
(2002) 11 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No's. 41 with 1397 of 2002 and Notice of Motion No. 274 of 2002 in Writ Petition No. 1397 of 2002

Envionsare Foundation

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-11-2002

Acts Referred:

Coastal Region Zone Rules — Rule 5(3)
Environment (Protection) Act, 1986 — Section 3(2)

Citation : (2003) 2 BomCR 519

Hon'ble Judges : Mhatre Nishita, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : Aspi Chinoy, S.K. Sen, P.R. Dhande and K. Dighe, instructed by D.H. Law and Associates in W.P. No. 41/2002, C.U. Singh and Sanjay Udeshi, instructed by Sanjay Udeshi and Co. in W.P. No. 1397/2002, for the Appellant; H.V. Mehta in W.P. No. 41/2002 for Respondent Nos. 1 and 4 in W.P. No. 1397/2002 for Respondent No. 1, R.M. Sawant, G.P. in W.P. No. 41/2002 for Respondent No. 2 in W.P. No. 1397/2002 for Respondent Nos. 2 and 3, A.B. Jain and R.V. Govilkar, in W.P. No. 41/2002 for Respondent No. 3 in W.P. No. 1397/2002 for Respondent No. 4, Rajiv Kumar and Akshay Patil, instructed by Advani and Co. in W.P. No. 41/2002 for Respondent No. 5, N.R. Engineer, instructed by Desai and Diwanji in W.P. No. 41/2002 for Respondent No. 7, Janak Dwarkadas Chirag Balsara and Gautam Bhat, instructed by Desai and Diwanji in W.P. No. 41/2002 for Respondent No. 8 in W.P. No. 1397/2002 for Respondent Nos. 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Gokhale, J.—These two petitions seek to challenge the legality and propriety of a pipeline of a distance of about 8.5 k.m. set up by respondent No. 8 Indian Oil Tanking Limited (I.D.T.L.) for carrying Naphtha—a hazardous substance—from a tap-off point (on an existing pipeline of O.N.G.C.) at Virag within the Jawaharlal Nehru Port Trust (J.N.P.T.) area to Navghar, where the storage terminal of respondent No. 8 is situated. The principal grievance in both the petitions is that

the pipeline affects the mangroves in that area, which falls in the Coastal Regulation Zone (C.R.Z.) and is set up in violation of the provisions of the Central Government Notification dated 19th February, 1991 governing the C.R.Z. The petition seek a declaration that the environmental clearance to this pipeline granted by the Ministry of Environment and Forest (M.O.E.F.) of the Union of India respondent No. 1 on 20th December, 2001 is illegal. Consequently, the petitions seek an order that the pipeline be dismantled and removed.

2. The first of the two petitions was filed on 15th December, 2001 and was moved on 2nd January, 2002 before a vacation Judge, who declined to grant any ad interim relief. Thereafter the matter appeared before the regular Division Bench from time to time, but no interim order was passed. Thereafter, when the actual construction of the pipeline started, it was mentioned before the vacation Judge on 28th May, 2002 for restraining respondent No. 8 from continuing with the construction of the pipeline, but again the ad interim order was declined. The matter was subsequently heard by the regular Division Bench, which admitted it, but refused the interim relief by its order dated 11th June/3rd July, 2002. The Division Bench passed the same order in the second writ petition being Writ Petition No. 1397 of 2002, which was filed in the meanwhile on 31st May, 2000. Both the petitions were directed to be heard together. In the second writ petition, a Notice of Motion has also been moved by the petitioners being Notice of Motion No. 274 of 2002, which principally seeks restoration of the status quo ante.

3. Being aggrieved by the orders of 11th June/3rd July, 2002 two special leave petitions were preferred. Inasmuch as the special leave petitions were against the refusal to pass an interim order, the Apex Court did not go into the merits of the submissions, but after considering the circumstances of the case and the public interest involved, the Apex Court, by its order dated 5th August, 2002, directed that the petitions be heard and disposed of within two months from that date. Thereafter the petitions were placed before another Division Bench of this Court from time to time, but that Division Bench could not proceed with these petitions due to its pre-occupation with other matters. They were, therefore, transferred by the Hon'ble the Acting Chief Justice and placed before this Bench on 7th October, 2002. The petitions were heard from time to time and hearing was concluded on 30th October, 2002. The Court was closed from 2nd November to 17th November, 2002 (due to Diwali vacation) and on reopening, the petitions along with the Notice of Motion (in the second writ petition) are being immediately disposed of.

