

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

APPEAL NO. 430/2025 (WZ)

COLVA CIVIC AND CONSUMER FORUM

....APPELLANT

Versus

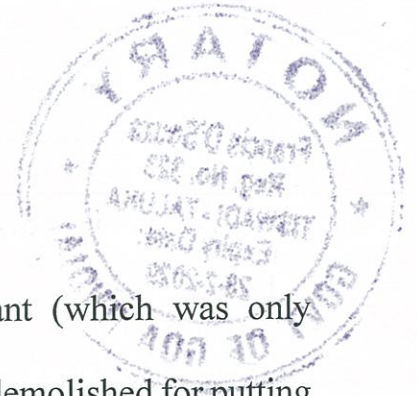
THE GOA COASTAL ZONE MANAGEMENT  
AUTHORITY AND ORS

...RESPONDENTS

**PRELIMINARY REPLY ON BEHALF OF THE  
RESPONDENT NO. 3**

**MAY IT PLEASE YOUR HONOUR**

1. The respondent No. 3 (“answering respondent”) is filing the present preliminary reply for opposing admission and/or grant of any interim relief in the matter. The answering respondent craves leave to file detailed reply in the matter, if need arises.
  
2. At the outset, the answering respondent states that present Appeal is abuse of process of law inasmuch as the Respondent No.3 is being harassed by Appellant for extraneous reasons in guise of environment protection. The answering respondent states that in earlier round of



litigation, the answering respondent's restaurant (which was only source of livelihood, was directed to be and was demolished for putting up the same without permissions). Now when the answering respondent is in process of erecting temporary structure for restaurant by taking necessary permission, the same is sought to be obstructed by filling frivolous proceedings like the present Appeal.

3. The answering respondent states that present Appeal is liable to be dismissed for suppression of material information/ documents and on this ground alone the Appeal is liable to be dismissed.
4. At the further outset, it is stated that the captioned Appeal is not maintainable in law under Section 16 of the NGT Act.
5. The answering respondent states that present Appeal filed under Section 16 of the NGT Act, 2010 is not maintainable inasmuch as there is no 'direction' under challenge in the present Appeal. Consequently, the present Appeal filed under section 16 of the NGT Act, 2010 is not



maintainable. Admittedly, as pleaded by the Appellant himself, the present Appeal challenges 'permission' granted by the Goa Coastal Zone Management Authority (GCZMA) to respondent No.3 for construction of a temporary restaurant/shack and wooden/bio-fencing in survey No. 96/1 of Betalbatim, Salcete Goa.

★ 6. Considering the aforesaid facts that what is sought to be challenged is not a 'direction' as contemplated under Section 16(g) of the NGT Act, 2010, the Appeal is not maintainable.

7. Section 16 (g) of the NGT Act, 2010 stipulates an Appeal only against a 'direction' issued under Section 5 of the Environment Protection Act, 1986. In view of the clear wording of Section 16(g) of the NGT Act, 2010, no Appeal can be held maintainable against any permission granted by the GCZMA.



8. For sake of convenience Section 16 of the National Green Tribunal Act, 2010 is reproduced hereinbelow:

*“16. Tribunal to have appellate jurisdiction.—Any person aggrieved by,—*

*(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*

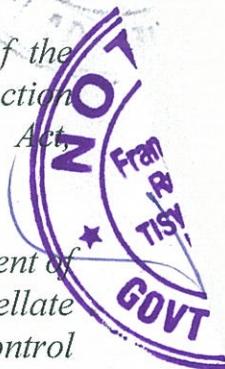
*(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*

*(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*

*(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);*

*(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);*

*(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);*



(g) any direction issued, 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 (29 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 process under the Environment (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003), may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

*Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days."*

9. From a bare perusal of Section 16 of the NGT Act, 2010 it is apparent that a clear distinction has been made by the lawmakers between the words 'order', 'decision'. and 'direction' issued by the authority. Pertinently, the words 'order' or 'decision ' as is found in clause (a), (b),



(d), (e), (f), (h), (i) and (j) of section 16 have been specifically omitted in clause (g) of the Section 16, Therefore, it is evident that Section 16 stipulates an appeal only against a 'direction' issued under Section 5 of the Environment Protection Act, 1986 and not against any 'order' or 'decision' taken by the authority.

