

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI
Appeal No.148 of 2016 (SZ)**

In the matter of

S. Prabakaran
Nadu Theru
Sothikuppam
Cuddalore O.T

.. Appellant

Vs.

1.Ministry of Environment & Forests (IA-III Division)

Government of India, New Delhi

2. M/s. Chemplast Sanmar Limited

No.9, Cathedral Road, Chennai – 86

.. Respondents

Appellant and counsel for appellant not appeared

Counsel appearing for the respondents

For respondent No.1: Mr. G Rajagopalan, Addl. Solicitor General of India

For respondent No.2 .. M/s. Orbit Law Services

T. Ravichandran, R. Sivakumar

ORDER

Present

Hon'ble Shri Justice Dr.P.Jyothimani, Judicial Member

Hon'ble Shri P.S.Rao, Expert Member

Delivered by Justice Dr. P. Jyothimani

24th March, 2017

Whether judgment is allowed to be published on the Internet .. Yes/No

Whether judgment is to be published in the All India NGT Reporter .. Yes/No

The appellant herein, has originally filed before the National Environment Appellate Authority Appeal No.37 of 2009 which was subsequently re-numbered as Appeal No.4 of 2011 before the National Green Tribunal, New Delhi and after transfer before Southern Zone Bench of NGT, Chennai, is numbered as Appeal No.148 of 2016. The appeal was originally filed under Section 11(1) of the National Environment Appellate Authority Act, 1997 (Appellate Authority Act) to declare that the laying of pipeline by Horizontal Directional Drilling (HDD) Technology or any other means in the CRZ area of Uppanar River for carrying out Vinyl Chloride Monomer (VCM) or any such hazardous material, is prohibited activity under the CRZ Notification, 1991 and to set aside the approval granted by the 1st respondent – MoEF to the 2nd respondent – M/s. Chemplast Sanmar Ltd., dated 22.6.2009 seeking to amend the Environmental

Clearance (EC) dated 19.12.2005 with regard to the activities in the areas of Uppanar River in the minutes of the 76th meeting of the Expert Appraisal Committee (EAC) for CRZ, Infrastructure Development and Miscellaneous Projects held on 21st and 22nd May, 2009 and to direct that an independent Committee/Commission be set up to verify the ground situation specifically with respect of various violations under the Environment (Protection) Act, 1986 (EP Act, 1986) and also as to air and water pollution made by the 2nd respondent company.

2. The 2nd respondent herein has raised a preliminary objection regarding maintainability and jurisdiction of the Appellate Authority. However, without deciding the maintainability or jurisdiction issue at the first instance, the Appellate Authority has admitted the Appeal No.37 of 2009 in the order dated 17.11.2009 with a desire to proceed with the merits of the case along with the maintainability issue simultaneously.

3. Challenging the said order of the Appellate Authority, the 2nd respondent filed writ petitions in W.P.Nos.493 and 494 of 2010 before the Hon'ble High Court of Madras to set aside the said order and also to prohibit the Appellate Authority from entertaining and proceeding with Appeal No.37 of 2009 filed by the appellant herein. The Hon'ble High Court of Madras, originally in the order dated 11.1.2010 ordered Notice of Motion and granted interim stay for a period of two weeks. In the subsequent order dated 11.2.2010 the said interim order of stay was extended till passing of the final order in the writ petitions in which orders were reserved on the said date.

4. In the mean time, the National Green Tribunal has been created under the National Green Tribunal Act, 2010 (NGT Act, 2010) which was published in the Gazette of India dated 2.6.2010 and the Central Government, by virtue of the powers under Section 3 of the NGT Act, 2010 has established the National Green Tribunal at New Delhi on 18.10.2010. Section 38(5) of the NGT Act, 2010 reads as follows:

“38(5). All cases pending before the National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997 (22 of 1997) on or before the establishment of the National Green Tribunal under the National Green Tribunal Act, 2010 shall, on such establishment, stand transferred to the said National Green Tribunal and the National Green Tribunal shall dispose of such cases as if they were cases filed under that Act.”

Therefore, the National Green Tribunal, New Delhi was impleaded as 4th respondent in the above said writ petitions filed before the High Court of Madras and the interim order originally granted against the Appellate Authority was granted against the National Green Tribunal also from proceeding with Appeal No.4 of 2011 wherein Appeal No.37 of 2009 before the Appellate Authority, New Delhi was renumbered as Appeal No.4 of 2011. The said interim injunction granted against the National Green Tribunal from proceeding with Appeal No.4 of 2011 was until further orders. Ultimately, both the writ petitions in W.P.Nos.493 & 494 of 2010 came to be disposed of by the Hon'ble High Court on 18.8.2016 remitting the matter back to the Appellate Authority to decide the issue of maintainability as preliminary issue based on which the question of analysis of the merits of the case would arise. After the Southern Zone Bench of the National Green Tribunal was established and started functioning from 31.10.2012, Appeal No.4 of 2011 pending before the Principal Bench of the National Green Tribunal, New Delhi was transferred to this Southern Zone Bench, received on 15.11.2015 and renumbered as Appeal No.148 of 2016.

5. When the appeal was posted before this Tribunal on 14.12.2016 learned counsel appearing for the respondents alone were present and there was no appearance on behalf of the appellant. The notice sent to the appellant by the Registry has been returned with the postal endorsement "left". Even though the learned counsel appearing for the 2nd respondent submitted that the matter is covered by the judgment of the Supreme Court, since there was no appearance on behalf of the appellant and the notice sent to the appellant was returned as stated above, the Tribunal directed the Registry to send a reminder to the appellant as well as his counsel at New Delhi viz., M/s. Ram Awadh Yadav, Primus Law Services noting that on the next date of hearing the matter will be decided on merit. On the next date of hearing viz., on 18.1.2017 there was no appearance on behalf of the appellant and the notice sent by Registered Post to the appellant's counsel at New Delhi has been returned with an endorsement as "left". It was in those circumstances, the learned counsel appearing for the respondents were heard.

