

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

ORIGINAL APPLICATION NO.73 OF 2017

CORAM:

HON'BLE MR. JUSTICE U.D.SALVI
(Judicial Member)

HON'BLE MR. RANJAN CHATTERJEE
(Expert Member)

In the matter of:

Subhaniya Ismail Osman
Residing at Bander Road,
Near Prime P.C.O,
Salaya
District Devbhumi Dwarka-361310.

.....**APPLICANT**

Versus

1. M/s RSPL Limited

Having Registered Office at
119-121 (Part), Block P & T
Fazal Gang, Kalpi Road,
Kanpur-208 012.

2. Government of India

Notice may be served through
The Secretary,
Ministry of Environment,
Forest and Climate Change (I.A. Division)
Indira Pariyavaran Bhavan
Aliganj, Jorbagh Road,
New Delhi-110003.

3. Government of India

Notice may be served through
The Secretary,
Ministry of Environment,
Block No.14,
8th Floor, Sachivalaya,

Counsel for Applicant (s):

Mr. Jitendra Malkan for the Applicant.

Counsel for Respondent (s):

Mr. Kavin Gulati Sr. Advocate a/w Mr. R.D. Soni Advocate, Mr Alok Pathak, Adv. Mr. Amit Agashe, Advocate, Ms. Vasudha Zutshi, Advocate, Mr Sidharth Chaudhary for Respondent No.1.

Mr. Rahul Garg, Advocate for Respondent No.2.

Ms. Supriya Dangare Advocate h/f Nanavati & Co. for Respondent No.3.

Date: 4th October, 2017

ORDER

Heard. Perused Record.

1. The Applicant claiming to be a local fisherman from Salaya, DV Nagar, Dwarka, is seeking interim relief in terms of the prayer Clause (2) in the Main Application i.e. restraint on Respondent No.1 M/s RSPL Limited from carrying out further project work, particularly, laying of pipeline beneath the seabed near seashore in intertidal area at Kuranga, Tal. Dwarka, District: Jamnagar, Gujarat.

2. According to the Applicant, Respondent No.1 - M/s RSPL Ltd have been granted consolidated Environment Clearance and CRZ Clearance on 12th November, 2015 to its greenfield Soda Ash Plant along with captive Power Plant at Village Kuranga, District Dwarka, District Jamnagar,

Gujarat but has violated specific conditions in respect of CRZ Clearance by undertaking underwater rock blasting and using heavy machinery in the Turtle nesting area in contravention of recommendations and conditions specified by the Gujarat Coastal Zone Management Authority (GCZMA) vide letter No. ENV-10-2014-72-E dated 17th December, 2014.

The Applicant has produced before us:

- i)** Copies of consolidated EC and CRZ Clearances dated 12th November, 2015;
- ii)** Copy of letter No.ENV-10-2014-72-E dated 17.12.2014, incorporating the recommendations of GCZMA;
- iii)** The photographs of the site;
- iv)** Copy of Environment Report on the Coastal and Marine Environment, Gujarat State-2012;
- v)** Extracts from the Report- "Evaluation of Sea-Turtles by Gujarat Ecology Commission".

3. Respondent No.1-RSPL Ltd responded to the Application with Affidavit-in-reply dated 29th May, 2017 and its response was re-joined by the Applicant with Affidavit-in-rejoinder dated 19th June, 2017. Respondent No.1 has also filed additional affidavit dated 11th July, 2017.

4. Respondent No.2- the Ministry of Environment and Forest (MoEF) resisted the Application with Affidavit in reply dated 10th July, 2017. Further Affidavit-in-rejoinder dated 26th July, 2017 has also been filed by the Applicant.

5. Both Respondent No.2- MoEF and Respondent No.3 – Department of Forest and Environment, State of Gujarat have contended that the present application is misconceived inasmuch as the Applicant has challenged the consolidated environmental and CRZ clearance dated 12th November, 2015 by way of the present application under Section 14 of the National Green Tribunal Act, 2010 and not by way of an appeal which if filed would have been grossly time barred.