4. The petitioner in Writ Petition No. 41 of 2001 claims to be a registered Public Charitable Trust and a non-Governmental Organisation interested in protecting environment. The 1st respondent to this petition is Union of India through the Secretary, Ministry of Environment and Forests (M.O.E.F.). The 2nd respondent is the State of Maharashtra through its Principal Secretary, Energy & Environment Department. The 3rd respondent is the member-Secretary of the Maharashtra Pollution Control Board (M.P.C.B.). The 4th respondent is the Chief Controller of

explosives (C.C.O.E.). Respondent No. 5 is the Chairman of the Board of Trustees of J.N.P.T. The 6th respondent is the Directorate of Industrial Safety and Health. Respondent No. 7 is the Chairman of Oil & Natural Gas Commission (O.N.G.C.) and respondent No. 8 is the I.O.F.L., a Joint Venture Company of Indian Oil Corporation (I.O.C.) and Oil Tanking GmbH (a German Company). In the second writ petition, the first four petitioners are registered co-operative societies of fishermen from nearby Dharamtar and Karanja Creeks. Petitioner No. 5 is a N.G.O. and the 6th petitioner is an activist. The 1st respondent to this petition is Union of India. The 2nd and 3rd respondents are Government of Maharashtra and its Secretary of Environment. Respondent No. 4 is M.P.C.B. Respondent No. 5 is I.O.T.L. and respondent No. 6 is its Managing Director. For convenience hereafter, the parties are referred to as the petitioners and the respondents as appearing in the first petition. Wherever there is a need to refer them separately the parties to the second petition are referred to accordingly. Mr. Aspi Chinoy, Senior Counsel with Mr. Sunil Sen has appeared for the petitioner in the first petition, whereas Mr. C.D. Singh has appeared for the petitioners in the second petition. Mr. H.V. Mehta has appeared for respondent No. 1 Union of India and respondent No. 4, Mr. R.M. Sawant, Government Pleader for respondent Nos. 2 and 6, Mr. Jain for respondent No. 3, Mr. Rajiv Kumar for respondent No. 4, Mr. Naushad Engineer for respondent No. 7 and Mr. Dwarkadas, Senior Counsel and Mr. Balsara have appeared for respondent No. 8.

Factual background:

5. Respondent No. 7-O.N.G.C. has set up several rigs and platforms in the high seas in the area known as Bombay High. They are located between 20 to 80 k.m. off the Indian Coast. O.N.G.C. extracts crude oil and gas therefrom and they are transmitted to refinery situated at Uran via a pipeline. At the refinery, crude is stored and stabilised and then gas is processed and converted into L.P.G. and Naphtha. All these years, Naphtha manufactured at this refinery was exported from Trombay after being taken over there via 24 k.m. pipeline partly going under the sea. This pipeline was laid more than 25 years ago. Since it was considered that the transfer of Naphtha via that old pipeline had become hazardous, O.N.G.C. desired that Naphtha be stored closer to the J.N.P.T. Port from where it would be exported. Therefore, O.N.G.C. invited a tender for storage and transfer of Naphtha for export purposes. For this purpose, it was contemplated to lay a pipeline of about 8.5 k.m. From a tap-off point on the above-referred existing O.N.G.C. pipeline near Viraj in the J.N.P.T. area to the storage depots at Navghar. About 1.8 k.m. length of this pipeline was to be of "8" diameter and was to be laid above the ground, while the remaining 6.7 k.m. was to be of 12" diameter and to be laid underground. The total cost of the project was in the range of Rs. 3.5 crores. The pipeline was to be laid partly on an existing corridor, alleviated approximately 12 ft. above the ground level. This corridor is already holding some ten other pipelines. O.N.G.C. accordingly floated a tender for storage of Naphtha manufactured by it. The proposed contract clearly stated that it was for hiring of storage and export related services in Uran

Trombay corridor for receipt, storage and pumping of Uran Naphtha for coastal supplies/exports. Annexure O of this contract defined the scope of work and Clause 1 thereof gave an introduction. This Clause 1 read as follows:

"1.0 Introduction:

O.N.G.C. is producing Low Aromatic Naphtha (L.A.N.) at its Gas Processing Complex at Uran. O.N.G.C. has limited process tankage at Uran and is accordingly interested in hiring storage facility in the vicinity of Uran-Trombay Corridor in Maharashtra State. Such storage facility is required to be connected with a Jetty with a view to export/move coastally economic size parcel of L.A.N. (Low Aromatic Naphtha). Both the storage facility and the Jetty are required to be approved for handling class A petroleum products. Through open tender No. 01-6033, O.N.G.C. has awarded a contract No. M.R.B.C./O.B.G./M.M./S.C.O.N./M.K.T./50(51)/01-02/01-6033/P.C.-9034 on M/s. Indian Oil tanking, Navghar, New Mumbai.

