. mtrs. at Bengre Fishing Village and 6,000 Sq. mtrs. on the Northern Side with 75% central assistance. Such a project requires strict compliance of stringent environmental laws. The coastal stretches around India are eco-sensitive. Respondent no. 8, The Ministry of Environment, Forest and Climate Change, Government of India (in short MoEF) in exercise of the powers under Section 3 (2) of the Environment (Protection) Act, 1986 notified a Coastal Regulation Zone (in short CRZ 1991) on 19.02.1991, which prohibits certain activities between HTL and the LTL. It regulates certain permissible activities along Coastal stretches of seas, creeks, backwaters and rivers. It required preparation of Coastal Zone Management Plans (in short CZMP) by the Coastal Zone Management Authority. The said Authority has to identify and demarcate the CRZ, inter alia the HTL and LTL, creeks, rivers and backwaters. The CZMP of Karnataka was approved on 27.04.1996 demarcating the Coastal Regulations Zones CRZ I & CRZ II. Sheet No. 28 of the said plan

pertains to the Mangalore City-Talapadi. However, the said sheet does not reflect the ground reality and fails to show the natural creek at Hoige Bazaar and reflects other features significant to the said area which has a direct impact on ecology. Therefore, sheet No. 28 of CZMP is to be ignored. By Notification dated 21.05.2002 respondent no. 8 amended CRZ, 1991, clarifying the method of calculating the distance between the HTL and LTL in the preparation of Coastal Zone Management Plans and also regulating development along the rivers, creeks and backwaters. In exercise of the powers under the Environment Protection Act, respondent no. 8 issued the Environment Impact Assessment Notification dated 14.09.2006 (in short the Notification 2006), requiring prior Environment Clearance and constituting State Level Environment Impact Assessment Authority (in short SEIAA) etc. Pursuant to the proposal of the State Government for the Third Stage Expansion, a Memorandum of Understanding (in short MoU) was entered into between respondent no. 7- Central Institute of Coastal Engineering for Fishery and respondent no. 3- State Animal Husbandry and Fisheries Department. Respondent no. 7 prepared a preliminary topographic and hydrographic map in February 2009, showing the existing facilities at Old Mangalore Port at Bunder, the existing boat building sheds and the private tile factories at Hoige Bazaar, the course and tide levels of the Gurupur river and its confluence with Nethravathi river at the Arabian Sea, the tide levels and additional harbour facilities over the actual creek location though

it does not show the existing natural creek. It is alleged that by the construction over the creek, the entire creek would be obliterated. By Government Order dated 07.03.2009, respondent no. 2, the State of Karnataka transferred 85,000 Sq. mtrs that is 28,000 Sq mtrs. on the southern side, 51,000 Sq. mtrs. at Bengre Fishing Village and 6,000 Sq. mtrs. on the northern side in favour of respondent no.3, the Animal Husbandry and Fishery department on lease for a period of thirty years for the proposed expansion. Respondent no. 7, Central Institute of Coastal Engineering for Fishery drew attention of Respondent no.4 by communication dated 31.07.2009, on the deterioration of the fish hygiene and sanitation conditions in the existing Mangalore Fishery Harbour First and Second stage and the necessity for the proposed Third stage expansion. A Draft Comprehensive Development Plan (for short CDP) was annexed thereto. Respondent no.7 deliberately neglected to show the existing natural creek. The proposed facilities on Gurupur side included toxic waste disposal system and fish processing industry, in spite of the prohibition under clause 2 (iii) to (vii) of CRZ, 1991. By communication dated 18.08.2009, respondent no. 7 intimated change in the draft CDP as it treats only local fishermen representatives as the only stake holders. Hoige Bazar is a residential ward of Mangalore and there is only some boat building activity and a few traditional fishermen are there near the creek. The residents who are directly affected by the project are the actual stake holders. Respondent no.4, on 03.2.2010

submitted an application to respondent no.10, Regional Director (Environment), seeking CRZ clearance. That application factually erred in describing the proposed activity as coming under permissible activity of clause 3 sub-clause (2) (ii) of CRZ Notification, 1991. The southern tip of Hoige Bazar, is in fact wet lands comprising the natural creek and ought to have been treated as CRZ 1. During the pendency of consideration of the CRZ application, respondent no. 4 by order dated 05.02.2010, sought additional land of 57,120 sq mtrs without specifying the location. Respondent no. 10 on 02.03.2010, intimated the Special Secretary of respondent no. 9, Department of Forest Environment and Ecology, Government of Karnataka, that the project may be considered subject to certain conditions requiring detailed Environment Impact Assessment of the project area, though he relied on an incorrect CZMP map. The proceedings of Respondent no. 13, the Karnataka State Coastal Zone Management Authority, on Agenda No. 5 show that the expansion reference is made to 6.5 hectares of port land. It is contended that there was no proper application of mind to the gravity of the matter and there was no proper discussion on the compliance of CRZ 1991. Mechanically, it was noted that the proposed facilities including toxic waste reception sheds, dredged materials being used for reclamation of the proposed area and disposal on the high seas, without considering its permissibility under CRZ 1991. Respondent No. 13 recommended it to respondent no. 1, The Department of Animal Husbandry, Dairy

and Fisheries, the Union of India, solely based on the flawed report of respondent no. 10 dated 02.03.2010, which in turn was based on an outdated and incorrect CZM Plan. Letter of respondent no. 7 dated 03.06.2010 to respondent no. 4, on costing has annexed abstract of cost for reclamation of Southern Side (Hoige Bazar) as being double that of Bengre. The reclamation ex facie is contrary to the specific stand of respondent no. 4 to the effect that there is no reclamation of land for port activities. The authority has not separately dealt with the additional two proposed locations, while granting the approval. Respondent no. 1, granted administrative approval dated 20.09.2010, based on the Techno-Economic Feasibility Report forwarded by respondent no. 7 by letter dated 16.06.2010. The administrative approval was granted subject to specific conditions including that deviation from the approved project proposal would not be permitted. It required the State Government to obtain the necessary Environmental Clearance from the Competent Authority. The Expert Appraisal Committee in the meeting held on 20.02.2010 recommended that no freezer companies should be set up in CRZ area. The CRZ, 2011 came into force on 08.02.2011. It deals with consideration of pending applications at different stages, seeking approvals from concerned Governments and Environmental Authorities on all pending Environmental Clearances. By order dated 03.03.2011, respondent no. 2 sought transfer of additional land of 54,820 Sq. mtrs, without specifying the location. As the location of the said

land is not identified, the entire Third stage expansion project is ambiguous. In this confusing scenario, appellants submitted a detailed representation on 04.05.2011 to various authorities including the respondents, pointing out the ground realities of filling up the natural creek, the area being low lying, subject to high rainfall and that storm water drains from higher localities of Mangalore pass through to the sea which may lead to an ecological catastrophe for the entire city. Development in urban areas of Karnataka is regulated by Zonal Regulations. In the existing regulation of Mangalore Local Planning Area Hoiege Bazar falls in the Mangalore Local Planning Area. By letter dated 16.06.2010 respondent no.7 forwarded the Techno-Economic Feasibility Report of the old Mangalore Port Third Stage expansion to respondent no.1. As per the Final Zonal Regulations of Mangalore notified in the Gazette on 05.05.2011, Hoiege bazaar is in a residential zone. The clearance of the Third Stage expansion of the old Mangalore port by various authorities have been done in a negligent manner contrary to the specific provisions of the various central and state laws. Though Hoiege bazaar is in a Residential Zone, as per the master plan, the southern tip is a wet land with tree cover, a salty marshy area with a natural creek, close to breeding and spawning grounds of fish and other marine life and lies between the HTL and LTL. Being the most low lying area of Mangalore city, the creek is the natural drain for the heavy rainfall of Mangalore, from where the excess rainfall flows into the river and then into the sea. The

