

Supreme Court of India
M.Nizamuddin Vs. M/S Chemplast Sanmar Ltd.& Ors. on 10 March, 2010
Author:
Bench: Dalveer Bhandari, A.K. Patnaik
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO. 2284 OF 2010

(Arising out of SLP(C) No. 7101 of 2009)

M. Nizamudeen ...Appellant Versus

M/s. Chemplast Sanmar Limited and Others ...Respondents WITH

W.P. (Civil) No. 130 OF 2009

WITH

T.P. (Civil) Nos. 365-367 OF 2009

JUDGEMENT

R.M. Lodha, J.

Leave granted in SLP (Civil) No. 7101 of 2009.

2. In this group of five matters before us, civil appeal is directed against the judgment of Madras High Court passed on October 31, 2008 whereby a writ petition in the nature of Public Interest Litigation (PIL) filed by the appellant - M. Nizamudeen - has been dismissed. Out of the other four matters; one is a writ petition being W.P. (C) No. 130 of 2009 preferred directly before this Court under Article 32 of the Constitution while the other three matters are transfer petitions seeking transfer of Writ Petition nos. 37043 of 2006, 8125 of 2007 and 23122 of 2007 filed before the Madras High Court.

3. M/s. Chemplast Sanmar Limited (for short, 'Chemplast') proposed to set up a project for manufacturing Poly-Vinyl Chloride (PVC) at Semmankuppam village, SIPCOT Industrial Complex, Phase-II, Cuddalore District (Tamil Nadu). An Environmental Impact Assessment Report (EIA) as well as Risk Analysis Report (RA) for the proposed PVC project was obtained by Chemplast and, then, they made proposal (vide application dated May 27, 2002) to the concerned authorities for setting up the said project. The feasibility of the project was considered by public hearing panel in the meeting held on June 7, 2002. The proposal of Chemplast was sent by the government of Tamil Nadu with its recommendations, after 2

accepting the conditional consent issued by Tamil Nadu Pollution Control Board (for short 'TNPCB'), to the Ministry of Environment and Forests, Government of India (for short, 'MOEF'). The MOEF examined the proposal submitted by the Chemplast in light of the questionnaire, EIA, RA and other relevant documents and accorded environmental clearance to the project proposed by Chemplast on November 28, 2005 subject to strict compliance to the specific and general conditions laid down therein.

4. One of the raw-materials for manufacturing PVC is Vinyl Chloride Monomer (VCM). VCM is not available indigenously and Chemplast planned to import the said raw- material for their plant use from international suppliers. Chemplast in their proposal also proposed to install a Marine Terminal Facility (for

short, 'MTF') near the seashore at Chitrapettai Village for receiving and transferring VCM from the ships to the PVC plant through underground pipeline.

5. The District Coastal Zone Management Committee in its meeting held on June 7, 2005 considered the proposal of Chemplast for setting up of MTF including the conveyance 3

mains and resolved to recommend to the Tamil Nadu State Coastal Zone Management Authority (TNSCZMA) to consider in principle clearance for the following facilities: "01. Laying of pipe lines for the transportation of Vinyl Chloride Monomer (VCM) as permitted vide Ministry of Environment and Forests, Coastal Regulation Zone Notification dated 19th February 1991 In paragraph 2 (Prohibited Activities), in sub paragraph (ii) with proviso "except transfer of hazardous substances from ships to ports terminals and refineries and vice-versa In the port areas";

02. Treated effluent lines and sea water intake and return lines as permitted vide Ministry of Environment and Forests, Coastal Regulation Zone Notification dated 19th February 1991 in paragraph 2 (Prohibited Activities) in sub paragraph (xii) with proviso "except facilities for carrying treated effluents and waste water discharges into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this Notification'.

03. Constructions for jetty activities and control room as permitted vide Ministry of Environment and Forests, Coastal Regulation Zone Notification dated 19th February 1991 in paragraph 3 (Regulation of Permissible Activities) in sub paragraph 2 of (ii) with proviso "operational constructions for ports and harbours and light houses and constructions for activities such as jetties, wharves, quays and slipways'.

6. The aforesaid recommendations were considered by the TNSCZMA and they resolved in its meeting held on October 17, 2005 to recommend to the state government to 4

forward the proposal to the MOEF for the issue of CRZ clearance to Chemplast with the following conditions : "1. The unit shall comply safety measures stipulated by the Navigational Safety in Ports Committee (NSPC), Goa and shall obtain the clearance from NSPC before Commissioning of the jetty.