6. The case of the appellant as it is seen in the papers filed in the appeal is that he is a resident of Sothikuppam Village, Cuddalore District involved in the upliftment of

fishermen and public at large and the Village is situated near the coast of Bay of Bengal and Uppanar River in Cuddalore District. According to the appellant, the 2nd respondent, with a desire to set up a PVC plant at Semmankuppam in Cuddalore Village and also proposed to install a Marine Terminal Facility (MTF) for receiving and transferring Vinyl Chloride Monomer (VCM) from the ships, applied for permission to set up MTF and PVC plant and there has been public hearing in which the appellant has also participated and according to him in the public hearing the project relating to PVC plant alone was brought forth and the issue relating to laying of pipeline along Uppanar river for transferring VCM was not deliberated. He has also stated that there was agitation by the villagers and the Tamil Nadu Pollution Control Board assured that monitoring and compliance would be ensured. It is also the case of the appellant that the 2nd respondent without permission has proceeded to lay the pipeline in violation of the CRZ Notification. It is the further case of the appellant that the 2nd respondent has obtained permission to set up PVC plant on 28.11.2005 which is an EC granted by the 1st respondent. It is also stated that the 2nd respondent has obtained permission to install MTF on 19.12.2005 from MoEF. It is the EC for the construction of revetment for the setting up of a Marine Terminal at Chitrapettail Village, Cuddalore District.

7. Based on the above EC granted by the 1st respondent, the 2nd respondent applied for "Consent" under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and "Consent" was granted for MTF and PVC plant on 31.3.2009 and 14.7.2009 respectively. The appellant is stated to have challenged the said "Consent" orders before the learned Appellate Authority constituted under the said Acts in Appeal Nos.78, 79, 80 and 81 of 2009 raising the ground that "Consent" has been granted without considering CRZ Notification. Even though it is stated by the appellant that the 2nd respondent has raised in the counter in the said appeals that MoEF was aware that the laying of pipeline was in the CRZ area of Uppanar River, according to the appellant, as per the EC granted on 19.12.2005 for MTF, the 1st respondent has not permitted laying of pipeline nor allowed any activities in the CRZ area of Uppanar River. It is also stated that in the said appeals the 2nd respondent has informed that they have applied to the 1st respondent on 14.5.2009 for the grant of permission to lay pipeline across Uppanar River and the order dated

22.6.2009 issued by the 1st respondent was filed along with the counter. It is seen from the said order that the approval has been granted to the advance technology called Horizontal Directional Drilling (HDD) for laying of pipeline across the Uppanar River and the 1st respondent has approved the use of the said technology in the impugned proceedings dated 22.6.2009.

8. The appellant has also referred to the minutes of the 76th meeting of the EAC for CRZ, Infrastructure Development and Miscellaneous Projects held on 21st and 22nd May, 2008 which speaks about the approval of the said technology stating that the project proponent has proposed to change the method of laying the pipeline with certain advanced procedure. According to the appellant, under the guise of seeking of amendment to the earlier EC dated 19.12.2005, the 2nd respondent has attempted to include the Uppanar River thereby regularising the prohibited act of carrying VCM through pipeline crossing Uppanar River and the 1st respondent without application of mind under the impugned proceedings dated 22.6.2009 has approved HDD of laying the pipeline.

9. The appellant has raised various grounds of challenging the impugned order of the 1st respondent dated 22.6.2009 which according to the appellant is an amendment to the original EC granted on 19.12.2005 stating that the impugned order has been passed in complete disregard to the safety of the public at large and the environment. It is also the case of the appellant that the 1st respondent was well aware of the fact of laying the pipeline in CRZ area of Uppanar River and the proposal should have been rejected on the ground of concealment of the statutory prohibition under CRZ Notification, 1991. It is the further case of the appellant that the impugned order dated 22.6.2009 which is only an amendment to the original EC dated 19.12.2005 and it is granted by surreptitiously including the areas of Uppanar River in the approved zone of the clearance permitting the 2nd respondent to carry on the illegal and prohibited activity.

10. The appellant's case is that under the CRZ Notification, 1991 the handling which includes transfer and transportation of hazardous chemicals is prohibited in the CRZ area except in the area covered in the port limit and the port limit is extended upto 50 m from the High Tide Line (HTL). Therefore, the handling of the hazardous chemicals viz.,

VCM cannot take place in the CRZ area beyond the port limit in Bay of Bengal side or across CRZ III area i.e., 100 m on both banks of Uppanar river. The original EC dated 19.12.2005 as well as the subsequent EC dated 22.6.2009 are void ab initio. It is the further case of the appellant that under CRZ Notification 1991 in respect of Coastal Zone Management and Environment Protection any one setting up a new industry or expanding an existing industry in the CRZ area has to necessarily submit an application and take specific permission for each activity from the MoEF/the CRZ Management Authorities in the State and Central Governments. The laying of pipeline for transfer of hazardous substance VCM in respect of which the cost exceeds Rs.5 Crores and therefore it requires separate EC from the 1st respondent after the EIA is done for the said proposal. The impugned order of the 1st respondent takes into consideration only the economic growth of the Nation at the cost of safety or otherwise of the people and detrimental to the environment. This affects the fundamental right of citizens and therefore the statutory provisions of CRZ Notification has not been fully followed.

