In the High Court of Judicature at Bombay

Rambhau Patil

v.

Maharashtra State Road Development Corporation

Writ Petition No.348 of 2000

dd. 09.10.2001

B.P. Singh, C.J

Judgement:

1. In all these three Writ Petitions, the challenge is to the construction of Worli-Bandra Sea Link Project to which the Government of India in the Ministry of Environment and Forests has accorded environmental clearance, subject to strict compliance of the terms and conditions mentioned in the Order according clearance dated 7th January, 1999 (Exhibit E). The Petitioners have prayed that the implementation of the impugned project be stayed forthwith, and the sanction accorded by the Government of India be quashed. In Writ Petition No.348 of 2000, the Petitioners have also prayed that Rule 5(4) of the Environment (Protection) Rules, 1986 be declared to be void and unconstitutional. Further, the amendment to paragraph (viii) of the CRZ Notification dated 19th February, 1991 brought about by amendment dated 9th July, 1997 be also quashed.

2. From the facts on record, it appears that having regard to the fact that the existing infrastructure was over-burdened by increase in traffic, and there being no possibility of broadening the existing roads which lead to South Bombay, a scheme was thought of to provide a sea-link between Worli and Bandra so as to reduce the traffic load on the existing roads. With this in view, a project was proposed, which starts at the inter-section of the Western Express Highway and Swami Vivekanand Road at Bandra, and connects to Khan Abdul Gafarkhan Road at Worli. A clover-leaf interchange at the Mahim inter-section and a flyover at the Love Grove inter-section at Worli has been

proposed as part of the said project. The bridge on the main channel is Cable Stayed Bridge having a length of 500 metres with two spans of 250 metres each with a single tower 150 metres in height in the center. The length of the approach bridge on Bandra-Worli sides is 3.5 kilometres, and the total length of the bridge is about 4 kilometres. The work on the said bridge commenced in or about June 1999, and a construction period of 30 months is envisaged, and the bridge is proposed to be opened for traffic by the year 2002. The estimated cost of this project is in the region of Rs.500 crores. The project also envisages reclamation of about 27 hectares for which necessary permission from the Government of India has been obtained.

3. We may take the representative facts from Writ Petition No.348 of 2000 in which the Bombay Environmental Action Group is a Respondent, though it is a Petitioner in Writ Petition No.1575 of 2000. Writ Petition No.715 of 2001 has been filed by the International Society for Sustainable Future challenging the project. We may at this stage notice that a fourth Writ Petition has been filed by some of the fishermen, being Writ Petition No.3030 of 1999. The aforesaid Writ Petition was filed on behalf of the Petitioners who claim to have been displaced as a result of the execution of the project. Their main grievance in the Writ Petition was regarding their rehabilitation. After some arguments, the Petitioners in that Writ Petition prayed for separating their Writ Petition from this batch of Writ Petitions, because their grievance was being considered by the Government separately. That is why the said Writ Petition was separated, and the matter regarding rehabilitation of the fishermen affected by the project is being considered in that Writ Petition separately.

4. In Writ Petition No.348 of 2000, there are as many as 11 Petitioners, who claim to be tax-payers and rate-payers, and who represent several organisations whose members are affected by the impugned project. All the Writ Petitions have been filed by way of public interest litigation. It is alleged that after the Maharashtra Regional and Town Planning Act, 1966 came into force, the Bombay Municipal Corporation, being the Planning Authority of the City of Bombay, published a Draft Plan, and invited objections and suggestions thereto from the members of the public. The Draft Plan was submitted for sanction to the State Government, and on or about 17th February, 1966, the First Development Plan for the City of Bombay came into force. In the year 1974, an authority, viz., the Bombay Metropolitan Regional Development Authority (BMRDA for short), was constituted under the provisions of the Bombay Metropolitan Regional Development Act, 1977 for the overall development of Bombay Metropolitan Region and for co-ordinating, supervising and development of areas under different local authorities. On 7th March, 1977, the said BMRDA, Respondent No.7 herein, was appointed by the State Government as the Special Planning Authority for the notified area of Bandra-Kurla Complex. In the year 1984, a draft of the Revised Development Plan of H(W) Ward and G-North Ward was published, inviting public objections and suggestions. The plan included the West Island Freeway going from the middle of the Bay between Bandras ancient fort and Mahim Fort, one going towards the Worli Sea Face in the South via Mahim Flyover and Dadar Chowpatty, and the other going towards the North. While the said Revised Development Plan was under consideration, the Government of India published the

CRZ Notification on 19th February, 1991 totally prohibiting reclamation of land between the High Tide Line and the Low Tide Line, and creation of any obstruction in the flow of tidal waves. On 16th March, 1991, an area of 184.14 ha. in Mahim Creek was declared as "Protected Forest" under the Indian Forest Act. This comprised the mangroves of the Nature Park area. On the 7th May, 1992, the Maharashtra Government sanctioned the Revised Development Plan of G-North and H(W) Wards, which included the aforesaid West Island Freeway, notwithstanding the CRZ Notification of 19th February, 1991. According to the Petitioners, the BMRDA conceived a new plan, and prepared a feasibility report for the so-called sea- route link between Bandra and Worli in October, 1992. No notice was issued inviting public objections and suggestions, and no plan was published. Some time in September, 1993, BMRDA invited about 30 selected persons for a Seminar on the proposed Bandra and Worli Sea-link. Thereafter, BMRDA forwarded the Worli- Bandra Sea-link Project to the Union Government, but the same was not sanctioned by the Union Government.

5. On 27th January, 1994, the Environment Impact Assessment Notification came into force under which it became compulsory for any new project listed in Schedule I thereof to obtain clearance from the Union Government, which was constituted as the Environment Impact Assessment Authority (EIA Authority). Highway Project was included in Schedule I. EIA Authority was empowered to grant or refuse clearance. The Petitioners further contend that on 4th May, 1994, sub-rule (4) was introduced in Rule 5 of the Environment requirement of public notice under Clause (a) of Sub-rule (3), if it appeared to the Central Government in public interest to do so. As noticed earlier, Sub-rule (4) of Rule 5 has been challenged by the Petitioners as being void.

6. In 1995, the State Government forwarded its Coastal Zone Management Plan Notification. It is not disputed that the said plan included, inter alia, the aforesaid Worli-Bandra Sea-Link Project. The Petitioners submit that though the Ministry of Environment and Forests, Union of India, approved the said CZM Plan on 27th September, 1996, subject to certain terms and conditions, which, in effect, refused to sanction the said Worli-Bandra Sea- Link Project. Reliance is placed on Clause XII of the said letter of approval, which provided that the approval of CZM Plan would not imply approval of any proposed project such as roads, airports, jetties, ports and harbours, buildings, etc., indicated in the plan/map.

