

Item No.1:-

Court No.1

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

(Through Video Conference)

Original Application No. 172 of 2020 (SZ)

IN THE MATTER OF:

Association of Deep Sea Going Artisanal Fishermen

Represented by its Vice President, Mr. Selvoriyan. A
Shark Street, College Road,
Thoothoor – 629 176.
Kanyakumari District.

...Applicant(s)

With

The Union of India

Represented by its Secretary
Ministry of Environment and Forest
Department of Environment and Forest and Wildlife
Paryavaran Bhavan
Jor Bagh Road, New Delhi and Ors.

...Respondent(s)

For Applicant(s): Mr. Edwin Jerome.

For Respondent(s): Mr. G.M. Syed Nurullah Sheriff for R1.
Dr. D. Shanmuganathan for R2 to R5 & R7.
Mr. Harsharaj for R6.
M/s. V.L. Akshai Sajin Kumar,
Adith Narayan, I. Saddam Hussain &
K. Ganesh Kumar for R8.

Judgment Pronounced on: 17th August 2022.

CORAM:

**HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER**

ORDER

Judgment pronounced through Video Conference. The original application is disposed of with directions vide separate Judgment.

Pending interlocutory application, if any, shall stand disposed of.

**Sd/-
Justice K. Ramakrishnan, JM**

**Sd/-
Dr. Satyagopal Korlapati, EM**

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17th August 2022. Mn.**

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With

1) The Union of India

Represented by its Secretary
Ministry of Environment and Forest
Department of Environment and Forest and Wildlife
Paryavaran Bhavan
Jor Bagh Road, New Delhi – 100 003.

2) The State of Tamil Nadu

Rep. by its Principal Secretary,
Public Works Department
St. George Fort,
Chennai – 600 009.

3) The State of Tamil Nadu

Represented by its Principal Secretary
Department of Environment & Forests
St. George Fort, Chennai – 600 009.

**4) Engineer in Chief (Water Resources Organization) and
Chief Engineer (General)**

Public Works Department
Chepauk, Chennai – 600 005.

5) The District Collector

Kanyakumari District
Nagercoil – 629 001.

6) Member Secretary

State Coastal Zone Management Authority (SCZMA)
No.1, Jeenis Road, Panagal Building,
Ground Floor, Saidapet, Chennai – 600 015.

7) Executive Engineer

Public Works Department (WRO)
Kodiyaru Irrigation System
Nagercoil – 629 001.

8) B. Paulraj

S/o. Baskaran
No.6/179 A, Pulimaru Via Veedu,
Vilvancode, Kaniampuram Post,
Kanyakumari District.

(R8 Impleaded as per order in I.A. No.57/2022 dt.05.04.2022)

...Respondent(s)

For Applicant(s): Mr. Edwin Jerome.

For Respondent(s): Mr. G.M. Syed Nurullah Sheriff for R1.
Dr. D. Shanmuganathan for R2 to R5 & R7.
Mr. Harsharaj for R6.
M/s. V.L. Akshai Sajin Kumar,
Adith Narayan, I. Saddam Hussain &
K. Ganesh Kumar for R8.

Judgment Reserved on: 15th July 2022.

Judgment Pronounced on: 17th August 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

Whether the Judgment is allowed to be published on the Internet – Yes.

Whether the Judgment is to be published in the All India NGT Reporter – Yes.

J U D G M E N T

Delivered by Justice K. Ramkrishnan, Judicial Member

1. This is an application filed by the applicant, an association representing the deep sea going artisanal fishermen in that locality and they were working for the protection of the interest of the fishermen community and also agitating against the environmental issues affecting the coastal zone.
2. According to the applicant, the coastal eco-system of Kanyakumari District comprises in 68 Km in length and is studded with 44 coastal fishing villages. The coastal zone in that area is formed by three seas viz., Arabian Sea, Indian Ocean and Bay of Bengal. The main part of

the coastal faces the Arabian Sea. There were lot of fishermen folk in these 44 villages who are solely depending their livelihood by doing traditional fishing activity. The stretch of the coast from Neerodi colony to Erayamunthurai is situated in the West coast of Tamil Nadu State. The width of the beach along this stretch of the coast is about 30 m and got washed away during the South West monsoon leading to the entering of seawater occasionally into dwelling units situated in that area. This stretch of the coast from Pozhiyoor to Neerodi in Kerala and Neerodi colony to Erayamunthurai is an island surrounded by Arabian Sea in South, AVM Canal in North, Poovar estuary in West and Thengapattanam estuary in East. Major part of the Kanyakumari District is drained by the principal rivers viz., Kodayar and Paralayar and their tributaries. Kodayar River originates from Agastiar Malai and flows in the southern direction for a length of 10 Km from its origin, leading natural drainage called Kodayar Lake which serves main source of irrigation system in that area. Further, it flows in a south west direction and south of Kuzhithurai and is called as Kuzhithuraiaru or Tamirabarani. The river flows through rugged terrain through a succession of falls and cascades. One such falls lies south of Tiruparappu, Chittar – I and Chittar – II are the major tributaries of Kodayar. There are other rivers also passing through this area and ultimately joins the western Tamirabarani at Thickurichy near Marthandam. Tamirabarani (Kuzhithuraiyaru or Kuzhithurai river) which is one of the important rivers of the district which is flowing in the central part of the district and drains in the Melpuram, Kuzhithurai, Munchirai and Killiyur blocks and ultimately, river joins into Indian Ocean after traversing Killiyur and Munchirai Blocks and joins the Arabian Sea near Thengapattanam which is at a distance of 56 Km West of Cape Commerin. Kodaiyar River Basin is in the threat of sea water intrusion and the rest of the area both the groundwater level and quality of the water is in permissible limit. They also explained the ecological sensitiveness of the area on the basis of the various reports submitted by various institutions.

- 3.** It is further alleged in the application that Respondent Nos.2, 4 & 7 have started construction of check dam at Parakani having latitude at $8^{\circ}15'10.6''$ N and longitude at $77^{\circ}09'44.3''$ E which falls under CRZ – III (NDZ) of the Coastal Zone Management Plan, Map No.TN11 Sheet No.C43*3.SE and it falls under 'No Development Zone' and violating the CRZ Notification, they are proceeding with the construction. No

construction shall be permitted within the 'No Development Zone' except for repairs of existing authorized structures not exceeding existing FSI, existing plinth area and existing density and for permissible activities under the notification, including facilities essential for the activities, construction and reconstruction of dwelling units of traditional coastal communities including fisher folk. The CRZ Notification was issued to regulate certain activities within the CRZ area and permissible/regulated activities can be carried out only after obtaining necessary clearance from the Coastal Zone Management Authority. They have not obtained any clearance from the Coastal Zone Management Authority and no study was conducted regarding the impact of construction of Thengapattanam Fishing Harbor and reconstruction of Kuzhithurai check dam. They have not taken any steps to reconstruct the damaged check dam at Mancaud, but they are hurriedly trying to construct the check dam at Parakani inside the harbor and estuary area. The construction of the dam is against the direction of the Hon'ble Apex Court in **S. Jagannath Vs. Union of India & Ors.**¹

4. On account of the construction of check dam, groundwater quality in that area has been affected and that will deny the drinking water source to the local area and there is a possibility of submerging of certain areas on account of such construction and it will affect the livelihood of the fishermen community in that area. Though several representations were made to the authorities not to carry out the activities, they were proceeding with the same in a hasty manner during the lock down.
5. So, the applicant has no remedy except to approach this Tribunal by filing this application seeking the following interim as well as final reliefs:-

"Interim Relief:

Pending disposal of the application, the applicant pray that this Hon'ble Tribunal be pleased to direct the respondent to stop the construction of the check dam.

Main Relief:

*(i) Direct the 2nd, 3rd, 5th and 7th respondents not to construct the check dam at Parakani at 8^o15'10.6" N and 77^o09'44.3" E which falls under CRZ - III (NDZ) of the Coastal Zone Management Plan, Map No.TN11 Sheet No.C43*3.SE in blatant violation of the provisions of the Coastal Regulation Zone Notification, 2011, Environment Impact Assessment Notification, 2006 and Coastal Regulation Zone Notification, 2019.*

¹ (1997) 2 SCC 87

(ii) Direct the respondents to restore the river to its original condition demolishing and removing the partially constructed illegal check dam.

(iii) Any other relief which the Hon'ble Tribunal may be deem fit and proper to this case and render justice."

- 6.** In the meantime, a third party viz., B. Paulraj filed an interlocutory application [I.A. No.57 of 2022 (SZ)] to get himself impleaded as additional respondent and the application was allowed as per order dated 05.04.2022 and impleaded as additional 8th Respondent.

- 7.** The 7th Respondent filed counter affidavit contending that the application is not maintainable. Major part of Kanyakumari District is drained by principal rivers namely, Kodayar and Paralayar and their tributaries and the water is being used mainly for Irrigation purpose. General Public at large are using the river water for their agricultural activities and drinking water purpose. Moreover, there were lot of TWAD Board Infiltration and wells and the river water is being pumped for the purpose of supplying to nearby villages for drinking purposes from these wells. Several lakhs of people are the beneficiaries of the said drinking water supply. Tamirabarani also called as Kuzhithuraiyaru or Kuzhithurai river which is one of the important river of the district which flows in the central part of the district and drain in the Melpuram, Kuzhithurai, Munchirai and Killiyur blocks and it is a perennial river having floor carrying capacity of 42,700 cusecs in Kanyakumari District. It runs for about 60 km distance and confluences into Arabian Sea near Erayumanthurai. During food season, the sandy mouth of river automatically opens and the river water enters into the sea. The sandy mouth of the river had been stopping the salty sea water intrusion into river. In order to construct the Fishing Harbour, the said sandy mouth of the river was removed. Therefore, after the construction of Fishing Harbour, the sea water intruded with the river water resulting in the spreading of the salty sea water in more than 48 villages, due to which the river water and ground water became unfit for drinking and agricultural purposes. The general public living in that locality was demanding the government to construct a check dam in order to prevent sea water intrusion and restore the river in the earlier condition. There were various demonstrations conducted by the general public as well as several political parties to stop the salty sea water intrusion by constructing a check dam across the river. Based on the request of

the general public and several political parties, in order to prevent salination of river water, the then Honorable Chief Minister had announced the construction of check dam across Kuzhithuraiyar near Erayumanthurai and various other locations upon Public Works Department's demand on 28.06.2017 that in order to recharge the ground water and to prevent sea water intrusion into the river water. Accordingly, G.O.(3D) No.26 dated 24.08.2016 was passed by the State of Tamil Nadu for the welfare of the general public at large. As per the said G.O., the length of the proposed Check Dam is 130.00m and height is 4.25m. By implementing this scheme, sea water intrusion will be prevented thereby arresting sea water into the river. The Check Dam will act as a grade wall for raising the bed level of Kuzhithuraiyar by deposit of sand in future. The estimated cost works was Rs. 15.37 Crores. Since, the said G.O. was passed by the Government for construction of check dam which is for the welfare of the public at large, the same cannot be quashed. The construction of the check dam is in progress and 40% of work has been completed and an expenditure of Rs 5.64 crores has been incurred so far. The height of body wall is 6.25m from river bed to top crest level (i.e., 5.25m + 1 m). It is imperative to note that the said construction is only to stop the sea water intrusion into the river water. At any point of time in future, the flow of the water would not be stopped since the construction is within the water level. Even now, the general public who had suffered due to the salty sea water intrusion are demanding the speedy completion of the said check dam. So, it is highly necessary for the purpose of protecting the interest of the public in that area and it will not applicant or others as alleged in the application. The AVM Canal (Anantha Victoria Marthandavarman Channel) is the water way project which was abandoned at the construction time by the Maharaja of Travancore in the year 1867 itself. A small stretch from Poovar to Thengapattinam only partially functioned and remaining portion had not been executed and it is not functional. Valliyar river is an independent river system and not a tributary of Kuzhithuraiyar river and the allegation contra mentioned in the application are not correct and it is not relevant for the purpose of considering the question of the disputed check dam in the disputed site. The sea water intrusion is not only on the opposite direction of the sea but also in the parallel side of the river also. In order to develop the livelihood of the fisherman, the Government has

formulated a new Fishing Harbour at Thengapattinam, for which, the Public works Department vide its letter No. TS/D.O.III/C.9747/06 Dated 04.07.2006 has given its consent to transfer the poramboke land for the formation of the said Fishing Harbour project of Thengapattinam subject to the following conditions:

"The entire length of bar mouth may be left as it is in order to allow the entire flood water of the Tamirabarani river (Kanniyakumari District) into the Arabian Sea and the proposed infrastructural facilities located at the Bar Mouth for the Fishing Harbour Project can be relocated the right bank of the river. One check dam across the river well within the distance of 1.00 Km from Thengapattinam in the upstream side of the river shall be provided in order to avoid sea water intrusion during high tides. Therefore, the said Fishing Harbour Project can be developed based on the above said conditions only. The public works department had given its consent to transfer its land in the river for the fishing harbor project with the condition that a check dam across the river well within the distance of 1.00 km from Thengapattinam in the upstream side of the river shall be provided in order to avoid sea water intrusion during high tide. However, to the contrary, on agreeing to the said terms only the fishing harbor project was completed. The aforementioned cannot be breached. This is the clear case of estoppel and also violation of the said consent letter dated 04.07.2006 given by the PWD. Further, it is submitted that the development along coast for fish landing and berthing of fishing vessels/ crafts are to be carried out according to the "Comprehensive shore line protection management plan for entire Tamil Nadu coast May 2016" prepared by the prestigious Institution of Indian Technology, Madras (popularly known as IIT Madras) and approved by the Government of Tamil Nadu for the proper implementation and maintenance of entire coast of Tamil Nadu. In the above plan the planning for development of fish landing centers will be carried out broadly under two categories viz., "i) Development of fish landing centers in gaps of existing coastal protection measures and ii) Conversion of existing coastal protection measures to fish landing centers with possibility for further expansion and these expansion works are being carried out by the Fisheries Department of Government of Tamil Nadu."