11. The 2nd respondent – project proponent in the reply has raised an issue of maintainability of the appeal and also states that even otherwise the appeal is barred by limitation. It is the specific case of the 2nd respondent that the impugned proceedings of the 1st respondent dated 22.6.2009 is not an EC and therefore under Section 11(1) of the National Environment Appellate Authority Act, 1997 which contemplates only appeal against granting of EC, the appeal is not maintainable. The impugned proceeding is the recommendation of the EAC on Infrastructure Development and Project to approve the technology as Horizontal Directional Drilling is the latest and advanced eco friendly technology and it cannot be said to be an EC for the project and therefore the appeal is not maintainable.

12. While raising the issue relating to limitation, it is stated by the 2nd respondent that in the guise of challenging the proceedings of the 1st respondent dated 22.6.2009, the appellant is virtually challenging the EC granted by the 1st respondent for the project on 19.12.2005 after the delay of more than four years. As per Section 11(1) of the National Environment Appellate Authority Act, 1997 appeal can be filed within 30 days from the date of the order and the authority has power to condone the delay if it is not more than 90 days subject to the condition that sufficient cause is explained for not

filing appeal in time. The appeal has been filed beyond the condonable limit of the Appellate Authority and even otherwise the appeal having been filed beyond the permitted period of 30 days has not set out any sufficient cause or reason for not filing in time.

13. It is also the case of the 2nd respondent that one, Mr. Nizamuddin has filed PIL before the Madras High Court in W.P.No.21791 of 2008 challenging the approval granted by the PWD of the Government of Tamil Nadu for laying the pipeline underneath the Uppanar River. The said writ petition was dismissed by the Division Bench of the High Court on 31.10.2008 against which the said Mr.Nizamuddin had filed S.L.P No.7101 of 2009 in the Hon'ble Supreme Court. Even though in the reply it is stated that the SLP was pending before the Supreme Court, the learned counsel appearing for the 2nd respondent during the course of argument has produced the judgment of the Supreme Court in the Civil Appeal No.2284 of 2010 arising out of S.L.P.No.7101 of 2009 dismissing the appeal on 10.3.2010 and the same is reported in M. NIZAMUDEEN VS. CHEMPLAST SANMAR LTD & OTHERS (2010) 4 SCC 240 dealing with every one of the points raised by the appellant herein. The reply also refers to various portions of the judgment of the High court which has referred to the laying of pipeline for which permission has been granted by the 1st respondent between the island jetty and its PVC plant located in between Thiyagavalli and Semmankuppam Village holding clearly that the EC granted as early as on 19.12.2005 cannot be permitted to be canvassed in the guise of challenging the impugned proceedings of the PWD, Government of Tamil Nadu dated 27.3.2008.

14. In addition to the above said points raised regarding maintainability, the 2nd respondent has also raised the issue of *locus standi*. According to the 2nd respondent, the appeal provision under Section 11 of the Act is intended to provide remedy to only persons aggrieved by the order of EC and the person aggrieved must prove the legal grievance and legal injury as per the dictum laid down by the Supreme Court and therefore according to the 2nd respondent even on the ground of locus standi the appeal is liable to be dismissed.

15. The 1st respondent – MoEF in its reply dated 5.10.2009 has also raised an issue that the appeal is not maintainable under Section 11(1) of the National Environment Appellate Authority Act. According to the 1st respondent the impugned letter of the 1st respondent dated 22.6.2009 is neither an EC nor an amendment for the EC already issued. As per the Act only the grant of EC can be challenged before the Authority. It is also stated by the 1st respondent that in the said letter dated 22.6.2009 the 1st respondent has conveyed that the request of the 2nd respondent company for an amendment to the EC dated 19.12.2005 for changing the methodology for laying the pipeline underneath the Uppanar River, is not required. It is also stated by the 1st respondent that the 2nd respondent has proposed to set up MTF for transportation of VCM, one of their raw materials for their PVC manufacturing unit near Cuddalore. The proposal includes laying of pipeline from jetty to the PVC unit for transfer of VCM. The main PVC project was accorded EC by the MoEF under the EIA Notification, 1994 based on the recommendation of Expert Appraisal Committee for Industrial Projects, after detailed assessment of the Environment Impact Assessment Report (EIA) Risk Assessment Report (RA) and public hearing.

16. As per the Coastal Zone Management Plan of Tamil Nadu, the following activities of the 2nd respondent falls within CRZ areas:

- (1) The portion of 12" pipeline length transporting the raw material i.e., 500 m out of 2,500 m
- (2) VCM vapour line of 6"
- (3) Sea water intake pipeline of 12"
- (4) Desalination reject pipeline of 10"
- (5) Office building for the monitoring of the operations 10 x 9 sqn (control room)

It is specifically stated that the land portion of Uppanar River adjacent to the plant in Thiyagavalli Village where the pipeline crosses Uppanar river and it does not come under the CRZ area as per the approved Coastal Zone Management Plan of Tamil Nadu. One of the agencies authorised by the 1st respondent viz., National Institute of Oceanography (NIO) has demarcated the HTL/LTL for the site. As per the map, the portion of Uppanar river where the pipeline crosses falls in CRZ area. In case of

change to the approved map if the State wants to reclassify the CRZ area it need to be recommended by the State Coastal Zone Management Authority to the National Coastal Zone Management Authority and that is not approved by MoEF. There is no such proposal for reclassification. It is also stated that the EAC on Infrastructure and Miscellaneous Projects, after detailed examination of the aspects of the project, including EIA Report, RA Report, Public Hearing Report, NOC from the Tamil Nadu Pollution Control Board (Board), HTL/LTL demarcation by NIO, Coastal Zone Management Plan of Tamil Nadu recommended the project subject to certain conditions. Accordingly, EC was granted on 19.12.2005 incorporating the required conditions. Therefore, it is stated by the 1st respondent that the impugned proceeding is only in respect of change in the methodology of laying the pipeline under the EC dated 19.12.2005. It is stated that the appellant is attempting to challenge the EC dated 19.12.2005 in the guise of challenging the impugned proceeding to which he is not entitled to. Therefore, according to the 1st respondent the appeal is hopelessly barred by limitation and it is filed beyond the power of condonation by the Authority and therefore such appeal cannot be entertained.

