

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
MISC. APPLICATION NO.185 OF 2014 IN
APPLICATION NO.97 OF 2014 (WZ)**

CORAM:

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

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

B E T W E E N:

Mr. Sunil Shetye,
C-1/143, Solar Costa Campus,
Panaji Goa, 403001.Applicant

A N D

- 1. M/S. Leading Hotel Limited**
Through its Managing Director,
Mr.Shivkumar Jatia,
having its corporate office at
573,Road Four, La Campala,
Miramar Panaji Goa-403001
- 2. The State of Goa,**
Through Chief Secretary,
Goa Legislature Secretariat,
Assembly Complex,
Alto-Provorim, Goa-403521
- 3. Goa State Environment Impact
Assessment Authority, 3rd floor**

Dempo Towers,
Patto Panaji, Goa-403 001.

4. Goa Coastal zone

Management Authority
3rd floor, Dempo Towers,
Patto Panaji, Goa-403 001.

5. Principal Conservation of Forest

Government of Goa,
Panaji Goa 403 001

6. Ministry of Environment & Forest

Government of India,
Indira Parayavaran Bhavan,
V-259, 2nd floor Vayyu Wing,
Ali Ganj, Jor Bagh, Jor Bagh Road,
New Delhi 11000

7. Goa State Biodiversity Board

Department of Science,
Technology & Environment,
Opp.Saligao Seminary, Saligao,
Bardez Goa 403511

8. Goa Pollution Control Board,

1st floor, Dempo Towers,
Patto Panaji, Goa 403001.

.....**Respondents**

Counsel for Applicant(s):

In person.

Counsel for Respondent(s):

Mr.Venkatesh Dhond, Mr. Shivam Dessai, Mr. Shankar
Chandekar, Adv for Respondent No.1
Mr.Nikhil Pai, Adv for Respondent No.2,3,5,7.

O R D E R

1. By this application, original project proponent challenges maintainability of the original application No.97/2014 filed by Applicant Sunil Shetye.

2. It is not necessary to set out pleadings of Sunil Shetye in detail. He challenges the project of original Respondent No.1 for establishment of “M/S. Leading Hotels Limited” , on the ground that, it is in blatant violation of all environmental norms. First, the location of said hotel is within 10 Kms. from common boundary of Goa and State of Maharashtra, and as such it is not permissible under the environmental Law. Therefore, the establishment of such hotel is not permissible under the Environmental law. The mega project would comprise of 200 luxury villas over, 9,90,000 Sq Mtrs including Golf Club and so far no EC is granted, though the construction activity falls within the category “ A ” project under the schedule of EIA notification dated 14th Sept. 2006 which provides that in such a case, category “B ” project is to be treated as category “A” project, where such a project is located within the 10 Km from boundary of the two States or within 10 Kms. of Protected Areas notified

under the Wild life (Protection) Act,1972, Critically Polluted areas as notified by the Central Pollution Control Board. There is Mandrem Beach which is been designated as turtle nesting site and protected under the Wildlife Protection Act,1972, which falls within 10 Km of notified Eco-sensitive areas of Sindhudurg Talukas comprising of several villages within 10 Km. notified Eco-sensitive area and therefore, construction activity is illegal, against the environmental norms totally in violation of the EIA notification, 2006, the GSEIAA has recommended the notification, recommended the grant of EC without application of mind. The CRZ clearance is not yet not granted, but the construction activity is being commenced by the respondent No.1, and therefore, application is filed.

3. Taking exception to maintainability of the appeal/ application, the project proponent states that, the Application is filed without indication of any public interest and that the Applicant has vested interest to black-mail the project proponent. The next contention of the project proponent is that, the consent to establishment granted under Sec.26 of Water(Prevention & Control of Pollution) Act, 1974 by GSPCB is appealable and Applicant has exhausted such remedy but has not given such

information in the application with ulterior motive. Secondly, Applicant has prayed that, environmental clearance dated 12-4-2013 granted by GSEIAA be declared as nullity and without authority, which prayer itself is untenable and barred by limitation, because he has not preferred any remedy available U/Sc.16(h) of National Green Tribunal Act, 2010. It is contended that the communication of such EC was received by the applicant/appellant on 12-4-2013, was advertised in two local News papers as per law on 18-4-2013, and therefore, in the light of said legal position, particularly in case of “Save Mon Region Federation of India” reported in 2013 All (I) NGT(PB) 1, the appeal is hopelessly barred by limitation. The applicant cannot now file application which too is barred by limitation available u/Sc.14(3) of N.G.T.Act. The next contention of the project proponent is that, the question of location of “certain nesting site” under the Wild Life (Protection) Act, 1972 is out side Schedule-I appended to the NGT Act, 2010 and as such, contention of the original applicant cannot be considered. On these premises, the project proponent sought dismissal of the appeal/application.

4. At the outset, we may make it clear that, the appeal/application cannot be finally decided at this juncture. We cannot and shall not determine, whether the project falls within NDZ as prescribed under the Coastal Regulation Zone, 2011. We cannot give any finding, at present as to whether the project in question requires EC of the MOEF or that the impugned EC by itself would suffice the purpose. In case, the project needed EC of the MOEF having regard to the area of construction and the nature of the activity, it will have to be decided, prima facie that the GSEIAA was not competent to issue the impugned EC and therefore, the impugned EC would be treated as non-est.

5. The question of limitation is not isolated and must be decided having regard to facts of each case. It is a mixed question of law and facts. It has co-relation with the bundle of facts which are unrolled and unplugged in the background of each case.

6. Assuming that the EC granted for the project in question, by the GSEIAA, rightly, yet, the impugned EC mandated CRZ clearance before it could be treated as operative. The impugned EC could not be treated as legal and valid, unless the condition appended to the EC could be shown as complied with. The first condition is that the project proponent shall obtain

CRZ clearance. The second condition as per the note appended at the foot of the EC is that, the project shall not be located within 10 Km. of the National Parks, Sanctuaries, Migratory Corridors of Wild Animals etc.

7. We do not wish to go in to the merits of the matter. Still, however, prima-facie it appears that, the village Mandrem is declared as place of turtle nesting in the CRZ notification 2011 and therefore, it is not a question which could be overlooked by the National Green Tribunal, only because Wild Life (Protection) Act, is not covered under Seven (7) Enactments scheduled in the N.G.T.Act. The CRZ notification is covered under the Environment (Protection) Act, 1986, and as such location of village Mandrem as shown in the said notification will have to be taken in to account. The concerned authorities have not disputed the fact that, village Mandrem is within 10 Km of the project area. Therefore, prima-facie the project could be said as project of category "A " at the time of appraisal and as such EC of MOEF might have been necessary. In any case, the project activity cannot be started without the CRZ permission.

8. The applicant/appellant has remedy available to prefer an appeal against the CRZ permission and therefore, presently

the application is rather premature. Therefore, we direct the applicant/appellant to elect proper remedy after the CRZ permission is granted to the respondent No.1 (Project Proponent) and inform the Tribunal about the same.

We deem it proper to keep the instant proceeding pending for such response of original Applicant for three(3) weeks. In case, no such response is received, the original Application be deemed as premature and, therefore, disposed off, with no order as to costs.

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

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

Dt.16th April,2015

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NGT