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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 13336 OF 2025

Clean and Heritage Colaba
Residents Association (CHCRA) Petitioner

Vs.

The State of Maharashtra
& Ors. Respondents

**WITH
WRIT PETITION (L) NO. 14795 OF 2025**

Dr. Laura D'Souza & Ors. Petitioners

Vs.

The State of Maharashtra,
through the Principal Secretary
Department of Ports & Transport,
& Ors. Respondents

Mr. Aspi Chinoy, Senior Advocate with Mr. Prerak Choudhary, Mr. Prakash Choudhary, Ms. Anisha Balse, Ms. Trisha Ranka, Ms. Regina David, Mr. Sunil Shetty & Ms. Rucha Bhole for Petitioner in WPL/13336/2025

Mr. Sunip Sen, Senior Advocate with Mr. Abhijeet Desai, Ms. Soma Singh, Smt. Anita Castellino, Ms. Mohini A. Rehpade, Mr. Vijay Singh, Mr. Digvijay S. Kachare, Ms. Daksha Punghera, Mr. Abhishek Ingle & Mr. Karan Gajra, for Petitioner in WPL/14795/2025

Dr. Birendra Saraf, Advocate General with Mr. Jay Sanklecha, 'B' Panel Counsel & Mr. Vishal Thadani, Additional Government Pleader for the State - Respondent No. 1 & 6 in WPL/13336/2025

Dr. Birendra Saraf, Advocate General with Mr. Jay Sanklecha, 'B' Panel Counsel & Smt. Jyoti Chavan, Additional Government Pleader for the State - Respondent No. 1 & 6 in WPL/14795/2025

Dr. Birendra Saraf, Senior Advocate with Mr. Jay Sanklecha, Mr. Ishwar Nankani, Mr. Huzefa Khokhawala & Mr. Karan Parmar i/b Nankani & Associates for Respondent No. 2 in WPL/13336/2025 & WPL/ 14795/2025

Dr. Milind Sathe, Senior Advocate with Mr. Gaurav Shrivastava, Mr. Aditya Mhase i/b Ms. Jaya Bagwe, for MCZMA, Respondent No. 3 in WPL/13336/2025 & WPL/14795/2025

Dr. Milind Sathe, Senior Advocate with Ms. Oorja Dhond i/b Ms. Komal R. Punjabi, for MCGM, Respondent No. 5 in WPL/13336/2025

Mr. Umesh Shetty, Senior Advocate with Mr. Gopalkrishna Nayak i/b Flavia Legal, for Respondent No. 7 in WPL/13336/2025 and WPL/14795/2025

JUDGMENT RESERVED ON : JULY 1, 2025

**WITH
WRIT PETITION (L) NO. 15735 OF 2025**

Shabnam Minwalla & Ors.Petitioners

Vs.

The Maharashtra Maritime Board
& Ors.Respondents

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jai Chhabria, Ms. Smriti Singh, Mr. Pratkeek Pai, & Ms. Arunima Athavale i/b Keystone Partners, for Petitioner.

Dr. Birendra Saraf, Senior Advocate with Mr. Jay Sanklecha, Mr. Ishwar Nankani, Mr. Huzefa Khokhawala & Mr. Karan Parmar i/b. Nankani & Associates for respondent No. 1.

Dr. Birendra Saraf, Advocate General with Mr. Jai Sanklecha, 'B' Panel Counsel & Smt. Lavina Kriplani, AGP for State-Respondent No. 2, 3, 4 & 9.

Mr. Rui Rodrigues for respondent No. 5.

Dr. Milind Sathe, Senior Advocate with Mr. Gaurav Shrivastav, Mr. Aditya Mhase i/b Ms. Jaya Bagwe, for respondent No. 7-MCZMA.

Dr. Milind Sathe, Senior Advocate with Ms. Oorja Dhond i/b. Ms. Komal Punjabi for respondent No. 8 (BMC).

Mr. Omprakash Jha with Ms. Heenal Wadhwa i/b. The Law Point for respondent No. 10.

JUDGMENT RESERVED ON : JULY 11, 2025

**CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.**

JUDGMENT PRONOUNCED ON : JULY 15, 2025

JUDGMENT (PER : CHIEF JUSTICE)

INDEX

Sr. No.	Heading	Page Nos.
I	The Project	6-7
II	Challenge	7-8
III	Background Facts	
	(a) The first report	8-10
	(b) The second report	11-12
	(c) The third Report	12-13
	(d) The Approvals/Clearances	13-15
	SUBMISSIONS:	
IV	On behalf of the Petitioner in Writ Petition (L) No.13336 of 2025	15-20
V	On behalf of the Petitioners in Writ Petition (L) No./14795/2025	20-21
VI	On behalf of petitioners in Writ Petition (L) 15735/2025	21-23
VII	Submissions on behalf of the MCZMA, HCC and MCGM	23-29
VIII	Submissions on behalf of the MMB	30-35
IX	Rejoinder submissions	35-39
X	Analysis	
XI	RELEVANT STATUTORY PROVISIONS	
	(a) The Environment Protection Act, 1986	39-40

	(b)	The Environment (Protection) Rules, 1986	40-41
	(c)	Environment Impact Assessment Notification 2006	41-44
	(d)	Coastal Regulation Zone Notification 2019.	44-51
	(e)	Office Memorandum dated 29 th November 2022	52-54
XII		Issues	54-55
	(A)	First Issue	55-63
	(B)	Second Issue	64-71
	(C)	Third Issue	71-72
	(i)	Scope of Judicial Review	72-78
	(ii)	Principles of sustainable development and precautionary principles	78-79
	(a)	Non-consideration of alternative site of Ferry Wharf	80-87
	(b)	Challenge to the location of the project and non-consideration of principle of sustainable development and precautionary principle.	87-95
	(c)	Non-disclosure of Consulting Engineers' report and accurate information while seeking MCZMA clearance	95-100
	(d)	Amphitheatre	100-101
	(e)	Restaurant/Cafe	101
	(f)	Existing Jetties	101-102
	(D)	Fourth Issue – Validity of Heritage NOC	102-110
	(E)	Fifth Issue – Validity of Traffic NOC	110-111
XII		Conclusion	111-113

Rule. Rule is made returnable forthwith. By consent of learned counsel for the parties, heard finally.

2. These petitions are filed by Residents' Associations and its members in Colaba area voice apprehensions that construction of 'Passenger Jetty and Terminal Facilities' abutting Gateway of India at Radio Club by the State of Maharashtra and Mumbai Maritime Board (hereinafter referred to as the **MMB**) would cause excessive and needless harm to pristine environment. The petitioners, by these three petitions, seek to halt the project, *inter alia*; on the ground of preservation of nature and precautionary principle that guards it. The writ petitions were, therefore, heard analogously and are being decided by this common order.

(I) THE PROJECT:

3. The proposal for construction of "Passenger Jetty and Terminal Facilities" involves erection of a "Terminal Platform" area of 80 x 80 mtrs. providing for parking of 150 cars, VIP waiting area, a food court, cafe and ticket

counters/administrative areas (for the sake of brevity, hereinafter referred to as the **Project**). This terminal area has frontage of 250 ft. on the sea side pavement is to be at a height of 4.5 mtrs. from road level. The proposed construction also involves a tennis racquet shaped 'jetty' extending from the terminal for a further 570 mtrs. into the sea and a width of 203 mtrs. with 10 boarding platforms extending from the outer rim of the Jetty. The project indicates that inner rim of this jetty is not proposed to be used for any purpose. An open air amphitheatre is also proposed to be located on the Jetty. The built-up area in the sea on the stilts of piles is stated to be 25,116 sq.mtrs.

(II) CHALLENGE:

4. In these writ petitions, the petitioners seek to quash and set aside the order dated 2nd March 2023 passed by the Maharashtra Coastal Zone Management Authority (hereinafter referred to as the **MCZMA**) granting clearance to the project. The petitioners also seek to quash and aside the 'No Objection Certificate' dated 28th January 2025 issued by the Mumbai Traffic Police and 'No Objection Certificate'

dated 7th February 2025 issued by the Heritage Conservation Committee (hereinafter referred to as **HCC**) and Municipal Corporation of Greater Mumbai (hereinafter referred to as **MCGM**), to the project.

(III) BACKGROUND FACTS:

(a) The first report:

5. In September, 2000 the Mumbai Port Trust (hereinafter referred to as the **MPT**) had issued Terms of Reference to M/s. Howe India Pvt. Ltd. (hereinafter referred to as the **Consulting Engineers**) for determination of a site for Passenger Water Terminal (hereinafter referred to as the **PWT**) for ferries/launches transporting passengers across the harbor. The Terms of Reference required the Consulting Engineers to consider five sites for the proposed PWT viz. (i) Off Arthur Bunder Road (near radio club) (ii) South of Sassoon Dock (iii) Nariman Point (iv) Cuffe Parade and (v) Trombay. Under the Terms of Reference, the Consulting Engineers were required to comprehensively deal with; (i) the general requirements of feasibility (ii)

additional studies, required if any (iii) technical appraisal (iv) environmental appraisal and (v) financial & economic appraisal.

6. The Consulting Engineers submitted an interim report in September 2000 in which sites at (i) Off Arthur Bunder Road (near radio club) (ii) South of Sassoon Dock (iii) Nariman Point (iv) Cuffe Parade and (v) Trombay were not found suitable and feasible. The Consulting Engineers recommended the location of the proposed PWT at Ferry Wharf as suitable, *inter alia*; on the following grounds:

- (i) there were existing wharf berths available,
- (ii) that the PWT at Ferry Wharf would be able to operate throughout the year in all weather conditions, without the need for a break water,
- (iii) that a back-up area with terminal building already existed at Ferry Wharf,
- (iv) that there would be no environmental impact on the immediate surroundings as the area was a business sector with no residential development in the immediate vicinity and;
- (v) that this site would result in the least interference with port traffic and would totally avoid interference with the Navy's operations.

7. The MMB disagreed with the findings of interim report and in its comment dated 3rd October 2000, *inter alia*; stated that Consulting Engineers lack professional approach. The CIDCO also vide letter dated 14th November 2020 disagreed with the report. The Government of Maharashtra, vide letter dated 9th November 2001 did not agree for setting up of PWT at ferry wharf alone and stated that terminal at Gateway of India is still needed.

8. The Consulting Engineers, in January 2002/April 2003 submitted their final report, wherein it was recommended that the PWT should be located only at Ferry Wharf. The Consulting Engineers, in pursuance of the request of the Government, in their final report have also provided for a floating type pontoon landing point secured on one side to the wall of the Radio Club pier and in front of the sea wall with two staircases cut into the block work of the Radio Club Pier. It was, however, pointed out that this pontoon pier would be operable in the non-monsoon months. However, no further action was taken.

(b) The second report:

9. The MMB, sometime in the year 2014 required M/s.Terracon Ecotech to prepare and submit an Environmental Impact Assessment Report (hereinafter referred to as the **EIA Report**) for construction of a Ferry Terminal and Passenger Jetty in the sea on piles, near the Radio Club to enable it to approach the MCZMA and the Ministry of Environment and Forest (hereinafter referred to as the **MoEF**) for environmental clearance and Costal Regulation Zone (hereinafter referred to as the **CRZ**) approval. Thereupon, the M/s. Terracon Ecotech submitted its report, in which it was stated that clearance was required only under the EIA Notification, subject to the project being recommended by the concerned State Coastal Zone Management Authority. The proposal envisaged a waiting area of 5050 sq.ft. in passenger terminal, a parking area of 2900 sq.ft. for 78 cars, restaurants and shops in the terminal area and a fixed single pencil like jetty walkway of 385 mtrs. length, leading to a boarding area consisting of multiple floating berths. It was mentioned in the report that

the area required for development of project was around 1.3 hector and the jetty would be operational only during fair-weather months i.e. not during monsoon.

10. The MCZMA, in its 93rd meeting held on 25th August 2014, noted that the project would generate effluent of 118 cubic metres per day grey and black water from the restaurants and toilets and sewage from berthed vessels which would be required to be treated in a modular STP. The MCZMA decided to recommend the proposal to the MoEF, subject to the exclusion of restaurants, shops, STP & Taxi/Bus stands which were not allowed in CRZ-I area. On 27th February 2019 the said proposal was placed before the State Environment Impact Assessment Authority (hereinafter referred to as the **SEIAA**). Thereafter on 5th March 2019 SEIAA gave its clearance, to the proposal. However, on this proposal also no further action was taken.

(c) The third report:

11. The MMB, in March 2022 got prepared a new EIA Report, which was prepared by one Building Environment (India) P. Ltd. for seeking approval of its revised proposal

for construction of the Passenger Jetty and Terminal Facilities at Radio Club near Gateway of India, Mumbai. The Building Environment (India) P. Ltd. submitted in its report that the project falls in CRZ-IV-A area and also stated that the project does not fall under the purview of the EIA Notification of 2006, as the the Project is for construction of passenger jetty with terminal facility for passenger commute and does not involve any capital dredging during the construction phase and cargo/fish handling during operation phase.

(d) The Approvals/Clearances:

12. Thereafter, on 10th June 2022 MMB approached the MCZMA with the revised proposal for passenger terminal and jetty. In its 160th meeting held on 12th September 2022, MCZMA decided that as substantial changes were suggested in the project, the MMB needed to submit an application afresh. Thereupon, the MMB, on 6th October 2022 submitted its fresh proposal in Form-I along with EIA report prepared by the Building Environment (India) P. Ltd. The Vice Admiral, Western Naval Command issued NOC on 29th

November 2022 to the project. The said proposal was considered by the MCZMA in its 163rd meeting held on 3rd February 2023 and clearance to the proposal was granted on the ground that it was for a standalone jetty. The MCZMA, by communication dated 2nd March 2023 conveyed its approval for the project in question to the MMB. The Mumbai Traffic Police on 28th January 2025 granted NOC for the construction of project, whereas Heritage NOC was issued on 7th February 2025. The Archaeological Department has also granted clearance under Maharashtra Monuments and Archaeological Sites and Remains Act, 1960.

