

Item No. 5

(Court No. 2)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.**

(Through Physical Hearing with Hybrid VC Option)

Original Application No.476/2022

Arvindbhai Hirabhai Patel & Ors.

...Applicants

Versus

State of Gujarat & Ors.

...Respondents

Date of hearing: 20.03.2023

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER.
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER.**

Applicant: None for the applicant.

Respondents:

Mr. Parth H. Bhatt for respondent no. 3, 4, 7 and 8
(through VC).

Mr. Maulick Nanavati, Advocate for respondent no. 5 and
6 (through VC).

Mr. Amit Prakash Yadav, District Magistrate, Navsari
(through VC).

Application is registered based on a complaint received by Post.

ORDER

1. The applicants have sent the present letter petition, which is treated and registered as original application, complaining about encroachments and construction of illegal shrimp farms at a Historical Village Karadi, Taluka Jalalpore, District Navsari, Gujarat and thereby causing of environmental pollution/degradation in the ecologically fragile coastal areas.

2. Vide order dated 02.08.2022, this Tribunal constituted a Joint Committee with direction to submit factual and action taken report within two months and notices were ordered to be issued to respondents no. 1 to 7.

3. As per office report notices have been duly served on the respondents.
4. Interim report of the Joint Committee has been filed vide email dated 21.10.2022.
5. Counter Affidavits by respondents no. 1 and 2 have been filed vide separate emails dated 15.11.2022 but none has appeared for them today.
6. Replies have been submitted by respondents no. 5, 6 and 8 vide emails dated 18.03.2023.
7. Learned counsel for respondents no. 5 and 6 has taken objection regarding territorial jurisdiction of this Bench in view of orders passed by Hon'ble High Court of Bombay in **PIL WP 22/2017** titled as **Goa Foundation Vs. Ministry of Environment** on 11.10.2017, **PIL WP No. 04/2022** titled as **The Goa Foundation Vs. The National Green Tribunal & Ors.** on 21.09.2022 and order dated 18.10.2022 passed by Hon'ble Supreme Court in **SLP (c) 17931/2022** titled as **the National Green Tribunal & Anr. Vs. the Goa Foundation & Ors.**
8. Rule 3 of the National Green Tribunal (Practice and Procedure) Rule, 2011

“(1) The Chairperson may constitute a bench of two or more members consisting of at least one Judicial Member and one Expert Member.

(2) The Chairperson shall have the power to decide the distribution of the business of the Tribunal amongst the members of the Tribunal sitting at different places by order and specify the matters which may be dealt with by each such sitting in accordance with the provisions of clause (d) of sub-section) of section 4 of the Act.

(3) If any question arises as to whether any matter falls within the purview of the business allocated to a place of sitting, the decision of the Chairperson shall be final.

Explanation.- The expression "matter" includes application for interim relief."

9. This Tribunal has power to exercise suo motu jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 as held by Hon'ble Supreme Court in **Municipal Corporation of Greater Mumbai V/s. Ankita Sinha and others 2021 SSC Online SC 897 2021 AIR (Supreme Court of India) 5147.**

10. Under order dated 02.05.2022 of the Hon'ble Chairperson of this Tribunal, any case which is recommended by the Hon'ble Members of the Zonal Benches or the Members of the Principal Bench for taking-up as *suo motu* case is required to be placed before the Hon'ble Chairperson for approval.

11. On approval and assignment of the case vide order dated 04.06.2022 by Hon'ble Chairperson for taking of *suo motu* cognizance, this Bench took *suo motu* cognizance on the basis of letter petition received by post on 18.04.2022 much before passing of order dated 21.09.2022 by Hon'ble Bombay High Court in **PIL WP No. 04/2022** titled as **the Goa Foundation Vs. The National Green Tribunal & Ors.**

12. In **PIL WP No. 04/2022** titled as **the Goa Foundation Vs. the National Green Tribunal & Ors** validity of impugned notices dated 06.09.2021, 04.01.2022, 11.04.2022, 27.04.2022 and 26.08.2022 was challenged which were quashed by Hon'ble Bombay High Court vide order dated 21.09.2022.

