

**BEFORE THE NATIONAL GREEN TRIBUNAL**

**(WESTERN ZONE) BENCH, PUNE**

**APPLICATION NO.15(THC)/2014**

**CORAM :**

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR  
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A.DESHPANDE  
(EXPERT MEMBER)**

**B E T W E E N:**

**Mr. NAIM SHARIF HASWARE,**

Adult, Occ. Business & Social work,

R/o Mhasla, Tal. Mhasala, Dist. Raigad,

Maharashtra.

**....APPLICANT**

**A N D**

**1. M/s Das Offshore Engineering P Ltd.**

Plot No.F-3, Sagar Uday, Behind Cldco Bhavan,  
Agrali, CBD Belapur, New Mumbai-400 614.

**2. MAHARASHTRA MARITIME BOARD**

Indian Mercantile Chamber, 3<sup>rd</sup> Floor,  
Ramjibai Kamani Marg, Bellard Estate,  
Mumbai-4000 18.

**3. THE SECRETARY,**

ENVIRONMENT DEPARTMENT,  
Hon. Secretary,  
Environment Department,  
Room No.217, 2<sup>nd</sup> Floor,  
Mantralaya annex, Mumbai-32.

**4. Hon. Chairman,**

IA-Division, Monitoring Cell, MoEF,  
Paryavaran Bhvan, CGO Complex,  
Lodhi Road, New Delhi-110003.

**5. Hon. Chairman,**

Regional Office, Ministry of Environment  
And Forest, (Regional Office) Western

Region, Kendriya Paryavaran Bhvan,  
Link Road No.3, E-5, Ravishankar Nagar,  
Bhopal-462016 (MP).

**6. Hon. Chairman,**

SEAC, 12/302 Sky city, Vangram,  
Ambattur Road, Chennai-600 095.

**7. Hon. Chairman,**

SEIAA, Jagnu, Kottaram Road,  
Calicut-673 006, Kerla,

**8. Hon. COLLECTOR,**

Raigad- Alibagh,

**9. TOWN PLANNING DEPARTMENT**

Raigad- Alibagh,

.....**RESPONDENTS**

**Counsel for Applicant(s):**

**Mr. Rajesh M.Joshi Advocate, holding for Mr. Sandeep Budhwant  
Advocate a/w Mr. Samarth S. Karmarkar Advocate, for the Applicant.**

**Counsel for Respondent(s):**

**Mr. Mr.Asim Sarode Advocate a/w Alka Babaladi, Vikas Shinde Advocates, Mr. Ranjit Gamar Avocate for the Respondent No.1.**

**Mr. D.M.Gupte Advocate a/w Supriya Dangare Advocate for the Respondent Nos.2,3.**

**Shweta Busar Advocate, holding for Mr. Ranjan Nehru Advocate for Respondent Nos.4,5.**

**Mr. Roshan Meshram DMO for the Respondent No.8.**

**Mr. Raja Pandit Town Planner, for the Respondent No.9.**

**Date: December 24<sup>th</sup>, 2014**

## **J U D G M E N T**

**1.** This litigation brings on surface as to how some times, civil dispute which is glossed as contractual dispute between the parties, is, in fact, a substantial environmental dispute, which requires adjudication under Section 14 read with Sections 15 and 18 of the NGT Act,2010 and not by a regular Civil Court.

**2.** Originally, Naim Sharif Hasware filed a suit bearing Regular Civil Suit R.C.S.No.196 of 2013 in the Court of Civil Judge, Senior Division at Raigad-Alibag. He sought reliefs of

declaration and mandatory injunction. He, however, described in the pleadings that certain licences issued to the Defendant No.1, for construction of project, are illegal and withdrawal of condition No.3 (iv) vide letter dated January 31<sup>st</sup>, 2012, issued by the Defendant No.3 i.e. the Secretary, Environment Department, State of Maharashtra, is illegal. He also urged that illegal acts of Defendant No.1 – M/s Das offshore Engineering Pvt. Ltd, shall be cancelled on the ground that the same are in breach of terms of the lease agreement dated 21<sup>st</sup> August, 2009, entered between Defendant No.1 – M/s Das offshore Engineering Pvt. Ltd, and the Defendant No.2, (Maharashtra Maritime Board) MMB.

**3.** The suit was transferred to this Tribunal in view of the order dated 28.11.2013 and, thereafter, it was registered as Application No.15 (THC) of 2014, for the purpose of trial.

**4.** For sake of convenience, the parties will be referred to hereinafter as follows:

Plaintiff – Naim Sharif Hasware will be referred by his first name as **'Naim'**,

Defendant No.1 – M/s Das offshore Engineering Pvt. Ltd, will be referred as **'M/s Das Offshore Company'**,

Defendant No.2 – Maharashtra Maritime Board will be referred as **‘Maritime Board’**,

Defendant No.3 – the Secretary, Environment Department, will be referred as **‘the Secretary (ED)’**,

Defendant Nos. 4 and 5 will be referred as **‘MoEF’**,

Defendant No.6 (State Expert Appraisal Committee) will be referred as: **SEAC**,

Defendant No.7 (State Environment Impact Assessment Authority) will be referred hereinafter as: **SEIAA**,

Defendant No.8 will be referred hereinafter as: **Collector Raigad** and Defendant No.9 will be referred as: **DistrictTown Planning Authority (DTPA)**.

