

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION No. 33(THC)/2013 (WZ)**

CORAM:

**Hon'ble Mr. Justice V.R. Kingaonkar
(Judicial Member)
Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

1. Janardan Chandar Patil,

Age 50 Yrs. President of
Talavali Village, R/at post. Ghansoli,
Navi Mumbai, Distt : Thane.

2. Mr. Yashwant Balaram Patil,

Age 40 Yrs., R/at Post Ghansoli,
Navi Mumbai, Distt : Thane.

....Applicants.

A N D

1. Union of India,

Department of Environment
Forest & Wild Life, Ministry of
Environment & Forest,
(Through : Secretary)

2. The State of Maharashtra.

Urban Development Department and
Department of Environment,
Mantralaya, Mumbai
(Through : Its Secretary).

3. Managing Director,

City & Industrial Development
Corporation of Maharashtra Ltd.,
Having its office at Vashi,
Navi Mumbai

- 4. Chairman,**
Maharashtra Industrial Development Corporation, having its office at Mahakali Caves Road, Andheri, Mumbai
- 5. Chairman,**
Maharashtra Pollution Control Board,
Having its office at Chhatrapati Shivaji Phule Market, 4th floor, Crawford Market, Mumbai 400 001.
- 6. Secretary,**
Thane Belapur Industries Association and Association of Industries,
Having its office at Rabale, TTC, Thane-Belapur Road, Navi Mumbai.
- 7. The Joint Secretary,**
Mangrove Society of India,
Mumbai.
- 8. Chairperson,**
Save Forum and Mangrove Society of India, (Mumbai Chapter), Mumbai.
- 9. Municipal Commissioner,**
Navi Mumbai Municipal Corporation
Having Head Office at Plot No.1, Palm Beach Road, Sector 15, CBD Belapur. Navi Mumbai
- 10. Chairman,**
Maharashtra Coastal Zone Management Authority (MCZMA),
Having office at : Environment Department, Room No.217, Annex Building, Mantralaya, Mumbai.

.....Respondents

Counsel for Appellant :

Mr. Sushil Jadhav, Adv.

Mr. P.S. Khupse, Adv.

Counsel for Respondent No. 1 :

Mr. Asim Sarode, Adv. a/w.

Mrs. Alka Babladi, and
Mr. Vikas Shinde, Adv.

Counsel for Respondent No. 3 :

Mr.K.D. Kelkar, Adv.
Mr. L.A. Pusalkar, Adv.

Counsel for Respondent No. 5 & 10 :

Mr. D.M. Gupte a/w.
Mrs. Supriya Dangare, Adv.

Counsel for Respondent No.4 :

Mr.D.D. Pawar, Adv.

Counsel for Respondent No.9 :

Mr. Ajay S. Patil, Adv.,

DATE : August 17th, 2015

J U D G M E N T

1. The present Application was originally filed as PIL No.17/2005 in High Court of Judicature at Bombay which was transferred to National Green Tribunal by order of Hon'ble High Court's dated 11-10-2013.

2. In the present Application, Applicant Janardan has challenged illegal actions of the Respondents affecting the public at large on following grounds :-

- i) Gross failure to maintain ambient air quality in the residential zone;
- ii) Developing residential area by Respondent Nos.2 and 3 by destroying the mangroves which is adversely affecting the natural habitat in creek side of Talavali, Ghansoli and Gothivali in Navi Mumbai, in violation of CRZ Notification;
- iii) Development of new residential areas in the above villages in violation of air pollution norms and also environmental norms.

3. The Applicants state that Navi Mumbai was developed to decongest city of Mumbai, considering rapidly growing ratio of population on the limited area available in Mumbai. Navi Mumbai now, is a thickly populated residential area, however, large areas of Navi Mumbai, still accommodate major chemical, petro chemical and also, hazardous industries which are located in proximity of newly developed residential area. Applicants allege that certain green zones which were identified in the earlier development plan have been converted into residential zones without considering the environmental risks, including the public health concern. There is no green belt separating the industrial area and the residential area and thereby, the residents are directly exposed to the hazardous air pollution caused due to the industries. Further, as the industries store large quantity of hazardous chemicals, there is substantial risk of accident/hazard, that may be cause disaster posing serious threat to the environment. Applicants also allege that in the process of development of residential area, large scale destruction of mangroves was done on the eastern side of Thane creek, in violation of to CRZ Notification. The Applicants have relied upon certain photographs to buttress their claims.

