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राष्ट्रीय पर्यावरण अपील प्राधिकरण
NATIONAL ENVIRONMENT APPELLATE AUTHORITY

No. 01/01/2000 - NEAA

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Dated the 8th May, 2000

APPEAL NO. 01 of 2000

BETWEEN

Beach Protection Council of Orissa,
Dolamandap Sahi, Bank Lane,
A/PP/Dist ... PURI -752001
Through its President, Shri Jagannath Bastia

Appellant

AND

Secretary to Government of India, Ministry of Surface Transport,
Transport Bhavan,
1, Parliament Street, New Delhi

Secretary to Government of India, Ministry of Environment & Forests,
Paryavaran Bhavan,
CGO complex, Lodi Road, New Delhi - 1100 03

Special Secretary,
The State of Orissa,
Department of Public Enterprises and Commerce,
Bhubaneswar

Secretary, Environment & Forests Department,
State of Orissa, Bhubaneswar.

Managing Director, International Seaport Private Ltd.,
East India Chambers, III Floor, 3-Village Road,
Nungambakkam, Chennai - 600 034
(Through Shri V.Krishnamurthy,
Advocate, 340n New Lawyers' Chambers
Supreme Court, New Delhi)

Respondents

Order dated the 7th May, 2000 of the National Environment Appellate Authority
in the above case is enclosed.

(A.S.N.Murti)

Registrar
A. S. N. MURTI
REGISTRAR

National Env. Appellate Authority
Jawahar Lal Nehru Stadium

गेट नं० 31, जवाहरलाल नेहरू स्टेडियम, लोधी रोड, नई दिल्ली 110003 (भारत)
GATE NO. : 31, JAWAHARLAL NEHRU STADIUM, LOOHI ROAD, NEW DELHI - 110003. (INDIA)
TEL. : 4633681 FAX : 011 - 4644791

Date : 7th May, 2000.

CORAM:

Hon'ble Mr. Justice N. Venkatachala
Smt. Nirmala Buch
Shri Mohinder Singh
Shri Ejaz A Malik

Chairperson
Vice Chairperson
Member
Member

For Appellant (s) Mr. Jagannath Bastia, President Beach Protection Council
of Orissa

For Respondent (s)

Mr. A.K. Aggarwal, Desk Officer (Ports Developments) for
Respondent - 1 and Respondent - 2
Mr. Sidhartha Pradhan, Special Secretary, Department of
Commerce, Govt. of Orissa for Respondents - 3 & 4.
Mr. V. Krishnamurthy, Advocate for Respondent - 5

ORDER

This appeal is preferred under sub-section (1) of Section 11 of the National Environment Appellate Authority Act, 1997 (the NEAA Act) by Beach Protection Council of Orissa - the Appellant, against Order No. PD/26017/8/98-PDZ (CRZ) dated the 4th January, 2000 made by the Central Government in the Ministry of Surface Transport (Ports Wing) - Respondent - 1, granting in favour of International Seaport Pvt. Ltd., - Respondent -5, environmental clearance for expansion of Dhamra Port Project on the Orissa coast (the Port Project) subject to fulfillment of the safeguards stipulated thereunder. Ministry of Environment and Forests of the Central Government is arrayed as Respondent - 2 in the above

appeal, while the Department of Public Enterprises and Commerce of the State of Orissa and the Environment and Forests Department of the State of Orissa are arrayed as Respondents - 3 & 4 respectively, therein.

As the Ministry of Surface Transport of the Central Government (Respondent-1) has come to make the environment clearance order under the present appeal, for expansion of the Port Project instead of the usual Ministry of Environment and Forests of the Central Government (Respondent - 2), the legal position thereof, which requires clarification at the out set, may be put thus:

Sub-section (1) of Section 3 of Environment (Protection) Act. 1986 (the EP Act) empowers the Central Government to take all such measures, as it deems necessary or expedient, for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution subject to the other provisions of the EP Act.

However, sub-section (2) of Section 3 of the EP Act, while dealing with some of the matters in respect of which measures could be taken by the Central Government under sub-section (1) of Section 3 thereof, adverts in clause (v) of sub-section (2), thereof, to 'restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards', as a matter in respect of which measures could be taken by the Central Government under sub-section (1)

thereof. But, clause (e) of sub-section (2) of Section 6 of the EP Act, adverts to the matter of 'prohibition and restriction on the location of industries and the carrying on processes and operations in different areas' as a matter, respecting which, the Central Government could take measures under sub-section (1) of Section 3 of the EP Act by making Rules by Notification in the Official Gazette. Then, when Environment (Protection) Rules, 1986 (the EP Rules) are made by the Notification in the Official Gazette dated the 19th November, 1986, Rule 5 thereof, refers to the factors required to be taken into consideration by the Central Government and the procedure to be followed by it for taking measures in the matter of 'prohibition and restriction on location of industries and the carrying on processes and operations in different areas'. It reads:

5(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas -

- (i) standards for quality of environment in its various aspects laid down for area.
- (ii) the maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.
- (iii) the likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.
- (iv) the topographic and climatic features of an area.
- (v) the biological diversity of the area which, in the opinion of the Central Government needs to be preserved.
- (vi) environmentally compatible land use.
- (vii) net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

- (viii) proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, national park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.
 - (ix) Proximity to human settlements.
 - (x) Any Other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.
- (2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.
- (3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may by notification in the official gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.
- (b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of process or operations in that area.
- (c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause(a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.
- (d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the official gazette consider all the objections received against such notification and may impose prohibition or

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restrictions on location of such industries and the carrying on of any process or operation in an area."

Subsequently, the Ministry of Environment and Forests of the Central Government, has exercised its power under sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act read with clause (d) of sub-rule (3) of Rule 5 of the EP Rules, to issue a Notification in the Official Gazette on 27th January, 1994, called 'the Environment Impact Assessment Notification, 1994' (the EIA Notification) to direct that neither any expansion or modernization activity (if pollution load is to exceed the existing one) nor any new project listed in the Schedule - I of that EIA Notification shall be undertaken in any part of India from the date of its publication, unless environment clearance is accorded by the Central Government, following the procedure laid down in that notification.

