

A Just Victory

A recent landmark judgement by India's National Green Tribunal has awarded compensation to the traditional fishers of Mumbai for the loss of livelihoods caused by coastal development

24

In what is seen as a landmark judgement, the Western Zone Bench of the National Green Tribunal of India has criticized the Jawaharlal Nehru Port Trust (JNPT) for continuing to reclaim land in violation of the Coastal Regulation Zone (CRZ) Notification, and has ordered the City and Industrial Development Corporation (CIDCO), JNPT and the Oil and Natural Gas Corporation (ONGC) to pay US\$15.3 mn to 1,630 fishermen families affected by JNPT's project of creating an additional berth at the port in Navi Mumbai.

In its ruling of 27 February 2015, the Tribunal labelled the case a "classic example of civil action brought by traditional fishermen"

affected from four such traditional localities of fishermen due to development projects undertaken by the Respondents, particularly by CIDCO, JNPT, ONGC and the Navi Mumbai Special Economic Zone (NMSEZ).

The claim for compensation and right for rehabilitation was based mainly on the fishermen's traditional right to catch fish from areas in the sea that are being reclaimed for project activities. These impair regular tidal water exchanges, egress and ingress of fishermen's boats to the sea through the creek near the JNPT. They are thus deprived of daily earnings from their traditional rights of access to the resources of the sea.

The petition further alleged that the reclamation of land, and removal of mangroves in the area, has caused large-scale destruction of all surrounding mangrove forests, which has, in turn, substantially reduced or obliterated the breeding of fish and narrowed the navigational route of the traditional fishing craft, which has also added to the misery of the fishing communities.

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Mangrove destruction

The Tribunal noted that all past activities of reclamation in Mumbai (formerly Bombay) have not only altered the urban topography of the area and could lie at the root of the present urban situation but have also contributed to the changes in the configuration, underwater topography and underwater circulation in the area's harbours and bays. This was followed by reclamation and destruction of mangroves alongside beaches and the seashore.

living in *koliwadas* (habitats of the Koli fishermen of Maharashtra), who were seeking compensation under Section 15 of the National Green Tribunal Act, 2010, for loss of livelihood due to project activities of the Respondents, as well as implementation of rehabilitation of their families, who are unsettled on account of the projects in question.

The principal Apellant, a fisherman named Ramdas Janardan Koli, on behalf of the Paramparik Macchimar Bachao Kruti Samiti, a fishers' organization, argued the case himself. He claimed that 1,630 families of traditional fishermen have been

This is a summary of the ruling of the National Green Tribunal (Western Zone) Bench in Pune, on 27 February 2015, in response to Application No. 19/2013

The Tribunal stated: “We have no hesitation in holding that JNPT caused destruction of mangroves and degraded the environment in the area of the port by reclamation of land as well as contemplated effect on tidal exchanges and obstruction in natural water navigation routes available to the traditional fishermen.”

While refraining from entering the thicket of government policy, in a situation like the present one, the Tribunal noted that the financial facet of the dispute relates to the ‘social cause’ of which the ‘environmental cause’ is the main component. “Social cause involves as to how in future the Applicants may sustain financial loss and their culture as fishermen would be obliterated due to degradation of environmental destruction by the acts of the contesting Respondents.”

The rehabilitation programme envisaged for the traditional fishermen does not include relocation of their hamlets/localities in the nearby areas, which could be of identical use for earning a livelihood, the Tribunal noted.

The Tribunal Bench found it obvious that “there are specific species and functional groups that play critical roles in important ecosystem processes, and the loss of these species may have significant influences on the whole ecosystem.”

“Primary and secondary productions are important mechanisms by which marine communities contribute to global processes. It has been estimated that half the primary production on earth is attributable to marine species. Without primary producers in surface waters, the oceans would quickly run out of food, but without planktonic and benthic organisms to facilitate nutrient cycling, the primary producers would quickly become nutrient-limited”, it added.

Under international law, States have a clear duty to protect people within their jurisdiction from having their human rights breached by non-state actors, including companies. Apart from being bound by international customary law, India has ratified, and is, therefore, a State party

to several international treaties that guarantee human rights, the Tribunal Bench elaborated.

When a government fails to protect human rights from abuse by non-state actors such as companies, it amounts to a violation of international law. However, the government’s failure to protect rights does not absolve non-state actors from responsibility for their actions and their impact on human rights, it explained.

Section 20 of the National Green Tribunal (NGT) Act, 2010, makes it clear that the Tribunal shall consider the ‘precautionary principle’ and it mandates the Tribunal, while passing any order or decision, to apply the principle of sustainable development, the ‘precautionary principle’ and the ‘polluter pays’ principle. The precautionary principle requires anticipatory action to be taken to prevent harm, the Tribunal Bench noted.

In the final analysis, Justice V R Kingaonkar, Judicial Member, and Ajay A Deshpande, Expert Member, of the Tribunal Bench, came to the conclusion that JNPT degraded the environment by destroying mangroves. JNPT also began work at the site even prior to environmental clearance and conducted the environmental impact assessment (EIA) without proper resettlement and rehabilitation (R&R) programmes, or auditing of the risks

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Boats at the Karanja fish landing area, Maharashtra, India. The urban topography of Mumbai has been altered by reclamation

and benefits due to the implementation of the project.

