

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

(By Video Conferencing)

Ex. Application No. 04/2021 (WZ)
IN
Original Application No. 25/2021(WZ)
(With report dated 12.11.2021)

Nandkumar Waman Pawar

Applicant

Versus

City and Industrial Development
Corporation of Maharashtra Ltd & Ors.

Respondent(s)

With

Review Application No. 01/2022 (WZ)
IN
Original Application No. 25/2021 (WZ)

Nandkumar Waman Pawar

Applicant

Versus

City and Industrial Development
Corporation of Maharashtra Ltd & Ors.

Respondent(s)

Navi Mumbai SEZ Pvt. Ltd.

Review Applicant

With

Review Application No. 03/2021 (WZ)
(I.A. No. 97/2021 & I.A. No. 120/2021)
In
Org. Application No. 25/2021(WZ)

Nandkumar Waman Pawar

Applicant

Versus

City and Industrial Development
Corporation of Maharashtra Ltd & Ors.

Respondent(s)

Date of hearing: 23.02.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Ms. Meenaz Kakalia, Advocate for Applicant in E.A No. 04/2021 (WZ)
Mr. Pinaki Misra, Senior Advocate with Mr. Saket Mone, Advocate for
Applicant, (Navi Mumbai SEZ Pvt. Ltd) in R.A No. 01/2022 (WZ)
Mr. G.S. Hegde, Advocate for Applicant (CIDCO) in R.A No. 03/2021(WZ)

ORDER

Introduction – the Issue

1. This order will deal with execution Application No. 04/2021(WZ) for execution of order of this Tribunal dated 15.04.2021 and RAs 1/2022(wz) and 3/2021(wz) which seek review of the said order. The issue to be dealt with in all the three is same viz. whether there is obstruction of flow of water to the Wetland and mangrove ecosystem in violation of environmental norms and whether structures for such obstruction are in violation of statutory CRZ notification, 2019, prohibiting such activities in CRZ IA Area (the present area is such area).

Order of the Tribunal dated 15.4.2021

2. Vide order dated 15.4.2021 sought to be enforced/reviewed, the Tribunal dealt with the grievance of obstruction of flow of water in *Panje wetland* bounded by the villages Panje, Phunde, Dongari and Bokadvira, Navi Mumbai, by unauthorized activities of Respondent No. 1, City and Industrial Development Corporation (CIDCO). Considering the direction issued by the Environment Department of Maharashtra dated 11.11.2020

on the subject, the Tribunal directed CIDCO to comply with the said direction. Order of the Tribunal is reproduced below:-

“

1. **According to the applicant, the wetland in question is bordered by mangroves on the west and the east and also has mangroves inside the wetland at some locations. It is intertidal wetland formed naturally in abandoned saltpans. Due to its geographical location, it was earmarked by the planning authorities as a flood control zone since the regular tidal influence made it easy to soak and drain the water from the nearby areas. It finds mention in the report titled ‘Coastal Wetlands and Waterbirds of Navi Mumbai: Current Status’ which notes 31 migratory species, 6 near threatened species, 1 vulnerable species and 5 Schedule I species of birds under the Wildlife Protection Act, 1972. Further, it notes that Panje wetland is the largest migratory waterbird congregation site in Navi Mumbai and one of the best birding sites in Maharashtra. It is further stated that in September, 2018 sluice gates feeding tidal water to the Panje wetland were blocked which resulted in the draining out and resultantly drying out of the Panje wetland. After numerous representations made by the Appellant herein and several others, these blockages from the sluice gates were removed and the flow of water to the wetland was restored. BNHS addressed a letter dated 4th December, 2018 to the erstwhile Chief Minister highlighting their concerns with regard to the conservation of the ecologically significant Panje wetland and setting out certain measures that it believed are needed to be taken for its protection.**

2. **In November 2020, Respondent No. 1, CIDCO blocked 5 culverts which led to State Environment Department writing letter dated 11.11.2020, directing as follows:**

“4. In order to protect the mangroves and water body at village Panje, you are hereby directed to initiate action with immediate effect as under:

- a) **Restore the free flow of tidal water by opening the sluice gates and removal of the blockages so that free flow of tidal water reaches to mangroves and water body at village Panje.**
- b) **Remove the illegally security cabins erected in CRZ area immediately.**
- c) **Stop the work of filling of low lying area in the said site.”**

The order also refers to order of the Bombay High Court in PIL No. 87/2016, Vithal Pandurang Barge v. State of Maharashtra and Ors.