An 8" x 24 k.m. long sub-sea underground pipeline runs between gas processing complex Uran and O.N.G.C.'s terminal at Trombay for transfer of Naphtha from Uran. O.N.G.C. is willing to provide a tap off from a suitable location on the line from where the contractor is required to lay an appropriate size of pipeline following suitable pipe specification welding procedures and certificates test procedures including hydrostatic testing, radiography and documentary proof of tests undertaken to ascertain the integrity of pipeline. The pipeline from tap off point to the storage terminal will be laid by the contractor after O.N.G.C.'s approval within 45 days from the date Award of work (i.e. 45 days from 11-10-01)."

6. On respondent No. 7-O.N.G.C. floating this tender, bids were made by three companies viz. (1) I.O.T.L. (respondent No. 8), (2) Aegls and (3) Ganesh Benzoplast. The bid was for a period of two years. The bid given by I.O.T.L. was for Rs. 15.01 crores, whereas that of Aegls was for Rs. 45.04 crores. The bid given by I.O.T.L. was accepted and O.N.G.C. issued a letter of intent to it on 11th October, 2001. On the next date i.e. on 12th October, 2001, I.O.T.L. applied to respondent No. 1 M.O.E.F. for clearance and then on 13th October, 2001 to City and Industrial Development Corporation (C.I.D.C.O.). It also applied to respondent No. 3-M.P.C.B. on 17th October, 2001 for its consent. On 18th October, 2001, respondent No. 5-J.N.P.T. granted its permission to lay the pipeline. On 29th October, 2001, respondent No. 3-M.P.C.B. issued a stop work notice since the permission required from C.C.O.E. respondent No. 4 was in the name of Indian Oil Ltd. and not respondent No. 8. This was followed by its subsequent letter to the same effect dated 22nd November, 2001.

7. In the meanwhile, the contract was awarded to respondent No. 8 formerly on 23rd November, 2001. Respondent No. 1 M.O.E.F. granted its approval to the pipeline by its permission dated 20th December, 2001 after considering all relevant factors and making the site inspection. The permission contained special

conditions and general conditions and at the end of it, stated that the project should also ensure that the proposal complies with the provisions of Coastal Zone Management Plan (C.Z.M.P.) of Maharashtra State and the Supreme Court's order dated 18-4-1996 in Writ Petition No. 664 of 1993, to the extent the same are applicable to this proposal. (This order is in the case of Indian Council for Environment-Legal Action Vs. Union of India (UOI) and Others, . Respondent No. 4-C.C.O.E. also granted approval for its work on 3rd January, 2002. Respondent No. 3 M.P.C.B. had raised an objection since the permission, which respondent No. 8 had from C.C.O.E. (respondent No. 4) was in the name of Indian Oil Corporation. Now, M.P.C.B. also granted its approval in May 2002. As per the contract, the pipeline was to be commissioned within 45 days and the C.C.O.E. has confirmed it by its letter dated 3rd July, 2002 that the pipeline had been completed in all its respects as per its approval and there was no objection to its commissioning. The pipeline had been commissioned since then and Naphtha has been flowing smoothly through the same.

8. Writ Petition No. 41 of 2001 has been opposed by filing affidavits-in-reply. Such affidavits have been filed on behalf of respondent Nos. 1 to 5, 7 and 8 and rejoinders and sur-rejoinders have also been filed. The parties have also tendered their compilation of documents, maps and photographs in support. In the second writ petition being Writ Petition No. 1397 of 2002, an affidavit-in-reply has been filed by respondent No. 5 thereto i.e. I.O.T.L. and a rejoinder has been filed on behalf of the petitioners. Similarly, as far as the Notice of Motion taken out therein is concerned, an affidavit-in-reply has been filed by respondent No. 5 thereto i.e. by I.D.T.L. and a rejoinder by the petitioners and then the sur-rejoinder have been filed. The Counsel for all the parties have taken us through the material on record as also the relevant provisions of the statute, and the notification of the Environment Ministry as also the relevant judgments.