southern tip of Hoige Bazar is wrongly treated as coming within CRZ II, which actually falls in CRZ I. Respondent no.8, the Ministry of Environment and Forest, based its approval on the recommendation of respondent no.13, the Karnataka State Coastal Zone Management Authority mechanically. The clearance granted by respondent no.8 is also vitiated because the initial CRZ application had proposed the project in a total area of 85,000 sq. mtrs whereas subsequently the project was expanded to cover an additional area of 54,820 sq. mtrs. A fresh application for CRZ clearance with the necessary permission of the other authorities for the additional area should have been made. A. Albuquerque & Sons, manufactures of traditional Mangalore roof tiles, addressed a detailed representation dated 05.07.2011 to the MoEF and others. By reply dated 15.10.2011, respondent no. 10, Regional Director, Environment enclosed a inter-departmental communication of respondent no. 5, the Assistant Executive Engineer, to respondent no. 6, the Executive Engineer, wherein it is stated that the proposed jetty would be built on land reclaimed from the river and not in the existing creek and that the existing creek would not be blocked or closed. The Third Stage expansion of the old Mangalore port is insisted for extraneous reasons. The traditional fishermen are also opposed to this. The Third Stage expansion ought to have restricted as per the original plan at Bengre, opposite to the old Mangalore port which would not have caused severe ecological damage or violated CRZ 1991 or CRZ 2011 or the Environment Protection

Act, 1986. It violates the fundamental right to life, of the residents of Hoiege Bazaar guaranteed under Article 21 of the Constitution. Mangalore is an ecologically sensitive area subject to sea erosion and severe environmental degradation. Over crowded old Mangalore fishing port has severe pollution problem of stench and fly menace. Bengre is conveniently and strategically the proper place for expansion and not the present site. Appellants are aggrieved by the illegal action of the respondents in mechanically extending the Third stage expansion to the southern tip of the old Mangalore port at Hoiege Bazaar thereby leading to irreversible ecological catastrophe. They contended that the actions of the respondents are in gross violations of the various environmental laws, is violative of the Constitutional guarantees of the local residents and their right to life. The approval of the project was without application of mind and contrary to the Karnataka Ports Act. It is contrary to the Zoning regulations and there has been no consultation with respondent no. 15, the Mangalore Urban Development Authority. Based on these pleadings, the appellants sought to quash the Coastal Zone Management Plan approved on 27.04.1996, proceedings of the Karnataka State Coastal Zone Management Authority dated 16.04.2000 and the Environmental Clearance granted on 05.06.2010 and the Notification dated 06.06.2011 issued by the Ministry of Environment and Forest in so far as they relate to the additional Fishery facilities in south of the Fishery Harbour at Hoiege Bazar, Bollar.

3. Respondent no. 1, Ministry of Agriculture & respondent no. 7, Central Institute of Coastal Engineering for Fishery filed a joint reply contending that the Techno-Economic Feasibility Report prepared by Central Institute of Coastal Engineering for Fishery (for short CICEF), Bangalore is for the comprehensive development of Mangalore fishery harbour including Third Stage development. The implementation of the project proposal by Karnataka Government has been necessitated, due to the fact that there is heavy congestion and overcrowding, due to increase in number of fishing fleet in the limited and constrained fishery harbour area of Ist and IInd stage development. Therefore, the project is to decongest the existing fishery harbour and improve harbour sanitation conditions. The new harbour facilities include modernization and renovation works in the existing Mangalore fishery harbour. It envisages fresh water supply, electricity, drainage and sewage facilities, including provision for Effluent Treatment Plant in an environment friendly manner. The project proposal was prepared in consultation with the departments and user groups. The storm water drain flowing into the creek from the Hoiege Bazar side has been kept open. In addition, improvement works for the storm water drain by proper guide bunds, RCC box culvert etc are envisaged for the smooth surface runoff in the harbour area. Bituminous/asphalt roads are provided with drains on either side. Storm water drains in the fishery harbour complex are planned, wherever required, keeping in view the functional aspects of the harbour. The appellants

have a misconception that the creek/drains in the project area are blocked or closed, resulting in the flooding of the surrounding area and it will have an adverse ecological affect. The apprehension has no basis. The Ministry of Agriculture, Government of India had constituted an Expert Standing Evaluation Committee (for short SEC) under the Chairmanship of Joint Commissioner of Fisheries to evaluate the existing facilities and assess the requirement of future expansion of the existing Mangalore fishery harbour stage I and II. After witnessing the present congestion and overcrowded condition of the fishery harbour, the SEC gave its report in November, 2008 recommending expansion of the fishery harbour. On the request of the Karnataka State Fisheries Department, the Ministry of Agriculture, Government of India advised the Central Institute of Coastal Engineering for Fishery, Bangalore (CICEF) to prepare Techno-Economic Feasibility Report. Accordingly, CICEF after conducting detailed engineering investigations on the project site, had submitted Techno-Economic Feasibility Report to State/Central Government. The Ministry of Agriculture, Government of India considered the project proposal and accorded approval for the project construction at a total cost of Rs. 57.60 crores in September, 2010. CICEF have meticulously planned all the harbour facilities in a most modern way keeping in view the functional and environmental aspects of the fishery harbour. As apprehended by the appellant, the creeks are not going to be closed. In fact the existing creeks are being de-silted

from the present shallow depth to -3.0 meter depth for the safe maneuvering of the fishing vessels. As such, the apprehension of the appellants is totally misconceived and misleading.

4. Respondents 2,3,4,5, 6, 9,10, 11 and 13 filed a joint reply contending that the appellants have filed the appeal in the guise of a Public Interest Litigation to achieve their private interest, with oblique motive. They are seeking to stall the developmental activity undertaken by the State and Central Governments. The developmental activity undertaken is strictly in consonance with the Jeremy Bentham's Theory of utilitarianism which provides greatest happiness of the greatest number, by improving the existing facilities, by incorporating essential facilities which will benefit one and all. The rapid increase in the number of mechanized boats led to congestion in the old Mangalore fishing harbour, in spite of its subsequent development in phase I and II. The Government of India advised the Central Institute of CICEF to undertake study and prepare Techno-Economic Feasibility Report after undergoing a detailed field study and discussion with the stake holders. CICEF prepared a detailed project report for the Third stage expansion of the Mangalore Fishery Harbour. The Government of India accorded administrative sanction for the project at a cost of Rs. 5760 lakhs to be shared 75:25 between Government of India and Government of Karnataka on 20.09.2010. The Third phase has been designed to accommodate 1850 mechanized fishing boats. The Coastal Zone Management Plan was approved on 27.04.1996 by the Karnataka

State Coastal Zone Management Authority. It is being challenged in the petition filed in 2012, belatedly.

