

Minutes of the 22nd Meeting of the National Coastal Zone Management Authority (NCZMA) held on 30th May, 2011 in Ministry of Environment and Forests, New Delhi

The 22nd Meeting of the National Coastal Zone Management Authority (NCZMA) was held on 30th May, 2011 at 11.00 A.M. under the chairmanship of Shri T. Chatterjee, Secretary(E&F). At the outset, the Chairman welcomed the Members and suggested that the pending Court cases, on which the NCZMA has to take a view, be considered in the beginning to be followed by rest of the Agenda items.

Agenda Item No. 1. : Confirmation of the Minutes of the previous meeting

1.1 Before initiating the proceedings, Dr. Nalini Bhat, Adviser, MoEF informed that as no comments/suggestions have been received on the Minutes of the 21st Meeting held on 19th April, 2011, the same were confirmed.

Agenda Item No. 2 : Action taken on the Minutes of the previous Meeting

2.1 Dr. Nalini Bhat informed about the follow up action taken, which included vetting of the draft Notification for issuing corrigendum for factual correction to the Notification relating to constitution of NCZMA. As per the discussions in the previous meeting, the Court cases from Kerala and Goa were included in the agenda.

Agenda Item No. 3 : Consideration of a Petition made by Dr. V. S. Gopalan against the order of the Kerala Coastal Zone Management Authority as per the order of Hon'ble High Court, Kerala in WP 31146/2010.

3.1 The Hon'ble High Court, Kerala disposed the above mentioned petition with a direction to the National Coastal Zone Management Authority to consider and pass orders on Ext. P8 (petition made to NCZMA) after affording an opportunity of being heard to all concerned as expeditiously as possible at any rate within three months from the date of receipt of a certified copy of this judgment.

3.2 The order of the Hon'ble Court was received on 31.03.2011 and issue was taken up in the 21st meeting of NCZMA held on 19.04.2011. The representative of the Petitioner attended the meeting and requested for three weeks' time to make submissions. Accordingly, the issue was taken up again by the Authority.

3.3 The Member Secretary, Kerala Coastal Zone Management Authority (KCZMA) attended the meeting and informed that the present petition to NCZMA is for challenging the order issued by the KCZMA vide No.1161/A2/10/KCZMA dated 17-9-2010 under Section 5 of the Environment (Protection) Act, 1986 against the unauthorized construction. Earlier in 2008, the Petitioner's application was forwarded by the Panchayat to KCZMA. It was observed in the order of KCZMA that the petitioner has violated the provisions of CRZ Notification, 1991 by constructing a building with 24 rooms (G+1) in an area of 26824 Sq.ft with in No Development Zone (NDZ) of CRZ-III area where no new constructions are permissible. Hence, an order was issued to the local authority to take action on illegal construction. The petitioner has challenged the order in the High Court of Kerala and the Hon'ble High Court on 04.06.2010 had set aside the order for the reason that the Chairman alone has no power to pass order. Accordingly, the petitioner was heard by the KCZMA on 16.08.2010. The main contentions raised by the Petitioner are :

(i) The question of CRZ violation can be determined only after fixing HTL in the area. Local Level maps have to be prepared for the purpose and some sort of physical signatures have to be put up in the area to identify the HTL.

(ii) The project can be treated as "Dispensary" instead of a "Hospital", which is a permissible activity. The word 'Hospital' in the original application is a misnomer.

3.4 The issue was discussed in the KCZMA meeting held on 31.08.2010. The Authority has noted that as per the original application submitted by the applicant, it was mentioned as hospital and that there is no change in the specification including the dimensions of the construction and the Hospital is not permissible within CRZ areas. Since no new evidence was brought out by the petitioner in favour of his contention, the KCZMA issued an order on 17.08.2010 directing the Local bodies for necessary action against the illegal construction.

3.5 The WP No.31146 of 2010 was filed by the Petitioner challenging the order stating that :

- (i) the building is beyond 200 mts from HTL and there is no local level CRZ map (1: 4000) hence it is not possible to demarcate the CRZ area and
- (ii) the building to be treated as Dispensary instead of Hospital, which is permissible under the CRZ Notification.

3.6 Since the Petitioner made petition before the NCZMA against the Order of KCZMA, Hon'ble High Court disposed the petition with a direction to the NCZMA to consider and pass orders on the petition (Ext. P8) after affording an opportunity of being heard to all concerned as expeditiously as possible at any rate within three months from the date of receipt of a certified copy of this judgment.

3.7 Further, MS, KCZMA has also pointed out that there is a Government Ayurvedic Hospital about 200 mts. from this facility.

