

**BEFORE THE DAHANU TALUKA ENVIRONMENT
PROTECTION AUTHORITY, MUMBAI.
[PRESIDED OVER BY JUSTICE A. B. CHAUDHARI,
[Former Judge, Bombay, AND Punjab & Haryana High
Courts].**
DTEPA CASE NO. 2 OF 2022

Jawaharlal Nehru Port
Authority [JNPA],
Navi Mumbai.

...

Applicant

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Shri Saket Mone, Adv., for the Applicant.

Ms. Meenaz Kakalia, Adv., for five Objectors.

**Shri Debi Goenka, Trustee, Conservation
Action Trust.**

Prof. Bhushan Bhoir, in-person.

**Shri Raghunathdada Patil for Shetkari
Sanghatna.**

Ms. Pranali Girish Raut, in-person.

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ORDER
[Passed on 31st July, 2023]

FACTS

01. Dahanu Taluka, earlier in Thane District, and, now in Palghar District in Konkan Region of Maharashtra State, is geographically located between 19⁰15', 20⁰8' North Latitude and 72⁰32' and 73⁰7' East Longitude, bounded by Palghar, Jawahar, Talsari and Wada Talukas,



on the coastal line 85 kms length. The approximate radius of the Taluka is about twenty-five kilometers, and it is on the border of Maharashtra and Gujrat States. The Central Govt. had issued a Notification, dated 29th March, 1989, clearing the proposal for BSES. Thereafter, Govt. of India in its Ministry of Environment & Forests had Issued a Draft Notification, dated 8th February, 1991, and a final Notification, dated 20th June, 1991, declaring Dahanu Taluka as "An Ecologically-Fragile Zone". Prior to that on 19th February, 1991, a Notification was issued, in general, declaring the coastal stretches as "Central Regulation Zone" [CRZ], for the purposes of regulating the activities in the said zone. Thereafter, one Shri Bittu Sehgal and others had filed a Writ Petition [Civil] No. 231 of 1993 [Bittu Sehgal & another Vs. Union of India & others], and in the same subject-matter and with reference to the Notification, dated 20th June, 1991, which was decided on 31st October, 1996. The Supreme Court in the said order observed that 19th February, 1991 Notification relates to the coastal area in general. The Notification dated 20th June, 1991 relates only to Dahanu area, which was declared as "Ecologically Fragile" by the said Notification with a view to protect the ecology and control pollution in the said area. The grievance in the earlier Writ Petition before the Supreme Court was likely heavy pollution because of setting up of BSES Thermal Power Plant. It appears that the Supreme Court had asked National Environmental Engineering Research Institute [NEERI],



Nagpur, to make inspection and submit a Report to the Supreme Court of India in Bittu Sahgal's case. NEERI submitted its Report, which was dated 19th October, 1996. In its Report, NEERI made several recommendations in relation to the Dahanu Taluka as well as in relation to the entire country in general. The Supreme Court also took note of the recommendations made by NEERI about the Regional Plan ["RP"] for the said area. It was also directed that the State Govt., shall take into consideration and implement the recommendations of NEERI reproduced in the said Judgment, dated 30th October, 1996. The Supreme Court also directed that an Authority should be constituted by the Govt. of India for Dahanu Taluka specially which shall consider and implement the recommendations of NEERI, so also to make implementation of the said two Notifications, dated 19th February, 1991 and 20th June, 1991. In accordance with the said directions given by the Supreme Court, the Govt. of India issued a Notification on 19th December, 1996, in exercise of powers conferred by Sub-Section (3) of Section 3 of the Environment Protection Act, 1986, constituting "Dahanu Taluka Environment Protection Authority", to be headed by a Former Judge of the High Court. The Authority started functioning after its constitution. The Govt. of India then issued a Notification on 09th July, 1997 amending the earlier Notification, dated 19th June, 1991.



02. It appears that sometime around 1997, P & O [Ports India Pvt. Ltd.], an Australian Company, was engaged for development of Vadhavan Port Project, and, accordingly, on 05th February, 1998 and 11th August, 1998, this Authority had permitted P & O Port Pvt. Ltd., to carry out the work of survey and collection of data as well as to complete the survey in the Monsoon season only for E.I.A. It appears that P & O [Port India Pvt. Ltd.] did not want to go ahead, perhaps, because if this Authority or Courts in the country prevents/prevent the Company from carrying out the activities for development of port by investing/spending huge money, its entire efforts, finances and human resources/hours would go waste and that is why the Company appears to have insisted on this Authority to decide whether they should go ahead or not with the project. That was more so because Dahanu Taluka Environment Welfare Association, Vadhavan Bandar Virodhi Sangharsh Samiti and others had raised a Preliminary Objection for construction and establishment of a mega port in Dahanu Taluka. This Authority then explicitly observed that it would decide only the question as to the construction or establishment of mega port at Vadhavan by way of Preliminary Issue. The center point of the objections was mainly the said Notifications, dated 19th February, 1991 and 20th June, 1991, as well as the then existing Regional Plan prohibiting any change of land use in an ecologically sensitive area in Dahanu. The further objection was that the berths of the port were proposed to



be constructed by excavating rockshell that stretches from the coast of Vadhavan, which is a fertile spawning ground for lobsters, Badami crabs and several varieties of fishes. P & O did not furnish plan of the proposed project or the detailed layout of backup facilities, including those for storage and infrastructure. The State Govt. had proposed to acquire the area under the Land Acquisition Act to meet the requirement of P & O. The cost of the setting up of entire port was estimated in the region of 2.4 billion dollars. The P & O Ports took a shelter of amendment to Notification made on 9th July, 1997 to the said Notification, dated 10th February, 1991, in that, accordingly, the port could be constructed on coast line, including Dahanu Taluka. This Authority again repeated that it would decide only the permissibility of setting up of a port and nothing more, and that it was not concerned with the wider question as to whether port could be constructed after amendment of 9th July, 1997 on the coast line or at any other place. This Authority then reasoned that by amendment to Notification of 1997, the directions issued by the Supreme Court could not be held to have been watered down. This Authority then concluded that the construction of port was never the subject-matter of the regional plan for the area, and as contended by P & O, upon amendment to the regional plan which could be made, the construction work could be started upon completion of necessary formalities, besides environmental clearance. This Authority then **held** that on proper reading



of the two Notifications of 1991, construction of such a mega port was wholly impermissible and that amendment of 1997 will make no change so far as Dahanu area is concerned in view of special Notification for Dahanu, dated 20th June, 1991. This Authority also observed that no construction work of any type in 500 meters of high tide area was permissible in an ecologically-fragile Dahanu area. Finally, this Authority held it to be impermissible and illegal. Having suffered said order from this Authority, P & O did not challenge that order and straightway left India.

03. The activities in relation to the Vadhavan Port then went into a deep slumber. On 5th June, 2015, Jawaharlal Nehru Port Trust belonging to Govt. of India and Maharashtra Maritime Board signed a Memorandum of Understanding for development of Vadhavan Port. On 14th April, 2016, a Joint Venture was formed with a Special Purpose Vehicle ["SPV"]. In that, JNPT would have seventy-four per cent equity of Rs. 48.10 lakhs, while Maharashtra Maritime Board would have twenty-six per cent equity of Rs. 16.9 lakhs. It appears that this Special Purpose Vehicle obtained approval from Atomic Energy Regulatory Board [A.E.R.B.], which was granted since Tarapur Atomic Power Station is in the vicinity of Dahanu Taluka, though in a different Taluka. Thereafter, on 19th February, 2020, a Notification for a major port at Vadhavan was issued by the Govt. of India with an area of twelve kms., from shore in sea. On 30th April, 2020,

 Central Pollution Control Board [CPCB] issued a Notification

and listed ports etc., in non-industrial operation category. As a sequel, Govt. of India in Ministry of Environment, Forests & Climate Change [MoF & CC] issued a Notification on 8th June, 2020 with a clarification that in view of the directions of CPCB, activity of port does not fall in red category. The National Fisheries Federation filed Original Application No. 22 of 2021 before the National Green Tribunal [National Fisheries Federation Vs. Min. of Environment & Forests]. In the matter, the National Green Tribunal made an order on 15th June, 2021 issuing certain directions to undertake certain studies by the Expert Committees. Pursuant to the directions issued by National Green Tribunal, Min. of Environment & Forests issued Office Order, dated 20th September, 2021 and Expert Committees were constituted, mentioning at Sr. Nos. 1 to 10 with the scope of works from Sr. Nos. [I] to [IV]. The said Order issued by the National Green Tribunal on 15th June, 2021 was without issuing any notice to the respondents in the said Original Application, vide Para 20 thereof. It appears that Review Petition against the said order was rejected by the National Green Tribunal. It is reported that Special Leave Petition against the said order is still pending in the Supreme Court. Obviously, the same has, by now, become infructuous, all the more so because the Expert Committee has furnished the Report pursuant to National Green Tribunal's order, which has been accepted by Ministry of Environment & Forests and notified accordingly. Thus, the subsequent developments, stated



above, still hold the field and as such, there is no stay order to these proceedings before this Authority. It is significant to note that Prof. Bhushan Bhoir had in one meeting suggested that about forty-one Village Panchayats should also be given notices by this Authority to appear and for that purpose all the documents related to the present case should also be supplied to them. The suggestion given by Prof. Bhoir was fair enough and, therefore, this Authority made an order directing service of all the documents etc., [translated into Marathi], to all those Gram Panchayats, which was duly complied with and also agreed to by Prof. Bhoir. Almost all those Gram Panchayats have filed their Resolutions/Objections on record which are in a cyclostyled form raising same grievance which has already been propagated by Adv. Kakalia in the Written Statements. In the Full-house meeting of 13th February, 2023, representatives of Sangharsh Samitis, individual members of public, NGO-CAT, in large number also in Full-house meeting held on 6th July, 2023 were heard; and in addition, Shri Raghunathdada Patil, All India Leader of Shetkari Sanghatna, was also heard. Their submissions have been briefly recorded in the Minutes. But it is not possible to repeat the same here.

04. The Applicant – JNPA having filed the application before this Authority for permission/No Objection, the matter bearing DTEPA Case No. 2 of 2022 was registered and notices were issued, and initial meetings were held for



conducting hearings and collecting objections, in which the representatives from the local area of Dahanu, their Unions and Samitis had also participated. In so far as this case is concerned, the hearings took place on 12th & 24th May, 2022, 18th July, 2022, 19th October, 2022, 29th November, 2022, first Full-house meeting on 13th February, 2023, first Full-house inspection on 27th March, 2023 and last Full-house meeting on 6th July, 2023. In all these hearings, full chance was given to all the objectors to plead their respective cases. After hearing all the sides, the Chairman consulted all Members present whether Case No. 2 of 2022 should be closed for orders. The answer unanimously was 'Yes'. However, the Office of DTEPA has received number of e-mails not to decide this case for their own reasons. We have bestowed our attention to the same and we find that since the decision of DTEPA is subject to other clearances, including that of EAC, there is no cause or reason to procrastinate. There were repeated requests made by the large number of members of public associated with Sangharsh Samitis, Unions and CAT through Shri Debi Goenka to carry out inspection of the related places at Dahanu Taluka. The Chairman as well as all Members of the Authority, all objectors, NGO-CAT as a Full-house, visited Dahanu's Vadhavan village on 27th/28th March, 2023 and made inspection for which Minutes have been recorded. The last Full-house meeting was held on 6th July, 2023, in which also all the stakeholders were present, and were heard. It is significant to note that the



Chairman of the Authority desired to have additional experts for this case, so also a local expert representative from Dahanu. Hence, Adv. Mr. Brian Lobo, as well as Farmers' Union leader from Dahanu area, Dr. Sanjay Deshmukh, former Vice Chancellor, Mumbai University, and an expert in Biodiversity etc, Dr. Laxmikant Naik, Senior Scientist, TCS, Mumbai, were co-opted as experts as approved by Govt. of India, MoEF & CC. Hence, upon effective consultations with them, the Authority proceeded to go ahead.