Relevant Statutory provisions :

Notification of 19th February, 1991

9. (a) As pointed out at the outset, the principal, grievance in both these petitions has been that the pipeline falls in the C.R.Z. area and is set up in violation of the provisions of the Central Government Notification dated 19th February, 1991 governing the C.R.Z. This notification states that the Central Government had invited objections against the declaration of Coastal Stretches as C.R.Z. and imposing restrictions on industries, operations and processes in the C.R.Z. u/s 3(1) and section 3(2)(v) of the Environment (Protection) Act, 1986 and after considering the objections, in exercise of its powers under Rule 5(3)(d), it had issued the particular notification on 19th February, 1991. Under this notification, the Central Government has declared and defined the C.R.Z. to consist of

(i) Coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 meters from

the High Tide Line (H.T.L.) and the land between the Low Tide Line (L.T.L.) and the H.T.L.

(ii) The High Tide Line is defined to mean the line on the land upto which the highest water line reaches during the spring tide.

(iii) The demarcation of the High Tide Line is to be done uniformly in all parts of the country by the demarcating authority or authorities authorised by the Central Government.

(b) This C.R.Z. is classified into four categories under Clause 6(1) of this notification. They are as follows:---

Category I (C.R.Z.-I)---

(i) Areas that are ecologically sensitive and important which are so designated either by description or by declaration by the Central Government or by the concerned authorities at the level of State/Union Territory.

(ii) Area between the L.T.L. and H.T.L.

Category II (C.R.Z.-II)---

Developed areas.

Category III (C.R.Z.-III)---

Undisturbed areas not falling in categories 1 and 11.

Category IV (C.R.Z.-IV)---

Coastal stretches in the Andaman & Nicobar, Lakshadweep and Small Island, except those designated as C.R.Z.-I, C.R.Z.-II or C.R.Z.-III.

10. (a) Clause 2 of this notification lays down the activities which are declared as prohibited activities within the entire C.R.Z.

(b) Clause 3 provides for the regulation of permissible activities and it lays down that all other activities, except those prohibited in Clause 2 will be regulated as provided thereunder.

Sub-clause (1) of this Clause lays down a general rule that clearance shall be given for any activity within the C.R.Z. only if it requires water front and foreshore facilities.

Sub-clause (2) lays down the activities which will require environmental clearance from the M.O.E.F.

Sub-clause (3) provides for preparing a Coastal Zone Management Plan (C.Z.M.P.) which is to be prepared by the Coastal States or the Union Territories and it further lays down that within the framework of this C.Z.M.P. all development and activities within the C.R.Z. other than those covered in para 2 (prohibited activities) and para 3 (where permission of M.O.E.F. is required) shall

be regulated by the State Government.

(c) Clause 4 lays down the procedure for monitoring and enforcement.

(d) Annexure-I to this notification lays down coastal area classification and development regulations and earlier we have noted the classification of C.R.Z. into four categories made in Clause 6(1). Clause 6(2) lays down norms for regulation of activities for these different categories.

(e) Annexure-II gives the guidelines for development of Beach Resorts/Hotels and Annexure III gives the list of petroleum products permitted for storage in the C.R.Z. except C.R.Z.-I (1). In this list, Naphtha is to be seen at Serial No. (XI). Amendment of 12th April, 2001

11. This notification of 19th February, 1991 came to be amended on 12th April, 2001. Amongst others, the preamble of this amending notification states as follows:---

And whereas the Central Government has also considered the requirement of projects relating to Department of Atomic Energy and Pipelines, conveying system including transmission lines and other facilities essential for activities permissible under the notification in the C.R.Z. areas;

And whereas the Central Government deems it necessary to harmonise the existing provisions of the notification. Therefore, the Central Government was making the amendment as mentioned in the amending notification.

12. Now, what is material to note is that Clause 2 of this notification declares as prohibited within the C.R.Z. the activities mentioned therein. The initial Clause (1) appearing thereafter now came to be replaced by the following sub-clause, which reads thus:---

"(i) setting up of new industries and expansion of existing industries, except (a) those directly related to water front or directly needing foreshore facilities and (b) projects of Department of Atomic Energy."

Thereafter appears the original sub-clause (ii) which reads as follows:-

"(ii) manufacturing or handling or storage of hazardous substances as specified in the notifications of the Government of India in the Ministry of Environment & Forest No. S.O. 594(E) dated 28th July, 1989, S.O. 966(E), dated 27th November, 1989 and G.S.R. 1037 (E), dated 5th December, 1989; except transfer of hazardous substances from ships to ports, terminals and refineries and vice versa, in the port areas."