3.8 Shri Shahasranman, Advocate represented the petitioner and informed that the building was constructed to provide ayurvedic treatment, which would benefit large number of people. He also submitted that the applicant is unaware of the Coastal Zone Regulation otherwise would not have constructed the building. In the ayurvedic centre, there is only a facility for Panchakarma, which is now being provided by many institutions throughout the country in many names. Such institutions are called Ayurvedic-massage centers, Vydyasalas, Oushadashalas, Dispensaries health Clinics, Spa, Hospitals, Treatment Centers, Ayur Research Centers etc., wherein only Panchakarma treatments alone are being carried out. Such institutions are Ayurvedic Health Centre as defined under the Kerala Ayurvedic Health Centres (Issue of License and Control) Act, 2007. In reference to such Ayurvedic dispensaries, the representatives of Ministry of Tourism informed that the 'Wellness Centres' are incorporated in tourism policies and a note in this regard would be submitted.

3.10 The petitioner prayed to set aside the impugned order of the KCZMA, dated 17.09.2010 and to regularize the construction and direct the 2nd Respondent ie. Valappad Panchyath to number the building in accordance with law.

3.11 During the discussion, the following points emerged:

- (i) Irrespective of the availability of local level maps prepared for various Panchayats, construction of hospital is not a permissible activity under CRZ, 1991 whether located in NDZ (0-200 m) or between 200-500 m from HTL.
- (ii) As per the original application submitted by the applicant, it was mentioned as hospital and also there is no change in the specification including the dimensions of the construction. Hence, the facility can not be considered as dispensary. Even dispensary can be permitted under the CRZ Notification, 1991 only for local inhabitants of the area, on case to case basis.
- (iii) Though construction of dispensary is a permissible activity, procedures need to be followed to seek permission/approval under CRZ, 1991. The building has been constructed without prior clearance which in itself is a violation of CRZ Notification, 1991.
- (iv) As per the approved CZMP of Kerala, the construction is in NDZ of CRZ-III which is not permissible as per the provisions of the CRZ Notification, 1991.
- (v) The ignorance of law, as stated by the petitioner, cannot be an excuse to undertake the construction of the project without CRZ clearance.
- (vi) The statement that the facility will benefit the local people cannot be accepted because there is a Government Ayurvedic Hospital operating within 200 m from this unauthorized building.
- (vii) There is no merit to set aside the order dated 17.08.2010 of the KCZMA.
- (viii) Despite the stand taken by KCZMA, the dispensary is still operational and therefore, the Authority decided to direct the stoppage of the use of the building till a final decision is taken.

3.12 The Authority, after deliberation decided to reiterate the stand taken by the KCZMA vide order dated 17.08.2010 and recommend the same to the Ministry for further action.

Agenda Item No. 4 : Reconsideration of the reclassification done from Dona Paula cove / bay to Vainguinim Beach as CRZ-II based on the Order of the Hon'ble High Court of Bombay.

4.1 The Hon'ble High Court of Bombay at Goa, in Writ Petition No. 519 of 2007 (*Carlos Noronha & anr. V/s Union of India & Ors.*) vide its final order of 10th December, 2010 has directed the NCZMA to reconsider its decision of approving reclassification done by the Ministry vide letter dated 03.12.2001 within a period of three months from the date on which an authenticated and certified copy of the order is placed before the Authority.

4.2 The certified copy was received on 08.02.2011 and the issue was taken up in the 21st meeting held on 19.04.2011. The Authority decided to circulate complete documents to the Members and take up the matter in the next meeting as priority item. Accordingly the issue was again taken up by the Authority.

4.3 The Order of the Hon'ble High Court relates to the reclassification of following stretches done by the Ministry vide letter dated 03.12.2001 :

1st stretch- the area from Cabo-Raj Niwas up to Dona Paula cove/bay (map no. 1),

2nd stretch- the area from Dona Paula cove/bay to Vainguinim Beach (map no. 2),

3rd stretch- the area from Vainguinim Beach up to Panaji municipal limit towards Siridao (map no. 3),

4th stretch- the entire stretch of land at Ribander (within Panaji municipal limit) along the Mandovi river (map no. 4 and 5),

4.4 The Member Secretary, Goa Coastal Zone Management Authority (GCZMA) informed that as per the approved CZMP of Goa, the Taleigao was classified in to CRZ-III. Since the area was substantially developed as on 1991, GCZMA has submitted proposal for reclassification in to CRZ-II. Further, the area has been designated as urban area (Census Town) as per

the Census Handbook of 1972 and also it falls under planning areas of "Taleigao".