5. Appellant no.7, Smt. Cecilia Albuquerque is the w/o George Albuquerque Pai, the Managing partner of the firm Albuquerque & sons. That firm has a tile factory in the vicinity of the project area. M/s Albuquerque & Sons have been leased approximately 6.57 acres of Port land, for the usage of wharf of their tile factory as per letter dated 28.07.2006. Out of 103 lessees, only 39 do exist in the project area and are involved in fisheries activities like fish drying, boat building and repair etc. They have been asked and will be asked to vacate on providing land on the proposed project area to continue their trade.
6. The necessity of the project was examined by the Standing Evaluation Committee constituted by Government of India. Based on their recommendations, the Government of India advised the CICEF, Bangalore to prepare a detailed project report, along with techno-economic feasibility report of the project. The CICEF has conducted detailed engineering and economic investigations and prepared comprehensive detailed project report, with techno-economic feasibility of the project for the Third stage development of fishing harbour at Mangalore. The Government of India accorded administrative sanction for the project by letter dated 20.09.2010. Under the project, the creek will not be blocked and instead it will be well defined by providing boundaries such as riveting the edges of banks and the basin will be dredged from the existing level of 0 to -1 mtr up to

-3 mtrs, so that the sailing vessels as well as fishing boats can have a smooth navigation. The drain, in which storm water passes, will be provided with a skew bridge for a span of 20 mtrs and the same will not be blocked or disturbed as apprehended by the appellants. Reasonable care will be taken to maintain the required depth, so that the storm water will have easy flow during the rainy season. Since the water will not be allowed to inundate, sanitation or hygiene issues will not crop up. Though Bengre area is ideal for fish processing units, under the new norms of Coastal Regulation Zone Notification, no fish processing industries are permitted there. On account of congestion in the existing fishing harbour, the Central and State Governments have taken up keen interest to put up an idle berthing Jetty at Bengre. It is never mentioned that the southern side of the existing fishing harbour should not be developed or extended. The fisheries department, after getting detailed comprehensive development project report from the CICEF, assessed the requirement of land which was to be used for fishing activities only and approached the department of port for transfer. By order dated 07.03.2009, 85,000 sq mtrs of land was transferred out of which 51,000 sq mtrs are towards Bengre side and 34,000 sq mtrs adjacent to existing fish harbour. Further, an additional land of 54,820 sq mtrs was also transferred by the port department to meet the requirement of the project. The statutory approval required for construction of a fishing harbour are:

- i. Approval under the clearance Regulation's Notification, 2006. It was obtained from SEIAA , Karnataka on 05.06.2010
 - ii. Approval as per the provisions of the CRZ Notification, 2011. That approval was obtained from the Ministry of Environment and Forest on 06.06.2011.
 - iii. Consent for establishment of fishery harbour under the provision of Water (Prevention and Control of Pollution) Act, 1974 (for short Water Act) and Air (Prevention and Control of Pollution) Act, 1981 (for short Air Act). They were obtained from the Karnataka Pollution Control Board on 22.10.2011.
7. The CRZ Notification, 1991 was superseded by Notification S.O 19 (E) dated 06.01.2011. The objective of the Notifications is to ensure livelihood security to the fishermen communities and others living in the coastal area through sustainable development. The activities directly related to waterfront or directly needing foreshore facilities are exempted from prohibition. As per the Notification, the foreshore facilities are operations such as boats and harbours, jetties, quays, wharf, erosion control measures, breakwaters, pipe lines, light houses and navigational safety facilities are not prohibited. So also, as per sub-para (iv) of para 3 of CRZ Notification, 2011, land reclamation, bunding or disturbing natural course of sea water is a prohibited activity except when required for setting up, construction or modernization or expansion of foreshore facilities

like ports, harbours, jetties, wharf, quays, slipways, bridges, sea links, road on stilts, etc. The Karnataka State Coastal Zone Management Plan was prepared in accordance with the criteria laid down in the Notification No. S.O. 114 (E) dated 19.02.1991 and subsequent guidelines issued by MoEF under the Environment Protection Act, 1986. The plan maps have been prepared using the Survey of India toposheets as base maps, which are in 1:25000 scale. Therefore, it cannot be expected to show all minute topographic features. However, the creek is shown in the draft local level Coastal Regulation Zone map being prepared by National Hydrographers Office, Dehradun. The Karnataka State Coastal Zone Management Plan was approved by MoEF on 26.09.1996, duly considering all aspects. The area between the HTL and LTL is classified as CRZ I and all other substantially built up area within the notified urban area is classified as CRZ II. The survey Map prepared by CICEF shows the tidal levels in the creek area. It is thus clear that the creek does exist undisturbed. The detailed project report prepared by CICEF has a layout plan of the entire project showing clearly the facilities proposed in the project area. It is envisaged to create necessary facilities for collection and disposal of solid, liquid and toxic wastes expected to be generated in the fishing harbour complex. It would improve the hygiene and environmental conditions in and around the harbour premises. The creek is essential for smooth navigation of fishing boats, dry docking, repair etc. Hence, it will not be blocked/obliterated. It is very

much required to support the boat building activity also. In the meeting held on 16.04.2010, the State Coastal Zone Management Authority reviewed all the details of the project. As per the guidelines framed under the CRZ Notification, application for approval of the project was submitted to Coastal Regulation Zone Authority. There is no proposal to construct jetty in the existing natural creek. Instead, the edges of the creek will be well defined by strengthening the revetment and deepening to -3 mtrs but ramps will be constructed for hauling of the boats. The storm water drains flowing into the creek from Hoige Bazar side has been kept open. In addition improvement work for the storm water drain by providing proper guide bunds and reinforced cement concrete box culverts for easy drainage of storm water. For the smooth run in the harbour area, bituminous/asphalt roads will be provided with the drains on either side. The proposal has been considered by the Karnataka State Coastal Zone Management Authority in a meeting held on 16.04.2010 and recommended to the MoEF after due application of mind. Since the area of the project is more on the southern side, than the Bengre side, the reclamation area is also relatively more on the banks of river Gurupur and Netravathi. At Bengre side, only idle berthing quay is proposed. The project has been exempted from public consultation as per the provisions of clause 7 (i) (III) (i) (e) of Notification No. S.O 1533 (E) dated 14.09.1006, as it is considered a B2 category activity. Respondent no. 10 had recommended detailed Environmental Impact Assessment of the

project area and respondent no. 7 had conducted Techno-Economical Feasibility Study. In the layout plan in the Third phase of the Mangalore Fishing Harbour, some area has been earmarked for fish processing industry, where drying of fish only will be taken up. Drying of fish is a permissible activity under the CRZ Notification 2011. Under clause 8 (III) (A) (iii) (I) of the CRZ Notification, facilities required for local fishing communities such as fish drying yards, auction halls, net mending yards, traditional boat building yards, ice plant, ice crushing units, fish curing facilities and the like are permitted in the no development zone. Under the CRZ Notification, 2011, land reclamation, bunding or disturbing natural course of sea water is a prohibited activity except when required for setting up, construction or modernization or expansion of foreshore facilities like ports, harbours, jetties, wharf, quays, slipways, bridges, sea links, road on stilts etc. Therefore, the proposal of expansion of Mangalore fishing harbour is well within statutory provisions and covered under the permissible activities. The application for CRZ clearance was submitted to the Regional Director on 03.02.2010. The Regional Director after examining the proposal recommended the application to the Secretary, Environment and Ecology, department of Forest, Karnataka on 02.03.2010. The Karnataka State Coastal Zone Management Authority in its meeting held on 16.04.2010 considered the proposal and recommended the project to MoEF by letter dated 28.06.2010. In the 92nd meeting by the Expert Appraisal Committee for Coastal Regulation Zone,