13. On 14th March 2025, a pandal was erected on the pavement along the sea side wall near the Radio Club and ground-breaking ceremony of the Passenger Jetty and Terminal Facility was done by the State Minister for Ports Development. During the said Ground-breaking ceremony, a brochure regarding the proposed construction of Passenger Jetty and Terminal Facility at Radio Club near Gateway of India, Mumbai was published. The members of

the petitioners' association obtained documents under the Right to Information Act and approached this Court by filing a writ petition.

14. A Bench of this Court, by order dated 7th May 2025 in writ petition (L) No.13336 of 2025 declined to grant interim relief to stay the implementation of the project work. The petitioners in writ petition (L) No.13336 of 2025 filed Special Leave to Appeal (C) 15709 of 2025, which was dismissed by an order dated 29th May 2025 by the Supreme Court. In the aforesaid factual background, these petitions arise for our consideration.

(IV) SUBMISSIONS ON BEHALF OF THE PETITIONER IN WRIT PETITION (L) NO.13336 OF 2025:

15. Learned senior counsel for the petitioner in writ petition (L) No.13336 of 2025 submitted that the decision of the State Government and the MMB to construct the project is *ex-facie* irrational, arbitrary and violative of rights of the members of the petitioner association, which are guaranteed to them under Article 14 and 21 of the

Constitution of India. It is further submitted that the project in question will excessively and needlessly affect the environment. It is pointed that the project has a built-up area of 25116 sq.mtrs and will envelope a sea area of approximately 15 acres. It is urged that the aforesaid project is located in ecologically sensitive CRZ-I and CRZ-IV area and therefore, it casts heavy onus on State Government and the MMB to justify the location of the project and the public interest involved therein. It is argued that the proposed design envelopes 12 acres of sea area with no additional facilities of inner side of the proposed Jetty. In support of the aforesaid submission, reliance has been placed on the decision of Division Bench of this Court in ***HANUMAN LAXMAN AROSKAR VS. UNION OF INDIA¹, TATA HOUSING DEVELOPMENT COMPANY LIMITED VS. AALOK JAGGA & OTHERS², T.N.GODAVARMAN THIRUMULPAD, IN RE VS. UNION OF INDIA & OTHERS³*** and ***GOA OUNDATION THROUGH ITS SECRETARY DR. CLAUDE ALVARES &***

¹ (2019) 15 SCC 401

² (2020) 15 SCC 784

³ (2022) 10 SCC 544

***ANR. VS. TOWN AND COUNTRY PLANNING
DEPARTMENT THROUGH THE CHIEF TOWN PLANNER
& ORS.⁴.***

16. It is contended that the Consulting Engineers had conducted detailed study at the instance of MPT and the State Government concluded that the ferry wharf site is the suitable location for construction of passenger jetty. It is urged that without conducting any further expert study/report, the MMB has proceeded to locate the project in the sea off the road near Radio Club. It is pointed out that no basis has been disclosed by the MMB either in the EIA report or in its application for CRZ clearance for departing from the aforesaid recommendations/ conclusion made by the Consulting Engineers.

17. It is pointed out that the MMB, in its application submitted in Form-I for seeking clearance for project attracting CRZ Notification, has failed to disclose the material and relevant fact that at the instance of MPT and the State Government, the Consulting Engineers had

4 2024 SCC OnLine Bom 1232

submitted a detailed report, wherein ferry wharf site was recommended to be suitable for the passenger Jetty. It is contended that the affidavit-in-reply filed on behalf of the MMB does not disclose any basis for MMB's decision to depart from the accepted / approved Ferry Wharf location and for shifting the project to the sea area near Radio club except to say that it was a policy decision. It is argued that the MMB has failed to discharge its burden for justifying the change in location under the precautionary principle. It is submitted that the impugned decision is, therefore, arbitrary and irrational and it is not for public purpose and same violates principle of sustainable development and precautionary principle, which is part of Article 14 and 21 of the Constitution of India.

18. It is contended that the MCZMA's purported CRZ permission is without jurisdiction and contrary to the CRZ Notification of 2019 as under clause 7 (ii) of CRZ 2019, Notification all development activities in CRZ-I and CRZ-IV are required to be dealt with by the Central Government for CRZ clearance with the exception of standalone jetties i.e.

basic/simple jetty without any additional port facilities. It is submitted that the project is *ex-facie* not for a standalone jetty but is a passenger jetty and terminal facility. It is pointed that the MCZMA and SEIAA, previously between 2014 and 2019, had accepted and proceeded, with the proposal for construction of passenger wharf jetty terminal facility on the basis that the proposal fell under Entry No.7(e) of Schedule to the EIA Notification 2006 and treated it as a Port or Harbour. It is urged that the MCZMA's minutes and subsequent permission letter do not consider as to how the present project can be treated as a standalone jetty. It is contended that the MCZMA's affidavit does not contain any explanation for treating the proposed project as a standalone jetty. Therefore, MCZMA's permission is vitiated by absence of jurisdiction.

19. Alternatively, it is contended that even assuming that the MMB's proposal could be treated as a standalone jetty in view of CRZ Notification of the year 2019 and EIA Notification dated 14th September 2006, the MCZMA could not have granted clearance to the project, but should have

referred the project to SEIAA, which was required to consider the same for grant of environmental clearance , after compliance with the requirements of EIA Notification of 2006. It is urged that the MCZMA, while purporting to grant CRZ clearance, has failed to apply the principle of sustainable development and the precautionary principle and has failed to advert to consider and deal with material facts and circumstances, which has rendered the CRZ clearance/permission being vitiated as being arbitrary, perverse and illegal. It is argued that Heritage NOC dated 7th February 2025 is not granted by the Commissioner of MCGM and therefore, the same is liable to be quashed. It is pointed out that the traffic NOC dated 28th January 2025 has been issued by Mumbai Traffic Police only for the period of construction of project and is not an NOC for the project itself.

(V) SUBMISSION ON BEHALF OF THE PETITIONERS IN WRIT PETITION (L) No.14795/2025

20. Learned senior counsel for the petitioners in writ petition (L) No.14795 of 2025 submitted that the CRZ is

divided into four categories viz. I to IV with sub categories. It is submitted that in addition to said categories, there is also fifth category, which includes specific areas selected from 12000 km of coastline and the estuaries, creeks etc. It is contended that the aforesaid fifth category requires superior care and handling and are classified as critically vulnerable coastal areas and includes the entire municipal area of Greater Mumbai. It is pointed out that the project site is included in the aforesaid fifth category. Therefore, the project cannot be located in the critically vulnerable coastal area.

21. It is submitted that the project is situated within Mumbai Port and is an expansion or addition of a Port comprising of whole complex of jetties and covered under the EIA Notification. It cannot be treated as a standalone jetty. It is also submitted that the NOC is required to be obtained from MPT.

(VI) SUBMISSIONS ON BEHALF OF PETITIONERS IN WRIT PETITION (L) 15735/2025

22. Learned senior counsel for the petitioner submits

that proposed passenger jetty is nothing but an extension/ expansion of the existing port. Therefore, the old project was treated as ports/harbour and the permission of SEIAA was obtained on 5th March 2019 by treating the project as governed by Entry No. 7(e) of EIA Notification. In this connection, reference has been made to EIA report submitted at the instance of MPT in the year 2014 in which there is admission of applicability of EIA Notification 2006 to the old project treating the same as harbour. It is contended that other passenger jetties in the vicinity has been set up after securing environmental clearance by treating the same as falling under Entry No.7(e) of EIA Notification 2006. It is urged that cargo/fish handling capacity is not determinative factor for deciding applicability of Entry No.7(e) of EIA Notification to the project. It is argued that activity of break water and dredging do not involve cargo/fish handling capacity indicated in column 3 and 4 of the Schedule to the EIA Notification for assigning the jurisdiction to MoEF and SEIA. It is submitted that the passengers are likely to transport their luggage in the

jetties, therefore, the activity at jetty would involve *inter alia*; cargo handling as well.

23. It is urged that the whole object sought to be advanced for execution of the project of decongesting the Gateway of India area is wholly misconceived and as construction of a new jetty 250 mtrs. away from the existing jetty is being undertaken, same would not decongest Gateway of India area in any manner. In this connection, reference has been made to traffic simulation study indicated in the report dated 12th February 2025 prepared at the behest of MMB indicating that 75% passengers will continue to visit Gateway of India first and thereafter board the jetty, whereas 25% travellers would directly travel to the mainland by using the jetty.

(VII) SUBMISSIONS ON BEHALF OF THE MCZMA, HCC AND MCGM:

24. On the other hand, learned Advocate General for respondent MCZMA, HCC and MCGM submitted that MMB had submitted an application for clearance under CRZ Notification dated 6th January 2011 of a project called

Passenger Jetty and ancillary facilities at Apollo Bunder off Gateway of India which was considered by the MCZMA in its meeting held on 25th August 2014 and a recommendation was sent to MoEF on 29th November 2014. It is further submitted that in view of amendment to the procedure for clearance of application, the proposal was required to be cleared by the SEIAA, instead of MoEF and accordingly, on 28th May 2016 the proposal was sent to SEIAA. It is pointed out that clearance to the project was granted on 25th March 2019. However, subsequently, MMB submitted an application to MCZMA on 10th June 2022 and sought amendment to the clearance, which was granted. It is pointed out that the aforesaid application was considered by the MCZMA on 12th September 2022 and since there were substantial modifications, the project proponent was asked to submit a fresh application.

25. It is contended that MMB, on 6th October 2022, submitted a fresh application seeking CRZ clearance, which was accompanied by EIA report for construction of passenger jetty and ancillary facilities, which was prepared

by an accredited agency viz. Building Environment (India) Pvt. Ltd. The said application of MMB dated 6th October 2022 was considered by MCZMA in its meeting held on 2nd/3rd February 2023 and after considering the permissibility of project and other relevant factors, MCZMA decided to grant clearance to the project, subject to conditions mentioned therein. Thereafter, on 2nd March 2023, MCZMA granted clearance to the project. It is urged that the clearance granted to the project by MCZMA was in terms of notice dated 18th January 2019 as amended on 24th November 2022 and as per the procedure laid down in Office memorandum dated 29th October 2022.

26. It is submitted that the contention that MCZMA has no jurisdiction since the project is not a standalone project, is misconceived. It is contended that the project in question is a standalone passenger jetty and is not a port. It is submitted that facilities like lounge, cafe, parking etc. are only incidental to passenger jetty for embarking and disembarking the passengers. It is urged that for ascertaining the nature of project, the dominant purpose or

dominant nature of the project or the “common parlance” test is required to be applied. In this connection reference has been made to decision of Supreme Court in ***RE NOIDA MEMORIAL COMPLEX, NEAR OKHLA BIRD SANCTUARY***⁵. It is contended that the project being standalone jetty, is a permissible activity within CRZ area in terms of clause 5.4 of CRZ Notification dated 18th January 2019.

27. It is argued that in terms of amendment to sub clause (ii) of paragraph 7 of the CRZ Notification by the amending Notification dated 24th November 2022 and in terms of Office Memorandum dated 29th November 2022, the authority and power to consider the application for clearance and grant of clearance under sub clause (ii) of paragraph 7 of Notification is now conferred on the State Level Coastal Zone Management Authority and therefore, the application for clearance made by MMB was within the jurisdiction of MCZMA.

28. It is contended that the application for clearance

5 (2011) 1 SCC 744

of the project was appropriately considered by the MCZMA in the light of the application and accompanying documents including the EIA report and Naval NOC dated 29th November 2022. It is further contended that relevant considerations for scrutiny of such application have been taken into account and clearance was granted after due consideration and on application of mind to all aspects, which is evident from the minutes of MCZMA dated 2nd February 2023 and the clearance dated 2nd March 2023. It is submitted that EIA Notification dated 14th September 2006 does not apply to the project, as the same is standalone passenger jetty and terminal facility which is not a part of the schedule to EIA Notification dated 14th September 2006 and there is no estoppel against the law. It is urged that the purpose of the project is to decongest the traffic movement of boats and yachts and visitors at the Gateway of India, a Grade-I Heritage Structure. It is submitted that new passenger jetty is situated about 350 mtrs. away from the Gateway of India and will help decongest Gate of India and preserve and protect it in

better manner. It is also submitted that the CRZ clearance is a matter within the domain of experts and justiciability of such decision is limited on the ground of lack of jurisdiction or the decision which actuated by *mala fide*. It is pointed out that in the instant case, the decision of MCZMA is not challenged on any of the aforesaid grounds and perception of the petitioners is not a ground for judicial review. In support of aforesaid submission, reliance has been placed on decisions of Supreme Court in **CONSERVATION ACTION TRUST VS. DAHANU TALUKA ENVIRONMENT PROTECTION AUTHORITY** ⁶, **ESSAR OIL LTD. VS. HALAR UTKARSHA SAMITI** ⁷, and **CITIZEN FOR GREEN DOON VS. UOI** ⁸.

29. It is submitted that the contention that project proponent ought to have mentioned alternative sites in the Form under which an application seeking clearance is made, is based on misreading of the requirement of the column and is therefore, misconceived.

