

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

**Application No.111 of 2016 (SZ)
and
M.A.Nos.133, 136 and 138 of 2016**

IN THE MATTER OF:

1. Udaya Suvarna,
S/o Late MahabalaBangera,
Badhragiri,
Baikady Village, Brahmavar Post,
Udupi Taluk and District,
Karnataka-576213.

2. Narayana Sriyan,
S/o Late NakraKundar,
Padu Baikady,
Baikady Village, Brahmavar Post,
Udupi Taluk and District,
Karnataka-576213.

3. Santhosh Bangera,
S/o Late Manjunatha Tholar,
Padu Baikady,
Baikady Village, Brahmavar Post,
Udupi Taluk and District,
Karnataka-576213.

4. Suresh Kunder,
S/o Late Sri Mohan Suvarna,
KiranHokuse,
Padu Baiady,
Baikady Village, Brahmavar Post,
Udupi Taluk and District,
Karnataka-576213.

... Applicants

AND

1. The Deputy Commissioner/
Chairman District Sand Monitoring Committee,
Office of the Deputy Commissioner,
“ Rajathadri ”, Manipal, UDUPI-576104.

2. The Member Secretary,
State Level Environment Impact
Assessment Authority- Karnataka,
7th Floor, 4th Gate, M.S Building,
Bangalore-560001.

3. The Member Secretary,
District Sand Monitoring Committee,
and Senior Geologist,
Department of Mines and Geology, 1st floor
A, Block, " Rajathadri ",
Manipal, UDUPI-576104.

4. The Regional Director (Environment),
Department of Environment and Ecology,
Government of Karnataka, 1st Floor,
'C' Block, " Rajathadri ",
District Administrative Centre,
Manipal, UDUPI-576104.

5. The Chairman,
Karnataka State Coastal Zone Management Authority,
4th Floor, M.S. Building,
Bangalore.

6. The Director,
Department of Mines and Geology,
Khanija Bhavan, Race Course Road,
Bangalore-560001.

7. The Secretary,
Ministry of Environment,
Forests and Climate Change,
Indira PayavaranBhavan,
Jor Bagh Road, Aliganj,
New Delhi-110003.

8. The APCCF, Regional Office,
Ministry of Environment & Forests (SZ),
Kendriya Sadan, 4th Floor, E& F Wings,
17th Main Road, Koramangal II Block,
Bangalore-560034.

9. The Director,
National Institute of Technology,
Suratkal, Srinivasanagara,
Mangalore, Karnataka-575025.

10. Udupi Jilla Hoige Dhoni Karmikara Sangha (R.)
Ramgopal Arcade, LVT Temple,
Opp. PutturSanthekatte,
Udupi District-576105.

(Arrayed as Respondent in terms of the order dated 03.08.2016 of Hon.
National Green Tribunal)

11. Karnataka Coastal District Traditional Sand Lifter's
Association, 1st floor, Mahakali Enclave, AdiUdupi,
Udupi District, Karnataka-579210.

(Arrayed as Respondent in terms of the order dated 03.08.2016 of Hon.
National Green Tribunal)

12. Sudhakar Amin,
S/o DasuPoojary,
R/o Garademane, Pangala, Udupi Taluk and District,

(Arrayed as Respondent in terms of the order dated 03.08.2016 of Hon.
National Green Tribunal)

13. Shambu Poojary,
S/o Aitha poojary,
R/o Herikudru,
KundapuraTaluk, Udupi District-576213.

(Arrayed as Respondent in terms of the order dated 03.08.2016 of Hon.
National Green Tribunal)

...Respondents

Counsel appearing for the Applicants :

Mr. Ranjan Shetty

Counsel appearing for the Respondents :

Mr. Devaraj Ashok for R1 to R6
Mr. G.M.Syed Nurullah Sheriff for R7 and R8
M/s. S.S. Sajeevkesan and
R. Vijayakumar for R9
Mr. P.H. Arvind Pandian Senior Counsel for
M/s. Sam Jaba Singh,
K. Prasanna Shetty and
Ramesh. K.R. for R10
M/s. Surana & Surana and
G. Kalyan Thabakh for R11 to R13

J U D G E M E N T

PRESENT:

HON'BLE SHRI JUSTICE M.S.NAMBIAR, JUDICIAL MEMBER

HON'BLE SHRI P.S. RAO, EXPERT MEMBER

Delivered by Hon'ble Justice M.S.NAMBIAR, Judicial Member

Dated: 27th February, 2017

Whether the Judgement is allowed to be published on the Internet – Yes/No

Whether the Judgement is to be published in the All India NGT Reporter – Yes/No

The applicants the natives of Baikady village, claim that they are living on the banks of the river " Swarna " since childhood and having a substantial knowledge of ecology and environment of the area, to protect the ecology and environment of the area filed the application under Section 14 of the National Green Tribunal Act, 2010 for a direction to respondent Nos.1 to 3 not to issue Environmental Clearance (in short EC) and not to issue permits to extract sand from the rivers of Udupi District which are in Coastal Regulatory Zone (in short CRZ) area, to direct respondent No.1, the Deputy Commissioner/ Chairman, District Sand Monitoring Committee to maintain the rivers of Udupi District in their present nature and character and to restrain the respondents and their subordinates from according any sanction or permission or to do any act or omission which would enable the contractors to

get sand mining permit/ removal of sand from sandbars in the rivers of Udupi District.

2. According to the applicants, there are six major rivers which are perennial in nature and are flowing towards West and joining the Arabian Sea, in the District of Udupi. Those rivers are Swarna, Seetha, Papanashini, Varahi, Souparnika and Yedamavinahole and most part of the rivers are covered under Coastal Regulation Zone (CRZ) Notification, 2011. The local communities residing on the river banks depend on fishing, lime shell collection for their livelihood. The local communities used to remove sand from the rivers by traditional methods for their own use/ local consumption. With a view to ensure livelihood security to the fishermen communities and other local communities, living in the coastal areas and 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, had declared the coastal stretches of the country including Udupi District under CRZ and prohibited certain activities in the CRZ.

3. In exercise of the powers under Section (3)(d) of the Environment (Protection) Act, 1986, the State of Karnataka made a request to the Ministry of Environment, Forests and Climate Change (in short MoEF&CC) for relaxation of sand mining by letter dated 28.03.2011 on the ground that sand deposits in the rivers is causing obstruction to navigation and fishing boats and also the rivers are getting silted up resulting in inundation of neighbouring agricultural land. It was also stated that extraction of sand will give employment to local people and sand could be supplied for local consumption. While allowing the request of the State by Office Memorandum (OM) dated 9th June 2011 and 8th November 2011, the MoEF&CC imposed conditions that (1) only traditional communities are entitled to remove the sand from sandbars, (2) sand to be collected in non-mechanised dinghies or small boats using baskets/ buckets by manual method, (3) sandbars which pose danger for fishing boats and inland navigation to be identified for extraction of sand, (4) sand mining permits should not be given in eco-sensitive zones, fish migratory and breeding grounds and (5) permit shall be given taking into consideration the local circumstances and ecological settings.

4. Respondent No.1 submitted an application to State Level Environment Impact Assessment Authority (SEIAA), Karnataka on 29.10.2014 to issue EC for removal of sandbars.

National Institute of Technology, Karnataka (NITK) Suratkal, one of the institutions identified for the purpose, had prepared a report dated 15.10.2014 for removal of sandbars. That report is claimed to have been considered by a Committee chaired by Deputy Commissioner/ Chairman, District Sand Monitoring Committee, Udupi District dated 21.10.2014. On 18 locations across 6 rivers of Udupi District sandbars have been identified. Vide letter dated 23.01.2015, the SEIAA accorded EC, for removal of sand from sandbars in the rivers for the period 21.01.2015 to 22.01.2016, subject to specific conditions enumerated therein.

5. The application was subsequently got amended, in view of the claim of the respondents that they are only removing the sandbars, in accordance with law and no permission is granted for sand mining, contending that while removing the alleged sandbars and extracting sand the conditions are violated. According to the applicants, contrary to the conditions, sand is being extracted in areas other than the areas specified by the authorities, instead of using small boats (Nadadoni) large boats are being used, instead of getting the sand extraction work done through local villagers, labourers are brought from North India, for sand extraction work. The migrant labourers are housed in temporary tents pitched on the river side. The labourers involved in the work of sand

extraction are not subjected to any kind of medical examination, they are not provided with basic facilities, the extracted sand is stored on roads or public places without any permission or NOC from the Village Panchayat. The sand is being extracted throughout the day and night, all the Trucks used to transport sand are not fitted with GPS and also not painted in yellow colour. Permit holders have not maintained records to find out the quantity of sand removed from the sandbars. Permit holders do not maintain trip sheets / transport permit and no one monitors the movement of Trucks carrying extracted sand and the extracted sand is being transported outside the State and even exported.

6. In the Swarna river course, authorities identified sandbar No.11 and 13 and assessed the quantity of sand for removal from those sandbars for the period 23.01.2015 to 22.01.2016 as 44550 and 40500 metric tonnes, respectively. But the Sand Monitoring Committee issued permission to remove sand to the extent of 44550 Metric Tonnes each to as many as six contractors in sandbar No.11. At sandbar No.13 also 7 persons were issued permits to remove 40500 Metric Tonnes of sand each. This indicates that the contractors are entitled to remove sand aggregating to 2,67,300 Metric Tonnes from sandbar No.11 and 2,83,500 Metric Tonnes from sandbar No.13, respectively. In all, the 18 sandbars identified across

the six rivers flowing in Udupi District, on an average, 8 contractors are given permit to extract sand to the full quantity of removable sand identified in each of the sandbars.

7. Respondent No.3, the Member Secretary of the District Monitoring Committee and Senior Geologist, thus had given permits to extract sand to each of the contractors to the full quantity of removable sand identified in each of the sandbars. Thus the permits granted were to extract almost 8 times the total quantity of removable sand identified by the Director of NITK Suratkal, for which SEIAA had accorded clearance. No procedure whatsoever is followed for granting permit to the sand mining contractors who are basically not from the local village or from local community. While the authorities have collected only Rs. 60/- per tonne of sand for removal of sandbars, a lorry load of sand, approximately consists of 12 tonnes, as such the payment received by the authorities per one truck load of sand would be around Rs.720/- as against the average selling price of truck load of sand at cities being around Rs.45,000/-. Condition No.8 of the permit granted by respondent No.1 makes it clear that specific permission has to be obtained from Village/ Grama Panchayat for storing the extracted sand. But no such permission has been obtained from the Panchayat, as is clear from the proceedings of Grama Sabha dated 20.08.2015 as well as 2nd General body meeting of

Haradi Grama Panchayat. In the said meetings, details of inconvenience caused to the locals and the gross violation of conditions stipulated by the authorities in connection with extraction of sand, were discussed and the matter was reported to the District Authorities.

