

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

IA. No. 106/2023(WZ)

in

O.A. No. 54/2023 (WZ)

THE GOA FOUNDATION

...APPLICANT

V/S

THE STATE OF GOA & ORS.

...RESPONDENTS

**WRITTEN SUBMISSIONS ON BEHALF OF THE
RESPONDENT NO.3**

The Respondent No.3 states and submits as under:-

1. The instant O.A. No. 54/2023 has been filed on **13.04.2023** in respect of alleged illegal concrete construction (“**alleged construction**”) carried out by the Respondent No.3 on Vainguinim Beach.

2. The Applicant has contended in **Paragraph 11** of the said O.A. that in the months of April and May 2021 the Respondent No.3 commenced and completed construction of permanent concrete embankment like structure cutting across a major segment of the beach. Thereafter, in **Paragraph 12**, the Applicant had knowledge and made reference to the complaints filed by the Applicant as on 21.04.2021 to Goa Coastal Zone Management Authority (“GCZMA”) and on 07.06.2021 to the Chief Secretary of the State of Goa.
3. The Applicant therefore can be presumed to have knowledge of the alleged construction latest as on 21.04.2021 (**Complaint is at Pg. 94**).
4. It is relevant to point out that two more complaints were filed before the GCZMA; the first being by one Mr. Bhanu Shirdokar on **19.04.2021** and the second being by Vainguinim Valley Residents Association (“VVRA”) on **20.04.2021**. The third complaint was by the

Applicant herein on **21.04.2021**. All these three complaints were in respect of alleged construction by the Respondent No.3. (**Kindly see the Order dated 14.10.2021 at Pg. 248**).

5. It is pertinent to mention that VVRA had filed Writ Petition No. 1187/2021 (F) seeking directions from the Hon'ble High Court to the GCZMA, to initiate action. At that stage, the show-cause notice dated **28.04.2021** was issued by the GCZMA. The GCZMA eventually discharged the show-cause notice by issuing directions under Section 5 of the Environment Protection Act, 1986, vide Order dated **14.10.2021**.
6. In light of this, Writ Petition No. 1187/2021 (F) came to be disposed of by the Hon'ble High Court, *vide* Order dated **11.02.2022**, as VVRA had the remedy of appeal before this Hon'ble Tribunal in terms of Section 16 of the National Green Tribunal Act, 2010. A copy of the Order dated **11.02.2022**, which was read out at the

hearing held before this Hon'ble Tribunal though not produced with the reply, is hereto annexed and marked as **Exhibit–A** to these Written Submissions.

7. It is further relevant to point out that pursuant to the show–cause notice, dated 28.04.2021, and before passing of the Order, dated 14.10.2021, the Applicant was given a hearing by the GCZMA, which is evident from **Page 251**.

The relevant portion thereof is reproduced hereunder:–

“The Complainant Mr. Claude Alvares argued that the survey plan given by the expert committee DSLR and the plan submitted before this Authority and requested to compare both the plans that the structure in question is not shown. Further submitted that as per the Additional Collector report it clearly indicates that there is nothing on record, there is no Legend on the plan. Gadga wall is shown in orange but linear wall which is shown in green on

the plan. He further submitted that written submission is on record and he is relying on the same.”

8. It is further extremely pertinent to point out that the copy of Order dated 14.10.2021 was sent to the Applicant by e-mail by the GCZMA, the name of the Applicant is mentioned **at Sr. No. 6 at Pg. 256.**

9. The Applicant instead of challenging the Order dated 14.10.2021, for which limitation even with the extended period of 30 days would expire on 14.12.2021, has approached this Hon'ble Tribunal by filing O.A. No. 54/2023, as if the Order dated 14.10.2021 is not existing and even if it is existing, the Applicant can ignore such order and approach this Hon'ble Tribunal by way of O.A. No. 54/2023. It is undisputed that the Order dated 14.10.2021 relates to the same alleged construction by the Respondent No.3 on the Vainguinim beach. It is undisputed that the subject

matter of O.A. No. 54/2023 is the alleged construction by Respondent No.3.

10. The upshot of the above is that the Applicant was fully aware that the alleged construction was in N.D.Z. area and was in violation of C.R.Z. notification. The Applicant is an expert in environmental matters and has been appearing and pursuing matters before this Hon'ble Tribunal at least since the year 2012. In any case the Applicant having filed complaint on 21.04.2021 before the GCZMA, and having appeared before the GCZMA prior to passing of Order dated 14.10.2021 cannot contend that the alleged construction is not in violation of CRZ Notification.
11. The Applicant therefore could have filed only an Appeal before this Hon'ble Tribunal against the Order dated 14.10.2021, and in respect of which even the extended period of limitation would expire on 14.12.2021.

12. The Applicant however filed Writ Petition before the Hon'ble High Court on 20.09.2021 being P.I.L. Writ Petition No. 29/2022 ("**PIL WP**"). The Applicant sought to club two issues before the Hon'ble High Court i.e. alleged construction and blocking of two different accesses to the beach meant for public which were subject matter of the judgment of the Hon'ble High of Bombay at Goa in *Minguel Martins and Ors. v. Sociedade de Fomento Industries Pvt Ltd. [2000(4) Bom Cr 448]* and of the Hon'ble Apex Court in the case of *Fomento Resorts and Hotels Ltd. and Anr. v. Minguel Martins and Ors.[(2009) 3 SCC 571.*
13. This Respondent states that the accesses referred to in the Judgments of the Hon'ble High Court of Bombay at Goa and the Hon'ble Supreme Court have absolutely no connection whatsoever with the alleged construction. This Respondent states that it is the case of the

Applicant that the accesses were existing prior to the year 1992.

14. This fact is affirmed and endorsed by the Applicant itself in Paragraph 8 of **PIL WP** wherein it is stated thus:-

“The Petitioner state that to the best of its knowledge and research the issues raised in the petition relating to the illegal construction are not dealt with or decided and that a similar or identical petition was not filed earlier by the petitioner on the same matter either in this Hon’ble Court or in the Supreme Court of India. However, with regards to the access roads to the beach, the same have been adjudicated earlier and there are High Court and Supreme Court directions to maintain the two accesses to the beach.”

Further, the two accesses referred as Access A and Access B in the PIL WP which were ordered to be kept

open by the Hon'ble Supreme Court were depicted by the Applicant in red colour and green colour respectively in the Plan annexed to the PIL WP. A copy of the PIL WP along with the Plan depicting the accesses in red colour and green colour is hereto annexed and marked as **Exhibit-B Colly**. (The copy of the Petition has not been placed on the record by the Applicant or the Respondent and is being placed on the record *vide* these Written Submissions.)

15. Therefore, from the above it is clear that the issue of alleged construction and the accesses to the beach are totally independent of each other and are not related in any manner whatsoever. The Applicant also has described the alleged construction as **Issue No.1 in Paragraph 13 of PIL WP** under the caption; **“The Illegal Concrete Construction raised by Respondents Nos.4 and 5 on Vainguinim Beach”** and **Issue No.2** as regards the access under

the caption, “**Restoration of the two public accesses to the beach**” in **Paragraph 21**.

16. It is pertinent to point out that in the O.A. No. 54/2023, the Applicant has not sought any relief as regards the two public accesses and the Application is only restricted to the alleged construction. The fact that the Applicant is fully aware that the alleged construction is in violation of CRZ notification is further evident from a reading of **Ground 20(a)** and **Ground 20(i)** of the O.A. which read thus:-

“20. a. ... The entire beach area, also including the area between the HTL and the LTL, is CRZ I and therefore no-development zone in terms inter alia of Paras 3 and 8 of the CRZ Notification, 2011. The GCZMA has not given an NOC for the construction of the concrete

permanent structure which falls in the ecosensitive CRZ-I area.”

20. i. The illegal structure is still there on the beach and therefore constitutes a continuing violation of the CRZ notification”

17. Therefore, it is crystal clear that the issue of alleged construction was purely an issue of CRZ violation which could have been agitated only before this Hon'ble Tribunal. Being so, the Applicant ought to have approached this Hon'ble Tribunal under Section 14 of the National Green Tribunal Act, 2010 in respect of the alleged construction of which the Applicant had knowledge on 21.04.2021, within a period of six (6) months i.e. by 21.10.2021, that too before the Order dated 14.10.2021 was passed by the GCZMA, and if the extended period of limitation is to be considered then

the Applicant could have approached this Hon'ble Tribunal not a day later than 21.12.2021.

18. The argument of the Applicant that the issue pertains to Public Trust Doctrine and therefore it approached the Hon'ble High Court is required to be stated to be rejected. In the first place, this Tribunal has exclusive jurisdiction in environmental matters. Secondly, Section 14 is wide enough to take within its sweep any substantial question relating to environment including any enforcement of any legal right relating to the environment which would subsume even the doctrine of public trust if the offending structure is on a public beach. The primary violation being of CRZ Notification, the only remedy that the Applicant had was to approach this Hon'ble Tribunal and in addition the Applicant could have pleaded breach of the Public Trust Doctrine.

19. The Applicant despite passing of the Order dated 14.10.2021 by the GCZMA, with a view to hoodwink this Hon'ble Tribunal by not at all making any reference to the Order of 14.10.2021 in O.A. No. 54/2023 has directly approached this Hon'ble Tribunal to unjustly claim a longer limitation of 6 months with a further extension of 60 days. The Applicant is too experienced a litigant to know that the remedy against the Order dated 14.10.2021 could only be by way of Appeal under Section 16 of the National Green Tribunal Act, 2010 and more importantly the Hon'ble High Court having already relegated VVRA to this Hon'ble Tribunal in light of Order dated 14.10.2021 passed by the GCZMA, the Applicant had no other option or choice but to approach this Hon'ble Tribunal.
20. This Respondent states that the grant of Application of condonation of delay being a discretionary and equitable relief any conduct of the Applicant which disentitles itself from seeking condonation of delay

ought to result in dismissal of the Application for condonation of delay.

LIMITATION ACT, 1963 IS INAPPLICABLE TO THE PROCEEDINGS BEFORE THE NATIONAL GREEN TRIBUNAL.

21. This is one case where the Applicant has tried to mislead this Hon'ble Tribunal, and therefore, the Application is liable to be rejected on this ground alone.

22. This Respondent states that the Hon'ble Supreme Court in the case of *Sridevi Datla v. Union of India & Ors. [2021 (5) SCC 321]* in Paragraphs 19 and 23 unequivocally has held that the period of limitation set out in a special law which provides for remedies and appeals has to be construed in its terms and without reference to the Limitation Act, 1963 if it contains specific provisions delineating the time or period within which applications or appeals can be preferred and confines the consideration of

applications for condoning the delay to a specific number of days. Undoubtedly, in such cases the Limitation Act would be inapplicable. The Court has clearly held that the Limitation Act, 1963 in such cases is inapplicable. The Hon'ble Supreme Court has accepted the argument that the Limitation Act, 1963 is *per se* inapplicable to proceedings under the NGT Act. Copy of the Judgment passed in the case of ***Sridevi Datla v. Union of India & Ors. 2021 (5) SCC 321*** is hereto annexed and marked as **Exhibit-C**.

23. It is submitted that for an Application under Section 14, just like an Appeal under Section 16, the basic period of limitation is specified and the extended period beyond which the Application cannot be entertained is also specified. Therefore, upon expiry of six (6) months and thereafter, upon expiry of additional sixty (60) days, the Hon'ble Tribunal does not have the power to condone delay as the Limitation Act, 1963 itself is not applicable to the proceedings before this Hon'ble Tribunal. In its

discretion, this Hon'ble Tribunal can condone delay beyond six (6) months but within the extended period of sixty (60) days and not beyond six (6) months.

24. This Respondent states that the Applicant while contending that the delay is of only three (3) days has on its own excluded the entire period between 20.09.2021 to 07.10.2022 when the PIL WP was pending before the Hon'ble High Court. The period of delay sought to be excluded by the Applicant is **382** days.
25. This Respondent states that the Applicant would have been entitled to this exclusion of 382 days only if the Hon'ble High Court was to exclude the same by way of a specific Order, with a further direction to this Hon'ble Tribunal to hear the matter on merits without having regard to the limitation. In the present case, on 07.10.2022 no such Order was passed and in fact all the contentions of the parties were kept open, which it is respectfully submitted would also include the ground of

limitation available to this Respondent. (**Order dated 07.10.2022 is at Pg. No. 177**).

26. This Respondent states that the Applicant made attempts to have the Order of 07.10.2022 modified to include a direction in respect of limitation. The Applicant in Paragraph 5 of the Application for modification bearing No. M.C.A. No. 196/2023 in PIL W.P. filed before the Hon'ble High Court of Bombay at Goa has pleaded thus:—

“5. ... When the NGT took up the matter for consideration, it drew the attention of the applicant to the fact that the period of limitation had already been exceeded and that it has no powers to take up matters beyond the period of limitation under the NGT Act, without the High Court recording that the delay on account of time spent in the High Court is condoned. ...”

(The Application for modification is at Pg. 257 and Para. 5 is at Pg. 260)

27. The Hon'ble High Court disposed of M.C.A. 196/2023 (Application for Modification of Order dated 07.10.2022 filed by the Applicant) *vide* Order dated 07.07.2023. **(Order dated 07.07.2023 is at Pg. 228).**
28. The Hon'ble High Court admittedly has not excluded the period when the PIL WP was pending before it. The Hon'ble High Court in fact has left the issue of limitation to be decided by this Hon'ble Tribunal. The Hon'ble High Court has also not modified the Order dated 07.10.2022. The Hon'ble High Court has merely observed that the Applicant was pursuing the Petition *bonafide* before the Hon'ble High Court. The issue whether the Petition is bonafide is also left open to be decided by this Hon'ble Tribunal.

29. It is submitted that nothing precluded the Hon'ble High Court from excluding the period during which the PIL WP was pending before it by way of an express Order, which the Hon'ble High Court has consciously avoided from doing, and has in fact left the issue of limitation open, and has held that the issue of limitation would be decided by this Hon'ble Tribunal.
30. This Respondent states that in all cases whenever the Hon'ble High Court has sought to give the benefit of exclusion of period on account of pendency of Petition before it while relegating the party to this Hon'ble Tribunal, the Hon'ble High Court has specifically passed orders directing this Hon'ble Tribunal to take up the matter on merits without raising the issue of limitation. The Applicant is fully aware of this position in law and has in fact relied upon an Order dated 03.01.2023 passed in Applicant's own Petition being P.I.L. Writ Petition No. 21/2019 in support of Application for modification of Order dated 07.10.2022 filed by the

Applicant. The Hon'ble High Court in **Paragraphs 8 and 9** from the Order dated 03.01.2023 held as under:-

“8. Even otherwise, all these petitioners, were bonafidely pursuing their petitions before this Court. The issue of alternate remedy was also pending before the Hon'ble Supreme Court in the challenge against the decision in Vanashakti (supra). Therefore, consistent with the order made by the Hon'ble Supreme Court, we also observe that in case the petitioners approach the NGT within 4 weeks from today, the proceedings they institute will be considered in accordance with law and on their own merits without raising the issue with respect to limitation. Further, all contentions of all parties are expressly left open because we have not examined the merits and these petitions are being disposed of only by relegating the petitioners to avail of the alternate remedy available before the NGT.

9. All these petitions are, therefore, disposed of by granting the petitioners liberty to approach the NGT. If the petitioners indeed approach the NGT within 4 weeks from today, the proceedings they institute be considered in accordance with law and on their own merits without raising the issue with respect to limitation. ...”