3. **Grievance of the applicant is that in spite of above direction, the free flow of tidal water by opening the sluice gates and removing blockage has not been restored nor illegally setup security cabins removed from the CRZ area. Filling of low-lying area is continuing which will damage the wetland in violation of the Wetland (Conservation and Management) Rules, 2017 and CRZ Notification, 2011.**

In view of the above, we direct CIDCO to go by the order of the Environment Department, Government of Maharashtra dated 11.11.2020 so long as the said order is operative. The District Collector, Raigad may enforce the said direction, following due process of law.

The application is disposed of.”

Order dated 11.11.2020 by Environment Department, Maharashtra

3. Order of Maharashtra Government, Environment Department, required the CIDCO to restore the free flow of tidal water, remove illegally erected security cabins and filling up of the low lying area at Panje water body in villages Panje, Phunde, Dongari and Bokadvira. The District Collector, Raigarh was directed to ensure compliance. The same is as follows:-

“This office is in receipt of repeated complaints pertaining to destruction of mangroves and blocking the tidal flow of water at village Panje, Tal: Uran, District: Raigad. It is alleged that inlet to tidal waters has been blocked at water body situated in village Panje leading to drying up the water body and mangroves. It is further alleged that 70 numbers of sluice gates installed by the CIDCO have been blocked leading to complete stoppage of ingress of tidal water in the mangroves and water body at Panje wherein lakhs of migratory birds visit every year. It is further alleged that security cabin have been erected at the site. Complainants has sent the photographic evidence substantiating the allegations.

2. **From the site photographs, it is observed that water body at village Panje is being dried up due to blockage of free flow of tidal water. It is further observed that security cabins are erected in CRZ area which are in violation of the CRZ Notification, 2011. Obstructing the free flow of tidal water and destruction of mangroves leads to violation of the CRZ norms and provisions of the Environment (Protection) Act, 1986. This is gross violations of the CRZ norms. Destruction of the mangroves leads to contempt of the Hon’ble High Court orders**

in PIL 87/2006, as per which, mangroves needs to be protected and conserved.

3. ***This is to inform you that Hon'ble Minister, Environment on 3rd March, 2020 had convened a meeting with officials of the Department of Environment in the matter and accordingly, this office vide letter dated 4th March, 2020 has issued directions to stop the ongoing activity of mangrove destruction and dumping of debris at village panje immediately. Further, Environment Department vide DO letter dated 18.05.2020 has sought action taken report in the matter on top priority. Despite of communications vide above referred letter at sr. no. 1) & 2), the report in the matter is not yet submitted to Government.***

4. ***In order to protect the mangroves & water body at village Panje, you are hereby directed to initiate action with immediate effect as under:***

a) Restore the free flow of tidal water by opening the sluice gates and removal of the blockages so that free flow of tidal water reaches to mangroves and water body at village panje.

b) Remove the illegal security cabins erected in CRZ area immediately.

c) Stop the work of filling of low lying area in the said site."

Consideration of the EA – compliance report of the Collector dated 1.7.2021 and Orders thereof

4. Vide order dated 01.07.2021, the Tribunal sought an action taken report from the District Collector, Raigarh which has been filed on 12.11.2021 to the effect that compliance has been done. Relevant extracts from the report are as follows:-

“Report of action taken by CIDCO administration:-

"This has reference to the captioned subject regarding submission of action taken report on NGT orders dated 15.04.2021 and 01.07.2021. In this regard it is submitted that, as per the directions of the letter dated 11.11.2020 of the state Environment department it is necessary to:

- a) Restore the free flow of tidal water by opening the sluice gates and removal of the blockages so that free flow of tidal water reaches to mangroves and water body at village Panje.
- b) Remove the illegal security cabins erected in CRZ area immediately.
- c) Stop the work of filling of low lying area in the said site. Actions taken in this regard are as under :

Point (a) -CIDCO opened up the sluice gates of holding pond on 18.11.2020 for free flow of tidal water. **It is therefore clear that, the 70 sluice (Flap) gates are opened up as per the directions.**

Point (b) & (c) - As per the Tahsildar report dated 23.11.2020, **existing security cabins were shifted away to non CRZ areas. Also, dumping and filling activities were not observed in this area.**

Besides the above, CIDCO, NMSEZ and Revenue officials had inspected the site on 25.5.2021 to verify the site condition as per the NGT Order dated 15.4.2021 and checked the compliances to directions given in the letter of State Environment department dated 11.11.2020. The compliance for above points, as per site visit dated 25.05.2021 is as under:

- a. **All the 70 sluice (Flap) gates were opened and there was free flow of tidal water.**
- b. **There are no cabins of NMSEZ with whom the land under reference is in possession**
- c. **Also no filling activity of low lying area was observed.**

Tahsildar, Uran clarified during the site visit and discussions that, they already informed the status to Sub Divisional Officer vide: letter dated 23.11.2020.

The representative of NMSEZ informed that, NMSEZ had already informed to the Director, Environment. Govt. of Maharashtra and informed about compliances to point (b) & (c). NMSEZ also informed regarding shifting of portable security cabins beyond the CRZ area and clarification given regarding point mentioned in point (c) above.

Further, CIDCO is in receipt of an e-mail of Nanda Kumar Pawar, the petitioner and B.N. Kumar- editor & Director of Net Connect Foundation through Shri. Narendra Toke, the Director, State Environment Department, GoM on 21:6/2021. As per the content of the e-mail and the attachments therewith, the matter is limited to 5 water blockages at inlets to Panje wetland.

In this regard it is submitted that

1. The matter is not related to 70 sluice (Flap) gates, which are already opened up and are in CIDCO area
2. The location of the blockages (5 blockages mentioned by the petitioner) for restore the free flow of tidal water by opening the sluice gates and removal, are in the boundary

of NMSEZ area (Panje wetland) and not related to 70 no. of Flap gate openings of outlet structure on Holding Pond in CIDCO area.

3. It may also be noted that lands in Panje were erstwhile agriculture not wetland as claimed by the petitioner.

Apart from this, this office has given the representation for reconsideration. reviewing and recalling of the directions contained in captioned letter of state Environment department dated 11.11.2020 to the Director, State Environment department, GoM.

In view of the above, it is clear that **CIDCO has complied with the directions given in the letter of State Environment department dated 11.11.2020 and NGT order dated 15.04.2021.** As the five culver / blockages are situated in the boundary of NMSEZ area, it necessary to seek the action taken report regarding removal of blockages from NMSEZ".

Report Submitted by SDO Uran:-

In this regard, as per directions of Sub Divisional Officer Uran, Talathi Dungri, Forest Ranger Jasai and Forest Ranger (Mangrove) personally visited and inspected the site. The land adjoining Creek at village Panje, Taluka Uran, District Raigad, has been acquired by CIDCO and leased to NMSEZ for a period of 30-years. The name of CIDCO is mutated as occupant of said land in occupant's column of the 7/12 extract of said land. The said land has a protective wall on the sea side and on the creek side and the road is built on the inside before 2009. On the inside of the protective wall, 3 pipes have been placed under the road to carry water to different places. The Sub-Divisional Officer, Uran has submitted the report showing present status as follows:-

"On inspecting the actual site, it is found that –

1. The pipe is open and the tidal water is flowing smoothly through it.
2. Also, there is no security post at this place found today.
3. Also, no filling work is in progress at villages Panje, Funde, Dongari and Bokadvira."

