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

Execution Application 1/2023(WZ)

In

Original Application 16/2016(WZ)

Salu D'Souza and Anr

...Applicant

Versus

GCZMA & Ors

...Respondent

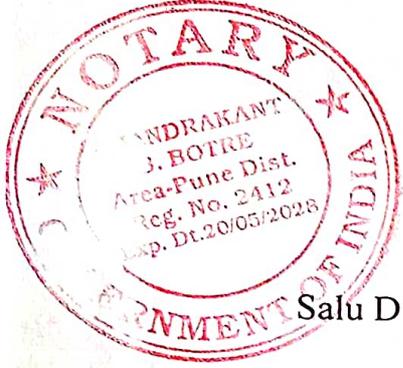
REPLY OF RESPONDENT NO. 5

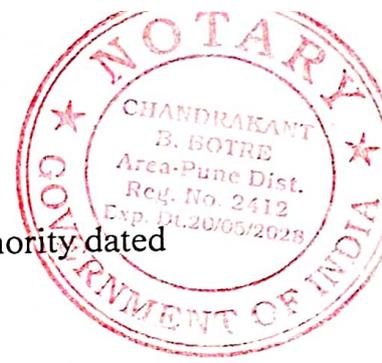
MAY IT PLEASE YOUR HONOUR

1. The Respondent no. 6 has procured following permissions from the competent statutory authorities, a details whereof is mentioned hereinbelow:

- a) Permission to use Cortalim Plot by Dy. Captain of Ports dated 28/09/1964;
- b) NOC from Captain of Ports , Panaji dated 28/12/1972;
- c) Registration Certificate of Establishment by Labour Inspector dated 31/12/1984;
- d) Consent to Operate under Air & Water Act issued by GSPCB dated 11-04-2011

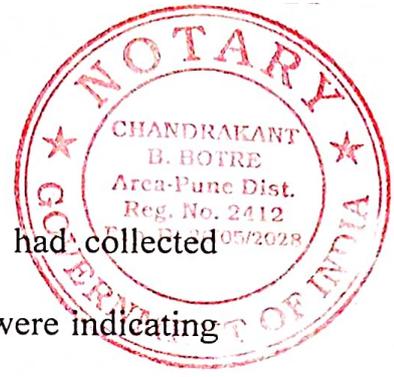
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e) Letter issued by Goa Coastal Zone Management Authority dated 09/02/2011.

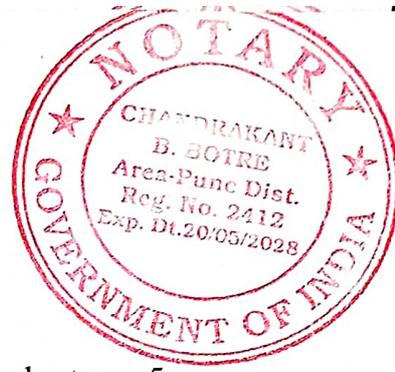
2. It is denied that the undersigned unit has been anchoring vessels and ships and causing pollution or dumping waste in CRZ 1 area in violation of CRZ notification.
3. With regards to execution of Order of this Hon'ble Tribunal in OA 16/2016, it is humbly submitted that unit is in operation only during monsoon season and conducts its operation / business based on permissions referred earlier hereinabove.
4. It is denied that the undersigned unit had anchored any vessel in Cortalim creek as alleged and it is submitted that no vessels are anchored by undersigned in Cortalim creek. It is denied that the undersigned is operating by causing pollution and it is submitted that polluter pay principle is not applicable to undersigned.
5. The undersigned in his objection assailing the invocation of methodology adopted for computing compensation on basis of polluter pay principle by joint committee report has submitted detailed reply, which is enclosed herewith and the undersigned craves leave to refer to and rely upon the same inverbatim.