4. The Applicants further allege that air pollution levels in the above referred villages have substantially

deteriorated due to the chemical industries and also, due to large scale construction for commercial and residential development which is affecting the environment. The Applicants have, therefore, prayed for following :

- (a) To issue a writ of Mandamus, or a writ in the nature of Mandamus, or any other appropriate writ, order or direction appointing a committee of experts to investigate as regards the issues raised in the present writ petition being firstly the air pollution levels in the villages of Talavali, Gothivali and Ghansoli, of Navi Mumbai and the feasibility of the blatant development of residential and commercial complexes undertaken by CIDCO in the light thereof, Secondly, the development of plots by the 3rd Respondent by creek side of these villages by destroying mangroves and make a report to this Hon'ble Court on this count, and issue appropriate directions to the Respondents in the light of the report of the expert committee as regards the residential and commercial development.
- (b) Pending the hearing and final disposal of this petition, this Hon'ble Court may be pleased to direct the 1st to 3rd Respondents not to carry out any plot development activity for commercial or residential purpose in the said creek side villages of Talavali, Gothivali and Ghansoli.
- (c) Pending the hearing and final disposal of this petition this Hon'ble Court may be pleased to direct the Maharashtra Pollution Control Board the 5th Respondent herein to forthwith submit a report about the air pollution status with its specifications about the contents of the various poisonous gases and its percentage in the said villages of Ghansoli, Gothivali and Talavali and the other residential nodes in the vicinity of the Thane Belapur Road chemical and hazardous industries and issue appropriate directions in the light of the said report.

5. Respondent No.3- City & Industrial Development Corporation of Maharashtra Ltd. (CIDCO), filed the reply-affidavit in the proceedings before the Hon'ble High Court on 11-3-2005. The Respondent No.3 submits that another Writ Petition No.1783 of 1991 filed before the Hon'ble High Court on similar grounds by one Ramesh Narayan Patil and others, was dismissed by an order on merits on 22-10-2002. Respondent No.3 alleges that this Application has been filed with malafide intention to stall the development activities under the pretext of violation of environmental norms. CIDCO further submits the chronology of events related to development of Navi Mumbai area through various notifications under the MRTP Act from 1979 onwards. CIDCO contends that the D.P. plan of 1979 was modified through the legal process after hearing the objections of all concerned. CIDCO submits that such modifications were approved through Government communications dated 20-4-1985 and 26-6-1988, prior to CRZ notification of 1991. CIDCO further submits that the development activities of CIDCO are being executed as per the approved CZMP and within the provisions of CRZ notification. CIDCO further submits that while approving the CZMP, the Ministry of Environment and Forest, Government of India had directed Chief Secretary, Maharashtra vide letter dated 27-9-1996 to set up a Committee for identification of CRZ-II areas within coastal

stretches of Mumbai and Navi Mumbai. The said Committee had submitted such reports to the MoEF on 21-11-1998 and therefore, the said categorization of CRZ-II areas, by compliance of condition No.20 of approval of CZMP communicated vide letter dated 27-9-1996, is conclusive and attained finality.

6. CIDCO further submits that in W.P. No. 1783 of 1991, the Hon'ble High Court had granted permission to undertake the development in accordance with the approved CZMP and accordingly, the development activities are being undertaken by CIDCO.

7. The CIDCO further submits that in view of the increased water and air pollution prevailing in Thane-Belapur industrial belt, CIDCO had proposed certain modifications in development plan that was approved in April 1986 which stipulates that the expansion of the existing units or setting up of new chemical units in TTC area are subject to stringent control/clearance from the environmental authorities. Further, area covered between high tide and low tide line of the creek, has been earmarked as no development zone (NDZ) since 1973 and CIDCO has taken efforts to conserve and protect the mangroves in the coastal areas Navi Mumbai.

8. It is further submitted that MPCB constituted a Committee under the Chairmanship of Mr. R.K. Garg to

review the safety measures adopted by various industries in handling hazardous material. The Committee though recommended that new buildings and hutments should not be allowed to come up near factories handling hazardous chemicals, it did not recommend any green belt with a specific width or any specification. CIDCO therefore, opposed this Application.