7. On the 9th July, 1997, the CRZ Notification of 19th February, 1991 was amended, particularly paragraph 2(viii) thereof, so as to permit, inter alia, reclamation, bunding disturbing the natural course of sea-water for the construction of bridges, sea-links and other facilities that were essential for activities permissible under the Notification. After some clarification, etc., the Government of India ultimately issued the No Objection Certificate on 7th January, 1999 for the said Worli-Bandra Sea- Link Project, subject to certain terms and conditions. The Petitioners contend that members of the public protested against the grant of NOC by the Government of India, and approval of the CZM Plan, but the Respondents have proceeded with the implementation of the project. They have referred to many articles appearing in the

newspapers and magazines, which would show that the project was opposed by members of the public, as it was not in the larger public interest.

8. Mr.Kalsekar, Senior Counsel appearing on behalf of the Petitioners in Writ Petition No.348 of 2000, advanced the following submissions in support of his Writ Petition:-

Approval by the Government of India was in breach of the Notification issued under the Environment (Protection) Act, inasmuch as no disturbance to tidal waves was permissible and no development work was permissible between the High Tide Line and Low Tide Line. Sanction given on 7th January, 1999 violated the Environment Impact

9. Assessment Notification dated 27th January, 1994 as amended by Notification of 10th April, 1997 requiring a report to be submitted to the Government on impact on environment and requirement of public hearing.

10. Sanction given under amended clause 2(2) of the CRZ Notification dated 19th February, 1991, as amended by insertion of Rule 5(4) by amendment of 9th May, 1997 of the Environment (Protection) Rules is invalid. Rule 5(4) itself is invalid, as vesting absolute discretion in Union Government to decide whether the matter is in public interest or not.

11. Implementation of the project is being done in violation of the terms and conditions of letter of approval dated 7th January, 1999. The reclamation was to be confined to 4.5 hectares, but in execution of the project, they have gone much beyond that, to the extent of 27 hectares. Moreover, the concurrence of the fishing community has not been obtained. The implementation of the project was in violation of undertaking given to this Court in Maneka Gandhi v. State of Maharashtra that no reclamation will be done in future.

12. The Bombay Environment Action Group, which is Respondent No.12 in Writ Petition No.348 of 2000 has filed an affidavit-in-reply substantially supporting the petition. It has challenged the approval granted by the Government of India, Respondent No.6, on the ground that the project was not made known to the public with relevant details and without inviting suggestions and objections from the public, despite the enormous impact the said project will have on the interest of public. The environmental clearance was granted by the Government of India without following the procedure prescribed, and hence, the same was invalid. It is pointed out on behalf of Respondent No.12 that they came to know about the submission of the project for environmental clearance some time in or about August, 1998. Believing that the said project would have a severe adverse effect on public interest, environment and the already overburdened infrastructure of the city, and that the said project would cause further traffic congestion and lead to widespread reclamation, thus exacerbating the aforesaid problems, Respondent No.12 approached the Government of India, Respondent No.6, for an opportunity to raise objections with regard to the said project. Although such an opportunity was given to Respondent No.12 in or about

September 1998, the hearing was an idle formality, completely divorced from the factual situation, and based only on theoretical possibilities.

13. It is, however, submitted that even if the environmental clearance is considered to be valid and effective, the implementation of the project is being done in flagrant violation of the terms and conditions contained in the order granting environmental clearance. In view of the violation of the terms and conditions of the order granting environmental clearance, Respondent No.6, the Government of India, should cancel the order granting environmental clearance. In particular, reference is made to condition of 4.7 hectares permitted under the order granting approval. Similarly, condition No.(x) is violated, inasmuch as fishing activities are adversely affected, but the concurrence of the fishermen has not been obtained. Lastly, notice is drawn to condition No.(xiv), and it is submitted that trees are being felled, and mangroves destroyed, in breach of the said condition. 14. It is further submitted that apart from what is stated above, there has been complete non-application of mind by the other Respondents with regard to the said project, and that Respondents No.1, 3 and 7 have taken into account irrelevant and extraneous considerations, and have ignored relevant matters, thereby rendering their action arbitrary, ultra vires and contrary to, and in violation of, the principles laid down in Article 14 of the Constitution of India. Reference is made to a Comprehensive Transport Plan for Bombay Metropolitan Region prepared by W.S. Atkins International in association with Kirloskar Consultants Limited and Operations Research Group. The Final Report was submitted in or around July, 1994, and in particular, paragraph 2.1.12 of the report refers to the results of preliminary tests on the road network carried out with the strategic model considering proposed additions to the island city road network, including the Bandra-Worli link, which showed that considerable additional traffic would be attracted to the island city, and while relieving parallel section of the existing eastern and western corridors, such proposed roads would increase congestion in Tardeo, Bombay Central, Opera House, etc. The Respondents have, therefore, submitted that the increased congestion is bound to result in an increase in air pollution, since transport systems impact directly on environment. These facts have been ignored by Respondents No.1, 3 and 7.

15. In any event, it is submitted that the decision to go ahead with the said Project is irrational and in complete defiance of logic, and based on extraneous considerations. Respondent No.12 has referred to the benefits that will accrue by virtue of the said project, as publicized by Respondent No.1 in the pamphlet issued by it (Exhibit A).

16. To this, they have replied by asserting that the Island City of Bombay is funnel-shaped with the length of approximately 18 K.M. from North to South and the width of 4.75 K.M. in the North narrowing to a little more than 1.3 K.M. at the southern tip of the island, where the central business district is located around old Fort area. Thus, there is already a severe shortage of spaces resulting in congestion in South Bombay. The said project will only aggravate the problem, since it will encourage more cars to be brought into the city. According to the Respondents, the project would only result in re-location of bottlenecks and areas of congestion further southward, and

would not result in savings in vehicle-operating cost as alleged. Respondent No.12 suggests that larger investment should be made to improve the public transport system in Mumbai, especially the Railways, and the benefits of such investment will accrue to almost the entire population of Mumbai, and public interest will be served better. On these grounds, Respondent No.12 has also challenged the environmental clearance dated 7th January, 1999 given by the Government of India for the said project.

17. On the other hand, an affidavit-in-reply has been filed on behalf of Respondent No.1, Maharashtra State Road Development Corporation Ltd. affidavit affirmed by Mr.Vijay Gargava, the Superintending Engineer of Respondent No.1, in charge of Bandra-Worli Sea Link Project, the project has been supported as being in public interest. The objection is taken that the Petitioners are guilty of gross delay and laches, because proposals of the impugned project were being considered from the year 1992 onwards. Respondent No.1 was entrusted with the execution of the project in the year 1998, and the actual work on the project started in or about May 1999. The Petition, however, is filed on 2nd February, 2000, by which time lot of work on the project had been done.

