

**MAHARASHTRA POLLUTION CONTROL BOARD
POLICY AND LAW DIVISION**

Sub : Before the National Environment Appellate Authority
New Delhi , Appeal No.15/2009
Stalin Dayanand, Bhandup, Mumbai
v/s
Ministry of Environment and Forests, Govt. of India.

Shri Stalin Dayanand, resident of B-401, Lata Park Friends Colony, Bhandup Village, Mumbai-42 have filed Appeal No.15/2009 against the Ministry of Environment & Forests, Govt. of India against the order No.10-10/2007-IA-III, dtd.17/3/2009 of Respondent No.1 (MoEF, Gol) granting Environment Clearance for the development of Sanitary Landfill and waste composting unit at Kanjur, Mumbai by Municipal Corporation of Greater Mumbai.

Hon'ble National Environment Appellate Authority, New Delhi has dismissed the said appeal vide order dtd.12/02/2009, as the proposed site is outside the CRZ and in view of the directions of Hon'ble Supreme Court for using the said site for dumping municipal garbage and the assurance given by the State Govt. (and accepted by the Hon'ble High Court) that they would not damage the mangrove, the Authority finds no reason to interfere with the Environment Clearance issued by the MoEF, Gol and the appeal is dismissed being devoid of merits and significance. Hon'ble Authority further directed the MoEF and MCGM, Mumbai to strictly enforce all measures to prevent odor and other nuisance.

BEFORE THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY,
NEW DELHI

DATED THE 12TH FEBRUARY, 2010

APPEAL NO. 15 OF 2009

PRESENT:

HON'BLE MEMBER SHRI J.C. KALA

BETWEEN:

1. Stalin Dayanand
B-401, Lata Park Friends Colony,
Bhandup Village,
Mumbai 400 042.
2. Nandakumar Waman Pawar
Pawar House, Bhandup Village,
Mumbai - 400 042.
3. Mangesh Narayan Pawar
Pawar House, Bhandup Village,
Mumbai - 400 042.



.... APPELLANTS

AND:

1. Ministry of Environment and Forests,
Through the Secretary,
Paryavaran Bhawan,
C.G.O Complex, Lodhi Road,
New Delhi - 110 003
2. Municipal Corporation of Greater Mumbai
Through the Commissioner,
Mahapalika Marg,
Mumbai - 400 001

.... RESPONDENTS

Counsel for Appellant (s)

Shri Ritwick Dutta, Advocate
Shri Rahul Choudhary, Advocate

Counsel for Respondent(s)
Respondent No. 1 (MoEF)

Shri E Thirunavukkarasu,
Dy. Director, MoEF.
Shri Bipin Rakesh, LA, MoEF

Respondent No. 2
(Municipal Corporation of GM)

Shri M.M Jayakar, Advocate
Shri Anand Sukumaran, Adv.
Shri Ashwin Shete, Advocate
Shri J. Muzaffar, Advocate

ORDER

This is an appeal preferred under section 11(1) of the National Environment Appellate Authority Act, 1997 against order No. 10-10/2007-IA-III, dated 17.03.2009 of Respondent-I (Ministry of Environment and Forests) granting 'Environmental Clearance' (EC) for the development of Sanitary Landfill and waste composting unit at Kanjur, Mumbai by Municipal Corporation of Greater Mumbai, Mahapalika Marg, Mumbai - 400 001.

2. The Appeal was preferred on the 38th day from the date of issue of EC before the National Environment Appellate Authority with a separate affidavit for condonation for delay. The Authority condoned the delay after hearing the parties on 09-09-2009 and directed the Respondents to file reply to the Appeal and Appellants to file the rejoinder to the reply and listed the matter for hearing on merit on 30th July, 2009. When heard on the said date, the counsel for the Appellants requested one week's time to file the rejoinder and accordingly the Authority adjourned the hearing of the Appeal to 18th August, 2009. However, on the said date, the Counsel for Appellants, being busy with CEC, requested for further adjournment till 25th August, 2009. The case was taken up for hearing on 25th August, 2009 and the Appellants have filed their rejoinder but in view of likely changes in the constitution of NEAA bench, the case was adjourned to 11th September, 2009, at 2.30 P.M. The case was heard on 11.09.2009, 30.09.2009, 27.10.2009 and finally on 21.12.2009. The Authority reserved the orders on 21.12.2009 by directing the parties to file their written submission by 11th January, 2010.