2. The unit shall inform in advance to the Assistant Director of Fisheries Department, Cuddalore as and when the loading and unloading of VCM is done from the ship.

3. The unit shall obtain NOC from the Tamil Nadu Pollution Control Board before commissioning of the jetty and the unit shall comply with the norms prescribed by the Tamil Nadu Pollution Control Board from time to time.

4. The unit shall submit the Disaster Management Plan to the District Authorities before commissioning of the jetty.

5. The Unit shall transport and dispose the treated effluent and R.O rejects of the Desalination Plant by conducting Hydrological study through National Institute of Ocean Technology/National Institute of Oceanography.

6. The Unit shall install double walled pipeline in a concrete trench for the transport of VCM from the Jetty to the Plant.

7. The Unit shall install Emergency shutdown valves in the Jetty and leak detection system in the onshore pipeline.

8. The unit shall install adequate fire fighting equipment to encounter any eventuality due to fire.

9. The unit's marine activity shall not give any hindrance to the public as well as to the aquatic life.

10. The unit shall provide and operate sufficient Navigational lighting Indication system during the night hours,

11. The waste water after treatment in the effluent treatment plant should not be discharged into the sea." 5

7. Pursuant thereto, the Director, Department of Environment, Government of Tamil Nadu considered the resolution dated October 17, 2005 of the TNSCZMA and forwarded the proposal to the state government by his communication dated October 28, 2005.

8. The government of Tamil Nadu by its communication dated November 9, 2005 informed the National Coastal Zone Management Authority its acceptance of the recommendation made by the TNSCZMA and recommended the proposal of Chemplast seeking environmental clearance for setting up of MTF. Along with its communication dated November 9, 2005, the state government sent, inter-alia : (i) questionnaire for environmental appraisal for MTF (ii) EIA prepared by LT Ramboll; (iii) RA prepared by LT Ramboll; and (iv) minutes of the 34th meeting of the TNSCZMA held on 17.10.2005.

9. Chemplast submitted further application to the MOEF on November 14, 2005. The MOEF, then, considered the proposal involving the activities namely, (i) construction of island jetty at 1000 meters from the shoreline; (ii) laying of 6

sub-sea pipelines from jetty to landfall point; (iii) construction of port office with communication facilities; and (iv) laying of onshore piping from landfall point to the CRZ area and thereon to the plant. The MOEF took into consideration, inter alia, that the MTF will be located offshore of Chitrapettai village; that the landfall point will be at Chitrapettai village, which is 2500 meters from the PVC plant; that the total length of the pipelines onshore will be 3500 meters; that the offshore pipelines and the onshore pipelines will be laid in a covered RCC trench; that the island jetty would be consisting of an operating platform, berthing dolphins, mooring dolphins and interconnecting walkway; that the platform and dolphins will be RCC structures suitable for open sea marine service; that sub sea pipelines will be laid with proper insulation and mechanical protection; that piping design would also take into effect stresses arising out of risers, temperature variation, buckling, buoyancy and sea bed erosion. In the backdrop of aforesaid facts and aspects, the MOEF granted environmental clearance on December 19, 2005 under the provisions of Coastal Regulation Zone Notification, 1991 (for short, '1991 Notification') as amended from time to 7

time for construction of revetment for setting up of MTF on the specific and general conditions set out therein including all the conditions stipulated by the government of Tamil Nadu in the letter dated November 9, 2005 and recommendations of the TNSCZMA.

10. The environmental clearance dated December 19, 2005 granted by the MOEF clarified that the stipulations/conditions set out therein will be enforced among others under the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act, 1986, the Hazardous Chemicals (Manufacture, Storage and Import) Rules, 1989, the 1991 Notification and its subsequent amendments and the Public Liability Insurance Act, 1991 and the Rules made thereunder. Chemplast was also directed to ensure that the proposal complies with the provisions of the approved Coastal Zone Management Plan of Tamil Nadu, 1996 (for short, '1996 Plan').

11. The TNPCB in light of the environmental clearance dated December 19, 2005 granted by the MOEF accorded its 8

consent on September 14, 2006 for the PVC plant as well as MTF and pipeline project of the Chemplast.