To this sub-clause (ii), the following proviso came to be added:---

"Provided that, facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure III appended to this notification and facilities for degasification of liquefied natural gas, may be permitted within the said zone in areas not classified as C.R.Z.-1 (i), subject to implementation of

safety regulations including guidelines issued by the Oil Industry Safety Directorate in the Government of India, Ministry of Petroleum and Natural Gas and guidelines issued by the Ministry of Environment and Forests and subject to such further terms and conditions for implementation of ameliorative and restorative measures in relation to the environment as may be stipulated by the Government of India in the Ministry of Environment and Forests."

13. Thereafter what is relevant for our purposes is that the following clause (xi) came to be substituted for the earlier Clause (xi), which reads thus:---

"Construction activities in C.R.Z.-I except as specified in Annexure 1 of this notification".

Now, since this added clause refers to Annexure 1, as far as C.R.Z.-I is concerned, the following clauses came to be added in Clause 6(2):---

C.R.Z.-I---

"No new construction shall be permitted in C.R.Z.-I except (a) Projects relating to Department of Atomic Energy and (b) Pipelines, conveying systems including transmission lines and (c) Facilities that are essential for activities permissible under C.R.Z.-I. Between L.T.L. and the H.T.L., activities as specified under paragraph 2(xii) may be permitted. In addition, between L.T.L. and H.T.L. in areas which are not ecologically sensitive and important, the following may be permitted: (a) Exploration and extraction of Natural Gas, (b) Activities as specified under proviso of sub-paragraph (ii) of paragraph 2, and (c) Construction of dispensaries, schools, public rain, shelters, community toilets, bridges, roads, jetties, water supply, drainage, sewerage which are required for traditional inhabitants of the Sunderbans Bio-sphere reserve area, West Bengal, on a case to case basis, by the West Bengal State Coastal Zone Management Authority."

14. (a) As noted earlier, Clause 3 deals with regulation of permissible activities and states that all other activities, except those prohibited in para 2 will be regulated as under this clause. Clause 3(2) lays down the activities which will require permission of clearance of M.O.E.F. In this clause, the following two sub-clauses came to be added by this amendment:---

(1) Construction activities related to projects of Department of Atomic Energy or defence requirements for which foreshore facilities are essential such as slipways, jetties, wharves, quays; except for classified operational component of defence projects for which a separate procedure shall be followed. (Residential buildings, office buildings, hospital complexes, workshops shall not come within the definition of operational requirements except in very special cases and hence shall not normally be permitted in the C.R.Z.).

For sub-clause (ii), the following sub-clause came to be substituted, namely:-

"(ii) Operational constructions for ports and harbours and light houses and

constructions for activities such as jetties, wharves, quays and slipways, pipelines, conveying systems including transmission lines."

(b) In this connection, it is also relevant to note that by amendment effected from 4th August, 2000, the following Clause (ii-a) had already been added in this Clause 3(2), which reads thus:---

"(ii-a) Exploration and extraction of oil and natural gas and all associated activities and facilities thereto."

Submissions on behalf of the petitioners:

15. The submission on behalf of the petitioners has been that there is an approved C.Z.M.P. for the Maharashtra State, which has been approved by the Government of India, M.O.E.F., vide its letter dated 27th September, 1996 and as per that C.Z.M.P., the green area of 500 meters in width running all along the periphery of the port is specifically classified as C.R.Z.-I. All mangroves in this area will, therefore, have to be protected. This strip and the mangroves, therefore, fall within C.R.Z.-I(i) which is ecologically a fragile area. The pipeline set up by respondent No. 8 starts from tap-off point near Viraj, which is undoubtedly in this area, though subsequently it goes to Navghar which is outside C.R.Z.-I(i). Thus, part of this pipeline, to the extent it falls in this area, has to be in conformity to this notification. Now, this pipeline is not transferring Naphtha from ship to shore or vice versa, but it is transferring the same from one onshore point to the terminal which is another onshore point. Laying of such a pipeline is, therefore, prohibited by Clause 2(ii) of the C.R.Z. notification as also under the proviso, which is added by amendment. Alternatively, it is submitted that, in any case, this pipeline from one onshore point to another onshore point can certainly be re-routed so as to totally avoid the C.R.Z. area. This would only add a few kilo meters of length and some additional costs to the 8th respondent, but that will be in conformity with the C.R.Z. notification.

