

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

M.A.No.24/2014

M.A.No.165/2014

APPLICATION NO.03/2014

CORAM :

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

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

B E T W E E N:

ALEIXO ARNOLFO PEREIRA,

Indian Citizen, Major of Age,

Address: H.No.150, Utorda,

P.O. Malorda –Salcete

Goa.

....APPLICANT

A N D

1. STATE OF GOA

Through Director of Tourism

Department of Tourism,

Govt. of Goa,

Patto, Panaji, Goa.

2. MINISTRY OF ENVIRONMENT & FORESTS,

Through its Secretary,
Paryavaran Bhavan, C.G.O. Complex,
Lodhi Road, New Delhi-110 003.

3. THE MEMBER SECRETARY,

The Goa Coastal Zone Management Authority
(GCZMA) 3rd Floor, Dempo Towers,
Patto plaza,
Panjim- Goa.

4. M/s KHR HOSPITALITY INDIA LTD

Having office at Utorda,
Salcete-Goa
Through its Company Secretary,
Mr. Sudipta Nandi,
Son of SukmalNandi,
Aged 42 years, Married,
Indian National,
Having office at 1 & 2 Little Russel street,
Kolkata-700 071.

**5. ALL GOA PRIVATE PROPERTY SHACKS
AND HUTS OWNERS ASSOCIATION,**

A Society registered under the Societies
Registration Act, 1860, having its Office
At Cuba Head Office, C/o Old Atul Soda
Factory, Patnem Beach, Canacona, Goa
Through its authorized representative
Shri.Dharmesh Saglani, Major of age,
Indian National, r/o H.No.850, Gokulwadi,
Sankhali, Goa.

.....**RESPONDENTS**

Counsel for Applicant(s):

In person

Counsel for Respondent(s):

Mr. A.N.S.Nadkarni Advocate Genreal a/w Dattaprasad Lawande Advocate, Mr Pradosh Dangui Advocate, Purna M.Bhandari Advocate, F. M.Mesquita Advocate for Respondent Nos.1 to 5.

Mr.Shivam Desai Advocate a/w Supriya Dangare Advocate for Respondent No.4 (Applicant in M.A.No.24/2014).

Mr. Nitin Sardesai Senior Advocate a/w Aprameya Shivade Advocate for Respondent No.5 (Applicant in M.A.No.165/2014).

Date: 17th December, 2014

J U D G M E N T

1. Applicant, Aleixo Arnolfo Pereira filed this Application, mainly challenging permissions granted by Respondent No.1 i.e. the Directorate of Tourism, State of Goa and Respondent No.3, Goa Coastal Zone Management Authority (GCZMA), allowing raising of temporary beach shacks and temporary huts in private properties, around villages Mazorda and Utorda. For the sake of convenience, we will refer the Applicant as 'Aleixo'. Aleixo also prays for suspension of permission granted for temporary shacks and temporary huts in the private properties by the Respondent No.1, in CRZ areas, under the shack policy of State of Goa.

2. Briefly stated, case of Aleixo is that the “Tourism Policy for erection of temporary seasonal structures, beach shacks, huts and others 2013-2016,” in State of Goa, commonly known as ‘Shack Policy’, envisages granting of permission to the beach shacks and huts by the Tourism Department, which is in contravention to the CRZ Regulations, 2011. Aleixo submits that CRZ Notification 2011, empowers only GCZMA, to regulate permissible activities in CRZ areas. GCZMA needs to scrutinize and examine activities in the CRZ areas, as per Clause 4.2, of the CRZ Notification. Aleixo further alleges that under the disguise of shack policy, the Respondent No.1, has usurped powers of regulatory authorities available only under the CRZ Notification to grant permissions to the beach shacks and huts in CRZ areas. Aleixo states that as per Notification for constitution of GCZMA, GCZMA is required to regulate permissible activities as per approved Coastal Zone Management Plan (CZMP) by following due process, as per Rule 4.2 and after examination of the proposals recommend the proposals for approval of MoEF, as shacks/huts are not covered under the EIA Notification 2006. Aleixo further alleges that GCZMA, though is responsible for enforcement of CRZ Rules and also, to ensure that the coastal environment in the State is protected, GCZMA, has not properly examined and appraised the proposals on various grounds, like location of sand dunes, sewage disposal, solid waste disposal, density of shacks in a particular area etc.

