

The Goa Foundation Through Its ... vs The Ministry Of Environment Forest & ... on 31 January, 2023

Item No. 4

(Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(By Video Conferencing)

Original Application No. 09/2023(WZ)

The Goa Foundation & Anr.

.....Applicant(s)

Versus

MoEF&CC & Anr.

....Respondent(s)

Date of hearing: 31.01.2023

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

Applicant(s) : Mr. Om Anthony D' Costa, Advocate along-with
Mrs. Norma Alvares, Advocates

ORDER

1. From the side of Applicants, learned Counsel Mr. Om Anthony D' Costa has appeared before us and on his behalf learned Counsel Mrs. Norma Alvares is appearing to argue in this matter on the point of admission. She has assured that on the next date of hearing, her Vakalatnama would be filed positively.

2. This application has been filed for quashing of the CRZ Notification No. G.S.R. 37 (E) dated 18.01.2019 or, in the alternative, it is prayed that the provisions stated in the paragraph no. 11 of this application may be set aside and direction be issued by the Respondent No. 1/MoEF&CC to reintroduce/add provisions in the CRZ Notification, 2019, as set out in paragraph no. 11 of the Notification apart from the interim relief.

3. It is submitted that Respondent No. 1/MoEF&CC had issued the Coastal Regulation Zone (CRZ) Notification, 1991 under the Environment (Protection) Act, 1986 with the aim to provide comprehensive measures for the protection and conservation of the country's coastline and provided for the establishment of CRZ upto 500m on the landward side of the High Tide Line (HTL). It also classified coastal zones on the mainland as well as on the islands of Andaman and Nicobar and Lakshadweep into Coastal Regulation Zones- I, II, III and IV. The regulations of activities in these

areas were also laid down. The CRZ Notification, 1991 provided guidelines for the development of beach resorts/ hotels in designated areas of Coastal Regulation Zone (CRZ)-III for temporary occupation of tourist/visitors with prior approval. The CRZ Notification, 1991 was amended 25 times in the last 20 years, most of which set out to dilute the Notification. Coastal Zone Management Plans for the various coastal regions were prepared and conditionally approved on 27.09.1996 and the Coastal Zone Management Authorities were set up pursuant to the Judgment of the Hon'ble Apex Court in Indian Council for Enviro-Legal Action V. Union of India, [(1995) 5 SCC 281]. CRZ Notification, 1991 was replaced by CRZ Notification 2011 on 6th January, 2011, which sought to bring in the fishing activity as a legitimate act with the fishing community having right to residence and livelihood in the coastal areas and also sought to extend the CRZ into the coastal waters as well. The CRZ Notification, 2011 categorized various areas as CRZ, based on environmental and ecological sensitivity into CRZ-I, CRZ-II, CRZ-III & CRZ-IV and varying degrees of protection have been attributed to each zone. Only a limited number of projects and activities were allowed in each zone. It also prescribed the process for the preparation of Coastal Zone Management Plans (CZMPs).

4. The impugned Notification of 2019 had been issued on 18th January, 2019, taking some regressive steps in respect of protection of ecology and rights of the fishing communities and is favoring the commercial and intensive organizational activities. The restrictions which were imposed in the past, have been relaxed without any adequate reasoning for the same and would impair sustainable development and ecosystem. It has sub-divided CRZ-III into unworkable CRZ-III(A) and CRZ-III(B) and has practically abandoned the coastal areas demarcated as CRZ-II and CRZ-III. In the case of Goa, it has abandoned turtle nesting beaches by dropping their names and also abandoned the Khazan system, which is a unique ecological feature of Goa, linked to tidal action.

5. The impugned CRZ Notification is said to be based on the Shailesh Nayak Committee Report (copy enclosed) and it is being claimed that the amendments which have been brought about in the said Notification, were recommended by the said Committee, which is not true. The observations in the Nayak Committee have been stated in Para no.9 sub clause A to C and it has been tried to establish that the amendments brought about in the impugned Notification are not in consonance with the said Committee Report.

6. It has also been submitted that the NDZ along sea-coast is reduced to 50 meters from earlier 200 meters, which is unacceptable in view of sea level rise and ingress of sea water into coastal areas. Further, the developmental activity towards the landward side has been restricted to only 20 meters from the HTL. The CRZ along the rivers is also reduced to 50 meters, which was earlier 100 meters from HTL without any appropriate justification. The NDZ in the impugned Notification is now a nomenclature without any meaning. The intertidal zone is now no longer in NDZ. Roads are permitted to be built in NDZ and activities are permitted on both sides of such roads, which include resorts, hotels and other associated tourism facilities on the landward side of such roads and toilets, changing rooms etc. on the seaward side. Temporary tourism facility is permitted on the beaches in both CRZ-II and CRZ-III at a distance of merely 10 meters from the HTL, which would include shacks, toilets, washrooms, walkways, seating arrangement etc. Eco-tourism activities have been

permitted, which would permit setting up of tree huts for tourists. Earlier sand dunes were given full protection under the CRZ Notifications (1991 & 2011) but now under impugned Notification, the same protects only 'active' sand dunes but the 'active' has not been defined. Tourists are permitted to reside in tents on sand dunes or tree huts in the NDZ, which is sure to lead to destruction of the dunes/ESAs.

7. Further, it is submitted that the impugned Notification will bring large populations closer to the sea and would expose it to its impending dangers, with just NDZ of 50 meters only regarding which there is no rationale.

8. In the CRZ-II, old limitations on nature of construction under the Notification are replaced with Local Town & Country Planning Regulations in force as of 18.01.2019, which will have huge repercussions because FSI/FAR in the local laws has been increased and will continue to change. There is bound to be large-scale increase in construction of thousands of small and tiny hotels, completely choking the coast. The impugned Notification has done away with the "Hazard Line" (HL) for demarcating ecologically sensitive area in addition to the Coastal Regulation Zones. At several places, in available CZMPs, the Hazard Line falls outside the CRZ line, on landward side, exposing existing structures falling between CRZ limits and Hazard Line, to the risk of sea level rise.

9. The provisions which the Applicant wants deleted, have been stated in paragraph no. 11 of the application and also contains the provisions recommended to be added in the impugned Notification.

10. We find that the matter requires in depth consideration as we have to compare the amendments which have been brought about in CRZ Notification, 2019 compared to the earlier Notifications and determine how far they are likely to damage the ecology. Therefore, we admit this application.

11. Registry is directed to issue Notice to the Respondents, returnable within 04(four) weeks.

12. Applicant is directed to provide copy of the application and relevant documents to the Respondents within a week.

13. Respondents are directed to submit their reply within 04(four) weeks providing copies of the same to the other parties in advance.

14. Applicant is also directed to take necessary steps for service upon the Respondents by both ways and also through available e-mail.

15. As regards the interim relief, we propose to consider them only after replies are received from the side of Respondents.

Put up this matter on 20.03.2023

16. Dinesh Kumar Singh, JM Dr. Vijay Kulkarni, EM January 31, 2023 Original Application No. 09/2023(WZ) P.Kr