

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

**(AFTER ORDER DATED 30TH JUNE, 2015, PASSED IN WRIT
PETITION NO.433 OF 2015)**

**MISC. APPLICATION NO.15 OF 2015
(ARISING OUT OF APPEAL NO.02 OF 2015)**

CORAM :

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A.DESHPANDE
(EXPERT MEMBER)**

In the matter of:

1. MR. ANTHONY MENDES

R/o, Tiracol village,
Tiracol, Pedem, Goa.

2. AGNEL GODINHO,

R/o, Tiracol village,
Tiracol, Pedem, Goa.

3. JUNE GODINHO,

R/o, Tiracol village,
Tiracol, Pedem, Goa.

4. GOA FOUNDATION,

A society registered under the
Societies Registration Act, 1960,

Through its Secretary, Dr. Claude Alvares,
Address Room-7, Above Mapusa Clinic,
Mapusa-403507, Goa.

APPELANTS

VERSUS

**1. MINISTRY OF ENVIRONMENT, FORESTS &
CLIMATE CHANGE,**

Through its Secretary, with address at:
Indira Paryavaran Bhavan, Jor Bagh Rd,
New Delhi 110 003.

2. GOA COASTAL ZONE MANAGEMENT AUTHORITY,

3rd Floor, Dempo Towers,
Patto, Panaji-Goa-403001.

**3. GOA STATE ENVIRONMENTAL IMPACT
ASSESSMENT AUTHORITY (SEIAA),**

Through its Member Secretary,
C/o Goa State Pollution Control Board,
Dempo Tower, Patto, Panaji, Goa.

**4. GOA STATE EXPERT APPRAISAL COMMITTEE
(SEAC),**

Through its Member Secretary,
C/o Goa State Pollution Control Board,
Dempo Tower, Patto, Panaji, Goa.

5. BIODIVERSITY MANAGEMENT COMMITTEE (BMC),

Through its Chairperson,
Village Querim,
Pednem, Goa.

6. STATE OF GOA,

Through its Chief Secretary,
Secretariat, Porvorim, Goa.

7. M/s LEADING HOTELS,

Having office at 573, Road-4,
La Campal, Miramar,
Panaji, Goa.

8. Forest Department,

Through PCCF,
Swami Vivekananda Marg,
Panaji-Goa.

.....**RESPONDENTS**

AND:

M/s LEADING HOTELS LTD,

Through its managing Director
Mr. Shiv Kumar Jatia,
Having Corporate Office at 573,
Road-Four, La Campal, Miramar,
Panaji, Goa.

(In MISC. APPLICATION No.15/2015)

APPLICANT

Orgn. R-7

Counsel for Applicant(s):

**Ms. Norma Alvares a/w Supriya Dangare, Mr. Jintendra P.
Suprekar Adv.**

Counsel for Respondent(s):

Mr. A.N.S. Nadkarni Advocate General a/w Mr. Dattaprasad Lawande, Mr. Nilesh Pail, Ms.P. Bhandari for Respondent Nos.2,3,4,5,6.

Mr. Venkatesh Dhond Sr. Advocate a/w Mr. Shivam Desari, Mr. Jitendra P. Supekar for Respondent No.7.

Mr. Ninad Laud a/w Mr Nitin Swant, Mr. Sanjay Malkarnekar Mr F.B.Bhaangi, Mr Rahul Garg, Mr Makarand Rodge, Advocates for Respondent No.8.