**5.** Briefly stated case of Naim is that he is a social worker and businessman. In or about 2009, he had done certain contractual work for M/s Das Offshore Co. In last week of June, 2010, M/s Das Offshore Co. directed him to stop the work, which he had accepted on contract basis. M/s Das Offshore Co. had undertaken a project work at Raigad, taluka Mhasla, District Raigad for assembling and offloading certain structures



associated with the work of offshore Oil and Natural Gas extraction at Rajapuri creek. For such purpose, M/s Das Offshore Co. desired to construct a wall of barges and jetty at Rajapuri creek at Rohini within land Gut Nos.70,80,79,77,78,81,71,73,75 and 76, within reclaimed area. The reclaimed area is duly described in the opening paragraph of the plaint.

**6.** In pursuance to terms of contract of such construction, which was an ongoing project, Naim was going ahead with the work which had to be suddenly halted due to instructions of M/s Das Offshore Co. on 26<sup>th</sup> June,2010. So, the workers of Naim, his machinery and all the expenditure incurred for the work became defunct. He suffered monetary loss.

**7.** M/s Das Offshore Co. had entered into a lease agreement with Maritime Board to carry out certain activities at Rajapuri creek. It was agreed that Maritime Board would give facility for sea-front situation at Rohini to M/s Das Offshore Co., as per registered M.o.U. dated 1.10.2010, in order to carry out the work of project. It was, however, agreed that M/s Das Offshore Co. ought to obtain Environmental Clearance (EC), required for construction of fabrication yard, within 24 months from the date

of lease-deed, or otherwise, the lease agreement, would be deemed as cancelled. In case, M/s Das Offshore Co. wants any extension of time, as per the terms of agreement, at least sixty (60) days prior to lease period would come to an end, it will have to apply for extension period sought to be applied for by the said Company. However, M/s Das Offshore Co. failed to comply with such legal obligations to seek extension of lease period, though no E.C. was obtained from MoEF.

**8.** M/s Das Offshore Co. started excavation of land, filling of land and blasting work at the site by engaging various contractors without prior permission of the various Govt. departments. M/s Das Offshore Co. caused destruction of mangroves situated in the lands adjoining to Rajapuri creek from 2008 for personal gain. Although, open blasting was not permissible, yet M/s Das Offshore Co. carried out such blasting at many places. M/s Das Offshore Co. failed to comply with various conditions shown in the EC. Hence, Naim made complaints to Maritime Board and other Govt. departments about illegal activities of M/s Das Offshore Co. They did not pay any heed to his complaints. They did not perform mandatory duty to



protect environment. One of such violation was that the Environment Department, categorically imposed condition No.3, in its letter dated 23<sup>rd</sup> Jun, 2010 that no land development including reclamation, shall be carried out by M/s Das Offshore Co. This was specific condition No.3 (iv) in its EC dated 17<sup>th</sup> January, 2012. For no reason by letter dated 31<sup>st</sup> January, 2012, Environment Department revoked that condition by issuing corrigendum and deleted 'the said condition'.

**9.** According to Naim, unilateral deletion of above condition, permitting reclamation of land by M/s Das Offshore Co., is clear violation of the Environmental Laws and is arbitrary action on part of the SEIAA and Environment Department. So also, though no permanent construction activity, as per EC, is permissible yet, M/s Das Offshore Co. constructed six (6) permanent workshops, admeasuring about 80m x 17m each along with Jetty admeasuring 40m x 70m, at the site of Rajapuri creek. M/s Das Offshore Co. deliberately submitted false and misleading information to the Govt. departments and Civil Courts from time to time.

M/s Das Offshore Company is causing immense loss to the environment, which is unlikely to be compensated and that is why Naim sought mandatory injunction, as well seeking prohibitory injunction, as well as restoration of land use. It appears that some other litigation is going on between the parties in Srivardhana Civil Court regarding monetary claim arising out of contract.

**10.** Obviously, M/s Das Offshore Co. is main contesting party in the present Application. According to M/s Das Offshore Co., basically Naim has challenged EC dated 17<sup>th</sup> January 2012, which claim is barred by limitation. It is averred that suit claim is arises out of political rivalry. According to M/s Das Offshore Co., Naim is the Director of one M/s Royal-21, Infrastructures P Ltd, which was involved in participation of project activities undertaken by M/s Das Offshore Co. and therefore, he has no *locus standi* to challenge the project. It is averred that there was dispute about settlement of accounts between M/s Royal-21, Infrastructures P. Ltd and M/s Das Offshore Co. which triggered filing of the suit. It is denied that the conditions of EC are violated by M/s Das Offshore Co. It is case of M/s Das Offshore Co. that project of Rohini Yard would entail setting up of yard for fabrication of

workshops, structures required for oil exploration machineries which at present, is mainly being obtained from foreign contractors by ONGC. The yard requires a waterfront and Jetty. Permissions for the project are granted by Maritime Board, Pollution Control Board, MCZMA, SEAC and SEIAA. The reclamation of land was essential, because subsequently M/s Das Offshore Co. pointed out that Maritime Board, MCZMA and SEAC decided to recommend the proposal to grant EC. The EC was granted on 17<sup>th</sup> January, 2012, but foreshore activities require land reclamation, therefore, condition 3(e) of the EC was deleted on 31<sup>st</sup> January, 2012, at the request of M/s Das Offshore Co. There is nothing as illegal act committed by the Authorities, nor M/s Das Offshore Co. has destructed any mangroves as alleged. It is categorically denied that the activities of M/s Das Offshore Co. have caused violation of environmental norms.