6. Learned Counsel appearing on behalf of the Applicant submitted that the Applicant is not challenging the consolidated environment clearance and CRZ clearance granted to the project but is questioning the activity of the Respondent No.1 carried out at the project site in contravention of the terms and conditions stipulated for the grant of consolidated environment and CRZ clearance. This fact is apparent from the tenor of the application. It is, therefore, necessary to examine whether there has been any such culpable contravention of the terms and conditions stipulated for the grant of consolidated environment and CRZ clearance and whether such violations, if any, warrant restraint on the activity of the Respondent No.1 as sought by the Applicant.

7. Admittedly, the Respondent No.1 – RSPL Limited is laying intake and outfall pipeline in the intertidal and subtidal area at the locations indicated by the National Institute of Oceanography on the seashore of Kuranga,

Taluka – Dwarka, Dist. Jamnagar, Gujarat with the help of Jackup Barge and JCB as seen in the photographs at Annexure-D collectively. FORM-1 filed by the Respondent No.1 – RSPL Limited Annexure-1 to Affidavit in Reply dated 29th May, 2017 (page-73) gives the description of size of the project as under:

Size of the project (in terms of total area):-	<u>Laying of pipelines for Seawater Intake and disposal of Effluent falling under CRZ area.</u>					
	For Intake facilities:					
	Area	Width (m)	Length (m)	Area (ha)	Total area (ha)	
	Intertidal	5	70	0.035	0.95	
	Subtidal	20	456	0.9120		
For Effluent Disposal facilities:						
Discharge point	Area	Width (m)	Length (m)	Area (ha)	Total area (ha)	
OF1	Intertidal	5	80	0.04	5.35	
	Subtidal	20	2655	5.3		
OF2	Intertidal	5	80	0.04	2.28	
	Subtidal	20	1120	2.24		
<p>Further onshore buried pipelines will be laid for the Seawater Water Intake and Effluent Disposal Pipelines. The plant boundary is located at an approx. distance of 850 m from the nearby seashore.</p> <p>Hence for laying of pipelines, approx.. 10-15 mt wide individual corridors will be required in CRZ area (500 m from the High Tide Line) for underground laying the pipelines.</p>						

8. Learned Counsel appearing on behalf of Respondent No.1 submitted that the project is almost 60-

65% completed and is being implemented in most time-efficient manner using latest eco-friendly technologies. He further submitted that the Respondent No.1 - M/s. RSPL Limited had revealed all the facts regarding use of Tugs, Barges as well as construction/laying of the submarine line with special equipment namely excavators, cranes, trailers, dozers, etc in FORM-1 at para 1.31 and 6.1 filled in for seeking the said clearance and the authorities had taken informed decision thereupon and granted the consolidated environment and CRZ clearance. According to him, tugs, barges are not heavy machineries as alleged and are essential components to carry out marine project work, particularly when the work in question which requires to be expeditiously carried out to avoid adverse influence on the environment due to time overrun or improper planning. He submitted that the site where the work in question is being carried out is not sea-turtle nesting site as observed in Site Monitoring Report - July-August, 2016 and observations recorded by Zoological Survey of India dated 10th July, 2017 and Status Report dated 22nd June, 2017 of Chief Conservator of Forest, Jamnagar. He submitted that the Tribunal while passing interim direction ought to consider the question as regards the existence of the prima facie case, balance of convenience and also the question as to whether any irreparable injury will be caused to the Applicant in terms of the environment damaged, a cause which he espouses. He relied upon the Judgment of the

Hon'ble Apex Court in ***Bombay Dyeing & Manufacturing Co. Ltd Vs. Bombay Environmental Action Group and Ors [(2005) 5 SCC 61: Bombay Dyeing & Manufacturing Co. Ltd Vs. Bombay Environmental Action Group and Ors]***.

