

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

APPLICATION No. 261 of 2014 (SZ).

IN THE MATTER OF:

1. Shri. Mohammed Kabir
S/o Ibrahim, Aged about 49 years
R/o Millath Nagar, Near Bridge,
Dargah Road, Ullal-575020
2. Shri. Imthiyaz
S/o Abdul Khadar, Aged about 33 years
R/o No.5-36, Basthipadpu,
Ullal-575020
3. Shri. Mayyadi Ali
S/o Ali, Aged about 43 years
R/o No.2-56/10, KodiKotepura
Near Barkah Ice Plant,
Ullal-575020
Applicants

AND

1. Union of India
Through the Secretary, MOEF&CC
ParyavaranBhavan, CGO Complex,
Lodhi Road, New Delhi-110003
2. Principal Secretary
Department of Forests, Ecology and Environment
Government of Karnataka
M.S. Building, Dr. B.R. AmbedkarVeedhi,
Bangalore-560001
3. Principal Secretary
Department of Public Works, Ports and Inland Water
Transport (Ports)
3rd Floor, VikasaSoudha,
M.S. Building, Dr. B.R. AmbedkarVeedhi,
Bangalore-560001
4. Karnataka Pollution Control Board
Through its Member Secretary
ParisaraBhavana, Church Street,
Bangalore, Karanataka-560001
5. Deputy Commissioner and Chairman of the District Coastal
Zone Management Committee,
Dakshina Kannada District,
Mangaluru-575001
6. Ullal Town Municipal Council,
Represented by its Chief Officer,
Ullal, Mangaluru Taluk,
Dakshina Kannada District,
Mangaluru-575001

7. Port Officer,
Office of the Port Officer,
Old Mangaluru Port,
Bunder, Mangaluru-575001
8. Karnataka State Coastal Zone Management Authority,
Department of Forests, Ecology and Environment
Government of Karnataka
M.S. Building, Dr. B.R. Ambedkar Veedhi,
Bangalore-560001
9. M/s Indian Fish Meal and Oil Products
No.1-11(1), Sea Road, Kotepura, Ullal Taluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor
10. M/s Fahad Fish Meal and Oil Co.
No.1-1/6, Sea Road, Kotepura, Ullal Taluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor
11. M/s S.M. Marine Products
No.1-1/17, Sea Road, Kotepura, Ullal Taluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor
12. M/s Indo Fish Meal and Oil Co.
No.1-1/1, Sea Road, Kotepura, Ullal Taluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor
13. M/s Super Aqua Tech
No.1-1/21, Sea Road, Kotepura, Ullal Taluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor
14. M/s Mangaluru Marine Products
No.1-2/1, Sea Road, Kotepura, Ullal Taluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor
15. M/s Ullal Fish Meal and Oil Co.
No.1-91/1, Sea Road, Kotepura, Ullal Taluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor
16. M/s Mangaluru Fish Meal and Oil Co.
No.1-22/(1), Sea Road, Kotepura, Ullal Taluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor
17. M/s United Marine Products
No.1-1/20, Sea Road, Kotepura, Ullal Taluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor
18. M/s Mangaluru Sea Products
No.1-2/2, Sea Road, Kotepura, Ullal Taluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor
19. M/s Haris Marina Products
Sea Road, Kotepura, Ullal Taluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor

20. M/s Span Auqatech Products now BawaFishMeal& Oil Co.
No.1-15/(1) and (2), Sea Road, Kotepura, UllalTaluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor
21. M/s Asian Fish Meal and Oil Co.
No.1-1/18 and (2),Sea Road, Kotepura, UllalTaluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor
22. M/s ShariffMarine Products
No.1-7/11, Sea Road, Kotepura, UllalTaluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor
23. M/s Blueline Foods India Pvt. Ltd
Sea Road, Kotepura, UllalTaluk,
Dakshina Kannada District, Mangaluru-575020
Through its Proprietor
24. Fishmeal and Oil Manufacturer Association,
Door No. 20-11-708/2, 1st Floor,
Indus Centre Building, South Wharf Road,
Bunder, Mangaluru-575001
Through its President
- ... Respondents

Counsel Appearing for the Applicants: Clifton D' Rozario and Maitreyi Krishnan

Counsel Appearing for the Respondents: Mr. G.M. Syed Nurullah Sheriff for Respondent No.1; Mr. Devaraj Ashok for Respondent No.2,3, 5,6,7 and 8; Mr. M. R. Gokul Krishnan for Respondent No. 4; Mr. P. Wilson, Senior Advocate for M/s. R. Karthikeyan and R. Bharaneedharan for Respondent No. 9-24.

ORDER

QUORUM:

1. **Hon'ble Dr. Justice P. Jyothimani**
Judicial Member
2. **Hon'ble Shri P.S.Rao**
Expert Member

Delivered by Hon'ble Shri. P.S. Rao dated 8th July 2016

1. Whether the judgment is allowed to be published on the internet. Yes / No
2. Whether the judgment is to be published in the All India NGT Reporter. Yes / No

1. This Application is filed by the Applicants being aggrieved by the environmental degradation and pollution caused by the respondent industries

located within the jurisdictional limit of 6th respondent namely Ullal Town Municipal Council, by engaging in the production of fish oil and fish meal thereby affecting the day to day affairs of residents living within half to three km. radius. The respondent industries No. 9 to 22 are engaged in the production of fish oil and fish meal. The fish oil is fatty oil extracted from the body of fish containing large amount of unsaturated fatty acid and is used in the manufacture of cosmetics, paints etc and fishmeal is a commercial product used primarily in diets for domestic animals and is made from bones and offal of the processed fish, the final product being brown powder or cake obtained by first cooking the fish then drying and later grinding it.

2. It is submitted by the applicants that the key environmental issues associated with the manufacture of fishmeal and fish oil are high water consumption, effluent discharge, malodour and noise. The high seawater consumption is mainly because of its use as cooling water and the by-products are screenings and wastewater sludge. The air emissions include Sox, Nox, CO, dimethylamine, triethylamine and hydrogen sulphide molecules and particulars from boilers and is so extreme that it remains in the cloths even after several washes. Malodour comes from the raw material in the manufacturing process i.e., fish and from the wastewater sludge. The discharge of effluents and emissions by the respondent industries and the transportation of raw materials in open trucks numbering at least 50 per day results in extreme foul smell and it makes the life impossible for the residents. The sludge generated from various stages of production has high level of organic matter reflected by high Biological Oxygen Demand (hereinafter called 'BOD'), high levels of Total Suspended Solids (hereinafter called 'TSS') and contains traces of ammonia, phosphorous, nitrogen, dimethylamine and triethylamine resulting in change in aquatic environment by disrupting natural movement and migration of

aquatic populations. A number of chemical compounds are formed during the bacteriological decomposition of the fish before it is cooked, and these are volatile and it pollutes the marine environment. Marine pollution is also caused as a result of product losses, including fish meal, stick water and a liquid known as evaporated stick water which contains approximately 40% dried matter. Further, respondent industries discharge the untreated sludge collected from CETP and other effluents into the sea and to Netravathi estuary causing serious marine pollution. The wastewater is resulting in respiratory, allergic other associated diseases among the residents of the locality.

