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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

APPEAL NO. 14 OF 2020

IN THE MATTER OF:

Bainguinim Citizens Forum **...APPELLANT**

VERSUS

Goa Waste Management Corporation and Ors. **...RESPONDENTS**

INDEX

THROUGH

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REJOINDER ON BEHALF OF THE APPELLANT IN RESPONSE TO THE AFFIDAVIT IN REPLY FILED BY RESPONDENT NO. 1

Most Respectfully Showeth:

1. That the above titled Appeal has been filed under Sections 18(1) read with Section 16 of the National Green Tribunal Act, 2010 challenging the legality and correctness of Environment Clearance dated 6.01.2020 granted to the Goa Waste Management Corporation, Respondent No.1 by the State Environment Impact Assessment Authority, Respondent No. 5 for the establishment of a 250 TPD+20% of the Integrated Solid Waste Management Facility of Solid Waste Management Plant at Bainguinim, Tiswadi Taluka, North Goa comprising of several components including a landfill.
2. That the instant rejoinder is being filed in response to the Reply of the Respondent No.1, i.e. Goa Waste Management Corporation filed *vide* Affidavit in Reply dated 13.07.2020. That at the outset, the Appellant denies each and every statement made by the Respondent unless specifically admitted or is part of the record. The Appellant reiterates all the facts and submissions made in the Appeal to be true and correct and the same may be read as part of the instant rejoinder and are not all being repeated for the sake of brevity.
3. At the outset it is submitted that Respondent No. 1 has accepted that no buffer zone of either 200 metres or 500 metres from habitation has been maintained which is in violation of the siting criteria. Respondent No. 1 has submitted an

order dated 05.05.2020 passed by Respondent No. 7 (Town and Country Planning Department) stating that 500 mtr radial buffer zone will be maintained:

> " *"The Government after examining the matter had decided to declare 500 mts. Distance from the boundary of land acquired for SWMF as No Development Zone/buffer zone.*
>
> *In view of the above, decision of the Government, it is hereby directed not to issue any technical clearance for any development within the no development zone."*

Thus at the time the Environment Clearance was granted, the buffer zone had not been maintained which is in clear violation of the siting criteria as per Schedule I Solid Waste Management Rules, 2016 and the Clarification of Buffer Zone Guidelines, 2019 by CPCB. Further,

4. That the Respondent has failed to counter all the averments made by the Appellant. Respondent No. 1 has remained silent on the concealment of fact of densely populated area of village of Bainguinim, as well as misrepresentation of information regarding existence of environmentally sensitive areas around the project site in Form I:

   (a) **Concealment of fact of densely populated areas:** It is submitted that the Project Proponent under the head of *"densely populated areas"* has only mentioned Panaji and Mapusa whereas the village of Bainguinim is densely populated and the plant is less than 200 metres from several residential buildings.

   (b) **Misrepresentation of information regarding existence of environmentally sensitive areas around the project site:** It is submitted that the Project Proponent under the head of *"areas occupied by sensitive man-made land uses"* only gives information about schools, churches, hospitals etc. without the distance from each. For example, the Healthway Hospital is at a distance of 239 metres and the Sunshine Worldwide School is at a distance of 291 metres from the project site.

   (c) That the Hon'ble Supreme Court in **Hanuman Laxman Aroskar v. Union of India** reported in **2019 (15) SCC 441** has stated that failure to make

the mandatory disclosures in Form I has a cascading effect on the entire process and must have consequences in law i.e. cancellation:

> *"77 The failure on part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 notification has a cascading effect on the salient objective which underlies the 2006 notification. The 2006 notification represents an independent code with the avowed objective of balancing the development agenda with the protection of the environment.* ***An applicant cannot claim an EC, under the 2006 notification, based on substantial or proportionate compliance with the terms stipulated in the notification. The terms of the notification lay down strict standards that must be complied with by an applicant seeking an EC for a proposed project. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 notification, that must have consequences in law.*** *There can be no gambles with the environment: a 'heads I win, tails you lose' approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law."*

5. That Respondent No.1 has also failed to address the non- compliance of the Terms of Reference:

   (a) That as per point 7 of the ToR, "*a separate plan be prepared delineating the existing/TCP-approved residential colonies/ settlement around the boundaries of the proposed facility within a radius of 3 km (i.e. zone of likely impact).*" However, the Project Proponent has simply written N/A. Similarly for point 8, there was a requirement *"adequate and rational sensitization of the local stakeholders by the PP on the proposed and sentiments of the local stakeholders towards the proposal, if any, be furnished"*, the Project Proponent has again responded with N/A. It is submitted each of these requirements were mandatory and required to be carried out in light of the siting criteria as well as the distance of the project site and habitation.