9. Learned Counsel appearing on behalf of the Applicant submitted that para 1.31 of FORM-1 which reads as under:

1.31	Transport of personnel, or materials for construction, operation or decommissioning?	Yes	Vehicles will be used for carrying equipment/materials and manpower. During construction/laying of submarine pipelines, tugs, barge etc. will be used for certain period.
------	--	-----	---

dealt with transportation of personnel or materials for construction, operation or decommissioning and cannot be read as one with reference to the construction/laying of the pipeline. He further submitted that reference is only found made to Barge, the simple meaning of which as per Black's Law Dictionary is: 'boat that is flat, it travels canals and rivers. It is uncovered and can be pushed or towed' and it is thus floating vessel and not one standing on the legs as "Jackup Barge". According to him, the movement of Jackup Barge along with the turbulence due to work will have irrecoverable impact on the sea-bed due to lowering and raising of the legs of the Jackup Barge thereby compacting the sea-bed and killing the life on the sea-bed.

10. As can be seen from the perusal of the FORM-1 filed by the Respondent No.1- RSPL Limited to reveal the necessary particulars like basic information, activity undertaken and environmental sensitivity of the area vide Annexure – 1 to the Affidavit in Reply dated 29th May, 2017, the authorities were made aware of the pertinent information like the size of the project including requirement of 10-15 mt wide individual corridors in laying of the pipelines in intertidal and subtidal area, excavation i.e. trenching/tunnel for laying of seawater intake/effluent disposal (para 1.3, 1.5), use of submarine pipelines, tugs, barges etc during the construction of laying work (para 1.31), operation of equipment such as excavators, cranes, trailers, dozers etc. (para 6.1) and blasting or piling (para 6.4); and thereupon the authorities had taken informed decision as regards the grant of consolidated environmental clearance and CRZ clearance to the project. Specific condition in respect of CRZ at para-B(v) stipulates that all the recommendations and conditions specified by Gujarat Coastal Zone Management Authority (GCZMA) vide letter No.ENV-10-2014-72E dated 17th December, 2014 shall be complied with.

11. Perusal of the recommendations made by Gujarat Coastal Zone Management Authority vide letter dated 17th December, 2014 Annexure-7 to the Affidavit in reply dated 29th May, 2017 reveals the reference to the use of heavy machinery and large vessels in Observation (ix) as under:

“ix. The aesthetics of the coastal zone off Kuranga would deteriorate due to the presence of construction machinery, materials and left-over solid waste, If the construction is prolonged due to time-overruns or improper planning, the adverse influence would increase accordingly. The birds using the intertidal area around the project site are not expected to be impacted adversely as the limited excavation does not warrant the use of heavy machinery and large vessels. Marine reptiles and mammals would not be affected due to the construction activities since they keep away from such sites. Since there are no major commercial fishing operations close to the shore, the impact on fisheries would be minor.”

Reading of Condition No.8 stipulated therein persuades us to examine the impact of this observation. For ready reference Condition No.8 is reproduced herein below:

“8. All the recommendations and suggestions given by the NIO in their effluent disposal point selection report and suggestions/recommendations given by M/s NIO in their Comprehensive Marine EIA report and M/s NEERI in the Environment Impact Assessment report shall be implemented strictly by M/s RSPL.”

Assuming the same to be a suggestion not to use heavy machinery and large vessels, we do not find in express terms, particularly, when the facts regarding the use of tugs, barges, excavators, etc. was made in FORM-1 as to what heavy machinery as regards the project in question would be. Moreover, Jackup Barge is an improvised version of the barge which would facilitate the work of excavation in intertidal area round the clock, both when the tide engulfs the tidal area and recedes therefrom. Phrase “heavy machinery”, therefore, requires to be understood with reference to the context with the object

and purpose of CRZ Notification, 2011. Opening paragraphs of the CRZ Notification reveal to us its object and purpose in following terms:

“Now, therefore, in exercise of the powers conferred by Sub-Section (1) of Clause (v) of the Sub-Section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government, with a view to ensure livelihood security to the Fisher Communities and other Local Communities, living in the coastal areas, to conserve and protect coastal stretches, its unique environment and its marine area and to promote development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas, sea level rise due to global warming, does hereby declare.....”

A sustainable development based on scientific principles assuring conservation and protection of coastal stretches and its unique environment is the goal of the CRZ Notification, 2011. It is, therefore, imperative to examine from the material before us to find out whether the use of Jackup Barge and such other machinery sub-serve this object of CRZ Notification or not.