Since 'Ports, Harbours, Airports (except minor ports and harbours) fall in Item 3 of the list of projects in Schedule - I of the EIA Notification, requiring environmental clearance from the Central Government in the Ministry of Environment and Forests, none of those projects would have been undertaken without environment clearance from the Central Government in the Ministry of Environment and Forests, when they are new projects or when they are expansion or modernization of existing projects, if their pollution potential were to exceed the existing one. However, paragraph 3 of the EIA Notification, since declares that nothing contained in that notification shall apply to any item falling under Entry No. 3 of Schedule - I thereof, to be located or proposed to be located in the areas covered by Notification SO No. 114(E) dated the 20th February, 1991, (new projects, as well as, expansion and modernization projects relating to Ports, Harbours, Airports to be located or proposed to be located in the areas covered by the latter Notification, get excluded from the EIA Notification. Therefore, if any Port and Harbour Project, be it a new project or be it an expansion or

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modernization project falling in the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 meters from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL, declared as Coastal Regulation Zone under Notification SO No. 114(E) dated the 20th February, 1991 issued by the Ministry of Environment and Forests of the Central Government in exercise of the powers vested in it under Sections 3(1) and 3(2)(v) of EP Act and clause (d) of sub-rule (3) of Rule 5 of EP Rules, could be undertaken only after obtaining environmental clearance as per that Coastal Regulation Zone (CRZ) Notification. But, that CRZ Notification, has come to be amended by the Ministry of Environment and Forests of the Central Government by Notification SO No. 114(E) published in the Official Gazette dated the 9th July, 1997. Its provisions, in so far as they become material, for deciding the questions arising for consideration in this appeal, could be excerpted:

"Now, therefore in exercise of the powers conferred by Clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 and all other powers vesting in its behalf, the Central Government hereby declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL as Coastal Regulation Zone; and imposes with effect from the date of this Notification, the following restrictions on the setting up and expansion of industries, operations or processes, etc., in the said Coastal Regulation Zone (CRZ). For purposes of this Notification, the High Tide Line means the line on the land upto which the highest water line reaches during the spring tide and shall be demarcated uniformly in all parts of the country by the demarcating authority so authorised by the Central Government in consultation with the Surveyor General of India.

Note :- The distance from the High Tide Line shall apply to both sides in the case of rivers, creeks and back waters and may be modified on a case by case basis for reasons to be recorded while

preparing the Coastal Zone Management Plans. However, this distance shall not be less than 100 metres or the width of the creek, river or backwater whichever is less. The distance upto which development along rivers, creeks and backwaters is to be regulated shall be governed by the distance upto which the tidal effect of sea is experienced in rivers, creeks or backwaters, as the case may be, and should be clearly identified in the Coastal Zone Management Plans.

2. Prohibited Activities

The following activities are declared as prohibited within the Coastal Regulation Zone namely:

- (i) setting up of new industries and expansion of existing industries, except those directly related to water front or directly needing foreshore facilities;
- (ii) manufacture or handling or storage or disposal of hazardous substances as specified in the Notifications of the Government of India in the Ministry of Environment and Forests No. SO 594 (E) dated 28th July 1989, SO 966 (E) dated 27th November, 1989 and GSR 1037(E) dated 5th December, 1989; except transfer of hazardous substances from ships to ports, terminals and refineries and vice versa in the port areas.]

Provided that Government of India in the Ministry of Surface Transport on a case to case basis may permit storage of the petroleum products as specified in Annexure - III appended to this notification within the existing port limits of existing ports and harbours and in those areas of ports that have not been classified as CRZ-I (i), subject to implementation of safety regulations including guidelines issued by Oil Safety Directorate in the Government of India, Ministry of Petroleum and Natural Gas after ensuring proper location of site and availability of necessary equipment to meet the safety norms and the exigencies arising due to any accident or spillage. ✓

- (iii) setting up and expansion of fish processing units including warehousing (excluding hatchery and natural fish drying in permitted areas);

Provided that existing fish processing units for modernization purposes may utilize twenty five per cent additional plinth area required for additional equipment and pollution control measures only subject to existing Floor Space Index, Floor Area Ratio norms and subject to the condition that the additional plinth area shall not be towards seaward side of existing unit and also subject to the approval of State Pollution Control Board or Pollution Control Committee.

- (iv) setting up and expansion of units/mechanism for disposal of waste and effluents, except facilities required for discharging treated effluents into the water course with approval under the Water (Prevention and Control of Pollution) Act, 1974; and except for storm water drains;
- (v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements. Schemes shall be implemented by the concerned authorities for phasing out the existing practices, if any, within a reasonable time period not exceeding three years from the date of this notification;
- (vi) dumping of city or town waste for the purposes of land filling or otherwise; the existing practice, if any, shall be phased out within a reasonable time not exceeding 3 years from the date of this Notification.
- (vii) dumping of ash or any wastes from thermal power stations;
- (viii) land reclamation, bunding or disturbing the natural course of sea water except those required for construction of port, harbours, jetties, wharves, quays, slipways, bridges and sea-links and for the other facilities that are essential for activities permissible under the notification or for control of coastal erosion and maintenance or clearing of water ways, channels and ports or for prevention of sandbars or for tidal regulators, storm water drains or for structures for prevention of salinity ingress and sweet water recharge.

) exempt

- (ix) mining of sand, rocks and other substrata materials, except those rare minerals not available outside the CRZ areas;

Provided that in the Union Territory of the Andaman and Nicobar Islands, mining of sands may be permitted by the Committee which shall be constituted by the Lieutenant Governor of the Andaman and Nicobar Islands consisting of Chief Secretary; Secretary, Department of Environment; Secretary, Department of Water Resources; and Secretary, Public Works Department Committee may permit mining of sand from non-degraded areas for construction purposes from selected sites, in a regulated manner on a case to case basis, for a period upto the 31st day of March, 1998. The quantity of sand mined shall not exceed the essential requirements for completion of construction works including dwelling units, shops in respect of current year and 1997-98 annual plans. The permission for mining of sand may be given on the basis of a mining plan from such sites and in such quantity which shall not have adverse impacts on the environment.

- (x) harvesting or drawal of ground water and construction of mechanisms therefore within 200 m of HTL; in the 200 m to 500 m zone it shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries;

Provided that drawal of ground water is permitted, where no other source of water is available and when done manually through ordinary wells or hand pumps, for drinking and domestic purposes, zone between 50 to 200 m from High Tide Line in case of seas, bays and estuaries and within 200 m or the CRZ, whichever is less, from High Line in case of rivers, creeks and backwaters subject to such restrictions as may be deemed necessary, in areas affected by sea water intrusion, that may be imposed by an authority designated by State Government/Union Territory Administration.

- (xi) construction activities in ecologically sensitive areas as specified in Annexure - I of this Notification;
- (xii) any construction activity between the LTL and HTL except facilities for carrying treated effluents and waste water

There is no exemption here in EC for digging pipe line

discharges into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this Notification; and

- (xiii) dressing or altering of sand dunes, hills, natural features including landscape changes for beautification, recreational and other such purpose, except as permissible under the Notification.