12. Chemplast made an application on February 6, 2008 to the Executive Engineer, PWD, Vellar Basin Division, WRO, Vridhachalam (for short, 'Executive Engineer') seeking permission for carrying seawater and raw-materials through pipelines laid 3.50 meter below the river bed. The Executive Engineer granted permission on February 27, 2008 subject to the conditions set out therein. In less than a month on March 19, 2008, the Executive Engineer, cancelled the aforesaid permission observing that VCM may cause pollution and health hazard to the public.

13. The order cancelling permission was challenged by Chemplast by filing writ petition before the High Court of Judicature at Madras. The High Court allowed writ petition on July 18, 2008 and set aside the order of the Executive Engineer passed on March 19, 2008 revoking the permission granted on February 27, 2008. It was then that the appellant - M. Nizamudeen - filed PIL before the Madras High Court praying therein that the order passed by the Executive Engineer on 9

February 27, 2008 be quashed and Chemplast be directed to forebear from laying of pipelines for drawing VCM raw-material from jetty to their plant in Semmankuppam village. In the writ petition, M. Nizamudeen did not challenge environmental clearances granted by MOEF on November 28, 2005 and December 19, 2005. The High Court, vide its Judgment dated October 31, 2008, dismissed the writ petition which is subject matter of challenge in the civil appeal.

14. It appears that after Petition for Special Leave to Appeal challenging the judgment of Madras High Court came to be filed by M. Nizamudeen before this Court that a writ petition under Article 32 of the Constitution has been preferred directly before this Court by A. Bhunanthiran praying therein that the permission granted by the MOEF on December 19, 2005 be quashed and a Writ of Mandamus be issued to the MOEF, TNSCZMA and TNPCB to ensure that no prohibited activity, viz., handling of any hazardous chemical through pipelines or otherwise takes place in CRZ areas on both sides of Uppanar river.

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15. Be it noted here that three more writ petitions (Writ Petition nos. 37043/2006, 8125/2007 and 23122/2007) came to be filed before Madras High Court challenging environmental clearances granted by the MOEF to the Chemplast. The appellant - M. Nizamudeen - has sought transfer of these petitions to this Court. I.A. No. 7 has been made therein for deletion of respondent nos. 21 and 22. As the issues are common, these writ petitions are transferred to this Court and respondent nos. 21 and 22 are deleted from array of parties.

16. We heard learned senior counsel and counsel for the parties at considerable length.

17. Mr. Ranjit Kumar, learned senior counsel for the appellant - M. Nizamudeen - submitted: that 100 meters from the High Tide Line (HTL) on both sides of Uppanar river are CRZ-III areas where handling of hazardous substance is prohibited; that VCM is hazardous substance notified under the Notification of MOEF issued on November 27, 1989 and handling of a substance includes transfer, as per Section 2(d) of Environment (Protection) Act, 1986; that Chemplast did not 11

seek any permission in respect of the pipelines in the CRZ on both sides of Uppanar river, rather existence of Uppanar river itself was suppressed in the proposals made; that 1996 Plan was neither annexed nor referred to in the proposals made before the competent authorities, nor was even brought to the notice of the High Court and it is being referred to and relied upon for the first time by Chemplast before this Court; that Chemplast while submitting proposals to the competent authorities itself annexed a demarcation map prepared by the National Institute of Oceanography (NIO) to show the High Tide Line/Low Tide Line [HTL/LTL] and the relevant CRZ area; that the said demarcation map prepared by NIO, for the purpose of environmental clearance, must prevail over 1996 Plan and in any case 1996 Plan has become redundant by the amendments in 1991 Notification.

18. Mr. Ranjit Kumar, learned senior counsel also submitted that a close look at the environmental clearance dated December 19, 2005 granted by the MOEF would show that it neither covers nor includes the activities of laying of pipelines across and underneath Uppanar river and drawing of 12

VCM through pipelines. He lastly submitted that Executive Engineer had no authority to permit laying of pipelines in the CRZ of Uppanar river.

19. Dr. Rajeev Dhavan, learned senior counsel for writ petitioner - A. Bhunanenthiran - adopted the submissions of Mr. Ranjit Kumar and further submitted that identification and demarcation of CRZ of any particular State involve two distinct processes and, although, 1996 Plan does not show the land portion of the banks of Uppanar river under CRZ area but the very concept of CRZ areas surrounding rivers changed in 2002. He would submit that 1998 amendment in 1991 Notification lays down that demarcation of CRZ has to be done by the authorized agencies and, therefore, the initial determination of CRZ has to be reassessed in light of the demarcation of the HTL / LTL and CRZ area carried out by authorized demarcating agencies.

