

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) AT PUNE**

Appeal No.: 53/2019(WZ)

Mr. Eduardo Pereira ..... Appellant

V/S

Goa Coastal Zone Management  
Authority and Anr ..... Respondents

**WRITTEN ARGUMENTS OF THE APPELLANT**

**MAY IT PLEASE THIS HON'BLE TRIBUNAL: -**

The Appellant most respectfully submits as under:

1. The present appeal raises out of the Impugned order dated 25/02/2019, passed by the Respondent no. 1, by which the Respondent no. 1 has issued direction under Section 5 of the Environment Protection Act, directing the demolition of the decorative retaining wall, restaurant and toilet block and the restore the same to its original condition.

**Facts as are relevant for the present appeal are as under:**

2. It appears that the Respondent No. 2 filed a complaint dated 24/01/2017 before the Respondent no.1 alleging illegal development / construction by the Appellant in the property bearing survey no. 9/10 of Gonsua village.

3. It appears that site inspection through the expert members of the Respondent no. 1 was conducted on 17/02/2017 and reported alleged violation. The Respondent no. 1 in its 189<sup>th</sup> meeting held on 04/12/2018 decided to issue direction to the party for hearing in the matter and accordingly a show cause notice bearing GCZMA/S/ILLE/16-17/73/1681 dated 10/12/2018 was issued to the Appellant.
4. That the Respondent no. 2 was absent for the 190<sup>th</sup> meeting held on 18/12/2018 and as such the matter was adjourned on that count as also on the request of the Appellant to file detailed reply.
5. The matter was taken up in the 191<sup>st</sup> meeting held on 04/01/2019. The Respondent no. 2 referred to his case whereas the Appellant filed his preliminary reply dated 26/12/2018 to the show cause notice dated 10/12/2018. The case of the Appellant in the said reply was that the Respondent no. 2 had enmity with the Appellant; that the Respondent no. 1 had approved the application filed by the Appellant for proposed open air hall in its 95<sup>th</sup> meeting held on 01/11/2013; that the village Panchayat of Betalbatim had issued N.O.C. dated 10/12/2013 for the proposed open air hall; that the GSPCB had issued its consent dated 12/04/2017 under Water and Air Act;

that the structures were temporary structures and there were no violations committed by the Appellant.

6. The Appellant states that in the said 191<sup>st</sup> meeting of the Respondent no. 1 held on 04/01/2019, the Respondent no. 1 directed the Appellant to file reply alongwith evidence.
7. The Appellant file his additional reply dated 07/01/2019 alongwith documents which includes the bookings of wedding, receipts of payment and study on sand dunes. The case of the Appellant as setout in the additional reply inter alia was that the Respondent no. 2 had a resort adjoining to the property of the Appellant and as such the Respondent no. 2 wanted to scuttle the competition and therefore filing false proceedings against the Appellant; that the allegation of construction activity in CRZ – 3 as alleged was denied; that the Appellant had not violated any provisions; that the list of customers and booking of weddings were referred to with documents; that there was no sand dunes and as such there was no occasion for damaging sand dunes as alleged; that a report of National Central for sustainable Coastal Management pertaining to Gonsua Village was relied by the Appellant to support the claim that there was no sand dunes existing in the property bearing survey no. 9/10.

8. The matter was thereafter taken up in the 192<sup>nd</sup> meeting of the Respondent no. 1 held on 21/01/2019. The Respondent no. 1 was pleased to issue demolition of the wall, structure/s, etc. for the reason as recorded in the Impugned Decision which was subsequently communicated to the Appellant on 27/02/2019 vide the Impugned Order.
9. The Appellant states that the Ministry of Environment, Forest and Climate Change vide order no. S.O. 3324(E) dated 26/10/2016, had notified the constitution of the Goa Coastal Zone Management Authority for a period of three years w.e.f. the date of publication of the said order.
10. The Appellant states that the said order dated 26/10/2016 indicates the Chairman and the Members of the Goa Coastal Zone Management Authority.
11. The Appellant states that the Minutes of the 189<sup>th</sup>, 191<sup>st</sup> & 192<sup>nd</sup> meetings of the Respondent no. 1 held on 04/12/2018, 04/01/2019 & 29/01/2019 gives the name of the members who are present for the said meeting. A bare perusal of the said Minutes would indicate that the composition / Constitution of the Authority on the said dates were not proper / not in accordance with the order bearing no. S.O. 3324(E) dated 26/10/2016 issued by the Ministry of Environment, Forest and