3. It is further submitted by the applicants that the respondent industries are located in an ecologically fragile area at the edge of Gurupur and Netravathi estuary, right on the banks of thin piece of the land abutting the estuary of these rivers. At the Eastern and North Eastern sides is the estuary, at the Western side is the sea and at South Eastern side mangroves are located. These industries are not located on private lands but on the lands belonging to the State Government under the control of the Department of Public Works, Port And Inland Water Transport. The respondent industries are the lessees of the said lands which fall within the CRZ-I area and a bare perusal of the lease agreement reveals that the said land was leased solely for storing fish products but in contrary the respondent industries have established units for the manufacture of fish oil and fish meal. It is stated that either at the time of grant or at the time of extension of lease, no public consultation has taken place. A letter dated 08.03.2007 was sent from Regional Director (Environment) to Kotepura Sultan Association that the respondent industries are located on port land falling under CRZ-I and no permission has been granted in this regard when there exists a prohibition for starting new industries and for expanding existing industries in the said area and CRZ Notification, 1991

has been violated. A letter was issued by the CRZ authority on 08.03.2007 to the 6th respondent requiring them to cancel the license issued to the respondent industries. Consequently 6th respondent addressed a letter dated 13.03.2007 to Kotepura Sultan Association temporarily staying the licenses of the respondent industries. As the respondent industries continued their operations in spite of suspending the trade licenses, 6th respondent filed a complaint to the Ullal Police Station dated 04.04.2007 seeking appropriate action. Further, a letter dated 12.06.2007 was issued by the 7th respondent namely the Port Officer to the respondent industries directing them to close down their operations. On non compliance of the said letter, the 6th respondent issued another letter dated 06.08.2007 to Deputy Commissioner, Dakshina Kannada district seeking guidelines and directions to take action against the respondent industries. On 08.08.2007, 7th respondent issued a letter to the 6th respondent stating that no permission may be granted to fish oil factory in the port area without their permission and after verification had stated that the plan was not approved by the Port authorities. A reminder letter from the Deputy Commissioner, Dakshina Kannada district was sent to the 6th respondent on 24.08.2007.

4. It is categorically stated by the applicants that as per the Karnataka State Pollution Control Board (hereinafter called 'KSPCB') guidelines, fish processing industries fall under orange category and that no industries having effluent discharge shall be established within 500 m from the river banks/reservoirs/major tanks and thus the establishment of respondent industries is in violation of KSPCB siting guidelines. Further, the respondent units applied for a No Objection Certificate (hereinafter called 'NOC') for its fish oil extraction units before Regional Director (Environment) against which objections were raised and subsequently an enquiry was conducted on 28/29.12.2007 but unfortunately, the 8th

respondent herein namely the Karnataka State Coastal Zone Management Authority (hereinafter called 'KSCZMA') in its meeting held on 15.01.2009 had issued NOC to the respondent industries.

5. It is further stated by the applicants that as early as in 2006 in the joint meeting conducted between local communities and the respondent industries, they admitted the fact that they were causing pollution and have undertaken not to discharge untreated effluents into the river by an endorsement dated 15.02.2006 but no action was initiated by the concerned authorities for the rampant pollution caused by the respondent units thereafter. Based on the repeated complaints received from the residents that the respondent units were discharging untreated effluents into the sea directly, the Assistant Commissioner, Mangaluru conducted a hearing and passed an order dated 18.05.2010 directing respondent industries to establish Common Effluent Treatment Plant (hereinafter called 'CETP') with a capacity of 600 Kilo Litres per Day (hereinafter called 'KLD') within a period of three months failing which 6th respondent was directed to close the industries. Further, the District Health and Family Welfare Officer issued a letter dated 20.09.2010 to the 6th respondent seeking action on an investigation report prepared by Taluk Health Officer on health impacts of the pollution caused by the respondent industries and recommending them to be closed. Meanwhile, the consent for the CETP was obtained from KSPCB on 04.06.2010 by the respondent industries under The Water (Prevention & Control of Pollution) Act, 1974 (hereinafter called Water Act, 1974) and The Air (Prevention & Control of Pollution) Act, 1981 (hereinafter called Air Act, 1981). But the Environmental Clearance (hereinafter called 'EC') for the same was obtained by the respondent industries from the State Level Environment Impact Assessment Authority (hereinafter called 'SEIAA') on 10.07.2012 and it is put forth by the applicants that

the grant of consent for establishment has preceded the EC which is totally illegal and impermissible in law. Despite receiving the permission to establish CETP, the respondent units failed to take necessary action towards the same and on 24.10.2011, 6th respondent issued a letter to the 4th respondent stating that it had inspected the premises of the respondent industries based on the complaints received and found that the effluents are discharged directly into the sea thereby seeking appropriate action to be initiated. Despite the rampant pollution caused, a combined consent order was granted to the respondent industries by KSPCB on 18.10.2011.

6. It is submitted that when the applicants noticed illegal encroachments by some of the respondent industries reclaiming the land from estuary by dumping soil into the river, complaint filed before Karnataka Lokayukta was registered as No. COMPT/LOK/MYS/767/2014/PP on which an order was passed on 28.03.2014 seeking an enquiry to be conducted in this regard. Further, the Regional Director (Environment) Department of Forest, Environment and Ecology issued notice dated 12.04.2012 to the 24th respondent association directing them to remove the encroachments over the river Nethravathi. Due to their failure to remove the same, a notice dated 22.05.2012 was issued to the 24th respondent association. On the basis of a direction issued by the Deputy Commissioner *vide* letter dated 02.05.2012, an inspection was conducted on 19.01.2013 by the Surveyor, Office of the Tahsildar, Mangaluru which clearly shows that the industries have encroached in Sy. No.119/1(P). It is further submitted by the applicants that the encroachments are yet to be removed and the same is in violation of the CRZ Notification, 1991.

7. The applicants stated that a complaint was also made to the Karnataka State Minorities Commission (hereinafter called 'KSMC') and an inspection was

conducted on 10.09.2012 wherein it was observed that the respondent units were not inclined to erect the CETP, and were not fulfilling any of the mandatory environmental norms. It was also found that people living within a distance of 3 km from the plant were suffering because of the pollution. After due process involving the concerned authorities and the residents of the area, the said Commission had given several findings and recommendations and the letter dated 15.09.2012, communicating the same was sent to all the concerned authorities. Thereafter, on 14.11.2012, the Commissioner of Police, Mangaluru has sent a report to the KSMC highlighting that the respondent industries have not complied with the directions issued by the Deputy Commissioner and seeking the complaints to be registered with the jurisdictional police for action to be initiated against the said industries under Section 133 of the Code of Criminal Procedure, 1973. It is submitted that the KSMC was dismayed by the callous attitude of the concerned authorities with regard to the recommendations made and hence another letter dated 15.11.2012 was issued to the Assistant Commissioner for initiating appropriate actions.

8. It is further submitted by the applicants that it is pertinent to note that the KSPCB itself on several occasions found that the respondent industries have failed to establish the CETP inspite of several directions issued from time to time. On 08.10.2012, the KSPCB summoned the President of 24th respondent association and its members for a personal hearing and directions were issued to take measures to ensure effective implementation of CETP latest by October 2012 as the respondents industries failed to fully operationalize the CETP. The respondent units thereafter gave an assurance that all measures to ensure effective operation of CETP will be undertaken by them within the time stipulated by the KSPCB. Further, on 22.10.2012 officials of the KSPCB found that the CETP was not functioning as required. The letter dated 21.11.2012 issued by the KSPCB to the

Assistant Commissioner states that the KSPCB had constituted a Technical Advisory Committee to review the environmental compliances of the respondent industries and on inspection found that the CETP was not operated properly and recommended that the KSPCB should secure a time bound action plan. Further, in the personal hearing before the KSPCB held on 03.05.2013, it was again observed that the CETP was not in compliance and the effluent discharge pipeline was broken, and directions were issued to take immediate action against the said pollution. Another inspection was conducted by the KSPCB on 07.01.2014 and found grave non-compliance and wilful violation by the respondent industries. Due to the failure to stop the pollution, another letter dated 24.03.2014 was issued to the KSMC seeking for the implementation of the recommendations. On 19.04.2014 KSPCB has issued another notice for proposed directions under Section 33 (A) of the Water Act, 1974 to stop the operation of the CETP and to issue directions to withdraw power supply to the CETP.