31. In another matter, being MCA No. 203/2023 the Hon'ble High Court vide Order dated 23.06.2023 specifically clarified its earlier order and stated thus:-

“5. Considering the above position, it is clarified that the period of 1447 and 1490 days respectively, needs to be excluded for calculating the period of limitation because, during these periods, the matters remained pending before this Court.”

Copies of Orders dated **03.01.2023** and **23.06.2023** are hereto annexed and marked as **Exhibit – D Colly**.

32. This Respondent submits that since the Limitation Act is not applicable, this Hon'ble Tribunal would not have the powers under Section 14 of the Limitation Act, 1963 to exclude the period of **382** days when the PIL WP filed by the Applicant was pending before the Hon'ble High Court.
33. In any case Section 14 of the Limitation Act, 1963 would be inapplicable to the facts and circumstances of this case as by no stretch of imagination can it ever be contended that the Hon'ble High Court in exercise of writ jurisdiction under Article 226 does not have the jurisdiction to entertain the PIL WP filed by the Applicant. The Hon'ble High Court exercised its discretion in not entertaining the PIL WP, in light of availability of alternate remedy. Section 14 of the Limitation Act, 1963 applies only in case the proceedings before the previous forum were filed *bonafide* and then it is found that that the Forum lacked jurisdiction to entertain the proceedings.

34. In fact, the Hon'ble National Green Tribunal in Appeal No. 24/2012 *vide* Order dated 05.09.2012 has specifically held that the Hon'ble National Green Tribunal cannot outstretch the period of limitation by taking aid of provisions under the Limitation Act, 1963 and has further held that Section 14 (2) of the Limitation Act, 1963 would apply only when it can be held that the Court lacked jurisdiction to entertain the Petition and has further held that in the absence of specific direction by the Hon'ble High Court to entertain the proceedings before the NGT notwithstanding the legal bar of limitation, it was impermissible for the NGT to condone the delay and consequently held that the Appeal was barred by limitation.

35. This Hon'ble Tribunal held that the Appellant therein was not entitled to seek exclusion of period spent before the Hon'ble High Court particularly when the Writ

Petition filed by them could have been entertained and decided by the Hon'ble High Court and it could not be held that the Hon'ble High Court lacked jurisdiction. A copy of the Order dated 05.09.2012 is hereto annexed and marked as **Exhibit–E**.

36. The Respondent therefore submits that the limitation having commenced for the Applicant to approach this Hon'ble Tribunal on 21.04.2021, it approached the Hon'ble High Court only on 20.09.2021 by which time One Hundred and Forty Four (**144**) days had elapsed. Merely approaching the Hon'ble High Court within the period of six (6) months when the Applicant knew that the only remedy was before this Hon'ble Tribunal would not permit exclusion of One Hundred and Forty Four (144) days from consideration from the point of view of limitation.

37. Assuming while not admitting that this One Hundred and Forty Four (**144**) days can be excluded, by no

stretch of imagination, the period of Three Hundred and Eighty Two (**382**) days, during which the PIL WP was pending before the Hon'ble High Court, can be excluded.

38. This Respondent therefore submits there is a delay of **714** days in approaching this Hon'ble Tribunal if the period of **144** days before approaching the Hon'ble High Court is taken into consideration. The calculation would be as under:

a. $144 \text{ days} + 382 \text{ days} + 188 \text{ days} - 6 \text{ months (180 days)} = 714 - 180 \text{ days} = \mathbf{534} \text{ days.}$

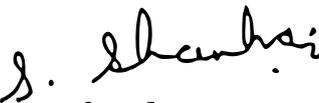
39. If this Hon'ble Tribunal is inclined to exclude 144 days from consideration of limitation, even then the delay would be of **390** days, as stipulated hereunder;
 $382 \text{ days} + 188 \text{ days} - 180 \text{ days} = 390 \text{ days.}$

40. Therefore, viewed from any angle there is inordinate and substantial delay in approaching this Hon'ble Tribunal and therefore this Application which only gives

an explanation for 3 days only is of no avail and the O.A.
No. 54/2023 is liable to be rejected as being barred by
limitation.

Place: Pune

Date: 14/8/2023


Advocate for the Respondent No.3

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1187 OF 2021 (F)

VAINGUINIM VALLEY RESIDENTS
ASSOCIATION, THR. ITS PRESIDENT,
COLLIN CURRY AND ANR. ... Petitioners.

Versus

THE GOA COSTAL ZONE
MANAGEMENT AUTHORITY, THR. ITS
MEMBER SECRETARY AND 5 ORS. ... Respondents.

Mr. Clayton Fonseca, Advocate *for the Petitioners*.

Mr. Devidas Pangam, Advocate General with Ms. Maria Correia,
Additional Government Advocate *for Respondent No.1*.

Mr. Parag Rao with Ms. Sowmya Drago, Advocates *for Respondent
No.6*.

**CORAM: MANISH PITALE &
R.N. LADDHA, JJ.**

DATED: 11th February 2022

ORAL ORDER: (Per Manish Pitale, J.)

1. Heard Mr. Clayton Fonseca, learned Counsel appearing for the Petitioners as well as Mr. Pangam, learned Advocate General appearing for Respondent No.1 and Mr. Parag Rao, learned Counsel appearing for Respondent No.6.

2. By this writ petition, the Petitioners had made a grievance that the Respondent Nos.1 to 5 were not acting upon representations and complaints made by the Petitioners with regard to alleged illegal

construction being carried out at Vainguinim Beach, Taleigao, Tiswadi, Goa. It was submitted that the said Respondents ought to take appropriate steps with respect to the representations and complaints submitted by the Petitioner. It was further prayed that the Respondent No.6 ought to be restrained from carrying out the alleged illegal construction, pending adjudication of the show-cause notice issued by Respondent No.1 to the Respondent No.6.

3. During the pendency of the present writ petition, this Court had recorded statements made on behalf of Respondent No.1 that hearing was under way and that it had been concluded. It was also brought to the notice of this Court that there was likelihood of an appropriate order being passed in the matter.

4. It is an admitted position that pursuant to the aforesaid proceeding, on 14.10.2021, the Respondent No.1 i.e. the Goa Coastal Zone Management Authority (GCZMA) passed an order discharging the show-cause notice. There is no dispute about the fact that hearing was granted to all concerned, including the Petitioners herein. A copy of the order dated 14.10.2021 is forwarded to this Court, which is taken on record and marked as "X".

5. Considering the aforesaid subsequent events, it becomes clear that the present petition has worked itself out and that the Petitioners can now avail of appropriate remedies with respect to the Order dated 14.10.2021 passed by the Respondent No.1-GCZMA, for redressal of the same. This

Court is informed that the aforesaid order can be made subject matter of challenge before the National Green Tribunal under section 16 of the National Green Tribunal Act, 2010. The learned Counsel appearing for the Petitioners made an attempt to comment upon the correctness or otherwise of the order dated 14.10.2021 and the decision making process undertaken by the Respondent No.1-GCZMA, but this Court is of the opinion that the Petitioners would be at liberty to raise such issues by availing the aforesaid remedy under the provisions of the said Act.

6. In view of the above, it is observed that the reliefs sought by the Petitioners in the present writ petition are no longer alive, considering the aforesaid event of the Respondent No.1-GCZMA having passed the order dated 14.10.2021.

7. As such, the writ petition is disposed of.

R.N. LADDHA, J.

MANISH PITALE, J.

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IN THE HON'BLE HIGH COURT OF JUDICATURE
AT BOMBAY, GOA BENCH, AT PORVORIM

PIL Writ Petition No.29/2022

P.I.L. Writ Petition No. ¹⁹⁶⁴ /2021

(F)

The Goa Foundation

....Petitioner

V/s

State of Goa & Ors

...Respondents

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Place: Porvorim, Goa

Date: 20.09.2021

Advocate for the Petitioner

IN THE HON'BLE HIGH COURT OF JUDICATURE
AT BOMBAY, GOA BENCH, AT PORVORIM

P.I.L. Writ Petition No. /2021

The Goa FoundationPetitioner

V/s

State of Goa & Ors ...Respondents

SYNOPSIS AND CHRONOLOGY OF
DATES AND EVENTS

This WP is filed in public interest to seek this Hon'ble Court's urgent intervention to save, recover and restore the public Vainguinim beach at Dona Paula from the *mala fide* and expropriatory actions of the owner and present managers of the luxury resort, Cidade De Goa, which have premises adjoining the beach. The respondents have illegally constructed a long, concrete structure/embankment across a stretch of the public beach, about 15 m away from the hotel's present boundary, in flagrant and open mockery of the Public Trust doctrine laid down in several judgements of this Hon'ble Court and Supreme Court, one of them dealing explicitly with the same (Vainguinim) beach. The illegal construction has damaged the beach and

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constitutes an interference with the rights of the ordinary public to access and enjoy the beach without any impediments and hazard. In addition to the damage caused to the beach ecosystem – the construction, made from cement and concrete, has created a dead zone out of a major segment of the living beach – it has also marred the natural beauty of the beach. The petitioner is approaching this Hon'ble Court to cure the breach of the public trust by the authorities, as it apprehends that this is the first stage by which the resort hopes to appropriate the beach area behind the new structure. The Petitioner is also approaching this Court for re-securing two permanent public accesses to the Vainguinim beach decreed by two judgements of this Hon'ble Court and two judgements of the Hon'ble Supreme Court of India, on the basis of liberty granted by the Supreme Court in its orders, in view of continuing attempts by the respondents to restrict or deviate such access.

LIST OF DATES AND EVENTS

Sr. No.	Date	Particulars of events or documents if any	Annexure and Page
1.	1982	Luxury Hotel, 'Cidade De Goa', constructed on land abutting a public beach-Vainguinim Beach	
2.	1982-1992	'Cidade De Goa' hotel creates obstacles in the public accessing Vainguinim Beach, including by closing a traditional access /pathway to the Beach.	
2.	1991-1992	Several citizens, including this petitioner, approach this Hon'ble Court challenging the limitations imposed by the Hotel on public access to Vainguinim Beach	

3.	25 th Apr. 2000	This Hon'ble Court <i>vide</i> its judgement in W.P. 36/1992 <i>inter alia</i> finds that Vainguinim Beach is a public beach, and recognizes the right of the public to access this Beach.	
4.	20 th Jan. 2009	Hon'ble Supreme Court <i>vide</i> its judgement in C.A. 4154/2000 dismisses appeal filed by owners of the Cidade De Goa hotel against the order dt. 25.04.2000 of this Hon'ble Court	
5.	April 2021	Cidade De Goa hotel undertakes and completes construction of a permanent, concrete embankment-like structure cutting across a major segment of the Vainguinim Beach	
6.	April 2021	Complaints made to the Goa Coastal Zone Management Authority [G.C.Z.M.A.] by some local residents regarding construction work undertaken by the Hotel,	

		including the use of a JCB bulldozer to excavate parts of the Vainguinim beach	
7.	21 st Apr. 2021	Petitioner makes a complaint to the Goa Coastal Zone Management Authority [R-6 herein] against construction on the Vainguinim Beach by the Hotel	Ann. 5 Colly, at pg.
8.	April - May 2021	G.C.Z.M.A. carries out site inspections and issues a show cause notice to the Hotel, but does not stop the construction work on the Vainguinim Beach – due to which construction is completed by the Hotel	
9.	May 2021	Group of local residents moves this Hon'ble Court in WP/1187/2021 [F] regarding construction of structure by the Hotel	
10.	7 th June 2021	Petitioner makes a fresh complaint to the Chief Secretary, Government of	Ann. 5 Colly, at pg.

HP

		Goa, seeking the removal of the concrete structure built by the Hotel	
11.	12 th Aug. 2021	This Hon'ble Court <i>vide</i> its order disposing M.CA. 1278 of 2021 in WP/1187/2021 directs the G.C.Z.M.A. to take a decision on the show cause notice issued within 6 weeks, i.e. by 1 st Oct. 2021	
12.	20 th Sept. 2021	Present petition is filed	

IN THE HON'BLE HIGH COURT OF JUDICATURE
AT BOMBAY, GOA BENCH, AT PORVORIM

P.I.L. Writ Petition No. /2021

The Goa FoundationPetitioner

V/s

State of Goa & Ors ...Respondents

QUESTIONS FOR DETERMINATION

&

LIST OF ACTS & AUTHORITIES

1. Whether NOCs/ statutory approvals can be granted by public authorities for permanent constructions on public spaces for private benefit, in violation of the Public Trust Doctrine?

2. Whether the right of the public to access the Vainguinim Beach, and the traditional access ways used for this purpose, can be restricted by any party in violation of the express orders of this Hon'ble Court and the Hon'ble Supreme Court of India?

- Judgement dt. 25th Apr. 2000 of this Hon'ble Court in W.P. 36/1992
- Judgement of the Hon'ble Supreme Court dt. 20th Jan. 2009 in C.A. 4154/2000

Place: Porvorim, Goa

Date: 20.09.2021

Advocate for the Petitioner

AT BOMBAY, GOA BENCH, AT PORVORIM

P.I.L. Writ Petition No. /2021

IN THE MATTER OF ARTICLES 21,
48A, 51 A(g), 226 AND 227 OF THE
CONSTITUTION OF INDIA AND
RULE 4(e) of THE BOMBAY HC PIL
RULES;

AND

IN THE MATTER OF ENFORCEMENT
OF THE PUBLIC TRUST DOCTRINE
AND INTERGENERATIONAL
EQUITY;

AND

IN THE MATTER OF THE ILLEGAL
CONSTRUCTION CARRIED OUT BY
M/S FOMENTO RESORTS AND THE
INDIAN HOTELS COMPANY LTD ON
THE VAINGUINIM BEACH;

AND

IN THE MATTER OF THE
OBSTRUCTIONS PLACED TO
PREVENT ACCESS OF ORDINARY
CITIZENS TO THE SAME BEACH;

AND

IN THE MATTER OF ABJECT
FAILURE OF THE AUTHORITIES TO
TAKE TIMELY ACTION TO RESTORE
THE VAINGUINIM BEACH TO ITS
ORIGINAL CONDITION AND ACCESS

The Goa Foundation

through its Secretary, Dr. Claude Alvares,
Having Regd. Office at
Room No 7, Above Mapusa Clinic,
Mapusa, Goa - 403507.
PAN No. AAAAG0249C
Email id: goafoundation@gmail.com

.....PETITIONERS

V/s

1. State of Goa

Through its Chief Secretary,
Having office at Secretariat,
Porvorim, Goa. 403521

2. Village Panchayat of Taleigao,

Through its Secretary,
Taleigao Community Center,
Caranzalem, Taleigao Goa -403002.

3. Greater Panaji Planning

and Devp. Authority (GPPDA),
Mala, Panaji, Goa 403 001.

4. **M/s Fomento Resorts & Hotels Ltd,**
Having office at Cidade de Goa,
Vainguinim Beach Goa - 403004.

5. **Indian Hotels Co Ltd.,**
Corporate Office,
9th Floor Express Towers,
Barrister Rajni Patel Marg
Nariman Point, Mumbai, Maharashtra - 400021.

6. **Goa Coastal Zone Management Authority**
(GCZMA)
through its Member Secretary,
Dempo Towers, 4th floor,
Patto, Panaji, Goa – 403001.

