



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.14 OF 2024

[*Public Interest Litigation (Stamp) No.30405 of 2023*]

- | | |
|---|-------------------------|
| 1. Conservation Action Trust, |] |
| Through its Executive Trustee – Debi Goenka |] |
| Having office at Ghatkopar, Mumbai. |] |
| 2. Debi Goenka |] |
| R/o. Powai, Mumbai. |] .. Petitioners |

Versus

- | | |
|--|-------------------------|
| 1. Dahanu Taluka Environment Protection Authority, |] |
| Through its Member Secretary, |] |
| Having office at Fort, Mumbai |] |
| 2. Chairperson, Dahanu Taluka Environment Protection |] |
| Authority, Fort, Mumbai |] |
| 3. Union of India, |] |
| Through Ministry of Environment, Forests & Climate |] |
| Change, New Delhi |] |
| 4. State of Maharashtra, |] |
| Through Urban Development Department |] |
| 5. Jawaharlal Nehru Port Authority, Navi Mumbai |] |
| 6. Maharashtra Maritime Board, Ballard Estate, Mumbai] |] |
| 7. Vadhavan Port Project Ltd., Navi Mumbai |] .. Respondents |

ALONG WITH

WRIT PETITION NO.15320 OF 2023

- | | |
|--|---|
| 1. National Fishworkers Forum, |] |
| Through Authorised Representative : |] |
| Smt. Jyoti Rajesh Meher, Dist. Palghar |] |
| 2. Thane Zilha Machimmar Madhyavarti |] |
| Sahkari Sangh, |] |
| Through Authorised Representative, Dist. Palghar |] |
| 3. Maharashtra Machimmar Kruti Samittee, |] |
| Colaba, Mumbai |] |
| 4. Thane Zilha Machimmar Samaj Sangh, |] |
| Through Authorized Representative, Dist. Palghar |] |

5. Kashtakari Sanghatana,]
Through Authorized Representative, Dist. Palghar]
6. Bhoomi-Sena-Adivasi Ekta Parishad,]
Through Authorized Representative : Ashok Thackery]]
Kondhana, Dist. Palghar]
7. Narayan Patil,]
R/of Vadhavan, Tal. Dahanu, Dist. Palghar]
8. Vaibhav Vaze,]
R/o. Varor, Tal. Dahanu, Dist. Palghar] .. **Petitioners**

Versus

1. Dahanu Taluka Environment Protection Authority,]
Through its Member Secretary,]
Having office at Fort, Mumbai]
2. Chairperson, Dahanu Taluka Environment Protection]
Authority, Fort, Mumbai]
3. Union of India,]
Through Ministry of Environment, Forests & Climate]
Change, New Delhi]
4. State of Maharashtra,]
Through Urban Development Department]
5. Jawaharlal Nehru Port Authority, Navi Mumbai]
6. Maharashtra Maritime Board, Ballard Estate, Mumbai] .. **Respondents**

Mr. Mihir Desai, Senior Advocate, with Ms. Nupur Jalan, Advocate, i/by Jayakars, for the Petitioners in PIL/14/2024.

Ms. Gayatri Singh, Senior Advocate, with Ms. Meenaz Kakalia, Advocate for the Petitioners in WP/15320/2023.

Mr. Advait Sethna with Mr. D.P Singh, Ms. Nivedita Mullerpattan and Ms. Poushali Roychoudhury, Advocates for Respondent No.3-UOI.

Mr. N.C. Walimbe, Addl. G.P, with Ms. Reena A. Salunkhe, AGP, for Respondent No.4-State of Maharashtra.

Dr. Milind Sathe, Senior Advocate, with Mr. Saket Mone and Mr. Devansh Shah, Advocates, i/by Vidhi Partners, for Respondent No.5-JNPA.

Mr. Saket Mone with Mr. Devansh Shah, Advocates, i/by Vidhi Partners, for Respondent No.6-MMB.

CORAM : A.S. CHANDURKAR & JITENDRA JAIN, JJ

The date on which arguments were concluded : 8TH MARCH, 2024.

The date on which Judgment is pronounced : 18TH APRIL, 2024.

JUDGMENT : [Per A.S. Chandurkar, J.]

1. On 31st July 2023, the Dahanu Taluka Environment Protection Authority, Mumbai – DTEPA passed an order thereby allowing the application filed by Jawaharlal Nehru Port Authority – JNPA seeking grant of permission to establish and develop Greenfield Port at Vadhavan, Taluka Dahanu, District Palghar. The permission was made subject to various terms and conditions imposed by the Ministry of Environment, Forests and Climate Change – MoEF&CC and its Authorities. Various other ancillary directions came to be issued by the DTEPA.

2. Public Interest Litigation No.14 of 2024 has been filed by the Conservation Action Trust, a Public Trust registered under the Maharashtra Public Trusts Act, 1950, which is engaged in the activities of protection and preservation of environment. The said Trust had filed Writ Petition No.231 of 1994 (*Bittu Sehgal and Anr. Vs. Union of India and Ors.*) before the Supreme Court of India under Article 32 of the Constitution of India. The said proceedings came to be transferred from the Supreme Court pursuant to the order dated 31st October 1996, after which it was considered and decided by this Court as Writ Petition No.981 of 1997. The petitioner no.2 is an environmentalist engaged in the

activities of the petitioner no.1-Trust. The order dated 31st July 2023 passed by the DTEPA in Case No.2 of 2022 is under challenge in these proceedings.

3. Writ Petition No.15320 of 2023 has been filed by the National Fishworkers Forum along with seven other petitioners who claim to be aggrieved by the order dated 31st July 2023 passed by the DTEPA. Since the challenge raised in both these proceedings is to the order dated 31st July 2023, both the matters have been heard together.

The Greenfield Port Project

4. JNPA is the premier container handling port in India serving as a gateway port patronised by all major container shipping lines operating in international seaborne trade. In the light of the projected demand of international trade of the country, detailed research studies were carried out for identifying sites for construction of a major port where large vessels could berth round the year and international seaborne trade could be carried out. The port was accordingly proposed at Vadhavan, Dahanu Taluka, District Palghar since it had unique natural features for construction of a modern all weather port. The site was found to have 18 meters draft naturally available in the port and 20 meters navigational channel that could drastically minimize capital and maintenance dredging. It is on that basis that the Greenfield Port was planned to be developed by

JNPA and Maharashtra Maritime Board as a joint venture project with equity share of 74% and 26% respectively. The cost of the proposed project is estimated to be Rs.76,220,00,00,000/- (Seventy Six Thousand Two Hundred and Twenty Crore). The total project area is 17,471 hectares out of which 16,906 hectares is port limit and 571 hectares is outside port limit. The port is considered to be important for the State from its economic as well as developmental point of view. It is expected to generate considerable opportunities of employment for the local people and also contribute to the wealth of the nation. By virtue of Office Memorandum dated 6th January 2021, the Ministry of Ports, Shipping and Waterways has stated that the said port is a nationally important project. It is also stated to be part of the “Sagarmala” programme of the Central Government aiming to enhance the performance of the country’s logistic sector through ports.

Factual prelude

5. At the outset it would be necessary to refer to certain historical aspects that have a bearing on the proceedings which have led to passing of the impugned order by the DTEPA :

- (a) On 20th June 1991, the Ministry of Environment and Forests – MoE&F issued a notification under Section 3(2)(v) of the Environment (Protection) Act, 1986 – *(for short “Act of 1986”)* indicating the Government’s

5/53

intention to declare Dahanu Taluka, which was then part of Thane District as an ecologically fragile area and to impose restrictions on the setting up of industries that would have detrimental effect on the environment. After considering the objections as received, the said notification was issued so as to declare Dahanu Taluka as an ecologically fragile area and to impose restrictions on the setting up of industries that would have detrimental effect on the environment. Various guidelines permitting / restricting industries in Dahanu Taluka were laid down. Industries were categorized into green category, orange category and red category. The notification further stated that with regard to the industries that did not fall in any of the said three categories, a decision with regard to their classification would be taken by the State Government in respect of projects having an outlay not exceeding Rs.3 crores and for others, reference was to be made to the MoE&F.

