

28 DEC 2023

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination October-November – 2023

Semester: UG VII Semester

Subject: Environmental Law

Marks: 100

Time: Three Hours

Instructions:

- (1) This question paper contains six questions. Question No. 1 is compulsory.
- (2) You must answer any **four** questions from Questions 2 to 6 according to the instructions given with each question.
- (3) No electronic devices including smartwatches are allowed in this examination.
- (4) In this examination no materials, aids and instruments are permitted.
- (5) You must start each answer by clearly identifying to which question they are responding.

Q.1).

Ferrous Industries Pvt. Ltd. is a company based in Bombassa, Newfoland. Newfoland is a state in Union of India. They bought land from Mr. Vargare situated in Lovassa (coastal town), 20 kms away from Bombassa. This was to be used to build their Hotel Morinho Resorts close to the Barga Beach. The location of the proposed hotel fell in Coastal Regulation Zone (CRZ) II zonation.

Ferrous Industries Pvt. Ltd. submitted plans of the proposed hotel were to the Gram Panchayat of Lovassa on December 11, 2011, and the Panchayat sent a letter in reply stating that the plans were in conformity with the land acquisition regulations in force in the area. However, they observed that the road leading to the hotel complex was at present used by general public to approach the Barga Beach which is a popular picnic spot and used by tourists and locals alike and thus, right of access to the beach must be maintained.

However, Ferrous Industries Pvt. Ltd. shifted access to the beach from the location originally sanctioned and the access is no longer directly to the beach but is a longer walk. Gustavo Renato da Cruz Pinto, a public spirited citizen filed a Writ Petition in the High Court of Bombassa for quashing the aforementioned permissions on various grounds including violations of permissions under CRZ Notification, 2011 and that they had blocked public access to the beach. With it there were other serious issues which were of concern to Mr. Gustavo; these are (i) effluent discharge from the hotel which is mixing in the coastal water causing water pollution, and (ii) tourists are not using the beach area judiciously, causing changes in the natural coast causing ecological degradation.

Discuss the possible violations of the CRZ Notification, 2011 by Ferrous Industries Pvt. Ltd. in refernce to the rules attached.

Substantiate your answer with relevant case law.

Relevant provisions of CRZ Notification, 2011:

“3. Prohibited activities within CRZ- The following are declared as prohibited activities within the CRZ,-

- (i) Setting up of new industries and expansion of existing industries except,-

- (a) those directly related to waterfront or directly needing foreshore facilities;
 Explanation: The expression "foreshore facilities" means those activities permissible under this notification and they require waterfront for their operations such as ports and harbours, jetties, quays, wharves, erosion control measures, breakwaters, pipelines, lighthouses, navigational safety facilities, coastal police stations and the like.;
- (b) projects of Department of Atomic Energy;
- (c) facilities for generating power by non-conventional energy sources and setting up of desalination plants in the areas not classified as CRZ-I(i) based on an impact assessment study including social impacts.;
- (d) development of green field Airport already permitted only at Navi Mumbai;
- (e) reconstruction, repair works of dwelling units of local communities including fishers in accordance with local town and country planning regulations.

(ii) manufacture or handling oil storage or disposal of hazardous substance as specified in the notification of Ministry of Environment and Forests, No. S.O.594 (E), dated the 28th July 1989, S.O.No.966(E), dated the 27th November, 1989 and GSR 1037 (E), dated the 5th December, 1989 except, -

- (a) transfer of hazardous substances from ships to ports, terminals and refineries and vice versa;
- (b) facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure-II appended to this notification and facilities for regasification of Liquefied Natural Gas (hereinafter referred to as the LNG) in the areas not classified as CRZ- I (i) subject to implementation of safety regulations including guidelines issued by the Oil Industry Safety Directorate in the Ministry of Petroleum and Natural Gas and guidelines issued by MoEF and subject to further terms and conditions for implementation of ameliorative and restorative measures in relation to environment as may be stipulated by in MoEF.
 Provided that facilities for receipt and storage of fertilizers and raw materials required for manufacture of fertilizers like ammonia, phosphoric acid, sulphur, sulphuric acid, nitric acid and the like, shall be permitted within the said zone in the areas not classified as CRZ-I(i).

(iii) Setting up and expansion of fish processing units including warehousing except hatchery and natural fish drying in permitted areas:

(iv) Land reclamation, bunding or disturbing the natural course of seawater except those,-

- (a) required for setting up, construction or modernisation or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sealink, road on stilts, and such as meant for defence and security purpose and for other facilities that are essential for activities permissible under the notification;
- (b) measures for control of erosion, based on scientific including Environmental Impact Assessment (hereinafter referred to as the EIA) studies
- (c) maintenance or clearing of waterways, channels and ports, based on EIA studies;
- (d) measures to prevent sand bars, installation of tidal regulators, laying of storm water drains or for structures for prevention of salinity ingress and freshwater recharge based on carried out by any agency to be specified by MoEF.