- 8.** It is further contended that the Kuzhithuraiyar river is an important river of Kanyakumari District. However, during the non monsoon season due to littoral effect of sea tides, the river mouth at the estuary of river closes due to sand sediment which acts as natural barrier for preventing back water entry and preventing the mixing of saline sea water with river fresh water which had been the natural phenomenon. Whenever the flood comes in the river, the sand bar gets opened automatically and flood water discharges into the sea when water recedes in the river, the sand bar is automatically formed which prevents the saline water mixing with the fresh water of river. However, after construction of the above said Fishing Harbour at the Estuary of Thamirabarani river the sand bar was completely removed for the movement of boat and vessels due to which the saline sea water enters into the river throughout the year causing salination of

river water for the stagnated water for the 13km length from sea to upward direction in the river. In order to prevent these aspects, several protest were made by the general public. In the year 2006 by forecasting these happenings, the Chief Engineer, PWD/WRO, Madurai Region, Madurai laid the condition that one check dam across the river shall be within the distance of 1.00 km from the Thengapattinam river mouth in upstream side of the river shall be provided in order to avoid sea water intrusion during high tides by laying the above condition only the PWD concurrence for land transfer for the construction of Thengapattinam Fishing Harbour had been given vide its Letter No. TS/D.O.III/C.9747/06 dated 04.07.2006. The check dam is proposed with crest Level of +1.00m with reference to Mean Sea Level based on the existing stagnated water level only and it will act as a concrete artificial barrier subsequent to the removal of natural sand bar due to the fishing harbor construction which will be preventing the back sea water entry into the river, and it will converted into saline free fresh water which would be used for drinking purpose and artificial recharges of saline free fresh water in that area. The construction of check dam is made in the river itself within the banks and top level of crest is kept in the existing stagnated water level only. So, there will not be additional inundation in the river and no submergence in the adjoining places as apprehended in the application and there was no question of any acquisition or removal of trees required for this construction. They also given the details of the benefit of the construction and also relied on the decision of the Hon'ble Apex Court in Sunil Batra Vs. Delhi Administration regarding the "Right to life" which includes the right to lead a healthy life and providing clean water. The Government passed G.O.(3D) No. 26 dated 24.08.2016 to protect the river water, ground water and drinking water in that locality. The officials have sent appropriate replies to the applicant in respect of the construction of Check Dam and also given the benefit of the construction of the check dam and they have further mentioned that it will not affect the natural eco-system or flora and fauna in that area.

- 9.** It is further contended that the Coastal Regulation Zone Notification was published in the Gazette of India vide Number S.O. 114 (E), dated 19th February 1991 and subsequently amendments were made as per the S.O. 329 (E) dated 12 April, 2001 and giving the details of

the zones and prohibited/regulated activities. Para 2 (viii) of the Coastal Regulation Zone Notification deals with the prohibited activities viz., 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 clearing 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 for sweet water recharge. So, there was no necessity to obtain Environmental Clearance and permission from the CZMA required to construct the check dam as it is a permitted activity. The draft notification of Coastal Regulation Zone, 2011 was published vide SO No.229(E) dated 15th September 2010 and the CRZ map indicating LTL, HTL and classification of variation of CRZ zones etc. was approved on 24-10-2018 by Ministry of Environment and Forest, New Delhi. However, the G.O. (3D) No. 26 Public Works (W1) Department dated 24.08.2018 for construction of check dam was issued on 24.8.2018 which was prior to the approval of the Coastal Zone Management Plan (CZMP) of Tamil Nadu. The provision of CRZ Notification, 2011 will not apply and the prior one should be followed. The check dam under construction is 800 m away from HTL and proposed location does not come under any CRZ zone as per the map available with the District Coastal Management Plan authority. The CRZ 2011 Map was issued on 24.10.2018 which is only after the issuance of the G.O. dated 24.08.2018 for the work. So, obtaining CRZ clearance from the authorities will not apply under such circumstances. As per Gazette Notification of India, Extraordinary Part-II and Section 3, Sub Section (ii) Ministry of Environment and Forests, New Delhi dated 14th September 2006, the saline water preventive structure does not come under Categories A or B of schedule and as such, there is no necessity to obtain prior Environment Clearance (EC). They also denied the possibility of apprehension raised by the applicant regarding damage being caused to the fishermen community in that area. Further, a Writ Petition was filed before the Hon'ble High Court of Madras at Madurai Bench as W.P.(MD) No.7069 of 2019 seeking for a Writ of Mandamus directing the Public Works Department to take immediate steps to construct a check dam in this area to obstruct the sea water intrusion between Mangadu to Thengapattinam of Thamirabarani (Kuzhithurai) River based on G.O.(3D) No.26, P.W(W1) Department dated 24.08.2018

issued by the Department of PWD, Tamil Nadu within the time frame and the Hon'ble Madurai Bench, Madras High Court emphasized the importance of the construction of check dam and directed the PWD officials to ensure that the construction of check dam is completed before the rainy season, so that there will not be any obstruction of the work and further inconvenience to the public can be prevented. So, the construction of the check dam was in progress and the same will be completed within the stipulated scheduled time. They denied the various allegation of impact of the construction of the check dam and they have further mentioned that the area will not fall under CRZ area under the Notification of 1991 or 2011 and there was no violation of any environmental laws committed by them. So, they prayed for dismissal of the application.

- 10.** The 1st Respondent filed counter affidavit contending that in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, Ministry of Environment and Forest had notified the Coastal Regulation Zone Notification, 1991 on 19.02.1991, which inter-alia provided classification of Coastal Regulation Zone, laws and norms for regulating developmental activities therein and this was subsequently amended from time to time. In supersession of the CRZ Notification, 1991, the Coastal Regulation Zone Notification, 2011 was notified on 06.01.2011 for regulation of developmental activities along the coastal stretches and to ensure the livelihood security to the fisher communities and other local communities, living in the coastal areas to conserve and protect coastal stretches and copy of the CRZ Notification, 2011 was produced as Annexure – R1(1) along with this affidavit. The validity of the Coastal Zone Management Plans approved under CRZ Notification, 1991 was extended from time to time, the last such extension being upto 31.07.2018, pending preparation and subsequent approval of fresh CZMPs under the CRZ Notification, 2011. All the developmental activities in the CRZ areas of coastal States were required to be regulated as per the above mentioned notification and within the framework of approved CZMPs. Under per Para 3 (iv) of the CRZ Notification, 2011, the following are

permissible activities:

- "(a) setting up, construction or modernization or expansion of foreshore facilities like ports, harbors, jetties, wharves, quays, slipways, bridges, sea nk road on stilts, road on reclaimed surface, and such as meant for defense and security purpose and for other facilities that are essential for activities permissible under the notification; Provided that such roads shall not be taken as authorized for permitting development on landward side of such roads till existing High Tide tine. Provided further that the use of reclaimed land may be permitted for roads, mass rapid or multimodal transit system, construction and installation, on landward side of such roads, of all necessary associated public utilities and infrastructure to operate such transit or transport system including those for electrical or electronic signal system, transit stopover of permitted designs except for any industrial operation, repair and maintenance;*
- (b) Measures for control of erosion, based on scientific including Environmental Impact Assessment (hereinafter referred to as the EIA) studies;*
- (c) Maintenance or cleaning of waterways, channels and ports, based on ETA Studies;*
- (d) Measures to prevent sand bars, installation of tidal regulators, tying of water drains or for structures for prevention of salinity ingress and freshwater recharge based on carried out by any agency to be specified by MOFE."*

11. It is further contended that the permissible activity within the CRZ area requires prior Environmental Clearance (EC) from the competent authority before commencement the activity. The construction of the check dam within the CRZ area as alleged in the application requires prior clearance as per the provision of the CRZ Notification 2011. The Coastal Zone Management Plan (CZMP) of Tamil Nadu for all coastal districts as per CRZ Notification, 2011 was approved vide letter No.12-8/2018-IA.III, dated 24.10.2018 and copy of the said letter was produced as Annexure - R1 (2) along with the affidavit. As per the CRZ Notification, the State Coastal Zone Management Authorities are primary responsible for enforcement and implementation of the provisions of the CRZ Notification and compliance of the conditions stipulated thereunder, the powers either original or delegated under the Environment (Protection) Act, 1986. They reserved their right to file further additional affidavit, if required and prayed for accepting their contentions and passing appropriate orders.

12. The 1st Respondent also filed additional counter affidavit contending that the allegation in the application was that construction of check dam within the CRZ area requires prior Environmental Clearance (EC) as per the provisions of the CRZ Notification, 2011. As per the report dated 11.01.2021 submitted by the Joint Committee which was duly signed by the representative of Tamil Nadu Coastal Zone Management Authority and the Regional Office, MoEF&CC, Chennai came the conclusion that based on the site visit and approved the

CZMP available the Joint Committee conforms that the alleged activities of construction of check dam is under CRZ area and attracts the provision of CRZ Notification. However, the project authority commenced the alleged project without obtaining required CRZ Clearance from the competent authority and it is being continued which stand amount to violation of provision of Environment (Protection) Act, 1986 and CRZ Notification, 2011. The Joint Committee report duly endorsed by the representative of the SCZMA - Tami Nadu unanimously agreed/confirmed that the project in question is in violation. The SCZMA - Tamil Nadu being the implementing and enforcement authority for the provisions of the CRZ Regulations in Tamil Nadu vide letter R.C. No.P1/1334/2007-1 dated 17.12.2020 requested the concerned District Coastal Zone Management Authority for necessary action as per the Joint Committee report. There is no conflict of opinion between the two regulating authorities viz., Regional Office, MoEF&CC, Chennai and the SCZMA - Tamil Nadu. As per the CRZ Notification, the SCZMAs are primarily responsible for enforcement and implementation of the provisions of the CRZ Notification and compliance of the conditions stipulated there under and the powers either original or delegated under the Environment (Protection) Act, 1986. The provisions related to the composition, tenure and mandate of SCZMAs have been notified from time to time by Ministry. The main function of these authorities include amongst others, enquiring into the cases of alleged violation of the provisions of the CRZ Notification, 2011 and take appropriate decisions, including power to enforce provision under Section 5, 10 and 19 of Environment (Protection) Act, 1986. So, they prayed for accepting their contentions and passing appropriate orders.

- 13.** Vide Order dated 08.09.2020, this Tribunal admitted the matter and appointed a Joint Committee comprising of (i) the District Collector - Kanyakumari District or a Senior Officer not below the rank of Assistant Collector or Revenue Divisional Officer, as designated by the District Collector, (ii) a Senior Officer from Ministry of Environment Forests and Climate and Change (MoEF&CC), Regional Office, Chennai, (iii) a Senior Officer from State Coastal Zone Management Authority - Tamil Nadu, Chennai and (iv) the Superintending Engineer of Public Works Department (Water

Resources Organization), who is in charge of that area to inspect the area in question and submit a factual as well as action taken report, if there is any violation found.

14.The Joint Committee was directed to go into the question as to whether there was any violation of any environmental laws and also if there is any damage caused to environment, including river bed and surrounding area in the process of constructing the check dam in the river and if so, assess the environmental compensation as well. The Joint Committee was also directed to ascertain the impact on the livelihood of the local fishermen on account of the construction of dam in the river and if there is any damage caused to environment, suggest the ways and means to restore the damage caused to the environment and who is responsible to carry out the same as well.

15.The Ministry of Environment Forests and Climate Change (MoEF&CC), Regional Office, Chennai was designated as the nodal agency for co-ordination and also for providing all necessary logistics for this purpose.

16.Pursuant to the above direction, the Joint Committee has filed the report dated 11.01.2021 and received on 19.01.2021 without the signature of the Sub Collector and the Superintending Engineer, Public Works Department (Water Resources Organization), but signed by other two members of the committee viz., Assistant Conservator of Forest and MoEF&CC, Regional Office, Chennai and the same was considered by this Tribunal as per Order dated 19.01.2021 and extracted in Para (7) of the order which reads as follows:-

"Report of the Joint Committee constituted in the O.A. No. 172 of 2020(SZ) in the matter of Association of Deep Sea going Artisanal Fishermen Vs Union of India & Ors. before the Hon'ble National Green Tribunal, (SZ), Chennai.

... ..

2. Constitution of the Joint Committee:

In compliance with the directions of the Hon'ble NGT, as a nodal agency Regional Office of MoEF&CC at Chennai vide O.M. No. EP/12.7/NGT(SZ)/055/2020/ dated 09.11.2020 constituted a Joint Committee comprising the following members based on the Officers deputed / nominated from the Authorities concerned:

- (i). *Smt. Sharanya Ari, I.A.S, Sub-Collector, Padmanabhapuram, Kanniyakumari District.*
- (ii). *Er. N. Gnanasekar, Superintending Engineer, WRD/PWD, Thamiraparani Basin Circle, Tirunelveli.*
- (iii). *Shri. D. Eswaran, Assistant Conservator of Forests, Department of Environment, Govt. of Tamilnadu.*
- (iv). *Dr. M.T. Karuppiah, Scientist – E, MoEF&CC, Regional Office, Chennai.*

3. Terms of reference (ToR) to the Joint Committee:

The Terms of the Reference (ToR) to the Joint Committee referred therein the Order dated 08.09.2020 of Hon'ble NGT in the above matter inter-alia include the following:

- (i). The committee shall go in to the question as to whether there was any violation of any environmental laws?
- (ii). If there is any damage caused to environment including river bed and surrounding area in the process of constructing the check dam in the river and if so, the committee is directed to assess the environmental compensation as well.
- (iii). The impact on the livelihood of the local fisherman on account of the construction of dam in the river, and
- (iv). If there is any damage caused to environment the committee is also directed to suggest the ways and means to restore the damage caused to the environment and who is responsible to carry out for the same as well.

4. Background of the project:

Tamiraparani, (Kodayar or Kuzhithuraiyar or Kuzhithurai river) which is one of the major rivers of the Kanniyakumari district, which is flowing about 60 km distance in the central part of the district and drain in the Melpuram, Kuzhithurai, Munchirai and Killiyur blocks. The river after traversing Killiyur and Munchirai Blocks, confluence in to the Arabian Sea near Erayumanthurai and Thengapatnam, which is at a distance of 56 km west of Cape Commerin. Thengapattanam estuary banks are Thengapattanam at the East and Erayumanthurai at West. The stretch of the coast from Pozhiyoor to Neerodi in Kerala and Neerodi colony to Erayamunthurai in Tamilnadu is an island surrounded by Arabian Sea in south and AVM Canal in North Poovar estuary in west and Thengapainam estuary in East.