9. With the above pleadings the applicants have made a prayer for directing the respondents to stop operation of the industries forthwith, to direct the 1st, 2nd, 4th, 5th, 6th and 8th respondents to commission a Regional Environmental Impact Assessment along with ecological survey to comprehend the individual and cumulative impacts of all the respondent fish meal and fish oil industries on the biodiversity, environment, human settlements, livelihoods, traditional knowledge etc., and prepare and implement a plan to remedy the negative impacts caused by the respondent industries on the 'Polluter Pays' Principle, to direct the shifting of the respondent industries out of its present location, to direct the respondents to restore the area to its previous pristine state, to direct the respondents to remove all offending and illegal constructions from the prohibited zone, to direct the respondents to assess the impact and award compensation to all affected persons,

to direct the respondents to pay compensation for damage caused to the environment and to pass any other appropriate orders.

10. In the reply filed by the 1st respondent MoEF&CC, it is stated that the CRZ Notification, 2011 declares the coastal stretches of the country and the water area up to its territorial water limit, excluding the islands of Andaman and Nicobar and Lakshadweep and the marine areas surrounding these islands up to their territorial limit as CRZ and it restricts the setting up of and expansion of any industry, operations or processes and manufacture or handling or storage or disposal of hazardous substances in the said area and also prohibits the discharge of untreated waste and effluents from industries, cities or towns and other human settlements. For implementing, enforcing and monitoring the compliance of the conditions and for regulating the developmental activities listed in the Notification within the framework of approved Coastal Zone Management Plan (hereinafter called 'CZMP'), responsibility is primarily vested with the CZMA of the local authorities, State Governments, or Union Territories. The 1st respondent has notified the composition, tenure and mandate of NCZMA and SCZMA which are reconstituted from time to time in terms of orders of Hon'ble Supreme Court in WP No. 664/2014. Further, 1st respondent has approved the CZMPs recommended by the SCZMA of Karnataka for CRZ area and is valid up to 31.01.2016. The 1st respondent had also issued directions from time to time to CZMAs of all coastal States to take appropriate action in case of any reported violations of the Notification. Further, the CRZ Notification, 1991 prohibits setting up of new industries and expansion of existing industries, except those directly related to water front or directly needing foreshore facilities including setting up and expansion of fish processing units including warehousing and excluding hatchery and natural fish drying in permitted areas. It is categorically stated by the 1st respondent that it has not granted any CRZ clearance to the respondent industries.

11. In the common reply filed on behalf of the 2nd and 8th respondents dated 16.09.2015 it is stated that a letter dated 08.03.2007 was sent by Regional Director (Environment) to Kotepura Sultan Association stating that the respondent industries are located in CRZ-I area and no permission was obtained under the CRZ Notification, 1991. The 8th respondent considered the proposal submitted by the Regional Director (Environment) subsequently seeking approval under the said Notification *vide* letters dated 05.09.2007, 19.02.2008 and 30.04.2008 in its meeting held on 15.01.2009. The 8th respondent observed from the report submitted by the Port Department that the units were functioning prior to the inception of CRZ Notification, 1991 and modernisation of the existing processing units is permitted as per the exemption clause *vide* para 2(iii) of the said Notification. Accordingly the 8th respondent issued NOC for the modernisation of the existing fish meal and fish oil units strictly within the framework of stipulations made in the notification.

12. It is further submitted by the 2nd and 8th respondents that the establishment of CETP in a cluster of small scale industries is a welcome development to ensure that the effluents generated by each of them are treated properly and any potential cause for pollution could be prevented. The application for issuance of EC for establishing CETP was made by M/s Fishmeal and Oil Manufacturers Association, the 24th respondent herein, on 15.02.2012 and it was considered by SEIAA in its meeting held on 01.06.2012 after taking note of recommendations made both by SEAC in its meeting dated 07.04.2012 and 27/28.04.2012 and KSCZMA in its meeting dated 28.05.2012. Accordingly EC was granted *vide* letter dated 10.07.2012 subject to strict compliance of the conditions thereon.

12. The 4th respondent KSPCB in its reply dated 25.08.2015 has stated that as per KSPCB Notification No. KSPCB/17/COC/2012-13/6311 dated 04.01.2013

'Fish Processing and Packaging' (excluding chilling fish) is an orange category industry and as per the siting guidelines issued by the Department of Ecology & Environment, Government of Karnataka (GOK Notification No. FEE 195 ENV 2002 dated 21.06.2003 and No.FEE 87 ENV 2005 dated 05.07.2005), no orange category industry having effluent discharge shall be established within 500 meters from the river bank/reservoir/ major tanks. KSPCB has issued consent to establish a CETP having capacity of 600 KLD at Ullal, Mangaluru by the 24th respondent namely Fishmeal and Oil Manufacturer Association, vide CFE order No. KSPCB/SEO (Non EIA)/CFE/2010-11/77 on 04.06.2010 with conditions to treat the effluents before discharging into the sea to the standards stipulated by the KSPCB for which an EC from SEIAA, Karnataka was also obtained on 10.07.2012. The 4th respondent has renewed the consent for 14 fish meal industries for the period up to 30.06.2012 after placing the renewal application in the District Level Consent Committee Meeting. The 4th respondent renewed the consent for the respondent industries for a further period of 5 years from 01.07.2012 to 30.06.2017 with a condition that the respondent industries shall maintain records of effluent generated and the same to be discharged only to the CETP and ensure that, treated effluent from CETP shall meet the standards stipulated by the KSPCB and in case of any maintenance /breakdown of CETP, respondent industries should not generate the trade effluent or stop the production activities itself.

13. The non-functioning of CETP was observed by the Regional Senior Environmental Engineer, Mangaluru on 20.01.2012 consequent to which first personal hearing with the 24th respondent was held at Board's office on 22.05.2012 and in the meeting held by the Senior Environmental officer, Mangaluru dated 08.10.2012, 14 respondent units have submitted their individual affidavits giving an undertaking for efficient operation and maintenance of CETP. On inspection by RO, Mangaluru on 22.10.2012 it was observed that the CETP installed by the 24th

respondent was not functioning as per the prescribed standards and subsequently the Board has constituted a five member committee headed by Prof. Manjappa to inspect the respondent industries and CETP *vide* OM No.4325 dated 25.10.2012 and accordingly inspection was carried out on 05.11.2012. The said committee observed nonworking of CETP and recommended metal sheet dome/RCC dome as top cover for anaerobic tanks, installation of efficient oil remover facility and installation of flow meter at both inlet and outlet. The committee also recommended KSPCB to secure time bound action plans from the respondent industries and to monitor them regularly. Another personal hearing was held on 03.05.2013 and the Board directed the 24th respondent to take action on laying underground pipelines to discharge treated effluents into the sea, and for effective operation of CETP, by providing a flair stack to anaerobic digester with an undertaking that no bye pass of effluents into the sea will be made. The 4th respondent has further inspected the respondent industries on 07.01.2014 and has observed continuous non-compliances of operation of CETP and recommended to the KSPCB to issue Notice of Proposed Direction and accordingly the same was issued *vide* NPD No.15 dated 19.04.2014 under Section 33(A) of Water Act, 1974.