8. Minutes of the meeting of Sand Monitoring Committee held on 31.07.2015 reveals that there are two sand processing units at Udipi / Kundapur District namely M/s. Blue Sea Sand Processing factory and M/s. Durga Parameshwari Sand Grading and Packaging Industry. It is reliably learnt that these sand processing units purchased the sand extracted from the rivers of Udipi District and after processing the same through vibrators, grade and pack in bags and reportedly export the sand through their agents. It is thus clear that the objective of removal of sandbars is totally defeated. The permit granted for removal of sandbars prohibits removal during monsoon, since it is fish breeding season (from 01.6.2015 to 31.09.2015). Even fishing is prohibited during that period. Proceedings of the respondent No.1 of the meeting held on 31.07.2015 reveals that this important eco-sensitive condition of SEIAA was also given a go by and sand mining was permitted even during fish breeding monsoon season. Thus it is clear that the intention behind removal of sandbars is clearly extraction of sand and thus it is just sand mining. It is also contended that permission

to remove the sandbars was taken without considering the local circumstances and ecological settings. In most part of the year, river is having saline water, being back water flowing from sea. The sand extracted from the salt water river bed is not suitable for construction of buildings as it has corrosive effect. Therefore permission is granted without taking into consideration this aspect. No control has been exercised on persons who are granted permission, restricting the quantum of sand and the area from where sand could be extracted and that they do not exceed the limit. As a result sand is extracted in excess quantity and not only in the specified area but outside. The applicants would contend that two hundred truck loads of sand being extracted and transported from the village per day from sandbar No.13 and 11, is causing inconvenience to the villages and polluting the area and damaged the roads beyond repair. The migrant workers who reside on temporary sheds are using the fields, for answering the call of nature, creating unhygienic environment. The guidelines for removal of sandbar, though clearly provide that removal of sandbars shall not cause sand bed erosion, at sandbar Nos. 13 and 11, sand has been extracted to such an extent that the depth of the river has gone much beyond the average bed level, affecting the flora and fauna of the river. Natural habitats of the river for species such as shellfish, crabs etc. are now totally not available in the Swarna River, near Baikady and Harady Villages. It is not even

possible to judge the depth of the river due to the sand mining. So the people are scared and find it risky to enter into water to collect shells and fish. Due to excessive sand mining, fish breeding and nesting of birds in the area have totally stopped. The natural filtration of salt water has stopped and as a result village wells and ponds have now become salty and unsafe to use for irrigation or for consumption. There is systematic erosion taking place in banks of the river, due to increase in depth of the river by removal of sand. The fish breeding has completely stopped due to indiscriminate sand exploration, which has seriously affected the income and availability of the food to the villagers. Even though, the very object of removal of sandbars is to remove accumulated sand, if it obstructs navigation of fishing boats and public water transportation, the sand extraction has to be carried out by the local communities by traditional method. There was no complaint from the local communities regarding any sandbar obstructing navigation. Thus the permission granted to remove sandbars is based on imaginary circumstances. Further, just to comply with the requirement of involving traditional communities, a sham Association of sand boat workers was created to grant permission to extract sand. It is only the contractors, who got permission, employ workers from far of states. The uncontrolled sand mining in the name of removal of sandbars, totally destroyed the eco sensitive environment of the

surrounding areas. The source / quality of sand in CRZ Rivers are the same whether it is accumulated in the sandbar or spread over the River bed. Sand mining from the river or removal of the sandbars, is the same as practically the sand is being removed from the river. The adverse, grave and irreparable impact on environment due to sand removal from the river, either from the bed or from sandbars is one and the same.

9. The applicants would contend that the removal of sandbars is in effect illegal sand mining being carried on in gross violation of the environmental laws and CRZ notification 2011 and the Environment (Protection) Act, 1986. It is in gross violation of the conditions imposed by the MoEF in Office Memorandum dated 9th June 2011 and 8th November 2011. Respondent No.3, violated the conditions laid down in the EC granted by SEIAA, while issuing sand mining permits. Respondent No.1 totally failed to ensure the objective of the Office Memorandum dated 9th June 2011 and 8th November 2011. As the 'precautionary principle' under the international law is now part of the Indian environmental law as declared by **the Hon'ble Supreme Court of India in Vellore Citizen's Welfare Forum vs. Union of India (1996 (5) SCC 647)**, the State Government and the statutory Authorities must anticipate, prevent and attack the causes of environmental

degradation and where there are threats of serious and irreversible damage to the environment, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. The "Onus of proof " is on the actor or the developer/ Industry to show that his action is environmentally benign. If further deterioration of the environment is not stopped, they would cause long term environmental degradation. Applying the 'polluter pays' principle, the project proponents are to held liable to make good the loss caused to the Environment, Ecology and the properties. The applicants would also contend that the application is filed to protect rights of the applicants as enshrined under Article 21 read with Article 48A of the Constitution of India and for public good to protect the public interest and are not intended to serve interest of any individual.

10. Respondent Nos.10 to 13 got themselves impleaded by filing M.A.Nos.98 of 2016 and 131 of 2016, claiming that they represent the association who are entrusted for removal of sandbars and removal of the sandbars is a permissible activity under CRZ Notification, 2011 and therefore they are necessary parties.

11. Though Mr. Devaraj Ashok, the learned counsel appearing for respondent Nos.2 to 6, reply was filed only by respondent Nos.2, 3 and 5. Respondent No.7, Ministry of Environment Forests and Climate Change (MoEF&CC) has also filed the reply. Respondent Nos.11 to 13 filed statement of objections to the main application. The remaining respondents did not file any reply.

12. Respondent No.2, State Environment Impact Assessment Authority (SEIAA), Karnataka in their reply contended that the application is barred by time and therefore not maintainable. It is contended that as per CRZ Notification, 2011, mining of sand, rocks and other sub-strata materials are prohibited activity in the CRZ area. However, the MoEF&CC, Government of India vide Office Memorandum (OM) dated 8th November, 2011 stipulated the conditions for removal of sandbars by traditional coastal communities, only by manual method. As per the stipulated conditions, the District Collector shall chair a seven-member Committee consisting of the concerned officials, at least one representative each from a scientific or Technical Institute, local communities such as fishermen and members of the local civil society and based on the recommendations of the Committee, the District Collector may permit removal of sand in a specified time period, in a particular area, with the specified quantity and subject to

specified conditions and by registration of local community that is being permitted to remove the sand manually. As per the stipulations, the Environmental Officer at the district level, shall monitor the removal of sand and submit a report to the District Collector with the quantity of sand removed in the period concerned and the permit shall be renewed on a yearly basis. The agenda and the minutes of the Committee, permits issued by Collector and monitoring reports on the removal of sand would be uploaded on the website of the office of the Collector and hard copies of the same shall also be made available to the Zila Parishad etc., as may be directed by the Collector. The accumulation of sandbar, its removal process etc., shall be studied by the State Government with the help of satellite images, GPS etc., and it shall be ensured that the permits are not accorded in areas which are identified as eco-sensitive zones and fish migratory and breeding grounds. The permits shall be given taking into consideration the local circumstances and ecological settings. The Principal Bench of the National Green Tribunal by order dated 5th August, 2013 in Original Application No.171 of 2013 and connected matters restrained carrying out any mining activity or removal of sand from river beds anywhere in the country, without obtaining EC from MoEF&CC/ SEIAA and license from the competent authorities. Under Para 4 (i) (b) of the CRZ Notification, 2011, clearance under EIA Notification is only required for those projects which

are listed under CRZ Notification, 2011 and also attract EIA Notification, 2006 and subject to the same being recommended by the concerned State or Union Territory Coastal Zone Management Authority (in short CZMA). The Deputy Commissioner of Udupi District got technical reports prepared by National Institute of Technology (in short NIT) Suratkal, which is one of the institutions identified by the MoEF vide OM dated 24th February, 2011 for this purpose. The reports have been approved by the District Sand Monitoring Committee. The proposals submitted by the Deputy Commissioner of Udupi District seeking CRZ/ Environmental, Clearance for removal of identified sand bars have been considered by the Karnataka State Coastal Zone Management Authority (in short KSCZMA) during the meeting held on 11.12.2014 and recommended for issuance of EC. The State Expert Appraisal Committee (in short SEAC) considered the proposals during the meeting held on 24th, 25th and 26th November, 2014 and recommended for issuance of EC for the removal of sandbars. The SEIAA during the meeting held on 16th January, 2015 considered the proposal and decided to issue EC taking note of the recommendations made by KSCZMA and SEAC. The EC letters were thereafter issued on 23.01.2015. The validity of the EC expired on 22.01.2016. Notification No. S.O.141 (E) dated 15.01.2016 of the MoEF&CC, EIA Notification 2006 does not cover the removal of sand bars in the CRZ area, as such activity cannot be

construed as Mining. The EC was granted with specific conditions only for removal of sand bars with strict compliance to the conditions stipulated therein. End use of the material removed is not covered in this process and it is not part of the clearance process. The EC was issued based on the precautionary principle and on sustainability criteria. Strict compliance to the conditions will ensure that there is minimal environment impact of such activity. The object of granting permission and the EC granted, was to ensure only removal of sandbars which obstruct movement of fishing vessels of the local fishermen so as to enable them to have safe livelihood. Deviation from the conditions imposed in the EC, misuse and violations thereof, will be dealt with in accordance with law. Such violations will attract the provisions of the Environment (Protection) Act, 1986. It is also contended that the validity of the EC referred to in the Original Application lapsed on 22.01.2016 and respondent No.3 submitted applications seeking EC for removal of sandbar in 30 locations of the rivers of Udupi District and based on the applications, fresh EC have been granted vide letter dated 11.04.2016 for removal of sand bars in the specified 23 locations, while disallowing 7 locations, following the due process of law and with the imposition of conditions for environmental protection. If there is any non-compliance of the conditions and violations it will result in

withdrawal of the EC granted. It is therefore contended that the application is to be dismissed.

13. Respondent No.3 in the reply contended that though removal of sand from the rivers flowing in the CRZ area was prohibited, there are certain exceptions that are provided in relation to such restrictions vide OM dated 08.11.2011. The Government of Karnataka vide order No. FEE 31 CRZ 2010 dated 28.03.2011, permitted removal of sandbars in CRZ area. The order provides for removal of sandbars that are identified by the consent authorities. The sandbars are naturally formed in the river system during flow of the water in the rivers as the water carries sediments. The water flowing in the river, brings sand and deposits the same at certain places and eventually these sand deposits build up and develop into large bars of sand and heaps of sand. These sand bars obstruct the water flow in the river. Naturally they also obstruct easy navigation, fishing etc. Boats are main source of transportation in CRZ areas, for the purpose of transportation of cargo, passengers, animals and also for regular fishing and livelihood activities. The boats connect small islands with the main land. The accumulation of sandbars creates obstruction for the day to day activities of the public. The only solution, for such periodic deposit of sand resulting impediment to the day to day activities in the CRZ areas, is regular removal of the excess

sand that are accumulated in those areas. The sandbars formed are numerous and are large in size and these cannot be easily removed. Mere removal of such sandbars from the river course or its stacking on the river banks do not solve the problem. Firstly there is no space on the banks of the rivers to stack up excess sand that is accumulated and even if stacked, such sand is eroded into the river again due to the constant flow of water, which again creates sandbars. The State Government has to address serious issues relating to obstacles to navigation, fishing, silting etc., caused by the sandbars. It was brought to the notice of the state government that removal of sandbars from the rivers is also providing employment to the local people and generating revenue to the state and also meeting public demand for sand, which in turn contribute to the regulation of the price of the sand in the State. It was therefore decided that sand so accumulated on the sandbars, causing obstructions, is to be removed in an environmentally friendly manner. It is for this purpose, the State Government sought relaxation for removal of the sand bars, from the MoEF&CC. The MoEF&CC permitted the removal of sandbars in a scientific manner. The permits granted for the removal of sandbars is subject to the compliance of the conditions provided by the Central Government and these conditions are strictly followed by the state government. In the year 2014, the sandbars in the rivers were identified by the District Sand Monitoring Committee with

the assistance of the independent institution NITK, Suratkal. The sandbars were identified at 18 locations in the rivers, flowing through the District of Udupi. The SEIAA granted permission for removal of sandbars on certain conditions and within a prescribed period. Respondent No.3 denied the case of the applicants that sand was being extracted from the areas other than those that were identified, that boats were used, that local people are not employed or that no basic amenities are provided to the employees. According to Respondent No.3 sand was being extracted under the vigilance of the authorities of the Department of Mines and Geology, Police, Revenue as well as Village Panchayats and various social organisations. Steps are taken to prevent misuse of land and roads. It is contended that even if there is any inadvertent, temporary deviation from the norms and guidelines, it would be immediately rectified. The sand is transported under the permits issued by the Department of Mines and Geology. These permits contain particulars of the quantity of sand being transported, place of transportation/destination. The transportation of sand in such manner with permits, is checked during transit throughout the State. Export of sand outside the state is banned and check-posts are created at important places to enforce the same. The extraction and transportation are regulated and controlled methodically by the State Government. Whenever there is any stray incident of violation of guidelines,