4.5 Based on the above proposals, the NCZMA had recommended for the reclassification from CRZ-III to CRZ-II.

4.6 The Hon'ble Court has made following observations :

(i) The stretches 2 and 3 and a small part of the stretch 1 were parts of village panchayat of Taleigao as on the said date and that the same were not within the municipal limits. The said area was included in municipal limits in the year 1995 and in the year 2003, it was again removed from municipal limits. The proposal of the State Government and the GCZMA was on the footing that the said area was within the municipal limits. Belatedly, the GCZMA came out with a case that it was legally designated urban area under the Census. The NCZMA in its meeting has not considered whether the said area was within the municipal limits or in other legally designated urban area. NCZMA reconsidered the matter on 2nd June, 2008. Even in the Resolution passed on that date, it is not recorded that the area is within other legally designated urban area (para 43 of the order)

(ii) MOEF did not examine the issue whether a census town can be other legally declared urban area. Census Town cannot be considered as designated urban area for the purpose of classification under CRZ, it is only for the purpose of census(Para 40 of the order)

(iii) There is no provision of the Town and Country Planning Act which says that the area forming part of Planning are become an urban area. (Para 38 of the order).

4.7 The Authority noted that the reclassification was considered only based on the development of the area. However, as per the order of the Hon'ble High Court, the issue was reconsidered and it was observed that though technically it was a developed area, but was not legally designated as urban area. The matter now needs to be looked into in light of the provision of CRZ Notification, 2011.

Agenda Item No. 5 : Review of the compliance of the decisions of NCZMA by SCZMAs and action taken on the violation under Section 5 of the Environment(Protection) Act, 1986.

5.1 In the previous meeting of NCZMA, action taken by SCZMAs on the notice issued in January, 2011 under Section 5 of the Environment(Protection) Act, 1986 was reviewed for some of the States. This exercise was further taken up for the States which could not be reviewed in the last meeting.

Goa

5.2 Shri Michael M. D'Souza, MS, Goa SCZMA informed that with reference to the directions given by the Hon'ble High Court at Goa, State Government has already started the identification of the violations of CRZ Notification, 1991 and so far 198 structures within 0-200 mts. from HTL have been demolished. The State Government has been appraising the Hon'ble Court accordingly from time to time. On the issue regarding uploading of information on dedicated website, it was suggested that the cases of violations may be divided into various categories for uploading on website. It was also suggested that the maps which are being finalized should also highlight mangroves, sand dunes etc. which could then be superimposed on Regional Plan of Goa for finalization of Integrated Coastal Zone Plan as per CRZ Notification, 2011.

Orissa

5.3 Shri Bhagirathi Behera, MS, Orissa SCZMA informed that the procedure to be followed for identification of violation cases was discussed in the meeting of SCZMA and the District Collectors have been given directions under Section 5 to identify such cases. So far action has been taken on demolition of cases relating to aquaculture.

5.4 In regard to website, it was informed that the same is still being developed. On this issue, Chairman, NCZMA suggested that the format developed by Maharashtra or Goa could be adopted. He also suggested that NCZMA would like to have a meeting in Orissa to discuss the proposed ICZMP and the violation cases. The State Government may like to organize this meeting in mid-July, 2011.

West Bengal

5.5 Shri Somenath Bhattacharyya, Member Secretary, WBSCZMA informed that the process of identification of violation has been initiated and

some demolition has taken place in Digha area. He also informed that some of the demolition orders have been stayed by the Hon'ble Court.

Kerala

5.6 Dr. R. Ajayakumar Varma, MS, KSCZMA indicated that for identification of violation, local bodies have been involved and it is proposed to involve the NGOs in this exercise. The State Government is in a process of developing the website which is expected to be ready within a month.

Karnataka

5.7 Shri Kanwerpal, Secretary(Ecology and Environment) informed NCZMA about the updated status of CRZ violation cases. So far, 69 cases of violations have been identified and directions have been issued by KSCZMA in 40 cases. It was also informed that videography is also being undertaken as a documentary proof. The details on violation would be uploaded on website.

5.8 In addition to the details on violation, it was informed that there are issues relating to sand mining and amendments in CRZ, 2011 which need to be addressed for appropriate amendment. Chairman observed that sand mining has been prohibited in CRZ areas on ecological concerns and alternate construction material needs to be encouraged to avoid stress on sand mining.

A & N Islands

5.9 Ms N. Kala, CCF and Member Secretary, A & N Islands indicated that so far 104 cases of violation have been identified, primarily on revenue land and it is proposed to demolish such encroachments. The website for display of violations is also being developed in this regard.

5.10 Concluding the discussions on the follow up on the Show Cause Notice issued for identification of violations, the Chairman observed that all the representatives of SCZMAs should submit the details in writing for proper records and future monitoring. The State Governments were also requested to send the panel for constitution of SCZMAs well in time as the tenure of many SCZMAs are getting over.