   (b) Under point 5.0, there was a requirement to carry out public Hearing and Stakeholder Consultations and include issues identified by the public in the EIA Report:

"Public hearing and stakeholder consultations shall be conducted, if applicable, including community consultations at the affected community levels. The objective of the consultation sessions shall be to improve project components with regard to proper environmental management. Issues identified by the public and other stakeholders during public hearing along with the issues raised by the public and the appropriate responses of the project proponent should be included in the final EIA report."

6. The Project Proponent has merely considered the responses received during the public hearing in the final EIA Report but has not addressed a single concern during the public consultation which is in violation of the EIA Notification, 2006. It is evident from the minutes of the Public Hearing dated 28.07.2019, that out of the 82 individuals who had registered to speak, 72 spoke out against it, and merely 4 out of the 82 have spoken in favour of the project. That one of the persons was the Mayor of the Corporation of the City of Panaji himself, and another is a Corporator with the Corporation of the City of Panaji.

7. In the matter of *The Sarpanch, Gram Panchayat Tiroda & Ors. v. MOEF and Ors. (Appeal No. 3 of 2011) (2011 SCC OnLine NGT 10),* the Hon'ble Tribunal has held that an EIA Report which was not in compliance with the granted TOR cannot be valid:

"... It is very surprising to notice that the EIA report is prepared by the project proponent through his own consultants at his own expenditure. In such case, there is every possibility of concealing certain intrinsic information, which may go against the proponent, if it is revealed. This is the area, the proponents take advantage. Here comes, the great role to be played by the EAC in making proper evaluation of the EIA report.
In view of our findings noticed above, we are of the considered opinion that the EIA report cannot be said have been properly prepared since sufficient and appropriate data was not collected and presented as per the awarded ToR as elaborated infra.
For the reasons recorded at para no. 19; we are in full agreement with the submissions made by the learned counsel for the appellant that the EIA report which was prepared at the behest of project proponent, does not disclose proper and sufficient facts and information. For example, the entire baseline data pertains to a period much prior to award of ToR. More important issue relates to the fact that at the time of award of ToR, as many as 16 additional ToR were prescribed (p 5, Vol V, Annexure 29). Out of which, condition no. iv, v, vii, ix, x, and xii were not complied with at the time of EIA report which are crucial for taking a final decision regarding recommending the project for grant of EC, which reads as under:..."

8. That Respondent No.1 has also not responded to the contentions raised by the Appellant that a faulty EIA assessment has been carried out as there has been no analysis of alternate sites. Neither the reply of Respondent No. 1 nor the EIA Report makes a mention of any alternate site that was considered for this project, nor the functional capacity of the Saligao plant that is already functional and there is no need to have another MSW plant especially so close to habitation.

Response by the Applicant:

9. That the Respondent No.1 has raised the following issues in their Affidavit in Reply:

   i. That the land where the integrated Solid Waste Management facility is being constructed has been acquired by the Corporation of the City of Panaji *vide* Land Acquisition Award dated 13.11.2008 by the Deputy Collector (Revenue) under Section 11 of the Land Acquisition Act, 1894;

   ii. That the Land Acquisition award was unsuccessfully challenged in multiple suits before the Hon'ble High Court of Bombay at Goa;

   iii. That a No Objection Certificate has been granted to the Corporation of the City of Panaji by Country and Town Planning Dept., i.e. Respondent No. 7 and by the Directorate of Archives and Archeology;

   iv. That the Govt. of Goa, Goa State Pollution Control Board, and the Water Resources Dept., i.e. Respondent Nos. 2, 3 and 6 have granted approval to Corporation of the City of Panaji for the project;

   v. That Respondent No.1 is not in violation of the Central Pollution Control Board "Clarification on Buffer Zone Guidelines" dated 15.04.2019.

10. **Rejoinder to contention nos. (i), (ii) and (iii):** That the contentions (i), (ii) and (iii) are closely interlinked and are therefore being dealt with jointly. **It is submitted that the contentions raised by Respondent No. 1 that the dismissal of challenges to the land acquisition will act against the Appellant as res judicata are denied.**

11. That it is submitted that the approval of by the Hon'ble High Court of Bombay of the Land Acquisition award will not be a substitute for the requirement to strictly follow the provisions of the EIA Notification, 2006.