6. The joint committee report in its report where it had collected samples nowhere indicates that the samples tested were indicating pollution being caused by undersigned unit.
7. The polluter pay principle is not applicable to undersigned as the undersigned unit has not caused any pollution.
8. The undersigned unit operated only after securing all the aforementioned permission, which prima facie indicate that the undersigned unit did not commit any illegality or irregularity or pollution.
9. This Hon'ble Court in its Order dated 11/05/2022 was pleased to observe that dropping of proceeding against the private respondents by GCZMA on ground of pendency of clearances before SEIAA is not justified. The said finding in the matter was in reference to respondent no. 7 only. The GCZMA in the case of undersigned unit after conducting inquiry and hearing the undersigned unit and officials at length was pleased to discharge the undersigned unit and came to conclusion that the activities of the unit of undersigned is not in contravention of permissions granted.
10. In view of the above, it is prayed that the undersigned unit be discharged.



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19-03-2024

Pune

Adv. for Respondent no. 5

AFFIDAVIT

I, M. M. Shaparia representative of M/s Shaparia Dock Steel Pvt Ltd, Respondent no.5 hereinabove do hereby solemnly affirm and state that the content of the reply are true to my knowledge.

Solemnly affirmed at NIGDI, Pune-44 on 16/04/2024.



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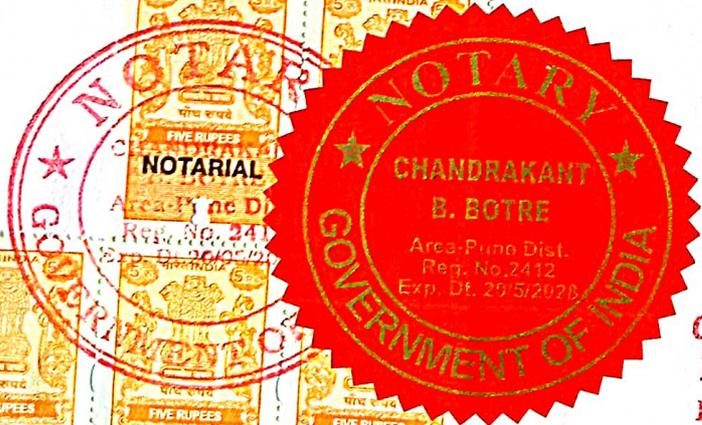
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DEPONENT

M. Shaparia

NOTED & REGISTERED
At. Sr. No. : 120/24
Dated : 15/04/2024



BEFORE ME
[Signature]
CHANDRAKANT B. BOTRE
NOTARY GOVT. OF INDIA
Pradhikaran, Nigdi, Pune- 44.

15 APR 2024

To,
The Member Secretary,
Goa Coastal Zone Management Authority,
Patto Panaji, Goa.

Subject: Objection to the report of the Joint Committee in compliance with order dated 11/5/2022 of the Hon'ble NGT Western Zone Pune in the matter of OA/16/2016 (Mr. Salu D'Souza and 2 ors V/s GCZMA & ors).

Respected Sir/Madam,

The undersigned is in receipt of the cited report which is completely hypothetical and based on no data merely formulated without any iota of evidence as such the same is unsustainable and entirely arbitrary.

The report of the Joint Committee is entirely silent on the merits and the permissions issued by competent authority since long and subsequent renewals thereafter which clearly go to reveal that the report has been prepared without considering and appreciating these facts.

Following are documents required to be appreciated that have found no reference in the report:

- a. Permission to use Cortalim Plot by Dy. Captain of Ports dated 28/09/1964;
- b. NOC from Captain of Ports , Panaji dated 28/12/1972;

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- c. Registration Certificate of Establishment by Labour Inspector dated 31/12/1984;
- d. Consent to Operate under Air & Water Act issued by GSPCB dated 11-04-2011;
- e. Letter issued by Goa Coastal Zone Management Authority dated 09/02/2011.

Without prejudice to the right of the undersigned to assail and challenge the correctness of the impugned report the contents of the entire report are denied as the same are cryptic and not confirming with appreciation of various facts, evidences that ought to have been considered before arriving at any finding least the cited report.

Hon'ble National Green Tribunal in its Order dated 11/05/2022 was pleased to observe that dropping of proceeding against the private respondents by GCZMA on ground of pendency of clearances before SEIAA is not justified. The said finding in the matter was in reference to respondent no. 7 only. The GCZMA in the case of undersigned unit after conducting inquiry and hearing the undersigned unit and officials at length was pleased to discharge the undersigned unit and came to conclusion that the activities of the unit of undersigned is not in contravention of permissions granted.