3. Regulation of Permissible Activities:

(regulated activities)

All other activities, except those prohibited in para 2 above, will be regulated as under:

- (1) Clearance shall be given for any activity within the Coastal Regulation Zone only if it requires water front and foreshore facilities.
- (2) The following activities will require environmental clearance from the Ministry of Environment and Forests, Government of India, namely:
 - (i) construction activities related to Defence requirements for which foreshore facilities are essential (e.g. slipways, jetties, etc.); except for classified operational component of defence projects for which a separate procedure shall be followed. (Residential buildings, office buildings, hospital complexes, workshops shall not come within the definition of operational requirements except in very special cases and hence shall not normally be permitted in the CRZ).
 - (ii) operational constructions for ports and harbours and light houses and constructions for activities such as jetties, wharves, quays and slipways;

Provided that for expansion or modernization of existing ports and harbours including fishing harbours operational constructions for ports and harbours and construction of jetties, wharves, quays, slipways, Single Point Mooring and Single Buoy Mooring and for reclamation for facilities essential for operational requirements of ports and harbours in areas within the existing port limits, except the areas classified as Category

except category

CRZ - I (i), shall require environmental clearance from Government of India in the Ministry of Surface Transport, which shall take decision on these activities on the basis of Environmental Impact Assessment Report.

Provided further that reclamation for commercial purposes such as shopping and housing complexes, hotels and entertainment activities shall not be permissible.

- (iii) thermal power plants (only foreshore facilities for transport of raw materials facilities for intake of cooling water and outfall for discharge of treated waste water/cooling water); and
 - (iv) all other activities with investment exceeding rupees five crores except those activities which are to be regulated by the concerned authorities at the State/Union Territory level in accordance with the provisions of paragraph 6, sub-paragraph (2) of Annexure I of the notification.
- (3)
- (i) the Coastal States/Union Territory Administrations shall prepare, within a period of one year from the date of this Notification, Coastal Zone Management Plans identifying and classifying the CRZ areas within their respective territories in accordance with the guidelines given in Annexures I and II of the Notification and obtain approval (with or without modifications) of the Central Government in the Ministry of Environment & Forests:
 - (ii) within the framework of such approved plans, all development and activities within the CRZ other than those covered in para 2 and para 3(2) above shall be regulated by the State Government, Union Territory Administration or the local authority as the case may be in accordance with the guidelines given in Annexure -I and II of the Notification; and
 - (iii) in the interim period till the Coastal Zone Management Plans mentioned in para 3(3)(i) above are prepared and approved, all developments and activities within the CRZ shall not violate the provisions of this Notification. State Governments and Union Territory Administrations shall ensure adherence to these regulations and violations, if any, shall be subject to the provisions of the Environment (Protection) Act, 1986.

4. Procedure for monitoring and enforcement:

The Ministry of Environment & Forests and the Government of State or Union Territory and such other authorities at the State or Union Territory levels, as may be designated for this purpose, shall be responsible for monitoring and enforcement of the provisions of this notification within their respective jurisdictions.

ANNEXURE - I COASTAL AREA CLASSIFICATION AND DEVELOPMENT REGULATIONS

Classification of Coastal Regulation Zone :

6(1) for regulating development activities, the coastal stretches within 500 metre of High Tide Line on the landward side are classified into four categories, namely:

Category I (CRZ-I)

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

(ii) - Area between Low Tide Line and the High Tide Line.

Category II (CRZ-II)

The areas that have already been developed upto or close to the shoreline. For this purpose, "developed area" is referred to as that area within the municipal limits or in other legally designated urban areas which is already substantially built up and which has been

provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains.

Category-III (CRZ-III)

Areas that are relatively undisturbed and those which do not belong to either Category-I or II. These will include coastal zone in the rural areas (developed and undeveloped) and also areas within Municipal limits or in other legally designated urban areas which are not substantially built up.

Category-IV (CRZ-IV)

Coastal stretches in the Andaman & Nicobar, Lakshadweep and small islands, except those designated as CRZ-I, CRZ-II or CRZ-III.

Norms for Regulation of Activities:

6(2) The development or construction activities in different categories of CRZ area shall be regulated by the concerned authorities at the State/Union Territory level, in accordance with the following norms:

CRZ-I

No new construction shall be permitted within 500 metres of the High Tide Line. No construction activity, except as listed under 2(xii), will be permitted between the Low Tide Line and the High Tide Line;

Provided that construction of dispensaries, schools, public rain shelters, community toilets, bridges, roads, jetties, water supply, drainage, sewerage which are required for traditional inhabitants of the Sunderbans Biosphere reserve area, West Bengal, may be permitted, on a case to case basis, by an authority designated by the State Government.

CRZ-II

(i) Building shall be permitted only on the landward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) or on the landward side of

existing authorized structures. Buildings permitted on the landward side of the existing and proposed roads/existing authorised structures shall be subject to the existing local town Country Planning Regulations including the existing norms of Floor Space Index/Floor Area Ratio:

Provided that no permission for construction of buildings shall be given on landward side of any new roads (except roads proposed in the approved Coastal Zone Management Plan) which are constructed on the seaward side of an existing road.

- (ii)
- (iii)

CRZ - III

(i) The area upto 200 metres from the HTL is to be earmarked as 'No Development Zone' No Construction shall be permitted within this zone except for repairs of existing authorised structures not exceeding FSI, existing plinth area and existing density, and for permissible activities under the notification including facilities essential for such activities. An authority designated by the State Government/Union Territory Administration may permit construction of facilities for water supply, drainage and sewerage for requirements of local inhabitants. However, the following uses may be permissible in this zone agriculture, horticulture, gardens, pastures, parks, play fields, forestry and salt manufacture from sea water.

(ii)

(iii) Construction/reconstruction of dwelling units between 200 and 500 metres of the HTL permitted so long as it is within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/reconstruction will be subject to the conditions that the total number of dwelling unit shall not be more than twice the number of existing units; total covered area on all floors shall not exceed 33 percent of the plot size ; the overall height of construction shall not exceed 9 metres and construction shall not be more than 2 floors (ground floor plus one floor).

Construction is allowed for permissible activities under the notification including facilities essential for such activities. An authority designated by State Government/Union Territory Administration may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads and bridges. The said authority may also permit construction of schools and dispensaries, for local inhabitants of the area, for those panchayats the major part of which falls within CRZ if no other area is available for construction of such facilities.