13. Order dated 21.09.2022 passed by Hon'ble Bombay High Court was challenged before the Hon'ble Supreme Court by filing **SLP (c) 17931/2022** titled as **the National Green Tribunal & Anr. Vs. the Goa Foundation & Ors.** and the directions mentioned in paragraph 56 of

order dated 21.09.2022 have been stayed by Hon'ble Supreme Court vide order dated 18.10.2022 whereby it has been clarified that since two Members (One Judicial and One Expert Member) are very much available for Western Zone Bench, all matters pertaining to Western Zone, Pune, including the matters are arising out of the states of Maharashtra and Goa will be heard only by Pune Bench sitting at Pune.

14. The order dated 02.05.2022 regarding hearing of letter petition by taking *suo motu* cognizance with the approval of and assignment by Hon'ble Chairperson was not challenged and set aside in that case and, therefore, in the very nature of the things and in accordance with the well settled principles of Doctrine of Stare Decisis, the observations in order dated 21.09.2022 will not apply to hearing of the cases cognizance of which was taken *suo motu* on the basis of letter petitions at Principal Bench well before order cited above. In the very nature of the thing, order dated 18.10.2022 passed by Hon'ble Supreme Court will also not apply to hearing of such cases in which cognizance has been taken on the basis of letter petition by Principal Bench of this Tribunal. In the very nature of things these orders do not bar exercise of powers by Hon'ble Chairperson under Rule 3 of the National Green Tribunal (Practices and Procedure) Rules, 2011.

15. It is obvious that assignment of the present case also implies distribution by way of transfer in accordance with rule 3(2) of the National Green Tribunal (Practices and Procedure) Rules, 2011 and we are bound to continue with hearing of the matter subject to any further clarificatory order from the higher Courts.

16. It may also be observed here that as held by Hon'ble Kolkatta High Court in **W.A No. 255/2021** titled as **Sachu Rajan Eapen Vs. State of**

Kerala and Ors. the territorial jurisdiction is a concept well known in law, empowering judicial officers and courts and Tribunals to function within the precincts of the territorial jurisdiction, which is basically intended to regulate the procedure in filing litigations, and in our considered view, will never take away the power conferred under law, on the National Green Tribunal, New Delhi, to deal with the object of the provisions of the Environment (Protection) Act, 1986 and the rules framed there under, provisions of law and that is why procedural laws empower the superior courts to transfer a litigation from one place to another.

17. The State of Gujarat and its instrumentalities are under constitutional and statutory obligations to protect and improve environment and the Gujarat Pollution Control Board is under statutory obligations to ensure due implementation of the environmental laws and the Project Proponents are also bound to comply with the EC/CTE/CTO consent conditions/environmental rules and regulations and there cannot be any objection to any order requiring filing of any response regarding compliance with the same.

18. However, it may be observed that this order shall be subject to clarificatory order from Higher Courts regarding jurisdiction of this Bench for hearing of this case and for this purpose this order shall be operative after one month to enable aggrieved person, if any, to approach the Higher Court by appropriate proceeding for such clarification as may be considered appropriate.

19. In the present case reply/response by respondents no. 3, 4 and 7 has not been received so far.

20. Reply/response by respondents no. 3, 4 and 7 be filed **within three months** by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

21. In view of the significant nature and impact of the questions involved in the present case, we also consider it appropriate to have the assistance of some Advocate as *amicus curie* to assist this Tribunal in just and fair adjudication of the questions involved. Accordingly, Mr. Kabir Ashwin Hathi, Advocate is appointed as *amicus curie* to assist this Tribunal in just and fair adjudication of the questions involved. The GSPCB shall pay Rs. 50,000/- to the amicus curie and also bear other expenses related to the economy class Air Ticket, Transportation, Boarding/Lodging, Photography etc.

22. List for further consideration on 10.07.2023.

23. A copy of this order along with the paper book be sent to Mr. Kabir Ashwin Hathi, Advocate *amicus curie* for her/his record and a copy of this order be also sent to the Secretary, MoEF&CC, GSPCB and the Gujarat State Legal Service Authority for information/record.

Arun Kumar Tyagi, JM

Dr.Afroz Ahmad, EM

March 20, 2023
AG