12. Such material is available in the undisputed recommendations of Gujarat Coastal Zone Management Authority vide letter dated 17th December, 2014 which gives the pertinent observations made by NIO, Mumbai. Observation No. ix therein gives a warning that ‘if the construction prolongs due to time overruns or improper planning the adverse influence would increase accordingly’. Expectation of NIO is to see that the project is completed expeditiously without unnecessary loss of time. Nowhere it

has stipulated ban on machines and prescribed manual efforts only for the reason of such expectation to curtail adverse influence on the environment with the passage of time spend on the project work. Observation Nos. xvii, xviii, xix which are reproduced herein below afford clear view to what will happen to the marine environment and to what extent:

“xvii. Trenching/pipelaying in the area having hard substratum/sand has relatively low potential to disperse the bed sediment. The impact would be localized, temporary and confined only to the construction phase. The sediment of the region is unpolluted; hence, there would not be deterioration in the water quality on this account. Since the area possesses hard substratum/sand and the excavated sediment is a small volume, it is unlikely to cause change in the sediment texture on a wider area. Misuse of the intertidal area by the work force can locally degrade the sediment quality by increasing BOD and population of pathogens. The impact, however, would be minor and temporary.

xviii. The intertidal corridor is largely composed of degraded reef and sand with isolated patches of seaweeds with a few species. Hence, no significant loss of flora and fauna is envisaged. Loss of localized weeds would be easily recouped by fresh recruitment once the activities are terminated. The impact of increase in turbidity due to enhanced levels of SS, if any, would be local and temporary with the phytoplankton community structure remaining more or less unaltered. Zooplankton are unlikely to be affected.

xix. The project would have negative impact on benthic habitats which would be destroyed during pipelaying. However, this loss would be minor and temporary and the benthos would re-colonise in due course after the construction activities are terminated. Moreover, structures would provide additional surface area for benthos to colonise on the newly created substratum. Since the corridor selected is

devoid of corals and mangroves, their destruction during the construction is unlikely.”

13. In our considered view, therefore, the use of Jackup Barge, excavators, etc. cannot be viewed as a machinery the use of which is counter-productive to the marine environment. Learned Counsel appearing on behalf of the Applicant submitted that Respondent No.1 – RSPL Limited is under obligation to ensure that laying of pipeline should be avoided during the breeding period of sea turtle i.e. between November and March vide Condition No.5 prescribed by the Gujarat Coastal Zone Management. He invited our attention to the ‘State of Environment Report on Coastal and Marine Environment Gujarat State’ at Annexure – G to the Affidavit in Rejoinder. He pointed out therefrom that Kharakhetar-Kuranga beach, Jamnagar coastal stretch has a sandy beach of value to the sea turtle for nesting. A Google imagery showing the extent of Kharakhetar-Kuranga coastal stretch vis-à-vis RSPL Limited is also found annexed to the Affidavit in Rejoinder dated 19th June, 2017 as Annexure – H. It gives a panoramic view of the said coastal stretch favoured by sea turtle for nesting. However, a more focused view of the coastal area in question vis-à-vis the sea turtle nesting has been placed before us by Respondent No.1 – RSPL Limited in form of inspection report and preliminary observations of the site made by Zoological Survey of India vide Annexure – 2 to their Additional Affidavit dated 11th July,

2017. Preliminary observations made by Zoological Survey of India upon the site visit are as under:

“Preliminary observations:

- i. There are *Prosopis* vegetation observed in the area and corridor background with hard rock substratum exposed in intertidal area.
- ii. The outlet point, recorded as per the geo-coordinate (22°00.047', 69°10.507') has similar topography as that of intake points (22°00.024', 69°59.993') with rocks expose in the intertidal region.
- iii. From the topography of the coastal stretch, it seems nesting intensity along the pipeline corridors could be rare, due to unsuitable habitat and rocky substratum.
- iv. There was no evidence of any old / fresh nests of sea turtles in the corridors, as observed during the field visit.
- v. There are pebbles and rubbles on the coastal corridors, which is generally not preferred by sea turtles for nesting due to unsuitability in digging nest by turtle for laying eggs. Also, heavy wave action was observed, therefore such conditions may not be preferred by sea turtle's approach for laying eggs on this stretch.”