the administration is taking steps to register cases for violation of the prescribed guidelines. The sand is removed only in the traditional method and local boats and baskets were used and only permitted quantities are being removed. Requisite steps have been taken to ensure equal distribution/allocation of sand to different parties and local community people were preferred. The photographs produced by the applicants are fabricated and have no relevance to the issues involved in the case. The total sand available was assessed at 9,98,867 MTS in the meeting dated 03.02.2015 and such quantity was permitted to be removed. There is bar for transportation of sand collected from the rivers outside the state. But there is no bar for transportation of sand outside Udupi District and within the state. The royalty prescribed by the Government is collected from the lessees. No serious complaint was received from the local people or the local bodies against the removal of sand, its storing and transportation. In stray cases of complaints relating to temporary deviations, if anything is pointed out stringent actions will be taken. It is also contended that it is locally and otherwise acknowledged and recognized that local people are not always interested in the employment of removal of sandbars and they only prefer working on their fields and attending to any other calling. If there is no availability of local workers/labour for the collection of sand, outsiders would have to be employed. Under such circumstances, lessees are

compelled to employ outsiders. There can be no complaint, as it was due to the non-availability of local people. If labourers are brought from outside, much care is taken to ensure their well being, by providing necessary facilities and benefits. Removal of sand from sandbars, quantity of sand, trip sheets are all being monitored by the District Administration Authorities. The Government of Karnataka authorized the officers of the departments of Revenue, Police, Motor vehicles, PWD and Mines & Geology to check illegal extraction and transportation of sand. The sand available in sand bar Nos.11&13 in Swarna river was assessed to be 44,550 MTS and 40,500 MTS respectively. Only available sand is permitted to be removed and it is distributed between contractors equally. It was also contended that there was a clerical mistake in the permits that were issued to the contractors and the total quantity of sand available was shown as having been allocated to each of the contractors and not the divided quantity in respect of each of the contractors. On noticing the said clerical error, it was rectified by issuing trip sheets to the contractors. The list of contractors and the trip sheets issued to them showing equal distribution among them, are produced. The sand bars available in different rivers were distributed to the contractors equally. Only the local traditional people were preferred. Only persons sponsored by the registered society of the community members were granted the leases and the

royalty fixed by the Government was collected for the same. The contractors were given due instructions regarding the storing and transportation of sand and were advised not to cause inconvenience to the local people. In case of stray complaints regarding inadvertent or temporary deviations from the guidelines and requirements, the same have been satisfactorily resolved. M/s. Blue Sea Sand Processing Factory and M/s. Durga Parameshwari Sand Grading and Packaging Industries have been carrying on the business, from a period prior to the implementation of the sand policy in 2014. They have been purchasing from contractors that are legally permitted to undertake sand for removal in the District and such purchases are in accordance with law. Respondent No.3 denied the case that these units use raw sand by manufacturing process and finished product are sold out to end user. Sand from the salty sand bars formed due to back water, is not permitted to be used in construction work. The Authorities periodically visit the identified sand bars and care is taken, so as to not to extract sand from outside the identified area and deeper than the permitted depth. The sand bars are removed manually with the help of "Nadadoni" and no machine is used. The Extraction of Sand from the identified sandbars is under the supervision of the contractor or lessee, who is necessarily a person belonging to the local community and who has been recommended by the registered society of the community.

Identification of the sandbars is a routine activity and of critical importance. The District Administration cannot afford to wait for complaints to be filed that the sandbars have started to obstruct navigation or create inundation and that water has entered the villages, before starting to identify the sandbars. Such identification has to be undertaken as a precautionary measure, regularly, before complications are created. If the sandbars are not removed, it would create several problems including those relating to environment and ecology and obstruction to the sustainable development. Out of the applicants, four persons are not residing on the banks of Swarna river which reflects the ulterior motive behind the filing of the application. Though there are other villages on the banks of the same river, none of them have raised any objections. The application is to be dismissed as there is no merit.

14. Respondent No.5, the Chairman, Kerala State Coastal Zone Management Authority (KSCZMA) in the reply reiterated the contentions raised by the other respondents. Additionally it was contended that the prohibited activity of Mining of sand, rocks and other sub-strata materials under CRZ Notification 2011 was modified by the OM dated 08.11.2011 of the MoEF. After stipulating the conditions, proposals are submitted by the Deputy Commissioner of Udipi District seeking CRZ Clearance/ Recommendation, for removal of identified sandbars. It was

considered by the KSCZMA during the meeting held on 11.12.2014. After considering the recommendations made by the District Sand Monitoring Committee and the report submitted by the NIT, Suratkal, it was decided to issue CRZ clearance, subject to 23 conditions enumerated therein. The CRZ clearance/ recommendations that have been made with specific condition, are only for removal of sandbars with strict compliance stipulated therein. The object of granting permission was to ensure removal of only sandbars which obstruct movement of fishing vessels of the local fishermen, so as to enable them to have safe livelihood. The KSCZMA has applied its mind to the circumstances of the matter and granted permission with the imposition of specific conditions to ensure environmental protection also. Though the validity of the clearance granted expired on 22.01.2016, respondent No.3 submitted applications seeking CRZ Clearance/ Recommendations, for removal of sandbar in 30 locations of the rivers of Udupi District and fresh CRZ Clearance/ Recommendations have been granted for removal of 18 sandbars as per the decisions taken by the KSCZMA in the meeting held on 05.04.2016. Hence the application is only to be dismissed.

15. Respondent No.7, the MoEF&CC in the reply contended that EIA Notification 2006 and CRZ Notification 2011

were issued under the Environment (Protection) Act, 1986 to provide regulatory framework for environmental and CRZ clearances for the permissible projects/activities listed therein. In supersession of the CRZ Notification, 1991, CRZ Notification, 2011 was notified on 06.01.2011 for regulation of developmental activities along the coastal stretches and to ensure the livelihood security to the fishing communities and other local communities, living in the coastal areas and to conserve and protect coastal stretches. The CRZ Notification declares coastal stretches 500M from High Tide Line (HTL), the stretch between Low Tide Line (LTL) and HTL and water portion upto 12 nautical miles in the sea as Coastal Regulation Zone (CRZ). It also declares 100M or width of the creek and back water and distance up to which Tidal effect of the sea is experienced in rivers, creeks and back waters as CRZ. The CRZ Notification 2011 provides details for classification of CRZ areas. The Notification also provides that in case mangroves area is more than 1000sq.m, a buffer of 50m along the mangroves shall be provided. CRZ-II is the areas that have been developed upto or close to the shoreline. The CRZ-III is the areas that are relatively undisturbed. Those areas which do not belong to either CRZ-I or CRZ-II, include Coastal stretches in the Rural areas, both developed and undeveloped. The CRZ-IV is the water area from the LTL to 12 Nautical Miles on the seaward side and also includes the water area of the Tidal influenced

water body from the mouth of the water body at the sea upto the influence of tide which is measured as five parts per thousand salinity during the driest season of the year. No Development Zone (NDZ) is provided in CRZ-III, the areas upto 200m from HTL on the Land Ward Side in case of seafront and 100m along tidal influenced water bodies or width of the creek, whichever is less. The CRZ Notification 2011 provides the list of activities which are declared as prohibited activities, including mining of sand, rocks and other substrata materials except those minerals which are not available outside the CRZ area. The CRZ Notification also provides the activities which are permissible in CRZ areas. For the purpose of implementation and enforcement of the provisions of CRZ Notification and Compliance with the conditions stipulated there under, the powers either original or delegated are available under the Environment (Protection) Act, 1986 with the State Government and State Coastal Zone Management Authority (SCZMA). In terms of Para 3 (iv) of the CRZ Notification, 2011 the MoEF vide OM dated 24.02.2011 specified six agencies for examining proposals relating to measures to prevent sandbars, installation of tidal regulators, laying of storm water drains or for structures for prevention of salinity ingress and fresh water recharge based on study carried by any agency to be specified by MoEF. Vide OM dated 09.06.2011 guidelines for management of the sand bars including its removal have been prescribed. Vide OM

dated 08.11.2011 certain conditions have been stipulated for removal of sandbars by traditional communities only by manual method in various coastal states. The projects of mining of minerals, as stated in the schedule to EIA Notification 2006, require prior EC either from MoEF or SEIAA.

16. Respondent No.10 to 13 in their reply contended that Respondent No.11 is an association registered under Societies Registration Act, comprising of people holding lease for lifting sand deposits as well as applicants who applied for lease for lifting of sand deposits in the coastal Districts of Karnataka. There are 31 lease holders who are members to the association. Respondent No.12 is one of the members of the association and a lease holder for extraction of sand deposits in Papanashini river vide Notification dated 13.05.2016 whereby Respondent No.12 was permitted to extract 1683 metric tons of sand deposits, for a period starting from 13.05.2016 to 10.04.2017 in sand deposits No.SB-PN-29. Respondent No.12 invested huge sum of money by engaging services of skilled labourers for extraction of sand deposits in the lease area. The SEIAA granted permission to Respondent No.1, Vide order dated 11.04.2016 granting EC under EIA Notification 2006 to Respondent No.2 to grant permission/license for removal of sand deposits in SB-PN-29. Respondent No.13 is also one of the members of the association and a lease holder for extraction of

sand deposits in Varahi River Bed, Kundapur Taluk, Udupi District Vide Notification dated 28.04.2016, respondent No.13 was permitted to extract 2100 metric tons of sand deposits for a period starting from 28.04.2016 to 10.04.2017 in Sand Deposit No.SB-VR-09. Respondent No.13 invested huge sum of money by engaging services of skilled labourer for extraction of sand deposits in the lease area. The SEIAA has given permission to Respondent No.1 Vide order dated 11.04.2016 granted EC under EIA Notification 2006 to Respondent No.2 for removal of sand deposits in SB-VR-08.

17. Vide letter dated 28.03.2011, State of Karnataka requested the MoEF to relax the bar imposed on mining on sand deposits in CRZ areas under CRZ Notification 2011, as they are causing obstruction to navigation and fishing boats and also causing inundation of the neighbouring agricultural land. Request was only to lift the ban for extraction of sand deposits. The MoEF after considering the request of State of Karnataka dated 28.03.2011, issued conditional permission guidelines for extraction of sand from the CRZ areas Vide OM dated 09.11.2011. However instead of "Sand Deposits" the OM used the word "Sand Bars". In fact sand bars and sand deposits are two different names of sand deposits. A "Sand Bar" is an exposed stretch of sand formation above the water level whereas "Sand Deposit" includes sand deposited below the

water level also. The Government of Karnataka had requested only for relaxation of extraction of sand deposits and not sand bars. The OM dated 09.06.2011 and 08.06.2011 stipulated that permit shall be given taking into consideration the local circumstances and ecological settings. In tune with the local conditions in the West Coast, the conditions laid down in OM dated 09.06.2011 and 08.06.2011 issued by MoEF, the removal of sand accumulated in the coastal river bed hinders the free flow of the river water discharged into the sea. Therefore the same has to be removed periodically under due supervision for free flow of river water to the sea. The process of sand formation fluvial, transportation and deposition is perennial. Thus the river sand is deposited every year as a part of the cyclic process of Weathering and Fluvial, Transportation and Deposition. The Average rate of annual sand accumulation/deposition in the upstream sections is about 0.5m, in midstream section it is 1 to 1.5m, in downstream section is 1.5 to 2.5m and in estuaries it is about 2.5 to 4m. The grain size of the sediments also decreases from coarse to fine as one travels along the river bed from Upstream to Downstream sections and Estuaries. In case the river sand is not extracted from the river for a number of years as suggested by some people, the consequences on the environment can be drastic such as clogging of the fluvial channels leading to river bank erosion, river bank flooding, clogging of estuaries followed

by increased strain on beach zones and increased incidence of severe sea erosion. The Amendment to CRZ Notification 2011 declared that the sand removal should be carried out in sandbars that affect free and unhindered navigation along the river channel. There are no exposed sandbars in the rivers flowing to West Coast in general and most of the annually recurring fluvial sand accumulations (90 to 95%) get deposited in the river bed. The strict implementation of the concept of sandbars valid in other environments, would not be useful or valid for the coastal rivers of Karnataka. It is therefore contended that annually recurring river bed sand deposits should be treated on par with sand bars recognized elsewhere as the environmental effects and repercussions of non-removal are quite similar in both the cases.

