

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

I.A. No. 83 of 2022
IN
APPEAL No. 12 of 2023

IN THE MATTER OF:

CHANDAN SURYAKANT KHORJUVEKAR ...APPELLANT

VERSUS

GOA COASTAL ZONE MANAGEMENT

AUTHORITY & OTHERS

...RESPONDENTS

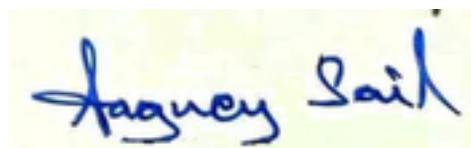
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NEXT DATE - 31.03.2023

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APPELLANT

THROUGH



**AAGNEY SAIL & GAURESH MALIK
ADVOCATES FOR THE APPELLANT**

4th Floor, Office No.401, Edcon Incrocio,
Opp. Don Bosco High School,
Panaji, Goa 403001.

Ph. +91.9810076618, 08329285339

Email: aagneysail@gmail.com,
gaureshmalik6@gmail.com

Filed on: 31.03.23

Place: Goa

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ADDITIONAL AFFIDAVIT OF APPELLANT

MOST RESPECTFULLY SHOWETH:

1. That the Appellant has filed the present Condonation of Delay application which is pending adjudication. The contents of the said Appeal and the Condonation of Delay Application are not being repeated herein for the sake of brevity and the Appellant craves leave of this Hon'ble Tribunal to refer and rely on the same at the time of hearing of the present Application.

NON-COMMUNICATION OF IMPUGNED DECISION:

2. That it is pertinent to mention that the corrigendum/addendum dated 18.11.2022 was not communicated by GCZMA to the Appellant, who is the affected party being the complainant. It is submitted that this is in direct violation of Section 16 of the NGT Act, 2010 which specifically provides that the order/decision/direction/determination should be communicated to the person aggrieved. In addition, it is submitted that as it has been held recently by this Hon'ble Tribunal in *Jose Fernandes &*

Anr. V. GCZMA & Ors. (Order dated 23.01.2023 in Appeal No. 42/2022(WZ)) that an order of withdrawal/discharge or decision to drop the proceedings is covered as a "direction" issued under Section 5 of the Environment (Protection) Act, 1986 ('EP Act, 1986' for short). Further, its non-communication is also a direct violation of Section 5 of the EP Act, 1986 read with Rule 4 of the Environment (Protection) Rules, 1986 ('EP Rules, 1986' for short) which mandatorily require due service of the direction through registered post, dasti, affixation etc. (refer Rule 4(6) of EP Rules, 1986).

3. That, in the present case, the postal address of the Appellant was known to the GCZMA and the Appellant was served with the copy of the Show-Cause notice dated 18.10.2022 (ANNEXURE-A6, pg. 62-65 of the Appeal) issued by GCZMA. Hence, it is submitted that as GCZMA failed to discharge its statutory obligation of communicating its order to the opposite party (Appellant herein), the limitation period cannot be reckoned and the bar of limitation does not apply (*Padmabati Mohapatra v. UOI & Ors.* 2013 SCC Online NGT 98, paras 20-21). Reliance is placed on interpretation of the words '*is communicated to him*' as given by this Hon'ble Tribunal in '*Save Mon Region Federation v. Union of India*' [2013 (1) All India NGT Reporter Page 1 – refer paras 16, 17 & 18] wherein it has been held that the expression '*is communicated to him*' would invite strict construction meaning that it is expected

that the order which a person intends to challenge is communicated to him, if not in personam than in rem by placing it in the public domain. In the present case as the person aggrieved is the Appellant who was the complainant before the GCZMA and whose postal address was known to GCZMA the impugned corrigendum which amounts to a direction issued U/s 5 of EP Act, 1986 should have been served as provided U/r 4 of EP Rules, 1986.

4. That it is submitted that the impugned corrigendum dated 18.11.2022 was communicated vide email dated 05.01.2023 sent by counsel of GCZMA to the Appellant's counsel. The impugned corrigendum dated 18.11.2022 was annexed as a relevant document to the additional affidavit of GCZMA dated 05.01.2023 filed in O.A. No. 70/2022(WZ). It is pertinent to mention that the Appellant for the first time got knowledge of the impugned corrigendum dated 18.11.2022 from this email dated 05.01.2023. A true and correct copy of the email dated 05.01.2023 sent to counsel of Appellant communicating the impugned corrigendum is hereto marked and annexed as **ANNEXURE – IA1**.