Reportedly natural sandy mouth formed near the confluence point has been removed for the fishing harbor works. Further, it has also been observed from the report of PWD that many years sand was quarried in the Kuzhithuraiyar, which resulted deeply lowering the river bed below the mean sea level (MSL) with heavy undulations and thus to prevent the back water entry and mixing the saline sea water, the Government of Tamilnadu vide G.O.(3D). No.26 dated 24.08.2018 has accorded administrative sanction for construction of Check Dam across kuzhithuraiyar near Eraimanthurai in Kanniyakumari District with estimated cost of Rs. 1537.07 lakhs.

5. Meeting of the Joint Committee:

In compliance with the Order dated 08.09.2020 of Hon'ble NGT in the above matter and in continuation to the Joint Committee Constitution vide O.M. dated 09.11.2020 of Regional Office of MoEF&CC at Chennai, the meeting of the Joint Committee was held on 08.12.2020 at Office of District Collector, Collectorate, Nagercoil, Kanniyakumari District. As a nodal agency, the meeting was coordinated by the MoEF&CC, Regional Office, Chennai. All the members of the Joint Committee were present in the said meeting. As part of natural justice and as consented by all the members of the Committee an opportunity was given to the Counsel of the Applicant in the O.A. and also to the project authority i.e. Water Resources Organization, Public Works Department, Govt. of Tamilnadu to submit their views before the Committee. During the meeting of Joint Committee, members discussed the facts, issues and prayers in the above case and the Terms of the Reference (ToR) to the Joint Committee referred therein the Order dated 08/09/2020 of Hon'ble NGT.

5.(i). Submissions of project authority (Public Works Department, Govt. of Tamilnadu):

In the above Joint Committee meeting, on behalf of Public Works Department, Govt. of Tamilnadu, as a project authority, Officers from the Water Resources Organization, Public Works Department took part in the meeting and made their submissions in connection with the above alleged construction of Check Dam, which inter-alia include the following:

- (a). *The River bed is lower than the Mean Sea Level (MSL) and thus construction of Check Dam is necessary to prevent the sea water intrusion.*
- (b). *Project Authority claimed that in order to develop the livelihood of the fishermen, the Government of Tamilnadu has formulated new fishing harbor at Thengapattinam. Reportedly, PWD consented the development of fishing harbor at Thengapattinam, subject to the condition that one check dam across the river within 1 km from the Thengapattinam in the upstream side of the river shall be provided in order to avoid sea water intrusion during high tides.*
- (c). *Project Authority claimed that CRZ clearance is not required for the said project activity, since the G.O. for the said project activity was issued on 24.08.2018, that is prior to the CRZ Notification, 2019 and thus it is not attracting the provisions of the CRZ Notification.*
- (d). *It was informed that in the W.P.(MD)No. 7069 of 2019, Hon'ble High Court of Madras, Madurai Bench passed the judgment with the direction to commence the check dam work and complete it before the rainy season.*
- (e). *No fishermen would be affected due to construction of Check Dam, since the same is being constructed 800 m away from the mouth of the river.*
- (f). *Project authority informed that the petitioner association has intention to misuse the river bank for the activities such as landing of their boats etc. beyond the harbour area.*

5.(ii). Submissions of the Applicant to the O.A.:

The Counsel for the applicant Shri. Edwin Jerome took part in the above said Joint Committee meeting and made the following submissions on behalf of the applicant Association:

- (a). *The applicant Association claimed that the said construction of check dam at Tamiraparani River (Kuzhithuraiyaru) near Eraiyumanthurai of Kanyakumari District is falling well within the CRZ area and the project authority executing the same without obtaining prior CRZ clearance from the Competent Authority.*
- (b). *The river Tamiraparani (Kuzhithuraiyaru) had two Check dams at Kuzhithurai and Mancaud. In the year 2016, Kuzhithurai Check dam was reconstructed by increasing its height and can deliver maximum of 55000 cu.ft of water. The Mancaud Check dam has already damaged. The project authority failed to reconstruct the Mancaud check dam instead they commenced construction of new check Dam in the CRZ area without obtaining prior CRZ clearance.*
- (c). *Due to the construction of Check Dam resulted sand deposit and tidal influence near the mouth of Thengapattinam Fishing Harbour, which is causing deaths and damage to the boats.*
- (d). *The applicant claimed that due to continuous unregulated sand mining activities in the past, the river bed is lowered than the Mean Sea Level (MSL).*
- (e). *AVM canal joins to the Tamiraparani river at Eraiyumanthurai, which serves as feed river which help to distribute the flood in the river to the Canal. Due to the present construction of the Check Dam about 50 m away from the AVM Canal, the entire stretch of the AVM Canal will become saline due to sea water ingress, which affects the local fishermen as well as the farmers, who depend on the fresh water.*
- (f). *The dwelling units located just close to the coast are facing threat of erosion. The width of the beach along this stretch of the coast is about 30 m and gets washed away during the South-West (SW) monsoon leads to the occasional seawater intrusion into the dwelling units. Beach slope in this stretch is quite steep. An existing sea wall for a length of 1km is in a collapsed stage.*
- (g). *Due to the construction of alleged Check Dam, the boats of the fishermen can not go to the Tamiraparani River, which will affect the fishermen community as their main source of income is fishing.*

- (h). *The applicant association claimed that there is technical flaw in the proposed activity, wherein height of the proposed Check Dam (6 m) is less than the height of the River (+ 6.5 m).*
- (i). *The present Check Dam construction leads to reduction of fresh water flow into the sea. The reduction in the freshwater discharge to the estuary would have major catastrophic impact due to the imbalance in the salinity and other aquatic parameters in the estuary region.*
- (j). *Applicant claims that the river banks are not having side walls and thus the present construction of the Check Dam can not hold the water, which may lead to flooding in the adjoining area of the river stretch.*
- (k). *Applicant informed that already numerous applications have been submitted to various Govt. Authorities with the request to shift the location of check dam from the current location.*
- (l). *It was alleged that the project authority failed to assess the ecological impact due to construction of the check dam at the present location, taken into account of the environmental and ecological damages to the local people and marine environment.*
- (m). *Finally he has submitted a collective representation duly signed by the local fishing communities with the request to drop the check dam construction to ensure the livelihood security to the fishermen communities. The said representation is enclosed as **Annexure – I**.*

6. Status of Statutory requirements:

- (i) *In exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, Ministry of Environment, Forest & Climate Change had notified the Coastal Regulation Zone Notification, 1991 on 19th February, 1991, which, inter-alia, provided classification of Coastal Regulation Zone (hereinafter referred to as CRZ) areas and norms for regulating developmental activities referred therein. This Notification was subsequently amended from time to time.*
- (ii). *Subsequently, in supersession of the CRZ Notification, 1991, the Coastal Regulation Zone Notification, 2011 was notified on 6th January, 2011 for regulation of developmental activities along the coastal stretches and to ensure the livelihood security to the fisher communities and other local communities, living in the coastal areas, to conserve and protect coastal stretches.*
- (iii) *All the developmental activities / projects attracting the provisions of the CRZ Notifications 2011 are required to obtain prior CRZ clearance from the authorities concerned.*
- (iv). *As per the CRZ notification, the State Coastal Zone Management Authority (SCZMA) is primarily responsible for enforcement and implementation of the provisions of the notification. For the purpose of implementation and enforcement of the provisions under CRZ Notification, the powers either original or delegated, under the Environment (Protection) Act, 1986 are with the State Governments and State Coastal Zone Management Authorities (SCZMAs).*
- *Further, the Government of Tamil Nadu constituted District Coastal Zone Management Authorities (DCZMA) for all the Coastal districts vide G.O.Ms.No.163 dated 09.06.1998 of Environment and Forests Department. The District Environmental Engineer of the Tamil Nadu Pollution Control Board is the Convener of the District Coastal Zone Management Authority and is the appropriate authority to take action in this regard.*
- *The DCZMAs are entrusted with the following responsibilities, in their respective jurisdictions, as per the above G.O.*
 - a) *to be responsible for monitoring and enforcement / Implementation of the provisions of the Coastal Regulation Zone Notification.*
 - b) *to ensure that the activities within Coastal Regulation Zone take place as per the approved Management Plan.*

- c) to advise the State Government on any matter relating to protection and control of pollution in Coastal areas.
- d) to act as an Authority under Sec. 4 of Coastal Regulation Zone Notification, 1991 dated 19.02.199 for taking action on Coastal Regulation Zone Plan violations.

(v). MoEF&CC vide letter No. 12-8/2018-IA.III dated 24.10.2018 has approved the Coastal Zone Management Plan (CZMP) of Tamilnadu for all its coastal districts as per the provisions of the CRZ Notification, 2011.

(vi). As approved by the Union Cabinet the new CRZ Notification, 2019 was notified vide S.O. GSR 37(E) dated 18.01.2019. However, CRZ Notification, 2019 come into force only after the respective Coastal Zone Management Plan (CZMP) framed to the CRZ Notification, 2011 have been revised / updated by the States / UTs, as per the provisions of the new CRZ Notification and approved by the Ministry of Environment, Forest & Climate Change. Para 6 (i) of CRZ Notification, 2019 inter alia states as under:

- (i) "All coastal States and Union territory administrations shall revise or update their respective coastal zone management plan (CZMP) framed under CRZ Notification, 2011 number S.O. 19(E), dated 6th January, 2011, as per provisions of this notification and submit to the Ministry of Environment, Forest and Climate Change for approval at the earliest and all the project activities attracting the provisions of this notification shall be required to be appraised as per the updated CZMP under this notification and until and unless the CZMPs is so revised or updated, provisions of this notification shall not apply and the CZMP as per provisions of CRZ Notification, 2011 shall continue to be followed for appraisal and CRZ clearance to such projects."

(vii). Before finalizing the CZMP concerned State / Union Territories / Coastal Zone Management Authorities are required to adopt due procedure in preparation of CZMPs as stipulated in Para 6 (iii) of CRZ Notification, 2019, which includes public consultation. Para 6 (iii) of said notification inter alia states as under:

- (iii). "The coastal States and Union territories shall prepare draft CZMP in 1:25,000 scale map identifying and classifying the CRZ areas within the respective territories in accordance with the guidelines given in Annexure-IV to this notification, which involve public consultation." All developmental activities listed in this notification shall be regulated by the State Government, Union territory administration, the local authority or the concerned Coastal Zone Management Authority within the framework of such approved CZMP, as the case may be, in accordance with provisions of this notification.

(viii). In accordance with the provisions of the sub-clause (d) clause (iv) of Para 3 of CRZ Notification, 2011, the structures for prevention of salinity ingress or measures to prevent the sand bars, installation of tidal regulators are permissible activity, based on carried out by any agency specified by MoEF&CC and needs to be regulated in accordance with the provisions of Para 4 of CRZ Notification, 2011. Thus the said activity requires prior permission / clearance from the competent authority before the commencement of the activity. Para 4.2 of CRZ Notification, 2011 prescribes the procedure for clearance of permissible activities attracted under this notification.

7. Observation of the Joint Committee on the ToR to the Committee:

Based on the deliberations held during the meeting of the Joint Committee and site inspection of the area under question, the following observations are made:

Whether there was any violation of any environmental laws?

- (i) The Project Authority claimed that the alleged construction activities for the Check Dam was commenced, since the Hon'ble Madurai Bench of Madras High Court in the W.P.(MD)No.7069 of 2019 directed to start the check dam work and complete it before the rainy season. But,

Hon'ble High Court was neither appraised of the CRZ issues in the said W.P. nor the same was exempted from the CRZ clearance for the said activity.

- (ii) The Joint Committee relied upon the following statutory provisions of the CRZ Notifications:
- (a). Coastal Zone Management Plan (CZMP) framed to the CRZ Notification, 2011 be revised / updated by the Tamilnadu State as per the provisions of the CRZ Notification, 2019. All the project activities attracting the provisions of this notification shall be required to be appraised as per the updated CZMP under this notification and until and unless the CZMPs is so revised or updated, provisions of this notification shall not apply and the CZMP as per provisions of CRZ Notification, 2011 shall continue to be followed for appraisal and CRZ clearance to such projects.
- (b). The activities prohibited and permitted within the CRZ are expressly declared in the Para 3 of CRZ Notification, 2011. As per sub-clause (d) clause (iv) of Para 3 –
"3. Prohibited activities within CRZ – The following are declared as prohibited activities within the CRZ,-
.....(iv). Land reclamation, bunding or disturbing the natural course of sea water except those,-
.....
(d). measures to prevent sand bars, installation of tidal regulators, laying of storm water drains or for structures for prevention of salinity ingress and fresh water recharge based on carried out by any agency to be specified by MoEF".
Thus, setting up of structures for prevention of salinity ingress is permissible activity under CRZ Notification, 2011. However, prior permission under the CRZ Notification, 2011 is required before commencing such a project, even if it is permissible activity.
- (c). Para 4 of CRZ Notification, 2011 prescribes for the regulation of permissible activities in CRZ area except those activities prohibited in para 3 of the Notification. Further, it requires prior permission / clearance from the competent authority before the commencement of the activity.
- (d). Para 4.2 of CRZ Notification, 2011 prescribes the procedure for clearance of permissible activities attracted under this notification.
- (iii) Based on the site visit and approved CZMP available, the Joint Committee confirms that the alleged activity for the construction of Check Dam is in the CRZ area and attracts the provisions of the CRZ Notification. The Coastal Zone Management Plan- Tamilnadu – Map No. TN-11, cross sectional view of Tamiraparani river in the CRZ area and superimposed view of ongoing Check Dam construction on the CZM Map having demarcation of No Development Zone (NDZ) Low Tide Line (LTL) and High Tide Line (HTL) is shown in the **Annexure-II & III**. Google imagery of the area under dispute before the construction and after the construction of the check dam is shown in the **Annexure – IV**. However, Project authority commenced the alleged project activity without obtaining requisite CRZ clearance from the Competent Authority and is being continued, which tantamount violation of the provisions of the Environment (Protection) Act, 1986 and CRZ Notification, 2011.