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3. GROUNDS OF APPEAL AND PRAYER

3.1 The Appellants have adduced the following grounds in support of their Appeal:-

- (i) The Ministry of Environment and Forests (MOEF) has not taken cognizance of the fact that the Kanjur Marg site is covered with mangroves and should thus be considered as CRZ- I Category. No garbage dumping is permissible in any of the categories of the CRZs(Coastal Regulation Zone);
- (ii) MOEF has not taken cognizance of the fact that Kanjur Marg site is a 'Protected Forest' area notified by the Government of Maharashtra pursuant to the order of Bombay High Court for the protection of mangroves;
- (iii) Dumping of garbage at Kanjur marg will cause great inconvenience and hardship to the local residents of Kanjur and Bhandup village on account of bad odour and traffic problem due to thousands of garbage trucks moving in the vicinity;
- (iv) It is unfair and illegal to close a dumping ground to benefit a builder and dump the garbage in another pristine neighborhood. Bombay Municipal Corporation and Maharashtra Government have colluded to enable big builder to grab the existing site for commercial exploitation;
- (v) Kanjur Marg is also on the landing path of the aircrafts at Bombay airport and will cause bird hit to the aircrafts;
- (vi) Hon'ble Supreme Court was wrongly informed that the Kanjur Marg site is not covered by CRZ while the site was earlier used for salt pans and is now covered with mangroves; and



- (vii) For selection of new site, Burman Committee's recommendations have not been complied with as mandated by the Supreme Court. The Kanjur site does not meet the requirement of Burman Committee's recommendations.

3.2 Base on the above grounds, the Appellants have prayed for:

- (a). Cancelling the environment clearance of MOEF for setting the sanitary landfill and waste composting unit;
- (b) staying EC granted for development of sanitary landfill and waste composting unit at Kanjur, Mumbai; and
- (c) passing any further order which the Authority deems fit in the circumstances of the case.

4. Counsel for Respondent-2 has denied and questioned the contentions of Appellants as follows:-

- 4.1 That the Kanjur village project was submitted to MOEF for granting EC by Municipal Corporation Greater Mumbai(MCGM) in September 2007 for setting-up proposed waste processing and disposal facility over an extent of 141.77 ha. The EIA report submitted clearly indicated 52 ha. (out of 141.77 ha) falling under CRZ-III. The Expert Appraisal Committee (EAC) set-up by MOEF, after examining the proposal, directed the MCGM to first obtain clearance from Maharashtra Coastal Zone Management Authority (MCZMA) under CRZ notification. Accordingly, the proposal of MCGM was considered and recommended by MCZMA to National Coastal Zone Management Authority vide letter dated 10th December, 2007. The proposal thereafter was again considered by EAC in its meetings held on 27, 28 and 29th of December, 2007 and in view of serious constraints faced by MCGM for any alternate site, asked Maharashtra Government to approach MOEF to amend CRZ notification for utilizing the entire area. However, the proposal of Chief Secretary to Government of Maharashtra to



this effect was not considered by MOEF. In view of this the MCGM modified its proposal by excluding the land affected by CRZ notification and submitted the proposal for 65.96 ha. This was considered by EAC in its meeting on 21st August, 2008. The revised proposal was also presented to MCZMA on September 26th, 2008 which recommended the same to MOEF on 28th October, 2008. MOEF has issued its conditional clearance on 17th March, 2009.

- 4.2 That the area of 65.96 ha., does not attract CRZ notification and none of the activities proposed in the project will be taken up within CRZ area. The project envisages receipt of mixed waste and after processing, the residues and inerts will be disposed off in a scientific manner in sanitary landfill. Land fill gas collection and treatment system, storm water drainage system, leachate collection and treatment system form part of the facility meeting the mandatory requirements of MSW(M&H) Rules 2000, issued by MOEF under the provisions of EP Act, 1986.
- 4.3 That the project poses no threat to coastal environment and result in overall beneficial impact on the micro-environment of the site.
- 4.4 That the Government of Maharashtra has admitted in High Court that this particular plot was notified as Protected Forest by mistake and the same is being amended by separate notification. High Court order to this effect is also annexed.
- 4.5 That dumping of garbage will cause no inconvenience to local residents of Kanjur and Bhandup villages. This is born out of the fact that during the Public Hearing, after the project was explained to public, they were quite satisfied with the development of the project. The project aims at developing a long term comprehensive scientific solution for solid waste management in Mumbai by bringing the best International practices and unlike other dumping sites of Mumbai, the present project will take care of waste burning, methane generation/global warming etc. Further the site being quite large, most of the waste processing will take place more than 500 meters away from residential area and since landfill will receive only inert material, problems associated with foul



odour, smoke, flies, vectors, rodents and environmental nuisance due to flying refuse will get eliminated. Respondent also narrated several other benefits of the project.