17. Before advertng to the contention raised by the learned counsel appearing for the respondents, as submitted by the learned counsel appearing for the 2nd respondent in the document, it is necessary to refer to some of the dates and events. The 2nd respondent M/s. Chemplast Sanmar Ltd has applied on 11.6.2005 to the 1st respondent – MoEF for grant of EC to set up PVC plant at Cuddalore to manufacture 1,40,000 MTPA of PVC Resin upgradable to 1,70,000 MTPA. As per the proposal, VCM will be used as raw material and will be imported from the international sources. The company has acquired 100 acres of land and as stated in the proposal the project does not involve forest land and displacement of people. The water requirement of 2,800 m³/day was proposed to be met from the desalination plant to be set up at the project site. It was also stated that no process effluents will be discharged and “zero” discharge level will be adopted. Vent Gas Absorption (VGA) system will be installed to control and absorb gas emission from the plant. The solid waste generated as PVC lumps will be disposed in a secured landfill at the project site. The total cost of the project was stated to be Rs.500 Crores. The MoEF has granted EC for the said project on 28.11.2005 in

accordance with the EIA Notification dated 27.1.1994 with specific and general conditions.

18. Subsequently, as the 2nd respondent was planning to source the VCM from the international suppliers, a proposal was made by the 2nd respondent on 14.11.2005 along with the recommendation of the Environment and Forest Department, Government of Tamil Nadu dated 9.11.2005 to the MoEF to install a MTF for receiving and transporting VCM from the ship to the PVC plant. As per the proposal, the MTF will be located offshore of Chittrappettai Village and the landfall will be at Chittrappettai Village which is 2,500 m from the PVC plant. The total length of the pipeline onshore will be 3,500 m and the offshore and onshore pipelines will be laid in a covered RCC trench with adequate protection and the activities of the project as per the said proposal, involves construction of island jetty at 1,000 m from the shoreline, laying of sub sea pipelines from jetty to landfall point, construction of port office with communication facilities and laying of onshore piping from landfall point through the Coastal Regulation Zone area and thereon to the plant. The 1st respondent – MoEF has granted EC for the above said proposal of the 2nd respondent on 19.12.2005 subject to specific and general conditions which include the condition that the unit should obtain No Objection Certificate from the Board before commissioning of the jetty and the unit should comply with the norms prescribed by the Board with all conditions stipulated by the Government of Tamil Nadu in the letter dated 9.11.2005 and the recommendations of the Tamil Nadu State Coastal Zone Management Authority dated 17.10.2005.

19. Challenging the EC dated 28.11.2005 and 19.12.2005, W.P.Nos.37043 of 2006, 8125 and 23122 of 2007 were filed before the Madras High Court. As the pipeline intended to be put up for the PVC project has to cross Uppanar River, the 2nd respondent in the letter dated 6.2.2008 addressed to the Executive Engineer, P.W.D., Vellar Division, WRO, Virudhachalam seeking permission to lay pipeline crossing Uppanar River, buried 3.5 m below river bed. The Executive Engineer in his proceedings dated 27.3.2008 has granted permission subject to various conditions which include that pipeline should be taken 3.50 m below the lowest bed level of Uppanar River and that the 2nd respondent shall restore the entire pipeline portion

properly so as to cause no inconvenience for the free flow of water in the river and other conditions.

20. Challenging the said permission granted by the Government of Tamil Nadu dated 27.3.2008 one, Mr. M. Nizamudeen filed PIL in W.P.No.21791 of 2008 in the High Court of Madras to quash the proceedings of the Executive Engineer dated 27.3.2008 and also for a consequential direction forbearing the 2nd respondent from laying the pipeline for drawing VCM raw material from the Jetty to its plant in Semmankuppam Village, Cuddalore District. The Hon'ble First Bench of the High Court of Madras in the judgment dated 31.10.2008 having found that the PIL has been moved challenging the permission granted to the 2nd respondent dated 27.3.2008 permitting laying of pipeline is only intended to challenge the original EC granted to the 2nd respondent dated 28.11.2005 and 19.12.2005 which cannot be permitted in law after such a long delay, has dismissed the writ petition the final paragraph of which reads as follows:

“30. In any event, in our considered view the petitioner who failed to workout his remedies as against the proceedings of the 5th respondent dated 19.12.2005, in granting environment clearance before the appropriate statutory Appellate Authority within the specified time limit cannot be permitted to collaterally challenge the said proceedings by seeking to challenge the impugned order of the third respondent dated 27.02.2008. Looked at from any angle, we do not find any merit in the writ petition and the writ petition fails and the same is dismissed.”