- (b) A writ petition under Article 32 of the Constitution of India was filed before the Supreme Court seeking various directions pertaining to Dahanu Taluka that

had been declared by the Central Government as an ecologically fragile area by the aforesaid notification dated 20th June 1991. The Supreme Court by its order dated 31st October 1996 in *Bittu Sehgal and Anr. Vs. Union of India and Ors., (2001) 9 SCC 181*, was of the view that continuous monitoring at the level of the State Government and also by some independent statutory authority was necessary to protect the ecologically fragile Dahanu Taluka. Accepting the recommendations made by the National Environmental Engineering Research Institute – NEERI, a direction was issued to the Central Government to constitute an authority under Section 3(3) of the Act of 1986. The said authority was to be conferred all powers necessary to protect the ecologically fragile areas of Dahanu Taluka and to control pollution in the said area. The authority so constituted was to consider and implement the “precautionary principle” and “the polluter pays principle”. The proceedings were thereafter transferred to this Court for being treated as a writ petition under Article 226 of the Constitution of India.

(c) In accordance with the directions issued by the Supreme Court in *Bittu Sehgal and Anr. (supra)*, the MoE&F issued a notification on 19th December 1996 constituting an authority known as the Dahanu Taluka Environment Protection Authority – DTEPA. The said Authority was to function through its Chairperson and ten members. The DTEPA was empowered to exercise powers under Section 5 of the Act of 1986 for issuing directions and taking measures with regard to the matters referred to in clauses (v) to (x) and (xii) of sub-section (2) of Section 3 of the Act of 1986. Its function was also to protect the ecologically fragile areas of Dahanu Taluka and to control pollution. Various other functions were also referred to in the said notification.

(d) A proposal was moved by the Government of Maharashtra in 1997 for development of a modern and all weather Port at Dahanu Taluka. The said proposal was forwarded by the MoE&F to the DTEPA for consideration. The proposal was accordingly considered and on 19th September 1998, the DTEPA held that Dahanu was the last surviving Green Zone

on the coastal area that was ecologically fragile. It observed that the word “Industry” was not defined in the Act of 1986 or the notifications issued thereunder. By adopting the principle of general construction, it was held that the Mega Port would fall within the ambit and scope of the word “Industry”. No construction work was permitted within 500 mtrs. of the high tide area. As per the recommendations of NEERI, construction of such Port was likely to be detrimental to the environmental and socio-economic conditions of Dahanu area. It was also contrary to the notification dated 20th June 1991. Hence, it held that construction of the Mega Port at Vadhavan was wholly impermissible.

This order was subjected to challenge by the Maharashtra Maritime Board in Writ Petition No.7593 of 2003 but the said writ petition was dismissed for want of prosecution on 23rd December 2014.

- (e) After about twenty years, a fresh proposal was received by DTEPA for establishment of a Satellite Port at Vadhavan, Taluka Dahanu. In the meeting held on

30th May 2017, the DTEPA considered the said proposal. It was brought to the notice of the DTEPA that Jawaharlal Nehru Port Trust – JNPT had been undertaking a preliminary exercise of considering the feasibility for establishing such Port but without obtaining prior permission of DTEPA to undertake such activities. While directing status-quo to be maintained, it was directed that JNPT would not proceed with the development of the Port without obtaining necessary permission from DTEPA. JNPT was accordingly directed to submit a detailed project report along with relevant details to DTEPA and till that time, no further steps were to be taken.

- (f) In the meanwhile, the writ petition that was filed before the Supreme Court was transferred to this Court and was registered as Writ Petition No.981 of 1997 (*Conservation Action Trust Vs. Union of India and Ors.*). The matter was considered by the Division Bench and on 16th July 2018, various directions were issued therein. The State Government was directed to immediately notify the Regional Plan for the years 1995-2015 and to bring the same into force after

getting the final notification approved from the DTEPA. The Division Bench held that if the duty of the DTEPA was to protect the ecologically fragile areas of Dahanu Taluka, then no project that was to come up in that area could be permitted without referring the proposal to DTEPA for its scrutiny and clearance. It was stated that no project as contemplated by paragraph no.15.10 of the draft Regional Plan should be approved either by the Central Government or the State Government without prior clearance by DTEPA. It held that DTEPA having been created under orders passed by the Supreme Court, it was an Authority having permanent feature.

- (g) On 30th April 2020, the Central Pollution Control Board – CPCB addressed a communication to all State Pollution Control Boards containing directions in the matter of harmonization of classification of industrial sectors into red, orange, green and white category. It further directed that the sectors mentioned at Annexure-II of the communication be considered under Non-Industrial Operations. At serial no. 5/46, reference was made to Ports and harbour, jetties and

dredging operations with the remark that the said category contains all sorts of pollution.

- (h) In view of the aforesaid categorization, the Ministry of Environment and Forests & Climate Change - MoEF&CC on 8th June 2020 issued an Office Memorandum stating therein that port, harbours, jetties and dredging operation were now listed in Non-Industrial Operations and were thus excluded from 'Red' category. It was stated that activities relating to ports falling in the Ecologically Sensitive Area could be undertaken in accordance with the notifications dated 20th June 1991 and 19th December 1996.
- (i) The petitioners in Writ Petition No.15320 of 2023 approached the National Green Tribunal, Western Zone Bench, Pune by filing an appeal under Section 14 of the National Green Tribunal Act, 2010 (*for short, "Act of 2010"*), raising a challenge to the directions issued by CPCB on 30th April 2020 as well as the Office Memorandum issued by MoEF&CC on 8th June 2020. On 15th June 2021, the National Green Tribunal, Principal Bench, New Delhi - NGT held that the

directions issued by CPCB on 30th April 2020 as well as the Office Memorandum dated 8th June 2020 issued by MoEF&CC ought to be re-visited by undertaking assessment and evaluation by an expert group comprising of various experts in the relevant fields. It directed that till such study was carried out and a fresh decision was taken, the direction issued by CPCB as well as the Office Memorandum issued by MoEF&CC insofar as they applied to ecologically fragile area of Dahanu Taluka were not to be given effect to.

MoEF&CC sought review of the aforesaid order and on 2nd August 2021, the review application came to be rejected.

- (j) The petitioners in Writ Petition No.15320 of 2023 approached the Supreme Court by filing proceedings under Section 22 of the Act of 2010 and challenged the order dated 15th June 2021 passed by NGT holding that the directions issued by CPCB on 30th April 2020 and the Office Memorandum issued by MoEF&CC on 8th June 2020 ought to be re-visited. The order dated

2nd August 2021 passed by NGT on the review application preferred by said petitioners was also challenged before the Supreme Court. The said petitioners also moved an interim application seeking stay of the said directions as well as the Office Memorandum dated 8th June 2020.

In the meanwhile, in accordance with the order dated 15th June 2021 passed by the National Green Tribunal, Western Zone Bench, the MoEF&CC requested the National Centre for Sustainable Coastal Management, Chennai – NCSCM to carry out an assessment study and submit its report. On 27th April 2022, after conducting various studies and tests, NCSCM submitted its report before the Expert Committee constituted by the MoEF&CC.

