

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

APPLICATION No. 17(THC)/2013(WZ)

AND

APPLICATION NO. 20(THC)/2013(WZ)

CORAM:

**Hon'ble Mr. Justice V.R. Kingaonkar
(Judicial Member)**

**Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

APPLICATION No. 17(THC)/2013(WZ)

B E T W E E N:

1. Mr. S.K. Shetye,
General Secretary,
All India Port and Dock Workers'
Federation (Workers') and Trustees
for the Port of Mormugao Kamgar Sadan,
Nawab Tank Road,
Mazagaon, Mumbai 400 010

2. Mr. Leonordo Rodrigues,
Working President of Mormugao Port and
Railway Workers Union and Trustee of the
Board of Trustees of the Port of Mormugao,
Office at Our Lady of Guia Building,
Above Tea Corner Shop,
Vasco-da-Gama- 403 802

....Applicants

A N D

1. Ministry of Environment and Forests,
Through : The Secretary,
With his office at Prayavaran Bhavan,

C.G.O. Complex, Lodi Road,
New Delhi – 100 003.

- 2. Ministry of Environment
Government of Goa,**
Through Its Secretary,
With his office at Secretariat Complex,
Porvorim, Barbadez-Goa.
- 3. Goa Coastal Zone Management Authority
(GCZMA),**
Through : Member Secretary,
Office at Department of Science, Technology
And Environment, Opp. Saligao Seminary,
P.O. Saligao, Barbadez-403 511
- 4. Government of Goa,**
Through : Its Chief Secretary,
Office at Secretariat Complex,
Porvorim, Barbadez-Goa.
- 5. Goa State Pollution Control Board,**
Through : Its Chairman,
Office at Dempo Towers, 1st floor,
E.D.C. Plaza, Patto, Panaji 403 001.
- 6. Mormugao Municipal Council,**
Through : Chief Officer,
Office at Vasco-da-Gama,
Goa.
- 7. Mormugao Port Trust,**
Through : Its Chairman,
Office at Headland, Sada,
Vasco-da-Gama 403 804.
- 8. Chemtrol Engineering Limited,**
910, Tulsiano Chamber,
212, Nariman Point,
Mumbai – 400 021

...Respondents

Counsel for Applicant :

Absent – Nemo

Counsel for Respondent Nos.1 to 5 :

Ms. F.M. Mesquita, Adv.

Counsel for Respondent No.6 :

Mr. S.D. Padiyar, Adv.

Counsel for Respondent No.7 :

Mr. Rohan Shirodkar, Adv.

Counsel for Respondent No.8 :

Mr. V.R. Tamba, Adv.

APPLICATION NO.20(THC)/2013

B E T W E E N:

The Chairman,

Board of Trustees of the Port of
Mormugao,
Office at Headland, Sada – Goa.

.....**Applicant**

Versus

- 1. Goa Coastal Zone Management Authority (GCZMA),**
Through : Secretary (Environment),
Office at Secretariat,
Porvorim, Goa
- 2. State of Goa,**
Through : Secretary (Environment),
Office at Secretariat Complex,
Porvorim, -Goa.
- 3. Mormugao Municipal Council,**
Through : Chief Officer,
Municipal Building, Vasco-da-Gama,
Goa.
- 4. Goa State Pollution Control Board,**
Through : Its Member Secretary,
Office at Dempo Towers, 1st floor,
E.D.C. Plaza, Patto, Panaji 403 001.
- 5. Chemtrol Engineering Limited,**
910, Tulsiano Chamber,
212, Nariman Point,
Mumbai – 400 021

.....Respondents

Counsel for Applicant

Mr. Rohan Shirodkar.

Counsel for Respondent Nos. 1, 2 & 4:

Ms. F.M. Mesquita

Counsel for Respondent No. 3:

Mr. Sandesh D. Padiyar,

Counsel for Respondent No.5:

Mr. V.R. Tamba

DATE : 29th May, 2014

COMMON - JUDGMENT

1. The Application No.17(THC)/2013 was originally filed as Writ Petition No.153/2010 in the High Court of Bombay, Bench at Goa, which was transferred to this Tribunal vide Hon'ble High Court Order dated 17th October 2013 along with the Writ Petition No. 812 of 2010, which was originally filed in the Hon'ble High Court of Bombay, Bench at Goa, and registered as Application No.20(THC)/2013 with the Tribunal. Both these matters were transferred keeping all the rights and contentions of the parties including question of maintainability of the Applications open.

2. Both these Applications relate to a dispute regarding location of Municipal Solid Waste Disposal site of Mormugao Municipal Council and associated

activities, and non-compliance of provisions of the Municipal Solid Waste (Management and Handling) Rules, 2000, and Coastal Zone Regulations of 1991. We deem it proper to deal both these matters together and as such the Application No. 20/2013 is treated as leading matter for adjudication of both these matters. It is the case of the Applicants that present Municipal Solid Waste Disposal site of Mormugoa Municipal Council is about 120 mts. from the High Tide Line (HTL) of the Arabian Sea. The Applicants claim that the subject site is located within Coastal Regulations Zone (CRZ). It is the case of the Applicants that the Coastal Regulations Zone Notification dated 19th February 1991 has declared coastal stretches as Coastal Regulations Zones (CRZ) for regulating activities and placed restrictions on several activities in the said CRZ area. The Applicants submit that the Clause-II of the said 1991 Notification prescribed prohibited activities in the CRZ area. Relevant sub-clause-(iv) and (v) are emphasized and relied upon by the Applicants to claim that the Municipal Solid Waste dumping/disposal and even the waste processing/treatment by composting technology is a prohibited activity within the CRZ notified area. The Applicants submit that though the dumping of the

waste is expressly prohibited under these clauses yet the implied interpretation of the term “otherwise” used in sub-clause (v) includes the composting. The Applicants further submit that the similar provisions have been retained in the CRZ Notification of 6th January 2011 which superseded the 1991 Notification.