**11.** The Respondent No.1, claims that it has successfully completed various projects, including development of offshore fabrication yard called as “Rohini yard” at Raigad creek in Rohini village (District Raigad). It is stated that Rohini-yard is of utmost importance since for want of fabrication yard, the ONGC had

received very few bids, though tenders were floated and therefore, for saving annual revenue the activity of Rohini-yard does require a waterfront Jetty and therefore, subsequent amendment for reclamation of the land was given by the Authority at the request of the Respondent No.1, but for which the project would have received a setback and could have become unworkable. The Respondent No.1 gave details of various stages at which the Authorities like MCZMA, SEAC decided to recommend the project on basis of environmental impact assessment (EIA) carried by the Respondent No.1- Project Proponent (PP). According to the Respondent No.1, EC has been granted on 17<sup>th</sup> January, 2012 by imposing various conditions, including the condition that no land reclamation shall be carried out, but at later stage the Respondent No.1, categorically made out a case that without creating a water frontage, activity of project could not be viable and therefore, by letter dated 31 January 2012, the condition No.3(iv) was deleted from the EC dated 17<sup>th</sup> January, 2012. The Respondent No.1, therefore, emphatically denied that deletion of such condition at subsequent stage, is illegal and without any authority and is unsustainable, because same was not done on basis of any EIA

study. On these premises, the Respondent No.1, sought dismissal of the Application.

**12.** By filing affidavit on behalf of the Respondent No.3, 6 and 7, Environment Department (Govt. of Maharashtra) resisted the Application. According to Environment Department, the proposal was considered by the State Environmental Assessment Committee (SEAC), because it was an activity for assembling and offloading of the structures associated with offshore extraction of oil and natural gas at Rajapuri creek (taluka Mhasala, District Raigad). The project falls in the category 7(e) of the Schedule appended to EIA Notification dated 14<sup>th</sup> September, 2006. It is the case of Environment Department that the project was appraised on environmental parameters and thereafter was recommended to SEIAA for its approval. The SEAC appraised the project and recommended it to the State Environmental Impact Assessment Authority (SEIAA), as per decision arrived at in its Meeting dated 23/24 November, 2011. It is further averred that subsequent amendment was issued in view of change in the circumstances on basis of information furnished by the Respondent No.1 and having regard to all points as per the minutes of SEIAA, which



were deliberated upon in the Meeting prior to deletion of condition No.3(iv) of the original EC dated 17<sup>th</sup> January, 2012.

**13.** An Additional affidavit was subsequently filed on behalf of the Respondent No.3 by Shri. Ajay Fulmali, Scientist-I, of the Environment Department, when this Tribunal by order dated March 6<sup>th</sup>, 2014, directed verification of status of work of reclamation. In his affidavit, it has been stated that the District Collector and MPCB, carried out on March 30<sup>th</sup>, 2014, joint visit at the site. They found that reclamation work of admeasuring area of 345sq.m x 180m for Jetty comprising RCC construction, size 17sq.m x 40m has been completed at the site under consideration. However, at that juncture, reclamation work was stopped. The inspection revealed that the construction work on the area was within area of 90sq.m x 86m. The inspection report is accompanied by photographs along with reclamation area. The affidavit also shows that the directions are proposed under Section 5 of the Environment (Protection) Act, 1986 and Rule 4(3) (a) of the Environment (Protection) Rules, 1986, for violating of conditions of the EC dated 17<sup>th</sup> January, 2012 and the provisions of CRZ Notification, 1991 and 2011 against the Respondent No.1.



Thus, additional affidavit reveals that the Respondent No.1, committed violation of EC conditions.

**14.** The Respondent No.1, filed rejoinder alleging that all legal formalities are being undertaken for regularization of the work.

**15.** Captain S.R. Naik, the Regional Port Officer of the Maharashtra Maritime Board, filed affidavit on behalf of the Respondent No.2- Maharashtra Maritime Board (MMB). He narrated as to how request of the Respondent No.1 for grant of lease of waterfront was considered by MMB in the Meeting dated 25<sup>th</sup> April, 2008. He supported background which gave rise to lease-deed whereby contractual relationship between the Respondent No.1 and the Respondent No.2, was created vide lease-deed dated 21.8.2009. At this stage itself, we may clarify that such issue is outside the jurisdiction of the NGT. Therefore, role of MMB in the present litigation is insignificant and ignorable.

**16.** By filing reply affidavit on behalf of MoEF, joint Director Shri. E. Thirunavukkarasu, submitted that the project in question is covered under item 7 (e) of the Schedule appended to EIA Notification dated 14<sup>th</sup> September, 2006 and is category 'B' project, and also attract CRZ Notification. MoEF, did not give any

recommendation to SEIAA. It is stated that as per O.M. issued on 24<sup>th</sup> February, 2011, certain guidelines were required to be followed for appraisal for category 'B' projects, while granting EC under Notification dated 14<sup>th</sup> September, 2006. The guidelines provide that such project could be considered by SEAC/SEIAA, after obtaining recommendations from Coastal Zone Management Authority (CZMA). Thus, project clearance could be given on basis of recommendation of CZMA by following due procedure as per EIA notification 2006. The MoEF also therefore, sought dismissal of the Application.