9. Respondent No.4-Maharashtra Industrial Development Corporation (MIDC), filed first affidavit on 12-4-2005 and submitted that there are no specific averments against it in the Application. MIDC submits that it is conscious of the need of establishing the industrial area and estates in consonance with the environmental norms and has been taking effective steps by providing the environmental infrastructure in the form of effluent collection system, greenery, CETP and effluent disposal arrangements besides development of common hazardous waste treatment and disposal facility. MIDC therefore submits that it has taken all the necessary measures for environmentally safe operations of the industries in MIDC area.

10. Respondent No.4-MIDC filed affidavits on 22-4-2015 and 2-5-2015 in compliance of specific directions of the Tribunal. In the first affidavit, it is contended that the MIDC do not have any regulatory role as far as environmental matters are concerned, related to the

industries. Such powers are vested with MPCB and MIDC is always providing the necessary information, support and assistance to MPCB in order to enforce MPCB's directions issued to the industries. MIDC agreed that they have a small team of environmental Engineers at their head office, however, the role of environmental group is to ascertain that the MIDC industrial areas are complying with environmental norms and MIDC management is provided with proper technical advice and information on environmental issues. This small group is no way responsible or aimed at enforcing the regulations but has been developed as a proactive initiative of MIDC management to ensure sustainable development of its industrial areas.

11. Respondent No.5- Maharashtra Pollution Control Board filed first Affidavit on 22-3-2005 and submits that the Board has been monitoring ambient air quality in the area in question. They admit that the ambient air quality in the residential area opposite Thane Belapur Industrial area as for the parameters of Suspended Particulate Matters (SPM) and Respiratory Suspended Particulate Matters (RSPM) are above specified standards, which can be attributed to various contributory sources such as traffic, road conditions etc. MPCB further submits that as far as destruction of mangroves is concerned, there have been incidents where land reclamation has taken place by

dumping construction material on mangroves or by creating embankments thereby stopping the ingress of saline water, which is required for survival of mangroves. MPCB submits that this issue was taken up with Navi Mumbai Municipal Corporation as well as CIDCO in June to August 2003 and in response, CIDCO assured to take all necessary measures for protection of mangroves.

12. After the transfer of the petition to National Green Tribunal, MCZMA was impleaded by order dated 20-11-2014, on noticing that issues related to mangroves and CRZ violation are now independently handled by MCZMA.

13. The MPCB filed another affidavit on 3-3-2015 and submitted that the concentration of air pollutants for the year 2014, except RSPM, the other parameters like SO₂ and NO_x are not abnormal. Further, it has compiled the stack emission data for various industries which indicate the compliance of the parameters. However, mere perusal of the Annexure-II of the affidavit, it is not clear as to which type of fuel is being used and what is the rate of fuel consumption, which are important inputs for understanding the stack emission data. The Annexure-I shows the ambient air quality data in MIDC area which indicates some excessive RSPM concentration but the most surprising part is SO₂ concentration which is shown as “0” (zero) at nearly fifteen (15) locations and at many locations, it is less than three (3). Subsequently, the Tribunal

further directed MPCB to submit the status of industrial area in view of CEPI report and in its affidavit dated 20-4-2015, MPCB submitted that the Navi Mumbai industrial cluster has been notified as “critically polluted area” by MoEF in January 2010. MPCB further submits that certain Action Plan has been prepared which is being implemented. The Member Secretary, MPCB attended the Tribunal and filed the affidavit on 20-4-2015. He submits that due to the large scale construction activity, the problem of particulates in ambient air, is still persisting. He submits that the Board has developed a robust air quality monitoring network to ascertain the air quality which needs to be used by the development authorities for air pollution control measures.

14. The Respondent No.10- Maharashtra Coastal Zone Management Authority (MCZMA) filed an affidavit on 15-1-2014 and submitted that the MCZMA visited five (5) sites at village Ghansoli, Talavali and Gothivali on 28-12-2013 and during the visit, certain non-compliance was observed. Accordingly, following directions were issued to CIDCO on 10-1-2014:

(a) CIDCO shall explain as to why prior approval of MCZMA was not sought for construction of part of initial asphalt road at site of proposed road at Talawali village (19 07.671N,72 59 612E) and to stop the said activities forthwith.