3. The Applicants submit that the GCZMA has granted approval for the composting facility at the disputed site on 7th December 1999, though such activity is expressly prohibited in CRZ area and had even incorporated a condition that the ongoing practice of dumping of waste should be phased out within reasonable time as provided in the Notification. The Applicants further averred that it has been clearly established from the affidavits of the Respondent No.4 i.e. Goa State Pollution Control Board that the activities of Solid Waste Composting are not being done by the Respondent-3, Mormugao Municipal Council, (herein after called “Municipal Council”) at the disputed site in scientific manner and the entire un-segregated waste is just dumped at the disputed site without any treatment or processing and therefore, considering the regular non compliances, the Board vide communication/directions dated 3rd March 2014, issued under Section 5 of Environment

(Protection) Act 1986 rejected the application submitted by the Municipal Council for renewal of Authorization in respect of Solid Waste Treatment Plant located Sada, Vasco.

4. The Applicants have relied upon various actions taken by GSPCB from time to time based on visits of their officers which have been referred in their Affidavits filed in both these matters. The abstract of such observations and actions as submitted by the Applicants is as under:

(i) Paragraph 10 of the Affidavit dated 13-3-2014 :

“I state that in light of the above and in view of the non-compliance of the Board’s directions by the Mormugao Municipal Council, the Respondent Board vide directions dated 03-03-2014, issued under Section 5 of the Environment (Protection) Act, 1986 rejected the Application submitted by the Mormugao Municipal Council, for renewal of the authorization in respect of the solid waste treatment plant located at Sada, Vasco”.

(ii) Directions dated 20-01-2010 (Copy enclosed for ready reference) : “During the course of an inspection of the Municipal Solid Waste facility

located at Headland, Sada, on 8-1-2010, it was observed as follows :

1. Large amounts of un-segregated municipal solid waste was stacked in the stack yard of the plant and the same was emitting a foul odour.
2. Unsegregated municipal solid waste alongwith construction debris is dumped beyond the compound wall on the seaward side;
3. Waste on the steep slope adjacent to the sea was seen burning and thick smoke was being emitted from the burning waste”.

(iii) Directions dated 09-01-2013 : (Copy enclosed for ready reference): “During the course of an inspection of the municipal solid waste facility located at Headland, Sada on 22-12-2012, it was observed as follows :

1. The Plant was not in operation for the past 6 months and large quantities of unscreened waste in heap is lying at the site;
2. Since mixed waste is collected and composed in windrows, large quantity of contaminated non-biodegradable waste was generated which was difficult to recycle and the load on the landfill increased.

3. There were large quantities of non-biodegradable waste stored on site after sieving which is susceptible to fire. The incident of fire had also occurred earlier in the year 2010 and the board had issued directions.

4. On the day of inspection, it was observed that no efforts were being made to extinguish the fire.

(iv) Directions dated 11th June, 2013 : (Copy enclosed for ready reference) : “Officials of the Board conducted an Inspection on 21-5-2013 and during the course of inspection, it was observed that :

1. Smoke was seen emitting from the Garbage Dumped Site;

2. The Municipal Solid Waste Dumping Site was completely filled with waste and there was no space to dump the fresh waste. Even the entry point where BWM is dumped was seen blocked by dumping MSW.

3. It was also observed that screening plant/sieves were not in operation, but dumping of fresh garbage was in progress.

Whereas observations as above indicate that dumping of un-segregated solid waste in the

area is causing environmental degradation and pollution in the vicinity.

(v) Directions dated 3rd March, 2014: (Copy enclosed for ready reference : “During the inspection conducted on 07-01-2014, it was observed that :

1. Mormugao Council generates 30—35 MT/day of solid waste and the same is treated in the Treatment Plant having capacity of 20 MT/day, from which 5 to 7MT/day of compost is generated.

2. However, record of the waste collected and compost generated is not made available at the time of inspection.

3. The waste treatment/screening plant were under maintenance but dumping of fresh garbage was in process.

5. The Applicants therefore claim that the conditional NOC granted by GCZMA to the MSW composting plant in favour of Municipal Council is in violation of the CRZ Regulations and moreover, the operation at the Municipal Council’s Solid Waste Processing Plant being conducted un-scientifically, causes pollution, nuisance and damage to the environment. The Applicants further allege that their

Hospital is in the proximity of the MSW plant. Hence they are sufferers of the pollution caused due to its unscientific and illegal operation. Consequently they seek revocation of consent granted by GCZMA on 07-12-1999 to the Municipal Council for running/operating the composting plant/Garbage Treatment Plant.

6. In Application 20/2013, The Applicants have arrayed Goa Coastal Zone Management Authority which has given NOC to the composting site as Respondent No.1 and the State of Goa, through the Secretary, Environment as Respondent No.2. The Mormugao Municipal Council which has commissioned this MSW processing plant as Respondent No.3 and M/s. Chemtrol Engineering Ltd, a private firm which operates the composting plant as Respondent No.5. The Goa State Control Pollution Board is regulatory authority and is added as Respondent No.4.

7. Respondent No.3-Municipal Council has filed detailed Affidavit opposing both these Applications. Respondent No.3 submits that the Goa Coastal Zone Management Authority has given NOC on 7-12-1999 in favour of Municipal Council for setting of the Garbage composting plant in Chalta No.P.T. Sheet

No.25 of City Survey, Vasco-da-Gama. Further, Goa State Pollution Control Board and also granted consent/authorization for establishment of such plant on 11-4-2000 which is subsequently renewed from time to time. The composting plant was set up by the Municipal Council after obtaining all requisite permissions and was made operational from 1-7-2000. The plant is providing composting treatment for the Municipal Solid Waste as per the provisions of the MSW Rules 2000. The composting site/waste disposal site is also earmarked as Solid Waste Management area in the Outlined Development Plan 2011 in respect of Vasco Planning area.