(iv)

CRZ-IV

.....
ANNEXURE - II

.....
ANNEXURE - III

[See paragraph 2, sub paragraph(ii)]

List of Petroleum Products permitted for Storage in Port Areas

- (i) Crude Oil;
- (ii) Liquefied Petroleum Gas;
- (iii) Motor Spirit;
- (iv) Kerosene;
- (v) Aviation Fuel;
- (vi) High Speed Diesel;
- (vii) Lubricating Oil;
- (viii) Butane;
- (ix) Propane;
- (x) Compressed Natural Gas;
- (xi) Naptha;
- (xii) Furnace Oil;
- (xiii) Low Sulphur Heavy Stock"

Thus, when the adverted provisions of the EP Act, the EP Rules and the Notifications issued under them, particularly the proviso to clause (ii) of sub-para (2) of Para 3 of Notification SO No. 114(E) dated the 20th February, 1991 issued by the Ministry of Environment & Forests of the Central Government (CRZ Notification) as amended by Notification dated 7th July, 1997 are seen, the legal

position which becomes clear is that wherever expansion or modernisation activities relating to existing ports or harbours including fishing harbours, operational constructions for ports and harbours and construction of jetties, wharves, quays, slipways, Single Point Mooring and Single Buoy Mooring and reclamation or facilities essential for operational requirements of ports and harbours are to be undertaken in the areas of the existing ports' or harbours limits, falling outside the areas classified as Category CRZ - I (i), environmental clearance could be granted by the Ministry of Surface Transport of the Central Government and it has to take a decision on these activities on the basis of Environmental Impact Assessment Report to be submitted to it.

In other words, the Ministry of Environment and Forests of the Central Government - the Environmental Impact Assessment Agency, which should have normally granted environmental clearance in cases of both new projects and expansion and modernization projects, has since delegated its power of granting environment clearance in respect of expansion or modernization projects within the areas of existing ports or harbours of the country to the Ministry of Surface Transport (Ports) of the Central Government, if those areas do not fall under the classification or categorization of Coastal Regulation Zone - I (i) areas under the Coastal Regulation Zone Notification of 1991 as amended by Notification of 1997. It is the Ministry of Surface Transport (Ports) of the Central Government which could grant environment clearance in respect of expansion or modernization of port project of any existing port or harbour, if such project does not extend to an area of the existing port area/s classified in Category CRZ -I (i) under CRZ Notification and Coastal Zone Management Plan (CZMP).

Since the Environment Clearance Order under the present appeal is issued by the Ministry of Surface Transport (Ports), two jurisdictional pre-conditions required to be satisfied to make it sustainable under the legal position clarified just

now, being that (i) the Dhamra Port for the expansion of which environment clearance is granted is within the limits of the area of the existing Dhamra Port and (ii) the expansion activity of Dhamra Port for which environment clearance granted does not relate to any area of the existing Dhamra Port classified Category CRZ I(i) in the CRZ Notification and Coastal Zone Management Plan (CZMP) of Orissa State. What needs to be considered on the basis of material on record, observations made at the local inspection, evidence taken after local inspection, arguments heard in the Appeal both before and after local inspection is whether the Ministry of Surface Transport (Ports) has granted the environment clearance order under appeal after satisfying itself of the fulfillment of jurisdictional pre-conditions:

Respondent-5, International Seaports Pvt. Ltd. and Respondent -3, the State of Orissa, came to enter into an agreement, known as, 'Concession Agreement for Expansion and Development of Dhamra Port on Build, Own, Operate, Share and Transfer (BOOST) Basis' on 2nd April, 1998. (Ex A 1)

The Preamble to that agreement commences by reciting :

"Whereas, the Government regards that owing to the liberalized Indian economy which is poised for a very rapid growth, that the ports will have to play a pivotal role in the emerging buoyancy in international trade and the coast at Orissa will have a very large requirement of port facilities very soon due to major development in power sector, industrial development, agricultural activities, fisheries development and mineral exploitation etc;

And whereas there has been a Minor Port in operation at Dhamra in the State of Orissa and in consonance with the programme of liberalization, the Government of Orissa is desirous to expand the Dhamra Port into a full-fledged all weather multi-user port through private investment on Build, Own, Operate, Share and Transfer (BOOST) terms;"

Then paragraph 2.17 of the same agreement contains a recital which reads:

" 2.17 PORT PROJECT

The Port Project means the expansion and development of the project as defined in the proposal by ISP of the existing minor port at Dhamra in Bhadrak District in the State of Orissa."

'Facts about Dhamra (Chandbali) Port' (Exhibit - A2) is an ancient document (printed book let) compiled by Shri Girish Chandra Roy, M.A., (Com.). As it contains facts of Dhamra Project upto the year 16-3-1957 it might be presumed to have been brought into existence towards the end of 1960's . Since the compilation has an introduction which adverts to matters in it, the same calls to be reproduced for a proper understanding of the facts pertaining to Dhamra (Chandbali) port being an existing port:

" Dhamra, Lat. 20°47'North and Long. 86°75' East, is a small village on the left bank of the river Dhamra and is inhabited mainly by fishermen. The river Dhamra is named after this village as this is the only village just on the bank of the river between the confluence of the rivers Bramhani and Baitarani, and the sea. The distance of the river from this confluence to the beginning of the land at Chandnipal is 13 miles and from there to the deep sea near Shortt Island is 7 miles. Therefore, the total distance of the Dhamra river from the confluence of the rivers Bramhani and Baitarani to the deep sea is 20 miles. The village Dhamra is 6 miles down to the east from the confluence. One mile up from the village Dhamra to the west runs a river which is called 'matai'. The Dhamra river on this side of the river Matai, is as deep as 42 feet at low-water. This western side of the said river Matai is called 'Chardia-side.

The French Mission which visited Orissa in 1950-51 have described the Dhamra river at page 105 of their report as follows, " Below Matai Nulla at the middle portion of Kalibhanj Dhan the water is 12 feet and needs dredging. After the down stream, the river is throttled by two sand points where the water is 15 feet deep. Then comes the mouth which has three arms. The North arm offers good depths of 15 to 20

feet for 2 miles. The second arm passes south of Shortt Island. It runs east for two miles and then bends S.E. It offers very considerable depths reaching 40 feet. Along its last mile, it becomes a narrow pool about 985 feet wide. * * * The third arm passes between the north of Middle channel island and the south of Wheeler Island. It is almost quite straight and runs S.E. for 3 miles and then bends south."

According to Bay of Bengal Pilot (1921) at page 277, " Shortt Island, Lat. 20°47' North and Long. 87°04' East, fronting the mouth of river Dhamra and about 5 miles eastward of Palmyra Point, was in 1914, about 1 4/10 miles long in a north-north westerly and south-south-easterly direction and about 4 cables broad at its southern part, tapering to less than 2 cables at its northern end; it is only 12 to 17 feet high and sands which are continually changing and had from 2 to 3 feet over them at low water spring tides, when last examined in 1901, extending fully a mile southward and 1 1/4 miles eastward." This Island has been named after W.D. Shortt, who as Executive Engineer, Cuttack Division had fixed beacons on that Island prior to 1857.