Infrastructure, Building construction and miscellaneous projects held on October 20th to 22, 2010, considered the proposal and recommended for CRZ clearance. It is, thereafter, clearance under the CRZ Notification was issued on 06.06.2011. Presently the creek has an irregular shape. It will be well defined by constructing diaphragm wall all around to confine the boundaries. To prevent erosion, stone pitching and revetment will be taken up at the opening of the creek. Dredging of the creek to ensure uniform depth of -3 mtrs apart from the widening of the creek mouth from the existing 19 mtrs to 70 mtrs. works will be carried out which will definitely facilitate smooth navigation and movement of vessels. It is true that in the Master Plan prepared under Section 13 of Karnataka Town and Country Planning Act, 1961, Hoige Bazar area is within the Mangalore local planning area. The area where Third stage Mangalore fishing harbour project is proposed is classified as parks, play ground and open spaces under the Land Use Zones. As the development project is in accordance with the CRZ Notification and the master plan, there is no violation. The total project area is 139820 sq. hectares of land. It was transferred by the Port Department. There is no ambiguity on the requirement of land for the project. While submitting proposal for CRZ clearance and Environmental clearance the entire project area has been indicated. Hence submitting fresh proposal does not arise at all. The Government of India while giving administrative sanction has given a time frame of 4 years to complete the project. The construction of the

project therefore, cannot be delayed. The department of Fishery after due consultations and after and after obtaining clearances and approvals from all statutory bodies commenced the project for smooth navigation of fishing and other vessels. While the Writ Petition was pending before the Hon'ble High Court of Karnataka, Appellants contended that Fishery Department has actually closed the creek and efforts have been made to put debris into the creek area to close. It. Hon'ble High Court passed an interim status quo order. Subsequently the Hon'ble High Court obtained a factual report from the District Judge, Mangalore which disclosed that only a temporary road was formed on the creek for maintaining and improving the status of the creek. The report stated that the water of creek on either side exists on the temporary road. Hon'ble High Court thereafter vacated the status quo order on 28.03.2012. The attempt of the appellants is to hinder the Government's project aimed to create essential infrastructure for augmenting fish production. The appellants are not entitled to any of the reliefs sought for.

8. Respondent no. 14, the Karnataka State Pollution Control Board filed a reply contending that Mangalore fishery harbour, stage I was constructed during 1984 and in view of the subsequent increase in the number of fishing boats, stage II expansion was commenced and was completed by 2003. The Standing Evaluation Committee of the Government of India, during their visit in December, 2007, observed that the fishery harbor at Mangalore needed some important amenities like alternative

harbour basin, quays repair, idle berthing and dry repairing of boats and recommended the development of Mangalore fishing harbour stage Three expansion. Ministry of Environment and Forest granted CRZ clearance for development of the fishery harbour. The State level Environment Impact Assessment Authority constituted by the MoEF granted environment clearance for the project on 05.06.2010. The Karnataka State Pollution Control Board granted consent for establishment under Water Act, 1974 and Air Act, 1981, by consent order dated 22.10.2011. While granting the consent it had stipulated various conditions for treating the effluents and to ensure that the operation does not cause any pollution. The Pollution Control Board in fact requested the project proponent to submit the clearance granted under CRZ Notification, before granting the consent to establish the project. The environment clearance granted is perfectly legal.

9. Respondent no.8 & 12 together filed a reply contending that the appeal is barred by time as it was filed beyond the prescribed period of limitation. The first cause of action arose when impugned Coastal Zone Management Plan was approved on 27.4.1996. The environment clearance was granted on 06.06.2011. The Writ Petition was filed only on 06.02.2012 and the appeal is hopelessly barred by time. It is contended that the CRZ Notification, 2011 was issued under section 3 (2) (1) and clause 5 of the Environment (Protection) Act, 1986 and clause (d) of sub rule (3) of Rule 5 of the Environment (Protection) Rules,

1986, for regulation of development activities along the coastal stretches and to ensure livelihood security to the fishermen communities and other local communities living in the coastal areas and also to conserve and protect coastal stretches. This Notification supersedes the CRZ Notification 1991. The Notification declares coastal stretches up to 500m from HTL, the stretch between LTL & HTL and water portion up to 12 nautical miles as Coastal Regulation Zone. It also declares 100m or width of the creek and backwater and distance up to which tidal effect of the seas is experienced in rivers, creeks and backwaters as Coastal Regulation Zone. As provided under para 3 (3) (i) of CRZ Notification, 1991, the respondents consulted Survey of India/Naval Hydrographer for preparing HTL, based on which CRZ area could be demarcated. Since the States could not prepare Coastal Zone Management Plan (CZMP), Writ Petition 664/93 was filed before the Hon'ble Supreme court of India by Shri. M.C Mehta. By order dated 10.04.1996 all the Coastal States/UTs and the Central Government were to file approved CZMPs. In compliance to the order, respondent approved the CZMPs prepared by the Coastal States on 27.09.1996. The respondent issued CRZ, 2011 on 06.01.2011 and as per the OM dated 08.2.2011, all the pending proposals are to be considered under CRZ Notification, 2011. The Mangalore fishery harbour (Stage I) became operational in 1984/ Consequent to increase in number of fishing fleets from 279 to 856 in 2000, Stage II expansion became essential. The work commenced in 2000 and

ended by 2003. The Standing Evaluation Committee, Government of India observed during their field visit in December, 2007 that the fishery harbour lacks some important amenities like alternative harbour basin, quays repair, idle berthing, and dry repairing of boats. Further due to increase in the fishing fleet, the fishery harbour became congested, SEC recommended expansion of the Mangalore fishery harbour. The Karnataka SCZMA thereafter recommended the project to the respondents vide letter dated 28.06.2010. The proposal was then put up for appraisal in the meeting of the Expert Appraisal Committee (in short EAC) held on 20th – 22nd October, 2010. After due consideration of the relevant documents submitted by the project proponent, EAC recommended the proposal for issuance of CRZ clearance subject to the conditions that (i) No ice plant is permissible in CRZ area; proponent agreed to drop the ice plant. (ii) waste oils and waste batteries shall be collected and handed over to the authorized recyclers. (iii) The treated waste water shall be re-used for toilet flushing and gardening. (iv) The Committee observed that monitoring reports of marine water and sediments do not match. The proponent was required to re do the analysis and submit to the Ministry. Accordingly, the project proponent submitted the analysis report of marine water and sediments on 21.03.2011 and HTL/LTL map on 18.05.2011. After receiving all the required information and processing the proposal as per the CRZ Notification, clearance was granted to the project on 06.06.2011, subject to strict compliance of various

environmental safeguards. As per the recommendation of the Karnataka Coastal Zone Management Authority dated 28.06.2010, expansion is proposed at two locations namely (i) 6.35 ha on southern part of existing fishing harbour and (ii) 5.6 ha on western side of Gurupur river. The project in question is a category 'B' project as provided under EIA Notification, 2006 and Environment clearance is to be granted by the SEIAA.

10. Respondent no. 16, The Mangalore City Corporation filed a statement contending that the master plan was prepared under section 13 of the Karnataka Town and Country Planning Act, 1961. Hoige Bazar area falls within the Mangalore Local Planning Area, approved by Government of Karnataka as per the sanction order No. AA.E 186 MY Aa Pra 2009 Bangalore dated 10.09.2009. It shows that the area where Third stage Mangalore Fishing Harbour Project is proposed is classified as parks, play ground and open spaces under Land Use Zones. It is not correct to allege that is in residential zone. Under the Zonal Regulations approved by the Mangalore Urban Development Authority and sanctioned by the Government on 05.05.2011 and published in the Karnataka Gazette dated 10.11.2011, any development project can be executed in such zones. The project proponent has already obtained CRZ clearance. Any development project which is sought to be executed has to comply with the Zoning Regulations under the Master Plan. The question of approaching or consulting the said Authority does not arise, since the planning area and the land use zones are declared by the

Mangalore Urban Development Authority. The respondent, Mangalore City Corporation has no role to play in the matter of development of lands by the Government as per section 342(1) of the Karnataka Municipal Corporation Act, 1976 which provides that nothing in the Act or in any rule or by law made there under shall be construed as requiring to take out any license obtain any permission under the Act or any such rule or by law in respect of any place in the occupation or under the control of the Central Government or the State Government or in respect of any property of the Central Government or the State Government.