18. The Karnataka Government proposed to MoEF&CC and CRZ authorities that in-stream mining of sand should be prohibited. It is contended that this stand is meaningless since most of the river sand resources in the Coastal Karnataka occur in river beds only and the prohibition of in-stream sand extraction would lead to eventual clogging of river channels. It is therefore contended that whatever rules were framed for the periodical removal of sandbars should equally be applied to in-stream or river bed sand deposits. They also contended that traditional method of river sand extraction in Coastal Karnataka

consists of employing boats equipped with divers who plunge into the river water and gather the sand deposited in the river bed. They employ baskets or buckets to collect the sand from the river. The advantage of the traditional method is that the divers are able to gather only top layer of sand accessible to them, when they plunge into the river. Since the process of diving and collection of sand in baskets is a slow process it is quite environment friendly as it filters the sand from the water and also allows enough time for smaller aquatic organisms living in the river water to easily escape from the basket. It is also contended that leaving out unmined sand blocks on either side of the bridges or between the sanctioned sand permit blocks in the river bed, would not be a wise decision as it may hinder free discharge or flow of river and may lead to unheaven fluvial morphology and dynamics in the course of time.

19. Even if there are any irregularities, it is for the authorities established under law, to monitor and control irregularities. The question of obtaining permission from the local bodies does not arise as there is a District Level Committee consisting of various government departments to administer the extraction and storage of sand. It is also stipulated that 25% of the income from the collection of royalty shall go to the developmental activities of the Panchayats. As there is no ban on transportation of sand anywhere within the

state of Karnataka, there is no relevance on the allegation of processing sand or transportation of sand outside. The extraction of sand during monsoon is not possible as it is prohibited. The allegation of salinity of the river sand is also baseless as it would be washed with water and made suitable for refined construction such as wall plastering, where fine sands from CRZ is required. The extraction of sand in fact, reduces flooding and river bank erosion. The usage of GPS for monitoring of sand transportation is an useful administrative tool. However the GPS Data and the controlling software should be under Government control Servers, so as to prevent tampering of data. GPS servers maintained by private individuals or companies are prone to mischievous tampering incidence as experienced in the past. The sand is very useful commodity for the development of the nation apart from providing employment to the people and royalty to the public exchequer. Therefore, sand needs to be extracted following the best environmental practices that safeguard our ecology and environment. Complete ban on the sand extraction is not a meritorious solution for the development of the country. The deposition of sand is a recurring phenomenon. The perennial accumulation of sand in the river bed would clog and choke the river channels that may lead to river bank erosion and flooding. Therefore systematic removal of sand from the Coastal River

Beds is necessary. The Respondents therefore contended that original application is to be dismissed.

20. Learned counsel appearing for the applicants argued that under CRZ Notification 2011, sand mining is prohibited in CRZ area. It is pointed out that the State of Karnataka sought amendments to CRZ Notification 2011 providing relaxation to the bar of removal of sand by letter dated 28.03.2011. That recommendation was made mainly on the ground that if the sand bars are not removed it would obstruct the navigation channels of the fishing boats and would result in accidents. Vide OM dated 9th June 2011, the MoEF provided guidelines for management of sandbars including its removal and it provides that sandbars which pose danger to navigation of fishing boats and vessels, shall be identified by the concerned department in the State Government and the State Government in consultation with the State agencies such as PWD, Water Resources Department, Fisheries Department may formulate a proposal for management of the sandbars including its removal. The guidelines provide that the proposal shall be examined by any one of the six institutions identified in the OM dated 24th February, 2011 including National Institute of Technology, Suratkal and based on the suggestions/ recommendations received from these institutions the concerned State Government agencies shall obtain necessary recommendations

from the State/ Union Territory, Coastal Zone Management Authority (CZMA) and based on the recommendations of the CZMA, the Environment Department of the State/ Union Territory shall take final decision on the proposal with valid justification and as per OM dated 24th February, 2011, the specified agencies are only institutions including NIT, Suratkal and not any particular professor of the institution or retired professor of the institution. It is also argued that vide OM dated 8th November, 2011, MoEF issued further guidelines for management of sandbars including its removal and the said OM was issued considering the request of the State of Karnataka with regard to the removal of sandbars by traditional coastal communities only by manual method. Learned counsel argued that the said OM specifically provided that after examining the proposal and the provisions of CRZ Notification, 2011 the Ministry stipulated the conditions for removal of sandbars by traditional coastal communities only by manual method. Learned counsel pointed out that the District Collector shall chair a seven-member Committee consisting of, apart from the concerned officials, at least one representative of each from a scientific or technical Institute, the local communities like fishermen and the local civil society and based on the recommendations of the said Committee, the District Collector is authorised to permit such removal of sand in the specified time period, in a particular area along with specific quantity

subject to such conditions, such as registration of local community persons permitted to remove the sand manually and the Environmental Official at district level shall monitor the removal of and submit report to the Collector showing the quantity of sand for removal in the period concerned and the permit can be renewed on yearly basis and the agenda and the minutes of the Committee, permits issued by Collector and monitoring reports of the removal of sand shall be uploaded on the website of the Collectorate and also hard copy is made available to Zila Parishad and the accumulation of sand bar, its removal the process etc., shall be studied by the State Government with the help of satellite imageries, GPS, etc., and it shall be ensured that the permits are not accorded in such areas which are identified as eco-sensitive zones, fish migratory and breeding grounds and the permit has to be issued considering the local circumstances and ecological settings.

21. Learned counsel argued that though permission to remove the sandbar can be granted by the District Collector, following the guidelines and the conditions provided in the OMs, in effect removal of the sandbar is sand mining, as has been visualised by the officials as well as the permit holders and it is in violation of CRZ Notification, 2011 as well as the guidelines provided under the aforesaid OMs and they have to be stopped and directions are to be issued to grant permits strictly in

compliance of the conditions, the guidelines and providing the conditions enumerated in the OMs. Learned counsel argued that the pre-requisite for granting permission for removal of sandbars is a report on the hindrance caused by the sandbars for navigation and fishing. But there is absolutely no material to show that there was any such complaint or report on the obstructions to the navigation or fishing, due to the existing sandbars. Learned counsel also argued that the other pre-requisite is a study of the identified sandbars, which are required to be removed for causing obstruction to the navigation and though as provided under the OM, satellite imageries could be used for identifying the sandbars, such satellite monitoring imageries should be of the recent period and not old ones.

22. The argument of the learned counsel is that deposits of sand and the generation of sandbars depend on the monsoon, the force of the flow of river water and such similar facts and the sandbar deposits in a particular year may not be the same on the next year, as it is related to the monsoon and force of the river flow current and tide and therefore the Committee before granting permit for removal of sandbars, should rely upon the immediate recent satellite imageries alone. It is pointed out that the report submitted by Prof. S.G. Mayya retired professor of NIT, Suratkal, shows that satellite imageries

relied on are not the recent ones. Learned counsel also argued that Prof. Mayya admittedly retired on attaining the age of superannuation on 31.12.2014 and therefore subsequent to 2014, he cannot represent NIT, Suratkal. Therefore, when under the OM, the institution recognized is NIT, Suratkal, Prof. Mayya is not competent to represent NIT, Suratkal, after 31.12.2014. The report of Prof. Mayya relied upon by the Committee and the District Collector for granting the permits could not have been relied on. Learned counsel also pointed out that the report of Prof. Mayya shows that Prof. Mayya was not involved in the physical identification of the sand bars and the report of January 2016 prepared by Prof. Mayya shows that the Deputy Director and Member Secretary of the District Sand Monitoring Committee, Udupi District by letter dated 23.11.2015, had informed the Professor that the officials of the Forest, Revenue and Mines and Geology Departments together identified 19 sand bars in the rivers that flow in Udupi Taluk and 11 sand bars in the rivers that flow in Kundapur Taluk within the CRZ area of the rivers in Udupi District and joining the Arabian sea. Prof. Mayya was requested for furnishing his technical opinion for removal of the said sand bars identified. Learned counsel argued that therefore it is clear from the report of January, 2016, based on which the Committee recommended and thereafter the District Collector granted permitted removal of sandbars, were identified prior to 23.11.2015 by Forest,

Revenue and Mining Geology Departments and thereafter there was no identification of the sandbars. It is therefore argued that if the identification of sandbars itself is faulty, the permits granted based on such technical opinion given by Prof. Mayya and the recommendations of the Monitoring Committee can only be invalid. It was argued that the letter from Senior Geologist establishes that various departments were advised to send the officials for spot inspection for the purpose of identifying the sandbars from 2.12.2015 to 4.12.2015 and thereafter from 7.12.2015 to 10.12.2015 and if that be so, the sandbars to be removed could have been identified only after 23.11.2015 and the report based on the earlier identification, prior to 23.11.2015 can never be accepted. Learned counsel also pointed out that the reply given by NIT, Suratkal, in answer to the application filed under RTI Act on the availability of any Bill submitted by Prof. Mayya for the technical reports submitted by him on the removal of sandbars, shows that no Bill was submitted by Prof. Mayya for payment of remuneration for the technical report. The argument of the learned counsel is that it is thus clear that the report of Prof. Mayya who retired on 31.12.2014 and as no Bill was submitted by Prof. Mayya through the NIT, Suratkal or through any other institution, it can only be taken that the technical report was submitted by Prof. Mayya in his individual capacity at a time he was not representing NIT, Suratkal and therefore the report cannot be

considered to be of report of one of the six approved institutions, as provided in the OM and therefore on that ground itself the permits granted are to be found illegal and void.

23. Learned counsel also argued that the reply of respondents 11 to 13 show that sandbars are almost non-existing in the coastal rivers of Karnataka, which flow towards West and fishing boats are also not common in the coastal rivers of Karnataka and there is no Inland navigation along coastal rivers and therefore it is clear that the provision for the removal of sandbars is being used as a ruse to mine the sand which is otherwise prohibited under CRZ Notification, 2011. Learned counsel also pointed out that the OM provides the constitution of the Committee and it is clear that the Committee was formed without the representatives of the civil society and the minutes of the Committee, made available by respondent No.10 shows that notices were given to 15 members when under the OM, the number of members could only be 7 and none of the representatives of the fishermen have attended any of the meetings and the members of local civil society were not invited or participated and in such circumstances, the recommendation of the Committee is void. It is also argued that as per OM dated 8th November, 2011, permit could be granted on conditions, such as registration of local community persons permitted to remove the sandbars and the proposals

submitted by the District Collector for getting the clearance reveals that the project involves removal of sand from identified sandbars, only to facilitate the smooth navigation of fishing boats and domestic boats by manual method and the details of registration will reveal that the permit holders are all businessmen and not sand removing labourers and the reply for the RTI application granted by the Senior Geologist establishes that there are no records maintained in the office, for registration of the local community sand miners with the District Sand Monitoring Committee for manually extracting sand in traditional method in CRZ area and therefore it is clear that the registration of local community persons permitted to remove the sand manually as mandated under the Notification, is violated.

24. Learned counsel also argued that though EC granted by SEIAA, under Condition No.3 provides that the recommendations of the NIT, Suratkal shall be adhered to, the recommendations of Prof. Mayya discloses suggestion of 20% reduction in removable quantity of sand. But this suggestion was not carried out while granting the permits. It is also argued that though under Condition No.31, it is specifically provided that sandbars shall not be removed during the period of monsoon from 15th June to 15th August, the permit granted shows that rainy season is fish breeding period and therefore

sand removal is prohibited during 1st June to 31st July and it is in violation of Condition No.31 of the EC. It is also argued that Condition No.7 provides that the non-mechanised dinghies or small boats used for transportation of the sand removal from the sandbars shall be registered with the Deputy Commissioner and transportation of sand using unregistered boats shall be treated as illegal and shall be confiscated. The report of the Senior Geologist referred to earlier, shows that non-mechanised dinghies or small boats were not registered and therefore the transportation was done illegally and still no boat was confiscated and they were freely allowed to be used in violation of the conditions.