Chandbali, Lat 20°47' North and Long. 86°44' East, is situated on the left bank of the river Baitarani, 10 miles up to the west of the confluence of the rivers Bramhani and Baitarani. The river here is 40 to 50 feet deep. Captain H.G.G. Ashton who surveyed the Dhamra river in 1926-27 writes in his report at page 9 regarding Chandbali. "Thus it that Chandbali, a natural port with good water right along the river banks, well-built strands (also falling into decay), pucca buildings which only go to show what the town once was, good roads, good climate and all the necessary adjuncts for development and progress, the only good outlet for trade in the whole of the province, is suffering from dry-rot and in animation"

The portion of land lying on the right bank of the river Dhamra and which is the extremity of the land on the north-eastern corner of the Cuttack district, is called 'Palmyra Point'; because palmyra-plants 'Hental' species are found in large numbers in this area.

The history of the port DHAMRA (Chandbali) as could be gathered from Government records have been embodied in this brochure only to dormant and inactive. The figures of total income and exports of the port as given in Appendix 'A' are incomplete in certain years due

to the fact that the same are not available from the records. However, in spite of the same, an idea can be formed from the figures available regarding the loss that the State is suffering due to negligence of a source of non-tax revenue income."

That on 2nd April, 1998, the very day on which Government of Orissa (Respondent-3) entered into an agreement with International Sea ports Private L (Respondent -5) for Dhamra Port Expansion Project, the Addl. Secretary Government of Orissa sent Letter No.2532/Com., Bhubaneswar, to the Secretary Ministry of Surface Transport (Port) of the Central Government. That letter reads thus:

"Government of Orissa have entered into an agreement with International Sea Ports Private Ltd., Singapore for expansion and development of the existing Minor Port at Dhamra. The concession has been signed for an initial period of 30 years.

I am enclosing the environment impact assessment report relating to the expansion project of the Minor Port at Dhamra. You are requested to kindly give necessary environment clearance for the expansion and development of the Minor Port".

Along with the said letter sent to the Ministry of Surface Transport of the Central Government, the Environment Impact Assessment (EIA) Report relating to Dhamra Port Expansion Project, is also sent. A copy of that report is found in the compilation - '*the Environment clearance for Dhamra Port Expansion Project*' placed as Exhibit -R4 before the National Environment Appellate Authority (NEAA). That compilation contains all the information needed by the Ministry of Surface Transport of the Central Government, for granting environmental clearance for Dhamra Port Expansion Project.

PART - 6 of Exhibit R-4, contains the copy of Letter No.GPP -20/98(pt. 1073/Com., Bhubaneswar, dated the 2nd Feb., 99, written by Special Secretary to

Government of Orissa to Joint Secretary, Ministry of Surface Transport of Central Government. That letter refers to outer limits of existing Dhamra (Chandbali) Port, thus:

"Dhamra (Chandabali) was notified as a Port vide Notification dated 28th March, 1881 (Published on pages 379 and 380 of the Calcutta Gazette dated 30.3.198810 by the then Bengal Government, defining the Port limit of Dhamra (copy enclosed-Annexure-I). Subsequently Dhamra Port limit was extended vide notification No.1652-1-VP-12-Commerce dated 9th June, 1931 by the Bihar and Orissa Government, wherein the Port limit of Dhamra (Chandabali) has been clearly defined. Copy enclosed - Annexure-II). This Port limit virtually continues till the present date. The Port limit extends from the approaches on the mouth of Dhamra river on the sea to Chandabali and Aul which is about 30 Kms inland. The Port limit which was enunciated by the then Bihar & Orissa Government in 1931 continues till this date virtually. The Dhamra Port limit extends as per notification dated 9.6.1931 from the mouth of the river on the sea to the hinter land covering Chandbali & Aul."

Annexure- I referred to in the said letter reads:

"NOTIFICATION, DATED THE 28TH MARCH 1881 (PUBLISHED IN THE CALCUTTA GAZETTE OF THE 30TH MARCH 1881. PART I, PAGE -379)

In supersession of previous notifications defining the limits of the Port of Dhamra (Chandbally) on the Orissa coast, the Lieutenant-Governor is pleased, with the previous sanction of the governor-general in Council to alter the limits of the said port and to declare, under section 6 of Act XII of 1876 (The Indian Ports Act, 1875), the extent of such limits to be as follows:-

The limits of the port, from the mouth of the Dhamra westward, include the following rivers and their banks within fifty yards of high-water mark at ordinary spring tide: the Dhamra; the Brahmanca as far as its junction with Chota Brahmani at Patamundai; the Kursuan to a distance of one mile beyond A1; byturnee as far as the Government ferry at Baliapal, Eastward of the mouth of the Dhamra the boundaries of the port are defined by (a) a line drawn from the

bank, opposite the Chandpal tree, on the north side of the river; through the Kanaka buoy, to a depth of seven fathoms; (b) a line drawn from the palm tree on the south side of the river (about two miles east by mouth of the east end of Kalibang Island) through Shorts' Tripod Beacon to a depth of seven fathoms; and (c) a line drawn through sounding of seven fathoms to join lines (a) and (b).

With the sanction of the Governor General of India in Council, it is hereby declared that the port of Dhamra (Chandbally), as now defined, is subject to the provisions of section 38 of Act XII of 1875".

So also, Annexure-II referred to in the said same letter reads:

"No.1652-I-VP-12-Com. In exercise of the power conferred by Sub-Sections (1) and (2) of Section 5 of the Indian Ports Act, 1908 (IX of 1908) and in supersession of the notification of the Government of Bengal dated the 28th March 1881 (Published on pages 379 and 380 of the Calcutta Gazette dated the 30th March 1881) the limits of the Port of Dhamra (Chandbali) on the Orissa Coast as delineated in the said notification and to declare the extent of the limits of the said Port of Dhamra to be as follows:

The limits of the port, from the mouth of the Dhamra westward, include the following rivers and their banks within fifty yards of high-water mark at ordinary spring tide: the Dhamra; the Brahmance as far as its junction with Chota Brahmani at Patamundai; the Kursuan to a distance of one mile beyond A1; byturnee as far as the Government ferry at Baliapal, Eastward of the mouth of the Dhamra the boundaries of the port are defined by (a) a line drawn from the bank, opposite the Chandpal tree, on the north side of the river, through the Kanaka buoy, to a depth of seven fathoms; (b) a line drawn from the palm tree on the south side of the river (about two miles east by mouth of the east end of Kalibang Island) through Shorts' Tripod Beacon to a depth of seven fathoms; and (c) a line drawn through sounding of seven fathoms to join lines (a) and (b).

Notification No.625-Com. Dated the 9th March, 1931 is hereby cancelled."

Again, the said same letter, refers to the exact location of the Dhamra

Port Area thus:

"The Port Project will be located between latitude of 20°52' and 20°48' N and Longitude of 86° 59 E and the area falls in the Port limit as defined in the notification dt. 9th June, 1931.

