

Dr Joe Dsouza vs State Of Goa on 30 September, 2022

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

Appeal No. 02/2022 (WZ)
(I.A. No. 97/2022)

IN THE MATTER OF:

1. Dr. Joe D' Souza
H. No. 11, Near Customs House,
Panaji, Goa- 403 001.
2. Valmiki Naik
Resident of 1st floor, Sea Breeze
Building, Miramar Panaji Road,
Campal Panaji, Goa- 403001.

.....Appellant(s)

Versus

1. THE STATE OF GOA
Through its Chief Secretary,
Having its office at Secretariat,
Porvorim-Goa.
2. THE GOA COASTAL ZONE MANAGEMENT AUTHORITY
Through its Member Secretary,
4th floor, Dempo Patto-Plaza,
Panaji- Goa- 403007.
3. THE GOA STATE POLLUTION CONTROL BOARD
Near Pileme Industrial Estate,
Opp. Saligao Seminary,
Saligao-Bardez Goa-403511.
4. THE GOA STATE BIODIVERSITY BOARD
C/o Department of Science, Technology
and Environment, Opposite Seminary,
Saligao, Bardez, Saligao, Goa- 403 511.
5. THE CAPTAIN OF PORTS
Captain of Ports Department,
Dayanand Bandodkar Road,
Panaji Goa.
6. NORTH GOA PLANNING AND DEVELOPMENT AUTHORITY
Through its Member Secretary
Archdiocese Bldg, 1st floor,
Mala Link Road, Panaji Goa.

7. CORPORATION OF THE CITY OF PANAJI
Through its Commissioner
Municipality Building, Panaji,
Goa.

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8. M/S. KARGWAL CONSTRUCTION PVT. LTD.
Real Estate & Infrastructure
Corporate office at 105, First floor,
Runwal Omkar Esquare, Opp. Sion Chunabhatti
Signal, Off Eastern Express Highway,
Sion (East), Mumbai-400 022.

.....Res

Counsel for the Appellant(s):

Applicant(s) : Mr. Nigel Da Costa Frias, Advocate

Counsel for the Respondent(s):

Respondent(s) : Mr. Abhhay Anturkar, Advocate for R-2 & 5
Mr. Pavithran AV, Advocate for R-3
Ms. Samiksha Vaigankar, Advocate for R-6
Mr. Annelise Fernandes, Advocate for R-7

PRESENT:

CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Reserved on : 13.

Pronounced on : 30

JUDGMENT

1. This Appeal has been preferred under Section 16 of the National Green Tribunal Act, 2010 with the prayer that the ongoing construction of the proposed terminal building in the riverine land on the banks of river Mandovi by Respondent No. 5/The Captain of Ports in the city of Panaji be declared as illegal, in violation of CRZ Regulations and the impugned order dated 06.07.2021 as communicated on 15.07.2021 of the Respondent No. 2/GCZMA regarding dismissing the complaint of the Appellant No. 1 (since died) and Appellant No. 2 be quashed.

2. Further, it is prayed that Respondent No. 5/The Captain of Ports and Respondent No. 9 (appears to be wrongly mentioned as there is no Respondent No. 9 in the present appeal) be directed to restore the riverine land and the reclaimed portion of the river land to its original position.

3. According to the Memo of Appeal, the facts in brief of the case are that Respondent No. 5/The Captain of Ports had applied to Respondent No. 2/Goa Coastal Zone Management Authority

(GCZMA) for CRZ clearance in respect of construction of a jetty on the banks of river Mandovi on 09.06.2008. The terminal building is constructed at the place where the old Panaji jetty is situated. The old jetty was demolished and the new jetty was constructed in 2014. The terminal building is located in the inter-tidal zone which is partly extended into the river itself. On 11.04.2012, the Respondent No. 5 wrote to the Goa State Infrastructure Development Corporation Limited that the Government had granted approval for demolition of the old canopy of Respondent No.5's jetty at Panaji and for construction of a new terminal building at its place. The Respondent No.5 thereafter sought clearance from the Respondent No. 2/GCZMA for construction of the proposed terminal building under the CRZ Notification, 2011. On 01.07.2015, it was decided by the Respondent No. 2/GCZMA that the proposed project may be heritage area/protected area, hence the Authority i.e. Respondent No.2 decided to direct the Respondent No. 5 to seek comments from the Heritage Committee/Competent Authority with regard to the restrictions/ regulations which may be applicable to such project.

4. On 06.07.2015, the Respondent No. 2/Goa Coastal Zone Management Authority decided to approve the said proposal from CRZ point of view subject to the condition that the Respondent No. 5/The Captain of Ports has to comply with the restrictions/ regulations imposed by the Heritage Committee/Competent Authority.

5. On 20.07.2015, the Respondent No. 2 granted NOC/ permission for construction of the terminal building in the property bearing Chalta No. 2 of PTS No. 7 of Panaji City, Tiswadi Taluka (CRZ-II) to Respondent No. 5/The Captain of Ports subject to the condition that the Respondent No. 5 shall obtain all the necessary requisite permissions as per law. The said NOC was granted subject to compliance of the following conditions:-

" i. Prior to the commencement of the aforementioned work on the ground, it will be incumbent upon the CoP to obtain all the requisite permissions, NOC etc. as required under law.

ii. Traditional access/easement/navigation channel shall not be blocked due to the construction activity. There shall be no disturbance to the fishing activity. iii. Due care should be taken to prevent and mitigate adverse environmental impacts such as erosion of earth material into river, dust pollution, noise pollution etc. iv. This permission is liable to be revoked if it is found, at any stage, that the application contained false information/wrong plans/ calculation/documents."