Climate Change, as such a nullity. The Appellant submits that the Minutes of the 189<sup>th</sup>, 191<sup>st</sup> & 192<sup>nd</sup> meetings of the Respondent no. 1 held on 04/12/2018, 04/01/2019 & 29/01/2019, under the caption "The following members were present for the meeting" will disclose that the persons present were representative of the Deputy Conservator of Forest; representative of the Director of Panchayats; representative of the Director of DSLR; representative of the Chief Engineer WRD; representative of the Director of Tourism; representative of the Director of Fisheries and not the persons as required under the order bearing no. S.O. 3324(E) dated 26/10/2016 issued by the Ministry of Environment, Forest and Climate Change. It is therefore submitted that the Constitution of the Respondent no. 1 not being in accordance with the requirements of law / order bearing no. S.O. 3324(E) dated 26/10/2016 issued by the Ministry of Environment, Forest and Climate Change, the meetings i.e. the 189<sup>th</sup>, 191<sup>st</sup> & 192<sup>nd</sup> of the Respondent no. 1 held on 04/12/2018, 04/01/2019 & 29/01/2019 are illegal and all / any decisions taking in such meeting are a nullity.

12. The Appellant submits that neither the Environment Protection Act, 1986 nor the Environment (Protection) Rules, 1986, permit

for delegation, as such the presence of the representatives of the Department concerned, itself vitiates the meeting and consequently all such decisions taken in such meeting.

### **ARGUMENTS**

A) The Appellant has questioned the validity to the constitution of the Respondent no. 1 on the 189<sup>th</sup>, 191<sup>st</sup> & 192<sup>nd</sup> meetings of the Respondent No.1 held on 04/12/2018, 04/01/2019 & 29/01/2019 (at page no. 104-106 of the paperback), which goes to the root of the matter. According to the Respondent no. 1 the quorum for the meeting on which the Respondent no. 1 had passed the Impugned decision was defective and consequently the decisions taken by the Respondent no. 1 on the said day which include the Impugned decision stands vitiated being without jurisdiction, thus a nullity. The said contentions of the Appellant are for the following reasons:

- The quorum / composition of Respondent No.1 on the said day of the Impugned Decision i.e. 29/01/2019 and the prior was not in accordance with the requirement of the law and as such the decisions taken in the said meetings are without jurisdiction, consequently the Impugned Order

passed on the basis of such Impugned decision are also illegal and a nullity.

- It is submitted that the members as required under the law / order bearing no. S.O. 3324(E) dated 26/10/2016 issued by the Ministry of Environment, Forest and Climate Change, indisputably, were not present, thus there being defect in the composition of the Respondent no.1 on the aforesaid days i.e. on the 189<sup>th</sup>, 191<sup>st</sup> & 192<sup>nd</sup> meetings held on 04/12/2018, 04/01/2019 & 29/01/2019 (at page no. 104-106 of the paperbook), which pertain to the case of the Appellant.
- It is submitted that the CRZ notification / order bearing no. S.O. 3324(E) dated 26/10/2016 issued by the Ministry of Environment, Forest and Climate Change does not provide for delegation and as such there was no scope for the nominated members to delegate its representatives for the said two meetings.
- The Appellant submits that the meetings of the Respondent no. 1 i.e. 189<sup>th</sup>, 191<sup>st</sup> & 192<sup>nd</sup> held on 04/12/2018, 04/01/2019 & 29/01/2019 are not in