21. As against the order of dismissal of the writ petition, the said Mr. M. Nizamudeen fled a Special Leave Petition in S.L.P (C) No.7101 of 2009 before the Hon'ble Supreme Court which was subsequently converted into Civil appeal No.2284 of 2010. On a request made on behalf of the said Mr. M. Nizamudeen before the Hon'ble Supreme Court about the pendency of W.P.Nos.37043 of 2006 and 8125 and 23122 of 2007 before the High Court of Madras challenging the EC granted in favour of the 2nd respondent in the transfer petition filed in T.P. (Civil) Nos.365 to 367 of 2009, the Honble Supreme Court transferred the said writ petitions pending before the High Court of Madras and all matters were heard along with the civil appeal. The Hon'ble Supreme Court, after hearing the learned counsel for parties framed the question to be decided as to whether Uppanar river and its banks at the point where pipelines pass, fall in the CRZ III area and if the answer is in the affirmative, the pipeline crossing underneath Uppanar river would require EC. The other question

framed was as to whether paragraph 2(ii) of 1991 Notification restricts transfer of VCM (hazardous substance) beyond port area to the PVC plant through pipelines. These two issues were to be considered first before the other issues as other considerations would depend upon these core issues. The Hon'ble Supreme Court, while dismissing the Civil Appeal and the writ petitions transferred from the Madras High Court in the judgment dated 10.3.2010 reported in M. NIZAMUDEEN VS. CHEMPLAST SANMAR LTD. AND OTHERS (2010) 4 SCC 240 held that Uppanar River and its banks at the relevant place where the pipelines laid by Chemplast do not fall under CRZ III area as per the 1996 CZM Plan which is approved by the MoEF on 27.9.1996 for different stretches of the coastline with certain conditions and no EC is needed for such pipeline. The Apex Court has also held that the stand of the MoEF that they granted permission to the onshore pipeline in so far as they pass through CRZ abutting the sea i.e., 500 m from HTL and no clearance was required for laying of pipeline under Uppanar River. Para 32 of the judgment which deals with the same reads as follows:

“32. More so, while giving approval on 27.9.1996 to the 1996 plan, the MoEF appended, inter alia, a condition that the Government of Tamil Nadu would not make any change in the approved categorisation of CRZ area without its prior approval. Seen thus the 1996 Plan for the purposes of demarcation and classification of CRZ area in the State of Tamil Nadu has to be treated as final and conclusive and has been rightly treated as such by the MoEF. We hold, as it must be, that Uppanar River and its banks at the relevant place where the pipelines laid by Chemplast pass do not fall under CRZ III area as per the 1996 Plan and no environmental clearance is needed for such pipelines. The stand of the MoEF is which seems to us to be correct, that they have granted permission to the onshore pipelines insofar as these pass through CRZ abutting the sea i.e., 500 metres from HTL and no clearance has been granted as it was not required for laying of pipelines under Uppanar River.”

22. While advertng to the next issue relating to Para 2(ii) of the 1991 CRZ Notification which prohibits manufacture or handling or storage or disposal of hazardous substances specified in the MoEF Notifications dated 28.7.1989, 27.11.1989 and 5.12.1989 except transfer of hazardous substances from ships to ports, terminals and refineries and vice versa in the port areas and having observed that VCM is a hazardous substance which is not in dispute and that it is an admitted position that handling of a substance includes transfer as per Section 2(d) of the Environment (Protection) Act, 1986, has held that the activity of laying pipeline in the CRZ area is

permitted. The portion of the judgment of the Hon'ble Supreme Court in this regard reads as follows:

“39. Notwithstanding imperfection of expression and that exception clause is not happily worded, we are of the view that by applying purposive construction, the expression, “in the port areas” should be read as “in or through the port areas”. The exception in Para 2(ii) then would achieve its objective and read, except transfer of hazardous substances from ships to ports, ships to terminals and ships to refineries and vice versa, in or through the port areas”. This construction will be harmonious with Para 3(2)(ii) which permits the activity of laying pipelines in the CRZ area.”

Therefore, by virtue of the final decision of the Hon'ble Supreme Court not only the permission granted by the Executive Engineer, PWD in the letter dated 27.3.2008 for laying pipeline crossing Uppanar River buried 3.50 m below the river bed level for carrying sea water and VCM raw materials, was held to be valid and the EC granted to the 2nd respondent for the project as stated above dated 28.11.2005 and 19.12.2005 were held to be valid.

23. In the mean time, the 2nd respondent has made a request to the MoEF for amendment of EC dated 19.12.2005 for setting up of Marine Terminal Facility at Chitrapettai Village by change of methodology of laying of offshore and onshore pipeline and the MoEF in the letter dated 22.6.2009 which is impugned in the present appeal has ordered that the said proposal is only a change in the methodology of laying the pipeline with advanced technology i.e., Horizontal Directional Drilling (HDD) and there is no change in the scope of the project and therefore no amendment in the EC dated 19.12.2005 is necessary. As stated above, the letter of the MoEF dated 22.6.2009 was challenged before the Appellate Authority which has admitted the appeal without deciding the preliminary objection regarding the maintainability of the appeal and ultimately the Hon'ble High Court of Madras in W.P.Nos.493 and 494 of 2010 in the order dated 18.8.2016 has remitted the matter before the Appellate Authority whose powers has been vested before the National Green Tribunal to decide the issue of maintainability as the preliminary issue and depending upon the same the question of analysis of the merits of the case would arise. Thus the appeal is before this Tribunal for deciding the maintainability.

24. In spite of the steps taken to serve notice on the learned counsel appearing for the appellant there is no appearance and therefore the Tribunal after few adjournments and service of notice on the appellant and his counsel was completed has to take up the appeal to decide the maintainability after hearing the learned counsel appearing for the respondents.