- (b) CIDCO shall obtain prior CRZ approval for any further construction along the bund road at Talawali village
- (c) CIDCO shall stop the illegal dumping of debris on CRZ I(A) area at site near Gothivali village (19 8 48 5 N, 72 59 731) immediately and restore the site of 1 Acre area within 3 months.
- (d) CIDCO shall explain as to why illegal dumping of debris was carried out in above said CRZ I (A) area which is a prohibited activity under the provisions of CRZ Notification, 1991 & 2011.

15. MCZMA further filed an affidavit on 26-12-2014 and submitted that as per the directions of Hon'ble High Court of Bombay in PIL No.87/2006, the Divisional Commissioner, Kokan Division has been appointed as Nodal Agency for protection and conservation of mangroves. It is further submitted that the Chairperson, MCZMA conducted a meeting with CIDCO and NMMC on 14-11-2014 to seek compliance of directions.

16. Considering the records of the Application and Affidavits filed by the contesting parties, we are of the opinion that following issues are required to be decided for the final adjudication of the matter :

- 1) Whether the ambient air quality of Navi Mumbai area, more particularly, the area of Talavali, Ghansoli and Gothivali is as per the norms, and if not, what are the different causes contributing to such deteriorated air quality ?

- 2) Whether any air quality improve Action Plan is contemplated or required to be formulated for air quality management of the above area ?
- 3) Whether the mangroves destruction and violation of CRZ notification have taken place the coastal area of Navi Mumbai, more particularly, in areas of Talavali, Ghansoli and Gothivali ?
- 4) Whether any specific directions are required from the Tribunal on the ambient air quality management and coastal zone protection?

Issue No.1 :

17. Navi Mumbai was established originally to accommodate the expanding industrial and residential activities in Mumbai. Many chemical, petro-chemical and other industries handling hazardous chemicals were relocated in the industrial area developed by Maharashtra Industrial Development Corporation, commonly known as TTC industrial area in Navi Mumbai. Over the passage of time, residential development took place across the main Thane-Turbhe road. The villages referred in the Application i.e. Talavali, Ghansoli and Gothivali are located on the other side i.e. western side of the road, which are experiencing high residential growth. Needless to say, such complex development of industrial and residential areas facing each other, across the main artillery road which itself experience heavy traffic, is a piquant scenario. However, such development was done well before 1980s when there was no much awareness about the environmental pollution and its effects. With the growing

environmental awareness and also, availability of environmental monitoring data in public domain, there is an improved understanding of status of pollution, underlining the need of taking effective measures for pollution control.

18. The ambient air quality is resultant of various air pollution sources, like traffic, industrial activities, domestic sources, refuse burning etc. The national ambient air quality standards has been promulgated by the CPCB in 2009 which are as under :

SCHEDULE VII

(See Rule 3(3-B))

National Ambient Air Quality Standards

S.No.	Pollutant	Time weighted average	Concentration in Ambient Air	
			Industrial, Residential, Rural and other Area	Ecologically Sensitive Area (Notified by Central Government)
1	Sulphur Dioxide(SO ₂)ug/m ³	Annual	50	20
		24 hrs.	80	80
2	Nitrogen Dioxide (NO ₂)ug/m ³	Annual	40	30
		24 hrs.	80	80
3	Particulate matter (Size less than 10 um) OR PM ₁₀ ug/m ³	Annual	60	60
		24 hrs.	100	100
4	Particulate matter (less than 2.5 um) or PM _{2.5} ug/m ³	Annual	40	40
		24 hrs.	60	60
5	Ozone (O ₃) ug/m ³	8 Hrs.	100	100
		1 Hr.	180	180
6	Lead (Pb) ug/m ³	Annual	0.50	0.50
		24 Hrs.	1.0	1.0

7	Carbon Monoxide (CO) ug/m ³	8 Hrs. 1 Hr.	2 4	2 4
8	Ammonia (NH ₃) ug/m ³	Annual 24 Hrs.	100 400	100 400
9	Benzene (C ₆ H ₆) ug/m ³	Annual	5	5
10	Benzo(a)Pyrene(BaP)-particulate phase only, ng/m ³	Annual	1	1
11	Arsenic (As), ng/m ³	Annual	6	6
12	Nickel (Ni), ng/m ³	Annual	20	20

19. At the same time, source specific standards for various sources of air pollution which are expected to be complied at all times, have also been notified from time to time. In the instant case, the industries which are located in the industrial area have been given such source specific emission standards by the Maharashtra Pollution Control Board (MPCB) through its consent management. At the same time, under the provisions of Section 16 read with section 17 of the Air (Prevention and Control of Pollution) Act 1981, it is mandatory for the Central Pollution Control Board (CPCB) as well as State Pollution Control Board (SPCB) to ensure that the ambient air quality of any particular area is within the prescribed norms. The State Pollution Control Board (SPCB) are, therefore, empowered under various sections of the Air (Prevention and Control of Pollution) Act, 1981 to take effective measures to ensure

that the ambient air quality is well within the prescribed limits.

