

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

**I.A. No. 106/2023 [WZ]
IN O.A. NO. 54 /2023 [WZ]**

BETWEEN

The Goa Foundation

...Applicant

AND

The State of Goa and Ors.

...Respondents

REJOINDER AFFIDAVIT OF THE APPLICANT

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PLACE: Mapusa, Goa

DATE: 02nd August 2023


 02.08.2023
 Counsel for the Applicant
Adv. Om D'costa

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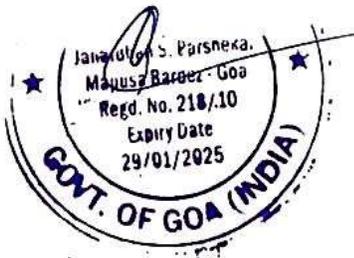
I, Dr. Claude Alvares, Indian national, Secretary of the Applicant organization above named, do solemnly state on oath as under:

1. I state that I have read and understood the contents of the Affidavit in Reply dated 17.07.2023 filed on behalf of the Resp. No. 3, and am filing this affidavit in response thereto. At the outset, I state that I am not replying to each and every statement and submission made in the said Reply Affidavit, and nothing may be deemed to be admitted unless the same is specifically admitted herein but should be treated as though the same has been set out seriatim and denied and disputed specifically.

2. The primary grievance of the R.1 is that there has been delay on the part of the Applicant, and that the O.A. is filed beyond time. The R. 3 in its Reply has made several submissions on the merits of the dispute which is the subject matter of O.A. 54/2023, which the deponent is not dealing with at this stage, considering that the question of condonation of delay is the only issue which is to be presently considered by the Tribunal in this I.A. The Applicant has submitted that there is a small delay of 3 days only, which this Hon'ble Tribunal is empowered to condone. It is vehemently denied that that the Applicant has misled this Tribunal in as far as the averred delay of 3 days is concerned, and that the main O.A. is hopelessly time barred.

3. In para 6 of the affidavit, the R-3 refers to a retaining wall which it states has existed for the past 100 years. The Applicant states that its challenge in the O.A (as also in the now disposed of PIL, which was filed in the High Court) is not to the retaining / compound wall of the hotel, but to a low embankment constructed right on the beach in April / May 2021. The Applicant has annexed photographs of the construction in the O.A for clear identification of the structure which is challenged.

4. The Respondent has thereafter made various calculations to show that the Applicant has approached this Hon'ble Tribunal after a delay period ranging from 96 – 702 days as follows:



- 540 days – para 4
- 702 days – para 13
- 156 days – para 17
- 96 days – para 18.

The Applicant denies each of the above delay periods and reiterates that there is only a delay of 3 days which this Hon'ble Tribunal may be pleased to condone.

5. I deny the various delay periods as stated by the Respondent No. 3 for the following reasons:

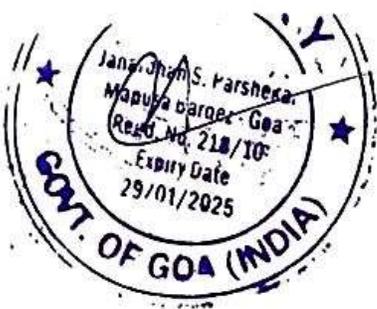
i. The construction of the embankment/low wall occurred in April/May 2021. The Applicant was before the Hon'ble High Court of Bombay at Goa in a P.I.L. No. 29/2022 challenging the said construction from September 2021 till 7th October 2022, when the petition was disposed of as the High Court observed that the issues canvassed by the Petitioner in the High Court could be more effectively agitated before the NGT.

ii. Vide its order dated 07.07.2023, the High Court has stated that the NGT while considering the issue of limitation needs to consider sympathetically the period that the Petitioner was bona fide pursuing the matter in the High Court. As the High Court in its various orders relating to the subject matter of this O.A. has observed:

- a) that the petition was bona fide pursued in the HC;
- b) that the NGT needs to consider the period sympathetically, and;
- c) that the issues raised in the petition can be effectively canvassed before the NGT;

it is obvious that the Hon'ble High Court is of the view that the period that the petitioner/applicant spent in the High Court ought not to come in the way of the NGT hearing the matter on merits.

iii. Due to the COVID Pandemic, the Hon'ble Supreme Court in terms of its order dt. 10.01.2022 (*Annexure R-1, issued in M.A. No. 665 of 2021 In S.M.W.P. (C) No. 3/ 2020*), has directed that the time period from 15.03.2020 till 28.02.2022 stands excluded for the purposes of limitation under all general and special laws.