accordance and / or are in violation of the order bearing no. S.O. 3324(E) dated 26/10/2016 issued by the Ministry of Environment, Forest and Climate Change (at page no. 91-103 of the paperbook) and / or the members as required to be present for the meeting of the Respondent No.1 , thus rendering the Impugned Decision / Impugned Order and / or all the decisions taken by the Respondent no. 1 qua the case of the Appellant in the said 189<sup>th</sup>, 191<sup>st</sup> & 192<sup>nd</sup> meetings held on 04/12/2018, 04/01/2019 & 29/01/2019 (at page no. 104-106 of the paperbook) are without jurisdiction, as such illegal.

- The Appellant submits that the CRZ notification / order bearing no. S.O. 3324(E) dated 26/10/2016 issued by the Ministry of Environment, Forest and Climate Change does not provide for delegation and as such there was no scope for nominated members to delegate its representatives for the said said 189<sup>th</sup>, 191<sup>st</sup> & 192<sup>nd</sup> meetings held on 04/12/2018, 04/01/2019 & 29/01/2019 (at page no. 104-106 of the paperbook) on which day the subject matter of the present appeal were considered.

- The Appellant relies on the Judgment of the Hon'ble Supreme Court in the case of **M. Chandru V/s. Member Secretary, Chennai Metropolitan Development Authority and Anr.** reported in **2009 (4) SCC 72** in support of the said proposition. The Hon'ble Supreme Court in para 14 to 21 dealt with the Delegation issue:

**“Para 18: *The Sewerage Board is State within the meaning of Article 12 of the Constitution of India. It is a creature of a statute. It can delegate its power provided there exists a provision in the Act. Power to delegate, thus, being a statutory requirement must find its place in the principal Act itself and not in the Regulations. The High Court, in our opinion, has asked unto itself a wrong question. The appropriate question required to be posed was not as to whether CMDA was appointed as an agent, but was as to whether the Sewerage Board could delegate its power to CMDA. It may have some advantages. But the same may not answer the legal requirement.”***

- The Appellant has specifically raised the said contention of the validity in the context of the

quorum of the Respondent no. 1 as on the date of the Impugned Decision.

- The Respondent no. 1 has filed reply dated 16/12/2019. The Respondent no. 1 has made an attempt to deal with the said contentions of the Appellant that for want of quorum the Impugned Decision and / or the decisions in the 3 nos. meetings as referred by the Appellant are without jurisdiction and nullity, in para 5 and 6 of the said reply dated 16/12/2019.
- At the outset it is submitted that the Respondent no. 1 has neither produced any document nor contended that there is a power to delegate. On the contrary the Respondent no. 1 though agrees that the Respondent no. 1 is a authority constituted by the Ministry of Environment and Forest in exercise of its power under the Environment Protection Act, 1986, the Respondent no. 1 has not pointed out any provision either under the Environment Protection Act or the CRZ notification wherein the member as appointed vide order bearing no. SO3324(E) dated 26/10/2016 can delegate its power or any provision wherein by

nominated members can delegate its representatives for the meeting.

The Respondent no. 1 in para 7 of the said reply has contended as follows:

*Para 7 : In any event I say and submit that the GCZMA consist of expert or nominated members and ex-officio members who are shown in the constitution order as heads of the consent department. As such, the ex-officio members of the authority are not nominated by the state Government. The concerned head of the department who is the ex-officio member of the authority can duly authorize his representative to remain present for the GCZMA meeting and in any event also the committee of the GCZMA is properly constituted and can validly take decisions in the matters placed before it. It is submitted that the presence of the representatives of the ex-officio members of the authority who are duly authorized by their respective head does not vitiate the proceedings before the authority as they participate in deliberation and / or discussion and have sound knowledge of the provisions contend in the CRZ*