11. The appellants have filed a common rejoinder to the objections filed by the respondents reiterating the contentions raised earlier. It was contended that as the Government pleader and the counsel appearing for the respondents pointed out to the High Court of Karnataka, the judgment of the Hon'ble Supreme Court in Bhopal Gas Peedit Mahila Udyog Sangathan & Ors Vs UoI (2012) 8 SCC 326, vide order dated 9th August 2012 had directed the matter to be transferred to the National Green Tribunal and therefore, there is no jurisdictional question to be adjudicated. It is also contended that the plea on limitation is baseless.

12. Respondents 2 to 6, 9 to 11, 13 and 17 filed a reply to the rejoinder denying the assertions made in the rejoinder and reiterating the plea already raised earlier.

13. When the learned counsel appearing for the appellants were directed to specify the objections to the project with reference to the reliefs sought for, the learned counsel submitted that the

CRZ clearance granted is not valid as the project area falls in CRZ I and not CRZ II and as CRZ Notification 2011 mandates that all pending proposals for clearance under CRZ 1991 Notification shall be dealt with under CRZ 2011 Notification and, therefore the clearance granted is not valid. The main objections are: under CRZ Notification 2011 there cannot be a Fish Processing Unit in a CRZ 1 area and therefore, the EC granted is not sustainable. The only other ground pressed is that within the project area, there is a fresh water creek which is ecologically sensitive and the project would destroy the entire creek which will be filled with the debris and would be reclaimed and it will result in an ecological catastrophe for the entire Mangalore city.

The following points arise for consideration:

- (1) Whether the CRZ clearance granted to the project is vitiated as canvassed by the appellants.
- (2) Whether the CRZ clearance is bad as the project include Fish Processing Unit.
- (3) Whether the project would cause any damage to the existing creek and if so, the remedy.
- (4) Whether the EC granted is bad in law.

14. The learned counsel appearing for the appellants and the respondents were heard.

15. Discussion on point no.1 and 2:

CRZ notification 1991 dated 19.02.1991 was issued by the MoEF in exercise of the powers conferred by clause (d) of sub rule (3) of Rule 5 of Environment Protection, Rules, 1986 declaring the

coastal stretches of seas, bays, estuaries, creeks, rivers and back waters which are influenced by tidal action up to 500 metres from HTL and the land between HTL and LTL as Coastal Regulation Zone and imposing prohibitions.

16. The prohibited activities under the CRZ Notification is provided in para 2. It reads:

(i) **“Setting up of new industries and expansion of existing industries, except (a)those directly related to water front or directly needing foreshore facilities and (b) Projects of Department of Atomic Energy.**

(ii) Manufacture or handling of storage or disposal of hazardous substances as specified in the Notifications of the Government of India in the Ministry of Environment and Forests No. S.O 594 (E) dated 28th July 1989, S.O 966(E) dated 27th November, 1989,;except transfer of hazardous substances from ships to ports, terminals and refineries and vice versa in the port areas:

Provided that, facilities for receipt and storage of petroleum products and Liquefied Natural Gas, may be permitted within the said Zone in areas not classified as CRZ-I (i), subject to implementation of safety regulations including guidelines issued by the Oil Industry Safety Directorate in the Government of India, Ministry of Petroleum and Natural Gas and guidelines issued by the Ministry of Environment and Forests and subject to such further terms and conditions for implementation of ameliorative and restorative measures in relation to the environment as may be stipulated by the Government of India in the Ministry of Environment and Forests.

(iii) **Setting up and expansion of fish processing units including warehousing (excluding hatchery and natural fish drying in permitted areas);**

Provided that existing fish processing units for modernization purposes may utilize twenty five per cent additional plinth area required for additional equipment and pollution control measures only subject to existing Floor Space index/Floor Area Ratio norms and subject to the condition that the additional plinth area shall not be towards seaward side of existing unit and also subject to the approval of State Pollution Control Board or Pollution Control Committee.

(iv) Setting up and expansion of units/mechanism for disposal of waste and effluents, except facilities required for discharging treated effluents into the water course with approval under the Water (Prevention and Control of Pollution) Act, 1974; and except for storm water drains:

(v) Discharge of untreated Wastes and effluents form industries, cities or town and other human settlements. Schemes shall be implemented by the concerned authorities for

phasing out the existing practices, if any, within a reasonable time period not exceeding three years from the date of this notification;

(vi) Dumping of city or town waste for the purposes of land filling or otherwise; the existing practice, if any, shall be phased out within a reasonable time not exceeding three years from the date of this Notification;

(vii) Dumping of ash or any wastes from thermal power stations;

(viii) Land reclamation, bunding or disturbing the natural course of sea water except those required for construction or modernization or expansion of ports, harbours, jetties, wharves, quays, slopways, bridges and sea-links and for other facilities that are essential for activities permissible under the notification or for control of coastal erosion and maintenance or clearing of water ways, channels and ports or for prevention of sandbars or for tidal regulators, storm water drains or for structures for prevention of salinity ingress and sweet water recharge;

(ix) Mining of sands, rocks and other substrata materials, except (a) those rare minerals not available outside the CRZ areas and (b) exploration and extraction of Oil and Natural Gas Provided that in the Union Territory of the Andaman and Nicobar islands, mining of sands may be permitted by the Committee which shall be constituted by the Lieutenant Governor of the Andaman and Nicobar Islands consisting of Chief Secretary; Secretary, Department of Environment; Secretary, Department of Water Resources; and Secretary, Public Works Department. The said Committee may permit mining of sand from non-degraded areas for construction purposes from selected sites, in a regulated manner on a case to case basis, for a period up to the 30th day of September, 2002. The quantity of sand mined shall not exceed the essential requirements for completion of construction works including dwelling units, shops in respect of half yearly requirements of 2001-2002 and 2002-2003 annual plans. The permission for mining of such sites and in such quantity which shall not have adverse impacts on the environment.

(x) harvesting or drawal of ground water and construction of mechanism therefore within 200 m of HTL; in the 200m to 500m zone it shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries;

Provided that drawal of ground water is permitted, where no other source of water is available and when done manually through ordinary wells or hand pumps, for drinking and domestic purposes, in the zone between 50 to 200m from the High Tide Line in case of seas, bays and estuaries and within 200 m or the CRZ, whichever is less, from the High Tide Line in case of rivers, creeks and backwaters subject to such restrictions as may be deemed necessary, in areas affected by sea water intrusion, that may be imposed by an authority designated by State Government/Union Territory Administration.

(xi) construction activities in CRZ-1 except as specified in Annexure-1 of this notification;

(xii) any construction activity between the Low Tide Line and High Tide Line except facilities for carrying treated effluents and waster water discharges into the sea, facilities for carrying sea water for cooling purpose, oil, gas and similar pipelines and facilities essential for activities permitted under this Notification; and

(xii) dressing or altering of sand dunes, hills, natural features including landscape changes for beautification, recreational and other such purpose, except as permissible under this Notification.

17. Therefore, it is clear that there is no prohibition for setting up of industries or projects directly related to water front or directly needing foreshore facilities. The expansion of the harbour is a project which is directly related to water front and in any event directly needing foreshore facilities. Hence, the Mangalore Fishing Harbour Development Project Stage III is not a prohibited project under CRZ 1991 or CRZ 2011.