12. That further, the Hon'ble Supreme Court in **Karnataka Industrial Areas Development Board v. C. Kenchappa,** reported in **(2006) 6 SCC 371** has as per the principle of *"sustainable development"*, the consequence and adverse impact of development on environment must be properly comprehended before acquisition of lands for development, and the lands be acquired for development that they do not gravely impair the ecology and environment:

> *"100. The importance and awareness of environment and ecology is becoming so vital and important that we, in our judgment, want the appellant to insist on the conditions emanating from the principle of "Sustainable Development":*
> *(1) We direct that, in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment.*
> *(2) We also direct the appellant to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands be converted into a mandatory condition for all the projects to be sanctioned in future."*

However, in the present matter, the land were acquired before any impact assessment was carried out on the environment. Thus, Respondent No. 1 is in violation of the order of the Hon'ble Supreme Court.

13. That even assuming the **Writ Petitions No. 30/2008, 03/2009 & 353/2009** by the High Court of Bombay at Goa were dismissed correctly, the issues were regarding the legality of grant of the Land Acquisition Award and the provisions of Land Acquisition Act, 1894. Similarly, **W.P. 12/2009** which is being relied on by the Respondent No.1 dealt with the 'in principle' approval granted by the State of Goa to the project and does not concern itself with the provisions of the EIA Notification, 2006.

14. That the Hon'ble High Court of Bombay in **Suo Moto Writ Petition No. 2 of 2007** by order dated 11.07.2019, has also observed that the process of grant of environment clearance for the project was in progress in. The Hon'ble High

Court observed that *"...a public hearing is scheduled on 28th July, 2019 for the facility at Bainguinim for environmental clearance."*

15. Thus, it is submitted that this Hon'ble Tribunal while carrying out a merit review is required to determine the legality and correctness of the environment clearance granted to the Respondent No. 1. The determination is based on the provisions of the EIA Notification, 2006. **The project may have all other approvals but if it fails to satisfy the provisions of the EIA Notification, 2006, the EC granted must be set aside.**

16. **Rejoinder to contention no. (iv):** That Respondent No. 1 has contended that the Govt. of Goa, Goa State Pollution Control Board, and the Water Resources Dept., i.e. Respondent Nos. 2, 3 and 6 have granted approval to Corporation of the City of Panaji for the project and thus the project is legal. This contention is denied.

17. That it is submitted that the No Objection Certificates granted by Respondent No. 7 and by the Directorate of Archives and Archeology, and the various 'approvals' granted by Respondent Nos. 2, 3 and 6 are under various different legal regulations and laws which are distinct in operation and scope, from grant of environment clearance under the EIA Notification, 2006.

18. That it is submitted that the administrative approvals granted and the EIA process operate within distinct legal regimes and have differing objects and purposes. That in this regard the Hon'ble Supreme Court in **Bengaluru Development Authority v. Mr Sudhakar Hegde & Ors.,** reported in **2020 SCC OnLine SC 328** has held as follows:

> *"18. The EIA process under the 2006 Notification serves as a balance between development and protection of the environment: there is no trade-off between the two. In laying down a detailed procedure for the grant of an EC, the 2006 notification attempts to bridge the perceived gap between the protection of the environment and development. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive. While the BDA Act was enacted with the purpose of establishing a development authority for*

the development of the city of Bangalore and adjacent areas, the 2006 Notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. The BDA Act and the 2006 Notification operate in different fields."

19. That similarly it has been held by this Hon'ble Tribunal in *J. Mehta v. Union of India (O.A. No. 88 of 2013) vide* order dated 24.10.2013 that the EIA Notification, 2006 operates entirely in the field of environmental law and other laws occupy other fields:

> *46. We must also clarify at this stage that* ***different regulatory regimes can simultaneously be applicable to a given situation****. It will be more so when both the regulatory regimes operate in different fields and have distinct essentials as well as consequences. The present case is an apt example of this kind.* ***The building bye-laws would govern buildings and its user while the EC would regulate the project as a whole*** *in relation to the various facets of environment and its impact thereof.* ***Both are regulatory regimes but they operate in distinct and incongruent*** *fields which have no area of conflict.* ***One operates exclusively in the field of environment,*** *i.e. to be in consonance with the provisions of the Environment Act and the Notification of 2006, while the other, is* ***the DDA Act and the zonal plan which is to govern the planned development and restrictions on buildings*** *in terms of area and user. The contention of Respondent No.9 that it is a matter exclusively falling in the domain of building bye-laws and this Tribunal has no jurisdiction, is therefore, misconceived and ill- founded.* ***The project as a whole has various dimensions under the environmental laws*** *and the regulatory regime prescribed thereunder. The violation of the terms and conditions of such statutory regulatory regime would invite consequences and would have to be* ***applied with all its rigours in the interest of the environment and public health.***
>
> *(emphasis supplied)*