3. The Respondent No.1 filed affidavit through Sh. Nikhil Desai, the directorate of Tourism and firstly pleads that the shack policy has been

evolved under the directions of Hon'ble High Court of Bombay at Goa and as per settled principle of law, formulation of policy is sole prerogative and function of executive authority of the State and the Court need not embark on adequacy or efficacy of such policy, as long as it falls within constitutional limitation and does not offend any provisions of Statute. The Respondent No.1 submits that similar issue was dealt in PIL Writ Petition No.330 of 2012, and Hon'ble Division Bench, has categorically held that "*erection of temporary structures between months of October to May, is permissible in view of CRZ Regulation, 2011*". The Respondent No.1 submits that other Writ Petition Nos. 9 of 2011 and 167 of 2007, also deal with the issue of shacks. The Respondent No.1 submits that shack policy has been framed only after approval from the Goa Coastal Management Authority (GCZMA) which is the concerned regulating and monitoring authority for coastal belt of the state. The Respondent No.1 further submits that this policy has been approved by the Hon'ble High Court of Bombay at Goa, in PIL No.9 of 2011, tagged with the Writ Petition No.167 of 2007 and High court has even given liberty to any citizen to challenge independently any provision of the policy or infringement of any individual rights and in view of aforesaid, judicial Dictum there are several Petitions filed before the Hon'ble High Court of Bombay at Goa, challenging the provisions of shack policy 2013-2016, which are pending for adjudication (Writ Petition No.606 of 2013, Writ Petition No.636 of 2013 and Writ Petition No.683 of 2013). The Respondent No.1 further submits that beach shacks and huts, are permissible

activity under the CRZ Notification, 2011, as per Clause 8.V.3.(iii) since “purely temporary seasonal structures customarily put up between the months of September to May, is a permissible activity except in the beaches, where tortoise nesting sites are located, as listed in Clause 8.V.3(vii)”. The Respondent No.1 further submits that the Respondents are vested with the powers under section 13(a) (5) of the Goa Registration of Tourists Trade Act, 1982 and Rules made thereunder and the state level permission committee decides on every such Application submitted for issue of permission and then recommends its findings for approval of the Govt. before any such permissions are granted. The Respondent No.1 further states that such permissions involving any erection of structures or development in CRZ areas or environmental issues, contained in CRZ Notification, are subject to approval by GCZMA and the individuals applying for such permissions need to get the approvals from GCZMA, independently, irrespective of such permissions being granted by the Respondent No.1 under Clause (C) of the shack policy. The Respondent No.1 therefore submits that shack policy is not violative of the CRZ notification and in any case, the Hon’ble High Court of Bombay at Goa, is seized with same issue involved in several Writ Petitions challenging the shack policy. Therefore, the Applicant is not entitled to challenge shack policy before this Tribunal. The Respondent No.1 further submits that as the shack policy is developed in consultation with GCZMA, claim of the Applicant –Aleixo that it is violative of CRZ Notification, cannot be sustained. Therefore, the Respondent No.1 sought dismissal of the Application.

4. The Respondent No.2, MoEF, has not filed any affidavit in the matter. The CRZ Notification is issued by the MoEF and the present Application raises certain important issues relating to interpretation of some rules and procedures and we record that submissions of MoEF, would have assisted the Tribunal and thrown light for arriving at judicial decision. We will deal with this in the final directions in due course when so needed.

5. The Respondent No.3 GCZMA, filed affidavit in reply through Sh. Srinet Kothwale, the Member Secretary on 23rd September, 2014, and resisted the Application. GCZMA submits that the shack policy was received from the Director of department of Tourism on 27.8.2013 and accordingly site inspection of various beach stretches were carried out by its Members and said shack policy was discussed in 90th Meeting of GCZMA on 7.9.2013, and only there-after necessary approval was accorded to the shack policy on certain conditions. Subsequently, another proposal was received from the department of Tourism for additional shacks and said proposal was examined that was refused, as decided in 97th Meeting of GCZMA, held on 9.1.2014. The Respondent No.3 GCZMA states that it has specifically received Application from a private shack i.e. M/s KHR Hospitality India P. Ltd (Respondent No.4), requesting for NOC and on due examination of site inspection, GCZMA has granted permission on 4.3.2014. However, another Application of Cosmos Premises (P)Ltd. was examined had been rejected on 20.2.2014. GCZMA further submits that they have received only two (2) Applications for beach shacks in private