**17.** As stated before, though dispute is raised by way of civil suit and may be outcome of failure of certain contractual obligations, yet it involves "substantial questions relating to environmental dispute, including enforcement of legal rights relating to environment," and as such same is required to be decided within framework of Section 14(1) read with Sections 15 and 18 of the National Green Tribunal Act, 2010. While doing and undertaking such exercise, of course, contractual obligations of the parties shall not hinder the proceedings and such kind of

dispute must be kept aside for the purpose of giving them liberty to litigate separately.

**18.** The environmental issues arising which can be culled out from record of the present case, may be stated as follows:

- I) Whether the Environmental Clearance (EC), namely; request for allotment of waterfront and natural tidal area for setting of captive yard phase-I, at village Rohini, without considering the fact that previously M/s Das Offshore Engg. Pvt.Ltd had already applied for E.C. to MoEF along with Rapid Environment Report and therefore the project could not be taken of altogether as “new case”?
- II) Whether or not it was legal obligation of SEAC and SEIAA, to appraise the project in the light of earlier deliberations/objections considered by the Expert Committee, in its Meeting dated 9/10<sup>th</sup> November,2010 by MoEF, as per letter dated 7<sup>th</sup> December, 2010, before completing process of appraisal and the impugned EC?
- III) Whether the project in question has caused environmental degradation, loss to environment and destruction of CRZ area?
- IV) Whether it is now essential to issue Mandamus to remove all structures, land reclamation by the Respondent No.1, for the purpose of restitution of the property or the land reclamation in

particular, or any other relief in terms of compensation needs to be granted for restitution of Environment?

**Re: Issue (i) & (II) :**

**19.** Before considering merits of contentious issue, it may be noted that CRZ Clearance was originally sought from MoEF for offshore facilities by the Respondent No.1, M/s Das Offshore Co. (Oil and Gas Division). MoEF had noted that both Environment Clearance and CRZ Clearance were found necessary from MoEF for activities of the Respondent No.1, in view of legal position as then existed. It appears that by virtue of O.M. dated 24<sup>th</sup> February, 2011, MoEF clarified that for the purpose of CRZ Notification 2011, the projects which do not attract EIA Notification, 2006, but attract only CRZ Notification 2011, as indicted at para 4(ii) such projects would require clearances from MoEF which will be considered in accordance with the procedure laid down in para 4(ii). It is in keeping with this O.M. that the Application of the Respondent No.1, M/s Das Offshore Co. was being processed by MoEF for consideration, as per procedure laid down in para 4(ii) of the CRZ Notification 2011. Obviously, it is essential to examine

the CRZ Notification 2011, in order to find out what procedure is required to be followed as indicated at para 4(ii) and 4.2 of the said Notification.

**20.** The Regulation 4 of CRZ Notification 2011 specifically indicates that certain activities would require Clearances from MoEF. Regulation 4 (ii) reads as follows:

The following activity shall require Clearance from MoEF, namely;

(a) those activities not listed in the EIA Notification, 2006.

(b) xxx                      xxx                      xxx                      xxx

(c) xxx                      xxx                      xxx                      xxx

(d) xxx                      xxx                      xxx                      xxx

(e) exploration and extraction of oil and natural gas and all associated activities and facilities thereto;

(f) Foreshore requiring facilities for transport of raw materials, facilities for intake of cooling water and outfall for discharge of treated wastewater or cooling water from thermal power Plants. MoEF may specify for category of Projects such as at (f), (g) and (h) of para 4;

(g) xxx                      xxx                      xxx                      xxx

(h) xxx                      xxx                      xxx                      xxx

(i) xxx                      xxx                      xxx                      xxx

The provisions under CRZ Notification, 2011, as per Regulation 4.2, sets out the procedure for clearance of permissible activities. It is stated that all the projects attracting this Notification shall be considered for CRZ clearance, as per the following procedure; namely;

- a)    xxx                    xxx                    xxx                    xxx
- b)    xxx                    xxx                    xxx                    xxx
- c)    xxx                    xxx                    xxx                    xxx
- d)    xxx                    xxx                    xxx                    xxx
- e)    xxx                    xxx                    xxx                    xxx
- f)    xxx                    xxx                    xxx                    xxx
- g)    xxx                    xxx                    xxx                    xxx
- h)    xxx                    xxx                    xxx                    xxx
- i)    xxx                    xxx                    xxx                    xxx

ii) The Concerned CZMA shall examine the above documents in accordance with the approved CZMP and in compliance with CRZ notification and make recommendations within a period of sixty days from date of receipt of complete Application,-

**21.**        There is no duality of opinion that the project in question attracted the provisions of EIA Notification, 2006 and CRZ Notification, 2011. Close reading of Regulation 4(ii) of CRZ Notification, makes it explicit that foreshore repairing facilities for Thermal Plants etc. such as indicated in para 4 (ii) (a),



(b),(c),(d),(e), (f), (g) and (h), shall require clearance from MoEF. It is important to note that Regulation 4(ii) (f) will be applicable in the present case. It reads as follows:

**“Regulation 4(ii) (f) :** Requiring foreshore facilities for transport of raw material.....

Firstly, the activity of such a project is one which comes within ambit of Regulation 4(ii) (f) and in any case, it is an activity which is connected with activity associated with exploration and extraction of oil and natural gas. With a result, it would also fall within impact of Regulation 4(ii) (e) of the Regulation. Considering nature of the project and its magnitude, even EIA Notification, 2006, was applicable as such, and therefore, EC from MoEF ought to have been issued before commissioning of the project, as per O.M. dated 24<sup>th</sup> February, 2011. The instructions were accordingly given to all the Authorities, including CZMA, Maharashtra. It follows therefore that CZMA.”