6. The Respondent No. 5/ The Captain of Ports addressed a letter dated 26.09.2012 to the Chief Town Planner and the Commissioner of Corporation City of Panaji, requesting them to examine, if any NOC needs to be issued from their end. Thereafter, he received a reply from the Chief Town Planner dated 27.09.2019 to the effect that the said jetty comes within the jurisdiction of the North Goa Planning Development Authority (NGPDA) and that the work of demolition and re-construction of Respondent No. 5 jetty, will attract Section 44 of the Town & Country Planning Act as well as CRZ Regulations applicable to the area. The Respondent No. 3/Goa State Pollution Control Board (GSPCB) vide letter dated 04.09.2015 clarified that the activity for construction of

terminal building does not come under the purview of Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974, hence, no NOC would be required from their end. The work is being carried out in Panaji Port area as notified by the Captain of Ports by Notification dated 17.02.2006 issued under Section 5 of the Indians Ports Act. The Respondent No. 5 entrusted the construction work to the Respondent No. 8- M/s. Kargwal Construction Pvt. Ltd. who there-after commenced the construction work around the year 2014. After various complaints were made by the Appellants, the Respondent No. 2/Goa Coastal Zone Management Authority (GCZMA) conducted the site inspection on 18.06.2019 which was made by the Expert Members of the Goa Coastal Zone Management Authority (GCZMA) and in their inspection report dated 18.06.2019, following observations, conclusion and recommendation were made:-

- " i). The site is a Mini Port Jetty of the Captain of Ports at Panaji and it is lying towards the southern bank of Mandovi River.
- ii). At site the construction of Terminal building was proposed by the COP after the Goa Government granted approval way back in the year 2012 to construct new terminal building by demolishing the existing old canopy of CoP jetty at Panaji.
- iii). The work of construction of the said terminal building is undertaken by GSIDC through its consultant.
- iv). As seen during the site inspection, the mooring for the group piles is going on at site for putting the foundation of the proposed terminal building of the CoP.
- v). The mooring is being done within the open space of the mini port jetty of the CoP. Besides this, there is no other construction seen at site.

Conclusion and recommendation:

- i). The site where the mooring for the piling of the proposed construction of Terminal building of the CoP has been started is falling within the Mandovi River at Panaji which is a city and a Municipal area of the CCP, so it is a CRZ II area.
- ii). There is no Survey no. to the site and the mooring for piling is being done within the open space of the existing mini port jetty of the CoP in the waterfront area.
- iii). The said area is located by the side of the office of CoP and it is also designated Mini Port area dated 17/2/2006 vide Official Gazette of the Government of Goa.
- iv). The NOC dated 20/7/2015 was already issued by the GCZMA for the proposed construction of terminal building within the said riverine area.
- v). At the same time, the NGPDA and TCP say that they do not have any jurisdiction over the area since it does not have a survey no.

vi). The GSPCB says that the proposed construction does not attract Water Act and Air Act and so they cannot issue NOC, whereas the NOC could be issued by CCP only for sewerage, water and electricity connections."

7. Further, it is submitted that the Respondent No. 4/The Goa State Biodiversity Board had not granted approvals/permissions for this project as the project being undertaken, is in area classified as CRZ II, where buildings are permitted on the landward side of existing road or on the landward side of existing authorized structures. Such buildings shall be subject to existing local town planning regulations including the norms of FSI or FAR.

8. Further, it is submitted that the construction is being done in the riverine land which is entirely submerged during the high tide and partly submerged during low tide, hence, this land is scientifically termed as inter tidal mud flats which is rich in biodiversity and eco-sensitive in nature. The land where-in the reclamation is done is within the LTL and the HTL i.e. CRZ-1 area where any construction activity other than that specified under the CRZ regulations is prohibited. The pile foundations for the terminal building are being laid in the river bed which is not permitted under the CRZ regulations. The foreshore facilities like ports, harbours and jetties are permissible activities in the CRZ areas, provided the required clearances were obtained under the regulations from the Competent Authorities. The construction of terminal building is not a permissible activity in the riverine land within the river as specified under Regulations 3 and 4 of the CRZ Notification, 2011. The proposed terminal building is to have restaurants, amphitheatres, and lounges etc. which are neither essential nor these activities relate to waterfront nor need foreshore facilities. The procedure for obtaining the clearance of permissible activities is spelt out in Regulation 4.2 of CRZ Notification, 2011, which includes submission of a rapid Environmental Impact Assessment Report; Comprehensive Environmental Impact Assessment (EIA) report with cumulative studies for projects in stretches classified as low and medium eroding by MoEF&CC based on scientific studies in consultation with the State Governments and the Union Territories, Disaster Management report, risk assessment report and management plan, CRZ map etc. The CRZ clearance dated 20.07.2015 does not contemplate construction in the river. If the construction is on land which has a promulgated survey number, the North Goa Planning and Development Authority will have jurisdiction over such land and in that case, development permission would be required under Section 44 of the Town and Country Planning Act, which has not been obtained in the present case. The CRZ clearance dated 20.07.2015 mentions that the permission is granted for construction of terminal building in the property bearing Chalta No. 2 of PT Sheet no. 7 of Panaji City from which, it is apparent that the construction was to be done on the land which has a promulgated survey number, which falls presently under the jurisdiction of Respondent No. 7/Corporation of the City of Panaji, Goa which is the Planning Authority constituted for this area under Section 20 of the Goa Town and Country Planning Act. No prior permission from the said Authority has been taken under the above Acts. The Respondent No. 7/Corporation of the City of Panaji, Goa had refused the proposal for construction of terminal building to the Respondent No. 5/The Captain of Ports, stating that it comes fully in the river. The proposal to the Respondent No. 2/GCZMA contained the Chalta Number and PT Sheet number of the land where the construction was proposed, to show that the proposed construction was to be on land and despite being aware that no construction of terminal building could be permitted in the river, the CRZ clearance had been obtained by fraud and