properties and have dealt with them, as per the Law. GCZMA submits that it has formulated the guidelines for shacks as per the minutes of the sub-committee of GCZMA, held on 13.2.2014. It is further stated that the Coastal Zone Management Plan (CZMP), has been Notified by the MoeF in the year 1996 and the said plan is valid up to 31.1.2015. GCZMA states that in the said CZMP, the villages having sand dunes have been identified and in such villages only areas having presence of sand dunes have been classified as CRZ-I and rest of the areas are classified as per distance from HTL. GCZMA submits that on receipt of Applications from the interested Applicants, Expert Members of GCZMA, carry out site inspection, which includes examination about presence/absence of sand dunes. GCZMA further submits that it has sought proposal for NIO, Goa for preparation of CZMP as per CRZ 2011 Notification, which includes mapping of sand dunes and the said proposal is in the process of obtaining Govt. approval and funds for preparation of CZMP.

6. GCZMA has filed another affidavit on 21st October, 2014, and submits that all the activities proposed to be undertaken within 500m from HTL, would require prior NOC/Permission of GCZMA, which would also include temporary seasonal structures, such as shacks, whether on Govt. land or in private property. GCZMA, states that such NOC/Permission can be granted only if the proposal fulfills the criteria of guidelines attributed in 99th Meeting of GCZMA, after proper examination and verification.

7. GCZMA further submits that temporary seasonal structures in Goa, are permitted as exception to the main provisions of CRZ Notification and therefore, the procedure under Clause 4.2 of the Notification, would not be applicable for such temporary structures. GCZMA further submits that the Hon'ble High Court of Bombay at Goa, in PIL No.20 of 2012, vide order dated 20.12.2012, has clearly held that “ *GCZMA is entitled to permit erection of purely temporary structures between the months of September to May in CRZ-III, areas, subject to compliance of the said regulations.*” Therefore, GCZMA submits that any person/Applicant interested in erecting a temporary shack in the private property has to obtain necessary permission from GCZMA under the CRZ Notification, 2011.

8. The Respondent No.4, was allowed to intervene and is a temporary shack provider. The Respondent No.4, during pendency of the Application, has applied to the GCZMA for necessary permission and has obtained the same. It is now submission of the Respondent No.4 that they shall be allowed to operate the shack as they now have necessary permission under the CRZ Notification.

9. In view of above pleadings, the issues, which require determination, are as follows:

- i) Whether the shack policy can be challenged before the NGT and if yes, whether policy is complying with CRZ Notification, 2011?
- ii) Whether temporary seasonal structures in the CRZ areas require permission of GCZMA and if whether

present practice of granting NOC is as per CRZ Notificaiton,2011?

iii) Whether any specific directions are required to be given to the Authorities?

10. Admittedly, the shack policy was notified by Govt. of Goa in 2013, after obtaining necessary approval from GCZMA. The shack policy is for the period of 2013-2016 and identifies 240 locations in North Goa, and 104 locations in South Goa and lays down the terms and conditions for granting of licences for erection of temporary beach shacks on identified beach stretches. In par-A of the policy, it is clearly mentioned that “ license shall be granted for erection of temporary shacks on identified beach stretches after joint inspection to be carried out by the officials of this department along with officials of GCZMA.”

We have also perused submissions made by the Respondent Nos.1 and 3 and noted that this policy was evolved as per directions of the Hon'ble High Court in (PIL) Writ Petition No.9 of 2011 and in Writ Petition No.167 of 2007. The order of Hon'ble High Court dated 10th December, 2013, is quite elaborate and recognizes that such policy has been framed. Further the Hon'ble High Court also noted that as per Clause 8(v) 3(iii), as a special case temporary structures have been permitted in Goa CRZ. The Hon'ble High Court disposed of the Petition by granting liberty to any person to approach the Court, if it is found that policy is not being properly implemented or at any subsequent point of time, if any constitutional or statutory violations are found in the policy. The Respondent No.1 also submitted that this shack policy

is under challenge before the Hon'ble High Court, therefore, various Writ Petitions Nos. 606 of 2013; 603 of 2013 and 683 of 2013, are pending for adjudication. Under these circumstances, we find that the prayer relating to challenge to the shack policy in the present Application cannot be entertained by this Tribunal so as to avoid any possible conflict of judicial decisions.