Damage caused to environment including river bed and the environmental compensation:

- (iv) The details regarding date of commencement of the construction activity for the alleged Check Dam has not been made available. The Civil excavation and construction of Check Dam have been completed for 30m with all components such as body wall, upstream & downstream apron and cement concrete block. The temporary coffer dam for a length of 70 m has been constructed and the water is diverted on the right flank of the river to facilitate day to day construction activities. The left bank abutment and wing wall and return wall completed. The overall physical progress of the construction is about 32%. Heavy machinery has been deployed for

excavation and other civil construction work. Excavation of river bed has been carried out. Course of river flow is altered. Thus the damage to the marine environment including river bed has already been occurred due to the process of ongoing construction activity of the check dam in the river. Photographs taken during the site inspection is placed as **Annexure – V to VII.**

- (v) Tamilnadu State Coastal Zone Management Authority vide letter dated 17.8.2020 and 24.8.2020 forwarded the complaints received in the above subject matter, to the Chairman, District Coastal Zone Management Authority, Kanniyakumari District and Convener District Coastal Zone Management Authority (DCZMA), Kanniyakumari District with the request to examine the matter and take appropriate action, if there is violation under CRZ Notification, 2011 and submit the action taken report. Copy of the said communications addressed to the DCZMA is enclosed as **Annexure-VIII.** In compliance with the request of TSCZMA, based on the site inspection District Environmental Engineer, TNPCB & Convener-DCZMA vide letter No. DEE/TNPCB/NGL/COMPL/TECH 06/1513/2020 dated 24.8.2020 confirmed the said ongoing construction activity of Check Dam is within the CRZ area and requested the Executive Engineer, Public Works Department, Govt. of Tamilnadu to carryout such activity only after obtaining CRZ clearance from the TSCZMA. Also requested to furnish the project relevant details and action taken report. Copy of the said communication dated 24.8.2020 of DCZMA is enclosed as **Annexure-IX.** So far the project authority has neither complied with the instructions of the District Coastal Zone Management Authority nor has submitted the action taken report, rather construction activities are being continued without obtaining prior CRZ clearance, which tantamount violation of Environment (Protection) Act, 1986 and also attracts for the provisions of financial penalty.
- (vi) The Hon'ble NGT(SZ) in the Order dated 08.09.2020 in O.A. 172 of 2020 has directed to assess the environmental compensation, if there is any violation. The approved methodology / guidelines issued by the Central Pollution Control Board for determining the Environmental Compensation to be recovered for violation is under Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. The said guidelines cannot be applied to the present CRZ activity under dispute. Further, the present project activity falls under the category where damages caused to the environment and liability of the responsible party (occupier, operator, transporter, importer, exporter, etc., as the case may be) as well as cost thereof are difficult to assess, since the ongoing activity is within the river.
- (vii) Under such circumstances, the Joint Committee determined the environmental compensation to ensure that levying of financial penalty remain within the brief of Section 15 of the Environment (Protection) Act, 1986, since the CRZ Notifications have been notified under the Environment (Protection) Act, 1986. Further, additional fine up to Rupees five thousand rupees for every day may also be imposed in case of failure continues by the responsible party beyond period by which remedial/corrective measures would have been implemented as suggested by the SPCB/PCC. Non-compliance may attract violation of one or several provisions of the said Rules and thus the total financial penalty amount may be arrived by adding up number of provisions violated.
- (viii) Accordingly, the environmental compensation for the present case is arrived as under:

Environmental compensation (EC) = (financial penalty remain within the brief of Section 15 of the E(P) Act, 1986 i.e. Rs. 100000/-) + 5000 x No. of days for which violation took place from date of communication of PCB or CZMA.

EC = 100000 + 5000 x 140 days (as on 11.01.2021) = Rs. 800000/- (rupees eight lakhs only).

The Hon'ble Tribunal may consider the above calculation or may arrive Environmental compensation as it deem fit under the circumstances of

the case based on the precedents i.e. on the basis of the percentage of the project cost as desired by the Hon'ble Tribunal. If the above suggested method is followed, it may be directed to the State PCB concerned to calculate and ensure the number of days violated for levying environmental compensation.

The impact on the livelihood of the local fisherman on account of the construction of dam in the river:

- (ix) Considering the sensitivity of the matter, the Joint Committee members did not directly interact with the local people to ascertain their views on the impact on the livelihood of the local fisherman on account of the construction of dam in the river. However, the collective representation duly signed by the local fishing communities submitted to the Joint Committee with the request to drop the check dam construction to ensure the livelihood security to the fisher communities is placed as **Annexure – I**.

Restore the damage caused to the environment and responsible authority to carry out for the same:

- (x) The said project activity has been commenced in the CRZ area without obtained requisite prior CRZ clearance from the Competent Authority. Further, overall physical progress of the construction of about 32% has already been completed, wherein heavy machineries are being deployed for excavation and other civil construction work. Excavation of river bed has been carried out. Course of river flow is altered during the construction. Thus the damage to the marine environment including river bed has already been occurred due to the ongoing construction activity of the check dam in the river. There is a possible impact on the estuary also due to the construction activity. Due to the construction of the check Dam in the present location, there is a possibility of saline water ingress in the AVM canal. In the present case, damages caused to the environment and liability of the responsible party as well as cost thereof are difficult to assess, since the ongoing activity is within the river and CRZ area. If the work could have been commenced with prior CRZ clearance, the requisite measures would have been stipulated based on the scientific data by the experts. Presently, there is no provision for getting ex-post-facto clearance. So, further course of action may be decided by the Hon'ble Tribunal. In the event of restoring the damage, the responsibility lies on the project authority i.e. Public Works Department, Govt. of Tamilnadu. They should bear the entire cost for the restoration."

17. This Tribunal also considered the observations made by the Joint Committee that regarding the violation of CRZ Notification issues were not projected and considered by the Hon'ble High Court of Madras at Madurai Bench in W.P. (MD) No.7069 of 2019.

18. The State Pollution Control Board has filed the report viz., Proceedings dated 24.08.2020 which was passed based on the complaint received directing the Executive Engineer – Public Works Department (Water Resources Organization) not to proceed with the project which reads as follows:-

**"Lr. No. DEE/TNPCB/NGL/COMPL/TECH 06/1513/2020
dt. 24.08.2020**

Sir,

Sub: TNPCB: O/o DEE, TNPCB. NGL – Complaint petitions receive against Establishments of check dam across River Thamiraparani- to

take necessary action – requested – regarding.

Ref:

1. Complaint petition from Thiru. J. Christopher, District Secretary, Akila India Parambariya Meenavar Sangam, #11/135B, Anbiam 5, Melmidalam, Udhayamarthandam, Kanniyakumari District – 629 178 dated Nil received in the office on 13.08.2020
2. Complaint petition from Association of Deepa Sea Going Artisanal Fishermen, Shark Street, College Road, Thoothoor P.O., Kanniyakumari District – 629 176 dated 08.08.2020 received in this office on 17.08.2020.
3. Complaint Petition fom Fishermens Integral Development Society, Reg. No. 3/2018, Neerodithurai, Kollemcode P.O., Kanniyakumari District – 629 160 dated 11.08.2020 received in this office on 17.08.2020.
4. Complaint Petition from Eraviputhenthurai Meenavar Padagu Urimaiyalar Unnetta Sangam (Eraviputhenthurai Boat Owners Developmental Society), Eraviputhenthurai, Thoothoor P.O. Kanniyakumari District- 629 176 dated 11.08.2020 received in this office on 17.08.2020.
5. Complaint petition from Eraviputhenthuri Boat Owners Developmental Society), Eraviputhenthurai, Thoothoor P.O. Kanniyakumari District- 629 176 dated 11.08.2020 received in this office on 17.08.2020.
6. Complaint petition from Thiru S. Maria Manoj, Chairman, Meenavar Orunginaippu Sangam, Iraviputhenthurai, St. Joseph Colony, Thoothoor Post, Kanniyakumari District 629 176 date 11.08.2020 received in this office on 17.08.2020.
7. Complaint Petition from Thiru. K. Mary Dasan Thoothoor Jesus Boat Owners Association Koshy Complex Thoothoor, Thoothoor Post, Kanniyakumari District 629 176 dated 11.08.2020 received in this office on 17.08.2020.
8. Complaint petition from Thiru. K. Mary Dasan, Thoothoor Jesus Boat Owners' Association, Koshy Complex Thoothoor, Thoothoor Post, Kanniyakumari District 629 176 dated 11.08.2020 received in this office on 17.08.2020.
9. Complaint Petition from St. John the Baptist Boat Owner Union, Poothurai, Poothurai Post, Kanniyakumari District- 629 176 dated 11.08.2020 received on this office 17.08.2020.

The copy of the complaints cited under reference is enclosed for taking necessary action.

The complaint is against the construction of check dam at Ezhudesam Village Vilavancode Taluk of Kanniyakumari District across River Thamiraparani by way of blocking the flow of River Thamiraparani using Construction debris. It was also stated that, it leads to the formation of sand dunes at the mouth of River Thamiraparani causing accidents of fisherman boats.

The complaint site was inspected by the AEE on 21.08.2020 and noted that construction activity was being carried out at one side of River Thamiraparani close to the confluence at sea (Arabian Sea). As enquired, it was ascertained that a check dam is under construction by PWD WRD.

The site of construction falls under the CRZ area and any construction activity is to be carried out only after obtaining prior clearance from the Tamil Nadu Coastal Zone Management Authority.

In this regard, I request you to take necessary action on the following.

1. PWD shall furnish the details on the activities carried out in the complaint area. The project report if any shall be furnished.
2. PWD shall furnish the site details in which the construction activities are carried out.
3. PWD shall undertake any activities in the CRZ area only after obtaining CRZ clearance.
4. PWD to ascertain the CRZ zone in which it falls through DTCP, Tirunelveli (or) Local Town Planning Office, kanniyakumari.
5. PWD shall inform the date from which the above said activity has commenced. The action taken may be informed to this office immediately."

19. The Superintending Engineer – Public Works Department (Water Resources Organization), Tamirabarani Basin Circle, Tirunelveli who is one of the member of the Joint Committee filed a dissenting report to the Joint Committee report which reads as follows:-

"Report of Joint Committee Member, WRD

Based on the Honourable Green Tribunal order in the original application No. 172/ 2020(SZ) the following officials inspected the check dam site and the Fishing Harbour area at Thengapattinam/ Erayumanthurai on 8/12/2020.

(i) The Sub Collector, Padmanabhapuram, (ii) Senior Officer from the Ministry of Environment, Forest and Climate Change (MoEF& CC), Regional office, Chennai, (iii) Senior Officer from State Coastal Zone Management Authority, Chennai, (iv) The Superintending Engineer, P.W.D, Tamirabarani Basin Circle, Tirunelveli.

The Government of Tamil Nadu have accorded administrative sanction for the work of Construction of Check Dam across Kuzhithuraiyar near Erumanthurai in Kanniyakumari District for Rs.1537.07 lakhs vide GO.Ms.No: 26 Dated: 24.08.2018. The work is in progress and about 34% of work physically completed and an expenditure of Rs.4.34crores has been incurred so far.

Thamirabarani also called Kuzhithuraiyar is a perennial river having flood carrying capacity of 42,700 cusecs in Kanniyakumari District. It runs for about 60 Km distance and confluences into Arabian Sea near Erayumanthurai. Backwater Kayal that formed at the confluence of the river with Arabian Sea and the sandy mouth has been removed at the confluences of the river due to Fishing Harbour works. As a result of this, sea water intruded with river water and salty water has been spreaded around more than 48 villages in the upstream side for a length of 13.00 Km affecting the population of around 2.00 lakhs. Along the course of river there are lot of TWAD Board Infiltration wells and the water is being pumped for supplying to nearby villages for drinking purposes from these wells.

Since the river bed is lower than the Mean Sea Level it is very much essential to arrest the Sea water intrusion. Hence the check dam is being constructed across Kuzhithuraiyar for a length of 130m and keeping the crest level of the check dam at +1.00 m above Mean Sea Level.

During the monsoon season due to littoral effect of sea tides the river mouth at the estuary of river used to get closed by sand sediment and which acted as natural barrier for preventing back water entry and preventing the mixing of saline water with river water which had been the natural phenomenon and whenever there is flow in the river the sand bar gets opened and flow of water got discharged into the sea and when water recedes, the sand bar got formed automatically and preventing the sea water intrusion. Due to the Construction of Fishing Harbour the river mouth was opened for vessel movement and sea water entered into the river. The salinity the happened due to the Harbour works, the ground water in the adjoining aquifers, openwells, borewells became saline and which are difficult to utilise for domestic and agricultural purposes.

It is submitted that no fisherman would be affected due to the construction of the check dam since the same is being constructed 800m away from the mouth of the river. The flow of river water also would not affect due to the said construction. In order to develop the livelihood of the fishermen, the Government has formulated a new Fishing Harbour at Thengapattinam. For which, the Public Works Department vide CE letter No : TS/DO.III/C.9747/06 dated : 04.07.2006 have given its consent to transfer of poromboke land for the formation of the said Fishing Harbour project at Thengapattinam subject to the following conditions:

- The entire length of bar mouth may be left as it is in order to allow the entire flood water of the Kuzhithurayar river (Kanniyakumari District) in to the Arabian Sea and the proposed infrastructural facilities located at

the bar mouth for the Fishing Harbour Project can be relocated at the right bank of the river.

- One check dam across the river well within the distance of 1.00 km from Thengapattinam in the upstream side of the river shall be provided in order to avoid sea water intrusion during hightides. Therefore, the said Fishing Harbour Project can be developed based on the above said conditions only.

It is submitted that since the river bed is- 3.25m lower than the Mean Sea Level, the Sea water is mixed with the river water and the same becomes as salty which spoils the ground water as salty and this salty water is being used for drinking and agricultural activities by the people of the villages in an around the river bank and the locality. Since, the public at large have been suffered due to the salty ground water, they started protesting to restore the river water in its previous position. Hence the State Government has passed the said G.O., to construct a Check Dam with the height of 4.25m from the bed of river upto the top the existing stagnated water level during high tide period which will resist the sea water into the river. Since the top of the check dam will be as same as the level of existing stagnated water level during high tide period always there will be water nappe over the check dam from upstream to downstream side

It is pertinent to note that since the bed of the river is very much lower than the Mean Sea Level, water is always stagnating in Kuzhithuraiyar for about 3m depth for a length of 13km throughout the year. However, even after the completion of the said proposed construction, the steady river water flow will occur and the river confluences with sea without any obstruction. Therefore, the reproduction and for laying eggs and other eco systems would not affect due to the proposed construction of the said check dam which is 800m (aerial distance) and 1.88 km (along the river path) away from the river mouth. The construction of check dam is made in the river itself within the banks and existing top level only, so there will be no additional inundation and outflanking in the river and no submergence in the adjoining places. There will be only the downward flow of fresh water from upward to downward. The fresh water above check dam would be eco-friendly which will be helpful for flora and fauna and since downward flow would not be blocked which would never ever prevent any upcoming nutrients of fresh water into the sea. The check dam barrier is only meant to restore the earlier existed condition.