18. On merits, it is submitted that the project is not in violation of the final revised Development Plans of H(W) and G(N) Wards prepared by the Bombay Municipal Corporation and Planning Authorities under the provisions of the MRTP Act, 1966. The said project was included in the sanctioned planning proposals of Bandra-Kurla Complex, and was also included in the Coastal Zone Management
Plan to which approval has been given by the Ministry of Environment and Forests. The project consists of solid approach road and land filling on Bandra side approach. Alignment, the cross-section and such details pertaining to the said project were included in the project proposals submitted to the Government of India by the MMRDA in the year 1993. Land filling of about 22.2 Ha was already included for the road alignment for the approach road on Bandra side, including filling the narrow ditch of about 60-90 meters between the road and the then existing shoreline. This had been shown in the sanctioned Development Plan for the Bandra-Kurla Complex. The procedure for finalizing the draft Development Plan was followed by the Town Planning Department, and the same was ultimately sanctioned. It is also denied that the letter of no objection dated 7th January, 1999 was issued by the Government of India without authority of law, or that the same was obtained by fraud or misrepresentation practised by Respondent No.1 or Respondent No.7, or that it was issued without application of mind by the Ministry of Environment and Forests. It is submitted that a report
of experts was obtained when the proposal was sent to the Government of India, and in this connection, reference is made to the report of Consulting Engineering Services (CES, for short). 19. It is further asserted that
in the year 1983, detailed Hydraulic Model Studies were carried out for the proposed bridge between Bandra and Worli by Central Water and Power Research Station (CWPRS), a Government of India undertaking. Experiments were carried out with a Hydraulic Model, both for under existing condition, and with the bridge having different openings and approach roads. Exhaustive Hydraulic Model Studies were conducted to examine the impact of the said project on the coast and tidal movement in the Mahim

Bay. It was observed that even for a 1200 metre long opening of the bridge, there was hardly any difference in the velocity and water level at
Mahim Causeway when compared to the existing conditions. It was concluded that there would be no adverse effect on the tidal influx/efflux entering or
leaving the Mahim Bay due to the construction of bridge structure and solid approach road and filling of balance area between road and earlier shoreline at Bandra. The construction of solid approaches of the bridge and seawall does not have any effect on the wave heights along the coast and flow across Mahim Causeway.
The conclusions reached were that

The construction of the bridge is not likely to create any adverse condition along the coast, and The 1.2 Km long bridge opening is not likely to cause any reduction in the tidal flow through Mahim Creek, and hence it is not expected to have any adverse effect on the discharge and dispersion of pollutants from Mahim Creek into the bay.

20. It is further stated that Environment Impact Assessment Studies were carried out by MMRDA through M/s.C.E.S. (I) Pvt. Ltd. in the year 1992. The study concluded that the said project is necessary for relieving the congestion in Mumbai, and also to improve the efficiency of the transport system by
reducing the fuel consumption and travel time, and it was recommended that the project may be taken up at the earliest, as it will go a long way for relieving
congestion along the Western corridor and for reducing pollution from vehicles. The Techno Economic Feasibility Report was submitted to the Ministry of
Environment and Forests by MMRDA along with the application for clearance of the project. The said report also referred to Dr.C.V.Kulkarnis opinion, and, therefore, it is submitted that his views were also taken into account while preparing the report. It is submitted that as required, Environment Impact Assessment Studies were carried out, which are a part of the Techno Economic Feasibility Study done by M/s.C.E.S. in the year 1992. The allegation that the execution of the project was being done in a manner violating the terms and conditions of the letter granting approval has been denied. It is stated that the allegation regarding destruction of mangroves on the northern side of Mahim Bay by dumping debris or rubble or blocking the mouth of Mahim Causeway is false. On the contrary, there were no mangroves at the reclamation site, and in proof thereof, a photograph of this area taken earlier in 1993 appearing in the magazine issued by Taj confirming this fact was referred to. It is further submitted that Respondent No.1 has not exceeded the permitted limits of reclamation. It is explained that the work of reclamation of 22.2 Ha. was included in the sanctioned land use proposal for Bandra-Kurla Complex , and it was to be carried out earlier by the Mumbai Municipal Corporation or Mumbai Housing Board. An additional area of 4.7 Ha. was shown in the proposal submitted to the Government of India, Ministry of Environment and Forests, for which approval was received on 7th January, 1999. Later, the Ministry of Environment and Forests, by letter dated 26th April, 2000, has approved the reclamation of 27 Ha. It is, therefore, explained that the reclamation is not in excess of the permissible limit. It is also denied that Respondent No.1 had destroyed the mangroves or encroached on the wetlands. It is also denied that there is any illegal quarrying or illegal reclamation or any change in the project profile as alleged.

The allegation made to the effect that the project is ecologically disastrous or injurious to public interest is stoutly denied. Respondent No.1 has also annexed to its affidavit-in-reply its affidavit filed in reply in Writ Petition No.3030 of 1999. In that affidavit also, it was stated that MMRDA through their Consultants M/s.C.E.S.(India) Pvt. Ltd. carried out feasibility study of Bandra-Worli Sea-Link Road in the year 1992. The study was envisaged to carry out a detailed feasibility study on economic, financial, environmental and legal issues for constructing Worli-Bandra Sea-link Road to alleviate the congestion on Western Corridor. The proposal was submitted by MMRDA to the Ministry of Environment and Forests on 10th June, 1993, along with the Tehno-Economic Feasibility Report prepared by the said Consultants in October 1992 for environmental clearance. In order to obtain views of the local NGOs and citizen groups regarding the Bandra-Worli Sea Link Project, seminars were held on 30th November, 1993 and 20th January, 1994, and the subject was discussed at length, and representatives from Bombay Natural History Society, Bombay Environmental Action Group, Society for Clean Environment, Western India Automobiles Association, Save Bombay Committee, Indian Heritage Society, etc., attended the seminars. The project consists of:-

The flyover at Love Grove Junction, near Worli. Junction development at Mahim providing grade separators. The solid approach road including promenade, filling up balance ditch area and under pass, connecting from Mahim Junction to the bridge, the length of which is around 1.6 Km, arboriculture and landscaping. The bridge from Bandra to Worli, which connects to the Worli Sea Face Road near Pratiksha and Vishnu Villa Buildings and toll plaza. The total length of this Bridge is 4.0 Km, and it comprises of Cable Stayed Bridge of 0.5 Km and approach bridges of 3.5 Km.

21. Improvement to Khan Abdul Gaffar Khan Road. The benefits of the project have been enumerated as follows Saving in vehicle operating cost to the tune of Rs.100 Cr. per annum at 1999 prices due to reduction in congestion of the existing road and lower vehicle operating cost on the bridge. Considerable savings in travel time due to increased speed and reduced delays at existing intersections, out of which 23 intersections are provided with traffic signals. Ease in driving with reduced mental tension and overall improvement in the quality of life. Reduced accidents. Improvement in environment, especially in terms of reduction in carbon monoxide, oxides of nitrogen and reduction in noise pollution. Project having no adverse effect on fisheries, marine life and livelihood of fishermen.

