BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Original Application No.209/2020
(Earlier O.A. 52/2018 (WZ))

IN THE MATTER OF:

KASHINATH SHETYE & ORS. ...APPLICANTS

VERSUS

THE CHIEF SECRETARY STATE OF
GOA & ORS. ...RESPONDENTS

INDEX

N.D.O.H. 24.09.2020

Filed by:
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New Delhi

Dated:.23.09.2020

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WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NOS. 3, 4, 6, 7,9 & 14

1. That the subject OA has been filed interalia seeking the following reliefs:

a. *Issue a stop order to the ongoing construction of the MRF factory on land bearing Survey no. 259;*
b. *Declare all Fresh Water Rivers including but not limited to River Khandepar and also Lakes/Tollem/Resrviors/Tollexet including marsh, fen, peat-land or water, natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salty, including areas of marine water, the depth of which at low tide does not exceed six meters and including all inland waters such as lakes, reservoir, tanks, backwaters, lagoons, creeks, estuaries and manmade wetlands and the zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands as a wetland site under Wetland Rules (2010) as well as Wetland (Conservation And Management) Rules, 2017 and the provisions Environmental Protection Act, 1986;*
c. *Order removal of the Encroachment by demolishing illegal construction/Development activities such as hill cutting, tree cutting, mangroves cutting, land filling, construction of all kinds of structures within the buffer zone around the fresh water Rivers/lakes/Tollems/Reserviors/Tollemxets including around Khandepar River to be prohibited and the said areas to be maintained as unencumbered and unobstructed buffer zone upto 200 meters;*
d. *Direct inspection of the catchment area/paths of the rivers including Kahndepar River to ascertain whether the illegal underground channels/drains/pipelines which drain water to the MRF or chemical discharge done by MRF in the River Khandepar and to take forthwith remedial measures if needed;*
e. *Direct inspection of the catchment area and buffer zone (NDZ) of the River Kahndepar for its Bio-diversity potential and to take remedial measures if needed to conserve its biodiversity;*
f. *Ascertain the breaches in the embarkments around the river Khandepar/Lakes/tank/reservoirs/tollems in Goa including cutting of mangroves and coconut trees to be ordered to be replanted by the offenders and violators (MRF) so that the banks of River Khandepar don't collapse;*
g. *Direct the Collectors of South and North Goa, the respective village Panchayats and other competent authorities to take immediate steps to ensure that the access to water bodies like River Khandepar, tanks, reservoirs, ponds and lakes for the members of the public which has been obstructed by MRF factory be restored immediately including by village Panchayat and the and other government authorities;*
h. *Order removal of the constructions/development undertaken by MRF (Respondent NO. 17) and others in Sy. Nos. 258 and 239 of village Usgao in the vicinity of the River Khandepar forthwith as it is constructed in Buffer Zone 200 meters in NDZ of the river bank;*
i. *Order the village Panchayat of Usgao/Khandepar, the Water Resources Department and the State Bio-diversity Board to undertake periodic inspections of the River Khandepar and take necessary measures for its*

conservation as may be required and demolish the bandhara built by MRF by bribing all respondents;

j. *Acquiring all water bodies on private lands including inside the MRF premises at Khandepar and Usgao to ensure their conservation and beautification including the water body called River Khandepar and the area comprising Buffer zone around it;*

k. *Order closure or sealing of all waste water discharged outlets into River Khandepar;*

l. *Order installation of water treatment facility by MRF for all the water entering into the River Khandepar from its Tyre manufacturing plants/units at Usgao;*

m. *Such other and further orders as this hon'ble Tribunal deem fit and proper in the interest of environmental protection.*

2. That this Hon'ble Tribunal, vide Order dated 24.10.2019, observed that Department of Forests, Goa, State Biodiversity Board, Goa Coastal Zone Management Authority, Mining Department and Goa State Wetland Authority are essential for an effective adjudication of the matter and thus directed them to file reply. A copy of the order dated 24.10.2019 is being annexed herewith as **ANNEXURE-1.**

3. That accordingly, the above Parties filed their respective replies/short affidavits which are part of the Court record and are being summarized hereinbelow for ready reference.

Submissions on behalf of Goa State Wetland Authority (R3), Refer Affidavit dated 14.01.2020 at page no. 805-810

4. That in so far as prayer 58 (b) of the O.A. to declare all fresh water rivers including but not limited to river Khandepar and also lakes/ tollem/reservoirs/ tollexet etc. as a Wetland site under the Wetland Rules is concerned, it is submitted that as per definition of wetlands as stated in the Wetlands (Conservation and Management) Rules, 2017, rivers and paddy fields do not qualify as wetlands. Further, CSIR- National Institute of Oceanography (NIO) has already been appointed as an agency for identification of wetlands and preparation of Brief Documents along with activities as mentioned in Rule 7 of Wetland 2017 Rules, and work in this regard has already been initiated and is in progress.