NON-AVAILABILITY OF DATE OF PUBLICATION OF IMPUGNED CORRIGENDUM/ADDENDUM ON GCZMA WEBSITE:

5. That without prejudice to the above contention, it is submitted that as the term of three years of the GCZMA came to an end on 31.10.2022 and it got constituted on 27.12.2022, the Appellant had no reason to check the website of GCZMA for any

corrigendum/addendum to the minutes of the 326th meeting. Moreover, the very nature of the corrigendum/addendum is such that it completely changes the basis for the decision taken on 27.10.2022 and hence, warrants service of impugned corrigendum dated 18.11.2022 on Appellant. Hence, GCZMA ought to have served the impugned corrigendum dated 18.11.2022 on the Appellant or should have intimated him about publication of the same on its website.

6. That, to the best of the knowledge of the Appellant, it is submitted that the said impugned corrigendum dated 18.11.2022 was not published on the official website of GCZMA till after 27.12.2022 i.e. after GCZMA got constituted, Members took charge and became functional. A true and correct copy of the MoEF&CC notification dated 27.12.2022 constituting the GCZMA is ANNEXURE-A9 (refer pg. 81-83 of Appeal).

7. That, it is submitted that there is no information regarding date of creation / modification of the Portable Document File (PDF) which contains the scanned signed copy of the impugned corrigendum dated 18.11.2022 which is available on the GCZMA website. As the website of GCZMA is being maintained and developed by National Informatics Centre, Goa they (NIC-Goa) should be directed to submit an affidavit stating the date of upload and the date of publication on the GCZMA website of the pdf file containing the

impugned corrigendum dated 18.11.2022 and that the said file was available uninterruptedly for downloading from the date of its publication. NIC-Goa should also be directed to submit the system logs of the GCZMA website showing uploading and publication of the said pdf file, soft copy (in a compact disc) of the said pdf file with meta data intact, complete email trail (with headers) of receipt of this file from GCZMA with email content/attachments. Simultaneously, GCMZA should also be directed to file the soft copy of the soft copy (in a compact disc) of the said pdf file with meta data intact, complete email trail (with headers) of sending of this file to NIC-Goa with email content/attachments for uploading. This will facilitate fair and just adjudication of the issue regarding date of publication of the impugned corrigendum dated 18.11.2022 on the website of GCZMA.

8. That it is pertinent to mention that the decision taken during the 236th GCZMA meeting held on 27.10.2022 was not immediately challenged by the Appellant as it was based solely on the order dated 20.10.2022 passed by this Hon'ble Tribunal in O.A. No. 70/2022(WZ) which was misunderstood / wrongly interpreted by GCZMA to mean that this Hon'ble Tribunal had discharged the proceedings against Respondent No. 2 (herein). The said misunderstanding / wrong interpretation of order dated 20.10.2022 was pointed out by Appellant in his Rejoinder dated 16.11.2022 in O.A. No. 70/2022(WZ) (ANNEXURE-A10 pg. 84-94

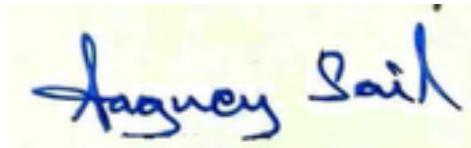
of Appeal) and also by the Respondent No. 2 in its reply dated 17.11.2022. On this aspect, arguments were heard and this Hon'ble Tribunal had observed on 18.11.2022 during the hearing of O.A. No. 70/2022 that,

“3. Since M/s Lucky Realtech Pvt. Ltd. has been exonerated as the proceeding against it has been dropped, the final order would be passed on merits only after taking into consideration the details reply of respondent no. 1 – GCZMA. ...”