25. Relying on the decision of **the Hon'ble Supreme Court in State of Jharkhand and others vs. Ambay Cements and another (Appeal (civil) 7994 of 2003)**, the learned counsel argued that whenever the statute prescribes that a particular act is to be done in a particular manner and also provides that failure to comply with the requirement leads to severe consequences, such requirement would be mandatory and it must be strictly construed and where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other manner and therefore the transportation by boats which are not registered as provided in the EC is violative and therefore even if the EC is

valid, they are liable to be set aside. Learned counsel therefore argued that in fact the illegal sand mining, in the name of removal of sandbars, is adversely affecting the environment and ecology and it shall be prohibited.

26. Learned counsel appearing for the respondents including the State of Karnataka, Karnataka State CZMA, the District Sand Monitoring Committee and the Secretary to the Department of Mines and Geology and Environment and the impleaded respondents, argued that the very application is liable to be dismissed as objection was taken only on sand mining and the respondents have no objection for prohibiting sand mining which is even otherwise prohibited under CRZ Notification, 2011. The arguments of the learned counsel is that even though the applicants are aware that the permits have been granted for removal of sandbars and such permits are issued as provided by the OM issued by the MoEF&CC, the applicants have not challenged either the guidelines providing for removal of sandbars or the permits granted to respondent No.1 for removal of the sandbars, based on the recommendations of the Committee constituted vide OM issued by MoEF and even the permits granted by the District Collector entitling the permit holders to remove the sandbars are not challenged and therefore the application is to be rejected on that ground. Learned counsel appearing for the respondents

argued that even though subsequently, the application was allowed to be amended, incorporating the contentions raised against the report submitted by the approved institution NIT, Suratkal and competency of Prof. Mayya who submitted the technical report and the validity of the recommendations of the Committee, for non-compliance with the guidelines issued by MoEF&CC in various OMs, as well as the constitution of the Monitoring Committee and the decision, the applicants have not chosen to challenge either the clearance granted by SEIAA or the permits granted to the permit holders by the District Collector and therefore the application is liable to be dismissed on those grounds.

27. The learned counsel also argued that though the applicants contended that sand mining is prohibited under item No.3 (x) of CRZ Notification, 2011, removal of sandbars are not covered under the said item and therefore it has no relevancy. It was argued that removal of sand bars is not a prohibited activity under CRZ Notification, 2011 as item No.3 (iv) (d) provides for exception in the case of sandbars and therefore removal of sandbars is not a prohibited activity under CRZ Notification, 2011. It is also argued that the removal of sandbars is permitted by the various OMs issued by MoEF&CC and OM dated 24th February, 2011 deals with identified Technical Institutions. OM dated 9th June, 2011 deals with

guidelines for management of sandbars including its removal, OM dated 8th November, 2011 deals with removal of sandbars by manual methods by traditional communities. Therefore when the removal of sandbars is a permissible activity under CRZ Notification and the permits were issued as provided under OMs, it cannot be contended that the permits are illegal. It was argued that as there is no prayer to set aside the permits and appeals are not filed challenging the clearance or permits granted, the application is to be dismissed. It was also pointed out that the application was originally filed challenging the activities permitted for removal of sandbars for the period from 2015- 2016, the said period expired on 23.1.2016 and therefore the challenge against the same has become infructuous. It was argued that when the OM provides for granting of permits for removal of sandbars, after the State Government in consultation with State Agencies such as PWD, Water Resources Department, Fisheries Department is formulating proposal for management of the sandbars including its removal, the constitution of the District Sand Monitoring Committee included all those departments and therefore there is no necessity for a separate proposal from those departments as claimed by the applicants.

28. Learned counsel argued that letter dated 23.2.2016 issued by the Port & Inland Water Transport Department to the

applicants under RTI Act and relied on by the applicants, shows that no proposal has come to the said department for removal of sand bars which are causing hindrance to inland water transport and the Head of the Department is situated at Uttara Kannada District whereas the Water Resources Department, Udupi District participated in the Monitoring Committee and fully agreed with the decisions taken in the meeting and therefore the absence of separate proposal for removal of sandbars by the Department is not necessary. It is also pointed out that the letter was issued by the Director of Port and Inland Water Transport Department, Karwar and there are two places where waterways exist as per the letter namely, one at Hangarakatte- Kodibenegre and another at Malpe-Padukere. At these two places the port is situated at the end of estuaries of the river joining Arabian Sea, where the sand extraction is totally prohibited and therefore based on the letter it cannot be argued that there was no information of obstruction caused to the navigation. It is also argued that the applicants did not seek the records from the Deputy Commissioner, who chaired the meeting of the Monitoring Committee and the applicants did not apply for the records from the District Sand Monitoring Committee and based on the reply to the RTI application given by the Senior Geologist, it is not possible to contend that the local communities from the river banks did not request to remove the sand bars.

29. Learned counsel also argued that Prof. Mayya was working in NIT, Suratkal and he is an expert and it was Prof. Mayya who had given the technical report while he was in service during the earlier period and it is revealed in the affidavit filed by Prof. Venkata Reddy of NIT, Suratkal that after the retirement of Prof. S.G. Mayya, there was no other expert in the field in NIT, Suratkal and therefore NIT, Suratkal asked Prof. S.G. Mayya to continue to give the technical report and Prof. Venkata Reddy had countersigned the report submitted by Prof. Mayya agreeing with the conclusions in the Report and therefore it is not a report submitted by Prof. Mayya in his individual capacity but it is the report submitted by NIT, Suratkal, the approved institution and therefore the report is valid and the challenge against the recommendations and permits based on that report is also not valid. It is also argued that the affidavit of Prof. Venkat Reddy clarified, as is clear from the report of Prof. Mayya, that what was requested for was whether the location identified by the department is Hydraulically conducive for deposition of sand and the quantity of sand proposed to be removed is in conformity with the various factors influencing the deposition and estimation of quantity of the sand and identification of the sandbars. It is therefore argued that failure of Prof. Mayya personally to identify the sandbars is not faulty and in fact that was not necessary at all. It is also argued that there is no uniform

updating of the Google map as can be seen and therefore relying on the Google map which was not updated just before the identification of the sand bars, is also not proper. Learned counsel also argued that OM dated 9th June, 2011, clarified that the Environment Department of the State shall take the final decision on the proposal submitted by the District Collector, based on the recommendations of the Monitoring Committee and therefore the SEIAA is under no obligation to rely upon the recommendation made by Prof. Mayya on the quantity of sand to be removed. The argument of the learned counsel is that the SEIAA on independent justification, overlooked the opinion of Prof. Mayya and reduced the specific gravity from 1.72 to 1.5. and therefore there is no defect in not providing for 20% reduction of the removable quantity of the sand as suggested by Prof. Mayya. It is also argued that the sand bar Nos.10 and 11 are closely located each other and therefore for the effective management and distribution of the licenses among the 9 license holders, temporary arrangements have been made, but the quantity of sand to be removed in these two sandbars remained exactly the same and therefore the permits cannot be challenged on that ground. It is also argued that validity of the recommendations of the Monitoring Committee or the District Collector is not based on the contention of respondent Nos.10 to 13 on the availability of the sandbars or fishing boats in the coastal rivers and therefore that contention

of respondent No.10 to 13 will not invalidate the permits. It is also argued that there is no prohibition for employing outsiders, if labourers are not locally available and even otherwise as provided under Section 2(11) of Karnataka Land Reforms Act, 1961, the word "to cultivate personally" has been defined as means, either by ones own labour or labour of any hired labourer or by servants on wages and therefore the permit holders employing outsiders, when labour/ employees are not available locally, is not violative of the conditions of the EC or the guidelines provided by the MoEF in various OMs. It is also argued that the information, relating to the registration of the Boat and the registration of local traditional community are available in the office of the District Monitoring Committee and in fact they were produced before the Tribunal and therefore the argument based on the reply of Senior Geologist in response to the application filed under RTI Act is not valid. It was argued that the application is not filed in the interest of ecology or to protect environment as otherwise applicants would have challenged removal of sandbars from all the coastal rivers of Karnataka and would not have restricted the prayer to Udupi District alone.

30. Learned counsel appearing for respondent Nos.11 to 13 additionally argued that removal of sand deposits from the river is necessary and it is pointed out that sand is a very useful

commodity for the development of the nation and therefore for sustainable development and to safeguard the ecology and environment, sand deposits are to be permitted to be removed and the permits granted were all granted in compliance with the guidelines provided under the OMs given by the MoEF&CC and they are not harmful to the environment or ecology and therefore application is only to be dismissed.

31. The following points arise for consideration:

- (1) Whether the application is maintainable ?
- (2) Whether the permission granted for removal of sandbars from the rivers of the District of Udupi of Karnataka State is in accordance with law. If not, whether the removal of sandbars would amount to sand mining ?
- (3) Reliefs and costs ?

32. **Discussion of Point No.1:** The application was originally framed as if the impugned activities are sand mining and not removal of sandbars. The case of the applicants is that under CRZ Notification, 2011 sand mining from CRZ area, of the coastal rivers in Udupi District is a prohibited activity and in violation of the prohibition, sand mining is carried out in the name of removal of sandbars. The applicants sought a direction

not to issue EC and not to issue permits to extract sand from the rivers of Udupi District which are in CRZ area. The case of the respondents is that there is a vast difference between removal of sandbars and sand mining and though sand mining is prohibited, removal of sandbars is a permissible activity and therefore the permits granted for removal of sandbars cannot be challenged on the ground that it is sand mining and therefore the application as framed, is not sustainable.

33. The case of the respondents is that though permits were granted by the District Collector in accordance with the relevant OMs in accordance with law, they are not challenged and even in the application, the applicants referred only the permits granted for the period from 2014 - 2015 and as the period of the said permits has expired, the challenge is infructuous.

34. The applicants thereafter got amended the original application raising various contentions including the authority of Prof. Mayya, a retired Professor to be a technical expert when NIT, Suratkal is the authorized institution, the Sand Monitoring Committee chaired by the District Collector does not constitute the mandatory members provided under the OM, and there was no proper identification of the sandbars. The guidelines

issued by the MoEF&CC, establish that removal of sandbars is for the removal of the obstruction caused to the navigation and fishing by the sandbars and removal of sandbars is to be by the local traditional people and these are all violated and therefore the permits granted are not in accordance with the OM and they are therefore not valid. It is true that the applicants did not file the appeals against the individual permits granted or did not file an appeal against all the permits granted for removal of the sandbars. But the sum and substance of the application is that though the MoEF&CC included removal of sandbars within the permissible activity, any permission granted pursuant to the OM, permitting removal of sandbars shall have to fully comply with the guidelines and the violations would make the permits illegal and void and therefore even if the sand is being removed on the strength of the permits for removal of sandbars, it would amount to only sand mining. In the light of the contentions raised, we cannot agree with the submissions of the learned counsel appearing for the respondents that the application is not maintainable.

Section 14 of the National Green Tribunal Act, 2010 provides the jurisdiction on the Tribunal over all civil cases where a substantial question relating to environment including enforcement of any legal right relating to environment is involved, provided such question arises out of the implementation of the enactments specified in Schedule I

35. CRZ Notification, 2011 was issued by MoEF, in exercise of the powers conferred under clause (d) and sub rule (3) of Rule 5 of Environment (Protection) Act, 1986, which is one of the 7 scheduled Acts provided under Schedule I. Therefore, question of violation of the provision of the said enactment, is a substantial question relating to environment.

36. The case of the applicants is that, though permits were granted, purported to be in compliance of guidelines and directions in the OMs dated 9th June, 2011 and 8th November, 2011, when such permits were granted in violation of the guidelines they would not amount to the activities provided under the OMs and hence cannot be for the removal of sandbars as they purported to be, but would amount to only sand mining, which is a prohibited activity and it is a substantial question relating to environment and arises out of implementation of one of the scheduled Acts. We therefore hold that the application is perfectly maintainable. Even if it is taken the application is not filed within the period of limitation computing from the respective dates of granting the permits, if the permits are granted in violation of the OMs and the guidelines, it would not be valid permits and in any case any removal of the sand on the strength of the permit would be a

recurring cause of action and therefore, the application is not barred by time also. The point No.1 is answered accordingly.