18. The main attack of the appellants against the clearances granted is on the ground that it includes fish processing unit. True, under para 2 (iii) of the CRZ Notification, setting up and expansion of fish processing unit is prohibited. The EAC for CRZ, Infrastructure, Building construction and Miscellaneous projects in the 92nd meeting held on October 20th, 22nd, 2010 had recommended the proposal for CRZ clearance with the following three conditions:

- (i) No ice plant is permissible in CRZ area; Proponent has agreed to drop the ice plant.
- (ii) Waste oils and waste batteries shall be collected and handed to the authorized recyclers.

- (iii) The treated waste water shall be re-used for toilet flushing and gardening.

19. The MoEF granted clearance thereafter on June 6, 2011. The main features of the project noted in the clearance reads:

“It is interalia, noted that the proposal involves development of Mangalore Fishing Harbour Karnataka by Department of Fisheries. The Mangalore fishery harbour (State-I) became operational in the year 1984. Consequent to increase in no. of fishing fleets from 279 to 856 in 2000 and ended by 2003. Standing Evaluation Committee (SEC), Govt. of India observed during their field visit in December 2007 that the fishery harbour lacks some important amenities like alternative harbour basin, quays repair, idle berthing and dry repairing of boats etc. Further due to increase in fishing fleet, the fishery harbour became congested and hence SEC recommended for expansion of Mangalore Fishery Harbour. The main features proposed as a part of the development of Mangalore Fishing harbour, III State expansion at Mangalore fishery harbour are Quays 831 m, Fish handling and auction hall 2210 Sq. mtr, Net mending sheds- 1241.7 Sq. Mtr, Fishermen rest sheds-860 Sq. m, Canteen- 255.4 Sq. m, Boat repair shop – 301.3 Sq. m, Compound wall 960 mtrs, RC sloping hard – 3 Nos. -20 m wide each, public toilet blocks – 140.8 Sq. m dredging to 30 m level.”

20. The Ministry in fact accorded CRZ clearance as per the provisions of CRZ 2011 Notification subject to strict compliance of the terms and conditions enumerated therein.

The specific conditions reads as under:-

- (i) “Consent for Establishment” shall be obtained from State Pollution Control Board under Air and Water

Act and a copy shall be submitted to the Ministry before start of any construction work, at the site.

- (ii) **No ice plant is permissible in CRZ area; Proponent has agreed to drop the ice plant.**
- (iii) Waste oils and waste batteries shall be collected and handed to the authorized recyclers.
- (iv) The treated waste water shall be reused for toilet flushing and gardening.
- (v) The committee observed that monitoring reports of marine water and sediments does not match, the proponent has to re do the analysis and submit to the Ministry.
- (vi) There shall be no ground water drawal within CRZ area.
- (vii) Solid waste Management shall be as per Municipal Solid (Management and Handling) Rules, 2000.
- (viii) Public access to the beach shall be provided
- (ix) No construction work other than those permitted in Coastal Regulation Zone Notification shall be carried out in Coastal Regulation Zone area.
- (x) The project proponent shall set up separate environmental Management cell for effective implementation of the stipulated environmental safeguards under the supervision of a Senior Executive.
- (xi) The funds earmarked for environment management plan shall be included in the budget and this shall not be diverted for any other purposes.

21. Therefore, the CRZ clearance cannot be challenged on the ground of violation of the prohibition on the Fish Processing Unit which is already given up.

22. Respondent no. 2 to 6, 9 to 11 and 13 in their replies to the rejoinder unambiguously stated that the Fish Processing is

dropped. The relevant pleading reads: *“Though in the project map the fish processing units were contemplated in the Third Stage expansion in the southern side, due to CRZ constraints, the said proposal has been dropped. What is meant by fish processing in the project is relating to fish net mending, ice crushing, and ice storage plants.”*

23. Therefore, the said objection is not sustainable and we hold that the CRZ clearance granted is valid.

24. Discussion on points 3 and 4:

The main challenge raised against the project is on the basis that the natural creek will either be partly or completely destroyed. Based on the submissions made by the appellants that the creek will be obliterated, vide order dated 1305.2014, a committee consisting of: 1. Dr. Rajasekhariah Shankar, 2. Dr. Ramachandra Bhatta, Scientist G., 3. A Scientist - E nominated by Indian Institute of Science, Bangalore , 4. An Expert on Coastal Zone Management nominated by the Secretary of Ministry of Earth Sciences., 5. Director or his Senior nominee from Space Application Center, Ahmedabad., 6. Member Secretary, Karnataka Coastal Zone Management Authority was appointed with a direction to conduct a site inspection and to submit a comprehensive report in all respects. It was specifically made clear that the report should indicate the past and present status of the creek and whether the creek or any part thereof has been

filled by any process. Committee was also directed to answer the following:

- “1. What is the history of the Creek and its significance in the life of the people living around the area?
 2. What is the size and depth of the Creek at present and what was it prior to 2004?
 3. Whether there existed a Creek (water body) as reflected in the Google Imagery of the year of 2004 and even of the year of 2012?
 4. Whether creek shown in the survey of India map and Google maps from 2004 to 2013, is reflected/ shown in CZMP, 1996?
 5. Whether low tide line and high tide lines are demarcated properly and shown in CZMP, 1996
 6. Whether the proposed project area in question is in CRZ 1 or 2?
 7. Whether there are any CRZ violations at the site?
 8. Whether the creek (water body) has been manually filled to convert it into solid mass of earth for the purposes of establishing the Fishery Harbour and Processing Unit at the site in question?”
25. The committee so appointed inspected the site, made use of Survey of India maps, satellite data, coastal zone map and coastal land use maps and submitted a comprehensive report. But one of

the Members of the committee, Dr. K.V. Thomas, an Expert on Coastal Zone Management did not participate in the deliberations of the committee or join the other members. Instead he prepared a separate report.

26. The comprehensive report submitted by the five members dated 21.06.2014 describes the history of the creek as follows:-

“The region under investigation located in the southern part of the Gurupur estuary and enviorns. SOI Map Sheet No. 48 L/13 published in 1913 (Surveyed in 1910-12) (Plate 1) shows that the entire eastern part of the Gurupur estuary in this region is Mangalore urban area and shows the presence of Port (location of the existing Mangalore Fishing Harbour). The entire western part of Gurupur eastuary forms a spit, presently known as the Bengre spit. The map does not show the presence of the creek and the entire region is the lower part of the Gurupur estuary without any island/bar/shoal/creek. SOI Map Sheet No. 48 L/ 13 published in 1973 (surveyed in 1967-68) shows the existence of swamps, bar, islands and a small spit in the lower parts of the Gurupur estuary (circled area in Plate1). This spit forms a semi-enclosed water body towards its eastern part, south of the Mangalore Fishing Harbour (site for the southern expansion of Phase-III). Landsat TM False Colour Composite (TM FCC) of 1992, IRS LISS-IV + Cartosar (Plate-2), IKONOS data (Plate-3) and coastal land use maps prepared using satellite data of 1989-91 and 2004-06 time frame (Plate-4) shows that the spit as shown on the topographical map of 1973 has further grown in width and has become a part of the mainland. There appears to be no significant change in the area of the water body up to January 27, 2012. However, the subsequent time sequential satellite images (October 11, 2012 to December 21, 2013 time frame) show shrinking of the water body due to its filling up as part of the Phase III project activity (Plte5-6)

The creek is important to the people living around the area in terms of:

- a) Local fishermen parking and repairing their fishing boats in the eastern part of the creek, and*
- b) Passage of storm water discharge.”*

27. The satellite images shown in the report makes it clear that, the nature of the creek was changing from time to time and was not static. Regarding the question on the size and depth of the creek at present and what was prior to 2004, the report reads, *“Plate 7 shows the spatial extent and changes during the period December 2004- December, 2013. Plate 8 shows the change in the creek (water body) area. During the field visit, it was found that the creek’s eastern part had got severed from the main creek due to the project activities. However, if the eastern part is included, the creek area (as of December 21, 2013) would be more than 0.54 ha. The water depth in the western part of the creek (water body) varied between - 0.50 and -1.00 metre as per the survey conducted by the Central Institute of Coastal Engineering for Fishery in February 2009.*

The water depth as measured during field inspection was -0.60 metre. However, water depth data of earlier period for the eastern part of the creek (water body) are not available. During the field visit, the water depth measured, varied from -0.40 to -0.53 metre.