⁶ **2024 SCC ONLINE BOM 1114**

⁷ **(2004) 2 SCC 392**

⁸ **(2023) 17 SCC 711**

30. It is urged that on the basis of parameters in regulation 52.9(C) of Development Control and Promotion Regulations-2034 for Greater Mumbai (hereinafter referred to as the **DCPR 2034**) NOC is granted by the HCC and neither there is any substantive nor any procedural violation. It is pointed out that the NOC has been granted on the recommendation of Mumbai Heritage Conservation Committee (hereinafter referred to as the **MHCC**) on the basis of its decision dated 16th January 2025. It is contended that MHCC consists of experts from the field of engineering, environment, architecture, history, public administration and archaeology and the decision of MHCC is a decision taken by experts and no case for interference is made out with the decision taken by the experts. In support of aforesaid submission reliance has been placed on decision of Supreme Court in **MIG CRICKET CLUB VS. ABHINAV SAHKAR EDUCATION SOCIETY** ⁹ and a reference has also been made to Glossary of terms from Dictionary of Shipping and Oxford Dictionary.

9 (2011) 9 SCC 97

(VIII) SUBMISSIONS ON BEHALF OF MMB:

31. Learned Advocate General for MMB submitted that petitioners are neither aggrieved by the location of the project nor by the concept of the project. It is contended that project seeks to address an urgent need for a safe, modern and properly equipped jetty facility for improving connectivity between the mainland and other areas including Navi Mumbai, Mandwa (Alibaug) and Elephanta Island etc. and to decongest the passenger and road traffic right next to the iconic Gateway of India monument. It is further submitted that there are five operational antiquated jetties which have been in use for almost a century and approximate 30 to 35 lac passengers travel every year through the aforesaid jetties. It is contended that the existing facilities are unable to handle the passenger traffic and provide proper berthing to ferries and yachts. It is pointed out that there are no proper infrastructure in terms of waiting area, parking facilities, disability accessibility and emergency services etc.

32. It is urged that during embarking and

disembarking from the existing facilities, the passengers, specially, elderly persons, women and children are at risk. It is submitted that Gateway of India attracts large crowd of tourists which results in overcrowding and traffic congestion in the junction near Gateway of India/Taj Mahal Hotel. It is contended that the project will improve connectivity and cater to the increased demand for water transport facility and will decongest passenger load and road traffic at the Gateway of India monument.

33. It is contended that the project has been assessed by the multiple regulatory authorities who have independently evaluated the project and have accorded their permission/No Objection to the same in accordance with the statutory mandate. It is pointed out that NOCs dated 14th October 2021 and 29th November 2022 have been obtained from Mumbai Port Authority from Vice Admiral, Western Command. It is also pointed out that the No-Objection Certificates dated 5th April 2022 and 28th April 2025 have been obtained from Archaeological Department, Mumbai under the Maharashtra Ancient Monuments and

Archaeological Sites and Remains Act, 1960 and No-Objection Certificate dated 28th January 2025 has been obtained from Assistant Commissioner of Police (Traffic). It is pointed out that the No-Objection Certificate dated 7th February 2025 has been obtained from MHCC under Regulation 52 of the DCPR-2034. It is pointed out that the CRZ Clearance dated 2nd March 2023 has been obtained from MCZMA. It is urged that the MMB has also obtained permission dated 30th April 2025 from MCGM for barricading the footpath on PJ Ramchandani Marg.

34. It is contended that decision to undertake the project is a policy decision in larger public interest, which has been taken after due care and deliberations. It is further contended that decision, whether to undertake an infrastructure project, what type of project to undertake, how to execute it, belong to the domain of policy-making and scope of interference with such policy decision by this Court, in exercise of powers of judicial review, is extremely limited. In support of aforesaid submissions, reliance has been placed on the decisions of Supreme Court in

***NARMADA BACHO ANDOLAN VS. UNION OF INDIA¹⁰,
RAJIV SURI VS. DELHI DEVELOPMENT AUTHORITY¹¹***
and ***DAHANU TALUKA ENVIRONMENT PROTECTION
GROUP VS. BOMBAY SUBURBAN ELECTRICITY SUPPLY
CO. LTD.¹²*** It is contended that the project has been approved by the expert/technical bodies and minimal interference is called for with the decisions which are outcome of the technical experts.

35. It is argued that this Court cannot reevaluate the factual findings made by an expert regulatory body. In support of aforesaid submission, reference has been made to ***CENTRE FOR PUBLIC INTEREST LITIGATION VS. UNION OF INDIA¹³, PROJECT IMPLEMENTATION UNIT VS. P. V. KRISHNAMOORTHY¹⁴*** and ***DELHI INTERNATIONAL AIRPORT LTD. VS. AERA¹⁵***. It is submitted that the petitioners' challenge to the project suffers from gross delay and laches as the media reports on

¹⁰ (2000) 10 SCC 664

¹¹ (2022) 11 SCC 1

¹² (1991) 2 SCC 539

¹³ (2016) 6 SCC 408

¹⁴ (2021) 3 SCC 572

¹⁵ (2024) 1 SCC 716

the development of the project at the present site was published in 2012. It is pointed out that Notice Inviting Tender for the project was floated by MCGM on 8th July 2024 and work order was issued on 11th October 2024. It is further pointed out that project site was handed over to the successful bidder on 11th October 2024 with direction to commence the work and the instant writ petitions have been filed only in the month of April, 2025 and May, 2025. It is submitted that the belated challenge to a policy decision cannot be entertained and any challenge to a project must be taken before execution of project is commenced. In this connection reliance has been placed on ***RAUNAQ INTERNATIONAL LTD. VS. IVR CONSTRUCTION CO.¹⁶*** and ***NARMADA BACHO ANDOLAN (SUPRA)***.

36. It is submitted that the project requires clearance from MCZMA only. It is contended that permission by MHCC has been granted in accordance with the regulation 52.9(C) and 52.9(D) of DCPR 2034. It is submitted that for the

16 (1999) 1 SCC 492

purpose of construction of the project, NOC has been obtained from the traffic department. It is urged that feasibility report was commissioned by the MPT in entirely different circumstances and there has been substantial change in the circumstances in past over two decades. It is urged that no reliance can be placed on the feasibility report for the purposes of challenging the location of the present project. It is argued that decision relied upon by the petitioner in **HANUMAN LAXMAN AROSKAR (SUPRA)** has no application to the facts and circumstances of the case. Reference has also been made to ERIC Sullivan's Marine Encyclopaedic Dictionary Sixth Edition.

(IX) REJOINDER SUBMISSIONS:

37. By way of rejoinder, learned senior counsel for the petitioner in WP/13336/2025 fairly submitted that the petitioner in the said writ petition does not dispute the need for new facility and the fact that new facility will result in decongestion of traffic. It is contended that the petitioner is aggrieved only by its location. It is further contended that there is no rationale in selection of a location which would

not operate for a period of five months in a year as one of the purposes of the project is to facilitate water transportation. It is submitted that no attempt has been made by the project proponent to discharge the burden to justify the location of the project.

38. It is contended that no basis has been disclosed by MMB either in its EIA report or in its application for CRZ clearance or even in its affidavit in reply for departing from the aforesaid recommendations/conclusions of the report of Consulting Engineers, not to locate the passenger terminal near the radio club and that only feasible and practical location was at Ferry Wharf. Therefore, the decision to locate the PWT in sea near radio club is *ex-facie* irrational and manifestly arbitrary. It is urged that no attempt has been made by MMB to discharge its onus/burden under the precautionary principle and principle of sustainable development regarding necessity of locating the passenger jetty and terminal facility in the ecologically sensitive CRZ-I and CRZ-IV area near radio club and revised design of jetty which envelopes a sea area in excess of 12 acres.

39. It is urged that petitioners do not dispute that present jetties are unsafe and inadequate and there is a need to set up a new jetty to enhance the connectivity between mainland and other lands including Navi Mumbai, Mandwa (Alibaug) and Elephanta Island and to decongest the passenger road and road traffic next to Gateway of India. It is contended that mere labeling of a decision as a policy decision is not a legally adequate response to the petitioners' submission that ferry wharf location for PWT was environmentally benign and more feasible. It is submitted that decision of respondent Nos.1 and 2 to locate the project at a location which has been held to be neither practical nor feasible without carrying out any further study or expert report, cannot be termed as a well-considered policy decision taken after due care and deliberations.

40. It is argued that mere assertion of respondents that there has been a substantial change of circumstances since the said Howe report was published, is a mere bald assertion without any reference to alleged change in circumstances. It is submitted that decision of MCZMA

establishes that it has not applied its mind/overlooked to divers material and important aspects while purporting to grant clearance. It is further submitted that MCZMA minutes and permission do not even exclude the VIP lounges, cafe, food court and STP plant which MCZMA had excluded while making its recommendation in 2014 on the ground that such activities are not permissible in sea area. It is also urged that the minutes and approval letter of MCZMA do not consider or exclude the proposed amphitheatre of 1362 sq.mtr., which is proposed on jetty. It is submitted that the writ petition, which has been filed within few weeks of detail disclosure of proposed jetty and terminal at the ground-breaking ceremony and subsequent disclosure of the documents in April 2025, cannot be treated to be barred by delay or laches.

41. It is argued that MCZMA's failure to advert to, consider and decide on the fundamental/basic environmental aspect vitiates its purported clearance, is clearly without jurisdiction as the clearance has been granted on the assumption that the proposal was for a

standalone jetty. It is contended that MCZMA has failed to consider that the proposal was for passenger jetty and terminal facility and not a standalone jetty. It is pointed out that MMB's earlier EIA report of 2014 itself had recorded that proposed jetty and terminal facilities would constitute a harbour for the berthing of ferries and leisure craft.

42. Learned Senior Counsel for the petitioner in WP(L) 14795 of 2025 has submitted that the project is in inter tidal zone and has reiterated his submissions made earlier.

(X) ANALYSIS:

43. We have considered the rival submissions made on both sides and have perused the record. Before proceeding further, it is apposite to take note of relevant statutory provisions.

(XI) RELEVANT STATUTORY PROVISIONS:

(a) The Environment Protection Act, 1986:

43.1 The Environment Protection Act, 1986 (hereinafter referred to as the **1986 Act**) is an Act to provide for protection and improvement of environment and for matters

connected therewith. The 1986 Act seeks to implement the decision taken at United Nations Conference on Human Environment held at Stockholm in June 1972 for protection and improvement of Environment, prevention of hazards to human being, other living creatures, plants and property. Section 3 mandates the Central Government to take measures to protect and improve the environment. Section 3(2) of the 1986 Act contains an inclusive list of the matters in respect of which the Central Government can take measures. Section 3(2)(v) provides for restriction of areas in which any industries, operations of processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. Section 6 of the 1986 Act empowers the Central Government to frame rules to regulate environmental pollution, whereas Section 25 confers power on the Central Government to make rules for carrying out the purposes of the 1986 Act.

(b) The Environment (Protection) Rules, 1986:

43.2 In exercise of powers under Section 6 and 25 of

the 1986 Act the Central Government has framed rules the Environment (Protection) Rules, 1986. Rule 5 provides for prohibition and restriction on the location of industries and for carrying out the processes and operations in different areas. Rule 5(iii) empowers the Central Government to issue notification imposing prohibition or restriction on location of industries and carrying on of processes or operations in an area.

(c) Environment Impact Assessment Notification 2006.

43.3 In exercise of powers under Section 3(1)(v), Section 3(2) of the 1986 Act and Rule 5(3)(d) of the 1986 Rules, the Central Government, Ministry of Environment and Forest has issued a Notification dated 14th September 2006 (hereinafter referred to as the **EIA Notification of 2006**) directing that project or activities listed in the schedule to the Notification shall be undertaken in all parts of India after prior environmental clearance from the Central Government or as the case may be by the State or the Union Territory Level Environment Impact Assessment Authority. Para 2 of

the Notification enlists the projects which require environmental clearance whereas para 3 of the Notification provides for constitution of State Level Environment Impact Assessment Authority (SEIAA). Para 4 of the Notification prescribes for categorization of projects and activities into Category A and B and which is reproduced below for the facility of reference:

"4. Categorization of projects and activities:-

(i) All projects and activities are broadly categorized in to two categories - Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man made resources.

(ii) All projects or activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF) on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;

(iii) All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. " "In the absence of a duly constituted SEIAA or SEAC a Category 'B' project shall be considered at Central Level as a Category 'B' project."

43.4 The Schedule to the EIA Notification 2006 provides for list of projects and activities requiring prior environmental clearance. The Schedule also divides the projects or activities in Category A or B depending upon threshold limits prescribed in the schedule. Entry-7 in the Schedule 2 EIA Notification of 2006 deals with “physical infrastructure including environmental services”. Entry-7 (e) is in respect of “ports, harbours, break waters, dredging”, which is relevant for the purpose of controversy involved in the instant petition is extracted below:

(1)	(2)	(3)	(4)	(5)
7(e)	“Ports, harbours, break waters, dredging	≥5 million TPA of cargo handling capacity (excluding fishing harbours)	≤5 million TPA of cargo handling capacity and/or ports/harbours	General condition shall apply. Note : 1. Capital dredging inside and outside the ports or harbors and channels are included. 2. Maintenance dredging is exempt provided it formed part of the original proposal for which Environment

				Management Plan (EMP) was prepared and environmental clearance obtained.
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43.5 Thus, it is evident that for projects of establishing ports, harbours, break waters or dredging, compulsory environmental clearance is needed. The said works are classified in two categories. Category – A project comprises of ports, harbours etc. with more than 5 Million ton per annum (**TPA**) of cargo handling capacity (excluding fishing harbours) and such project would require environmental clearance of the Central Government. The projects of ports, harbours, having capacity of less than 5 Million TPA of cargo handling capacity and/or port/harbours having more than 10000 TPA of fish handling capacity requires clearance from SEIAA.

(d) Coastal Regulation Zone Notification 2019.