37. **Point Nos.2 and 3:** CRZ Notification, 2011 was notified on 6th January 2011. The object of the Notification is 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 and sea level rise due to global warming. Para 3 of the Notification provides the prohibited activities within CRZ. Under clause (x) of Para 3 of the Notification, Mining of sand, rocks and other sub-strata materials is a prohibited activity. Only exceptions provided are mining of those rare minerals which are not available outside the CRZ area and exploration and exploitation of Oil and Natural Gas. Admittedly, the rivers, involved in the application, are all covered under CRZ Notification and the impugned sand mining / removal of sandbars is within the CRZ area. Under sub clause (iv) of Para 3 of the Notification, Land reclamation, bunding or disturbing the natural course of seawater are prohibited activities. But the activities under clauses (a) to (d) of Para 3(iv) are exempted.

The clause (d) of Para 3(iv) of reads “(d) measures to prevent sand bars, installation of tidal regulators, laying of storm water drains or for structures for prevention of salinity ingress and freshwater recharge based on carried out by any agency to be specified by MoEF”

Hence Para 3(iv)(d) is not a prohibited activity as it is exempted from the preview of prohibition under clause (iv) of Para 3 as land reclamation, bunding or disturbing the natural course of seawater are prohibited activities while measures to prevent sandbars, installation of tidal regulators, laying of storm water drains or for structures for prevention of salinity ingress and freshwater recharge carried out by any agency specified by MoEF&CC are exempted. The State of Karnataka by letter dated 28.03.2011 requested the MoEF&CC to issue necessary amendment to the CRZ Notification, 2011. It is clear from the said letter that the State Government, thought it necessary to get the CRZ Notification amended, as under Para 3 (x) of the CRZ Notification, 2011, mining of sand, rocks and other substrata materials is a prohibited activity. The case of the State Government was not that the removal of sand bars is not a permitted activity, or that it is not prohibited under Para 3 (iv) of the Notification. Instead it was on the specific ground that sand mining is a prohibited activity, request was made stating that removal of sand deposits in the coastal rivers of the Karnataka State would not cause any damage to the environment and instead would benefit the environment. The

case was that sand and sea shell could be supplied for the local consumption, it provides employment opportunity to the local people and if not removed, the river course would get silted up and result in inundation of neighbouring agricultural land and also on the ground that if the sand deposits are not removed, they would cause obstruction to the navigation channel of the fishing boats and result in accidents. Letter dated 28.03.2011 by the Secretary of the Government (Ecology and Environment) Department of Forest, Ecology and Environment of the State of Karnataka reads as follows:

"GOVERNMENT OF KARNATAKA

No. FEE 31 CRZ 2010

Karnataka Government Secretariat
M.S. Building
Bangalore, dated 28.03.2011.

From,
Secretary to Government,
Forest, Ecology and Environment Department.

To,
The Secretary,
Ministry of Forests and Environment,
Government of India,
Paryavarn Bhavpan, Lodhi Road,
CGO Complex, New Delhi - 110 003.

Sir,

Sub: Relaxation to sea shell and sand mining in the rivers influenced by the tidal action in the light of CRZ Notification, 2011 - Reg.

- Ref:-
1. CRZ Notification, 2011.
 2. Representation of Karnataka Karavali Muralu Guthigedarau Hagu Karimikara Hitharakshana Samithi, Udupi dated 18.03.2011.
 3. Letter No.MMC/CR/57/2005-06 dated 28.02.2011 of the Deputy Commissioner, Udupi District, Udupi.
 4. Letter dated 9.3.2011 from the Deputy Commissioner, UttaraKannada District, Karwar.

Mining of seashell and sand in the rivers of coastal area have been done traditionally from the immemorial. This activity apart from catering to the local requirement of the sand and seashell have been providing good employment opportunities to the local communities.

As per para 3 (x) of the CRZ Notification, 2011, mining of sand, rocks and other substrata materials is a prohibited activity except for those rare materials not available outside the CRZ area and exploration and exploitation of oil and natural gas. The present CRZ Notification have also included the aquatic area in the rivers and backwaters upto which the salinity is 5 parts per thousand. In view of this mining of sea shell and sand

which used to be done in these water bodies as done in the conventional method without causing any damages to the environment. The recommendations and the representations cited above are enclosed here with for your perusal and consideration.

It is stated in the above said letters that the mining of sand and sea shell done on conventional methods without using any machineries will not cause any damages to the environment instead it is beneficial for the following reasons:

- (a) Sand and sea shell are supplied for the local consumption.
- (b) It provides good employment opportunity to the local people.
- (c) If not removed the river course get silted up and result in inundation of neighbouring agricultural land.
- (d) If not removed the sand deposit will obstruct the navigation channel of the fishing boats and result in accidents.

Keeping the above facts in the mind and considering the request of the local communities it is necessary to bring suitable amendments to the CRZ Notification, 2011 to permit mining of sea shell and sand in the areas that are not ecologically sensitive on case to case basis by the State Coastal Zone Management Authority.

You are therefore requested to kindly arrange to issue necessary amendments in this regard to the CRZ Notification, 2011 at the earliest.

Yours faithfully,

(KANWERPAL)

Secretary to Govt. (Ecology and Environment),
Department of Forest, Ecology and Environment."

38. Even earlier to this request, MoEF&CC had issued OM dated 24.02.2011 providing that all proposals relating to the projects involving measures to prevent sand bars, installation of tidal regulators, laying of storm water drains or for structures for prevention of salinity ingress and freshwater recharge, as provided under Para 3 (iv) (d) shall be examined by the institutions provided under the OM from technical angle and also providing that based on the recommendation made by these institutions, the project would be considered for clearance by the concerned authorities indicated in the Notification. Out of the six institutions provided under Notification, No (vi) is NIT, Suratkal. The relevant portion of the Notification dated 24.02.2011 reads as follows:

Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.

Dated, the 24th February, 2011.

OFFICE MEMORANDUM

"Sub: Implementation of provisions of Coastal Regulation Zone Notification, 2011 issued vide S.O.No.19(E), dated 6th January, 2011 – regarding.

This has reference to the issue of the Coastal Regulation Zone (CRZ) Notification, 2011 vide S.O.No.19(E), dated 6th January, 2011. As per para 3(iv)(d), "measures to prevent sand bars, installation of trial regulators, laying of storm water drains or for structure for prevention of salinity ingress and freshwater recharge based on carried out by any agency to be specified by MoEF." In this regard, the Ministry specifies that following institutions who will be involved for the above activities:-

- (i) Central Water and Power Research Station
- (ii) IIT Chennai, IIT Bombay
- (iii) Department of Erosion Directorate, Ministry of Water Resources
- (iv) ICMAM
- (v) National Centre for Sustainable Coastal Management
- (vi) NIT, Suratkal

2. All proposals relating to the projects indicated in the above para of the Notification shall be examined by the Institutions from technical angle and based on the recommendation made by these Institutions the project would be considered for clearance by the concerned authorities indicated in the Notification."

39. Vide OM dated 09.06.2011, MoEF&CC issued guidelines for management of the sandbars including its removal. The OM reads as follows:

Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.

Dated, the 9th June, 2011.

OFFICE MEMORANDUM

Sub: Implementation of provisions of Coastal Regulation Zone Notification, 2011 vide S.O.No.19(E), dated 6th January, 2011 – regarding.

This is in continuation to our earlier Office Memorandum of even number dated 24th February, 2011 regarding removal of sand bars as indicated in para 3(iv)(d) of Coastal Regulations Zone Notification, 2011 dated 6th January, 2011, a copy of same is enclosed.

2. A guideline for management of the sand bars including its removal which are as follows:-

- (a) Sand bars which pose danger to navigation of fishing boats and vessels shall be identified by the concerned Department in the State Government.
- (b) The State Government in Consultation with the State agencies such as PWD, Water Resources Department, Fisheries Department, etc., may formulate a proposal for management of the sand bars including its removal.
- (c) The proposal shall be examined by the six institutional identified in the above Office Memorandum dated 24th February, 2011, namely, (a) Central Water and Power Research Station, Pune; (b) IIT, Chennai, IIT, Bombay, (c) Department of Erosion Directorate, Ministry of Water Resources; (d) Integrated Coastal and Marine Area Management, Chennai; (e) National Centre for Sustainable Coastal Management; and (f) National Institute of Technology, Suratkal.
- (d) Based on the suggestions / recommendations received from these institutions the concerned State Government agency(s) shall obtain necessary recommendation from the State / Union Territory (UT) Coastal Zone Management Authority.
- (e) Based on recommendations of the State / UT Coastal Zone Management Authority the Environment Department of the State / UT shall take final decision on the proposal with valid justification.
- (f) The decision shall be put on the website of the concerned agency undertaking the project and also on the website of the State / UT Coastal Zone Management Authority.

(Dr. A. Senthil Vel)
Director

Inspite of these OMs, on receipt of the request of the State of Karnataka referred to earlier, the MoEF thought it necessary to issue a further Official Memorandum dated 08.11.2011. The OM reads as follows:

Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.

Dated, the 8th November, 2011.

OFFICE MEMORANDUM

Sub: Removal of sand in the Coastal Regulation Zone area of rivers / estuaries by manual methods by traditional communities – regarding.

This is in continuation to the Ministry's Office Memorandum (OM) dated 24th February, 2011 and 9th June, 2011 with regard to guidelines for management of the sand bars including its removal.

2. The Ministry had now received request from State Government of Karnataka with regard to removal of the sand bars by manual methods by traditional communities.

3. After examining the proposal and the provisions of the Coastal Regulation Zone Notification, 2011 the Ministry hereby stipulates the following conditions for removal of sand bar by traditional coastal communities only by

manual method (i.e. sand collection in non-mechanised dinghies or small boats using baskets / buckets by human beings) in various coastal States:-

- (a) The district Collector shall chair a seven-member Committee consisting of, concerned officials as also atleast one representative of each from a scientific or technical Institute, the local communities, like fisher folk and the local civil society.
- (b) Based on the recommendations of the above Committee, the District Collector may permit such removal of sand in the specified time period in a particular area alongwith specific quantity subject to such conditions, such as registration of local community persons permitted to remove the sand manually.
- (c) The Environmental Official at district level shall monitor the removal of sand and submit report to the Collector, as may be specified, say quantity of sand removed in the period concerned.
- (d) The above permit shall be renewed on yearly basis.
- (e) The agenda and the minutes of the aforesaid Committee, permits issued by Collector and monitoring reports of the removal of sand would be uploaded on the website of the Collectorate and also made available hard copy to Zila Parishad etc., as may be directed to the Collector.
- (f) The accumulation of sand bar, its removal the process etc., shall be studied by the State Government with the help of satellite imageries, GPS, etc., it shall be ensured that the permits are not accorded in such areas which are identified as eco-sensitive zones, fish migratory and breeding grounds. The permits shall be given taking into consideration the local circumstances and ecological settings.

(E. Thirunavukkarsu)
Deputy Director

40. Thus, it is clear that the MoEF considered removal of sand bars is not a prohibited activity under Para 3 (x) or Para 3 (iv) of CRZ Notification, 2011 and provided the guidelines by the Official Memorandums. First of all, every such proposal for removal of sandbars should be examined by one of the institutions provided in the OM dated 24.02.2011 from technical angle. The concerned authorities have to consider the proposals for granting clearance of removal of sandbars, based on such recommendations made by the institution. The institution relevant to our purpose is NIT, Suratkal. Under the guidelines provided in OM dated 09.06.2011, the management of the sandbars including its removal would be of those sandbars which pose danger to navigation of fishing boats and

vessels which shall be identified by the concerned Department in the State Government. State Government has to then formulate the proposal for management or removal of the sandbars in consultation with the State agencies like PWD, Water Resources Department, Fisheries Department. Such proposal shall be examined by any of the six institutions provided under OM dated 24.02.2011. Based on the suggestions / recommendations received from the institution, the concerned State Government agency shall obtain necessary recommendations from the State / Union Territory (UT) Coastal Zone Management Authority (CZMA). It is based on the recommendations of the State/UT CZMA, the environment Department of the State / UT have to take a final decision on the proposal with valid justification. It also provides that such decisions shall be put on the website of the concerned agency undertaking the project as well as on the website of the State / UT CZMA.

