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

WRIT PETITION NO.2016 OF 2021

Mariyayi Machhimaar Sahakari Sanstha
Maryadit Thr.H.R.Sutar .. Petitioner

Versus

Department of Fisheries Thr.Commissioner of
Fisheries and Ors. .. Respondents

**WITH
INTERIM APPLICATION NO.757 OF 2022
IN
WRIT PETITION NO.2016 OF 2021**

Akhil Maharashtra Macchimaar Kruti Samiti .. Applicant

Versus

Mariyayi Machhimaar Sahakari Sanstha
Maryadit Thr.H.R. Sutar and Ors. .. Respondents

**WITH
INTERIM APPLICATION NO.880 OF 2022
IN
WRIT PETITION NO.2016 OF 2021**

Paramparik Machhimaar Bachao Kruti Samiti
Thr.Authorised Ramesh Koli and Anr. .. Applicant

Versus

Mariyayi Machhimaar Sahakari Sanstha
Maryadit Thr.President Harishchandra R. Sutar
and Ors. .. Respondents

WITH

**INTERIM APPLICATION NO.19487 OF 2022
IN
WRIT PETITION NO.2016 OF 2021**

Girgol Joki Rodricks and Ors.

.. Applicant

Versus

Mariyayi Machhimaar Sahakari Sanstha
Maryadit Thr.President Harishchandra R. Sutar
and Ors.

.. Respondents

Adv. Zaman Ali, for the Petitioner

**Sr. Advocate Dr. Milind Sathe a/w Adv Saket Mone a/w Adv Devansh Shah
i/b Vidhii Partners** for Respondent No.8 (MSRDC)

Adv. Jay Bagwe for Respondent No.5 (MCZMA)

Adv. Radhika Kurdukar i/b Adv Yuvraj Narvankar for Applicant in
IA/19487/22

**Sr. Advocate Sharan Jagtiani, Amicus Curiae a/w Adv. Rohil Bandekar,
Adv. Siddharth Joshi and Adv. Avanti Divan**

Ms. S. D. Vyas, Addl GP a/w Mr. A. R. Deolekar, AGP for State

Prof Geetanjoy Sahu, Scientist from Respondent No. 11 (TISS) [Appeared
Through VC]

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**
DATE: MAY 02, 2025

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1. The present matter was circulated by the Petitioner and came to be listed before us on 24th April 2025. On that date, we heard the learned counsel for the parties before us at length. We also heard Mr. Sharan Jagtiani, Senior Advocate, who had been appointed as *Amicus Curiae* by prior orders of this Court. The Petitioner had circulated the matter seeking a direction from this Court to appoint Tata Institute of Social Sciences (TISS) to conduct a survey and prepare a detailed report on the extent of damage and loss caused to fisherfolk living in the vicinity of the bridge being constructed by Respondent No. 8 (MSRDC) on Thane Creek.

2. Before we address the specific issue for which the matter was circulated and for which the parties were heard, it would be appropriate to briefly discuss the history of this matter. This would assist in providing the requisite context in which we have held that TISS must be appointed.

A. Background of the matter

3. The present Writ Petition was filed on 24th March 2021. It was filed in the wake of a public infrastructure project that the State of Maharashtra was undertaking in Thane Creek, near Vashi, Maharashtra, *viz.* Thane Creek

Bridge III Project (“**TCB III**”). TCB III was proposed as a six-lane bridge on the Sion-Panvel Highway. We have been informed that the project is largely complete; a portion of it is now open to vehicular traffic and will be fully operational in the coming weeks.

4. The Petitioner is a society registered under the Maharashtra Cooperative Societies Act 1960. It comprises of members from traditional fishing communities known as the Koli community. The members of the Petitioner carry out the activity of fishing in the vicinity of TCB III. The primary Respondents are Respondent Nos. 1, 2 and 8. Respondent No. 1 is the State of Maharashtra through the Department of Fisheries. Respondent No. 2 is the Assistant Commissioner of Fisheries of the Thane-Palghar region. Respondent No. 8 (MSRDC) is the project proponent for TCB III.