Thus, the above were the only features expressed in the said Order, dated 19th September, 1998, and, to our mind, the changes, as noted and brought into existence, have changed the complete scenario in last twenty-four years, i.e., from 1998 to 2023. The anxiety then expressed was also justified in the then situation. We are, hence, as DTEP Authority, convinced that the dictum by the Hon'ble Supreme Court in Bittu Sehgal's case and the Notification dated 20th June, 1991, in no case, would be violated.

SUBMISSIONS AND ARGUMENTS :

05. The submissions and arguments made by various objectors, Advocates, Unions, Samitis are summarized as under :-

[a] The majority of the Organizations, which are in opposition to the present Application by JNPA for establishment of satellite Vadhvan Port at



Vadhvan, have filed a common Written Statement through Adv. Ms. Minaz Kakalia along with documents from Sr. Nos. 2 to 13, i.e., **Annexures-1 to 12** from pages 1 to 212, including Written Statements/Written Submissions, the said Written Statements and the documents having been filed on 07th June, 2022 by Ms. Meenaz Kakalia. On behalf of Vadhvan Bandar Virodhi Sangharsh Samiti, National Fish Workers' Forum, Thane Zilla Machchimar Sahakari Sangh Maryadit, Maharashtra Machchimar Kruti Samiti, Thane Zilla Machchimar Samaj Sangh, Kashtkari Sanghatna and Bhoomi Sangh Adiwasi Ekta Parishad, the Written Statement has been signed by S/Shri Narayan Patil, Leo Colaco, Jaikumar Bhoi, Ramkrushna Tandel, Jagdish Naik, Bryan Lobo and Ashok Thakre. One Shri Bhushan Bhoir also filed his separate Objection in detail, claiming that he is a Professor having deep study in biodiversity etc. Besides the above Objections, there are large number of Objections sent by e-mail or by Post or by personal delivery and all those large number of objections have almost a common stand taken, which would be elaborated later. The stand of almost all the objectors is materially the same, except for some minor additional objections.



The said Written Statement along with documents is, therefore, being considered in the correct perspective in the present matter.

- [b] It is averred by the Objectors through Adv. Ms. Minaz Kakalia that all these Organizations represent farmers, fisher folk and Adiwasis in Dahanu Taluka. These Organizations are involved in community participation in the management of natural resources and protection of ecology. Dahanu has a rich land forest and aquatic resources. It has a vast coast line, dense deciduous forests, wet lands and mangrove area covering approximately 66.261 hectares, as stated in the NEERI Report, dated 19th October, 1996. Almost seventy percent population of the Taluka is of Adiwasis - Scheduled Tribe.

Vadhvan Village located in Dahanu Taluka, where the satellite port is proposed to be constructed, is a small fishing village. The proposal entails acquisition 571 hectares of private land and 1,000 hectares of Govt. land. DTEPA had rejected identical proposal by order, dated 19th September, 1998, which was moved at the behest of P & O Port, Australia, to build an international port at Vadhvan. This Authority had found that such a port would

violate the Notification of 20th June, 1991 as well as the Regional Plan and Coastal Regulation Zones [CRZ] Notification of 19th February, 1991. The Expert Members of this Authority also had shown their anxiety about the adverse impacts to the marine life, benthic life and dense mangrove habitats as well as breeding and spawning ground of fishes and other marine lives of the area. This Authority, therefore, held that the proposed project of a mega port at Vadhvan would be wholly impermissible. In June, 2015, renewed attempts to set up a port have been undertaken by a Memorandum of Understanding [MoU] despite order dated 19th September, 1998 made by this Authority. That is why, on 30th May, 2017, in the meeting, this Authority had asked JNPA to maintain status quo and not to undertake any work without prior permission of DTEPA. Since this Authority had found the proposed port to be an industry falling in the "Red Category", the present application cannot be considered again by this Authority. It is stated that on 24th May, 2022, this Authority having been reconstituted with the appointment of the present Chairman – Justice A. B. Chaudhari, who took charge on 11th April, 2022, a meeting was held in the absence of other

Members of the Authority and the order of 24th May, 2022 has only been signed by the Chairman.

In this connection, it is significant to note that the present Chairman, after having taken the charge on 11th April, 2022 and having perused the records in the office, found several cases which were unattended, and, in so far as the present case is concerned, on 12th May, 2022, this Authority made an order and it has started functioning and, therefore, 21th May, 2022 was the first date for all those interested to appear before the Authority. On that date, number of objectors, including Adv. Kakalia, Shri Debi Goenka of CAT, were present before the Authority and they were asked the preliminaries about the Vadhvan project. Even thereafter, some meetings were similarly held in the chambers of the Chairman and it was repeatedly told in all those meetings to the persons present that the Chairman wanted to collect all the pleadings and documents from all the parties with a view to comply with the principles of natural justice, and after collecting the same and also hearing those present, the hearing before the Authority by inviting all the Authority Members would commence, since it was of no use in calling the Members from



different stations, i.e., Nagpur, Mumbai, Goa, Roorki, Ahmedabad so on and so forth, only for collection of pleadings and documents. This is very well known to Adv. Kakalia and those who were present and signed the Attendance Sheet/Register. Obviously, the order, dated 24th May, 2022, cannot be signed by any other person, except the Chairman. Therefore, to say that other Authority Members were not invited on 24th May, 2022 and only the Chairman had signed the order are unwarranted pleadings.

[c]

The proposal would be in violation of the Notifications, as a Port is a highly polluting operation with pollution index of 85 where water-polluted sullies are toxic, not biodegradable with liquid wastes generation of 100 Kilo Liters Per day [K.L.D.], with conservation of coal/fuel of more than twenty-four metric tons per day. Port is an industry falling in "Red Category" which is prohibited in Dahanu area. The same is in violation of Regional Plan contemplated by NEERI. The Regional Plan of 1995 to 2015 restricts the areas within which the industries can be located. In accordance with Terms of Reference, dated 7th October, 2020, the project envisages reclamation of 1473 hectares of land and acquisition of 571 hectares of land in



intertidal zone proposed near the shore etc. Large part of the project would be located on the landward side and the land area constitutes CRZ-I [A] [Coastal Regulation Zones]. Ports have been held to be a highly polluting activity and as far as categorization of industries is concerned, discussions were held at the national level conference of the Environment Ministers of the States, held in Delhi in April, 2015, and to be precise, no "Red Category Industry" would be permitted in eco-sensitive and protected area. Although Central Pollution Control Board issued directions on 30th April, 2020 that the ports, harbours, jetties and trenches are non-industrial operations, the fact remains that they do not lose the character of being in "Red Category". The Office Memorandum, dated 8th June, 2020, excluding ports from the "Red Category" is misconceived and, hence, the said Office Memorandum, dated 08th June, 2020 and Direction, dated 30th April, 2020, so also Office Memorandum dated 26th May, 2022, are all liable to be quashed and set aside by this Authority. The Ministry of Environment & Forests seems to have already decided that the project should be permitted which is clear from Para 16 of the Affidavit filed by the Ministry of Environment & Forests in Civil



Appeal Nos. 5718-5719 of 2021 before the Supreme Court of India [vide Para 62 of Written Statement], and that is why, on 19th February, 2020, Notification declaring Vadhvan as a "major port" was issued. This Authority was created to protect an ecologically-fragile Dahanu Taluka and the pollution and to consider and implement the precautionary principle as well as "Pay for Pollution" and, therefore, this Authority should also consider and implement the recommendation of NEERI and the directions of the Supreme Court. There is bound to be the damage to the environment, if the project is permitted. Finally, it has been stated that the port cannot be permitted and the permission should be declined by this Authority.

- [d] Prof. Bhushan Bhoir has filed his point-wise objections. Perusal of his objections shows general observations and nothing is specific - qua - the environment protection etc., due to proposed Vadhvan Project in the area. This Authority has carefully gone through the entire Objections filed by Prof. Bhoir and they would be considered at appropriate place, since they are of general nature.

[e] **COMMENTS/OBJECTIONS, DATED 15TH**



SEPTEMBER, 2022:

Conservation Action Trust [CAT], through Shri Debi Goenka, has raised certain points. These Submissions have been replied para-wise by the Applicant along with a covering letter, dated 30th June, 2023, particularly **Annexure-1** to the same. The said Submissions would form part and parcel of this Order here and marked as **Document No.1.** Similarly, the other consolidated points raised in the communication, dated 2nd February, 2023, by CAT also with reference to Full-house hearing held on 13th February, 2023 have been responded to by the Applicant-JNPA. The same is marked as **Document No.2.**

[f] SUBMISSIONS BY UNIONS OF FISHERMEN :

There was a large number of representations from the Fishermen Associations and many individuals having a cyclostyled nature of objections and they have drawn the attention of DTEPA regarding various issues. Names of some of such Associations are as under :-

- [a] Thane Zilla Macchimar Madhyawarti Sahakari Sangh Maryadit, Palghar, representation dated 7th February, 2023.
- [b] Thane Zilla Macchimar Samaj Sangh bearing Registration No. E-155/Thane, dated 21st October, 1957, representation dated 7th

February, 2023.

- [c] Thane Zilla Macchimar Madhyawarti Sahakari Sangh Maryadit, Palghar, representation dated 7th February, 2023.
- [d] National Fish Workers' Forum [NFF], bearing Registration No. 487/85, representation dated 8th February, 2023.
- [e] Maharashtra Macchimar Kruti Samiti.
- [f] Vadhavan Bundar Virodhi Sangharsh Samiti, representation dated 8th February, 2023.

The fishermen have represented many Forums regarding their objections, including the protests they held at Mumbai, and also during site inspection by the Authority. The main grievance is that there would be loss of livelihood for fishermen and tribals living in this area.