14. The 4th respondent herein has called for another personal hearing on 27.06.2014 and subsequently a meeting was conducted on 19.07.2014 directing the respondent industries to install and operate both the Deodorizer and the Evaporator to control foul smell and to treat the effluent generated respectively on or before 31.10.2014. On an inspection conducted pursuant to the directions in the said personal hearing, it was found that a total of nine units namely the respondents No.9, 10,13,14,16,17,18,20 and 22 have not installed Deodorizers and thus a show cause notice and a Notice of Proposed Direction was issued to them. The 4th respondent further submitted that another inspection of the CETP was carried on 24.11.2014 and the legal samples from the CETP outlet were collected on

30.01.2015 and based on non compliance of the earlier directions of the Board, another Notice of Proposed Direction was issued *vide* NPD No. 349 dated 05.05.2015 and a personal hearing was conducted which was presided over by the Chairman, KSPCB on 11.05.2015 and was decided that pending CFO application will be entertained only after receiving the revised treatment proposal from 24th respondent and the same to be implemented within two months of acceptance by the Board. It is further submitted by the Board that in view of the circumstances stated above, closure orders could not be issued and pursuant to the orders of Hon'ble NGT, the same is issued dated 20.08.2015

15. It was further submitted by the Board that pursuant to the directions of this Tribunal in its order dated 18.11.2015, an inspection of respondent units and the CETP was conducted on 27.11.2015 and 04.12.2015 and observed that the CETP is categorised as 'small red' consisting of nine units namely Bar Screen, Collection Tank, two Anaerobic Digesters, Aeration tank with diffused aerators, Settling Tank, Clarified Tank, Pressure Sand Filter, Activated Carbon Filter and Sludge Drying Beds. The Board, during inspection, observed that the CETP was in operation and the stabilization of aeration tank is under progress, the effluent outflow meter to CETP is installed, old corroded diffusers lines for aeration tank were dismantled and new diffusers were installed, the media for pressure Sand Filters and Activated Carbon Filters were replaced but the anaerobic digester top is not covered and is kept open, the Energy Meter was not installed and a log book will be maintained for operation and maintenance of CETP. The treated trade effluent sample was collected from the outlet of Activated Carbon Filter during inspection and the same was submitted to Regional Laboratory for analysis and the final treated trade effluent is being discharged into the Arabian Sea located adjacent to CETP. It was further observed that eight fishmeal units have already installed and commissioned the evaporators and one fish meal unit is under the

process of installation and one unit remained closed for a long time and remaining four units have given work order for the installation of evaporator. Regarding installation of deodorizer, presently four units have installed and commissioned the deodorizer and remaining units have given work order for the installation of deodorizer system.

16. The 4th respondent KSPCB further submitted that pursuant to the directions of this Tribunal, an inspection was conducted on 31.03.2016 and was observed that out of fourteen units one remained closed and nine units were not in operation from last 3 months due to non availability of raw material and only respondents No. 9, 10, 17 and 22 were found operating at lower capacity. It was further observed that respondent Nos. 13, 16 and 18 have not complied with the installation of evaporators. However, they have made a temporary agreement with respondent no. 14 to treat the stick water generated in their respective units. During inspection, it was observed that the CETP was in operation and the stabilization of aeration tank was under progress, installation of Evaporators has reduced the quality and quantity of effluent generated and has reduced the load on CETP. Since most of the fish meal plants are not in operation due to non availability of raw material, effluent generation is almost nil and they are presently recycling the same effluent inside the CETP. The effluent outflow meter to CETP was installed and the reading was 4547.50 m³ and the final treated effluent sample was collected from the outlet of the Activated Carbon Filter during inspection and was submitted to Regional Lab for analysis. The final treated trade effluent is being discharged into the Sea. A DG set of 62.5 KVA is installed for CETP with acoustic enclosure and chimney height of 3 meter ARL as an alternative source during power failure. It was also noticed that the aeration tank was under stabilization and no good settling of MLS was observed in the settling tank. The members of 24th respondent association were present during the inspection and informed that the CETP is

proposed to be upgraded by installing Clariflocculator Tank with addition of coagulants prior to aeration tank to improve the operational efficiency of CETP at the earliest.

17. In the reply filed by the 5th respondent Deputy Commissioner and Chairman of the DCZMA, it is stated that it is strange to note that only three people have approached this Hon'ble Tribunal with their grievance without bringing a representative petition involving large number of residents or by giving a paper publication supporting them in the public interest litigation. It is also pertinent to note that the applicants have not undertaken any public protest against respondents for not addressing their grievances.

18. The 6th respondent Ullal Town Municipal Council has stated in its reply that the responsibility of issuing trade licenses and collecting tax from the industries including that of the respondent industries is within their jurisdiction as per the Municipal Act, 1964 and the trading licenses are renewed annually on the basis of consent letter issued by the 4th respondent KSPCB and based on the consent, the 6th respondent has issued trade licenses to all the respondent industries except Respondent No. 10, 13 and 19. It is further submitted by the 6th respondent that a notice dated 08.10.2013 was sent to all respondent industries regarding causing pollution and for unhygienic conditions which are responsible for breeding of mosquitoes dengue fever. Another notice dated 10.09.2014 was sent to all the respondent industries to stop unauthorised constructions and adopt measures to control water pollution failing which the trade licenses will be cancelled. Another notice dated 05.01.2015 was issued under Section 256 of the above said Act to adopt modern technologies to abate water pollution within a period of 15 days as the effluents are discharged into the sea directly failing which their trade licenses will be cancelled in terms of Sections 276 (1), (2) and (3) of the Municipal Act,

1964. The 6th respondent finally stated that they have taken all necessary steps in accordance with law to curtail any violations or illegalities committed by the respondent industries from time to time and as and when these deviations have been noticed.

19. In the common reply filed by respondents No.9 to 24 dated 19.08.2015, it is submitted that the respondent units are in existence for more than four decades initially following the manual method of extraction of fish oil no complaint on pollution was raised by the local people. Further, the extraction of fish oil was manually done in traditional method and as the technology advanced, automatic machines were used to extract fish oil and the chances of air pollution is nil as the entire process is systematically done in air tight closed missions except for the discharge of wastewater which is generated from the pressing machine which is inherent in the fish and also from washing and cleaning the boiler floor. It is further stated that the effluent contains considerable amount of fishmeal which is valuable and the same are recovered to the operator and converted into soluble paste and in turn is used as fish food in aquaculture and also as a fertilizer supplement. These respondents however state that during the process of extracting the fish oil from the raw fish, no chemicals whatsoever is being used and the raw fish is crushed and cooked using steam run boilers and from the cooked fish, the flesh is separated from the water and oil and further the flesh is again processed and used for manufacturing the fish meal. The liquid extract comprising of water and oil is once again separated in the de-condenser and then the fish oil is extracted and the residue water is treated and sent to the CETP. It is further stated that the water sent to the CETP only contains possible effluent of fish and no chemical which substantially pollute the sea water. It is further stated that the effluents from these units are only discharged to the Netravati river after due treatment in the CETP which is managed by the association of the respondent units, the 24th

respondent herein. It is also submitted by the respondent units that neither the applicants nor the inhabitants or the residents of the Kotepura Village are in any way affected by the operation of their units, since they are living at a distance of 5 kilometres.

20. It is further submitted that the lands in which the units are situated between the Nethravati and Gurupura rivers on one side and the Arabian Sea on the other, was initially used only for storing the fish and as the said site is frequently eroded by the sea, the same could not be used for any other purposes other than the activities of the respondent units. The respondent units are in existence for more than four decades and they cannot be located far away from the sea shore taking into consideration of the nature of the activities and the averments made by the applicants that the respondents units are located in an ecologically fragile location is completely denied on the ground that no wastages are let-in to the river and the same are let out in the sea after being put into the process of CETP. The said lands were leased out to the respondent units by the Department of Ports which was recommended by the Government of Karnataka by its proceedings dated 13.01.2009 for fish storage sheds and subsequently when the occupants of the said lands have developed fish oil extracting units, separate licences for the same were obtained from appropriate authorities namely paid license from the Municipality, VAT registration, registration as exporter from the Marine Products Export Development Authority and Export Licence from the Export Inspection Agency-Kochi under the Ministry of Commerce and Industry, Government of India besides other necessary permissions such as for the usage of the boilers and other machines including that of building permits.