20. Dr. Rajeev Dhavan, learned senior counsel would submit that the application made on May 27, 2002 was abandoned by Chemplast because the statutory designated authority, in its inspection held in the month of June 2005, 13

declared the relevant area to be CRZ and the District Coastal Zone Management Committee and TNSCZMA had examined the earlier application for the port area alone. He submitted that realising that the CRZ extended to the Uppanar river, Chemplast made devious hidden changes in its application made on November 14, 2005. Learned senior counsel submitted that the permission granted by MOEF on December 19, 2005 is limited to MTF and no more. He reiterated that the phrase "and thereon to the plant" in the permission dated December 19, 2005 does not cover permission for the pipeline all the way to the Uppanar river.

21. Learned senior counsel urged that 1996 Plan is obsolete and must make way for the plan prepared by NIO and the demarcation of CRZ by the NIO being final, the said plan must prevail over 1996 Plan.

22. According to Dr. Rajeev Dhavan, CRZ-III status has to be attributed to both banks of the Uppanar river through which the pipeline carrying the hazardous substance VCM is to be taken to the plant. Referring to the 1991 Notification as amended in 2002, Dr. Rajeev Dhavan submitted that VCM can 14

be brought on to the port area but not carried any further by pipeline in or across CRZ area including the CRZ-III area in relation to rivers, creeks and backwaters where the salinity concentration is 5 ppt for a distance of 100 meters from the HTL or the width of the river whichever is less. He referred to public trust doctrine and precautionary and public interest principles and submitted that in relation to the CRZ, the public interest to protect the environment is paramount and the benefit of doubt and precaution should be given to the environment. Learned senior counsel submitted that interest of Chemplast and the industry must yield to the public interest in the environment. He would submit that although there has been no challenge to the permission granted on November 28, 2005 to the PVC plant utilizing the VCM but, since the tanks of Chemplast probably fall in the CRZ area, this Court must order the plant to be CRZ compliant by shifting the storage tanks. As regards carriage of VCM, Dr. Rajeev Dhavan suggested that VCM can be carried in tankers at minus 13 degree centigrade which cannot be done by pipeline by going upstream and crossing a bridge and this being an alternative solution, the 15

Court may accept the same which would be consistent with the public interest principles.

23. On the other hand, Mr. K.K. Venugopal, learned senior counsel for the Chemplast submitted that PIL filed before the High Court and also directly before this Court are not bona fide as the petitioners in these matters have been set up by a corporate rival, viz., Cuddalore Powergen Corporation Limited (CPCL) who wanted the land in question at a much cheaper price. CPCL instigated and got these persons who had objected to the

scheme in 2002. Learned senior counsel submitted that after obtaining necessary approvals and permissions, the plant at the cost of about Rs. 600 crores has been set up and after having obtained the consent to operate, the plant has started its commercial production. He also submitted that 1996 Plan still holds the field and as per that plan, particularly, sheet no. 10 prepared for the Cuddalore District, the tidal influence in the Uppanar river ends above Thiyaavalli village and below Kudigadu village of Cuddalore Old Town area and, therefore, the area on both sides of Uppanar river through which the pipeline traverses is not CRZ area at all. Mr. K.K. Venugopal 16

contended that the plan prepared by the NIO is not approved plan and the said plan cannot override 1996 Plan approved by the central government under 1991 Notification. Learned senior counsel also submitted that laying of pipelines for transfer of VCM is not a prohibited activity as contended by the petitioners as the interpretation given by them to paragraph 2(ii) of 1991 Notification is too restrictive and narrow.

24. Learned counsel for Union of India urged that the point at which the pipelines pass under the Uppanar river and its banks is not a part of CRZ as per 1996 Plan prepared by the state government and approved by the central government and, therefore, no permission or environmental clearance is required for that portion of the pipeline that passes under the Uppanar river nor such permission was granted. He submitted that environmental clearance was only required for the MTF and that portion of the pipeline that falls within the CRZ abutting the sea, i.e. within 500 meters from HTL and vide permission dated December 19, 2005, environmental clearance was granted for this portion of the pipeline only. He would also submit that the interpretation given to paragraph 2(ii) of 1991 Notification by the 17

petitioners is not correct interpretation and that exception in paragraph 2(ii) needs to be construed in a purposive manner.