8. Respondent No.3, therefore, pleads that the present Applicants have challenged the permissions/NOC granted to them dated 7-12-1999 and 11-4-2000 respectively, and therefore, as per the provisions of Section 14 sub-section 3 of National Green Tribunal Act 2010, both these Applications are hopelessly barred by Limitation as the first cause of action arose on 11-4-2000, much beyond the time specified for limitation under Section 14 of the NGT Act.

9. Respondent No.3 further submits that while transferring these matters the Hon'ble High Court in

vide order dated 17-10-2013 has specifically kept open all rights and contentions of the parties including that of the maintainability of the Applications and therefore, the Order dated 17-10-2013 does not confer the specific plenary jurisdiction to this Tribunal which may or could be otherwise available to a Writ Court under Article 226 or 227 of the Constitution of India. Respondent No.3 further submits that though Rule was issued in one of these Applications, the Writ Petition in which Rule is issued is also liable for dismissal at the final hearing stage on account of objections, such as, availability of alternative remedy, delay and laches, *locus-standi* etc.

10. Respondent No.3 further submits that above Applications are also not maintainable in view of final disposal of Writ Petition No.152 of 2005 by the Hon'ble High Court of Bombay, Bench at Panaji-Goa by Judgment dated 3-10-2005 and in view of applicability of the principles of *res-judicata*, constructive *res-judicata* and principles analogues thereto. Respondent No.3 submits that the Hon'ble High Court has observed in para 6 that the compost plant has been established at the said site after seeking appropriate approvals and no objections from the concerned authorities and therefore, the judgment in Writ

Petition No.152 of 2005 is *judgment-in-rem*. It binds the public at large and bars the Members of Public from raising any connected issue or an issue which has been raised/should have been raised on earlier actions.

11. Respondent No.3 further submits that the same Petitioner Shri Vijay Chandran in the year 2010 filed a Second Writ Petition No.513 of 2010 specifically challenging the NOC dated 7-12-1999. However, the aforesaid petition was rejected by the Hon'ble High Court by its order dated 13-7-2010.

12. Respondent No.3 submits that in the Writ Petition No.812 of 2010 filed before the Hon'ble High Court of Bombay at Panaji contains identical averments as in Writ Petition No.153 of 2010 (National Green Tribunal Application No.17/2013). It was observed by the Hon'ble High Court in order dated 13-7-2010 passed in Writ Petition No.153 of 2010 that the Hon'ble High Court by its judgment and order dated 3-10-2005 had not disturbed the said communication and the Hon'ble High Court wanted to examine the compliance of conditions of the impugned NOC of GCZMA. Hon'ble High Court by way of interim relief had directed that existing site should not be used as land-filling site and ordered that existing site as well

as additional land allotted should not be used for land filling.

13. Respondent No.3 further submitted that both the Applications are also not maintainable in view of final disposal of *suo-motu* written petition No.2 of 2007 by the Hon'ble High Court of Bombay, Bench at Panaji-Goa vide its judgment dated 13-8-2013. Said Writ Petition was concerning the Waste Disposal management of Municipal Councils as well as Village Panchyats of Goa. The Hon'ble High Court had issued several directions from time to time and several improvements in the Solid Waste Management of the State were ensured by the Hon'ble High Court. This petition received wide publicity and media coverage. Respondent No.3 alleges that in spite of such opportunity available, the Applicants had kept quiet and did not take any step to move to the Court, if they had any grievances and therefore, the Respondents plead that the challenge to the location of present site and also the NOC of GCZMA and GSPCB cannot be now entertained.

14. Respondent No.3 further submits that the CRZ Notification dated 19-2-1999 does not prohibit setting up of composting plant or my composting activity. It is claimed that the site is used for scientific treatment and processing of the waste by the Aerobic Window

formation method based composting technology for degradation of Organic Manure. CRZ Notification prohibits only dumping of waste for the purpose of land filling and otherwise. Therefore the word “otherwise” found in clause (vi) of paragraph 2 of CRZ Notification is required to be read by complying principle of “*noscitur-a-sociis*” or the Rule of “*ejusdem-jemeris*” which makes it clear that what activities are prohibited are only of land filling or activities similar to land filling or dumping whereby garbage remains at the site and can ultimately cause pollution of Air, Soil and Water. The expression “*unius est exclusion ulteris*” is also required to be invoked i.e. express mention of one thing implies exclusion of another. It is the case of Respondent No.3 that only activities viz. dumping and land filling are expressly mentioned in the CRZ Notification, making them prohibitory activities. However, composting which is a scientific method for processing/treatment of the waste is not expressly mentioned and therefore is not covered within the scope of prohibition. Respondent No.3 submits that the composting plant is developed in compliance with the MSW Rules 2000 framed under Environment (Protection) Act, 1986, is in the interest of Protection of Environment and as such cannot be termed as a

prohibited activity or Industry under the CRZ regulations.

15. Respondent No.3 further submits that the Municipal Council has developed this project for the treatment and processing of the municipal solid waste generated in municipal area and is operating the same since the year 2000 on the principle of sustainable development. It is submitted by the Respondent No.3 that they are trying to comply with all the conditions stipulated in NOC granted by GCZMA and also, Authorisation granted by GSPCB and they are willing to comply and improve the operations at the processing plant as per the directions of authorities and this Tribunal.