Date : SEPTEMBER 8th, 2015

ORDER

1

The Applicant -Original Respondent No.7 (Project Proponent), has raised certain preliminary objections by way of filing instant Application. The objections pertain to maintainability of the Appeal on following grounds:

- i) Appeal against Environmental Clearance (EC)/Approval dated 9th December, 2014, under the CRZ Notification granted to Project of Golf-Course facility and Hotel by name "M/s Leading Hotels Pvt. Ltd." , which is proposed to be constructed in Survey No.2 and 13 of Tiracol village, Pednem Taluka (North Goa), is not appealable being only an approval, which does not fall within list enumerated in Schedule-I, of the National Green Tribunal Act, 2010;

ii) Appeal challenging EC dated April 12th, 2013, is clearly barred by limitation under Section 16 of the NGT Act, 2010 and, therefore, falls outside the scope of Section 16 and that identical issue is agitated in PIL Writ Petition No.26 of 2014 before the Hon'ble High Court of Bombay at Goa and, as such, cannot be challenged in the Appeal, which is barred by limitation and is untenable.

iii) The Appellants cannot be termed as "aggrieved persons" and, as such, they have no '*locus-standi*' to prefer Appeal against the impugned approval of CRZ- Authority dated December 9th, 2014, or EC dated April 12th, 2013.

iv) The Appellants have tried to interlink the CRZ approval with prior EC dated April 12th, 2013 with ulterior motive on ground that the said EC was outcome of fraud, such kind of two issues cannot be entwined for hearing of the Appeal.

2. On basis of above noted preliminary objections, Project Proponent (PP), sought dismissal of the Appeal against both the orders, challenged in the Appeal. By order dated April 27th, 2015, we disallowed the preliminary objections after hearing learned Advocates for the parties in *extenso*.

3. The Project Proponent preferred to approach High Court of Bombay at Goa, by filing Writ Petition No.433 of 2015. The Hon'ble Division Bench, by order dated June 30th, 2015, came to the conclusion that "*it was*

necessary to give opportunity to both the parties to present their submissions on issue about merger of CRZ Clearance/Approval with EC” and observed that “the principles of natural justice require afresh hearing on the aspect of such doctrine of merger of permissions issued under the CRZ Notification and EC”. The High Court remitted the matter for re-hearing by this Tribunal only as regards question of merger of the permissions issued under the CRZ Notifications and EC. Needless to say, the scope of hearing now is restricted within ambit of only above mentioned issue.

4. Learned Counsel Norma Alvares, fairly stated that she would file separate Application under Section 14 or 15 of the NGT Act, 2010, as may be permissible under the Law, as far as EC dated April 12th, 2013, is concerned. She has placed on record a written ‘pursis’ in this behalf. Obviously, now there is no issue about merger of the EC orders dated April 12th, 2013 and December 9th, 2014.