mis-representation. Fresh EIA was essential and necessary because Mandovi River harbors over 6 fold increase in the number of floating casinos while the jetty was being built by intruding upon the relatively clean River Mandovi post 2008, with nearly 250 piles driven since 2008 after the EIA report was submitted. The Appellants being aggrieved by the non-action on the part of the authorities, had filed a PIL Writ Petition No. 55/2019 before the Hon'ble High Court of Bombay at Goa to bring to their notice that the illegal construction being undertaken by the Respondent No. 5/Captain of Ports, praying for an order to direct the GCZMA to revoke the permission dated 20.07.2015, which was disposed of by the Hon'ble High Court dated 26.02.2020 with the following observations and directions:-

"8. The conclusions and the recommendations in the report dated 18/6/2019 suggest that the agency which is undertaking the GSIDC and the petitioners herein should be called for a hearing by the GCZMA for-deciding the matter. The recommendation also suggests that the issues raised by the petitioners should be deliberated and discussed in the meeting by the GCZMA so that a suitable decision could be taken in the matter. The recommendation is that the parties should be heard in the meeting of the GCZMA and thereafter the GCZMA, as a body, should take a decision in the matter.

9. The issues raised in the petition can be best addressed by the GCZMA as a body. Such issues cannot be addressed on the basis of mere prima facie opinion of the experts and certainly, not on the basis of the opinion of the Member Secretary of the GCZMA. All these are matters which can be best be decided, at least in the first instance, by the GCZMA as a body. To that extent, we agree with the recommendations made by the experts in their Report dated 18/06/2019 that the Project Proponents, the Executing Agency and the petitioners-complainants should be called for a hearing by the GCZMA and the issues raised by them may be deliberated and discussed by the GCZMA.

10. In fact, the learned Advocate General states that the GCZMA is not at all averse to hearing the Project Proponent, the Executing Agency and the petitioners herein and thereafter taking a suitable decision in the matter within four weeks from today.

11. Accordingly, we direct the GCZMA to hear the Project Proponent, the Executing Agency and the petitioners on all the issues raised by the petitioners in the present petition and thereafter take a suitable decision in the matter. The GCZMA to also address the issue of the necessity or the otherwise of the Rapid Environmental Impact Assessment Studies, now that it is suggested that the construction is coming up in the river or in the riverine area and not on the land. In arriving at its decision, the GCZMA, should not be influenced in any manner by the Affidavit of the Member Secretary in this matter. The GCZMA to decide all issues on their merits and in accordance with law after affording an opportunity of hearing to all parties as aforesaid.

12. The GCZMA to communicate its decision to all parties, including in particular the petitioners herein, within a period of seven days from the date on which such decision is arrived at. If any parties wish to challenge such decision, they are at liberty to do so in accordance with law."

9. The Appellant had made a prayer before the Hon'ble High Court that pending decision of the GCZMA any further construction of the terminal building be stayed. But upon consideration, following order was passed:-

"14. Mr. Nigel Da Costa Frias has himself submitted that for the last three months there is no construction in progress at the site. The construction, even otherwise is commissioned by the Captain of Ports, which is a Government Department and the same is executed by GSIDC, which is a Government Company. This is a Public Project. At this stage, we do not feel that it would be appropriate to pass any orders on stay. Besides, we have directed the GCZMA to consider all the issues within a period of four weeks from today taking into consideration the urgency expressed by the petitioners. The construction is presently, not going on at the site. If the construction begins, it is always open for the petitioners to approach the GCZMA for appropriate orders in relation to the construction terminal building. At this stage, we can only say that the construction, if undertaken shall be subject to any orders which the GCZMA will make in the matter.

15. We make it clear that we have not examined the merits and demerits of the rival contentions and it is for the GCZMA to examine and to decide upon such contentions in accordance with law and on their own merits within the period indicated.

The petition was accordingly disposed off."

10. Thereafter, the GCZMA vide order dated 06.07.2021 which was communicated to the Appellants on 15.07.2021 dismissed their representations/complaints which is being challenged before this Tribunal.

11. Further, it is submitted that CZMP for Goa has not been finalized till date, therefore, no new construction should be permitted in the riverine land as directed by this Tribunal in Original Application No. 424/2016 and Original Application No. 11/2014, hence, in this backdrop of the facts, the above prayers have been made in the present appeal.

12. The stand of Respondent No. 5/ the Captain of Ports is as follows:-

(i). The Clearance for the re-construction of the Panjim Jetty was granted in 2008 which came to be completed in 2015, that was never challenged. The terminal building is being constructed atop this Jetty. The answering Respondent made an application dated 09.10.2014 to the Respondent No. 2/GCZMA seeking clearance under the CRZ Notification for the project which was granted clearance vide order

dated 20.07.2015 as the project fell in CRZ-II area. The Appellants are essentially seeking revocation of the clearance dated 20.07.2015 which has attained finality and substantial construction has already been carried out on the basis of the aforesaid clearance.

(ii). Pursuant to the complaints of Appellants, the Respondent No. 2/GCZMA carried out a site inspection on 18.06.2019 in the presence of the Appellants, Respondents and other Officers concerned and it was concluded that the project clearly fell within CRZ-II area. At no point of time did the Appellant dispute or question the said conclusion before the Hon'ble Bombay High Court at Goa when Appellant filed PIL Writ Petition No. 55/2019. They did not challenge the legality of the clearance dated 20.07.2015 but only sought directions to the Respondent No. 2 for the revocation of the clearance. The project is of the public importance, hence the construction was not stayed by the Hon'ble High Court.