Further, the need of construction of Check Dam at this place became essential due to the removal of sand bar for the construction of fishing harbour at the estuary of river so it will only bring the earlier situation before the construction of Fishing Harbour.

The Draft notification of Coastal Regulation Zone, 2011 was published vide SO No:229/(E) dated 15th september2010. The CRZ map indicating LTL, HTL and classification of variation of CRZ zones etc. was approved on 24-10-2018 by Ministry of Environment and Forest, NewDelhi. The GO(3D) No: 26 Public Works (W1) department dated 24-08-2018 for the construction of check dam was issued on 24-8-2018 and preliminary works were started. The check dam under construction is 800 m away from HTL, and proposed location does not come under any CRZ zone as per the map available with the District Coastal Management plan authority. It is emphasized that the CRZ 2011 map was issued on 24-10-2018 which is only after the issuance of the GO date (24-8-2018) for the work. Hence obtaining CRZ clearance from the authorities was not arisen.

The petitioner himself is taking inconsistent plea with the intention to misuse the river and the river bank for the landing of their boats and other purposes beyond the harbor area. Further it is submitted that the development along coastal for fish landing and berthing of fishing vessels crafts are to carried out accordingly to the "Comprehensive shore line protection management plan for entire Tamilnadu coast May2016"prepared by the prestigious Indian Institute of Technology, Madras (popularly known as IIT Madras) and approved by the Government of Tamil Nadu for the proper implementation and maintenance of entire coast of Tamil Nadu . In the above plan the planning for development of fish landing centers will be carried out broadly under two categories viz "i) Development of fish landing centers in gaps of existing coastal protection measures and ii) conversion of existing coastal protection measures to fish landing

centers with possibility for further expansion and these expansion works are being carried out by the Fisheries Department of Government of Tamil Nadu.

It is submitted that Thiru A. Sesadimai, President Association of Deep Sea Going, Artisanal Fisherman, Shark Street, Thoothoor post, Kanyakumari District has filed a writ petition W.P (MD) No: 27380 of 2019 in the Honorable Madurai bench of Madras High Court seeking order of injunction from proceeding with the check dam construction work and it is still pending before the Honorable Madurai bench of Madras High Court.

In light of the circumstances explained above it is submitted that due to the removal of sand bar from the river mouth and reduction of river width from 800m to 75m at river mouth for Fishing Harbor works caused sea water intrusion. The sea water intruded around 13km along the river in the upward direction and water became salty and also spoiling the adjoining aquifer, open wells, bore wells etc. In order to safeguard the livelihood of people on banks of river the check dam is being constructed and which is the only meant to restore the preexisted condition. Hence there is no violation of environment laws and no damage caused to environment including river bed and surrounding area due to the construction of check dam."

20. It was mentioned in the above report that another case was pending before the Hon'ble High Court of Madras at Madurai Bench filed by one Mr. Sesadimai, President, Association of Deep Sea going Artisanal Fishermen, Shark Street, Thoothur Post, Kanyakumari District as **W.P. (MD) No.27380 of 2019** seeking an order of injunction from proceeding with the check dam construction work. Since there was a dispute regarding the distance of place where the construction is being taken on the basis of the report of the Joint Committee signed by two members and Public Works Department (Water Resources Organization) who is the executing authority of the check dam, this Tribunal passed the following order:-

"14. According to them, Coastal Zone Management plan (CZMP) in respect of Tamil Nadu on the basis of CRZ Notification, 2011 was approved only on 24.10.2018. But this G.O was issued on 24.08.2018. But it may be mentioned here, that the authorities have lost sight of the legal aspect that even if the Coastal Zone Management Plan (CZMP) has not been approved on the basis of CRZ Notification, 2011 but they will have to go by the existing CZMP namely Coastal Zone Management Plan of 1996 and it was approved on the basis of the earlier CRZ Notification, 1991 and the areas will have to be fixed on the basis of the Coastal Zone Management Plan (CZMP), though in tune with CRZ Notification, 2011.

15. Further, even if the sanction has been granted before proceeding with the work if, Coastal Zone Management Plan (CZMA) 2018 has been approved then also they will have to abide by the CRZ Notification, 2011, and they will have to ascertain as to whether any portion of the check dam falls within the CRZ area and if so, then they are not entitled to proceed with the work if it is a prohibited or a regulated activity without getting necessary sanction under that Notification.

16. However, since there was some mention made about two Writ Petitions, we feel that it is better to peruse those two orders passed in the Writ Petition by the Hon'ble High Court of Madras at Madurai Bench before passing any adverse order against the Government in respect of the project.

17. The office is directed to get the copies of the orders passed by the Hon'ble High Court of Madras at Madurai Bench as W.P. (MD) No: 27380 of 2019 and also W.P. (MD) 7069 of 2019 so as to consider those

orders as well before passing any order by this Tribunal before the next hearing date.

18. The parties are also at liberty to produce the copies of the Writ Petition and orders passed by the Hon'ble High Court of Madras at Madurai Bench in this regard.

19. The parties are also at liberty to file their objections, if any, to the committee report before the next hearing date. If the Government is proceeding with the work then, that will be the subject to the result of further orders to be passed by this Tribunal in this regard.

20. The parties are at liberty to submit their independent responses regarding the allegations made in the application which they are expected to file within one month from the date of service of the notice.

21. The Tamil Nadu State Pollution Control Board is also directed to submit the report to this Tribunal on or before 29.01.2021, by e-filing in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF along with necessary hard copies to be produced as per rules.

22. The Registry is directed to communicate this order to the Tamil Nadu State Pollution Control Board as well as the official respondent's immediately through e-mail, so as to enable them to comply with the direction and for filing their independent response to the allegations made in the application and also for filing their independent report as directed by this Tribunal."

21. Vide Order dated 15.03.2021, this Tribunal considered the report submitted by the Sub Collector, wherein he had given some dissenting opinion to the effect that the project did not require any clearance under the CRZ Notification, 2011. Thereafter, this Tribunal had passed the following order:-

"4. It may be mentioned here that when there is a conflicting stand between the State Coastal Zone Management Authority (SCZMA) and the Ministry of Environment, Forests & Climate Change (MoEF&CC) as to whether it is a prohibited activity or not and if there is any violation of CRZ Notification, then it is for the MoEF&CC to explain those things in their reply affidavit to be filed. But such a thing is absent in the affidavit.

5. Further, in the Joint Committee report, the MoEF&CC, Regional Office, Chennai is a party and they have filed the report stating that this is a CRZ violation and also assessed the environmental compensation for the damage caused to the environment.

6. So, in the independent report submitted by the Sub Collector, they have got a different case stating that this will not fall under the CRZ Notification as the project is situated about 800 Meters away from the High Tide Level (HTL) of the river over which the present disputed check dam is under construction. This fact will have to be clarified by the MoEF&CC when they are filing their reply affidavit.

7. When this was pointed out, the learned counsel appearing for the MoEF&CC submitted that they will come with a detailed reply affidavit in this regard.

8. The learned counsel appearing for the applicant submitted that they are proceeding with the project and ultimately if the project is completed, then the purpose of the application will be defeated.

9. It may be mentioned here that since there is a conflict of opinion between the State Coastal Zone Management Authority (SCZMA) and the Regional Office, MoEF&CC, Chennai, it is always better to get a detailed opinion from the MoEF&CC itself in the counter affidavit to be filed by them, so that this Tribunal can resolve the difference of opinion in accordance with law.

10. The learned counsel appearing for the State Department submitted that the Additional Advocate General wanted to appear in this matter and they also wanted to produce some more documents, for which he prays for some time.

11. So under such circumstances, we feel that some more time

can be granted to the parties to complete the pleadings and get ready with the matter on the next hearing date. If they did not file any documents before the next hearing date, then this Tribunal will be compelled to hear the matter on the basis of the available documents on record before this Tribunal."

22.Based on the directions given by this Tribunal, the MoEF&CC has filed a subsequent counter affidavit as mentioned above. Again, the matter was taken up on 23.07.2021 and on that day, this Tribunal considered the submissions made by the learned counsel appearing for the applicant, 7th Respondent, MoEF&CC and also considered the report submitted by the Joint Committee dated 11.01.2021 and also the report submitted by the Sub Collector which was extracted in Para (12) of the order which reads as follows:-

"Report of Joint Committee Member, Sub Collector

Based on the Honourable Green Tribunal order in the original application No. 172/2020 (SZ) the following officials inspected the check dam site and the Fishing Harbour area at Thengapattinam / Erayumanthurai on 8/12/2020

(i) The Sub Collector, Padmanabhapuram, (ii) Senior Officer from the Ministry of Environment, Forest and Climate Change (MoEF & CC), Regional office, Chennai, (ii) Senior Officer from State Coastal Zone Management Authority, Chennai, (iv) The Superintending Engineer, PWD, Thamirabarani Basin Circle, Tirunelveli The Government of Tamil Nadu have accorded administrative sanction for the work of Construction of Check Dam across Kuzhithuraiyar near Erumanthurai in Kanniyakumari District for Rs. 1537.07 lakhs vide GO.Ms. No: 26 Dated: 24.08.2018. The work is in progress and about 34% of work physically completed and an expenditure of Rs.4.34crores has been incurred so far. Thamirabarani also called Kuzhithuraiyar is a perennial river having flood for about 60 Km distance and confluences into the Arabian Sea near Erayumanthurai. Backwater Kayal to formed at the confluence of the river with Arabian Sea and the sandy mouth has been removed at the confluences of the river due to Fishing Harbour works. As a result of this, sea water intruded with river water and salty water has been spread around more than 48 villages in the upstream side for a length of 13.00 Km affecting the population of around 2.00 lakhs. Along the course of river there are lots of TWAD Board Infiltration wells and the water is being pumped for supplying to nearby villages for drinking purposes from these wells.

Since the river bed is lower than the Mean Sea Level it is very much essential to arrest the Sea water intrusion. Hence the check dam is being constructed across Kuzhithuraiyar for a length of 130m and keeping the crest level of the check dam at +1.00 m above Mean Sea Level. The said check dam is 800m (aerial distance) and 1.88 km (along the river path) away from the river mouth.

It is submitted that no fishing activity would be affected due to the construction of the check dam since the same is being constructed 800m away from the mouth of the river. The flow of river water would also not be drastically affected due to the said construction. In order to develop the livelihood of the fishermen, the Government has formulated a new Fishing Harbour at Thengapattinam. For which, the Public Works Department vide CE letter No: TS / DO. III / C 9747/06 dated: 04.07.2006 have given consent to transfer of poromboke land for the formation of the said Fishing Harbour project at Thengapattinam subject to the following conditions:

The entire length of bar mouth may be left as it is in order to allow the entire flood water of the Kuzhithurayar river (Kanniyakumari District) in to the Arabian Sea and the proposed infrastructural facilities located at the bar mouth for the Fishing Harbour Project can be relocated at the right bank of the river.

One check dam across the river well within the distance of 1.00 km from Thengapattinam in the upstream side of the river shall be provided in order to avoid sea water intrusion during high tides.

Therefore, the said Fishing Harbour Project can be developed based on the above said conditions only.

It is submitted that since the river bed is- 3.25m lower than the Mean Sea Level, the Sea water is mixed with the river water and the same becomes as salty which spoils the ground water as salty and this salty water is being used for drinking and agricultural activities by the people of the villages in an around the river bank and the locality. Since, the public at large have been suffered due to the salty ground water, they started protesting to restore the river water in its previous position. Hence the State Government has passed the said G.O. , to construct a Check Dam with the height of 4.25m from the bed of river upto the top the existing stagnated water level during high tide period which will resist the sea water into the river. This shall allow in providing fresh water to nearby villages to tune of 2 lakh population

The Draft notification of Coastal Regulation Zone, 2011 was published vide SO No: 229 / (E) dated 15th September 2010. The CRZ map indicating LTL, HTL and classification of variation of CRZ zones etc. was approved on 24-10-2018 by Ministry of Environment and Forest, New Delhi. The GO (3D) No: 26 Public Works (WI) department dated 24.08.2018 for the construction of check dam was issued on 24-8-2018 and preliminary works were started. The check dam under construction is 800 m away from HTL, and the proposed location does not come under any CRZ zone as per the map available with the District Coastal Management plan authority. It is emphasized that the CRZ 2011 map was issued on 24-10-2018 which is only after the issuance of the GO date (24-8-2018) for the work. Therefore the previous CRZ notification 1991 and the coastal zone management plan (CZMP) approved in 1996 has been followed.

It is submitted that Thiru B.Paulraj. Kanyakumari District has filed a writ petition bearing W.P (MD) No: 7069 of 2019 before the Honourable Madurai bench of Madras High Court seeking immediate steps to construct the check dam at Eraimanthurai to prevent sea water intrusion. Honourable High Court delivered the judgment, directing the respondents to ensure that the construction of check dam is completed before the rainy season, so that there will not be any obstruction of the work and further inconvenience to the public can be prevented.

In the light of the circumstances explained above, it is submitted that in order to safeguard the livelihood of people on banks of river and as per the directions of the Honourable High Court, the check dam is being constructed and which is the only meant to restore the pre-existed condition. Hence, there is no violation of environment laws and no damage caused to environment including river bed and surrounding area due to the construction of check dam."

23. Thereafter, this Tribunal passed the following order:-

"13. But, in fact, this ought to have been incorporated in the Joint Committee report and the joint committee members ought to have got an opportunity to go into the same and answered that aspect as well. But instead, the Sub Collector without signing the report sent a dissenting report to this Tribunal independently, which practice cannot be encouraged. The dissenting member who has given their dissenting note, when the draft report is circulated and that also will have to be considered by the committee and then, conclusion ought to have been arrived at for giving reasons by the committee members who are not agreeing with the dissent recommended by other members to be considered by this Tribunal while evaluating the report.

14. The applicant also filed a detailed objection to the committee report and also to the counter affidavit filed by the 7th respondent denying the allegations made against them and justifying the construction of Check Dam and reiterating that it is in violation of CRZ Notification.

