

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

APPEAL NO.09 OF 2017

M.A.No.84 of 2017

CORAM:

HON'BLE MR. JUSTICE U.D.SALVI
(Judicial Member)

HON'BLE DR. NAGIN NANDA
(Expert Member)

In the matter of:

BETQUI CANDOLA SAMVARDHAN SAMITEE

A Society registered under societies
Registration Act, 1860, under Registration no.
601/Goa/2013.

With its office at

C/o Shri Umakant Shetye

H.No.295/1, Damodaralay Devlay,

Candola Marcela, Goa-403107

Through its authorized Member

Shri Viraj Vishnu Bakre

Major, son of Mr. Vishnu Purushottam Bakre

Resident of House No.317, Devlay Nagar,

Khandola, Marcela-Goa.

.....APPLICANT

VERSUS

1.M/S GERA DEVELOPMENTS PVT LTD

Represented by Shri. Dwarka Rao,

General Manager Liaison, Major

R/o G-18, Gera's Imperium,

Ground floor, Plot No.17

Patto Plaza, Panaji-Goa.

2.THE VILLAGE PANCHAYAT OF BETQUI-CANDOLA,

Through its Secretary
Candola, Ponda, Goa.

3.THE STATE OF GOA,

Through its Chief Secretary,
Secretariat, Porvorim, Goa.

4.THE ADDITIONAL COLLECTOR, II,

North Goa, at Panjai, having
Office at COLlectorate Building,
Panaji-Goa.

5.THE TOWN PLANNER

Town & Country Planning Department
Ponda-Goa.

6.THE CHIEF TOWN PLANNER

Town & Country Planning Department
Ponda-Goa.

7.THE GOA SEIAA

C/o Goa State Pollution Control Board
3rd Floor, Dempo Tower,
EDC Patto Plaza,
Panaji Goa-403001.

.....**RESPONDENTS**

Counsel for Applicant (s):

Mr Viral V.Bakre for Applicant

Counsel for Respondent (s):

Mr. Saket Mone, Mr. Subit Chakraborty i/b Vidhi Partners for
Respondent No.1.

Ms. Fawia M. Mesquita for Respondent Nos.3,7.

DATE: NOVEMBER 27th, 2017.

J U D G M E N T

Heard. Perused Record.

1. The present Appeal, challenging Environment Clearance (EC) dated 31st October, 2016 granted by the Goa State Environment Impact Assessment authority (SEIAA) to the construction of project at Survey No.33/1 of village Candola, Taluka Ponda, Goa has been preferred by the Appellant- Betqui Candola Samvarthan Samittee on 1st March, 2017.

2. The Appellants having sensed that the issue of limitation would arise moved the present M.A. bearing No.84 of 2017 to claim that there is no delay in filing the instant Appeal in view of the circumstances revealed in the said Application.

3. Notice was issued. In response thereto Respondent No.1 Gera Developments Pvt Ltd- Project Proponent (PP) and Respondent No.3. - the Member Secretary, Goa SEIAA filed their replies dated 12th April, 2017 and 24th July, 2017 respectively. The Appellant re-joined the said replies.

4. The Appellants contended that there was no communication of EC in question to them in any manner whatsoever, inasmuch as the Authorities concerned, more

particularly, the Ministry of Environment and Forest (MoEF) had not uploaded the copy of EC on its website and the status of clearance on the website of MoEF as of 1.03.2017 was 'under examination of SEIAA'. The Appellant places reliance upon the Judgment of the **Tribunal in 'Save Mon's case' (All (I) NGT PB (1); Save Mon Regional Federation and Anr Vs Union of India and Ors)** with a particular reference made to para 19 therein.

5. Respondent No.1 Gera Developments Pvt. Ltd revealed in its reply that in compliance of Clause-5 (f) of the EC in question, the EC was duly published on the website of the Company of 16th November, 2016 vide copy of Screen Shot of the website Ex.'C' annexed to the Application. It further revealed that EC was also put in the public domain by Respondent No.3-Goa SEIAA party granting EC by putting it on the website of Govt. of Goa, Department of Science, Technology and Environment on 28th November, 2016 vide copy of list of updated status of ECs granted since year 2011, giving necessary particulars at Exh.'D' to the reply.

6. Respondent No.1 further revealed through its reply that the Appellant was no stranger to the process of grant of EC inasmuch as it has been watching the

developments and participating in the process leading to grant of EC from the time of making an Application there for.