22. Proper landscaping measures along the approaches, roads and promenade along waterfront to enhance environment of the area. An affidavit-in-reply has been filed on behalf of Respondent No.6, Union of India, which has been affirmed by a Joint Director in the Ministry of Environment and Forests. It is asserted that the environmental clearance letter dated 7th January, 1999 issued to the Worli-Bandra Sea Link Project and Rule 5(4) of the Environment (Protection) Rules, 1986, including the 9th July, 1997 amendment to the CRZ Notification of 1991 are legally valid, since the same were issued after following the requisite procedure as per the existing legal provisions. It is stated that the proposal regarding the impugned project was submitted

to the Ministry in the year 1993, and the same was under examination, and necessary additional information/clarification was called from the project proponents from time to time. Therefore, the provisions of the amendment dated 10th April, 1997 made in the E.I.A. Notification, 1994, requiring mandatory public hearing are not applicable to the said project. It is further stated that MSRDC, Respondent No.1, has informed the Ministry that they had consulted the local fishermens community, and had obtained their concurrence to the project. It is also denied that mangroves have been destroyed on the northern side of the Mahim Creek by dumping debris/rubble on them. As regards reclamation, it is stated that the Government of India, on receiving a report that MSRDC had reclaimed more than the stipulated 4.7 ha. of land while implementing the project, had sought a clarification from MSRDC, Respondent No.1. MSRDC clarified that 4.7 ha of land is required only for the promenade, and an additional 22.2 ha of land is required for the approach road to the bridge as envisaged in the Feasibility Report of the project submitted to the Ministry in 1993. MSRDC also informed the Ministry that they had committed an inadvertent mistake while informing the Ministry that reclamation of only 4.7 ha. of land was required for the project, instead of informing that 4.7 Ha. of land was required only for promenade, in addition to the 22.2 ha. of land required for the approach road as envisaged in the feasibility report submitted to the Ministry in 1993. The Ministry, therefore, constituted a team to look into the reclamation already done, the actual requirement of land for the approach road and promenade. The team visited the site, and submitted its report, and as per the report, about 27 ha. of reclaimed land is required for the promenade and the approach road. After examining the report of the team and the additional information/clarifications provided by the State Government and the project authority, the Ministry of Environment and Forests modified the relevant condition in the clearance letter dated 7th January, 1999, and issued a letter on 26th April, 2000 providing that the land reclaimed should be kept to the bare minimum and should in no case exceed 27 ha.

23. It is also asserted that the environment clearance to the project was issued after considering all the relevant environmental issues. The clearance to the project was accorded on its merits after examining the environmental issues in accordance with the provisions of the existing rules and regulations.

24. An affidavit-in-reply has also been filed on behalf of Respondent No.3, the State of Maharashtra, through its Executive Engineer, supporting Respondent No.1, and justifying the sanction of the project, which was absolutely essential in public interest.

25. Mr.Kalsekar, appearing on behalf of the Petitioners in Writ Petition No.348 of 2000, submitted that the Bandra-Worli Sea-link Project was not in accordance with the Final Revised Development Plan of H(W) and G(N) Wards drawn up in accordance with the provisions of the MRTP Act. In the Writ Petition, there is a clear statement that a draft of the Revised Development Plan of H(W) Ward and G(N) Ward was published in the year 1984, inviting objections and suggestions from members of the public. The plan included West Island Freeway going from the middle of the bay between Bandras ancient fort and Mahim Fort. There is also clear averment that on

7th May, 1992, the Maharashtra Government sanctioned the Revised Development Plan under the MRTP Act, and this included the West Island Freeway. In view of these factual averments in the Writ Petition, it is difficult for the Petitioners to contend that the Revised Development Plan did not sanction the impugned project which was a part of the West Island Freeway. Mr.Sawant, Counsel appearing on behalf of Respondent No.1, drew our attention to paragraph 5 of the affidavit of Respondent No.1, MSRDC, wherein it has been stated that the said project was included in the sanctioned planning proposal of Bandra-Kurla Complex, and was also included in the CZM Plan, which had been granted approval by the Ministry of Environment and Forests, Government of India. The Petitioners in Writ Petition No.3030 of 1999 also admitted that the Bandra-Worli Sea-link Project forms part of the proposed Western Freeway. Mr.Sawant also drew our attention to the affidavit of Debi Goenka filed on behalf of Respondent No.12 annexing a copy of his letter dated 8th September, 1998, in which he has stated that the Bandra-Worli Sea-link Project is a part of the West Island Freeway. Similarly, the affidavit-in-reply filed on behalf of the State Government stated that land use proposals submitted by MMRDA, and approved by the Government of Maharashtra in 1979, contain a proposal for development of Block A wherein the solid approach road is included. In Writ Petition No.1575 of 2000, the Petitioner, Bombay Environment Action Group, has itself averred that this project is an integral part of earlier project that provided an alternative road access from Bandra all the way to Nariman Point. The Bandra-Worli Sea-link Project is one segment of this plan.

26. In view of the abundant material on record, it must be held that the Bandra-Worli Sea-link Project, which was a part of the West Island Freeway, was accorded sanction by the State Government under the MRTP Act, since it was included in the revised plan sanctioned by the Government.

27. Mr.Kalsekar, however, submitted before us that even if it was included and sanctioned as part of the Revised Development Plan, in view of the Notification dated 19th February, 1991 issued by the Government of India, prohibiting reclamation between High Tide Line and Low Tide Line, and creation of any obstruction in the flow of tidal waves, the sanction became void and illegal, since it was in breach of CRZ Notification. In particular, he referred to paragraph 2(viii) of the CRZ Notification dated 19th February, 1991, and submitted that land reclamation, bunding or disturbing the natural course of sea-water with similar obstructions, except those required for control of coastal zone and maintenance or cleansing of water-ways, channels, etc., was prohibited. It was pointed out on behalf of the contesting Respondents that paragraph 2(viii) of the CRZ Notification dated 19th February, 1991 was amended by Notification dated 9th July, 1997, and land reclamation, bunding or disturbing the natural course of sea-water was permissible if required for construction of port, harbours, jetties, wharves, quays, ship-ways, bridges and sea-links and for other facilities that are essential for activities permissible under the Notification (emphasis supplied). In view of the amendment, it was submitted that land reclamation and bunding or disturbing the natural course of sea-water was permissible, since it became necessary to do so for construction of sea-links and bridges.

It was, therefore, contended that in view of the amended provisions of paragraph 2(viii) of the CRZ Notification, such activity was permissible.