16. Respondent No.3 also submitted details of events leading to development of such composting plant. They submit that the Municipal area comprise of about 27.37 sqkm area and bulk of the land is possessed by Mormugao Port Trust, Indian Navy, Railways and Goa Shipyard, leaving very little land for development purpose. The Municipal area is thickly populated and uniquely positioned, surrounded on two sides by sea stretches, one side by Airport and another side by the village Chicalim. The Mormugao Municipal Council area generates approx. about 50 metric tonnes

of garbage on daily basis and compost plant has the capacity to treat 40 to 50 metric tonnes of waste per day. The Municipal Council has also taken efforts to find out other alternatives before selecting the present location, but such landscape and proximity to sea and also Airport are posing challenge to identify the suitable site for landfill. The Council has also tried to dispose the waste through the incinerator to the available at Mormugaon Port Trust. However, due to various technical reasons, this option also not found feasible. Respondent No.3 submits that the present site was selected in compliances with the order of the Hon'ble Apex Court when the matter reached the Apex Court in the form of S.L.P. filed by M/s. Antarctica Study Center against the Municipal Council over the disposal of garbage. In terms of agreement reached with all aforesaid parties to the S.L.P., the Municipal Council was to stop dumping at the waste at the earlier garbage side w.e.f. 1-7-2000. The points agreed were placed before the Hon'ble Supreme Court and thereafter the Spl. Leave Petition came to be disposed of by the Hon'ble Supreme Court on 17-9-1999.

17. Respondent No.1 filed its Affidavit in the pleadings before the Hon'ble High Court in Writ Petition No.153 of 2010 through an Affidavit of Shri

Michael D'Souza, Member Secretary, GCZMA dated 14-8-2010 and as per the statement of the Ms. F.M. Mesquita, learned Advocate of GCZMA, same Affidavit is taken on record for both these Applications. Respondent No.1 submits that GCZMA had considered a request proposal made by Chief Officer, Mormugao Municipal Council dated 12-5-1999 for approval for setting up of the waste treatment plant for composting of garbage. The Municipality had also brought to the notice of the authority that the subject matter had acquired urgency in view of the proceedings before Hon'ble Supreme Court in view of a Spl. Leave Petition filed by Antarctica Study Center against dumping of garbage at Sada, Vasco-da-Gama. Respondent No.1 submits that the GCZMA had gone through the entire application and also additional details submitted by the Council and based on the availability of the appropriate area, technical information, the urgency of the matter and undertaking of the Council to comply with the norms, GCZMA granted NOC for the proposed composting plant vide letter dated 7-12-1999, in the public interest, subject to following conditions:

- (i) That no concrete structure will be permissible,

- (ii) That detachable sheds made of pipes and walls/roof of detachable material may be assembled as required,
- (iii) That the area will be adequately secured to ensure that no part of the garbage/waste matter brought to the site for composting is spilled over beyond the composting area and that only biodegradable garbage should be allowed on the site and non-biodegradable garbage should be promptly separated and removed from the site for alternate disposal as per the law in force,
- (iv) That all precaution should be taken to ensure that the leachate and a run-off water flowing through the composting area does not pollute the ground water and the sea water, respectively,
- (v) That the site will be thoroughly sanitized against possible emanation of foul smell and health hazards to be nearby settlements,
- (vi) That the entire area will be made out of bounds to stray animals rag pickers, and other unauthorized intruders,
- (vii) That consents to establish and operate should be obtained from the State Pollution Control

Board prior to the establishment and commissioning of the facility.

18. Respondent No.1, GCZMA further submits that they have received complaints about improper operation of the composting plant and burning of garbage. Thereupon, GSPCB had conducted inspections and issued directions to the Respondent Municipal Council from time to time. Respondent No.1 GCZMA further submits that the permission given by GCZMA to Municipal Council on 7-12-1999 was the subject matter in Writ Petition No.152 of 2005 and that the petition was finally decided by the Hon'ble High Court, by not disturbing the permission given by GCZMA dated 7-12-1999. GCZMA would submit that they have not approved the Application made by Municipal Council for setting up of Sanitary landfill site at the said location, as the same is prohibited activity under the CRZ Notification.

19. Respondent No.4 filed Affidavit through Shri S.V. Joglekar, the In-charge Member Secretary, GSPCB on 13th March 2014 wherein it is submitted that vide order dated 16-8-2010 passed in Writ Petition No.153 of 2010, the Hon'ble High Court of Bombay, at Goa directed that it cannot stop the existing arrangement. Therefore use of the existing

site cannot be perennially allowed for land filling purpose. It is submitted that the GSPCB had granted Municipal Council, a renewed authorization dated 1-4-2011 for this Garbage Treatment Plant subject to various conditions. GSPCB further submitted that based on the observations during such inspections, Board had issued number of directions to Municipal Council in respect of the waste treatment plant. The Board, under directions dated 5-3-2014 issued U/s. 5 of the Environment (Protection) Act, 1986, rejected the Application for renewal of Authorization due to several non compliances. It is submitted in the subsequent Affidavit dated 11th April 2014 that the Chief Officer of the Council was given personal hearing on 25th March 2014 and based on the assurances and undertakings and subsequent visit dated 3rd April 2014, the Board had decided to grant renewal of Authorization in respect of solid waste treatment plant located at Sada, Vasco for three (3) months so as to observe and monitor functioning of the plant.

20. Considering the submissions made by the contesting parties and also the nature of dispute, we deem it proper to frame following issues for adjudication of the Applications :

- (i) Whether the present Applications are Barred by principle of *res-judicata* and/or Limitation?
- (ii) Whether the Municipal Solid Waste Management of Mormugao Municipal Council is in compliance with the MSW Rules and also authorization/NOC granted by GCZMA and GSPCB?
- (iii) Whether additional measures are necessary to avoid pollution and nuisance, if any, caused by the composting plant? If yes, what measures shall be adopted ?
- (iv) Whether the NOC dated 7-2-1999 is liable to be set aside?