7. Respondent No.3 Goa SEIAA made a categorical assertion in its reply that EC in question was put up in the public domain through the Govt. portal of the State of Goa- Department of Science, Technology and Environment on 28th November, 2006 and accessibility to the said EC was thrown open to public through the simple procedure and links which could be understood and followed open opening the website, and the Appeal being not preferred in the manner and within time prescribed by law it deserves to be dismissed.

8. Respondent No.3 Goa SEIAA produced a copy of the list of updated status of ECs granted by SEIAA published on the website of - department of Science, Technology and Environment at Ex. 'D', annexed to the reply in support of its assertion.

9. In its rejoinder, the Appellant contended that EC can be/(could be) downloaded through the website of - department of Science, Technology and Environment through the links mentioned in the affidavit in reply of Respondent No.3, but it was not available at the time of filing the Appeal. The Appellant further contended that

Respondent No.3 SEIAA ought to have marked copy of EC to them, or ensured that Respondent No.1 did so in terms of the circular dated 30th June, 2009 issued by MoEF, Govt. of India. The Appellant added that EC was not published on the Notice board of Town and Country Planning Department, Village Panchayat, or Notice Board of Goa SEIAA to their knowledge, vide rejoinder dated 27th July, 2017.

10. The Appellant in person, presented note of submissions dated 27.11.2017 and argued the case personally. He placed reliance upon the circular dated 30th June, 2009 issued by MoEF, Govt. of India to contend that it enjoined the Goa SEIAA to stipulate the following condition in the EC:

1. A copy of the clearance letter shall be sent by the proponent to concerned panchayat, Zila Parisad/Municipal Corporation, Urban Local Body and the Local NGO, if any, from whom suggestions / representations, 'if any, were received while processing the proposal. The clearance letter shall also be put on the website of the Company by the proponent."

11. According to him, EC issued is in violation of the circular dated 30th June, 2009, inasmuch as the Clause-5 (f) therein omitted the phrase 'local NGO' therefrom in order to deliberately extend an illegal concession to PP. He submits that this

conduct of the Authorities as well as failure of Respondent No.1 to communicate EC to the Appellant- local NGO which had participated even in recommendatory process undertaken by SEAC, is an offence to the provisions of Section 16 of the National Green Tribunal Act, 2010, which requires communication of every appealable order to the person aggrieved.

12. Learned Counsel appearing on behalf of Respondent No.1 Gera Developments Pvt. Ltd submitted that what would prevail in the present case as a law is the EIA Notification, 2006 duly amended by Amendment Act, 2009. He placed before us amended text of para-10 of the EIA Notification, 2006 (amended by Notification dated 1st December, 2009), which reads as below:

IV In para 10 relating to Post Environmental Clearance

Monitoring,-

- (a) The existing sub-para (i) shall be renumbered as sub-para (ii) and before sub-para (ii) as so re-numbered, the following sub-para shall be inserted namely;
- (a) In respect of Category 'A' projects, it shall be mandatory for the project proponent to make public the environmental clearance granted to, their project along with the environmental conditions and safeguards at their cost by prominently advertising it at least in two local newspapers of the district or State where the project is located and in addition, this shall also be displayed in the project proponent's website permanently.
- (b) In respect of category 'B' projects, irrespective of its clearance by MoEF/SEIAA, the project proponent shall prominently advertise in the newspapers indicating that the project has been accorded environment clearance and the details of MoEF website where it is displayed.

- (c) The Ministry of Environment and Forests and the state/union Territory Level Environmental Impact Assessment Authorities (SEIAAs), as the case may be, shall also place the environmental clearance in the public domain on Government portal.
- (d) The copies of the environmental clearance shall be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.,,;