11. Mr. Nitin Sardesai, learned Senior Counsel, appearing for other private shack owners argued that seasonal temporary structures, are allowed in the coastal areas of Goa by specific exemption given under Clause (8) of the CRZ Notification, 2011 and it is settled legal proposition that exemption if given separately need not be bound by earlier prescribed provisions of the said Regulations. He would, therefore, submit that the procedure as envisaged in Clause 4.2 for regularizing permissible activity will not be applicable in the instant case. He would also submit that as per Clause 5(x) and Clause 6(a), the State Govt. is empowered to regulate and enforce CRZ Notification and the State Govt. has formulated the shack policy in consultation and approval from GCZMA and therefore, the State Govt. is within its legal rights, if such limited regulation of shacks is done through the Tourism Department, which is also an organ of the State Govt.

12. Aleixo argued in person and pleads that though the CRZ Notification, 2011, allows purely temporary and seasonal structures in CRZ areas of Goa, these activities need to be regulated as per Clause 4, related to regulation of permissible activities in CRZ area. It is his contention that as per Clause 4.2 (ii) such proposal needs to be

examined by GCZMA, as per the procedure laid down in Clause 4.2 and subsequently, ought to be sent with recommendation to the MoEF, as these projects are not covered under EIA Notification. The Respondent No.3, has taken a separate view and argued that the CRZ Notification, 2011 has carved out certain relaxation/exception for the areas requiring special consideration as in Clause 8(3)(v) and therefore, such exceptions cannot and need not be regulated as per procedure laid down in Clause 4.2. It is contention of the Respondent No.3, that GCZMA is competent to regulate authority in CRZ areas as per approved CZMP and therefore, GCZMA is competent to give permissions for such temporary structures in CRZ areas. GCZMA further submits that they have formulated appropriate guidelines to ensure that such proposals are objectively evaluated before granting them permission so as to ensure that the coastal environment is adequately protected.

13. In view of above contrary stands taken, we would like to refer certain clauses of CRZ Notification. Clause 4 of the CRZ Notification, 2011 stipulates regulation of permissible activities in CRZ area. Clause 4.2 lays down procedure for clearance of permissible activities. Clause 5.5(x) stipulates that all developmental activities listed in this Notification, shall be regulated by the State Govt. Union Territories or the concerned CZMA, within the framework of such approved CZMPs as the case may be, in accordance with the provision of this Notification. Clause 6 of the Notification relates to the enforcement of CRZ Notification, wherein MoEF, State Govt. or Union Territory

Administration, MCZMA and SCZMA, have powers either original or delegated, as available under the Environment (Protection) Act, 1986. Clause 6.6 (c) also specifies that State Govt. or Union Territory, CZMPs shall be primarily responsible for enforcement and monitoring of this Notification. The above referred Sub-Clause also envisages the district level Committees under the chairman of the district Magistrate to assist in this task. In view of such overlapping provisions in the CRZ Notification, the question which is to be resolved is who is the Authority to regulate and grant permission for such temporary seasonal structures in CRZ areas? This particular aspect has already been dealt with by Hon'ble High Court of Bombay at Goa, in the (PIL) Writ Petition No.30 of 2012, decided on 28th December, 2012 and relevant paras are reproduced below:

“Mr.Ferreira, learned Assistant Solicitor General appearing for respondent no.5 has also submitted that in terms of Coastal Regulation Zone,2011, purely temporary structures are permissible in CRZ-III. Having regard to the order dated 01/05/2007 and also CRZ of Goa referred to in the Coastal Regulation Zone, 2011, we are of the considered opinion that the GCZMA is entitled to permit erection of purely temporary structures between Septembers to May months in CRZ-III subject to compliance of the said regulations. However, it is for the GCZMA to ensure that all the provisions of Coastal Regulation Zone, 2011 are complied with before any permission is granted to erect purely temporary structures in CRZ-III. Therefore, we do not find merit in the first submission made by the petitioner. However, we find merit in the

submission of the petitioner that in view of the order dated 09/04/2010 issued by Central Government it is only GCZMA which has power to issue permissions under Environment Protection Act.”

