

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE
EXECUTION APPLICATION NO. 01 OF 2023
IN
ORIGINAL APPLICATION NO. 16 OF 2016**

IN THE MATTER OF:

Salu D'Souza & Anr.

...Applicants

Versus

Goa Coastal Zone Management Authority & Ors.

...Respondents

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Dated:- 11.03.2024

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**RESPONSE ON BEHALF OF APPLICANT TO JOINT COMMITTEE
REPORT DATED 01.12.2023**

1. That the present Application is being filed before this Hon'ble Tribunal under Section 25 of the National Green Tribunal Act, 2010 seeking execution of the Order dated 11.05.2022 of the Hon'ble Tribunal in Original Application No. 16 of 2016 (Salu D'Souza & Ors v. Goa Coastal Zone Management Authority & Ors.) which contained directions for stoppage of activities in violation of Coastal Regulation Zone, 2011, payment of compensation by the violators and restoration of the area in and around Cortalim Creek in South Goa where the action of illegal anchoring of ships by 7 private parties in violation of the CRZ Notification, 2011 led to destruction of ecology of the area.
2. That vide final Order dated 11.05.2022 in Original Application No. 16 of 2016, this Hon'ble Tribunal had constituted a Joint Committee for ensuring compliance with the directions of this Hon'ble Tribunal and to ensure that restorative actions are taken in the area.

3. That the Joint Committee has filed a Report dated 01.12.2023 and the Applicants have the following response to the Report:
- i. The Joint Committee Report has admitted that the units were operating without obtaining consents under the Water (Prevention and Control of Pollution) Act, 1974;
 - ii. None of the directions contained in the Order dated 11.05.2022 have been complied with, leading to a situation that even after passing of almost two years since the final Order, environmental violations are taking place;
 - iii. The compensation calculated is inadequate because,
 - The Joint Committee has only computed compensation for violation of Water Act and has failed to compute compensation for violation of provisions of CRZ Notification by units for operating in CRZ-I area;
 - The units, which were found to be violating the CRZ Notification by this Hon'ble Tribunal in OA 16 of 2016, are still operating in violation, even after the Order of this Hon'ble Tribunal dated 11.05.2022 and no exemplary cost has been imposed upon them;
 - The time period of violation calculated for some units with respect to violation of provisions of Water Act is inadequate.

Admission by Joint Committee that no consents under the Water (Prevention and Control of Pollution) Act, 1974 have been obtained

4. That the Joint Committee Report has clarified that all the private respondents were functioning without consents and No-Objection Certificates under the Water (Prevention and Control of Pollution) Act, 1974. The following table will briefly point out the observations of the Joint Committee with respect to the status of permissions granted to the private units:

Private Respondent	Status of permissions as per the Report
A.V. Salgaonkar Works	- Permission from Captain of Ports expired on 12.07.1971. No further permission was obtained. - No consent obtained under Water (Prevention and Control of Pollution) Act, 1974
Shaparia Docks and Steel Co. Ltd.	No consent obtained under Water (Prevention and Control of Pollution) Act, 1974
Sardassai Engineering	No consent obtained under Water (Prevention and Control of Pollution) Act, 1974
Vipul Shipping Engineering Works	No consent obtained under Water (Prevention and Control of Pollution) Act, 1974
Sachita Engineering Works	No consent obtained under Water (Prevention and Control of Pollution) Act, 1974

Ferromar Shipping Pvt Ltd	No consent obtained under Water (Prevention and Control of Pollution) Act, 1974
Desa Engineering Works	NO CRZ Clearance was obtained

Non-compliance with directions contained in the final Order dated

11.05.2023 of this Hon'ble Tribunal

5. That the private respondents have failed in complying with any of the directions of this Hon'ble Tribunal given vide final Order dated 11.05.2022 in Original Application No. 16 of 2016.
6. That the Joint Committee Report at Page 402, has provided information with regard to grant of permissions and approvals obtained by the private respondents. A perusal of the same will make it clear that the Joint Committee Report has failed to comment on violation of CRZ Notification, 2011 by the activities of the private units. Vide Order dated 11.05.2022, this Hon'ble Tribunal had recorded that the activities which are not allowed as per CRZ Notification cannot be allowed to continue. This Hon'ble Tribunal had recorded:

*"17. Accordingly, dropping of proceedings against the private respondents by CZMA on the ground of pendency of clearances before SEIAA is not justified. Mere pendency of application for CRZ Clearance cannot be treated as permission to continue such activities. **The said activities which are not permissible without CRZ clearance are thus directed to be discontinued within three months from today.**"*

7. It is pertinent to note that the activities are being undertaken in CRZ-I area, as per CRZ Notification, 2011 which includes the following:

"(i) CRZ-I,–

A. The areas that are ecologically sensitive and the geomorphological features which play a role in the maintaining the integrity of the coast,-

(a) Mangroves, in case mangrove area is more than 1000 sq mts, a buffer of 50meters along the mangroves shall be provided."