(iii). Thereafter, the Respondent No. 2/GCZMA conducted another site inspection on 31.05.2021 and decided the matter finally rejecting by the impugned order the Appellant's complaints with a detailed and reasoned order.

(iv). It is apparent from the consideration made by the Respondent No. 2/GCZMA that according to Regulations 4(i)(d) and 4.2(i)(b) of the CRZ Notification, 2011, construction of the terminal building involving less than 20,000 sq. mts. built-up area, did not require rapid Environment Impact Assessment. The Project does not fall within the purview of the Environment Impact Assessment Notification, 2006. The project fell in CRZ-II area and accordingly was covered by the Regulation 4(i)(d). The said area does not fall within "No Development Zone (NDZ)"

according to the CRZ Notification, "No Development Zones"

come only within CRZ-III areas. The Appellants are themselves at one place stated that the project fell in CRZ-I area while at other place stated that it fell within CRZ-III area. As per Regulation 4.2 of the CRZ Notification, 2011, the project comes under permissible activities. But the Provisions regarding requirement of a Rapid EIA are not applicable to the project as it is covered by the exception granted to projects under Regulation 4(i)(d) read with Regulation 4.2(i)(b) of the CRZ Notification. In terms of Regulation 4.2(i)(c), a comprehensive EIA is required only for projects in stretches classified as low and medium eroding by the Ministry of Environment, Forest & Climate Change (MoEF&CC). But the present project is not situated in such an areas, therefore, neither a Rapid EIA study nor a comprehensive EIA is mandatory for the project. There is no destruction or harm to the marine life nor any adverse effect on the coastal eco-system nor is there any obstruction to the flow of water, as the terminal building was being constructed on the already existing jetty which was elevated from the water and therefore, the Appeal should be dismissed.

13. The stand of Respondent No. 2/GCZMA is as follows:-

(i). It contains the same facts which have already been cited above in the affidavit of Respondent No. 5 and in addition to these facts, it is submitted that the Respondent No. 5/The Captain of Ports made an application dated 26.07.2016 for correction and re-survey of the site of the Jetty and accordingly, the Deputy Collector and Sub-Divisional Officer, Panaji passed an order dated 23.11.2016, confirming the Report dated 04.11.2016 of the Assistant Survey and Settlement Officer, Panaji observing that the jetties were wrongly shown under Chalta Number 2, PT Sheet No. 7 as the same are actually concrete platforms standing on piles above the water body. Once the construction in question was found to be a permissible activity, the issue regarding the construction of site bearing a Chalta Number or whether the project fell in riverine or land area, are of no significance. There is an existing Jetty which was re-constructed in 2015 after obtaining necessary permissions and the terminal building was placed atop the said Jetty in order to facilitate the use and operation of the said Jetty. The answering Respondent had given permission/clearance of the said jetty way back in 2008.

14. Heard the arguments of the Learned Counsel for the parties and perused the record.

15. The main emphasis laid down by the Learned Counsel for the Appellant is that the area where the construction of terminal building is being done by Respondent No. 5, is classified as CRZ-IV area which is located in water body and not in CRZ-II area as is being made out by the Respondents.

16. It is further argued by him that the foreshore facilities like ports, harbours and jetties are permissible activities in the CRZ areas but for that required clearance under the proper regulations are necessary to be obtained.

17. He has drawn attention to the norms laid down for taking up such permissible activities, mentioned in Regulation 8 (I) CRZ-I of the CRZ Notification, 2011, the relevant portion of which is reproduced here-in below:-

"(i) no new construction shall be permitted in CRZ-I except,-

a) projects relating to Department of Atomic Energy;

b) pipelines, conveying systems including transmission lines;

c) facilities that are essential for activities permissible under CRZ-I;

d) installation of weather radar for monitoring of cyclones movement and prediction by Indian Meteorological Department;

e) construction of trans harbour sea link and without affecting the tidal flow of water, between LTL and HTL.

f) development of green field airport already approved at only Navi Mumbai."

18. He has also drawn attention to Regulation 3 (iv) of the CRZ Notification, 2011 and argued that it provides land reclamation, bunding or disturbing the natural course of seawater is not permissible except those-

" (a). Required for setting up, construction or modernization or expansion of foreshore facilities like ports harbours, jetties, wharves, quays, slipways, bridges, sealink, road on stilts, and as such meant for defence and security purpose and for other facilities that are essential for activities permissible under the notification.

(b). measures for control of erosion, based on scientific including Environmental Clearance Impact Assessment studies.

(c). Maintenance or clearing of waterways, channels and ports, based on EIA studies.

(d). measures to prevent sand bars, installation of tidal regulators, laying of storm water drains or for structures for prevention of salinity ingress and freshwater recharge based on carried out by any agency to be specified by MoEF."

19. In the light of above provision, it is argued that foreshore facilities as defined under the CRZ Notification, 2011 mean those activities which are permissible under the CRZ Notification, 2011 and require water front for their operations such as ports, harbours, jetties quays wharves, erosion control measures, light-houses, coastal police stations, break waters, pipelines, navigation safety facilities and that the land reclamation for commercial purposes such as shopping and housing complexes, hotels and entertainment facilities are prohibited under the above Regulations. Therefore, the GCZMA has committed the error in rejecting the complaint filed by him.

20. Further, it is argued by him that in the site inspection report dated 18.06.2019, the Expert Members of GCZMA observed that the proposed construction of the terminal building is a facility meant for offices and other allied purposes within the water front of CRZ, it can be done only after obtaining NOC from the GCZMA by carrying out rapid EIA study and the CoP was required to file EIA report to GCZMA, but in the present case, there is no EIA study done. Accordingly, the Appeal should be allowed.