5. In our opinion, the High Court narrowed down compass of the matter by making following observations:

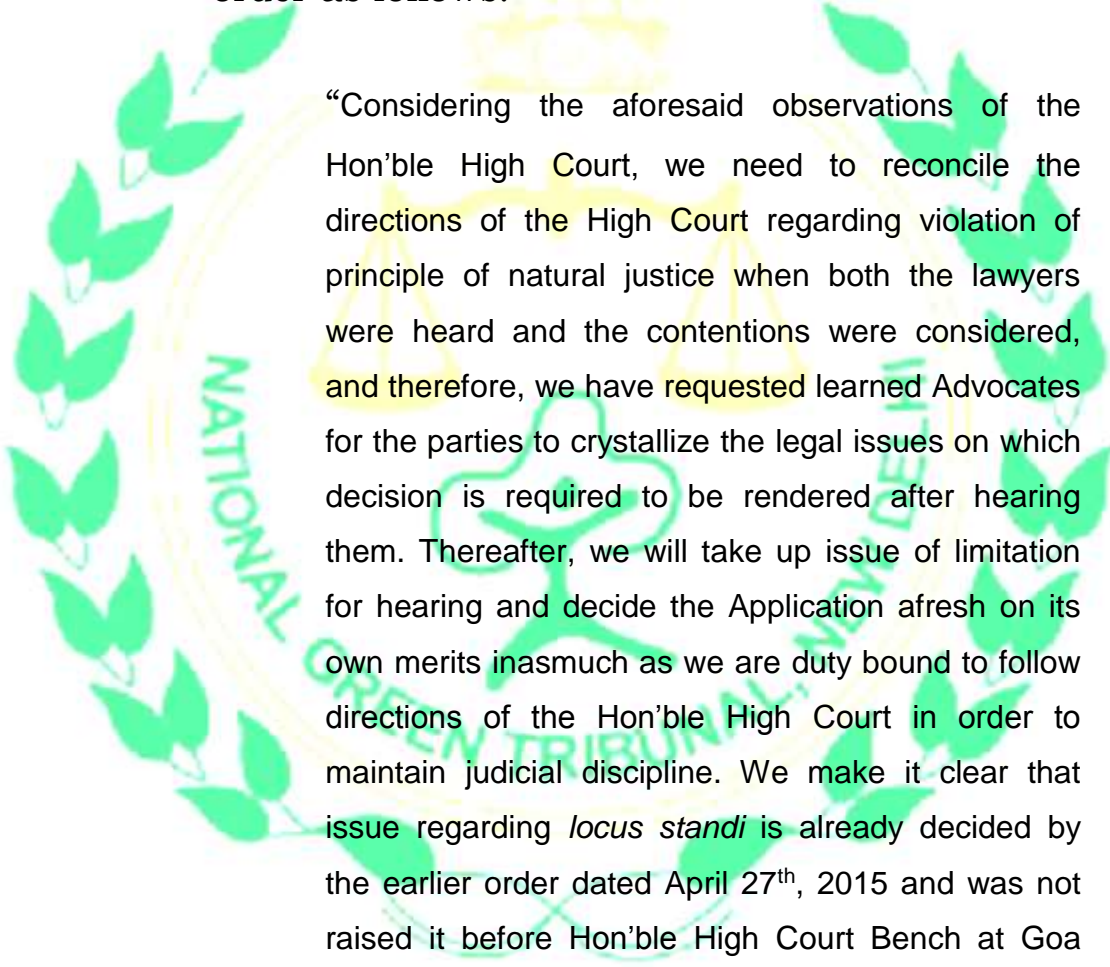
“We are only examining the rival contentions in the context of ascertaining whether the

procedure followed by the Tribunal whilst passing the impugned order is in breach of the principles of natural justice. It is not disputed by the Respondents No.1 to 4 that the petitioner had advanced submissions in support of their contention that the appeal itself is barred by limitation, on different counts as noted hereinabove in the submissions advanced by the learned Senior Counsel appearing for the petitioner. But, however, the decision on this aspect has not been rendered by the learned Tribunal whilst passing the impugned order. Besides that, the contentions of Ms. Alvares, learned Counsel appearing for the respondent No.4 that the permissions issued under the CRZ Notifications merge with the environment clearance, has also not been decided by the Tribunal. These aspects would be material to decide whether there is merit in the contention of the petitioner that the appeal itself is barred by limitation.....”

6. We may take note of the fact, therefore, that de-linking of the EC order dated 12th April, 2013 from scope of Appeal filed under Section 16 of the NGT Act, 2010, would obviously mean that this issue requires no specific determination, because that order is not under challenge any more, for the reasons that leave is granted to the Applicants to challenge the said EC, as provided under the Law, as may be permissible, if

so, applicants desire. Thus, only jurisdictional issue remains to be determined.

7. Even so, though above is the clear position, by order dated 24th July, 2015, in order to avoid confusion and to be more clear on the issues to be considered for decision making process in the context of Misc. Application No.15 of 2015, we passed specific order as follows:



“Considering the aforesaid observations of the Hon’ble High Court, we need to reconcile the directions of the High Court regarding violation of principle of natural justice when both the lawyers were heard and the contentions were considered, and therefore, we have requested learned Advocates for the parties to crystallize the legal issues on which decision is required to be rendered after hearing them. Thereafter, we will take up issue of limitation for hearing and decide the Application afresh on its own merits inasmuch as we are duty bound to follow directions of the Hon’ble High Court in order to maintain judicial discipline. We make it clear that issue regarding *locus standi* is already decided by the earlier order dated April 27th, 2015 and was not raised it before Hon’ble High Court Bench at Goa and therefore will not be reheard.