True and correct copy of the order dated 18.11.2022 passed in O.A. No. 70/2022(WZ) is ANNEXURE-A11 (Pg. 95-99). Hence, considering the proceedings / order passed on 18.11.2022 in O.A. No. 70/2022(WZ) and the pending correction of impugned decision dated 27.10.2022 sought by Respondent No. 2, the Appellant did not immediately file Appeal challenging the decision of the GCZMA taken on 27.10.2022 during its 326th meeting. It is only after service of the impugned corrigendum dated 18.11.2022 and the proceedings of O.A. No. 70/2022 (WZ) held on 27.02.2023 that the Appellant got clarity and decided to challenge the impugned decision / corrigendum. True and correct copy of the letter dated 11.11.2022 written by Respondent No. 2 (herein) through their counsel to GCZMA seeking correction of the minutes of 326th meeting which was filed along with their Reply dated 17.11.2022 is hereto marked and annexed as **ANNEXURE –IA2**.

9. That reliance is placed on various judgments of this Hon'ble Tribunal and of the Supreme Court of India that have laid down the law that (a) the period of delay must be construed liberally and if found to be not deliberate or wilful, the Court may condone it (Jaya Mathachan v. MoEF&CC 2021 SCC Online NGT 1024 – para 18 & 19), (b) Approach of the Tribunal should be liberal and not hyper-technical (Dyaneshwar Vishnu Shegde v. UOI 212 SCC Online NGT 80 – para 10 to 15). That in light of the above it is submitted that the date of communication of the impugned corrigendum dated 18.11.2022 should be taken as 05.01.2023 and the delay of 37 days in filing the present Appeal be condoned.

APPELLANT
THROUGH



AAGNEY SAIL & GAURESH MALIK
ADVOCATES FOR THE APPELLANT

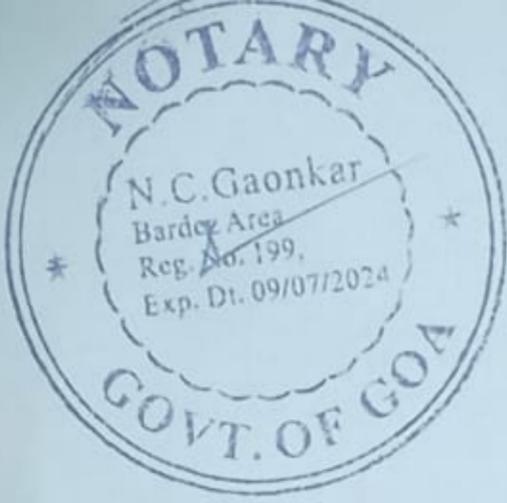
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Ph. +91.9810076618, 08329285339

Email: aagneysail@gmail.com, gaureshmalik6@gmail.com

Filed on: 31.03.2023

Place: Goa



**BEFORE THE NATIONAL GREEN TRIBUNAL
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I.A. No. _____ of 2023

IN

APPEAL No. _____ of 2023

IN THE MATTER OF:

CHANDAN SURYAKANT KHORJUVEKAR ...APPELLANT

VERSUS

GOA COASTAL ZONE MANAGEMENT

AUTHORITY & OTHERS

...RESPONDENTS

AFFIDAVIT

I, Chandan Suryakant Khorjuvekar, S/o Late Shri Suryakant Khorjuvekar aged about 49 years, R/o H.No. 98/9, Bandirwaddo, Anjuna, Bardez, Goa - 403517, do hereby solemnly state and affirm that:

1. That I am the Appellant in the above mentioned Appeal and I am aware of the facts of the present case and as such am competent to swear this affidavit.
2. That I have read and understood the accompanying Application for condonation of delay which has been drafted on my instructions and the contents of which are true to my knowledge and have been read and explained to me in the vernacular.

DEPONENT

VERIFICATION:

Verified that the contents of paras 1 to 2 of my above affidavit are true to my knowledge and its content is read and explained to me in the vernacular, no part of it is false and nothing material has been concealed therefrom.

Verified on 29th day of March, 2023 at Mapusa, Goa.

DEPONENT

Solemnly affirmed
Before me

536463863355

N. C. Gaonkar
Advocate & Notary
Mapusa Bardez - Goa
Sr. No. 10480/23

29 MAR 2023



ANNEXURE - IA1

29/03/2023, 13:20

Gmail - OA No. 70/2022 [Chandan Khorjuvekar v. GCZMA and Ors.] - Service of Additional Affidavit including objections to IA 202/2022



Aagney Sail <aagneysail@gmail.com>

OA No. 70/2022 [Chandan Khorjuvekar v. GCZMA and Ors.] - Service of Additional Affidavit including objections to IA 202/2022

Abhay Anturkar <anturkarandassociates@gmail.com>

Thu, Jan 5, 2023 at 6:57 PM

To: aagneysail@gmail.com, nadkarnigauravvardhan@gmail.com, gaureshmalik6@gmail.com, gm@maargitbeachresortgoa.com, Maargitbeachresortgoa@gmail.com

Dear Sir,

Please find attached the Additional Affidavit being filed on behalf of the Respondent No. 1 GCZMA in the above-captioned case.