43.6 In exercise of powers under Section 3(2)(1)(v) of the 1986 Act, the Ministry of Environment Forest and

Climate Change (hereinafter referred to as the **MoEFCC**) had issued Notification dated 6th January 2011 declaring Coastal stretches of the country and waters upto its territorial water limits as CRZ. The aforesaid Notification was superseded by a Notification dated 11th January 2019. The said Notification is issued with an object to conserve and protect the environment of coastal stretches and marine areas besides providing for security of livelihood to fisher communities and other local communities in coastal area and to promote sustainable development based on scientific principles taking into account the dangers of natural hazards, sea level rise due to global warming etc.

43.7 Para 2 of the Notification provides for classification of coastal zone areas into CRZ-I to CRZ-IV. CRZ-I areas are environmentally most critical and have been further classified into CRZ-IA and CRZ-IB. The CRZ classification made under para 2 of the Notification reads as under:

Para-2.0 of the Notification provides for classification of Coastal Regulation Zones into CRZ-I to CRZ-IV. CRZ-I areas are environmentally most critical and have been

further classified as CRZ-1 A and CRZ-I B. The CRZ classification under para-2.0 of the Notification is, as under :-

2.0 Classification of CRZ - For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely:

2.1 CRZ-I areas are environmentally most critical and are further classified as under:

2.1.1 CRZ-1 A:

(a) CRZ-I A shall constitute the following ecologically sensitive areas (ESAs) and the geomorphological features which play a role in maintaining the integrity of the coast viz.:

(i) Mangroves (in case mangrove area is more than 1000 square meters, a buffer of 50 meters along the mangroves shall be provided and such area shall also constitute CRZ-1 A);

(ii) Corals and coral reefs;

(iii) Sand dunes;

(iv) Biologically active mudflats;

(v) 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), Forest (Conservation) Act, 1980 (69 of 1980) or Environment (Protection) Act, 1986 (29 of 1986), including Biosphere Reserves;

(vi) Salt marshes;

(vii) Turtle nesting grounds,

(viii) Horse shoe crabs' habitats;

(ix) Sea grass beds;

(x) Nesting grounds of birds;

(xi) Areas or structures of archaeological importance and heritage sites.

(b) A detailed environment management plan shall be formulated by the states and Union territories for such ecologically sensitive areas in respective territories, as mapped out by the National Centre for

Sustainable Coastal Management (NCSCM), Chennai based on guidelines as contained in Annexure-I to this notification and integrated with the CZMP.

2.1.2 CRZ-1 B:

2.2 CRZ-II:

2.3 CRZ-III:

2.4 CRZ-IV:

The CRZ-IV shall constitute the water area and shall be further classified as under:-

2.4.1 CRZ-IVA:

The water area and the sea bed area between the Low Tide Line up to twelve nautical miles on the seaward side shall constitute CRZ-IV A.

2.4.2 CRZ-IVB:

CRZ-IV B areas shall include the water area and the bed area between LTL at the bank of the tidal influenced water body to the LTL on the opposite side of the bank, extending from the mouth of the water body at the sea up to the influence of tide, i.e., salinity of five parts per thousand (ppt) during the driest season of the year.

(emphasis added)

43.8 Para-5 of the Notification deals with regulation of permissible activities in CRZ. For the purpose of the present petitions, para-5.1.2 of the Notification dealing with regulation of permissible activities in CRZ-1B is relevant as the impugned project comes under CRZ 1B area on account of location of the heritage structure of Gateway of India in the vicinity:-

5. Regulation of permissible activities in CRZ:

5.1.2 CRZ-I B-The inter tidal areas:

Activities shall be regulated or permissible in the CRZ-I B areas as under:-

(i) Land reclamation, bunding, etc. shall be permitted only for activities such as,-

(a) foreshore facilities like ports, harbours, Jetties, wharves, quays, slipway, bridges, hover ports for coast guard, sea links, etc;

(b) projects for defence, strategic and security purposes;

(c) road on stilts, provided that such roads shall not be authorised for permitting development on the landward side of such roads, till the existing High Tide Line:

Provided that the use of reclaimed land may be permitted only for public utilities such as mass rapid or multimodal transit system, construction and installation of all necessary associated public utilities and infrastructure to operate such transit or transport system including those for electrical or electronic signaling system, transit stopover of permitted designs; except for any industrial operation, repair or maintenance;

(d) measures for control of erosion;

(e) maintenance and clearing of waterways, channels, ports and hover ports for coast guard;

(f) measures to prevent sand bars, installation of tidal regulators, laying of storm water drains or for structure for prevention of salinity ingress and freshwater recharge.

(ii) Activities related to waterfront or directly needing foreshore facilities such as ports and harbours, jetties, quays, wharves, erosion control measures, breakwaters, pipelines, lighthouses, navigational safety facilities, coastal police stations, Indian coast guard stations and the like.

(emphasis added)

43.9 Para-5.4 of the CRZ Notification deals with permissible activities in CRZ-IV areas, which is also relevant for deciding the present petitions as the impugned project also comes within CRZIV area. Para 5.4 reads thus:-

5.4 CRZ-IV:

Activities shall be permitted and regulated in the CRZ IV areas as under:-

- (i) Traditional fishing and allied activities undertaken by local communities.*
- (ii) Land reclamation, bunding, etc. to be permitted only for activities such as.*
 - (a) foreshore facilities like ports, harbours, Jetties, wharves, quays, slipway, bridges, sea links and hover ports for coast guard, etc;*
 - (b) projects for defence, strategic and security purpose including coast guard;*
 - (c) measures for control of erosion;*
 - (d) maintenance and clearing of waterways, channels and ports;*
 - (e) measures to prevent sand bars, installation of tidal regulators, laying of storm water drains or for structure for prevention of salinity ingress and freshwater recharge.*
- (iii) Activities related to waterfront or directly needing foreshore facilities, such as ports and harbours, jetties, quays, wharves, erosion control measures, breakwaters, pipelines, navigational safety facilities and the like.*

(emphasis added)

43.10 Para-6 of the CRZ Notification provides for preparation of Coastal Zone Management Plan (CZMP). Para-7 of the Notification deals with CRZ clearance for

permissible and regulated activities and provides that all permitted and regulated project activities attracting the provisions of the Notification shall require CRZ clearance prior to their commencement. Para-7 of the Notification reads thus:-

7. CRZ clearance for permissible and regulated activities- Delegation:

(i) All permitted or regulated project activities attracting the provisions of this notification shall be required to obtain CRZ clearance prior to their commencement.

(ii) All development activities or projects in CRZ-I and CRZ-IV areas, which are regulated or permissible as per this notification, shall be dealt with by Ministry of Environment, Forest and Climate Change for CRZ clearance, based on the recommendation of the concerned Coastal Zone Management Authority.

(iii) For all other permissible and regulated activities as per this notification, which fall purely in CRZ-II and CRZ-III areas, the CRZ clearance shall be considered by the concerned Coastal Zone Management Authority and such projects in CRZ -II and III, which also happen to be traversing through CRZ-I or CRZ-IV areas or both, CRZ clearance shall, however be considered only by the Ministry of Environment, Forest and Climate Change, based on recommendations of the concerned Coastal Zone Management Authority.

(iv) Projects or activities which attract the provisions of this notification as also the provisions of EIA notification, 2006 number S.O. 1533(E), dated the 14th September, 2006, shall be dealt with for a composite Environmental and CRZ clearance under EIA Notification, 2006 by the concerned approving Authority, based on recommendations of the concerned Coastal Zone Management Authority, as per delegations i.e., State Environmental Impact

Assessment Authority (hereinafter referred to as the SEIAA) or the Ministry of Environment, Forest and Climate Change for category 'B' and category 'A' projects respectively.

(v) In case of building or construction projects with built-up area less than the threshold limit stipulated for attracting the provisions of the EIA Notification, 2006 these shall be approved by the concerned local State or Union territory Planning Authorities in accordance with this notification, after obtaining recommendations of the concerned Coastal Zone Management Authority. (vi) Only for self-dwelling units up to a total built up area of 300 square meters, approval shall be accorded by the concerned local Authority, without the requirement of recommendations of concerned Coastal Zone Management Authority and such authorities shall, however, examine the proposal from the perspective of the Coastal Regulation Zone notification before according approval.

(emphasis added)

43.11 The CRZ Notification dated 18 January 2019 has been amended by Notification dated 24 November 2022. For the purpose of the present petitions, amendment to para-7(ii) is relevant and the amended para-7(ii) reads thus :-

"(ii) All development activities or projects in CRZ-I and CRZ-IV areas, which are regulated or permissible as per this notification, shall be dealt with by the Central Government for Coastal Regulation Zone clearance, based on the recommendation of the concerned Coastal Zone Management Authority with the following exceptions, namely: -

Stand-alone jetties, Salt works, Slipways, Temporary structures and Erosion Control Measures (like Bunds, Seawall, Groynes, Breakwaters, Submerged reef, Sand nourishment, etc.)

which shall be dealt by concerned Coastal Zone Management Authority."

(emphasis added)

(e) Office Memorandum dated 29th November 2022:

43.12 The Government of India, **MoEFCC** with a view to bring about greater clarity about processing of the proposals for CRZ clearances has issued OM dated 29th November 2022, which prescribe the approving authorities for CRZ clearances for various types of projects and the procedure which is required to be adopted. The OM provides for clarification and procedure in the form of a chart by dividing the projects which do not require environmental clearance and the ones which requires environmental clearance under the EIA Notification of 2006. The relevant portion of the OM is extracted below for the facility of reference:

"(ii) The concerned State/Union Territory Coastal Zone Management Authority (CZMA) shall examine the above documents in accordance with the approved Coastal Zone Management Plan (CZMP)/Island Coastal Regulation Zone (ICRZ) Plans or Integrated Islands Management Plan (IIMP) in accordance with the procedure laid down and make recommendations as per the provisions of CRZ Notification, 2019/ ICRZ Notification 2019, clearly specifying the permissibility, section/clause of the notification permitting the project/activity, to the concerned authority as under:-

<i>Sr. No.</i>	<i>Scenario as per the CRZ Notification 2019</i>	<i>Clearance</i>	<i>Approving Authority</i>	<i>Procedure</i>
<i>Projects requiring only CRZ clearance</i>				

1	<p>(a) All development activities or projects in CRZ-I and CRZ-IV areas except those mentioned at S.No. 2(a) below</p> <p>(b) All construction activities related to projects of Department of Atomic Energy or National Defence or Strategic or Security importance, except those mentioned at S. No.2(a) below.</p> <p>(c) Projects in CRZ-II and III, which also traverse through CRZ-I or CRZ-IV or both.</p> <p>(d) Construction of sewage treatment plants in CRZ-I for the purpose of treating the sewage from the municipal area of Greater Mumbai.</p>	Stand-alone CRZ	Ministry	<p>Application at CZMA by the PP</p> <p>Recommendation of CZMA</p> <p>Application in the Ministry</p> <p>Recommendation of EAC (CRZ)</p> <p>Clearance by the Ministry</p>
2	<p>(a) Stand-alone jetties, Salt works, Slipways, Temporary structures and Erosion Control Measures (like Bunds, Seawall, Groynes, Breakwaters Submerged reef, Sand Nourishment, etc.) located in CRZ-I and CRZ-IV.</p> <p>(b) Permissible and regulated activities which fall purely in CRZ-II and CRZ-III areas</p>	Stand-alone CRZ	CZMA	<p>Application at CZMA by the PP</p> <p>Clearance by the CZMA</p>

	<i>All construction Activates related to projects of Department of Atomic Energy or National Defence or Strategic or Security importance mentioned in S. no. 29(a) and 2(b)</i>			
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(emphasis added)

Thus, it is evident that the project involving standalone jetty can be cleared directly by the Coastal Zone Management Authority (**CZMA**) without referring the proposal to the **MoEFCC**.

(XI) ISSUES:

44. After having noticed the relevant statutory provisions, we may advert to the issues, which arise for our consideration:

- (i) Whether the project is not a standalone jetty and therefore, CRZ clearance can be granted only by the Central Government?
- (ii) Whether the order dated 2nd March 2023 passed by MCZMA is liable to be quashed on the ground that MCZMA has no jurisdiction to grant the approval to the project?
- (iii) Whether the impugned decision of construction

of the project at the radio club site being irrational, arbitrary, violative of the rights of the petitioners under Article 14 and 21 of the Constitution of India and is in breach of precautionary principle and principle of sustainable development, is liable to be quashed and set aside ?

- (iv) Whether the heritage NOC dated 7th February 2025 is legal and valid?
- (v) Whether the traffic NOC dated 28th January 2025 issued by the Mumbai Traffic Police is legal and valid?

45. We shall now proceed to deal with the issues *ad seriatim*.

(A) FIRST ISSUE:

- (i) Whether the project is not a standalone jetty and therefore, CRZ clearance can be granted only by the Central Government?

46. The challenge to the order dated 2nd March 2023 passed by the MCZMA has been made on the following grounds:

- (a) The project cannot be treated as a standalone jetty and therefore, CRZ clearance can

be granted only by the Central Government.

(b) Even if the project is to be treated as standalone jetty, para 7(iv) of the Notification 2019 would require composite clearance under EIA Notification 2006 as well as CRZ clearance and that in the absence of environmental clearance, the grant of CRZ clearance by MCZMA is without jurisdiction.