Learned Senior Council Mr. Dhond has agreed to frame the issues on which the common hearing is necessary and to follow the directions of the Hon’ble High Court of Bombay at Goa in context of objections of limitation and jurisdiction to which Ms. Norma Alvares also agreed. Both of them shall put the same on record during course of the day”.

By consent learned Senior Counsel Sh. Dhond and learned Advocate Ms. Norma Alvares, gave common issues required to be decided as per written submission dated 24th July, 2014. They agreed that only following issues are required to be decided.

1) Whether the Appeal challenging the prior Environmental Clearance order dated 12th April, 2013 is beyond the time prescribed under Section 16 of the National Green Tribunal Act, 2010 and cannot be entertained?

2) Whether this Honourable Tribunal has jurisdiction to entertain an Appeal challenging the CRZ Clearance order dated 9th December, 2014, having regards to the provisions of Section 16 of the National Green Tribunal Act, 2010 and cannot be entertained?

8. Chief objection, which needs to be dealt with is as to whether CRZ- Clearance order dated December 9th, 2014, is appealable under Section 16 of the NGT Act, 2010, or, that it is not an order against which Appeal is maintainable. Because CRZ Notification is

not specifically mentioned in Schedule-I, appended to NGT Act, 2010.

9. On behalf of Applicant (Project Proponent), learned Senior Counsel Mr. Dhond, invited our attention to Clause (2) of the CRZ Notification. He argued that purport of CRZ Notification is to impose restrictions on certain activities in particular areas and, therefore, directions can be given by CRZ Authority, but it does not amount to 'direction' under Section 5 of the Environment (Protection) Act, 1986. Therefore, such approval order given by the CRZ Authority, is not an appealable order.

10. Chapter-III of NGT Act, 2010, deals with jurisdiction, power and proceedings of the Tribunal. Section 16 of the NGT Act, 2010, to the extent it is relevant, may be reproduced as follows:

“16. Tribunal to have appellate jurisdiction.—any person aggrieved by,-

- (a) xxx xxx xxx xxx
- (b) xxx xxx xxx xxx
- (c) xxx xxx xxx xxx
- (d) xxx xxx xxx xxx
- (e) xxx xxx xxx xxx
- (f) xxx xxx xxx xxx

(g) any direction issued, made, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (20 of 1986);

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or processes under the Environment (Protection) Act, 1986 (20 of 1986).

(j) xxxx xxxx xxxx xxxx

may, within a period of thirty days from the date of which the order of decision or direction or determination is communicated to him prefer an appeal to the Tribunal:

(Emphasis supplied)

11. True, specifically the CRZ Notification, as such, is not enlisted in list of Schedule-I, appended to the NGT Act, 2010. The question is whether such Notification can be the subject matter of the Appeal/Application only because the CRZ Notification is excluded from such a list.

12. Learned Senior Advocate Sh. Dhond, would submit that grammatical interpretation, is necessarily

required to be followed in such a case. He argued that 'directions' which can be issued under Section 5 of the Environment (Protection) Act, 1986, can be challenged, but 'order' under the CRZ Notification does not take form of 'directions' under Section 5 of the Environment (Protection) Act, 2010, and, therefore, the impugned order falls outside pale of jurisdiction of the National Green Tribunal. He seeks to rely upon observations in the case of **Arun Kumar**

Aggarwal Vs. State of Madhya Pradesh & Ors

AIR 2011 SC 3056. The Apex Court observed:

"17. the meaning of expression "direction" has been discussed in Corpus Juris Secundum, Vol. 26A, at pg.955-956 at thus:

The word 'direction' is of common usage, and is defined as meaning the act of governing, ordering or ruling, the act of directing, authority to direct as circumstances may require; guidance; management; superintendence; "prescription" also a command, an instruction, an order, an order prescribed, either verbally or written, or indicated by acts; that which is imposed by directing a guiding or authoritative instruction as to method.