5. The case of the Petitioner is that its members, i.e., the fishermen affected by TCB III (“**Project Affected Fishermen**”), are inhabitants of Thane Creek, and exercise their customary right to fish for a living in Thane Creek. It is their case that the construction of TCB III will adversely affect their customary right to fish, which is the source of their livelihood.

6. It is pertinent to note that at no stage have the Petitioners sought an

injunction against the construction of TCB III. Instead, the relief that was sought was a direction against the Respondents to provide appropriate compensation to the Project Affected Fishermen for losses caused to them due to the alteration of the ecology as a result of the construction of TCB III.

7. Mr. Jagtiani was appointed as Amicus Curiae to assist the Court by an Order dated 22nd June 2021.

8. The issues that were framed for determination were the following:

- i.* Whether the Petitioner can prove that the Project Affected Fishermen have a customary right to fish for a living in Thane Creek?
- ii.* Whether TCB III is likely to detrimentally impact the practice of such customary rights?
- iii.* Whether a state wide policy for all categories of persons whose customary rights are affected by infrastructure projects is required?
- iv.* If yes, what is the framework for such a policy that can be recommended to the appropriate authorities?
- v.* If the answer to issue (i), issue (ii) and issue (iii) is yes, what should be the contours of a policy compensating those

affected by TCB III.

9. All of the issues that were framed were decided by this Court by an Order dated 12th August 2021. There are also certain subsequent Orders that were passed which are of some relevance. These are referred to below.

B. Prior Orders of this Court in this Writ Petition

10. As mentioned above, the primary Order is the Order dated 12th August 2021. By that Order, issues (i) and (ii) were answered in the affirmative, i.e., that the Project Affected Fishermen did indeed have a customary right to fish for a living in Thane Creek and further, that TCB III is likely to detrimentally impact the exercise of such customary rights. By the Order dated 12th August 2021, the Court also went on to discuss a broader policy framework for such cases as well as the contours of a possible policy to compensate those affected by TCB III. The relevant observations and findings are extracted below:

“49. *The documents, therefore, establish with*

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sufficient clarity that the Project Affected Fishermen have a customary right to fish for a living in Thane creek. Most importantly, the Affidavits in Reply of Respondent No. 1 also appears to accept this position.

50. *We accordingly answer Issue (i) in the affirmative.*

FINDING ON ISSUE (ii):

51. *We have analyzed the submissions of the various parties. On an appreciation of the material before us, we are of the view that TCB III is likely to impact the Project Affected Fishermen's customary right to fish for a living, and therefore answer Issue (ii) in the affirmative.*

52. *The Court only needs to satisfy itself that there will be some or a likely impact. If it is so satisfied, which it is, then that is enough for us to hold that the customary rights to fish for a livelihood are being impacted. The extent of the impact may be considered in greater depth by the committee to be constituted, as discussed later in this judgment.*

53. *The livelihood of fishermen is dependent on a healthy environment and balanced ecology. The Department of Environment, Forests and Wildlife of the Government of India has recognized this in the Preamble of the CRZ Notification, 2011 by stating that coastal stretches need to be protected "... with a view to ensure*

livelihood security to the fisher communities..." It requires that any development activity needs to be done in a "... sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas..."

54. The MCZMA itself, in its 114th Minutes of Meeting dated 2 and 3 November 2016 has stated that TCB III should be constructed in a manner which does not affect the navigational routes of local fishermen. This shows that the MCZMA believes, and is aware, that navigational routes of the Project Affected Fishermen are likely to be impacted.

55. Further, Respondent Nos. 1 and 2 in a communication to various authorities of the State Government recognizes that projects implemented in the maritime area or along the sea coast would impact the livelihood of local fishermen in the proximity of the project.

56. Both of these documents show that even the State Government authorities are of the view that maritime projects like the TCB III are likely to impact the livelihood of fishermen communities in the vicinity of the project.

