

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

Appeal No.77 of 2015 (SZ)

IN THE MATTER OF:

Rajakkamangalam Thurai Fishing Harbour Pvt., Ltd.,
Rep. by its Director,
No.26/40, St. Arockia Annai Building,
Rajakkamangalam Thurai and Post,
Agastheeswaram Taluk,
Kanyakumari District.

..Appellant

AND

1. Union of India,
Rep.by its Secretary,
The Ministry of Environment and Forests,
New Delhi.
2. The Secretary to Government,
Environment and Forest Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
3. The Member Secretary/ Director Environment,
Tamil Nadu Coastal Zone Management Authority,
Panagal Building, Saidapet,
Chennai.

4. The District Collector,
Kanyakumari District,
Nagerkoil- 629 001.
5. T. Dharmakrishnan,
S/o. Thangiah Nadar,
Paniyoor,
Ethamozhi Post- 629 501.
6. The Chairman,
Paniyoor Region Citizen Welfare Trust,
22-25, Paniyoor,
Rajakkamangalam P.O.,
Kanyakumari District.

...Respondents

Counsel appearing for the Appellant :
Mr.P.B.Sahasranaman for
M/s. TAAURS ASSOCIATES
S. Kamaleshkannan and
S. Sai Sathya Jith

Counsel appearing for the Respondents :

Mr. G.M. Syed Nurullah Sheriff for R1
M/s. M.K. Subramanian and
P. Velmani for R2 to R4
M/s. Yogeshwaran for
Clifton D' Rozario,
Maitreyi Krishnan, Aishwarya Rao &
Raghupathy.S for R5 and R6

J U D G E M E N T**PRESENT:****HON'BLE SHRI JUSTICE M.S.NAMBIAR, JUDICIAL MEMBER****HON'BLE SHRI P.S. RAO, EXPERT MEMBER**

Delivered by Hon'ble Justice M.S.NAMBIAR , Judicial Member**Dated:23rd December, 2016**

Whether the Judgement is allowed to be published on the Internet – Yes/No

Whether the Judgement is to be published in the All India NGT Reporter – Yes/No

The Rajakkamangalam Thurai Development Trust by its representation dated 30.04.2004 requested the Government of Tamil Nadu to construct a Fishing Harbour at Rajakkamangalam Thurai in Kanyakumari District under BOOT (Build-Own-Operate- Transfer) system. Thereafter, the Director of Fisheries reported to the State Government that there are no Fishing Harbours/ Fish Landing Centres available in Kanyakumari District to facilitate the fishermen for berthing

the mechanized boats to unload their catches, though 1737 mechanised boats are in operation in Kanyakumari District. The Director of Fisheries has also stated that about 300 mechanised boats can use the Fishing Harbour at Rajakkamangalam Thurai and the total valuation of the project would be around Rs.22 crores and the proposed lands could be used for the Fishing Harbour. The Government accepted the proposal and by G.O.Ms.No.210, Animal Husbandry, Dairying & Fisheries (FS-I) Department dated 13.12.2005, issued orders for the construction of Fishing Harbour at Rajakkamangalam Thurai in Kanyakumari District under BOOT (Build-Own-Operate- Transfer) system subject to conditions enumerated therein.

2. The 5th respondent, Dharmakrishnan filed a Writ Petition in W.P.(MD) No.2206 of 2009 before the Madurai Bench of Hon'ble High Court of Madras to issue a writ to quash the said G.O.Ms.No.210, dated 13.12.2005. While the Writ

Petition was pending on 18.7.2011, the Ministry of Environment, Forest and Climate Change (MoEF&CC) granted clearance under Coastal Regulation Zone (CRZ) Notification, 2011 to the appellant, Rajakkamangalam Thurai Fishing Harbour Private Ltd., for construction of Rajakkamangalam Fishing Harbour at Neendakarai B village on specific and general conditions. Consequent to the CRZ Clearance (wrongly pleaded as Environmental Clearance) granted, to the 5th respondent got amended his Writ Petition seeking a consequential relief of quashing the CRZ Clearance and for adequate compensation and to restore the land to their original position, contending that the appellant has violated the conditions in the clearance order and therefore the CRZ clearance is liable to be cancelled. Pannaiyoor Region Citizens Welfare Trust filed Application No.5 of 2013 before the Tribunal for a direction to the 1st respondent, MoEF&CC, to revoke the CRZ clearance granted to the appellant.

3. While so, by order dated 9.12.2013, following the directions of **the Hon'ble Supreme Court of India in Bhopal Gas Peedith Mahila Udyog Sangathan and others vs. Union of India and others, reported in 2012 (8) SCC 3256**, the Division Bench of the Hon'ble High Court of Madras transferred the Writ Petition to the National Green Tribunal and it was taken on file and registered as Application No.4 of 2014.

4. While admitting Application No.5 of 2013 on 12.2.2013, the Tribunal granted an order of injunction restraining the appellant herein from doing any activities on the strength of CRZ clearance questioned in the application. While these petitions were pending before the Tribunal, based on the representation received from Conservation of Nature Trust and the applicant in Application No.5 of 2013 alleging that the clearance under CRZ Notification, 2011 was granted to the sand dune area and the CRZ clearance was obtained based on

false statements suppressing the material facts.

5. The 1st respondent, MoEF&CC directed an inspection to be conducted by the Additional PCCF and Scientist 'F' of Regional Office, MoEF & CC, Chennai. The report submitted after site inspection, reveals that the project site consists sand dunes and there have been instances of laying of eggs by Olive Ridley Turtles in the project area. Based on the findings of the 1st respondent and in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 the MoEF & CC issued a show cause notice dated 11.2.2015 to the appellant to explain within 15 days as to why the presence of sand dunes was not reported in the "HTL/LTL" demarcation map prepared by the Institute.

6. While so, the appellant filed Application No.69 of 2015 before the Tribunal to quash the said show cause notice. Though an order of interim stay was granted by the Tribunal,

the applicant in Application No.5 of 2013 challenged the order before the Hon'ble High Court of Madras in W.P.No.6696 of 2015 and the order of stay granted by the Tribunal was stayed till the disposal of the said Writ Petition. The Hon'ble High Court in the said Writ Petition directed the 1st respondent to continue the show cause notice proceedings after giving opportunity to the appellant to participate in the personal hearing. After providing a personal hearing, by the impugned order dated 11.9.2015, the 1st respondent cancelled the CRZ clearance dated 18.7.2011 granted to the appellant subject to the decisions of the Tribunal in Original Application Nos.5 of 2013, 4 of 2014 and 69 of 2015 and W.P.No.6696 of 2015. Appeal No.77 of 2015 is filed challenging the said order.

7. While so, when the 1st respondent produced the impugned order cancelling the CRZ clearance granted to the appellant by order dated 29.9.2015, the Tribunal recorded that as the CRZ clearance granted to the appellant has already

been cancelled, pursuant to the show cause notice challenged in Application No.69 of 2015, nothing survives in the applications and disposed Application 5 of 2013 and 4 of 2014.

8. The appellant sought to set aside the order of cancellation of the CRZ clearance on the following grounds:

The inspection of the project site by the Additional PCCF and Scientist "F" Regional Office, MoEF & CC, Chennai on 17.01.2015 was without notice to the applicant and therefore the report is violative of the principles of natural justice as due notice was not issued before the inspection and the inspection was at the instigation of the complainants who wanted to stop the work. The impugned order passed is pre-determined. The Coastal Zone Management Plan (CZMP) prepared for the State of Tamil Nadu under CRZ Notification, 1991 was approved by the 1st respondent on 27.9.1996 after proper examination and by Notification dated 31.3.2015, the validity of the said map was extended till 31.01.2016. Even as per the