18. According to P. Ramanatha Aiyar, *Advanced Law Lexicon* (3rd ed.2005) the word 'Direction' means: address of letter, order or instruction as to what one has to do. A direction may serve to direct to places as well as to persons. Direction contains most of instruction in it and should be followed. It is necessary to direct those who are unable to act for themselves. Directions given to servants must be clear, simple and precise.

19. According to the *Words and Phrases, Permanent Edition, Vol.12A*, the term 'Direction' means a guiding or authoritative instruction, prescription, order, command.

20. To sum up, the direction issued by the Court is in the nature of a command or authoritative instruction which contemplates the performance of certain duty or act by a person upon whom it has been issued. The direction should be specific, simple, clear and just and proper depending upon the facts and circumstances of the case but it should not be vague or sweeping”.

13. He further relied upon **Competition of India vs Steel Authority of India Limited & Anr. (2010) 10 SCC 744.** The Apex Court observed:

103. *The expression “any person” appearing in Section 53-B of the Competition Act, 2002, has to be construed liberally as the provision first mentions specific government bodies, then local authorities and enterprises, which term, in any case, is of generic nature and then lastly mentions “any person”. Obviously, it is intended that expanded meaning be given to the term “person” i.e. persons or bodies who are entitled to appeal. The right of hearing is also available to the parties to appeal.*

107. *Regulations 24 to 26 define powers of the Commission to join or substitute parties in proceedings, permit person or enterprises to take part in proceedings and strike out unnecessary parties. Out of these provisions Regulation 25(1) has a distinct feature as it lays down the criteria which should be considered by the Commission while applying its mind in regard to application of a party for impleadment. The person or enterprise sought to be impleaded should have substantial interest in the outcome of the proceedings and/or that it is necessary in the public interest to allow such an application. In other words, amongst others, are the criteria which could be considered by the Commission. This principle would obviously stand extended for exercise of jurisdiction by the Tribunal. In our view, the Commission would have substantial interest in the outcome of the*

proceedings in most of the cases as not only would the judgments of the Tribunal be binding on it, but they would also provide guidelines for determining various matters of larger public interest and affect the economic policy of the country”.

14. Relying upon these authorities, it is argued that the CRZ Notification is outside the Jurisdictional domain of this Tribunal and the Applicants legally cannot file the main Application, inasmuch as they are not the persons having *substantial interest* in the outcome of the proceedings and serving of large public interest, as well as the CRZ Clearance order falls outside jurisdiction of the NGT.

15. We are afraid that both the above arguments are unacceptable in view of five (5) Members Bench Judgment of the Principle Bench of NGT in case of **Wilfred J. vs MoEF Vs.MoEF in M.A. No.182/2014 and MA No.239/2014 in Appeal No.14 of 2014, and MA No.277/2014 in O.A No. No.74 of 2014 and O.A.No.74 of 2014.** The Principle Bench of NGT, New Delhi, headed by **Hon^{ble} Sh. Justice Swatanter Kumar**, observed:

“An act of issuing a Notification is a part of a legislative action. The Notification issued by the Government or any competent authority in

exercise of its delegated powers can be judicially noticed. The Supreme Court in the case of State v. Gopal Singh on 21st September, 1956 Cri.L.J.621 held that "such a notification is a part of the law itself and, therefore, judicial notice of the notification can be taken." in exercise of the power of subordinate legislation when a regulation is made and is validly approved by the legislation, if so required. It becomes a part of the Act and should be read as such (Uttar Pradesh Power Corporation Ltd. V. NTPC, (2000) 6 SCC 235). The executive order may not be a law but a legislative order is part of the law ('Edward Mills Co. Ltd. V. State of Ajmer', (S) 1955 1 SCR 735).