15. First of all, we find that the State Coastal Zone Management Authority (SCZMA), Tamil Nadu and the State Government including the

project proponent namely, the Public Works Department (PWD) are represented by the same counsel.

16. The learned counsel appearing for the State Government fairly submitted that there is some conflict of interest between the SCZMA and the project proponent, and it is not proper for him to appear for the SCZMA and the separate counsel will have to be appointed for that purpose and he will address the Government for the same.

17. Further, as per Notification delegating the power of SCZMA for taking action for violation, it is for the District Coastal Zone Management Authority which consists of District Collector of the respective district as Chairman and District Environmental Engineer of State Pollution Control Board of the respective districts as convenor to take action in this regard. But, in this case, though the District Collector was appointed as one of the members of the committee appointed by this Tribunal with rider to depute some officer not below the rank of Assistant Collector or Sub Divisional Magistrate, it is on that basis, Sub Collector was deputed by the District Collector. The District Collector himself being a regulator should have joined inspection instead of delegating the power to some other persons who is not authorized to take action, if any violation was brought to their notice.

18. Further, the District Collector in the capacity as Chairman of District Coastal Zone Management Authority has not filed any independent counter statement as well, though he is the authority under the Notification to take action for the violation (if any) brought to the notice and he has been directed to take action by the Regional Office, MoEF&CC, Chennai noting that there is a violation.

19. The learned counsel appearing for the State of Tamil Nadu submitted that a Writ Petition was filed before the Hon'ble High Court of Madras at Madurai Bench seeking mandamus for completion of Check Dam within a time frame as W.P. (MD) No.7069 of 2019 and the Hon'ble High Court of Madras at Madurai Bench by order dated 01.04.2019, directed the State Government to complete the work and passed the following order:-

"The Petitioner has come forward with this Writ Petition seeking issuance of a Writ of Mandamus directing the respondents 1 to 4 to take immediate steps to construct a Check Dam in the Parakkani (Irayumanthurai) area at Vilvancode Taluk in Kanyakumari District to obstruct the sea water intrusion between Mangadu to Thengaipattanam of Thamiraparani (Kuzhithurai) River based on G.O. (3D) No.26, P.W. (W.1) Dept/ dated 24.08.2018 issued by the Department of P.W.D, Tamil Nadu within the time frame fixed by this Court.

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The Thamiraparani river which flows from Thirparapu Kuzhithurai - Thengaipattinam, finally ends up in Arabian Sea. It is stated that from Mangadu to Thengaipattinam, there are seven villages and thousands of families are living on the banks of the river to a stretch of seven kilometres. It is also stated that the said river water is the main source of ground water, agriculture and drinking water, for all the people who are living in that stretch for about seven kilometres,

4. The grievance of the petitioner is that sea water is mixing with the river water of Tamiraparani and due to intrusion of saline water into the Tamiraparani (Kuzhithurai) river, water is not suitable for drinking or irrigation purpose. It is also stated that increase in salinity in river water is likely to cause other environmental issues and health hazards. It is in these circumstances, the petitioner has come forward with this Writ Petition for the relief, as stated supra.

5. It is also stated that despite passing of Government Order sanctioning and approving the scheme, construction of check dam has not been commenced.

6. The learned Additional Government Pleader appearing for the respondents, on instructions, submitted that the construction work namely construction of Check Dam in the appropriate place has been given to a Contractor, after following the tender process. Further, for construction of Check Dam, a sum of Rs.14,58,76,181/- has been approved and sanctioned by the Government. It is further stated that the work is likely to be commenced. It appears that the contractor has also

deposited the security deposit as per the tender conditions. It is further submitted that after appointment of Contractor and execution of contract, the Contractor has commenced the work.

7. The learned Additional Government Pleader appearing for the respondents also submitted that the respondents will ensure that the work is executed within the time stipulated in the agreement, without any delay.

8. Having regard to the nature of work undertaken by the respondents, the official respondents shall ensure that the construction of Check Dam is completed before the rainy season, so that there will not be any obstruction of the work and further inconvenience to the public can be prevented.

9. With the above direction, the Writ Petition is closed. No costs."

20. The Hon'ble High Court of Madras at Madurai Bench has not considered as to whether the authorities have obtained necessary clearance for this purpose including Environmental Clearance (EC) or CRZ Clearance as required under the EIA Notification or CRZ Notification and there is any violation of environmental norms. The Division Bench of High Court of Madras at Madurai Bench only proceeded on the basis that it was a project which had obtained all necessary requisites and there is no violation of any environmental laws. The question whether it requires any CRZ Clearance was also not gone into by the High Court.

21. Further, in Para 5 of the Order, it was mentioned that despite passing of Government Order sanctioning and approving the schemes, construction of check dam has not been commenced, that was the status of construction as on 01.04.2019.

22. It is also seen from the counter statement filed by the 7th respondent that another Writ Petition was filed before the Hon'ble High Court of Madras at Madurai Bench as W.P. (MD) No.27380 of 2019 seeking for injunction restraining from proceeding with the work of construction of check dam by the President of the present applicant association. Since no injunction was granted by the Hon'ble High Court of Madras at Madurai Bench, the applicant approached this Tribunal by filing this present application.

23. It is seen from the documents produced by the applicant that, that writ petition was later withdrawn and the same has been dismissed as withdrawn by the Hon'ble High Court of Madras at Madurai Bench.

24. The question as to whether there is any violation of environmental laws has not been gone into by the High Court while disposing the writ petition mentioned above. That question will have to be gone into by this Tribunal.

25. The learned counsel appearing for the applicant submitted that the project proponent is proceeding with the work and some death also occurred on account of consequence of this alleged unauthorized construction by the Government.

26. We feel that an opportunity will have to be given to the SCZMA, Tamil Nadu to independently represent by another counsel, as there are conflicts of interest between the State Government and the SCZMA, Tamil Nadu as per the Joint Committee report submitted.

27. But, at the same time, prima facie, it is found that the MoEF&CC, Regional Office, Chennai in the joint committee along with the Department of Environment, State of Tamil Nadu have come to the conclusion that there is a violation of CRZ Notification.

28. We are not agreeing with the submission made by the counsel appearing for the State Departments that since the administrative sanction as well as financial sanction has been granted for the project in 2018 and the CZMP was approved only thereafter, there is no need to obtain CRZ Clearance.

29. It may be mentioned here that even prior to the preparation of CZMP in tune with the CRZ Notification, 2011, CRZ Notification 2011 has been notified much earlier namely, 06.01.2011 and that will govern the area in respect of permitted/regulated/prohibited activities in the CRZ Zone and till the Coastal Zone Management Plan of 2011 in tune with the Notification 2011 has been prepared. This will have to be guided by CZMP of 1996 in tune with the provisions of 2011 Notification so as to ascertain as to whether this falls under any of the zone as provided under the CRZ Notification, 2011 or not.

30. Further, the question regarding obtaining prior clearance will arise not at the time when the administrative sanction was granted by

the Government, but before starting of execution of work on ground, as the notification prohibits any construction in the regulated zone without getting prior clearance and further, prior to commencement of work, they will have to obtain clearance / permission from the concerned authority. Since there is some dispute regarding the place exactly where the work is going on, according to the two members of the joint committee, it falls within the No Development Zone of CRZ III Zone, but, according to the Government Departments namely, the project proponent including the Sub Collector it is not falling within the CRZ Zone at all.

31. So, in order to resolve the issue, we appoint an independent agency namely, Institute of Remote Sensing (IRS), Anna University, Chennai to go into the question as to whether the area in dispute falls in any of the regulated/prohibited/permitted zone as per the CRZ Notification, 2011, after inspecting the area along with the joint committee and prepare a plan by super imposing the area with the CZMP of State of Tamil Nadu prepared in tune with the CRZ Notification, 2011. The District Collector himself/ herself is directed to participate in the committee at the time of inspection, instead of deputing any other officer.

32. Till that question is resolved, we are not inclined to grant any interim order, but at the same time, it is clarified that any construction made by the project proponent in the disputed area will be subject to the result of original application and they will be doing the work at their risk.

33. Anyhow, the State Government shall take all necessary steps to provide safeguard to the people who are residing near the construction site to avoid any alleged calamities as claimed by the applicant.

34. In the meantime, the party respondents are directed to file their independent response including the SCZMA, Tamil Nadu regarding the allegations made in the application and also regarding ongoing project and also violation (if any) as alleged by the applicant and if there is any violation, what is the nature of action taken by them regarding the same, especially two members of the joint committee mention that there is a violation.

35. Expense for conducting the study will have to be met by the State Government of Tamil Nadu and the Chief Secretary, State of Tamil Nadu is directed to take all necessary steps for providing necessary fund for conducting the study as directed by this Tribunal and any other logistics or other support (if any) required by the expert agency.

36. The Institute of Remote Sensing, Anna University, Chennai is directed to submit the report along with the plan super imposing the CZMP of 2018 and locating the project area, so as to enable this Tribunal to ascertain as to whether the area in dispute falls in any of the regulated/prohibited/permitted zone under the CRZ Notification, 2011 with colour pictures and on that basis, the joint committee is also directed to file further report on this aspect.

37. They can file the documents with the help of the Regional Office, MoEF&CC, Chennai. The MoEF&CC, Regional Office, Chennai is also directed to provide all assistance to the agency to conduct the study and for submitting the report as directed by this Tribunal and the committee members are directed to reinspect the site along with the agency mentioned and co-operate with the agency in carrying out the work and submit the report on the basis of the report from the agency.

38. The committee members as well as Institute of Remote Sensing, Anna University, Chennai are directed to submit their reports to this Tribunal on or before **25.08.2021** by e-filing in the form of Searchable PDF/OCR Supportable PDF and not in the form of Image PDF along with necessary hardcopies to be produced as per Rules without fail, considering the importance of the issue and urgency in the matter.

39. The State Government is also directed to consider the aspect that conflict of interest between the regulators namely, SCZMA, Tamil Nadu and the project proponent namely, Public Works Department (PWD) and appoint an independent counsel to represent the SCZMA, Tamil Nadu without delay, considering the fact that the matter involves serious environment issues and alleged violation by the State Department itself."

24. Thereafter, the matter was taken up on 20.12.2021 and this Tribunal had considered the report submitted by the Institute of Remote Sensing, Anna University, Chennai dated 10.12.2021, e-filed on the same date and extracted in Para (2) of the order and the relevant portion required for our purpose viz., Results and Conclusions are reproduced below:-

"4.0 RESULTS AND CONCLUSIONS

4.1 Results

The observed baselines of GNSS receivers were processed using TBC software to derive the coordinates of ground control points for Geo referencing of satellite imagery and cadastral maps. The ground control points were used to geo reference the cadastral map of the study area. The HTL and LTL were superimposed on the cadastral map along with ecologically sensitive areas in the vicinity. Along with HTL, 100m or width of the creek (whichever is less) buffer lines for the HTL (creek) were also drawn. The different CRZ zones such as CRZ IB, CRZ II, CRZ II, CRZ II (NDZ). CRZ IVA and CRZ IVB have been identified from approved CZMP in the vicinity of the site. The check dam site is falling in CRZ-IB, CRZ-III (NDZ) and CRZ-IVB.

The co-ordinates of the HTL in WGS84 system are presented in the Annexure-I along approved CRZ map in Annexure III. The Google image of the site, approved CZMP, CRZ map of 7km radius and field survey photographs are shown in annexure II, IV, V and VI respectively. The ecologically sensitive areas like sand dunes, turtle nesting ground and mangrove areas are not present in the vicinity of the site. The coordinates of the check dam is shown in table 1. The list of IRS team and committee members name and signature constituted by the Hon'ble NGT (SZ) are presented in annexure VII.

Table 1. Coordinate of the check dam

Label	Latitude	Longitude
A	8° 15 ' 11.664 " N	77° 9 ' 40.790 " E
B	8° 15 ' 10.432 " N	77° 9 ' 44.844 " E

4.2 Conclusions

i. The approved CZMP (Map no. TN 4 & 11) as per CRZ notification 2011 has been used to prepare the final CRZ map. The HTL was verified during the field survey.

ii. The GPS survey was carried out in the project site to observe the coordinates of the site boundary. Based on these coordinates and soft copy of the check dam layout given by the client, the check dam site layout was superimposed on the approved CRZ map.

iii. Along with HTL / LTL, 100m or width of the creek (whichever is less) buffer lines for the HTL (creek) were also drawn.

iv. The Coastal Regulation Zone such as CRZ IB, CRZ II CRZ III, CRZ III (NDZ), CRZ IVA and CRZ IVB were drawn on the map. The CRZ maps in 1:4000 for the site and 1:25,000 for 7km radius have been prepared.

v. The ecologically sensitive areas like sand dunes, turtle nesting ground and mangrove areas are not present in the vicinity of the site.

vi. The construction of check dam in survey No.516, Ezhudesam - A Village, Killiyur taluk, Kanyakumari district is falling in CRZ-IB, CRZ-III (NDZ) and CRZ-IVB as shown in the table 2. The Coastal Regulation Zones (CRZ) of the protection wall and abutment in A & B sides of the check dam are shown in Table 3.

Table 2 : The length of check dam under various CRZ

Sl. No.	CRZ - Classification	Length in Meters
1	CRZ - I B	8.4
2	CRZ - III (NDZ)	2.7
3	CRZ - IV B	118.9
	Total	130.0

Table 3 : CRZ of the protection wall and abutment in A & B sides of the check dam

Description	CRZ Classification	Length in Meters	Total Length in Meters
Abutment - A	CRZ - IB	19.94	32.95
	CRZ - IV B	12.02	
	CRZ - III (NDZ)	0.99	
Abutment - B	CRZ - III (NDZ)	32.95	32.95
Protection Wall - A	CRZ - IV B	46.83	85.00
	CRZ - IB	13.85	
	CRZ - III (NDZ)	24.32	
Protection Wall - B	CRZ - III (NDZ)	80.91	85.00
	CRZ - IB	4.09	

25.It was mentioned in the report that ecologically sensitive areas like sand dunes, turtle nesting ground and mangroves are not present in the vicinity of the site.