The Expert Committee in its meeting held on 28th April 2022 was of the view that construction of ports and harbour, jetties and dredging operations could be considered as Non-Industrial operations under the notification dated 20th June 1991 and would be treated as a permissible activity under the CRZ

Notification of 2011 as amended subject to a detailed study and obtaining clearance from DTEPA.

- (k) On 12th May 2022, JNPA moved the DTEPA seeking its approval to the setting up of Greenfield Port at VadHAVAN.
- (l) On 26th May 2022, the MoEF&CC issued an Office Memorandum stating therein that in view of the recommendation of the Expert Committee – NCSCM, setting up of Port in the Ecologically Fragile Area of Dahanu Taluka could be considered subject to clearances under the Environmental Impact Assessment Notification 2006, CRZ Notification 2011 as well as from the DTEPA.

On 6th June 2022, the petitioners in Writ Petition No.15320 of 2023 moved an interim application in Civil Appeal No.7008 of 2021 before the Supreme Court seeking stay of the Office Memorandum dated 26th May 2022 issued by MoEF&CC.

- (m) On 9th March 2023, the MoEF&CC amended the notification dated 19th December 1996 constituting the

DTEPA. Items (5), (6) and (11) were amended and named members were substituted by ex-officio members of the concerned departments. Item (12) was inserted to include Director, NEERI or his nominee as Member.

- (n) On 29th March 2023, the Regional Development Plan for Dahanu Taluka was notified by the State Government.
- (o) On 9th May 2023, the MoEF&CC issued a notification amending the earlier notification dated 19th December 1996 constituting the DTEPA. The Authority was permitted to invite experts or stakeholders, not exceeding five, for assisting the Authority in deliberations and discharge of its functions on case to case basis and as deemed appropriate by the Chairperson of the Authority with the approval of the Central Government.

Accordingly, on 10th May 2023 the Chairperson recommended the names of Dr. Sanjay Deshmukh, Ex-Vice Chancellor, Mumbai University, Dr. Laxmikant P Naik and Adv. Brian Lobo, representative of the locals

of Dahanu Taluka for appointment. The recommendation was approved by MoEF&CC on 4th July 2023 stating that the said members would assist the DTEPA in its deliberations but would not exercise any voting rights.

- (p) On 31st July 2023, the DTEPA approved the establishment of Greenfield Port at VadHAVAN subject to conditions mentioned in its order.

Submissions of learned Counsel

6. Mr. Mihir Desai, learned Senior Advocate for the petitioners in Public Interest Litigation No.14 of 2024 referred to various historical facts that led to the constitution of the DTEPA by referring to the judgment of the Supreme Court in *Bittu Sehgal and Anr. Vs. Union of India and Ors., (2001) 9 SCC 181*, as well as the notification dated 19th December 1996 that was issued by the MoE&F. According to him, since the DTEPA was constituted as an Authority under the Act of 1986, it could not be said that it had merely a recommendatory role to play in a matter of such nature. The object behind constituting the said Authority was to protect the ecologically fragile areas of Dahanu Taluka and to control the pollution therein. The initial notification dated 20th June 1991 was required to be read with the notification dated 19th December 1996. Referring to the

judgment of a co-ordinate Bench in the *Conservation Action Trust Vs. Union of India* (Writ Petition No.981 of 1997 dated 16th July 2018), it was submitted that this Court had held in clear terms that without the consent of DTEPA, it was not permissible to undertake an activity that could affect the environment in the ecologically fragile areas of Dahanu Taluka. Since it was necessary to obtain the consent of DTEPA, it's role could not be treated to be merely recommendatory in nature.

. It was pointed out that in the year 1998, a proposal for setting up an All Weather Port in Dahanu Taluka along with the Maharashtra Maritime Board – MMB had been considered by the DTEPA, which had thereafter rejected the said proposal on 19th September 1998. The observations of DTEPA in that order continued to operate in view of the fact that though the said order was challenged by the MMB in Writ Petition No.7593 of 2003, that writ petition was dismissed for want of prosecution on 23rd December 2014. The findings recorded by the DTEPA therefore continued to bind the parties. As per the report of NEERI, the construction of a Port was treated to be detrimental to the environment as well as the socio-economic conditions of Dahanu Taluka.

. Referring to the Final Document on Revised Classification of Industrial Sectors under various categories dated 29th February 2016 as

well as the Modified Directions issued by the Central Pollution Control Board – CPCB dated 7th March 2016, ports and harbour, jetties and dredging operations were placed in the category that resulted in generating all sorts of pollution. Despite this Final Document, the CPCB issued Circulars on 30th April 2020 and 26th May 2022 that did not indicate any justification for de-categorization of ports as “Red Industries” despite the score on the Pollution Index being shown at “85”.

. Coming to the impugned order dated 31st July 2023 passed by the DTEPA, the learned Senior Advocate referred to various infirmities therein. It was submitted that though the Port in question was to be constructed by the Special Purpose Vehicle comprising of JNPA and MMB, the application for grant of environmental clearance had been made only by JNPA. Further, the order dated 31st July 2023 had been passed in the absence of various members of the Authority and was also signed by various non-members. Of the twelve members of the Authority, four had not signed the said order. It therefore could not be said that the order dated 31st July 2023 was one passed by the DTEPA. It was then submitted that the Terms of Reference as initially made on 7th October 2020 underwent a major change by virtue of the amended Terms of Reference dated 2nd June 2023 - ToR. The DTEPA failed to consider the effect of the amended ToR despite the fact that the Expert Appraisal Committee – EAC had in its 318th

meeting noted that the said amendment changed the entire scope of the earlier ToR dated 7th October 2020. Various studies had been directed to be undertaken by the EAC and without considering this aspect, the DTEPA proceeded to grant its consent to the project in question.

7. Ms. Gayatri Singh, learned Senior Advocate for the petitioners in Writ Petition No.15320 of 2023 referred to the background in which the DTEPA came to be constituted. The Supreme Court while considering the proceedings in Public Interest Litigation took into consideration the Notification dated 20th June 1991 declaring Dahanu Taluka to be an ecologically fragile area and proceeded to direct NEERI to prepare a report indicating the activities that ought to be permitted within said area. The Supreme Court was cognizant of the fact that various environmental regulatory bodies were in existence and despite that it felt a need to constitute a distinct and independent Authority for Dahanu Taluka. The Notification dated 19th December 1996 constituting the DTEPA made reference to the provisions of Sections 3 and 5 of the Act of 1986, which indicated the scope and purview of the DTEPA. Unless the activities intended to be carried out in an ecologically fragile area were verified and approved by the DTEPA, the same could not be undertaken. It was thus urged that the role of the DTEPA could not be treated to be merely recommendatory in nature but that it was an Authority constituted under Section 5 of the Act of 1986.

20/53

. Referring to the earlier proposal that was considered by the DTEPA in 1998, it was submitted that though the said proposal was for setting up a Port on a smaller scale, the same was not permitted by DTEPA since it was found that the same would fall within the ambit and scope of the word “industry”. The present proposal as moved was in fact on a much larger scale which required reclamation of 1,473 hectares of sea adjoining Dahanu Taluka, an area that was declared to be ecologically fragile. It was also proposed to acquire 571 hectares of privately owned land for road and rail linkage with additional land admeasuring about 1,000 hectares of Government land for rail, road and other ancillary activities. It was therefore evident that these activities would affect the ecologically fragile area and hence the DTEPA was duty-bound to have taken into consideration all relevant aspects before approving the same. It was to be noted that the Circular dated 30th April 2020 issued by CPCB declaring Ports to be non-industrial activity as well as the Office Memorandum dated 8th June 2020 issued by the MoEF&CC were under challenge and the prayer for interim relief seeking to keep the said Circular and Office Memorandum in abeyance had not been rejected. Moreover, by the order dated 15th June 2020 passed by the NGT, the Circular as well as Office Memorandum had been directed to be kept in abeyance.