SUBMISSIONS BY JNPA – APPLICANT :

[g] The Applicant – JNPA was also heard through Shri Sanjay Sethi, the Chairman and Shri Unmesh Sharad Wagh, Vice-chairman of JNPA and Shri Madabhavi, the Director of the proposed port in the Full-house meeting held on 13th February, 2023. The Applicant filed several documents as well as research paper-books on record, and made their Submissions/Presentations, so also the scientists from various institutions. The stakeholders present, including all the Members of this Authority as well as Scientists and the representatives of the Agencies, had conducted surveys etc., in Vadhvan area. The Applicant – JNPA has submitted the



following paper-books containing various Research Reports etc. :-

- 1.a. Detailed Project Report.
- 1.b. Development of Greenfield Vadhavan Port – Road DPR.
- 1.c. Development of Greenfield Vadhavan Port – Rail DPR.
2. Draft EIA Report.
3. Impact Study on Proposed Vadhavan Port on Coastal Fisheries Report by CMFRI.
4. Draft SIA Report.
5. CRZ Mapping Report by IRS.
6. Study on Bio-Diversity Report by NIO.
- 7.a. CWPRS Report on Vadhavan Impact of Dredging TR No. 5970 – November, 2021.
- 7.b. CWPRS Report on Hydrodynamic & Siltation Study for New Layout TR No. 5968 – November, 2021.
- 7.c. CWPRS Draft Report on Impact Flooding on Dahanu Region.
- 7.d. CWPRS Report on Flood Hydrographs in the Dahanu Creek TR No. 5985 – 2021.
- 7.e. CWPRS Report on Desk and 2D wave flume studies for design of revised breakwater – 5952 -2021.
8. Report by NCSCM & the Committee constituted by NGT on VPPL.
9. Shore Line Changes Atlas of the Indian coast –



Maharashtra & Goa.

10. National assessment of Shoreline changes along Indian coast by Nation Centre for Coastal Research, Chennai.

The following Issues were framed :-

PRELIMINARY ISSUES :

Ans.

- [a]** Whether, in the wake of Order, dated 19th September, 1998, passed by DTEPA in the matter of P & O Ports [India] Pvt. Ltd., by which a Preliminary Issue was decided that the activity of development of port/Vadhvan Port was an "Industry" in "Red" Category, and was impermissible in Dahanu Taluka, the present application should be summarily dismissed?

.... **No**

- [b]** Whether, in the wake of Order, dated 19th September, 1998 made by the DTEPA, the proceedings in DTEPA Case No. 2 of 2022 are liable to be dismissed in the light of principles akin to *res judicata*, and without going into the merits?

.... **No**

- [c]** Whether the actions of JNPA – Applicant in carrying out surveys, biodiversity studies and other types of studies in Vadhvan area of Dahanu Taluka without obtaining prior permission from DTEPA, vide Minutes of Meeting, dated 30th May, 2017 are void and as such should entail into dismissal of Case No. 2 of 2022?

.... **No**

- [d]** Whether DTEPA should stay its hand in deciding the validity of the Order, dated 30th April, 2020 by Central Pollution Control Board, Office Memoranda, dated 8th June,

2020 and 26th May, 2022, issued by the Ministry of Environment & Forests?

.... No

ISSUES ON MERITS :

[e] Whether the Order, dated 30th April, 2020 by CPCB, Office Memoranda, dated 8th June, 2020 and 26th May, 2022, both issued by MoEF & CC, are valid and legal?

.... Yes.

[f] Whether proposed establishment and development of "Major Port" at Vadhvan in Dahanu Taluka would be in violation of Special Dahanu Notification, dated 20th June, 1991, CRZ Notification dated 19th February, 1991 and directions of Hon'ble Supreme Court in the case of Bittu Sehgal?

.... No

06. CONSIDERATION :

[i] It would be appropriate and useful to state the legal cases – qua – Dahanu Taluka before entering into detailed discussion. **Dahanu Taluka Environment Protection Group** had filed a Petition in the Supreme Court of India against **Bombay Suburban Electricity Supply Company Ltd. ["BSES"]** [(1991) 2 SCC 539], which was decided on 19th March, 1991. It would be useful to reproduce some paragraphs from the said judgment. The said paragraphs are Para 2, Para 3 (2), (4) & (6), paras 4 and 5, which are quoted below :-

"2. The limitations, or more appropriately, the self-imposed restrictions of a Court in considering such an issue as this have been set out by the Court in Rural Litigation & Entitlement Kendra v. State of U.P. and Ors. 1987 (1) SCR 637 and Sachidanand Pandey and Anr. v. State of West Bengal and Ors. The observations in those decisions need

not be reiterated here. It is sufficient to observe that it is primarily for the Governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people on the one hand and the necessity for preservation of social and ecological balances, avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance between these two conflicting objectives. The Court's role is restricted to examine whether the Government has taken into account all relevant aspects and has neither ignored or overlooked any material considerations nor been influenced by extraneous or immaterial considerations in arriving at its final decision.

3. Having regard to the fact We shall briefly deal with the contentions urged before us:

(1)

(2) The principal objection on behalf of the petitioners is that the clearance is in the teeth of the findings of an expert body appointed by the Government itself to examine all the aspects of the proposed location at Dahanu. It is contended that this Appraisal Committee for Thermal Power Stations (EAC) held its meetings on 27th October, 1988 and 29th December, 1988. The meetings were attended by the members of the EAC, concerned officers of the State of Maharashtra, the representatives of the company and representatives of various public bodies and groups. The Committee, after examining the various aspects, considered the site at Dahanu unsuitable and listed nine reasons for this conclusion. It is pointed out that this conclusion of the EAC was arrived at on 29.12.88. Surprisingly, counsel say, despite the opinion of the EAC, the Government of India cleared the proposal on 29.3.1989 without any reasons disclosed for rejecting the expert body's report. This, it is urged, shows absence of application of mind on the part of the Government to the dimensions of the problem.

Prima facie, this appears to be very forceful objection. But it proceeds on the misapprehension that the views of the EAC represent a decision of the Government and that the approval of the project is in the nature of a volte face. This is not correct. Sri Ashok Desai sought to brush aside the EAC papers relied upon as nothing but "minutes" and as ex cathedra pronouncements. This may be going too far. But we are in agreement with counsel that the findings of the EAC cannot be treated as conclusive or binding on the Central

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Government. We find that the Central Government had before it not only this "report" but also the findings of a State Expert Committee which had gone into the matter in detail and recommended the Dahanu site. The State Government in turn had before it several reports of expert bodies. The details are fully explained in the affidavit of Sri Ziradkar on behalf of the Government of Maharashtra which has been referred to in the judgment by the High Court. It is also seen that a comparative study of the two sites on all aspects such as pollution, contamination of fresh water sources, effect on fisheries, effect on plantation, agriculture and forests and effect on the tribal population living in the affected areas was looked into.

After examining all the aspects, the State Government approved the proposal subject to several stringent conditions. There were also a couple of reports received after 29.12.1988 but before 29.6.1990 when the final decision of the Central Government, after the reconsideration directed by this Court, was taken. The several expert reports expressed the view that the pollution of water on account of the hot water discharge from the cooling plant and the atmospheric pollution due to outlet of gases would be well within permissible limits. Though the EAC had pronounced against the location of the thermal station at Dahanu the Government of India had before it the strong recommendations of the State of Maharashtra and the several reports referred to above. If, after considering all the material, the Central Government chose to accept the recommendations of the State Government, its action cannot be said to be arbitrary. That apart, even assuming that some aspects might have been overlooked by the Government, that possibility has been taken care of as a result of the interim directions of the High Court which resulted in a reconsideration of the whole issue in the light of the specific objections put forward by the petitioners. We have already referred to the fact that on 29.6.90 an affidavit and memorandum were filed on behalf of the Union meeting everyone of the objections that were sought to be raised. We are not concerned with the question whether the decision taken is right or wrong; the question is whether it has been taken after a consideration of all relevant aspects. It is clear that in the circumstances outlined above and having regard to all the material that has been made available, it is not possible to agree with the counsel for the petitioners that the Government decision should be faulted as it runs counter to the views of the EAC or that the Government has not applied its mind to all relevant aspects of the setting up of a thermal power station at Dahanu.

(3) Another grievance

(4) The second objection based on the guidelines is that the present plant cannot be located in such a way as to ensure being away from HTL by more than 500 metres not to speak of its being beyond 5 kms. from the coastline. Here again attention is drawn to the EAC's report which says that "the site falls within high-tide line in the Dahanu creek" and that "the site is low-lying land virtually in the creek which gets submerged during high-tide". It is true that the plant is located within 500 mtrs. of the sea but, for the reasons already pointed out, it is impossible to rigidly apply this standard in the context of the present project. The second part of the objection regarding its being within 500 metres of the HTL is, however, based on a misconception. In the first place the restriction in the guidelines is only for the buildings of the thermal station and, for obvious reasons pointed out by Sri Desai, cannot be read to as to mean that no part of the site of the thermal station of about 800 hectares should at all fall within the distance of 500 metres. Secondly, the comments made by the EAC related to the site of the power plant building originally under consideration. As a result of the discussions that ensued subsequently and, in particular after the Government of India heard the various objections by the petitioners and took them up with the company, the company agreed to move up the thermal plant in such a way as to have a clearance of 500 metres. from HTL on all sides. This is perfectly clear from the letter written by the Company to the Government of India on 15th June, 1990 and the plan annexed thereto. The plan is one drawn to scale and we are told that the High Court satisfied itself that the new site for the thermal station buildings shown in the plan did have a clearance of 500 metres from the high tide line on all sides. We would, however, like to place the matter beyond doubt by directing the Central and State Governments to monitor the construction of the buildings under the scheme to ensure that no building of the thermal power station comes up within a distance of 500 metres from the HTL.

(5) Learned Counsel

(6) Finally, counsel for the petitioners expressed an apprehension that the conditions imposed for the clearance of the plant may not be capable of enforcement by the Government or may be relaxed or waived at a later stage. In this context, it is submitted that the obligatory requirement to set up a FGD plant immediately has already been waived by the State Government on the application of the company and that the proposal is now before the Central Government. It is suggested that while a large number of conditions are



imposed on paper there is a danger of these conditions being slowly relaxed in actual practice over a period of time with the result that all these directions will become meaningless in course of time. It has been submitted that it is the experience of the petitioners that similar relaxations have been given by the Government in respect of earlier projects which had been likewise conditionally cleared.

The apprehension that the Government will not be in a position to enforce the conditions imposed for the clearance is not well founded. In fact one of the conditions specifically mentions that if there is any infringement of the conditions, the Government will have a power to shut down the operations immediately in the power plant. There are also enough statutory provisions to enable the Government to enforce these conditions. There is, therefore, no substantial reason for the petitioners to apprehend that the conditions can be violated by the company with impunity.

4. We may observe that there is no material before us to show that the conditions imposed while granting sanctions are being relaxed without proper advertence to the consequences. So far as the present allegation regarding the FGD plant is concerned however, it is not denied that the Company has asked for dispensing with the requirement at this stage. Sri Ashok Desai submits that this has been done on the basis of the findings of the World Bank that, having regard to the nature and quality of the coal proposed to be used as could be seen from the analysis made available, the immediate installation of a FGD plant may not be necessary. It has been suggested that the plant could be designed in such a way that it found necessary the FGD plant could be installed at a later date. Shri Ashok Desai also submits that the Environment (Protection) Rules, 1986, which have been promulgated on 30th August, 1990, also envisage a policy of increasing the stack height so that contamination by emission of gases at ground level might be minimized. He submits that there is no reason for the petitioners to anticipate any relaxation of this condition if it will be harmful to environmental interests. We do not wish to say anything more at this stage on this issue except to say that the condition regarding an FGD plant has been imposed under the Government sanction and this has to be adhered to by the company. Whether it has to be relaxed or not in future will be a matter which has to be tackled when the application is made in this behalf and considered by the Central Government. But, we think, some safeguard should be provided in this regard which we indicate below.