Agenda Item No. 6 : Factual correction of CZMPs

- 6.1 Deletion of plot bearing CTS No. 195(pt) of Village Andheri, Mumbai from M/s Vaidehi Akash Pvt. Ltd.**
- 6.2 Demarcation of HTL and delineation of CRZ Boundary along and across the Plot bearing Nos. D/23, D/23A, D/24, D/25, D/30, D/31, D/32, D/45, D/46, D/47 and D/48 of CTS No. IA(pt) of Village Pahadi Goregaon at Goregaon (West), Mumbai**
- 6.3 Demarcation of HTL & CRZ boundary of plot bearing Survey No. 275(pt) & CTS No.657A & 1295 of Village Kanjur, District Mumbai Suburban**
- 6.4 Demarcation of property bearing CTS No. 657-D & 657-C of Village Kanjur, 'S' Ward, Kanjur Marg(East), Mumbai**
- 6.5 Demarcation of HTL, LTL & deletion of CRZ-I at Villages Chulane, Girij, Gas, Diwanman & Achole, Taluka Vasai, District Thane (Area about 622 ha.)**

Chairperson, Maharashtra SCZMA had conveyed that due to ill health she was not be able to attend this meeting and as such the discussions on the proposals (6.1-6.5) from Maharashtra were deferred.

During the discussion on this agenda item, the Members also expressed their views on the proposals on reclassification of certain stretches of approved CZMPs as per CRZ Notification, 1991.

Taking note of the fact that CRZ Notification, 2011 is not for regularization of violations and that after issuance of this Notification, it is not desirable to undertake such reclassification, it was decided that the proposals for reclassification should not be considered and the ones which are pending with the Ministry should be returned to the respective SCZMAs with a suggestion that while preparing the CZMPs under new CRZ Notification of 2011, concerned issues could be addressed.

The Chairman also suggested that the NCZMA could hold its meetings in the coastal States to undertake site inspections and to discuss with

various stake holders the preparation of Integrated Coastal Zone Management Plan.

Agenda Item No. 7 : Any other matter with the permission of the Chair

7.1 After discussion on the agenda items, some of the Members pointed out the factual corrections/clarifications required in CRZ Notification, 2011. It was agreed that the Members would give their suggestions in writing to Dr. A. Senthil Vel, Director for consideration.

7.2 The Authority took on Board the representation dated 23rd May, 2011 received from Vizag Sampradaya Matsyakarula Samakya regarding identification of violation under CRZ Notification, 1991 with reference to Visakhapatnam district and suggested that the Ministry may forward the same to the SCZMA for an appropriate action.

7.3 The Authority also took on Board the reference received from Maharashtra SCZMA regarding the functioning of the State CZMA enclosing the office memorandum of 19th April, 2010 pertaining to charging of Coastal Conservation Fund in Coastal Regulation Zone of Maharashtra. As the Chairperson of Maharashtra SCZMA could not attend the meeting, the discussion on the subject was deferred.

Meeting ended with a vote of thanks to the Chair.

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Annexure

22nd Meeting of the National Coastal Zone Management Authority (NCZMA) held on 30th May, 2011 in Ministry of Environment and Forests, New Delhi

List of participants

Ministry of Environment and Forests

1. Secretary (E&F), Chairman
2. Dr. Nalini Bhat, Adviser and Member Secretary, NCZMA
3. Shri Bharat Bhushan, Director
4. Dr. A. Senthilvel, Director
5. Shri. E. Thirunavakkarasu, Deputy Director

Members of NCZMA

6. Dr. M. Baba, ED, Advanced Training Centre, Pune
7. Dr. Ramchandran Ramesh, IOM, Anna University, Chennai
8. Shri Morad Ahmad, Chief Town Planner, Goa
9. Dr. A. K. Choubey, Director, NIO, Goa
10. Dr. Ajay, Group Director, SAC, Ahmedabad
11. Shri V. Vivekanandan, South Indian Federation of Fishermen Societies, Trivandrum
12. Shri S. Bhattacharya, Scientist D, CGB, New Delhi
13. Ms. Mandwa Dubey, Dy. Director General, Ministry of Tourism, New Delhi

State Coastal Zone Management Authorities

14. Shri Kanwerpal, Secretary (Ecology & Environment) Government of Karnataka.
15. Shri Michael D'Souza, Member Secretary, Goa SCZMA
16. Ms N. Kala, CCF and Member Secretary, A & N Islands
17. Dr. R. Ajayakumar Varma, Member Secretary, Kerala SCZMA
18. Shri Bhagirathi Behera, Orissa SCZMA
19. Shri Somenath Bhattacharya, WB SCZMA

Others

20. Shri P.B. Sahasranaman, Advocate, representing the Petitioners in the matter of Writ Petition No. 31146/2010