*notification and the Environment Protection Act and the relevant statutes. This representatives are at all times competent and duly authorized to make decisions under the CRZ notification.”*

- The Respondent no. 1 having taken such a stand was required to support the same based on provision of law. The Appellant disputes the contentions of the Respondent no. 1 as sought to be raised in the said paras of the reply dated 16/12/2019. The said contention of the Respondent no. 1 also appears to be contrary to the order bearing no. SO3324(E) dated 26/10/2016.
- In the context of the claim and contention of the Respondent no. 1 with regards to the authority of the concerned head of department to authorize his representatives in the manner suggested by the Respondent no. 1, the Respondent no. 1 has not supported the same with any provision of law or any such material.
- In the context of the claim of the Respondent no. 1 of such representatives are competent and have authority to make decisions is also a claim which is

liable to be rejected in limine. A perusal of the minutes of the 189<sup>th</sup> of the meeting, 191<sup>st</sup> meeting and 196<sup>th</sup> meeting dated 04/12/2018, 04/01/2019 and 29/01/2019 (at pages 104-106 respectively), do not even indicate the name of such representative. The minutes produced at pages 104-106 are of the Respondent no. 1 as such the Respondent no. 1 would not be able to dispute the same.

- On the face of the said records, which neither indicate the name of such representatives nor the designation of the said representatives the Respondent no. 1 has made an attempt that they were competent and they are authorized to make decisions under the CRZ notification. With utmost respect, the said contentions of the Respondent no. 1 is untenable and is as and by way of an afterthought which is attempted to the lapse.
- The Appellant therefore submits that the Respondent no. 1 has not been able to show before this Hon'ble Tribunal that the quorum for the meeting on which the Impugned Decision was taken is in accordance with the order bearing no. SO3324(E) dated 26/10/2016 issued by the Ministry of Environment

Forest and Climate Change. Similarly, the Respondent no. 1 or for that matter the other Respondents have failed to even remotely indicate that there is power to delegate and / or the CRZ notification provides for delegation.

- In view of the above, it is respectfully submitted that the composition of the Respondent no. 1 on the said day being defective and not in accordance with the provisions of law, has affected the Impugned Decision, thereby vitiating the Impugned Decision and consequently the Impugned Decision and / or the meetings of the Respondent no. 1 held on 04/12/2018, 04/01/2019 and 29/01/2019 are without jurisdiction, consequently such decision is a nullity. This Hon'ble Tribunal therefore be pleased to consider the said matter and consequently quashed and set aside the Impugned Decision and Impugned Order.

B) The Appellant submits that the contentions and / or the observations of the Respondent no. 1 and for that matter the expert committee of the Respondent no. 1 with regards to the sand dunes and / or leveling of the sand dunes, are perverse in as much as the Respondent no. 1 fails to consider

the report on coastal sand dunes of Goa prepared by the National Centre for Sustainable Coastal Management, which would clearly indicate that there were no sand dunes towards the Northern side of village Gonsua, where the property bearing Survey no. 9/10 of the Appellant is located. The sand dunes if any, were towards the Southern side of village Gonsua. It is therefore submitted that the contentions of the Respondent no. 1 with regards to the alleged leveling of the sand dunes, etc. are factually incorrect. The Impugned Order / Impugned Decision of the Respondent no. 1 does not consider and / or deals with the said issue as specifically raised by the Appellant in his reply dated 07/01/2019, which was supported with evidence. The Impugned Order / Impugned Decision therefore stands vitiated on this count alone.

C) The Respondent no. 1 has neither referred to nor considered the document i.e. report on coastal sand dunes of Goa prepared by the National Centre for Sustainable Coastal Management (at page 89 of the paperbook), which was a relevant document in the facts and circumstances of the present case and / or the allegations as made against the Appellant. The said document was prepared by an independent agency viz. the National Centre for Sustainable

Coastal Management. The document not being considered amounts to violation of the principles of natural justice, in as much as the said document had a bearing on the subject matter and if considered, would have affected the merits of the decision. The Respondent no. 1 being a quasi judicial authority and the decisions of the Respondent no. 1 having severe civil consequences, the Respondent no. 1 was required to deal and consider the document referred and relied by the Appellant.

