

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
MISC. APPLICATION NO.17 OF 2015
APPLICATION NO.61 OF 2014 (WZ)**

CORAM :

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A.DESHPANDE
(EXPERT MEMBER)**

In The Matter of:

CAVELOSSIM VILLAGERS FORUM

A Society registered under the Societies Act, 1860,
Bearing Registration No.196/Goa/2013,

H.No.314/L IBR-Plaza,

Patecantem, Cavelossim,

Salcete- Goa- 403731.

Through its President,

Mr. Iris Passanha, r/o H.No.314/L,

Patremcantem, Cavelossim, Salcete, Goa.

APPLICANT

VERSUS

1. VILLAGE PANCHAYAT OF CAVELOSSIM,
Cavelossim, Salcete, Goa.

2. SENIOR TOWN PLANNER,
Town and Country Planning Department,
South Goa District office,

Margao, Goa.

3. THE COLLECTOR,

South Goa District,
Margao Goa.

4. ASSISTANT ENGINEER,

SUB DIVISION, Sub-Division-I,
Works Div-II,
Water Resource Department,
Gogol, Margao, Goa.

5. GOA COASTAL ZONE MANAGEMENT AUTHORITY,

C/o Department of Science, Technology &
Environment, Government of Goa,
3rd Floor, Dempo Towers,
Patto, Panaji-Goa.

6. CHAIRMAN,

Goa State Pollution Control Board,
1st Floor, Dempo Towers, Patto,
Panaji Goa.

7. CHAIRPERSON,

Goa State Biodiversity Board,
C/o Department of Science, Technology &
Environment, Opp. Saligao Seminary, Saligao
Bardez, Goa-403511.

8. M/S SHREE BALAJI CONCEPTS,

A Partnership Firm,
having its Registered office at Kadar Manzil,
1st Floor, Margao Goa-403601.

.....**RESPONDENTS**

AND:

M/S SHREE BALAJI CONCEPTS

A Partner Firm,
Having its registered office at Kadar Manzil,
1st Floor, Margao, Goa-403601.

(In MISC. APPLICATION No.17/2015)

APPLICANT

Counsel for Applicant(s):

Mr. Nigel De Casta Frisis Advocate a/w Mr. Iris Passanha for Jidith A.B.Almeida.

Counsel for Respondent(s):

Mr. Amit Phadte Advocate for Respondent No.1.

Mr. Dattaprasad Lawande a/w F.M.Mesquita, Mr. Nikhil Pai Advocates for Respondent Nos.2 to 7.

Mr. Ninad Laud a/w Mr Nitin Swant, Mr. Sanjay Malkarnekar Mr F.B.Bhaangi, Mr Rahul Garg, Mr Makarand Rodge, Advocates for Respondent No.8.

Date : April 8th, 2015

JUDGMENT

1. This is an Application filed by the Original Respondent No.8, (Project Proponent), raising objection to maintainability of main Application No.61 of 2014, on the ground that the same is barred by limitation. The bar of limitation is pleaded on the ground of maintainability of the main application, in view of the provisions of Sub-section (i) and (iii) of section 14 of the National Green Tribunal Act, 2010.

2. Cavlossim Village Forum, the Original Applicant, claims to be a registered society.

Undisputedly, the Respondent No. 8 M/s Shree Balaji Concepts, has proposed development /construction in lands Survey Nos.9/11,91/5,91/6 and 91/8, of village Cavelossim, Tal. Salcete State of Goa. According to the Original Applicant, the project of Respondent No.8, would knock cause to water bodies, fishing ponds, channels and Nullahs and therefore, a complaint was made to the authorities. An inspection was carried out on 11.2.2014, which clearly revealed such illegalities. Though the authorities gave directions to the Respondent No.8, to stop work, yet there was no compliance by the Respondent No.8. Therefore, continuation of project activity by the Respondent No.8, is causing diversion of natural channels of water in total violation of legal provisions of the Goa Irrigation Act, 1993, as well as Ses.24 and 25 of the Water (Prevention & Control of Pollution) Act, 1974. The site in question falls within NDZ area. The construction activities were found to be carried out by reclaiming the area in violation of CRZ Notifications. A report of Coastal Zone Management Authority (CZMA), dated 24th June, 2014, comprises this fact. So also, the Goa Agricultural department and the Goa state Diversity Board, noted that due to filling of soil and reclamation of land, environment was being