. The learned Senior Advocate referred to the proceedings before the DTEPA and submitted that on most of the occasions, the matter was

considered only by the Chairperson. The Members of the Authority were not present on various dates when the proceedings were heard from 24th May 2022 to 29th November 2022. Two members of the Authority on 13th February 2023 had sought to raise relevant questions about the feasibility of the said project in the ecologically fragile area but within a period of four days, the said Members came to be removed as was indicated by the Notification dated 9th March 2023. The writ petition challenging removal of these Members was pending. On 4th July 2023, draft issues were circulated by the Chairperson of the Authority for being discussed at the hearing on 6th July 2023. Considering the short time given, a request was made by the petitioners for grant of an alternate date but this request was not accepted. Though on 6th July 2023 the draft issues were not discussed and the Expert Members who had been inducted after removal of the earlier two Expert Members had participated in the deliberations for the first time, the petitioners subsequently got knowledge that the proceedings had been finally decided by the order dated 31st July 2023. The said order failed to consider various contentions raised by the petitioners despite taking note of the same. The validity of the Circular dated 30th April 2020 issued by CPCB as well as the Office Memorandum dated 8th June 2020 was examined despite the fact that the DTEPA was informed that the proceedings in this regard were pending before the Supreme Court. The objection raised by the petitioners came to be rejected on 19th September

2022. It was further submitted that the Authority ought to have independently considered whether the categorization of the Port as “non-industrial” was justified or not in the light of the fact that its Pollution Index was shown at “85”. Reference was made to the CRZ Notification of 1991 though the same was superseded by the CRZ Notification of 2011 and thereafter CRZ Notification of 2019. The additional studies that were directed to be conducted by the MoEF&CC while issuing the amended ToR on 2nd June 2023 had not been undertaken. It was thus clear that the DTEPA failed to take into consideration the effect of absence of these additional studies in the light of the fact that the original ToR had been substantially amended. Though it was stated that a “full-house inspection” was conducted at the site on 27th March 2023, it was only the Chairperson and two other Members who were present. The inspection therefore could not be said to be one conducted by the full-house. It was thus submitted that the DTEPA despite being conferred with statutory authority under the Act of 1986 and especially Sections 3 and 5 thereof, it failed to act in the manner as required by the statute. This resulted in defeating the purpose behind establishing the said Authority. The CRZ areas extended to 12 nautical miles which was equivalent to about 22 kilometers from the coast line. The DTEPA had the necessary jurisdiction over the off-shore area since it had been constituted to enforce the provisions of the CRZ Notification of 1991. In addition, the project was also located on land to

the extent of 1,571 Hectares. On this basis, it was urged that the order passed by DTEPA called for interference and the matter required reconsideration by the concerned Authority.

8. Dr. Milind Sathe, learned Senior Advocate for respondent no.5-JNPA opposed the aforesaid submissions on various counts. According to him, the proceedings before the DTEPA were recommendatory in nature since it was even otherwise necessary for the Project Proponent to secure all applicable regulatory as well as statutory permissions before the project could be commenced. Such permissions were governed by the Environmental Impact Assessment Notification dated 14th September 2006 as well as the CRZ Notification of 2019. The Notification issued on 20th June 1991 merely required consideration of imposing restrictions on the setting up of industries that would have detrimental effect on environment in the ecologically fragile area of Dahanu Taluka. The said notification did not apply to “operations or processes” that had been excluded from reference in the said notification. The DTEPA through a general construction and generic sense of the word “Industry” had passed orders on 19th September 1998 as well as 2nd June 2017 against setting up of the Port. However, with the Circular dated 30th April 2020 issued by the CPCB, it was clear that activities with regard to ports and harbour, jetties and dredging operations were not related to manufacturing activities. It was to be noted that the proposed Port was to be constructed off-shore in the sea

at a distance of about 6 kms. from the sea-shore and was thus beyond the purview and jurisdiction of the DTEPA. The same was within the jurisdiction of the MoEF&CC under the CRZ Notification 2019. The jurisdiction conferred on DTEPA was confined to the limits of the Dahanu Taluka and it did not extend upto 12 nautical miles of the territorial waters of India. The fact that no objection was to be obtained from DTEPA was itself a condition imposed under the ToR issued by MoEF&CC for the purposes of grant of environment clearance. The order passed by DTEPA was therefore required to be viewed from this perspective. Attention was invited to CRZ notifications dated 19th February 1991, 6th January 2011 and 18th January 2019.

. The initial ToR was issued on 7th October 2020 on the basis of which various studies for the proposed Port had been undertaken and the outcome thereof had been submitted to the DTEPA. In view of the change of location of the proposed Port from on-shore to off-shore, an Additional ToR came to be issued on 2nd June 2023. The DTEPA had referred to the aspects relevant insofar as Daman region was concerned since major terms of the Additional ToR referred to activities there. The two aspects found relevant for Dahanu Taluka was the socio-economic status of the fishermen community as well as bio-diversity study with a specific focus on off-shore marine mammals movement as well as fish aggregation sites at the reclamation area. Various monitoring measures were also provided

when the construction of the proposed Port was to be undertaken. A Grievance Committee as well as the Monitoring Committee had also been duly constituted by DTEPA as a mitigation measure.

. It was denied that there was any procedural lacunae during the course of hearing before the DTEPA. By the Notification dated 9th March 2023, three Members of the Authority were substituted by ex-officio members who were holding specific posts / designations. These persons were experts in the field of environment and allied activities. It was not the case of the petitioners that these ex-officio members did not possess the requisite qualifications or expertise. The members replaced pursuant to the Notification dated 9th March 2023 had not raised any grievance whatsoever. The earlier members did not have a vested right to hold the post in question especially when the appointment was made through nomination and at the discretion of the appropriate Government. The DTEPA's full-house had conducted site visits on 27th March 2023 and 28th March 2023 in the presence of various objectors including the petitioners. It was denied as factually incorrect that the order dated 31st July 2023 had been signed only by five members out of which two were not members of DTEPA.

. The learned Senior Advocate submitted that the work was related to a public infrastructure project having national importance and hence all

requisite statutory permissions and sanctions had to be obtained before proceeding further. The cost of the proposed Port was estimated at about Rs.76,220 crores. The same was likely to generate about one thousand direct employments and six thousand indirect employments during the construction phase. On the Port becoming functional, about one lakh direct / indirect employment opportunities would be available. The impugned order sought to balance the aspect of environmental protection and undertaking of developmental activities by following the principle of “sustainable development”. Since all relevant aspects had been taken into consideration by the DTEPA, coupled with the fact that the petitioners challenging the said order of DTEPA were neither experts in the field of environment nor had they produced any scientific or technical data to counter the various studies and reports considered by DTEPA, there was no case made out to interfere in exercise of writ jurisdiction. To substantiate his contentions, the learned Senior Advocate referred to the decisions of the Supreme Court in *Indian Council for Enviro-Legal Action Vs. Union of India and Ors.*, (1996) 5 SCC 281; *National High Speed Rail Corporation Ltd. Vs. Montecarlo Ltd. and Anr.*, (2022) 6 SCC 401; *Raunaq International Ltd. Vs. I.V.R. Construction Ltd. and Ors.*, (1999) 1 SCC 492; *N.G. Projects Ltd. Vs. Vinod Kumar Jain and Ors.*, (2022) 6 SCC 127; *Union of India Vs. Kushala Shetty and Ors.*, (2011) 12 SCC 69 and *Dahanu Taluka Environment Protection Group and Anr. Vs. Bombay*

Suburban Electricity Supply Company Ltd. and Ors., along with connected matter, (1991) 2 SCC 539 and submitted that both the proceedings were liable to be dismissed.