The loss of ecology, livelihoods, homes, spawning grounds and fish species are significant issues that require due payment of compensation to the Applicants, though it is difficult to relocate them with adequate facilities, environment and culture, the Tribunal Bench noted.

ONGC, the Bench pointed out, also did not remove the outer covering of the pipeline, in order to restore the ecology and environment in the area. It appears that tidal exchanges of sea water are obstructed due to acts of the Respondents. In addition, JNPT, admittedly, has undertaken the work of narrowing the Nhava-Sheva creek, which will cause difficulty in re-routing the passage of the traditional boats of the Applicants. "Under these circumstances, it is manifest that their main source of living is being taken away. We are inclined to hold, therefore, that they are entitled to recover compensation as stated below," the Bench ruled.

The apportionment of compensation amount payable to the Applicants from CIDCO, JNPT and ONGC would be 10: 70:20 per cent, having regard to their contribution to the loss of mangroves, loss

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of spawning grounds, loss of livelihoods, etc.

It is an admitted fact that the Nhava-Sheva creek is used by the traditional fishermen to navigate from the creek to the open sea and return. It is an admitted fact that with the development of the fourth terminal, the available width of the creek would be further reduced. "During the course of argument", the Bench pointed out, "we specifically enquired about any defined navigation routes/channels for such local fishermen's boats, in the context of such development, and

whether such routes/channels have been appraised and approved by the competent authorities. It was informed that the Captain of the Ports has a mandate to regulate the movement of the boats in the port area.

While appreciating the concerns raised by the JNPT regarding safety and security while allowing such movement of ships/boats, the Bench felt it is necessary to develop a system whereby such movement of the boats belonging to traditional fishermen or otherwise shall be regulated by the competent authorities with necessary safety and security measures, including anti-collusion devices, GPS, separate registration, etc. Such a system will ameliorate conflicts of the local fishermen vis-a-vis commercial port activities, leading to sustainable development. "We, therefore direct JNPT to approach the competent authority and, if necessary, provide required support to implement such system," the Bench ordered.

Admitting that it is difficult to determine precisely the income derived by each fisherman and the total family income, the Bench said that any hypothetical exercise should have some rationale based on the normal period for which a family would lose earnings due to the activities of the Respondents in the case.

The Tribunal Bench held that ordinarily such a period will be at least of three years. The family may comprise four members, including two male and two women. All the four may be earning about Rs800 (US\$ 13) per day even if pro rata income is considered at Rs200 per day (US\$ 3). This is the normal income earned by any person of the lower income group, the Bench noted. Therefore, the yearly loss of income per family may be Rs2,92,000 (US\$ 4662) Considering mere subsistence as one-third of this amount, the gross loss per family per year turns out to be Rs1,94,666 (US\$ 3108) only.

Transition period

The Bench continued: "We may realistically assume that each of such family will need a period of about three years to switch over to some

other vocation to earn a livelihood. For example, some of them may be required to learn driving of transport vehicles, and get due experience and jobs in such businesses. The gap of three years is pragmatic, having regard to the sudden changeover in their daily source of earning. Therefore, the total loss for three years for 1,630 families is US\$ 15,303,877.

The Bench ruled the Application in the following manner:

i) The Applicants do recover Rs95,19,20,000 (US\$ 15,303,877), which shall be distributed equally to 1630 affected and identified fishermen's families as per the Collector's Report, named therein, to the extent of Rs5,84,000 (US\$ 9834) per family within three months by the Respondent Nos.7, 8 and 9 (that is, CIDCO, JNPT and ONGC) respectively, as per their shares mentioned above.

In case, such amount is not paid within the above period, then it will carry interest at 12 per cent per annum till it is realized by the concerned fishermen's families.

The Respondent Nos.7, 8 and 9 shall pay Rs50 lakhs (US\$ 80,385) and restoration cost for environmental damage, as per the above share which work, the Collector, Raigad, shall carry out under his supervision within eight months hereafter for activities of mangrove plantation, ensuring free passage of tidal currents, etc., in consultation with the Maharashtra Coastal Zone Management Authority (MCZMA).

The Respondent Nos.7, 8 and 9 shall pay costs of Rs5 lakhs (US\$ 8038) as litigation costs to the Applicants and bear their own costs.

The Respondent Nos.7, 8 and 9 shall deposit the amount shown in above para (i) and (iii) in the office of Collector, Raigad within the stipulated period, otherwise the Collector shall realize the said amount, as if it is Land Revenue dues from them. A compliance report on this behalf be submitted by the Collector, within four months to this Tribunal.

The MCZMA shall submit the compliance of directions issued by them to the Respondents in two months, the Tribunal Bench ruled.



A scene from Karanja village of Uran, Raigad District, Maharashtra, India. It is necessary to develop a system to allow for the movement of boats belonging to traditional fishermen

The above orders were passed by Justice V R Kingaonkar and Ajay A Deshpande of the National Green Tribunal (Western Zone) Bench in Pune, on 27 February 2015, in response to Application No. 19/2013. 3

For more



indianexpress.com/article/cities/mumbai/ngt-orders-jnpt-ongc-to-pay-affected-fishermen-families-95-cr/#sthash.VVwl30np.dpuf

Pay Rs 95 cr to 1,630 Fishermen Families: NGT to Port Trust, CIDCO, ONGC