26.The 7th Respondent has filed their objections to the report submitted by the Institute of Remote Sensing, Anna University, Chennai and also considered the apprehension raised by the learned counsel appearing for the applicant that on account of the ongoing construction of check dam across the river at the disputed place, eight villages viz., Erayamanthurai, Poothurai, Thoothur, Chinnathurai, Eraviputhanthurai, Vallavilai, Neerodi and Marthandamthurai were likely to be affected and they would be denied receiving of fresh water which they were enjoying from the river. It was also apprehended by the learned counsel for the applicant that on account of the construction of the check dam, course of the river has been changed and affected the ecosystem in that area. They have not taken any steps to strengthen the bunds, thereby the possibility of erosion of the banks cannot be ruled out and that may cause irreparable injury to the riparian residents of the river.

27.So, this Tribunal directed the 7th Respondent to file a statement clarifying the apprehensions raised by the learned counsel appearing for the applicant which they are anticipating on account of construction of check dam and also to consider the question as to whether after commencement of the construction of check dam, any builders have started encroaching into the river portion and making an attempt of construct buildings. So, this Tribunal directed the Water Resources Department and District Collector to file their respective reports regarding the alleged encroachment and if so, what is the nature of action taken and also answer the apprehension raised by the applicant.

28.The applicant also filed objection to the Joint Committee report reiterating the observations made by the Joint Committee and also impact thereon and relied on certain judgments of the Hon'ble Apex Court in **Sunil Baitra Vs. Delhi Administration, Manuel F Rodrigues Vs. State of Goa [Original Application No.21 of 2013 (THC) (WZ)]** and the Principal Bench of National Green Tribunal in **S.P. Muthuraman Vs. Union of India** by Judgment dated 07.05.2015.

29.The applicant also produced the order of the Writ Petition in **W.P.(MD) No.7069 of 2019 [B. Paulraj Vs. The Principal Secretary, Public Works Department, Fort St. George, Chennai & Ors.]** of the Hon'ble High Court of Madras at Madurai Bench along with the reply, wherein there was a direction issued to complete the construction of the check dam. They also further submitted that subsequent writ petitions mentioned was later dismissed as withdrawn.

30.In the objection filed by the Water Resources Department to the report submitted by the Institute of Remote Sensing, Anna University, Chennai has mentioned that Government of India through the Ministry of Environment, Forests and Climate Change (MoEF&CC) approved vide its Office Memorandum F.No.19-27/2015-IA - III Division (CRZ) dated 19.02.2021 regarding the procedure for dealing with violations arising due to not obtaining a prior CRZ Clearance for permissible activities and thereby, the obtaining of post-facto clearance was approved by the Government in order to remove the hurdles faced by the projects which has started without obtaining Environmental Clearance for the benefit of the general public. They have further mentioned that the 7th Respondent will obtain post facto clearance in respect of the CRZ Zone issue, in order to protect the check dam and the fishing harbor if this Tribunal so directs. They further mentioned that the report of the Institute of Remote Sensing, Anna University, Chennai should not be relied on.

31.As directed by this Tribunal, the 7th Respondent has filed the statement regarding the apprehensions raised by the applicant which reads as follows:-

"Statement filed by the 7th Respondent as per the direction by this Honourable Tribunal in its Order dated 05.04.2022

1. It is respectfully submitted that in the above I.A.No.57/2022

the Honourable Tribunal allowed the said I.A to implead the additional 8th in the original application.

2. Meanwhile, during the course of hearing, the counsel for applicant in the original application submitted that on account of ongoing construction of check dam across the river at the disputed place, eight villages viz., Erayamanthurai, Poothurai, Thoothur, Chinnathurai, Eraviputhanthurai, Vallavilai, Neerodi and Marthandamthurai are likely to be affected and they will be denied receiving of fresh water which they were enjoying from the river. Further, the applicant submitted that on account of construction of this check dam, course of the river has been changed and affected the ecosystem in that area. They have not taken any steps to strengthen the bunds thereby the possibility of erosion of the banks cannot be ruled out. That may cause irreparable injury to the riparian residents of the river.

3. The above submissions made by the applicant's counsel are absolutely false and baseless. In fact, the AVM Canal is located in between Poovar and Erayamanthurai connecting the coastal villages namely Neerodi, Marthandamthurai, Vallavilaithurai, Eraviputhanthurai, Chinnathurai, Thoothur, Poothurai and Erayamanthurai. The said canal acts as a natural barrier to prevent sea water intrusion. It receives water from the Neyyar river for its western location and Thamiraparani River for its eastern location. The water will be stagnant in the said AVM Canal. Originally the AVM canal was constructed for navigation purpose by the Erstwhile Travancore State. Thamiraparani River originates from Kodayaru and travels around 60 kilo meters with the carrying capacity of 42,700 cusecs and it conflues with Arabian Sea at Erayamanthurai. The direction of the said Thamiraparani river is North from Kodayaru and south at Erayamanthurai (Arabian sea). Whereas, the direction of AVM canal is West from Poovar and East at Erayamanthurai and also it passes parallel to the Arabian Sea. But the check dam is being constructed around 800 meter away (northern side) from the AVM canal.

4. During high tide the sea water enters the river directly through the opened river mouth which was already opened for fishing harbour works for vessel movement towards the upward direction for more than 13 km and spoiling the surface water and ground water. In order to overcome the said issue, the check dam is being constructed 800 m (aerial distance) away from the river mouth by keeping the crest level of the body wall +1.00m from the mean sea level. The bottom of the body wall is at -5.25m from the mean sea level. Hence the total height of body wall 6.25m. The check dam is mainly constructed for preventing the sea water intrusion and not to impound by any storage. Since the Thamiraparani river is a perennial river, steady flow occurs throughout the year without any stoppage of water towards the downstream side of the check dam. Hence, there is no question of denial of receiving fresh water to the above said Villages. However, it is pertinent to note that the said AVM canal became saline due to the opening of the sand bar in the estuary point which was done for Fishing Harbour works for moment of vessels in to Kayal (i.e., back water).

5. Further, it is submitted that the coffer dam has been constructed to divert the water flow to do the construction works. The said coffer dam is only for temporary purpose. Once the construction of check dam is completed, the said temporary coffer dam will be totally removed and the flow will be restored in the pre-existed condition. Due to the unprecedented rain and flood occurred during month of November 2021, the right bank of the river near to the check dam has been eroded. Therefore, necessary proposal has been sent to the Government of Tamil Nadu to restore the right bank of the river in its original condition. Accordingly, this 7th respondent will do the necessary construction works in order to restore the right river bank of the Thamiraparani river. The applicant is well known about the same but intentionally suppressed in order to mislead the Honourable Tribunal. Further, it is submitted that 90% of construction of check dam has been completed physically.

6. Further, the applicant alleged that there are some builders have started encroaching in to the river portion and making attempt to construct buildings. The said submission is absolutely false and baseless. There is no encroachment in the alleged river portion."

32.It is mentioned in the statement that coffer dam was constructed to divert the water flow to do the construction work and it is only a temporary measure and once the construction of check dam is completed, temporary coffer dam will be removed and the flow will be restored to the pre-existed condition. Due to the unprecedented rain and flood occurred during the month of November 2021, the right bank of the river near the check dam has been eroded. Necessary proposal has been sent to the Government of Tamil Nadu to restore the right bank of the river in its original condition. They will do necessary construction work to restore the right river bank of the Tamirabarani. There were no encroachments in the river portion noticed.

33.The additional 8th Respondent has filed a reply supporting the contentions of the official respondents and the necessity of the check dam construction which is required for the purpose of protecting the interest of the people in the locality. They also relied on the decision of the Hon'ble Apex Court in **Pahwa Plastics Private Limited & Anr. Vs. Dastak NGO & Ors.**² and **Electrosteel Steels Limited Vs. Union of India & Ors.**³, wherein the Hon'ble Apex Court had observed that the ex-post facto clearance can be granted in appropriate case taking into consideration of larger public interest and this is being a permissible activity, the same cannot be said to be a impermissible activity for want of CRZ Clearance and they prayed for passing appropriate orders, accepting their contentions and dismissal of the application.

34.Heard the learned counsel appearing for the applicant and respondents.

35.The learned counsel appearing for the applicant argued that it will be seen from the Joint Committee report as well as the report submitted by the Institute of Remote Sensing, Anna University, Chennai that the construction of the check dam is in CRZ area and without obtaining necessary CRZ Clearance, construction of the check dam is illegal. Further, on account of the construction, the water course has been diverted and it affects the livelihood of the people in that locality.

² (2022) SCC Online SC 362

³ (2021) SCC Online SC 1247

36. On the other hand, the learned counsel appearing for the State Departments, including the Water Resources Department argued that there was no violation committed and the Coastal Zone Management Plan (CZMP) in tune with the CRZ Notification, 2011 was approved only after the Government Order was issued and as such, the CRZ Notification, 2011 is not applicable. Further, it was done with an intention to protect the interest of the fishermen community in that locality and this is intended for the purpose of preventing intrusion of saline water into the river during high tide so as to provide clean water to the people in that locality and taking into the public interest and the bonafide of the Government in proceeding with the project, no coercive orders need be passed. If the Tribunal directs, they will take appropriate steps to get the clearance from the SCZMA – Tamil Nadu as required under the CRZ Notification, 2011 and 2019.

37. The learned counsel appearing for the MoEF&CC argued that the construction falls within the CRZ area and without obtaining necessary CRZ Clearance, they are not expected to proceed with the work. Though it is a permissible activity, they ought to have obtained prior CRZ Clearance before commencing the project. The remedial measures will have to be taken and the enforcement of the provisions of the CRZ Notification and violation (if any) has to be considered by the SCZMA – Tamil Nadu and it is for them to take appropriate action in this regard.

38. We have considered the pleadings, reports submitted by the Joint Committee, objections filed by the project proponent and the applicant and also the submissions made at the time of hearing.

39. The points that arose for consideration are:-

- (i)** Whether the 7th Respondent had committed any violation in constructing the check dam in Tamirabarani River at the disputed site in violation of the CRZ Notification, 2011?
- (ii)** Whether there was any damage caused to the environment on account of the construction and if so, what is the nature of directions to be given to protect the environment?
- (iii)** Whether any directions will have to be issued to

remove the construction made, if it is found that it was done in violation of the CRZ Notification, 2011?

- (iv) Whether the State of Tamil Nadu is liable to pay any environmental compensation for the damage (if any) caused to the environment on account of such construction in violation of CRZ Notification, 2011?
- (v) What is the nature of direction to be issued by this Tribunal applying the principles of "*Precautionary Principle*" and "*Doctrine of Proportionality*" to protect the environment?
- (vi) Relief and costs.

POINTS:-

40. The case of the applicant was that the State Government through the 7th Respondent viz., Public Works Department (Water Resources Organization) is proceeding with the construction of the check dam in Tamirabarani River (Kuzhithuraiyaru or Kuzhithurai river) at the disputed site which falls under the CRZ area as provided under the CRZ Notification without obtaining necessary CRZ Clearance and on account of the construction made, water course of the river has been diverted thereby affecting the livelihood of the local fishermen community who are solely depending on the river.

41. On the other hand, the case of the State Government and the 7th Respondent was that since there were lot of complaints received from the local community that on account of the intrusion of salt water into the river during the high tide season, the salinity of the water has been increased thereby making the water unfit for any purpose. There were lot of protest made by the local people in this regard and several requests have been received from the various political parties to resolve the issue. In order to resolve that issue, the 7th Respondent has sent a proposal for construction of check dam and also for construction of new fishing harbor at Thengaipattinam vide their letter T.S./DO.III/C9747/06 dated 04.07.2006 and permission was granted for construction of the harbor with certain conditions. On account of the construction of the fishing harbor, there were certain difficulties faced by the local people and in order to resolve the same, there was a necessity for construction of check

dam due to the removal of sand bar for construction of fishing harbor at the estuary of the river so as to bring the earlier situation before the construction of fishing harbor and accordingly, the State Government had issued administrative sanction for construction of check dam across the Kuzhithuraiyar near Erayamunthurai in Kanyakumari District at an estimated cost of Rs.1,537.07 Lakhs vide G.O. (Ms.) No.26 Public Works (W1) Department dated 24.08.2018. It is on that basis, they have started construction and 34% of the work has been completed and they have spent an amount of Rs.4.34 Crores so far.

42.The case of the State Government was that since the administrative sanction was granted on 24.08.2018 prior to the approval of the Coastal Zone Management Plan (CZMP) i.e. on 24.10.2018, the CRZ Notification is not applicable. Further, they also contended that the check dam under construction is 800 meters away from the High Tide Line (HTL) and the proposed location does not come under any of the CRZ area as per the map available with the District Coastal Zone Management Authority.

43.In order to ascertain the question as to whether the disputed area falls within the CRZ area and whether prior CRZ Clearance is required or not, a Joint Committee was appointed by this Tribunal and the Joint Committee has filed the report dated 11.01.2021, signed by the Assistant Conservator of Forests, Department of Environment, Government of Tamil Nadu and a Member from MoEF&CC, Regional Office, Chennai alone, wherein it was specifically mentioned that the construction was made in violation of the CRZ Notification, 2011 and the activities though permitted under CRZ Notification, 2011, prior CRZ Clearance is required from the authority before it is started. It was also mentioned in the report that the construction falls under 'No Development Zone' and there was certain damage caused to the environment on account of the construction, as the water course has been diverted and there was no provision for granting the ex-post facto clearance.

44.Since there was dispute regarding the distance from the High Tide Line (HTL) and whether the construction will fall under the CRZ area notified under the CRZ Notification, this Tribunal directed the Institute of Remote Sensing, Anna University, Chennai to look into the issue

and submit a report on the basis of the CRZ Notification and the CZMP prepared as to whether this will fall under the CRZ area or not.

45. Accordingly, the Institute of Remote Sensing, Anna University, Chennai has filed the report during December 2021 along with the super imposed locations in the CZMP of the project area and came to the conclusion that the construction of the check dam in Sy. No.516 of Ezhudesam – A Village, Killiyour Taluk, Kanyakumari District is falling in CRZ I B, CRZ – III (NDZ) and CRZ – IV B. It was further mentioned that there was no ecologically sensitive areas like sand dunes, turtle nesting ground and mangroves present in that area. Though an objection has been filed by the 7th Respondent to the same, we are not convinced with the objection filed by the 7th Respondent to the report submitted by the Institute of Remote Sensing, Anna University, Chennai in this regard who is an accredited agency for preparation of CZMPs by the MoEF&CC. So, the accredited agency has come to the definite conclusion that the construction falls in CRZ area.