28. Mr.Kalsekar then submitted that the amendment of paragraph 2(viii) of the CRZ Notification was itself bad. He submitted that the said amendment had been made to the CRZ Notification without any notice being given to the members of the public to file their objections, and this was done in view of Rule 5(4), which was itself inserted by G.S.R. dated 16th March, 1994. The said Sub-rule (4) of Rule 5 provides that notwithstanding anything contained in Sub-rule (3), the Central Government is empowered to dispense with the requirement of notice under Clause (a) of Sub-rule (3), if it appeared to the Central Government that it was in public interest to do so. Mr.Kalsekar submitted that the G.S.R. dated 16th March, 1994 itself was void, since it vested in the Central Government unbridled, unguided power to dispense with the requirement of notice under Clause (a) of Sub-rule Rule 5 of the Environment (Protection) Rules, 1996 lays down the factors which the Central Government may take into consideration while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas. The procedure has been laid down in Sub- rule (3) of Rule 5. Clause (a) of Sub-rule (3) provides that whenever it appears to the Central Government that it is expedient to impose prohibition or restriction on the location of an industry, or the carrying on of processes and operations in an area, it may, by notification in the Official Gazette, and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so. Under clause (b) of Sub-rule (3), every notification under clause (a) shall give particulars required, and specify the reasons for the imposition of prohibition or restriction. Under Clause (c) of Sub-rule (3), any person interested in filing an objection against the imposition of prohibition or restriction on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette. It would, thus, appear that under Rule 5, the Central Government is empowered to prohibit or restrict the location of industries and carrying on of processes and operations in different areas. When it proposes to do so, it is required to issue a Notification, and give notice of its intention to do so. The purpose of issuance of such a Notification disclosing the intention of the Central Government to impose prohibitions, restrictions, etc., is to give to any person affected or interested an opportunity to file an objection against the imposition of prohibitions and restrictions. However, under Sub-rule (4), if it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under Clause (a) of Sub-rule (3). Thus, if the Central Government exercises its discretion under Sub-rule (4) of Rule 5, a grievance can be made by a person who may be interested in filing an objection against the imposition of prohibitions and restrictions. The Petitioners in Writ Petition No.348 of 2000 cannot be heard to say that no notice was given of the prohibitions and restrictions imposed by issuance of Notification under Rule 5 of the Environment (Protection) Rules, 1986. Moreover, the Central Government may exercise its discretion under Sub-rule therefore, be said that the power vested in the Central Government is an unguided and unbridled power. The power to dispense with the requirement of notice under Clause (a) of Sub-rule (3) can be

exercised only if it is in public interest to do so. The Courts have not found any difficulty in giving meaning to the words "public interest". The concept of public interest is well- understood and well-defined, and provides a sufficient guide to the authority exercising the power vested in it. If the authority acts arbitrarily and not in public interest, the action can always be challenged in a Court of law. We are, therefore, satisfied that the power given to the Central Government to dispense with the requirement of notice under Clause (a) of Sub-rule (3) of Rule 5 is not an unguided, unbridled power, since it can be exercised only in public interest. Moreover, as observed earlier, the requirement of giving notice is for the benefit of those persons who may be interested in filing objections against the imposition of prohibitions and restrictions. The Petitioners cannot be heard to complain that such notice was not given, because the Petitioners support the prohibitions and restrictions imposed, and do not contend that such prohibitions and restrictions should not have been imposed. This statement of Mr.Kalsekar, therefore, that Sub-rule (4) of Rule 5 of the Environment (Protection) Rules, 1986 is invalid and void must be rejected.

28. It was then submitted by the Petitioners in all the three Writ Petitions that the environmental clearance given by the Government of India was bad in law, in view of the fact that no environmental impact assessment had been done, and no public hearing was given before the project was granted environmental clearance by the Government of India. It was submitted that the environmental clearance granted by the Government of India was clearly in breach of the relevant Notifications issued by the Government of India, Ministry of Environment and Forests, under Section 3 of the Environment Rules, 1986.

29. In this connection, it was submitted that the Notification dated 27th January, 1994 laid down the requirements and procedure for seeking environmental clearance of projects. It provided that any person who desired to undertake any new project in any part of India, or the expansion or modernisation of any existing industry or project listed in Schedule I, shall submit an application to the Secretary, Ministry of Environment and Forests, in the proforma specified in Schedule II to the Notification. The application had to be accompanied by a detailed project report, which shall include, inter alia, an Environmental Impact Assessment Report and an Environment Management Plan prepared in accordance with the guidelines issued by the Central Government from time to time. The Notification also provided that the Techno Economic Feasibility Report submitted with the application shall be evaluated and assessed by the Impact Assessment Agency at the central Government in consultation with the Committee of Experts. The Impact Assessment Agency would be the Union Ministry of Environment and Forests, and the Committee of Experts shall be constituted by it. The Impact Assessment Agency is required to prepare recommendations based on technical assessment of documents and data furnished by the project authorities through visits to sites or factories and interaction with affected population and environmental groups. Comments of the public may be solicited, if so recommended by the Impact Assessment Agency, within thirty days of receipt of proposal, in public hearings arranged for the purpose after giving thirty days notice of such hearings in at least two newspapers. The

assessment is to be completed within a period of three months on receipt of requisite documents and data of the project authorities and completion of public hearing where required. If no comment from the Impact Assessment Agency is received within the time limit, the project is deemed to have been approved as proposed by the project authorities.

30. The first Notification dated 27th January, 1994 was amended by a subsequent Notification of 4th May, 1994. The Petitioners contend that it is no doubt true that in the second Notification, the requirement as to submission of Environmental Impact Assessment Report and public hearing was made optional, and not mandatory. Public comments were to be solicited only if so decided by the Impact Assessment Agency. It is not disputed by any of the parties appearing before us that in view of the Notification dated 4th May, 1994, it was not mandatory for the project authorities to submit a detailed project report, inter alia, including an Environmental Impact Assessment Report and an Environmental Management Plan. Instead, a project report, including an Environmental Impact Assessment Report, Environment Management Plan had to be submitted. Moreover, public hearing would be given, or public comments solicited, only if so decided by the Impact Assessment Agency, and not as a mandatory requirement. We are of the view that even under the earlier Notification dated 27th January, 1994, comments of the public could be solicited only if so recommended by the Impact Assessment Agency. These two Notifications, therefore, did not make it mandatory to invite public comments on the project. However, it is not disputed that by a third Notification dated 10th April, 1997, Environment Management Plan and details of public hearing had to be submitted along with the application for grant of environmental clearance. It is agreed that in view of the said Notification, environmental clearance could be granted by the Central Government only after Environment Management Plan and details of public hearing were submitted to the Central Government.