....RESPONDENTS

(Above addresses are all registered addresses of parties)

To,

**The Hon'ble Chief Justice and Companion Judges,
Bombay High Court at Porvorim, Goa**

THIS HUMBLE PETITION OF THE PETITIONER
MOST RESPECTFULLY SHOWS

1. This WP is filed in public interest to seek this Hon'ble Court's urgent intervention to save, recover and restore the public Vainguinim beach at Dona Paula from the *mala fide* and expropriatory actions of the owner (Resp.No.4) and present managers (Resp.No.5) of the luxury resort, Cidade de Goa, which have premises adjoining the beach. The respondents have illegally constructed a long, concrete structure/embankment across a stretch of the public beach, about 15 m away from the hotel's present boundary, in flagrant and open mockery of the Public Trust doctrine laid down in several judgements of this Hon'ble Court and Supreme Court, one of them dealing explicitly with the same (Vainguinim) beach. The illegal construction has damaged the beach and constitutes an interference with the rights of the ordinary public to access and enjoy the beach without any impediments and hazard. In addition to the damage caused to the

beach ecosystem – the construction, made from cement and concrete, has created a dead zone out of a major segment of the living beach – it has also marred the natural beauty of the beach. The petitioner is approaching this Hon'ble Court to cure the breach of the public trust by the authorities, as it apprehends that this is the first stage by which the resort hopes to appropriate the beach area behind the new structure. Photographs of the beautiful beach and of the illegal construction which is in the form of a cement-concrete embankment exceeding 100 metres in length are at Annexure 1.

2. Petitioner is also approaching this Court for re-securing two permanent public accesses to the Vainguinim beach decreed by two judgements of this Hon'ble Court and two judgements of the Hon'ble Supreme Court of India, on the basis of liberty granted by the Supreme Court in its orders, in view of continuing attempts by the respondents to restrict or deviate such access. In all the above mentioned litigation, the Goa Foundation, present petitioner, was either a petitioner or respondent. A sketch showing both accesses to the beach (Access A, eastern side and Access B, western side) – which have become problematic for members of the ordinary public due to actions of the Respondents Nos.4 and 5 – is at Annexure 2.

Particulars of the Petitioner

3. The Petitioner is an environmental NGO based in Goa who has approached both, this Hon'ble Court and the Hon'ble Supreme Court, time and again over the past three decades, in public interest, for enforcement of the provisions of environment, wildlife, forest, coastal regulation, land use, pollution and mining laws. Pertinently, the Petitioner herein was a party in cases filed before this Hon'ble Court and the Hon'ble Supreme Court when attempts were made previously by the same hotel to privatize the beach and deny public access.
4. All its members are citizens of India. The average annual income of the Petitioner organization is around Rs.15 lakhs. The Petitioner states that there is no civil, criminal or revenue litigation involving the Petitioner organization which has or could have a legal nexus with the issue involved in this PIL. Registration certificate and resolution of the petitioner organisation are herein marked and annexed to the petition as **Annexure 3 colly.** Undertaking that the petitioner will disclose the source of information leading to the filing of the PIL is herein marked and annexed at **Annexure 4.**

Declaration of the Petitioner

5. The Petitioner states that this petition is filed by way of public interest. The petitioner does not have

any personal interest in the matter. Reliefs claimed are in public interest.

6. The Petitioner states that the entire litigation costs and other charges are being borne by the petitioner.
7. Petitioner states that adequate research has been conducted in the matter raised through the petition and all relevant material has been annexed to the petition. More may be added, if necessary, at a later stage.
8. The Petitioner states that to the best of its knowledge and research the issues raised in the petition relating to the illegal construction are not dealt with or decided and that a similar or identical petition was not filed earlier by the petitioner on the same matter either in this Hon'ble Court or in the Supreme Court of India. However, with regards to the access roads to the beach, the same have been adjudicated earlier and there are High Court and Supreme Court directions to maintain the two accesses to the beach. To this extent the present PIL is connected with issues raised in the earlier PILs filed by the petitioner in relation to the same public beach. Petitioners state that this Hon'ble Court has jurisdiction to hear and decide this matter as it concerns the enforcement of the Public Trust doctrine and public access to a public resource and liberty granted by the Apex Court.

9. The Petitioner has understood that in the course of hearing of this petition, the Court may require any security to be furnished towards costs or any other charges and the petitioner shall comply with such charges.

Facts constituting the cause

10. The Vainguinim Beach is a public beach located on the estuarine front of the bay adjoining Dona Paula. It is in fact part of the larger Dona Paula Bay. The beach is small but popular and visited by local villagers as well as tourists. Around 1982, a luxury hotel by the name of 'Cidade de Goa' was constructed by M/s Fomento Resorts Pvt Ltd. (Resp.No.4) on the land abutting the public beach. The resort's owners attempted to privatize the beach and created difficulties for the public to visit the beach, including closure of a traditional pathway. Several citizens, including this petitioner approached this Hon'ble Court in PILs and both this Hon'ble Court as well as the Supreme Court (wherein appeals were subsequently filed) firmly directed that the two accesses to the beach were to be kept open and free for the public to directly access the beach, as Vainguinim beach is a public beach and the Public Trust doctrine squarely applies to its conservation and enjoyment by the general public and future generations.

11. Petitioner quotes below from this Hon'ble Court's judgement dated 25.4.2000 in Writ Petition No.36/1992 on the unequivocal and undoubted fact of the Vainguinim beach being a public beach.

"Para 7. At the outset, it is to be noted that there is no dispute between the parties that Vainguinim Beach is a public beach and the public have every right to access the same through the property bearing old survey No.787."

12. The Hon'ble Supreme Court stated as follows with regards to the applicability of the public trust doctrine in this matter:

"40. We reiterate that natural resources including forests, water bodies, rivers, sea shores, etc., are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to the uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the Court can invoke the public trust doctrine and take affirmative action for protecting the right of the people to have access to light, air, water, and also

for protecting rivers, seas, tanks, trees, forests and associated natural eco systems.

Petitioner craves leave to produce and rely upon these reported judgments, if and when required in these proceedings (*Minguel Martins & Ors vs M/s Sociedade e Fomento industries Pvt Ltd* [2000 BOMCR (4) 448] and the Hon'ble Apex Court in *Fomento Resorts and Hotels Ltd & Anr Vs Minguel Martins & Ors* [(2009) 3 SCC 571].

Issue I. The Illegal Concrete Construction raised by Respondents Nos.4 and 5 on Vainguinim Beach:

13. During the months of April and May 2021, during the Covid-related curfew imposed on the public, the respondents 4 and 5, working even at nights, commenced and completed construction of a permanent, concrete embankment-like structure cutting across a major segment of the beach, claiming to have NOCs allegedly granted by the authorities and despite number of public protests and demonstrations from citizens. Around 21.04.2021, residents of the area noticed that a portion of the public beach was being excavated using a JCB, and construction of a cement structure approximately 13-15 m away from the existing boundary and retaining wall of the respondent hotel was underway. The cement structure was being

constructed in the intertidal zone, within the HTL limit and which is squarely part of the public beach. Immediately, at the onset of the construction activity itself, complaints were made to the GCZMA (Resp.No.6) by residents of the area.

14. Petitioner too, upon becoming aware of the illegal activity through social media, and being informed that some NOC for the work had been reportedly issued by the Goa Coastal Zone Management Authority (GCZMA), protested to the GCZMA vide its letter 21.04.2021, against the use of a bulldozer by the respondent hotel to excavate the sandy portion of the beach. Subsequently, after visiting the site and seeing the structure erected right across the beach obviously to suit the hotel's purposes, the petitioner addressed a letter to the Chief Secretary of the Goa government dated 7.6.2021 on the dereliction of its duty to protect the public beach, drawing to his attention the orders passed by the High Court and Supreme Court specifically on the handling of beaches as part of the public trust doctrine. Petitioner therefore requested the State Govt to remove the offending structure forthwith. Copies of the petitioner's letters dated 21.04.2021 to the GCZMA and 7.6.2021 to the Chief Secretary are enclosed as Annexure 5 colly.

15. It appears that based on citizens' complaints, the GCZMA conducted some site inspections and issued a show cause notice to the Resp hotel company. The GCZMA, however, did not stop the construction work, even though it was taking place on the beach itself which is public property. As a result, due to the complicity of the GCZMA, the Resp Nos 4 and 5, working day and night, completed the construction of the structure by the end of May 2021. Photographs of the construction while it was underway – some of which were enclosed with the letters to the Chief Secretary – and media report of the same are at Annexure 6 colly.
16. The Petitioner submits that despite the best attempts of the citizens and this petitioner to get the authorities to take action, no authority has acted thus far, apart from site visits, as the resort owners are persons who can exert enormous influence on public authorities. It is, however, necessary that the offending structure be removed at the earliest and the beach is restored to its original status, under the supervision of an expert body like the National Institute of Oceanography (NIO), Goa, at the cost of the Respondents Nos.4 and 5.
17. The structure, which actually appears to be an embankment, is approximately of 100 mt length, 50 cm width and 1 mt height, erected with cement

concrete on the sand beach. It has already caused severe damage to the beach. The portion behind the new structure has already turned into a "dead zone" for all marine life on the beach. Petitioner fears that by the said means of illegal impoundment, half the beach will now go out of the hands of the public, as the resort's security guards are already dissuading visitors to the beach from accessing the portion of the beach behind the structure/embankment, towards the hotel. Petitioner apprehends that the hotel will thus colonize this portion of the beach and annex it to the property of the hotel for use of beach activities of its guests including beach games, relaxation and serving of food. The hotel will then have succeeded in privatising a large portion of Vainguinim beach for itself.

18. As the beach is a public beach, no permissions for development can be granted or obtained for any development by any party as per the Public Trust doctrine. Any measures that may need to be taken to protect the beach (e.g., from erosion) may only be authorized by the State Govt which holds the beach in trust for the enjoyment of the public.
19. The GCZMA which is the coastal authority for Goa has been holding some hearings on the matter. After some citizens approached this Hon'ble Court in a PIL, the GCZMA was directed by this Hon'ble Court to take a decision within six weeks, by

October 1, 2021. The petitioner was also invited to the hearings. The petitioner attended the same and submitted a written note, but found that the entire proceeding had turned into a dispute over the nature of the NOC issued by the GCZMA in 2017 for repairs to the hotel's boundary wall (also termed as gadaga / linear wall) and whether the hotel had violated the conditions of the NOC.

20. Further, the issue of GCZMA's NOC is entirely irrelevant to the issue of the concrete embankment now standing on the Vainguinim beach. No authority is empowered to grant any permission or NOC for any permanent structure to be constructed on a public beach. No private party can be permitted a license to construct a permanent structure on a beach. Beaches are public spaces, for all citizens to enjoy and use. They are covered by the doctrine of Public Trust. The State and its instrumentalities are duty bound to act as custodians of these public endowments and ensure they are kept in a good state of health so that they will also be available for future generations.

Issue 2. Restoration of the two public accesses to the beach

21. Petitioner states that the hotel owners (Resp.No.4) have attempted to privatize the beach and restrict public access to the same from the time the hotel was set up. Petitioner first approached this Hon'ble

Court in 1992 for protection of the two public ways to the beach. The first, guaranteed by custom and imposed as a condition in an agreement which the Goa government had made with the resort while acquiring land for the hotel's purposes, which shall be referred to hereinafter as **Access A, eastern side**). This Access A is one metre in width, straight, and non-motorable. It is the traditional pathway to the beach. The second access (with parking lot for the public attached) was a condition imposed on the hotel by way of the development permission granted in 1978 (hereinafter, **Access B, western side**). Access B is around 3 metres in width, winding road, motorable right from the main road down to the beach with a public parking lot on the upper side of the road. The map, taken from Court records, is at Annexure 7.

22. **Access A**, from a point marked A to a point marked B (beachside) is presently open to the public. However, signboards indicating the access through the hotel property which were installed earlier, together with guard rope (separating the pathway from the hotel properties on either side), have been removed. Instead, close to point A, the hotel management has intentionally placed a board pointing in the direction of a narrow path alongside the nullah towards the beach, instead of the actual pathway ("Point A" to "Point B") ordered by the Apex Court. Visitors to the beach are naturally

misled by this board and avoid using the pathway given to citizens by the Court. Photos of this pathway, the board misdirecting the public and of the correct path are at Annexure 8 colly. This Hon'ble Court may direct removal of the misdirecting board. A fresh board, to be affixed at point A, must be installed in the interests of justice. Two further display boards are needed: one, at the mid-point, and the second, at point B, where the pathway meets the beach. The boards need to state "Public Way to the Beach" (not way to public beach). The petitioner, after a visit to the beach in 2020, complained in writing to the management about this, but there has been no change on the ground and the complaint has been ignored. Copy of the said letter dated 21.1.2020 is Annexure 9. This Court may be pleased to issue appropriate directions in the interests of the public.

23. As regards **Access B**, it has now been appropriated and once again privatized by the expanded buildings of the Cidade de Goa II, with scant observance of the Supreme Court's directions to ensure that the road remains available always for public use. The approved plan of the Cidade de Goa II (expansion) does not show the road as a public road. Security guards are placed at the very inception of this road at the point where it deviates from the main Dona Paula-University road itself. There are no boards indicating "Public Way to the

Beach” and “Public Parking Lot.” The public road which was a tarred one has been upgraded to look similar to the private property of the hotel. Thus, even though the access exists, it has been practically turned into a private road. Further, the hotel has reduced the public parking lot to a space which can accommodate not more than 4-6 cars (reduced from approximately 20 earlier) which is also being used for its own purposes. The Resp Nos 4 and 5 have also installed massive iron gates with a security guard, immediately beyond the parking lot. Photos of relevance to Access B are enclosed at Annexure 10. The presence of security guards, gates and the absence of boards clearly declaring the road as a public road naturally dissuade persons from using the road, believing it to be private property. There were neither security guards nor gates earlier on this road after the High Court and Supreme Court directed that it should be for the public. Since the resort has constructed its own private parking areas behind Cidade de Goa I and II, it is not entitled to the use of the public parking space which was required by Courts’ orders. This should be restored to its original size, i.e., for approx. 20 cars and buses. This parking area cannot be used by the resort for any purpose.

24. Petitioner submits that sign boards need to be prominently deployed at the main road at the point at which the road branches into the hotel’s

property; these sign boards must also announce public parking space. Further, another 5 sign boards are required beyond the parking area as the road winds down to finally pass along the boundary of the hotel and end at steps that lead onto the sands. The gate erected to close the public road to the beach adjoining the parking lot has to be removed, as no private gate may enclose a public road, that too, a road upheld by this Hon'ble Court, and by the Supreme Court in appeal.

25. Petitioner submits that neither this Hon'ble Court's judgments nor those of the Hon'ble Supreme Court have cured the Resp No 4 (and its new partner, Resp.No.5) of their desire to privatize the Vainguinim beach. It is necessary to ensure that the respondent hotel ceases to place any further obstacles on the access to the public beach. A commissioner may be appointed to visit both accesses and make appropriate recommendations in respect of both accesses. Hence, the need for certain directions.
26. The petitioners are constrained to return to this Hon'ble Court, to ensure the rights of the citizens over the public beach and the duty of the government and authorities to protect and uphold the same under the public trust doctrine and principles of intergenerational equity.