21. It is further stated by the respondent No. 9 to 24 that the Regional Director (Environment) has issued NOC by its proceedings dated 27.02.2009 to renovate

the old fish meal units of the respondents after being recommended both by the Regional Office and by the Government of Karnataka. These respondent units were further granted consent under the Water Act, 1974 and the Air Act, 1981 by the KSPCB periodically to each of the units apart from the consent granted to the CETP managed by the 24th respondent. The CETP was established in accordance with the rules and regulations and the guidelines stipulated by the KSPCB and SEIAA has approved the establishment of the same as it was within the parameters and guidelines issued by the MoEF&CC. The complaint dated 10.12.2010 which the applicants rely, is significant as it is predated since the CETP was properly established in accordance with law and the guidelines of the KSPCB and SEIAA in accordance with the guidelines of the MoEF&CC.

22. It is further submitted by the respondent units that the six units out of fourteen units have now installed new evaporators and the remaining units have placed orders for the same which would be installed and commissioned very shortly, that can recover all the valuable ingredients in the effluent which may be converted into a soluble paste that in turn is utilised. Further, the installation of the evaporators in all the units will substantially reduce the load on the CETP which would help to achieve reduction in the effluent generation by 40 % and reduction in BOD by 98% and reduction in TSS load by 99.9% which means that the respondent fish oil and fish meal manufacturing units would be virtually discharging clean water into the sea. It is also pertinent to state that the activities of extracting fish oil is also now a seasonal business operating only for a period of four months from September to December every year, as the raw fish is not available throughout the year and it is stated that for a minimum of 6 months, many of the units remain closed and some are partially operated from the raw fish procured from adjacent villages. It is also submitted that the respondents units have not taken any steps to reclaim land from the seashore by dumping soil into the river

and instead have laid stone blocks to prevent sea erosion, which has also been substantiated from the proceedings of the Under Secretary to Government, Public Works, Ports and Inland Water Transport Department.

23. It is submitted that the respondent units have not encroached the lands abutting Nethravati River. Strong objections were raised by the respondent units on the activities of the KSMC as they are not vested with any jurisdiction to enquire into the issues pertaining to pollution and any order passed or decision taken by the KSMC is against law and not binding upon them. The respondent units have relied upon their proceedings to show that the KSMC exceeded in exercising its powers and it is also pointed out that the finding of KSMC is not binding at all in any manner or whatsoever, since no notice was issued to them before the alleged inspection of the units was conducted nor they were called to attend the meeting in which the KSMC has issued directions. It is also pertinent to note that the said KSMC will have a role to play only when the interest and rights of the minorities are affected, since both the applicants as well as the respondent units belong to Minorities community, it can be well said that the KSMC have exceeded its jurisdiction or acted against the law.

24. It is further submitted by the respondent units that the CRZ Notification, 1991 is not applicable to the existing units and the modernisation of the existing units would never amount to violation of the said notification. The establishment of CETP, installation of evaporators and such other connected works would never amount to 'expansion of the existing units' but it will amount to 'modernisation of existing units' which would *per se* establish that these respondent units are well within the parameters of CRZ Notification and the consultation with the general public is required only at the time of starting new units which is again inapplicable to the respondent units. The allegation made by the applicants that the respondent

units are utilising sea water for cleaning is denied on the ground that they purchase water from outside sources for the process of cooling and cleaning. The respondent units were already set up prior to the CRZ notification, 1991 came into force and they have been developing their units to cater to the modern needs and conditions by installing machines which are used for extracting fish oil without emanating malodour. The allegation that the respondents units are causing air pollution by emitting dimethylamine, trimethylamine and traces of hydrogen sulphide is denied. The allegations of malodour arising from the raw material i.e. fish and from the manufacturing process are completely denied by these respondent units and it is further submitted that the fish would become rotten if transported uncovered and the units would become inoperative and thus that allegation is completely denied.

25. It is further stated by the respondent units that the Test Report relied on by the applicants is not in accordance with the established procedures recognised by the environmental laws. Further, before the samples were collected, the respondent units should have been given an opportunity of being heard or samples must have been collected with their consent or in their presence and non-mentioning of date, time and location where samples were collected or the temperature during which such samples were collected, would establish that the test conducted by the applicants is self-explanatory, which will never bind upon these respondents. No where the National Institute of Technology, Karnataka at Surathkal mentioned that the samples collected by the parties are either from the sea or from the river at the site of the units, and the non-mentioning of methodology of collecting the samples would establish no fault on the part of these respondents.

26. It is further submitted that no joint meeting was carried out between local community and the respondent units at any place much less in the premises of Ullal Police Station as claimed by the applicants. Further, during the hearing

conducted before the Chairman of the KSPCB which was held on 11.05.2015, it was decided to take decision on the application for consent for operation only after the receipt of the revised treatment proposal from the respondent units and the same was to be implemented within a period of 2 months. Further, the respondent units have also submitted the working of the evaporators and its result based upon which KSPCB will decide to consider the said application. In the meanwhile, based upon orders of this Tribunal dated 28.07.2015; the 4th respondent had issued closure orders to the respondents 9 to 22. Finally, the respondents have prayed to dismiss the application.

DISCUSSION AND CONCLUSION:

27. The applicants have filed this application under Section 18(1) read with Section 14 and 15 of NGT Act, 2010. As per the Section 14(3) of the said Act, no application for adjudication of disputes shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action first arose. Though the applicants, as stated in the application, are aware of the activities of respondent units right from the year 2007 they have not chosen to approach the court of law or this Tribunal when it came into existence in 2011. They have also not given any plausible explanation for not filing the application before 2014. Neither have they challenged the NOCs granted by the 8th respondent dated 15.01.2009 and 27.02.2009 and GO dated 13.01.2009 issued by the 2nd respondent nor they filed any appeal against the granting of EC by the SEIAA for establishment of CETP on 10.07.2012. Thus they have not chosen to challenge any of the aforesaid orders permitting the modernisation of respondent units within the limitation period under the NGT Act, 2010 but have chosen to file this application with a prayer to close down the industries. Therefore in our view the belated application questioning the grant of GO, NOC as well as the EC and

also pointing that KSCZMA is not competent to give NOC under the CRZ Notification, 1992 does not deserve any consideration. However with respect to the issues raised by the applicants that pollution being caused by the units, this Tribunal is of the opinion that it constitutes a cause of action and hence the case deserves to be considered on merits.

28. After going through the records placed before us and having heard the parties at length, we feel it is quite apt to formulate certain questions on various points raised by the applicants to have a comprehensive and detailed understanding of the environmental and ecological issues as follows:

1. *Whether there is any violation of the CRZ Notification, 1991 in permitting the respondent units to operate in the area which is located at the edge of Gurupur - Netravathi estuary abutting the Arabian Sea?*
2. *Whether the activities of respondent units are prohibited as they are reported to be located in CRZ-I area and can not be permitted to continue as no clearance has been obtained under CRZ Notification, 1991?*
3. *Whether the respondent units are damaging the marine ecosystem by causing pollution in the locality which is reported to be ecologically-sensitive?*

Question No.1: Whether there is any violation of the CRZ Notification, 1991 in permitting the respondent units to operate in the area which is located at the edge of Gurupur - Netravathi estuary abutting the Arabian Sea?