47. Before proceeding further, it would be apposite to take note of the deliberations made by the MCZMA and the decision taken in the meeting held on 2nd and 3rd February 2023, which are extracted below:

DELIBERATIONS:

The MMB officials presented that the project is very important since it aims to decongest the traffic at Gateway of India, proposed passenger jetty would prove to be alternative to Gateway jetty. There would not be vehicle movements through the jetty. All necessary permissions have been obtained by the MMB for the project, Even the State Arachnology Department has granted the NOC for the project. MMB officials further informed that-there is no ecologically sensitive features, mangrove in the project site The Authority noted that the PP has submitted the EIA/ EMP report prepared by MoEF Accredited consultant (Building environment). The EIA report states the proposed project is located on left side of Radio Club, Mumbai. The spring tide range in the proposed area of development of passenger craft near Radio club jetty is about 4.5 which gives rise to high tidal currents especially during the flood tide. The hydrodynamic and sedimentation studies were carried out to study the

suitability of the proposed jetty infrastructure at Radio Club for 5 different options, option 1 to 5 were studied using MIKE-21 HD/MT. The EIA report further states that the present Gateway India attracts large no. of passengers' movements and high amount of road traffic in area which has consequences of littering and generation of solid waste by the passengers which may affect the archeologically monument. **The proposed jetty at Radio Club will reduce the passenger load as well as road traffic from Gateway of India and also will provide a better access and safe berthing facility to the boats/yachts along with parking facility and amenities considering the social benefit aspect of the project, and the suggestion of Indian Navy the jetty location is decided at Radio Club for embarkation point of view.** The Authority noted the probable impacts and mitigation measures stated in the EIA report. The Authority suggested MMB to ensure that during construction phase noise and vibration level should be kept within prescribed limits. Sewage from the public utilities should not be disposed of in the sea. Zero discharge practice should be implemented by the MMB. **The Authority noted that the MoEF&CC, New Delhi has published amendment dated 24.11.2022 to original CRZ Notification, 2019 as per which, in paragraph 7, for sub-paragraph (ii) the following sub-paragraph shall be substituted, namely: "(ii) All development activities or projects in CRZ-I and CRZ-IV areas, which are regulated or Permissible as per this notification, shall be dealt with by the Central Government for Coastal Regulation Zone clearance, based on the recommendation of the concerned Coastal Zone Management Authority with the following exceptions, namely: -**

Stand-alone jetties, Salt works, Slipways, Temporary structures and Erosion Control Measures (like Bunds, Seawall, Groynes, Breakwaters, Submerged reef, Sand nourishment, etc.)

Subsequently, the MoEF&CC, New Delhi has issued an OM dated 29.11.2022, as per which, project activities such as Stand-alone jetties, Salt works, Slipways, Temporary structures and Erosion Control Measures (like Bunds, Seawall, Groynes, Breakwaters, Submerged reef, Sand nourishment, etc.) require clearance by the CZMA.

DECISION:

In the light of above, the Authority after deliberation decided to grant clearance to proposal from CRZ point of view subject to following conditions:

- 1. Proposed activity should in accordance with provision of the CRZ Notification, 2019 (amended from time to time).*
- 2. MMB to obtain Heritage / Archaeology Noc from the competent Authority.*
- 3. MMB to ensure that during construction phase decibel and vibration level should be kept at minimum level. It should not exceed the prescribed standards.*
- 4. Sewage from the public utilities should not be disposed of in the sea. Zero discharge practice should be implemented by the MMB.*
- 5. Debris generated during the project activity should not be dumped in CRZ area. It should be processed scientifically at a designated place.*
- 6. Adequate onboard waste storage bins should be maintained on boat as well as in jetty and all terminal facility premises. Regular waste collection and disposal should be implemented.*
- 7. MMB to implement recommendations of the EIA / EMP report for mitigation of environment impacts.*
- 8. Solid waste generated should be properly collected and segregated. Dry/inert solid waste should be disposed of to the approved site for land filling after recovering recyclable materials.*
- 9. All other required permission from different statutory authorities should be obtained.*

From the aforesaid decision, it is evident that MCZMA treated the project to be a standalone jetty and examined the issue of clearance from the CRZ point of view.

48. It is also relevant to mention here that under unamended para 7 (ii) of CRZ Notification, 2019, all permissible activities in CRZ-I and CRZ-IV area were to be dealt with by the Government of India, Ministry of MoEFCC and MCZMA was merely a recommendatory authority and final CRZ clearance would be issued only by the Central Government. However, by Notification dated 24th November 2022, para 7(ii) of CRZ Notification 2019 was amended and amended provision carved out an exception in respect of certain activities including standalone jetties for which CRZ clearance has to be granted at the level of concerned Coastal Zone Management Authority without requirement of referring the proposal to the Central Government. In order to notice the change brought about by the amendment, the provision of unamended and amended para 7(ii) of CRZ Notification 2019 are required to be read in conjunction which are reproduced below in the form of a chart.

Unamended para-7(ii) of the CRZ Notification dated 18 January 2019	Amended para-7(ii) of the CRZ Notification dated 24 November 2022
(ii) All development activities or projects in CRZ-I and CRZ-IV	"(ii) All development activities or projects in CRZ-I and CRZ-IV

<p>areas, which are regulated or permissible as per this notification, shall be dealt with by Ministry of Environment, Forest and Climate Change for CRZ clearance, based on the recommendation of the concerned Coastal Zone Management Authority.</p>	<p>areas, which are regulated or permissible as per this notification, shall be dealt with by the Central Government for Coastal Regulation Zone clearance, based on the recommendation of the concerned Coastal Zone Management Authority with the following exceptions, namely:</p> <p>Stand-alone jetties, Salt works, Slipways, Temporary structures and Erosion Control Measures (like Bunds, Seawall, Groynes, Breakwaters, Submerged reef, Sand nourishment, etc.)</p> <p>which shall be dealt by concerned Coastal Zone Management Authority.";</p>
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49. Thus, after issuance of Notification dated 24th November 2022, the excepted projects enumerated under para 7(ii) can now be dealt with by MCZMA for CRZ clearance. One of the excepted projects under amended para 7(ii) is standalone jetty. Thus, for CRZ clearance, for standalone jetties, MCZMA can grant clearance by itself, without referring the proposal to the Central Government.

50. Therefore, it is necessary to examine whether the project is a standalone jetty. Para 5.1.2 of CRZ Notification 2019 dealing with regulated or permissible activity for CRZ-

IB area clearly spells out ports and jetties as different and distinct activities. The CRZ Notification 2019 creates a conscious distinction between “ports” and “jetties”. Similarly, the activities mentioned in para 5.4 of aforesaid Notification also make a conscious distinction between “ports” and “jetties”. Therefore, the term standalone jetty as contra distinct from the “port” would mean where no porting activities are carried out and the facilities used only by the passengers. A port can have jetties for tying the boats and the passengers boarding on and alighting from such boats. Such a port having jetties would not be covered by exceptions under amended para 7(ii) of CRZ Notification 2019. However, every jetty, which does not have a port facility, would be covered by the said exception. The term “standalone” signifies absence of any port or harbour like facilities where the platform is used only by the passengers to board or alight from the boats.

51. The object of the project is to provide a facility of jetty for parking of boats and to provide for embarkation

and disembarkation point to the passengers. The project does not involve handling of cargo or fish and same is only for the benefit of passengers. The Supreme Court, in Re : ***NOIDA MEMORIAL COMPLEX, NEAR OKHLA BIRD SANCTUARY (SUPRA)***, has evolved the test of dominant purpose of dominant nature of the project or common parlance test i.e. how a common person using or enjoying the facilities would view it. On the touchstone of aforesaid principle, if the dominant purpose of the project is seen, the same is to provide facilities to the passengers. The facilities like lounge, cafe and parking are only incidental to the passenger jetty. The project provides for basic facilities to the passenger who will be embarking and disembarking and therefore, the facilities which are incidental to the project does not alter the dominant nature of the project i.e. passenger jetty. The ancillary facilities required for making passenger jetty functional does not make it something else other than the jetty. Every jetty set up for use by the passengers (where cargo or fish is not handled) would be covered by the term 'standalone jetty' used in para 7(ii) of

the CRZ Notification. Thus, the project is a standalone jetty and is a permissible activity in CRZ area in terms of CRZ Notification dated 18th January 2019.

52. In the instant case, MCZMA which is a statutory authority comprising of experts, has treated the project to be standalone jetty. The view taken by the statutory authority is a plausible view and the same cannot be said to be either perverse, arbitrary or irrational. This Court, therefore, in exercise of powers of judicial review in the absence of any infirmity with a decision taken by a body of experts, cannot sit like an appellate authority and record any contrary opinion.

53. Thus, the inevitable conclusion is thus, that the project is a standalone jetty and submissions made by the petitioners to the contrary do not deserve acceptance. Accordingly, the first issue is answered in the negative by stating that the project is a standalone jetty and there is no need to seek CRZ clearance from the Central Government.

(B) SECOND ISSUE:

(ii) Whether the order dated 2nd March 2023 passed by MCZMA is liable to be quashed on the ground that MCZMA has no jurisdiction to grant the approval to the project?

54. It is the case of the Petitioners that the Project in question is covered by Entry No.7(e) of the EIA Notification and therefore, it requires environmental clearance from the Central Government. The contention of the Petitioners about the Project being covered by Entry No.7(e) of the EIA Notification is essentially based on the fact that the previous proposal for setting up pencil-like jetty was placed before the SEIAA, with a clear finding that the said project was covered by Entry No.7(e) of the EIA Notification. It appears that the 2014 proposal was recommended by the MCZMA in its 93rd meeting held on 25th August 2014. The proposal was thereafter placed before SEIAA in March 2019. The petitioners also relied upon the proposal submitted by Project Component, MMB in March 2022 in which a representation was made that the Project is covered by Entry No.7(e) of the EIA Notification. Since MCZMA had

directed submission of revised proposal for passenger terminal and jetty, a fresh proposal was submitted by Project Component, MMB on 6 October 2022 in which a representation was made in the Certificate of Accreditation dated 6th December 2022 that the Project is covered by Entry No.7(e) of the EIA Notification. The petitioners contend that even otherwise the Project is covered by Entry No.7(e) of the EIA Notification taking into consideration the plain language of the said entry.

55. We have already reproduced Entry No.7(e) and the EIA Notification which pertains to the activity of physical infrastructure for 'ports, harbours, break waters and dredging'. It would be impermissible to read the fifth activity of establishment of 'passenger jetty' into Entry No. 7(e) of the EIA Notification. Furthermore, upon comparison of the entries under Entry. No.7(e) of the EIA Notification that with the activities in para-5.4(iii) of the CRZ Notification, conscious exclusion of 'jetty' in Entry No.7(e) of the EIA Notification is more than apparent. For better understanding, the comparison of the activities in para-

5.4(iii) of the CRZ Notification and in Entry No.7(e) of the EIA Notification is, as under:-

Para 5.4(iii) of CRZ Notification	Entry No.7(e) in EIA Notification
(iii) Activities related to waterfront or directly needing foreshore facilities, such as ports and harbours, jetties, quays, wharves, erosion control measures, breakwaters, pipelines, navigational safety facilities and the like.	"Ports, harbours, break water, dredging".

56. Thus, while activities of ports, harbours and break waters are common to both CRZ Notification as well as EIA Notification, there is a conscious exclusion of activities of 'jetty' in EIA Notification.

57. The fact that the activity of establishment of jetty is excluded from Entry No.7(e) of the EIA Notification becomes evident if column Nos.3 and 4 of the Schedule are seen in which the activities are subdivided in Category 'A' and Category 'B' which have to be dealt with by the Central Government or the SEIAA, respectively. If ports, harbours, break waters or dredging involves the threshold limit of more than 5 million TPA of cargo handling capacity

(excluding fishing activities), the clearing authority is the Central Government. On the other hand, if ports, harbours, break waters or dredging involves threshold limit of less than 5 million TPA of cargo handling capacity and/or ports/harbours exceeding 10,000 TPA of fish handling capacity, the clearing authority is SEIAA. Thus, column Nos. 3 and 4 clearly show that all the four activities included in Entry No.7(e) must necessarily involve either the cargo handling or fish handling activities. None of the four entries envisages handling of only passengers. This is why there is conscious exclusion of the activity of 'jetty' in Entry No.7(e) of the EIA Notification.

58. Now the issue which arises for our consideration is whether the MMB must be tied to the representation it had made in respect of the previous project being governed by Entry No.7(e) of EIA Notification, when in fact, the project envisages construction of standalone jetty which is not included in Entry No.7(e) of EIA Notification. The question, whether or not the project is covered by Entry No.7(e) of EIA Notification cannot be decided on the basis of conduct

of the parties and there is no estoppel in law against MMB in respect of the representation it has made about the previous project which was never set up. The MMB, after having realized that execution of the project involves setting up of passenger jetty and the same is not covered by Entry 7(e) of the EIA Notification, is entitled to take a stand that project is not governed by Entry 7(e) of the EIA Notification. Therefore, the project cannot be treated as governed by Entry 7(e) of the EIA Notification on account of MMB's conduct.

59. The contention that project must be treated as governed by Entry 7(e) of the EIA Notification only on account of securing environmental clearance for other jetties in the vicinity also sans substance. It is pertinent to note that construction of Ro-Ro jetty and other terminal facility at ferry wharf cannot be compared with present project, as Ro-Ro jetty comprises of large size vessel aimed mainly at transporting wheeled cargo where vehicles can drive directly on and off the vessel. The Ro-Ro jetty involves transportation of vehicles; therefore, it may be

governed by Entry 7(e) of the EIA Notification based on the cargo handling capacity.

60. Now we advert to another contention urged on behalf of the petitioners that the project is a part of the existing MPT. Merely because MPT is licensing authority for the boards and yachts plying across the harbour, the same does not mean that proposed jetty would form part of MPT as MPT has never treated the proposed project as its own. It is noteworthy that MPT in the year 2001 was proposing to execute a separate project for establishing PWT for providing water transportation system between Navi Mumbai and Mumbai. The present project is being executed by altogether different agency viz. MMB. Therefore, the contention that proposed project is part of existing port of MPT cannot be considered.