Grounds

27. The Petitioner is therefore approaching this Hon'ble Court in public interest and under the Public Trust doctrine on the following grounds, among others:-

- a) The Vainguinim beach is declared a public beach and the rights of the public to access it in its entirety are squarely covered under the doctrine of Public Trust, enunciated by this High Court and endorsed by the Supreme Court in appeal in matters that were connected with this very same beach two decades prior.
- b) The illegal construction carried out by the respondents is on the beach, within the intertidal zone of the public beach, in the area where no construction or development works may be permitted, and thus an interference with the rights of the public to access and enjoy the beach. The structure is moreover physically damaging the beach. The failure of the authorities to take action to restore the beach to the public is a complete and total breach of the public trust doctrine.
- c) It is on the very same basis that prior attempts by this very hotel to privatize

the beach and restricting access to the public were stopped by this Hon'ble High Court in *Minguel Martins & Ors vs M/s Sociedade e Fomento industries Pvt Ltd* [2000 BOMCR (4) 448] and the Hon'ble Apex Court in *Fomento Resorts and Hotels Ltd & Anr Vs Minguel Martins & Ors* [(2009) 3 SCC 571]. Despite these precedents, the respondent hotel is brazenly making another attempt now to grab public property as its own and to restrict the use and enjoyment of it by the citizens.

- d) In *MC Mehta vs Kamal Nath & Ors* (1997) 1 SCC 388, the Hon'ble Supreme Court has held that the State is the trustee of all natural resources which are by nature meant for public use and enjoyment. The public at large is the beneficiary of the sea shore, running waters, air, forests and ecologically fragile lands. These resources are meant for public use and cannot be converted for private ownership or control. The Court further held that in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership or

commercial use. The aesthetic use and pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the Courts find it necessary, in good faith, for the public good and in public interest to encroach upon said resources.

- e) The Petitioner submits that this is yet another attempt to privatize a portion of the public beach and restrict access to the same by the hotel. The petitioners submit that the property of the hotel ends as soon as the sandy portion of the beach begins. The portion of the intertidal zone of the public beach cannot be claimed as private property. All parts of the sandy beach and beyond are public property and resources – held only in trust under the public trust doctrine by the Government. It is the duty of the authorities to ensure free access and enjoyment of the full beach to all citizens.
- f) The public trust doctrine includes the guarantee of public access to public trust resources with a requirement of

public accountability in respect of decision-making regarding such resources. The Chief Minister has specifically made a statement to the media that the resort does not have permissions from the government for the construction then underway.

- g) The hotel has absolutely no right to do any work – repair or construction – on the beach which is public property, and no permissions can be granted to a private party for such work. There is neither an NOC nor any other statutory approval for the illegal construction on the beach and none can be granted.
- h) The authorities have completely failed to take requisite action against the violators. The GCZMA issued merely a show cause notice and has subsequently delayed taking a final decision in the matter, allowing the party to complete the construction. The show cause notice was issued on 28.04.2021. However, till date, no decision or action has been taken by the authority.
- i) The accesses to the beach are required to be kept fully functional with due

signboards, parking area, etc., pursuant to directions of the Apex Court in the interests of intergenerational equity. These directions ought to have been kept in mind while approving the plans for the construction of Cidade de Goa II. The authorities appear to have completely forgotten these directions. They need to be reminded. Access of the citizens to the beach (a publicly owned, public resource) is a common right that cannot be compromised in any manner.

- j) Such other and further grounds that may be urged at the time of hearing.

Source of Information

28. The Petitioners are relying on information received under the provisions of the RTI Act, 2005

Delay, if any, in filing the petition

29. There is no delay in filing this petition. Work on the public beach began in April, 2021 purportedly on the basis of NOCs granted in 2017. It has taken more than a month thereafter to get replies to RTI requests to examine relevant files. However, requisite action has not been taken by the authorities who are obviously hand-in-glove with the resort's owners. Complaints were made to the

relevant authorities as soon as the first bulldozer began its operations on the beach.

Representations made

30. The Petitioner has made representations to the Chief Secretary vide letter dated 7.6.2021 and also to the GCZMA.

Documents relied upon

31. List of documents to be relied upon is provided in the index.

Prayers:

32. Petitioner is therefore praying for the following reliefs, in public interest:

- a) For an order directed to the Respondent No.1 to demolish forthwith in its entirety the concrete structure or embankment constructed on and across the Vainguinim beach approx. 13-15 metres from the existing boundary wall (gadaga / linear wall) of the resort and report compliance;
- b) For an order directing the respondent Nos. 1, 2 and 3 to take steps to restore the Vainguinim beach to its original sandy status with expert advice;
- c) For an order imposing monetary sanctions of Rs.50 lakh upon Resp. Nos.4, 5 and 6

for the illegal construction and for the grave damage caused to public property;

- d) For an order directing the Respondents to erect signages at appropriate points to ensure correct information to the public to access the beach from both routes (Access A and B);
- e) For an order directing the Respondents to ensure that the gate and security guards are removed from the public road (Access B, western side);
- f) For an order directing the Respondents to ensure that the parking arrangements are available as earlier (Access B, western side).
- g) For costs of this petition;
- h) Any other reliefs this Hon'ble Court may be pleased to grant;

Interim reliefs:

- i) Pending hearing and final disposal of this petition, for an order directing the Respondent No.1 to demolish forthwith the concrete structure or embankment constructed on the public beach (Annexure 1);

- j) Pending hearing and final disposal of this petition, for appointment of a commissioner to report in respect of the status of both accesses to the public beach and recommendations for any directions required (Annexure 2);

Caveat

33. No notice has been received of lodging a caveat by the opposite parties.

Nature and Extent of Injury

34. The illegal construction has damaged the beach and constitutes an interference with the rights of the ordinary public to access and enjoy the beach without any impediments and hazard. In addition to the damage caused to the beach ecosystem – the construction, made from cement and concrete, has created a dead zone out of a major segment of the living beach.

Place: Porvorim, Goa

Date: 20th September 2021

Petitioner

IN THE HON'BLE HIGH COURT OF JUDICATURE
AT BOMBAY, GOA BENCH, AT PORVORIM

PILWP No. /2021

Goa FoundationPetitioner

Vs

State of Goa & Ors
...Respondents

AFFIDAVIT IN SUPPORT OF THE PETITION

I, Dr. Claude Alvares, Secretary of the Petitioner organisation abovenamed do hereby solemnly affirm and declare as under:

1. I have today filed a Writ Petition in public interest for the reliefs sought therein.
2. I state that there is no personal gain, private motive or oblique reason in filing the PIL.
3. The petitioners are ready to pay costs as ordered by the Court, if it is ultimately held that the petition is frivolous or has been filed for extraneous consideration or that it lacks bonafides.

4. The petitioners shall disclose the source of their information, leading to the filing of the PIL, if and when called upon by the Court to do so.

5. I solemnly declare and say that what has been stated in paras 1 (p), 2-7, 8(p), 9-15, 16(p), 17(p), 18(p), 19, 20(p), 21, 22(p), 23(p), 28, 30 & 31 of the accompanying petition are in the nature of facts which are true to my own knowledge and the contents of paras 1 (p), 8(p), 16(p), 17(p), 18(p), 20(p), 22(p), 23(p), 24-27, 29 & 32 are my submissions made on legal advice which I believe to be true and correct. No part of it is false and nothing material has been concealed therefrom.

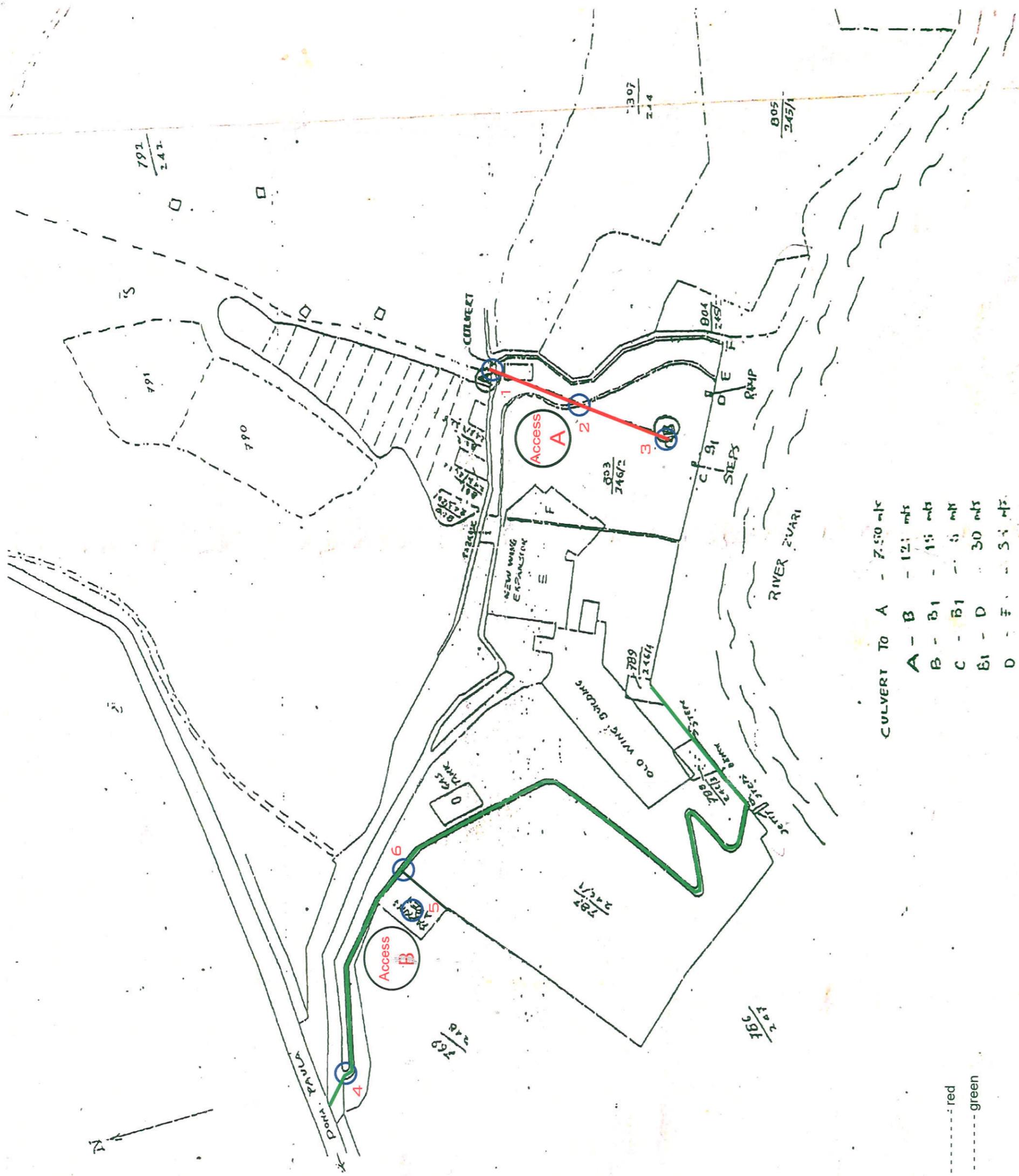
6. I say that the documents annexed are true copies of their originals.

Solemnly affirmed at Mapusa

This the 20th day of September 2021

Deponent

34-A



CULVERT TO A - 7.50 mks

A - B	- 12.1 mks
B - B1	- 1.5 mks
C - B1	- 0 mks
B1 - D	- 30 mks
D - E	- 5.5 mks

Legend
 Access A (eastern side) - - - - - red
 Access B (western side) - - - - - green

SRIDEVI DATLA v. UNION OF INDIA

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(2021) 5 Supreme Court Cases 321

(BEFORE L. NAGESWARA RAO AND S. RAVINDRA BHAT, JJ.)

2J

a SRIDEVI DATLA . . . Appellant;

Versus

UNION OF INDIA AND OTHERS . . . Respondents.

Civil Appeal No. 3136 of 2020[†], decided on March 2, 2021

b **A. Environment Law — National Green Tribunal Act, 2010 — S. 16 proviso — Appeal — Delay — Condonation of — NGT’s refusal to exercise discretion — “Sufficient cause” not construed liberally by NGT — Legality — Environmental clearance for construction of greenfield international airport — Held an appeal to NGT in such matters is no ordinary matter — It has potential of irrevocably changing environment with possibility of likely injury — Application of judicial mind by an independent tribunal in such cases, at first appellate stage, is almost a necessity**

c — Documentation attendant to clearance granted to project applicant was voluminous, and expert as well as professional legal advice of kind necessary to approach NGT was not available in State of A.P. — Thus, procuring of relevant documents, and correspondence with counsel in Delhi and drafting of appeal entailed some delay — Given the mandate of NGT Act, exercise of discretion, as was done in present case, to reject appeal by dismissing application for condonation of delay, on ground that no sufficient cause was shown, was erroneous and based on a narrow reading of law

d **B. Limitation Act, 1963 — S. 29(2) — Express exclusion of Limitation Act, by special law — If a mandatory requirement — Import of words “expressly excluded” in S. 29(2) — Held, provisions of Limitation Act are inapplicable in appeal under S. 16 of the NGT Act**

e — National Green Tribunal Act, 2010 — S. 16 — Appeal — Delay condonation — Inapplicability of Limitation Act — Words and Phrases — “Expressly excluded”

f **C. Statute Law — General Clauses Act, 1897 — S. 10 — Object and applicability — For S. 10 of the 1897 Act to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday — Held, S. 10 of the 1897 Act applies proprio vigore to all appeals filed under NGT Act**

g — Object of S. 10 is to enable a person to do what he could have done on a holiday — Where a period is prescribed for performance of an act in a court or office, and that period expires on a holiday, then according to S. 10 of the 1897 Act, act in question should be considered to have been done within that period, if it is done on next day on which court or office is open — National Green Tribunal Act, 2010 — S. 16 — Appeal — Delay condonation — Applicability of S. 10 of the General Clauses Act

h [†] Arising from the Judgment and Order in *Sridevi Datla v. Union of India*, 2020 SCC OnLine NGT 870 (National Green Tribunal, MA No. 231 of 2017, dt. 31-7-2020)

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SUPREME COURT CASES

(2021) 5 SCC

D. Limitation Act, 1963 — S. 5 — Expression “sufficient cause” — Held, must receive a liberal construction so as to advance substantial justice — Generally, delays in preferring appeals are required to be condoned in interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to party seeking condonation of delay — National Green Tribunal Act, 2010, S. 16 proviso

a

E. Limitation Act, 1963 — S. 5 — Sufficient cause — There cannot be a universal formula to judge whether sufficient cause has, or has not been shown and the exercise is necessarily fact specific — Adoption of a strict standard of proof sometimes fails to protect public justice and it may result in public mischief — National Green Tribunal Act, 2010, S. 16 proviso

b

F. Limitation Act, 1963 — S. 5 — Delay condonation — Sufficient cause — In cases where delay is inordinate, consideration of prejudice to other side will be a relevant factor while condoning delay — However, in cases where delay is of few days, no such consideration arises — Court, equally should be sensitive to fact that successful litigant has acquired certain rights on basis of judgment under challenge and a lot of time is consumed at various stages of litigation apart from cost — Term “sufficient cause” is relative, fact dependent, and has many hues, largely deriving colour from facts of each case, and behaviour of litigant who seeks condonation of delay (in approaching the court) — However, what can broadly be said to be universally accepted is that in principle, applicant must display bona fides, should not have been negligent, and delay occasioned should not be such that condoning it would seriously prejudice other party — National Green Tribunal Act, 2010, S. 16 proviso

c

d

G. Environment Law — National Green Tribunal Act, 2010 — Ss. 22, 14, 15 and 16 — State’s power to alienate publicly available resources like ponds — Held, such transfer or alienation is impermissible

e

H. Environment Law — National Green Tribunal Act, 2010 — Ss. 16 and 20 — Duties of NGT and proper exercise of power — NGT is under an obligation to consider issues as an expert body, and apply principle of sustainable development, in adjudicating environmental issues, especially while considering validity of grant of clearance to large projects under Environment (Protection) Act, 1986

f

I. Environment Law — National Green Tribunal Act, 2010 — Ss. 14 to 18 — Locus standi/Standing to approach NGT — Held, there is nothing in the NGT Act which excludes parties who would be directly affected by a project that has environmental repercussions, from accessing NGT

Fifth respondent (project applicant) proposed the construction of a new greenfield international airport. As was required by law and extant statutory notifications, it applied to the Ministry of Environment, Forests and Climate Change (MoEF) to seek environmental clearance. MoEF, after following the prescribed procedure, which included ascertaining the views and objections of the parties concerned, the general public, etc. indicated its approval by an order dated 14-8-2017. In terms of Section 19 of the NGT Act, the approval was posted on the website of MoEF on 14-8-2017. Concededly, the project applicant published the approval in an English daily on 13-9-2017.

