

Samast Bharuch Jilla Machimar Samaj ... vs Gujarat State Environment Impact ... on 31 March, 2022

Author: Adarsh Kumar Goel

Bench: Adarsh Kumar Goel

Item No. 01

(Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Appeal No. 107/2017(WZ)

Samast Bharuch Jilla Machimar Samaj & Ors.

Appellant

Versus

Gujarat State EIAA & Ors.

Respondent(s)

Date of hearing: 31.03.2022

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MS. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Appellant: Ms. Shilpa Chohan, Advocate

Respondents: Maulik Nanavati, , Advocate for R- 1 to 4 & 6
Mr. Rahul Garg, Advocate for (MoEF& CC)

ORDER

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1. This appeal has been preferred against the Coastal Regulation Zone (CRZ) clearance for the proposed construction of Barrage at Village Bhadbhut, Distt. Bharuch, Gujarat by Narmada, Water Resources, Water Supply & Kalpsar Department (the PP) by SEIAA, Gujarat vide order dated 31.08.2017. The clearance is preceded by the recommendation of GCZMA vide letter dated

22.09.2014. The proposal was considered by the SEIAA in its meeting held on 24.08.2018 and was recommended. The clearance is subject to conditions specified therein applicable during construction as well as operation phase to ensure compliance of water, air, noise, safety and solid and hazardous waste scientific handling norms. Compliance of CRZ Clearance is to be monitored by the SEIAA, Gujarat. The site for the proposed barrage is 5 Km downstream from Village Bhadbhut and 25 Km upstream from the river mouth in the estuarine area of the river Narmada. The objectives of the projects are:

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Protection of water quality of Narmada river from salinity due to tidal influence and checking the problems of salinity ingress and deterioration of ground water quality in the upper reaches of Narmada river;

Storage of the regulated release of water from SSP and runoff from free catchment for irrigation, domestic and industrial water supply;

Flood protection of about 400 sq. km low lying area covering 17 villages on the left bank of river Narmada;

Road connectivity between left and right banks, shortening route from Surat/Hajira to Dahej region."

2. Grievance in the appeal is that the data considered for the CRZ clearance is not reliable. The project was wrongly classified as Category 'B' project, though it should have been treated as category 'A' project as it extends upto 22 kms. Though public hearing was conducted, which is in case of category 'A' project, clearance has not been granted on that basis. CRZ Clearance is not based on application of mind as instead of stopping ingress of saline water, Narmada estuary will be adversely impacted. Embankment proposed cannot control the tidal influence. Hilsa and river Jumbo prawns will decline. Area is highly polluted. There is presence of heavy metals which has not been considered. Building of the barrage will cause further pollution.

3. The appeal was filed on 30.11.2017. The Tribunal considered the matter on 05.12.2017 and issued notice to the respondents, including the PP and SEIAA, Gujarat. The appeal was admitted on 01.10.2021.

4. The respondents have filed their response. Response of the PP is that the CRZ clearance has been granted after due consideration of the relevant data and following the laid down procedure. The PP earlier sought EC but since the command area is less than 2,000 hectares, EC was not necessary and was not therefore pursued. According to the additional affidavit dated 28.07.2021 filed by the PP, Forest Clearance was duly granted and compensatory afforestation undertaken. Contract has been given for construction of cofferdam for which requisite Consent to Establish has been obtained by the contractor.

5. Stand of the SEIAA, Gujarat in its affidavit filed on 18.07.2018 is that in accordance with the Notification dated 28.11.2014, SEIAA is the Authority for CRZ Clearance covered by Para 4(i) of CRZ Notification, 2011. CZMA in its reply has also referred to letter dated 22.09.2014 whereby CRZ Clearance was recommended to SEIAA. The said letter considering the stand of the PP inter-alia mentions as follows:

"xxxxxx.....xxx The NWR&WS&KD has submitted that the Bhadbhut barrage includes the water body of the Narmada tail stretch from the Gulf mouth of the estuary up to Tilakwada (@ 85 km upstream). The implications of the barrage on the fisheries along the above domain encompass two types, viz. fresh and brackish habitat. Presently, the fishermen residing along the Narmada tail stretch carry out their fishery activities across the two habitat without any interruption. Moreover, the marine Hilsa fish species, thriving in saline water environment of Arabian Sea, requires fresh water environment for breeding purpose. Similarly, the fresh water prawn, thriving in fresh water environment, requires brackish water environment for breeding purpose. Presently, these fish species do not face any obstruction to their inter-habitat migratory path. After construction of barrage, inter-habitat movement of the fishermen as also of the fish species (Hilsa fish and fresh water prawn) suitable mitigation measures have been incorporated in the barrage projects like.