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The impugned report is an example of sheer submission of data and recommendation which ought to have been exercised with due care and caution appreciating the documents.

Without prejudice to the above the undersigned craves leave to challenge/assail/dispute the findings of the cited report comprehensively on following grounds vis a vis the observations and notings which the joint committee has arrived without factual verification of the unit of undersigned:

I. Joint Committee Action

A. Inspection conducted by the Joint Committee

- a. The Joint committee conducted no inspection at the site on the contrary as a proof hardly entered the premises, captured photographs and moved away, there was no proper inspection.
- b. The samples collected for verifying pollutants i.e. the water sample, sediment sample, none of which have indicated pollution as such there is no iota to prima facie indicate that there is any pollution by the unit of undersigned. The calculation arrived at does not consider the fact that the business of the undersigned unit is purely

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seasonal and is otherwise operational only during monsoons and the penalty imposed is merely on basis of dates of grant of permission which are provided and assuming that the unit of the undersigned is operational throughout the year, the penalty imposed are without prejudice to the rights of the undersigned beyond period of limitation.

B. Inspection dated 10th July 2023

- a. The photographs relied by the Committee in their report indicates the visit made to all the seven units on 10th July 2023, the photographs prima facie show that the visits were done during the monsoon while the relevant day was raining.
- b. Inspection report given by the committee dated 31/10/2023 does not indicate any extension or addition by the undersigned to any structure.
- c. The photograph in the joint committee report for sampling at location of P2 is Sardessai Engineering works and not Shaparia Dock and Steel and P3 is

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Shaparia Dock and Steel and not Sardessai Engineering works.

C. Inspection dated 24th July 2023.

- a. With regards to the information sought by the committee for imposing penalty and remedial action for restoration the list of documents that were called upon were submitted as per the availability available with the unit.
- b. The data which the committee called for that was not available with the unit was never a part of terms and conditions which the Captain of Ports warranted.
- c. The undersigned unit started in the year 1964. The first permission/NOC was obtained in the year 1964 as per records available with the undersigned. There is no violation of any nature whatsoever, there is no notice of any such violation observed and no pollution caused by the undersigned unit.

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d. It is submitted that the DSLR re survey indicating the latest status was also superimposed by the Captain of Ports authorized area which clearly revealed that there was no extension or encroachment beyond the permitted area.

D. Meeting on 31st August 2023

a. The test report of samples collected by GSPCB dated 01/10/2016, Directorate of Fisheries and Joint Committee Report reveal that the samples tested are well within the prescribed parameters and the same is neither causing pollution nor affecting the fishing catch.

E. Meeting dated 06th October 2023 (page no. 7 of report).

a. In connection with the legal framework the undersigned unit never shied away from complying to any compliances called upon from time to time by Captain of Ports.

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- F. With reference to the DSLR, Government of Goa survey which clearly indicates that there have been no further encroachment but the encroachment mentioned in the riverine area is within the permissible area permitted by the Captain of Ports while granting the permission which is clearly shown by the area Captain of Ports have allotted to the undersigned unit drawn on the DSLR plan to indicate that no activity carried out was beyond the scope of permission granted by Captain of Ports.
- G. Surface water and sediment collection at Cortalim creek by GSPCB and CPCB in its conclusion suggests their values concluding that the overall basic water parameters showed more or less similar water quality with minor variations. In Particular, the low turbidity, substantial D.O. contents and depleted B.O.D values indicate good condition of sea water along the creek. Very low oil and grease residue which is below detectable level so also less faecal coliform counts in surface water also suggest the same thus there is no pollution as such from the water sample tested results.



- a. Sediment sample result : the analysis of sediment sample result does not reveal existence of any pollution.
- b. Fish production data obtained from department of fisheries clearly reveal that it cannot be concluded that project activity are responsible for reduction in fish catch.

II. COMMITTEE OBSERVATION AND FINDING

- A. The committee opines that the private respondent is liable to pay compensation for past violations on polluter pay principle to be assessed by GSPCB as per prevailing law.
- B. The undersigned disputes and denies that the undersigned unit has committed any act of pollution that can bring the undersigned unit or make the polluter pay principle applicable to the undersigned unit.
- C. Without prejudice and without admitting the contents of the joint committee report, the calculation of 13168 days to calculate the penalty based on assumption that the pollution is caused from the date of grant of 1st permission

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and without even considering that the undersigned unit is operational only during monsoons thus the calculation provided and the methodology adopted to calculate the EDC is arbitrary, absurd, unsustainable.