Zoological Survey of India made following recommendations from the aforesaid preliminary observations:

- “i. Although sea turtle seems to avoid areas such as above being unsuitable for laying eggs, however M/s RSPL should monitor the surrounding areas on a daily basis and nesting observed/reported if any, the same to be informed to the Forest Department officials and the eggs to be translocated immediately to the nearest hatchery at Okha Madhi being maintained by Gujarat Forest Department, since they are as such the nest is subjected to predation.
- ii. Reclamation of intake and outlet corridor to be done by M/s RSPL immediately, after the civil work is completed.”

Annexure – 3 to the said Affidavit in Rejoinder is a copy of the letter dated 22nd June, 2017 from Chief Conservator of Forests, Marine National Park, Jamnagar addressed to

Respondent No.1 – RSPL Limited. It reiterates that considering the report of site visit of the committee consisting of GPCB, MNP, DEEFD and after countercheck with the local forest staff it was found that no sea turtle nesting activity is being observed surrounding the project pipeline corridor and also confirms that the said project is having rocky formation and devoid of sand which is a primary requirement for sea turtle nesting. Monitoring Report dated 6th September, 2016 of Dr. Bharat Jethva NABET Accredited FAF Category-1 Ecology & Biodiversity Gandhinagar produced by the Respondent No.1 – RSPL Limited reveals that the project site at Village Kuranga, Taluka Dwarka, District Devbhumi Dwarka was monitored by 4 site personals including environment engineers, site engineers and site managers/ in-charge trained to monitor ecological impacts due to construction and other activities made following pertinent observations:

“Observations:

- a.
- b.
- c.
- d. No endangered wildlife species/ wildlife have been reported at the Soda Ash project site as well as on the proposed Seawater Intake and outfall pipeline corridors.
- e. Rock formation found in and around the Intake and outfall pipeline corridor.
- f. No signs of presence of turtle nesting/ tracks/ predated nests / eggs have been observed along the pipeline corridors/ seacoast.

g. No mangroves are observed along the Kuranga seacoast.

h.”

In pursuance to these observations Dr. Bharat Jethva made the following pertinent recommendations:

“Recommendations

1.
2.
3. Complete the pipeline laying work job in stipulated time to negate impact on marine ecology.
4. Since no turtle breeding / nesting sites are observed nearby the project area which may be due to rocky formation found nearby the corridors, pipeline laying related activities can be carried out. However, in case of any sea turtle nests are encountered they shall be rehabilitated by consulting local forest department.”

14. The aforesaid facts revealed to us point out that no *prima facie* case for grant of interim injunction as prayed for is made out. Moreover, we find that the balance of convenience is in favour of the Respondent No.1- RSPL Limited and we see no irreparable injury to the coastal environment including the marine environment due to the work in question. However, as a precautionary measure we pass the following order:

- (i) We direct National Institute of Oceanography, Mumbai to depute a Senior Scientist to visit the site, carry out local investigation and report to us its findings regarding adverse impact, if any, on marine/coastal environment due to the work of laying of the underground pipeline in intertidal and subtidal area at the project site at Kuranga, Taluka Dwarka, District Devbhumi Dwarka undertaken by Respondent

No.1 – RSPL Limited; and to further periodically monitor the project site at Kuranga, Taluka Dwarka, District Devbhumi Dwarka every month during the progress of the said work. Liberty granted to NIO to carry out surprise checks. Any damage to the coastal/marine environment due to the work undertaken by Respondent No.1 – RSPL Limited shall be reported to us by the NIO.

(ii) Respondent No.1 – RSPL Limited shall continue to abide by the recommendations made by Gujarat Coastal Zone Management Authority as well as Zoological Survey of India.

(iii) No interim relief.

15. List this case for further hearing on 10th October, 2017.

....., **JM**
(Justice U.D. Salvi)

....., **EM**
(Ranjan Chatterjee)

Date : 4th October, 2017

mk