Issue No.(i):

21. For the purpose of examining the issue No.(i), it would appropriate to consider the orders of Hon'ble High Court of Bombay, Bench at Goa in Writ Petition No.152 of 2005 dated 3-10-2005 and also orders dated 13-7-2010 and 16-8-2010 in Writ Petition No.153 of 2010, as both these Writ Petitions are directly related to the subject matter. The Hon'ble High Court in its order dated 3-10-2005 in Writ Petition No.152 of 2005 have gone into details of the

Solid Waste Management in Mormugao Municipal Council and the relevant paragraphs of this order are reproduced for more clarity.

“6. It appears from the available material that the compost plant has been established at the subject site after seeking appropriate approval and no objection from the concerned authorities. By setting up the said plant, the municipal solid waste is being disposed of scientifically by process involving biotechnology. There is objection by the Airport Authority of India for the disposal of garbage at the present site which has been notified by the Pollution Control Board to the Municipal Council. The Council has to sort it out with the Pollution Control Board.”

Similarly, in order dated 13-7-2010 in Writ Petition No.153 of 2010, the Hon'ble High Court while observing that :

“2. It is not in dispute that the communication dated 7th December, 1999, issued by the Goa Coastal Zone Management Authority was the subject matter of challenge in writ petition no.152 of 2005. The petition was finally decided by judgment and order dated 3rd October, 2005. By the said decision this Court has not disturbed the said communication”.

The Hon'ble High Court further noted that the Court will have to examine whether the compliance has been made by the concerned Respondents of the various conditions imposed by the authorities. The Hon'ble High Court in further order dated 16-8-2010 noted that :

“3. Looking to the legal contentions raised in the petition and the stand taken by the Goa Coastal Zone Management Authority, the issues raised in this petition will have to be considered.

..

..

5. As far as the existing garbage disposal plant is concerned, we cannot stop the existing arrangement. It is obvious that the existing site cannot be used as a land filling site in view of the stand taken by the Goa Coastal Zone Management Authority. By way of interim relief we direct that the existing site shall not be used as a land filling site. We also direct that until further orders, the area of 14000 square metres allotted by the State Government to which a reference has been made in the order dated 13th July, 2010 passed by this Court shall not be used for the purpose of land filling.”

(Emphasis laid by us)

22. It is manifest that such use of the site was allowed only by way of stop-gap arrangement. The Hon'ble High Court did not approve the legality of its use as land fill site by applying MSW Rules, 2000.

23. The Hon' ble High Court of Bombay at Goa in its final order dated 13-8-2013 in the *suo-motu* P.I.L. No. 2 of 2007, has considered the Solid Waste Management in the State and in particular, reference to Mormugao Municipal Council, has noted in paragraph (16) that all the Municipal Councils/Corporations in the State of Goa have waste disposal sites for treatment of garbage and all the Municipal Councils except Mormugao Municipal Council have sites for setting up landfills or landfills are already constructed. The Court has further ordered for constitution of a committee for identification of suitable site for setting up of the land fill for the Mormugao Municipal Council. The Committee was supposed to identify the site within a period of two (2) months and the State Government was expected to hand over the land to the Mormugao Municipal Council in another six (6) months. Further, Mormugao Municipal Council was directed to construct the landfill site within one year from the

date of handing over the possession of land to it by the State Government.

24. It is also relevant that the Apex Court in **“Rural Litigation and Entitlement Kendra Vrs. State of U.P.” 1989 Supp.(1) S.C.C. 504**, declined to apply the Rule of constructive *“res-judicata”* to a P.I.L. raising issues of public importance on the ground that in a P.I.L. the disputes raised were not inter-parties and that constructive *res-judicata* was a technical defence, which could not preclude consideration/determination of such matter. It is observed that every technicality in the procedural Law is not available as a defence when a matter of grave public importance is for consideration before the Court. The Apex Court further observed that even though the earlier order could be treated as final one, then also in the dispute like P.I.L., it would be difficult to entertain the plea of *“res-judicata”*.

25. We cannot over-look that the environmental litigation is not strictly adversarial in nature. The *‘lis’* is not between the parties as such but it is between the environment and the alleged polluter of environment. It is aptly said that rivers, mountains, trees, birds, flora and fauna have no language,

particularly, in legal parlance and, therefore, they speak through human beings. Such kind of litigation is partly inquisitive and partly adversarial.

26. Apart from the legal position discussed herein above, it would be appropriate to refer Section 19 of the National Green Tribunal Act 2010. Section 19(i) and (ii) read as follows :

1. The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.

2. Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.

3. x x x x x x x

4. The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely –

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or

document or copy of such record or document from any office;

(e) Issuing commissions for the examination of witnesses or documents;

(f) reviewing its decision;

(g) dismissing an application for default or deciding it ex-parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex-parte;

(i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;

(j) pass an interim order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I

(k) any other matter which may be prescribed.

(l) x x x x x x x x

Bare perusal of the above mentioned section would indicate that this Tribunal is not bound by the procedure laid down by the Code of Civil Procedure, 1908. Further, the plain reading of sub clause 4, also reveals that the Tribunal has been delegated the limited powers by the Legislature in its own wisdom, which does not mention the *res-judicata related provisions*.