25. In view of the contentions advanced by the senior counsel and counsel for the parties, the first question which we have to look to is, whether Uppanar river and its banks at the point where pipelines pass, fall in the CRZ III area. If the answer to this is in the affirmative, obviously, the pipelines crossing underneath Uppanar river would require environmental clearance. The other main question we have to consider in connection with these matters is, whether paragraph 2(ii) of 1991 Notification restricts transfer of VCM (hazardous substance) beyond port area to the PVC plant through pipelines. Other considerations would depend on answer to these two core issues.

26. In considering the first question, we need to look to 1991 Notification which came to be issued by the MOEF declaring the coastal stretches as Coastal Regulation Zone (CRZ) and regulating activities in such area. 1991 Notification 18

has been amended from time to time. To the extent it is relevant, it reads :

"Now, therefore, in exercise of the powers conferred by Clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, and all other powers vesting in its behalf, the Central Government hereby declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL as Coastal Regulation Zone; and imposes with effect from the date of this Notification, the following restrictions on the setting up and expansion of industries, operations or processes etc. in the said Coastal Regulation Zone (CRZ). 1

[(i) For the purposes of this notification, the High Tide Line means the line on the land up to which the highest water line reaches during the spring tide. The High Tide Line shall be demarcated uniformly in all parts of the country by the demarcating authority or authorities so authorised by the Central Government, in accordance with the general guidelines issued in this regard]

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[(ii) The distance from the High Tide Line shall apply to both sides in the case of rivers, creeks and backwaters and may be modified on a case to case basis for reasons to be recorded in writing while preparing the Coastal Zone Management Plans provided that this distance shall not be less than 100 meters or the width of the creek, river or backwaters, whichever is less. The distance up to which development along rivers, creeks and backwaters is to be regulated shall be governed by the distance up to which the tidal effects are experienced which shall be determined based on salinity concentration of 5 parts per thousand (ppt). For the purpose of this notification, the salinity measurements shall be made during the driest period of the year and the distance upto which tidal effects are experienced shall be clearly identified and demarcated accordingly in the Coastal Zone Management Plans.]; 1

Substituted by S.O.1122(E), dated 29th December, 1998. Gazette of India (Extra). No. 849, dated 29-12-1998.

2

Inserted as per S.O.(E). No. 550 (E), dated 21st May, 2002 19

2. Prohibited Activities :

The following activities are declared as prohibited within the Coastal Regulation Zone, namely : (i)

(ii) manufacture or handling or storage or disposal of hazardous substances as specified in the Notifications of the Government of India in the Ministry of Environment & Forests No. S.O. 594(E) dated 28th July, 1989, S.O. 966(E) dated 27th November, 1989 and GSR 1037(E) dated 5th

December, 1989; 3[except transfer of hazardous substances from ships to ports, terminals and refineries and vice versa, in the port areas:]

3. Regulation of Permissible Activities : All other activities, except those prohibited in para 2 above, will be regulated as under :

1.

2. The following activities will require environmental clearance from the Ministry of Environment and Forests, Government of India, namely:

(i)

(ii) 4[Operational constructions for ports, harbours and light houses and construction activities of jetties, wharves, Slipways, pipelines and conveying systems including transmission lines provided that environmental clearance in case of constructions or modernization or expansion of jetties and wharves in the Union Territory of Lakshadweep for providing embarkation and disembarkation facilities shall be on the basis of a report of scientific study conducted by the Central Government or any agency authorized or 3

Added by S.O. 494(E), dated 9th July, 1997. Gazette of India (Extra) No. 393, Part II, Sec. 3(ii), dated 9th July, 1997.

4

Substituted by Notification No. S.O. No. 636 (E), dated 30-05-2003. 20

recognized by it suggesting environmental safeguard measures required to be taken for minimizing damage to corals and associated biodiversity.]