endangered due to loss of natural biodiversity. There were several such illegalities committed by the Respondent No.8, (M/s Shree Balaji Concepts), which gave cause of action when serious environmental degradation came to the notice by the Original Applicant during inspection dated 18.12.2013, conducted by the Village Panchayat of Cavelossim. Consequently, the Original Applicant filed an Application for restoration of damaged properties and to settle the dispute regarding environmental issues involved in the dispute, which arose out of implementation of enactment specified in the Schedule-I, of the National Green Tribunal Act, 2010.

3. In the meanwhile, the proceedings were stayed by the Hon'ble High Court of Bombay at Goa, in the Writ Petition No.450 of 2014. This Tribunal, however, passed an order dated 7th January, 2015, which restricted the Original Applicant to agitate only environmental issues by way of amendment Application, deleting Municipal issues, which were not covered as indicated in the earlier order of December 10, 2014. The Hon'ble Division Bench disposed of the Writ Petition No.450 of 2014, holding that the issues related to those, which come within purview of

Schedule-I, of the NGT Act, 2010, can be dealt with by this Tribunal. All contentions of the Petitioners therein on merits were kept open. The issue regarding limitation also was kept open. The interim order was vacated and the Writ Petition was disposed of.

4. It is in the above backdrop that instant Application is filed by the Original Respondent No.8 M/s Shree Balaji Concepts.

5. Briefly stated, the construction licence was issued on 18.6.2010 and the construction activity was commenced in December, 2010. Therefore, 'cause of action' arose for the first time in December, 2010. The Original Applicant made complaint about alleged illegalities in the construction to the Village Panchayat along with copy of letter of Block Development Officer (BDO) dated 2.9.2013, with a request for inspection of site. Obviously, in any case, the Original Applicant gained knowledge about illegal construction activity on or before 2nd September, 2013. Upon plain reading of Section 14(1) read with Section 14 (3), of the NGT Act, 2010, it is manifest that such Application cannot be filed beyond period of six (6) months from the date of cause of action for such dispute and the explain the period under Sub-clause (3) can be granted only up to

sixty (60) days, if 'sufficient cause' is shown by the Applicant. According to the Original Respondent No.8 (M/s Shree Balaji Concepts), even if the limitation period is compounded from 2.9.2013, being the date of knowledge when the complaint was made to the Village Panchayat, and BDO by the Original Applicant, regarding so called illegal construction activities, yet, in terms of Section 14(3), maximum limitation period shall be over on or before 2nd March, 2014. The filing of instant Application on 27th May, 2014, is totally barred by limitation and, therefore, the Application is liable to be dismissed.

6. By filing affidavit in reply on behalf of the Original Applicant, for reasons that the developer (M/s Shree Balaji Concepts), has not complied with the order dated 20th May, 2014, passed by this Tribunal, whereby direction was issued to furnish undertaking that in case the Application is allowed the construction will be dismantled by the developer within two (2) weeks at its own cost. According to the Original Applicant, there was no confirmed knowledge regarding filling of water bodies unless inspection was done by the Village Panchayat on 18.12.2013 and, therefore, the Application could not be filed till a letter

dated 26th February, 2014, was received from Village Panchayat. The Applicant alleges that mere knowledge of some construction activity going on at the site by itself, does not give rise to cause of action, but knowledge regarding violation of Environmental loss in order to raise the dispute under Section 14(1) of the NGT Act, is starting point which would trigger limitation for filing of such Application, which shall be taken into account as 24th June, 2014 or 11.2.2014, in view of pleadings and, therefore, the Application is within period of six months from such date. The Original Applicant, therefore, sought dismissal of the objection-petition i.e. M.A No.17 of 2015.