Another statement found in the said same letter as regards mangrove patch found in extreme corner of the intended Dhamra Port Expansion Project near the Amar Nagar, reads:

"There are no mangrove forest in the intended Dhamra Port Expansion Project area. The EIA Addendum Report clearly states that there is a mangrove patch (about 200 plants in about 2 to 3 acres) at one extreme corner of the intended Dhamra Port Expansion Project area near the village of Amar Nagar. The mangrove vegetation is so sparse that they hardly have any ecological significance. The Environment Department have categorically stated that the Dhamra Project area falls under CRZ-I(ii) and the area does not violate the Coastal Zone Management Plan of the Government of Orissa as approved by the Ministry of Environment & Forest, Government of India."

Exhibit - R1 is the Coastal Regulation Zone map. In that map the area coloured in pink is CRZ-I area, which falls with in Dhamra Port Area and outside Dhamra Port Area.

Exhibit -R2 is the Dhamra Port Expansion Project Area map. That map prepared by the proponent of Dhamra Port Expansion Project, indicates the project expansion area in square miles. It also indicates the CRZ-I Area in pink colour and CRZ-III in green colour. Further, it also shows the existing area of Dhamra Port in parallel ink lines.

As regards Exhibit -R1 and Exhibit -R2 maps, Shri L.N Patnaik, Director, Forest and Environment Department, Government of Orissa, who was examined by the NEAA as Respondent's Witness-1(RW-1), has stated that Exhibit -R1 is the Coastal Regulation Zone Map got prepared by him on the basis of Satellite

imagery and ground truthing through the Orissa Remote Sensing Application Centre. He has also stated that Exhibit-R1 is one of the 87 maps of Orissa Coastal Zone Management Plans and the colouring done there in pink is CRZ-I area and colouring done there in green is CRZ-III area. He has further stated that the project proponent of the Dhamra Port Expansion Project since wanted the map prepared by him relating to it, super-imposed, with reference to Exhibit R1, the Port Expansion Project Area, he has got it super imposed in that map and bounded by letters A,B,C,D, for which he has also given a certificate thus:

"The Coastal Regulation Zone area including the classification corresponding to the proposed project expansion area has been correctly depicted"

According to him, as indicated at serial No.1 in the Index of the map CRZ -I area is shown there in pink colour - as indicated at serial No.2 in the Index of the map CRZ -III area there is shown in green colour - as indicated at serial No.3 in the Index of the map. Port Expansion Area there, is shown in crossed pink lines and as indicated at serial No.4 in the Index of the map, the area indicated in the map in the parallel ink lines is the full area of Dhamra Port Limits in 1951. He clarified that category CRZ-I, is the inter-tidal zone while category CRZ-II comprises of areas which are ecologically sensitive and important, such as natural parks, marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty, areas of historical/heritage, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government and the concerned authorities at the State Government, Union Territory level from time to time. Then, he clarified that category CRZ-II comprises of areas lying between Low Tide Line and the High Tide Line, which is also known as 'inter-tidal zone'. He further clarified that

having considered the matter, he has found that port expansion area indicated by serial No.3 of the index falls under CRZ-I(ii) Category and not CRZ-I (i) Category. For none of the criteria indicated at CRZ -I (i) is found in the area of Dhamra Port Expansion. When a question was put to him by the Authority whether mangrove was found in the port expansion area, his answer was that on physical verification, he found there, a small patch of area where there are about 50 meters mangroves. When another question was put to him, as to which is the specific area where such mangroves existed, his answer was that he has indicated the same in the map Exhibit R-2 at 'M', which is closer to the boundary mark at point 'C' on the map. According to him, he had advised the proponents of the project to exclude this mangrove area from the port expansion area. When yet, another question was put to him, as to whether Ministry of Surface Transport could grant environment clearance with regard to the Coastal area which falls in CRZ-I Category, it was plainly told by him that Ministry of Surface Transport has no power to grant environmental clearance in respect of area marked as Exhibit R-2 'M' and the 50 meters' buffer zone around it. In fact Exhibit -R3 is the photocopy of the letter dated the 13th January, 1999 written by him to the Transport and Commerce Department, Government of Orissa wherein he has stated that the proposed project site, that is, Dhamra Port Expansion Area, should not cover the mangrove patch near Amar Nagar. Another aspect spoken by the R.W - 1 is that Kalibanz Dayan Forest area was not in Dhamra Port Expansion Area, in that the distance between port expansion project area and the Dayan forest is approximately 4 to 5 kilometers. The Appellant who was given opportunity to cross examine this witness, said that he had nothing to cross examine. Indeed, members of the Authority, who made a local inspection of the Port Area and the area of the Port where the Dhamra Port Expansion Project has to come up, could find no fault, in the statements of R.W - 1, as regards matters spoken concerning those areas.

Shri Siddartha Pradhan, Special Secretary, Commerce and Transport Department, Government of Orissa, examined as Respondent's Witness-2 (RW-2) clarified that mangrove patch area indicated as Exhibit -R2 'M' stands excluded from the environmental clearance order under appeal because of the letters written by him to the Ministry of Surface Transport of the Central Government, containing the request for such exclusion. However, it is said by him that the Appellate Authority may clarify in its order that the mangrove plus 200 meters wide strip upto the salt dyke located near Amar Nagar as shown in Exhibit -R2 is not included in the Environment Clearance Order, under Appeal.

When the facts adverted to hereinbefore, make it abundantly clear that there was the existing Dhamra Port on the Sea Coast of the State of Orissa and that the area of the Dhamra Port Expansion Project falls well within the limits of the existing Dhamra Port area - the two jurisdictional pre-conditions required for the Ministry of Surface Transport (Ports) in the Central Government to grant environmental clearance for Dhamra Port Expansion Project, it becomes obvious that the Ministry of Surface Transport (Ports), had the power and jurisdiction to grant the environment clearance for the Dhamra Port Expansion Project. as is done by it under the environmental clearance order under appeal.

The only other question which requires to be considered in this appeal being whether the environmental clearance order under appeal granted for Dhamra Port Expansion Project, by the Ministry of Surface Transport (Ports) of the Central Government, on the basis of the information made available to it by the project proponent and Orissa State Government in the form of Environmental Impact Assessment Report and other clarifications, becomes unsustainable for any valid reason, the same shall be presently examined and answered.

The argument for the Appellant was that the area of the Orissa Sea C where the Dhamra Port Expansion Project has to come up was an ecologi sensitive area classifiable as CRZ - I(i) Category area under the CRZ Notifica as well as, under the Orissa State Coastal Zone Management Plan. That argu proceeded on the assumption that the Dhamra Port Expansion Project comprised of an area of Kalibahanj Dian Reserve Forest, an area of mangro and an area of breeding of endangered species of turtles and hence fell in CRZ -I (i) Category area under the CRZ Notification and became an area wh industrial activity was prohibited under the Orissa State Coastal Managen Zone approved by the Ministry of Environment and Forests in the Cer Government. And no environmental clearance could have been granted by Ministry of Surface Transport (Ports) for taking up Dhamra Port Expans activity in such ecologically sensitive area. On the other hand, the argument the Respondents' was that the Dhamra Port Expansion Project area did not con any forest, any mangrove and any turtle breeding place and hence was not ecologically sensitive area falling in Category CRZ I(i) area Classified as such the CRZ Notification. Orissa State Coastal Zone Management Plan approved MoEF of the Central Government does not come in the way of carrying out activities in the area of the Dhamra Port Expansion Project.