25. The learned counsel appearing for the 2nd respondent has submitted that originally when the appeal was filed before the Appellate Authority under Section 11(1) of the National Environment Appellate Authority Act, 1997 it was not only filed beyond the period of limitation prescribed under the said Act but also in effect and in the guise of challenging the letter of the 1st respondent dated 22.6.2009, the EC granted to the 2nd respondent dated 19.12.2005 is attempted to be challenged which is hopelessly barred by limitation. According to the learned counsel this is similar to the conduct of the said Mr. M Nizamudeen who has chosen to challenge the order of the Government of Tamil Nadu, PWD dated 27.3.2008 permitting laying of pipeline crossing Uppanar River for carrying sea water and VCM raw materials and in effect indirectly challenging the EC granted to the 2nd respondent dated 19.12.2005 which was finally decided by the Hon'ble Apex Court as not maintainable. Therefore, according to the learned counsel this is one more attempt by the present appellant to challenge the EC dated 19.12.2005 in the guise of challenging the letter of the 1st respondent dated 22.6.2009. According to the learned counsel the impugned letter dated 22.6.2009 is neither granting of EC nor making amendment to the EC dated 19.12.2005 but only stating that the request of the project proponent is only for changing the methodology of laying pipeline by an advanced technology and therefore there is no change in the scope of the project and therefore there is no need for amendment to the EC. If it is the case of the appellant that the said letter amounts to an amendment to the original EC dated 19.12.2005, his remedy is only to challenge the EC dated 19.12.2005 which cannot be done now at this later point of time either under the National Environment Appellate Authority Act, 1997 or under the NGT Act, 2010.

26. The learned counsel would also submit that even on the merits of the case, all these points which are raised by the appellant were raised before the Hon'ble Supreme Court in the judgment stated above and the Apex Court has clearly held that the EC as

well as permission to lay pipeline are valid in law and therefore there is no necessity to interfere at this stage. That is also the contention raised by the learned counsel appearing for the MoEF.

27. After hearing the learned counsel appearing for the respondents and referring the voluminous records filed by both the appellant as well as the respondents and as directed by the Hon'ble High Court, the issue to be decided is as to whether the present appeal is maintainable and if it is so, as to whether the appeal can be sustained on merits on the ground that the issue has already been decided by the Hon'ble Apex Court.

28. As stated above, eliciting the prayer of the appellant, the specific case of the appellant is not only to declare that laying of pipeline by Horizontal Directional Drilling (HDD) technology or any other means in the CRZ areas of Uppanar River for carrying VCM or any such hazardous materials prohibited under CRZ Notification but it is also to set aside the approval granted by the 1st respondent to the 2nd respondent in the impugned letter dated 22.6.2009 seeking to amend the EC dated 19.12.2005. Therefore, from the prayer it is clear that the appellant has presumed that the impugned letter of the 1st respondent dated 22.6.2009 is an approval seeking to amend the EC dated 19.12.2005. Therefore, it is necessary to refer to the impugned letter dated 22.6.2009. Before referring to that, it is relevant to note that the 2nd respondent who has written letter to the 1st respondent on 14.5.2009 no doubt requested for amendment of EC dated 19.12.2005 by which the 1st respondent has already granted EC for the construction of a MTF at Chitrapettai Village to receive and transfer VCM from the ship to PVC plant. The said EC dated 19.12.2005 has been upheld by the Hon'ble Apex Court in NIZAMUDEEN's case. That proposal came to be considered by the EAC for CRZ on Infrastructure Development and Miscellaneous Projects in the meeting held on 21st and 22nd May, 2009. The Committee, considering the proposal has given its recommendation which is as follows:

“Environmental Clearance to the project was issued in the year 2005 for Marine Terminal Facility for transportation of Vinyl Chloride Manomar from Jetty to PVC plant. As per Environmental Clearance letter, the off shore pipelines and the on shore pipelines were to be laid in a covered RC trench. The proponent has proposed to

change in method of laying the pipeline and stated that the following procedure shall be adopted for various sections:

- (i) The sea portion pipeline shall be buried in a trench with a minimum cover of 1 meter. The pipe shall be lined with concrete.
- (ii) The pipeline on lands shall be buried in a concrete trench at a depth of minimum 2 meters.
- (iii) For the Uppanar river crossing, an improved method for laying the pipeline without disturbing the river has been proposed. The pipeline shall be laid under the riverbed at a depth of 3.5 meter minimum.
- (iv) All the pipeline segments are of pipe in pipe configuration.”

The Committee after examination of the details submitted recommended to approve the technology as the Horizontal Directional Drilling is latest advanced eco-friendly technology.”

This recommendation was considered by the Regulatory Authority viz., the 1st respondent MoEF which has written to the respondent on 22.6.2009 specifically stating as follows:

“As all the above change is only in the methodology of laying pipeline with advanced technology Horizontal Directional Drilling (HDD) and there is no change in the scope of the project, no amendment in the Environmental Clearance issued earlier vide letter No.11-63/2005-IA-III dated 19th December 2005 of the above project is necessary.”

Therefore, by the letter dated 22.6.2009 it is clear that the 1st respondent has not granted any amendment to the EC dated 19.12.2005 and it is only stated that since the proposal is to adopt the advanced technology of the same project no amendment to the EC granted on 19.12.2005, is required. Therefore the assumption as if the impugned letter dated 22.6.2009 is an approval by way of amendment to the EC dated 19.12.2005 is a total misnomer.

29. Further, Section 11(1) of the National Environment Appellate Authority Act, 1997 is as follows:

“11. Appeals to Authority.—(1) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed.”

It is against the grant of EC any aggrieved person can file appeal before the Appellate Authority within 30 days from the date of such order and the Appellate Authority can condone the delay upto 90 days thereafter, if sufficient cause for not filing the appeal within 90 days is shown. On the face of it and as we have stated earlier the impugned letter dated 22.6.2009 is neither an EC nor an amendment to the EC granted to the 2nd respondent dated 19.12.2005 and therefore the appeal under Section 11(1) of the Appellate Authority Act, 1997 against the said letter dated 22.6.2009 is not at all maintainable.

