



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12431 OF 2024

Adani Electricity Mumbai Infra Ltd.

..... Petitioner

Vs.

Union of India & Ors.

..... Respondents

Mr. Vikram Nankani, Senior Advocate (through video conferencing) a/w. Mr. Aditya Mehta, Mr. Shrey Fatterpekar, Ms. Shweta Jaydev, Ms. Pooja Vasandani, Ms. Feroza Bharucha and Ms. Nishi Doshi i/b. Rashmikan and Partners for the petitioner

Mr. D. P. Singh for respondent No.1

Ms. Jaya Bagwe for respondent No.2

Mrs. Neha Bhide, Government Pleader a/w. Mr. O. A. Chandurkar, Additional Government Pleader with Ms. G. R. Rahuwanshi, AGP for respondent Nos.3 to 6

Mr. Rakesh L. Singh i/b. M. V. Kini and Co. for respondent No.7 (MSEDCL)

Mr. Nirman Sharma a/w. Mr. Ansh Karnawat with Ms. Viloma Shah i/b. AGP Partners for respondent No.8

**CORAM: ALOK ARADHE, CJ. &
BHARATI DANGRE, J.**

DATE : FEBRUARY 6, 2025

ORDER (PER: CHIEF JUSTICE)

1. Heard the learned Counsel for the respective parties.

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2. RULE.

3. Rule is made returnable forthwith. With the consent of the learned Counsel for the parties, the writ petition is heard finally.

4. The petitioner before us is incorporated as a Public Limited Company & is 100% subsidiary of Adani Electricity Mumbai Limited ("AEML") which has been set-up as a Special Purpose Vehicle for the implementation of a project being the ' $\pm$ 320kV 1 x 1000 MW' High Voltage Direct Current ("**HDVC**") Voltage Source Converter ("**VSC**") based Link between MSETCL 400 k V Kudus EHV Substation and AEML 220 kV AEML-Transmission Aarey EHV Substation (**HVDC DPR**). It is the claim of the petitioner that AEML is one of the Mumbai's primary electricity supplier and is involved in catering to the electricity needs of the households in Mumbai and Suburbs around Mumbai.

5. The petitioner, through this petition seek a writ of mandamus, directing the respondents to permit it to execute and implement the project which involves 80 km stretch consisting of 30 km of HVDC Over Head Transmission Line and 50 km of HVDC underground cable in the mangrove area, in the wake of public importance of the project since the judgment and order dated 17th September 2018 in PIL No.87 of 2006 make it imperative for it to seek requisite permission from the High Court. The electricity transmission line HVDC which involves 80 km of stretch cable, as per the petitioner, only 1 km passes through areas which have presence of mangroves, whereas 2.2 km of this transmission line falls in the Coastal Regulation Zone area ("**CRZ area**"), which is

proposed to be laid at the depth of 20 mtrs below the ground using horizontal directional drilling (HDD) and duct bank trenches method across the Vasai Creek.

6. In the wake of the increasing demand of the electricity in Mumbai, the Maharashtra Electricity Regulatory Commission (**MERC**) on 29th January 2019 in Case No. 3 of 2019 observed that the only option to deal with the scarcity of power generation resources is to increase available transfer capability (**ATC**) of Mumbai. The Government of Maharashtra (Industries, Energy & Labour Department) agreed with the aforesaid inference and on 11th February 2019, the MERC convened a meeting for review on strengthening of the Mumbai Transmission System and referred the matter for Bulk Power Injection Scheme of Mumbai to the Central Electricity Authority of India which (CEA) on requisite study and analysis concluded that Kudus – Aarey 1000 mw HVDC would provide infeed to Mumbai. It is in this background AEML conceptualized 1000 MW HVDC transmission link between MSETCL Kudus and AEML Aarey to enable injection of 1000 MW power right to load the centre of Mumbai with provision of injection of further 1000 MW if required in future.

7. In the wake of a partial grid failure in Mumbai Metropolitan region on 12th October 2020, the High-Power Committee constituted by MERC, recommended the expeditious implementation of the scheme on priority basis. The petitioner was granted a transmission license under Section 14 of the Electricity Act, 2003 (**Act of 2003**) on 21st March 2021 and in-principle approval was granted by the MERC on 22nd October 2021.

The Government of Maharashtra (Industries, Energy & Labour Department) passed a resolution on 11th May 2022 granting permission under section 68 of the Act of 2003 for implementation of the HVDC Project.