CZMP, the project site is demarcated as only CRZ III with no sand dunes and hence there is no necessity for the appellant to falsely state that there are no sand dunes in the site. The 1st respondent without considering the report of the Sub Committee constituted by the Government of Tamil Nadu in G.O.Ms.No.288, dated 31.07.2012 passed the impugned order. Even though, the Sub Committee had made personal inspection on 22.11.2013 and 23.11.2013, the impugned order was passed without proper consideration of the facts involved. The appellant had been agitating from the very beginning that there are sand heap at the site with plantation found towards the landward side. The said heap of sand is stated to be settled and without any characteristics of sand dunes that are found in coasts. This fact had been even recorded in the site inspection of the Sub Committee of the Government of Tamil Nadu. The Sub Committee has also reported that there has been no traces of turtle nestling in the project site. The order is issued with bias relying on the

submissions of the representative of the complainants. The impugned order places reliance upon the examination of the issue by National Centre for Sustainable Coastal Management (NCSCM), Chennai. The 1st respondent after personal hearing of the appellant sought for assistance of the NCSCM for factual finding of the existence of sand dunes in the project site. The documentary evidence relied on by the 1st respondent to decide on the issue had not been presented to the appellant and no opportunity was granted to explain the same and therefore, relying on them are violative of principles of natural justice. The 1st respondent mainly relied on the factual data in the report of NCSCM. The report submitted by NCSCM annexed to the cancellation order is only based on the aerial bird eye view photograph of the year 2011 and the satellite image of the year 2011 of 2.5m Resolution. The sand heap is covered with trees and green shrubs. No reliance would have been placed on the report of NCSCM. The clearance dated 18.07.2011 had been appraised and granted

only under the 1991 Notification after taking into consideration of the existence of the elevated topography with trees and shrubs towards the landward side. The NCSCM failed to observe the characteristics of the heap of sand available near the site and unreasonably concluded that there exists sand dunes. The report should not have been accepted by the 1st respondent as it was not based on 2D image to derive at vertical height of the sand heap. The 1st respondent while cancelling the CRZ clearance failed to consider the submissions of the 2nd respondent, State of Tamil Nadu who had furnished the facts based on the inspection by its officers. They only found that there is sand heap of more than 75 m from HTL and that there exists no sand dune or turtle nestling in the project site. The said authority had referred in the letter dated 19.11.2013 of Institute of Remote Sensing (IRS), Anna University and letter dated 26.02.2013 by the District Forest Officer, Nagercoil where it is stated that there are no sand dunes in the project site. It is therefore contended that

the acceptance of the NCSCM report as against the report furnished by the 2nd respondent is illegal. The statutory authority to decide the issue of presence of sand dunes is not the NCSCM. Therefore, calling for report from NCSCM is contrary to the established procedures under CRZ Notification. It is therefore contended that the impugned order is to be set aside.

9. The first respondent in their reply contended that CRZ Notification 1991 was issued to regulate various activities in CRZ area. The Notification regulates developmental activities in the coastal stretches within 500 meters of High Tide Line on the landward side which were classified into four categories, CRZ I, CRZ II, CRZ III and CRZ IV. Clause 2 (xiii) of the notification prohibits dressing or altering of sand dunes, hills natural features including landscape changes for beautification, recreational and other such purposes. All developmental activities under the notification are required to

be regulated in accordance with Coastal Zone Management Plan (CZMP) approved by the respondent in accordance with the provisions of the notification. CZMP for Tamil Nadu State submitted by the Government of Tamil Nadu vide letter dated 23.08.1996 was approved by the Ministry on 27.09.1996 subject to certain conditions. One of the conditions was that sand dunes are classified as CRZ I. In supersession of the CRZ Notification 1991, the Ministry notified CRZ Notification 2011 on 06.01.2011. The area that is ecologically sensitive and has geomorphological features which play a role in maintaining the integrity of the coast, is included in CRZ I-A. It includes mangroves, corals, coral reefs, mud flats, National Parks, Marine Parks, Sanctuaries, reserve forests, wild life habitats, salt marshes, Turtle nestling grounds and horse shoe crabs, habitats etc. The area between Low Tide Line and the High Tide Line is classified as CRZ I-B. The CRZ Notification 2011 also provided the validity of CZMPs already approved under CRZ Notification 1991, for a period of 24 months. The validity

of CZMP for Tamil Nadu approved under CRZ Notification 1991 has been further extended upto 31.01.2016. The issue of further extension of the validity is under consideration and it depends on the progress made by the various coastal states in preparing new CZMP in accordance with CRZ Notification 2011. In the area included under CRZ I A, no new construction is permitted except the projects relating to admittedly, pipe-lines, conveying systems including transmission lines, facilities that are essential for activities permissible under CRZ I, installation of weather radar for monitoring of cyclones movement and prediction by Indian Meteorological Department, Construction of Trans Harbour sea link without affecting the tidal flow of water between LTL and HTL and development of green field airport already approved at Navi Mumbai only. The recommendation of the Tamil Nadu CZMA for grant of CRZ Clearance under CRZ Notification 1991 for construction of Rajakkamangalam Thurai Fishing Harbour by the appellant proposed under BOOT system by Fisheries

Department, Government of Tamil Nadu, was received vide letter dated 29.06.2010. The proposal was to construct the Harbour in sea shore promboke land of an extent of 16.695 Hectare falling in RS Nos.1403 (1,2,3,4 & 5 parts), 1404 (1, 2, 3, 4 & 5 parts), 1405 (1, 2,3, 4 & 5 parts), 1406- part 2 and 1413 Needakarai ` B' village in Agastheeswaram Taluk of Kanyakumari District. The proposal discloses that the site is falling under CRZ I (ii) and CRZ III. Subsequently, application was received for grant of CRZ Clearance from the appellant.

10. It is clear from the proposal and proforma submitted by the appellant that the appellant did not disclose the presence of sand dunes at the project site, for reasons best known to him. The proposal recommended by the Tamil Nadu Coastal Zone Management Authority (TNCZMA) was appraised as per the prescribed procedure in the light of the provisions under CRZ Notification 1991 and 2011. On the basis of the mandatory documents enclosed and additional

clarification furnished in response of the meeting held on 21st and 23rd September 2010, 5th and 6th April 2011, and 31st May 2011 of the Expert Appraisal Committee (EAC), and after due consideration of the relevant documents, since the CRZ Notification 1991 was superseded by CRZ Notification 2011, EAC recommended grant of CRZ Clearance and on the said recommendation, the respondent granted CRZ Clearance under CRZ Notification 2011 by their letter dated 18.07.2011. In the letter dated 11.03.2015, the Environment & Forest Department, Government of Tamil Nadu interalia informed the respondent about the presence of sand dunes in that area. The said letter discloses that the sub-Committee formed by the Government of Tamil Nadu submitted a report stating that there is no violation of conditions of coastal regulations and there are no sand dunes in the project site but indicating the presence of sand heap near the project site and the Rajakkamangalam coast is located at a distance of 75 to 100

m from High Tide Line with a height of 13 m of MSL and 7 m from the project activity area. It is contended that in the geomorphology (the science of landforms with an emphasis on their origin, evolution, form and distribution across the physical landscape) there is no such terminology as sand 'heap'. The Ministry received representations from Conservation of Nature Trust and Pannaiyoor Region Citizen Welfare Trust alleging that sand dunes are there in the area proposed for construction of Harbour at Needakarai B Village and the appellant obtained CRZ permission on a false statement of the District Forest Officer, Nagercoil that there are no sand dunes in the Rajakkamangalam Coast. In the representation it was alleged that there is a huge 90 feet high sand dune and the Trust received a report from the Revenue Department dated 15.07.2013 stating that there are sand dunes in Rajakkamangalam coast of Kanyakumari.

11. On receipt of the representation, vide letter dated 26.02.2014, the Ministry ordered site inspection. The site was inspected by the Additional Principal Chief Conservation of Forests (Addl.PCCF) and Scientist-F, Regional Office, Ministry of Environment, Forest and Climate Change, Chennai on 17.01.2015. The inspection report reveals that the project site has sand dunes and there have been instances of egg laying by turtles in the project area. Taking into consideration of the said findings, the Ministry found that the recommendations of the concerned authorities of the Government of Tamil Nadu lack factual correctness with respect to the presence of sand dunes at the project site etc. Hence, in exercise of powers conferred under Section 5 of the Environment (Protection) Act 1986, a show cause notice dated 11.02.2015, was issued to the appellant to explain within 15 days of the receipt of the notice why the presence of sand dunes was not reported in the HTL/LTL demarcation map prepared by their Institute. The appellant submitted reply to the show cause notice. Vide order

dated 11.08.2015 in W.P.(C) 6696 of 2015, the Hon'ble High Court of Madras directed the Ministry of Environment and Forests to adjudicate the show cause notice within four weeks. Thereafter, the appellant was heard on 03.08.2015 and complainant was heard on 24.08.2015. Taking into consideration the submissions of both parties, on 11.09.2015 the Ministry passed the order holding that the application of the Project Proponent lacked factual correctness with regard to the presence of sand dunes at the project site and cancelled the clearance granted to the appellant. The show cause notice or the final order did not offend the principles of natural justice as the appellant was granted opportunity and was heard before passing the impugned order.