Indeed, Members of the NEAA had to make a local inspection in respect the area of Dhamra Port Expansion Project and its surrounding areas, to test t veracity of the opposing stands taken by the contesting parties in the appeal of t existence of mangroves or breeding centres of turtles and forests in the area wh the activities of the proposed Dhamra Port Expansion Project had to be carried o Immediately after the local inspection, the Members of the NEAA held their Co sitting, in a place close to the area of the proposed Dhamra Port Expansion Proj and examined two witnesses in the presence of the very person, who has filed t

present appeal representing the Beach Protection Council of Orissa. Shri L.N. Patnaik, Director (Env), Forest & Environment Department, Government of Orissa, who gave evidence on oath as R.W. -1 stated that the Dhamra Port Expansion Project area did not fall in CRZ-I(i) category area defined under the CRZ Notification, for it was not an ecologically sensitive area, that is, an area consisting of natural parks, marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals/coral reefs, breeding centres of fish and other marine life, place of outstanding natural beauty or the like. He stated about the presence in a corner of the originally proposed Dhamra Port Expansion Project area, a patch of 200 mangroves but had recommended for that mangrove to be excluded from the proposed Dharma Port Expansion Project Area. Indeed Shri Siddhartha Pradhan, Special Secretary, Commerce and Transport Department, Government of Orissa, examined on oath as Respondent's Witness-2 (RW-2), made it clear in his evidence that the area of the patch of mangrove which was originally in a corner of the proposed project area has been excluded from the project area subsequently and environmental clearance has been granted to Dhamra Port Expansion Project excluding the mangrove area. The person who was representing the Appellant in the appeal, when was asked by the Authority to cross examine R.W -1 and R.W - 2 , if he desired to dispute the facts stated by them in their evidence, he plainly said that he does not dispute them and therefore did not propose to cross examine them. Indeed, when the local inspection was held by the Members of the NEAA, they did not also find any mangrove or forest or breeding area of turtles in the area proposed for Dhamra Port Expansion Project. The area between the Low Tide Line and High Tide Line in the area to be covered by Dhamra Port Expansion Project being of clay soil and very sticky it could never become a breeding centre for turtles. Therefore, it cannot be said that the environmental clearance order under appeal given in respect of the Dhamra

Port Expansion Project, is in any way vitiated due to the presence of any forest or mangrove or turtle breeding centre within the area of that project.

No doubt, when the environmental clearance order under appeal for Dhamra Port Expansion Project is made by the Ministry of Surface Transport (Ports) on the basis of the Environment Impact Assessment Report of Dhamra Port Project given to it and other information made available to it as found in Exhibit - F (compilation), it has to be seen whether such report and information was sufficient for the Ministry of the Surface Transport (Ports) of the Central Government, to make that order of environmental clearance.

Copy of the letter No.2583/Com., Bhubaneswar, dt. 2.4.1998 written by the Addl. Secretary to Govt. of Orissa to the Secretary, Ministry of Surface Transport, shows that the environment impact assessment report relating to the expansion project of the Minor Port at Dhamra, is also sent along with that letter. Copy of the said letter and copy of the said report are found in the compilation Exhibit - R4 titled 'Environment Clearance for Dhamra Port Expansion Project'. This report comprises of 6 chapters:

"Chapter-1: Introduction

This chapter provides background information of the project, brief description and objectives of the project, description of the area, scope and organization of the study. It also provides information on climate and environment in the region as also on key environmental legislation. Aspects related to the land acquisition, construction and operation of the project are also discussed.

Chapter-2: Port Features and Sources of Pollution

This chapter deals with the process technology and specifications of the project. This also deals with the sources of pollution from the project due to the expansion of port and proposed control measures.

Chapter-3: Baseline Environmental Status

This chapter presents the methodology and findings of field studies undertaken with respect to ambient air, water, soils, noise levels, ecology to define the various existing environmental status in the area. It also presents the meteorological conditions which govern the air quality impacts, a major concern during the construction and operation of the port. Details are included on landuse, socio-economics, geology, hydrology and industries from published secondary data. The sections in the chapter include:

- 3.0 - Introduction
- 3.1 - Landuse Pattern
- 3.2 - Soil Characteristics
- 3.3 - Geology and Hydrology
- 3.4 - Meteorology
- 3.5 - Air Quality
- 3.6 - Water Quality
- 3.7 - Noise Levels
- 3.8 - Ecology
- 3.9 - Socio-Economics.

Chapter-4: Impact Assessment

This chapter highlights the inferences drawn from the environmental impact assessment. It describes the overall impacts of the expansion of port and underscores the areas when applicable environmental standards are expected to be violated.

Chapter-5: Environmental Management Plan (EMP)

This Chapter provides recommendation for environmental management plan aimed at minimizing the negative environmental impacts of the project. Environmental monitoring requirements for effective implementation of mitigatory measures during construction as well as operation of the project have also been delineated along with requisite institutional arrangements for their implementation.

Chapter-6: Risk Assessment and Disaster Management Plan

This chapter deals with possible hazards and hazard identification and risk analysis due to the port expansion. Based on the risk assessment

disaster management including on site an off-site management plan have been prepared."

Chapter - 4 of the said Report deals with Impact Assessment on the environment in the proposed Dhamra Port Expansion Project area, both during the construction phase and its operational phase.

Para 5.1.1 of Chapter - 5 of the same report gives the anticipated facts of Environmental Impact of Dhamra Port Expansion Project and steps to be taken for their mitigation.

PART - 2 of Exhibit -R4 contains letter No.21564/Env-I-II/98/F&E, dated the 17th October 1998 addressed to Secretary, Ministry of Surface transport and Principal Secretary to Government of Orissa. That letter refers to the following documents as those already sent to the Ministry by the Proponent of the Project.

- (i) Duly filled questionnaire.
- (ii) Environmental Impact Assessment Report along with the addendum.
- (iii) Copy of the Office Memorandum from the State Pollution Control Board, according consent for establishment (NOC).

PART - 3 of the Exhibit - R4 contains the minutes of the seventh meeting of the Empowered Committee on Environment clearance for Port projects (ECEC) held on 18/12/1998 at Transport Bhavan, New Delhi.