14. Now, question arises whether such directions of the Hon’ble High Court have been complied by the responsible authorities. We have gone through a copy of permission granted by the Respondent No.1, Tourism department of Lindon Alves M/s Sunset Gateways on 29.11.2013, which is filed on record (P-148). The condition No.9 of the said permission is as under:

“9) The organizers shall abide by all the orders passed by the Hon. High Court of Bombay at Goa in various Writ petitions in this behalf and the regulations as specified by the GCZMA in the CRZ -2011 notifications from time to time. In case the event structures/site falls within the CRZ area, it shall be the responsibility of the organizer to obtain necessary clearances from CRZ and Environmental point of view from the GCZMA”.

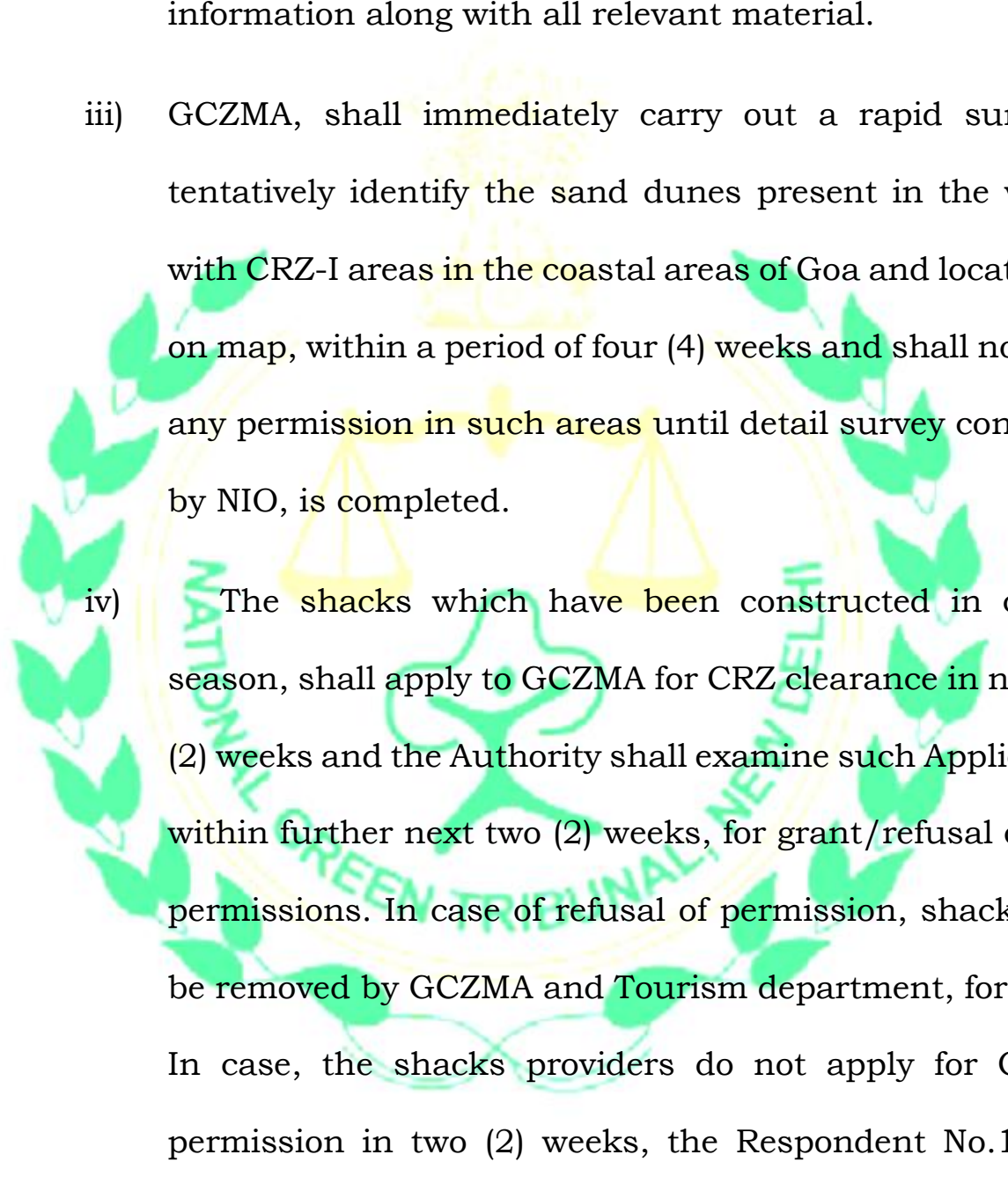
15. Needless to say, therefore that the Hon’ble High Court of Bombay at Goa has already settled this issue, and Respondent 1 and 3 have also agreed on the requirement of specific permission under CRZ notification for such temporary seasonal structures in their affidavits. And therefore, the Issue- I and II are answered accordingly.