5. For the reasons discussed above, we are satisfied that the clearance to the thermal power station was granted by the Central Government after fully considering all relevant aspects and in particular the aspects of the environmental pollution. Sufficient safeguards against pollution of air, water and environment have been insisted upon in the conditions of grant. However, in order to allay the apprehensions on the part of the petitioners that the company may seek and obtain relaxations or modifications of the conditions that may prove detrimental to environment, we direct that the condition requiring the installation of a FGD plant should not be relaxed without a full consideration of the consequences and that, if there is any proposal from the company to relax this or any other condition subject to which the plant has been cleared, neither the State Government nor the Union Government should permit such relaxation without giving notice of the proposed changes to the petitioner groups and giving them an opportunity of being heard."

[ii] In **Bittu Sehgal & another Vs. Union of India & others** [Writ Petition [Civil] No.231 of 1994; decided on 31st October, 1996], the following relevant observations are quoted :-

"We are of the view that continuous monitoring at the level of the State Government and also by some independent statutory Authority is necessary to protect the ecologically fragile Dahanu Taluka. The State Government is under an obligation to implement the Town/Original Plan as approved by the Government of India, subject to the conditions imposed in the Official Memorandum dated March 6, 1996 by the Government of India. We direct the State of Maharashtra to execute the said plan, subject to the conditions and also the two notifications issued by the Government of India dated February 19, 1991 [CRZ Notification] and also the Notification dated June, 20, 1991, pertaining to Dahanu area. The State Government shall also take into consideration and implement all the recommendations of the NEERI as reproduced by us in the earlier part of this Order."



"So far as this Authority is concerned, the Supreme Court has observed -

"The Authority so constituted by the Central Government shall consider and implement the "Pre-cautionary Principle" and the "Polluter Pays" principle. The Authority shall also consider and

"The Supreme Court in its order dated 30th October, 1996 has observed, that the Central Government has declared Dahanu Taluka as ecologically fragile area by the Notification dated 20th June, 1991. Similarly Govt. of India had also issued another Notification dated 19th February, 1991, declaring the Coastal Stretches as Coastal Regulation Zone (CRZ) and has regulated the activities in the said Zone. It was then observed by the Supreme Court :

"The Notifications have been issued by the Government of India under the Environment (Protection) Act, 1986, the notification dated Feb. 19, 1991 relates to the Coastal area in general. Subsequently on June 20, 1991, Govt. of India issued another Notification relating to Dahanu Area. In particular, Dahanu Area has been declared as ecologically fragile area. The two notifications have been issued with a view to protect the ecology and control pollution in the said area."

"Then Supreme Court had made a reference to the Report submitted by the NEERI and observed:-

"Pursuant to the above quoted order the NEERI placed on the record of this Court its Report dated October, 19, 1996. The Report is a useful document which may be kept in view by the Bombay High Court while monitoring this case and also by the Authority (to be constituted as directed in this Order), while implementing the Regional

Plan relating to Dahanu Taluka."

"implement the recommendations of NEERI as quoted above. Needless to say that the Authority shall ensure the implementation of the Notifications mentioned in the Order above."

[iii] This Authority on 19th September, 1998, made an order in No. DTEPA/Vadhavan Port/98 and decided only by way of Preliminary Objection, holding that construction/establishment/development of "Mega Port" was Impermissible in view of the Special Dahanu Notification, dated 20th June, 1991. The said Order is marked as **Annexure-A** to this order.

The background for the above Order appears to be a Letter/Proposal, dated 19th November, 1997 sent by the Govt. of India to DTEPA that Govt. of Maharashtra had moved the Govt. of India to permit the State to develop modern All-weather Port at Vadhavan in Dahanu Taluka, which may be examined by DTEPA. The proposed Port would handle "Cement, Coal, Petroleum Products, Chemicals etc" and the location of the Port will be on land at Vadhavan and the seashore [onshore].

[iv] Hon'ble Bombay High Court in Writ Petition No. 581 of 1997 [Conservation Action Trust Vs. Union of India; decided on 16th July, 2018], inter alia, issued directions as to the first issue [vide paras 8 to 14]. Pursuant to the said directions, compliances were made and lastly the Regional Plan has been approved by State Govt., and is also



undergoing the process for 'Modifications' for roads/rail infrastructure in the Regional Plan for the 'Vadhavan Port Project'. A copy of the said judgment, dated 16th July, 2018 is produced as **Annexure-B** to this Order.

[v] National Green Tribunal, New Delhi [West Bench], had on 15th June, 2021 made an ex parte order and issued directions to MoEF & CC to revisit the Order/Directions by CPCB, dated 08th June, 2020, and consequent Office Memorandum, dated 30th April, 2020, and to constitute a Committee of Experts, and then take a fresh decision. A copy of NGT's Order, dated 15th June, 2021 is at **Annexure-C** with this Order. NGT dismissed Review Petition - qua - the said Order, dated 15th June, 2021. Special Leave Petitions are pending in the Apex Court. The MoEF & CC, however, implemented the NGT's Order and constituted an 'Expert Body'/Committee which submitted its report, that is to say, inter alia, April, 2022 Report by National Centre for Sustainable Coastal Management [NCSCM], which was studied by the MoEF & CC and accepted and it issued Office Memorandum, dated 26th May, 2022. The CPCB's Order, dated 30th April, 2020, thus, upon revisit stood confirmed, but with fresh terms.

07. With the above preface, the Issue-wise discussion needs to be made, which is as under:-

[a] **As to Issue No.[a], [b] & [d]** : All the Objectors have unanimously urged that this case should be

summarily dismissed on the Preliminary Issues and earlier order, dated 19th September, 1998, should be upheld/followed on the principles akin to '*res judicata*'. This Authority has carefully considered the Issues.

The following salient distinguishing features are worth mentioning :-

- [i] Application/Proposal, dated 19th November, 1997, was, at the behest of P & O [Australia] for Govt. of Maharashtra, examined by DTEPA. Now, the Applicant is JNPA with a major shareholding and MMB with a minor shareholding. Hence, Applicant-JNPA was not a party to the said proceedings and order, dated 19th September, 1998.
- [ii] The said Order, dated 19th September, 1998, if carefully read, will reveal that it was not an adjudication on merits at all, but was as a preliminary nature of order, without a single data, study, environmental regulators and research on any angle, by holding that development of a 'Mega' Port would obviously be an "Industry."



That was because there would be huge constructions on land/shore, which would come up, and that, though the 'Port' was not declared as an "Industry" in the Special Notification, dated 20th June, 1991, the handling of millions of tons of cargo would partake the character of 'Industry'. In this connection, though we have our own reasons, namely that construction of roads and laying of railway tracks for public or cargo transportation, that too for a "National Project" [as declared by Govt. of India], construction of a 'Mega Port' four-six kms. away in the sea from Vadhvan shore, by reclamation would only be a 'one-time activity' and would not be a permanent "Industry". We are, in addition, inclined to agree with the reasons for analysis made by NCSCM on the CPOB's order that the "Port" activity would partake the character of "Service Industry". That is besides notable recommendations to prevent environmental impacts, ecological disturbance, pollution and so and so



forth. Thus, there are glaring changes in the scenario of the year 1998 and now in 2023, besides detailed research studies, and examinations, assessments, recommendations, Terms of References [ToRs], nothing of which was before this Authority in the year 1998.

Vadhvan has been declared a 'Major Port' by Central Govt. in February, 2020 under the Indian Ports Act, 1908, and that is the thirteenth [newly added] major port in the country. 'Non-Major Ports' are notified all within the jurisdiction of State Governments. In so far as Regional Plan is concerned, the situations in 1998 and 2023 are far different. In the interregnum Bombay High Court had to intervene in Writ Petition No. 981 of 1997; decided on 16th July, 2018 [Conservation Action Trust Vs. Union of India], and had issued directions regarding Regional Plan with a time limit [**Annex.B**]. To Repeat, the directions by now have been

complied and Regional Plan is approved strictly in accordance with the Notification, dated 20th June, 1991 and the directions in Bittu Sehgal's case.

- [iii] As per the P & O proposal, the berths of the Port were proposed to be constructed by excavating rock shelf that stretches from the coast at Vadhvan. No Master Plans were furnished by P & O, so also detailed layout of back up facilities. It is estimated that 5.5 million tons of cargo would have been handled by the year 2001. The cargo handled would have been cement, coal, petroleum products and chemicals. The CRZ-I considered on the basis of marine benthic life and dense mangroves by referring to CRZ Notification - 1991, did not permit large-scale construction and developments.

There have been massive changes from 1998 till 2023, - inasmuch as coastlines, CRZ, CRZ categorization, permissible



developments and stricter CRZ norms to protect Mangroves and environment have been introduced. There is a total prohibition in CRZ-IA – Ecologically Sensitive Area [ESA] and fifty meters minimum from 'Mangroves'. The Maps, based on Coastal Zone Management Plan placed on record show that actual proposed port area in sea is about half kilometer from Mangroves and no activity nearby is permissible, nor there is any such proposal. Then there is CRZ-IB, which is an area other than ESA, where developmental activities in a regulated manner between HTL and LTL are permitted with varied distances from fifty meters to one kilometer. Unlike then, Master Plans, detailed layouts, back up facilities all are placed in large number of documents [Paper-books] by supplying the same to objectors. Now, coal, petroleum products, cement, LPG, LNG all are not proposed to be handled. As to Marine Benthic life, studies have



been made and two Reports from NIO, Goa, do not indicate any alleged alarming situation as propagated. The same can be taken care of while monitoring by DTEPA in a separate Monitoring Case which will be registered.

It is seen from the record of this Authority that the Office Memorandum, dated 26th May, 2022, validity of Order, dated 30th April, 2020, issued by the Central Pollution Control Board, Office Memorandum, dated 8th June, 2020, has been challenged before this Authority by various objectors. Since this Authority is having plenary powers to investigate, analyze all the Expert Reports, various Notifications with the assistance of Expert Members of this Authority, this Authority also being the first Authority, like the First Court, is under a duty to decide/adjudicate on all the aforesaid orders. During the course of hearing, Ms. Kakalia, Adv., and others had stated that all those orders and Office Memoranda being



under challenge before National Green Tribunal, this Authority should refrain from deciding or adjudicating on the same. It is not possible to agree with this submission in the first place because in so far as the said Office Memoranda and Notifications relate to Dahanu Taluka, Dahanu Taluka Environment Protection Authority is the first Authority having the plenary powers to adjudicate upon all such issues arising - qua Dahanu Taluka. This being the First Authority, the High Court or the Supreme Court would be the Higher Courts in hierarchy to find out the correctness of the Orders of this Authority on facts as well as in law. To put it in other words, hierarchical Courts ought to have benefit of the reasons and findings of this Authority, which would be based on evidence, documentary as well as oral, the expert opinions of the Members of this Authority as well as the objectors and various Hon'ble Experts in various fields. In other

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words, if the submission made by Ms. Kakalia is accepted, the higher Courts will not have benefit of the opinions of various experts at the ground level. Needless to say that if this Authority decided to hear even the individuals, so also the Advocates and NGOs and various Samitis/Sanghatanas/Unions who have filed their Objections, this Authority thinks that it may not be possible for the Higher Courts or Tribunals to hear them at an appellate stage. That is why this Authority thinks that it is its obligation and duty to decide the correctness of the aforesaid Office Memoranda and Orders, dated 30th April, 2020, 8th June, 2020 and 26th May, 2022.