16. Thus, when the CRZ Notification is issued by the Central Government, under Sub-section (1) of Clause (v) of Sub-section (2) of Section-3 of the Environment (Protection) Act, 1986, it is manifest that the Notification is outcome of delegated Legislation. The Regulations issued in exercise of powers under delegated Legislation, which comes within umbrella of the main enactment i.e. the Environment (Protection) Act, 1986, need not be

specifically mentioned in the List of Schedule-I appended to the NGT Act, 2010, for classification or clarification of jurisdiction available to the NGT. Otherwise, it will create more confusion instead of clear understanding of the scope of list enumerated in Schedule-I. Moreover, the issuance of CRZ Notification is to enact a specific regulatory mechanism. It is indeed a Legislative Act, in view of the fact that it is part and parcel of delegated legislation covered by umbrella legislation under the Environment (Protection) Act, 1986.

17. Apart from reasons stated above, it is important to note that GCZMA, is only Regulatory Authority under the CRZ Notification. For example; regulation 4(d) reads as follows:

4. Regulation of permissible activities in CRZ area.

(a) ***

(b) ***

(c) ***

“(d) Construction involving more than 20,000sq mtrs built up area in CRZ-II shall be considered in accordance with EIA Notification, 2006, however, for Projects less than 20,000sq. mtrs built-up area shall be approved by the

concerned State or Union Territory Planning authorities in accordance with this Notification after obtaining recommendations from the concerned CZMA and prior recommendations of the concern CZMA shall be essential for considering the grant of environmental clearance under EIA Notification,2006 or grant of Approval by the relevant planning authority”.

(Emphasis supplied)

18. The abovementioned provision makes it amply clear that it is *pari materia* with provisions of the EIA Notification dated 14th September, 2006, Schedule Entry Nos.8(a)-8(b). The EIA Notification 14th September, 2006, is issued by the MoEF in exercise of powers available under the Environment (Protection) Act, 1986. Obviously, the CRZ Regulations are also linked with EIA Notification, 2006 and are under umbrella of the Environment (Protection) Act, 1986, which is in the list of Schedule-I of the NGT Act, 2010. Secondly, if we will consider purport of Regulation 6 of the CRZ Notification, 2011, it is manifest that purpose of CRZ Notification is implementation and enforcement of provisions of the Environment (Protection) Act, 1986. For amplification of understanding, we may reproduce Regulation 6 (a) as stated above.

6. Enforcement of the CRZ, Notification, 2011.

(a) For the purpose of implementation and enforcement of the provisions of this Notification and compliance with conditions stipulated thereunder, the powers either original or delegated are available under Environment (Protection) Act, 1986 with the MOEF, (State Governments or the Union Territory Administrations) NCZMA and SCZMAs;

From above discussion the inescapable conclusion is that the EC condition of CRZ clearance merge with each other. This answers the issue referred back to this Tribunal by the High Court of Bombay at Goa

19. So far as question of “*locus standi*” is concerned, we think that the High Court has not directed this Tribunal to deal with such an issue. The Applicants can be permitted to ventilate substantial question relating to environment by filing such Application, because they fall within definition of “person” as covered under Section 2(i) (j) (v) of the NGT Act, 2010. In our opinion, “environment” is not property of any one individual and, therefore, degradation of environment can be brought to notice of the competent authority or Court or Tribunal, by such a group or individuals. We do not find any merit

in the contentions of learned Senior Counsel Mr. Dhond in this context and, as such, overrule the objections raised by him.

20. In the result, Misc. Application No.15 of 2015 is dismissed. Appeal No.2 of 2015, is, therefore, held as maintainable and will be heard on merits.

....., JM
(Justice V. R. Kingaonkar)

....., EM
(Dr.Ajay A. Deshpande)

DATE: SEPTMBER 8th, 2015.
PUNE.

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