16. It is alleged by Aleixo that there are innumerable shacks, which are being erected in CRZ areas of Goa and they do not have necessary permissions under the CRZ Notification. We had directed GCZMA to place on record information about such permissions sought and

granted by GCZMA and it is submitted by GCZMA that only two (2) Applications were received for construction of shacks of which, one was granted permission and other was refused. We are surprised with such submission and information provided by GCZMA. This information submitted by GCZMA clearly supports the allegations made by Aleixo that those temporary seasonal structures like shacks are being developed in CRZ areas without permission of GCZMA, though such specific directions are issued by the Hon'ble High Court and such condition has been laid down by the Respondent No.1, in its permission given to various proposals. Undoubtedly, such unauthorized shacks from CRZ point of view, are not properly regulated and pose a threat to the coastal environment.

17. In view of above discussion, we are of the opinion that certain directions are required to be given to regulate such seasonal temporary structures in sustainable manner without affecting the pristine coastal environment of Goa, on basis of the principles of Precautionary principle as mandated under Section 19 and 20 of NGT Act, 2010. The Application is accordingly partly allowed with following directions:

- i) The seasonal temporary structures, as permitted under the CRZ Notification, shall be regulated by GCZMA by granting necessary permissions, incorporating details of the project, specific and general terms and conditions; and environmental safeguards in a comprehensive manner, subject to compliance of the guidelines formulated by GCZMA and other provisions of CRZ Notification.

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- ii) GCZMA, shall put all the permissions granted to the shacks and other temporary structures on its website immediately within two (2) days from the date of issuance of permission for public information. The guidelines developed by GCZMA shall also be put on the website for public information along with all relevant material.
- iii) GCZMA, shall immediately carry out a rapid survey to tentatively identify the sand dunes present in the villages with CRZ-I areas in the coastal areas of Goa and locate them on map, within a period of four (4) weeks and shall not issue any permission in such areas until detail survey conducted by NIO, is completed.
- iv) The shacks which have been constructed in current season, shall apply to GCZMA for CRZ clearance in next two (2) weeks and the Authority shall examine such Applications within further next two (2) weeks, for grant/refusal of such permissions. In case of refusal of permission, shacks shall be removed by GCZMA and Tourism department, forthwith. In case, the shacks providers do not apply for GCZMA permission in two (2) weeks, the Respondent No.1, shall revoke their permission and GCZMA, shall issue necessary directions for dismantling of the shacks. GCZMA and Respondent-1 shall immediately give public notice clearly mentioning the directions of Tribunal in this regard.

- v) GCZMA, shall carry out study to assess the carrying capacity of different beaches in State of Goa, for providing such shacks and other temporary structures, in environmentally sustainable manner to protect the coastal environment, based on the 'precautionary principle' in next six (6) months and based on findings of this study, the permissions for the year 2015-2016, only shall be granted.
- vi) MoEF shall cause inspection of compliance of these directions in first week of February and submit a detailed report before the scheduled date.

18. The Application No. 03/2014 along with all the Misc Applications are accordingly disposed of. No costs.

19. In view of above time-bound directions the Application is listed for compliance/directions on **14/2/2015**.

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

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

Date: 17th December, 2014