Provision of Hatcheries: for production of fish seeds/prawns seeds, a provisions of three hatcheries with an estimate cost of Rs. 9 crores is made. These hatcheries would help in maintaining and enhancing fish/prawn production. The fisheries Department would set up and operate such hatcheries as they have subject experience .The local fishermen will get benefited economically as a result of stocking of fish/prawn seed. These hatcheries includes: 1) Hilsa fish hatchery, 2) Fresh water prawn hatchery, and 3) Fresh water fish hatchery. Besides, provisions of Hatcheries, following measures would be adopted for mitigate the impacts on fisheries due to Bhadbhut barrage:

Gates of barrage would be kept open during monsoon. Provision of Fish Pass
Release of Environment Flow Fishing rights in the barrage reservoir Provision of
ship lock /crane Priority in other government welfare schemes for BPL/SC/ST
families Social awareness It is submitted by the NWR&WS&KD that the left bank of
the Narmada river, downstream of Golden Bridge, has low elevation (about 3m to 4m
below the highest flood level). Hence, the left bank area is prone to erosion and
submergence. During high flood in the Narmada river, approximately 400 sq. km left
bank area including Taria and Borbhatha villages get partially submerged. The flow
of tidal water during ebb tide is opposite to the direction of the river water flow that
carries large sediment load and attains high erosivity. At the same time, the flow
velocity is reduced. Depending upon the prevailing hydraulic conditions, erosion and
deposition take place. The formation of Dhanturia island and the erosion of the bank
almost upto the river bed level are attesting examples. One of the flooding is the
inadequate carrying capacity of the river channel which is not capable of confining

the flow within the banks and the flood water overtops the left bank since, it has low elevation. This results in submerging the nearby habitation and the agriculture land areas. The erosion is caused due to meandering of the river.

It is further submitted by the representative of NWR&WS&KD that under the present conditions of obstruction to the river flow caused by Dhanturia island and the low elevations of the river bank and the agriculture land areas on the left bank, erosion of the left bank is a common occurrence, which during monsoon flood gets aggravated encroaching upon the agriculture land.

The water channel of the Narmada river from Dhanturia to Kantiyajal on left bank is silted up. The entire Narmada flow is shifted towards the right bank downstream of village Bhadbhut. During the neap tide period, the tidal flow caused by the returning tidal prism (that extends upto Shuklatirth during the ebb tide) and the river flow are unidirectional. This conjunctive flow that attains higher velocity, is also more erosive. Therefore, the right bank downstream of village Bhadbhut is subjected to the recurring phenomenon of erosion. The affected villages are Kaladra, Vegani, Koliyad, Rahiyad, Suva, Ambheta, Jageshwar and Luvara. Among these, Kaladra is most severely affected.

It is submitted by the representative of the NWR&WS&KD that there is a provisions for construction of 24 Km long rock-fill-cum-earthen embankment along the upstream bank. The embankment has the top width of 30 m and height 1 m above HFL. This will check the erosion as well as the spread of flood water in the low lying areas on the left bank. Thus, the erosion and the flooding of the upstream left bank agriculture areas will be completely checked.

There is also provisions of de-silting and widening of river. In addition, Water Resources Department has already started implementation of flood protection works in this area. Accordingly, WAPCOS worked out design parameters in respect of Gabion pitching on slope and Gabion matters extending horizontally into the bed. Water Resources Department has planned to carry out Gabion pitching along the left bank starting from Railway Bridge through a stretch of 4.02 Km downstream at an estimated cost of Rs. 33 crores. In light of the above facts, there would not be any erosion and submergence of upstream left bank agriculture land areas of Tariya and Borbhatha villages due to barrage construction.

It is further submitted by NWR&WS&KD that to check the negative impacts of the high tide level, due to construction of barrage, the following mitigation measures have been ingrained in the project design:

The estuary banks will be appropriately trimmed to widen the estuary's horizontal space to increase the spread of the tidal water so as to reduce the tidal water level.

There is a provision of protective embankment for down stream estuary banks so as to check the over reach of the barrage reflected tidal water of elevated level.