Thus, the above were the only anxious features expressed in the said Order, dated 19th September, 1998, and to our mind, the changes, as noted, and are brought into existence, have changed the complete scenario in last twenty-five years, i.e., from 1998 to 2023. The anxiety then expressed was also justified in the then situation. We are, hence, as DTEP Authority, convinced that the dictum by the Hon'ble Supreme Court in Bittu Sehgal's case and the

Notification, dated 20th June, 1991, in no case, would be violated.

[b] As to Issue No.[c] : We find that in the meeting, dated 30th May, 2017, prior permission to carry out surveys in Vadhvan area was necessary. However, it is seen that from January, 2019 till 11th April, 2022, DTEPA was not functioning, and the existence of Monitoring Committee was void *ab initio*. That apart, making of surveys could not prejudice anyone, nor there is any material to show prejudice. Then, the 'Vadhvan Major Port' was notified by Govt. of India for the first time in February, 2020.

As a sequel, we answer Preliminary Issues [a], [b], [c] and [d] in the Negative.

08. As to Issue No.[e] & [f] [Issues on Merits] : It is not in dispute that the Special Dahanu Notification, dated 20th June, 1991, does not prohibit establishment, development of ports, harbours, nor stated that it would be "Red" category industry. On the contrary, EIA Notification, dated 14th September, 2006, has, in its classification, put item (7), which is for physical infrastructures including by Environmental Services and in that 7 (e) is for Ports, Harbours, breakwaters, dredging. Thus, the nature of Ports, Harbours is of a Services providing for physical infrastructures. Perusal of the said Item (7) shows infrastructures, like Airports, Highways etc. If not identical like Airports, the activity of Ports and Harbours, to our mind, also should fall in the realm of service

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infrastructure.

In so far as laying of rail lines is concerned for the port, in question, there is no requirement of obtaining 'Environmental Clearance' in view of Section 11 of the Indian Railways Act, 1989, read with judgment of the Bombay High Court, dated 29th April, 1992 in **Goa Foundation & others Vs. The Konkan Railways in Writ Petition No. 170 of 1992**. Environment Notification of 2006 gives a List of projects requiring clearance, but Railways is not to be found in that List. There cannot be any Port without supporting railway infrastructure.

09. On 07th October, 2020, MoEF & CC [IAD] issued Terms of Reference - qua - Development of Greenfield Port at Vadhvan. The following relevant items 3 [ix}, [x], [xi], [xii], and [xiii] are thus:-

"3. The project proponent

[i] to [viii].....

(ix) **Item of Schedule to the EIA Notification, 2006 : 7 (e) Ports, Harbours.**

(x) **Applicability of General/Specific Conditions as per EIA Notification, 2006 : NA.**

(xi) **Landuse/Landcover of project site in tabular form :** The project envisage Reclamation of 1473 Ha and acquisition of 571 ha. Reclamation of 1473 ha in inter tidal zone proposed near the shore in levels ranging from +4.2m CD to -2 m CD and acquisition of



571 ha land for road and rail linkages is proposed. Acquisition of additional land area of 1000 has of Govt. Land is proposed for road and rail related infrastructure and other allied services of port i.e., solar power, corridor for power and water pipelines, public amenities, housing for employees and emergency personnel etc.

- (xii) **Landuse/Landcover around 10 km radius of project site (1 km in case of Highway projects) :** The new land use plan envisages to provide port facilities which essentially comprises of Port and Port related activities. It is proposed to reclaim 1473 ha land in intertidal zone near to shore in levels ranging from +4.2 m CD to up to 2 m CD. As per new land use plan it also proposed to acquire 571 ha of land for road and rail linkages owned by Private, Government and Forest Department. In addition to above it is proposed to acquire Government land of 1000 ha is also proposed for rail and road allied services of port in addition to Port related infrastructure like solar power, corridor for power and water pipelines, public amenities, housing for employees and emergency personnel etc.
- (xiii) **Terrain and topographical features :** Topography of the intertidal zone is rocky and highly undulated. Casuarina plantations are observed along the shoreline. The bed levels in intertidal zone are sloping west. The slope varies from 1:350 to as gentle as 1:2000 in some section. Most of the rock at Vadhavan Point and off comprises rock of basaltic composition. The basaltic rock is dark grey, black and hard, tough and compact. The rock is susceptible to superficial weathering. Most part of the hard rock under the sea is whieathered and degree of weathering varies from exposed rock to subsurface rock with



subsurface rock more weathered than the exposed one."

After the above Terms of Reference, dated 7th October, 2020, the Applicant-JNPA, the project proponent, made a notable change in respect of location of the Port, changing it from onshore to offshore, and to fill material through marine borrow pit as against [earlier] proposal of earth filling borrowed from land location, particularly in view of the ecological sensitivity of the region [Dahanu Taluka]. The material from offshore shall be borrowed from Daman coast about fifty kms from port site, by dredging in a highly modernized manner.

Thus, after the above change of location by proponent Applicant, due to eco-sensitive land area of Dahanu Taluka, fifty kms away for borrowing material, that too sand by dredging for making reclamation in the sea at a distance of four-six kms inside the sea, the major apprehension about earth, rock shelf that stretches from the Vadhvan Coast has been done away with No earth/rocks etc., shall be extracted from the eco-sensitive Dahanu Taluka. Whatever earth material would be needed would not be obtained from Dahanu Taluka and would be obtained from nearby places outside Dahanu Taluka. A map for proper understanding is at **Document No.3.**

10. The online proposal to the EAC, dated 19th December, 2022, seeking the amendment in ToR, in view of the changes as stated herein before, was considered by EAC in its 318th EAC meeting and it issued an order/communication,



dated 02nd July, 2023 prescribing for additional ToR numbering eleven. The same are reproduced below :-

"8. Based on the deliberations in the meeting and information provided by the proponent in support of the project, the EAC recommended for the amendment in Terms Of Reference, which was accorded vide letter no. 10-52/2020-IA.II dated 7th October, 2020. As per the recommendations of the FAC, the Ministry of Environment, Forest and Climate Change hereby accords amendment in Terms of Reference for 'Development of Greenfield Port at Vadhavan, District Palghar, Maharashtra by Jawaharlal Nehru Port Trust (JNPT)' as mentioned at point 6 above along with the following additional TORs for conduct of additional studies.

- i. Justification for the site suitability and viability of the project shall be submitted.
- ii. The PP has to conduct the studies as the revised configuration for the EIA/EMP studies.
- iii. Traffic assessment studies for the increase of the traffic due to port related activities on NH-8/Vadodara Expressway shall be conducted.
- iv. JNPA has identified a burrow pit at around 50-65 kms into sea from the proposed Vadhavan port for obtaining sand for creating reclaimed land at the proposed Vadhavan port. The marine sand will be dredged using Trailing Suction Hopper Dredger (TSHD) and the sand will be transported and dumped at the reclamation. This has involved the mining in the marine in this regard Comments/permission shall be obtained from the Ministry of Earth Sciences.
- v. A detailed and additional biodiversity study for the burrow pit region covering monsoon and winter season (considering the sand flats are active breeding areas for fishes and Other sand burrowing fauna) should undertaken by Zoological Survey Of India.
- vi. A comprehensive and dedicated socio-economic



studies to be conducted with specific focus on fisherman community both in Dahanu and Daman region considering large scale sand mining that may have an impact on active fishing grounds. Such fishing grounds to be documented by Central Marine Fisheries Research Institute (CMFRI) or similar competent nationally reputed institute with expertise in fisheries. Details regarding the impact, mitigation and R&R for fisherman community be envisaged.

- vii. The mining also proposed after 12 nautical miles around 50-65 kms into sea Ministry shall obtain the Comments from the CRZ division in this regard.
- viii. Public hearing shall be conducted at Dahanu district and Daman districts.
- ix. No LNG and LPG terminal shall be allowed in the proposal at this time.
- x. Two seasons additional baseline data shall be collected by Zoological Survey of India covering monsoon and winter with specific focus on offshore marine mammals movement and fish aggregation sites if any with special emphasis on offshore sand mining areas and port reclamation areas.
- xi. Impact of breakwaters and transport carriageway on the erosion/accretion to be evaluated by National Center for Coastal Research.

The objectors, particularly Adv. Ms. Kakalia, Shri Debi Goenka, Prof. Bhoir vehemently contended that DTEPA should wait for the result of the studies contemplated by Additional ToR. We are of the opinion that since all the specific studies have been completed and substantive facts have been brought out in Applicant's submissions, as such we do not think that procrastination of the present proceedings on such grounds would be justified. The process regarding studies after Additional ToR would be better examined by EAC. As stated earlier, the present decision is not final, as the same is subject

to harder/ more comprehensive analysis by EAC.

But then, in so far as Dahanu Taluka is concerned, we think the Special Dahanu Notification dated 20th June, 1991 as well as the Supreme Court directions are not at all violated, as the entire port location has been shifted and except for highway, rail lines and some onshore reclamation by material which will be obtained from beyond Dahanu Taluka. The aspects about pollution due to dust etc., are all taken care of by recommendations made by NCSCM. Mitigation measures have been suggested.

11. At any rate, road and rail connection to the port area is its integral part. The construction of roads, rail lines in respect of National Projects is governed by Clause 15.1 (10) of the Building Byelaws and Development Control Rules for Regional Plan of Dahanu. Hence, the Applicant is entitled to construct roads as per DPR by using the same material underneath while constructing connecting roads in Dahanu Taluka area. The construction of roads for port cannot violate the Notification, dated 20th June, 1991, as the activity of construction of roads by Public Works Department of Zilla Parishad, Public Works Department of State Govt in Dahanu Taluka is a regular feature. However, any new road construction will be as per Regional Plan after approval from DTEPA.



12. To test the validity of the impugned CPC Order, dated 30th April, 2020 and consequent Office Memorandum,

dated 8th June, 2020, we have clearly made discussion as to the massive changes during the long period of twenty-five years from 1998 to 2023, which are bound to lead in our considered and careful assessment - qua - Special Dahanu Notification, dated 20th June, 1991, that no adverse impacts to eco-sensitive Dahanu area or environment would be minimized by adopting stringent Environmental Management Plan due to establishment of a 'Major Port'. We uphold the said order, dated 30th April, 2020 made by CPCB for the following additional assessment and reasons furnished by NSCSM in its Report.