5. The process of identification and declaration of Wetlands in the State of Goa is subjudice before this Hon'ble Tribunal in a case filed by the present Applicant itself being O.A. No. 141/2017 (WZ) (Kashinath Shetye & Ors. Vs Chief Secretary & Ors) wherein in the second quarterly report dated 07.08.2020 it has been submitted before this Hon'ble Tribunal, that total number of water bodies identified as potential wetlands in the State of Goa are 35, out of which One wetland namely Bondvol lake has already been Draft Notified and published in Official gazette on 07.05.2020. Furthermore, brief documents of Ten water bodies have been completed and were placed before the technical committee as per Wetland (Conservation and Management) Rules 2017, which now will be placed for Draft Notification after incorporating inputs if any from DSLR & TCP. As per the CSIR-NIO report dated 18.09.2020, river channels

such as Khadepar River are not wetlands as per Wetland (Conservation and Management) Rules 2017.

6. That with reference to the contention regarding maintaining buffer zone upto 200 meters around the fresh water rivers/ lakes/ tollems/ reservoir/tollemxets including area around Khandepar river, it is submitted that it will be dealt with as per Wetlands (Conservation and Management) Rules, 2017 as a part of the process of identification of wetlands which is ongoing.

7. That directions had been issued to CSIR-NIO whereby the area in and around 10 km of MRF (Respondent No.17) is to be taken on priority basis to identify the presence of wetland as per Wetland Rules, 2017. According to the report by CSIR-NIO a total of 10 Waterbodies have identified as potential wetlands within 10 km radius of MRF, brief documents of which are under process.

8. That accordingly, GSWA has issued a letter dated 23.09.2020 to the Water Resource Department, Goa requesting therein to maintain and protect the 10 identified waterbodies while ensuring to maintain buffer of 50 meters till a decision is made with respect to declaration of these waterbodies as per Wetland (Conservation and Management) Rules, 2017. A copy of the said letter dated 23.09.2020 is being annexed herewith as **ANNEXURE-2.**

Submissions on behalf of Goa State Biodiversity Board (R4), Refer Affidavit dated 14.01.2020 at page no. 796-804

9. It is submitted that the prayers made by Applicant in this O.A. do not come under the mandate of Goa State Biodiversity Board as per the Biological Diversity Act 2002 and Biological Diversity Rules 2004 & Goa Biological Diversity Rules 2017, which mainly emphasis on regulation of activities related to access of Biological Resources for the purpose of commercial utilization, Bio Survey and transfer of results of any Research related to any bio-resources, or the associated Traditional Knowledge, especially to Non-resident Citizen of India or to any person who is not citizen of India. Regulation of access to Biological Diversity is dealt in section 3-7 of Biological Diversity Act 2002.

10. It is further submitted that in the Agenda no 14 of 29th Board Meeting of GSBB it was resolved that GSBB will strictly follow the mandate under the Biological Diversity Act 2002 and Rules 2004 & Goa Biological Diversity Rules 2017 while addressing the complaints received by GSBB, those within the legal framework to be acted upon & others to be dealt as per legal advice. The copy of the relevant extract of agenda no 14 of 29th Board Meeting of GSBB dated 23.10.2017 is annexed with GSBB Affidavit as ANEXURE 2 ay Page no. 802-804.

11. The task of preparing river biodiversity index as a part of larger study while monitoring the impact of Sand mining clusters of Rivers in Goa, GSBB has entrusted the study of the same to CSIR - National Institute of Oceanography (NIO). Engagement of NIO as an expert agency has been

approved by Government of Goa and the work has been initiated. During the study for ascertaining the Biodiversity Index the same will also cover the catchment area/paths of rivers etc. as mentioned in Prayer 48 (D&E) of the OA. After conducting the aforementioned studies, the report will be the basis for decision making and will be submitted to the relevant authorities.

Submissions on behalf of Goa Coastal Zone Management Authority (R6), Refer Affidavit dated 14.11.2019 at page no. 811-815

12. The subject area i.e. property bearing Sy. No. 258/0, 259/2-A and 259/1 in Usgao village of Ponda Taluka wherein it is alleged by the Applicants that Respondent No. 17 has done encroachment in and around Khandepar River, does not attract provisions of CRZ Notification, 1991. The same has been communicated to Respondent No. 17 vide GCZMA letter Ref No. GCZMA/S/1/07/11/1497 dated 07.10.2016 which is annexed with the Affidavit as ANNEXURE R6/1 at page no. 815.