D) The Appellant submits that the Appellant in the memo of appeal has specifically made a challenge with regards to the existence of the sand dunes as reported by the expert of the Respondent no. 1 as reported in the site inspection report relied by the Respondent no. 1. Such a challenge was also raised before the Respondent No. 1. The challenge made by the Respondent no. 1 is on the basis of the document i.e. report on coastal sand dunes of Goa prepared by the National Centre for Sustainable Coastal Management. The specific challenge is on ground (i) of the memo of appeal.

The Respondent no. 1 has dealt with the grounds (d) to (s) in para 10 of the reply dated 16/12/2019. In the said para 10 the Respondent no. 1 has contended that “.....*I say and submit that I would like to rely upon the contents of the*

*Impugned Order which speaks for itself and the reasons for rejecting the documents and taking into consideration the report of the expert committee regarding leveling and cutting of sand dunes .....".* The Impugned Order does not refer and / or deal with the report on coastal sand dunes of Goa prepared by the National Centre for Sustainable Coastal Management relied by the Appellant, which was relied alongwith the additional reply dated 07/01/2019 filed by the Appellant before the Respondent no. 1, para 31 of the said reply.

The Appellant submits that the specific challenge with regards to the non consideration of the report on coastal sand dunes of Goa prepared by the National Centre for Sustainable Coastal Management is not dealt with by the Respondent no. 1. In such circumstances of violation of principles of natural justice in as much as non-consideration of vital document, stands established. The said document had a bearing on the subject matter of the decision taken by the Respondent No.1. The Impugned Order is liable to be quashed and set aside on this count alone.

E) The Appellant with utmost respect submits that the inspection report makes a reference to existence of an alleged sand dune. It is submitted that on the face of the

report on coastal sand dunes of Goa prepared by the National Centre for Sustainable Coastal Management, the inspecting team ought to have considered the prior record on the basis of which it could be safely concluded about the existence / non existence of a sand dunes as purportedly reported in the inspection report.

It is submitted that the Respondent no. 1 having issued the permission dated 27/11/2013, the Respondent no. 1 ought to have verified the records of the said permission dated 27/11/2013.

In other words, it is submitted that pursuant to any application being made by any applicant, before the Respondent no. 1, inspection was conducted by the official of the Respondent no. 1 to verify the site condition before granting any such permission. Admittedly, the Appellant was granted permission dated 27/11/2013 by the Respondent no. 1. In such circumstances, the Respondent no. 1 ought to have considered the records of the said permission which include the site inspection report carried out by the authorities at the relevant time. The said exercise was relevant for ascertain whether there existed a sand dune at that point of time, considering the report on coastal sand dunes of Goa prepared by the National Centre for

Sustainable Coastal Management, which showed that there were no sand dunes in the vicinity of the Appellant's property i.e. no sand dunes towards the Northern side of village Gonsua and the sand dunes were towards the Southern side Gonsua village. The Respondent no. 1 has not undertaken the said exercise, thereby resulting in grave and serious prejudice begin caused to the Appellant.

F) The Appellant submits that the proceedings and / or the case filed by the Respondent no. 2 was out of intentions that were not bonafide and infact were malafide, for the reasons more particularly stated by the Appellant in his reply dated 26/12/2018 at para 4 and paras 2 and 3 of the addition reply dated 07/01/2019. Once the said fact was pointed out to the Respondent no. 1, the Respondent no. 1 ought to have dealt and consider the said issues. The Impugned Order would indicate that the Respondent no. 1 has failed to consider the same, thereby vitiating the Impugned Order / Impugned Decision.