13. He explained that this amended Notification was issued in exercise of the powers conferred under Sub-section (v) of Clause-5 of Sub-section 2 and 3 of the Environment (Protection) Act, 1986 as a piece of delegated legislation and it also being subsequent to the circular dated 30th June, 2009 issued by MoEF would prevail over circular dated 30th June, 2009 and the impact of the provision made for communication of the appealable order to the person aggrieved in Section 16 of the National Green Tribunal Act 2010 needs to be understood in context with the manner or mode of communication of such order in terms of para-10 of the EIA Notification, 2006, as amended hereinabove. He invited our attention to para-41 of the Judgment delivered in Save Mon's case, wherein the Principal Bench of this Tribunal had noted the provisions in para 10 of the EIA Notification, 2006. He submitted with particular reference to direction-10 in the said Judgment that period of limitation shall have to be reckoned from the date either from the date (1) when

complete order of EC is put on the website of MoEF (In present case SEIAA); and the same can be downloaded without any hindrance or impediments, or (2) when PP uploads EC with its conditions and safeguards upon its website as well as publishes the same in the newspapers as prescribed under the Regulation/para-10 of the Environment Clearance Regulations, 2006, or (3) when EC is displayed by the local body, Panchayat, Municipal Body along with concerned department of the State Govt., whichever is earlier.

14. Learned Counsel appearing on behalf of Respondent Nos. 1 and 3 pointed out from list of the updated status of ECs Ex.'B' to the reply of Respondent No.3 that EC in question was uploaded on the website of SEIAA on 28th November, 2016. They further demonstrated from use of mobile/ tab that not only EC in question, but ECs immediately preceding the EC in question issued to M/s Trinitas Realtors India LLP could also be accessed by use of links provided and the said EC also had Clause 5(f) identical to the one in EC in question.

15. Learned Counsel appearing on behalf of Respondent No. 1 submits that the Appellant could have produced screen-shots taken from the website of

department of Science, Technology and Environment, State of Goa of any previous date to demonstrate that EC in question was not accessible and could not be downloaded. It is pertinent to note that all material i.e. hosted on the website is in PDF file, which is not open to any changes once it is hosted on the website. It is also noteworthy to find from the list of updated status Ex.'B' to the reply of Respondent No.3 that uploaded status of ECs is sequentially placed in the table format making reference to all ECs granted by SEIAA from the year 2011. We have, therefore, no reason to believe that EC in question was not accessible and downloadable from the date on which it was reportedly hosted on the website of the department of Science, Technology and Environment, Govt. of Goa. We also do not find any merit in the contention of the Appellant that Respondent Nos. 1 and 3 were under obligation to communicate EC in question to the local NGO i.e the Appellant, as per the circular dated 30th June, 2009 of MoEF.

16. In light of above discussion, we find no reason to record a note of dissent from what is eruditely observed in para 19 and directed as per para 64(10) the Judgment delivered in Save Mon's case (supra)- in the following words:

19. The limitation as prescribed under Section 16 of the NGT Act, shall commence from the date the order is communicated. As already noticed, communication of the order has to be by putting it in the public domain for the benefit of the public at large. The day the MoEF shall put the complete order of Environmental Clearance on its website and when the same can be downloaded without any hindrance or impediments and also put the order on its public notice board, the limitation be reckoned from that date. The limitation may also trigger from the date when the Project Proponent uploads the Environmental Clearance order with its environmental conditions and safeguards upon its website as well as publishes the same in the newspapers as prescribed under Regulation 10 of the Environmental Clearance Regulations, 2006. It is made clear that such obligation of uploading the order on the website by the Project Proponent shall be complete only when it can simultaneously be downloaded without delay and impediments. The limitation could also commence when the Environmental Clearance order is displayed by the local bodies, Panchayats and Municipal Bodies along with the concerned departments of the State Government displaying the same in the manner afore indicated. Out of the three points, from which the limitation could commence and be computed, the earliest in point of time shall be the relevant date and it will have to be determined with reference to the facts of each case..”

64.

“10. The date on which the order of Environmental Clearance is communicated to the public at large, shall be the date from which the period of limitation shall reckon as contemplated under Section 16 of the Act Communicating the order, in other words, shall mean putting the order in the public domain in its complete form and as per the mode required under the provision of the NGT Act of the Regulation 2006. The limitation shall start running and shall be computed as referred to in Para 19 of the judgment. Where different acts by different stakeholders are complied with at different dates, the earliest date on

which complete communication is carried out, shall be the date for reckoning of limitation.”

17. In our considered opinion, therefore, the present Appeal has been preferred beyond the time prescribed by law. We, therefore, cannot entertain the Appeal.

M.A.No.18 of 2017 is therefore rejected.

Appeal No.09 of 2017 is, therefore, not entertained and is dismissed in limine.

....., JM
(Justice U.D.Salvi)

....., EM
(Dr.Nagin Nanda)

PUNE

DATE: November 27th, 2017.

hkk

NGT