As per said reports submitted by the Joint Managing Director II, CIDCO dated 26/07/2021 and 02/11/2021 and the report submitted by Sub-Divisional Officer Uran dated 28/10/2021, the following compliances in accordance with the order of this Hon'ble Tribunal, dated 1/07/2021, appears to be made –

- 1.. All the 70 sluice (Flap) gates were opened and there was free flow of tidal water.**
- 2. There are no cabins of NMSEZ with whom the land under reference is in possession.**
- 3. Also no filling of low lying activity was observed.**

CIDCO has complied with the directions of state Environment department letter dated 11.11.2020 and NGT order dated 15.04.2021 and 01.07.2021 and also substantiated the

clarification given by NMSEZ to the content of the issues raised by the petitioner. CIDCO has also filed a review petition in the NGT on dated 12/10/2021"

Accordingly, this Action Taken Report is hereby submitted as per order of this Hon'ble Tribunal dated 1/07/2021."

Order on EA

5. In view of above, nothing survives in the Execution Application which is disposed of without prejudice to the aggrieved party taking remedies as per law, if any violation of order of this Tribunal takes place.

Review Application No. 01 and 03/2022 (WZ)

Rival Contentions

Review Applicants' case

6. Review Application No. 01/2022(WZ) has been filed by Navi Mumbai SEZ Pvt. Ltd. while RA 03/2021(WZ) has been filed by the CIDCO for review of order of this Tribunal dated 15.04.2021. Their contention is that order of this Tribunal was passed without hearing them. There is no violation of Wetland Rules nor of CRZ notification. Artificial ponds in question are necessary to prevent flooding which does not affect the tidal flow or the mangroves. The matter is covered by the orders of the Bombay High Court in various proceedings, pending or disposed of to which reference is made hereafter.

7. According to the review applicants, flap gates are environmentally sustainable method for development of coastal low lying areas and to prevent flooding during monsoon. By this method, holding pond is able to collect excess water and prevent the same from being discharged into the backwaters or sea. In short, it is submitted that:

- i. The said storm water drain-pipes are not connected to HP-1;*
- ii. The said storm water drain-pipes are meant only to drain out storm water;*

- iii. *The flap gates on the said storm water drain-pipes are to prevent creek water from entering into the lands; and*
- iv. *The said storm water drain-pipes have been kept plugged during the non-monsoon period for the last 10-12 years.*

8. The review applicants submit that the direction of the Environment Department applied only to the sluice gates (flap gates) of the holding ponds and not to the said storm water drain pipes. The original applicant has sought to expand the scope of the proceedings to “culverts” which is made referable to storm water drain pipes. There is no obstruction to free flow of tidal water due to storm water drain pipes as found by (i) Circle Officer, Uran; (ii) the Forest Conservation Officer, Uran; and (iii) the Talati, Saja-Dongri. The holding Ponds in Dronagiri, Kalamboli and Panvel are under the control of CIDCO and remaining are under the control of Navi Mumbai Municipal Corporation. If flap gates are open, it will result in flooding of nearby villages due to reduction of capacity of holding ponds.

9. It is further submitted that de-siltation of ponds is required to be carried out from time to time to maintain their capacity. Necessary permission for purpose was granted by the Bombay High Court on 28.07.2008 in *Notice of Motion No. 538 of 2006 in the said PIL 87 of 2006* and on 03.07.2013 in *Notice of Motion No. 290 of 2012 in PIL 87 of 2006*. CIDCO has moved MoEF&CC for de-silting of the holding ponds. *WP No. 13476 of 2018* has also been filed on the subject. As per order of the Bombay High Court dated 11.01.2022 in *Public Interest Litigation No. 91 of 2021*, there is no bar to maintenance of ponds. The said order is as follows:-

“Pendency of this writ petition shall not preclude the respondents to take appropriate steps for maintenance and restoration of the holding ponds and damaged flap gates to prevent water logging during the period of high tides”

Opposition of the Review Applications by the Original Applicant

10. The review applications are opposed by the original applicants. It is pointed out that creation of ponds and fixing of flaps on storm water drain pipes obstructs flow of water to the water body, to the prejudice of the environment and rights of the fishermen. This violates the principle of Wetland Rules, 2017 and CRZ notification, 2019. The Maharashtra Government in its order dated 11.11.2020 considered the matter and prohibited the said activity which has been rightly directed to be enforced by this Tribunal and infact the same stands already enforced, as noted above. There is no conflict with any order of the Bombay High Court. Thus, no ground for review has been made out.