(v) Setting up and expansion of units or mechanism for disposal of wastes and effluents except facilities required for,-

- (a) discharging treated effluents into the water course with approval under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (b) storm water drains and ancillary structures for pumping;

(c) treatment of waste and effluents arising from hotels, beach resorts and human settlements located in CRZ areas other than CRZ-I and disposal of treated wastes and effluents;

(vi) Discharge of untreated waste and effluents from industries, cities or towns and other human settlements. The concerned authorities shall implement schemes for phasing out existing discharge of this nature, if any, within a time period not exceeding two years from the date of issue of this notification.

(vii) Dumping of city or town wastes including construction debris, industrial solid wastes, fly ash for the purpose of land filling and the like and the concerned authority shall implement schemes for phasing out any existing practice, if any, shall be phased out within a period of one year from date of commencement of this notification.

Note:-The MoEF will issue a separate instruction to the State Governments and Union territory Administration in respect of preparation of Action Plans and their implementation as also monitoring including the time schedule thereof, in respect of paras (v), (vi) and (vii).

(viii) Port and harbour projects in high eroding stretches of the coast, except those projects classified as strategic and defence related in terms of EIA notification, 2006 identified by MoEF based on scientific studies and in consultation with the State Government or the Union territory Administration.

(ix) Reclamation for commercial purposes such as shopping and housing complexes, hotels and entertainment activities.

(x) Mining of sand, rocks and other sub-strata materials except,-

(a) those rare minerals not available outside the CRZ area,

(b) exploration and exploitation of Oil and Natural Gas.

(xi) Drawl of groundwater and construction related thereto, within 200mts of HTL; except the following:-

(a) in the areas which are inhabited by the local communities and only for their use.

(b) In the area between 200mts-500mts zone the drawl of groundwater shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries and where no other source of water is available.

Note:-Restrictions for such drawl may be imposed by the Authority designated by the State Government and Union territory Administration in the areas affected by sea water intrusion.

(xi) Construction activities in CRZ-I except those specified in para 8 of this notification.

(xiii) Dressing or altering the sand dunes, hills, natural features including landscape changes for beautification, recreation and other such purpose.

(xiv) Facilities required for patrolling and vigilance activities of marine/coastal police stations.

7. Classification of the CRZ – For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely:-

(ii) CRZ-II,-

The areas that have been developed upto or close to the shoreline.

Explanation.- For the purposes of the expression “developed area” is referred to as that area within the existing municipal limits or in other existing legally designated urban areas which are substantially built-up and has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains;

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

II. CRZ-II,-

- (i) buildings shall be permitted only on the landward side of the existing road, or on the landward side of existing authorized structures;
- (ii) buildings permitted on the landward side of the existing and proposed roads or existing authorized structures shall be subject to the existing local town and country planning regulations including the 'existing' norms of Floor Space Index or Floor Area Ratio:
Provided that no permission for construction of buildings shall be given on landward side of any new roads which are constructed on the seaward side of an existing road;
- (iii) reconstruction of authorized building to be permitted subject with the existing Floor Space Index or Floor Area Ratio Norms and without change in present use;
- (iv) facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure-II appended to this notification and facilities for regasification of Liquefied Natural Gas subject to the conditions as mentioned in sub-paragraph (ii) of paragraph 3;
- (v) desalination plants and associated facilities;
- (vi) storage of non-hazardous cargo, such as edible oil, fertilizers, and food grain in notified ports;
- (vii) facilities for generating power by non-conventional power sources and associated facilities;"

(Marks 20)

Q.2).

"Over the last two decades, a new class of torts has emerged that targets personal injuries caused by toxic substances in the environment. These hybrid environmental torts are quite distinct from the trespass- nuisance precedent that is part of traditional tort theory; nor are environmental torts simply a subset of the mass hazardous substance litigation that has remade product liability law. Environmental torts are informed, in a way product law is not, by environmental regulation. These torts are unique because their deterrent signal is transmitted to producers of hazardous environmental pollutants by litigants who have suffered physical injury or disease."

In light of this statement, briefly discuss the judicial approach towards environmental torts in India.

(Marks 20)

Q.3).

Sustainable development is the main concept underpinning our policy response to the environmental crisis the world faces. As such, it is pervasive in all sorts of documents, writings, and discourse, including legal ones and, within the latter, international legal instruments. Its ubiquitous character is only matched by its vagueness; and its vagueness is a deliberate choice driven by its function, which is to rally rather than to divide.

Explain the international and domestic application of this principle with reference to relevant case law.

(Marks 20)

Q. 4).

The activities of several small-scale industries sprouted on the banks of small river polluted the water of the river, soil, and ambient air. The people in the vicinity of the area complain that the

pollution caused by the industries is affecting their health and has also become dangerous to their cattle, plants, and crops. Discuss the remedial measures available to the State Pollution Control Board in light of relevant provisions of Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981. Substantiate your answer with relevant case law.

(Marks 20)

Q.5)

The State Government of Uttarpara (within Union of India) has opened a tender for granting a mining lease within the limits of a reserve forest. Green Pvt. Ltd. wants to apply for the lease. Advise Green Pvt. Ltd. about all the clearances required for starting such mining operations. Explain with reference to relevant case law.

(Marks 20)

Q.6)

Write short notes on:

- (a) Solid Waste Management Rules, 2016.
 - (b) Management of Hazardous Waste in India.
- Substantiate your answer with relevant case law.

(Marks 10+10)