16. Then it is submitted that the amendment introduced on 12th April, 2001 does not change the position. This is because transfer of hazardous substances is specifically prohibited under Clause 2(ii) of this Notification, except when it is from ship to shore and vice versa in the port area. The proviso, which is added to this clause, also states that receipt and storage of petroleum products may be permitted within the said zone but in areas not classified as C.R.Z.-I(i). The incorporation of pipelines in Clause 3(2)(ii), which deals with regulation of permissible activities, will also make no difference. This is because Clause 3, at the outset, states that the activities except those prohibited in para 2, are to be regulated as provided in Clause 3. This being the position, the pipelines contemplated in Clause 3(2)(ii) will have to mean those not transferring any hazardous substances. Mr. Chinoy, learned Counsel appearing for the petitioners, submitted that as far as the pipelines supplying water etc. are concerned, there was no problem. However, those which transfer hazardous substances except from ship to shore or other way round would continue to be hit by Clause 2(ii) of

the Notification. Reply on behalf of the respondents:

17. Mr. Dwarkadas, learned Counsel appearing for respondent No. 8, on the other hand, pointed out that, firstly, both the petitions were motivated and filed with mala fide intentions. He submitted that the petitioner in the first writ petition was put up by Aegis, which could not succeed in getting this contract. The very fact that the petitioner had all the necessary documents clearly indicated that they had the support of this bidding party, which had lost the bid. It is further pointed out that the Chairman of the petitioner-trust was a former official of the M.P.C.B. and that is how, he is using his position to get the information and also to pressurize M.P.C.B.

18. Apart from the allegation of mala fides, Mr. Dwarkadas, firstly, submitted that the contract clearly indicated that it was for export purposes and it clearly laid down that this storage facility was required to be connected with a jetty with a view to export. Now, the Naphtha was to flow from Uran to the tap-off point and therefrom to the storage tanks at Navghar through the inlet point. The outlet pipeline from Navghar to J.N.P.T. was already existing. Thus, the pipeline from the tap-off point to the Navghar terminal was a part of the process of transfer of hazardous substance from the refinery to the port and could not be isolated to say that this activity will be hit by Clause 2(ii). In fact, it was protected under this clause which has been retained unamended.

19. Mr. Dwarkadas, secondly, pointed out that the contract document clearly stated that the pipeline was for export related service. The introduction giving the scope of work recorded that O.N.G.C. was having a gas processing complex at Uran and one of its by products was Naphtha and it had to be stored in storage facility with a necessary pipeline at Navghar, instead of carrying it to Trombay, which was being done earlier. He, therefore, submitted that, firstly, this pipeline would fall in the category of associated activities and facilities mentioned along with exploration and extraction of oil and natural gas and Clause (ii-a) added in Clause 3(2). Besides, since the oil and natural gas was extracted from the offshore drills and it was processed in the refinery at Uran and since it was to be stored for export purposes at Navghar, surely it is an activity which requires a water front or a foreshore facility as per added Clause 2(i) which is an activity excluded from the prohibited category.

20. Mr. Dwarkadas, thirdly, submitted that if one sees preamble of the amending notification, as quoted earlier, the amendment was brought in to specifically exclude the requirements of projects relating to Department of Atomic Energy and Pipelines, conveying systems including transmission lines and to surmount existing provisions. Clause 2(ii) added in Clause 3 specifically mentions the word pipeline. Once it is noted that this pipeline is for transfer from refinery to the port, it would not be hit by Clause 2(ii) and it will be regulated through an environmental clearance from the Ministry of External Affairs as provided under Clause 3(2). He pointed out that the tap-off point wherefrom the line was laid was on a hard surface. There was an alleviated corridor on which some ten

pipelines were already going through an existing right of way and along therewith this new pipeline was to go. He submitted that this pipeline was set up inasmuch as it was necessary for carrying Naphtha from the refinery to the storage facility and by using the existing corridor comparatively the least damage was being caused to the mangroves. Mr. Dwarkadas further pointed out that the fact that a road and a railway line was passing on the seaward side of this pipeline could also not be ignored and in fact, as proposed by the State Government in the revision of C.Z.M.P. since it was a developed area, the entire area should fall in C.R.Z. and not in C.R.Z.-I(i).

21. The last submission of Mr. Dwarkadas was that in the list of prohibited activities, now, an Item (xi) has come to be added. It states that construction activities in C.R.Z.-I are prohibited except those specified in Annexure 1. Annexure 1 has now a new clause under C.R.Z.-I and in sub-Clause (b) of this clause, pipelines conveying systems including transmission lines are specifically included. He, therefore, submitted that a purposive interpretation had to be given to the notification and its amendment and for that purpose, he relied upon a judgment of the Apex Court in the case of State of M.P. v. Sriram Agarwal, reported in 1979(4) S.C.C. 689, where the Court observed: Language permitting, the appropriate interpretational canon must be purpose oriented.