21. From the side of Respondent No. 5, attention is drawn to page no. 119 of the paper book which is an order dated 20.07.2015 of the Member Secretary, Goa Coastal Zone Management Authority (GCZMA), granting permission for construction of terminal building in property bearing Chalta No. 2 and P.T. Sheet No. 7 of Panaji City, Tiswadi Taluka, Goa which was granted in response to the application dated 09.10.2014.

22. Thereafter, he drew attention to page no. 453 of the paper book which is a letter dated 27.09.1996 written by the Deputy Secretary to the Government of India addressed to the Chief Secretary, Government of Goa, Panaji on the subject of Coastal Zone Management Plan (CZMP) of

Goa where-in approval of the same is conveyed in accordance with the powers vested in Central Government under Section 3(3) (i) of CRZ Notification, 1991, subject to the conditions and modifications which are cited in the said letter and at page no. 459 of the paper book, in condition no. (xiii), following is recorded:-

" (a). Area along Ourem creek till confluence with Mandovi river is classified as CRZ-II

(b). Area along Mandovi river bank (from confluence with ourem creek) westwards till the beginning of Children's Park of Campal is classified as CRZ-II

(c). Area on landward side of existing road till Rotunda of Gaspar Dias is classified as CRZ-II.

(d). Area west of Sports Authority of India complex up to Rotunda of Gaspar Dias is classified CRZ-II.

(e). Area from Rotunda of Gaspar Dias - Gaspar Dias beach to Caranzalem beach up to Cabo Raj Niwas is classified as CRZ-III.

(f). Area from Cabo Raj Niwas to Dona Paula jetty is classified as CRZ-III

(g). Area of Dona Paula cove/bay is classified as CRZ-III upto line of existing authorized developments.

(h). Area from Dona Paula cove/bay to Wainginim beach is classified as CRZ-III

(i). The plateau top to the extent is classified as CRZ-II (falling within municipal limits).

(j). All areas outside municipal limits are classified as CRZ-III

(k). Wainginim beach is classified as CRZ-III,

(l). From Wainginim beach to Sorodao Beach and area upto Agassaim bridge is classified as CRZ-III."

23. With respect to its environs, the following categorization is approved:-

"(a) Area along Ourem creek till confluence with Mandovi river is classified as CRZ-II.

(b) Area along Mandovi river bank (from confluence with ourem creek) westwards till the beginning of Children's Park of Campal is classified as CRZ-II"

24. Having drawn attention to it, it is argued that as per this CZMP which would be treated to be in force till 2018 as per the Notification dated 31.07.2017 of the Ministry of Environment, Forest and Climate Change (MoEF&CC), which is annexed at page 486 to 490 of the paper book, it is clearly established that when the permission was obtained from Goa Coastal Zone Management Authority (GCZMA) for constructing the jetty as well as terminal building, it would be treated to be covered under CRZ-II area and therefore, GCZMA could very well have granted permission.

25. We would like to now reproduce the Joint committee's report dated 20.07.2015 which is quoted here-in below:-

"Terms of Reference-

As mentioned supra, during the course of the proceedings before the Hon'ble National Green Tribunal, the Appellant as well as the Respondents were unable to throw light on certain issues raised by the Hon'ble National Green Tribunal which resulted in formation of a Committee so that the Hon'ble Tribunal could go into the root of the matter. Thus the terms of reference as contained in the order dated 25/05/2022 was as follows:

- a). Whether the Terminal Building is constructed in CRZ-I, CRZ-II, or CRZ-IV region.
- b). Ascertain whether procedure was followed in granting CRZ clearance.
- c). The built-up area of the terminal building.
- d). Accord an opportunity of hearing to the Complainant as well as the Respondents.
- e). Dossier of evidence to be collected. Thus the report should cover all of the above TOR's.

Terms of Reference- A: Whether the Terminal Building is constructed in CRZ-I, CRZ-II or CRZ-IV region. For the purpose of understanding, the need to go through the classification of areas as CRZ-I, CRZ-II & CRZ-IV would have to be understood in light of the CRZ Notification 2011. CRZ-I(A): The areas that are ecologically sensitive and the geomorphological features which play a role in maintaining the integrity of the coast which includes Mangroves, corals & coral reefs, sand dune, mudflats, biosphere reserves, salt, marshes, turtle nesting grounds, horseshoe crab habitats, seagrass beds, nesting ground of birds & areas or structures of archaeological importance/heritage sites. CRZ-I (B) - The area between high tide & low tide line CRZ-II - The areas that have been developed up to or close to the shoreline.

CRZ-IV(A) - The area from the low tide line to twelve nautical miles on the seaward side.

CRZ-IV(B) - Shall include the water area of the tidal influenced water body from the mouth of the water body at the sea up to the influence of tide which is measured as five parts per thousand during the driest season of the year.

The contention of the Applicant before the Hon'ble National Green Tribunal was that the terminal building of the Captain of Ports was constructed in the river bed & hence it was in CRZ-I region & the Member Secretary of the GCZMA contended that it is in CRZ-II area.