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h

a The appellant preferred her appeal to NGT. Along with the appeal, she preferred an application for condonation of delay in approaching NGT, given the stipulation of Section 19 of the NGT Act that the appeal had to be preferred within 30 days from the date of communication of the order impugned. She explained that since the clearance and related documents were voluminous and the matter required some technical expertise, requiring the papers to be forwarded to experts and lawyers in Delhi, and the inter se communication delay, NGT needed to condone the delay, in the interests of justice. After considering the submissions made *b* by the appellant as well as the project applicant, which opposed the application for condonation of delay, NGT, by its impugned order, rejected the appellant's application and consequently the appeal before the Supreme Court.

c It was contended by the appellant that NGT's opinion that sufficient cause was not shown while seeking condonation of delay is erroneous. Any proposal as well as clearances where voluminous documentation is involved, or if any individual or entity is aggrieved, or adversely affected, the only remedy provided is by way of an appeal. To substantiate the grounds of appeal, it would be essential that in many instances, expert advice is obtained based on which the grounds of appeal can be prepared and urged. If the issue were to be considered in this perspective, the explanation provided by the appellant in her application seeking condonation of delay could not be considered unreasonable and in fact amounts to sufficient cause. *d*

The Union of India contended that in terms of the Environment Impact Assessment Notification, 2006, the clearance had to be published within seven days from the date of uploading on the website of MoEF. The publication of environment clearance dated 14-8-2017 was done on 21-8-2017. Thus, the appellant's plea that she came to know of the environmental clearance on 24-8-2017 is baseless.

e The project applicant contended that the project concerned has been conceived in public interest and in replacement of the existing airport which is primarily a defence airport. It was further contended that any aggrieved litigant should be vigilant in the exercise of his rights and that he cannot claim the exercise of discretion for condoning any delay as a matter of right.

f The issue for determination before the Supreme Court was: whether the approach to the issue of limitation by NGT was correct, and whether on a correct interpretation of law, the appeal under Section 16 of the NGT Act was filed within the 90 days period, in the facts of the present case.

Allowing the appeal, the Supreme Court

Held :

g The State has no power to alienate publicly available resources like ponds, etc. (Para 16)

NGT is under an obligation to consider issues as an expert body, and apply the principle of sustainable development, in adjudicating environmental issues, especially while considering the validity of grant of clearance to large projects under Environment (Protection) Act, 1986. (Para 16)

h *Jitendra Singh v. Ministry of Environment*, (2020) 20 SCC 581 : 2019 SCC OnLine SC 1510; *Hanuman Laxman Aroskar v. Union of India*, (2019) 15 SCC 401, *relied on*

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Where periods of limitation are prescribed under special laws, appeals that exceed the period granted and are within the extended period of limitation in the special law, can be entertained at the discretion of the tribunal, or court concerned and the Limitation Act would not apply upon expiry of such extended period. Provisions of the Limitation Act are inapplicable in appeal under Section 16 of the NGT Act. (Para 19)

Kaushalya Rani v. Gopal Singh, (1964) 4 SCR 982 : AIR 1964 SC 260 : (1964) 1 Cri LJ 152; *CCE v. Hongo (India) (P) Ltd.*, (2009) 5 SCC 791; *Union of India v. Popular Construction Co.* (2001) 8 SCC 470; *Patel Bros. v. State of Assam*, (2017) 2 SCC 350 : (2017) 1 SCC (Civ) 658, *followed*

Object of Section 10 of the General Clauses Act, 1897 is to enable a person to do what he could have done on a holiday. Where a period is prescribed for performance of an act in a court or office, and that period expires on a holiday, then according to Section 10 of the 1897 Act should be considered to have been done within that period, if it is done on next day on which court or office is open. For Section 10 of the 1897 Act to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday. (Para 21)

Harinder Singh v. S. Karnail Singh, 1957 SCR 208 : AIR 1957 SC 271; *Manohar Joshi v. Nitin Bhaurao Patil*, (1996) 1 SCC 169; *Mohd. Ayub v. State of U.P.*, (2009) 17 SCC 70 : (2011) 1 SCC (L&S) 580, *followed*

There is no indication in the NGT Act that Section 10 of the General Clauses Act cannot be applied. It is, therefore, held that the provision applies proprio vigore to all appeals filed under the NGT Act. (Para 22)

The expression “sufficient cause” in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. (Para 24)

G. Ramegowda v. LAO, (1988) 2 SCC 142, *followed*

Ramlal v. Rewa Coalfields Ltd., (1962) 2 SCR 762 : AIR 1962 SC 361; *Shakuntala Devi Jain v. Kuntal Kumari*, (1969) 1 SCR 1006 : AIR 1969 SC 575; *Concord of India Insurance Co. Ltd. v. Nirmala Devi*, (1979) 4 SCC 365 : 1979 SCC (Cri) 996; *Mata Din v. Narayanan*, (1969) 2 SCC 770; *LAO v. Katiji*, (1987) 2 SCC 107 : 1989 SCC (Tax) 172, *relied on*

Adoption of a strict standard of proof sometimes fails to protect public justice and it may result in public mischief. There cannot be a universal formula to judge whether sufficient cause has, or has not been shown and the exercise is necessarily fact specific. (Para 25)

Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595; *Improvement Trust v. Ujagar Singh*, (2010) 6 SCC 786 : (2010) 2 SCC (Civ) 798, *followed*

State of Nagaland v. Lipok Ao, (2005) 3 SCC 752 : 2005 SCC (Cri) 906; *New India Insurance Co. Ltd. v. Shanti Misra*, (1975) 2 SCC 840; *N. Balakrishnan v. M. Krishnamurthy*, (1998) 7 SCC 123; *State of Haryana v. Chandra Mani*, (1996) 3 SCC 132; *LAO v. K.V. Ayisumma*, (1996) 10 SCC 634, *relied on*

A distinction can be underlined between a case where the delay is inordinate, and a case where the delay is of few days and that in the former case the consideration of prejudice to the other side will be a relevant factor; in the latter case, no such consideration arises. After noticing that a liberal and justice-oriented

a approach needs to be taken, it was stated that the court, equally should be sensitive to the fact that “the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost”. (Para 27)

Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai, (2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24, *followed*

b Thus, it is evident that the term sufficient cause is relative, fact dependent, and has many hues, largely deriving colour from the facts of each case, and the behaviour of the litigant who seeks condonation of delay (in approaching the court). However, what can broadly be said to be universally accepted is that in principle, the applicant must display bona fides, should not have been negligent, and the delay occasioned should not be such that condoning it would seriously prejudice the other party. (Para 28)

c The appellant pleaded that since the documentation attendant to the clearance granted to the project applicant was voluminous, and expert as well as professional legal advice of the kind necessary to approach NGT was not available in the State of Andhra Pradesh, the procuring of relevant documents, and correspondence with counsel in Delhi and drafting of the appeal entailed some delay. (Para 29)

d There is merit in the appellant’s argument. The respondents, especially, the project applicant, had urged that the appellant is an interested party, and cannot be called a public-spirited citizen, because she had opposed acquisition of land for the airport and therefore, was able to access legal advice at the High Court stage. There is nothing in the NGT Act which excludes parties who would be directly affected by a project that has environmental repercussions, from accessing the tribunal (NGT). Likewise, characterising the nature of legal advice that can be accessed for challenging land acquisition, as similar to a challenge to environmental clearance which involves application of mind to technical issues in a detailed manner, would be unfair and simplistic. Scientific or technical support — apart from expert professional legal advice is necessary, if NGT were to be approached. In these circumstances, given the mandate of the NGT Act, the exercise of discretion, as was done in this case, to reject the appeal by dismissing the application for condonation of delay, on the ground that no sufficient cause was shown, was erroneous and based on a narrow reading of the law. An appeal to NGT in such matters is no ordinary matter; it has the potential of irrevocably changing the environment with the possibility of likely injury. Application of judicial mind by an independent tribunal in such cases, at the first appellate stage, is almost a necessity. (Para 30)

f The delay in filing the appeal before NGT is hereby condoned. The appeal is allowed. (Para 31)

Sridevi Datla v. Union of India, 2020 SCC OnLine NGT 870, *reversed*

g *Padmabati Mohapatra v. Union of India*, 2013 SCC OnLine NGT 2177; *Rambir Narhargir Gosai v. Prabhakar Bhaskar Gadhwany*, 1954 SCC OnLine MP 46 : AIR 1955 Nag 300; *Save Mon Region Federation v. Union of India*, 2013 SCC OnLine NGT 2511; *H. Dohil Constructions Co. (P) Ltd. v. Nahar Exports Ltd.*, (2015) 1 SCC 680 : (2015) 1 SCC (Civ) 646; *DSR Steel (P) Ltd. v. State of Rajasthan*, (2012) 6 SCC 782 : (2012) 3 SCC (Civ) 1034, *cited*

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Advocates who appeared in this case :

Ms Anitha Shenoy, Senior Advocate, for the Appellant;

K.M. Nataraj, Additional Solicitor General and Mukul Rohatgi, Senior Advocate, for the Respondents. a

Chronological list of cases cited **on page(s)**

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4. (2017) 2 SCC 350 : (2017) 1 SCC (Civ) 658, *Patel Bros. v. State of Assam* 333a
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16. (1998) 7 SCC 123, *N. Balakrishnan v. M. Krishnamurthy* 334f
17. (1996) 10 SCC 634, *LAO v. K.V. Ayisumma* 334f
18. (1996) 3 SCC 132, *State of Haryana v. Chandra Mani* 334f
19. (1996) 1 SCC 169, *Manohar Joshi v. Nitin Bhaurao Patil* 334a
20. (1988) 2 SCC 142, *G. Ramegowda v. LAO* 334b-c f
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26. (1964) 4 SCR 982 : AIR 1964 SC 260 : (1964) 1 Cri LJ 152, *Kaushalya Rani v. Gopal Singh* 333a
27. (1962) 2 SCR 762 : AIR 1962 SC 361, *Ramlal v. Rewa Coalfields Ltd.* 334c-d
28. 1957 SCR 208 : AIR 1957 SC 271, *Harinder Singh v. S. Karnail Singh* 333d
29. 1954 SCC OnLine MP 46 : AIR 1955 Nag 300, *Rambir Narhargir Gosai v. Prabhakar Bhaskar Gadhaway* 328f h

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.— The appellant is aggrieved by an order¹ of the
 a National Green Tribunal (hereafter referred to as “NGT”²) and has, therefore, approached this Court under Section 22 of the NGT Act. NGT rejected her appeal, preferred to it against the environmental clearance for construction of Greenfield International Airport, Bhogapuram, Visakhapatnam, which had been sought for by the fifth respondent.

2. The facts are simple: the fifth respondent (hereafter called “the
 b project applicant”) proposed the construction of a new greenfield international airport. As was required by law and extant statutory notifications, it applied to the Ministry of Environment, Forests and Climate Change (hereinafter, the “MoEF”) to seek environmental clearance. MoEF, after following the prescribed procedure, which included ascertaining the views and objections of the parties concerned, the general public, etc. indicated its approval by an order
 c dated 14-8-2017. In terms of Section 19 of the NGT Act, the approval was posted on the website of MoEF on 14-8-2017. Concededly, the project applicant published the approval in an English daily on 13-9-2017.

3. The appellant preferred her appeal to NGT on 13-11-2017. Along with the appeal, she preferred an application for condonation of delay in approaching
 d NGT, given the stipulation of Section 19 that the appeal had to be preferred within 30 days from the date of communication of the order impugned. She explained that since the clearance and related documents were voluminous and the matter required some technical expertise, requiring the papers to be forwarded to experts and lawyers in Delhi, and the inter se communication delay, NGT needed to condone the delay, in the interests of justice. After
 e considering the submissions made by the appellant as well as the project applicant, which opposed the application for condonation of delay, NGT, by its impugned order¹, rejected the appellant’s application and consequently the appeal as well.

4. The appellant’s arguments before this Court are mainly twofold: that the requirement of Section 16 is to “*communicate the order to the parties
 f concerned as well as the public and that a meaningful interpretation should be given to the provision*”. It was emphasised in this context that communication means not merely the publication on the Central Government’s website, but also dissemination of the news or the decision to the affected parties. The learned Senior Counsel for the appellant Ms Anitha Shenoy, in this context, relied upon the terms contained in the environmental clearance/approval given
 g by MoEF, especially those which obliged the project applicant to intimate the decision in dailies having local circulation in the vernacular. She also relied upon the stipulations in the environmental clearance (“EC”) which prescribed that the successful project applicant had to, in continuation to so publishing the decision or intimation in local newspapers, also ensure that the decision was forwarded to local communities through the panchayats, etc. for dissemination.

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 1 *Sridevi Datla v. Union of India*, 2020 SCC OnLine NGT 870
 2 Dated 31-7-2020

5. It was pointed out that the object of these conditions should be construed as part of a larger scheme of the Act to communicate every decision. The appellant argued that if a contrary interpretation were to be accepted, the appeal given by the statute would be meaningless as most often, large projects which involve either displacement of people or which affect habitats and have the tendency to damage or at least cause significant adverse impact upon the environment would not be considered on its merits by NGT since people and neighbourhoods cannot be presumed to have knowledge of deliberations in New Delhi.

6. It was also argued on behalf of the appellant that in the circumstances of the present case, at least the appeal could not be said to be time-barred. It was argued that the date for reckoning (limitation) is from 14-8-2017, when MoEF uploaded the decision on its website. The ninety-day period within which appeal was to be filed, expired on 12-11-2017, which was a Sunday. It was submitted that under Section 10 of the General Clauses Act, if any period prescribed ends on a Sunday or a day on which the court or the tribunal does not function, the next day should be considered as the terminus quo in point of time. Consequently, it was submitted that the appeal should be considered as within time and should have been entertained on merits.

7. Lastly, it was argued that NGT's opinion that sufficient cause was not shown while seeking condonation of delay is erroneous. The learned counsel highlighted that any proposal as well as clearances where voluminous documentation is involved, or if any individual or entity is aggrieved, or adversely affected, the only remedy provided is by way of an appeal. To substantiate the grounds of appeal, it would be essential that in many instances, expert advice is obtained based on which the grounds of appeal can be prepared and urged. If the issue were to be considered in this perspective, the explanation provided by the appellant in her application seeking condonation of delay could not be considered unreasonable and in fact amounts to sufficient cause. The learned counsel relied upon a previous order of NGT in *Padmabati Mohapatra v. Union of India*³. Reliance was also placed on the judgment of the Nagpur High Court, in *Rambir Narhargir Gosai v. Prabhakar Bhaskar Gadhaway*⁴.