20. The contention of the Applicants is that due to industrial air pollution in the proximity of these three (3) villages, the ambient air quality is deteriorated. The Applicants have pointed out that the obnoxious odor released by various industries is causing the health hazard. On the contrary, the MPCB has filed an affidavit by conducting ambient air quality monitoring at these three (3) villages that except for the dust, i.e. RSPM, other parameters like SO₂ and NO_x are within the prescribed limits. The affidavit filed by MPCB on 22-3-2015 regarding the ambient air quality at these three villages as well as some industries recorded limited parameters of criteria pollutants. Subsequently, MPCB also filed an affidavit on 22-3-2015 where the ambient air quality at various locations like Nirmal Bhavan-Mahape, Ghansoli, Airoli etc. are presented along with ambient air quality at various industries in Maharashtra Industrial Development Corporation (MIDC) area. MPCB has averred that more than 57 major industries which were generating air emissions have been closed. Besides that, it has also ensured that some of the major industries are started to use of clean fuel i.e. CNG which has reduced the overall air emissions substantially. MPCB has, therefore, submitted that though the parameter of RSPM is still exceeding the

standards, the contribution of the industries has been effectively controlled through its interventions. There are several other sources like traffic, construction, refuse burning, etc. which also contribute to overall RSPM concentration in the ambient air pollution.

21. During the proceedings of the matter, it was also noted that the Navi Mumbai industrial area has been declared as “critically” polluted area by the Ministry of Environment and Forest (MoEF), Government of India in 2010, based on the comprehensive environmental pollution index (CEPI) and certain restrictions were imposed on the industrial and developmental activities in the said area. It is also submitted that the MPCB had prepared an action plan for the Navi Mumbai industrial cluster which was submitted to the Ministry of Environment and Forest (MoEF) and CPCB; and thereafter the MoEF has lifted such moratorium imposed in Navi Mumbai industrial cluster on 15-2-2011. MPCB is on record that it is taking all efforts to implement the action plan. The said action plan as prepared by MPCB, related to control of air pollution, along with the present status is submitted by MPCB which is as below :

Navi Mumbai—ACTION PLAN FOR AIR

A. Short Term Action Points.

S.No.	Action Points (including source and mitigation measures)	Responsible Stake Holders	Present Status
1	Performance Evaluation of ECS.	Industries	<ul style="list-style-type: none"> All the major industries have improved their Emission Control System in order to reduce pollutant load at least by 10%
2	Repairs of Internal Roads in MIDC area.	NMMC	<ul style="list-style-type: none"> There are internal roads of 95 km in MIDC area most of the roads under improvement in order to limit dust emissions by vehicle transport. Navi Mumbai Municipal Corporation has taken work and started construction of roads.
3.	Online display of AAQM data	TBIA MPCB as Nodal Agency	<ul style="list-style-type: none"> AAQM is carried out at three locations however there are three automation online display centers at three stations viz. Fire Brigade Compound Vashi, Airoli Fire Station and Turbhe MSW Site. AAQM station has been installed at Koparkhiarne Teen Taki Area by NMMC.