41. The OM dated 08.11.2011 specifically provides the guidelines as to how the proposal has to be received and proceeded with. The said OM further makes it clear that, after examining the proposal submitted by the State of Karnataka for amendment of the CRZ Notification, 2011, MoEF&CC stipulated the necessary conditions for removal of sandbars by traditional coastal communities only by manual method in various coastal

states. By manual method what was intended was sand collection in non mechanised dinghies or small boats, using baskets / buckets by human beings. The stipulation provides that the District Collector shall chair a seven-member Committee, consisting of concerned officials as also at least one representative of each from a scientific or technical institute, the local communities, like fisher folk and the local civil society. Based on the recommendations of that committee, the District Collector can permit such removal of sand in the specified time period, in the particular area, along with specific quantity of sand, subject to the conditions such as registration of local community persons permitted to remove the sand manually. It also provides that District level officer of the Department of the environment shall monitor the removal of sand and shall submit a report on the quantity of sand removed in the period to the District Collector and the permit can be renewed on early basis and the agenda and the minutes of the Committee, permits issued by the Collector and monitoring reports of the removal of sand would be uploaded on the website of the Collectorate and hard copy should also be made available to Zila Parishad. It also provides that the accumulation of sandbars, its removal, and the process shall be studied by the State Government with the help of satellite imageries, GPS etc., and it shall be ensured that the permits are not accorded in such areas which are identified as eco-sensitive zones, fish migratory and breeding

grounds and permits shall be given taking into consideration the local circumstances and ecological settings. It is thus clear that the proposal for removal of the sandbars shall first be examined by the seven-member Committee headed by the District Collector and such seven-member Committee shall consist of at least one representative each from the local communities like fisher folk and the local civil society. Evidently, it is to avoid mining of sand under the guise of removal of sandbars, as the local fisher folk and the local civil society are the best custodians of the environment of the locality.

42. The case of the applicants is that though permits were granted for removal of sandbars, the proposal was not examined by one of the institutions provided under Notification dated 24.02.2011 and the institution did not submit a technical report, to consider the proposal and though the report of Prof. Mayya was relied on by the Committee, it is not the report of the institution NIT, Suratkal. Evidently, Prof. Mayya was acting as the technical expert representing NIT, Suratkal for the previous years 2014- 2015, and reports were earlier submitted for removal of sandbars which were considered by the Monitoring Committee headed by the District Collector and granted permits. As the period for removal of sandbars for the period 2014- 2015 had expired, we are only concerned with the

permits issued for removal of sandbars for the subsequent year 2016-2017. Hence it is not necessary to deal with the earlier report submitted by Prof. Mayya. The relevant report is submitted by Prof. Mayya in January, 2016.

43. As distinct from the report for the previous year, which specifically show that the report is filed by the Department of Applied Mechanics & Hydraulics, National Institute of Karnataka, Suratkal by Prof. S.G. Mayya, the relevant report for the year 2016 shows that it is the report of removal of sand in CRZ area of Rivers in Udupi District, 24th January, 2016 by Dr. S.G. Mayya (Retired), Former Professor, Department of Applied Mechanics and Hydraulics, National Institute of Technology, Karnataka, Suratkal. The fact that Prof. Mayya retired on 31.12.2014 from NIT, Suratkal on superannuation is admitted by all concerned. Therefore when the report of January, 2016 was submitted by Prof. Mayya, he was not a Professor of NIT, Suratkal. This fact is not in dispute. The argument of the learned counsel appearing for the applicants is that as it is clear that the report was submitted by Prof. Mayya in his individual capacity, as a retired professor of NIT Suratkal, this cannot be taken as the technical report of one of the approved institutions as mandated under the OM.

44. The argument of the learned counsel appearing for the respondents is that though Prof. Mayya prepared the report, it was not prepared in his individual capacity but only for the institution, NIT Suratkal and as Prof. Mayya was preparing the report during the previous years and there was no other expert in the institute during 2016 during the relevant period after the retirement of Prof. Mayya, Prof. Mayya was asked to prepare the report and that report is also examined and approved by Dr. Venkat Reddy, Professor who also countersigned the report submitted by Prof. Mayya. The affidavit filed by Prof. Venkat Reddy is to the effect that he has been serving in the Department of Civil Engineering, NITK Suratkal from 04.08.1986 as professor of M.Sc., Geology, M.Sc., Technical Hydro Geology and Ph.D Geology and expertise in the Hydro Geologist and Engineering Geologist. The relevant portion of the affidavit reads as follows:

"I say that during the year 2015 on 23.11.2015 the NITK Suratkal had received a request from DSMC (CRZ) Udupi to give technical approval to newly identified sand bars in the rivers located in the CRZ area of Udupi District. I say that the expertise in the field of river engineering, river hydrodynamics, sedimentation and the hydrology in NITK Suratkal was Mr. Dr. (Prof) S.G. Mayya who had already given the technical approval for the years 2011- 2012 to 2014-2015 for all the three districts in coastal Karnataka namely, D.K. Udupi and Uttar Kannada (Karwar). Since Mr. Dr. Prof. S.G. Mayya was retired on 31.12.2014, the NITK, Suratkal had the assigned the work of giving technical approval to Dr. (Prof) S.G. Mayya as there are no other and experts in that field in NITK Suratkal. I say that Mr. Dr. Prof. S.G. Mayya has undertaken the work of preparation of technical approval of sand bars in the rivers of CRZ Udupi District and hence I have counter signed as a Geologist in NITK Suratkal and I have agreed on

the finding of Mr. Prof. Dr.S.G. Mayya and sent the technical report to DSMC (CRZ) Udupi through NITK Surathkal. "

45. That portion of the affidavit shows that Prof. Venkat Reddy is not an expert on the field, as even according to Prof. Venkat Reddy, after the retirement of Prof. Mayya there is no other expert in the field at NIT Suratkal. In such circumstances, though Prof. Venkat Reddy claims that he had countersigned as Professor of Geology, Department of Civil Engineering and agreed with the findings of Prof. Mayya, as Dr. Prof. Venkat Reddy is not an expert, even as admitted by Dr.Venkat Reddy, such counter signature agreeing with the findings of Prof. Mayya is of no consequence. The report cannot be validated by any such counter signature. The report submitted by Prof. Mayya cannot be treated in law as the report of the institution NIT, Suratkal. Though the said affidavit claims that the work to prepare a report by the technical expertise was assigned by NIT, Suratkal to Prof.Mayya, there is nothing on record to corroborate the said claim of Dr.Venkat Reddy. In fact, when the matter was being argued, the learned counsel appearing for the applicants was forcefully submitting that the report is not by the institution but by Prof.Mayya in his individual capacity as the retired Professor of NIT Suratkal. Sufficient adjournment was granted in the matter to enable the respondents to make available, the relevant authorisation or assignment of the work

by NIT Suratkal. But no material has been produced to prove the authorisation or assignment.

46. Learned counsel appearing for the applicants would argue that when an application was filed before the NIT Suratkal, to get the details of the bill presented to the Institute by Prof. Mayya claiming remuneration for preparing the report in January 2016, the reply was that no such bill was presented. It is based on this fact, it is argued that if the work was assigned to the retired Prof. Mayya by NIT Suratkal, the claim for remuneration should have been presented by Prof. Mayya before the NIT Suratkal, and in turn NIT Suratkal would have claimed the fees payable to Prof. Mayya and it further indicates that the report is submitted by Prof. Mayya in his individual capacity and not for and on behalf of the NIT Suratkal. We find force in the submission. If that be so, it is to be found that the report relied on by the seven-member District Sand Monitoring Committee headed by the District Collector, is not a report of one of the institutions, provided in the OM dated 24.02.2011. It is clear from the OM dated 08.11.2011 that the seven-member committee chaired by the District Collector shall consider the proposal, based on the report of the expert viz., one of the six institutions provided in the OM. The OM dated 09.06.2011 proves that it is for the concerned department of the State Government first to identify the sand bars which pose

danger to the navigation of the fishing boats and vessels. It is for the State Government in consultation with the State agencies like PWD, Water Resources Department, Fisheries Department, to formulate the proposal for the removal of such sandbars. The OM mandates that such proposal shall be examined by anyone of the six institutions identified in the OM dated 24.02.2011 including NIT Suratkal. It is based on the suggestions and recommendations received from such institutions, the concerned State Government has to obtain recommendations from the CZMA for permission to the removal of sandbars.

47. The report of Prof. Mayya dated 24.01.2016 makes it clear that the Deputy Director and Member Secretary of the District Sand Monitoring Committee by letter dated 23.11.2015, requested Prof. Mayya to provide technical opinion and suggestions for removing sand from the identified sandbars, in the rivers flowing in Udupi District. It further clarifies that the said letter was based on the identification of 19 sandbars in the rivers that flow in Udupi Taluk and 11 sandbars in the rivers that flow in Kundapur Taluk, within the CRZ of the rivers in the District of Udupi joining Arabian Sea, as identified by the Departments of Forest, Revenue, and Mines and Geology. As rightly pointed out by the learned counsel appearing for the applicants it is thus clear that the 19 sandbars in the rivers that

flow in Udupi Taluk and that 11 sandbars in the rivers that flow in Kundapur Taluk, were identified earlier to 23.11.2015. What was required from Prof.Mayya was only to provide technical opinion and suggestions for removing sand from such 30 identified sandbars. The report also shows that the key map showing the river reaches in the CRZ and the location of the identified sandbars was also enclosed with the letter. The affidavit filed by Dr.Venkat Reddy, referred to earlier, clarifies that the job of the experts in the matter is limited to two issues namely (1) whether the location identified by the department is Hydraulically conducive for deposition of sand and (2) the quantity of sand proposed to be removed is in conformity with the various factors influencing the deposition and estimation of quantity of the sand is acceptable. The report of Prof. Mayya further establishes that along with the key map, copy of the Google Earth Map showing the exact locations with the approximate boundaries of the sandbars was also enclosed. The survey number of the river bed where the sandbar is formed, the name of the river, length and width of the sandbar, areal extent and the lat long of the corner points of the sand bars are presented in the Table format and taking an average depth for the sand bars, approximate quantity of sand in metric tonnes that can be removed from each sandbar were furnished to Prof.Mayya, along with the letter.

48. Learned counsel appearing for the applicants vehemently argued that if the sandbars were in fact not properly identified prior to 23.11.2015, the report of the expert on the removal of such sandbars is also not proper and therefore based on such identification and technical report, the permits granted are violative of the stipulation in the OM and therefore they are void. The learned counsel also pointed out that in addition to the specific observation, Prof. Mayya has given 10 general guidelines and guideline No.10 shows that the expert was not convinced that the sandbars in fact exist at the location. The said guideline No.10 reads as follows:

"Sand should be removed only if the sandbars are observed at the identified locations."

49. It is also provided by Prof. Mayya that this year, there is reduction in Monsoon Rainfall to the extent of 20% as reported by IMD. Sediment carried in the river is also a function of the river flow during Monsoon. Thus total sediment carried by the rivers will have to be reduced to the extent of 20% of the estimated.

50. The Proceedings of the Senior Geologist, Mines and Geology Department, Manipal, Udupi dated 23.11.2015 makes it absolutely clear that the sandbars on which the technical report of Prof. Mayya was sought for by letter dated

23.11.2015, were in fact not identified even on 23.11.2015. It is interesting to note that the proceedings in fact is a communication addressed to (i) the Deputy Conservator of Forest, Kundapura Sub-Division, Kundapura, Udupi District, (ii) Regional Director, Environment (CRZ), Udupi, (iii) Tahshildar, Udupi/ Brahmavara/ Kundapura/ Byndoor, (iv) Environment Officer, Karnataka State Pollution Control Board, Udupi, (v) Assistant Director, Fisheries Department, Udupi and (vi) Head of the Department, Department of Applied Mechanics and Hydraulics NITK, Surathkal, Karnataka. It is regarding the identification of sandbars in the CRZ area of Udupi District as provided in OM dated 09.06.2011 as well as the proceedings of the District Sand Monitoring Committee. The communication is requesting to depute the officials of the department for spot inspection. The spot inspection is "for identification of the sandbars of the CRZ areas of the rivers in Kundapur Taluk" and it was fixed for 02.12.2015 to 04.12.2015 and for the rivers for Udupi Taluk the dates fixed were 07.12.2015 to 10.12.2015.