8. On behalf of the Union of India, the ASG, Mr K.M. Nataraj argued that the impugned order¹ does not require to be disturbed. He pointed out that the impugned order¹ had noticed that the appellant made no complaint that MoEF had put up the decision to grant environmental clearance on its website on 14-8-2017 or that having uploaded the decision it could not be viewed publicly in an uninterrupted manner. He further submitted that the finding that the first date when the decision was communicated by MoEF on its website is determinative for the purpose of reckoning limitation rather than any other later point in time. It was further emphasised on behalf of the UoI that the need to publish environmental clearances under the Environment Impact

3 2013 SCC OnLine NGT 2177

4 1954 SCC OnLine MP 46 : AIR 1955 Nag 300

1 *Sridevi Datla v. Union of India*, 2020 SCC OnLine NGT 870

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a Notification 2006, framed under the Environment Protection Act, 1986 is now known to all. The proposal of the project applicant clearly fell within the sweep of the Environment Impact Notification in Item 7(a) to the Schedule (to the notification).

b 9. It was submitted on behalf of the UoI that in terms of the Environment Impact Assessment Notification, 2006, the clearance had to be published within seven days from the date of uploading. The publication of environment clearance dated 14-8-2017 was done on 21-8-2017. Thus, the appellant's plea that she came to know of the environmental clearance on 24-8-2017 is baseless. The learned ASG relied upon a decision of NGT in *Save Mon Region Federation v. Union of India*⁵ in this regard.

c 10. The learned ASG lastly argued that by virtue of Section 33 of the Act, the provisions of all other laws stand overridden and consequently, the question of extending the period of limitation by reference to Section 5 of the Limitation Act would not arise. He further urged that the period of limitation prescribed is actually 30 days for the filing of an appeal, and that further period of 60 days is only by way of acceptance of application for condonation of delay. Thus, no appeal is maintainable after the expiry of 90 days. It is pointed out that in the present case, the 90 day period in fact ended a day prior to the filing of the appeal; it was, therefore, clearly time-barred.

d 11. Mr Mukul Rohatgi, learned Senior Counsel appearing for the project applicant supported the submissions of the Union and argued that the project applicant concerned i.e. M/s Bhogapuram International Airport Corporation Ltd., has been conceived in public interest and in replacement of the existing Vishakhapatnam Airport which is primarily a defence airport. The learned counsel relied upon the decision of this Court in *H. Dohil Constructions Co. (P) Ltd. v. Nahar Exports Ltd.*⁶ to the effect that any aggrieved litigant should be vigilant in the exercise of his rights and that he cannot claim the exercise of discretion for condoning any delay as a matter of right. Reliance was also placed upon the decision in *DSR Steel (P) Ltd. v. State of Rajasthan*⁷. In this regard, it was submitted that the appeal before this Court which purports to be under Section 22 of the Act is confined to the grounds specified under Section 100 CPC, which is only if the Court is satisfied that the case involves a substantial question of law.

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g 12. Lastly, it was submitted by the learned Senior Counsel that the NGT Act correctly surmised in the circumstances of the case that the appellant had adopted a casual approach and did not believe the contents of the application for condonation of delay. The learned counsel in this context argued that the appellant is an interested person in the sense that her lands had been notified for acquisition and was therefore not uninformed or incapable of receiving appropriate legal advice.

h 5 2013 SCC OnLine NGT 2511
6 (2015) 1 SCC 680 : (2015) 1 SCC (Civ) 646
7 (2012) 6 SCC 782 : (2012) 3 SCC (Civ) 1034

Analysis and findings

13. The relevant provision of the Act i.e. Section 16⁸ reads as follows:

“16. *Tribunal to have appellate jurisdiction.*—Any person aggrieved by— a

(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974); b

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977); c

(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980 (69 of 1980); d

(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986); e

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986); f

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986); g

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003), h

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

a

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.”

b

14. Environmental disputes are complicated and entail expertise in diverse fields (such as ecology, chemistry, biology, economics, administration, management, law, etc.) for their determination in an effective and speedy fashion, that is not possible within the regular judicial and administrative set up in India. In other words, environmental disputes relating to forests, biodiversity, air and water are complicated in nature; resolving and expeditiously disposing of these cases is not possible without a separate special court. Environmental courts or tribunals have been a long-standing demand for other reasons too.

c

For effective prevention and control of environmental protection, there was an urgent need for a separate environmental court or tribunal to adjudicate without much delay. India is a party to the United Nations Conference on the Human Environment (known as the Stockholm Conference), 1972 where it made commitments relating to safeguarding of natural resources and developing international law, and to provide compensation to victims of pollution and other environmental degradation.

d

15. India is also a signatory to the Rio Declaration adopted at the United Nations Conference on Environment and Development at Rio de Janeiro in 1992. The Rio Declaration states that participating States must make suitable environmental legislation regarding effective access to the people, to judicial and administrative proceedings, including remedies. The Law Commission’s 186th report recommended that the Union Government should establish and constitute separate Environmental Courts in each State, to deal with complex, specialised issues concerning the environment. It was in this background that Parliament enacted the NGT Act. The Act amends various other enactments and adds provisions to them, for appeal before NGT. These are incorporated in Section 33-B of the Water (Prevention and Control of Pollution) Act, 1974; Section 13-A of the Water (Prevention and Control of Pollution) Cess Act, 1977; Section 2-A of the Forest (Conservation) Act, 1980; Section 31-B of the Air (Prevention and Control of Pollution) Act, 1981; Section 5-A in the Environment (Protection) Act, 1986 and Section 52-A in the Biological Diversity Act, 2002.

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16. In *Jitendra Singh v. Ministry of Environment*⁹ the narrow, but important question considered was whether a State could alienate publicly available resources like ponds. This Court held that that such transfer or alienation was impermissible. In *Hanuman Laxman Aroskar v. Union of India*¹⁰ this Court held that NGT is under an obligation to consider issues as an expert body, and apply the principle of sustainable development, in adjudicating environmental

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⁹ (2020) 20 SCC 581 : 2019 SCC OnLine SC 1510
¹⁰ (2019) 15 SCC 401

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issues, especially while considering the validity of grant of clearance to large projects under the Environment Protection Act. It was held that NGT Act:

“provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment.” (*Hanuman Laxman Aroskar case*¹⁰, SCC p. 458, para 133)

17. The Court noted that to be a member of NGT, the individual had to possess specified academic qualifications, including a master’s degree in science with a doctorate in engineering or technology, with prescribed experience in certain domains. To be an administrative member, the individual should possess fifteen years’ administrative experience including experience of five years in dealing with environmental matters in the Central or State Government or in a reputed national or State level institution. The Court proceeded to hold in *Hanuman Laxman Aroskar*¹⁰, that the grant of environmental clearance to a greenfield airport in Goa did not receive proper merits review by NGT.

18. Having regard to these decisions, and given the nature of jurisdiction which NGT has been invested with, the substantial questions of law that arise in the present case, are whether the approach to the issue of limitation by NGT was correct, and whether on a correct interpretation of law, the appeal under Section 16 was filed within the 90 days period, in the facts of this case.

Applicability of General Clauses Act

19. There can be no dispute that the period of limitation set out in a special law, which provides for remedies and appeals, has to be construed in its terms and without reference to the Limitation Act, if it contains specific provisions delineating the time or period within which applications or appeals can be preferred, and confines the consideration of applications for condoning the delay to a specific number of days. Undoubtedly, in such cases, the Limitation Act would be inapplicable.¹¹ There are several previous judgments of this Court holding that where periods of limitation are prescribed under special laws,

¹⁰ *Hanuman Laxman Aroskar v. Union of India*, (2019) 15 SCC 401

¹¹ That provision is as follows:

“29. **Savings.**—(1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.”

SRIDEVI DATLA v. UNION OF INDIA (*Ravindra Bhat, J.*)

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a appeals that exceed the period granted and are within the extended period of limitation in the special law, can be entertained at the discretion of the tribunal, or court concerned and the Limitation Act would not apply upon expiry of such extended period.¹² This Court holds that there is merit in the contention of the Union that the provisions of the Limitation Act are inapplicable. This is, however, not dispositive of the issue; the next question is whether there is merit in the appellant's argument that NGT should have considered the issue of whether the appeal was filed within the extended period prescribed under the proviso to Section 16 i.e. within sixty days after the expiration of the initial 30 day period, required in the main provision.

b **20.** The appellant argues that since there is no indication to the contrary; the appeal is to be considered as having been filed within the extended period of 60 days, since the last (of the 60 days) was a Sunday (12-7-2020). The appellant relied on Section 10 of the General Clauses Act, for this purpose. The respondents, notably the Union, opposed this argument.

c **21.** Section 10 of the General Clauses Act, 1897¹³ stipulates that when the last date for doing something falls on a public holiday, the act "*shall be considered as done*".. if it "*is done or taken on the next day afterwards on which the Court or office is open*". This provision applies to all Central Acts enacted after the said Act was brought into force. The scope of this provision was considered by this Court in *Harinder Singh v. S. Karnail Singh*¹⁴ by a four-Judge Bench, which explained the object of Section 10 and held as under: (AIR p. 273, para 5)

d "5. ... Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday."

f

12 *Kaushalya Rani v. Gopal Singh*, (1964) 4 SCR 982 : AIR 1964 SC 260 : (1964) 1 Cri LJ 152; *CCE v. Hongo (India) (P) Ltd.*, (2009) 5 SCC 791; *Union of India v. Popular Construction Co.* (2001) 8 SCC 470; *Patel Bros. v. State of Assam*, (2017) 2 SCC 350 : (2017) 1 SCC (Civ) 658

g 13 "**10. Computation of time.**—(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies.

h (2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887."

14 1957 SCR 208 : AIR 1957 SC 271

22. Other decisions¹⁵ have followed the same reasoning. It is also noticeable that there is no indication in the NGT Act that Section 10 of the General Clauses Act cannot be applied. It is, therefore, held that the provision applies *proprio vigore* to all appeals filed under the NGT Act. a

Approach of the court in considering the application for condonation of delay

23. What constitutes “sufficient cause” in terms of Section 16 of the NGT Act? While it is unexceptionable for the project applicant to argue that the Limitation Act is per se inapplicable to proceedings under the NGT Act, given that the basic, and outer period of limitation for filing an appeal have been enacted, nevertheless, what constitutes *sufficient cause*, is left to the discretion of the tribunal. Here, the court discerns a surfeit of authority on what the term denotes, and the general approach of the court, in dealing with delay. b

24. In *G. Ramegowda v. LAO*¹⁶, speaking for this Court, Venkatachaliah, J. summarised the position in the following terms: (SCC pp. 147-48, para 14) c

“14. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See: *Ramlal v. Rewa Coalfields Ltd.*¹⁷, *Shakuntala Devi Jain v. Kuntal Kumari*¹⁸, *Concord of India Insurance Co. Ltd. v. Nirmala Devi*¹⁹, *Mata Din v. Narayanan*²⁰ and *LAO v. Katiji*²¹, etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression “sufficient cause” in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.” d e

25. Much later, in *Esha Bhattacharjee v. Raghunathpur Nafar Academy*²² this Court referred to a large number of previous judgments²³, and observed that adoption of a strict standard of proof sometimes fails to protect public justice f

15 *Manohar Joshi v. Nitin Bhaurao Patil*, (1996) 1 SCC 169; *Mohd. Ayub v. State of U.P.*, (2009) 17 SCC 70 : (2011) 1 SCC (L&S) 580

16 (1988) 2 SCC 142

17 (1962) 2 SCR 762 : AIR 1962 SC 361

18 (1969) 1 SCR 1006 : AIR 1969 SC 575

19 (1979) 4 SCC 365 : 1979 SCC (Cri) 996 : (1979) 3 SCR 694

20 (1969) 2 SCC 770 : (1970) 2 SCR 90

21 (1987) 2 SCC 107 : 1989 SCC (Tax) 172

22 (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595

23 *State of Nagaland v. Lipok Ao*, (2005) 3 SCC 752 : 2005 SCC (Cri) 906; *New India Insurance Co. Ltd. v. Shanti Misra*, (1975) 2 SCC 840; *N. Balakrishnan v. M. Krishnamurthy*, (1998) 7 SCC 123; *State of Haryana v. Chandra Mani*, (1996) 3 SCC 132; and *LAO v. K.V. Ayisumma*, (1996) 10 SCC 634 g h

a and it may result in public mischief. Other decisions have highlighted that there cannot be a universal formula to judge whether sufficient cause has, or has not been shown and the exercise is necessarily fact specific; in *Improvement Trust v. Ujagar Singh*²⁴, the Court held: (*Improvement Trust case*²⁴, SCC p. 789, para 16)

b “16. While considering [an] application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not.”

26. The Court also emphasised that each case has to be balanced on the basis of its facts and the surrounding circumstances in which the parties act and behave.

c 27. Yet another dimension to the issue was highlighted in *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai*²⁵, where the Court underlined a distinction between a case where the delay is inordinate, and a case where the delay is of few days and that in the former case the consideration of prejudice to the other side will be a relevant factor; in the latter case, no such consideration arises. After noticing that a liberal and justice-oriented approach needs to be taken, it was stated that the court, equally should be sensitive to the fact that
d “the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.” The Court then held that: (SCC pp. 168-69, para 24)

e “24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

f 28. It is evident that the term *sufficient cause* is relative, fact dependent, and has many hues, largely deriving colour from the facts of each case, and the behaviour of the litigant who seeks condonation of delay (in approaching the court). However, what can broadly be said to be universally accepted is that in principle, the applicant must display bona fides, should not have been negligent, and the delay occasioned should not be such that condoning it would seriously prejudice the other party.

g 29. Keeping these principles in mind, it is relevant to consider whether NGT’s refusal to exercise discretion, in the facts and circumstances of this case, was erroneous. The Court is conscious of the fact that exercise of discretion, per se, is a fact dependent one, and considerable latitude should be given to the court or tribunal of the first instance, in the performance of that task. Nevertheless, as decided, cases and judgments have shown that the exercise of discretion does at

h 24 (2010) 6 SCC 786 : (2010) 2 SCC (Civ) 798
25 (2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24

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SUPREME COURT CASES

(2021) 5 SCC

times, call for appellate scrutiny by this Court. This is one such. The appellant pleaded that since the documentation attendant to the clearance granted to the project applicant was voluminous, and expert as well as professional legal advice of the kind necessary to approach NGT was not available in the State of Andhra Pradesh, the procuring of relevant documents, and correspondence with counsel in Delhi and drafting of the appeal entailed some delay.

30. This Court is of the opinion that there is merit in the appellant's argument. The respondents, especially, the project applicant, had urged that the appellant is an interested party, and cannot be called a public-spirited citizen, because she had opposed acquisition of land for the airport and therefore, was able to access legal advice at the High Court stage. There is, in our opinion, nothing in the NGT Act which excludes parties *who would be directly affected by a project*, that has environmental repercussions, from accessing the tribunal (NGT). Likewise, characterising the nature of legal advice that can be accessed for challenging land acquisition, as similar to a challenge to environmental clearance which involves application of mind to technical issues in a detailed manner, would be unfair and simplistic. Scientific or technical support — apart from expert professional legal advice is necessary, if NGT were to be approached. In these circumstances, this Court is of the opinion that given the mandate of the NGT Act, the exercise of discretion, as was done in this case, to reject the appeal by dismissing the application for condonation of delay, on the ground that no sufficient cause was shown, was erroneous and based on a narrow reading of the law. An appeal to NGT in such matters is no ordinary matter; it has the potential of irrevocably changing the environment with the possibility of likely injury. Application of judicial mind by an independent tribunal in such cases, at the first appellate stage, is almost a necessity.