Regards,

--

Abhay Anturkar**Advocate****Supreme Court of India****New Delhi:**LGF, E - 1, Jangpura Extn.,
New Delhi 110 014.[+91 9923354883](tel:+919923354883)**Mumbai:**93, Engineer's
Premises. Mumbai
Samachar
Marg, Fort, Mumbai 400
023.[\(022\) 22626433](tel:(022)22626433)**Pune:**Shree Radheya Apartments.
44, United Western Society.
Karve Nagar,
Pune 411 052[\(020\) 25412503](tel:(020)25412503)

 **Additional Affidavit_GCZMA.pdf**
16448K

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ANNEXURE - IA2

209

"EXHIBIT H"

J/C

11 November, 2022

To,
Goa Coastal Zone Management Authority,
Patto,
Panaji,
Goa

Divisional Secretary *Perk* 11/11/22
Goa Coastal Zone Management Authority
C/o Department of Environment & Climate Change
Dempo Road, Patto
Panaji - 403001

Ref: GCZMA/Telle Compl/22-23/75/1549 dated 18/10/2022

Sub: Correction of the Minutes of the Meeting dated 27/10/2022 in GCZMA/Telle Compl/22-23/75/1549 dated 18/10/2022, Chandrakant Khorjuvekar Vs M/s Lucky Realtech

Respected Person Concerned,

The undersigned has made this application speaking to the Minutes of the 326th meeting dated 27/10/2022. That in the said minutes in Case No. 1.2, it is mistakenly recorded that Lucky Realtech has been discharged from the matter before the Hon'ble NGT, while the submission made by the undersigned was that no interim order was passed by the Hon'ble NGT against Lucky Realtech on account of no violation in terms

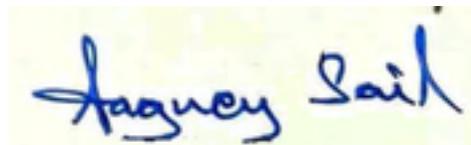
of the inspection report of this Authority, which is evident from the order dated 20/10/2022 placed on record by the undersigned before the Authority.

The Application is made in urgency for correction of the minutes and it is requested that the same may be made at the earliest, since the minutes need to be placed before the Hon'ble NGT.

Yours Sincerely,



Adv. Gauravvardhan A.S. Nadkarni



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Item No. 7

(Pune Bench)

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

(By Video Conferencing)

Original Application No. 70/2022 (WZ)

Chandan Suryakant Khorjuvekar

.....Applicant

Versus

GCZMA & Ors.

....Respondent(s)

Date of hearing: 27.02.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Aagney Sail, Advocate

Respondent(s) : Mr. Abhay Anturkar, Advocate for R-1/GCZMA &
R-2/Goa Forest Department

Mr. Gauranvardhan, Advocate for R-4/PP

Mr. Aprameya Shivade, Advocate for R-5 & 6

Mr. Pankaj P. Vernekar along-with Mr. Shivshankar

Swaminathan, Advocates for R-8

ORDER

1. From the side of Applicant, learned Counsel Mr. Aagney Sail has appeared.

2. From the side of Respondent No. 1/GCZMA and Respondent No. 2/Goa Forest Department, learned Counsel Mr. Abhay Anturkar has appeared and pointed that site inspection report has been filed by the Respondent No. 1/GCZMA, where-in they have clearly indicated that all the Survey Numbers which are subject matter of this application, are found to fall either within 200 mtrs. from HTL or within 200-500 mtrs. from HTL in CRZ-III, therefore, they all are illegal structures and yet they have discharged the Respondent No. 4/Project Proponent, although the

learned Counsel for the Respondent No. 1/GCZMA says that this report is not with respect to Respondent No. 4-M/s. Lucky Realtech Pvt. Ltd.