8. That further, the CRZ Notification, 2011 had given special consideration to the CRZ areas of the State of Goa. As per Par 8 (V) (3), the following has been stipulated:-

"3. CRZ of Goa

In view of the peculiar circumstances of the State Goa including past history and other developments, the specific activities shall be regulated and various measures shall be undertaken as follows:-

i) the Government of Goa shall notify the fishing villages wherein all foreshore facilities required for fishing and fishery allied activities such as traditional fish processing yards, boat building or repair yards, net mending yards, ice plants, ice storage, auction hall, jetties may be permitted by Grama Panchayat in the CRZ area;

...

(iv) the eco sensitive low lying areas which are influenced by tidal action known as khazan lands shall be mapped;

(v) the mangroves along such as khazan land shall be protected and a management plan for the khazan land prepared and no developmental activities shall be permitted in the khazan land;"

(Emphasis supplied)

9. That the CRZ Notification, 2011 only allows the following activities to be undertaken in CRZ-I area, which does not include parking of vessels, repair work and causing pollution:

"I. CRZ-I,-

(i) no new construction shall be permitted in CRZ-I except,-

(a) projects relating to Department of Atomic Energy;

(b) pipelines, conveying systems including transmission lines;

(c) facilities that are essential for activities permissible under CRZ-I;

(d) installation of weather radar for monitoring of cyclones movement and prediction by Indian Meteorological Department;

(e) construction of trans harbour sea link and without affecting the tidal flow of water, between LTL and HTL.

(f) development of green field airport already approved at only Navi Mumbai."

10. That therefore, these activities cannot be allowed to be undertaken in CRZ-I area and the encroachments have to be removed, as per the directions of this Hon'ble Tribunal.
11. That the following table will show how the private respondents as well as the authorities have failed to comply with the orders of this Hon'ble Tribunal:

Direction of this Hon'ble Tribunal	Status as per Joint Committee Report
The said activities which are not permissible without CRZ clearance are directed to be	As per information given in the table at page 399, the following units are still operations:

<p>discontinued <i>within three months from the date of order.</i></p>	<p>i. Shaparia Dock and Steel Co. Pvt. Ltd., ii. Desa Engineering Works, iii. Vipul Shipping Engineering Works, iv. Sachida Engineering Works.</p> <p>The same is also reiterated at Page 403 (for Shaparia Dock and Steel Co. Pvt. Ltd., Vipul Shipping Engineering Works, Sachida Engineering Works) and at page 404 (for Desa Engineering Works).</p>
<p>Private respondents are also liable to pay compensation for past violations on polluter pays principle to be assessed by the Goa Pollution Control Board as per law.</p>	<p>Environmental compensation has been computed as per the formula of Central Pollution Control Board (at Page 405). However, the compensation computed by the Committee is inadequate as it does not take into account violation of CRZ Notification by the private respondents.</p>
<p>For remedial action for past violations and restoration, a restoration plan be prepared by a joint Committee <i>(to be finalized within a period of three months).</i></p>	<p>The Joint Committee Report at Page 407 has stated that "<i>for remedial action for past violations and restoration, a restoration plan be prepared by a joint Committee</i>". However, it is not clear if the restoration plan has been prepared as there is no further information provided on</p>

	the same. Copy of the restoration plan has also not been annexed.
Removal of encroachment by vessels and restoration plan may be ensured through the concerned authorities, including Police.	Encroachments are still present in the riverine area. At Page 393 of the Report, it is an admitted fact that " <i>DSLRL observed encroachments in the riverine area</i> ".
The Committee to function for four months to oversee execution and submit its action taken report to Chief Secretary, Goa. Any cost to be incurred in the process will be borne first by State PCB under the public trust doctrine, to be recovered from the private respondents, as mentioned earlier on polluter pays principle.	No information provided on whether any such action taken report has been submitted to Chief Secretary, Goa.