31. In view of the foregoing findings, this Court is of the opinion that the impugned order¹ of NGT has to be and is, therefore set aside. The delay in filing the appeal before NGT is hereby condoned; the parties shall now appear and proceed to argue the appeal on its merit, which shall then be disposed in accordance with law. The appeal is allowed. There shall be no order on costs.

¹ *Sridevi Datla v. Union of India*, 2020 SCC OnLine NGT 870

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Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

**PUBLIC INTEREST LITIGATION WRIT PETITION NO.21 OF
2018**

WITH

**PUBLIC INTEREST LITIGATION WRIT PETITION NO.18 OF
2019**

WITH

**PUBLIC INTEREST LITIGATION WRIT PETITION NO.19 OF
2019**

WITH

STAMP NUMBER (MAIN) NO.2322 OF 2019(FILING)

WITH

**PUBLIC INTEREST LITIGATION WRIT PETITION NO.21 OF
2019**

WITH

**PUBLIC INTEREST LITIGATION WRIT PETITION NO.22 OF
2018**

**PUBLIC INTEREST LITIGATION WRIT PETITION NO.21 OF
2018**

Kashinath Jairam Shetye And 8 Ors.

...Petitioners

Versus

**Union of India, thr. Jt. Secretary, Ritesh
Kumar Singh And Anr.**

... Respondents

Petitioner in person.

Mr Raviraj Chodankar, Standing Counsel for Respondent No.1.

**Mr Devidas J. Pangam, Advocate General with Ms Maria S. J.
Correia, Additional Government Advocate for Respondent State.**

WITH**PUBLIC INTEREST LITIGATION WRIT PETITION NO.18
OF 2019**

Kashinath Jairam Shetye And 7 Ors. ...Petitioners

Versus

Union of India, thr. Director MOEF, New Delhi And 2 ors. ... Respondents

Petitioner in person.**Mr Raviraj Chodankar, Standing Counsel for Respondent No.1.****Mr Devidas J. Pangam, Advocate General with Ms Maria S. J. Correia, Additional Government Advocate for Respondent State.****WITH****PUBLIC INTEREST LITIGATION WRIT PETITION NO.19
OF 2019**

Federation of Rainbow Warriors, thr. Its Secretary, David Rodrigues And 2 Ors. ...Petitioners

Versus

Union of India, thr. The Secretary, Ministry of Environment, New Delhi And Anr. ... Respondents

Ms Maria Caroline Collasso, Advocate for the Petitioner No.1.**Mr Raviraj Chodankar, Standing Counsel for Respondent No.1.****Mr. Devidas J. Pangam, Advocate General with Mr Suhas Parab, Additional Government Advocate for Respondent State.**

WITH
STAMP NUMBER (MAIN) NO.2322 OF 2019 (FILING)

Old Cross Fishing Canoe Owners Co-op.
Society Ltd., thr. Its President, Custodio
D'Souza And 3 Ors. ... Petitioners

Versus

Ministry of Environment, Forests And ... Respondents
Climate Change, thr. its Secretary, New Delhi
And Anr.

Mr Raviraj Chodankar, Standing Counsel for Respondent No.1.

**Mr. Devidas J. Pangam, Advocate General with Ms Sulekha
Kamat, Additional Government Advocate for Respondent State.**

WITH
PUBLIC INTEREST LITIGATION WRIT PETITION NO.21
OF 2019

The Goa Foundation, thr. Its Secretary Dr.
Claude Alvares And Anr. ... Petitioners

Versus

Ministry of Environment, Forests And ... Respondents
Climate Change, thr. its Secretary And Anr.

**Ms Norma Alvares and Mr Om D'Costa, Advocates for the
Petitioner.**

Mr Raviraj Chodankar, Standing Counsel for Respondent No.1.

**Mr. Devidas J. Pangam, Advocate General with Mr Geetesh
Shetye, Additional Government Advocate for Respondent State.**

WITH
PUBLIC INTEREST LITIGATION WRIT PETITION NO.22
OF 2018

Kashinath Jairam Shetye And 8 Ors. ... Petitioners

Versus

Union of India, thr. Jt. Secretary, Ritesh
Kumar Singh And Anr. ... Respondents

Petitioner in person.

Mr Raviraj Chodankar, Standing Counsel for Respondent No.1.

Mr Devidas J. Pangam, Advocate General with Mr Shubham Priolkar, Additional Government Advocate for Respondent State.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED : 3rd January, 2023

ORAL ORDER:

Heard learned counsel for the parties, learned Advocate General for the State and Mr Chodankar, learned Standing Counsel for the Central Government.

2. In all these petitions, the challenge is to certain provisions of the CRZ Notification, 2019. In the petitions instituted by Mr Kashinath Shetye, he has challenged further notifications issued under the Environment Protection Act, 1986.

3. A coordinate Bench of this Court in the case of ***Vanashakti & Anr. v/s. Union of India & Ors.***¹ has held that such petitions need not be entertained by the High Court because the petitioners have an alternate and efficacious remedy before the National Green Tribunal.

4. The decision in ***Vanashakti*** (supra) was challenged before the Hon'ble Supreme Court by instituting the petition for Special Leave to Appeal (C) No.20495 of 2021. On 03.08.2022, we had made it clear that we would await the decision of the Hon'ble Supreme Court in the said SLP and only after that, decide whether these petitions should be entertained or whether the petitioners should be relegated to avail of the alternate remedy before the National Green Tribunal.

5. The Hon'ble Supreme Court disposed of the above SLP on 30.09.2022 by making the following Order:

'In the facts and circumstances of the case, the High Court has rightly relegated the petitioners to approach the National Green Tribunal (NGT) as number of technical issues arise which can very well be dealt with by the NGT are involved. Therefore, it is appropriate that the petitioners approach the NGT,

¹ 2021 0 Supreme (Bom) 368

as observed by the High Court. The Special Leave Petition stands dismissed.

However, it is observed that if the petitioners approach the NGT within a period of four weeks from today, the proceedings be considering in accordance with law and on its own merits without raising the issue with respect to limitation.

All the contentions and defences which may be available to the respective parties are kept open to be considered by the NGT in accordance with law and on its own merits.

Pending application(s), if any, stand disposed of.'

6. Therefore, consistent with the above order, we dispose of these petitions by relegating the petitioners to avail of the alternate remedy before the National Green Tribunal.

7. Some of the petitioners, including, in particular, Mr Kashinath Shetye, expressed apprehension on the issue of limitation. Mr Chodankar, learned Standing Counsel for the Central Government made it clear that if the petitioners indeed approach the NGT within 4 weeks from today, the issue of limitation will not be raised. This statement is entirely consistent with the directions of the Hon'ble Supreme Court in its order dated 30.09.2022 disposing of the above SLP.

8. Even otherwise, all these petitioners, were bonafidely pursuing their petitions before this Court. The issue of alternate remedy was also pending before the Hon'ble Supreme Court in the challenge against the decision in **Vanashakti** (supra). Therefore, consistent with the order made by the Hon'ble Supreme Court, we also observe that in case the petitioners approach the NGT within 4 weeks from today, the proceedings they institute will be considered in accordance with law and on their own merits without raising the issue with respect to limitation. Further, all contentions of all parties are expressly left open because we have not examined the merits and these petitions are being disposed of only by relegating the petitioners to avail of the alternate remedy available before the NGT.

9. All these petitions are, therefore, disposed of by granting the petitioners liberty to approach the NGT. If the petitioners indeed approach the NGT within 4 weeks from today, the proceedings they institute be considered in accordance with law and on their own merits without raising the issue with respect to limitation. The statement of Mr Chodankar, learned Standing Counsel for Central Government in this regard is also noted and accepted.

10. The petitions are disposed of in the above terms without any order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

MARIA SUZANA
REBELLO

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Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 203/2023
IN
WRIT PETITION NO. 121/2019

THOMAS FERNANDES AND ANR ... Applicants.

Versus

THE GOA STATE COASTAL ZONE
 MANAGEMENT AUTHORITY,
 THR. ITS MEMBER SECRETARY AND ... Respondents.
 2 ORS

Mr Jitendra Supekar with Mr S. Sayed, Advocates for the Applicants.

Mr Shubham Priolkar, Addl. Govt. Advocate for Respondents no.1 and 2.

WITH
MISC. CIVIL APPLICATION NO. 1305/2023(F)
IN
WRIT PETITION NO. 93/2019

SERGIO DIAS Applicant.

Versus

THE GOA STATE COASTAL
 ZONE MANAGEMENT
 AUTHORITY, THR. ITS
 MEMBER SECRETARY AND 2 ORS Respondents.

Mr Shivan Desai with Mr A. Sardesai, Advocates for the Applicant.

Mr Shubham Priolkar, Addl. Govt. Advocate for Respondents no.1 and 2.

CORAM : M. S. SONAK, J.

DATE : 23rd June 2023

P.C. :

1. Both these Applications seek modification of a common Judgment and Order dated 3rd February 2023, by which the Petitioners were relegated to avail the remedy before the National Green Tribunal under the provisions of the National Green Tribunal Act, 2010.

2. The order dated 3rd February 2023 had clarified that should the Petitioners institute proceedings before the National Green Tribunal within three weeks, the Tribunal would consider that the Petitioners were bona fide pursuing their grievances before this Court and entertain their Appeals on merits.

3. The Petitioners, accordingly, instituted their Appeals before the National Green Tribunal within three weeks. However, on 24/4/2023, the Tribunal made the following order :

“1. After having heard the learned Counsel for the Appellant for some length of time, the learned Counsel prays for some time to be allowed to them to seek clarification from the Hon’ble High Court of Bombay at Goa, as to whether the period of delay i.e. 1490 days needs to be excluded for calculation of the period of limitation because this matter remains pending before the Hon’ble High Court for consideration.

2. As prayed, Registry is directed to put up this matter on 21.07.2023. Interim order shall continue.”

4. In *The Goa Foundation Vs. The National Green Tribunal, Principal Bench and ors.* - PIL Writ Petition No.4/2022, disposed of by a Full Bench of this Court on 21st September 2022, vide paragraph 41, it is noted that until 4th January 2022, following the Supreme Court order dated 31st January 2018, there was no available Bench for the Western Zone. Even, otherwise, the learned Counsel for the Petitioners point out that there was no regular Bench available for the Western Zone for the period from 31/1/2018 to 4/1/2022. The learned Counsel point out that therefore, the Petitioners had to institute writ petitions before this Court in January 2019.

5. Considering the above position, it is clarified that the period of 1447 and 1490 days respectively, needs to be excluded for calculating the period of limitation because, during these periods, the matters remained pending before this Court.

6. Accordingly, the order dated 3rd February 2023 stands modified to this extent.

7. Both the Misc. Civil Applications are disposed of in the above terms.

M. S. SONAK, J.

CHAPTER 10

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NATIONAL GREEN TRIBUNAL**Principal Bench, New Delhi**

Appeal No. 24/2012
Wednesday, 5th of September, 2012

Quorum:

1. Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)
2. Hon'ble Dr. Devendra Kumar Agrawal
(Expert Member)

BETWEEN:

1. Shri Dilip Namdeo Dherange
Residing at village- Gulani,
Tal- Khed, Dist. - Pune-410505
2. Shri Bahgwan Vithal Gulankar
Residing at village- Gulani,
Tal- Khed, Dist. - Pune-410505
3. Shri Subhash Dattu Pingale,
Residing at village- Gulani,
Tal- Khed, Dist. - Pune-410505
4. Shri Sudhir Shripati Pingle,
Residing at village- Gulani,
Tal- Khed, Dist. - Pune-410505

5. Shri Ramdas Namdev Aarude,
Residing at village- Gulani,
Tal- Khed, Dist. - Pune-410505
6. Shri Dadasheb Ananda Rode
Residing at village- Gulani,
Tal- Khed, Dist. - Pune-410505
7. Shir Popatrao Shankarrao Tambe,
(Advocate), residing at village-
Varude, Tal- Khed,
Dist. - Pune-410505
8. Shri Popat Baburao Godse,
Residing at village- Varude,
Tal- Khed, Dist. - Pune-410505
9. Shri Vilas Baban Pokharkar
Residing at village- Varude,
Tal- Khed, Dist. - Pune-410505
10. Shri Gorakh Raghu Katore,
Residing at village- Varude,
Tal- Khed, Dist. - Pune-410505
11. Shri Sahebrao Vithoba Tambe
Residing at village- Varude,
Tal- Khed, Dist. - Pune-410505

...appellant's

A N D

1. Ministry of Environment & Forests
Through its Secretary, Having
Its office at Paryavaran Bhavan
CGO Complex, Lodhi Road,
New Delhi - 110003
2. Maharashtra, Pollution Control Board,
Through its
The State/National Level
Environment Impact Assessment]
Having its office at MPC. Board
Kalpataru Point. 3rd-4th floor
S 10 n Matunga Scheme, Road No. 8,
Opp. Cine Planet, Sion Circle,
Mumbai-22
3. The Environment Department,
(Government of Maharashtra),
Through its Secretary,
Having its office at Manatralaya,
Mumbai - 400031
4. M/s Khed Economic Infrastructure
Private Limited, a Pvt. Ltd.
Project Company, Registered
Under the Indian Companies Act 1956,
Through CEO/ Managing Director
Having its office at
Corporate Office Building,
Kalyani Carpenter Special Steels
Ltd, Mundhwa, Pune 411036

5. M/s Bharat Forge Limited,
A Private Limited Company,
Registered under the Companies
Act, 1956, through its
Chairperson/Managing Director
Having its office at
Pune Cantonment, Mundhwa,
Dist - Pune
6. State of Maharashtra through
It's Principal Secretary, Ministry
of Industries, Energy & Labour
Dept.(SEZ Section), Govt. of
Maharashtra, having its office
At Mantralaya Annex,
Mumbai-32
7. Maharashtra Pollution Control
Board, through its Member Secretary
Having its office at M.P.C. Board,
Kalpataru point, 3rd&
4th floor, Sion Matunga Scheme
Road no. 8, opp. Cine Planet,
Sion Circle, Mumbai
8. Maharashtra Pollution Control
Board, through its Regional
Officer, having its office at MPCP
Sub-regional office, Pune-1,
2nd floor, Jog Centre, Wakade
Wadi, Pune - 411057
9. The Maharashtra Industrial
Development Corporation,

Through its Chairperson/CEO,
Having its office at “Udyog Sarthi”,
Mahakali Caves Road, Andheri
(East), Mumbai - 400093

10. The Development Commissioner
(Industries), Government of
Maharashtra having its office
At Administrative Building, 2nd
Floor, opp. Mantralaya Annex,
Mumbai - 400032

11. The District Collector
Office of District Collector,
Near Pune Station, Dist – Pune - 411001

12. The Special Land Acquisition
Officer No. 13 having its office
At 2nd floor, “D” wing, New
Administrative Building, opp
Council Hall, Pune- 411001

13. The Chief Land & Rehabilitation
Officer, having its office at
MIDC, “Udyog Sarathi”, Mahakali
Caves road, Andheri (East)
Mumbai 400093

14. The Maharashtra Krushna Valley
Development Corporation
Through its Executive Engineer,
Having its office at Sinchan
Bhavan, Baner Road, Mangalwar
Peth, Pune 411011

15. Ministry of Irrigation
Through its Secretary,
Having its office at Mantralaya,
Mumbai 400031

... Respondents

(Advocates appeared: Ms. Gayatri Singh Sr. Counsel, Mr. Sunil Dighe, Ms. Anubha Rastogi for appellant and Mr. Mukesh Verma for Respondent No. 2, 3, 7 & 8 and Mr. Iqbal Chagla, Mr. Vivek Shetty for Respondent No. 4& 5 and Ms. Rujuta Masurekar & Ms. Ramni Taneja Adv. For Respondent No. 9)

ORAL ORDER (BY BENCH)

1. By this order we propose to decide preliminary objections raised about maintainability of the appeal as well as applicability of Section 14 of the Limitation Act for the purpose of condonation of the delay.
2. The appellants have filed an application for condonation of delay on the ground that the knowledge about establishment of the National Green Tribunal was gathered from a news which was published on 15.3.2012. The appellants, admittedly, had filed WP (PIL) No. 37/2010 in the High Court of Bombay, challenging

acquisition of lands and also seeking cancellation of the Environmental Clearance Certificate (ECC) due to violation of the provisions of the Environment (Protection) Act, 1986. The appellants submit that they received information regarding grant of ECC on 20th May, 2010 during pendency of the WP (PIL) 37/2010. Thereafter, they moved the High Court of Bombay for amendment of the petition memo. The appellants further alleged that the writ petition was withdrawn with liberty to file an appeal in this Tribunal.

