

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**WRIT PETITION (PIL) NO. 199 of 2014**

=====

KHETI VIKAS SEVA TRUST & 1....Applicant(s)

Versus

STATE OF GUJARAT & 4....Opponent(s)

=====

Appearance:

MR SIRAJ R GORI, ADVOCATE for the Applicant(s) No. 1 - 2

MR PARTH BHATT, AGP for the Opponent(s) No. 1

MR BIREN A VAISHNAV, ADVOCATE for the Opponent(s) No. 2

MR DEVANG VYAS, ADVOCATE for the Opponent(s) No. 3

SINGHI & CO, ADVOCATE for the Opponent(s) No. 4

=====

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 28/08/2014

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. This petition in the nature of public interest litigation raises concern of fishermen of different villages such as Kotdi, Zarpara, Navinal, Vandh and Tagadi, etc., situated around Kotdi Creeks in the Kutch District. Besides others, their main grievance is that the respondent Nos.4 and 5 have constructed a canal in the nature of outfall channel, which is used for brooming intake sea water, after its use for the power plant and other purposes. It is not in dispute that such channel crosses Kotdi Creek through bridge like structure constructed over the

creek. The grievance of the petitioner is that the channel is constructed in such a way, leaving no height over the creek near water, that the fishermen simply cannot cross the channel with aid of their vessels. In other-words, the channel has dissected the creek into two parts; one alienable from the other.

2. Respondents do not dispute either the construction or the location of the channel. They also seriously doubt that with the construction of the channel over the creek, it would not be possible for anyone to navigate with the vessels from the creek on one side of the channel to the other. Respondent Nos.4 and 5 however, contended that the construction of the channel is in no way breach of the environment clearance. They point out that after detailed study and on the basis of report, the Ministry of Environment and Forest has given the clearance subject to certain conditions. None of the conditions contained in such clearance certificate, is breached in the process of construction of canal.

3. At this stage, we would like to gather few basic facts, which are as under:-

- 1) What is the width of the Creek at a point where the channel is constructed;
- 2) What is the height from the water level to the channel at lowest and highest tides.

3) What is the total length of the Creek on either side till it merges into ocean.

4) What is the population of the fishermen in the region on either side of the Creek.

5) Whether the issue of dividing the Creek in such a manner as to make such passage from one side of the creek to the other was examined by the Ministry of Environment and Forest before clearance of construction of channel was granted.

4. The details at Item Nos.1 to 4 shall be supplied by the State Government. The details of Item No.5 shall be supplied by the Union Minister of Environment and Forest. Both authorities shall give such details in affidavit.

5. We clarify for time being, we have undertaken only one of the main two issues raised by the petitioner. We reserve for the inquiry. S.O. to **19.09.2014.**

(AKIL KURESHI, J.)

(J.B.PARDIWALA, J.)

aruna