10. Section 5 of the Environment Protection Act, 1986 is reproduced hereinbelow for ready reference:

***“5. POWER TO GIVE DIRECTIONS.-*** *Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions*

*Explanation--For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-*

*(a) the closure, prohibition or regulation of any industry, operation or process; or*

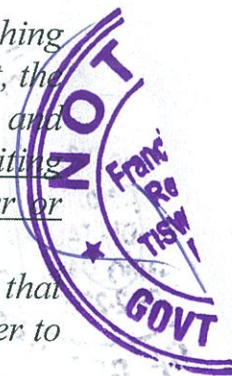
*(b) stoppage or regulation of the supply of electricity or water or any other service.”*

11. The same is also evident from Rule 4 of the Environment Protection

Rules which are relevant in this regard:

***“4. DIRECTIONS***

*(1) Any direction issued under section 5 shall be in writing.*



(2) The direction shall specify the nature of action to be taken and the time within which it shall be complied with by the person, officer or the authority to whom such direction is given...

(4) The Central Government shall within a period of 45 days from the date of receipt of the objections, if any or from the date up to which an opportunity is given to the person, officer or authority to file objections whichever is earlier, after considering the objections, if any, received from the person, officer or authority sought to be directed and for reasons to be recorded in writing, confirm, modify or decide not to issue the proposed direction."


12. That Rule 4 sub-rule 2 of the Environment Protection Rules 1986 makes is clear that a direction shall specify the nature of the action to be taken and the time within which it shall be complied with by the person, officer or the authority to whom such direction is given. As stated supra, since no action has been specified to be taken vide decision under challenge, the same cannot be -termed as a direction. Further, under sub rule (4) it is categorically provided that Authority may after considering the objections, if any, received from the person, officer or authority sought to be directed and for reasons to 'be recorded in writing, confirm, modify or decide not to issue the proposed direction. It is submitted that the grant pf permission cannot be termed as a 'direction'.



13. The Hon'ble Supreme Court in matter of *T.N. Pollution Control Board v. Sterlite industries (I) Ltd.* (2019)19 SCC 479, whilst holding that an Appeal is a creature of statute and an Appellate Tribunal has to act strictly within the domain prescribed by statute, the terms 'directions' and 'orders' are distinct terms used in the statutory scheme under the NGT Act.

14. This Hon'ble Tribunal in its judgement in Appeal No. 03/2017 in the matter of *Austin Francis D 'Souza vs Secretary Environment Department and Ors.* had categorically held no appeal would lie against letter issued under Section 16(g) of the NGT Act, 2010 being a decision taken by the authority under Section 5 of the Environment Protection Act, 1986.

15. In the above conspectus, it is clear that the present Appeal which is filed under section 16 of the NGT Act, challenging the permission granted to the respondent No.3 is not maintainable and liable to be dismissed on this ground alone.



16. The captioned Appeal is also barred by limitation inasmuch as the permission challenged is dated 30.06.2025, whereas the captioned appeal is filed only on 09.08.2025, consequently the Appeal is barred by limitation. It is pertinent to note that the decision to grant the permission was taken by the GCZMA on 22.05.2025 and the Appellant was immediately aware of the same and had filed objection to the same on 27.05.2025. The decision of the GCZMA dated 22.05.2025 has not even been challenged, obviously being conscious of the fact that the same is hopelessly barred by limitation under the NGT Act. In conclusion, it is submitted that the instant Appeal is not maintainable for the foregoing reasons and that this Hon'ble Tribunal ought to dismiss the Appeal.