**22.** Respondent No.1, M/s Das Offshore Co. had already submitted an Application for CRZ Clearance to MoEF, which involved foreshore facilities for assembling and offloading of structures associated to offshore extraction of oil and natural gas in

Rajapuri creek at village Rohini (taluka Mhasala, district Raigad). The Director of MoEF, informed the Respondent No.1, that during course of discussion certain points had emerged for which clarification was found necessary. The points which were raised are as follows:

- i) The site is surrounded with mudflats and mangroves and there is no justification for selection of site.
- ii) The project requires both under Environmental and CRZ Clearances for which TOR will be required.
- iii) The Committee suggested that PP may submit a draft report, which will be discussed and finalized by the Committee.

**23.** There is absolutely nothing on record to show that what kind of clarification/information was given by the Respondent No.1, which could be circulated to the MoEF, EAC Committee Members for reconsideration of the proposal before it was put on the Agenda of next Meeting. Thus, at least two (2) things

are very clear, namely; (a) the site was found surrounded with mudflats, mangroves and there was absence of justification for selection of the site, and (b) the project required environmental and CRZ Clearances, which therefore, needed ToR and other procedure under EIA Notification to be complied with. Obviously, the PP – Respondent No.1, could not escape the procedure of appraisal, as enumerated in EIA Notification, 2006. The procedure as enumerated in the said Notification ought to have been followed. Therefore, unless it could be given go by under any particular provision of the Law, the EIA Notification dated 14<sup>th</sup> September, 2006 needed to be followed scrupulously.

**24.** For a moment, we may consider that the project in question as project 'B' yet, it was necessary for the Respondent No.1, to follow the procedure of going through Stages of Appraisal. This Appraisal will entail screening of an Application seeking Environmental Clearance (EC), by the Appraisal Committee, whether project activity requires Environmental study for preparation of Environmental Impact Assessment (EIA) for its appraisal prior to grant of EC, depending upon nature thereof. It

is further important to note that categorization of project into 'B1' and 'B2' categories except item 8(b) in the Schedule was left to discretion of MoEF and guidelines could be issued from time to time in this behalf.

**25.** Perusal of the Schedule appended to the Environment Impact Assessment Notification 2006, reveals that Entry No.8 (a) pertains to building and construction projects, which are over and above 20,000sq.m. and below 150000sq m. of built up area. So, MoEF cannot issue any direction in the context of this kind of activity. Reverting to communication of Sh. Bharat Bhushan, dated 7<sup>th</sup> December,2010, it is amply clear that the proposal was pending before MoEF, till first week of December,2010 and certain compliances were called from the Respondent No.1 with a view to prepare TOR. As stated before, without making such compliances or even if the Respondent No.1, has indulged in certain communication with MoEF, the same are not placed on record. Therefore, based upon O.M. dated 8<sup>th</sup> February, 2011, the SEAC/SEIAA took over the authority for grant of EC assuming, even though, there is no reason for such assumption that O.M.

dated 8<sup>th</sup> February, 2011, is applicable to the present case, because the project was already pending before MoEF. We are, therefore, unable to accept the contention that the project in question could be automatically considered by the SEAC for recommendation to SEIAA. The reply affidavit filed by Scientist-III, of the Environment Department, Sh. Anish Parashurame, shows that the Respondent No.1, by his letter dated 22.3.2011, submitted an Application to SEAC to appraise the project along with EIA report. It is not clear why the stages of TOR and public consultation were not followed by SEAC before recommending the project to SEIAA. It is stated that SEAC categorized project as 'B' and therefore, accordingly E.C. was granted on 17.1.2012. The affidavit of Sh.Anish Parshurame, highlighted that the project was considered as per prevailing practice, in view of O.M. dated 8<sup>th</sup> February, 2011, issued by the MoEF. Let us see the text of O.M. dated 8<sup>th</sup> February, 2011, so as to examine whether Environment Department could take the call of scrutiny in respect of project on its own. The relevant entries at Sr.Nos.3 and 4 will have to be considered for the present purpose. Entry No.3, shows that if the proposal is received from State/Union Territory and Coastal Zone