NCSCM REPORT :

13. The Central Pollution Control Board's Direction, dated 30th April, 2020, was the subject-matter of a thorough examination by NCSCM, and in discussing the same with reference to the earlier Notification, dated 7th March, 2016, it has been found in the Report that ports are a Service Sector having nothing to do with industrial operations and that is why the ports are excluded from the "Red Category". The following observations with regard to ports as a Service Sector with underscoring key observations are quoted below from para 10 at page 70 of NCSCM Report of April, 2022:-

"10. Assessment of CPCB Notification

a) Ports as a service sector



- Ports are associated primarily with freight services (loading-unloading, stowing-unstowing, transport between ships or ship-port) and are in general associated with the service sector.
- However, port activities such as infrastructure development, operation and maintenance may cause environmental stress, but much of it reversible, if the port operates in following the sustainable green port guidelines with both environmental and economic benefits.
- The port operates within the framework of national and internal maritime rules, laws and legislation and the activities are periodically monitored for environmental, ecological and social variables, to rule out any adverse impact on the terrestrial and aquatic environment,
- These activities are aligned to the environmental guidelines and emission norms of CPCB including sea water use classification guidelines (SW-IV).
- Government of India, vide press release dated 05 Aug 2021, has undertaken green port initiatives for the major ports for adopting the green port norms for the environmental benefits. These include:
 - Monitoring environmental pollution,
 - Acquisition of dust suppression systems,
 - Setting up of sewage waste water treatment plants,
 - Setting up of garbage disposal



- system for ports and ships,
- Developing shore reception facility for wastes from ships,
 - Setting up projects for energy generation from renewable energy sources,
 - Providing shore power to ships at berths,
 - Creating Oil Spill Response (Tier-1) capabilities at all ports,
 - Taking actions to improve harbor water quality,
 - Inclusion of sustainable practices in terminal design,
 - Development and operation
 - increasing green cover within port premises etc.

As the shipping and port sector does not involve any production related activities which can significantly impact the environment, the Central Pollution Control Board (CPCB) took an initiative to reclassify the ports and harbours as non-industrial operation(service sector).

CPCB has issued directions vide letter no. B-29016/ROGW/IPC-VI/2020-20 dated 30th April 2020 notified that the port, harbours, jetties and dredging operation as Non-Industrial Operations (Activities / Facilities / Infrastructure / Services), thereby excluding from 'Red' category.

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As per the direction issued by CPCB, the port does not fall in the red categories of industry. Hence, activities relating to the 'port' falling in the Ecologically Sensitive Area, may be considered in accordance with the provisions of the Notification S.O.416 (E) dated 20th June, 1991 and Notification S.O.884(E) dated 19th December, 1996 issued by the Ministry and as amended from time to time.

Key Observations

The generic observation that ports are associated primarily with freight services (loading-unloading, stowing-unstowing, transport between ships or ship-port) is the basic premise for the CPCB to exclude ports from the RED category. Despite the anticipated pollution impacts, it is appropriate to mention that ports need to conform to the environmental standards and safeguards as prescribed for "Green" Ports, and by following national and international green protocols."

NCSCM FURTHER REPORT :

14. The Report submitted by NCSCM was examined in details. The NCSCM has prepared the Report as per the terms from Expert Committee constituted by MoEF & CC as per direction from NGT. The NCSCM made an analysis, in detail, of the available secondary data/information in the form of satellite data for the last fifteen to twenty years, in order to study the impacts on the coast line and environment offshore. The mathematical analysis/modelling studies were also conducted to find out the possible changes due to the proposed offshore activities for establishment and development of the major port. The scientific satellite data and other form of information or data would not be available on the site. As such data has been stored for a number of



years from time to time for future studies. Vide Table-VIII in the NCSCM Report of April, 2022, the shoreline data from the years 1975 to 2022 was considered for making an assessment, i.e., almost for forty-seven years – long-term and short-term from the years 2000 to 2022 was calculated for approximately every hundred-meter along sea shore using the linear regression method. The following observations have been made in the said Report:-

- "- The baseline study indicates no impact on the environment and ecology
- During construction phase, likely impacts are high for shoreline and high for most other variables
- In the operation phase, most of the high impacts are likely to be minimized to moderate, low and to no impacts if the operations continue on a green port mode
- From the preliminary assessment, the water environment [in particular the coastal waters and creeks] and marine biota including fisheries are likely to be impacted during construction but it is expected that current baseline conditions will be restored if the port operations are as per the green port norms"

Since NCSCM Report is a detailed report, it would be appropriate to add the same to this order as **Document No.**

4.



The CWPRS has also concluded that the changes in

shore line are minimum.

[1] THE NCSCM HAS ALSO ANALYSED THE ASSESSMENT OF COASTAL REGULATION ZONE [CRZ] NOTIFICATION AND MANGROVES :

NCSCM having studied the entire data observed, thus, in relation to this aspect, based on the data furnished by the Institute of Remote Sensing, Anna University, Chennai, and as per the Report, the following observations have been examined in relation to the development within the CRZ IA [mangrove and 50m mangrove buffer zone], wherein the development is not permitted, and within CRZ IB [intertidal zone], No Development Zone [NDZ] of CRZ III [between 200m to 500m], where the developments have been proposed. The Proposed Approach Trestle, Proposed Breakwater, Proposed Navigational Area, Proposed Offshore Reclamation Area, and the Proposed Shelter Area fall within the CRZ IV A category, whereas the Proposed Reclamation Area near shore falls in CRZ IB, NDZ of CRZ III, CRZ III and CRZ IVA categories. Even though the CRZ categories along the Project Area include CRZ IA [Mangrove], no development has been proposed therein. The area in CRZ IA, i.e., about 39.53 hectares, and CRZ IA [50 meters Mangrove Buffer Zone], [CRZ IA to the extent of 50.86 hectares], is excluded from any development [Reference : Page No.69 of NCSCM Report].



15. Based on analysis of the NCSCM Report, it is necessary to underscore that post-construction, operation and maintenance of the proposed port are likely to reverse the adverse impacts, provided the prescribed norms for Green Ports are followed in letter and spirit. The Applicant is expected to implement the same accordingly.

It is significant to note that the ultimate and final authority to clear such a major port project from all the angles is the Expert Appraisal Committee [Infra.] [EAC], constituted by the Ministry of Environment, Forests & Climate Change [MoEF & CC] of Govt. of India, which consists of highly expert scientists, drawn from various relevant institutes in the country. Therefore, it would not be wrong to say that DTEPA is not the final authority in this context. Considering the magnitude of the major port, the EAC has already given Terms of Reference initially on 7th October, 2020 and thereafter on 2nd June, 2023. Upon perusal of the Terms of Reference [ToR], it is seen that they are stringent, and keeping in mind the ecologically fragile Dahanu Taluka, the DTEPA, under its duty, also would impose the conditions for issuing the permission, if any. Clause 15.10 of Development Control Rules and Regulations of Dahanu Taluka reads as follows :-

"15.10 Installations and constructions in relation to operational, defense and other activities of national importance, and laying of railway lines/highways, high tension lines and other public interest projects may be permitted in the agriculture or No Development Zone and in



other zones, including CRZMP area with the prior sanction of the State Govt. and DTEPA, as the case may be. Four infrastructure developments proposals – (i) Delhi-Mumbai Freight Corridor, (ii) Mumbai-Vadodra Expressway, (iii) Dahej-Nagothane Reliance Ethane Gas Pipeline and (iv) Navsari-Bhoisar 400 KV Power Grid Line can be considered under the Regional Plan as per the existing provisions.”

[Reference : Govt. Resolution No. TPS 1210/1230/Case No. 221/10/UD-12, dated 29th March, 2023].

As the Project is of national importance and the connectivity to the port is passing through Dahanu Taluka and an area of 275 hectares of land is expected to be acquired for road and rail connectivities, the environmental issues connected with development of roads and rail as well as the port need to be examined by DTEPA independently. It is observed that as per the mandate, the development of any infrastructure in line with NEERI Report has to be examined, and the Regional Plan, which has been approved by DTEPA, allows road development, if the project falls under the category of national importance as well as for a public interest vide Rule 15 (1), (10) of Development Control Rules. The DTEPA has allowed various road and rail connectivity projects within Dahanu Taluka with mitigative and precautionary measures to be undertaken by the project proponent. The extent of mitigative measures depends on how much the proponent plans to provide in their Environmental Impact Assessment [EIA] Report and mitigative measures to monitor and implement the measures to avoid pollution. As per the

Report submitted by JNPA under EIA and EMP for the subject project, they need to be looked into and any improvement needs to be suggested by DTEPA.

Thereafter, the process to streamline Regional Plan in accordance with the Notification and the directions of Hon'ble Supreme Court as well as the recommendations of NEERI was undertaken, and DTEPA had engaged the services of Mrs. Asha Dahake, a retired Town Planning Officer, as an independent expert, to examine the Regional Plan before putting the same in the meeting of the Authority. Accordingly, she took a month's time to study and to make suggestions, improvements and corrections and to remove some mistakes, and submitted her report to the DTEPA. DTEPA thereafter discussed the entire matter, including her report, and directed forwarding of the same to the Government for further action. The Govt., has then approved the Regional Plan on 29th March, 2023 by issuing a Govt. Resolution. The Applicant has contended that application for incorporating road and railway links in the Regional Plan was made on 31st March, 2023 by JNPA to the Govt., and the same is under process, having been recommended by the Town Planning Department of Dahanu Taluka and Palghar District [Thane, Palghar & Raigad [TPR] districts]. As per the procedure, after modification of the Regional Plan, as claimed by the Applicant - JNPA, for road and rail, the same will have to be referred by the Govt., to the DTEPA.



In so far as the Additional Terms of Reference [ToR],

dated 2nd June, 2023 provided by MoEF & CC is concerned, the submissions have been made by the Objector – CAT, Kashtkari Sanghatana, Thane Bunder Virodhi Samiti and Prof. Bhushan Bhoir. The points raised by them have been responded to by the Applicant-JNPA by three separate Affidavits, which are **Document Nos. 5.6 & 7.**

Except two aspects of studies in the Additional ToR, dated 2nd June, 2023, i.e., socio-economic status of fishermen community at Dahanu and the biodiversity study with a specific focus on offshore marine mammals' movement and fish aggregation sites, if any, at Port Reclamation Area, specifically close to Dahanu region, all other Terms of Reference pertain to Daman region for studies which studies would be submitted to EAC, which would be the Authority to decide thereon. The Applicant has submitted in its Submission with a covering letter, dated 28th June, 2023 at **Document 8**, that a majority of the studies with respect to biodiversity, including identification of mammals' movement, has been carried out by National Institute of Oceanography [NIO], Goa [Mumbai Regional Centre] and validation was also done by the National Institute of Oceanography during its visit on 18th and 19th May, 2023 and the additional report is annexed and there are certain recommendations by the NIO team after impact assessment. The mammals' movement was also observed and as such the mitigative measures need to be put in place. It is understood from the submissions of the Applicant that the Zoological Survey of India has been entrusted with the study of mammals' movement and aggregation of fishes in the



region and to monitor the same during project implementation. The study of socio-economic status of Dahanu fishermen is already completed by Central Marine Fisheries Research Institute [CMFRI] and the Applicant has indicated that the same will be validated, based on the latest inputs. As far as the studies of socio-economic status of fishermen at Daman is concerned, they are in progress, and would be submitted to Empowered Appraisal Committee [EAC] [Infra.] of the MoEF & CC.