61. The EIA Notification of 2006 has been amended by S.O.3067 (E) dated 1st December 2009 by which the entries 'breakwaters and dredging' were added in Clause 7(e) of the Schedule to EIA Notification 2006. The

amendment effected by S.O. dated 1st December 2009 also included insertion of two notes relating to activity of dredging. Thus, so far as ports and harbours are concerned, the entry in Clause 3 and 4 of the Schedule clearly go to show that determinative factor for deciding jurisdiction of MoEF or SEIAA is only the quantum of cargo/fish handling capacity. This would necessarily mean that boat or berthing facility like the jetty which does not involve cargo/fish handling, is not governed by entry 7(e) of the EIA Notification.

62. We are, therefore, of the view that the activity of setting up of passenger jetty is not covered by Entry No.7(e) of EIA Notification and therefore, para-7(iv) of the CRZ Notification has no application for the project. In other words, since environmental clearance under EIA Notification is not needed, provisions of para-7(iv) of CRZ Notification are wholly inapplicable to the present case. Therefore, environmental permission of SEIAA or of the Central Government was not necessary for execution of the Project and the CRZ clearance granted by MCZMA is

found to be in order.

63. For the aforesaid reasons, the second issue is answered by stating that the project does not require environmental clearance from the Central Government and the grant of CRZ clearance by MCZMA is legal and valid.

(C) THIRD ISSUE:

(iii) whether the impugned decision of construction of the project at the radio club site being irrational, arbitrary, violative of the rights of the petitioners under Article 14 and 21 of the Constitution of India and is in breach of precautionary principle and principle of sustainable development, is liable to be quashed and set aside ?

64. For the facility of reference, we have sub-divided the challenge of the petitioners to the project under third issue with following sub-headings:

(a) Non-consideration of alternative site of Ferry Wharf.

(b) Challenge to the location of the project and non-consideration of principle of sustainable development and precautionary principle.

(c) Effect of non-disclosure of Howe report and accurate information while seeking MCZMA

clearance :

- (d) Amphitheatre
- (e) Restaurant/Cafe
- (f) Existing jetties

65. Admittedly, the impugned decision of construction of the project at radio club site is a policy decision. Therefore, it is apposite to take note of well settled principles with regard to scope of judicial review in the matter of policy decision and with regard to applicability of principles of sustainable development and precautionary principles in relation to a development activity.

(i) Scope of Judicial Review:

66. The Supreme Court in ***DAHANU TALUKA ENVIRONMENT PROTECTION GROUP & ANR. VS. BOMBAY SUBURBAN ELECTRICITY SUPPLY COMPANY LTD. & ORS.***,¹⁷ while dealing with validity of clearance by the State of Maharashtra to the proposal of Bombay Suburban Electricity Supply Company for construction of a thermal power project over an area of 800 hectors or

17 (1991) 2 SCC 539

thereabouts in Dahanu, Maharashtra, in paragraph 2 of the decision dealt with the scope of judicial review in environmental matters. Relevant extract of paragraph 2 is extracted below for the facility of reference:

"2.....The observations in those decisions need not be reiterated here. It is sufficient to observe that it is primarily for the governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people on the one hand and the necessity for preservation of social and ecological balances, avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance between these two conflicting objectives. The court's role is restricted to examine whether the government has taken into account all relevant aspects and has neither ignored nor overlooked any material considerations nor been influenced by extraneous or immaterial considerations in arriving at its final decision."

67. The scope of judicial review of governmental policy is now well defined. The Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are the courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review, when examining a policy of the Government, is to check whether it violates the fundamental rights of the

citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. The Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review (***VID ASIF HAMEED VS. STATE OF J & K***¹⁸), ***SITARAM SUGAR CO. LTD. VS. UNION OF INDIA***¹⁹, ***KHODAY DISTILLERIES LTD. VS. STATE OF KARNATAKA***²⁰, ***BALCO EMPLOYEES' UNION VS. UNION OF INDIA***²¹, ***STATE OF ORISSA VS. GOPINATH DASH***²², ***AKHIL BHARAT GOSEVA SANGH VS. STATE OF A.P.***²³, and ***DIRECTORATE OF FILM FESTIVALS VS. GAURAV ASHWIN JAIN***²⁴.

68. A three Judge Bench of the Supreme Court in ***NARMADA BACHAO ANDOLAN VS. UNION OF INDIA &***

18 ***1989 SUPP (2) SCC 364***

19 ***(1990) 3 SCC 223***

20 ***(1996) 10 SCC 304***

21 ***(2002) 2 SCC 333***

22 ***(2005) 13 SCC 495***

23 ***(2006) 4 SCC 162***

24 ***(2007) 4 SCC 737***

ORS.²⁵ dealt with the scope of judicial review in respect of infrastructural projects and held that conception and decision to undertake a project must be regarded as a policy decision and it is for the Government to decide how to do its job. Paragraphs 227, 229 and 234 of the aforesaid decision which are relevant for the purposes of controversy involved in the instant writ petition are extracted below for the facility of reference.

"227. There are three stages with regard to the undertaking of an infrastructural project. One is conception or planning, second is decision to undertake the project and the third is the execution of the project. The conception and the decision to undertake a project is to be regarded as a policy decision. While there is always a need for such projects not being unduly delayed, it is at the same time expected that a thorough possible study will be undertaken before a decision is taken to start a project. Once such a considered decision is taken, the proper execution of the same should be undertaken expeditiously. It is for the Government to decide how to do its job. When it has put a system in place for the execution of a project and such a system cannot be said to be arbitrary, then the only role which a court may have to play is to see that the system works in the manner it was envisaged.

229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is

25 2000(10) SCC 664

violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them.

234. *In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."*

69. Another three Judge Bench of Supreme Court in ***RAJIV SURI VS. DELHI DEVELOPMENT AUTHORITY & OTHERS***²⁶, reiterated the scope of interference with policy

26 (2022) 11 SCC 1

decisions and in paragraphs 202, 203 and 211 has held as under:

"202. *A policy decision goes through multiple stages and factors in diverse indicators including socio-economic and political justice, before its final culmination. As per the nature of the project, the Government executes the project by taking certain steps — legislative, administrative, etc. and it is this which comes under the radar of the Court. The increasing transparency in Government functioning by means of traditional and modern media is reducing the gap between citizens and Government and Government actions are met with a higher level of scrutiny on a real-time basis.*

203. *In a democracy, the electors repose their faith in the elected Government which is accountable to the legislature and expect it to adopt the best possible course of action in public interest. Thus, an elected Government is the repository of public faith in matters of development. Some section of the public/citizens may have another view point if not complete disagreement with the course of action perceived by the elected Government, but then, the dispensation of judicial review cannot be resorted to by the aggrieved/dissenting section for vindication of their point of view until and unless it is demonstrated that the proposed action is in breach of procedure established by law or in a given case, colourable exercise of powers of the Government. Therefore, it is important for the Courts to remain alive to all the attending circumstances and not interfere merely because another option as in the perception of the aggrieved/dissenting section of public would have been a better option.*

211. *To sum up the above discussion, it may be noted that judicial review primarily involves a review of State action — legislative, executive, administrative and policy. The primary examination in a review of a legislative action is the existence of power with the legislature to legislate on a particular subject-matter. For this purpose, we often resort to doctrines of pith and substance, harmonious construction, territorial nexus, etc. Once the existence of power is not in dispute, it is essentially an enquiry under*

Article 13 of the Constitution which enjoins the State to not violate any of the provisions of Part III in a law-making function. The review of executive action would depend upon the precise nature of the action. For, the domain of executive is wide and is generally understood to take within its sweep all residuary functions of the State. Thus, the precise scope of review would depend on the decision and the subject-matter. For instance, an action taken under a statute must be in accordance with the statute and would be checked on the anvil of ultra vires the statutory or constitutional parameters. The enquiry must also ensure that the executive action is within the scope of executive powers earmarked for State Governments and Union Government respectively in the constitutional scheme. The scope of review of a pure administrative action is well settled. Since generally individuals are directly involved in such action, the Court concerns itself with the sacred principles of natural justice — audi alteram partem, speaking orders, absence of bias, etc. The enquiry is also informed by the Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principles of unreasonableness. The review of a policy decision entails a limited enquiry. As noted above, second guessing by the Court or substitution of judicial opinion on what would constitute a better policy is strictly excluded from the purview of this enquiry. Under the constitutional scheme, the Government/executive is vested with the resources to undertake necessary research, studies, dialogue and expert consultation and accordingly, a pure policy decision is not interfered with in an ordinary manner. The burden is heavy to demonstrate a manifest illegality or arbitrariness or procedural lapses in the culmination of the policy decision. However, the underlying feature of protection of fundamental rights guaranteed by the Constitution must inform all enquiries of State action by the constitutional court.”

(ii) Principle of sustainable development and precautionary principle:

70. A three Judge Bench of Supreme Court in

VELLORE CITIZENS' WELFARE FORUM VS. UNION OF INDIA & ORS.²⁷ has taken note of the concept of sustainable development and precautionary principle. It has been held that traditional concept that development and ecology are opposed to each other is no longer acceptable and sustainable development is the answer. It has further been held that sustainable development, as a balancing concept between ecology and development, has been accepted as part of customary international law. It has also been held that 'precautionary principle' and 'polluter pays' principle are essential features of sustainable development and since these principles have been accepted as part of customary international law, there would be no difficulty in accepting it as part of domestic law. The similar view has been reiterated in **VELLORE DISTRICT ENVIRONMENT MONITORING COMMITTEE VS. THE DISTRICT COLLECTOR, VELLORE DISTRICT & OTHERS**²⁸.

²⁷ (1996) 5 SCC 647

²⁸ 2024 SCC ONLINE SC 4758

(a) Non-consideration of alternative site of Ferry Wharf:

71. The challenge to the project has been made on the ground that non-consideration of alternative site at ferry wharf has vitiated the decision in respect of the project at radio club. In support of aforesaid contention, petitioners have relied on the report of Consulting Engineers, wherein a recommendation was made for construction of PWT at South of ferry wharf. It is contended that decision for construction of the project at radio club has been taken in ignorance of report of the Consulting Engineers and without carrying out any independent study. Therefore, the decision is arbitrary and irrational and suffers from the vice of non-application of mind.

72. The Consulting Engineers were appointed to submit a report to avoid collision between passenger crafts proposed to be used for water transport service between Mumbai and Navi Mumbai and ports', cargo and vessels. The aforesaid fact is evident from the following observations in the Consulting Engineers' interim report.

"Two separate studies were conducted on the subject in the past at different points of time — one in 1992 by M/s Kirloskar Consultants and the other in 1995 by M/s Consulting Engineering Services — which resulted in the selection of the location of one PWT terminal in South. Mumbai next to the Gateway of India near Radio Club and the other terminal in Navi Mumbai at Belapur as shown in Fig.1.1

Mumbai Port Trust (MbPT), however, harboured certain concerns on the location of the terminal in South Mumbai particularly in the context of possible collisions between the passenger crafts and the ports' cargo vessels during the crossings of the port's main navigation channel by the passenger crafts along the then recommended navigation route (reference pages 4 and 5 of the Terms of Reference - Section 2).

It is with their apprehension in view that MbPT appointed Howe (India) Pvt Ltd (HIPL) to freshly review *constructively the scenario of the past with the objective to examine feasible locations offering the minimum interference of the PWT traffic with the seaborne traffic of MbPT, JNPT and the Indian Navy, for siting of the proposed PWT terminal."*

(emphasis added)

73. The Consulting Engineers, in the interim report conducted comparison of five alternative locations and recommended the proposed PWT to be located at ferry wharf. The said report was circulated amongst the stake holders for their responses. The MMB disagreed with the findings of the interim report and in its comments on 3rd October 2000 stated that approach of Consulting Engineers (Howe) was aimed only at negating the potential site at

Gateway of India at radio club and to locate PWT within MPT premises. In the report, MMB also stated that Consulting Engineers lack professional approach to suggest viable suggestion to establish PWT at a location which will be useful to public. The relevant extract of the said communication dated 3rd October 2000 reads as under:

*"5. The Report of M/s. Howe (I) Ltd. is not considered wholesome **as it is aimed only at negating potential sites at Gateway / Radio Club area and within the Mumbai Port Trust premises.** Instead of finding out a solution and suggesting ways and means of accommodating much needed passenger ferry service, the Consultant appears to have taken a fixed stand as to why it cannot be done at other places other than Ferry Wharf. No professional approach appears to have been made to suggest a viable solution for establishing water transport services in the location which would be useful to the public and will be able to reduce passenger load from the road and rail network of Mumbai."*

(emphasis added)

74. The CIDCO, vide letter dated 14th November 2000 also objected to the report of Consulting Engineers, wherein it was stated that a biased assessment has been made by the Consulting Engineers. The Government of Maharashtra, vide letter dated 9th November 2001, did not agree for setting up of PWT at ferry wharf. It was further stated in the said communication that a terminal at Gateway of India

is still needed as ferry wharf was not a suitable substitute. The State Government, therefore, suggested that PWT be developed at ferry wharf and Gateway of India.

75. The Consulting Engineers, after considering the objections and suggestions by various stake holders, submitted a final report sometime in January 2002/April 2003, in which following recommendations were made:

i) It is strongly recommended that the PWT system be established at the earliest at Ferry Wharf.

ii) Provision of the two flyovers on P.D'mello road, as proposed in the report, would considerably ease out the access and dispersal of the passengers to and from the proposed PWT. Also, the alternative access proposed by MbPT, involving two level crossings, is technically feasible. Therefore, a judicious selection between the two alternative access schemes will be necessary.

iii) It is recommended that 50% subsidy be granted to the PWT system in the interest of public service.