Management Authority, and has not yet sent to Central EAC/MoEF and such project which falls in 'B' category, it shall be sent for appraisal to SEIAA concerned. Admittedly, MoEF did not forward the proposal to State Authority, though the proposal was in respect of 'B' category project. Also, the project was considered by EAC prior to this O.M. So far as Entry No.4 of O.M. dated 8<sup>th</sup> February,2011, is concerned, it may be reproduced as below:

| Sr No. | Status   | Action   |
|--------|--|--|
| 1      | Projects attracting Coastal Regulation Zone (CRZ) Notification, 1991 which have been submitted to the concerned State/UT Coastal Zone Management Authorities | The concerned State/UT Coastal Zone Management Authority after examination of the projects in accordance with the CRZ 2011 or the IPZ Notification, 2011, as the case may be, shall recommend or reject the projects. The recommended project shall be forwarded for appraisal to State Environmental Impact Assessment Authority /MoEF, in accordance with the EIA Notification, 2006. Those projects which do not attract EIA notification shall be forwarded to MoEF for clearance. |
| 2      | Considered and recommended by State/UT Coastal Zone Management Authority but not yet sent to MoEF  | Action may be taken as per para 1 above.   |



|   |   |   |
|---|---|---|
| 3 | Received from State/UT Coastal Zone Management Authority and not yet sent to Central EAC/MoEF       | Such projects which fall in 'B' category shall be sent for appraisal to SEIAA . Concerned and those projects which fall in 'A' category or do not attract EIA Notification, 2006 or where SEIAA has not been constituted, shall be examined by Centre EAC/MoEF under the CRZ 2011 and IPZ 2011. |
| 4 | Those projects which are pending with the Centre EAC/MoEF but final recommendation not yet provided | Act in may be taken as per item 3 above   |
| 5 | Recommended by Central EAC under the CRZ Notification, 1991 and pending with MoEF                   | Decision shall be taken by MoEF in light of CRZ 2011 and IPZ 2011.  |

**26.** The alleged part of O.M. is not applicable to the project in question, because even though such projects are required to be considered in accordance with the action to be taken, as per Entry at Sr. No.3, the action contemplated is as follows:

*“such projects which fall in ‘B’ category, shall be sent for appraisal of SEIAA concerned and those fall in ‘A’ category or do not attract EIA Notification, 2006, where SEIAA has not been constituted, shall be examined by Central SEIAA/MoEF or EIA 2011”.*

The plain reading shows that as per O.M. dated 8<sup>th</sup> February, 2011, is that those projects which fall in 'B' category and were received from State CZMA, and were now sent to SEAC/SEIAA, could be approved by SEAC concerned only after they were 'sent for appraisal to SEAC concerned'. In other words, where such projects were under consideration of the MoEF could be sent only by the MoEF to the State Authority. The State Authority could not have snatched the power of decision making for grant of clearance in respect of such projects, having regard to wording of the said O.M. Even assuming that this O.M. was to be considered yet, we cannot overlook the fact that SEAC appraised the project in 45<sup>th</sup> Meeting on 29.9.2011 and EC was granted on 17.1.2012. In the meanwhile, MoEF had again issued O.M. dated 24<sup>th</sup> February, 2011. The said O.M. reveals that the projects which attracted EIA Notification and are categorized as 'B' projects, shall be considered under the Environmental Impact Assessment (EIA) Notification, 2006 by SEAC after obtaining prior recommendations from the concerned CZMA., P.P shall provide all information/reports/field in pro-forma, as stipulated under the EIA Notification, 2006 and part 4.2 of CRZ Notification, 2011.

Thus, subsequent Notification ought to have been taken into account before considering the project in question for the purpose of Clearances during course of Meeting of SEAC as well as during course of Meeting of SEIAA. Minutes of the Meetings do not show any reference to the said O.M. of MoEF. The Schedule appended to EIA Regulation, 2006, reveals that entry No.1 (B) deals with all the projects of offshore and onshore oil and gas exploration, development and production activities. Impugned project is the part and parcel of such activity, associated with exploration of oil and natural gas. Therefore, the provisions of EIA Notification dated 14<sup>th</sup> December, 2006, are attracted and as such O.M. dated 24<sup>th</sup> February, 2011, ought to have been considered by the SEAC and SEIAA, before recommendation/appraisal of the project in question. Not only that, but the issues raised by MoEF were not addressed in any justifiable manner, yet the project was granted approval by SEAC and SEIAA. In any case, the SEAC could not have treated the project as a “new case”.

**27.** Apart from aforesaid discussion, it is important to note that the project of the Respondent No.1 was considered by SEAC,

as 'new project' which fact is explicit from entries in the minutes of 45<sup>th</sup> Meeting of SEAC, held on 30<sup>th</sup> September, 2011. This was treated as project in category 7(e) – Cat.B as 'new case'. Obviously, it is very much clear that the case was not referred to SEAC by MoEF, nor any Application was submitted by the Respondent No.1 M/s Das Offshore Co. to MCZMA, along with rapid environment impact report, prepared with approved TOR, for the purpose of assessment and forwarding of the same to SEAC. Neither, the MCZMA had sent any of its recommendations to SEIAA, Maharashtra but choose to send its recommendations only to MoEF. The Respondent 1 claim to have informed SEAC about their earlier Application to MoEF. Needless to say, it was expected of SEAC, in that event, to follow up the matter with MoEF for sending the proposal back or dealing it at MoEF as the case may be, and even if to be considered at its end, inform MoEF accordingly and also, consider the observations of MoEF made in the EAC meeting. The appraisal including selection of site, changes if any in the original plan, status of construction of project and impact on the environment, a further rapid environment report based on ToR was essential and SEAC ought

to have called upon the MMB and MCZMA, to confirm earlier Clearances, or add any conditions, if so necessary.