57. Further, we agree with the Amicus Curiae's submission that destruction of mangroves for TCB III will disturb the ecological balance in Thane Creek. The vital role that mangroves play in maintaining ecological balance and sustaining biodiversity is well documented.

The Thane Creek Flamengo Sanctuary Management Plan and The Preliminary Report on Biodiversity of Thane Creek, which are discussed above also bear out that the destruction of mangroves often results, inter alia, in loss of biodiversity, and reduced fish catch, which in turn would impact livelihood of the Project Affected Fishermen. The judgment in Bombay Environmental Action Group v. State of Maharashtra (supra) of this Court, elucidates the importance of mangroves on the ecology. The judgment states, at paragraph 32

"In the instant case it has been established that mangrove forests are of great ecological importance and are also ecologically sensitive."

58. Being satisfied that there is likely to be some impact, we prefer to leave the exercise of determining the extent of the impact with more precision to a body that has the wherewithal to make such a determination.

59. Since we hold that the Project Affected Persons' customary rights are being impacted, we also hold that they are entitled to be compensated for their loss, subject to what is stated below.

[Emphasis Added].

11. Thereafter, by an Order dated 16th February 2022, this Court observed that despite six months passing, the Project Affected

Fishermen had not been provided with any compensation. On that date, the Court was informed that it would take at least another year to finally decide the issue of compensation. Accordingly, the Central Marine Fisheries Research Institute (**CMFRI**) was directed to submit an Interim Report to the Court and to update the Court on the quantum of interim compensation that could be paid to the Project Affected Fishermen.

12. On 25th February 2022, this Court directed Respondent No. 8 (MSRDC) to deposit a sum of Rs. 10 crores (i.e. Rs. 1 lakh per family comprising the Petitioner Society).

13. On 23rd March 2022, this Court passed another fairly detailed Order. The question before the Court was with regard to the disbursement to the Project Affected Fisherman of the sum of Rs. 10 crores which had been deposited. All of the parties as well as the Ld. Amicus Curiae were heard and the Court ultimately directed in paragraph 16 that it would be appropriate and reasonable to order a disbursal of the interim compensation of Rs. 1 lakh per family of Project Affected Fishermen. It was also held in paragraph 18 that the ad hoc compensation (interim compensation) is not a substitute

for the final compensation. In this Order the Court also considered the submissions of Respondent No. 8 as to whether the earlier Orders had determined the question of loss and only left open the question of extent/quantum of loss. The relevant observation is extracted below:

“13. Our Order and Judgment of 12th August 2021, therefore, holds that the TCB-III is likely to affect the Petitioner's members (defined as the Project Affected Persons) and that they are entitled to be compensated for such loss. What was left open for the compensation committee to determine was the precise extent of such loss and quantum of compensation.”

[Emphasis Added].

14. The Orders of this Court dated 12th August 2021, 25th February 2022 and 23rd March 2022 were challenged by Respondent No. 8 before the Supreme Court by way of SLP Nos. 6292-6294 of 2022. By an Order dated 13th May 2022, the Supreme Court refused to interfere with the Orders passed by this Court.

15. Accordingly, the Orders dated 12th August 2021, 25th February 2022 and 23rd March 2022 of this Court have attained finality.

C. Issue before this Court today

- 16.** CMFRI has filed 2 reports – an Interim Report dated 12th May 2022 and a Final Report dated May 2023. It is the Final Report of CMFRI which is relevant at this stage.
- 17.** As mentioned above, this matter was circulated by the Petitioner seeking the appointment of Tata Institute of Social Sciences (**TISS**), to assess the extent of the damage caused to the Project Affected Fisherman and to quantify such damage for the purposes of determining the quantum of compensation payable.
- 18.** It is the case of the Petitioner that the Final Report of CMFRI has failed to quantify the loss suffered and to assess the impact on the increase/decrease of fish catch and diversity due to the absence of baseline data of the original ecology from the period prior to the construction of TCB III. This despite the fact that the Final Report has concluded that TCB III has impacted gill net fishing, hook net fishing and crab trap fishing and has also stated that construction activity of TCB III has resulted in a change in turbidity of the water.
- 19.** The Petitioner has further submitted that though the report broadly

concludes that there is some impact on fishing activities, as noted in paragraph 5 titled 'Conclusions', it is vague and cryptic and does not even attempt to indicate the quantum or extent of damage caused to the Project Affected Fishermen.