(3) (i) The coastal States and Union Territory Administrations shall prepare, within a period of one year from the date of this Notification, Coastal Zone Management Plans identifying and classifying the CRZ areas within their respective territories in accordance with the guidelines given in Annexures-I and II of the Notification and obtain approval (with or without modifications) of the Central Government in the Ministry of Environment & Forests; (ii) Within the framework of such approved plans, all development and activities within the CRZ other than those covered in para 2 and para 3 (2) above shall be regulated by the State Government, Union Territory Administration or the local authority as the case may be in accordance with the guidelines given in Annexures-I and II of the Notification; and (iii) In the interim period till the Coastal Zone Management Plans mentioned in para 3(3)(i) above are prepared and approved, all developments and activities within the CRZ shall not violate the provisions of this Notification. State Governments and Union Territory Administrations shall ensure adherence to these regulations and violations, if any, shall be subject to the provisions of the Environment (Protection) Act, 1986."

27. Indian Council for Enviro-Legal Action filed a writ petition before this Court challenging some of the amendments made in 1991 Notification; they also raised the grievance that the MOEF except for issuing the 1991 Notification had taken no steps to follow up its own directions contained in that 21

Notification. This Court while disposing of writ petition filed by Indian Council for Enviro-Legal Action [(1996) 5 SCC 281], inter alia, issued the following directions:

"(1)

(2).....

(3) Considering the fact that the Pollution Control Boards are not only overworked but simultaneously have a limited role to play insofar as it relates to controlling of pollution for the purpose of ensuring effective implementation of the notifications of 1991 and 1994, as also of the Management Plans, the Central Government should consider setting up under Section 3 of the Act, State Coastal Management Authorities in each State or zone and also a National Coastal Management Authority.

(4) The States which have not filed the Management Plans with the Central Government are directed to file the complete plans by 30-6-1996. The Central Government shall finalise and approve the said plans, with or without modifications within three months thereafter. It is possible that the plans as submitted by the respective State Governments and Union Territories may not be acceptable to the Ministry of Environment and Forests. Returning the said plans for modifications and then resubmission of the same may become an unnecessary, time-consuming and, perhaps, a futile exercise. In order to ensure that these plans are finalised at the very earliest, we direct that the plans as submitted will be examined by the Central Government who will inform the State Government or the Union Territory concerned with regard to any shortcomings or modifications which the Ministry of Environment and Forests may suggest. If necessary, a discussion amongst the representatives of the State Governments and the Ministry of Environment and Forests should take place and thereafter the plans should be finalised by the Ministry of Environment, if necessary, by carrying out such modifications as may be required. The decision by the Ministry of Environment and Forests in this regard shall be final and binding.

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A report with regard to the submission and the finalisation of the plans should be filed in this Court and the case will be listed for noting compliance in September 1996."

28. Paragraph 3(3)(i) of 1991 Notification requires the Coastal States and UT Administrations to prepare Coastal Zone Management Plans for identification and classification of the CRZ areas within their respective territories in accordance with the guidelines given in Annexures I and II of the Notification. It further mandates Coastal States and UT Administrations to obtain approval of such plans from the Central Government. As a matter of fact, the said provision provided a period of one year for preparation of such plans from the date of the Notification, but the Coastal States and UT Administrations remained dormant for many years in this regard. However, consequent upon directions of this Court, the State of Tamil Nadu submitted its Coastal Zone Management Plan to the MOEF on August 23, 1996 which was approved on September 27, 1996 (1996 Plan) containing 31 sheets corresponding to maps for different stretches of the coastline of the State of Tamil Nadu with certain conditions/modifications/ 23

classifications. Sheet no.10 pertains to the coastal stretch of Cuddalore District. The MOEF, based on sheet no. 10 (1996 Plan) have stated in their affidavit that the land portion of the banks of Uppanar river adjacent to the plant in Thiyagavalli village where the pipeline crosses Uppanar river does not come under the CRZ area. This position is reiterated by the TNSCZMA in their affidavit filed before this Court: ".....as per the approved Coastal Zone Management Plan, the banks of Uppanar River adjacent to the Plant in Thiyagavalli Village where the pipeline crosses River Uppanar does not come under CRZ area....."

29. We were also shown a copy of sheet no.10 from which it did not transpire that Uppanar river and its banks where the pipelines pass have tidal influence and come under the CRZ area. That 1996 Plan does not reflect the area on both sides of the Uppanar river through which the pipelines pass as CRZ area is not in dispute. The contention of the senior counsel for the petitioner/appellant is that 1996 Plan has become redundant and obsolete in view of change in the CRZ regime 24

due to amendments in 1991 Notification, first on December 29, 1998 and then on May 21, 2002.

