

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

M.A. No. 253/2019
In
Original Application No. 487/2015
WITH
Original Application No. 1028/2019
(I.A. No. 722/2019)

Bharat Jhunjhunwala & Ors

Applicant(s)

Versus

Union of India &Ors.

Respondent(s)

Date of hearing: 10.01.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE MR. SIDDHANTA DAS, EXPERT MEMBER**

For Applicant(s): Mr. Ritwick Dutta, Ms. Meera Gopal, Advocates

For Respondent(s): Mr. Sanjay Upadhyay, Ms. Saumya Chandhari,
Advocates for IWAI
Ms. Deep Sikha Bharti, Advocate for State of U.P

ORDER

1. The issue for consideration is whether EIA is necessary for navigation infrastructure in the River Ganga in the stretch from Allahabad to Haldia also known as the National Waterway 1 (NW1) undertaken by Inland Waterways Authority of India. The project envisages developmental activities such as river terminal, jetties and locks and barrages and 4 multimodal river water terminals along with

necessary dredging operations. It is estimated to cost Rs. 4,200 crores and is likely to take 6 years to be completed.

2. The applicant relies on Entry 7(e) of Schedule to the EIA Notification dated 14.09.2006 to the effect “ports, harbours, back waters and dredging”. However, the entry further mentions that maintenance dredging is exempted, in the manner mentioned therein.
3. When the matter came up before this Tribunal on 14.09.2017, this Tribunal observed:

“The Learned counsel appearing for the Ministry of Environment, Forest and Climate Change and Ministry of Water Resources will take clear instructions, as to whether the projects of the present kind as a class along with their activities, are covered under the notification or not. They shall also take into consideration their own memorandum.”

4. On 30.05.2018, following further order was passed:

“By our order dated 14th September, 2017, we had directed learned counsel appearing for the MoEF to take clear instructions as to whether the project of the present kind as a class along with other activities are covered under the notification/ filing Environmental Clearance or not . Till now, there is no such statement forthcoming and none has appeared except MoEF has filed its affidavit in 2016.

Let the MoEF shall complied with the order dated 14th September, 2017 and make categorical statement in this regard.”

5. Similar order was also passed on 01.11.2018. The said order is quoted as follows:

“In this original application, the primary issue raised is as to whether Environmental Clearance in respect to Inland Waterways is required under Law or not. There is no dispute about the fact that the project of Inland Waterways is, as on date, not included in the EIA Notification, 2006. There is no doubt about the fact that such projects are first of its kind and may increase in the coming days.

Therefore, we consider it appropriate to direct Ministry of Environment and Forest to look into the issue in consultation with the Experts in the field, as to whether any Environmental

Clearance is required or not and whether Environmental Impact Assessment is to be done in projects relating to Inland Waterways. They may do this exercise within a period of three weeks.

The Ministry of Environment would submit their final opinion to the Tribunal by 31st January, 2019. Accordingly, this Original Application No. 487 of 2015 is disposed of, with no order as to cost.”

6. Against the said order, the applicant filed C.A No. 1411 of 2019 before the Hon’ble Supreme Court which was disposed of on 28.02.2019 as follows:

“However, the application that has been filed, being Original Application No. 487 of 2015, has been disposed of without the appellants being able to comment on the Report.

We make it clear that this Report will be given to the appellants, who can then approach the Tribunal by way of objections, if any, to the said Report in a fresh application filed for this purpose.

Accordingly, the appeal is disposed of.”

7. On 25.02.2019, the Tribunal observed:

“As of now neither the Ministry has given its final opinion, as per order dated 1st November, 2018 nor an affidavit of concerning officer, as directed by order dated 13th February, 2019, has been filed.

Therefore, the concerned Director/Scientist, MoEF is directed to ensure that compliance of the order dated 1st November, 2018 is done, failing which he shall remain present before the Tribunal on the next date of hearing.”

8. Thereafter, an additional affidavit was filed on behalf of the MoEF&CC on 25.03.2019 in the light of which the matter was disposed of with liberty to the applicant to proceed in accordance with the direction of the Hon’ble Supreme Court.

9. It is in the above background that M. A No. 253/2019 has been filed. The applicant has also filed separate O.A No. 1028/2019. We are of the view that separate O.A. on the matter is superfluous and will stand disposed of.

10. As regards M.A No. 253/2019 is concerned, the objection to the stand of the MoEF&CC is that as per the additional affidavit filed on behalf of the MoEF&CC, expert committee was constituted on 21.04.2017 prior to the order of this Tribunal dated 14.09.2017. The committee met on 18.05.2017 and held as follows:

“14. After detailed deliberations during the meeting, the committee clarified that the proposal for implementation of ‘Jal Marg Vikas Project’ for augmentation of navigational aids in the Haldia-Varanasi stretch of National Waterway-1 (NW-1) by Nwai is covered under the EIA Notification, 2006 and be appraised as ‘Category A’ project with reference to specific issued addressing river as living entity, changing hydrology, riparian rights, transboundary impacts, protection of banks, and floodplain zones of the river system. Also, the maintenance dredging involved in this project cannot be exempted from environmental clearance as the project has not obtained any prior environmental clearance as provided in column 5 of item 7(e) of EIA Notification as amended from time to time. In order to bring more clarity regarding the applicability of such projects under EIA Notification, 2006, the Expert Committee recommended for amending the EIA Notification, 2006 to include ‘Inland Waterways, Jetties and Multi-Modal Terminals under the list of items requiring prior environmental clearance in Column 2 against item 7(e) of the Schedule requiring prior environmental clearance as Category A projects. However, Public Hearing in respect of Inland Waterways may be restricted to areas where facilities such as Jetties, terminals, storage are created.”

11. However, a further meeting was held between the MoEF&CC and the Ministry of Road Transport & Highways, Shipping and Water Resources, River Development & Ganga Rejuvenation on 24.10.2017 which held that no EC was necessary in view of OM No. 14-9/2016-IA-III dated 21.12.2017 issued by the MoEF&CC. Reference to the said O.M shows that certain environmental safety measures had been specified therein. The minutes of meeting dated 24.10.2017 are *inter alia* as follows:

“3.7 It was further explained that while recommending the proposal on 6.3.2017, the PIB had indicated the need for resolution of the limited point on non-requirement of EC for maintenance dredging in rivers before seeking the approval of Cabinet. However, the Expert Appraisal Committee of MoEF&CC considered the issue of EC for the JMVP. The Expert Committee had recommended that maintenance dredging involved in this project could not be exempted from environmental clearance as the project had not obtained any prior environmental clearance as provided in column 5 of item 7(e) of EIA Notification, as amended from time to time. In order to bring more clarity regarding the applicability of such projects under EIA Notification, 2006, the Committee recommended for amending the EIA Notification 2006 to include the Waterways, jetties and Multimodal Terminals under the list of items requiring prior environmental clearance in column 2 against item 7(e) of the schedule requiring prior environmental clearance as Category A projects.

3.8 Since there was difference of opinion between the MoS and the MoEF&CC, the Ministry of Shipping took the matter to the Committee of Secretaries (CoS) for an early resolution of the matter. The minutes of the CoS held on 29.9.2017 were also discussed. It was also informed that Department of Economic Affairs and the NITI Aayog had also supported the position taken by the MoS on the ground that maintenance dredging was merely a de-silting process.

Secretary, MoEF&CC stated that the MoEF&CC felt that the JMVP should apply for EC keeping in view the involvement of dredging component, which attracted the provisions of EIA Notification, 2006 as amended from time to time and in view of the interpretation taken by the Expert Appraisal Committee and its recommendations on the subject. He assured that the MoEF&CC would process the application for EC on a fast track basis if the JMVP applied for the same.

5. **The house took note of various points advanced by the MoS and the MoEF&CC. It observed that a plain reading of the provisions in the EIA Notification, as amended from time to time, the exempted cases listed under Appendix-IX, the exemption reiterated in the Sustainable Sand Mining Guidelines of 2016, and even the position taken by the MoEF&CC in its affidavits filed before the NGT, it left little doubt that ‘dredging’ of silt in the river beds to keep the same navigable did not require Environmental Clearance. It was further observed that the comments and recommendations of the EAC could not be given priority over the provisions contained in the EIA Notification, especially when its recommendations, had not been incorporated in the Notification itself, more so, when the EAC has not given any cogent reasons in support of their**

observations and recommendations. As matter of fact, the recommendations of the EAC would amount to introducing a change in the EIA Notification vis-a-vis Schedule IX thereof, which required the prescribed process to be followed. Keeping the aforesaid in view, it was agreed that maintenance dredging for navigational channel in inland waterways was aimed at maintaining adequate depth of the waterway for safe navigation and as per the extant legal position, this activity did not require obtaining prior EC. Similarly, construction of Multi-Modal Terminals, jetties etc. and setting up of navigational aids etc. do not require obtaining prior EC. Accordingly, the Ministry of Shipping was advised to submit the proposal seeking approval of JMVP for consideration and approval of CCEA as soon as possible.”