20. It is in this light, that the Petitioner submits that an institute with the requisite knowledge and expertise – in this case TISS – be appointed, to carry out this exercise.
21. Dr. Sathe, Ld. Senior Advocate appearing for Respondent No. 8 (MSRDC) submitted that there is no infirmity with the Final Report prepared by CMFRI, and accordingly, there is no need whatsoever to appoint TISS to carry out the very same exercise which CMFRI has just conducted. He further submits that there is in fact no damage that has been caused to the Project Affected Fishermen and that this is borne out by the Final Report prepared by CMFRI. He submits that it is for the expert agency to determine the existence of any loss or damage, and only if loss is established would the question of extent or quantum arise. In the absence of any damage caused, no further compensation is required to be paid to the Project Affected Fishermen, was the submission.

22. Mr. Jagtiani, Ld. Senior Advocate appointed as Amicus Curiae, has also made submissions. He submitted that the previous orders of this Court dated 12th August 2021 and 23rd March 2022 have already concluded that TCB III is likely to have an adverse impact on the customary right of the Project Affected Fishermen to fish for a living; that the existence of loss is not open for determination and the scope of the expert agency is only to determine extent or quantum of the damage caused. Accordingly, he submitted that it is no longer open to Respondent No. 8 to canvas the same argument that has previously been canvassed on its behalf and rejected by earlier Orders of this Court which have attained finality.
23. Mr. Jagtiani submitted that it appears that the Final Report prepared by CMFRI does to some degree allude to both temporary and permanent damage being caused to the Project Affected Fishermen. However, it concludes that the exact extent and quantum of damage cannot be assessed because there is no “baseline data” or in other words, there is no data or statistics *prior* to the commencement of construction of TCB III which can be compared to arrive at the difference in data *post* construction.

Accordingly, he submits that while there is useful information in the Final Report, it does not ultimately fulfill the mandate that was required of it, which was to determine the extent and quantum of damage caused to the Project Affected Fishermen.

24. Mr. Jagtiani further submitted that it is not unprecedented to make an attempt to assess and quantify damage caused post construction, without having an estimate of the required metrics pre-construction. In this regard, Mr. Jagtiani drew the attention of this Court to the “Compensation Policy and its Implementation Plan for Project Affected Fisherfolk of Mumbai Coastal Road Project (South)” dated February 2023 and prepared by TISS, to be found at Exhibit L, Pg. 2967 of the Petitioner’s Affidavit dated 28th August 2023. In that very detailed Report, the expert (TISS) does suggest an amount towards compensation for loss suffered.

25. Based on the above, Mr. Jagtiani submitted that it would be appropriate to appoint TISS to carry out an assessment of the extent and quantum of damage caused to the Project Affected Fishermen. He submitted that the Advocate for the Petitioner may not be correct in saying that the CMFRI Report must be disregarded

entirely. The CMFRI Report was prepared over a period of one year and may contain useful information and statistics even though it did not ultimately fulfill the remit of determining extent of damage. He therefore suggested, that while TISS could be appointed, TISS should determine which, if any, portion of the Final Report of CMFRI it deems appropriate to rely upon for its eventual findings, rather than discarding it in its entirety.