A joint site inspection was held on 09/07/2022 along-with one of the Petitioner namely Valmiki Naik & the Respondents of the Hon'ble National Green Tribunal. There is a jetty constructed by the Captain of Ports on a pile foundation and within this jetty the purported terminal building is sought to be raised. At Annexure 'A' is the copy of the site plan wherein the jetty is shaded in blue colour and the pile foundation is within the open water area of the jetty and the pile foundation is shown highlighted in purple dots. This jetty was assigned Chalta No. 2 of P.T.S. No.7 of City Survey Panaji. The Captain of Ports further approached the Court of the Dy. Collector at Tiswadi-Panaji prayed to delete the survey number given to the jetty because it was not a landed property but an artificially created platform on a pile foundation to facilitate water traffic in the nature of the jetty. The Dy. Collector conceded to the request made by the Captain of Ports and accordingly the survey number was deleted from the Records of Rights as well as from the Survey plan. Initially when the GCZMA had received the application for consideration towards conveying approval to construct the terminal building, the very same area was identified with a survey number and hence in the approval conveyed by the GCZMA, there is a mention of Chalta No. 2 of P.T.S. No. 7 but this survey number has ceased to exist on account of the order which is annexed at Annexure B. We may state here that survey numbers in terms of the Goa Land Revenue Code 1968 are given only to landed properties and not to water bodies, rivers or sea. The terminal building is thus constructed on the banks of river Mandovi. This area where the terminal building is being constructed experiences low tide & high tide. The said Terminal building is constructed in a place within the jetty which was open to the sky as can be seen in Annexure 'A' (Purple dots). As per the survey plan prepared under the provisions of Goa Land Revenue Code, the Jetty was in existence which can be discerned from the plan provided by the Directorate of Settlement and Land Records (DSLRL) whereby the jetty is shown in pink colour and the date on the original plan is also mentioned there-in as 10/12/1971. The O/o the DSLRL Goa was established in the year 1898 and during the Portuguese regime cadastral survey was conducted in some villages including the City of Panaji. As per the cadastral plan, the jetty as is where it is located is seen on the plan which is highlighted in red colour.

What can thus be inferred is that the Jetty was in existence prior to the Liberation of Goa and much prior to the CRZ Notification of 1991. As per clause 5(xii) of the CRZ Notification 2011, the Coastal Zone Management Plan as prepared on the basis of CRZ Notification 1991 were to remain valid for a period of 2 years from the date of notifying CRZ Notification, 2011. This period of validity was extended from time to time and the last of such Notification for extension of the CZMP prepared on the basis of CRZ Notification 1991 was issued on 31/07/2017.

The State of Goa had also prepared the CZMP based on CRZ Notification 1991 which was duly approved by the MoEF, New Delhi on 27/09/1996. The copy of CZMP is at Annexure 'F' and the

approval conveyed by the MoEF is at Annexure 'G'. The Goa, Daman and Diu Municipalities Act was notified on 25/04/1969 and since then Panaji is notified as a Municipality. Annexure-I of the CRZ Notification, 1991 and Clause 7(ii) of CRZ Notification, 2011 classifies the areas which can come within the CRZ Category II. For all purposes since the CZMP prepared in terms of CRZ Notification 1991 was in vogue at the time when the project proponent had moved the application on 09/10/2014 seeking for approval to construct the terminal building, this area would qualify to be in CRZ-I area primarily because of fact that the constructions of the terminal building is within the waters of river Mandovi which area can be inundated due to rise in sea level consequent upon global warming. However, with the CRZ Notification-2011 if taken into consideration then the area whereupon the terminal building is under construction qualifies to be in CRZ- IV.

Terms of Reference -- B: Ascertain whether procedure was followed in granting CRZ clearance, Regulation 4.2 of the CRZ Notification 2011 prescribes the procedure for clearance of permissible activities. The Captain of Ports who is the Project Proponent had filed the application in Form I without any Rapid EIA specifically in relation to the Terminal Building probably because of the exemption provided for construction of projects listed in provision 4(d) of the CRZ Notification 2011. The total built-up area of the Terminal building as per the plan is 2070 Sq.mts. which is less than 20000 sq.mts. The Captain of Ports had undertaken a Rapid EIA at the time of construction of the jetty way back in March 2008. The present Terminal building is constructed within waters of River Mandovi as can be seen in Annexure 'A' which is declared as a Port vide Notification published in O.G. Govt. of Goa Series I No.48 dated 02/03/2006. The provision contained in Section 3(ii) provides for activities prohibited within CRZ areas except transfer of hazardous substances from ships to ports, terminals and refineries and vice-versa. The present construction is that of a terminal building. Alongwith the application filed by the Captain of Ports, a specific Rapid EIA was not submitted. The Disaster Management Report, Risk Assessment Report & Management Plan, Project Layout Report superimposed on CRZ map indicating HTL & LTL as demarcated by one of the authorized agency etc. has not been placed by the project proponent: The GCZMA may have skipped from taking these documents by factoring that the Terminal building was being essential for coastal security and on account of the said area being a notified Port area.

The EIA Notification of the year 2006 contemplates that any construction which is having built up area of more than 20000 sq.mts would require prior Environmental Clearance but in this case it is less than the prescribed area. However the bare minimum requirement of proper vetting to be done through the SEIAA should have been done by the concerned Government Department. There have been instances in the past whereby the Hon'ble NGT has passed orders to ensure compliance to the mandatory requirements. One such instance is that of an order passed in Ex. Appln. No. 48/16 in App/No. 85/15 dated 27/10/2016.

Terms of Reference - C: The built up area of the Terminal Building As per the plans approved by the GCZMA, the Terminal Building comprises ground plus three floors. The plinth area is 668 Sq.mts and the total built-up area of the terminal building is 2070 Sq.mts. As per the plans placed before us, there are places reserved for various offices associated with the CoP as well as an amphitheatre and a cafeteria. The CoP did argue to say that the ancillary features of amphitheatre and a cafeteria would not be constructed but to suffice this argument revised plans/drawings have not been placed

before us.