B. Long Term Action Points.

S.No.	Action Points (including source and mitigation measures)	Responsible Stake Holders	Present Status
1	Change in fuel	Industries	<ul style="list-style-type: none"> At present most of the industries are using fuels like FO, Coal, etc. which create huge emission. The Mahanagar gas co. is laying down gas pipeline in TTC Area which is commissioned at some places. All the industries will be proposed to use natural gas after completion of the pipeline work at present majority of large/medium industries

			using natural gas. <ul style="list-style-type: none"> • About 17 industries have changed their fuel pattern and using CNG as fuel.
2	Improvement in ECS	Industries	<ul style="list-style-type: none"> • All the air polluting industries are being proposed to improve their ECS by increasing efficiency of their scrubbers and changing to eco-friendly fuels.
3.	Set up of New AAQM Station.	TBIA and MPCB.	<ul style="list-style-type: none"> • At present there are three AAQM Stations established by MPCB (viz.D.Y. Patil, Nerul, TBIA Rabale, MPCB Central Lab. Mahape).
4.	Vehicle pollution and traffic management plan	NMMC, RTO, MIDC, MPCB	<ul style="list-style-type: none"> • NMMC and MIDC have been directed to provide good roads network in the area. Most of the public transport vehicles, taxis, Auto Rickshaw running on natural gas.
5.	Awareness program	MPCB, TBIA	<ul style="list-style-type: none"> • Awareness program are being conducted at various schools, colleges, public places, etc. through road shows, posters, banners, hand bills and various programs etc.

22. It was expected that with such an action plan, the air pollution level in Navi Mumbai will be reduced below the permissible limits. However, during the proceedings, MPCB fairly admitted that during the revised CEPI estimation by CPCB, the score of the CEPI for Navi Mumbai has increased marginally which in turn indicates that the action plan has not been effectively implemented. During the hearing on 23-4-2013, it was also revealed that

the air pollution data presented on the MPCB website itself indicates higher level of air pollutants.

23. Another important aspect of the allegations is the presence of obnoxious industrial odour. Many of the industries, in the industrial area are of chemical nature. It is, therefore very likely that certain Volatile Organic Compounds (VOC) are released in the environment, which may be the cause of such obnoxious odour. MPCB was, therefore, directed to conduct the air monitoring as per the notified standards and MPCB has placed on record samples analysed through the private laboratory i.e. Skylab which indicates that all the parameters are within the prescribed standard. We are surprised to see, such a submission made by the MPCB wherein laboratory results of the samples collected by a private laboratory are submitted in place of MPCB laboratory. It is necessary that regulatory institutions like MPCB shall be equipped and capable of monitoring all the parameters prescribed under relevant Acts. It is observed that such samples are neither taken in the presence of MPCB officials nor it is clear that such agency was engaged by MPCB for some specific purpose. In the light of above discussion, the Tribunal is not inclined to accept such reports produced by the MPCB.

24. While reverting back to CEPI Report, it is observed that the CEPI scores for air quality primarily depend on

various air pollutants including certain organic chemicals which are listed in the report itself which indicate that more importance and emphasise has been given on such organic chemicals, besides the criteria pollutants like RSPM and SPM. The MPCB's affidavit is silent on such pollutants, which are listed in the CEPI Report, though it can be observed from MPCB's own website that MPCB had conducted similar studies in the past.

25. In view of the above discussion, it is clear that the ambient air quality in the Navi Mumbai area is still not meeting the prescribed standards as notified by the CPCB. In addition, there is no authentic study on record to indicate the presence of various organic chemicals listed in the CEPI report, as on 2010, when the industrial area was declared as "critically polluted" viz-a-viz the present status. In the absence of such data and also, the continuing operation of the chemical industries, there is clear likelihood of presence of various obnoxious odours in the area surrounded by the industrial estate and therefore, the issue No.1 is answered in the AFFIRMATIVE while holding that the air quality in Navi Mumbai area is not meeting the prescribed norms.

Issue No.2 :

26. It is already on record that the Navi Mumbai area which includes three (3) villages in question is already declared as 'critically' polluted area and even by

considering the individual CEPI score of the three (3) environmental attributes i.e. Air, Water and Land, the CEPI score of Air is 61 when compared to that of Water and land which are 59 and 55.5 respectively. This indicates that the Air pollution in Navi Mumbai area is more predominant among the three types of pollution i.e. Air, Water and Land. In view of such CEPI classification, the MPCB has prepared an action plan for control of pollution in the Navi Mumbai area in the year 2010. However, during the final arguments, it was fairly admitted by MPCB that all the aspects covered under the CEPI action plan have not been completely implemented as there are various stake-holders like Municipal Corporation, construction industries, transport authority etc. who have to play a leading role. It was also submitted that even now the CEPI score is above the critical range. All the above facts necessarily establish that there is an urgent need to comprehensively review the action plan prepared by MPCB for its efficacy and adequacy and also, feasibility to implement various actions proposed therein. MPCB is mandated under Section 17 of Air (Prevention and Control of Pollution) Act 1981 “to seek execution” of such action plan prepared by MPCB. At the same time, CPCB is empowered to enforce the provisions of the Air (Prevention and Control of Pollution) Act “in order improve the quality of Air and to prevent, control or abate air pollution in the