20. **Thus, even if the approvals granted under various laws are correct, the same will have no effect on the operation of the EIA Notification, 2006.**

21. **Rejoinder to contention no. (v):** That with regards to the compliance of the Solid Waste Management Rules, 2016 and Buffer Zone Guidelines dated 15.04.2019, Respondent No.1 has relied on certain letters to show compliance:

    (a) Letter dated 13.10.2010 written by Respondent No. 7 to the Corporation of City of Panjim seeking freezing of the 500 mtr radial buffer zone;

(b) Letter dated 6.08.2019 by Respondent No. 1 to Respondent No. 7 dated 6.08.2019 seeking freezing of the 500 mtr radial buffer zone;

(c) Order dated 05.05.2020 passed by Respondent No. 7 stating that 500 mtr radial buffer zone will mean that no technical permissions will be granted thereafter.

22. At the outset, all the documents relied on by Respondent No.1 clearly prove that Respondent Nos. 1 and 7 were aware of the legal requirement of a 500 mtr buffer zone from the boundary of the project.

23. That the order by Respondent No. 7 dated 5.05.2020, was issued **after the grant of environment clearance.** Thus, this proves that at the time the EC was granted, no buffer zone was maintained and further the SEAC completely failed to carry out an appraisal and recommended the grant of EC to a project in violation of the law.

24. That further this order was passed 10 years after this project was first conceived and is prospective in nature without considering the construction already present within the buffer zone. The passing of the order will not create a buffer zone, the buffer zone had to be maintained and kept free of construction when the project was first conceived which is not the case here.

25. That it is submitted that Respondent Nos. 1 and 7 have utterly failed to consider that this order passed is infructuous as there are already a large number of residential constructions, schools and hospitals within the 500 metre buffer zone. However, in the present case, the nearest habitation is a mere 35 metres away and shares a common boundary with the proposed site, the Healthway Hospital is at a distance of approx. 239 metres, the Sunshine Worldwide School is at a distance of approx. 291 metres, along with several UNSECO world heritage sites. Further the proposed site also shares a common boundary on the northern side by Expat Vida, Perola and Casa Amora Phase-I, Phase-II and Phase-III ongoing construction on the Western side. It is submitted

that there is no space for a buffer zone or a no development zone which can be maintained from the boundary of the project site.

26. **Approximate Distances from proposed Bainguinim Integrated Solid Waste Management Plant:**

Sl. No.	***Name***	***Distance***	***Remarks***
1	Casa Amora - Phase III	21.4m	364 flats
2	Casa Amora - Phase I	24m	144 flats
3	Expat Vida	35m	192 flats
4	Perola	53m	208 flats
5	Milroc Kadamba	81m	438 flats & 36 shops
6	Casa Amora - Phase II	111m	68 flats
7	Jagadguru Narendracharya Mutt	150m	
8	Healthway Hospital	238m	250 bed hospital
9	Sunshine Worldwide School	291m	800 students
10	Vineth Harmony	378m	28 flats
11	Soundekar Palace	553m	
12	Well	591m	

27. **Further, the failure of the Respondents to freeze development in the buffer zone cannot put the health of its citizens and the environment at risk.**

28. Because this Hon'ble Tribunal in *Tarun Bharat Chauhan and Anr. v. Union of India and Ors., Appeal No. 110 of 2015* decided on 16.12.2016 quashed the Environmental Clearance for a solid waste management plant in Dundahera, Ghaziabad for violating the 500 metres siting criteria to be kept from habitation as well as the fact that the EC was granted by the SEIAA had not considered the habitation in close distance of the site similar to the present matter:

"In the impugned Environmental Clearance no area has been specified for the buffer zone whereas Clause 17.4.1 of the Manual provides that a landfill site should be at least 500 meters from a notified habituated area. ***The aforesaid facts and circumstances clearly goes to show that the Environmental Clearance dated 24.04.2013 is not at all in conformity with the Municipal Solid Waste (Management and Handling) Rules and Solid Waste Management Manual and is liable to be cancelled for the reasons given above. The EC dated 24.04.2013 is to be cancelled as not being in conformity with the Rules of 2000 and the Manual. Accordingly the issue is answered in the affirmative.***