16. The Applicant has submitted a Report on Marine Diversity Management Plan for the Vadhavan Port Project covering all the aspects of assessment of prevailing environment, flora and fauna, fishery, reptiles etc., and marine mammals and anticipated marine environmental impacts carried out through National Institute of Oceanography. The Impact study of the proposed Vadhavan Port on coastal fisheries is conducted by Central Marine Fisheries Research Institute [a Unit of Indian Council for Agricultural Research]. These Reports have comprehensively examined all various issues of biodiversity and mitigative measures. The recommendations have been recorded in Marine Biodiversity Management Plan [MBMP] under Chapter-VI of NIO Report. Similarly, the conclusions have been recorded in Chapter-IV of the CMFRI Report, in which the possible impacts within the port limits and predicted impacts are mentioned.



As far as the recommendations of social impact

assessment on fishermen is concerned, the CMFRI has prepared a List of Recommendations, which is quoted below :-

"Recommendations:

1. Identify the fishers, and coastal community who will be affected and provide compensation to minimize the economic impact/livelihood impact.
2. All the direct impacts, livelihood impacts to be adequately compensated and mitigated to maximum.
3. Compensation to those, whose fishing structures has to be removed and displaced.
4. There is no adequate medical facility in the proposed port area. To address the possible behavioural change and health issues created among the coastal community during the construction and operational phase of port, there is an urgent need to create adequate medical facility in the region.
5. With the adequate qualifications/skills specified, coastal community may be given preferential consideration for employment in the port jobs.
6. Any loss to the fixed assets in the lands of the coastal community to be compensated.
7. Interconnectivity between the coastal villages should not be restricted due to the port construction.
8. Mandatory navigational aid in the port premises and channels or any restricted areas. Timely communication to stakeholders on all important matters needing attention.
9. Many of the villages doesn't have proper landing centres and are mostly beach-based. Adequate arrangement has to be made to land the fish (facilities like jetty or harbour). Proper access to this landing area and fishing area from the jetty or operational base should be ensured. Adequate depth should be provided to the boats for the navigation if in case there are siltation chances, navigation issues during the construction or post-construction phase.
10. There are legal and institutional constraints in assessing damage to *Do I* fishery. The fixed structures (sus) in the sea are not exclusively included in fisheries legislation. Only fishing boats are registered. There is no information on the fishing structures in the sea with any agencies. The Government of Maharashtra or its bodies may come up with policies such as,



mandatory registration of fishing structures in the sea and any eligibility assessment should be based on that registered with the government agency. The *sus* locations if in case shared by fishers should be verified by sea surveys.

11. Support in fishing vessels to equip all with have transponders/AIS or VMS systems to identify this by other vessels in the ocean and reduce chances of accidents.
12. Installation of the artificial reef:-Based on the availability suitable types of artificial reefs can be deployed to increase productivity and support lobster fisheries.
13. Provision on value addition and branding of seafood products: Better income for fishers comes from better value for their harvest. Marketing and storage facilities appear to be major limitations in the region. Adequate Infrastructure should be developed for better marketing, improved income, and fresh fish for all.
14. Compensation or loans to likely affected fishermen (boat owners, crew, subsistence and marginal fishers) and persons involved in other fishery-related allied activities in the project area to continue their avocation of fishing.
15. Capital expenditure for switching to alternative livelihoods options like cage-culture, crab fattening, pond culture and shrimp farming.
16. Skill development or (Capacity building) of the marginal fishermen has to be taken care by shifting them to other than fishing activity.
17. Ice factory and cold storage facility at multiple locations should also be considered.
18. Support in improved navigation aid and up-gradation of fishing vessels.
19. Seawater quality in the port area/ port limit should be strictly maintained and monitored so that it should not cause adverse impacts on fishing and the environment.
20. Continuous fisheries monitoring programs on the effectiveness of the mitigation measures or additional impacts if any during the construction and operation of the project. Pollution is a major threat in the sea-coastal regions, reducing marine pollution in coastal waters, seawater quality in the near shore waters should be monitored regularly and pollution should not cause adverse impacts on fishing and the



environment.

21. Transformation of the coastal areas will have an impact, how and what extent, and what magnitude cannot be predictable at the current state of extreme events and climate change. However, a recommendation for regular monitoring program during the construction phase and audit after post construction phase to verify the status of the predictions about fisheries impact study and to detected and unpredicted/unforeseen Impacts. Evaluate the effectiveness of mitigation plans implemented by JNPT (navigation, fishing restriction, operation issues, etc.) during post construction phase.
22. A social impact study must be conducted if the port is to establish the actual impact if any shift in the fishing area/impact on fishing-based livelihoods.
23. Better income for fishers comes from better value for their harvest. Marketing and storage facilities appear to be major issues in the region. Adequate Infrastructure should be developed for better marketing, improved income, and fresh fish for all.
24. Proper access to the landing area and fishing area from the jetty. Adequate depth should be provided to the boats for the navigation if in case there are siltation chances, navigation issues during the construction or post-construction phase."

17. The Marine Biodiversity Report also proposes marine environment monitoring during construction and operations of the port and the same is on page no. 106 of NIO Report. As per the CMFRI Report, the fishermen will be deprived of their livelihood in the proposed port location. The extent of the people likely to be affected in the project-influence area has been identified by considering the influenced area within ten kilometers and the population of these fishing villages to be about 20,809 residing in 5333 households across sixteen villages. There are various fishing methods adopted in the region and the net practices followed falling within the port

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limits have been identified. There are about 265 nets of various activities. The Applicant also submitted that all the recommendations, as per the CMFRI Report, will be implemented under port project, and they have also submitted in the presentations during the meetings held on 13th February, 2023 and 6th July, 2023 that they will support all the developments for fishing activities as well as provide opportunities of adequate livelihood for the fishermen community. Port has shown its endeavour to support fishermen community in all respect, including adopting the State Compensation Policy for the project-affected fishermen issued vide Govt. Resolution No. Matsyavi-1121/CR/152/ADF-14, dated 9th March, 2023. The fishermen likely to be affected need to be identified as per the extant policy guidelines through a mechanism under the Fisheries Department and DTEPA will have to examine the proposal and suggest the methods of payment of compensation for the loss of livelihood and a strict implementation mechanism will have to be put into place to safeguard the interests of fishermen. The Applicant also will have to adhere to all the provisions of rules and regulations for rehabilitating the fishermen who will lose the means of their livelihood.

[III] COASTAL REGULATION ZONES [CRZs]:

The first Notification, dated 19th February, 1991, pertaining to CRZ was issued by the MoEF & CC under Section 3 (1) and Section 3 (2) (v) of the Environment (Protection) Act, 1986 and Rule 5 (3) (d) of Environment (Protection)



Rules, 1986. There appears to be substance in the submission of the Applicant looking to the Clause (2) (viii) of the said Notification, which reads thus:-

"2. Prohibited Activities :

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

- (i) to (vii)
- (viii) land reclamation, bunding or disturbing the natural course of sea water with similar obstructions, except those required for control of coastal erosion and maintenance or cleansing of waterways, channels and ports and for prevention of sandbars and also except for tidal regulators, storm water drains and structures for prevention of salinity ingress and sweet water recharge;
- (xiii)"

The aforesaid Clause (viii) stood substituted by the Notification, dated 9th July, 1997, and the substituted portion reads thus :-

- "(viii) land reclamation, bunding or disturbing the natural course of sea water except those required for construction of ports, harbours, jetties, wharves, quays, slipways, bridges and sea-links and for other facilities that are essential for activities permissible under the notification or for control of coastal erosion and maintenance or clearing of water ways, channels and ports or for



prevention of sandbars or for tidal regulators, storm water drains or for structures for prevention of salinity ingress and sweet water recharge."

Thus, by substitution, as aforesaid, activities under "exception" have been expanded. That must be obviously for essential developments in the public interest. It is, thus, seen that the activity of establishment and development of ports even in CRZ area was made permissible right from the beginning. Nevertheless, there is always a regulation over the same, so also monitoring. In so far as DTEPA is concerned, the Notification of 19th December, 1996 itself empowers the DTEPA to monitor the activities in relation to the establishment of port or development in Dahanu Taluka. It has also been argued by the Applicant-JNPA that the establishment of port is being undertaken at a distance of four-six kms., inside the sea with reclamation and minor development for landing point near the shore. Obviously, the same would not disturb the normal shore activities in Dahanu Taluka.

MANGROVES :

18. In so far as mangroves protection is concerned, the Hon'ble Supreme Court in its operative order had ordained this Authority to give extra attention to the same, obviously because the same is the most essential part of the defense in the coastal areas, when the sea water is uncontrollable. In the present case, upon perusal of the map [cited supra], it is clear that the present mangroves habitat nearest to the

proposed development falls at a distance of about 150 meters from the nearest boundary line of the project which is about 100 meters in length towards mangroves site as against the permissible limit of beyond fifty meters. Balance development is away from CRZ-1A. Thus, there is more than enough distance from the mangroves habitat and there is no likelihood of causing any damage to the same by the construction activity which would take place offshore. That apart, to achieve what the Hon'ble Supreme Court desired in relation to the additional plantation of mangroves in the area, the DIEPA would, while monitoring, take all steps to protect the existing mangrove habitat and also add mangroves in a huge quantity by directing the Mangroves Protection Cell of the Govt. of Maharashtra as well as taking the help of or engaging the services of such other agencies which would effectively function.

ANALYSIS OF VARIOUS STUDIES BY THE APPLICANT :

19. As per the studies carried out, CWPRS, a premier institute of Govt. of India, regarding mathematical modelling studies for assessment of wave tranquility, wave flume studies for design of breakwater cross section, mathematical modelling studies for tidal hydrodynamics and siltation, method model studies for shoreline changes at Dahanu coast have been completed as per the mandate given by the MoEF & CC in ToR, dated 07TH October, 2020. All these studies were required for designing and developing and also designing the harbor facilities in the most sustainable manner, taking



into consideration all the effects on the tide current and coastal erosion and accretion etc. These studies will enable the Applicant to properly set up a port, and accordingly, the Applicant has got prepared a DPR from the appointed consultant - M/s. Royal Haskoning DHV, Netherlands. As per the mandated studies, it is established that after setting up of port, there will not be any significant changes in the hydrodynamics of the coastal region, as the proposed port is to be established away from coast keeping the tidal movement across the coast without any effect. The NCSCM has also observed that there will be insignificant erosion and accretion of Dahanu coast and most of the coast will be a stable coast.

The Applicant - JNPA has engaged the services of the global consultant after following tender process and the said consultant is M/s. Royal Haskoning DHV, Netherlands, which is the expert global Company of Consultants for development of ports. We have seen the bulky Project Report prepared by the said Consultant in association with other Consultants after making surface and site inspections, measurements etc.