country”. It is, therefore, necessary to achieve the prescribed norms for an acceptable of Air quality. In view of this, it is necessary that the CPCB, as a premier technical regulatory authority shall take a review of action plan and also, periodically review implementation of the same. At the local level, MPCB is required to coordinate the efforts with the local authorities like Corporation, transport department etc. As discussed earlier, the problem of Air Pollution in Navi Mumbai area has more sensitivity in view of the proximity of the industrial area with the residential area. In other words, the probability of environmental impacts, including the health impacts and the risks are likely to be more significant when distance between the sources of pollution i.e. industries and other sources, and the receptor i.e. residential population is substantially low without any buffer in the form of green belt or sufficient distance. The issue No.2 is accordingly answered in the AFFIRMATIVE.

Issue No.3 :

27. The Applicants allege widespread mangroves destruction along the side of creek. The Applicants have placed on record orders issued by Hon’ble High Court of Bombay, in Writ Petition No.1783 of 1991 dated 4-2-1992, wherein certain ad-interim orders restraining the Respondents from any carrying activities contrary to notification dated 19-2-1991 in respect of 400 Ha in the

Coastal Regulation Zone. The CIDCO has claimed that the development plan of CIDCO has been prepared in compliance with CRZ Notification. It also submitted that the MoEF while approving the CZMP for Maharashtra vide letter dated 27-9-1996 directed Chief Secretary, Maharashtra to form a committee to identify CRZ-II areas along the coastal stretches of Mumbai and Navi Mumbai and submit the report. Accordingly, such Committee was formed and report was sent to MoEF on 21-11-1998. It is, therefore, claimed that such categorization of CRZ-II areas by the Committee in compliance of condition No.20 of the approved CZMP is conclusive. The Applicants as well as other Respondents have not contraverted these facts nor have produced any material on record contradicting such submissions. As regards to the allegations of destruction of mangroves, it will be pertinent to refer the affidavits of MPCB filed on 22-3-2005 as well as MCZMA on 15-1-2014 and 30-12-2014. MPCB has submitted that there have been instances where land reclamation has taken place by dumping construction material of mangroves or by creating embankments thereby stopping the egress and ingress of saline water. MPCB claims to have taken up the issue with Navi Mumbai Municipal Corporation and also CIDCO. CIDCO, in turn, assured the authorities to take all necessary measures for preservation and protection of mangroves.

28. Further, MCZMA submitted that Chairperson MCZMA conducted the meeting with CIDCO and Navi Mumbai Municipal Corporation on 14-11-2014 in order to seek compliance of directions issued to these authorities on 10-1-2014. It is interesting to note that the directions issued by MCZMA on 10-1-2014 gave specific time of three (3) months to comply the directions. However, in spite of the present proceedings, such a review meeting took place only in November 2014. It is also observed that the CIDCO has replied to such directions where basically the stand of CIDCO is that the illegalities are not done by them but by somebody else. MCZMA has also placed on cord some other complaints received by them regarding illegal reclamation of wetlands in said area and destruction of mangroves. It is observed from the affidavits that MCZMA has just forwarded such complaints to the Divisional Commissioner and the authorities for further action. It is observed that no investigation either scientific or factual have been carried out by MCZMA regarding such repeated complaints and only paper work of forwarding the complaints to authorities has been performed. MCZMA has been constituted under the provisions of CRZ Notification and Environmental (Protection) Act, 1986. A close look at the notification of constitution of MCZMA issued by MoEF would reveal that the authority has been empowered to take measures for protection and improving

the quality of coastal environment in the State of Maharashtra and the relevant functions under the Notification are reproduced for clarity as under :

II. The Authority shall have the power to take the following measures for protecting the improving the quality of the coastal environment and preventing, abating and controlling environmental pollution in area of the State of Maharashtra, namely :-

(i) Examination of proposals for changes or modifications in classification of Coastal Regulation Zone areas and in the Coastal Zone Management Plan (CZMP) received from the Maharashtra State Government and making specific recommendations from Coastal Regulation Zone point of view as per the provisions of Coastal Regulation Zone notification, 2011.