76. Thus, it is evident that the purpose of appointment of Consulting Engineers was to examine the technical and economic viability of providing Passenger Water Transport System across the harbour between the Mumbai and Navi Mumbai cities. The MPT had assigned the project to the Consulting Engineers, as there was an

apprehension of possible collision between passenger crafts and port cargo vehicles during crossing of ports' main navigation channel by passenger crafts.

77. Thus, the recommendation by the Consulting Engineers was made in the context of providing water transport facilities which was to be operated through passenger crafts, like shuttle services between Mumbai and Navi Mumbai cities and setting up of a terminal, which was part of the project. The feasibility study was conducted by the Consulting Engineers for the purpose of choosing most convenient points for setting up terminal for such passenger movement.

78. Admittedly, passenger jetty service as conceived in the year 2000 has not been set-up by the State Government or any other agency in past 25 years. Undeniably, on account of construction of several fly-overs, increase of lanes of Vashi creek bridge and construction of trans-harbour bridge (Atal Setu), the time taken to commute between the cities of Mumbai and Navi Mumbai

has reduced considerably and the road connectivity between the two cities has improved significantly. The Consulting Engineers' interim report indicates that average journey time between two cities was 110 minutes. The purpose of setting-up of PWT in the year 2000 was for operation of passenger water transport services to connect Mumbai and Navi Mumbai cities, whereas, the purpose of the present project is to decongest the existing small antiquated jetties at Gateway of India, where hundreds of boats, ferries and yachts are berthed. Approximately 35 lac passengers face immense difficulty in embarkation and disembarkation. The object of the present project is to provide better facilities to the existing passengers using old jetties and to decongest the Gateway of India area rather than establishing connectivity between two cities through water transport service. The project of construction at radio club is not aimed at the same purpose for which the Consulting Engineers had conducted the study in the year 2000.

79. The position has undergone a change during the past 25 long years as majority of port activities have shifted

from MPT to JNPT located at Nava Shea, District-Raigad. It is relevant to mention that one of the reasons for rejecting the site at radio club pier by Consulting Engineers was the requirement of conducting rock blasting, which is evident from the following findings in Consulting Engineers' report:

*"It is to be noted that this scheme is characterized by large quantity of rock dredging **requiring blasting and grab dredging in the vicinity of the residential area across T. Ramchandani Marg and the Gateway of India.***

*iv) **Rock blasting for dredging** to -2 M CD would be unavoidable since no cutter suction dredger can operate in the shallow depths encountered at the location.*

*v) **Extreme precautions** would need to be taken while **rock blasting in view of the close proximity of Gateway of India** — a heritage structure, as well as the existing residential buildings across T. Ramchandani Marg."*

80. Thus, it is evident that Consulting Engineers' report was in the context of altogether different need and was principally aimed at suggesting site for PWT at a location other than Gateway of India. The said report was prepared for a different purpose i.e. for establishing PWT system to connect Mumbai and Navi Mumbai. Therefore, the same was not required to be brought to the notice of

MCZMA for seeking environmental clearance. For the similar reason, MCZMA was not required to consider the alternative sites as the project is undertaken with main object to provide facilities and safety to the passengers travelling between the existing location at Gateway of India. Thus, it is evident that the non-consideration of alternative site at ferry wharf has not vitiated the decision to construct the project at radio club. In our opinion, MMB was not under an obligation to mention the alternative sites in the application seeking clearance of the project.

(b) Challenge to the location of the project and non-consideration of principle of sustainable development and precautionary principle:

81. In so far as the challenge to the impugned policy decision on the ground that ferry wharf is a more suitable location for setting up of the jetty and construction of jetty and passenger terminal would result more congestion and traffic chaos in the area is concerned, suffice it to say that multiple regulatory authorities, after application of mind, have granted approval to the project. Primarily, it is for the

Government to consider the project and the role of Courts is restricted to examine whether Government has taken into account all relevant aspects or has neither ignored nor overlooked any material consideration. The Supreme Court in **NARMADA BACHAO ANDOLAN (SUPRA)**, after taking into the precautionary principle applicable to a project affecting environment in para 122, 123 and 124, has held as under:

"122. *It is this decision which was the subject-matter of challenge in this Court. After referring to the different concepts in relation to environmental cases like the "precautionary principle" and the "polluter-pays principle", this Court relied upon the earlier decision of this Court in Vellore Citizens' Welfare Forum v. Union of India [(1996) 5 SCC 647] and observed that there was a new concept which places the burden of proof on the developer or industrialist who is proposing to alter the status quo and has become part of our environmental law. It was noticed that inadequacies of science had led to the precautionary principle and the said "precautionary principle" in its turn had led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed is placed on those who want to change the status quo. At p. 735, this Court, while relying upon a report of the International Law Commission, observed as follows: (SCC para 38)*

"38. The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment."

123. *It appears to us that the "precautionary principle" and the corresponding burden of proof on the person who wants to change the status quo will ordinarily apply in a case of polluting or other project or industry where the extent of damage likely to be inflicted is not known. When there is a state of uncertainty due to lack of data or material about the extent of damage or pollution likely to be caused then, in order to maintain the ecology balance, the burden of proof that the said balance will be maintained must necessarily be on the industry or the unit which is likely to cause pollution. On the other hand where the effect on ecology or environment of setting up of an industry is known, what has to be seen is that if the environment is likely to suffer, then what mitigative steps can be taken to offset the same. Merely because there will be a change is no reason to presume that there will be an ecological disaster. It is when the effect of the project is known that the principle of sustainable development would come into play which will ensure that mitigative steps are and can be taken to preserve the ecological balance. Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation.*

124. *In the present case we are not concerned with the polluting industry which is being established. What is being constructed is a large dam. The dam is neither a nuclear establishment nor a polluting industry. The construction of a dam undoubtedly would result in the change of environment but it will not be correct to presume that the construction of a large dam like the Sardar Sarovar will result in an ecological disaster. India has an experience of over 40 years in the construction of dams. The experience does not show that construction of a large dam is not cost-effective or leads to ecological or environmental degradation. On the contrary there has been ecological upgradation with the construction of large dams. What is the impact on environment with the construction of a dam is well known in India and, therefore, the decision in A.P. Pollution Control Board case [(1999) 2 SCC 718] will have no application in the present case."*

82. Thus, in view of aforesaid enunciation of law, it is evident that in the light of precautionary principle, the burden of proof is on the project proponent to prove that such activity is not potentially harmful to the environment in every case where there is identifiable risk of serious or irreversible harm. The precautionary principle usually is applied where the extent of damage likely to be inflicted is not known due to lack of data or material. However, in a case where impact on the environment on account of execution of the project is well known, the precautionary principle would not apply and principle of sustainable development would come into play. The principle of sustainable development would ensure that mitigative steps are taken and can be taken to preserve ecological balance. In the instant case, the project envisages construction of passenger jetty and terminal facilities involving virtually no reclamation of the sea. The project is aimed at not creating altogether a new facility but to substitute a new facility at the existing antiquated jetties. The extent of damage likely to be caused by the construction of the jetty is well-known

as was in the case before the Supreme Court in **NARMADA BACHAO ANDOLAN (SUPRA)**, where the project of construction of dam and its impact on environment was well-known. Therefore, in the fact situation of the case, the precautionary principle would not strictly apply.

83. At present, there are five antiquated operational jetties right next to the iconic Government of India monument, which have been in use for almost a century. One of the said five jetties is exclusively used by Bhabha Atomic Research Center. The other four jetties are used by daily commuters, who travel to work in South Mumbai as well as by the tourists who make use of ferries to reach Elephanta Caves, Alibaug etc. or for excursion in the sea. The jetties are also used by yacht owners and operators. According to the affidavit filed by MMB, approximately 30 to 35 lac passengers currently travel every year from the said four jetties. The said affidavit highlights the position that the existing jetties facilities are wholly inadequate as there is no proper infrastructure in terms of waiting area, parking facilities, disability accessibility, emergency services,

physical frisking/checking of the passengers, etc. Location of those jetties next to the iconic Gateway of India monument, as well as proximity to the Taj Mahal hotel leads to overcrowding and high amount of road traffic at the junction of the Gateway of India. It is pointed out in the affidavit that during embarkation/ disembarkation from the jetties, passengers are required to cross 3-4 boats to get to their boat/ferry or to the shore. In the said process of embarkation, elderly persons, women and children are at the risk of serious injuries. The MMB has placed on record photographs of the existing jetty facilities at the Gateway of India, which depict overcrowding at the spot as well as serious security and safety hazards where passengers are seen crossing several jetties to reach the desired boat/ferry.

84. Bearing in mind the above concerns, the MPT has conceived the project of setting up passenger jetty and terminal, which involves construction of 10 fixed pile jetties (with 20 berths) with walkway, passenger terminal platforms and parking in pile and a terminal (porta cabins having heritage like look) over an aggregate area

admeasuring 25116.3 sq.mtrs. The project site is 350 mtrs. away from the Gateway of India monument. The Affidavit indicates that MMB has considered the feasibility of other locations for the Project and has also taken into consideration the suggestions of Western Naval Command. Since the project is at close proximity of naval establishment, MMB has placed on record letter dated 29 November 2022 of Western Naval Command which has imposed several conditions including the condition of clearance of all boats from the sea area around Gateway of India, as well as provision of one jetty and office space on the passenger terminal to be allotted to the Indian Navy for berthing of Indian Navy Craft and associated administrative purposes.

85. Thus, the decision taken by MMB to set up passenger jetty and terminal at Radio Club appears to be well considered decision and is aimed at addressing several safety, security and other concerns in respect of the existing five outdated jetties being used by 30-35 lac passengers annually at the Gateway of India.

86. In our view, the Project also meets the principle of sustainable development where the proposed development is being carried out with minimum damage to the environment. It is noteworthy that an expert body namely, MCZMA has applied its mind to all the environmental concerns and has thereafter given clearance to the project. In absence of any expertise at our command, we cannot sit as an appellate authority over the decision of expert body like MCZMA. We also cannot judge the wisdom of the Government in setting up of the jetty near the site where lakhs of passengers have already undertaken sea journeys, instead of expecting them to shift to another location, which is not considered as a feasible alternative by the Government to achieve the objective of decongesting the existing jetty facilities at Gateway of India.

87. The aforesaid policy decision has been taken by the Government and MMB, which does not suffer from vice of arbitrariness, irrationality and vice of non-application of mind. The MMB has taken into account relevant factors. The decision to construct the project, cannot be said to be

either arbitrary or irrational. The project cannot be termed as violative of Article 14 and 21 of the Constitution of India and principles of sustainable development and precautionary principle. The decision to locate the project at radio club is also a well-considered decision.

(c) Non-disclosure of Consulting Engineers' report and accurate information while seeking MCZMA clearance :

88. The petitioners have contended that MMB is guilty of suppression of material facts while seeking CRZ clearance from MCZMA. It is contended that once non-disclosure of accurate information to the clearing body is apparent, the environmental clearance granted to the project must necessarily be set aside. In this connection reliance is placed on judgment of the Apex Court in **Hanuman Laxman Aroskar Versus. Union of India**²⁹ in which the Apex Court has held in paras-34, 37, 38, 62, 72, 73, 80 and 82 as under:-

34. *The objective of the EIA process is to ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate*

29 (2019) 15 SCC 401

information available.

37. *The application, which was to be made in accordance with the schedule provided in the notification was to be submitted with a project report which included with it an EIA report, an Environment Management Plan (EMP) and the details of a public hearing which had been carried out in accordance with guidelines issued by the Central Government from time to time. Limited exceptions to the public hearing process and the submission of an EIA were provided.*

38. *MoEF as the Impact Assessment Agency (IAA) would then evaluate the application and reports submitted. IAA was empowered to constitute a committee of experts, if necessary, which would have a right of entry into and inspection of the site during or after the commencement of the preparations relating to the project. IAA would prepare a set of recommendations based on the documents furnished by an applicant within 90 days from the receipt of the documents and a decision would be conveyed to the applicant within 30 days thereafter. EC granted was valid for a period of five years and a successful applicant was required to submit half-yearly reports to IAA. Concealing factual data or submitting false or misleading information would make the application liable for rejection and would lead to the cancellation of any EC granted on that basis.*

62. *The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 Notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately. Clause (vi) of Para 8 of the notification provides thus:*

"Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

72. *We cannot gloss over the patent and abject failure of the State of Goa as the project proponent in failing to disclose wetlands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km as required by Form 1. The disclosure in Form 1 constitutes the very foundation of the process which is initiated on the basis of the information supplied by the project proponent. Following the disclosure in Form 1, ToR are formulated, and this leads to the preparation of the EIA report. A duty is cast upon the project proponent to make a full, complete and candid disclosure of all aspects bearing upon the environment in the area of study. The project proponent cannot profess an ignorance about the environment in the study area. The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1.*

73. *There can be no manner of doubt that Form 1 is an important ingredient in the entire process envisaged under the 2006 Notification. Hence, clause (vi) of Para 8 of the 2006 Notification provides that deliberate concealment or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection and lead to the cancellation of a prior EC granted on that basis. The declaration which is required of the project proponent is to a similar effect.*

80. *Though the EIA report adverts to the presence of forests within the study area in Goa and Maharashtra, we have to consider whether this by itself warrants the grant of an EC in spite of the fact that there has been a patent failure on the part of the project proponent to make a*

transparent and candid disclosure of material facts in Form 1. Information furnished in Form 1 is crucial to the preparation of ToR by EAC. EAC comprises of experts. It is constituted, among other reasons, for the specific purpose of assessing the information furnished in Form 1 and preparing comprehensive ToR. There is an intrinsic link between the disclosures in Form 1 which constitute the basis for formulating ToR and between the ambit of the EIA report required by ToR and the final EIA report. ToR guide the preparation of the EIA report. A failure to disclose information in Form 1 impairs the functioning of EAC in the preparation of ToR and in consequence, leads to preparation of a deficient EIA report.