12. The CZMP prepared by the State of Tamil Nadu under CRZ Notification 1991 was approved by the Ministry subject to the condition that the area having sand dunes are classified as CRZ I. A show cause notice was issued and the impugned

order was passed based on the site inspection of the Committee appointed by the State Government and the report of the National Centre for Sustainable Coastal Management (NCSCM), Chennai, has been based upon hearing the representative of the appellant on 03.08.2015. After hearing the parties, the competent authority decided to request NCSCM to examine the issue based on the data available on record and confirm the existence or non existence of sand dunes at the project site. NCSCM is an autonomous centre of the Ministry of Environment, Forests and Climate Change, Government of India, aiming to be a world class Institution for coastal and marine area management. The Centre is established within the Anna University Campus, Chennai. 14 Institutions have formed a consortium with NCSCM, with Anna University, Chennai. The NCSCM has divisions to deal with issues related to Geospatial Sciences, Integrated Social Sciences and Economics, Coastal Environmental Impact Assessment, Conservation of Coastal and Marine Resources,

Knowledge, Governance and Policy, Futuristic Research and Integrated Island Management. The Centre has expertise to carry out all activities in the area of Coastal Zone Management. NCSCM forwarded a detailed report based on the scientific data available with them along with map. The map shows the presence of sand dunes at S.No.1406, which is partly shown under the project site. The report concludes stating that the sand dunes which fall under CRZ I-A are present adjacent to the project site and are partly present in S.No.1406; the sand dunes lie in between the sea and the project area/Survey Plots.1403, 1404, 1405 and 1406 (part); and sand dunes which are CRZ I - A, are not present in S.Nos.1403, 1404 and 1405. NCSCM prepared a map which forms part of the report and the impugned order dated 11.09.2015 was issued, indicating the presence of sand dunes. That map was prepared based on aerial photographs in Stereo/3D images undertaken by Survey of India (SOI) in the year 2011-2012. This aerial photography resolution is of 9 cm ground sampling distance

with an accuracy of +/- 25 cm and the satellite imageries of Cartosat-I, have a resolution of 2.5 mts. Based on these data, presence of sand dunes was determined. The identified sand dunes were superimposed on Cadastral map prepared by the Government of Tamil Nadu, which is of 1: 4000 scale. Based on the above, it is concluded that there is a presence of sand dunes in the project site. The above methodology adopted by NCSCM was internationally accepted which is based on very high resolution data set and it is a standard practice followed by various National and International Institutions to determine the presence of sand dunes.

13. The appellant admitted the presence of sand heaps in the project site and they are covered with trees and green shrubs. Sand heaps, as admitted by the appellant, are sand dunes tuffed with vegetation, which is termed as sand dunes with vegetation. The occurrence of sand dunes with vegetation clearly indicate that this geo-morphological feature

is in existence for a longer period much prior to 1991. The Sub-Committee Constituted by the Government of Tamil Nadu and the Committee constituted by this respondent confirm the presence of sand dunes at the Rajakkamangalam Coast. The Sub-Committee in their report mentioned that the sand heap near the project site in Rajakkamangalam coast is located at a distance of about 75-100 m from HTL with a height of about 13 m from MSL and 7 m from the project activity area. The Ministry after hearing the parties, decided to request the NCSCM, Chennai to examine the issue based on the data available with NCSCM and confirm the existence or non existence of the sand dunes at the project site and the said decision was not objected to by the parties and in fact, agreed by the appellant. The sand dunes are extremely important as they protect the coastal area from strong winds, tidal surges and act as absorbent of fresh water thereby recharging the ground water. Therefore, they are classified under CRZ I in the CRZ Notification 1991 and 2011. Sand

dunes are classified as CRZ I where activities are prohibited except very few like laying of conveying system, projects relating to Department of Atomic Energy etc. Further, altering or modification or destruction of sand dunes in CRZ area is prohibited activity under the CRZ Notification, 1991 and 2011. The appeal has, therefore, no merits and to be dismissed.

14. The 3rd respondent is the Member Secretary/Director of Environment, Tamil Nadu Coastal Zone Management Authority. In their reply they have stated that by G.O.Ms.No.577 Revenue (LD4(1) Department, dated 05.10.2007, the Government of India issued orders for transfer of the project lands to Fisheries Department for the construction of fishing Harbor at Rajakkamangalam, as the said lands are vacant sea shore lands. The lands have been thus handed over to Fisheries Department by the Revenue Department on 22.05.2008 for the construction of Fishing Harbour. On 17.02.2007, the Commissioner of Fisheries,

Government of Tamil Nadu has handed over the development of Fishing Harbour at Rajakkamangalam Thurai in Kanyakumari District under BOOT system to the Rajakkamangalam Thurai Development Trust to develop design, engineer, finance, procure, construct, operate and maintain the facility for a period of 30 years from the date of commencement at Concessionaire's own cost. The Principal Chief Conservator of Forests, Forest Department, Tamil Nadu ordered for the recovery of Rs.2,60,200/- towards the cost for Casurina shelterbelt plantation in the proposed site for the year 2008 and permitted the appellant to clear the Casuarina plantation in the presence of forest officials and the amount was remitted by the appellant on 10.02.2010. The Hon'ble Madurai Branch of Madras High Court in M.P.(MD) No.2 of 2009 in W.P.No.2206 of 2009, passed an order on 19.03.2010 holding that if there is any such restriction for making any construction under Coastal Regulator Zone, it is needless to state that without getting such Clearance from the

competent authority, no construction can take place. On 06.05.2010, appellant submitted an application for the construction of Rajakkamangalam Fishing Harbour. The Coastal Zone Management Plan of Tamil Nadu was approved by the first respondent, Ministry vide letter dated 27.09.1996. The project site for the construction of the Fishing Harbour falls in CRZ III and CRZ I (ii) i.e inter tidal zone. The map does not show the existence of sand dunes in the project site or in the adjacent site. The appellant engaged the Department of Ocean Engineering, Indian Institute of Technology (IIT), Madras and got prepared a Detailed Project Report (DPR). The DPR shows that the project site has a formation of varied topography sloping towards the beach having an elevation greater than 3 m and has a green cover formed with thorny plants, Casuarinas and other vegetations and the beach stretch and the foreshore is sandy. The IIT did not indicate the presence of sand dunes in the project site. The feasibility report was prepared by 'ENSYSCON ' one of the accredited

agencies and as per their report, the project site is a beach poromboke land with thorny bushes and Casuarinas. Further, it was indicated that there is no environmental issue.

15. In the meeting held on 18.05.2010, the District Coastal Zone Management Authority (DCZMA) resolved to forward the proposal to the first respondent, State Coastal Zone Management Authority (SCZMA) to enable the appellant to obtain CRZ Clearance for the project from the Government. As per the CRZ Notification 1991 and 2011, the appellant should furnish High Tidal Line demarcation map from an authorized agency approved by the Ministry of Environment and Forests, Government of India and the appellant furnished the High Tide Line demarcation map obtained from the Institute of Remote Sensing (IRS), Anna University. It also does not indicate the presence of sand dunes in the project site. The above details were placed before the 59th Meeting of the Tamil Nadu State Coastal Zone management Authority

held on 28.05.2010. The Authority resolved to recommend the proposal to the Ministry of Environment and Forests, Government of India. Accordingly, the proposal was sent to the Ministry for issuance of CRZ Clearance under CRZ Notification 1991. The Ministry issued CRZ Clearance.

16. To furnish the factual report to the Tribunal, a Sub-Committee inspected the project site on 22.11.2013 and 23.11.2013 and furnished a report. As per the said report, there is no violation of conditions of CRZ Clearance granted to the appellant and the presence of sand dunes in the project site is also not indicated. So also, the presence of turtle nestling area was not mentioned in the report. It is therefore, contended that there is no justification in finding that there are sand dunes in the project area and quashing the CRZ Clearance granted to the appellant.