This was not done by the SEAC or SEIAA. The project was in pipeline and was pushed with external forces for the purpose of Clearances, is also clear from the fact that earlier condition No.3 (iv) was categorically put in the EC as follows:

***“3(iv): no land reclamation should be carried out”.***

There appears hardly any justification as to why all of a sudden, without considering complications of environmental impact, even though MCZMA letter is very specific regarding the scale, purpose and nature of reclamation which can be carried out, such condition was summarily withdrawn by SEIAA and was deleted vide communication dated 31<sup>st</sup> January, 2012, bearing No.SEAC-2011/CR-698/TC.2.

**28.** It is therefore evident that the SEAC has appraised the project, even when such proposal is still under consideration of MoEF. Also, the prescribed procedure of appraisal, as enumerated in EIA Notification, like scoping, public consultation is not



followed by SEAC, though MoEF itself has identified the potential environmental impacts of the project and noted the need of detailed ToR for EIA studies. Thus, in view of failure to observe basic principles of natural justice, the decision of SEAC/SEIAA is illegal and untenable. It becomes 'non-est' in the eye of Law for the reasons discussed so far. This answers both the above Issues, referred to above.

**Re: Issue (iii) :**

**29.** This is a crucial issue in the present Application. For, the Application is in fact, not an Appeal against EC as such, although, we have to ignore EC, because it has to be stamped as 'Non-est' in the eye of Law. Assuming that the EC is required to be taken into account as legal and proper, the question yet remains whether the project was illegally commissioned or implemented, which in fact, destructed environment in the area. The project activity is admittedly waterfront related activity for the purpose of installation of workshop and other construction, proposed repairs of equipments or Barges etc. and oil channels on various ONG platforms. The work of fabrication and installation, including



replacement of existing pipeline etc. was target of the project activity. The written statement of Respondent No.1, clearly shows that commissioning of Rohini fabrication yard relates to development of offshore fabrication yard. The pleadings of Respondent No.1, would make it very clear that offshore fabrication yard was required for fabrication of existing pipelines on various ONGC platforms etc. The project activity, as per discussion in the minutes of SEIAA (Item No.20), is shown as “a facility for assembling and offloading of structures, which are associated with offshore extraction of natural gas and oil. The oil platform and rig modules, are planned to be fabricated in the temporary shed with specialized facility of store, bracing, piping and assembling shops, fixed and mobile Cranes for easy movements of components. All the facilities are proposed to be developed over reclaimed area under all about 249300sq m. inter-tidal area. The boulders and rocks are available from nearby hills, which are approved by the Revenue Department, as borrow area.

**30.** From aforesaid project activity, as understood by SEIAA, categorically was to be carried out by the Respondent No.1,

definitely was harmful and detrimental to environment. The damage to environment could be for following reasons:

a) Admittedly, 249300sq m. inter-tidal area of the sea was to be reclaimed. In other words, the flora and fauna, including spawning of fishing, aquatic life could be definitely destructed due to reclamation. The reclamation was of very large extent, which ordinarily could be given rise to various questions before grant of EC;

b) The project required hill cutting, maybe it was approved by the Revenue Department, but mere payment of royalty for the minor minerals, could not be sufficient if the hill-cutting could have dampened the forest area. This is particularly so, because the forest department had taken such objection on the ground that nearby forest area of Timbarpad forest was being effected, due to the project in question;

c) The movement of heavy Cranes, fabricated pipes, construction of shops and construction of clubhouse in the area, could not have been allowed without ensuring proper installation of STP and other facilities and permission of MPCB;

d) The project-work also involves installation of Jetties with RCC construction and construction of workshop, which information was not furnished to SEAC/SEIAA, by the Respondent No.1 And these structures could have been detrimental to the local environment.

**31.** As stated earlier, when MoEF was seized the matter by communication dated 7<sup>th</sup> December, 2010, explanation was called from the Respondent No.1, particularly, on the following points:

i) The site is surrounded with mudflats and mangroves and there is no justification for selection of site.

ii) The project requires both EC and CRZ Clearance  
for which TOR will be required.

iii) The Committee suggested that PP may submit a  
draft even, which will be discussed and finalized  
by the Committee.

**32.** For a moment, we may overlook other things, but it cannot be ignored that the Respondent No.1, gave no justification either for selection of site or other two (2) points raised by MoEF. Nor, there was denial by the Respondent No.1, as regards the fact that the site was surrounded with mudflat and mangroves and therefore, was unsuitable for the project in question. The non-approval of the ToR by experts of EAC/SEAC and also, absence of public consultation as per EIA notification has further prevented the scientific appraisal of the project and also, to ascertain the views of the local residents. In other words, the project activity could have destructed mangroves and the mudflat, was the clear message given to the Respondent No.1. It is but natural, that the Respondent No.1, was well aware of this difficulty and precarious situation, which he desired to obviate. Resultantly, he

approached SEAC, in order to get escape the well-defined Appraisal process of formulation of ToR, preparation of revised EIA report and also, the public consultation process, which would have ensured enough of safeguards to identify the environmental threats; and get it due to faulty appraised and probable stage managed processing of the subject. It also appears from the record that the Respondent-1 also started the development/ construction activities prior to obtaining the EC, and accordingly, MPCB had issued stop work order notice. It is observed that the SEAC/SEIAA have not considered this aspect in their appraisal, though the MoEF office memorandum stipulate a certain process and line of action in such violation cases. He thus, committed suppression of facts or fraud.