28. The report also reveals that the creek is clearly seen on the Google imagery of the year 2004 and also of the year 2012. On the question whether the creek is shown in the Survey of India Map and Google maps from 2004 to 2013 and is reflected/ shown in CZMP, 1996, the report reads, *“The area is shown as CRZ-II, however part*

of the creek which is discernible from the Survey of India map of 1985 and Google images from 2004 (Plate no 5) to 2013 (Plate no. 6), is not shown in the CZMP, 1996". On the question whether LTL and HTL are demarcated properly and shown in CZMP 1996, the report reads "The area is shown as CRZ-II. In the estuary part of river, the low tide and high tide lines as shown in the India Survey Map of 1985 are not marked separately on CZMP, 1996." On the question whether the proposed area in question is CRZ-I or II, it is reported that it falls under CRZ-II as per 1996 CZMP Map approved by MoEF which was the only CZMP Map available. On the question whether there are any CRZ violations at the site, the report is in the negative. On the question whether the creek has been manually filled to convert it into a solid mass of earth for the purpose of the project, the report reads, "During the field visit, it was found that the low-lying area of the western part of the creek (water body) was filled up as required for the Phase-III Expansion. There was no filling as part of the project work in the eastern part of the creek. However, some part of the eastern portion of the creek (water body) was filled up (shown as "x" in Plate no. 9) even before the project work began. This can also be seen in the field photograph taken during the field inspection on June 12, 2014."

29. The learned counsel appearing for the appellants instead of relying on the said report signed by the five members, relied on the report prepared by Dr. K.V Thomas, Scientist G and Head Marine Sciences Division, National Centre for Earth Science Studies. The said report is to the effect that the size of the creek was more or less

similar to what is now seen in the Google image of 2004. There was a substantial beach build up on sea side immediately north of the north break water after its construction. Reclamation of the small creek on the eastern side started in 2012 as evidenced from satellite imageries. A road was also constructed from west to east across the “small creek”. The water body part north of the road has been reclaimed and also certain parts on the southern side of the road have also been reclaimed. The southern most side of the new road is reclaimed. The eastern bank of Gurupur river on the side of the port has also been reclaimed. Gurupur – Netravathi estuary is a feeding and spawning ground of many estuarine and marine organisms and hence important for the fishing community of the area. “On the size and depth of the creek at present and prior to 2004” it is reported as, “*The area of the creek (water body), which was reclaimed, is about 33000 m². Hence the area of the creek was reduced by about 33000 m² from its original area prior to 2004*”. Even on the question whether the proposed area is CRZ-I or II the report submits that “*The proposed area where development has taken place is mostly in CRZ-II. The water body part and the bed where reclamation has been carried out for construction of port is CRZ IV as per CRZ 2011 notification. But definitely there is a region between HTL and LTL which is CRZ IB, which has not been shown in the CZMP probably due to the scale limitations.*” On the question of CRZ violation, there is no clear answer. On the question of manual filling of the creek, the report is to the effect that all the morphological indicators suggest that there is a manual

(anthropogenic) filling up (reclamation) of the water body for establishing the fishery harbour and associated facilities.

30. The crucial question is whether the completion of the project would cause permanent destruction or reduction of the creek in full or part. Though learned counsel appearing for the appellants vehemently argued that the creek has been substantially reduced and it would adversely affect the environment, the respondents vehemently denied it. On the materials before us, we find that there would not be a destruction of the creek in part or full. The Google imageries made available reveal that the nature of the creek was not the same and instead it changed from time to time. The Survey of India Map sheet published in 1913 shows the entire eastern part of the Gurupur estuary forms a spit. The map does not show the presence of the creek. The entire region is the lower part of the Gurupur estuary without any island/bar/shoal/creek. The Survey of India Map Sheet published in 1973 shows the existence of swamps, bar islands and a small spit in the lower parts of the Gurupur estuary. This spit forms a semi-enclosed water body towards its eastern part, south of the Mangalore Fishing Harbour, which is the site for the southern extension of Phase-III. As revealed in the report of the five members of the committee, coastal land use maps prepared using satellite data of 1989 to 1991 and 2004 to 2006 time frame shows that the spit as shown on the topographical map of 1973 has further grown in width and has become a part of the mainland, though there has not been any significant change of the water body thereafter till January 2012.

At the same time, sequential satellite images of subsequent time from October 11, 2012 to December 21, 2013 show shrinking of the water body due to the filling up of the part Phase-III project activity.

31. While considering the allegation with regard to the destruction of part of the creek, it is necessary to bear in mind the order of the Hon'ble High Court of Karnataka in *Writ Petition No. 4124/2012*. On 15.03.2012, on the submission of the Writ Petitioner (the appellants herein) that the Fishery Department are actually closing the creek and intensive efforts are being made to put the debris into the creek area, taking into consideration the submission of the counsel appearing for the Fishery Department, the Division Bench had passed an order directing that the parties should maintain status-quo. The Division Bench directed the District Judge, Mangalore to inspect the site and submit a report. After submission of the report, the Division Bench modified the order of status-quo on 28.03.2012 which reads as follows:

“The report of the District Judge discloses that the temporary road formed on the creek is only for maintaining and improving the status of the Creek. The report also clearly states that the water of Creek on either side exists on the temporary road.

It is the contention of the Fisheries Department that they have to dredge and redefine the Creek in order to make it economically and environmentally more viable. In that view, the status-quo order is vacated”.

32. In the reply submitted by respondent nos. 2 to 6, 9 to 11 and 13, it has been specifically admitted as follows. *“Presently the creek has an irregular shape. The creek will be well defined by constructing diaphragm wall all around to confine the boundaries and to prevent*

erosion, stone pitching and revetment will be taken up at the opening of the creek. Dredging the creek to ensure uniform depth of -3 mtrs, apart from widening the creek mouth from the existing 19 mtrs. to 70 mtrs. These works will definitely facilitate smooth navigation and movement of vessels of all kinds.” They have also stated that “the creek is very much required to support the boat building activity also”. It is their specific case in the reply that “there is no proposal to construct jetty in the existing natural creek. Instead the edges of the creek will be well defined.” From the Google imageries and SOI maps of 2004, it could be said that from the then existing area of the creek, there has been some reduction in the area in the later years. It need not necessarily be due to the execution of the project. If the creek as such is not destroyed and instead it is well defined by strengthening through riveting and its depth is increased by dredging and the mouth of the creek is widened, the question which remains for consideration is whether there is any adverse environmental impact, in case the project as proposed is executed. The only case of the appellants is that the creek is an eco-sensitive area and the natural drain for the heavy rainfall of Mangalore which flows into the river and the sea. The apprehension was that if the project is materialized, the whole creek would be obliterated. There is no case that there are any mangroves on the banks of the creek or that it is a breeding and spawning ground of fish. Even according to the appellants, the creek is used to transport tiles manufactured in the tile factory of M/s Albuquerque & sons. The Report submitted by the five members, appointed by the Tribunal,

