

A Casual Approach

By taking on board the concerns of a fishing community in Hazira, India, regarding the construction of a port, the National Green Tribunal has set an important precedent

In 2013, a fishermen's group in Hazira—the Hazira Machimar Samiti—and three affected fishermen had filed a petition against the Adanis, the project proponent of the port at Hazira, in Surat district in the south-western Indian state of Gujarat, as well as against the governmental bodies that granted environmental clearance to the project proponent. The case was filed in the National Green Tribunal (NGT) as, since 2010, cases relating to environment protection are exclusively dealt with by this tribunal for 'effective and expeditious' disposal of cases. The Tribunal has the powers of any other civil court in the country

damages caused by the project proponent.

The key issues that were considered by the court in this case were whether the 2013 environment clearance itself "suffered from any illegality, impropriety or irregularities" and whether there is an actual threat of restriction of access due to expansion. While unravelling answers to these questions, the court also looked into the extent of environmental destruction that was caused due to the whole project. What started as an issue of the fishermen's access to the sea led to questions of the project's compliance to environmental clearance conditions, the process followed by the government in giving clearances to the project and the environmental impacts of the project. A fine of Rs 25 crores (3.7 mn US\$) was imposed on the project proponent to be used for restoration of the environment, and the environmental clearance that was given for the expansion of the project was set aside. The court also gave further orders to look into the compliance of forest-related conditions of the 2003 environment clearance.

The basic challenge that the petitioners put forth was on the environmental clearance given for the expansion of the port by the Ministry of Environment, Forest and Climate Change (MoEFCC)

and can provide for relief and compensation for damages to person and property. The case was heard by the NGT's western zone bench in Pune and on 8 January 2016, the judgment was finally delivered.

There are about 80 families in the village of Hazira engaged in fishing using traditional boats. These boats sailed into sea through a creek, at the opening of which now sits the Hazira port. The fishermen fear that if the port is expanded anymore, they will lose access to this creek. The port was developed in phases since 2003 after it was granted environmental clearance, and the petitioners claimed that this had already caused massive environmental damage to the surroundings. They demanded restoration costs for the environmental

Basic challenge

The basic challenge that the petitioners put forth was on the environmental clearance given for the expansion of the port by the Ministry of Environment, Forest and Climate Change (MoEFCC). The court, made it unambiguous that the question of legality of the environment clearance, the sole defendant is the MoEFCC. This is because while the project proponent put forth the necessary documents, the onus is on the Ministry to examine them carefully, ask for

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verifications and impose necessary conditions. As a central ministry that examines high-impact projects whose environmental impacts are usually multiple and widespread, the Ministry's performance is not only a question for rule of law but for the wellbeing of the environment and citizens.

For the environment and Coastal Regulation Zone (CRZ) clearance granted in 2013, the procedural path taken was traced back by the court. Since clearances are granted on the basis of recommendations from an Expert Appraisal Committee (EAC) that is constituted by the Central government, the minutes of these meetings were looked at by the court. While the recommendations given by the EAC are not binding on the Ministry, the Court assessed the time spent by the Committee on discussing and understanding the impacts of the project, and on whether facts had been verified by the Committee. The court, after appraising the minutes, remarked on the 'casual approach' taken by the EAC on recommending the grant of clearance.

The arguments made in the case clearly bring to light the fact that the MoEFCC had not considered various factors while granting clearance. The necessary permissions that are required while handling hazardous materials were neither taken by the company nor sought by the MoEFCC. The discussions regarding the project also ignored examining the possible impact of the effluent pipeline of the project on the marine life in the area.

It is almost as if a pre-decided approach was taken by the government regarding this expansion, and the procedures were touched upon merely as a matter of formality. The Ministry, which should have prioritized the protection of environmental resources and minimising of the impacts of such projects, had gone easy on a large-scale infrastructural project which is more than capable of bearing the monetary cost of environmental compliance.

Regarding the issue of access, maps submitted by the petitioners were superimposed with earlier maps to understand the landscape changes caused by the project. This showed clear evidence that the creek had narrowed since the project construction began. Though it was contended that no public consultation held to discuss the impacts of re-alignment of a railway line undertaken for the project and there were at least two critically endangered species in the area—the white back vultures and long-billed vultures, these issues were not dealt by the court in detail.

While the compliance of the environment clearance of 2003 per se was not considered by the court, it looked at the issue of compliance of conditions regarding compensatory afforestation of mangroves. The court considered the evidence provided by the petitioners in the form of maps and compared it with the clearance conditions. It also accepted the affidavit of the Deputy Conservator of the Forests, stating that the area once had mangroves in abundance while

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Fisherfolk protesting against the port project at Hazira, Gujarat, India.

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there was no mangrove vegetation now.

The 2003 clearance had imposed the condition that the mandatory compensatory afforestation for an area of 450 ha would be taken up by the project proponent. In 2007 this got modified to 200 ha, through 'official communication' to the company. This bypassing of conditions by diluting it later on without giving any 'substantial reasons' for such changes makes the entire process of grant of conditional approvals seem like a redundant exercise.

Though the legality of the environmental clearance given in 2003 was beyond the scope of this case, it does come into light that there were substantial changes that were made to the layout of the port in 2007. An affidavit that was given by the respondent company itself reveals this. It was found that the company had proceeded with expansion work after 2007 in the absence of necessary environment and coastal regulation clearance.

It also became clear from the records available to the court through the Ministry's affidavit dated 5 March 2015 that the MoEFCC did not monitor the compliance of the project nor did it evaluate its performance while considering the environment clearance of 2013. This raises a pertinent question of the past performance of the companies being an indicator of their future performance. How could the approval of expansion of a project not be based on the existing project details? While looking at granting an 'environment clearance', should not one of the basic criteria be compliance with previous conditions? Deterrence to environmental violations can come about only when the non-compliance to environmental conditions has adverse consequences.

While a standalone petition asking for access to fishing would have resulted in limited remedies, bringing together all the elements that affect the community and the environment ensured that the remedies given were more encompassing. Also substantiating the issues along with

reliable evidence strengthened the case. For example, the claims made by the fishermen on the restriction of access were supported by maps.

The hefty fine imposed by the court for restoration was due to the cumulative environmental impacts that have to be dealt with. A standalone petition asking for access to fishing would have resulted in limited remedies. Bringing together all the elements that affect the community and the environment ensured that the remedies given were more encompassing. It is also, however, important to show the relevance of each plea with respect to the remedy asked for, and ensure, as far as possible, that these claims are presented with reliable evidence. Claims made by the fishermen on the restriction of access were supported by maps. While the court did not examine in detail most conditions of the initial environmental clearance of 2003 that were raised, the destruction of mangroves was examined in detail.

Even though the case is now being heard at the apex court of the country due to an appeal, the judgment is an important precedent as the fishing community's voices were heard and the subject of environmental non-compliance by large projects and their consequences have been placed in the spotlight. Moreover, the project proponent has reportedly paid the fine amount of Rs 25 crore imposed by the National Green Tribunal, as per the apex court's orders. Large-scale land-use transformations usually leave certain sections of society more vulnerable to the effects of such changes, and their opinions are usually not heard, sometimes noted but mostly not accounted for. A robust and outcome-based environmental compliance and monitoring system can reduce or mitigate the impacts of land-use change. It needs to be built and upheld as a critical rule of law issue for these times.

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National Green Tribunal