Consideration by the Tribunal

11. We have duly considered the submissions having regard to the fact that at the time of passing of order dated 15.04.2021, the said review applicants were not before the Tribunal. The Tribunal passed the order in view of the fact that the matter had already been duly examined by the Environment Department of Maharashtra which had culminated into order dated 11.11.2020 which was in force for five months prior to passing of the order by the Tribunal.

12. Questions for consideration are whether the area in question is Wetland so as to attract the restrictions as per principles of the Wetland Rules, affecting the impugned activity. Further question is whether CRZ notification 2019 apply and affects the impugned activity. Last question is whether any order of the Bombay High Court permits the activity in question.

13. It may be noted that as per law laid down by the Hon'ble Supreme Court in *M.K. Balakrishnan & Ors. V. Union of India & Ors.*¹ the principles of Wetland Rules are applicable not only to the notified wetlands but to all the wetlands inventorized in the Atlas. Upto 2014, more than 2 lakhs wetlands had already been mapped. More wetlands have been mapped thereafter. Observations of the Hon'ble Supreme Court are reproduced below:

“21. The learned counsel for the petitioners has drawn our attention to an additional affidavit filed by the Union of India on or about 9-9-2014. The additional affidavit contains an information brochure “National Wetland Inventory & Assessment”. **This brochure indicates on p. 11 thereof that 2,01,503 wetlands have been mapped at 1:50,000 scale.** All these wetlands have an area of more than 2.25 ha. As a first step, the “brief documents” with regard to these 2,01,503 wetlands should be obtained by the Union of India from the respective State Governments in terms of Rule 6 of the Wetlands (Conservation and Management) Rules, 2010. We are told that obtaining these “brief documents” may take some time. We are inclined to grant adequate time for this purpose. The Union of India should follow this up with the State Governments and inform us of the time-frame on the next date of hearing.

22. The apprehension expressed by the learned counsel for the petitioners is that with the passage of time there is a possibility that some of the wetlands may disappear. On a reading of the information brochure, this apprehension is not unfounded.

23. Accordingly, **we direct the application of the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 to these 2,01,503 wetlands that have been mapped by the Union of India.** The Union of India will identify and inventorise all these 2,01,503 wetlands with the assistance of the State Governments and will also communicate our order to the State Governments which will also bind the State Governments to the effect that these identified 2,01,503 wetlands are subject to the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010...”

14. This Tribunal vide order dated 25.11.2021, in *Original Application No. 351/2019, Raja Muzaffar Bhat v. U.T. of Jammu & Kashmir* observed that the principle of Rule 4 of the Wetlands Rules will apply not only to the 2.01 lakh wetlands already mapped but also to more wetlands which may be so identified. All the States/UTs were required to map all available

¹ (2017) 7 SCC 805

wetlands and file report with the National Wetland Committee for preparing exhaustive inventory on the subject. The directions of the Tribunal are as follows:-

“17. The suggestion of the applicant is that significant wetlands need not be limited to 363 and more wetlands on examinations be added to the list from time to time for better protection by preparing appropriate action plans under the programme for protection of the significant wetlands. Further, apart from figure of 2.01 lakh wetlands already mapped, to which the Wetland Rules, 2017 are applicable even if no separate Notification in terms of 2017 Rules in view of directions of the Hon’ble Supreme Court in M.K. Balakrishnan, supra, it may be possible to identify more such wetlands. Infact, the report of the MoEF&CC itself mentions that some States have already identified larger number of wetlands than earlier mapped. In UP itself, 133484 wetlands are entered in the Revenue Records which are being protected by the State. On the same pattern, all the States/UTs need to map all available wetlands in their jurisdiction and file report with the National Wetland Authority so that National Wetland Authority can prepare an exhaustive inventory of wetlands in the country and extend protection to all such wetlands. These suggestions need to be considered by the MoEF&CC.”