31. Counsel for the contesting Respondents, however, submitted that the project had been submitted for environmental clearance along with Techno Economic Feasibility Report on or about 10th June, 1993. The Ministry of Environment and Forests made several enquiries with regard to this report, and after being satisfied with the clarifications given, granted the environmental clearance by its Order dated 7th January, 1999. The three Notifications referred to earlier were issued after the submission of the project to the Central Government for grant of environmental clearance. It was submitted that the three Notifications were prospective in their operation, and, therefore, could not apply to a project submitted for environmental clearance before the issuance of the Notifications. The Petitioners, on the other hand, contend that assuming that the Notifications are prospective in their operation, they would apply to any approval granted by the Central Government after the date of issuance of those Notifications. In the instant case, even though the application had been made by the project authorities on 10th June, 1993, since the environmental clearance had not been given till the 7th January, 1999, and in the meantime, these three Notifications came to be issued, environmental clearance ought not to have been given to the project without compliance with the aforesaid

Notifications, particularly, the Notification dated 10th April, 1997, which made submission of Environmental Impact Assessment report and public hearing mandatory. We find considerable force in the submission urged on behalf of the Petitioners. Reliance placed by the Petitioners on the observations in 2000 (10) SCC 664 2000 AIR SCW 4809 misplaced. No doubt, the Notifications are prospective in operation, but in that case, the clearance had already been given in the year 1987, and, therefore, the subsequent Notification could not affect the clearance already given. It was then submitted by the Petitioners that in the instant case, the clearance was given much later, in the year 1999, and, therefore, the Notifications did apply. We find ourselves in agreement with the submission urged on behalf of the Petitioners; but the question still remains as to whether in a public interest litigation of this nature, the project should be quashed, and the environmental clearance given by the Central Government set aside, on the ground of mere non-compliance of a technical procedural requirement, even if the requirement is substantially met, having regard to the facts and circumstances of the case. It is not disputed even by the Petitioners that the City of Bombay faces an acute traffic problem. The existing infrastructure is over-burdened, and, therefore, there is need to take steps which may reduce the traffic burden on the existing infrastructure.

32. The grievance of the Petitioners is that even so, the Government of India, before granting environmental clearance, should have considered all aspects of the matter. Full and complete information was not furnished to the Government of India, and the environmental clearance was obtained, which was granted by the Government of India without application of mind. On the other hand, Counsel for the contesting Respondents contend that serious thought was bestowed on the problem facing the citizens arising out of traffic congestion on the road linking Bandra and South Bombay. It is not as if a proposal was made to the Government of India without first studying the problem in great depth. As early as in the year 1983, detailed Hydraulic Model Studies were carried out for the proposed project in Bandra and Worli by the Central Water and Power Research Station (CWPRS), a Government of India undertaking. CWPRS addressed itself to the ecological effects of the reclamation, and the alleged adverse effect of the reclamation. In accordance with the CRZ Notification dated 19th February, 1991, the State Government prepared a Coastal Zone Management Plan, and the same was submitted to the Government of India. After examining the report, the Government of India approved the said Coastal Zone Management Plan by its letter dated 27th September, 1996. The Worli-Bandra Sea-link with a bridge between Worli and Bandra is a part of this project. The said Coastal Zone Management Plan was approved by the Government of India on 27th September, 1996, subject to certain conditions and modifications mentioned therein, none of which relate to Bandra-Worli Sea-link. The Coastal Zone Management Plan clearly indicated that the project consisted of solid approach road and land filling on Bandra side approach. Land filling of about 22.2 Ha was included for the road alignment for the approach road on Bandra side, including filling the narrow ditch of about 60-90 metres between the road and the then existing shoreline which had been shown in the sanctioned Development Plan for the Bandra-Kurla Complex. The Coastal Zone Management Plan was sanctioned by the Government of India, Ministry of

Environment and Forests, after taking into consideration all these facts. In the year 1992, Environment Impact Assessment Studies were carried out by MMRDA through M/s. M/s.C.E.S.(I) Pvt. Ltd. The study concluded that the said project was necessary for relieving the congestion in Mumbai, and also to improve the efficiency of the transport system by reducing the fuel consumption and travel time, and it was recommended that the project may be taken up at the earliest, as it will go a long way for relieving congestion along the Western corridor and for reducing pollution from vehicles. The Techno Economic Feasibility Report was submitted to the Government of India by MMRDA along with the application for clearance of the project.

33. The Petitioners have stated in paragraph D of the grounds in Writ Petition No.348 of 2000 that the study/report was carried out by the Consulting Engineering Services (India) Pvt. Ltd. (CES), and on the environmental impact of the said Project, Central Water and Power Research Station (Pune) and Dr.C.V.Kulkarni were consulted. A grievance is made that the report of Dr.C.V.Kulkarni was ignored, since he had suggested that there should be no further reclamation in the Mahim Bay. This is controverted by the contesting Respondents who submit that the report of CES (I) Pvt. Ltd. does refer to the report of Dr.Kulkanri, and it is not as if the report of Dr.C.V.Kulkarni was ignored. In fact, the report of CES (I) Pvt. Ltd. indicates that some changes were made in view of the suggestions of Dr.Kulkarni. The report of CES (I) Pvt. Ltd. refers to the report of Dr.Kulkarni, and also refers to the report of CWPRS, and in paragraph 9.2.4, CES (I) Pvt. Ltd. has also concluded that the deterioration of water quality and increasing pollution levels in the Mahim Bay and Mahim Creek due to domestic and industrial waste water discharge had aversely affected fishing activity. Fish, including some coloured varieties have almost vanished from the bay. Only limited fishing with traditional techniques is practised by a few fishermen on the rocky outcrops on Bandra side. The fishermen had to go deep into the sea beyond 2 to 3 kms from the proposed bridge for fishing. The Petitioners are, therefore, not right in contending that the opinion of Dr.Kulkarni was not taken into account by the consultants engaged by MMRDA for preparation of the Techno-Economic Feasibility Report which was submitted to the Government of India along with the application for clearance of the project.

34. So far as the Techno-Economic Feasibility Report is concerned, it was prepared by CES (I) Pvt. Ltd. The report consists of 13 chapters, and Chapter 9 deals with Environmental Impact Assessment. It would, thus, appear that the Environmental Impact Assessment Report was part of the Techno-Economic Feasibility Report submitted to the Government of India while applying for environmental clearance.

35. When all these materials were placed before the Government of India, it cannot be said that the environmental clearance has been granted without application of mind. It may be that many others had expressed their views in the matter. Several articles had appeared in the newspapers, etc. One cannot assume that those were not within the knowledge of the Government of India or other contesting Respondents.