17. The 5th respondent filed a reply contending that the appeal is not maintainable and the appeal should have been filed under Section 15 of the Environment (Protection) Act 1986. Writ petition (MD) No.2206 of 2009 filed before the Madurai Bench of Madras High Court was amended to challenge the CRZ Clearance. It was transferred to the Tribunal and numbered as Application No.4 of 2014. The grounds stated for quashing the clearance granted to the appellant under CRZ Notification, vindicates all the contentions of the respondent raised in the appeal.

18. It is further contended that under Clause 3 (xiii) of the CRZ Notification, 2011, dressing or altering the sand dunes, hills, natural features including landscape changes for beautification, recreation and other such purposes are prohibited. Clause 7 (i) (A) (c) of the Notification mentions sand dunes and Clause 7 (i) (A) (g) mentions turtle nesting grounds and these areas are classified as CRZ I (Ecologically

sensitive). The CRZ Notification 1991 also classified sand dunes as CRZ I and altering sand dunes was a prohibited activity under Clause 2 (XII) of the CRZ Notification 1991. The establishment and construction of a fishing harbour is not a permitted activity.

19. The appellant secured the clearance by suppressing the existence of sand dunes in the project site. So also, the presence of turtle nestling area was also suppressed. The existence of sand dunes and turtle nestling in the area, are visually ascertained and also evidenced as the area is classified as CRZ I by CZMP in Sl.No.8 of sheet 30 of CZMP. Reply given by the Tahsildar to the application submitted under Right to Information Act, also establishes the presence of sand dunes in that area. Though the District Forest Officer, Kanyakumari Division by letter dated 26.02.2013 stated that there were no sand dunes in the area, the same officer in the RTI reply dated nil/05/2013 stated that no details about

the morphology of the coast was available in their office. It is therefore, clear that no credence is attached to the report of the Forest Officer stating that there are no sand dunes in that area.

20. In the book "Indian Ocean Tsunami" in Chapter 29 authored by Shri N.Chandrasekar and Shri R.Ramesh, it is stated that the height of the dune rose upto 2 to 3 meters near Periakadu, Rajakkamangalam and Chothavillai and migration of dunes is also noticed between these regions. The DPR submitted by the Project Proponent refers to the dune vegetation. The area is also a turtle nestling area. The Forest Department, in fact, set up a hatchery at Rajakkamangalam beach. Representatives of the appellant were present during the inspection, even Mr.Albin, the Director of the appellant was present at the site. Having been present at the time of inspection, the appellant cannot be heard to say that he did not get notice prior to the inspection by the Ministry. The first

respondent, the Ministry had heard all the parties and considered the written response and thereafter passed the impugned order. In fact, the Ministry obtained a report from the National Centre for Sustainable Coastal Management (NCSCM), Chennai, an authorized agency to demarcate HTL and LTL and prepare a Coastal Zone Management Plan. In fact, when clarification is needed, it is for the NCSCM to verify based on latest satellite imagery ground truthing. The Ministry performed its functions as a regulator as mandated by law. The appellant did not raise any issue about the violation of principles of natural justice before the Ministry seeking time to respond or object to the proceedings. The appeal does not contain any scientific averments seeking to dispute the report of MoEF and the NCSCM. In the absence of any contrary assertion, the determination by the expert cannot be called into question by the appellant. The appellant suppressed essential facts required for granting clearance under CRZ Notification. That suppression amounts

to fraud, which vitiates even a decree or order obtained by playing fraud as held by the Supreme Court in various decisions. There is no merit in the appeal.

21. Respondent No.6, the Chairman of Panniyoor Regional Citizen Welfare Trust filed a reply reiterating the contentions raised by the respondent No.5 and asserting that the project site falls under CRZ I A as sand dunes and turtle nestling grounds are present. The area is classified as C RZ I by CZMP for the District as seen from CZMP Sheet 30, Sl.No.8. The reply dated 08.04.2009 to the RTI application from the Director, Town and Country Planning also shows that the project area is falling in CRZ I. There is unquestionable finding about the presence of sand dunes at the project site in the site inspection report conducted on 17.01.2015 as well as the report of NCSCM, Chennai. The reply of Tahsildar dated 15.07.2013 on an application filed under RTI Act, also states that sand dunes are present at the said coast. The book

“Indian Ocean Tsunami” authored by Shri N.Chandrasekar and Shri. R.Ramesh clearly states that the height of dune rose upto 2 to 3 meter near Perakadu, Rajakkamangalam and Chothavilai and migration of dunes is also noticed between these regions. The DPR of the Project also refers to dune vegetation. The UN supported “Policy brief: Sand Dunes” clearly records the unique function played by sand dunes and the environmental importance of it. The report prepared by the Committee headed by Dr. M.S.Swaminathan to review the CRZ Notification, 1991, also reiterates the importance of protecting sand dunes and turtle nestling area. It is contended that the reports on the turtle hatchery in the area shows the even has the District Forest Officer in the picture posing at the hatchery and a turtle next. The report of the MoEF also recorded the existence of turtle nestling in the area. It is thus, clear that the project area falls under CRZ I A under CRZ Notification 2011 and CRZ Clearance, obtained by the appellant suppressing these facts, is reportedly cancelled by

the Ministry and there is no reason to interfere with the same.

22. The appellant had filed rejoinder to the reply filed by the respective respondents controverting the contents. It is not necessary to state in detail the contents of the rejoinder. It is suffice to say that the contentions of the respondents were controverted.

23. Learned counsel appearing for the appellant and the respective respondents were heard. The following points arise for consideration:

1. Whether sand dunes are present in the project site? If so, whether non disclosure of that fact in the Proforma filed by the appellant for Clearance under CRZ Notification, would amount to suppression of material fact warranting cancellation of the Clearance granted?

2. Whether turtle nestling grounds exist within the project area and if so, whether the CRZ Clearance obtained by the appellant is vitiated?

3. Whether the impugned order is vitiated due to violation of principles of natural justice and whether the order of cancellation of the Clearance granted under CRZ Notification 2011 warrants interference.

Point Nos.1 to 3:

24. Sand dune is defined in the New Encyclopaedia Britannica (Vol.10) as follows:

“Sand dune, hill, mound, or ridge of loose material (not always sand) are formed by wind action. The existence of dunes is a direct function of the ability of wind to transport unconsolidated material. They are commonly associated with desert regions where wind-blown sand occupies extensive areas. It has been estimated, for example, that sand deposits in the Sahara Desert cover about 2,700,000 sq. Miles (70,00,000 sq.km) In the recent geological past desert areas may have been even larger during dry periods in the Pleistocene glaciations. At that time great areas of loess (Wind blown silt) were deposited across North America, Europe and Asia. Dunes are also associated with coasts where beach sands may be reworked by the wind.”

25. In physical geography, a coastal sand dune is a hill of sand built by wind action (aeolian process). Dunes are

subject to different forms and sizes based on their interaction with wind. Most kinds of sand dunes are longer on the windward side where the sand is pushed up the dune and have a shorter 'slip face' in the lee of the wind. Formation of sand dunes is through sand accretion. Sand that is brought in by the winds gets trapped by the shrubs, creepers, trees and other obstacles that are found on the coast. This accumulated sand forms, mounds of sand, that keep growing over time to form large dunes.

26. The Hon'ble Supreme Court in **Goa Foundation Vs Diksha Holdings Pvt Ltd., and others (2001) 2 Supreme Court Cases 97)** had occasion to consider the sand dunes and noted that sand dunes normally get transported away from the site of origin by wind and water, before being deposited at a particular place and recorded as follows:

"The geomorphic characteristics of sand dunes can be best appreciated upon assessment of two basic

elements, namely, sand and the wind and it is an interaction of these two elements which bring about the sand dunes. It is interesting to note that sand dunes are invariably built by particles of various forms and shapes of sand, sized up by waves and carried by the wind. Clay particles usually do not come along with sand particles. The growth of sand, however is totally dependent upon the direction and velocity of the wind. By reason wherefor sand dune which cannot be attributed to be ancient has been noticed to have another redeeming feature of being movable along with time, tide and the wind.”