29. It is a fact that the units of the respondents 9 to 22 involve production of fish meal and fish oil, respondent no. 23 deals only with fish trading business whereas

respondent No. 24 is an association of fishmeal and fish oil manufacturers operating the CETP. Fish oil is the fatty oil extracted from bodies of fish and contains large amount of unsaturated fatty acids and is used in making cosmetics and paints among other products whereas fish meal is a commercial product made from fishes and bones and offal of the processed fish and is primarily used in diets in domestic animals. Traditionally the owners of the units were involved drying and storage of fish. The respondent nos. 11 to 17 were originally granted license for utilising the port land for the purpose of fish storage sheds whereas respondent nos. 9 and 22 were permitted to establish temporary lime kiln/shed. In case of respondent No. 10, 18 and 19 part of the land was leased for fish processing and respondent No. 20 was allotted for the purpose of temporary lime kiln/shed and temporary fish drying. So it is clear that except in case of respondent No. 10, 18 and 19 rest of the units were allotted with the Port land mainly for the purpose of temporary storage sheds and for temporary limekiln purposes. The above said units were leased with the land belonging to the Department of Ports in different years the earliest being on 01.04.1978 in case of 10th and 19th respondents. As there are a series of complaints against respondent units that they are encroaching the adjacent port land and also causing pollution, the respondent Municipality as well as the respondent Deputy Commissioner issued a series of notices but it appears that no concrete action has been taken though enquiry was conducted as seen from the records placed before us. But ultimately the 8th respondent KSCZMA having examined the proposal of the Regional Director (Environment), Mangaluru has decided to issue NOC for the purpose of modernisation of the 'existing' fish meal and fish oil industries of the respondents situated at Kotepura, Ullal, Mangaluru. The minutes of the KSCZMA reveal that the Regional Director (Environment) after conducting enquiries has submitted proposals to KSCZMA stating that the said units dealing with the extraction of fish meal and fish oil as well as storage

and drying of fish, were operating since 1987 on the land leased by the Port Department and such activities are going on prior to 19.02.1991, the date on which CRZ Notification, 1991 was issued by MoEF&CC under the Environment (Protection) Act, 1986. The report also states that these fish meal and fish oil manufacturers have proposed to modernise their activities by adopting modern technologies and as the units are existing and operating prior to the CRZ Notification, 1991 there is no violation of said notification. Accordingly the KSCZMA considered the proposal and granted NOC. Later on, on 10.07.2012, the association of the units was granted EC for establishing CETP by the Karnataka State level Environment Impact Assessment Authority (SEIAA) with a capacity of 600 KLD and the individual units were also given consent by 4th respondent KSPCB.

30. Here the contention of the applicants is that since the units are located in CRZ-I they are not entitled to continue their operations and granting NOC for modernisation followed by EC after the CRZ Notification came into force, is clear violation of law. Not only the respondent units have illegally undertaken the manufacturing of fish meal and fish oil though most of them were permitted to take up only storage sheds in the land leased to them, they encroached the adjacent land of Port department which is in clear violation of CRZ Notification, 1991. They are also causing pollution and damaging the marine ecosystem in the ecologically sensitive Gurupur - Nethravathi estuary. Whereas the respondent units state that CRZ Notification, 1991 is not applicable to their units as their activities started well before 1991 and they were involved in the process of fish meal and fish oil production manually on a low scale but over a period of time, as the technology improved and demand for the finished products from abroad started increasing, they went on expanding their activities and installed machinery and equipment and also simultaneously taken steps to prevent pollution. There is no dispute that the

respondent units are in existence prior to CRZ Notification, 1991 except in respect of respondent no. 21 for the purpose of handling the fish and later they started manufacturing of fish meal and fish oil. However in case of respondents no. 10, 18 and 19 part of the land was originally leased for fish processing also.

31. The applicants have not brought out any material evidence in support of their contention that the respondent units, though permitted to take up only fish storage sheds, have switched over to fish processing involving production of fish meal and fish oil and after the CRZ Notification 1991 came into force. There is no doubt that prior to the issue of CRZ Notification in 1991, the units except that of respondent no. 21 were in possession of land leased to them by the Port department and they were under operation and therefore these are not newly established units after coming into force of the CRZ Notification, 1991, though it is an admitted fact that some of the units apart from indulging in fish storage activities, have undertaken fish processing and extended their activities in the adjacent Port land. As the date of granting of original lease to the respondent units by Port Department, is prior to the date of issue of CRZ Notification, 1991 except in respect of respondent no.21, at this juncture it cannot be said that the respondent units came into existence in violation of CRZ Notification 1991. Moreover, there is a provision in the CRZ Notification 1991 to permit modernisation of existing fish processing units. Clause (2) (iii) of the CRZ Notification 1991 reads as follows:

“2. Prohibited Activities:

The following activities are declared as prohibited within the Coastal Regulation Zone, namely:

(i)XXXXXX

(ii)XXXXXX

(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 modernisation purposes may utilise 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 3 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.”

32. The Regional Director (Environment), Mangaluru during his enquiry has clearly stated that the units are functioning prior to 1991 and hence NOC can be granted. The proposals of the Regional Director (Environment), Mangaluru dated 05.09.2007, 19.02.2008 and 30.04.2008 were considered by the KSCZMA in its meeting and NOC was issued on 15.01.2009. The 2nd respondent State of Karnataka, having examined the whole issue and after obtaining the report from the Harbour Officer, Mangaluru Port has issued G.O. dated 13.01.2009 granting permission for leasing the Port Land to the respondent units for a term of thirty years for modernising the fish oil and fish meal processing units on certain terms and conditions.

33. This Tribunal cannot go into the alleged utilisation of the leased land beyond the purpose for which it was originally leased out but it is a fact that the units started manufacturing of fish oil and fish meal and also involved in encroachment of adjacent Port land. It is for the concerned State government authorities to deal with the matter and take action as per law if they find that the government land is encroached. However, having examined all these issues, Government of Karnataka have issued the G.O. as stated above and therefore the issues of expansion and encroachment are already settled. We are only concerned as to whether there is any violation of CRZ Notification 1991 as averred by the applicants. It is not disputed by the applicants that the units were in existence either for the purpose of storage

of fish or for the production of fish oil and/or fish meal prior to 1991 except in respect of respondent No. 21 and therefore the contention of the respondent industries that they were all involved in the processing of fish before CRZ Notification came into force, cannot be brushed aside and therefore in our view the units are existing in one form or other prior to CRZ Notification 1991. Had there been any record placed before us to show that the units were established after 1991, definitely there would have been a case of violation of CRZ Notification 1991. But in this case all the concerned authorities including Regional Director (Environment), Mangaluru, KSCZMA as well as the State of Karnataka having satisfied that the units are existing prior to 1991 Notification, recommended/sanctioned modernisation of the units. However the authorities have erred in granting permission to respondent No. 21 who was allotted with the land after CRZ Notification 1991 which came into force on 19.02 1991. We do not agree with the contention of the applicants that the KSCZMA has no power to issue NOC under clause (2) (iii) of CRZ Notification 1991 as the fish processing units are prohibited in the area falling in CRZ. But here the units except that of respondent No.21, already exist prior to 1991 and there is no bar under the Notification for continuing the existing units and the Notification is only prospective in nature and moreover the NOC is only for the modernisation of existing fish oil and fish meal plants based on which State Government have issued Orders. Subsequently KSPCP has granted consent and SEIAA has given EC to set up the CETP to take care of the pollution aspects. This answers question No.1

Question No.2: Whether the activities of respondent units are prohibited as they are reported to be located in CRZ-I area and cannot be permitted to continue as no clearance has been obtained under CRZ Notification, 1991?

34. It is a fact that fish processing units come under orange category industries and as per the siting guidelines issued by 4th respondent dated 21.06.2003 the orange category units should be located at least 500 meters away from the river bank/reservoir/minor tanks. Such siting guidelines were issued by the KSPCB for the first time in 2003 with respect to distance from the river bank whereas the notification issued by KSPCB grouping 'fish meal and fish oil industries' under orange category is only in 2013. Therefore these orders have only prospective effect and the units already existing are allowed to continue provided they meet all the prescribed environmental standards.