9. Mr. Advait Sethna, learned Advocate appearing for the Union of India submitted that the DTEPA was an expert body and after taking into consideration aspects which it found relevant had passed its order. The petitioners had not challenged the Office Memorandum dated 26th May 2022 that had been referred to in the impugned order passed by DTEPA. Since the Project Proponent was required to obtain all statutory permissions / clearances, it was bound to ensure that without doing so the project would not be commenced.

10. We have heard the learned counsel for the parties at length and with their able assistance, we have perused the documentary material on record. We have thereafter given thoughtful consideration to the issues that arise for determination.

Scope of proceedings before the DTEPA

11. At the outset it would be necessary to examine the nature of jurisdiction exercised by the DTEPA while considering the proposal moved by JNPA seeking its approval for setting up the Greenfield Port at Vadhavan, Taluka Dahanu. Dahanu Taluka has been declared as an

ecologically fragile area by the MoE&F pursuant to the Notification dated 20th June 1991 that has been issued under Section 3(2)(v) of the Act of 1986. With a view to ensure appropriate steps being taken to preserve this ecologically fragile area, the Supreme Court in *Bittu Sehgal (supra)* directed the Central Government to constitute an Authority under Section 3(3) of the Act of 1986 and to also confer on the said Authority all the powers necessary to protect the ecologically fragile Dahanu Taluka. Section 3 of the Act of 1986 prescribes the power of the Central Government to take measures to protect and encourage the environment. The DTEPA has been constituted as an Authority under Section 3 for exercising and performing such of the powers and functions of the Central Government under the Act of 1986 as well as for taking measures in respect of such matters referred to in Section 3(2). It's powers include the power to issue directions under Section 5 of the Act of 1986. Specific directions were issued to the Central Government to confer on DTEPA the power to issue directions under Section 5 and also for taking measures with regard to matters referred to in Section 3(2)(v) to (x) and (xii). The aforesaid provisions of the Act of 1986 make it clear that the Authority constituted under Section 3(3) is empowered to take measures with regard to restriction of areas in which any industry, operation or process shall not be carried out or shall be carried out subject to certain safeguards. Under Section 5, the power to issue directions in the exercise

of its powers and performance of its functions has been conferred. The directions issued under Section 5 are binding on the concerned person, officer or any authority.

. From the provisions of the Act of 1986 and especially Sections 3 and 5 thereof it becomes clear that the DTEPA having been constituted as an Authority under Section 3(3), it is empowered to prescribe measures with regard to matters under Section 3(2)(v) to (x) and (xii). The binding nature of its directions is clear from Section 5 of the Act of 1986.

12. It is also necessary to refer to the order dated 16th July 2018 passed by the Division Bench in *Conservation Action Trust (supra)*. While recognizing the ambit of DTEPA, it has been held that the same is an Authority created under the orders of the Supreme Court dated 31st October 1996 and was functioning for the last almost twenty-one years. Since DTEPA had been empowered to protect the ecologically fragile areas of Dahanu Taluka, no project coming up in that area could be permitted without referring such proposal to it for its scrutiny and clearance. In paragraph 14 of the said order, it has been observed as under :

“14. Apart from the powers under various clauses under sub-section (2) of Section 3, the power of the Central Government under Section 5 to issue directions has been conferred on the said Authority. One of the important functions of the said Authority is to

protect the ecologically fragile areas of the Dahanu Taluka and to control pollution in the said area. If the said duty is to be effectively performed by the said Authority which is empowered to exercise various powers of the Central Government, no project which is coming up in the declared ecologically fragile area of Dahanu Taluka can be permitted without referring the proposal to the said Authority for its scrutiny and clearance. If such a course is not adopted, the notification dated 19th December 1996 will become a dead letter. Such approach will defeat the directions issued by the Apex Court of constituting the said Authority. Therefore, in our view, the Hon'ble Chairman of the said Authority is right in saying what is stated in the letter dated 27th October 2015 that to protect ecologically fragile area of the Dahanu Taluka and to control the pollution in the said area, it is necessary that the projects which are referred in the Regional Plan will have to be referred to the said Authority for its scrutiny and clearance.”

. It is thus clear from the order dated 16th July 2018 that DTEPA being an Authority under the Act of 1986, its clearance of any proposal in respect of a project in the ecologically fragile area of Dahanu Taluka is mandatory. Its role therefore cannot be said to be merely recommendatory in nature.

Scope of examination by this Court

13. Having found that DTEPA is an Authority constituted under Section 3(3) of the Act of 1986 and has the necessary powers to issue directions under Section 5 of the Act of 1986, it is clear that the role of DTEPA is not

merely recommendatory in nature but has all the trappings of an Authority under the Act of 1986. DTEPA itself consists of experts from various diverse fields connected with environment. The said authority is expected to proceed on the basis of cumulative inputs of all such experts while arriving at a conclusion as to whether the activity in question could be permitted without the same having any diverse effect on the ecologically fragile area of Dahanu Taluka. While arriving at a final decision, the said Authority which comprises of experts with diverse experience is expected to have adverted to all relevant aspects. Some opinions amongst the experts are bound to vary. The Court does not possess the requisite expertise or have in-depth knowledge of environmental niceties that fall within the domain of experts. The material collected through various sources and inputs requires examination by such experts and the question is whether the same has been gone into by the Authority. The aspect to be considered is whether the Authority has taken into consideration all relevant material before arriving at its decision. The Court does not possess such expertise so as to sit in appeal over the decision of the Authority constituted under Section 3 of the Act of 1986.

14. At the same time, the Court has to consider whether a balance has been struck between sustainable development on the one hand and environmental protection with necessary safeguards on the other. If it is found that experts have taken into consideration all relevant material

having bearing on the environmental aspects and the Authority has been alive to the concerns for which it has been established under the notification dated 19th December 1996, there would be no reason to interfere with its conclusion. On the other hand, if it is shown that vital environmental aspects arising for consideration have not been seriously adverted to and the activity in question if permitted would pose a danger to the ecologically fragile area of Dahanu Taluka, the Court would be required to step-in and issue corrective directions. The following observations made by the Supreme Court in paragraph 2 of its decision in *Dahanu Taluka Environment Protection Group (supra)* are instructive and they read as under :

“2. 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.”

15. The concept of sustainable development as well as the striking of balance between the ecology and environment with projects of public utility has been considered by the Supreme Court in various decisions. Reference can be usefully made to paragraphs 238.2 to 238.5 of the decision in *G. Sundarrajan Vs. Union of India and Ors., (2013) 6 SCC 620*.

The same read as under :

“238.2. In *Bombay Dying & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group, (2006) 3 SCC 434*, while dealing with the concept of sustainable development and planned development vis-a-vis Article 21 of the Constitution, a two-Judge Bench has opined thus :

“251. It is often felt that in the process of encouraging development the environment gets sidelined. However, with major threats to the environment, such as climate change, depletion of natural resources, the eutrophication of water systems and biodiversity and global warming, the need to protect the environment has become a priority. At the same time, it is also necessary to promote development. The harmonisation of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines ‘sustainable development’ as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational

for public policies raises important challenges that involve complex synergies and trade offs.”