It is further submitted that the net annual sediment deposition in the barrage reservoir would be insignificantly small. Considering the enormity of the design features of the Bhadbhut barrage project having provisions for (1) unobstructed disposal of monsoonal floods and sediments through barrage gates, (2) continuous passing of sediments through silt excluders, (3) widening and grading of the estuary in U/S and D/S segments coupled with flood protection embankments, (4) continuous passages of environmental flow and also the scientific facts of very low level of sediment retention in the reservoir , faster and more effective exit of flood and tidal waters and containment of the barrage reflected ebb tide within the confines of the estuary banks."

6. We have heard learned Counsel for the parties present and considered the matter.

7. Contentions raised on behalf of the appellant are that the impugned CRZ Clearance could be granted only by MoEF&CC and not by the SEIAA, Gujarat and that the same is not called for being against the interest of the fishermen. These contentions are opposed on behalf of the PP. It is submitted that the MoEF&CC comes into picture only when command area for the project is more than 10000 ha. The project will infact benefit the fishermen. The SEIAA has duly considered the matter. The clearance is fully justified.

8. We have duly considered the rival contentions and are satisfied that the impugned clearance has been validly granted.

9. With regard to competence of SEIAA to grant the clearance, we first refer to the Notification dated 06.01.2011 issued by the MoEF&CC. Para 4 of the said Notification regulates permissible activities in CRZ area and mentions that for projects listed under and attracting EIA Notification, 2006, recommendation has to be made by the CZMA to the concerned State or Union Territory. Sub-para (ii) of Para 4 specifies the activities requiring clearance from MoEF&CC and one of such activities is those not listed in EIA Notification, 2006. The said notification has been amended on 28.11.2014 as follows:

"(3) In paragraph 4.2, in sub-paragraph (ii), after clause (b), the following clause shall be inserted, namely;

"(c) SEIAA, for the projects specified under paragraph 4 (i) (except with respect to item (d) thereof relating to building projects with less than 20,000 sq. mts of built-up area) and for the projects not attracting EIA notification, 2006"

10. Activity in question is listed in the EIA Notification 2006 under Entry 1(c) of the Schedule to the EIA Notification, 2006. Where command area is less than 10,000 ha., project is treated as category 'B'. Vide amendment dated 25.06.2014 category 'B' projects will be where command area is more

than 2000 ha. and less than 10,000 ha. Thus, for the projects involving less than 2,000 ha. command area, no EC is required. It is thus clear that the project is listed in the 2006 notification. Only projects more than 10000 ha. command area are to be appraised by MoEF&CC. Those above 2000 ha. and below 10000 ha by SEIAA. Thus, either it has to be held that no clearance is required or if it is required it has to be by SEIAA and not MoEF&CC. Mere fact that EC was sought or public hearing was held does not lead to conclusion that the project is A category or EC is required or that CRZ clearance has to be by MoEF&CC.

11. Coming to the justification for the clearance, we are unable to hold that the clearance has been granted ignoring the interests of the fishermen. From the recommendation quoted earlier, which can be taken to be the basis for the clearance, it is clear that the project will benefit the people, including the fishermen. There is no merit in the plea that the rights of fishermen will be adversely affected or that it will damage the fisheries or fish production.

12. We note that the appellant has filed a copy of EIA report prepared by NEERI in April 2013 to show that the PP treated the project as category A which plea is untenable, as held above. However, the said report shows that the project addresses the problem of water shortage for domestic, agricultural and industrial purposes. It is aimed at checking problem of salinity ingress in upstream river stretch and deterioration of surface and ground water quality and providing protection to flood-prone low-lying area on the left bank of the river which in turn would facilitate an ecological based socio-economic development of the estuarine region of the river Narmada. The EIA study covers impact of air, water, noise and salinity in the river as well as land and biological environment, impact on fisheries and fish production, agricultural, socio economic environment and infrastructure resource base. Anticipated impact and mitigation measures are dealt with in the EMP. The report supports the case of the PP but independent of the said report, there was adequate material before SEIAA to justify the impugned clearance, as already held.

The appeal is accordingly dismissed.

Adarsh Kumar Goel, CP Sudhir Agarwal, JM Pushpa Sathyanarayana, JM Prof. A. Senthil Vel, EM Dr. Vijay Kulkarni, EM March 31, 2022 Appeal No. 107/2017(WZ) DV