30. By 1998 amendment, it has been provided in 1991 Notification that HTL shall be demarcated uniformly in all parts of the country by the demarcating authority or authorities so authorized by the central government in accordance with the general guidelines issued in this regard. By further amendment on May 21, 2002, sub-paragraph (ii) was inserted in the first para of 1991 Notification providing therein that the distance from the HTL shall apply to both sides in the case of rivers, creeks and backwaters. The said amendment provides that the distance up to which development along rivers, creeks and backwaters is to be regulated shall be governed by the distance up to which the tidal effects are experienced which shall be determined based on salinity concentration of 5 ppt. It further provides that salinity measurements shall be made during the driest period of the year and distance up to which tidal effects are experienced shall be clearly identified and demarcated in the Coastal Zone Management Plans. It is perfectly true that at the time of preparation and approval of 1996 Plan, the 25

amendments of December 29, 1998 and May 21, 2002 in 1991 Notification had not seen the light of the day and the declaration made in first para that the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 meters from the HTL and the land between the LTL and the HTL are CRZ was kept in view but in the absence of any modification carried out thereafter, 1996 Plan remains operative. The authorities authorized to demarcate HTL, we are afraid, cannot override the plan prepared and approved under paragraph 3(3)(i) as the said paragraph leaves no manner of doubt that Coastal Zone Management Plan prepared by the Coastal State (or for that matter State Coastal Zone Management Authority) and duly approved by the MOEF is the relevant plan for identification and classification of CRZ areas. The plan prepared by NIO, thus, cannot be said to have superseded 1996 Plan for the Cuddalore coastal stretch.

31. Moreso, while giving approval on September 27, 1996 to 1996 Plan, the MOEF appended, inter alia, a condition that government of Tamil Nadu would not make any change in 26

the approved categorization of CRZ area without its prior approval. Seen thus, 1996 Plan for the purposes of demarcation and classification of CRZ area in the state of Tamil Nadu has to be treated as final and conclusive and has been rightly treated as such by the MOEF. We hold, as it must be, that the Uppanar river and its banks at the relevant place where the pipelines laid by the Chemplast pass do not fall under CRZ III area as per 1996 Plan and no environmental clearance is needed for such pipelines. The stand of the MOEF is, which seems to us to be correct, that they have granted permission to the onshore pipelines insofar as these pass through the CRZ abutting the sea, i.e. 500 meters from the HTL and no clearance has been granted as it was not required for laying of pipelines under the Uppanar river.

32. Here, we may also deal with the objection of the petitioners that Chemplast has suppressed the material facts regarding the existence of Uppanar river in its proposals. In the first place, there seems to be no substance in the said objection. From the materials available on record that include the Environment Impact Assessment Report (EIA) and Risk 27

Analysis Report (RA), it cannot be said that existence of Uppanar river has been suppressed by the Chemplast in its proposals although in these reports Uppanar river has been described as Uppanar canal. In EIA prepared by L & T Ramboll, in Section 3.6.2.2., it is stated:

“The onshore pipeline to the extent possible is routed in a direct line from the landfall point to the Plant in order to minimise the length. The route crosses the Uppanar canal where the pipeline will be trenched sufficiently deep into the canal bed to avoid impact from grounding vessels, dropped objects or dragged anchors. The pipeline section crossing the Uppanar will be of a type similar to the marine pipeline section. As regards the onshore section, the selection of pipeline type and installation is discussed in the following paragraphs :

The main options for the land pipeline will be : 7 Trenched, sub terrain pipe line (-1.0 to -1.5 m) 7 Pipeline on low supports at the terrain surface (+0.2 to +0.5m)

7 Overhead pipeline on masts/columns above bus/truck passage heights (+4.5 to 5m)

(Approximate levels given from existing natural ground level)“

Similarly, in Section 5 of RA, reference is made to pipeline crossing Uppanar canal. The position is clarified by Chemplast in their subsequent application made on November 14, 2005. In the second place, and more importantly, this objection pales into insignificance in view of our finding that the 28

land portion of the banks of Uppanar river where the pipelines laid by Chemplast pass Uppanar river does not fall under CRZ III area.