- 4.6 That the closure of earlier dumping site was as per Hon'ble Supreme Court's direction in Special leave petition No. 18717 of 2001 which also included direction to use the present site for dumping. Thus the allegation that it was meant for benefiting builder is baseless.
- 4.7 That the site does not fall in the landing path of aircrafts. In fact based on full information on the site furnished by the MCGM, the Airports Authority of India has issued NOC for the project. Scientific management of waste which include processing under fully covered sheds will eliminate bird nuisance.
- 4.8 That the Hon'ble Supreme Court was informed that the said plot is covered under CRZ but not the CRZ-I. Infact MCGM while applying for clearance deleted area of 52.5 ha. covered under CRZ-III. Special leave petition No. 18717 of 2001 bear testimony to this fact.
- 4.9 That the Burman Committee report does not stipulate any requirement for the site selection. Such criteria are covered under MSW(M&H) Rules, 2000 and CPCB guide lines. Notwithstanding this, several efforts were made, as per the direction of Hon'ble Supreme Court, to identify appropriate and suitable land within and outside municipal limits. Three sites outside Municipal limits viz. Bhayandar, Anjur village and Bhiwandi village and three sites within Municipal limits viz. Darwali/Erangal, Haryali village/Povai, and Poisar9Kandivali) were examined for the purpose but were not found suitable. Finally at the instance of Hon'ble Supreme Court the present site measuring 141.77 was allotted to MCGM for setting up the facility



4.10 That this site was earlier used as salt pan by Bombay Salt and Chemical Works till the expiry of its lease in 1999 and abandoned thereafter.

4.11 That this issue has already been considered by Hon'ble Supreme Court way back in 2001 and is beyond the jurisdiction of this Authority.

5. Respondent-1, the Ministry of Environment and Forests in their response have submitted that:-

- i) the project involves construction of MSW processing facility(windrow composting for processing 4000 TPD), construction of sanitary landfill including landfill gas collection system, leachate collection and treatment at Kanjur Marg, Mumbai. The total area for the project is 141.77 hectare, out of which 52.5 hectare falls under Coastal Regulation Zone-III and 86.72 hectare is free from CRZ. An extent of 20.76 hectare is affected by mangroves and the balance of 65.96 hectare is available for the project development;
- ii) Maharashtra State Coastal Zone Management Authority had cleared the proposal vide their letter dated 10.12.2007 for the entire area of 141.77 hectare. Public Hearing for the Project was held on 08.06.2007, and
- iii) Proposal was considered by the EAC for Coastal Zone, Infrastructure and Miscellaneous Project in its meeting on 27-29th December, 2007 and 21-22nd August, 2008 and recommended the project for the composting in Phase-I in 65.96 hectare (which is outside the CRZ area) under EIA Notification, 2006 and CRZ Notification, 1991. And the Ministry has accorded Environment Clearance vide letter dated 7th March, 2009 subject to strict compliance of the terms and conditions.



6. The Appellant in his rejoinder has stressed on the following points:

- (i) That the land falls under CRZ-I by virtue of presence of mangrove and its use as saltpan in the past. The State Government has excluded it from CRZ-I fraudulently;
- (ii) The fact that the area is Protected Forest has been concealed from MoEF and no clearance has been obtained under Forest Conservation Act 1980;
- (iii) Most of the people were unaware of Public Hearing;
- (iv) Siting this facility at this place is violation of Municipal Solid Waste Management Rules, 2000, (MSWRules) in as much as it is near cluster of habitation, forest etc. Kannamwar Nagar is 150 meters from the proposed site. The site was submerged for 3 days during Mumbai floods of 26th July 2005. And as of 24th July 2009, the water level was 2 feet below the raised portion. As a result, construction of this facility will lead to flooding of residential areas; and
- (v) the appellant has referred to non application of mind and non reasoning of MCZMA in its reference to MOEF, vide table item-1 -Proceedings of 47th meeting of MCZMA dated 26th September, 2008 and requested to quash the Environmental Clearance quoting the Judgment of Hon'ble High Court of Delhi passed in Utkarsh Mandal Vs. Union of India in Writ Petition No. 9340 of 2009.