26. We have heard all the parties at significant length. We are inclined to appoint TISS to prepare a detailed report on the extent of damage/loss caused to the Project Affected Fishermen of TCB III, and to determine the final compensation payable.
27. From a reading of the earlier Orders, we are of the view that there has been a clear determination that TCB III will have an impact on the livelihood of the Project Affected Fishermen. The purpose of the CMFRI Report or that of any other expert agency was to determine the extent of loss.
28. The Order dated 23rd March 2022 has already recorded and thereafter rejected the submission of Dr. Sathe that there has been

no determination of whether TCB III will impact the livelihood of the fisherfolk. Paragraph 4 of that Order records Dr. Sathe's submission. Paragraphs 6 to 12 record the submissions of the Ld. Amicus Curiae and the Court's own findings in its 12 August 2021 Order. Ultimately, in paragraph 13 of the Order dated 23rd March 2022, this Court held:

“13. Our Order and Judgment of 12th August 2021, therefore, holds that the TCB-III is likely to affect the Petitioner's members (defined as the Project Affected Persons) and that they are entitled to be compensated for such loss. What was left open for the compensation committee to determine was the precise extent of such loss and quantum of compensation.”

[Emphasis Added].

29. The Order dated 23rd March 2022 has been confirmed by the Supreme Court. The submissions as to the inadequacy of the CMFRI Report have to be considered in this background.
30. With respect to the CMFRI Report itself, it concludes to some extent that there is temporary and permanent damage caused to the

Project Affected Fishermen as regards their customary right to fish for a living. Despite arriving at this conclusion, CMFRI has been unable to quantify the extent of loss and consequent compensation payable to the Project Affected Fishermen. In fact, even prior to publishing its Final Report, CMFRI, in its Affidavit dated 22nd February 2022, has candidly stated that it is not competent to render assistance for determining compensation; that it can only assist any agency or institute such as TISS, which may be entrusted with the responsibility for determining compensation with technical data.

31. The “Compensation Policy and its Implementation Plan for Project Affected Fisherfolk of Mumbai Coastal Road Project (South)” dated February 2023 prepared by TISS, which was brought to our attention by the Ld. Amicus Curiae, is a document that goes into great detail to provide a proper and comprehensive recommended compensation for fisherfolk affected by that project, so that the affected fishermen are adequately supported for overcoming the impact of the project on their lives and livelihoods. That study was conducted *after* construction of the Coastal Road was well under way, and despite this, TISS was able to deploy a methodology by

which it could reasonably assess damage and compensation. A similar effort should be made by TISS in the present case.

32. It is clear that the damage caused cannot be determined with complete exactitude. The nature of the exercise is by definition an estimation. Nevertheless, an attempt must be made to determine damage and loss by an expert looking at all relevant factors and date.
33. Further, we are of the view that it would not be prudent to discard the Final Report prepared by CMFRI altogether. TISS may use the report to the extent it believes it can be of assistance. The ultimate discretion in this regard will of course rest with TISS.
34. There is one other aspect that we must touch upon. Pursuant to the directions contained in the Order dated 12th August 2021 of this Court, the Government of Maharashtra has passed a Government Resolution containing a State-wide Compensation Policy for Project Affected Fishermen. We are informed that this policy is the subject matter of a challenge in a writ petition pending before the Bombay High Court. TISS is at liberty to use the state-wide policy for

guidance, but should ultimately apply its own mind to the impact caused by TCB III in the same way that it has done in its report pertaining to the Coastal Road (South). We make it clear that we have not looked into the merits of this state-wide policy and therefore no observation in this Order should be taken as an observation in respect of that policy. The challenge to the policy in the pending writ petition will be entirely decided in that petition.

- 35.** In light of the above observations, we direct TISS to prepare a detailed report on the extent of damage and loss caused to the Project Affected Fishermen of TCB III and to recommend an amount towards the quantum of compensation payable to the said Project Affected Fishermen. Needless to add that TISS may recommend a range of compensation and the compensation may vary across different categories of Project Affected Fishermen as may be determined by TISS. It is clarified that TISS can interact with all/any of the persons involved to come to its findings. The costs which will be incurred by TISS are to be borne by Respondent No.8.

- 36.** This Report is to be submitted by 21st November 2025.

- 37.** List the matter on 28th November 2025 for further directions.
- 38.** This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]