238.3. In *M.C. Mehta v. Union of India*, (2004) 12 SCC 118, while stating about sustainable development and the needs of the present without compromising the ability of the future generation to meet their own needs, this Court has expressed thus :

“46. ... The definition of ‘sustainable development’ which Brundtland gave more than 3 decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664, this Court observed that sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a ‘reasonable person’s’ test. [See Chairman Barton : *The Status of the Precautionary Principle in Australia* (Vol. 22, 1998, Harv. Envtt. Law Review, p. 509 at p. 549-A) as referred to in para 28 in *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718.]”

238.4. In *Tirupur Dyeing Factory Owners Assn. v. Noyyal River Ayacutdars Protection Assn.*, (2009) 9 SCC 737, while dealing with the concept of sustainable development, the Court has observed as under :

“26. The concept of ‘sustainable development’ has been explained that it covers the development

that meets the needs of the person without compromising the ability of the future generation to meet their own needs. It means the development, that can take place and which can be sustained by nature/ecology with or without mitigation. Therefore, in such matters, the required standard is that the risk of harm to the environment or to human health is to be decided in public interest, according to a ‘reasonable person’s’ test. The development of the industries, irrigation resources and power projects are necessary to improve employment opportunities and generation of revenue, therefore, cannot be ignored. In such eventuality, a balance has to be struck for the reason that if the activity is allowed to go on, there may be irreparable damage to the environment and there may be irreparable damage to the economic interest. A similar view has been reiterated by this Court in *T.N. Godavarman Thirumulpad (104) v. Union of India, (2008) 2 SCC 222* and *M.C. Mehta v. Union of India, (2009) 6 SCC 142.*”

238.5. In *T.N. Godavarman Thirumulpad v. Union of India, (2002) 10 SCC 606*, this Court observed that :

“35. It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and

the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship.”

. It is on the aforesaid premise that the challenge to the order dated 31st July 2023 passed by the DTEPA would be required to be examined.

Terms of Reference and the effect of its amendment

16. In this regard, it would be necessary to refer to the initial Terms of Reference – TOR. An online proposal was submitted by JNPA to the MoEF&CC on 15th August 2020 in terms of the Environment Impact Assessment Notification, 2006 and the Act of 1986. The project was proposed as an all weather Port at Vadhavan that was to be developed as landlord port. It was to be located at the foreshore area and reclaimed land near village Vadhavan. The project area was 17,471 hectares out of which 16,900 hectares had been declared as Port Limit and 571 hectares outside Port Limits. The ToR came to be approved on 7th October 2020 and various directions in the said matter came to be issued.

. Subsequently on 19th December 2022, JNPA sought amendment in the ToR. It's proposal for such amendment was considered by the Expert Appraisal Committee (EAC). As per the said amended proposal, the reclamation proposed was 200 mcum as compared to 86.88 mcum under the original ToR. The location of the Port was changed from on-shore to

off-shore Port requiring reclamation. The proposal for amendment in ToR was recommended by the EAC. On 2nd June 2023, the MoEF&CC permitted amendment in the ToR and directed conduct of additional studies including justification for the site suitability and viability of the project.

. From the aforesaid amended ToR dated 2nd June 2023, the complexion of the project has undergone a substantial change inasmuch as the Port now proposed is an off-shore Port and the same is not within the landed territorial limits of Dahanu Taluka. The initial concerns based on the location of the said Port have now undergone a change in view of the re-location of the Port at a distance of about 6 kms. from the shore area. In this regard, JNPA in its affidavit-in-reply filed in the Public Interest Litigation has stated as under :

“55. The additional concern / reservation of the DTEPA was as to whether apprehensions of shore line changes as contemplated in NEERI report in 1997 have been removed in the revised layout in respect of the said project. In that regard, it is to be noted that as such, no Port is being proposed to be set up within the territorial limits of the Dahanu Taluka and/or the Palghar District as a whole. The said project shall be set up at a distance

of nearly 6 kms. away from the shore and only a connecting access highway and railway line with a length of 34 kms. will be required to be constructed, which is also permissible under the land use specified in the Regional Plan of the Palghar District. Even out of the total length of 34 kms., only 11.4 kms. would pass through Dahanu Taluka region. Pertinently, similar highways / railway lines have been permitted to pass through Dahanu Taluka by the DTEPA in the past on several occasions.”

. It is thus clear that the Greenfield Port at Vadhavan is now proposed as an off-shore Port at a distance of about 6 kilometers from the shore. Pertinently, the Notification dated 20th June 1991 issued by the MoEF declaring Dahanu Taluka as an ecologically fragile area relates to Dahanu revenue taluka. The area where the Greenfield Port is proposed falls within the jurisdiction of MoEF&CC as per the CRZ 2019 notification.

Office Memorandum dated 26th May 2022

17. The Office Memorandum dated 26th May 2022 has a material bearing on the nature of activities permissible in the ecologically fragile area of Dahanu Taluka. Initially on 8th June 2020, the MoEF&CC had issued an Office Memorandum in the matter of classification of Red

Category Industries. It was clarified that “Port” did not fall in the Red Category Industries and that activities relating to a Port falling in the ecologically sensitive area can be undertaken in accordance with the notifications dated 20th June 1991 and 19th December 1996. This Office Memorandum was subjected to challenge by the Conservation Action Trust before the National Green Tribunal by preferring Original Application No.22 of 2021. On 15th June 2021, the NGT issued directions by which it held that the Circular issued by CPCB on 30th April 2020 as well as the Office Memorandum dated 8th June 2020 were required to be re-visited by an expert group. Till such study was carried out, the aforesaid Circular and Office Memorandum were directed not to be given effect to for Dahanu Taluka. Though MoEF&CC sought review of the said order, the same was rejected on 2nd August 2021 after which the MoEF&CC sought the views of NCSCM, an expert committee. The aforesaid directions have been subjected to challenge by the Conservation Action Trust by preferring a Special Leave Petition. On 27th April 2022, NCSCM submitted it’s report as directed. The Expert Committee constituted by MoEF&CC on 28th April 2022 concluded that construction of Ports and harbours could be considered as non-industrial activities under the notification dated 20th June 1991 subject to obtaining clearance from the DTEPA. Based on the recommendations of the Expert Committee, the MoEF&CC on 26th May 2022 issued an Office Memorandum holding that set-up of Port in the

ecologically fragile area of Dahanu Taluka may be considered subject to clearances under the EIA Notification 2006, CRZ Notification 2011 and clearance from the DTEPA.

. The Conservation Action Trust has also sought to challenge the aforesaid Office Memorandum before the Supreme Court but as of today, there are no interim orders passed restraining the operation of the said Office Memorandum. Till such time the Office Memorandum operates, it can be relied upon. The aforesaid would thus indicate that as per the MoEF&CC, setting up of the Port at Dahanu Taluka is permissible in view of the recommendations of the Expert Committee.