46. It is clear from the report submitted by the Joint Committee as well as the reply submitted by the MoEF&CC after extracting the provisions of the CRZ Notification, 2011 that it is a permissible activity, as making construction of regulators to avoid intrusion of saline water from seashore is a permissible activity but it requires prior CRZ Clearance from the authorities.

47. It is true that the Hon'ble High Court of Madras at Madurai Bench in **W.P. (MD) No.7069 of 2019** directed the Public Works Department (Water Resources Organization) to complete the construction of the check dam before the monsoon. It was also seen from the report that another writ petition was filed as **W.P. (MD) No.27380 of 2019** before the same Bench through Mr. Sesadimai, President, Association of Deep Sea going Artisanal Fishermen, Shark Street, Thoothur Post, Kanyakumari District seeking injunction against the construction of the check dam, but no interim order was granted. But it appears from the submission made by the learned counsel appearing for the applicant that subsequently the writ petition was withdrawn, as the parties have filed application before this Tribunal.

48.In the Judgment in **W.P. (MD) No.7069 of 2019**, the Hon'ble High Court of Madras at Madurai Bench has not gone into the question of any violation of CRZ Notification, but only directed the authorities to complete the construction and that cannot be treated as a permission granted for the Government to proceed with the work, if there is any prior clearance required under the CRZ Notification, 2011, as has been observed by the Hon'ble Apex Court in several decisions, including the decision in **The Kerala State Coastal Zone Management Authority Vs. The State of Kerala Maradu Municipality & Ors.**⁴, wherein it has been held by the Hon'ble Apex Court that if any construction was made in violation of the CRZ Notification, it will be deemed to be an unauthorized construction and in that case, it can be directed to remove the construction made. So, if any construction made in CRZ area, though permissible activity without obtaining prior CRZ Clearance, then it will be deemed to be an illegal or unauthorized construction.

49.Merely because, administrative sanction was granted prior to the approval of CZMP will not ipso facto give permission for the authority to proceed with the construction without obtaining any clearance under the environmental laws. Even prior to the CZMP was approved, there was a CZMP available on the basis of the CRZ Notification, 1991 and the CRZ Notification, 2011 was passed even prior to the grant of administrative sanction in 2018.

50.So, even if the CZMP was not prepared, then the provisions of the CRZ Notification, 2011 will be applicable and the zone will have to be identified on the basis of the existing CZMP prepared on the basis of CRZ Notification, 1991 as its validity was extended from time to time by the MoEF&CC after passing CRZ Notification, 2011. So, the submission made by the learned counsel appearing for the State departments that since the administrative sanction for construction of the check dam was granted prior to the approval of CZMP, as such CRZ Notification is not applicable cannot be accepted and the same is rejected.

51.It may be mentioned here that the Central Government had issued Office Memorandum amending the CRZ Notification incorporating a provision for applying for ex-post facto clearance in respect of

⁴ (2019) 7 SCC 248

activities which are permissible under CRZ Notification, but started construction without obtaining prior CRZ Clearance vide Office Memorandum No.F.19-27/2015-IA.III Division (CRZ) dated 19.02.2021, laying down the procedure for obtaining post facto clearance, but this was challenged before the Hon'ble High Court of Madras at Madurai Bench and the same has been stayed by the Hon'ble High Court. But this aspect was considered by the Hon'ble Apex Court in the **Electrosteel Steels Limited Vs. Union of India & Ors.**⁵, wherein the Hon'ble Apex Court had observed that the stay granted by the Hon'ble High Court in respect of the above said notification will be applicable only to the State of Tamil Nadu and not to other States.

52. Further, in **Pahwa Plastics Private Limited & Anr. Vs. Dastak NGO & Ors.**⁶ and also in **Electrosteel Steels Limited Vs. Union of India & Ors.**⁷, the Hon'ble Apex Court has held that the granting ex-post facto clearance in exceptional circumstances is not prohibited under the Environment (Protection) Act, 1986 and the authorities can consider the question of granting ex-post facto clearance taking into account the larger public interest and also the nature of the project and its necessity for protecting the interest of the public. We are not going into the question as to whether the ex-post facto clearance is permissible or not, but it is for the authorities to consider those aspects and pass appropriate orders whenever such applications have been filed, taking into consideration the guidelines provided by the Hon'ble Apex Court in several decisions dealing with the same, as there are conflicting decisions of the Hon'ble Apex Court in this regard.

53. Even, it is seen from the further statement filed by the 7th Respondent that if the Tribunal feels that prior CRZ Clearance is required, they will make necessary application to the authorities. So, we hold that the construction of check dam in CRZ area without obtaining prior CRZ Clearance is not permissible and the 7th Respondent cannot further proceed with the construction activities without obtaining necessary clearance from the Coastal Zone Management Authority, especially when the District Coastal Zone

⁵ (2021) SCC Online SC 1247

⁶ (2022) SCC Online SC 362

⁷ (2021) SCC Online SC 1247

Management Authority has directed the 7th Respondent not to proceed with the construction without obtaining prior CRZ Clearance.

54.As regards the compensation aspect is concerned, the Joint Committee has not assessed the compensation. So, we leave it to the SCZMA – Tamil Nadu to assess the same after giving opportunity to the 7th Respondent and the State of Tamil Nadu to consider this aspect and pass appropriate orders in accordance with law.

55.As regards the remedial measures are concerned, the State of Tamil Nadu through the 7th Respondent is directed to carry out the recommendations made by the Joint Committee for the purpose of restoring the course of river and construction of the bund which was breached during monsoon so as to protect further intrusion of saline water and affect the water quality in that area.

56.In view of the detailed discussion and observations made above, this Tribunal feel that the application can be disposed of by giving following directions:-

- a. We hold that the construction of the check dam in CRZ area without obtaining prior CRZ Clearance is illegal, but taking into consideration the public interest and involvement of the public money, we are not directing demolition of the check dam, but we direct the State of Tamil Nadu and the 7th Respondent or the concerned department not to proceed with the further construction in that area without obtaining CRZ Clearance from the SCZMA – Tamil Nadu and they should proceed with the same only after obtaining CRZ Clearance, if it is permissible under law.
- b. If any application for CRZ Clearance is submitted by the 7th Respondent or any other authority who are executing the project before the SCZMA – Tamil Nadu, then they are directed to consider and pass appropriate orders in that application strictly in accordance with the orders of the Hon'ble High Court in the pending litigation.
- c. As regards the compensation aspect is concerned, we direct the SCZMA – Tamil Nadu to conduct enquiry on this aspect, after giving opportunity to the 7th Respondent and applying the

principles laid down by this Tribunal in several case of this nature and also by the Hon'ble Apex Court in respect of assessing environmental compensation, pass appropriate orders in accordance with law. If any environmental compensation is imposed, then they are directed to take steps to realize the same in accordance with law.

- d. The 7th Respondent or any other department who is in-charge of executing the project is directed to carry out the recommendations made by the Joint Committee and also the Institute of Remote Sensing, Anna University, Chennai for the purpose of mitigating the damage caused to the Tamirabarani River on account of the construction of the check dam without obtaining prior CRZ Clearance so as to protect the water course and prevention of intrusion of saline water from the sea to the river.
- e. The SCZMA – Tamil Nadu is also directed to suggest the ways and means to remedy the damage caused to the environment on account of the construction and if any suggestions are given by them, then the 7th Respondent or other executing department of the project is directed to carry out the same in its letter and spirit.
- f. The 7th Respondent is directed to inspect the area to identify encroachments, if any, and ensure that no encroachment is made by any third party in the river bed area on account of the temporary diversion made by providing coffer dam for construction of the check dam in that area and if there is any encroachment found, then they are directed to take appropriate steps to remove the same in coordination with the District Collector – Kanyakumari District and if any encroachment is found, then the District Collector – Kanyakumari District is also directed to render all assistance to the 7th Respondent to remove the encroachments into the water body and protect the water body against the encroachment and pollution.

57.The points are answered accordingly.

58. In the result, the Original Application is allowed in part and disposed with the following directions:-

- (i)** We hold that the construction of the check dam in CRZ area without obtaining prior CRZ Clearance is illegal, but taking into consideration the public interest and involvement of the public money, we are not directing demolition of the check dam, but we direct the State of Tamil Nadu and the 7th Respondent or the concerned department not to proceed with the further construction in that area without obtaining CRZ Clearance from the SCZMA – Tamil Nadu and they should proceed with the same only after obtaining CRZ Clearance, if it is permissible under law.
- (ii)** If any application for CRZ Clearance is submitted by the 7th Respondent or any other authority who are executing the project before the SCZMA – Tamil Nadu, then they are directed to consider and pass appropriate orders in that application strictly in accordance with the orders of the Hon'ble High Court in the pending litigation.
- (iii)** As regards the compensation aspect is concerned, we direct the SCZMA – Tamil Nadu to conduct enquiry on this aspect, after giving opportunity to the 7th Respondent and applying the principles laid down by this Tribunal in several case of this nature and also by the Hon'ble Apex Court in respect of assessing environmental compensation, pass appropriate orders in accordance with law. If any environmental compensation is imposed, then they are directed to take steps to realize the same in accordance with law.
- (iv)** The 7th Respondent or any other department who is in-charge of executing the project is directed to carry out the recommendations made by the Joint Committee and also the Institute of Remote Sensing, Anna University, Chennai for the purpose of mitigating the damage caused to the Tamirabarani River on account of the construction of the check dam without obtaining prior

CRZ Clearance so as to protect the water course and prevention of intrusion of saline water from the sea to the river.

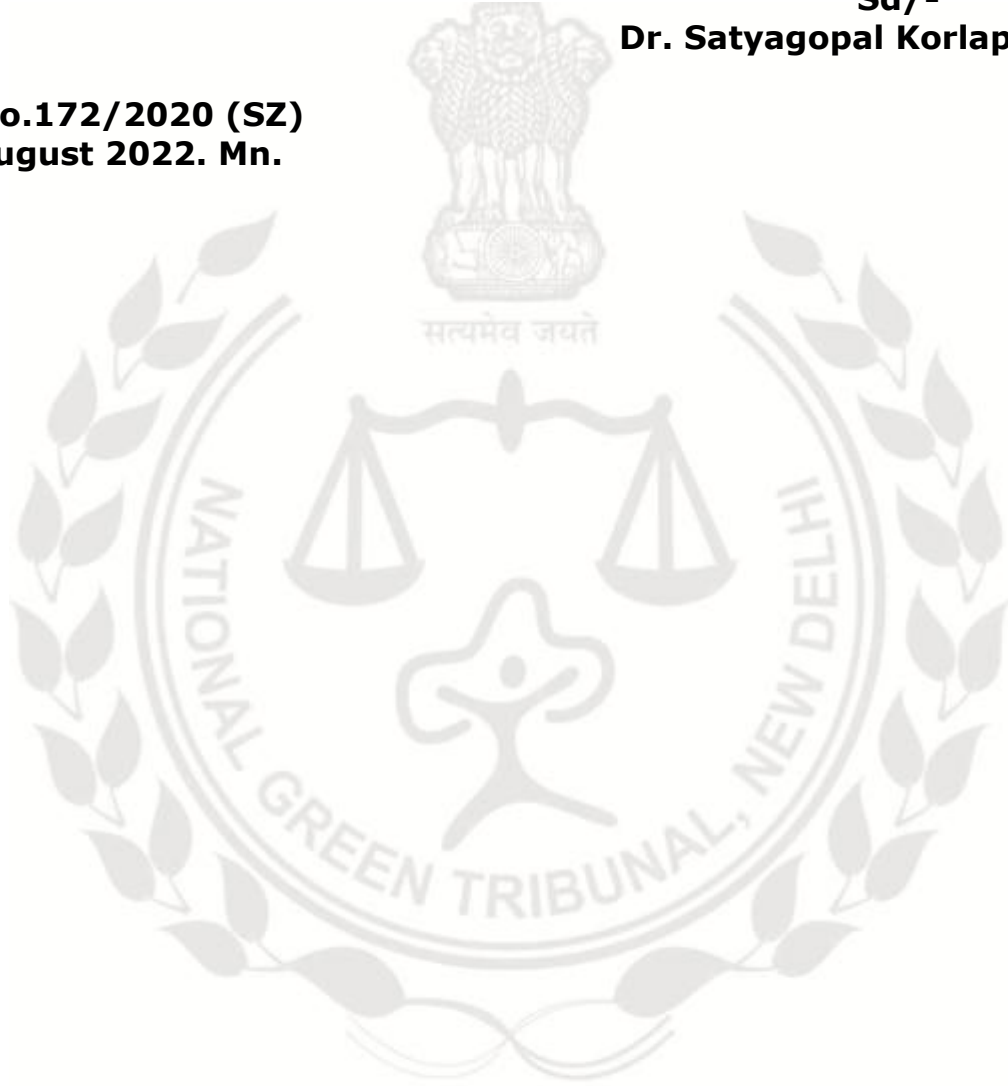
- (v)** The SCZMA – Tamil Nadu is also directed to suggest the ways and means to remedy the damage caused to the environment on account of the construction and if any suggestions are given by them, then the 7th Respondent or other executing department of the project is directed to carry out the same in its letter and spirit.
- (vi)** The 7th Respondent is directed to inspect the area to identify encroachments, if any, and ensure that no encroachment is made by any third party in the river bed area on account of the temporary diversion made by providing coffer dam for construction of the check dam in that area and if there is any encroachment found, then they are directed to take appropriate steps to remove the same in coordination with the District Collector – Kanyakumari District and if any encroachment is found, then the District Collector – Kanyakumari District is also directed to render all assistance to the 7th Respondent to remove the encroachments into the water body and protect the water body against the encroachment and pollution.
- (vii)** Considering the circumstances, parties are directed to bear their respective costs in the application.
- (viii)** The Registry is directed to communicate this order to the Regional Office, MoEF&CC, Chennai, SCZMA – Tamil Nadu, DCZMA, Engineer – in – Chief, Public Works Department or who is in-charge of execution of the project, District Collector – Kanyakumari District, Additional Chief Secretary to Government – Department of Environment, Climate Change and Forests, Additional Chief Secretary to Government – Water Resources Department and also to the Chief Secretary to Government, State of Tamil Nadu for their information and compliance of directions.

59.With the above observations and directions, this Original Application is disposed of.

**Sd/-
Justice K. Ramakrishnan, JM**

**Sd/-
Dr. Satyagopal Korlapati, EM**

**O.A. No.172/2020 (SZ)
17th August 2022. Mn.**



NGT