51. The OM dated 09.06.2011 mandates that it is for the State Government in Consultation with the State Agencies such as PWD, Water Resources Department, Forest Department etc., to formulate a proposal for the management of the sandbars including removal. It is that proposal which shall be examined by one of the six institutions provided therein. It is based on

the suggestions/recommendations received from the said institution, the seven-member committee chaired by the District Collector/ Deputy Commissioner to consider the proposals and recommend the removal of sandbars. Thereafter, it is for the concerned State Government agency to obtain the necessary recommendations from the CZMA. Based on the recommendations of CZMA the Environment Department of the State/Union Territory has to take a final decision on the proposal with valid justification.

52. It is therefore absolutely clear that the very proposal for removal of sand from the identified sandbars is to be initiated by the State Government, in consultation with the concerned Departments. Thereafter the proposal is to be examined by the authorised institute. If that be so, it is clear from the proceedings dated 23.11.2015 that the proposal for removal of the sandbars should be after identification of the sandbars and the proposal shall thereafter be examined by the Institute of NIT. Hence identification of the sandbars and preparing the proposal after the identification of the sandbars should be before the institute is requested to examine the proposal and give the recommendations/ suggestions. The proceedings dated 23.11.2015 establish that the very spot inspection for identification of the sandbars were fixed from

02.12.2015 to 10.12.2015. The relevant portion of the proceedings dated 23.11.2015 reads as follows:

“With reference to above subject, the environmental clearance certificates of Udupi District Coastal Regulation Zone is expiring on 22-01-2016 and the extraction of sand bars are going to complete. New sand bars are to be identified; by preparing sketches, obtaining technical approval from NITK, environmental clearance from SEIAA is to be obtained. In respect of this identification of new sand bars as per reference No. 2 a resolution has already been taken. Therefore for identification of sand bars in CRZ area of the following dates, place make arrangements to depute the officials of your departments for spot inspection. ”

SI.No	Taluk	Prescribed dates
1	Kundapura	02-12-2015 to 04-12-2015
2	Udupi	07-12-2015 to 10-12-2015

Sd/
Yours faithfully
Member Secretary / Senior Geologist
Mines and Geology Department
Udupi

If that be the case, it is clear that the sandbars to be removed during 2016 - 2017 were identified only in December 2015. Hence the date of the sandbars furnished to Prof. Mayya seeking his technical opinion and suggestions for removal from the identified sandbars by letter dated 23.11.2015 can never be regarding the sandbars to be identified from 02.12.2015 to 10.12.2015. The report of Prof. Mayya conclusively establishes that he had given his technical opinion and suggestions for removal of those sandbars which were identified and furnished to him by letter dated 23.11.2015. Therefore, the said request can never be with regard to the sandbars which are yet to be identified as on 23.11.2015.

53. In the light of these materials, we can only find that the technical opinion furnished by Prof. Mayya on 24.01.2016, were not in respect of the sandbars which were to be identified on spot inspections from 02.12.2015 to 10.12.2015. If that be so the proposal prepared by the State Government in consultation with the State Agency and the recommendations provided by Prof. Mayya are not in conformity with the guidelines provided by the OM dated 09.06.2011. In the light of this fatal defect, we hold that the decision of the seven-member District Sand Monitoring Committee, based on such suggestions and recommendations of Prof. Mayya for removal of sandbars for the period 2016-2017 is also bad in law as it is in isolation of the guidelines of the MoEF&CC. Hence it is to be found the entire proceedings before the seven-member District Sand Monitoring Committee chaired by the District Collector and the subsequent proposal examined by the KCZMA and the clearance granted by the SEIAA are all vitiated and not valid in law. From the facts and the materials placed before us, it is clear that all the permissions granted for removal of sandbars for the period 2016- 2017 are not in conformity with the guidelines and the conditions stipulated by the MoEF&CC in OM dated 09.06.2011 and 08.11.2011.

54. The very letter dated 28.03.2011 submitted by the Secretary to the Government of Forest, Ecology and

Environment, State of Karnataka, to the MoEF&CC establishes that the intention behind the request seeking amendment to CRZ Notification, 2011 was not for the protection of the livelihood of fishermen communities or for the smooth navigation but for removal of the sand. The letter shows that several representations have been received by the State Government to reconsider the prohibition for removal of sand mining in the CRZ area of the rivers as by the prohibition, mining of sea shell and sand, have come to a stand still. The State Government contending that sand mining and sea shell mining could be done in the conventional method without causing any damage to the environment, submitted the request seeking amendment to the CRZ Notification, 2011. To justify the request, in addition to the contention that such mining of sand and sea shell done on conventional methods without using any machineries will not cause any damage to the environment, it was additionally contended that it is beneficial as sand and sea shell could be supplied for local consumption, provides good employment opportunity to the local people and if not removed, the river course get silted up and result in inundation of the neighbouring agricultural land and more over if not removed, the sand deposit will obstruct the navigation channel of the fishing boats and result in accidents. If the State Government has to permit sand mining, necessarily the provision of EIA Notification, 2006 would apply, even if the sand mining is to be

undertaken on non-CRZ area of the rivers. When sand mining is expressly prohibited from the rivers coming under CRZ area under CRZ Notification, 2011, sand mining can never be permitted as sought for by the State of Karnataka within the CRZ area of the rivers flowing in Udupi District. It is to get over this impediment, case of obstruction caused to navigation and fishing by the local fishermen have been projected as a ground to get exemption to remove the sand bars, so that the sand could be extracted from the river which is otherwise prohibited. We cannot support the blatant attempt to circumvent the provisions of CRZ Notification, 2011, as has been done in this case, which are detrimental to the environment and ecology. True, as the measures to prevent sandbars, which may include removal of sandbars also, is not a prohibited activity in view of clause (d) of Para (3) (iv) of CRZ Notification, 2011 and therefore removal of sandbars is permissible. But it shall be strictly in accordance with the guidelines and the conditions provided in OMs dated 24th February, 2011, 9th June, 2011 and 8th November, 2011.

55. We have already found that the recommendations made by the District Sand Monitoring Committee based on which the KCZMA recommended the proposal, which was accepted and clearance was granted by the Karnataka SEIAA, are all vitiated as they are in violation of the provisions of the

guidelines and conditions of the OM. It is also clear that the seven member committee to consider the proposal based on the technical report of the approved institution was not constituted properly. Even though the OM specifically provides that the seven member committee shall consist one representative of the local civil society, no such representation was provided while constituting the Committee. So also a representative of the local fishing community also not included in the Committee. As stated earlier, when the local protectors of the environment and ecology are not included in the Committee, it is to be found that the proposal was not validly considered by a Committee as provided in the OM. Hence that is also a valid ground to hold that the decisions and the permits granted based on such decision are all vitiated. In view of these findings, we do not consider it necessary to discuss on the further violations projected by the applicants.

56. Already we found that the proposal was not examined by any one of the six institutions as provided in the Official Memorandum dated 24.02.2011 as the Prof. Mayya was acting in his individual capacity as retired Professor of NITK and not for and on behalf of NITK, Suratkal. We also found that in any case, the report submitted by the Prof. Mayya dated 24.01.2016 was based on identification of sandbars earlier to 23.11.2015 and the existence of sandbars to be removed were

yet to be identified on 23.11.2015. We also found that spot inspection for identification of sandbars was fixed from 2nd December, 2015 to 10th December, 2015. Therefore, as is clear from the report of the Prof. Mayya, the Technical opinion / suggestions and recommendations provided are not in respect of the sandbars that were to be identified for the period 2016-2017. The technical opinion was in respect of the sandbars which were existing in the previous years. It is clear that the sandbars which cause obstruction to the navigation or fishing, which are to be removed as on 23.11.2015 were yet to be identified when Prof. Mayya was asked to give the technical opinion/ suggestion. The expert opinion needed as provided under Official Memorandum dated 09.06.2011 is based on the proposal prepared by the State Government in consultation with the State Agency and such proposal is based on the identification of sandbars, which posed danger to navigation or fishing boats and vessels as identified by the concerned department. Therefore, when the technical opinion furnished by Prof. Mayya, was acted upon by the seven member Committee headed by the District Collector, it is clear that there was no valid technical report furnished by any one of the institutions as provided in the Official Memorandum dated 24.02.2011 and that too, based on the identification of sandbars made by the Department of the State Government as is mandated under the Office Memorandum dated 08.11.2011.

As per the Office Memorandum dated 08.11.2011, the seven member Committee shall consist of concerned officials and atleast one representative of each from a scientific or technical Institute, the local communities like fisher folk and the local civil society. The proposal which was accepted by CZMA and later by the District Collector to grant of permission was in fact not placed before a Committee, which include the representative of the local community persons like fisher folk or representative of the local civil society as the Committee was not properly constituted. Therefore, it can only be found that the permits granted for removal of sand bars from the CRZ area of the rivers of Udipi District for years 2016-2017 are all vitiated and thus invalid.

57. Therefore we hold that all those permits are invalid and pursuant to those permits, sand cannot be permitted to be extracted from the rivers of Udipi District for the period 2016-2017. Vide order dated 17th May, 2016, while admitting the application an order of injunction was passed "restraining respondents 1 to 3 and their subordinates from taking any steps towards issuance of sand mining permits in any manner to extract sand in the rivers in Udipi District which are located in CRZ area until further orders." Therefore there was no sand mining or removal of the sandbars from the CRZ area of those rivers from that day onwards. Admittedly, the permits

granted for removal of sandbars for the period from 11.04.2016 to 10.04.2017 would expire shortly. Therefore there cannot be any extraction of sand in the name of removal of sandbars unless valid permits are granted in accordance with the guidelines as provided by the MoEF&CC. The State of Karnataka is entitled to grant permission for removal of sandbars, which cause obstruction to the fishing and navigation in the coastal rivers coming within the CRZ area, only in strict compliance to the conditions and guidelines provided in the official Memorandum dated 24.02.2011, 09.06.2011 and 08.11.2011. Even Para 7 of the affidavit filed by Shri. H.K. Ananda, Scientific Officer in the Department of Forest, Ecology and Environment for the SEIAA Karnataka shows that the object, of the permissions and the EC granted, was to ensure removal of only sandbars which obstruct movement of fishing vessels of the local fishermen with a view to provide safe livelihood for the fishermen. Therefore, the permits to be granted for removal of sandbars can never be to circumvent the prohibition of sand mining under the name of removal of sandbars. If any sandbar is to be removed, a proposal is to be submitted by the State Government, as provided in the OM, in consultation with the departments provided therein. Such a proposal should originate, on account of the existence of sandbars causing obstruction to the fishing or navigation. If no such obstruction is caused by any sandbars,

no proposal for removal of such sandbars shall be made. If any such sandbars exist causing obstruction to the navigation or fishing, the proposal for their removal shall be made strictly, as provided in the OM. Thereafter, the proposal shall be examined by one of the institutions provided in the OM. It is for the said Institute and not a retired expert to consider the proposal and give the technical opinion. Based on that technical opinion, the proposal shall be examined by the Seven Member Committee headed by the District Collector as provided in the OM. The Monitoring Committee shall be constituted not in violation of the guidelines, but strictly in compliance with the guidelines including the representatives of the local fishermen community and the local civil society. It is based on the decision of the Monitoring Committee the proposal is to be examined by the KCZMA. It is thereafter, the Department of Environment, State of Karnataka to examine the proposals and decide whether the permission is to be granted or not. The order of granting such permission or rejecting such permission shall necessarily show the reasons for such permission or rejection as the case may be. We grant liberty to the State of Karnataka to decide the question of removal of sandbars from the coastal rivers of Karnataka strictly in compliance of the guidelines and conditions provided in the Office Memorandums of the MoEF&CC but making it clear that in any event it shall not be for sand mining in the name of removal of sandbars. We hold that based on the

disputed permits granted for the period 2016 -2017, no sand shall be extracted from the rivers of Udupi District.

58. The application is disposed accordingly with no order as to costs. Consequently, the connected Miscellaneous Applications are closed.

सत्यमेव जयते

Justice M.S. Nambiar
Judicial Member

P.S. Rao
Expert Member

NGT