- iv. Hence, it is clear that from the date when the construction commenced, (i.e April/May 2021) till 28th February 2022, the limitation period is excluded by the order of the SC dt. 10.01.2022. Thereafter, the period from 1st March till 7th October 2022 also ought to be condoned, considering the request of the High Court.
- v. The order of the High Court dated 7th October 2022 was uploaded only on 10th October 2022, and hence, the cause of action for the applicant to approach the NGT would arise only on 10th October 2022, when the Applicant obtained a copy of the High Court Order.
- vi. As the Applicant has filed this Application under S. 14 of the NGT Act, the Applicant is entitled to a time period of 6 months from the date the cause of action arose, which period thus ends on 10th of April 2023. The O.A No 54/2023 was filed on 13th April 2023. The delay is admittedly therefore of 3 days only.
- vii. I state that the Applicant did not deliberately wait for the 6 month period to expire before filing this Application. Applicant has stated in the IA and in the OA that the Secretary of the Applicant society, who is knowledgeable in this matter and authorized to file legal proceedings, suffered a major heart attack in the last week of October 2022 and was prescribed 3 to 4 months of strict rest, during which period he was home bound. It was only after February 2023 that he could attend to office work. Hence the Application could not be filed well within the 6 month period, and there was some delay towards the end of the period in obtaining certain maps [*explained in para 4 of IA and para 21 of OA*]. Hence the outer limit of 6 months was overrun by 3 days.



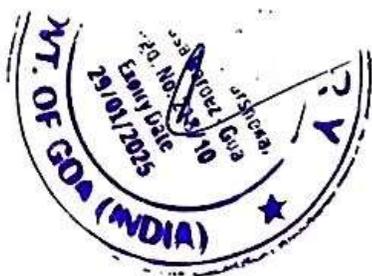
viii. Applicant relies on judgements in Collector, Land Acquisition vs. Katiji, (1987) 2 SCC 107, and Vedabai Patil vs. Baburao Patil, (2001) 9 SCC 106, annexed to the instant I.A., in support of its submission that since the OA raises an issue of public interest, this Hon'ble Tribunal be pleased to condone the delay of 3 days in the filing of this Application, which discretion is within the powers of this Hon'ble Tribunal under S. 14.

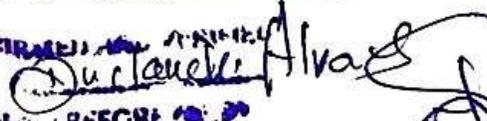
6. In these circumstances, the Applicant humbly requests this Hon'ble Tribunal to condone the delay of 3 days in the filing of O.A No. 54/2023 [WZ] and take up the O.A. for consideration on merits, for which the Applicant is truly grateful.

7. I solemnly declare and say that what has been stated in paragraphs 1(p), 2(p), 3(p), 4(p), 5(p), and 6(p) are true to the best of my knowledge and official documents/records, and what is stated in paragraphs 1(p), 2(p), 3(p), 4(p), 5(p), and 6(p) are in the nature of legal submissions which I believe to be true and correct. No part of it is false and nothing material has been concealed therefrom, and the annexures enclosed are true copies of their respective originals.

Solemnly affirmed at Mapusa, Goa,
this the 2nd day of August, 2023


Deponent




ANARDHAN S. PARSHE
TAR AT MAPUSA, BARDEZ - GOA
STATE OF GOA INDIA
29/08/2023

VERIFICATION

I, Dr. Claude Alvares, Secretary of the Applicant organization, do hereby verify that the contents of paras 1 to 7 of my above affidavit are true to my knowledge and belief, and that no part of it is false and nothing material has been concealed therefrom.

Verified on this the 2nd day of August 2023, at Mapusa, Goa


DEPONENT



DECLARATION OF AFFIDAVIT MADE BY DR. CLAUDE ALVARES
SECRETARY OF THE APPLICANT ORGANIZATION
VERIFIED BY ME, JUDGE, COURT OF GOA, AT
MAPUSA, BARDEZ, GOA, ON 29/01/2023

IANARDHAN P. PARSHEKAR
JUDGE AT MAPUSA, BARDEZ - GOA.
STATE OF GOA INDIA.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

MISCELLANEOUS APPLICATION NO. 21 OF 2022

IN

MISCELLANEOUS APPLICATION NO. 665 OF 2021

IN

SUO MOTU WRIT PETITION (C) NO. 3 OF 2020

IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION

WITH

MISCELLANEOUS APPLICATION NO.29 OF 2022

IN

MISCELLANEOUS APPLICATION NO. 665 OF 2021

IN

SUO MOTU WRIT PETITION (C) NO. 3 OF 2020

Order

1. In March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 pandemic.

2. On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.
3. Thereafter, due to a second surge in COVID-19 cases, the Supreme Court Advocates on Record Association (SCAORA) intervened in the Suo Motu proceedings by filing Miscellaneous Application No. 665 of 2021 seeking restoration of the order dated 23.03.2020 relaxing limitation. The aforesaid Miscellaneous Application No.665 of 2021 was disposed of by this Court *vide* Order dated 23.09.2021, wherein this Court extended the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f 15.03.2020 till 02.10.2021.
4. The present Miscellaneous Application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the COVID-19 and the drastic surge in the number of COVID cases across the country.

Considering the prevailing conditions, the applicants are seeking the following:

- i. allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in Suo Motu Writ Petition (C) NO. 3 of 2020 ; and
 - ii. allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in M.A. no. 665 of 2021 in Suo Motu Writ Petition (C) NO. 3 of 2020; and
 - iii. pass such other order or orders as this Hon'ble Court may deem fit and proper.
5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:
 - I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

- II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

- III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

- IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

6. As prayed for by learned Senior Counsel, M.A. No. 29 of 2022 is dismissed as withdrawn.

.....CJI.
(N.V. RAMANA)

.....J.
(L. NAGESWARA RAO)

.....J.
(SURYA KANT)

New Delhi
January 10, 2022