- D. As per CPCB committee methodology of assessing environment compensation, it is submitted that "N" from the formula $EC=PI \times N \times R \times S \times LF$ is number of days for which violation took place is the period between the day of violation observed and due day of direction of compliance and day of compliance verified by CPCB, SPCB and PCC. Without prejudice this means in the present case "N" will have to be calculated as number of days from when violation was observed which is not so in the case of undersigned as such the entire calculation is misconceived.
- E. Even the amended Water Act prescribes maximum ceiling on the penalty.
- F. The mode of compensation is entirely absurd, unacceptable and cannot be considered applicable to undersigned unit.

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G. In the present circumstances the sample collected of water / sediment / fish production data none of the results have concluded in indicating that there is any pollutant discharged or that there is pollution caused by the undersigned unit on the contrary the conclusion of water samples reveal good condition of sea water along the creek.

H. General framework for imposing Environmental Damage Compensation as per CPCB where the result of analysis of soil/GW/SW/Air/Etc does not indicate pollution, no further action is required.

A. In the circumstances at hand in respect of the undersigned unit it is categorically clear in the joint report itself stipulates that:

- a) The sample of water drawn is not polluted but within normal limits.
- b) No air sample collected by the committee. As such no opinion indicated by the joint committee.
- c) The Fish Production Data Report by the fisheries department who issued report also clarified that

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there is nothing concluded that the undersigned unit is responsible for the reduction in fish catch.

- d) All in all the sediment samples not analysed for heavy metals.
- e) The findings in the joint committee report does not anywhere indicate any pollutant and yet has arbitrarily calculated arbitrary highly escalated enormous compensation figure on no valid grounds at all.

- I. The Formula that is sought to be pressed in the report rendering arrival of a hypothetically cryptic value is entirely erroneous and arbitrary:

In order to Apply the formula i.e.

$$EC=PI \times N \times R \times S \times LF$$

N connotes the number of days the violation took place which is the period between the day violation observed / due date of direction compliance and the day the compliance is verified by CPCB /SPCB/PCC.

Consent to Operate under Air & Water Act issued by GSPCB dated 11-04-2011 was granted upon conducting site inspection, however,

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no violation was observed at the time of inspection and as such consent to operate was granted to the unit, thus indicating that invocation of the formula by Joint Committee in its report for calculating EDC in the present case more particularly for calculation of number of days i.e. "N" is erroneous, absurd, arbitrary.

- a) The CPCB / GSPCB nor any authority ever issued any notice or indication on the date of such observance of violation. The reports submitted are also silent on the exact date from which the violation was first observed.
- b) There is no direction compliance notice issued.
- c) Clear interpretation of the number of days would indicate that the day on which the violation took is the day from which violation is observed by the authority.
- d) In the present case there is at the out set no iota of pollution seen from the report of the collected samples.
- e) A fact cannot be lost site of that no particular notice was available to procure permission from a particular authority and there was no reason to flout such condition had it been incorporated in permissions issued by the

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Captain of Ports when the undersigned unit was taking necessary permissions from statutory authorities. On the contrary the authorities failed to indicate the permission that was required, (GCZMA) (Pollution) which was subsequently obtained, yet way before the OA 16/2016 was filed.

- f) It is further submitted that the application of formula is ill founded and the same is disputed.
- g) Without prejudice to the above it is submitted that the Joint Committee Report is erroneous and cannot invoke polluter pay principle retrospectively defeating laws of limitation.

In view of the above the undersigned ought to be discharged from the alleged compensation as there is no element of pollution made out in the report and more particularly in accordance with the CPCB Report.

The undersigned is thus not governed under the formula the joint committee has sought to arbitrarily impress as there is no pollution as revealed from the sample analysis data.

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Thus it is urged to discharge the undersigned from the alleged claim of environment compensation indicating of a highly uncomprehensive figure.

Thanking You

Yours sincerely

FOR SHAPARIA DOCK & STEEL CO. PRIVATE LTD

Amshapawa