27. Learned single Judge of the Hon’ble High Court of Bombay in Goa Foundation Vs Goa State Coastal Zone Management Authority (2001 (4) Bombay CR 226 dealt upon the importance of sand dunes as sand dunes play a key role in protection of hinterland and recorded as follows:

“Sand dunes do play a key role in protection of the hinterland, in as much as the sand dunes as sentinel against any destructive cyclones, rising water level of the sea due to global increase in temperature. Sand dunes also play an important role in protecting the agricultural and the potable water supply of the hinterland coming from springs and wells. Sand dunes are thus purely nature’s gift to the coastal regions. Their protection is, therefore, absolutely necessary and they are rightly placed in CRZ I category.”

“ The geomorphic characteristics of sand dunes can be best appreciated upon assessment of two basic elements, namely, sand and the wind and it is an interaction of these two elements which bring about the sand dunes. It is interesting to note that sand dunes are invariably built by particles of various forms and shapes of sand, sized up by waves and carried by the wind. Clay particles usually do not come along with sand particles. The growth of sand, however, is totally dependent upon the direction and velocity of the wind. By reason wherefor sand dune which cannot be attributed to be ancient has been noticed to have another redeeming feature of being moveable along with time, tide and the wind.”

28. The Hon'ble Supreme Court in Goa Foundation case has also stressed this aspect as follows:

“ Sand dunes, admittedly, if otherwise ancient in nature as noticed above, sometimes have coconut tree grown on the dunes by reason wherefor the dunes, as a matter of fact, act as a “second line of defence against the fury of any cyclonic onslaught”.

29. In the Book The Indian Ocean Tsunami edited by Tad S.Murthy, Department of Civil Engineering, University of

Ottawa, Canda, U.Aswathanarayana, Mahadevan International Centre for Water Resources Management , Hyderabad and N.Nirupama, Atkinson School of Administrative Studies, York University, Toronto, Canada, Chapter 29 deals with the paper "Tsunami Damage to the South Eastern Coast of India" by N.Chandrasekar, School of Technology, Manonmaniam Sundaranar University, Tirunelveli and R.Ramesh, Planetary Geosciences Division, Physical Research Lab, Navrangpura , Ahmedabad. In 29.2 - on Geomorphology of the Kanyakumari Coast, it is recorded that along with shoreline between Colachel and Kanyakumari, there are number of rocky cliffs projecting into the Arabian Sea and forming as headlands. In between the headlands, wide beaches are noticed with high concentration of black sands. Between Kanyakumari and Rajakkamangalam, linear calcareous terraces covered aeolian sands with an enrichment of heavy minerals, are observed. The sandy beaches are built by the development of foredune belt as well as high sand

dunes. The sand dunes are fine in nature and well rounded with broken molluscan shells. Nature with numerous intertidal mudflats and lacustrine ponds are present along the study area. It is recorded that sand dunes are rich amount of loose sand formed by aeolian activity. The coastal dunes are noticed in the area of Chothavilai, Periakadu, Pozhikarai, Rajakkamangalam and Colachel. A large parabolic dune along with dune complex is observed in Chothavilai beach. It has a length of 5 km and the width ranges from 2 to 5 km. The height of the dune rose upto 2-3 m near Periakadu, Rajakkamangalam and Chothavilai. Migration of dune is also noticed between these regions.

30. In "Policy Brief: Sand Dunes" by Naveen Namboothri, Devi Subramaniam, Aarthi Sridhar etc. the importance of the sand dunes has been stressed upon as follows:

" After the December 2004, tsunami that hit the southeast coast of India, there has been

recognition among the coastal communities living adjacent to coastal sand dunes about the value of sand dunes in not only protecting the hinterland and coastal hamlets, but also their role in preventing saltwater intrusion as a result of inundation by large waves. There is also better recognition of their cultural, social and ecological significance. Post-tsunami community initiated attempts to conserve and revive sand dune ecosystems in some parts of Tamil Nadu is in itself a good indicator of the fact that communities have recognised the value of sand dunes. In spite of all this, sand dunes have not enjoyed the kind of attention or popularity that is given to other coastal ecosystems like mangroves and coral reefs. In fact, both funds and attention have been focussed on bioshields for coastal protection, which are in fact controversial from both ecological and community perspectives. General neglect of the coastal sand dune ecosystems by the scientific community has led to a serious overnight of this critical ecosystem of the coast. There is a major dearth of information on coastal sand dunes available/accessible by the community, institutions and managers and decision makers."

31. It is also stated therein that the dunes are occupied by a highly adapted group of plants and the animals specially suited to life in such harsh conditions. Coastal sand dunes are also vital in maintaining the ground water level of coastal

areas, which is vital in sustaining not only the flora and fauna, but also form an important source of freshwater for coastal populations. Dunes are known to prevent intrusion of saltwater into the fresh water aquifers of coastal areas. Very often, extensive sand dune systems may have inter-dunal swales (Fresh water bodies) which are low elevation areas located between dunes. Many dune plant species have ethnobotanical importance. A few dune plant species are used for fish aggregation in traditional fishing. As geomorphic features, sand dunes act as physical barriers and protect the hinterland from the forces of the ocean, including wave run up due to storm surges. Wide beaches and high dunes act as efficient dissipaters of wave energy offering protection to inland property. They also protect coastal cash crops, acting as barriers, warding off the salt laden wind from the sea. Sand dunes have long been known by scientists and resource managers to be nature's own means of protecting the shores. Foreshore sand dunes are important coastal protective

formations. They hinder the movement of storm waves and tides into the land area behind the beach. Dunes are considered as the first line of defence against erosion. They further serve as stockpiles to feed the beach and provide protection more effectively and at a lower cost than building a seawall. The undisturbed system of dunes acts as a flexible coastal barrier against sea erosion. The system may retreat under wave attack when sand is lost to form off-shore bars, but may advance during calm weather as the coastal vegetation traps windblown sand that has been returned by wave action from the off-shore bars to the beach.

32. The appellant submitted the proposal for Clearance under CRZ Notification 1991. Admittedly, there is no mention that there are any sand dunes in the project area, for which clearance was sought. The proposal was submitted before the supersession of CRZ Notification 1991 by CRZ Notification 2011. In fact, Tamil Nadu Coastal Zone Management Authority

(TNCZMA) forwarded the proposal to the Ministry of Environment and Forests and Climate Change (MoEF & CC) before the issuance of Clearance under CRZ Notification 2011. But before the clearance was issued, CRZ Notification 1991 was superseded by CRZ Notification 2011. Therefore, the clearance could have been granted only under CRZ Notification 2011.

33. The area falling in CRZ I (ii) of CRZ notification 1991 and the area falling in CRZ I B of CRZ Notification 2011 is the same. viz. the area between Low Tide Line and High Tide Line. The difference is in the description of the area falling in CRZ I (i) of 1991 CRZ Notification and CRZ I A of CRZ Notification 2011. While the ecologically sensitive areas falling under CRZ I (i) of CRZ Notification 1991, the areas falling in CRZ I A of CRZ Notification 2011 are more specific. They read as follows:

CRZ I (i) of CRZ Notification 1991:

“(i) Areas that are ecologically sensitive and important, such as, national parks/marine parks, sanctuaries, reserved forests, wildlife habitats, mangroves, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historical/heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government or the concerned authorities at the State/Union Territory level from time to time.”

CRZ I A of CRZ Notification 2011:

“A. The areas that are ecologically sensitive and the geomorphological features which play a role in the maintaining the integrity of the coast:

- a. Mangroves, in case mangrove area is more than 1000 sq. mts a buffer of 50 meters along the mangroves shall be provided;
- b. Corals and coral reefs and associated biodiversity;
- c. Sand Dunes;
- d. Mudflats which are biologically active;
- e. National parks, marine parks, sanctuaries, Reserve forests, wildlife habitats and other protected areas under the provisions of Wild Life

(Protection) Act, 1972 (53 of 1972), the Forrest (Conservation) Act, 1980 (69 of 1980) or Environment (Protection) Act, 1986 (29 of 1986); including Biosphere Reserves;

- f. Salt Marshes;
- g. Turtle nestling grounds;
- h. Horse shoe crabs habitats;
- i. Sea grass beds;
- j. Nestling grounds of birds;
- k. Areas or structures of archaeological importance and heritage sites.”

34. The appellant sought to justify the non mentioning of the sand dunes in the proposal submitted for CRZ clearance on the ground that sand dunes are not specifically included in CRZ I (i) of 1991 Notification, though it is specifically included in CRZ I A of C RZ Notification 2011. But as rightly pointed out by the learned counsel appearing for the respondents, the CRZ Notification 1991 under Rule 2 (xiii) provides that dressing or altering of sand dunes, hills, natural features including landscape changes for beautification, recreational and other such purpose except as permissible under the Notification” are prohibited activities.