27. Considering all these submissions, we are of the considered opinion that though the Hon' ble

High Court of Bombay, at Goa has elaborately gone in the Municipal site waste management issue related to Mormugao Municipal Council and has noted about approvals obtained as far as the Municipal Solid Waste processing/Treatment by composting technology at the site by Chalta No.2 of E.T. sheet No.25 of City Survey Vasco-da-Gama which has been given by NOC by the Goa Coastal Zone Management Authority and also authorization under the MSW Rules 2000 by Goa State Pollution Control Board in favour of Mormugao Municipal Council. However, in our humble opinion, the CRZ aspects have not been argued before the High court. It is also seen from order dated 3.10.2005 mentioned above that High Court has even kept the issue of Complaint of Airport Authority open and it is not known whether this issue has been settled by GSPCB and therefore, we are of the opinion that Hon'ble High Court has not laid down a legal ratio or recorded a final finding in the matter, so as to close the chapter.

28. Another contention of the Learned Counsel for Respondent-3, Council is related to Limitation prescribed under Section 14 of NGT Act. In the present case the NOC and Authorisation to the disputed compost plant site have been granted on 7-12-1999

and 11-4-2000 respectively. Section 14 and Section 16 of NGT Act, 2010 prescribe a specific limitation period for filing Appeal or Application before NGT.

29. In ***Rauf Ahmed Vs State of Chhattisgarh and others*** (Appeal No.1 of 2003), a Coordinate Bench of this Tribunal (Central Zone Bench, Bhopal) held that “the period of limitation cannot be extended by the Tribunal, in view of the language used in Section 16 of the NGT Act, 2010.” The Hon’ble Bench of Central Zone, further observed that the order of transfer of Writ Petition in view of ***Bhopal Gas Peedith Mahila Sangathan &Ors. vs. Union of India & Ors.*** NGT by itself would not cover up the issue of limitation, inasmuch as such issue had been kept open for decision of the Tribunal. In present case too, transfer of the Writ Petition was ordered by the Hon’ble High Court of Bombay, Bench Goa, clear directions that all the rights and contentions of the parties including maintainability of the Application are kept open. Considering this aspect of the matter, we find that the Appeal is filed beyond period of limitation, as envisaged under Section 14 and even, 16 of the NGT Act,2010. The Hon’ble Principal Bench of NGT elaborately considered the issue of limitation in ***Ms. Medha Patkar Vs MoEF and Ors*** in **Appeal No. 1 of**

2013 by referring to the expression “communication” and the other expressions in the context of cause of action. Similar issue is considered in :

1. Janhit Seva Samiti & Anr. V. Union of India & Ors. [Misc Application No.59 of 2011].

2. Consumer Federation Tamil Nadu v. Union of India [Appeal No.33 of 2011 (PB.NGT)]

3. State Level Environment Impact Assessment Agency v. Tamil Nadu & Ors [Appeal No.5 of 2012 (PB, NGT)]

4. Grampanchayat Tiroda & Anr V. MoEF & Ors [Appeal No. 2 of 2013 (WZ)]

5. Aradhana Bhargav & Ors. V. MoEF & Ors [Application No.11 of 2013 (P.B 46/2013 THC)]

30. It is not necessary to elaborate the discussion on the ratio laid down in each of the above referred Judgments. Suffice to say that the period of limitation is circumscribed by the specific provision of the special enactment, namely, the National Green Tribunal Act, 2010. Obviously, this Tribunal has no discretion to extend the period by taking aid from the general provisions of the Limitation Act. The negative expression used in the language of Section 16 of NGT Act, creates embargo on flexibility in the context of the limitation available for filing of the Appeal. Having

regard to legal position enumerated hereinabove, we have no hesitation in holding that the Appeal is barred by limitation.

31. Therefore, though, we are not inclined to accept the contentions of the learned Counsel for Respondent No.3 for application of the principle of *res-judicata*, as far as dispute related to the location of waste processing of treatment by composting technology at the designated site, we are inclined to accept the arguments of Respondents that the present Applications are time barred by the limitation prescribed in Section 14 and 16 of NGT Act, 2010. And therefore, the NOC dated 7.12.1999 and 11.4.2000 granted by GCZMA and GSPCB cannot be challenged and agitated now before this Tribunal. However, the Hon'ble High Court has already considered and kept open the issue of the compliance of the conditions, operations of the Waste Processing Treatment Plant and therefore, the issue related the operation, performance, Monitoring, enforcement, etc related to the waste processing/treatment plant are open for adjudication and being dealt with in subsequent paras. The Issue No.(i) is answered accordingly.

Issue No.(ii) :

32. We have carefully gone through the NOC granted by the GCZMA dated 7-12-1999 for the proposed Solid Waste Processing/Treatment Plant for Mormugao Municipal Council. The relevant conditions appended to the NOC are reproduced below :

- i.** No concrete structures will be permissible.
- ii.** Detachable shed made of G.I. pipes and walls/roof of detachable material may be assembled, if required.
- iii.** The area will be adequately secured to ensure that no part of the “garbage/waste matter” brought to the sites for composting is spilled over beyond the composting area. (Only biodegradable garbage should be allowed on the site and non-biodegradable garbage, if any should be promptly separated and removed from the site or alternate disposal as per the law in force).
- iv.** All precautions should be taken to ensure that the leachate and the run-off water flowing through the composting area does not pollute the ground water and the sea water, respectively.

- v.** The site will be thoroughly sanitized against possible emanation of foul smell and health hazards to the nearby settlements.
- vi.** The entire area will be made out of bounds to stray animals, rag pickers and other unauthorized intruders.
- vii.** Consents to establish and operate should be obtained from the State pollution Control Board, prior to the establishment and commissioning of the facility, respectively.