22. The submissions of Mr. Dwarkadas were supported by Mr. Mehta, learned Counsel appearing for the Union of India. He stated that a clear approval had been given by the Central Government and the Central Government was the proper authority to give this approval under para 3(2) of the notification and this has been specifically stated on oath by the appropriate officer of the Central Government. The submission of Mr. Dwarkadas that the project was for export purposes was also supported by Mr. Naushad Engineer, learned Counsel appearing for O.N.G.C.

23. Mr. Singh, learned Counsel appearing for the petitioners in the second writ petition being Writ Petition No. 1397 of 2002, submitted that no activity of the kind, as proposed by respondent No. 8, ought to be permitted in this C.R.Z. in any way as this would affect the mangroves affecting the fishing rights of the petitioners. He adopted the submissions of Mr. Chinoy, learned Counsel appearing for the petitioner in the first writ petition, but he raised two additional submissions. Firstly, Mr. Singh submitted that C.Z.M.P. declared by the State Government in September 1996 was binding on the respondents and that continued to hold the field. That was to counter the submission on behalf of J.N.P.T. that the High Tide Line was, in fact, not drawn when the earlier C.Z.M.P. was finalized and that the State Government had now forwarded another C.Z.M.P. to the Central Government for its approval on 24th February, 2002. He further submitted that this new proposal has not yet been finalised and, therefore, we had to proceed on the footing that this area continued to be a C.R.Z.-I(i) area.

24. The second submission of Mr. Singh was that the permission given by the

Central Government could not be said to be valid permission. The permission was subject to the approval of the M.P.C.B. as the permission itself stated and subject to the approval of the plans by the State Government. He drew our attention to two judgments of the Apex Court, first in the case of *State of Punjab & another v. Hari Kishan Sharma*, reported in AIR 1961 S.C. 1081, which had held that a jurisdiction which was in a licencing authority could not be exercised by the State Government and the second judgment in the case of *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, which held that the Chief Minister was not a recognised authority under the relevant Sugar Cane (Control) Order. Any order issued by him was bad. Mr. Singh then drew our attention to the judgment of the Apex Court in the case of *S. Jagannath Vs. Union of India and others*. He drew our attention to various paragraphs thereof and particularly para 19, which emphasizes the purpose behind the C.R.Z. Notification namely that it is to protect the ecologically fragile coastal areas. He then drew our attention to the report of N.E.E.R.I., which is referred in paras 25 and 26 of the judgment, which emphasizes the importance of mangroves.

Conclusions:

25. Having heard the Counsel for the parties, we have to note that the notification of the Central Government has to be seen in its correct perspective. The notification is issued under the powers of Environment (Protection) Act, 1986 to impose restrictions on industries, operations and processes in the C.R.Z. Section 3(2)(v) of the Act gives the power to the Central Government to impose such restrictions and the rules requires the necessary procedure to be followed. The idea is to restrict these industries in the interest of environment, and at the same time also to see to it that where economic development or necessity requires it, they have to be permitted and regulated. In the instant case, the original notification provided that the C.R.Z. area is to be demarcated by the demarcating authority and the C.Z.M.P. will identify and classify the C.R.Z. area. As far as the present notification of this particular area is concerned, it is, no doubt, true that the State Government has forwarded a fresh proposal to the Central Government in the year 2002, but it is not yet approved. It is still under consideration. That being the position, the particular tap-off point where the pipeline is to start, will have to be held as falling in C.R.Z.-I(i). It is true that High Tide Line has not been drawn, but, in any case, this is a point which falls within 500 meters from the water front of the port under the earlier plans and we will have to proceed on that footing.

26. As far as the question with respect to the appropriate authority, which can give any clearance in this area is concerned, though an emphasis has been laid on the particular contents of the M.O.E.F. clearance dated 20th December, 2001 to submit that it lies with M.P.C.B. or the State Government, the M.P.C.B. itself has taken a stand that it does not have the authority. It has authority only for the purposes of granting consent under the Water (Prevention and Control of Pollution) Act, 1974. As far as the maps for the particular pipeline are concerned,

the State Government has also clearly stated that it has no objection. The authority dealing with explosives i.e. C.C.O.E. has also given its approval. Two area authorities---C.I.D.C.O. and J.N.P.T., to the extent the pipeline flows in their area have given no objection. As far as the authority to regulate this development and to give clearance is concerned, it is clear from Clause 3(2) that if an activity is a permitted activity, the regulation thereof remains with the Central Government and undoubtedly the Central Government has given its approval.