35. Therefore, even if sand dunes were not specifically included in CRZ I (i) of 1991 Notification, when the appellant proposed to submit the proposal for CRZ Clearance, if there is a presence of sand dunes in the project area, the appellant should have shown the presence of sand dunes in the proposal as even dressing or altering of sand dunes except as permitted under the Notification is a prohibited activity.

36. The arguments of the learned counsel appearing for the appellant is that no sand dunes exist in the project site and this has been specifically recorded in the site inspection report made by the Members of the Sub-Committee. The appellant relied on the statement of District Forest Officer (DFO), Nagercoil to buttress the argument that no sand dunes exist in the project site.

37. Learned counsel appearing for the respondents would vehemently argued that the DFO is not the authority to

determine the existence or otherwise of the sand dunes and therefore, the statement of DFO, Nagercoil has no value to determine the existence of sand dunes in the project area.

38. It was pointed out by the learned counsel appearing for Respondent No.5 that in view of the statement of DFO relied on by the appellant, an application was filed under the Right to Information Act (RTI) on 19.04.2013 about the morphology of the coast at Rajakkamangalm and in the reply dated 20.05.2013, the DFO categorically recorded that "no details about the morphology of the coast are available in this office". It is therefore, argued that in any event no reliance can be placed on the earlier statement of DFO regarding the absence of sand dunes in the project site as the area is not a notified forest and not under the control of Forest Department. Learned counsel appearing for respondent No.5 pointed out that respondent No.6, Pannaiyoor Region Citizen's Welfare Trust filed an application under RTI before the Tahsildar,

Agastheeswaram. Copy of the said application produced by the respondent, proves that information on the following two questions were sought:

- i. Please let me know whether there is sand dunes in Rajakkamangalam Coast of Kanyakumari District and
2. What is the height and length of the sand dunes found in the above coast.

39. To this application dated 28.03.2013, reply was furnished by the Tahsildar on 15.07.2013. The following are the particulars provided by the Tahsildar;

- "1. There is sand dunes in Rajakkamangalam Coast of Kanyakumari.
2. The height and length particulars are not available in this office."

40. Therefore, the said reply furnished to the application filed under RTI Act by respondent No.6 regarding the existence of sand dunes establish that sand dunes are present in the Rajakkamangalam Coast. The reply furnished

by the DFO to the application filed under RTI Act establishes that no records are maintained in the office of the District Forest Office, Kanyakumari District, Nagercoil. As there are no records on that aspect in the office of the DFO, who is not the authority to determine the existence of sand dunes in the project area, , no reliance could be placed on the statement of DFO that no sand dunes exist in Rajakkamangalam coast.

41. Mr.Sahasranaman, the learned counsel appearing for the appellant argued that the Detailed Project Report (DPR) for the project was prepared by IIT, Madras after site inspection and the DPR also establishes that no sand dunes are in existence in the project site. True. DPR does not disclose the existence of sand dunes in the project site. But, as rightly pointed out by the learned counsel appearing for the respondents, there are materials in the DPR, which clearly indicate the existence of sand dunes as follows:

“The sandy beach exposed to open sea with elevated backbone and done vegetation”.

Due vegetation stated therein is nothing else than the sand dune vegetation. It is also stated in the DPR that the “project site has a formation of varied topography sloping towards the beach having an elevation greater than 3 m and has been acting as a protective barrier for the inhabitants on the landward side from further inundation during severe wave climate during the cyclones.” DPR also establishes presence of ‘sand heap’ in the project site. Even in the appeal memorandum, the existence of sand heap is admitted by the appellant. In the appeal memorandum under ground No.(iii) the appellant has pleaded “ it is submitted that the appellant had been agitating from the very beginning that there happens to be sand heaps with plantation found towards the landward side. The said heap of sand is stated to be settled and without any characteristics of sand dunes that are found in

costs. The same had been even recorded in the site inspection of the said subcommittee of the Government of Tamil Nadu.”

42. Reliance was placed by the appellant on the report prepared by the Sub-Committee appointed by the State of Tamil Nadu. The Government of India, Ministry of Environment and Forests, New Delhi in the Gazette Notification No.S.O (E) 91 dated 18.01.2012 constituted the Tamil Nadu State Coastal Zone Management Authority (TNSCZMA) under the Chairmanship of Secretary to the Government, Environment and Forests Department consisting of 10 members and a Member Secretary, with powers to implement and enforce the CRZ Notification 2011, for protecting and improving the quality of the Coastal environment and preventing, abating and controlling environmental pollution in the coastal areas of the State of Tamil Nadu. Pursuant to the constitution of TNSCZMA, a sub-committee was constituted by the Government of Tamil Nadu under G O (D) No.288,

Environment and Forests (EC.3) Department dated 31.07.2012.

43. The 66th meeting of the TNSCZMA held on 03.04.2012 resolved to form a Sub-Committee for the purposes as shown in the Government Order as follows:

“(a) As several Power Plants are likely to be established on the coast of Nagapattinam district, the Authority resolved to conduct a study on carrying capacity of Nagapattinam coast with reference to the said activities so as to take corrective measures and proper decisions, in future, on similar projects. Due to the presence of Reserve Forests/Bird Sanctuaries, Tidal Flats, Turtle Nestling grounds etc. in and around the Coast of Nagapattinam district, the authority also resolved to make a comprehensive study on the impact of Coastal and Marine environments on the setting up of several Power Plants and on the erection of foreshore facilities such as captive ports / jetties, desalination plants etc.

b) to make periodical inspections to review and check the adherence of conditions imposed in the Environmental clearances during Construction Phase/ Post Construction Phase and also during Operational Phase, duly by the project proponents.”
(underline supplied)

44. The Government Order further shows that the experts from the specialised institutions will also be included in the said Sub-Committee to ensure that studying and inspections are unbiased and the Sub-Committee will submit their reports based on their findings at periodical intervals to TNSCZMA, for taking further action. The Director of Environment has proposed the names of the Members of the Committee and after careful consideration, the Government constituted the Sub-Committee. The Government Order shows that the **Sub-Committee was appointed to make periodical inspections to review and check the adherence of conditions imposed in the Environmental Clearances and to make a comprehensive study on the impact of Coastal and Marine Environments on the setting up of several Power Plants in Nagapattinam District** comprising of the following members.

“Dr.M.Ramalingam, Director, Institute of Remote Sensing, Anna University, Chennai -600 025.

Dr.K.Thanasekaran, Chief Scientist, Centre for Environment Studies, Anna University, Chennai – 600 025.

Thiru K.Kalidasan, Founder, OSAI Environmental Organisation, 70-A, Raju Naidu Street, Sivanantha Colony, Coimbatore – 641 012.

Dr.T.Balasubramanian, Director, CAS in Marine Biology, Annamalai University, Parangipettai -608 502.

Dr.J.K.Patterson Edward, Senior Professor and Director, Suganthi Devadason Marine Research Institute, Tuticorin.

The District Environmental Engineer of the concerned coastal Districts.

The Assistant Conservator of Forests, Green Squad of Department of Environment will act as the Co-ordinator for the Sub-Committee and he will arrange for the inspections and accompany the sub-Committee during inspections.”