8. The HVDC project to be undertaken would include approximate length of 2.22 km in CRZ area near Vasai and Kaman Creek though the proposed cables have to pass below the creek and shall be laid at substantial length of 20 M below creek bed via HDD Drilling. The project involved felling of 209 mangroves as per the Mumbai Mangroves Conservation Unit (**MMCU**), since the inspection confirmed presence of mangroves. Out of 209 mangroves 144 are located in MMCU whereas, 65 mangroves are located in SGNP forest division. The petitioner therefore, obtained an Environment Impact Assessment (EIA) and Environment Management Plan (EMP) for the HDVC project. A report conducted by Building Environment India Pvt. Ltd. was submitted on 3rd March 2023.

9. The application of the petitioner was also considered by the Maharashtra Coastal Zone Management Authority (hereinafter referred to as "**MCZMA**") and recommendation was made for approval of the project to the respondent No.1 viz. Ministry of Environment, Forests and Climate Change, which considered the application of the petitioner dated 5th February 2024 in its 355th Environment Assessment Committee meeting and recommended the HVDC Project.

10. Thereafter, on 29th April 2024 the MoEFCC i.e. respondent No.1 granted CRZ clearance to the project in accordance with the provisions of CRZ Notification 2019 in the wake of the approval received from the Expert Appraisal Committee (EAC) in its 355th meeting held on 5th February 2023. The clearance was granted subject to certain specific conditions other than the General conditions. On 10th July 2024 the Regional Empowered Committee (REC) recommended the proposal of the petitioner by taking note that the part of the proposed area passes within the boundaries of Tungreshwar Wildlife Sanctuary ("**TWLS**") and Sanjay Gandhi National Park ("**SGNP**"), Borivali and their Eco Sensitive Zone ("**ESZ**"), for which the approval of the National Board for Wildlife ("**NBWL**") is required. As regards felling of mangroves it was indicated that the User Agency shall obtain permission from the High Court. It was further noted that out of 22.3118 HA, 14.08 HA is for overhead transmission line and 8.23 HA is for underground line and it involved cutting of 1542 mangroves out of 1850 mangroves. The Committee, therefore, recommended its in-principle approval at two stages but it also sought advice of the Ministry on certain points and the issuance of in-principle approval was dependent upon the said advice.

11. On 20th August 2024 the respondent No.1 – MoEFCC granted its in-principle approval for the project under Section 2(1) of Forest (Conservation) Act, 1980 for diversion 21.1214 HA out of 22.3118 HA forest area for laying of HVDC base link between Kudus-EHV substation and Aarey EHV station in Taluka Palghar, Bhiwandi, Thane and Vasai in the State of Maharashtra subject to

general conditions as well as specific conditions, which included a condition that the State Government shall not issue working permission for the project till the project is received clearance from NBWL and the State Government shall ensure to implement all mitigating measures as suggested by it at the project cost, if any.

12. On 22nd August 2024 the Chief Conservator of Forest, SGNP forwarded the approval to TWLS ESZ Committee and the said Committee, in its meeting dated 8th October 2024 accorded its unanimous approval to the HVDC project being in the nature of public welfare, subject to taking prior permission from the Central Government under the Forest Conservation Act, 1980 (**Act of 1980**).

13. Thereafter, on 8th October 2024 the Divisional Forest Officer, Mangroves Division, North Konkan issued demand notice to the petitioner requiring it to deposit sum of Rs.6,77,618/- towards the cost of plantation of mangroves in 1:5 ratio i.e. for compensatory afforestation. The petitioner, thereupon made the aforesaid payment on 8th October 2024 itself.

14. The ESZ Monitoring Committee of SGNP, on 14th October 2024 granted its NOC to the Project. Thereafter, on 22nd February 2024 the Mangrove Cell, Mumbai submitted the Mangrove Conservation Plan to the petitioner for necessary action. The petitioner, on 23rd October 2024 paid sum of Rs. 3 lakhs in compliance of the mangroves plan for the gap filling during mangrove plantation and submitted the undertaking. On 7th

November 2024, the TWLS Eco-Sensitive-Cum-Monitoring Committee unanimously approved its permission to the HVDC Project. On 9th January 2025 the Standing Committee of NBWL also recommended the HVDC Project subject to the conditions mentioned therein.