17. The answering Respondent states that issue of sand dunes is being raised is based on factually incorrect statement and only in an attempt to create prejudice against the answering respondent. It is stated that as per the approved GCZMP there is no sand dune in the property bearing survey no. 96/1 of Betalbatim Salcete Goa. The fact that there is no sand dunes in survey no 96/1 is evident from the documents produced on record by Appellant himself. The inspection report of the

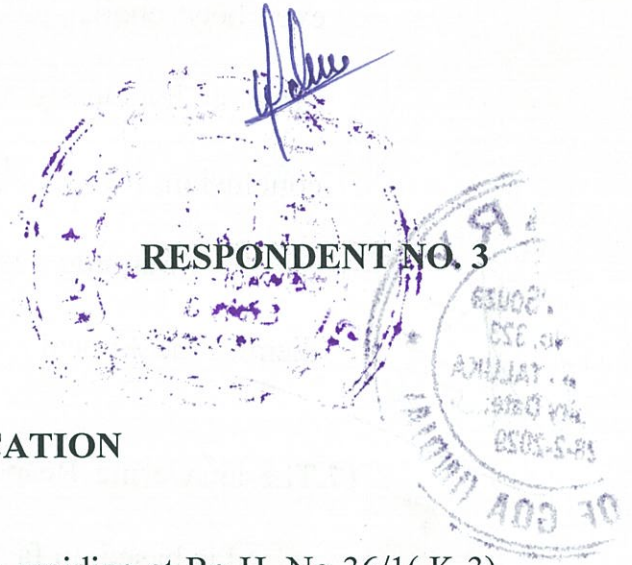


authority also confirms that fact that there exist no sand dunes in the aforesaid survey number in respect of which the permission is granted by the Authority. The statement made in the Appeal qua the issues of sand dune is only with an intent to create prejudice against answering respondent and mislead this Hon'ble Court.

In the above conspectus it is humbly prayed that the present Appeal be dismissed.

**Place :** Panaji Goa

**Date :** 06/09/2025



#### VERIFICATION

I, Michael Fernandes, major of age, residing at Ro H. No 36/1( K-3) Annie Enclave Opp Green House, Pequeno Vaneilim Colva, Salcete, Goa- 403708, Respondent No.3 hereinabove, do hereby solemnly affirm and state that whatever is stated hereinabove in Paragraphs 1, 2, 3(part), 16(part) and 17(part) of the reply are true to my own knowledge and/or as per the records available and what is stated in the

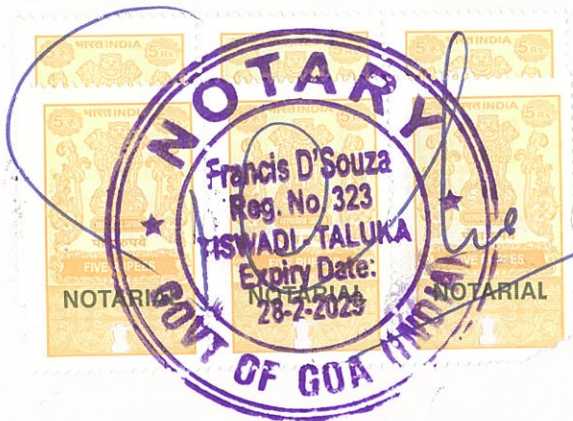


remaining Paragraphs namely 3(part), 4 to 15, 16(part) and 17(part) are in the nature of legal submissions and/or inferences of facts, which I believe to be true.

Solemnly Affirmed at Panaji Goa  
On this 6<sup>th</sup> day of September 2025.

DEPONENT

Identified By Me



BEFORE ME  
  
SHRI FRANCIS D'SOUZA  
NOTARY FOR TISWADI TALUKA  
STATE OF GOA (INDIA)

BEFORE ME  
  
SHRI FRANCIS D'SOUZA  
NOTARY FOR TISWADI TALUKA  
STATE OF GOA (INDIA)

I hereby attest the above signature of  
Shri/Smt./Miser Michael  
Fernandes the  
deponent  
above named  
Who has been identified before me  
by .....  
..... who is personally known to me  
registered under No. 185572025

ADV. FRANCIS D'SOUZA  
NOTARY  
KAMAKSHI PRASAD BLDG  
THIRD FLOOR, FLAT NO. 304  
PATTO, PANAJI  
TISWADI GOA - 403 001