45. It is therefore, absolutely clear that the Sub-Committee was formed under the Government Order only to make periodical inspections to review and check the adherence of conditions imposed in the Environmental

Clearances and to make a comprehensive study on the impact of Coastal and Marine Environment on the setting up of the Power Plants in Nagapattinam District. The Government Order does not empower or authorise the sub-Committee to make a study with respect to the coast of Kanyakumari District or Rajakkamangalm Coastal area. No other authority empowering the committee to inspect or file a report on Rajakkamangalam Coast was produced. The report relied on by the appellant shows that it is an inspection report of the Sub-Committee, "constituted by "G.O.(D).No.288, Environment and Forests (EC.3) Department dated 31.07.2012" and it was on the presence of sand dunes and turtle nestling sites in the Rajakkamangalam coast and compliance of the CRZ Clearance by M/s.Rajakkamanglam Thurai Fishing Harbour Pvt. Ltd. Neither the appellant nor the respondent.No.2, the Secretary, Ministry of Environment and Forests, State of Tamil Nadu or the Member Secretary/Director of Environment produced any order or authorisation

empowering the Sub-Committee appointed for an entirely different purpose to inspect Rajakkamangalam coast or to submit a report on sand dunes and turtle nestling sites. As rightly pointed out by the learned counsel appearing for respondents 1 and 5, out of 7 members in the Sub Committee constituted under G.O.(D) 288 of 2012, only 4 members conducted the inspection at Rajakkamangalam coast on 22.11.2013 and 23.11.2013. Dr.M.Ramalingam, Director, Institute of Remote Sensing, Anna University, Chennai, Dr.K.Thanasekaran, Chief Scientist, Centre for Environmental Studies, Anna University, Chennai and Dr.T.Balasubramanian, Director, CAS in Marine Biologoy, Annamalai University, Parangipetti were not parties to the inspection conducted on 22.11.2013 and 23.11.201. It is not known how the Sub-Committee conducted the inspection with only some of the members. The relevant portion of the report Reads:

“It was observed that there is no characteristic sand dune/s present in the coast in general and in and

around the project site in particular. A sand heap covering a small area with a height of about 13 m (Approx 40 feet) from MSL (Mean Sea Level) and 7 m (Approx 22 feet) from the project activity area is seen near the project site. The sand heap is seen covering a distance of about 40 M. Out of the 40 m distance covered, the project site includes a part (covering about 15 m distance) of this sand heap near the northern side of the back water. This sand heap is not a characteristic sand dune as the general topography of the coast is gently slopes towards the sea with higher elevation."

46. It is stated in the report that in general, the characteristics of the coastal sand dunes are, "large quantities of sand, persistent wind capable of moving the sand and suitable locations for sand to accumulate". It is further reported that the said characteristics are not seen in Rajakkamangalam coast. The Committee has also relied on the letter of the District Forest Officer, Kanyakumari dated 26.02.2013 (the letter discussed earlier) stating that there is no Mangrove Forest and Sand dunes available in Rajakkamangalam Coast.

47. In the reply given by the Institute of Remote Sensing, Anna University, Chennai to an application under RTI Act, it has been stated that there are no sand dunes available in the coastal areas of Rajakkamangalam Panchayat, Agastheeswaram Taluk, Kanyakumari District, as per the records available with the Institute. At the same time, the report specifically mentions about the existence of sand heap. It reads:

“The sand heap near the project site in Rajakkamangalam coast is located at a distance of about 75-100 m from the HTL and at a height of about 13 m from MSL (Mean Sea Level) and 7 m from the project activity area.”

It is on this basis, the Committee reported that no sand dunes exist in the project site.

48. The respondent No.1 specifically pleaded in the reply that in Geomorphology, there is no such terminology as “sand heap” and the sand heap referred to, in fact, is the sand

dunes. The respondent Nos. 2 and 3 also pointed out that the appellant has not produced any material to explain the term "sand heap", if it is not sand dunes. Added to this, in the DPR submitted by the appellant for CRZ Clearance, the existence of dune vegetation is admitted, though it is not stated that the sand dunes are in fact, sand dunes.

49. Based on a complaint received by the Ministry, which was forwarded to the Secretary of the 1st respondent, respondent No.1 in turn directed an inspection to be conducted by Additional PCCF and Scientist - F, Regional Office of Ministry of Environment, Forest and Climate Change, Chennai. They inspected the site on 17.01.2015 and reported that a number of sand dunes were noticed along the sea coast in the project site. The sand dunes at some places are high and at some places low. In major portion of the sand dunes, Casuarina plantations have been raised in the past. All the Casuarina trees in the project site have reportedly been felled

about 4 years back. But coppice shoots have come up in the felled areas. Small portion of sand dunes are covered with Prosopis species, some Shrubs and herbs. Prima facie getting satisfied that there exists sand dunes in the project site, respondent No1 issued a show cause notice dated 11.02.2015 to the appellant to explain why the presence of sand dunes was not reported when applied for CRZ Clearance. After the appellant submitted a preliminary reply and also a final reply and on hearing the appellant, the impugned order of cancellation of CRZ Clearance was passed. Before passing the impugned order, respondent No.1 called for a report from the National Centre for Sustainable Coastal Management, (NCSCM) Chennai on the disputed presence of sand dunes in the project site. The report of the NCSCM shows that aerial photographs and Cartosat Satellite image was used to identify sand dunes in the project site. The digitized cadastral map of the project area was made available by the Department of Environment, State of Tamil Nadu. The cadastral map was

superimposed on the sand dunes data extracted from Satellite image of 1:4000 scale. Based on the study, it is reported that Survey Plots 1403, 1404, 1405 do not contain any sand dunes and sand dunes are present in part of S.No.1406. It is also reported that sand dunes are present between the sea and the project area in Survey plot Nos.1403, 1404, 1405 and 1406 part. The conclusions of NCSCM reads:

“Sand dunes which are CRZ I A are present adjacent to project site and are partly present in S.No.1406. The sand dunes lie between the sea and the project area in Survey plot Nos.1403, 1404, 1405 and 1406 (part). Sand dunes which are CRZ I A are not present in S.Nos.1403, 1404 and 1405”.

50. The arguments of the learned counsel appearing for the appellant is that the said report of the NCSCM should not have been relied upon as that report was procured after the appellant submitted the explanation and was heard by the respondent No.1 and the copy of the report was not furnished. The reply filed by the respondent No.1 also shows

that the report was called for after hearing the appellant and before passing the impugned order, no opportunity was granted to the appellant to submit anything on the report. Therefore, there is substance in the submission of the learned counsel appearing for the appellant that the said report, which was obtained by the Ministry behind the back of the appellant, should not have been used against the appellant to pass the impugned order.

51. But de hors the said report, there are sufficient materials to conclude that sand dunes are present in the project site. Chapter 29 of *The Indian Oceans Tsunami* edited by Tad S. Murthy, which was published in 2007, contained the paper on *Tsunami Damage to the South Eastern Coast of India* authored by Shri N.Chandrasekar and Shri R.Ramesh. It discusses the geomorphology of the south eastern coast with reference to the different geomorphological units. It shows that coastal dunes are noticed in the area of Chothavilai,

Pepriakadu, Pozhikarai, Rajakkamangalam and Colachel. Therefore, existence of sand dunes in Rajakkamangalam coast, as against the statement of the District Forest Officer, relied on by the appellant. Though the learned counsel appearing for the appellant argued that the inspection report of Dr.C.Kaliyaperumal Scientist -F, Environment and Forests and Climate Change , Chennai based on which the show cause notice was issued, cannot be relied on as there was no previous notice, it is not disputed that the representative of the project proponent was present at the time of inspection. Therefore, it cannot be said that it is a report obtained behind the back of the appellant or an exparte report. The report shows that during the inspection, a number of sand dunes were noticed along the coast in the project site. The sand dunes are at higher level at some places and low at some other places. It is thus clear that the sand heaps referred to in the DPR and admitted by the appellant, where Casuarina vegetation was existing, are actually sand dunes. That sand

dunes are wrongly described as sand heaps. Therefore, on the materials available, we have no hesitation to hold that the sand heaps and dune vegetation referred to in the DPR submitted by the appellant for the CRZ clearance is, in fact, the sand dunes existing in the project area.

52. The fact that existence of sand dunes is not mentioned in the Proforma submitted by the appellant for CRZ Clearance is admitted. In the explanation given to the show cause notice and the rejoinder submitted by the appellant to the reply of respondent No.1, the omission was sought to be justified by stating that sand dunes are not specifically included in CRZ I (i) of CRZ Notification 1991 and therefore, the non mentioning is not a material suppression of fact.