(ii) (a) inquiry into cases of alleged violation of the provisions of the said Act or the rules made thereunder or any other law which is relatable to the objects of the said Act and, if found necessary in a specific case, issuing directions under Section 5 of the said Act, insofar as such directions are not inconsistent with any direction issued in the specific case by the National Coastal Zone Management Authority or by the Central Government.

(b) review of cases involving violations of the provisions of the said Act and the rules made thereunder or under any other law which is relatable to the objects of the said Act, and if found necessary referring such cases, with comments for review to the National Coastal Zone Management Authority.

Provided that the cases under sub-paragraphs (ii)(a) and (ii)(b) of paragraph II only be taken up sue motu on the basis of complaint made by an individual or an representative body or an organisation;

(iii) Filing complaints under Section 19 of the said Act, in cases of non-compliance of the directions

issued by it under sub-paragraphs (i) and (ii) of paragraph II of this order;

(iv) To take action under Section 10 of the said Act so as to verify the facts commencing the issues arising from sub-paragraphs(i) and (ii) of paragraph II of this Order.

II. -----

III. -----

IV. The Authority shall identify coastal areas highly vulnerable to erosion or degradation and formulate area specific management plans for such identified areas and arrange for funding for the implementation of the same.

29. It is manifest from the above discussion that the role of MCZMA is multi-dimensional and MCZMA is expected to deal with any violations noted by it either through complaints or *suo motu* in order to ensure compliance of CRZ Notifications. It is not sufficient to only write to local authorities who may not be scientifically or technically specialised to deal with issues of effect of any destruction or violations on the local eco-system. MCZMA is also expected to issue directions for certain compliances, if it is found necessary and further, in case of non-compliance, can even file prosecution. In the instant case, no such proactive and affirmative action can be noticed from MCZMA. The only actions which are reported is receipt of complaints and forwarding the same to the local authorities which cannot be called as effective and proper in view of the mandate given to MCZMA.

30. The above discussion along with reports filed by MPCB as well as MCZMA, the claims made by CIDCO regarding dumping of debris by private developers and also, receipt of complaints by MCZMA regarding destruction of mangroves in the same area, it is imperative that detail investigations are required to be carried out by MCZMA in this matter, by involving its own members and experts, on a scientific/technical technique using latest analytical tools. Issue No.3 is, therefore, answered in AFFIRMATIVE though the quantum of such mangroves destruction needs to be ascertained further.

31. Considering the above discussion, we are inclined to allow this Application with following directions, which are issued under the powers conferred by Section 20 of the National Green Tribunal Act 2010.

- 1.** The Member Secretary, CPCB shall review the action plan for control of pollution for Navi Mumbai area submitted by MPCB for its adequacy and efficacy and finalise the same within next four (4) weeks.
- 2.** The Member Secretary, MPCB shall take necessary steps and measures to execute and enforce such action plan by all stake holders within period of six (6) months, by taking monthly review meeting. A monthly progress report shall be submitted to the Registry of the Tribunal.
- 3.** CPCB and MPCB shall take necessary steps to install the ambient air quality monitoring station in the critically polluted areas including Navi Mumbai which can monitor all the

specified air pollutants as per the prescribed standards within next six (6) months.

4. CPCB shall update the CEPI index for all such identified areas, on yearly basis and yearly trend of such index shall be available on the website of CPCB and concerned SPCB.
5. The Committee under Chairmanship of Chief Conservator of Forest (mangroves cell) and including Expert Member of the MCZMA (to be nominated by Chairman, MCZMA) with Member Secretary MCZMA as Member-convenor is hereby formed to assess and verify the fact position related to destruction of mangroves and violation of CRZ area in Navi Mumbai. The Committee is at liberty to seek expert opinion, if it is required.
6. The Committee shall also identify the violations of the CRZ Notification, 1991 and 2011 and also, violators and the person/agency responsible for such violation. The Committee shall submit its report to MCZMA within next four (4) months and copy shall be submitted to Registry of the Tribunal.
7. The MCZMA shall take necessary action on the report of the Committee on priority within (two) months thereafter.

The Application is accordingly disposed of. No costs.

....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr. Ajay. A. Deshpande)

Date : August 17th, 2015.

ajp