15. In PIL No.87 of 2006 filed by the respondent No.8 Bombay Environmental Action Group, a Division Bench of this Court, while focusing on the issue of protection of mangroves, on entertaining the PIL, issued several guidelines and while disposing of the PIL, it declared that the destruction of mangroves, which is necessary to be preserved for attaining ecological balance, the State is duty bound to protect the same and in the order dated 17th September 2018 it was held as under:

"83 (viii) in view of applicability of public trust doctrine, the State is duty bound to protect and preserve mangroves. The mangroves cannot be permitted to be destructed by the State for private, commercial or any other use unless the Court finds it necessary for the public good or public interest."

16. In the aforesaid factual ground, the petitioner has filed this petition seeking permission to proceed with the project.

17. Mr. Vikram Nankani, the learned senior Advocate for the petitioner submits that the project is necessary to be sanctioned in public interest, as the same is critical for the city of Mumbai and its suburbs as the existing capacity of the transmission corridor is not sufficient to carry further power into the city. It is also urged that the petitioner, in terms of the transmission license, is required to commission the project by 21st March 2025 and the

petitioner has received all the statutory permissions required in relation of cutting of the mangroves and carrying out the work in CRZ areas for the HVDC Project. Learned Senior Advocate for the petitioner undertakes to carry out compensatory afforestation of the mangroves 5 times the number of mangroves which are proposed to be fell. It is also submitted that in the wake of Notification under clause 8 of the Coastal Regulation Zone Notification dated 6th January 2011 issued by respondent No.1, laying of the transmission line is a permissible activity.

18. On the other hand, learned Counsel for respondent Nos.1 to 5 supported the submissions made by the learned Counsel for the petitioner and submit that the petitioner be granted permission to lay down the transmission line and also do not dispute that the proposed Project is of Public importance.

19. Learned Counsel for respondent No.8, however has raised a serious objection to the proposed project, by submitting that there is inconsistency in the number of mangroves to be cut. It is pointed out that the minutes of the meeting held by MCZMA indicate that 79 mangroves are proposed to be cut whereas as per the petitioner's case 209 mangroves are required to be cut. It is further submitted that the Environment Impact Assessment ("**EIA**") report has failed to consider the impact of electricity transmission lines in mangroves area and national parks. It is also contended that the approvals of the sanctioning authority suffer from vice of non-application of mind as the operational impact of the project should have been determined as the underground cables may give rise to environmental issues for many

vulnerable species in the national parks, as the transmission line would pass through the same.

20. In support of the aforesaid submission, reliance has been placed on Supreme Court judgment in the case of ***M.K.Ranjitsinh and Ors. Vs. Union of India & Ors. 2024 SCC OnLine SC 570.***

21. We have considered the submission made on both sides and have perused the record.

22. The respondent No.1 has issued Coastal Regulation Zone Notification on 6th January 2011 in exercise of powers conferred by sub section (1) and Clause V of Sub Section (2) of Section 3 of the Environment (Protection) Act, 1986 to ensure livelihood security to fisher community and other communities living in the coastal areas and to conserve and protect coastal stretches, its unique environment and its marine area and to promote development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas, sea level rise due to global warming and thus declaring the coastal stretches of the country as coastal regulation zone (CRZ) and restricting the setting up and expansion of an industry, operations or processes and manufacture or handling or storage or disposal of hazardous substances in the said area. The said Notification has prohibited certain activities within the CRZ limits and has also enlisted the permissible activities.

23. Respondent No.1 issued Coastal Regulation Zone Notification dated 6th January 2011. Clause 8 of the aforesaid

Notification prescribes the Norms for regulation of activities permissible and it reads thus:

8. Norms for regulation of activities permissible under this Notification -

(i) *The development or construction activities in different categories of CRZ shall be regulated by the concerned CZMA in accordance with the following norms, namely:-*

Note : The word existing, used hereinafter in relation to existence of various features or existence of regularisation or norms shall mean existence of these features or regularisation or norms as on 19.2.1991 when the CRZ notification, 1991 was notified.

I. CRZ-I -

(i) *no new construction shall be permitted in CRZ-I except, -*

(a) *.....*

(b) *pipelines, conveying systems including transmission lines;*

(c) *to (f).....”*

Thus, it is evident that laying down transmission line is a permissible activity in CRZ-I.

24. The need for sustainable development and the requirement to maintain the environment must strike a balance. The project of construction of electricity transmission line is critical for the city of Mumbai as the existing capacity of transmission corridor is not sufficient to carry further power into the city. The HVDC project would enable additional power to be supplied to Mumbai and suburbs and shall meet the ever increasing energy demands of the city.

