

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**WRIT PETITION (PIL) NO. 63 of 2013**

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IBRAHIM AMAD GADH & 4....Applicant(s)

Versus

UNION OF INDIA & 7....Opponent(s)

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Appearance:

MR HASHIM QURESHI, ADVOCATE for the Applicant(s) No. 1 - 5

MR. EKRAMA H QURESHI, ADVOCATE for the Applicant(s) No. 1 - 5

DS AFF.NOT FILED (N) for the Opponent(s) No. 2 - 3

GOVERNMENT PLEADER for the Opponent(s) No. 2 , 6

M/S TRIVEDI & GUPTA, ADVOCATE for the Opponent(s) No. 5

MR DEVANG VYAS, ADVOCATE for the Opponent(s) No. 1

MR DHAVAL D VYAS, ADVOCATE for the Opponent(s) No. 4

MR SHAKEEL A QURESHI, ADVOCATE for the Opponent(s) No. 7

NOTICE SERVED BY DS for the Opponent(s) No. 6

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

Date : 21/08/2014

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

The grievance of the petitioners is with respect to construction of a jetty with connected infrastructure. Such construction is undertaken by the Kandla Port Trust (for short, 'KPT') with participation from Adani Kandla Bulk Terminal Private Limited (the respondent no.8 herein).

The allegations of the petitioners are that such construction causes serious environmental damage to the fragile coastal ecosystem.

Orders have been passed from time to time by this Court. Compliance reports have been called for.

In particular, we may notice that under a communication dated 12th February 2014, the Ministry of Environment and Forests, having looked into various aspects of environment concerns, conveyed to the Chairman of the Kandla Port Turst as under :

“7. As regards awarding the concession to M/s.Adani Kandla Bulk Terminal Pvt. Ltd (AKBTPL), it is noted that KPT vide letter dated 19.12.2012 had awarded the concession to AKBTPL for implementation of the project. This was informed to MoEF vide letter dated 26.12.2012. However, KPT has not applied for transfer of clearance to M/s.AKBTPL.

10. Now, therefore, under Section 5 of the Environment (Protection) Act, 1986, you are hereby directed to :

(i) Submit a detailed action plan with time line on mangrove plantation with respect to condition (iii) of the

clearance letter with area, location, budget etc. within one month. The status of plantation, location with co-ordinates and monitoring is to be submitted to RO, MoEF along with six monthly reports.

(ii) Though M/s.AKBTPL is the concessioner for implementation of the project, the responsibility/accountability to comply with conditions stipulated under environmental clearance shall remain with M/s.KPT for which M/s.KPT shall incorporate requisite conditions in the concession agreement as per the EC/CRZ clearance granted to them to ensure compliance of EC/CRZ conditions. This Ministry, however, shall hold M/s.KPT accountable for non-compliance of EC/CRZ conditions.

(iii) Take expert opinion and implement measures so as to ensure free flow of water to mangroves. The details shall be submitted to R.O. MoEF, Bhopal, before commencement of further work."

Thereafter, the KPT filed its reply on 10th June 2014, contending that the conditions in the order of the Ministry of Environment and Forests dated 12th February 2014 have been satisfied. The petitioners, however, are not convinced. Their all conditions are satisfied.

This Court, therefore, on 10th July 2014, passed the following further order :

“The Union of India is directed to file affidavit disclosing whether the Kandla Port Trust Authority has complied with the direction contained in paragraph 10 of the final order dated 12th February 2014. In the affidavit, the detailed compliance so far complied with by the Kandla Port Trust Authority should be indicated. Let such affidavit be given within fortnight. Let the matters appear after fortnight.”

In response to such order, the Ministry of Environment and Forests has filed an additional affidavit dated 12th August 2014.

Having heard the learned advocates for the parties, on the basis of such materials on record, a few things still remain to be gone into. First, the petitioners are correct in pointing out that the respondents must be asked to produce the concessioner agreement between the KPT and the respondent no.8 Adani Kandla Bulk Terminal Private Limited, which shall be done by them before the next date of hearing with a copy to the counsel for the petitioners. We are also of the opinion that the affidavit of the Ministry of Environment and Forests dated 12th August 2014 does not clearly bring out, whether the KPT has fulfilled the abovenoted three conditions contained in the communication dated 12th February 2014. The

affidavit merely reproduces the response of the KPT to the queries raised by the Ministry. The Ministry's independent opinion on such response is not on record. We, therefore, direct the Ministry of Environment and Forests to file a further affidavit, if need be, after carrying out spot inspection through a responsible officer and to disclose as to what extent the above conditions have been fulfilled. In particular, the deponent shall state, whether the third condition of submitting an expert's opinion and the measures to be implemented to ensure free flow of water to mangroves before commencement of further work has been completed or not. It also *prima facie* appears that mere submission of the report or suggestion would not be sufficient to take care of the environment concerns. The Ministry of Environment and Forests must apply its mind and decide, whether such report is to be accepted and the suggestions for implementation and measures are sufficient protection against the environmental damage. These aspects also will be covered in such affidavit.

Stand over to 18th September 2014.

(AKIL KURESHI, J.)

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(J.B.PARDIWALA, J.)