82. *The failure on part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 Notification has a cascading effect on the salient objective which underlies the 2006 Notification. The 2006 Notification represents an independent code with the avowed objective of balancing the development agenda with the protection of the environment. An applicant cannot claim an EC, under the 2006 Notification, based on substantial or proportionate compliance with the terms stipulated in the notification. The terms of the notification lay down strict standards that must be complied with by an applicant seeking an EC for a proposed project. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on the part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law. There can be no gambles with the environment : a "heads I win, tails you lose" approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law.*

89. In so far as reliance placed by the petitioners in case of **HANUMAN LAXMAN AROSKAR (SUPRA)** is concerned, the Supreme Court found that material

information i.e. failure to disclose wetlands water sources, water bodies, bio-spheres, mountains and forest within an aerial distance within 15 km from an International Airport, which was expressly provided in Form-I stipulated in the EIA Notification was not furnished to the Ministry. The Supreme Court, thereupon remitted the matter for reconsideration. In the instant case, the project proponent has not concealed any material information from the MCZMA, which has granted CRZ clearance. We have already held that it was not necessary to disclose the report of Consulting Engineers to the MCZMA, as the same did not consider any environmental impact while suggesting the site for establishment of PWT for altogether different purpose and at a distinct point of time. Therefore, the decision in **HANUMAN LAXMAN AROSKAR (SUPRA)** has no application to the obtaining factual matrix of the case.

90. We have already held that Consulting Engineers' report was not relevant for the purposes of project in question. We have also held that MCZMA was not required to consider any alternative site for the project. There is no

suppression of any information while seeking MCZMA clearance. Therefore, non-disclosure of Consulting Engineers' report does not affect the validity of the decision to construct the project at radio club.

(d) Amphitheatre :

91. It is pertinent to note that while dealing with the second report, which was prepared in the year 2014 at the instance of M/s. Terracon Ecotech, the MCZMA, in its 93rd meeting held on 25th August 2014 had noted that project would generate effluent of 118 c/mtr. per day from restaurants and toilets and sewage from berthed vessels therefore, the same would be required to be treated in modular sewage treatment plant. The MCZMA, therefore, had required exclusion of restaurants, shops, sewage treatment plant, taxi/bus stand. However, the project does not contain any proposal for sewage treatment plant. Therefore, in our opinion, every endeavour should be made to ensure that the project is only used as a facility for the passengers and only ancillary facilities are provided to the passengers. Therefore, we made a query to the learned

Advocate General with regard to amphitheatre. Thereupon, learned Advocate General stated that the place described in the project as amphitheatre would only be used as a sitting area for the waiting passengers and the same is not envisaged as a place of entertainment in any manner.

(e) Restaurant/Cafe:

92. In response to a query made by this Court, learned Advocate General has clarified that MMB is not proposed to set-up any restaurant in the proposed jetty and that food stalls for catering to the passengers for provision of water and packed food products would only be set-up. The facility is being provided to the passengers and the same shall not be used for providing dining facility but shall be treated as ancillary service to the passenger jetty. The aforesaid submission is placed on record.

(f) Existing Jetty :

93. This Court has made a query to learned Advocate general about the existing five jetties at Gateway of India after completion of the project. Thereupon learned

Advocate General stated that after completion of the project, five existing jetties at Gateway of India would be discontinued in a phase-wise manner as directed by Indian Navy. The aforesaid submission is also placed on record.

94. For the aforementioned reasons, the issue No.(iii) is answered in the negative by stating that construction of project is neither in breach of Article 14 and 21 of the Constitution of India nor principle of sustainable development or precautionary principle.

(d) FOURTH ISSUE :

Validity of Heritage NOC:

95. In exercise of powers conferred under Section 22(m) read with Section 159 of the Maharashtra and Regional and Town Planning Act, 1960, the State Government, by a Notification dated 8th May 2018, has notified Development Control and Promotion Regulations for Greater Mumbai 2034 (hereinafter referred to as the **DCPR-2034**). Part-X of the DCPR contains special provisions, containing Regulations 52 to 56. Regulation 52 deals with

conservation of heritage. Regulation 52.2 provides that the Regulation shall apply to the heritage as shall be notified by the Government of Maharashtra from time to time and to any draft heritage list as published by Government of Maharashtra/ Municipal Commissioner. Regulation 52.4 prescribes for preparation of a list of heritage buildings and heritage precincts. The aforesaid Regulation provides that the heritage list shall not be considered as part of DCPR for the purpose of Section 37 of the MRTP Act and the list can be supplemented, altered, deleted or modified from time to time by the Government on receipt of proposals from the Commissioner or by the Government, sou-moto, provided that objections and suggestions from the public be invited and duly considered by Commissioner and/or Government of Maharashtra, before Notification.

96. It is pertinent to note that the Government of Maharashtra on 19th June 2019, has issued a heritage list of 'A' Ward area, in which Gateway of India is mentioned at Sr.No.211-D. It is not in dispute that Gateway of India is Grade-1 heritage building. The relevant extract of

Regulation 52.9(D) which deals with procedure in respect of development permission for changes in respect of Grade-1 building is extracted below for the facility of reference:

(D) Procedure:

Development permission for the changes shall be given by the Commissioner in consultation with/ taking into consideration the recommendation of the MHCC.

97. Regulation 5 of DCPR 2034 deals with Delegation of Powers. Regulation 5 is extracted below for the facility of reference:

5. Delegation of Powers:

Except where the Commissioner's special permission is expressly stipulated, the powers or functions vested in him by these Regulations may be delegated to any municipal official under his control, subject to his revision if necessary and to such conditions and limitations, if any, as he may prescribe. In each of the said Regulations, the word "Commissioner" shall, to the extent to which any municipal official is so empowered, be deemed to include such official."

In exercise of powers the MHCC, on 15th March 2022 passed the following resolution :

"It was also recorded that although as per GR Chief Engineer (D.P.) serves as a Member Secretary for the MHCC, for all practical purposes the Dy. Municipal Architect (D.P.) is delegated as Member Secretary and conveyer of all official communication of the MHCC."

98. The MHCC comprises the following persons who are experts in various fields :

1. Shri Ramnath Jha, Retired Principal Secretary
– Chairman
2. Head of the Department Structural Engineering Dept., Sardar Vallabhbhai Patel College of Engg. Andheri, Mumbai – Member.
3. Head of the Department Structural Engineering Dept., V.J.T.I., Mumbai – Member.
4. Principal, Sir J.J. College of Architecture, Mumbai – Member
5. Head of the Department / Senior Professor in Environmental Engg. VJTI, Matunga, Mumbai
– Member
6. City Historian from Mumbai University, as suggested by the V.C. - Member
7. Director, Prince of Wales Museum, Mumbai – Member
8. Chief Architect to Govt. Public Works Department, Government of Maharashtra – Member
9. An officer from MCGM not below the rank of Chief Engineer (to be suggested by the Municipal Commissioner) – Member Secretary.

99. In the instant case, the MMB made an application on 9th January 2025 to the HCC seeking permission for construction of the project. The HCC, in its 57th meeting held on 16th January 2025 considered the application and decided to grant the NOC. Thereupon, the HCC, on 7th February 2025 issued the NOC, subject to following conditions:

- (i) That this NOC is granted only from heritage point of view and all other applicable permissions from concerned departments shall be obtained prior to starting any work at site.
- (ii) That structural integrity of surrounding heritage sites and Gateway of India monument shall be ensured under the guidance of a structural consultant.
- (iii) That remarks from Traffic Department could be taken to ensure the better management of traffic.
- (iv) That further discussions with all stakeholders shall be done to finalize the detailing of the proposal.
- (v) That NOC is valid for 2 years from the date of issuance.

(vi) That completion certificate of the MHCC shall be obtained on completion of the work at site.

100. From close scrutiny of the provisions of DCPR-2034, the scheme which emerges is that Regulation 52.9 applies only when development permission is necessary for execution of a particular project. If a development permission is required for undertaking construction in surrounding areas/vistas of Grade-I heritage structure, such development permission can be granted by the Municipal Commissioner in consultation with/taking into considerations of MHCC. The execution of the project does not involve procurement of development permission. The Municipal Architect has not himself issued the NOC but has merely communicated that NOC is issued by the MHCC. The Dy. Municipal Commissioner has been delegated the power of Principal Secretary and conveyor of all official communications of MHCC. Therefore, the contention that the communication dated 7th February 2025 issued by the Dy. Municipal Architect conveying the no-objection of MHCC is without jurisdiction, does not deserve acceptance.

101. In so far as the challenge to the decision taken by MHCC on merits is concerned, the same is taken by a committee comprising of experts. The MHCC has taken into account the provisions of DCPR 2034 in which a development in surrounding areas/vistas of heritage Grade-1 can be permitted after ensuring that such development does not mark the grandeur or views from heritage Grade-1. It is relevant to note that even though, MHCC was required to take note of development of area within 100 mtrs. as vista of heritage Grade-1, the MHCC has considered, whether construction of project mar the view from Gateway of India even though the monument is located beyond 100 mtrs. from the proposed jetty i.e. at the distance of 300 mtrs. The Minutes of MHCC clearly record that 'the proposed jetty top is kept only 1.50 M above road level and the top of temporary structures like porta cabin will be 4.5 M from the road level so as not to obstruct the view of the surrounding heritage structures'.

102. Thus, it is evident that MHCC, which is a body

comprising experts from the fields of Engineering, Environment, Architecture, History, Public Administration and Archaeology etc., has taken into account all relevant factors as enumerated in Regulation 52.9(C) of DCPR 2034 while making the recommendation. The aforesaid decision cannot be said to be affected by Wednesbury Principle of reasonableness, *ultra vires* the power or authority or actuated by mala fides. In fact, neither the recommendation made by MHCC nor the Heritage NOC has been challenged on the said grounds. It is trite law that this Court, in exercise of powers of judicial review cannot sit in an appeal over the decision taken by an expert body and substitute its views **[SEE : MIG CRICKET CLUB (SUPRA)]**.

103. It is noteworthy that no provision in DCPR 2034 has been brought to our notice which mandates conduct of public hearing before issuing Heritage NOC. For the aforementioned reasons, the inevitable conclusion is that the Heritage NOC issued for the project does not suffer from

any infirmity. Accordingly, the issue No.(iv) is answered in the affirmative by stating that Heritage NOC dated 7th February 2025 is legal and valid.

(E) FIFTH ISSUE:

Traffic NOC :

(v) Whether the traffic NOC dated 28th January 2025 issued by the Mumbai Traffic Police is legal and valid?

104. The traffic NOC dated 28th January 2025 has been issued by the ACP, Traffic and has been granted for the purpose of construction work. The aforesaid NOC has been challenged on the ground that the NOC has not been issued for the project but has been issued only for the purpose of construction of project and therefore, the same discloses non-application of mind. It is pertinent to note that the petitioners have failed to point out any legal provision, which requires the MMB to obtain NOC from Traffic Police for construction of the project. The aforesaid contention, therefore, is wholly misconceived. The impact of the project

on traffic has been considered by a consultant in the traffic simulation report. The report indicates that there will be marked improvement in traffic conditions with the development of jetty and terminal building. The MMB has introduced an additional lay-over/pick-up and drop lane of the existing road to regulate the traffic in a better way. The project contemplates a parking facility on the jetty which will de-congest the traffic on P.J.Ramchandani marg. The ACP (Traffic) has applied its mind to all relevant factors. Therefore, we are not inclined to accept the submission made on behalf of the petitioners that the traffic NOC dated 28th January 2025 requires to be quashed and set aside. In the result, the fifth issue is also issued in the affirmative by stating that the traffic NOC dated 28th January 2025 issued by the Mumbai Traffic Police is legal and valid.

(XII) CONCLUSION:

105. The pursuit of development is not an affront to the environment, when it walks the careful path of sustainability, guarded by regulations and reason. After

traversing the entire expanse of material on record, expert opinions, statutory clearances and upon weighing the scales between the progress and preservation and taking into account the fact that the project stands fortified by statutory clearance, we uphold the validity of the decision of MMB and the State Government in constructing the project i.e. "Passenger Jetty and Terminal Facilities" in sea face/promenade abutting the Gateway of India near the Radio Club.

106. We have already assigned reasons in the preceding paragraphs to record a conclusion that dominant purpose of the project is to provide facilities to the passengers for embarkation and disembarkation. The other facilities like amphitheatre and restaurant/cafe are only ancillary to the project. Therefore, the same have to be used only to make passenger jetty functional. We are also conscious of the fact that there is no sewage treatment plant envisaged in the project. The functioning of the facilities should not be detrimental to the environment. Therefore, we deem it appropriate to issue following

directions:

(i) The project proponent i.e. MMB shall ensure that the amphitheatre shall only be used as a sitting area by the passengers waiting to board the jetty and shall not be used as a place of entertainment in any manner.

(ii) The MMB shall further ensure that the proposed restaurant/cafe shall be used only to provide water and packed food products to the passengers and shall not be used for providing dining facility.

(iii) The MMB shall also ensure that after completion of the project at Gateway of India, the existing jetties shall be discontinued in a phased manner, as directed by the Indian Navy.

107. Accordingly, the writ petitions are disposed of.

108. Rule stands discharged.

(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE)