

Nileshbhai Babubhai Rathod vs Gujarat Pollution Control Board on 23 December, 2022

Item No. 3

(Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(By Video Conferencing)

Original Application No. 57/2021(WZ)
I.A. No. 127/2022(WZ)

Nileshbhai Babubhai Rathod & Ors. (Bhavnagar-Gujarat)

.....Applicant

Versus

Gujarat Pollution Control Board through its
Member Secretary & Ors.

....Respondent(s)

Date of hearing: 23.12.2022

CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Applicant	:	Ms. Shilpa Chohan, Advocate
Respondent(s)	:	Mr. Maulik Nanavati, Advocate for R-1 to 3 & R-5 Mr. Rahul Garg, Advocate for R-11/MoEF&CC

ORDER

1. From the side of Applicant, learned Counsel Ms. Shilpa Chohan has appeared.

2. This Original Application has been filed with the following prayers:-

" (a) Pass an ad-interim, ex-parte order prohibiting any construction of earthen bunds and other structures in CRZ area associated with salt manufacturing during the pendency and final decision of the case;

(b) Direct Respondent No.2/ Collector Bhavnagar to cancel the leases of Respondent No.6 to Respondent No.10 located in the CRZ-IA and the CVCA of Bhavnagar, Gujarat and to stop the violations of the CRZ Notification, 2019/2011 to prevent further deterioration of the fragile coastal environment;

(c) Direct Respondent No.2/Collector Bhavnagar to order destruction/removal of all

bunds, blockages, structures, facilities, storages and presence of other salt manufacturing infrastructure from the CRZ1-A and the CVCA so as to freely allow the natural monsoon flows of six rivers through the flood plains presently obstructed by Salt Pans of the Respondents at the cost of Respondent Salt companies;

(d) Direct Respondent No.12, Respondent No.4 and Respondent No.1 to prepare a contingency plan to avoid the flooding, inundation and damage to life, crops, property, flora and fauna, particularly the habit of Blackbuck and grazing birds in the area in for the ongoing monsoon months and for future;

(e) Direct Respondent No.5 to constitute an expert committee consisting of community members from the affected villages for the determination of environmental compensation, loss and damage done since 2018 to the CRZ- IA and the CVCA by the Respondent companies and such amount determined by the Committee so constituted to be recovered from the Respondent Salt Companies and used for compensating the loss of ecosystem services related livelihoods, restoration and restitution of the area in question in a time bound manner;

(f) Direct Respondent authorities to initiate legal action against the Respondent Salt Companies for the violation of CRZ Notification and the Environment (Protection) Act, 1986;

(g) Direct Respondent No.3 to order cumulative impact assessment of all the illegally constructed earthen bunds/ embankments for salt manufacturing approximately 100 km in length along the CRZ area of Bhavnagar and submit the Assessment Report to this Hon'ble Tribunal for further ordering the removal and demolition to prevent the violations of the CRZ Notification, 2019 at the cost of the Respondent Salt Pan Companies;

(h) Direct Respondent No.3 and MoEFCC to prepare and finalize the Integrated Management Plan (IMP) for protecting and managing the said CVCA around the nine coastal villages in the Bhavnagar Taluka as per CRZ, 2019;

(i) Impose the costs on Respondent No. 1, Respondent No.2, Respondent No.4, Respondent No.5 for failing to protect the coastal ecology and specially protected CVCAs and subjecting the life and coastal commons of vulnerable communities to man-made flood disaster by blocking the natural flows of six rivers through the CVCA towards the Creek and the sea;

(j) Impose cost and take action for the dereliction of the duties on the part of Respondent No.2/Collector, Respondent No.3/GCZMA and Respondent No.4 / Executive Engineer for deliberately misleading the entire process wasting public funds by ordering technical investigations, constituting the cluster committees, indiscriminately channeling the creek causing further damage to CVCA and CRZ

violations despite knowing the illegalities committed by the Respondent Salt Companies and delaying the prevention of harm caused to the ecologically sensitive CRZIA and the CVCA;

(k) Any other relief that the Hon'ble National Green Tribunal may deem fit and proper in the light of facts and circumstances of the case."

3. The matter was considered on 04.08.2021 for the first time where- by the direction was issued to serve notices upon the Respondent Nos. 1 to 5 and Respondent Nos. 11 & 12 only, leaving the private Respondents. The service affidavit is on record as per which the service on the above Respondents is sufficient.

4. From the side of the Respondent No. 1/Gujarat Pollution Control Board, Respondent No. 2/Collector and District Magistrate, Respondent No. 3/Gujarat Coastal Zone Management Authority and Respondent No. 5/State of Gujarat, learned Counsel Mr. Maulik Nanavati has appeared and appraised us that the reply-affidavit has already been filed only on behalf of the Respondent No. 3/Gujarat Coastal Zone Management Authority.

5. From the side of Respondent No. 11/Ministry of Environment, Forest and Climate Change, learned Counsel Mr. Rahul Garg has appeared and submits that he does not want to file reply affidavit.

6. From the side of learned Counsel for the Respondent No. 3/Gujarat Coastal Zone Management Authority, it is pointed out that the lease granted to Respondent No. 9-M/s. Admiral Salt Private Limited and Respondent No. 10-M/s. Shriram Seabrine Salt Industries, fall completely outside the Coastal Regulation Zone as per Final Map of Coastal Management Zone Plan for District Bhavnagar, Gujarat.