12. Learned counsel for respondent No. 01, the project proponent, submitted that as far as the present project is concerned, the matter has been finally decided by the Allahabad High court by the judgement dated 28.04.2016 in PIL 31229 of 2005 as impact assessment was duly done by way of precaution, irrespective of legal requirement. The consolidated environmental impact assessment report (CEIA) was considered by the World Bank also which is part of project information document dated 25.11.2016 available on the website of the World Bank titled as 'Integrated Safeguards Data Sheet Appraisal Stage' dated 27.11.2016. The executive summary of the impact assessment dated May 2016 is also available on the website of Respondent No.01 and mentions the safeguards followed to mitigate the environmental impact. Revised version of EIA reports were uploaded on IWAI website in December, 2016 which mentions environmental advantages by the project.

13. Additional affidavit filed on behalf of the applicant on 10.04.2017 states that construction of Varanasi terminal has been initiated and is to be completed by 2018. The terminal will be handling cargo for

which prior EC is required. The judgement of the High Court cannot be treated as permission for construction of the terminal.

14. Respondent No. 01 has filed additional affidavit on 03.08.2017 stating that detailed environmental impact assessment was carried out by way of abundant caution as part of safeguards required by the World Bank. Following studies have been concluded:

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- i) *Cumulative Impact Assessment (CIA) Report for NW-1.*
- ii) *Basin level Critical Resource Study;*
- iii) *Consolidated Environment Impact Assessment (EIA) Report fir NW 1*
- iv) *Description of Environment (Baseline Part)*
- v) *Environment Management Framework for Future Interventions*
- vi) *Consolidated EIA (Stakeholders Consultations)*
- vii) *Environment Management Plan (EMP) for the Varanasi Multimodal Terminal;*
- viii) *EMP for Sahibganj Terminal*
- ix) *EMP for Haldia Terminal*
- x) *EMP for Farakka Lock*
- xi) *EMP for Maintenance Dredging*
- xii) *EMP for Barge Operation*
- xiii) *Consolidated Social Impact Assessment cum Social Management Plan\Resettlement Action Plan*

10. *It is submitted that as per the Disclosure Policy of the World Bank, the following reports have been put on the website:*

- i) *Consolidated Environmental Impact Assessment (EIA), including Description of Environment (Baseline Part), Environment Management Framework for Future Interventions, Consolidated EIA (Stakeholders Consultations); along with Executive Summary in English and regional languages.*
- ii) *Consolidated SIA-cum-SMP and RAP along with Executive Summary in the regional languages.*
- iii) *Cumulative Impact Assessment (CIA) Report for NW-1.*
- iv) *Standalone Environmental Management Plans for the terminals at (a) Varanasi, (b) Sahibganj and (c) Haldia and (d) Navigational Lock at Farakka, (e) Maintenance dredging and (f) Barge Movements.*
- v) *Resettlement Policy Framework as per applicable national laws and World Bank Operational Policies.*
- vi) *Basin Level Study on Critical Environmental Resources.”*

15. We have perused the order of the High Court dated 28.04.2016, wherein the issues considered include applicability of item 7 (e) of the Schedule to the EIA Notification dated 14.09.2006. The High Court considered the draft environmental impact assessment report for the project up to the stage of commissioning and permitted IWAI to proceed with the project subject to obtaining environmental impact assessment after the date of commissioning.
16. Having considered the above material, while for the project in question on a 'precautionary' principle, environment impact assessment is claimed to have been done which has also been considered in the process of World Bank funding, following questions survive for consideration:
- i. Whether the general issue of requirement of EIA raised in the order dated 14.09.2017 by this Tribunal and reiterated in further orders dated 30.05.2018 and 01.11.2018 has been gone into.
 - ii. Whether in view of order of the High Court and EIA which is said to have been conducted on 'precautionary' principle in respect of the project in question for the present project no further EIA remains necessary.
17. Let the MoEF&CC constitute an expert committee in terms of the order of this Tribunal dated 14.09.2017 to go into the above issues and give a further report to this Tribunal after looking into the entire matter. It will be open to the parties to file their respective viewpoint for consideration by the committee through the Secretary, MoEF&CC for being forwarded to the Committee. Ecological, aquatic and floral

experts may be part of the Committee. The report of the Committee may be furnished within three months by email at judicial-ngt@gov.in.

A copy of this order be sent to the MoEF&CC by e-mail.

List for further consideration on 27.04.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Nagin Nanda, EM

Siddhanta Das, EM

January 10, 2020
M.A. No. 253/2019
In Original Application No. 487/2015
WITH Original Application No. 1028/2019
(I.A. No. 722/2019)
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