Submissions on behalf of Goa State Pollution Control Board (R7), Refer Affidavit dated May 2019 at page no. 532-590

13. The Answering Board, on receipt of complaint dated 28.05.2018 from the Applicant, conducted a site inspection on 30.05.2018 and on the basis of the findings of the Report of Inspection has issued Respondent No. 17 a Show Cause Notice dated 06.12.2018, subsequent a reply dated 11.12.2018 was filed by Respondent No. 17. The said reply was placed under the technical advisory committee (TAC) of the board on 06.05.2019 and based on the recommendation of the TAC, Respondent No. 17 was directed to furnish certain clarifications that was communicated to Respondent No. 17 vide letter dated 03.07.2019. Subsequently based on the response received, the board has issued the renewal of consent to operate to Respondent No. 17.

14. **Issue of pollution of the water in River Khandepar**: The Answering Board carried out water quality monitoring in the River Khandepar at two locations one of which is upstream while one is downstream of the unit of Respondent No. 17. The result of the water quality monitoring over last 4 years (2015-2019) indicates that all the parameters of pH, DO, BOD and Total Coliform are within the CPCB prescribed limits. *(Refer Exb. D page 566-573)*

15. **Treatment Facility (Sewage Treatment Plant/Effluent Treatment Plant):** Respondent No. 17 has installed a Treatment Facility unit within its premises. Domestic and Industrial Effluents generated by Respondent No. 17 is treated in the said facility. Respondent NO. 17 does not release treated effluents into the river Khandepar and the same is used for gardening and toilet flushing. Answering Board has carried out a Performance Analysis Report of the Treatment Facility, and the result of the analysis of samples of the final treated effluent of the treatment facility indicates that all the parameters of the treated water samples are within the CPCB prescribed limits.

16. The Answering Board also collected samples of treated water samples of the Treatment Facility of the unit of Respondent no. 17 and the water samples

of upstream and downstream of the River Khandepar flowing adjacent to the unit on 18.07.2018 and the analysis of these samples indicates that all the parameters are within prescribed limits. (*Refer Exb E pg. 574-588)*

17. **Pollution of the air in the vicinity of the unit of M/s MRF, due to its operation:** The Answering Board has conducted Continuous Ambient Air Quality Monitoring (CAAQMS) at two locations in the vicinity of the Respondent No 17 unit on 06.08.2018, 07.08.2018 and 08.08.2018. The AAQM conducted by the Board at two locations i.e. at the Car Parking area and the other at the furnace Oil Tank, indicate that the parameters of CO, 03, NO2; NOX, NH3, PM2.5,PM10 monitored are within prescribed limits as per the NAAQS standards. The parameters of SO2 for the 24-hour average were found to be marginally high in respect of the monitoring at the car parking area. *(refer Exb. F pg. 589-590)*

18. The Answering Board is in receipt of Stack Monitoring Reports and Ambient Air Quality Monitoring Reports, submitted by the Respondent No. 17 in compliance to consent conditions upto February 2019 which was conducted by an MoEF accredited laboratory and the reports indicate that all parameters are within prescribed limit.

Submissions on behalf of Director of Mines and Geology, Goa (R9), Refer Affidavit dated 16.12.2019 at page no. 592-623

19. Respondent No. 17 submitted an application dated 05.12.2016 to the Answering Respondent seeking permission for cutting and filling of land in property bearing Sy. No. 258/0, 259/2-A and 259/1 in Usgao village of Ponda Taluka along with copy of permissions granted to them by the Town and Country Planning Department, Government of Goa (Respondent no. 8), In-principle approval of the Goa Investment Promotion & Facilitation Board (IPB) (Respondent No. 5) dated 17.11.2016, Consent to establish dated 09.11.2016 issued by Goa State Pollution Control Board (Respondent No. 7). *Refer Annexure R9/1 page 598-611.*

20. The Application dated 05.12.2016 was processed by the Answering Respondent and permission was granted to Respondent No. 17 under Rule 53 of the Goa Minor Mineral Concession Rules, 1985 vide letter no. 04/781/2016/Minor/Mines/2849 dated 27.01.2017 for extraction/transportation of minor minerals from the subject property after payment of advance royalty under Rule 53 of Goa Minor Mineral Concession Rules, 1985 which was subject to obtaining NOC from any other authority concerning extraction and transportation. *Refer Annexure R9/2 page 612-613.*

21. That as per Rule 53 of Goa Minor Mineral Concession Rules, 1985, "when minor minerals are found in the course of building, the provisions of Goa Minor Mineral Concession rules 1985 shall not apply to such mineral. However, royalty at the rate, as prescribed in Schedule I of Goa Minor Mineral concession rules 1985 is to be payable during construction."