SHORELINE CHANGES OF VADHAVAN COAST :

Shri Debi Goenka of CAT has relied on Space Shoreline Changes of Atlas of Indian coasts for Maharashtra and Goa, prepared by Indian Space Research Organization [ISRO], Ahmedabad and Coastal Erosion Directorate, Central



Water Commission, Ministry of Water Resources. The said Report was prepared for the purpose of protection to coastline and to enable to take measures for coastal erosion and accretion. The said Report is based on the satellite data for the periods from 1989 to 1991 and 2004 to 2006 time frame. The Applicant has submitted that under **Document – 2**, the shoreline changes have been studied by NCSCM as per the directions of MoEF & CC and these maps are available on the website of NCSCM. The Applicant has submitted that the National Centre of Coastal Research [NCCR], a Scientific Organization under the Ministry of Earth Sciences, has also examined the assessment of coastline changes in 2017 and the said Report is in respect of Thane and Palghar districts in Maharashtra coastline, which is 126.64 kms, has only 1.12 kms highly eroding area and 4.98 kms is a moderate eroding zone and the balance ninety percent of the coast of 126 kms is having a status of either low or stable coast. There is no high eroding zone in the vicinity of Vadhavan Port location, and is declared as a stable coast. The Report on Shoreline Changes Atlas of the Indian Coasts is based on five-six-year data, whereas NCSCM Report is based on nearly twenty-year data and the purpose of shoreline changes is for a different purpose, whereas the Report prepared by NCSCM is specific to establishment of a Port Project and shore development in order to establish feasibility of such developments. Therefore, as per the MoEF & CC Terms of Reference, reliance on the documents and Reports is placed for the Reports published by NCCR and NCSCM which are under the control of Ministry of



Earth Sciences and MoEF & CC. To sum up, Atlas is general of the entire Indian coasts, based on five-six-year data as against NCSCM Report, specifically for Port Project etc. based on twenty-four years' data.

The MoEF & CC had streamlined and crystallized the procedure for obtaining the clearances for environmental issues by issuing a Notification, dated 14th September, 2006. By that Notification, there was a constitution of State and Central Govt. Committees for obtaining prior environmental clearances. The Applicant has accordingly placed on record a Draft Environmental Impact Assessment Studies. The said Study Report placed on record has been prepared in accordance with the guidelines issued by MoEF & CC – qua – the Port Sector. We find from the contents of the said Draft Report that there is an examination of study of various aspects of pollution with respect to air, water and noise and biodiversity of marine environment and also suggested various mitigative measures and monitoring plans under Environment Management Plan [EMP]. The EMP will be examined in detail by Empowered Appraisal Committee and it will direct proper mechanism for monitoring through State and Central Organizations, like MPCB and the Regional Director of MoEF & CC. The DTEPA is a Monitoring Authority in Dahanu Taluka and the role of Monitoring Authority will also rest with DTEPA for the subject project. As per the EMP, the Applicant has to submit relevant details of monitoring as per the scheduled time, from time to time. This needs to be followed during construction as well as for the operation period.

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THE STUDY OF BIODIVERSITY BY NIO, GOA :

20. National Institute of Oceanography, Goa, was asked to study the Biodiversity, Marine life which had submitted its Report [Report-I]. In the Full-house meeting held on 27th March, 2023 at 7.00 p.m., at Dahanu, S/Shri Narayan Patil, Prof. Bhushan Bhoir, Vaibhav Vaze, Adv. Brian Lobo and a few other members of the public called Report-I and as 'Homework' by NIO Scientists without making any actual survey, but on the secondary evidence. Thereafter, DTEPA asked NIO to have second report, through NIO vehemently contested the above allegations, upon fresh visit with a team of different scientists. In the meanwhile, S/Shri Bhoir and others sent e-mails, saying that NIO is not a recognized Institute and used unwarranted expletives. That was unfair. In the first place, NIO reports are merely studies with recommendations, not binding on DTEPA, but seen for assistance. Be it as it may. Now, both the reports are with the DTEPA.

The studies carried out and stated in both the Reports have been perused. We find that the fishing area used by the fishermen is far away from the port project proper, besides the fact that preventive and mitigating measures would be adopted. These Reports do not lead to any such major thought regarding fate of the project. The criticism on the Reports made by the objectors leads nowhere in the circumstances.



The Head of the Team of NIO, who submitted the Second Report, has rightly stated that developmental activities of the higher gravity along the coast come at the cost of loss of biodiversity. It is necessary to keep such loss at the minimum and the same is possible. He, therefore, suggested that even during the development, construction and related activities, this Authority needs to monitor the same to minimize the losses. He also stated that all the mitigation measures suggested in the EIA and Biodiversity Assessment Reports are complied with by the PP and its agencies and contractors. Not only that even post-development, continuous biodiversity assessment will have to be carried out to monitor the restoration or recovery of the biodiversity. Since NIO is a Member of this Authority as also the Assessing Authority - qua - biodiversity, we are in agreement with the above valuable suggestion given by the NIO. We, therefore, would in a separately registered monitoring case appoint Sub-expert Committee to look after the above aspect on actual visits/inspections at the time of construction and also thereafter.

Major Change - Shifting of location of the proposed port:

21. There has been a strong opposition by the locals, Sangharsh Samitis, Farmers' Samitis, Fishermen's Unions from the area and some other organizations to the establishment and development of Vadhvan Port. In the wake of Special Notification, dated 20th June, 1991 for Dahanu

Taluka being ecologically sensitive fragile and the directions of the Hon'ble Supreme Court of India, the Applicant - JNPA came to a conclusion that it would be better to shift the location of the proposed port. Accordingly, the shifting of location of the port was proposed by JNPA while requesting for additional Terms of Reference in the beginning of the year 2023. To repeat, it has been decided to shift the establishment and development of the port at a distance of four to six kilometers inside the sea from the earlier onshore location. Thus, now, the location is offshore, and, as a result of which, the issues about ecologically fragile area, environmental damage and pollution in Dahanu Taluka would largely be done away with. The legal position is that the offshore area would fall within the complete domain of the Central Govt., and beyond the area of Dahanu Taluka.

22. Apropos, the National Green Tribunal's Order dated 15th June, 2021, an Expert Group was required to revisit the decision taken by CPCB on 30th April, 2020, and Office Memorandum, dated 8th June, 2020. Accordingly, MoEF & CC, by order, dated 20th September, 2021, constituted an Expert Group with nine renowned experts, in which Dr. Bishnesh, Scientist-D and ZSI, was the expert in marine biology, Shri Deepak Samuel, Scientist-E, NCSCM in ecology and Dr. K. Sivakumar, Scientist-F, WII, were included for undertaking assessment and evaluation due to the setting up of port on overall ecology of the area. In our opinion, the direction again to carry out such assessment and evaluation made by NGT, obviously by a superior body of experts, drawn from various



fields, was with a view to find out the sanctity and significance of the earlier studies, right since 2017 undertaken by PP. The MoEF & CC has accepted the report made by EAC and issued Office Memorandum, dated 26th May, 2022.

23. The setting up of the Ports as infrastructure connecting the international route is the necessity of time. Originally, the "Sagar Mala" programme was started in the year 2003. It could not take off somehow. Thereafter, in the year 2015, the Central Govt., propagated and launched the "Sagar Mala" programme to enhance the performance of the country's logistic sector with a Motto : 'Port led prosperity'. The objective was to identify the future industrial capacities near the coasts to reduce the logistics cost of bulk commodities and to develop discrete manufacturing clusters closed to ports to enhance export competitiveness. Presently, six major ports have been planned, one each in Kerala, Tamilnadu, Maharashtra [Vadhavan], Karnataka, Andhra Pradesh and West Bengal. Equally, there is a systematic plan for sustainable development of the population living in the Coastal Economic Zone [CEZ], community and rural development, tribal development and employment generation, fisheries and skill development, tourism promotion etc. Vadhavan will be the 13th major port in India. It has natural drafts in excess of 18 meters that would enable ultra-large container and cargo vessels to call on the port and to provide required capacity to accommodate the future cargo growth in the hinterland served by the port.



24. Having recorded our considered findings as above, we think necessary permission to establish and develop Vadhavan major port deserves to be granted by this DTEPA, subject to the conditions which have already been set out by EAC and other Authorities, so also the recommendations made by the various reputed Institutions who carried out the studies and made recommendations. In order to have constant monitoring and supervision right from the starting of the development of the project, we would constitute a Monitoring Committee for different subjects by registering a separate monitoring case. There is likelihood of grievances by the locals, Unions, Sangharsha Samitis, NGOs and others in respect of the development of the Port Project at Vadhavan and, therefore, we have decided to constitute a Grievance Committee under DTEPA.

25. To sum up, the upshot of the above discussion is that the following order is made:-

ORDER

- [i]** DTEPA Case No. 2 of 2022 filed by Jawaharlal Nehru Port Authority [JNPA], Navi Mumbai, is disposed of.
- [ii]** The Application filed by JNPA - Applicant registered as DTEPA Case No. 2 of 2022 for grant of permission to establish and develop Major Port, that is Vadhavan Port is granted and the Applicant-JNPA is permitted to establish and



develop Vadhavan Port at Vadhavan in Dahanu Taluka, subject to the various Terms and Conditions imposed by MoEF & CC and its Authorities, including EIA as well as carrying out the recommendations made by Expert Groups and Expert Agencies in their respective reports.

- [iii] There shall be registration of DTEPA monitoring case for Vadhavan Port by the Office of DTEPA within four weeks from today, in which Monitoring Committees/Sub-committees would be formed from time to time.
- [iv] There shall be a Grievance Committee, which shall be constituted by the DTEPA within 12 weeks from today for hearing the grievances of all the stakeholders or the locals and all others who are concerned with the Project.
- [v] The Monitoring Committees as well as Grievance Committee shall submit their respective reports to the DTEPA, who shall then exercise powers under the provisions of EP Act, 1986.
- [vi] The Applicant as well as its agencies and contractors shall be bound to follow the directions as well as orders from the DTEPA, as and when the need arises and any default in such compliances might result into stoppage of a particular work till compliances are made.



This Order is declared accordingly on this day of 31st July, 2023 and the same shall be uploaded on the Website by the Applicant – JNPA.

Sd/-

**Justice Arun B. Chaudhari,
Chairman,
Dahanu Taluka Environment
Protection Authority,
Mumbai,
[Former Judge, Punjab &
Haryana High Court].**

**DAHANU TALUKA ENVIRONMENT PROTECTION
AUTHORITY MEMBERS**

1. Dr. Sudhir Kumar,

Director, National Institute of
Hydrology, Roorkee.

Sd/-

2. Dr. Manikandan, Sr. Scientist,

O/o Director, National Institute of Oceanography, Dona Paula, Goa.

Sd/-

3. Prof. Subhankar Karmakar,

HoD, Environment Engineering,
IIT, Powai, Mumbai.

Sd/-

4. Shri Govind M. Bodke, IAS,

Collector, Palghar Distt., Palghar.

Sd/-



5. **Dr. Vidyanand Motghare,**
Jt. Director, Maharashtra Pollution
Control Board, Sion Mumbai.

Sd/-

6. **Dr. Pawankumar Labhsetwar,**
Chief Scientist & Head
W.T & M Division, CSIR, NEERI,
Nagpur.

Sd/-

Sd/-

Shri Nirmalkumar Chaudhari,
Member-Secretary,
Dahanu Taluka Environment
Protection, Authority,
Fort, Mumbai.

Mumbai,
Dated : 31st July, 2023.

TRUE COPY



(C. B. KARADE)
Officer on Special Duty,
Dahanu Taluka Environment
Protection Authority, Fort, Mumbai.