**33.** In our opinion, as fallout of implementation of the project, the mudflats existing at the relevant time, were destroyed, the mangroves also had been destructed due to reclamation of such huge reclamation of land at the site, without any justification required to be given by the Respondent No.1 in this behalf. So also, the project caused environmental damage to the

ecology, destruction of flora and fauna, fishing activities, spawning of fishes and aquatic life in the sea area. Consequently, third issue is answered in the affirmative.

**Re: Issue (iv) :**

**34.** So far as question of restitution is concerned, it may be gathered that the project activity is almost completed. It appears that MPCB issued stop-work order, in the meanwhile, but it was vain. In pursuance to directions of this Tribunal, joint inspection was carried out by SDM Shrivardhan, taluka Mhasla, and site Supervisor in presence of representative of the Respondent No.1, along with Sub-regional officer of Navi-Mumbai and the Field Officer of Mahad. A joint inspection report is placed on record. The joint inspection report dated 20<sup>th</sup> March, 2014, purports to show that the Respondent No.1, almost completed Jetty work (RCC construction) 70x40m). Leveling/reclamation work is completed (about 345m x 180m). The report further shows that the Respondent No.1, has not provided water sprinkling arrangement for suppression of dust. The Respondent No.1, has constructed workshop of about 90x80m. The Respondent No.1 has not started



work of STP. The buffer zone between mangroves is not maintained as per EC conditions. The visit report, however, does not show existence of any mangroves at the site.

**35.** Considering the facts and circumstances of the present case, we have no hesitation in holding that the project is practically completed without considering environmental implications and loss of environment. The Respondent No.1, is, therefore, liable to face the legal consequences for environment degradation, because due to illegalities committed while implementing the project in question.

**36.** Before parting with Judgment, it may be stated that on behalf of the Respondent No.1, issue of limitation was raised in written submission put forth on 10<sup>th</sup> November, 2014. No such plea was taken in the written statement. For the purpose of Application under Section 14(1) read with Section 18, limitation is of six (6) months and may be extended further as provided under the proviso appended thereto. We are of the opinion that when the plea of limitation was not raised before the learned Civil Judge, Senior Division, Alibag, and when no such plea is taken in

the written statement of the Respondent No.1, it cannot be allowed to be taken only at the time of filing of written submission. Even so, when we have come to the conclusion that EC itself is illegal and 'Non-est' and when the Respondent No.1, failed to show as to when was the same placed on the Website for the first time or was published in the newspaper. There is obscurity as to when did 'first day of cause of action' had arisen in this matter. The argument in this context is therefore, untenable and stands rejected.

**37.** As regards restitution, when the development work is completed and much expenditure has been already borne by the Respondent No.1, it would be harsh to undo the things which have been done, and may be the demolition of existing structures may cause more environmental damage. It would be improper to call upon the Respondent No.1, to go through the process for seeking EC afresh though he is a party to the alleged suppression of facts, the method in which the inquiry of MoEF was given complete go by. In our opinion, the principle of '*fate accompli*' is attracted in the instant case. Demolition of all the structures and

restoration of land will be rather harsh and more disproportionate to the evil acts committed by the Respondent No.1. It would be appropriate therefore, to impose heavy penalty on the Respondent No.1, for restoration of environmental damage caused due to project activities in question. The penalty of Rs.25 crores,(Twenty five crores) inclusive of amount of Rs.5 crores,( Five crores) payable for mangrove plantation programme in the project area and Rs.20 crores (Twenty crores) to be paid to the Environment Department for development of environment in the State, would be just and proper.

**38.** In the result, the Application is partly allowed. The prayer for Mandamus for restitution of the property is rejected. The Respondent No.1, M/s Das Offshore Co. shall pay amount of Rs.25 crores, (Twenty five crores) as penalty for environment damages/ compensation for the purpose of restoration of environment on account of destruction, which approximately estimated in respect of items enlisted in paragraph 41 above. Respondent No.1 shall deposit this amount with Environment Department, Government of Maharashtra, within 4 (four) weeks

else the Collector, Raigad shall seal the premises of Respondent-1 and recover the amount by auction of all property of Respondent-1 including land, building, stock and barrel. Collector Raigad shall not wait for any separate orders from this Tribunal in this regard and submit the compliance report on 15<sup>th</sup> February, 2015, without fail.

**39.** Out of these amounts, amount of Rs. 5 crores (Five crores) be transferred to MCZMA which shall be used for mangroves plantation purpose, preferably in project area, and Rs.20 crores (Twenty crores) be credited to a separate account by State Environment Department, for development of environment programme, including generate awareness, constructions of solid waste facilities, sewage management, public toilet facilities in small towns, which are not adequately funded and have no Municipal Council, or Corporation Authorities, but are having population approximately nearby requirement of Municipal Council, special toilets on Highways in the State for womenfolk, so on and so forth.

**40.** The Respondent No.1, shall pay costs of the litigation being Rs.1 lakh to each of the Respondent and to the Applicant within 4 (four) weeks.

The Application is accordingly disposed of.

....., JM  
(Justice V. R. Kingaonkar)

....., EM  
(Dr.Ajay A. Deshpande)

**Date: December 24<sup>th</sup>, 2014**

NGT