22. The Answering Respondent renewed and extended the permission granted under Rule 53 of the Goa Minor Mineral Concession rules, 1985 to Respondent No. 17 from time to time and the last such extension/renewal of permission was granted vide letter No. 04/781/2016/Minor/Mines/7443 dated 13.12.2018. *Refer Annexure R9/3 page 614.*

23. It is pertinent to note that a Public Interest Litigation being Writ Petition No. 17 of 2018 was filed by the Dhatwada Usgao Citizens Forum and Anr., before the Hon'ble High Court of Bombay at Goa against the approval and permissions granted by various authorities consequent to the in principle approval granted by the Goa Investment Promotion and Facilitation Board under the provisions of the Goa Investment Promotion Act, 2014 to MRF Ltd. In the said Writ Petition, the Answering Respondent has been arrayed as Respondent No.5 and MRF Ltd has been arrayed as Respondent No. 9. The Hon'ble High Court of Bombay at Goa vide its interim order dated 11.09.2019 passed in PIL WP No. 17 of 2018, has interalia restrained Respondent No. 17 herein from undertaking any further activities in pursuance of the permissions dated 27.01.2017 and 19.04.2017 as renewed and granted from time to time by the Answering Respondent. *Refer Annexure R9/4 page 615-623.*

The Hon'ble High Court further directed as under:

27.....Further, we clarify that neither pendency of this petition nor grant of this interim order will come in the way of the Respondent No.9 from applying for the EIA clearance under the EIA Notification of 2006, no doubt, without prejudice to their rights and contentions that EIA Notification of 2006 is inapplicable to the activities presently undertaken by them. If such application is made, the SEIAA to consider such an application in accordance with law and on its own merits, on the basis that the EIA Notification of 2006 is in fact applicable notwithstanding the pendency of this petition and grant of this interim order. In fact, any determination by the SEIAA, will also assist this Court in determining the issue as to whether the extraction and transportation of over one million tonnes of minor mineral by flattening an entire mountain is indeed an environmentally benign activity requiring no clearance whatsoever under the provisions of Environment (Protection) Act,1986 in general and EIA Notification of 2006 in particular.

Submissions on behalf of Forest Department, Panaji -Goa (R14), Refer Affidavit dated 09.01.2020 at page no. 816-838

24. On 24.10.2016, Respondent No. 17 applied before the Answering Department for felling of 127 trees in Sy. No. 259/2-A, Usgao village, Ponda under The Goa Daman and Diu, Preservation of Trees Act, 1984 in prescribed Form "B". Subsequently a site inspection was carried out by Dy. Conservator of Forests and Tree Officer, North Goa on 07.11.2016 and based upon the documents and factual position on ground, a felling permission was granted by competent authority and same was conveyed to Respondent No. 17 vide felling

license No. DCFN/PON-58/16-17/553 dated 13.12.2016 for **127 trees**. *(Refer Annex I page 820-824)*

25. On 23.11.2016, Respondent No.17 had again applied before the Answering Department for felling of 128 trees in Sy. No. 259/1, Usgao village, Ponda under the Goa Daman and Diu, Preservation of Trees Act, 1984 in prescribed Form "B". A site inspection was carried out by the Dy. Conservator of Forests, North Goa Forest Division and Tree officer, North Goa on 28.11.2016. Based upon the documents and factual position on ground, a felling permission was granted vide felling license No. DCFN/PON-70/16-17/591 dated 12.01.2017 to cut only **104 trees** against 128 trees proposed for felling. *(Refer Annx. II page 825-827)*

26. It is submitted that while granting the tree felling permissions a condition to replant 3 times the trees in lieu of feeling was also imposed upon the Respondent No. 17 and Respondent no. 17 has successfully carried out re-plantation of 700 trees in their campus. *(Refer Annx. III colly page 828-38)*

27. It is further submitted that in both of the applications dated 24.10.2016 and 23.11.2016, the General Manager of Respondent No. 17 had also sought permission for felling of 1400 number of coconut trees but at that time, "Coconut" was not covered under the provision of Goa Daman and Diu, Preservation of Trees Act, 1984, hence no permission was granted by Goa Forest Department to fell the coconut trees.