7. As regards the leases granted to Respondent No. 6-M/s. H A Salt Private Limited, Respondent No. 7-M/s. J. M. Salt Private Limited and Respondent No. 8-M/s. Saline Salt Private Limited, the majority portion of the lease area falls within the CRZ-1B as per the Final Map of Coastal Zone Management Plan for District Bhavnagar, Gujarat. Therefore, the entire averments made in this regard by the Applicant, are wrong and contrary to record. Further, it is submitted that the National Green Tribunal Act, 2010 confers the jurisdiction upon this Tribunal only with respect to the 7 Acts, which are narrated in the Schedule-I only and therefore, the present case where-in cancellation of leases has been prayed, would not fall in the domain of this Tribunal.

8. The leases have been granted by the State Government in exercise of its revenue jurisdiction, which cannot be called into question by this Tribunal in absence of any environmental law prohibiting such grant. Even if, it be assumed for the sake of argument that the grant of lease by the Government in the area in question, raises substantial question relating to environment, then too, the application stands time barred as under Section 14 Sub-Section (3) of the National Green Tribunal Act, 2010 which stipulates that no application for adjudication of dispute shall be entertained by the Tribunal unless it is made within a period of six months from the date on which

the cause of action first arose with the proviso that on being shown sufficient cause, that period may be further extended for sixty days. In the present case, the leases have been given to the Private Respondents in the year, 2018 and 2019 while the present application has been filed in July, 2021, which is much beyond the prescribe period of limitation.

9. It is further stated that no activity, even if, permissible to be carried out in CRZ-1B area under the Coastal Regulation Zone Notification, 2011, can be carried out without obtaining prior CRZ clearance from the Coastal Zone Management Authority. In the present case, Respondent No. 7-M/s. Saline Salt Private Limited and Respondent No. 8-M/s. Saline Salt Private Limited have made bunds at some locations prior to grant of CRZ clearance by the Coastal Zone Management Authority but such bunds have already been removed with the assistance of the local District administration and notices have been issued to these parties for actions to be taken against them in accordance with law.

10. The act of constructing of bunds is not permissible in CRZ-1A area. The lease granted to Respondent No. 9-M/s Admiral Salt Private Limited and Respondent No.10/Shriram Seabrine Salt Industry fall outside the Coastal Regulation Zone. No portion of area leased to Respondent No. 6/M/sH A Salt Private Limited, Respondent No. 7-M/s. H Salt Private Limited and Respondent No.8-M/s Saline Salt Private Limited falls in CRZ-1A area, but only some part of it falls in CRZ-1B area. Bunding is permitted in CRZ-1B area only for activity of salt cultivation. Therefore, it is wrong statement of the Applicant to say that the provisions of CRZ Notification 2011 has been violated.

11. Heard the argument of the learned Counsel of Respondent No. 3/ GCZMA as well as the Applicant. Due to vehement opposition on the part of Respondent No. 3/GCZMA that the prayer for cancellation of leases cannot be entertained by this Tribunal as the same is beyond the jurisdiction of this Tribunal. The learned Counsel for the Applicant has relied upon the Judgment of the Hon'ble Apex Court in Mantri Techzone Pvt. Ltd vs. Forward foundation & Ors. [(2019) 18 SCC 494], where-in reliance is placed on para nos. 41 to 44, which are as follows:-

"41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (Including enforcement of any legal right relating to environment) is involved. However, such question should arise out implementation of the enactments specified Schedule I.

42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Scheduled I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1) (b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15 (1) (c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore Lal v. Chairman, Employees' State Insurance Corpn.*, I (2008) CPJ 13 (SC) (2007) 4 SCC 579, para17). The existence of the Tribunal without its broad restorative powers under Section 15(1) (c) read with Section 20 of the Act, would render it ineffective and toothless, and shall be try the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with judicial members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment."

12. Having relied upon the said judgment, it is prayed that if there is adverse impact on environment even by grant of leases, this Tribunal has jurisdiction to look into this matter and grant appropriate relief even if that relief seeks cancellation of said leases.

13. In view of the above arguments and the pleadings, which has been placed before us, we frame following question for preliminary consideration by us:-

1) Whether this Tribunal has jurisdiction to decide as to whether the leases granted to the Private Respondent Nos. 6 to 10 can be cancelled, if it is found that they are having adverse impact on the environment in the area where they have been granted.

14. We find from the pleadings of the Appellant/Applicant that it has been stated that lease granted to Respondent No.6 falls in CRZ-1A and CVCA area and while the leases granted to Respondent No. 7 falls in CRZ-1B area along-with CVCA area & the leases of Respondent No. 8 fall in CRZ-1B area, while leases granted to Respondent Nos. 9 & 10 fall in CVCA area. But how they are falling in those areas, has not been clarified on the basis of sound proof/evidence. We direct the Applicant to place the evidence in that regard before us by the next date positively.

15. Put up this matter for disposal of the preliminary issue framed above, on 09.02.2023.

Dinesh Kumar Singh, JM Dr. Vijay Kulkarni, EM December 23, 2022 Original Application No. 57/2021(WZ) I.A. No. 127/2022(WZ) P.Kr & S.J.