Proceedings before the DTEPA

18. Coming to the present proceedings before DTEPA, they commenced pursuant to the application dated 12th May 2022 filed by JNPA seeking permission to develop the Greenfield Port. The proceedings were numbered as DTEPA Case No.2 of 2022. The first meeting of the said Authority was held on 24th May 2022 and thereafter on various dates. The record of the said proceedings indicates that on 18th July 2022, a direction was issued by the Authority to supply all relevant documents to all parties. On 17th September 2022, a preliminary objection came to be raised to the maintainability of the application moved by JNPA. It was stated that in the

year 1998, a similar proposal had been moved for setting up of a Port at Vadhavan but that request had been turned down on 19th September 1998. According to the said objection, JNPA was seeking to re-agitate the same proposal but in view of the order passed on 19th September 1998 by the Authority, it was not permissible to do so. DTEPA on 19th September 2022 observed that the preliminary objection as raised would be decided separately. Thereafter on 19th October 2022, the Authority proposed inspection of the sites where the project was located. Prof. Shyam R. Asolekar, member of the Authority on 13th February 2023 raised various issues that needed deliberations with JNPA. In the Full House meeting of DTEPA held on the same day, various stakeholders including members of the Authority were present. The aforesaid issues raised were taken note of in the said Full House meeting. An inspection by the Full House of the Authority was undertaken on 27th and 28th March 2023. On 4th July 2023, the 'issues' framed for consideration by DTEPA were circulated for the knowledge of all participants. The issues raised by Prof. Shyam R. Asolekar were responded to by JNPA and its version was intimated to DTEPA by JNPA on 5th July 2023. The proceedings before DTEPA were thereafter scheduled on 6th July 2023. However, on 30th June 2023, a request was made on behalf of Conservation Action Trust to defer the said proceedings. The Authority did not accept the said request on the ground that necessary ground work had been done. The matter was thereafter considered by the

DTEPA on 6th July 2023. The ex-officio members inducted pursuant to the notification dated 9th March 2023 as well as the experts appointed pursuant to the notification dated 9th May 2023 along with other members of the DTEPA participated in the said proceedings. A draft order was thereafter circulated amongst Members of the DTEPA so as to invite suggestions / additions / deletions / modifications. A special meeting of the DTEPA was then held on 29th July 2023. Deliberations were held amongst members of DTEPA. Five members including the Chairman were physically present while two members participated through video conferencing. The Collector, Palghar expressed his views on telephone. After finalization of the draft order, the order of the DTEPA was pronounced on 31st July 2023 and signed by all members which fact has been stated in the minutes dated 29th July 2023. The order also indicates that it is signed by the Chairperson and seven other members.

Legality of CPCB Circular dated 30th April 2020, Office Memorandums dated 8th June 2020 and 26th May 2022 issued by MoEF&CC

19. The petitioners contend that the DTEPA was not justified in going into the legality and validity of the CPCB Circular dated 30th April 2020 and Office Memorandums dated 8th June 2020 and 26th May 2022 issued by MoEF&CC on the ground that the aforesaid were the subject matter of

challenge before the NGT in Original Application No.22 of 2021. The orders dated 15th June 2021 and 2nd August 2021 passed by NGT were now the subject matter of challenge before the Supreme Court in Civil Appeal No.7008 of 2021. Similarly, the operation of Office Memorandum dated 26th May 2022 was sought to be stayed by filing Interim Application No.83593 of 2021 before the Supreme Court.

. The DTEPA has proceeded to consider the validity of the aforesaid Circular and Office Memorandums on the premise that as an 'Authority' constituted under the Act of 1986, it had the jurisdiction to examine the matter since it pertained to the ecologically fragile area of Dahanu taluka. As an 'Authority' of first instance, it held that it could go into the challenge so that the hierarchial Courts would have the benefit of its reasons and findings.

20. We do not find the line of reasoning as adopted by the DTEPA in examining the validity of the Circular dated 30th April 2020 as well as Office Memorandums dated 8th June 2020 and 26th May 2022 to be contrary to the Notification dated 19th December 1996 under which it was constituted. The DTEPA has been conferred powers under Section 5 of the Act of 1986 for issuing directions and taking measures with respect to matters referred to in Section 3(2)(v) to (ix) and (xii) of the Act of 1986.

Since the power to give directions under Section 5 includes the power to direct the closure, prohibit or regulate any industry, operation or process, the DTEPA was within its authority when it proceeded to consider the legality of the CPCB Circular dated 30th April 2020 and Office Memorandums dated 8th June 2020 and 26th May 2022 issued by MoEF&CC especially in the context of the permissible activity of establishment of the Greenfield Port. The aforesaid Circular and Office Memorandums form the basis of permissibility of the activity in question and as the same is being undertaken in Dahanu taluka, the DTEPA was justified in applying its mind to the same. It is also to be noted that the said Circular and Office Memorandums were challenged before the DTEPA by various objectors which fact has been recorded in the minutes of the proceedings of the DTEPA on 21st July 2022. In view of this specific challenge raised before it, the DTEPA cannot be faulted for examining such challenge to the extent it pertained to the matter within its jurisdiction as per notification dated 19th December 1996 as an Authority of first instance. The aforesaid consideration by the DTEPA would naturally be subject to the challenge pending before the Supreme Court.

21. The DTEPA in its order dated 31st July 2023 has observed that the situation as existing in 1998 when the activity of development of the port in Dahanu taluka was held impermissible being an 'industry' in 'Red

category' had undergone a massive change during the period of twenty-five years till 2023. The CPCB Circular dated 30th April 2020 was upheld in view of the additional assessment and reasons furnished by NSCSM in its report of April, 2022. The DTEPA has made the aforesaid report part of its order dated 31st July 2023. It is to be noted that pursuant to the directions of the NGT in its order dated 15th June 2021, the MoEF&CC appointed NCSCM as an expert group to undertake a fresh study on the impact of setting up a port on the overall ecology of Dahanu taluka. NCSCM after its study submitted its report in April 2022 and thereafter the Expert Committee constituted by the MoEF&CC in its third meeting held on 28th April 2022 concluded that construction of ports and harbours, jetties and dredging operations could be considered as non-industrial activities under the Notification dated 20th June 1991 and a permissible activity under the CRZ Notification, 2011.

22. In our view, the approach of the DTEPA in upholding the CPCB Circular dated 30th April 2020 and Office Memorandums dated 8th June 2020 and 26th May 2022 issued by MoEF&CC in view of the report of the expert body, NCSCM cannot be said to be arbitrary or impermissible. The DTEPA has preferred to go by the report of an expert body constituted by the MoEF&CC and we do not find any reason to take a different view. In any event, the challenge to the CPCB Circular dated 30th April 2020 and

Office Memorandums dated 8th June 2020 and 26th May 2022 issued by MoEF&CC is pending before the Supreme Court and hence the consideration undertaken by the DTEPA would naturally be dependent upon those proceedings. Hence, the order passed by the DTEPA to that extent does not call for any interference.

Re-constitution of DTEPA

23. The National Fishworkers Forum as well as Conservation Action Trust have sought to question the removal and replacement of three members of the Authority. According to them, Prof. Shyam R. Asolekar, an expert in the field of Environmental Engineering and Shri K.B. Jain, an expert in the field of Developmental and Environmental Planning had raised various objections in the proceedings held on 13th February 2023. By Notification dated 9th March 2023, the MoEF&CC substituted entries 5, 6, 11 and added one entry in the Notification dated 19th December 1996. It is not necessary to dilate much on this aspect as the National Fishworkers Forum has separately challenged such substitution of members in Writ Petition (Lodging) No.17261 of 2023. Suffice it to observe that named members have been replaced by ex-officio members. Moreover the queries raised by Prof. Shyam R. Asolekar have been responded to by JNPA and that response was placed before the DTEPA on 5th July 2023. The DTEPA took its final decision thereafter on 31st July 2023.