36. It is also not disputed that seminars were held on the 30th November, 1993 and 20th January, 1994, and the project was discussed in those seminars. According to the contesting Respondents, all aspects of the said project were discussed, and the details of these meetings were also reported by some leading newspapers. The said seminars were attended by representatives from Bombay Natural History Society, Bombay Environment Action Group (Petitioner in Writ Petition No.1575 of 2000), Society for Clean Environment, Western India Automobiles Association, Save Bombay Committee, Indian Heritage Society, etc. Mr.Sawant, therefore, submitted that for the purpose of granting clearance, necessary Techno-Economic Feasibility report was submitted to the Government. The proponents of the project did carry out directions of the Government of India of holding seminars and furnishing information and clarifications as called for by the Government of India, and only thereafter clearance was granted on 7th January, 1999. 8. It is, no doubt, true that Respondent No.1 and the Union of India, Respondent No.6, were of the view that the EIA Notification of 27th January, 1994 issued by the Ministry of Environment and Forests, Government of India, had no application to the proposal of Bandra-Worli Sea-link, which was submitted earlier in June 1993. It was particularly emphasized that the Notification of 27th January, 1994 mandated that "on and from the date of publication of the Notification" in the Official Gazette, expansion or modernisation of any activity (if pollution load is to exceed the existing one) or a new project in Schedule I shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure specified in the Notification. They were, therefore, under the impression that the proposal, which was earlier submitted in June 1993, was not affected by the subsequent Notification dated 27th January, 1994. As we have observed earlier, the stand of the contesting Respondents does not appear to be tenable, because the Notification dated 27th January, 1994 put a ban on any expansion or modernisation of any activity (if pollution load is to exceed the existing one) or undertaking of a new project in Schedule I. It, therefore, follows that if a new project included in Schedule I was undertaken, it could be undertaken only after it had been accorded environmental clearance by the Central Government in accordance with the procedure prescribed in the Notification, which included the submission of Environmental Impact Assessment Report and also provided for inviting public comments if so recommended by the Impact Assessment Agency. However, as we have noticed earlier, the Techno-Economic Feasibility Report submitted along with the application did contain an Environmental Impact Assessment Report. That requirement was substantially complied with. Similarly, public discussions were held, and social activists and environmental groups were given opportunity to express their views on the subject, including the Petitioners in Writ Petition No.1575 of 2000. It is, no doubt, true that the procedure that was followed was not exactly the same as was required to be followed under the three Notifications dated 27th January, 1994, 4th May, 1994 and 19th April, 1997. The question that arises is: Whether, in these facts and circumstances, the entire project, as well as the environmental clearance granted by the Government of India, should be quashed? Having considered all aspects of the matter, we are of the view that in a case of this nature, if there is substantial compliance with the requirements of the Notifications, the project and the environmental clearance granted by the

Government of India should not be quashed on the mere ground of technical procedural non- compliance. We cannot lose sight of the fact that this is a public interest litigation. Therefore, the primary concern of the Court in such Writ Petitions is to safeguard public interest. We cannot also lose sight of the fact that the project has also been conceived to serve public interest, and provide free flow of traffic between Bandra and Worli, which is considerably an over-burdened sector. The report of the Consultants does include a chapter on Environmental Impact Assessment. The report takes into account earlier reports and views expressed by experts. This was followed by public discussions and seminars held for the purpose. It is not as if the project violates any statutory provision. Reclamation of land is permissible for sea-link projects. The project is included in the revised Development Plan prepared under the MRTP Act. The Coastal Zone Management Plan, which includes the project, has also been approved by the Government of India. We are also satisfied that the project would not cause any ecological or environmental damage. We cannot lose sight of the fact that while maintaining and observing environment and ecology , the Government is also required to solve other problems, which are of varied nature and also involving public interest, and, therefore, a balance has to be struck between the two. If the project violated any statutory provision, and resulted in ecological and environmental damage, we would have no hesitation in quashing the project itself. However, we find that the project will not have any such result, and all that can be said is that the procedure under the three EIA Notifications was not followed, though we find that Environmental Impact Assessment Report was submitted along with the application for grant of environmental clearance by the Government of India, and that was followed by seminars in which social activists and environmentalists had adequate opportunity of expressing their views. We are, therefore, of the view that the requirements of the Notifications have been substantially complied with, even if technically the procedure was not punctiliously observed.

37. This takes us to the next question as to whether the project is being implemented in violation of the terms and conditions imposed by the sanction letter dated 7th January, 1999. In this case, the Petitioners submit that the sanction letter dated 7th January, 1999 granted permission to reclaim only 4.7 hectares, whereas, in reality, much more than that had been reclaimed in violation of the terms and conditions of the letter granting environmental clearance. This has been explained by the contesting Respondents. In the affidavit-in-reply filed on behalf of Respondent No.1, it has been stated that the work of reclamation of 22.2 Ha. was included in the sanctioned land use proposal for Bandra-Kurla Complex, and it was to be carried out earlier by the Mumbai Municipal Corporation or Mumbai Housing Board. An additional area of 4.7 Ha. was shown in the proposal submitted to the Government of India, for which approval was received on 7th January, 1999. Thereafter, reclamation of 27 Ha. has been approved by the Ministry of Environment and Forests, by their letter dated 26th April, 2000. In the affidavit-in-reply filed on behalf of the Union of India, Respondent No.6, it is explained that the Ministry of Environment and Forests had sought a clarification from Respondent No.1 as regards reclamation. Respondent No.1 clarified that 4.7 ha of land was required only for the promenade, and an additional 22.2 Ha. of land was required for the approach road to the bridge as envisaged in the

Feasibility Report of the project submitted to the Ministry in 1993. Respondent No.1 also informed the Ministry that they had committed an inadvertent mistake while informing the Ministry that reclamation of only 4.7 ha. of land was required only for project, instead of informing that 4.7 Ha. of land was required only for promenade in addition to the 22.2 ha. of land required for the approach road as envisaged in the feasibility report submitted to the Ministry in 1993. The Ministry, therefore, constituted a team to look into the reclamation already done, and the actual requirement of land for the approach road and promenade. After visiting the site, the Committee submitted report that about 27 ha. of reclaimed land is required for the promenade and the approach road. After examining the report and the additional information or clarification provided by the State Government, the Ministry of Environment and Forests modified the relevant conditions vide its letter dated 7th January, 1999, and allowed reclamation of land to the extent of 27 Ha.

38. It would, thus, appear that there was a communication gap, and Respondent No.1, under the impression that an area of 22.2 Ha. was already sanctioned for the reclamation under the revised Development Plan of the area, had mentioned about the reclamation of only 4.7 Ha. in its proposal to the Government of India. When this was detected later, the matter was again enquired into by the Government, and thereafter, the condition was modified. It would, thus, appear that the reclamation now permitted is to the extent of 27 Ha. and, therefore, there is no violation of the condition imposed by the Government of India while granting environmental clearance.