30. In so far as the filing of the present appeal, as stated above, the impugned letter of the 1st respondent is dated 22.6.2009 as we have also stated in the previous paragraphs that it is neither an order nor granting EC so as to enable any person to file appeal under Section 11(1) of the Appellate Authority Act, 1997. Even assuming that the impugned communication dated 22.6.2009 can be an order which can be brought under Section 11(1) of the Appellate Authority Act, 1997, as stated above, the appellant has chosen to state in the column relating to limitation as under:

“The appellant came to know of the impugned order of the 1st respondent vide F.No.11-63/2005-IA-III dated 22.6.2009 and the minutes of meeting held on 21st – 22nd May 2009 of the 1st respondent in 76th meeting of the Expert Appraisal Committee for CRZ, Infrastructure Development and Miscellaneous Projects on 17.8.2009 when his counsel was served with the copy of the paper book filed by the 2nd respondent in the appeal pending before the Appellate Authority of the TNPCB and hence the appeal has been filed in time.”

31. The 2nd respondent – project proponent has taken objection that the appeal was not filed before the statutory period of 30 days and the appellant has not set out sufficient cause or reason for filing the appeal in time. Likewise, the 1st respondent MoEF has also raised an objection that the appeal is barred by limitation since it is filed beyond the period of 30 days from the date of the impugned order and the appellant has not shown any sufficient cause for the purpose of condonation of delay which can be only upto 90 days. Even assuming that the date of knowledge of the impugned letter dated 22.6.2009 came to be known to the appellant on 17.8.2009 where an appeal was stated to be pending before the learned Appellate Authority under the Water (Prevention and Control of Pollution) Act, 1974, the appeal which is stated to have been filed in

September, 2009 may be within the statutory period of limitation of 30 days. But in the circumstances that the impugned letter dated 22.6.2009 is neither an order nor EC, the intention of the appellant as it is seen in the prayer appears to be to question the EC granted to the 2nd respondent on 19.12.2005. In fact the grounds raised are all mostly relating to the EC dated 19.12.2005. If that is the case, the appeal which is filed challenging the letter of the 1st respondent dated 22.6.2009 is basically to challenge the EC granted by the 1st respondent dated 19.12.2005. In that event, certainly the appeal cannot be said to be in time and the reason assigned in the paragraph relating to limitation cannot be acceptable at all. Therefore, on this ground also the appeal cannot be said to be in time.

32. Even otherwise, as correctly submitted by the learned counsel appearing for the 2nd respondent, the points which are raised in this appeal are squarely covered in the judgment of the Hon'ble Supreme Court in M. NIZAMUDEEN's case. The appellant in the appeal has raised in the beginning that the impugned proceedings of the 1st respondent is in blatant violation of the CRZ Notification. As it is seen in the impugned letter dated 22.6.2009 the 1st respondent has decided that the proposal of the 2nd respondent is in respect of the same project for which EC was already granted on 28.11.2005 and 19.12.2005 and what was proposed was only in respect of the methodology of laying of pipeline with advanced technology of HDD and therefore there is no change in the scope of the project and therefore the plea raised by the appellant in this appeal as to the violation of the CRZ Notification should be in respect of EC granted on 19.12.2005. The appellant further states that the 2nd respondent has laid pipeline in total violation of the CRZ Notification and therefore it is an offence punishable under the Environment (Protection) Act, 1986.

33. The appellant has further stated that the 2nd respondent – project proponent has relied upon a map drawn by the National Institute of Oceanography wherein it is marked that the 500 m area from the HTL is CRZ area on the Bay of Bengal and 100 m area from the HTL is CRZ III area on both the banks of the Uppanar river. The appellant also states that the 1st respondent in the EC dated 19.12.2005 neither permitted laying of pipeline nor any other activity in the CRZ area. The appellant further states that the 2nd respondent has not disclosed the existence of the CRZ area on the

banks of Uppanar river. Further, he states that there was no approved alignment of the said pipeline from the landfall point to the PVC plant. Therefore, it is the categorical case of the appellant that the 2nd respondent has deliberately concealed the existence of Uppanar river in the application and made it appear that they were seeking clearance only for laying the pipeline upto 500 m from HTL and that the 2nd respondent even before any permission was granted for laying the pipeline, has gone ahead and laid the pipeline across the Uppanar river for transporting VCM from the MTF to their plant under which clearance was granted by the 1st respondent in the year 2005. All the above said issues were specifically raised in the judgment of the Hon'ble Supreme Court and as elicited above, the Hon'ble Supreme Court in paragraph 24 has specifically considered the issues out of which one is as to whether Uppanar river and its banks at the point where pipelines pass fall in the CRZ III area. In the said paragraph the Hon'ble Supreme Court has extensively dealt with the provisions of the CRZ Notification, 1991 as referred to in the affidavit filed by the MoEF and reiterated by the Tamil Nadu State Coastal Zone Management Authority stating that the land portion of the banks of Uppanar river adjacent to the plant in Thiyagavalli Village where the pipeline crosses Uppanar river, does not come under the CRZ area. The Apex Court has stated in paragraph 28 as follows:

“However, consequent upon directions of this Court, the State of Tamil Nadu submitted its Coastal Zone Management Plan to the MoEF on 23.8.1996 which was approved on 27.9.1996 (the 1996 Plan) containing 31 sheets corresponding to maps for different stretches of the coastline of the State of Tamil Nadu with certain conditions/modifications/classifications Sheet No.10 pertains to the coastal stretch of Cuddalore District. The MoEF, based on Sheet No.10 (the 1996 Plan) have stated in their affidavit that the land portion of the banks of Uppanar River adjacent to the plant in Thiyagavalli Village where the pipeline crosses Uppanar River does not come under the CRZ area. This position is reiterated by TNSCZA in their affidavit filed before this Court:

“....as per the approved Coastal Zone Management Plan, the banks of Uppanar River adjacent to the plant in Thiyagavalli Village where the pipeline crosses River Uppanar does not come under CRZ area. ...