shows that it is necessary for parking and repairing fishing boats and for passage of storm water discharge. The relevant part of the report reads *“The creek is important to the people living around the area in terms of (a) local fishermen parking and repairing their fishing boats in the eastern part of the creek and (b) passage of storm water discharge”*. Even Dr. K.V Thomas, who submitted a separate report, has not stated that the creek as such is an eco-sensitive area, though it is stated that Gurupur-Nethravathy estuary is a feeding and spawning ground of many estuarine and marine organisms and hence important for the fishing community. Therefore, if there is no impediment for parking and repairing and for passage of storm water discharge, there need not be any objection for implementing the project. At this stage it is important to note that the local fishermen want the execution of the project and got their association impleaded in the appeal and contended that the project is necessary for their welfare. Evidently if the Third stage expansion is materialized it would give more facilities for the fishermen both for parking and repairing of the vessels. It is therefore to the advantage of the fishermen community of the area. We find no adverse environmental impact, if the project as such is materialized.

33. Moreover, as noted earlier, the specific case of the project proponents is that the creek will be preserved and will not be obliterated. They have unambiguously stated that instead of obliterating the creek, it will be well defined by constructing diaphragm wall all around to confine the boundaries and to prevent

soil erosion, stone pitching and revetment will be taken. They have also stated that the mouth of the creek will be widened from the existing 19 mtrs to 70 mtrs. They have also stated that the depth of the creek will be uniformly increased to -3 mtrs. If that be so, it would provide better facility for parking and passage of the vessels. Therefore, we find no reason to interfere with the Environmental Clearance granted as sought for. Suffice to record the submission of the respondents on maintaining the creek as noted earlier.

34. Even otherwise, the remedy of the appellants, if they are aggrieved by the Environmental Clearance granted to the project is to challenge the same by recourse to Section 16 of the National Green Tribunal Act, 2010. Instead they approached the High Court under Article 226 of the Constitution of India. Though it was later transferred to the Tribunal and numbered as an appeal, even when the Writ Petition was filed on 06.02.2012, no appeal could have been filed against the Environmental Clearance granted on 05.06.2010 as the Tribunal has the power to condone the delay of only 90 days. The remedy of appeal was barred by that time. On that ground also the challenge against the Environmental Clearance cannot succeed. On the facts we hold that the Environmental Clearance granted is not bad in law.

35. Though sheet no. 28 of the Coastal Zone Management Plan was challenged on the ground that the creek is not shown, that plan approved on 27.04.1996 cannot be challenged at this stage. Moreover it is explained that the CZMP is prepared in 1:25000 scale and hence, the features less than 25m may not be shown on the

CZMP due to scale limitations. Therefore, the challenge on the CZMP can only be rejected. We have already found that the challenge on CRZ clearance and Environmental Clearance are not sustainable.

36. We find no merit in the appeal but we find it necessary to give the following directions to maintain the environment and ecology of the area:

i.) The submission of respondent no 2 to 6, 9 to 11 and 13 that the creek will not be blocked and instead it will be well defined by providing boundaries such as riveting the edges of banks, the basin will be dredged from the existing level of 0 to -1 meter up to -3 meters, so that the sailing vessels as well as fishing boats can have a smooth navigation, the drain in which the storm water passes, will be provided with a skew bridge for a span of 20 mtrs and the same will not be blocked or disturbed and the mouth of the creek will be widened from 19 mtrs to 70 mtrs are recorded. The project proponent has to comply the submissions. On completion of the project, the project proponent shall submit compliance report before the Tribunal along with photograph of the creek.

ii.) The Project proponent shall inform the fact of completion of the project to the Member Secretary, Karnataka Coastal Zone Management Authority who shall inspect the site along with an expert to be nominated by the Indian Institute of Science, Bangalore and submit a report before the Tribunal, on the compliance of the submission of respondent no. 2 to 6, 9 to 11 and 13 on the creek.

iii.) The appellants are not entitled to any of the reliefs sought for.

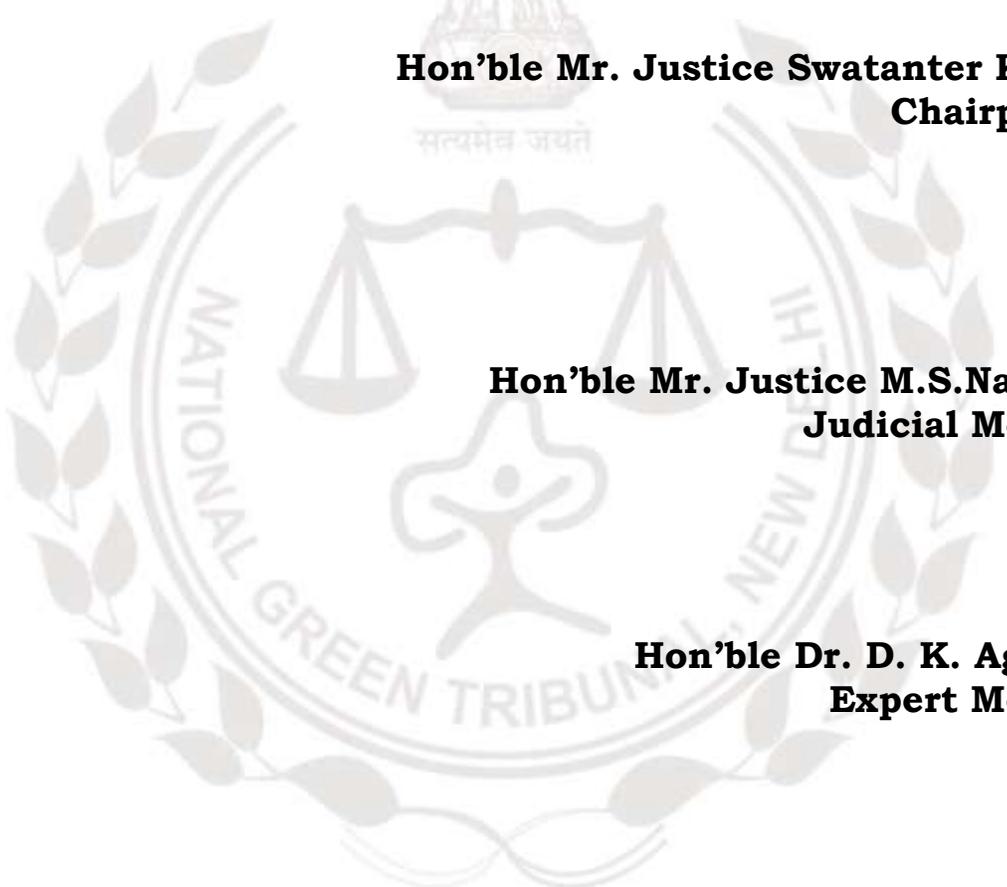
The Appeal is disposed accordingly without any order as to cost.

M.A No. 166/2013

The appellant has already produced the records sought to be dispensed with, hence M.A is dismissed as infructuous.



Hon'ble Mr. Justice Swatanter Kumar
Chairperson



Hon'ble Mr. Justice M.S.Nambiar
Judicial Member

Hon'ble Dr. D. K. Agrawal
Expert Member

Hon'ble Mr. Bikram Singh Sajwan
Expert Member

New Delhi,
May, 2016