35. Even if we allow that the units have already got a stake on the site for the purpose of handling fish by virtue of lease granted to them by the Port Department and they are existing prior to 1991 and there is no violation of CRZ 1991, one cannot shut the eyes to the fact that they have a no right to undertake expansion and modernisation activities without the permission of competent authorities and in this case they have failed to obtain statutory permissions either from the State Government or from KSPCB. The units formed into association i.e. 24th respondent and established CETP only after a series of representations were made to various authorities right from the early 2000s against the respondent industries that they are not only encroaching the adjacent Port Department land for expanding their activities but also causing pollution by letting the industrial effluents into the sea and emanating unbearable malodour affecting the nearby residents of Kotepura locality under Ullal Town Municipality. Based on the widespread criticism as well as publication of news reports against the activities of respondent units and also on the representation of certain individuals, the authorities have issued show cause notices to the units as to why suitable action should not be initiated against them. Therefore there is no alternative for the respondent industries other than approaching the State Government to ensure that their

activities are allowed to be continued by getting the sanction orders and the Regional Director (Environment), Mangaluru submitted various reports dated 05.09.2007, 19.02.2008, 30.04.2008 which was considered by KSCZMA which took into account that the units are already existing and are requesting for permission to go for modernisation and hence CRZ Notification is not applicable and accordingly NOC was issued and the respondent State of Karnataka issued the GO dated 13.01.2009 by virtue of which the units have a right to continue their activities and the entire land allotment process was streamlined in the said GO. The lease was extended but the issue of causing pollution by these industries was not given due attention and only after the matter was raised in various forums, the 24th Respondent association fish meal and fish oil industries has been leased with additional land to the extent of 1902.29 sq. meters for establishing CETP with a capacity of 600 KLD to ensure that the effluent generated by the cluster of respondent fish meal and fish oil units instead of discharging into the sea, is allowed to be treated properly to ensure that only treated effluent is discharged without causing any harm to the local marine eco-system. Therefore SEIAA has considered the whole issue in detail and granted EC to the CETP of the 24th respondent association on 10.07.2012 by imposing several conditions. However the individual units were granted consent both under the Air Act, 1981 and the Water Act, 1974 by the KSPCB for the first time in 2010 which was subsequently extended for a period of five years from 01.07.2012 to 30.06.2017 with a condition that respondent industries shall maintain records of quantity of effluent generated and it should be disposed only to the CETP to ensure that the treated effluent meets the standards stipulated by the Board. The units operate seasonally for a period of 4-6 months during Sept. to Feb. depending upon the availability of the fish. It is reported that due to shortage of raw fish most of the units are not able to operate to their full capacity and during the recent inspections conducted by the KSPCB most

of the units were found not under operation. Therefore at this juncture the contention of the applicant that there is a strong justification for invoking the provisions of CRZ Notification and arriving at a conclusion that the units are existing in violation of CRZ Notification and hence liable to be removed, is not sustainable and is rejected. This answers question No.2

Question No.3: Whether the respondent units are damaging the marine ecosystem by causing pollution in the locality which is reported to be ecologically sensitive?

36. Environmental issues associated with the manufacture of fishmeal and fish oil are high water consumption, effluent discharge, malodour and noise. The high seawater consumption is mainly because of its use as cooling water and the by-products are screenings and wastewater sludge. The air emissions include SO_x, NO_x, CO, dimethylamine, triethylamine and hydrogen sulphide molecules. Malodour comes from the raw material in the manufacturing process i.e., raw fish and from the wastewater sludge. The sludge generated at various stages of production has high level of organic matter reflected by high BOD, high levels of TSS and contains traces of ammonia, phosphorous, nitrogen, dimethylamine and triethylamine. A number of chemical compounds are formed during the bacteriological decomposition of the fish before it is cooked, and these are volatile and if discharged without treatment they cause pollution to the marine environment.

37. It is a fact that a lot of complaints were received against the units that they are causing pollution and the KSPCB during various inspections conducted by it on the individual units as well as the CETP, found various shortcomings and issued notices. Personal hearing was held with the respondent association on 08.10.2012 by the Senior Environmental Engineer, Mangaluru and a decision was taken

regarding efficient operation and maintenance of CETP. When the CETP was inspected by the Regional Officer of the KSPCB on 22-10-2012 it was found that the CETP is yet to be rectified and it was not functioning to the standards stipulated. Thereafter a 5 member committee headed by Prof. Manjappa was constituted by the KSPCB and the committee inspected the individual fish meal and fish oil units and also the CETP on 5-11-2012. The committee found that the CETP is not in working condition and recommended to provide metal sheet dome or RCC dome as top cover to the anaerobic tanks, install efficient oil remover facility, install flow meter at both inlet and outlet etc. and recommended to secure time bound action plan from the units .

38. Another personal hearing was held on 03.05.2013 and the KSPCB directed the 24th respondent to take action on laying underground pipelines to discharge treated effluents into the sea, and for effective operation of CETP, by providing a flair stack to anaerobic digester with an undertaking that no bypass of effluents into the sea will be made. The 4th respondent KSPCB has further inspected the respondent industries on 07.01.2014 and has observed the continuation of non-compliance of operation of CETP and recommended to issue notice of proposed direction and accordingly the same was issued *vide* NPD No.15 dated 19.04.2014 under Section 33(A) of Water Act, 1974.

39. The 4th respondent KSPCB has called for another personal hearing on 27.06.2014 and subsequently a meeting was conducted on 19.07.2014 directing the respondent industries to install and operate both the Deodorizer and the Evaporator to control foul smell and to treat the effluent generated respectively on or before 31.10.2014. On an inspection conducted pursuant to the directions in the said personal hearing, it was found that a total of nine units namely the respondents No.9, 10,13,14,16,17,18,20 and 22 have not installed Deodorizers and thus a show

cause notice and a notice of proposed direction was issued to them. The 4th respondent conducted another inspection of the CETP on 24.11.2014, legal samples from the CETP outlet were collected on 30.01.2015 and based on non compliance of the earlier directions of the Board, another notice of proposed direction was issued on 05.05.2015. A personal hearing was also conducted which was presided over by the Chairman, KSPCB on 11.05.2015 and it was decided that the pending application for Consent to Operate will be entertained only after receiving the revised treatment proposal from the 24th respondent and the same to be implemented within two months of acceptance by the Board. Pursuant to the directions of this Tribunal in the order dated 18.11.2015, an inspection of respondent units and the CETP was conducted on 27.11.2015 and 04.12.2015 and observed that the CETP is categorised as 'small red' consisting of nine units namely Bar Screen, Collection Tank, two Anaerobic Digesters, Aeration tank with diffused aerators, Settling Tank, Clarified Tank, Pressure Sand Filter, Activated Carbon Filter and Sludge Drying Beds. The Board, during inspection, observed that the CETP was in operation and the stabilization of aeration tank is under progress, the effluent outflow meter to CETP is installed, old corroded diffusers lines for aeration tank were dismantled and new diffusers were installed, the media for pressure Sand Filters and Activated Carbon Filters were replaced but the anaerobic digester top is not covered and is kept open, the Energy Meter was not installed and a log book will be maintained for operation and maintenance of CETP. The treated trade effluent sample was collected from the outlet of Activated Carbon Filter during inspection and the same was submitted to Regional Laboratory for analysis and the final treated trade effluent is being discharged into the Arabian Sea located adjacent to CETP. It was further observed that eight fishmeal units have already installed and commissioned the evaporators and one fish meal unit is under the process of installation and one unit remained closed for

a long time and remaining four units have given work order for the installation of evaporator. Regarding installation of deodorizer unit, four units have installed and commissioned the deodorizer and the remaining units have given work order for the installation of deodorizer system.