33. Now, we advert to the other main issue concerning paragraph 2(ii) of 1991 Notification. This paragraph prohibits manufacture or handling or storage or disposal of hazardous substances, as specified in the Notifications issued by MOEF (dated 28th July, 1989, 27th November, 1989 and 5th December, 1989), except transfer of hazardous substances from ships to ports, terminals and refineries and vice-versa, in the port areas. That VCM is hazardous substance notified vide notification dated November 27, 1989 is not in dispute. There is also no dispute, rather it is an admitted position, that handling of a substance includes transfer as per Section 2(d) of the Environment (Protection) Act, 1986. It was contended by the senior counsel for the appellant/petitioner that transfer of VCM in CRZ area is completely prohibited and VCM cannot be carried through the CRZ except in the port area. Their argument is that VCM can be brought onshore by pipeline to the port area but not in the CRZ area. The arguments of 29

learned senior counsel have put in issue the scope of expression, "except transfer of hazardous substances from ships to ports, terminals and refineries and vice versa in the port areas" which was added in paragraph 2(ii) on 9th July, 1997. We are called upon to ascertain the true meaning and intention of the Executive in bringing this exception. In the original 1991 Notification there was no exception clause. It appears to have been added for the purpose of enabling transfer of hazardous substances from ships to ports, ships to terminals and ships to refineries and vice versa. Is such transfer of hazardous substances confined to terminals and refineries located in the port areas? The answer in the affirmative may make the said provision unworkable and would also result in absurdity inasmuch as the hazardous substance would be brought in to the port, refinery or terminal in the port area from the ship and would remain there and could not be taken beyond the port area because of the prohibition. This surely could not have been the intention of the Executive in adding the exception clause. It is well settled that if exception has been added to remedy the mischief or defect, it should be 30

so construed that remedies the mischief and not in a manner which frustrates the very purpose. Purposive construction has often been employed to avoid a lacuna and to suppress the mischief and advance the remedy. It is again a settled rule that if the language used is capable of bearing more than one construction and if construction is employed that results in absurdity or anomaly, such construction has to be rejected and preference should be given to such a construction that brings it into harmony with its purpose and avoids absurdity or anomaly as it may always be presumed that while employing a particular language in the provision absurdity or anomaly was never intended. Notwithstanding imperfection of expression and that exception clause is not happily worded, we are of the view that by applying purposive construction, the expression, 'in the port areas' should be read as, 'in or through the port areas'. The exception in paragraph 2 (ii) then would achieve its objective and read, 'except transfer of hazardous substances from ships to ports, ships to terminals and ships to refineries and vice versa, in or through the port areas'. This construction will be harmonious with paragraph 3(2)(ii) which permits the activity of 31

laying pipelines in the CRZ area. As a matter of fact, the MOEF in their affidavit before this Court have clearly stated that the permission granted to Chemplast on 19th December, 2005 is in exercise of the powers conferred under paragraph 3(2)(ii) of 1991 Notification. We do not find any infirmity in the permission granted by the MOEF on 19th December, 2005. Having held that, there is no illegality in the permission granted by the Executive Engineer on February 27, 2008 either.

34. In view of our foregoing discussion in respect of the two core issues, we do not deem it necessary to deal with the objection raised by Mr. K.K. Venugopal, learned senior counsel for the Chemplast about the maintainability of PILs and that the petitioners have been instigated and set up by a corporate rival - Cuddalore Powergen Corporation Limited.

35. By way of footnote, we may observe that the project has been established by investing huge amount of about Rs. 600 crores and has already been commissioned after obtaining necessary approvals and, therefore, it shall not be in the interest of justice nor in the public interest now to interfere with the project. The alternative solution suggested by 32

Dr. Rajeev Dhavan for carrying VCM across Uppanar river to the plant is noted to be rejected.

36. In the result, Civil Appeal and Writ Petition (Civil) No. 130 of 2009 are dismissed. Writ Petition Nos. 37043 of 2006, 8125 of 2007 and 23122 of 2007 filed before Madras High Court and transferred to this Court are dismissed. Transfer Petitions and I.A. No. 7 stand disposed of. I.A. No. 4 filed by the appellant - M. Nizamudeen - for initiating proceedings for perjury against the MOEF is dismissed. The parties shall bear their own cost.

.....CJI

.....J

(R. M. Lodha)

.....J

New Delhi, (Dr.B.S. Chauhan) March 10, 2010.

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