39. It was next submitted that fishing activity was affected by the project, and the concurrence of the fishermen affected thereby was not obtained. The contesting Respondents, on the other hand, contend that fishing activity is not at all affected by the project. Adequate provisions have been made in the design of the bridge for movement of fishing boats and trawlers. The design provides for the central bridge of 500 metres with two spans of 250 metres each with a vertical clearance of almost 20 metres above High Tide Line. The remaining portion of the bridge has 50 metres span with minimum vertical clearance of 9 metres above High Tide Line. As would appear from the report of the consultants that water pollution in the creek has affected the estuary, and only limited fishing with traditional techniques is practised by a few fishermen on the rocky outcrops on Bandra side, and the fishermen have to go deep in to the sea beyond 2 to 3 kms from the proposed bridge for fishing. It was pointed out that the project has been so designed that the fishermen can have free access to the sea for fishing purposes, and the bridge does not in any way adversely affect the fishing activity of the fishermen of the locality. Apart from the fact that according to the Techno-Economic Feasibility Report, fishing activity is to be carried on at 2-3 Kms. from the site of the project, and, therefore, does not affect the interest of the fishermen of the locality, the fishermen had themselves filed a Writ Petition before this Court, being Writ Petition No.3030 of 1999, but their only grievance was that they should be rehabilitated, as they were sought to be displaced on account of construction of approach road to the bridge. Their case is being considered separately by the Government, and it appears that the Government is willing to rehabilitate them.

40. The next point made by the Petitioners is that in implementation of the project, the mangroves on the northern side of Mahim Bay have been destroyed by dumping debris/rubble on them. This has been denied as a fact by the contesting Respondents. It was submitted that there were no mangroves at the reclamation site where reclamation is being done. This, again, is a question of fact, and we cannot express any final opinion in the matter. However, if what is alleged by the Petitioners is true, the Government of India has power to take appropriate action against Respondent No.1, and compel it to observe the conditions laid down in the letter granting environmental clearance.

41. It was also contended by the Petitioners that dumping material was to be brought from various quarries, but the material was being brought from Powai Hills by resorting to illegal quarrying. This is, again, disputed by the contesting Respondents who contend that there is no illegal quarrying or illegal reclamation or any change in the project profile as alleged. In paragraph 12 of the affidavit filed on behalf of Respondent No.3, and affirmed by the Executive Engineer of Respondent No.3, it is categorically asserted that the material for reclamation is not being brought from unauthorized quarries as alleged. It is stated that the material for reclamation is brought by the contractor appointed by Respondent No.1 from authorized quarries from Powai and Navi Mumbai area after payment of royalty for excavation carried out to the Office of the Collector under the Land Revenue Code.

42. Counsel for the contesting Respondents submitted that if any of the conditions imposed by the Government of India while granting environmental clearance is violated, the Government of India has authority to take appropriate action. That by itself would not render illegal the environmental clearance granted by the Government of India. In our view, the submission has force, and must be accepted. The Government of India should keep a close watch on the implementation of the project, and ensure that the project is implemented in a manner complying with all the terms and conditions imposed by the Government of India while granting environmental clearance to the project.

43. Lastly, it was submitted by Mr.Kalsekar that a Writ Petition was filed in this Court, being Writ Petition No.263 of 1997 (Maneka Gandhi v. State of Maharashtra & Ors.) in which it was prayed that the Respondents be stopped from defiling the water of Mithi River by the development in the Bandra- Kurla Complex. In that Writ Petition, the then Advocate-General and Counsel appearing for MMRDA (the Fifth Respondent) gave an undertaking to the Court that the Fifth Respondent shall not carry out any reclamation in the Bandra-Kurla Complex area, and that the Fifth Respondent shall not destroy any mangrove in the Mithi River and its estuary. According to him, the Mithi River rushes into the Mahim Bay through Mahim Creek and the impugned reclamation in the bay is a part of the Bandra-Kurla Complex. According to him, the reclamation that was going on is in breach of the undertaking given to this Court. Mr.Sawant, appearing on behalf of Respondent No.1, submitted that the order passed by this Court has to be read as a whole. That order was passed with regard to building activities which were then being carried out on the northern side of the Mithi

River. The statement made in the Writ Petition must, therefore, be read in that context. He further submitted that paragraph 5 of the order clarified that the statement made in sub-clauses (1), (2) and (3) of paragraph 3 of the order will not restrain the Ministry of Environment and Forests from considering allowing applications for any such project, scheme, development, etc. The order, therefore, cannot be read in such a manner so as to prevent the Government of India from even considering projects for development schemes in the future. In the instant case, the Government of India has expressly sanctioned the project with express provision for reclamation. There is, therefore, no breach of the order of this Court dated 19th February, 1998 in Writ Petition No.263 of 1997. Apart from the submission of Mr.Sawant, appearing on behalf of Respondent No.1, if there is any breach of the order of this Court dated 19th February, 1998, it is always open to the Petitioners to bring that to the notice of this Court in appropriate proceeding. It may not be appropriate for us to go into that question in these Writ Petitions.

44. Having considered all the submissions urged before us, we have reached the conclusion that the environmental clearance given by the Government of India for the Worli-Bandra Sea-link Project cannot be held to be illegal or in breach of statutory provisions. Reclamation of land is permissible for sea-link projects. The sea-link project is in public interest, and is necessary, keeping in view the situation as it exists today with the existing infrastructure being over-burdened with ever-increasing traffic. The project will not result in ecological or environmental damage, and, on the contrary, will reduce burden of traffic on the existing infrastructure, thereby reducing pollution. The vehicular movement has a direct impact on noise and air pollution. The Consultants, M/s.C.E.S.(I) Pvt. Ltd., have considered these aspects of the matter in their Environmental Impact Assessment Report, and have justified the project. The Government of India has also considered this matter, and granted environmental clearance. We find no reason to take a different view. The project was included in the revised Development Plan and also included in the Coastal Zone Management Plan, which has the approval of the Government of India. We do not find that any statutory provision is breached if the project is implemented in public interest. The requirement of submitting an Environmental Impact Assessment Report was also substantially complied with, and the matter has been discussed in public seminars in which important activists, groups and environmentalists have discussed the issues threadbare. The requirements of public discussion and environmental impact assessment have been substantially complied with, and we are not inclined to quash the project and the environmental clearance granted by the Government of India merely for technical non-compliance of the procedure laid down in the three Environmental Impact Assessment Notifications. We are also satisfied that the project is being implemented in public interest, and serves the cause of environment, without any serious damage to ecology . Where there are two competing public interests, a balance has to be struck between the two. We are, therefore, satisfied that no interference is called for by this Court in exercise of Writ Jurisdiction. These Writ Petitions are, therefore, dismissed.