SEIAA had not properly examined or discussed the project proposals in its aforesaid meeting. The committee had neither noted nor adequately addressed itself in respect of the management of air pollution, water pollution, noise pollution, etc. It did not discuss the details of the project surroundings including distance and direction from the periphery of the land fill site. 91 ***It failed to consider the fact that the dumping yard site cannot come up adjacent to habitation clusters.*** *It* ***leaves no room of doubt that the EC granted in April 2013 for SWM plant was by ignoring the all-round construction activity, the development which had taken place around the proposed site and the fact that the area was fully inhabited as well as densely populated. It was not a case of an individual or even a single developer who had raised a construction on their own or in an illegal manner."***

(emphasis supplied)

29. That even in the present matter the surrounding residents live in authorized and legal constructions and the hospital and school as well were set up as important public utilities. The Respondent cannot shrug off the responsibility towards the health of its citizens based on its own negligence and lack of planning.

30. Further in *Reyons Enlighting Humanity v. MoEF & Ors (OA.No.86/2013), decided on 18th July, 2013,* this Hon'ble Tribunal held that public bodies must be bound by principles of public accountability and perform their duties in accordance with the law of the land:

"48. The Corporation, being a public body, is bound by the principles of public accountability and performance of public duties in accordance with the law of the land. In our considered opinion, the Nagar Nigam, Bareilly, Respondent No.4, has failed to discharge its duties in accordance with the law. Environmental impact, convenience of the residents and ecological impacts are the relevant considerations and all such considerations, in the facts of the case, were weighed against Respondent No.4. The larger public interest must prevail over the narrow end of collection and composting of municipal waste at the site in question."

31. That it is submitted that the statement made by Respondent No. 1 shifting the accountability upon the private residents is wholly illegal:

> *"64. I say that despite of these known facts builders of mega housing projects and people at their own risk and consequences have preferred to construct mega residential/commercial projects, schools, hospital, houses in close proximity touching the compound wall constructed on the boundary of the acquired land of the project."*

Thus, as per the Respondent, the building of houses, school and hospitals next to an empty piece of land must be at the risk of the citizens health and safety. It is submitted that it was incumbent upon the Respondent No. 1 to follow the laws and freeze development within the buffer zone. Further, Respondent No. 7 as the Town and Country Planning Department also ought to have maintained a buffer zone, instead of passing a much-delayed order in May, 2020 after all the constructions had already been carried out. Thus, the Respondents cannot take advantage of their own wrong.

32. That the Respondent cannot now claim that the buffer zone to be maintained is a minimum 200 metres when as per the letter dated 6.08.2019 was sent by the Chief Town Planner, Town and Country Planning Department to Respondent No. 1 specifically stating that *"to ensure buffer zone of 500 mtrs as per prevailing law"* and by order dated 5.05.2020 directed no technical clearance to be granted in the 500 mtr buffer zone.

33. Further, it is submitted that apart from 500 metre radial distance, there is no space even within the project site for a buffer zone as the North-South distance is 400 metres and East-West distance is 451 metres. A copy of the Google map showing the North-South and East-West distances within the project site is annexed as Annexure A-7 in the Appeal.

34. Hence, it is submitted that in light of the above submissions and the submissions in the Appeal, the Environment Clearance dated 6.01.2020 granted to Respondent No. 1 be set aside.

Pass any other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the instant case.

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BAINGUINIM CITIZENS FORUM OLD GOA

APPELLANT

THROUGH

RITWICK DUTTA RAHUL CHOUDHARY KANIKA SOOD

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BEFORE THE NATIONAL GREEN TRIBUNAL,

WESTERN ZONE BENCH AT PUNE

APPEAL NO. 14 OF 2020

NOTARY Fernando Jorge Colaço Reg C.P. expires on 30.06.2025 GOVT. OF GOA (INDIA)

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IN THE MATTER OF:-

BAINGUINIM CITIZENS FORUM **...Appellant**

VERSUS

GOA WASTE MANAGEMENT CORPORATION & ORS **...Respondent(s)**

AFFIDAVIT

I, Kumar Naveen Krishnamurthy, age 44 years, s/o C.S. Krishnamurthy, r/o Flat No. G-001, Manglam's Casa Amora, Phase –I, Bainguinim, Old Goa, Goa - 403402 do hereby state and declare on solemn affirmation as under:

1. That I am the Secretary and Authorised Representative for the Appellant in the above titled Appeal, and hence well conversant with the facts and circumstances described in the present case and as such, I am competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.

BAINGUINIM CITIZENS FORUM OLD GOA

DEPONENT

VERIFICATION

I the above-named deponent, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

Verified at Panaji on this 24th day of August, 2020.

BAINGUINIM CITIZENS FORUM OLD GOA

DEPONENT