33. The first NOC/Consent to establish given by the GSPCB is not placed on record. However, subsequent renewals of authorizations are on record. It is the case of Applicants in both the matters that the Respondent No.3-Municipal Council is not operating the composting unit in scientific manner in compliance with the authorization, CRZ Notification and also, MSW Rules. We have also carefully gone through the Affidavits of the GSPCB in this regard and the Applicants have already placed a summary of actions taken by GSPCB against the Council for the scientific operations of the MSW composting plant which is already mentioned earlier. In the last Affidavit filed by GSPCB, the Member Secretary of the Board has clearly submitted that the Board had refused the Application

for renewal of Authorisation of Respondent No.3-Municipal Council, due to various non-compliances, on 3-3-2014, and subsequently based on the representation, the Board had decided to give a temporary renewal of authorization for three (3) months so as to observe and monitor the working of the plant. GSPCB has also admitted that un-segregated waste is brought at the site and used for composting purpose. Further, it is also averred that the MSW Treatment plant was not operational for past eight (8) months and the waste seems to have been accumulated at site without any treatment. The GSPCB Affidavit is also not referring to the compliance of conditions stipulated in the NOC given by GCZMA and more particularly towards the leachate collection and treatment systems.

34. We have also gone through the Affidavits filed by GSPCB and have noted that the GSPCB has not furnished details related to the monitoring of MSW processing/treatment plant. We would like to refer the MSW Rules 2000 which squarely puts responsibility on the State Boards in terms of Rule No.6(1) which reads as : “The State-Board or the Committee shall monitor the compliance of standards regarding the ground water, ambient air, leachate quality and the

compost quality including incineration standards as specified under Scheduled (ii), (iii) and (iv).” These schedules further give detailed methodology and protocol for such monitoring purpose including locations, frequency, parameters, etc. We therefore find that GSPCB has failed to conduct such monitoring of environmental parameters which is essential to ensure that the waste processing/treatment is environmentally sound and in compliance with the MSW Notification. It is also not the case of Respondent No.3 that they are fully complying with the conditions stipulated in the authorization or MSW Rules 2000. The Respondent No.3 have mainly focused on the legality of the NOC granted to the composting site. We have not come across any document or report filed on behalf of Respondent No.3 to show due compliances of the MSW Rules, which is substantiated by necessary monitoring data. In the absence of such reports and also the fact that the GSPCB itself has observed various operational lacunae in the composting plants of the Respondent No.3, we are of the considered opinion that Respondent No.3-Municipal Council is not operating the composting plant for MSW in compliance with the

MSW Rules 2000. The issue no (ii) is therefore answered in Negative.

Issue No.(iii) :

35. It is an admitted fact that un-segregated Municipal Solid Waste is brought to the composting site and the same is further taken for the treatment by way of Aerobic Composting, as and when the plant is in operation. It is observed from the inspection report of the GSPCB dated 3-4-2014 that the GSPCB is of the opinion that the compost treatment plant is having capacity of 20 metric tonnes per day against the MSW generation of 35 to 40 metric tonnes per day. It is the claim of the Council that the composting plant has a capacity of 30 to 35 metric tonnes per day. Further, the Municipal Council is in the process of procuring OWC Plant for treating the bio-degradable waste having capacity to treat 5 to 10 metric tonnes per day. We find a very serious gap in the operation and enforcement of MSW plant by both the Municipal Council and the GSPCB. The basic criterion of any MSW processing plant is the capacity to treat the waste and in the instant case, Municipal Council and the regulator i.e. GSPCB seems to have a different perception about the capacity of the treatment unit. We fail to understand when the composting unit is in

operation since the year 2000, how, the GSPCB has not evaluated this criterion so far and has made such observation only in 2014. This shows that all is not well in the GSPCB, either due to lack of technical expertise, lack of man power or neglect towards the Municipal Solid Waste Management.

36. The another important aspect is the non-segregation of the waste when taken for the composting process. The schedule (iv) of the MSW Rules specifies the standard for composting. The non bio-degradable waste and also rejects from the processing plant needs to be disposed at the secured land-fill site. It is an admitted fact that the Mormugao Municipal Council do not have a secured land fill site and taking a note of the order of Hon'ble High Court in *suo-motu* P.I.L. No. 2/2007 referred above, the State Government was directed to form a committee for identification of the land for land-fill site and also handing over the same to Municipal Council in a time bound manner. Respondent No.3-Municipal Council was directed to construct the landfill site within one (1) year from the date of handing over possession of the land to it by the State Government. The Respondent No.3 has submitted that the work of identifying the site for setting up of the landfill is in progress and the

committee is moving necessary application as regards the extension of time before the Hon'ble High Court of Bombay at Panaji-Goa. We, therefore, note that though the order of Hon'ble High Court was passed on 13-8-2013, the State Government has so far not identified and handed over the land for the landfill site to the Respondent No.3, though it was expected to hand over within eight (8) months. However, the Counsel for Respondent No.3, during the oral submissions, submitted that the Committee has identified a particular land in the Industrial area and further actions are being taken. We hold that the issue No.(iii) is duly proved. It is answered accordingly.

36. In view of the foregoing discussion, we are inclined to partly allow these Applications and partly allow the same as stated below :

- (i)** Both the Applications challenging NOC dated 7-12-1999 granted by GCZMA and Authorisation dated 11-4-2000 granted by GPCB for composting plant of the Municipal Council are dismissed.
- (ii)** The Application is partly allowed to the extent of direction for location of landfill site and monitoring of the MSW composting plant. A

Joint Team of CPCB and GSPCB headed by Zonal Officer, CPCB Bangalore shall visit the MSW processing site of Respondent No.3 in next four (4) weeks and carry out detailed inspections in terms of its capacity, segregation of waste, process technology, environmental parameters, plant performance, record keeping, waste accumulation etc. and submit a detailed report to Chairperson GSPCB within four (4) weeks. In the meantime, Respondent No.3 is directed to ensure that the composting activities shall be conducted adopting precautionary measures like spraying of suitable herbal spray etc. so as to avoid smell nuisance and fires.