G) The Respondent no. 2 has filed his reply dated 11/09/2020 before this Hon'ble Tribunal. The Respondent no. 2 has made statements and / or produced documents, which apparently were not forming a part of the records before the Respondent no. 1 and at any rate the said documents which

the Respondent no. 2 has sought to produce for the first time were not notified to the Appellant before the Respondent no. 1. The Appellant submits that the said documents and / or contentions sought to be raised for the first time by the Respondent no. 2 are irrelevant and in any case support the case of the Appellant that the proceedings taken out by the Respondent no. 2 are not bonafide.

The claim and contention and / or the submission made by the Respondent no. 1 in his reply are denied and disputed. Nothing claimed and contented by the Respondent no. 1 may be deemed to be admitted for want of rebuttal.

H) The Appellant was operating an open air hall from his property bearing survey no. 9/10 of village Gonsua, pursuant to the permission from the Respondent no. 1 (permission dated 27/11/2013 at page no. 49 of the paperbook ), N.O.C. from the Village Panchayat of Betalbatim (at page 50 of the paperbook) and consent to operate issued by the Goa State Pollution Control Board (at page 51 of the paperbook) . The activity as undertaken by the Appellant was a permissible activity under the CRZ notification. The reference to the structures as made in the Impugned Order of the same being of permanent nature would be factually incorrect as apart from a small structure i.e. the toilet, all the other structures

were of temporary nature, in the context of the same being erected on poles and roof of metal sheets, thus temporary. The structures which are alleged to be illegal neither offend the environment nor cause any environmental damage. At any rate, the Respondent no. 1 had considered the request of the Appellant and granted its NOC dated 27/11/2013.

- D) It is submitted that the activity of the Appellant i.e. of a wedding venue, which was permitted by the Respondent no. 1 vide its permission dated 27/11/2013, required a toilet facility which was such a nature that there was no source of nuisance as also security so as to maintain the privacy of the persons visiting the venue and using the toilet. It is submitted that the said toilet did not cause any environment damage.
- J) The Appellant submits that the site inspection report dated 17/02/2017 of the expert of the Respondent no. 1 itself would indicate that the property was covered with lawns and flowering trees / plants. The Appellant was using the property for the purpose as permitted by the Respondent no. 1 vide its permission dated 27/11/2013. It is submitted that the Respondent no. 1 has not come to a conclusion and / or any finding with regards to there being any violation of the permission dated 27/11/2013.

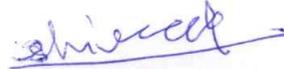
K) The Respondent no. 1 has failed to consider that the complaint filed by the Respondent no. 2 was frivolous and misleading. That apart the complaint filed by the Respondent no. 2 was without any basis and any research. The Appellant states that it was the case of the Appellant that the Appellant was operating an open air garden / open air hall in his property survey no. 9/10 of village Gonsua, which activity was permissible activity in terms of the CRZ regulations and the Respondent no. 1 had infact issued permission dated 27/11/2013 which was considered by the Respondent no. 1 in its 95<sup>th</sup> meeting held on 01/11/2013. In such circumstances the Respondent no.1 ought not to have entertain the proceedings which were commenced on the basis of the complaint filed by the Respondent no. 2 were liable to be dropped.

L) The Appellant states that the activity in the property bearing Survey no. 9/10 of village Gonsua being a wedding venue, the structures which are referred to by the Respondent no. 1, which structures are of temporary nature as stated herein above are permissible and / or required to be held to be permissible. In such situation the directions issued by the Respondent no. 1 for demolition of the same are illegal and perverse.

It is therefore prayed that the appeal be allowed and the Impugned order bearing no. GCZMA/S/ILLE-COMPL/16-17/73/4004 dated 25/02/2019 and the Impugned Decision taken by the Respondent no. 1 in its 192<sup>nd</sup> meeting held on 29/01/2019, be quashed and set aside, consequently the proceedings initiated against the Appellant be dropped.

Date:24/10/2020

Place: Pune.



Aprameya Shivade  
Advocate for the Appellant