7. It may be stated that the objection petitioner filed rejoinder and the Members of Village Panchayat supported case of developer (M/s Shree Balaji Concepts).

8. We have heard learned Advocates for the contesting parties. We have considered the main objection raised by M/s Shree Balaji Concepts (developer) and response of Original Applicant.

9. On behalf of M/s Shree Balaji Concepts, it is argued by learned Advocate Mr. Ninad Laud that the Original Applicant did not reproduce facts regarding

disposal of earlier Writ Petition by the Hon'ble High Court with oblique intention. It is further argued that when the Applicant made complaint to Village Panchayat and BDO, on 2nd September, 2013, then the Applicant was well aware about nature of construction activities and could have gathered information regarding alleged degradation of environment. It is further argued that the inspection carried out by the BDO on 30th September, 2013, was intimated to the Original Applicant and assuming that it triggered cause of action, then also the Application is barred by limitation, inasmuch as it is not filed within six (6) months, from the said date. It is contended that after period of six (6) months, the Original Applicant cannot claim extension of time by way of right unless and until it is shown that he was prevented due to 'sufficient cause' from filing of the Application, within timeframe indicated in Sub-clause (1) of Section 14 of the NGT Act, 2010. Consequently, looked from any angle, the Application for so called degradation of environment, is barred by limitation. It is further argued that in December, 2013, construction activity had started, which the Applicant admittedly noticed in January, 2014. Therefore, it was expected that within six (6) months, he should have filed the Application. However,

‘something was amiss’ which had caused environmental degradation. It is pointed out that wife of the President of Applicant-forum, is one of the Member of Village Panchayat and, therefore, her knowledge could be shared by the Applicant without difficulty. Under the circumstances, the Application is hopelessly barred by limitation and is liable to be dismissed by this Tribunal, upholding the objections.

10. Countering above arguments, learned Counsel for the Original Applicant submitted that knowledge of construction activity by itself cannot give cause to the Applicant to raise dispute under Sub-cause (1) of Section 14, unless and until there is existence of ‘substantial environmental dispute’. He argued that unless existence of such ‘substantial environmental dispute’ was found in reality, there was no point in filing the Application. Therefore, proper verification through the authorities was essential. He contended that the Applicant got confirmed the fact regarding violation when the inspections were conducted by BDO and other authorities. Perusal of the record shows that on 18th December, 2013, the Village Panchayat Secretary, found road was constructed by M/s Shree Balaji Concepts, without CRZ approval and was,

therefore, illegal activity. It was also found that rain water drained had flowed and diverted without any approval from the concerned authority. What appears from the record is that the Applicant sought information under the R.T.I. by filing an Application dated 29th April, 2014. He received information dated 30th April, 2014. The information showed that there was no Application filed by M/s Shree Balaji Concepts to change natural course of the water channels. It is important to note that by order dated 21st March, 2014, a report was issued by the Assistant Engineer to show the construction work was being carried out vicariously by changing natural course of water. The Assistant Engineer, therefore, issued communication dated 18.2.2014, to M/s Shree Balaji Concepts to stop the work of construction activities within fifteen (15) days, because original water bodies were found being destructed. Thus, construction activity of M/s Shree Balaji Concepts have been started in 2010, but when it took ugly turn of changing natural course of water flow, stagnation of water in the body fields and off spring sites, which endangered environment, then only the Applicant could say that there was 'substantial environmental dispute' which could be raised by filing Application under Section 14(1) of the NGT Act, 2010.