- (iii)** Chairperson GSPCB shall issue comprehensive directions to the Respondent No.3 Municipal Council in next three (3) weeks for improvement in the MSW processing/treatment unit of Respondent No.3 within a time bound period which shall not exceed three (3) months. In case of non-compliance, GSPCB shall take further stringent action against Respondent

No.3 including prosecution of the responsible officers/office bearers of the said Council.

- (iv)** The District Magistrate, South-Goa who has overall responsibility for enforcement of MSW Rules shall personally review the compliance of the directions issued by GSPCB and in case of non compliance shall take further suitable action in terms of Municipal Council Act.
- (v)** The private operator i.e. Respondent No.5 has failed to operate the plant in terms of compliance with the MSW Rules and the plant was also not operated for substantially long period since its commissioning. The District Magistrate, South Goa shall cause to conduct an enquiry into the entire operations of the MSW plant and fix up the responsibility of the operator for not operating the plant for substantially long time and verify whether it has caused any loss to the public exchequer and also damage to the environment in the surrounding area.
- (vi)** Chairperson GSPCB shall ensure that the monitoring as envisaged in MSW Rules shall

conducted at the site of composting plant of the Respondent No.3 till compliances is achieved. This monitoring shall be conducted at the cost of Municipal Council/private operator of the plant.

(vii) Respondent No.4-GSPCB and Respondent No.3 Municipal Council shall pay costs of Rs.10,000/- (Rs. Ten Thousand) each towards these Applications in next four (4) weeks which shall be paid to the Collector, South Goa for undertaking Environment Improvement Initiatives in the area surrounding MSW plant.

(viii) The operator M/s. Chemtrol Engineering i.e. operator of the composting plant shall pay costs of Rs.1,00,000/- (Rs. One lack) to the Collector, South Goa, towards cost of these Applications which be used for above purpose. This amount shall be deposited within period of four (4) weeks or else the Collector shall take suitable action to recover this amount as a part of land amount.

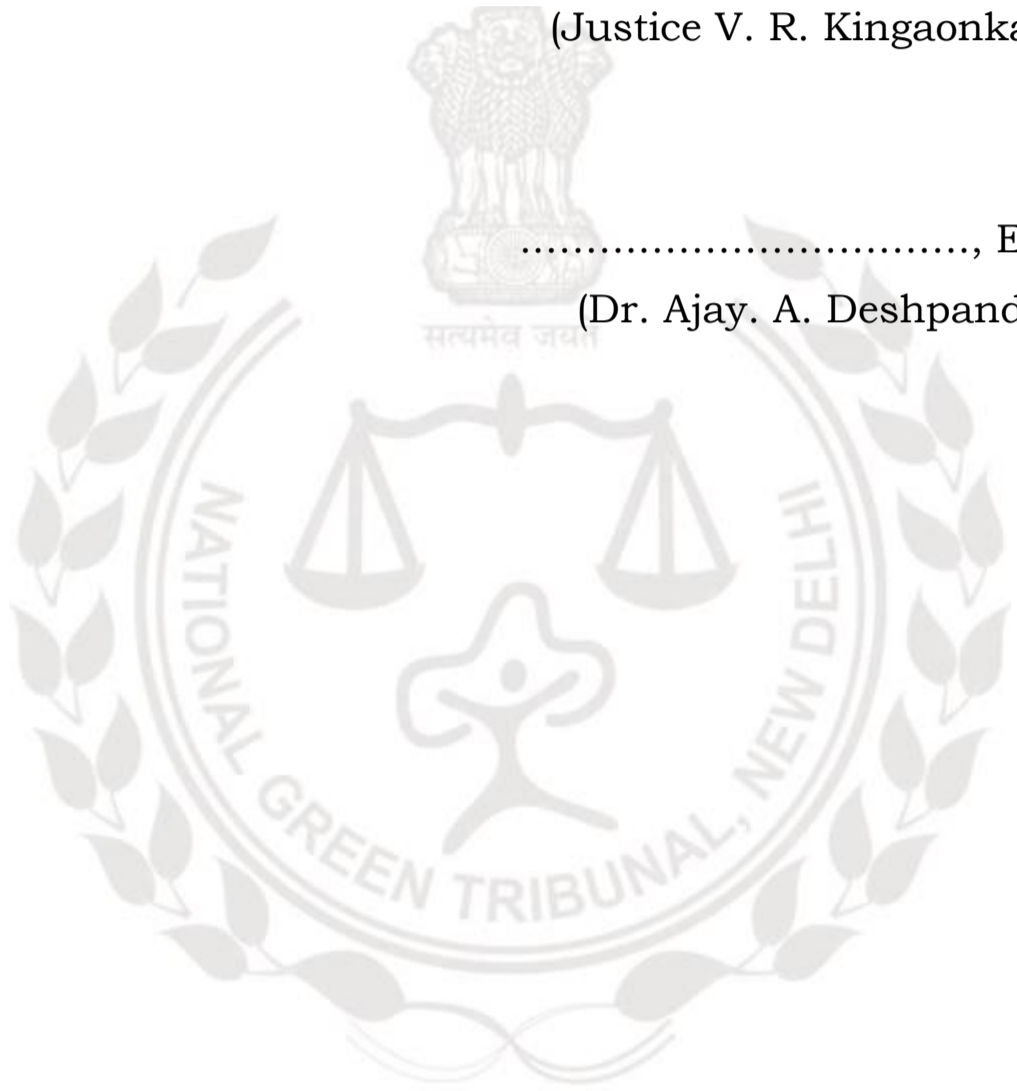
The Application Nos. 17(THC)/2013 and Application No.20(THC)/2013 are accordingly disposed off.

.....,JM

(Justice V. R. Kingaonkar)

....., EM

(Dr. Ajay. A. Deshpande)



NGT