27. Question, however, is whether laying down this pipeline is a prohibited activity or a permitted activity. Mr. Chinoy, learned Counsel appearing for the petitioner, submitted that, admittedly, clearance sought was for the limited pipeline from the tap-off point to the terminal and the tap-off point was in C.R.Z.-I(i). Admittedly, the pipeline was transferring hazardous substance. In his submission, this was not a pipeline from ship to shore and, therefore, it would be hit under Clause 2(ii). To examine this submission, all the connected factors will have to be seen. The pipeline is set in order to cater to the storage facility set up at Navghar by O.N.G.C. Until this pipeline was laid, Naphtha used to flow under the sea from this tap-off point to Trombay and therefrom it used to be exported. So many years had gone since that pipeline was laid and it was risky to continue to use it. It is for this purpose that the storage facility was now being set up at Navghar. What was to flow from this storage facility was, in fact, the input from the refinery at Uran, which conducted the gas processing. Gas was collected at Bombay High and was brought to refinery at Uran for processing. The portion of the pipeline from the tap-off point to the terminal at Navghar was undoubtedly a part of this entire process so that thereafter from the storage tanks at Navghar, Naphtha will flow to the port for the purposes of export. In this sense, in our view, the pipeline will have to be held as a part of the shore to ship process, which is clearly protected under Clause 2(ii) of the Notification.

28. (a) However, if any doubt was arising, that has not been removed by the amendment effected in April 2001 and the earlier amendment of 4th August, 2000 introducing Clause (ii-a) in Clause 3. Mr. Chinoy submits that pipelines for non-hazardous substances in C.R.Z.-I(i) area were otherwise also not affected under Clause 2(ii). If that was so, the amendment of April 2001 was not required at all. In our view, the amendment of April 2001 has been brought about by way of abundant caution and as the amendment itself declared, it has been brought to consider the requirements of projects relating to Department of Atomic Energy and pipelines, conveying systems and transmission lines in C.R.Z. areas and to harmonise existing provisions of the notification. This being the declared objective of the amendment, the amended notification will have to be read purposively. Inasmuch as Naphtha processed from the natural gas of Bombay High is forwarded from the refinery through the pipeline, the construction of this pipeline will have to be looked at from that point of view. As rightly submitted by Mr. Dwarkadas, it required foreshore facilities, only limitation being is that an environmental clearance from the Ministry of Environment and Forest was

necessary under Clause 3(2).

(b) Similarly, now, under the added Clause 2(xi), construction activities are permitted in C.R.Z.-I, except those specified in Annexure-1. Clause 6(2) of Annexure I is relevant in this behalf, which clearly states that no new construction shall be permitted in C.R.Z.-I and then specifically permits in Clause (b) thereof pipelines, conveying systems including transmission lines. In this view of the matter, the pipeline set up by respondent No. 8 cannot be said to be a prohibited activity. It will have to be held as a permitted activity, which will be regulated under the environmental clearance from the M.O.E.F. and that clearance has been granted by the Ministry. In the circumstances, the objections raised in both the petitions cannot be accepted.

29. Respondent No. 8 has additionally made allegations of mala fides in their reply. However, it is not possible to accept this submission for want of strong material since as far as mala fides are concerned, unless there is a definite proof, one cannot accept the same. We are quite conscious of the observations of the Apex Court in the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, , where the Apex Court has observed as under:---

"There is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive."

Yet, in the absence of any clinching material, we are refraining from making any observations with respect to the mala fides of the two petitions.

30. Before we conclude, we cannot refrain from referring to the guidance from the Apex Court in the case of The Goa Foundation Vs. Diksha Holdings Pvt. Ltd. and others, , that while maintaining and preserving environment and ecology, economic development of the State has also to be kept in mind and a balance has to be struck between the two. That approach is reflected in the notification of 19th February, 1991 and particularly the amendment of the notification brought about on 12th April, 2001 and which completely protects the disputed pipeline.

31. For the reasons stated above, both the petitions as well as the notice of motion are dismissed. However, there will be no order as to costs.

32. Parties be provided with an authenticated copy of this judgment. Petitions & notice of motion dismissed.