25. In terms of the transmission license, the petitioner was required to commission the project by 21st March 2025. The

petitioner has received all the necessary statutory permissions required in relation to the cutting of mangroves and carrying out the work in CRZ area for HVDC Project, subject to the conditions mentioned in the order granting approvals/permissions. The petitioner has received the permission/NOC from the following authorities:

- (i) In-principle approval dated 21st March 2021 from MERC
- (ii) Permission dated 11th May 2022 granted by the Government of Maharashtra (Industries, Energy & Labour Department) for implementation of the HVDC Project.
- (iii) Recommendation dated 8th January 2024 by MCZMA through respondent No.1 for approval subject to the conditions mentioned therein which are extracted below for the facility of reference:

"(i) to (iii)

(iv) PP to obtain the NoC from the mangrove cell. Compensatory afforestation of the mangroves 5 times should be carried out with the help of forest Dept.

(v) PP to obtain the Forest clearance under Forest (Conservation) Act, 1980 for diversion of the forest land.

(vi) PP to obtain the prior High Court permission since, the project involve cutting of the mangroves."

(iv) The CRZ Clearance dated 29th April 2024 from respondent No.1.

(v) Stage-I/In-principle approval dated 20th August 2024, subject to the following condition:

"3.5 The User Agency shall require to obtain permission from the Hon'ble High Court and the User Agency shall implement Mangrove Conservation plan to be prepared by the Mangrove Cell of the Maharashtra Forest Department at the project cost."

(vi) The proposal dated 22nd August 2024 forwarded by the Chief Conservator of Forest of SGNP to TWLS ESZ Committee.

(vii) The approval dated 8th October 2024 granted by SGNP ESZ Committee to HVDC Project being in the nature of public welfare subject to taking prior permission from the Central Government under the Forest Conservation Act, 1980.

(viii) NOC dated 14th October issued from SGNP ESZ Monitoring Committee.

(ix) Approval dated 7th November 2024 granted by TWLS ESZ Committee.

(x) Approval dated 21st December 2024 granted by the Standing Committee of NBWL recommending the HDVC Project subject to conditions stipulated therein.

26. The petitioner, after obtaining statutory permissions/NOCs, in terms of the in-principle approval for Stage-1 clearance, on receipt of the demand note from the Dy. Conservator of Forest, Dahanu has deposited sum of Rs.8,47,48,992/- towards demarcation, compensatory afforestation, net present value and mangroves cutting. The petitioner shall be entitled for Stage-II approval after this Court grants its approval to the project.

27. In so far as the submission of respondent No.8 with regard to the discrepancy in the number of mangroves is concerned, suffice it to say that after the site inspections were carried out, the concerned authorities has confirmed the total number of mangroves cutting as 209. The aforesaid number has been considered by the mangroves cell and they have accordingly prepared the mangroves conservation plan.

28. It is pertinent to note that EIA report considers two areas in sanctuary in Vasai and Kaman Creek as they fall in CRZ. The EIA report for the project submitted to the Expert Appraisal Committee (EAC) through MCZMA is a detailed report analysing the potential impact of the project on the environment, since the HDVC lines will pass through Mumbai, Thane and Palghar District and some portion of it will be taken through TWLS and SGNP. Similarly, the HDVC transmission route passes through territorial forest of Dahanu Division and mangroves forest at Vasai Creek and therefore, the EIA report was prepared for assessing the environmental conditions in the region and also to evaluate the impact of the project on various environmental and social attributes thereof. The report also recommended mitigating measures to minimize the impact on environment, followed by preparation of Environmental Monitoring Programme “**(EMP)**” and Environmental Management Plan to identify the actions and the agencies responsible to ensure minimum damage to the environment due to the proposed project by obtaining CRZ clearance from EAC via MCZMA.

29. The report has enlisted the presence of fauna and flora in the affected area and has included 114 bird species in SGNP and 163 bird species from Kolshet Creek including water birds and grassland birds. During site survey, 32 bird species were noted but the report specifically states that none of the species are vulnerable or endangered species as per the IUCM data and all the species fall under Schedule-IV of WP status. The report also include the list of mammals, reptiles, arthropod and insects as well

as the zoo phantom along with the macro benthos. The report has analyzed and anticipated the impact on the land use and land cover and suggested mitigating measures in form of adequate compensation to be provided for any loss or profit or employment opportunities to the project. The anticipated impact on the ecology and bio diversity has also been analyzed at two phases; construction phase and operation phase. In regards the construction phase the report categorically state as under:

"Construction Phase

Anticipated Impact

The proposed project involves laying of electricity transmission cable across Vasai and Kaman "creek. The entry and exit pits will be excavated at open spaces on either side of the creeks. About 3940 sqm area will be required for creating access road and setting up the HDD machinery operating area near Vasai creek. This requires cutting of about 108 trees which includes mangrove (79 nos.), associate and non mangrove trees.