28. Since the Respondent No. 17 was granted permission under the provision of Goa Daman and Diu, Preservation of Trees Act, 1984 as applicable, no illegal cutting of trees has happened at the behest of Respondent No. 17 at the subject area. The Respondent No.17 has only felled the permitted trees and no tree has been felled illegally. However, since at the time of application "Coconut" was not covered under the provision of Goa Daman and Diu, Preservation of Trees Act, 1984, no permission was granted by Goa Forest Department to fell the coconut trees. Further the felling permission was granted to Respondent No. 17 by keeping a setback of around 20-25 mts from the riverbank of Khadpekar to check the chances of any soil erosion and no mangrove cutting permission has been granted by the Answering Authority.

29. That in the light of submissions made hereinabove, it is most respectfully submitted that the captioned O.A. may be disposed of based on the factual position and submissions made by the Respondent Authorities qua the prayers made in the present case.

Filed by:

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NEW DELHI
DATED:23.09.2020

ANNEXURE-1

8

Item No. 06

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)

Original Application No. 52/2018 (WZ)

Kashinath Shetye & Ors. Applicant(s)

Versus

Chief Secretary, State of Goa & Ors. Respondent(s)

Date of hearing: 24.10.2019

CORAM : HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s): Mr. Kashinath Shetye, in person

For Respondent (s): Ms. Ruchira Gupta and Mr. Anurag Sharma, Advocates for Respondent No. 6.
Mrs. Fawia M. Mesquita, Advocate for Respondent No. 1.
Jai A. Dehadrai, Advocate for GSPCB.

ORDER

1. Mr. Jai A. Dehadrai, Learned Counsel for GSPCB points out that there is an error in recording facts in para 4 of the order dated 29.08.2019 in as much as Respondent No. 7 has been indicated not to have filed its response when it has already been filed on 07.05.2019.

2. The submission is taken on record.

3. Let a copy of the affidavit be handed over to Mr. Kashinath Shetye, applicant who is present in court.

TRUE COPY

4. Respondents who have filed their responses shall ensure that copies are exchanged between all the parties arrayed in the case.

5. The position that other than Respondent Nos. 7 & 17 have not filed their response till now has still not altered, despite the specific direction on 29.08.2019 that if they failed to do so their rights shall be forfeited.

6. Considering the response by the Department of Forests, Goa State Biodiversity Board, Goa Coastal Zone Management Authority, Mining Department and Goa State Wetland Authority are essential for an effective adjudication of the matter, we grant them one more opportunity to do so making it clear that failure to file the responses on the next date shall entail payment of heavy cost including initiation of disciplinary proceedings against the officer concerned and their civil imprisonment.

7. List on 16.01.2020.

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

24th October, 2019
O.A. No. 52/2018 (WZ)
hb

GOA STATE WETLAND AUTHORITY
O/o Goa State Biodiversity Board (GSBB)
Opp. Saligao Seminary, Saligao Bardez, Goa – 403511.
E-mail: goawetland@gmail.com

No.07-03/GSWA/2020/legal/058 **Date: 23/09/2020**

To,
The Chief Engineer,
Water Resource Department,
Sinchai Bhavan, Porvorim,
Bardez-Goa.

Sub: Request to maintain waterbodies within 10 km radius of MRF Region, Usgao, Ponda, Goa

Ref: Hon. NGT matter O.A. No. 52/2018 Kashinath Shetye and Ors. Vs. Chief Secretary and Ors.

Sir,

This is in reference to the written submission filed by GSWA with regard to the matter Kashinath Shetye and Ors. Vs. Chief Secretary and Ors. Pending before the Hon. NGT. The Report submitted by CSIR-NIO in this regard has identified 10 waterbodies in the MRF Region, Usgao, Ponda, Goa as potential wetlands. This report was submitted by CSIR-NIO as a part of its Project 'Identification of Wetlands in Goa' and subsequent to the proceedings in the Original Application 52 of 2018. Annexed herewith is the report of CSIR-NIO alongwith the list of 10 waterbodies.

Hence GSWA kindly requests you to ensure that the enlisted waterbodies are maintained and buffer of 50 meters remains protected till a decision is made w.r.t. declaration of these waterbodies as Wetland as per Wetland (Conservation and Management) Rules, 2017. Subsequently, you may continue to protect them as per the mandate of your Department.

This is for your information, perusal and further action.

Thanking you in anticipation.

Yours faithfully,

GOA STATE WETLAND AUTHORITY SALIGAO GOA

Dr. Pradip Sarmokadam
Head of the Nodal Agency
Goa State Wetland Authority

Enclosed: As above

CC to
1. OSD to Hon. Minster for Environment,
2. Director (Environment)