40. Pursuant to the directions of this Tribunal, an inspection was conducted on 31.03.2016 and was observed that out of 14 units, 1 unit was found remained closed and 9 units were not in operation from last 3 months due to non availability of raw material and only respondents No. 9, 10,17 and 22 were operating that too at lower capacity. It was further observed that respondents No. 13, 16 and 18 have not complied with the installation of evaporators, but however they have made a temporary agreement with respondent no. 14 to treat the stick water generated in their respective units. During the inspection, it was observed that the CETP was in operation and the stabilization of aeration tank was under progress, installation of Evaporators has reduced the quality and quantity of effluent generated and has reduced the load on CETP. Since most of the fish meal units are not in operation due to non availability of raw material, effluent generation is almost nil and they are presently recycling the same effluent inside the CETP units. The effluent outflow meter to CETP was installed and the reading found was 4547.50 m³ and the final treated effluent sample was collected from the outlet of the Activated Carbon Filter during inspection and was submitted to Regional Lab for analysis. The final treated trade effluent is being discharged into the Sea. A DG set 62.5 KVA is installed for CETP with acoustic enclosure and chimney height of 3 meter ARL as an alternative source during power failure. It was also noticed that the aeration tank was under stabilization and no of MLS was observed in the settling tank. The members of 24th respondent association were present during the inspection and informed that the CETP is proposed to be upgraded by installing

Clariflocculator Tank with addition of coagulants prior to aeration tank to improve the operational efficiency of CETP at the earliest.

41. Thus the above factual position indicates that the respondent fish meal and fish oil manufacturing units indulged in negligence, violated the pollution control norms thereby causing pollution to the adjacent estuary waters by discharging untreated effluents and also caused nuisance and health hazard to the nearby residents by emanating malodour and stench. In spite of repeated notices and directions given by various authorities they did not mend their ways and continued to operate the units in utter disregard of the environmental concerns. It is pertinent to note that the KSPCB itself on several occasions found that the respondent industries have failed to establish the CETP in spite of several directions issued from time to time. And even after installation of CETP it was not properly maintained. We, therefore, feel this answers question No.3 and it is a fit case to invoke the 'Polluter pays' principle against the respondents for having operated the fish meal and fish oil production units without taking adequate pollution control measures we also make the association of the units i.e. respondent No. 24 responsible for not operating the CETP properly which lead to causing of pollution and consequent damage to the environment. The Hon'ble Apex Court in ***M.C. Mehta v. Union of India*** 1992 Supp (2) SCC 85 observed as under:

"We are conscious that environmental changes are the inevitable consequence of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the residents of the area".

42. In ***M.C. Mehta v. Kamal Nath*** 1997 (1) SCC 388, the Apex Court also laid emphasis on the principle of polluter pays and held that one who pollutes the environment must pay to reverse the damage caused by his acts. It is also relevant to mention here that this Tribunal in the case of ***Court on its own motion v. State***

of *HP and others* reported in the All India NGT Reporter 2014 (1) Part 3, held that:

"The other relevant principle is the 'Polluter Pays' principle which can be applied to prevent as well as control further environmental damage in the area. The 'Polluter Pays' principle is one which is aimed at ensuring that the costs of environmental damage caused by the polluting activities are borne in full by the person responsible for such pollution. It is said that this principle means that the polluter should pay for the administration of the pollution control system and for the consequences of the pollution, for example, compensation and clean up. Under this principle, the Government alone cannot be held responsible for preventing and controlling the environmental pollution. If this fiscal incident in its entirety is shifted to the Government, then it would amount to unduly burdening the common tax payer, for none of his fault, for taking anti-pollution, preventive and remedial measures. The actual polluter, thus must be held liable for the damage done. This doctrine has been accepted in larger parts of the world as the fundamental principle on environmental matters and has been one of the underlying principles for action programme on the environment".

43. The Hon'ble Supreme Court while deciding in the **Tirupur Dyeing Units Factory Owners Association Vs. Noyil River Protection Association** on 06.10.2009 has made the following observation:

"Therefore, the polluting industries are absolutely liable to compensate for the harm caused by it to villagers or other affected persons of the area, to the soil and to the underground water and hence, the industry is bound to take all necessary measures to prevent degradation of environment and also to remove sludge and other pollutants lying in the affected area. As the liability of the polluter is absolute for harm to the environment it extends not only to the victims of pollution but also to meet the cost of restoring the pollution free environment."

In case of **Krishnakant Singh vs. National Ganga River Basin Authority 2014 ALL (1) NGT Reportable 3 Delhi 1**, the Principle Bench of this Tribunal directed Simbhaoli Sugar Mills which had opened without consent of the concerned Board for a long period and had polluted the environment, Phulderadrains well as the underground water, to pay a compensation of Rs.5.00 Crores. The compensation was imposed for flouting the law and for causing the pollution.

44. However, at this stage it is not possible to assess and quantify the damage caused to the environment and hence, considering the original date of granting lease to the units, nature of activities of the units and their location in a sensitive area, we impose the respondents with penalty to pay under Polluter pays principle as follows:

Sl. No	Unit	Date of lease granted	Penalty (Rs.)
1	Respondent No. 9	1-4-1984	Rs. 5,00,000/-
2	Respondent No. 10	1-4-1978	Rs. 8,00,000/-
3	Respondent No. 11	1984	Rs. 5,00,000/-
4	Respondent No. 12	Prior to 1988/1989	Rs. 5,00,000/-
5	Respondent No. 13	1-4-1985	Rs. 5,00,000/-
6	Respondent No. 14	1-4-1984	Rs. 5,00,000/-
7	Respondent No. 15	1-4-1984	Rs. 5,00,000/-
8	Respondent No. 16	1-4-1979	Rs. 8,00,000/-
9	Respondent No. 17	1978/1983	Rs. 8,00,000/-
10	Respondent No. 18	1-4-1979	Rs. 8,00,000/-
11	Respondent No. 19	1-4-1978	Rs. 8,00,000/-
12	Respondent No. 20	1-4-1984	Rs. 5,00,000/-
13	Respondent No. 22	1984	Rs. 5,00,000/-

We further order an amount of Rs. 25,00,000/- (Rupees Twenty Five lakhs only) against the respondent No. 24 Fish meal and Fish oil Manufacturers Association for utter negligence and violation of standards in operating the CETP thereby leading to releasing of untreated effluents into the adjacent sea and causing pollution inspite of giving a no. of opportunities to rectify the CETP. All the above said amounts shall be paid to the Environment Relief Fund established under Section 24 of the National Green Tribunal Act, 2010 within one month from the date of this judgment.

45. In respect of unit of the respondent No. 21 which was established for the first time in Sept. 1991 viz. after the CRZ Notification 1991 came into force, it is clear violation of the notification and the authorities failed to appreciate this fact and granted NOC and also Consent. The unit is existing illegally in violation of CRZ Notification 1991. Therefore, we order that the operation of the unit of the

respondent no. 21 shall be stopped forthwith and the unit may be directed to remove the machinery and equipment and vacate the site within one month from the date of this judgment and the Port Department shall cancel the lease and resume the land.

46. We direct that the KSPCB shall continue to monitor the units and do not allow them to operate unless the CETP is made to function by meeting all the required standards and all the individual units install the deodorisers and evaporators and make them fully functional.

47. With the above directions, the Application stands disposed. No cost

In view of the disposal of the main application, pending M.A.Nos.180, 181, 183, 184, 186, 187, 189, 190, 192, 193, 195, 196, 198, 199, 201, 202, 204, 205, 207, 208 of 2015 are closed.

Date : 08.07.2016
Chennai

Justice Dr. P. Jyothimani
(Judicial Member)

Shri. P.S.Rao
(Expert Member)

NGT