- *The proposed project activity will be carried out along NH-48 near Thane Ghodbunder Road junction which had frequent and heavy traffic movement plying from Mumbai and Thane towards Ahmedabad. Therefore, this region shows elevated noise levels at all the times. Thus, no impact on ecology and biodiversity is anticipated from noise generated during construction phase.*
- *The drilling will be carried out about 20 m below the creek bed which may not lead to cause any disturbance to the aquatic ecosystem from vibrations.*

Severity of the impact is ranked high as cutting of mangrove and non mangrove trees will have direct impact on the ecosystem in the project area. The vegetation clearance is local hence ranked low. As vegetation clearance is permanent impact duration of the impact is ranked high. However, considering the compensatory plantation of mangrove trees and owing to the fact that affect area is highly commercialized area with regular heavy traffic movement the probability of the impact is moderate. Overall significance of the impact is estimated to be low

Mitigation measures

Compensatory mangrove plantation should be carried out as per directions of mangrove cell.

Regular maintenance of machinery should be done to minimize noise levels generated during its operations.

High noise generating equipment such as DG set should be acoustically covered.

Operation Phase

Anticipated Impact

The proposed project involves transmission of electricity via transmission cables during operation phase. Therefore, no impact on ecology and biodiversity is anticipated.”

30. The report has also anticipated the impact of air quality, ambient noise and vibrations at construction and operation phase and has opined that the project shall have no impact on ecology and bio diversity at either of the stages. In addition the socio-economic impact at construction phase and operation phase is also specifically highlighted. It was specific observation that the project will generate employment opportunities to the locals.

31. It is also equally well settled legal proposition that in exercise of powers under Article 226 of the Constitution of India, this Court cannot sit in an appeal over the recommendation/decision taken by the various Committees comprising of Experts.

32. In so far as the reliance placed on the decision of the Supreme Court in the case of ***M.K.Ranjitsinh & Ors. (supra)***, suffice it to say that the Supreme Court, in the said decision, was dealing with the issue of protection of Great Indian Bustard and the Lesser Florican, both of whom are on the verge of extinction. We have been informed that there is neither any Great Indian Bustard nor Lesser Florican in the Vasai Sanctuary and Kaman Creek which are involved in the project. In paragraph 66 of the

aforesaid decision, the Supreme Court has merely expressed an opinion that the underground cables may give rise to environmental issues for many vulnerable species. It is not the case of respondent No.8 that there are vulnerable species in both the national parks involved in the project.

33. Considering the public importance of the proposed project, which shall benefit the electricity consumers in the city of Mumbai/suburbs and which will lead to a potential growth, in the wake of the requisite permissions being secured by the project proponent, and on testing the necessity of the proposed project and by ensuring that the necessary statutory compliance are ensured, in light of the directions contained in paragraph 83(viii) of the judgment and order dated 17th September 2018 in PIL No.87 of 2006, we deem it appropriate to confer the desired permission by taking into consideration the importance of the project to the public at large. Considering that the similar permissions being previously granted by this Court in favour of the project proponents who had sought to execute projects of *bona fide* public utility, we are convinced to grant the relief in favour of the petitioner.

34. The writ petition is made absolute in terms of prayer clause (a) which is reproduced hereunder, subject to the condition that the responsible officer of the petitioner shall file an undertaking before this Court within a period of two weeks stating that the petitioner shall strictly ensure compliance of the conditions which are imposed in the permissions secured by it from various authorities.

"(a) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of mandamus under Article 226 of the Constitution of India thereby directing the respondents to permit the petitioner to execute and implement the HVDC Project, being the ' $\pm$ 320kV 1 x 1000 MW High Voltage Direct Current Voltage Source Converter (VSC) based Link between MSETCL 400 kV Kudus EHV Substation and AEML 220 kV AEML-Transmission Aarey EHV Substation (HVDC DPR)' in the mangroves area as set out herein above in view of the public importance of the project, by granting leave as contemplated paragraph 83(viii) of the Judgment and Order dated 17th September, 2018 in PIL No.87 of 2006."

35. No order as to costs.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)