The environmental compensation computed by Joint Committee is inadequate

12. That the Joint Committee Report has provided computation of environmental compensation to be imposed on each private respondent (Page 405).
13. It is the submission of the Applicants that the Joint Committee has failed to compute compensation for violation of CRZ Notification, 2011 for undertaking its operations in CRZ-I area, thereby violating the

provisions of the Notification. The Joint Committee has only computed compensation for violation of Water Act and for operating without obtaining consent under the Water Act. It is submitted that the units were still in violation even after obtaining consent to operate, since they were operating in CRZ- I area.

14. That it is pertinent to point out the observation made by this Hon'ble Tribunal in Order dated 11.05.2022 in Original Application 16 of 2016:

*"15. On due consideration of rival contentions, we find that foreshore activities are involved in respect of vessels in question. Vessels are birthed not merely for repairs but have been there for years without requisite CRZ clearance. **Permission granted by the Captain of Port for use of water frontage is not be a substitute for the CRZ Clearance, statutorily required as per CRZ Notification. Such clearance is not exempted even if the activities started prior to 1991. What is protected is the construction is already made prior to 1991 and not such foreshore activities for which CRZ Clearance is required.** There is also mandate to protect mangroves and khazan land under para 8 of the CRZ Notification.*

...

*16. In view of the above, without CRZ clearance activities of the private respondents are not permissible. **Mere fact that the CZMP has not been prepared cannot be a ground to continue the said activity as the matter will be governed by already finalized CZMP on 27.09.1996,** according to which the area falls under CRZ-I (inter*

tidal area) calling for CRZ Clearance for regulated activities."

(Emphasis supplied)

15. That in light of this, the environmental compensation has to be computed for the period beyond the date of obtaining of consent to operate since the violation continued even after it.
16. That the following table will show how the compensation calculated for each private respondent is inadequate:

Private Respondent	Violation, as per the Report	Compensation
A.V. Salgaonkar Works	Consent to operate granted on 04.08.2020 for repair of barges.	Committee has only computed compensation until 2012, even though the first consent was granted on 04.08.2020. No compensation computed for operating in CRZ-I area.
Shaparia Docks and Steel Company Ltd.	The unit was found to be in operation, at the time of site inspection.	No compensation computed for operating in CRZ-I area. The unit is continuing operations, despite clear directions from this Hon'ble Tribunal vide Order dated 11.05.2022 in OA 16 of 2016, and therefore, exemplary costs should be imposed.

Sardessai Engineering	Consent was obtained on 19.08.2015, which expired on 10.12.2019.	Even though no operations were observed during the site visit, the Report is not clear whether operations continued even after expiry of consent on 10.12.2019. No compensation computed for operating in CRZ-I area.
Vipul Shipping Engineering Works	The project was found to be in operation, without obtaining any consent.	No compensation computed for operating in CRZ-I area. The unit is continuing operations, despite clear directions from this Hon'ble Tribunal vide Order dated 11.05.2022 in OA 16 of 2016, and therefore, exemplary costs should be imposed.
Sachita Engineering Works	The project was found to be in operation.	No compensation computed for operating in CRZ-I area. The unit is continuing operations, despite clear directions from this Hon'ble Tribunal vide Order dated 11.05.2022 in OA 16 of 2016, and

		therefore, exemplary costs should be imposed.
Ferromar Shipping Pvt. Ltd.	The Consent was granted on 29.09.1999, which expired on 25.08.2001. Thereafter, renewal of consent was granted on 22.09.2020.	Compensation has only been computed until 29.09.1999, when the consent was granted. However, no compensation has been computed from the time of expiry of consent on 25.08.2001 to 22.09.2020, when the consent was renewed. Encroachment was noticed during site visit, however, no compensation computed for the same.
Desa Engineering Works	Unit is still operational.	The unit is continuing operations, despite clear directions from this Hon'ble Tribunal vide Order dated 11.05.2022 in OA 16 of 2016, and therefore, exemplary costs should be imposed. No compensation has been computed for operating the unit without obtaining

		<p>consent under the Water Act;</p> <p>The Standard Operating Procedure dated 07.07.2021 pertains to violation cases wherein operations are continuing without a valid Environmental Clearance. However, in the present case, there has been no violation of EIA Notification but the matter relates to operating in CRZ-I area.</p>
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17. That the Joint Committee may be directed to take adequate steps to ensure that all the directions contained in the final Order dated 11.05.2022 of this Hon'ble Tribunal are complied with and the compensation is calculated for each violation, in terms of law.
18. That in light if the above facts and circumstances, this Hon'ble Tribunal may be pleased to pass appropriate directions.

Through



RITWICK DUTTA



RAHUL CHOUDHARY

ADVOCATE FOR THE APPLICANTS