Terms of Reference - D: Accord an opportunity of hearing the Complainant as well as the Respondents. We have heard both the Complainant & the Respondents. It is the case of the Complainant that the Terminal building is not at all meant for the purpose of facilitating the needs & requirements of the Captain of Ports but is only meant to be used for the purpose of giving undue benefit and advantage to the Casino lobby who are operating within stones throw from the Terminal building. He questioned as to why there ought to be a cafeteria & amphitheatre in this complex, if at all it was the Terminal Building in the true sense of the term. He further stated that the activities associated with coastal security and coastal traffic can nevertheless be continued in the existing premises of the Captain of Ports and hastened to ask as to how they are currently manning the coastal security and coastal traffic. Thereafter, he stated that due to change of flow of the river, it will encourage siltation. This would also result in disturbance of the fishing activity having adverse environmental impacts. The Complainant further stated that if the Terminal building is allowed to be constructed then it would overburden the carrying capacity of the City of Panaji with unnecessary vehicular traffic, parking requirements, solid waste creation etc... He stated that the Terminal building is not of such a nature which requires foreshore facilities. The petitioner further went on to state that the said Terminal building is not a reconstruction of the old terminal building because the current disputed building is constructed within the waters of River Mandovi and the old alleged dilapidated terminal building was towards the landward side. This fact has been elaborated by him through written submissions and pictorial evidence. He also sought to demolish the claim that the terminal building is located in CRZ-II area by stating the said construction is located in CRZ-I and CRZ-IV B because the pile foundation is completely under waters of River Mandovi. He thus prayed to recommend in the report the cancellation/withdrawal of the approval conveyed by the GCZMA for construction of the Terminal Building. The Respondent i.e. The Captain of Ports stated that the construction of the Terminal Building is in the interest of marine safety and that the same is protected on account of Regulation 4(d) because the same is not exceeding the built-up area of 20000 sq.mts. He stated that the built-up area is just 2070 sq.mts. As regards change in the flow of river, the Respondent i.e. The Captain of Ports stated that the entire construction is on stilts and beneath the same, the water of river Mandovi is still flowing smoothly. Though initially there were plans to have a cafeteria & amphitheatre, the same has been shelved is what the CoP submitted. The Terminal Building according to the Captain of Ports would harbour various sectional offices of the Department of Ports and it would also be having modern equipment concerning marine safety and security. As regards Rapid EIA is concerned, he stated that it would not be required because they had already done the same at the time of repairs and expansion of the Jetty and the Terminal building is constructed within the jetty area without reclamation of any area within the river. He went on to submit that there is no reclamation of land or that they have not disturbed the natural course of sea water. He further relied upon Clause 3 (iv) (a) of the CRZ Notification 2011 which provides for construction or modernization or expansion of foreshore facilities meant for defence and security purposes. According to the CoP the Terminal Building would act as a major water traffic control point in the nature of defence and security of our State. The Captain of Ports thus prayed to reject all the contentions raised by the complainant. Terms of Reference -- E: Dossier of Evidence.

The various Annexures to this report itself forms the dossier of evidence.

Concluding observations of the Committee:

The Committee opines that the provisions of CRZ Notification 2011 has not been fully complied by the Project Proponent. Had they prepared the Rapid EIA, then a lot of unanswered aspects which are part of the requirement as contained in Reg. 4.2 would have been automatically complied. The Panaji Port plays a pivotal role in handling passengers and is required for the safety & security of both humans and the geographical area of the State from infiltration by enemies. Upgradation of terminals with new technologies is also required from time to time for the security as well as for the economy to grow. In that sense of the term, the Government went ahead with the idea of constructing a Terminal building by means of pile foundation. The piling work commenced on 21/01/2019 and as of now, the construction is nearing completion of the ground floor. The Complainant has not placed any evidence to suggest that due to the construction undertaken by the Captain of Ports; any adverse impacts on the coastal ecology have cropped up in and around the area of 1 to 2 kms. radius or be it even more. Likewise we are also informed that no such complaints have been received by the GCZMA from any other entities. The area where the Terminal Building is constructed is within the port limits. Although construction in CRZ II areas is permissible towards the landward side of an already existing structure or in alignment to the said existing structure which was prior to 19/02/1991 and further by considering the approval conveyed by MoEF for the CZMP prepared in 1996 in accordance to CRZ Notification 1991, the area along Ourem creek till confluence with Mandovi river is classified as CRZ II. So also the area from Mandovi river bank (from confluence with Ourem Creek) westward till the beginning of Children's Park is classified as CRZ II. The CZMP in 1996 was accordingly required to be modified which apparently has not been done by the GCZMA but for all purposes, the GCZMA seems to be regulating the City of Panaji as being classified as CRZ II. A conscious call needs to be taken on this aspect because construction of structures meant for defence and security purposes requiring foreshore facilities are permitted as per CRZ Notification, 2011 as well as per the Notification of Ports.

During the course of preparing this report, we have taken all possible efforts to obtain relevant documents as well as tried to understand by reading in between the lines of the provisions contained in CRZ Notification 1991 and CRZ Notification 2011. In our tryst in compilation and preparation of this report, if any omissions are observed then we seek pardon to that effect. The committee is also open for giving any further clarification, if required and if so directed by the Hon'ble NGT.

Submitted in compliance to the directions given by Hon'ble NGT, WZ, Pune in Appeal No. 02/2022."

26. It is apparent from the report of the joint committee that CRZ Notification, 1991 and Clause 7(ii) of CRZ Notification, 2011 classify the areas which can come within the CRZ Category II. For all

purposes since the CZMP prepared in terms of CRZ Notification 1991 was in vogue at the time when the project proponent had moved the application dated 09.10.2014, seeking approval to construct the terminal building, this area would qualify to be in CRZ-I area primarily because of fact that the constructions of the terminal building is within the water of river Mandovi which area can be inundated due to rise in sea level consequent upon global warming, however, with the CRZ Notification-2011, if taken into consideration then the area where-upon the terminal building is under construction qualifies to be in CRZ-IV.