7. Respondent - 2 submitted that declaration of this area as Protected Forest vide directions of Hon'ble High Court of Bombay was a mistake committed inadvertently by including the entire Survey No. 275(CTS No. 657 A) comprising 425.983 hectare in the notification without verifying the presence of mangrove. This was also brought to the notice of Honble High Court and the Court in their order dated 29th April, 2009 observed that it is for the State Government to un-do



the mistake. However, the Court did not go on the merit as to whether the area contained mangrove or not.

7.1 Again on 24th April 2006 in Writ Petition No.3246 of 2004, the Hon'ble High Court has accepted the promise made by the State Government that no dumping of garbage will be carried out in area which supports mangrove. Further, the Ministry of Environment and Forests has approved the Coastal Zone Management Plan submitted by the CZMPA of Maharashtra according to which area exceeding 1000 meter square will constitute CRZ1.

7.2 In the recent submission of the Respondent-2, it is reported that pursuant to the direction dated 29th April, 2009 of the Hon'ble High Court of Bombay, granting liberty to the Respondent-2 to approach the State Government for de-notifying the said area, the Divisional Commissioner Konkan Division vide Notification dated 29-12-2009 had de-notified 119.91 hectare on the said site at Kanjur Marg bearing survey No. 275 as protected forest for the vital landfill project.

8. THE ANALYSIS

8.1 The arguments of Appellants and the Respondents were carefully assessed by the Authority. It is observed that the Hon'ble Supreme Court in its wisdom directed this site to be used for dumping municipal waste in lieu of earlier site being objected to by the public of the locality. The only issue now remains open is as to whether, the Ministry of Environment and Forests has duly observed the Environment Protection laws while issuing its environmental clearance and the relevant issue to this effect is whether the area falls in CRZ or not.

8.2 On the direction of Authority, the Coastal Zone Management Authority of Maharashtra (MCZMA) has submitted a map showing the status and location of the proposed dumping site. According to this map, out of total area of 141.77 hectare, an extent of 86.72 hectare is free of CRZ (considering 150m & 50m



offset from the boundary) and an extent of 20.76 hectare contains sparse mangrove. This sparse mangrove has been deleted from 86.72 hectare and the remaining 65.96 hectare, which is not demarcated as CRZ, is approved for dumping. This map has the approval of MOEF and is the basis for the Ministry to grant the clearance. It is true that this land was being used as saltpan but it is also true that in view of requirement of salt production, this cannot afford to fall in intertidal zone.

- 8.2. Perusal of minutes of 11th meeting of MCZMA held on 13th November, 2007 reveal that the MCZMA, after deliberating the issue, had recommended to MOEF the development of sanitary landfill and waste composting unit on the entire 141.77 hectare. The Authority also perused the minutes of the 60th meeting of EAC held on 27-29th December 2007 and 68th meeting on August 21-28th, 2008 and found detailed examination of the matter by the EAC before recommending the Project for Environment Clearance subject to conditions stipulated therein. One of the conditions was that the revised layout shall be superimposed on the approved CZMP of Greater Mumbai and submitted to the Ministry with recommendations of the Maharashtra Coastal Zone Management Authority. Following this, MOEF in its letter of 11th August, 2008 had asked the Municipal Corporation to prepare a revised layout locating new components of the project duly superimposed on the CZMP and submit the same after obtaining the approval of MCZMA. The revised layout comprising non-CRZ area of 65.96 hectare was placed before the MCZMA in its 47th meeting on 26th September, 2008. The Additional Municipal commissioner BMC made a presentation of various activities proposed and based on this the MCZMA decided to forward it to MOEF. In the light of this and the fact that the entire area of 141.77 hectare was recommended by the MCZMA in its 11th meeting after due deliberations, not much analysis was called for from MCZMA and therefore their minutes dated 26th September, 2008 of 47th meeting are considered adequate.



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8.4 The Authority also went through the focus group consultations held at 10 locations at the residential area surrounding the site and found no clear perception of the community on the proposed project and feels the need for faithful implementation of modern technology to guard against the odor, mosquitoes, flies, insects and rodents nuisance.

9. In the ultimate analysis, it is clear that the proposed site is outside the CRZ and in view of the directions of Hon'ble Supreme Court for using the said site for dumping municipal garbage and the assurance given by the State Government (and accepted by the High Court) that they would not damage the mangrove, the Authority finds no reason to interfere with the Environment clearance issued by the Ministry and the appeal is dismissed being devoid of merits of significance. It would, however, direct the Ministry and the Municipal Corporation of Greater Mumbai to strictly enforce all measures to prevent odor and other nuisance. No cost




(J.C KALA)
MEMBER

"True (copy)"
Court Master
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