53. True, the sand dunes as figured in CRZ I A of CRZ Notification 2011, is not there in CRZ Notification 1991. It is also true that the Proforma was submitted and the TNCZMA

recommended the proposal for CRZ clearance earlier to CRZ Notification 2011 was issued. But as stated earlier, CRZ Notification 1991 specifically prohibits any dressing or altering of sand dunes. Therefore, omission to mention the existence of sand dunes is material omission and cannot be slightly viewed. Moreover, CRZ Notification 2011 superseding CRZ Notification 1991, came into force on 06.01.2011, before CRZ clearance was granted by the respondent No.1. Therefore, in law respondent No.1, could have granted CRZ Clearance for the project only under the CRZ Notification 2011. Therefore when CRZ Notification 2011 specifically provide under Para 7 (1) (c) that the areas that are ecologically sensitive and the geomorphological features which play a role in the maintaining of the integrity of the coast, including the sand dunes, would fall under CRZ I A, the CRZ clearance for the project could not have been granted in violation of the provisions of CRZ Notification 2011. Para 8 of the CRZ Notification 2011 provides norms for regulation of activities

permissible under this notification. Under sub-para (1) of para 8 it is provided that the development or construction activities in different categories of CRZ shall be regulated by the concerned CZMA, in accordance with the norms provided therein. It provides that no new construction shall be permitted in CRZ I, except the following :

- "a. Projects relating to Department of Atomic Energy;
- b. Pipelines, conveying systems including transmission lines;
- c. Facilities that are essential for activities permissible under CRZ-I;
- d. Installation of weather radar for monitoring of cyclones movement and prediction by Indian Meteorological Department;
- e. Construction of trans harbour sea link and without affecting the tidal flow of water, between LTL and HTL.
- f. Development of green field airport already approved at only Navi Mumbai;"

It is therefore clear that the project is not a permissible activity under CRZ 1 A of CRZ Notification 2011.

54. The said prohibition is only in an area falling under CRZ I A, as under the sub para (ii) of para 8 , it is provided that

the area between LTL and HTL (CRZ I B) which are not ecologically sensitive, necessary safety measures will be incorporated while permitting the following projects:

- "a. Exploration and extraction of natural gas;
- b. Construction of dispensaries, schools, public rainshelter, community toilets, bridges, roads, jetties water supply, drainage, sewerage which are required for traditional inhabitants living within the biosphere reserves after obtaining approval from concerned CZMA.
- c. Necessary safety measure shall be incorporated while permitting such developmental activities in the area falling in the hazard zone;
- d. Salt harvesting by solar evaporation of seawater;
- e. Desalination plants;
- f. Storage of non-hazardous cargo such as edible oil, fertilizers and food grain within notified ports;
- g. Construction of trans harbour sea links, roads on stilts or pillars without affecting the tidal flow of water"

55. It is thus clear that if the project area falls in CRZ I A, the Ministry could not have granted CRZ Clearance. If that be so, existence of sand dunes in the project area which was suppressed in the proforma submitted by the appellant for clearance and terming them as sand heaps or dune vegetation, is material suppression. Therefore, we cannot agree with the

arguments of the learned counsel appearing for the appellant that the omission to mention the existence of sand dunes is not a ground to cancel the CRZ Clearance granted earlier. On the facts, we find that sand dunes exist in the project site and also between the project area and the sea and if the project is to be materialized, the sand dunes are definitely to be irreparably damaged, which cannot be permitted under CRZ Notification 2011.

56. The existence of turtle nestling area in the project site is also not specifically mentioned in the proforma submitted by the project proponent. On getting the complaint, respondent No.1 while directing inspection of the project site, also directed to consider the existence of turtle nestling also. The report shows that there exists turtle nestling area in the project site. The arguments of the learned counsel appearing for the appellant is that no reliance could be placed on that portion of the report as it is not based on no scientific data.

The report shows that existence of turtle breeding is found as follows:

“Enquires have been made regarding the laying of eggs by turtles and hatching. It is gathered that there have been some instances of egg laying by the turtles in the project site and a large number of cases are reported towards the north of the project site. Rajakkamangalam coastal area appears to be suitable for turtle breeding.”

The photographs annexed to the report shows recovery of turtle eggs by the Forest Staff in the project site on 13.01.2015. The learned counsel appearing for respondent No.5 argued that the photographs establish that the project site is a turtle breeding area.

57. The learned counsel appearing for the appellant argued that from the photographs, it is not clear from where exactly the turtle eggs were collected and based on the photographs, it cannot be found that there is turtle nestling area in the project site.

58. Learned counsel appearing for the respondent No.5 made available the Notification issued by the State of Tamil Nadu published in the Gazette on 27.10.2016. That notification was issued in respect of prohibition of fishing by mechanized fishing vessels, motorized country crafts and those using mechanized fishing techniques within a radius of 5 nautical miles around the potential nestling and breeding sites of sea turtles in the coastal area shown in the Tamil Nadu Marine Fishing Regulation Act, 1983, as potential nestling sites of Sea Turtle along the coast of Tamil Nad. There are 18 locations in Kanyakumari District where nestling sites of sea turtle was notified under the said Notification. It reads:

“District

Kanyakumari:

Location

1. Kellamanakudi
2. Pallam
3. Puthanthurai
4. Kesavan Puthanthurai
5. Pozhikarai
6. Periakadu

7. Rajakkamangalamthurai

8. Azhikkai
9. Kottilpadu
10. Kodimunai
11. Keezhmidalam
12. Melmidalam
13. Enaiyam
14. Enaiyamchinnathurai
15. Eraviputhanthurai
16. Vallalvilai
17. Marthanadamthurai
18. Neerodi."

59. In the light of the said Notification, it cannot be disputed that there is turtle nestling area in Rajakkamangalam, which supports the contention of the respondent No.1 that there is, turtle nestling sites in the project area. Hence, when it is a turtle nestling area, definitely, the area would come under CRZ I A of CRZ Notification 2011 under para 7 (1)(g). If that be so, this fact is an additional ground to support the cancellation of CRZ Clearance granted to the appellant. True, learned counsel appearing for the appellant has a case that the said notification is challenged before the Hon'ble High Court and therefore, no reliance can be placed on that.

Mr.Mohan, the learned senior counsel appearing for respondent No.5 submitted that the learned counsel is appointed as *Amicus Curiae* in the matter before the Hon'ble High Court and the Notification is challenged before the High Court, not on the existence or otherwise of turtle nestling area shown in the Notification, but only on the prohibition of fishing within 5 nautical miles as provided therein. Therefore, we cannot accept the submission of the appellant that since the Notification was challenged before the Hon'ble High Court, the Notification cannot be relied on to uphold the turtle nestling sites in existence in the project area. It is thus clear that there is turtle nestling sites in the project area and that too was also suppressed in the proforma submitted by the project proponent for CRZ clearance.

60. The authority and the power of the first respondent to cancel the CRZ clearance for suppression of material facts is not challenged before us. Though CRZ Notification 2011

does not contain an identical express provision as is the case with Environmental Impact Assessment Notification 2006 (EIA Notification 2006) to cancel the clearance granted for suppression of material facts, the Authority which grants the clearance has always the power to cancel the clearance when it is satisfied that the clearance would not have been granted, if the material facts suppressed were disclosed at the stage when the clearance was granted. As we have already found there exist sand dunes and turtle nestling site in the project area, the presence of either the sand dunes or the turtle nestling site, makes the area fall under CRZ 1 A of CRZ Notification 2011. If that be so, being a prohibited activity in the area falling under CRZ I A, no clearance could/would have been granted. Hence, respondent No.1 was justified in law to cancel the clearance granted to the appellant.

61. In the light of the above findings, we reject the case of the appellant that respondent No.1 was not justified in

cancelling the CRZ Clearance granted to the appellant by the impugned order. Though the learned counsel appearing for the appellant argued that as sand dunes are found to be in existence only in a part of S.No.1406 and not in existence in S.Nos.1403, 1404 and 1405, the impugned order be set aside and the CRZ clearance granted be upheld subject to the condition that no disturbance be caused to the sand dunes in existence in S.No.1406. When sand dunes are present not only in S.No.1406 part, but also in the area between the sea and S.Nos.1403,1404,1405 and 1406 part, there cannot exist a fishing Harbour, without causing irreparable damage to the sand dunes which lie between the project area and the sea. Therefore, though the learned counsel appearing for the appellant vehemently submitted that taking into consideration of the huge amount already spent by the project proponent for the project, the order of cancellation of CRZ clearance is to be interfered with, on the facts when it is clear that destruction would be caused to the very sand dunes in existence in CRZ I

A area, appellant cannot be permitted to proceed with the construction of the project in violation of the CRZ Notification 2011.

62. In view of the earlier finding, we find no merit in the appeal. The appeal is dismissed with no order as to costs.

Justice M.S.Nambiar
Judicial Member

P.S.Rao
Expert Member

NGT