11. We may pin-point here that mere violation of Municipal Laws or some minor Laws caused like destruction of a small patch of about 2x2ft of grass due to a large scale project, may not be treated as 'substantial environmental dispute'. The principle *De Minimis Non Curat Lex* would be attracted in such cases and therefore, probably the Legislature purposely used the expression 'substantial environmental dispute' in relation to Sub-clause (i) of Section 14 of the NGT Act, 2010. If such interpretation is taken into account, conduct of the Applicant can be well understood. Obviously, it can be said that 'substantial environmental dispute' could be raised by him after due verification of the facts which he got verification along with R.T.I information received at the fag-end of February, 2014 and further confirmed in the last week of June, 2014. So, even assuming that 'cause of action' triggered on inspection of 11.2.2014, on basis of site inspection conducted by the Water Resources Department and frequent violation of the Irrigation Laws by diverting natural course water channel was noticed by the authorities. The Application falls within period of six (6) months. For, first 'cause of action' to raise such 'substantial environmental dispute' could arise only had identified on 27.5.2014, or 11.2.2014,

when the channel of natural water course (course of stop of water) was noticed by the authority of Applicant, as a result of construction activities of M/s Shree Balaji Concepts. It need not be reiterated that concerned authorities issued stop-work order to M/s Shree Balaji Concepts, immediately after noticing that work had caused change in the natural course of water flow. Violation of conditions in the permission granted to M/s Shree Balaji Concepts by the authorities may be Village Panchayat or CRZ authority, also gave 'cause of action' to commence such a dispute.

12. Much reliance is placed on the case of 'Aradhana Bhargav vs MoEF' 2013 SCC on line, NGT, 84. A part of observations in the said Judgment is extensively collected in the Application. So also, reliance is placed on 'Kehar Singh vs State of Haryana' 2013, SCC on line NGT 52, and 'Vidhan Mishra vs Union of India' 2013, SCC OnLine NGT 429 and Oswal Fabs and ICC Ltd vs Common (Admn) 2010 SCC on line 728. In Aradhana Bhargav vs MoEF, the Co-ordinate Bench of this Tribunal, observed that "concept of continuing cause of action is outside pale of the NGT Act." It is pointed out that concept of 'continuing cause of action', is foreign expression to the provisions of

statute of Limitation engrafted under Section 14(3) of the NGT Act. So also, in Kehar Singh, it is held that “Tribunal will have no jurisdiction to condon the delay beyond period of sixty (60) days after expiry of such period”. There cannot be any dispute about legal opinion that the NGT Act, is a special enactment and, therefore, general provisions of the Limitation Act, 1963, will not be applicable to the special provision of limitation provided under the former Act. Only question is whether as to when would first time ‘cause of action’ can be counted? And can be regarded as have arisen. In Application No.13 of 2014 (MA No.65/2014) Amit Maru Vs Secretary, MoEF and Ors, this Tribunal held that “the limitation will commence from first date of arising of cause of action for ‘such dispute’. The expression ‘such dispute’ relates to the dispute pertaining to breach of conditions of permission granted for development in the lands, stop work order and diversion of water channels”. In our view, such a dispute arose in the fag-end of February, 2014 and, therefore, the Application is well within time, as it is filed within limitation, as it is filed in on 27.5.2014, and at the fag-end. Therefore, it is well within time because it is filed within period of six (6) months there from.

13. Under the above circumstances, objection raised by the Original Respondent No.8, (M/s Shree Balaji Concepts), is without any substance and is dismissed. The office to verify whether undertaking is given by M/s Shree Balaji Concepts, as per earlier order dated 28th May, 2014, and if it is not given, then defence of M/s Shree Balaji Concepts, shall not be allowed in any manner. Misc. Application is, accordingly, disposed of and the Main Application to proceed and be scheduled on **23rd April, 2015.**

....., JM
(Justice V. R. Kingaonkar)

....., EM
(Dr.Ajay A. Deshpande)

Date: April 8th, 2015.

khk

NGGT



NGT