3. According to the appellants, they were bonafidely litigating before the High Court of Bombay by filling the said writ petition. They also submitted that the period spent in litigating before the High Court of Bombay can be excluded under Section 14(2) of the Limitation Act 1963. According to them, the appeal could not be filed within prescribed period of limitation due to lack of knowledge regarding establishment of the National Green Tribunal and due to the pendency of the said writ petition filed by them before the High Court of Bombay. Consequently, they seek condonation of the delay and urge that the appeal may be heard on merits.
4. A preliminary objection has been raised by the Respondent Nos. 4, 5 & 9 in respect of maintainability of the appeal. They have also disputed the reasons given for condonation of the delay. They further submit that delay cannot be condoned inasmuch as this Tribunal is creature of a special statute having special provision for limitation under Section 16(j) of the National Green Tribunal Act,

2010. They submit that it cannot be over-ridden by giving such kind of explanation as offered by the appellants.

5. We have heard Learned Counsel for the parties in extenso. We have also gone through the relevant orders of the High Court of Bombay. It is pertinent to note that the High Court of Bombay by order dated 7th August, 2012 clarified the fact situation under which liberty to withdraw the Writ Petition (PL) No. 37/2010 was granted. It will be useful to reproduce the relevant observations of the High Court of Bombay. It is observed:

“We want to make it clear once the writ petition (PIL) is disposed of by this Court, it is for the Green Tribunal to consider the aspect of delay etc. in accordance with law and procedure stipulated in the National Green Tribunal Act, 2010 as well as the Rules made there under and it is not for the High Court to consider these aspects once the writ petition (PIL) is disposed of finally by the Order of this Court. It is in these circumstances, civil application suffers lack of merits. Same is dismissed.”

6. To clear the deck, it is worthy to note that Writ Petition (PIL) 37/2010 was withdrawn by the appellants on 15th March, 2012. The High Court of Bombay allowed withdrawal of the said Writ Petition and granted liberty to the appellants to approach the National Green Tribunal. This Tribunal on 20th July, 2012 passed following order.

“After hearing all the parties it seems that the Writ Petition(PIL) filed before the Hon’ble High Court of Bombay was withdrawn without seeking any direction to this tribunal to entertain and dispose of the appeal on merits. In absence of such direction this Tribunal cannot entertain the appeal of this nature which suffers from abnormal delay of more than two years.”

It is in the wake of such order of this Tribunal which was rendered on 20th July, 2012, that the appellants went before the Division Bench of the High Court of Bombay to seek clarification of the earlier order. Since the civil application came to be dismissed, after making categorical observation that it sans merits, it is amply clear that the High Court of Bombay did not think it proper to clarify the position that the liberty was granted to consider the period spent before the High Court of Bombay for the purpose of exclusion. In other words, the observation of this Tribunal in the order dated 20th July, 2012 that in absence of such direction the appeal cannot be entertained, remained unaffected and the High Court of Bombay did not find it necessary to give any finding on such aspect of the matter.

7. What emerges from the record is that the ECC was granted to the project proponent on 20th May, 2010 and that order could be challenged by the appellants by filling an appeal under the Repealed enactment, namely, the National Environmental Appellate Authority Act, 1997. The appellants did not prefer any such appeal before the National Environmental Appellate Authority. They chose

to file draft amendment application to the writ petition which was already pending before the High Court of Bombay.

8. On behalf of the appellants Learned Counsel points out that applicability of Section 14(2) of the Limitation Act, 1963 is not specifically excluded under any provision of the National Green Tribunal Act, 2010. The Learned Counsel for the appellants submits that though there is specific provision in the context of limitation as provided under Section 16 of the National Green Tribunal Act, 2010, yet the delay can be condoned by excluding the period which the appellants had spent in litigating before the High Court of Bombay. The learned counsel seeks to rely on certain observations made in **“Consolidated Engineering Enterprises Vs. Principal Secretary Irrigation Department and Ors.” (2008) 7 SCC 169**. Reliance is further, placed on **“State of Goa Vs. Western Builders” (2006) 6 SCC 239**. In **“Consolidated Engineering Enterprises Vs. Principal Secretary Irrigation Department and Ors.”** Hon’ble Supreme Court dealt with applicability of Section 14 of the Limitation Act in the context of proceedings under the Arbitration and Conciliation Act, 1996. The relevant observations may be re-produced as below.

“Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said Section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- 1. Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;**
- 2. The prior proceeding had been prosecuted with due diligence and in good faith:**
- 3. The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature:**
- 4. The earlier proceeding and the latter proceeding must relate to the same matter in issue and:**
- 5. Both the proceedings are in a court.**

The policy of the Section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong

forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him it in such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings that suit or the application in the wrong court in consequence of bona fide mistake of law or defect of procedure. Having regard to the intention of the legislature, this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.

To attract the provisions of Section 14 of the Limitation Act, five conditions enumerated in the earlier part of this Judgement have to co-exist. There is no manner of doubt that the section deserves to be construed liberally. Due diligence and caution are essentially prerequisites for attracting Section 14. Due diligence cannot be measured by any absolute standards. Due diligence is a measure of prudence or activity expected

from and ordinarily exercised by a reasonable and prudent person under the particular circumstances. The time during which a court holds up a case while it is discovering that it ought to have been presented in another court, must be excluded, as the delay of the court cannot effect the due diligence of the party. Section 14, requires that the prior proceedings should have been prosecuted in good faith and with due diligence. The definition of good faith as found in Section 2(h) of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. It is true that Section 14 will not help a party who is guilty of negligence, lapse or in action. However, there can be no hard and fast rule as to what amounts to good faith. It is a matter to be decided on the facts of each case. It will, in almost every case be more or less a question of degree. Merely filing of an application in wrong court would not prima facie show want of good faith. There must be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. In the light of these principles, the question will have to be considered whether the appellant had prosecuted the matter in other courts with due diligence and in good faith. As is evident from the facts of the case, initially the appellant had approach the court of Learned Civil Judge, Senior Division, Chitradurga for setting aside the award made by the arbitrator. On direction dated October 29, 2002 issued by the Learned Civil Judge (Senior Division), Chitradurga, the appellant had

presented the application for setting aside the award before the Learned District Judge, Chitradurga. Before the learned District Judge, Chitradurga an objection was raised by the respondent that the application was not maintainable before the said Court and that the application was maintainable before the Learned Judge, City Civil Court, Bangalore. The District Judge, Chitradurga by an order dated February 3rd, 2003 held that it had no jurisdiction to entertain the application submitted by the applicant and accordingly returned the application for presentation before the appropriate court. The question of jurisdiction was seriously contested between the parties not only before the court of learned Civil Judge (Senior Division), Chitradurga but also before the appellate learned District Judge, Chitradurga. The question of jurisdiction had to be considered by the courts below because of establishment of City Civil Court, Bangalore under a special enactment and in view of the definition of the word 'court' as given in Section 2(e) of the Arbitration and Conciliation Act, 1996 which means "a principal civil court of original jurisdiction" in a district. The record does not indicate that there was pretended mistake intentionally made by the appellant with a view to delaying the proceeding or harassing the respondent. There was an honest doubt about the court competent to entertain the application for setting aside the award made by the arbitrator. The mere fact that the question of jurisdiction is an arguable one would not negative good faith because the appellant believed bona fide that the court in

which it had instituted the proceedings had jurisdiction in the matter. By filing the application in the Court which had no jurisdiction to entertain the same, the appellant did not achieve anything more particularly when the lis was never given up. Under the circumstances, this Court is of the opinion that the Division Bench of the High Court of Karnataka was not justified in concluding that the appellant had not prosecuted the matter in other courts with due diligence and in good faith. The said finding being against the weight of evidence on record is liable to be set aside and is hereby set aside. We, therefore, hold that the appellant had prosecuted the matter in other courts with due diligence and in good faith and, therefore, is entitled to claim exclusion of time in prosecuting the matter in wrong courts. Therefore, the appeal arising from SLP (C) No. 1 5619 of 2005 will have to be allowed.”

9. The learned counsel for the appellants seeks to rely on certain observations of Judgment in **Writ Petition No. 50 of 1998 (Bhopal Tragedy case)**. The Supreme Court observed:

“we find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is the NGT, created under the provisions of the NGT Act.

The Courts may be well advised to direct transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice.”

10. Considering the nature of observations it is explicit that the Hon'ble Supreme Court gave advice for transfer of such cases, in the discretion of the High Courts, and there is no mandate issued in this behalf. The above observation would also make it clear that the transfer advised by the Hon'ble Supreme Court pertains to **“such cases and in which the High Court would think it desirable to shift the forum for certain reasons.”** It is conspicuous that it was within the domain of the High Court to consider transfer of the appellant's writ petition if that was found necessary, having regard to nature of the lis between the parties.

So far as maintainability of the appeal is concerned, Learned Senior Counsel **Mr. Iqbal Chagla** submits that the appeal cannot be entertained in view of the fact that the order was not challenged by filing any appeal before the special Appellate Authority provided under the National Environment Appellate Authority Act, 1997. He would submit that the order impugned could have been challenged before the National Environment Appellate Authority. But the appellants having failed to file such an appeal, there was no question of continuation of such appeal under Section 38(5) of the National Green Tribunal Act, 2010. He contended that appeals could be filed only against the orders passed after commencement of the National Green Tribunal Act and not against the orders

against which the appeal could have been preferred under the repealed enactment. According to Learned Senior Counsel, **Mr. Iqbal Chagla**, this appeal is incompetent and untenable. He further submits that Section 14(2) of the Limitation Act 1963 is not applicable in the present fact situation, inasmuch as this Tribunal is creature of the special enactment. He pointed out that Section 14 will come into play only when there is lack of jurisdiction to the forum before which the earlier litigation was being bonafidely prosecuted.

11. **Mr. Iqbal Chagla**, Learned Senior Counsel seeks to rely on **“Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur and Ors.” (2008) 3 SSC 70**, and **“The Commissioner of Sales Tax, U.P., Lucknow Vs. M/s. Parson Tools And Plants, Kanpur” (1975) 4 SCC 22** as well as a judgement of this Tribunal in Appeal 14/2011 **“Thervoy Gramam Munnetra Nala Sangam Vs. Union of India and Ors.”**

12. The Apex Court held in both the above noted first two cases that where a special provision is enacted in respect of limitation for any civil action to be taken under the special enactment, the Tribunal cannot outstretch the period of limitation by taking aid of provisions under the Limitation Act, 1963.

At this Juncture, it will be useful to revert to the cases relied upon by the appellants. In both the cases, relied upon by the Learned Counsel for the appellants, the Apex Court dealt with Section 14 of the Limitation Act along

with Section 34 of the Arbitration Act and Conciliation Act, 1996. It may be stated that the Apex Court categorically dealt with Section 43 of the Arbitration and Conciliation Act while deciding the question regarding exclusion of time under Section 14 (2) of the Limitation Act 1963. It is pertinent to note that Section 43 of the Arbitration and Conciliation Act, 1996, categorically declares that the Limitation Act, 1963, shall apply to arbitration as it applies to the proceedings of Court. The necessary corollary of this provision is that due to the special provision under Section 43 of the said Act the Limitation Act and particularly Section 14 thereof will be attracted. Another limb of argument of the Learned Counsel for the appellants is that since there is no exclusion of Section 14 of the Limitation Act in the National Green Tribunal Act, 2010 it could be made applicable by implication. We do not agree. The legislative intent can be gathered from outerlimit specified vide proviso appended to Section 16 of the National Green Tribunal Act, 2010. It would be too much to infer that non-exclusion of applicability of Section 14 of the Limitation Act, 1963 in the National Green Tribunal Act, 2010 tantamounts to its inclusion in the Act. It is trite that ordinarily language of an enactment is not in negative form unless it is found essential for any particular purpose or to clarify the Legislative intent. Hence we deem it proper to reject the above contention of the Learned Counsel.

13. So far as the question of exclusion of period spent by the appellants before the High Court of Bombay is concerned, there are two significant aspects of the matter. First, the

previous order of this Court made it explicit that the appeal is barred by limitation in view of absence of any specific direction of the High Court of Bombay to entertain the same notwithstanding legal bar of limitation. As stated earlier, that finding of this Tribunal remained unaffected because again the High Court left the matter for decision of the Tribunal without recording any finding on question of limitation while dismissing the application for clarification. Secondly, it cannot be said that the High Court of Bombay had no jurisdiction to entertain the Writ Petition(PIL) under Article 226, of the Constitution. The exclusion of period may be required to be considered only when period is sought to be excluded because the earlier litigation was pending before the Court having no jurisdiction. Still, however, the period which was spent before the Court having jurisdiction cannot be excluded by taking aid to Section 14(2) of the Limitation Act. In our opinion, the appellants are not entitled to seek exclusion of the period spent before the High Court of Bombay, particularly, when the writ petition filed by them could have been entertained and decided by the High Court.

14. Coming to the question of maintainability of the appeal, it may be gathered that the appellants having failed to file an appeal before the authority under the earlier enactment, now the present appeal is incompetent. This Tribunal in Appeal No. 14/2011 (**Thervoy Graamam Munnetra Nala Sangam Vs. Union of India &Ors.**) has dealt with the question of limitation in a similar case. We find it difficult to deviate from that view. It is well - settled that view of Coordinate Bench cannot be

overruled by another Coordinate Bench. Judicial discipline requires the same to be followed unless there are substantial reasons to make a reference to the larger Bench. We do not find any such substantial reasons to give go by to the view taken by this Tribunal in the above case. This Tribunal held in the said case that such an appeal filed against order rendered prior to commencement of the National Green Tribunal Act, 2010 is incompetent and barred by limitation.

Same view is followed by the Tribunal in “**Ossie Fernandes Vs. Ministry of Environment and Forest etc.**” (Appeal No. 15 of 2012).

15. For the reasons stated hereinabove, we find it difficult to entertain the appeal and hold that the appeal is bared by limitation. The application for delay condonation is therefore dismissed and so also the appeal is dismissed. No costs.

(Dr.Devendra Kumar Agrawal)
Expert Member

(Justice V. R. Kingaonkar)
Judicial Member