15. We are conscious that the Wetland Rules as such do not apply to the areas governed by CRZ notification in view of para 3 of the said Rules. Still, the principle of Rule 4 has to be applied in view of orders of the Hon’ble Supreme Court having regard to the need for protection of the Wetland, which play significant role in protecting the environment, particularly the aquatic biodiversity and birds habitats, as noted inter alia in judgement of the Hon’ble in Vaamika Island resort V. UOI, (2013) 8 SCC 760. The same are governed by public trust doctrine in view of judgement of the Hon’ble Supreme Court in (1997) 1 SCC 388.

16. In the present case, the report of the Bombay Natural History Society (BNHS), Annexure A-2 to the Original Application describes the wetland in question as follows:-

“2.1.5) Wetland near Panje, Uran A wetland area situated along Dongri, Funde, and Panje villages (18°54’3.04”N, 72°57’1.86”E Refer to Map 6) was observed to be used by waders during high tides. Spread over 100 hectares, this wetland is located within

the confines of a Special Economic Zone (SEZ) in Uran, Navi Mumbai. The SEZ was identified here in 2009 and the boundary wall was constructed around the wetland separating it from sea shore. This wetland, located approximately three kilometres from Nhava Sheva police station, is easily accessible by a tar road. This wetland faces anthropogenic pressure so it is a safer foraging and roosting area for congregating birds”

17. Further, the BNHS report titled ‘Coastal Wetlands and Water birds of Navi Mumbai: Current Status’ of the year 2019, the wetland in question is described as follows:-

“2. Wetlands

2.1. Panje Wetland

1. Characteristics

Location: *This wetland is located on the west of Dongri and Panje villages (18°54'0.95"N, 72°57'2.04"E). It is enclosed by 8-10 feet high concrete wall and therefore almost isolated from tidal influence. West side of the wetland bordered with a narrow patch of mangrove (300–500m wide and 1.5 km long), whereas east side surrounded with degraded mangroves, villages and roads. Internally, the wetland is divided into a number of compartments using soil bunds, usually, most of the area is shallow but some parts are excavated and deepened for fishing. These areas are transformed into reeds.*

Area: 124 ha

Number of bird species: 50 (Table 2.1.2)

Number of individuals: 565 (minimum)–11560 (maximum). The numbers of birds in the winter season can reach up to 50,000, however frequently observed numbers fluctuate between 15000 to 20000.

Number of migratory species: 31

Number of near-threatened species: 6

Number of vulnerable species: 1

Wildlife Protection Act schedule species: Schedule I–5, Schedule IV –45 Remark: *The site was notified as a Special Economic Zone (SEZ) of Uran, Navi Mumbai in 2009.”*

18. From the above, it is seen that what is described as ponds with flap gates for preventing flooding are obstructing the free flow of water to the Panje wetland which is factually in existence, even if not notified. The Environment Department of Maharashtra has found the ponds/structures in question to be obstructing flow of water in the said wetland and

prohibited the same. Thus, the order of this Tribunal is not based on any mistake or wrong assumption as submitted by the review applicant. The flaps meant to prevent flooding are infact obstructions to the flow of water to the wetland.

19. While de-silting may be a different matter, in the garb of de-silting, mangrove removal is not permissible in view of CRZ Notification 2019. There is need to ensure that there is no encroachment or damage to the wetland as per Para 2.1.1 (b) of the CRZ Notification, 2019. Thereunder, detailed Environment Management Plan is required to be prepared and integrated with the CZMP. Relevant extracts from the notification of 2019 are as follows:-

“xxxxxx.....xxx

2.1.1 CRZ-I A:

(a) CRZ-I A shall constitute the following ecologically sensitive areas (ESAs) and the geomorphological features which play a role in maintaining the integrity of the coast viz.:

- (i) **Mangroves (in case mangrove area is more than 1000 square meters, a buffer of 50 meters along the mangroves shall be provided and such area shall also constitute CRZ-I A);***
- (ii) Corals and coral reefs;*
- (iii) Sand dunes;*
- (iv) Biologically active mudflats;*
- (v) National parks, marine parks, sanctuaries, reserve forests, wildlife habitats and other protected areas under the provisions of Wild Life (Protection) Act, 1972 (53 of 1972), Forest (Conservation) Act, 1980 (69 of 1980) or Environment (Protection) Act, 1986 (29 Of 1986), including Biosphere Reserves;*
- (vi) Salt marshes;*
- (vii) Turtle nesting grounds;*

- (viii) Horse shoe crabs' habitats;
- (ix) Sea grass beds;
- (x) Nesting grounds of birds;**
- (xi) Areas or structures of archaeological importance and heritage sites.

(b) A detailed environment management plan shall be formulated by the states and Union territories for such ecologically sensitive areas in respective territories, as mapped out by the National Centre for Sustainable Coastal Management (NCSCM), Chennai based on guidelines as contained in Annexure-I to this notification and integrated with the CZMP.

xxxxxx.....xxx”

“5.1.1. CRZ-IA:

*These areas are ecologically most sensitive and **generally no activities shall be permitted to be carried out in the CRZ-I A area, with following exceptions:-***

- (i) *Eco-tourism activities such as mangrove walks, tree huts, nature trails, etc., in identified stretches areas subject to such eco-tourism plan featuring in the approved CZMP as per this notification, framed with due consultative process, public hearing, etc. and further subject to environmental safeguards and precautions related to the Ecologically Sensitive Areas, as enlisted in the CZMP.*
- (ii) *In the mangrove buffer, only such activities shall be permitted like laying of pipelines, transmission lines, conveyance systems or mechanisms and construction of road on stilts, etc. that are required for public utilities.*
- (iii) *Construction of roads and roads on stilts, by way of reclamation in CRZ-I areas, shall be permitted only in exceptional cases for defence, strategic purposes and public utilities, subject to a detailed marine or terrestrial or both environment impact assessment, to be recommended by the Coastal Zone Management Authority and approved by the Ministry of Environment, Forest and Climate Change; and in case construction of such roads passes through mangrove areas or is likely to damage the mangroves, a minimum three times the mangrove area affected or destroyed or cut during the construction process shall be taken up for compensatory plantation of mangroves.”*

20. In view of above, having regard to the provisions of CRZ Notification, 2019 and the judgement of the Hon'ble Supreme Court in *M.K Balakrishnan (Supra)*, requiring the application of principle of Rule 4 of the Wetland Rules 2010 (now 2017 and Guidelines for implementing this Rules as notified by the MoEF&CC in 2020) to all wetlands and the order of the Environment Department of Maharashtra dated 11.11.2020 and there being no order of the Bombay High Court in conflict with the said order, there is no merit in the Review Application. Order of Bombay High Court dated 11.1.2022, quoted above, is applicable on in the context of preventing waterlogging during the period of high tides for maintenance and restoration of flap gates and ponds. The same has to be followed but consistent with that order of this Tribunal and order of Maharashtra Government dated 11.11.2020 will remain binding. The review applications have to be thus dismissed.

21. A joint Committee of nominees of National Wetland Committee, State Wetland Authority, Maharashtra, MCZMA and the District Collector, Raigad needs to take all necessary steps for protection, conservation and management of the wetland in question consistent with the order of the Bombay High Court dated 11.1.2022 or any other order on the subject. The joint Committee will be free to permit any protective measures during monsoon to prevent flooding. There is no bar to de-silting, subject to necessary approvals of the statutory authorities without adversely affecting the mangroves and the tidal flow. These aspects may be included in the EMP, prepared in terms of 2.1.1 (b) of CRZ Notification, 2019, if not already prepared.

A copy of the order be forwarded to the National Wetland Committee,
State Wetland Authority, Maharashtra CZMA and the District Collector,
Raigad by e-mail for compliance.

Adarsh Kumar Goel, CP

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

Dr. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

Dr. Afroz Ahmad, EM

February 23, 2022
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