3. Thereafter, the learned Counsel for the Applicant has drawn our attention to the Site Inspection Report of the GCZMA dated 30.08.2022 at page nos. 264-265 of the paper book, where-in in para no. 10, it is recorded that the plinths are of laterite masonry with thin layer (about 7 cm thick) PCC (at plinth level) is found to be there in case of Respondent No. 4 and yet he has been discharged but the learned Counsel admitted that the said order now discharging the Respondent No. 4 is appealable order against which he would file a separate appeal.

4. The learned Counsel for the Respondent No. 1/GCZMA states that against Respondent No. 5/Pankaj Chopra, Respondent No. 6/Mrs. Goldy Chopra and Respondent No. 7/Mr. Satyam Thakral, hearing is already going on which is to be conducted on 09.03.2023 and that Respondent No. 8, which has appeared today, against that also the hearing would be done on the same date by it. Therefore, he has suggested that this application be disposed of with a direction to the GCZMA to take a decision in respect of the Respondent Nos. 5 to 8 and thereafter, if any of them feels aggrieved by their order/decision, they may approach this Tribunal by way of filing an appeal. This argument is being vehemently opposed by the learned Counsel for the Applicant saying that there are various other prayers also made in the present application, particularly, he has drawn our attention to prayer no. B, which relates to direction to the Goa Forest Department to submit a report demarcating the NO-TAKE Zone of Mandrem Beach and also a direction to be issued to GCZMA to make available on its website all the consents/approvals (including conditions) granted by it regarding shacks/huts/tents/cottages and events in private lands in the entire State of Goa. Therefore, he says that

simply taking into consideration the allegations which are levelled by the Applicant against the Respondent Nos. 5 to 8 would not be sufficient.

5. At this stage, we made a query to the learned Counsel for the GCZMA as to whether he has submitted any reply in respect to the above-mentioned reliefs, which are now been pointed out, he has admitted that he has not filed reply affidavit so far. Therefore, we direct him to file full-fledged reply affidavit within a period of two weeks and no more.

6. From the side of Respondent No. 8/Mr. Rajendra Kumar Kamra, learned Counsel Mr. Pankaj P. Vernekar along-with learned Counsel Mr. Shivshankar Swaminathan have appeared and apprised that against him, the service has been held to be sufficient by the order of this Tribunal dated 09.01.2023, but there was no service effected upon the Respondent No. 8 and that he came to know about the present proceedings through his neighbor, therefore, he has appeared today. Without verifying the facts in this regard, we deem it appropriate to direct the Applicant to provide a copy of the application along-with all the relevant documents to the Respondent No. 8 today itself and within two weeks thereafter, the Respondent No. 8 shall file the reply affidavit and within one week thereafter, rejoinder, if any, may also be filed by the learned Counsel for the Applicant.

7. From the side of Respondent No. 5/Pankaj Chopra and for Respondent No. 6/Mrs. Goldy Chopra, learned Counsel Mr. Aprameya Shivade has appeared on behalf of learned Counsel Mr. Nalini Mulegaonkar, who is not present today and has apprised us that he has also not got the copy of the rejoinder as well as the reply affidavit of the GCZMA. Therefore, we direct the learned Counsel for the Applicant as well as GCZMA to provide a copy of the same to the learned Counsel for

the Respondent Nos. 5 & 6 today itself and within two weeks thereafter, he may file rebuttal, if so required.

8. In view of above, we direct the Registry to place this matter on 21.04.2023 and in the meantime, if the GCZMA completes the proceedings against the Respondent Nos. 5 to 8, the latest position shall be brought on record by them before us.

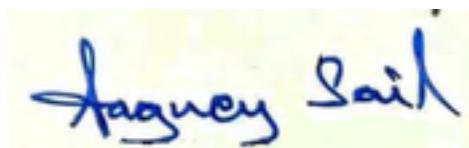
9. Today, the learned Counsel for the GCZMA has stated that he is also representing Goa Forest Department, therefore, we direct him to file the reply affidavit on behalf of Respondent No. 2 as well, within a period of two weeks.

10. The parties shall have exchanged the pleadings among themselves before the next date so that no adjournment would be needed.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

February 27, 2023
Original Application No. 70/2022 (WZ)
P.Kr

A handwritten signature in blue ink on a yellow background. The signature reads "Jagney Sain".

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