27. It is also submitted in this report that Regulation 4.2 of the CRZ Notification, 2011 prescribes the procedure for clearance of permissible activities. The Captain of Ports who is the Project Proponent had filed an application in Form I without any Rapid EIA, specifically in relation to the Terminal Building, probably because of the exemption provided for construction of projects listed in Provision 4(d) of the CRZ Notification 2011. The total built-up area of the Terminal building as per the plan is 2070 Sq.mts. which is less than 20000 sq.mts. The Respondent No. 5/The Captain of Ports had undertaken a Rapid EIA at the time of construction of the jetty way back in March 2008. The present Terminal building is constructed within water of River Mandovi which is declared as a Port vide Notification dated 02.03.2006. The GCZMA may have skipped from taking the documents such as Rapid EIA, Disaster Management Report, Risk Assessment Report & Management Plan and Project Layout Report superimposed on CRZ map indicating HTL & LTL by factoring that the Terminal building was essential for coastal security and on account of the said area being a notified Port area.

28. Further, it is opined in this report that though built up area of the said construction is less than 20,000 sq.mtrs. which would not require prior Environmental Clearance under EIA Notification, 2006 but the bare minimum requirement of proper vetting to be done through the SEIAA, should have been done by the concerned Government Department. As per the plans approved by the GCZMA, the terminal building comprises ground plus three floors.

29. It is also recorded in the report that Respondent No. 5 had urged at the time of this inspection that the ancillary features of amphitheatre and a cafeteria would not be constructed but in support of this argument, no revised plans/drawings were placed before the Committee. The piling work commenced on 21.01.2019 and as of now, the construction is nearing completion of the ground floor.

30. It is further mentioned in this report that construction in CRZ- II areas is permissible towards the landward side of an already existing structure or in alignment to the said existing structure which was prior to 19.02.1991 and further by considering the approval conveyed by MoEF&CC for the CZMP prepared in the year 1996 in accordance with CRZ Notification 1991, the area along Ourem creek till confluence with Mandovi River is classified as CRZ II. So also, the area from Mandovi River bank (from confluence with Ourem Creek) westward till the beginning of Children's Park is classified as CRZ II. The CZMP in 1996 was accordingly required to be modified which apparently has not been done by the GCZMA but for all purposes, the GCZMA seems to be regulating the City of Panaji as being classified as CRZ II. A conscious call needs to be taken on this aspect because construction of structures meant for defense and security purposes requiring

foreshore facilities are permitted as per CRZ Notification, 2011 as well as per the Notification of Ports.

31. The Learned Counsel for the Respondent Nos. 2 & 5 has drawn attention to Regulations 4(i)(d) and 4.2(i)(b) of the CRZ Notification, 2011 which are reproduced here-in below for the sake of convenience:-

"Regulation 4 (i) (d) of the CRZ Notification, 2011 Construction involving more than 20,000 sq. mts. built-up area in CRZ-II shall be considered in accordance with EIA notification, 2006 and in case of projects less than 20,000 sq. mts built-up area shall be approved by the concerned State or Union territory Planning authorities in accordance with this notification after obtaining recommendations from the concerned CZMA and prior recommendations of the concern CZMA shall be essential for considering the grant of environmental clearance under EIA notification, 2006 or grant of approval by the relevant planning authority.

Regulation 4.2 (i) (b) of the CRZ Notification, 2011 Rapid EIA Report including marine and terrestrial component except for construction projects listed under 4(c) and (d)"

and argued that existing road on the landward side under CRZ would require rapid EIA, in terms of the above mentioned provisions and did admit that in the present case, if we go by the Provisions mentioned under CRZ Notification, 2011 then the Rapid EIA study would be required in the present case.

32. We are also of the view that in view of the joint committee's report cited above, it is apparent that the place in question fell in CRZ-IV and the activity of the Respondent No. 5 being a permissible activity, would require permission after complying with the Provisions quoted in Regulations 4(i)(d) and 4.2(i)(b) of the CRZ Notification, 2011 and it is quite apparent that the same has not been done.

33. Alternatively, the Learned Counsel for the Respondent No. 2/GCZMA has tried to convince us that since at the time when earlier permission for construction of terminal building was taken from the GCZMA on 09.10.2014, the said area fell in CRZ-II area according to CRZ Notification 1991, as well as CZMP prepared under the aforesaid Notification, therefore, such kind of activity was permissible, pursuant to which only the construction was being made. Therefore, the Respondent No. 5 should be allowed to complete the project as the same being in advance stage of completion.

34. We are not in agreement with the opinion as well as the request made by the Learned Counsel for the Respondent No. 2/GCZMA and find that in the present case, the Regulation 4 (i)(d) read with 4.2 (i)(b) of the CRZ Notification, 2011 would be applicable which mandates conducting of Rapid EIA as minimum requirement before construction should have been carried out. From the Joint committee's report, it is apparent that no pollution has been found to have been caused on account of the present activity but even then we cannot allow the said activity to go on without the Rapid EIA report.

35. We, therefore, direct that the construction activity be immediately halted by the Respondent No. 5/The Captain of Ports and the same can be initiated only after obtaining permission from the Respondent No. 2/GCZMA after the Rapid EIA report being placed before it.

36. This process should be completed as early as possible i.e. within 02(two) months from now looking to the fact that the project is of public importance and is at advance stage.

37. We set aside the impugned order of the Respondent No. 2/GCZMA dated 06.07.2021. Appeal is accordingly disposed of.

38. I.A. No. 97/2022 (WZ) also stands disposed of.

Dinesh Kumar Singh, JM Dr. Vijay Kulkarni, EM September 30, 2022 Appeal No. 02/2022 (WZ)
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