Consideration by the DTEPA

24. The DTEPA initially considered the preliminary issue with regard to the tenability of the proceedings in the light of its earlier order dated 19th September 1998. It held that the present proceedings seeking approval for setting up the Greenfield Port were maintainable in the light of various events that occurred after the order dated 19th September 1998 came to be passed. Reference was made to the directions issued by CPCB on 30th April 2020, the Office Memorandum dated 8th June 2020 and the Office Memorandum dated 26th May 2022. The DTEPA held that the request as made by JNPA was required to be considered on its merits. It thereafter proceeded to consider the matter on merits. After referring to the initial ToR dated 7th October 2020, the DTEPA found that an amendment to the same had been permitted on 19th December 2022. In view of such amendment, it noted that the entire Port location had been shifted and that except for highways, rail lines and some on-shore reclamation through material to be obtained from areas beyond Dahanu Taluka, the Greenfield Port had become an off-shore Port. The directions issued by CPCB on 30th April 2020 were upheld. Reference was made to the report submitted by NCSCM and it was noted that necessary analysis of the CRZ notifications had been undertaken. The Regional Development Plan for Dahanu Taluka had been approved pursuant to Government Resolution dated 29th March 2023. It was within the purview of the DTEPA to

consider granting permission accordingly. It was noted that under the amended ToR, two aspects of studies with regard to socio-economic studies of the fishermen community as well as bio-diversity study related to Dahanu region, while all other terms of reference pertained to Daman region. It noted that under the notification dated 19th December 1996, the DTEPA was required to monitor activities with regard to establishment of Ports or developments in Dahanu taluka and that the Port was now being established at a distance of about 6 kms. inside the sea with reclamation. The minor development for landing Port near the shore would not disturb the normal shore activities in Dahanu Taluka. It was further noted that there was no threat to mangroves since the proposed development was at a distance of about 150 mtrs. from the nearest boundary line of the project. The study undertaken by the National Institute of Oceanography, Goa was referred to and it was held that the fishing area used by fishermen was at a distance from the Port Project notwithstanding the fact that preventive and mitigating measures would be adopted. On this basis, the DTEPA recorded its satisfaction and held that necessary permission to establish and develop the Greenfield Port deserved to be granted subject to the conditions set out by EAC and other authorities. It also proceeded to constitute a Monitoring Committee for different subjects as well as a Grievance Committee for hearing the grievances of all the stakeholders as well as all persons concerned with the project. The proceedings were

accordingly disposed of by issuing various directions and granting permission to establish and develop the Major Port.

Events that have occurred after the DTEPA granted its consent

25. It is necessary to note that after DTEPA granted its consent on 31st July 2023, the Maharashtra Coastal Zone Management Authority – MCZMA considered the proposal submitted by JNPA in its 171st and 172nd meeting held on 15th December 2023 and 5th February 2024 respectively. MCZMA recommended the proposal to the MoEF&CC from CRZ point of view subject to various stated conditions. The recommendation was accordingly communicated to the Director (IA-III) Coastal Zone Regulation, MoEF&CC.

. The Environmental Public Hearing was conducted by the Maharashtra Pollution Control Board at Tembhode, District Palghar on 19th January 2024.

. The Expert Appraisal Committee (EAC) in its 356th meeting held on 6th and 7th February 2024 considered the proposal. It noted that as prescribed by the ToRs, the Project Proponent had carried out various studies through expert agencies. EAC thereafter recommended the proposal for Environmental and CRZ Clearance with specific conditions.

. The MoEF&CC has thereafter on 16th February 2024 granted Environmental Clearance to the proposed project along with CRZ Clearance for development of the Greenfield Port at Vadhavan. According to JNPA, the aforesaid recommendations and permissions continue to hold the field as of today. Though the aforesaid authorities are distinct from the DTEPA, these aspects are being referred to only to indicate that other statutory bodies have also gone into the matter and have thereafter recommended the project subject to complying with various conditions and compliances.

In conclusion

26. When the entire proceedings conducted by the DTEPA are considered, we find that the Authority has taken into consideration all relevant aspects for arriving at the conclusion that approval for setting up the Greenfield Port at Vadhavan, Taluka Dahanu ought to be granted. The effect of the CPCB Circular dated 30th April 2020 as well as Office Memorandums dated 8th June 2020 and 26th May 2022 has been taken into consideration. The report submitted by NCSCM which was requested by the MoEF&CC to submit the same has also been considered. The DTEPA has found that the initial ToR dated 7th October 2020 came to be amended by the additional ToR dated 2nd June 2023. It concluded that the complexion of the project had undergone a substantial change in view of

re-location of the Port at a distance of about six kilometers from the shore area. The aspect of mangrove protection has also been gone into. The concerns raised by the Conservation Action Trust on 11th January 2023 based on the Shoreline Change Atlas of India, Volume 2, 2014 have also been considered. The DTEPA has relied upon the NCSCM report as well as the report of the National Centre of Coastal Research – NCCR. It has found that the report on Shoreline Changes Atlas of the Indian Coasts was based on data of five to six years while the NCSCM report was based on data of about twenty four years. Since the NCCR and NCSCM reports were published by the MoEF&CC, it preferred to go by the said reports. With the change of location to off-shore, it was found that the Greenfield Port was to be established at a distance of about six kilometers from the shore line. The off-shore area was found to fall beyond the area of Dahanu Taluka and within the domain of the Central Government.

. It is thus found that the DTEPA as an Authority under Section 3 of the Act of 1986 has considered all relevant aspects having material bearing on the issue as to whether approval should be granted to the Greenfield Port. It has also proposed mitigation measures by constituting a Monitoring Committee for different subjects to have constant monitoring. A Grievance Committee has also been constituted for considering the grievances of all stakeholders as well as all those concerned with the project.

27. We therefore do not find any justifiable ground to interfere with the approval granted by the DTEPA to the establishment of the Greenfield Port vide its order dated 31st July 2023. The approval of the DTEPA is only a step towards the actual establishment of the Greenfield Port. JNPA is required to obtain all necessary clearances and approvals from various authorities as well as the Expert Appraisal Committee and the MoEF&CC. These authorities exercise jurisdiction over different environmental spheres and only on the project being approved by all of them can the Greenfield Port be established. Hence for aforesaid reasons, we are not inclined to interfere in exercise of writ jurisdiction. Accordingly, Public Interest Litigation No.14 of 2024 and Writ Petition No.981 of 1997 are dismissed. Rule discharged with no order as to costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.14 OF 2024

Conservation Action Trust, Mumbai & Anr. .. Petitioners

Vs.

Dahanu Taluka Environment Protection Authority,
Fort, Mumbai and Ors. .. Respondents

ALONG WITH

WRIT PETITION NO.15320 OF 2023

National Fishworkers Forum, Palghar & Ors. .. Petitioner

Vs.

Dahanu Taluka Environment Protection Authority,
Fort, Mumbai and Ors. .. Respondents

Ms. M. Kakalia for the Petitioners in WP/15320/2023.

Mr. Advait M. Sethna with Mr. D.P. Singh, Ms. Nivedita Mullerpattan and
Ms. Poushali Roychoudhary, Advocates for Respondent No.3-UOI.

Mr. N.C. Walimbe, Additional Government Pleader, with Smt. R.A.
Salunkhe, Assistant Government Pleader, for the Respondent-State of
Maharashtra.

Mr. Devansh Shah, Advocate, i/by Vidhii Partners, for Respondent No.5-
JNPA.

**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ**

DATE : 30TH APRIL, 2024.

PC. :

1. In the Judgment dated 18th April 2024, the following corrections
shall be made :-

- (a) On page 13/53, in line no.12, the word '*MoEF&CC*'
shall be replaced by the word "**JNPA**".
- (b) On page 40/53, in line nos.5 and 15, the words
'*Conservation Action Trust*' shall be replaced by the
words "**National Fishworkers Forum**".

On the same page, in line no.12, the word '*MoEF&CC*' shall be replaced by the word **"JNPA"**.

(c) On page 41/53, in line no.4, the words '*Conservation Action Trust*' shall be replaced by the words **"National Fishworkers Forum"**.

(d) On page 53/53, the figures '*981 of 1997*' shall be replaced by the figures **"15320 of 2023"**.

2. The Judgment dated 18th April 2024 stands corrected accordingly and corrected judgment be uploaded.

[**JITENDRA JAIN, J.]**

[**A.S. CHANDURKAR, J.]**