PART - 4 of the Exhibit- R4, contains the letter No.10765/com dt.30.12.1998 sent by Special Secretary to Government of Orissa to the Director (Ports), Ministry of Surface Transport, New Delhi. It clarifies the points raised in the Minutes of the 7th meeting of the ECEC, thus:

"Kindly refer to my letter No.8520/Com., dated 17.10.98 wherein I had furnished the detailed proposal for sanction of Environmental clearance for Dhamra port Expansion project and the subsequent discussions of the empowered committee on 18.12.1998 at Delhi. In this regard and as discussed we forward herewith the following:

1. Five copies of an addendum document to the report submitted earlier.
2. Five copies of a letter issued by the Chief Wildlife Warden, Government of Orissa with regard to queries raised during the meeting on December 18th.

It may be noted that the addendum submitted herewith clarifies the following.

- The location of the port expansion area.
- One year data for the environment study.
- Other clarifications as raised during the meeting on December 18th.

We also confirm that the port expansion project proposed by the developer is within the port limits as notified in 1931 Notification No.1652-1-VP-12-Com., dated 9.6.1931 issued by Bihar and Orissa Government. -Considering the important nature of the project, the Government of Orissa is keen on getting work on the project initiated soon. Therefore it is kindly requested that this project may please be put up for clearance before the empowered committee on environment at the earliest".

Copy of the letter No.61/80 dt. 30.12.1998 sent to the Special Secretary to Government of Orissa by Chief Wildlife Warden, Orissa relates to the comments on the observation made by ECEC in its seventh meeting:

"1. The proposed site for the port is not part of any National Park or Proposed National Park.

2&4. There is one Wildlife Sanctuary namely Bhitarkanika Wildlife Sanctuary which is near the proposed port site but the port site does not come within the sanctuary. This sanctuary is not exclusive to

crocodile but comprises of mangrove forest and has good population of estuarine crocodiles besides other animals. The sanctuary is separated from the proposed project area by the Dhamra river. No crocodile is seen on the coast close to the port.

3. The Olive Ridley turtles nest in the Gahirmatha beach which is about 15 kms. from the port site as the crow flies. But as there is dispersal of islands and sand-bars, actual water route distance from the port site to the nesting beach is about 30 Kms. No other endangered marine life occurs or nest in close vicinity of the proposed port site. There is no likelihood of this project affecting the nesting of sea turtles."

This part contains also Dhamra Port Expansion Project, Addendum to the EIA Report given by International Seaports Pvt. Ltd. It furnishes the clarification required by the Empowered Committee for Environmental Clearance in its meeting dt. 18.12.1998, thus:

1. The final project location and technical details.
2. Additional information as regards the Impact, if any, that the port may have on the Gahirmatha Sanctuary.
3. Details regarding Dredging to be undertaken for the port expansion.
4. Additional information (3 months data collection on the various site based data collected for the environment study)
5. Any additional requirements on rehabilitation based on (1) above.
6. Vegetation, based on (1) above.
7. Updated Impact Assessment "

PART - 5, contains letters sent by Orissa State Government to Ministry of Surface Transport giving clarifications on various matters relating to environment clearance for Dhamra Port Expansion Project.

PART - 6, contains several letters of clarification on the proposed project. Same is the position as regards PART - 7 thereof. PART - 8 also contains

Environmental Impact Assessment on Dhamra Port Expansion in Orissa Coast with reference to marine living resources.

Ultimately, it is the 11th meeting of the Empowered Committee for Environmental Clearances (ECEC) for Port Projects held on 8th November, 1999, which has decided on the grant of environmental clearance for Dhamra Port Expansion Project, after it had got all the information as contained in Exhibit - R4. The minutes of that meeting in so far as it is relevant reads:

"2. The following projects came up for discussion in the meeting. After presentations by the project proponents and detailed discussions, the following decisions were taken:

1.
2. Expansion of Dhamra Port in Orissa.
 - (i) Various points raised by MoEF with the Project Proponent, stand clarified. A letter received from President, Orissa Krushak Mahasangh was also discussed in the meeting and it was decided that the environmental clearance to the proposal was well within the delegated powers of Ministry of Surface Transport. The matter regarding the vulnerability of the Coast of Orissa to severe cyclones was also discussed.
 - (ii) The Committee cleared the proposal from environmental angle and advised the Project Proponent to keep the above points in mind while going ahead with the implementation of project".

It is the said decision taken by the Empowered Committee for Environmental Clearance of Port Projects in the Ministry of Surface Transport of the Central Government, which has made that Ministry grant the environmental clearance order under appeal for Dhamra Port Expansion Project. The adverted matters, show that grant of environmental clearance for the said port expansion project, is made by ECEC of Ministry of Surface Transport by following the Guidelines issued for Environmental Clearance of Ports vide its Ref:S.O.No. (E) Dated 9th July, 1997.

Thus, when no infirmity is pointed out to the NEAA in the order of Environment Clearance under Appeal on behalf of the Appellant, which had challenged the order of environment clearance and when the NEAA is not able to see any infirmity in the procedure adopted by the ECEC in granting environmental clearance order under appeal, the NEAA finds no good ground for interfering with such order appealed against. However, it has to be clarified that the patch of about 200 mangroves located closer to the Dharma Port Expansion Project area for which environmental clearance is granted by the order under appeal shall be regarded as excluded from that project area including 200 meters width of the area parallel to the mangrove patch upto salt dyke reaching the village Amar Nagar, which shall be fenced and maintained at the cost of Respondent -5.

It is also clarified that the Monitoring Committee, as and when constituted, for overseeing full compliance of the conditions imposed in the environmental clearance order, granting clearance of Dhamra port Expansion Project to the project proponent both during its construction phase and during its operational phase, shall include the Beach Protection Council of Orissa, as has been agreed to by R.W. 2 while giving his evidence in the case, of course subject to Appellant's acceptability on the committee by the Orissa Government.

It is needless to point out that the environment clearance order made by the Central Government in respect of new development projects or expansion or modernization projects, when have been made appealable under the National Environment Appellate Authority Act, 1997, it is necessary for the Environment Clearance Agency to make speaking orders, so that, it may become easy for the NEAA to find out as to what are the factors which might have weighed with the

Environment Impact Assessment Agency for making such environment clearance orders.

In the result and on consideration of all the matters as above, this appeal liable to be dismissed and it is accordingly dismissed. However, the parties are bear their own costs of this appeal.

sd/-

(JUSTICE N. VENKATACHALA
CHAIRPERSON

sd/-

(SMT. NIRMALA BUCH)
VICE CHAIRPERSON

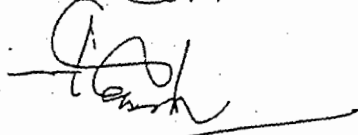
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(MOHINDER SINGH)
MEMBER

sd/-

(EJAZ A MALIK)
MEMBER

TRUE COPY



A. S. N. MURTI
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