34. The Supreme Court further held in categorical terms that the Uppanar river and its banks at the relevant place where the pipelines laid by Chemplast pass do

not fall under CRZ III area and no EC is needed for such pipeline. The relevant portion of the judgment in that regard is as follows:

“32. More so, while giving approval on 27.9.1996 to the 1996 plan, the MoEF appended, inter alia, a condition that the Government of Tamil Nadu would not make any change in the approved categorisation of CRZ area without its prior approval. Seen thus the 1996 Plan for the purposes of demarcation and classification of CRZ area in the State of Tamil Nadu has to be treated as final and conclusive and has been rightly treated as such by the MoEF. We hold, as it must be, that Uppanar River and its banks at the relevant place where the pipelines laid by Chemplast pass do not fall under CRZ III area as per the 1996 Plan and no environmental clearance is needed for such pipelines. The stand of the MoEF is which seems to us to be correct, that they have granted permission to the onshore pipelines insofar as these pass through CRZ abutting the sea i.e., 500 metres from HTL and no clearance has been granted as it was not required for laying of pipelines under Uppanar River.”

35. Holding that the Coastal Zone Management Plan prepared by the coastal States and approved by the MoEF is the relevant plan for identification and classification of CRZ areas and that the plan prepared by the National Institute of Oceanography cannot supersede the 1996 plan for the Cuddalore coastal stretch. The Supreme Court observed as follows:

“31. It is perfectly true that at the time of preparation and approval of the 1996 Plan, the amendment of 29.12.1998 and 21.5.2002 in the 1991 Notification had not seen the light of the day and the declaration made in first para that the coastal stretches of seas bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from HTL and the land between LTL and HTL are CRZ was kept in view but in the absence of any modification carried out thereafter, the 1996 Plan remains operative. The authorities authorised to demarcate HTL, we are afraid, cannot override the plan prepared and approved under Para 3(3)(i) as the said paragraph leaves no manner of doubt that Coastal Zone Management Plan prepared by the coastal State (or for that matter the State Coastal Zone Management Authority) and duly approved by the MoEF is the relevant plan for identification and classification of CRZ areas. The plan prepared by NIO thus cannot be said to have superseded the 1996 Plan for the Cuddalore coastal stretch.”

36. The legal ground raised by the appellant particularly relating to the pipeline crossing Uppanar river stated to be coming within the CRZ area has been categorically held in favour of the project proponent. While dealing with the contention raised by the appellant in this appeal which is similar before the Hon'ble Apex Court that the project proponent has concealed the fact that the said area falls under CRZ III and VCM is a

hazardous substance and handling of the same is prohibited under law, the Hon'ble Apex Court in clear terms has held that the project proponent has not suppressed. The said finding is as follows:

“33. Here, we may also deal with the objection of the petitioners that Chemplast has suppressed the material facts reading the existence of Uppanar River in its proposals. In the first place, there seems to be no substance in the said objection. From the materials available on record that include the environmental impact assessment report (EIA) and risk analysis report (RA), it cannot be said that existence of Uppanar River has been suppressed by Chemplast in its proposals although in these reports Uppanar River has been described as Uppanar Canal.”

37. The Supreme Court further held in that case rejecting the contention raised on behalf of the petitioner therein that an alternative solution should be found out to carry VCM across Uppanar river to the plant. It was held as follows:

“42. By way of footnote, we may observe that the project has been established by investing huge amount of about Rs.600 Crores and has already been commissioned after obtaining necessary approvals and, therefore, it shall not be in the interest of justice not in the public interest now to interfere with the project. The alternative solution suggested by Dr. Rajee Dhavan for carrying VCM across Uppanar River to the plant is noted to be rejected.”

38. The Hon'ble Supreme Court while dealing with the EIA prepared on behalf of the project proponent has again reiterated that the pipeline laid by Chemplast across Uppanar river does not fall under CRZ III.

“34. In EIA prepared by L & T Ramboll, in Section 3.6.2.2. it is stated:

“The onshore pipeline to the extent possible is routed in a direct line from the landfall point to the plant in order to minimise the length. The route crosses Uppanar Canal where the pipeline will be trenched sufficiently deep into the canal bed to avoid impact from grounding vessels, dropped objects or dragged anchors. The pipeline section crossing Uppanar will be of a type similar to the marine pipeline section. As regards the onshore section, the selection of pipeline type and installation is discussed in the following paragraphs:

The main options for the land pipeline will be :

- Trenched, subterranean pipeline (-1.0 to -1.5 m)
- Pipeline on low supports at the terrain surface (+0.2 to 0.5 m)
- Overhead pipeline on masts/columns above bus/ truck passage heights (+4.5 to 5m)

Approximate levels given from the existing natural ground level.)”

Similarly, in Section 5 of RA, reference is made to pipeline crossing Uppanar Canal. The position is clarified by Chemplast in their subsequent application made on 14.11.2005. In the second place, and more importantly, this objection pales into insignificance in view of our finding that the land portion of the banks of Uppanar River where the pipelines laid by Chemplast pass Uppanar River does not fall under CRZ III area.

39. Therefore, on a overall analysis of the entire judgment of the Hon'ble Supreme Court in M. NIZAMUDEEN's case makes it abundantly clear that the final court of the land has rejected all the similar contentions raised in respect of the same project and it is certainly not open to the appellant to raise the same issue once again in the present appeal. Looking from any angle, the appellant is not entitled to any relief as claimed in this appeal and the appeal is dismissed as not maintainable. There shall be no order as to cost.

Justice Dr. P Jyothimani
Judicial Member

Shri P.S.Rao
Expert Member

NGT