

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

**APPLICATION No. 85/2015 (WZ)
(M.A.No.175/2015 and M.A.No.8/2016)**

CORAM:

**Hon'ble Dr. Justice Jawad Rahim,
(Judicial Member)**

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

B E T W E E N:

- 1. Goa Foundation,**
Through : Secretary,
G-8, St. Britto's Apartments,
Feira Alta, Mapusa (Goa)-403 507
....Applicant

A N D

- 1. Goa State Infrastructure Development Corporation**
Through : Managing Director,
EDC Building,
Panaji, Goa-403 001
- 2. Goa State Environment Impact Assessment Authority,**
Through : Secretary,
C/o. Goa Pollution Control Board,
Dempo Towers, Patto,
Panaji, Goa- 403 001.
- 3. Goa Coastal Zone Management Authority,**
Through : Member Secretary,
3rd Floor, Dempo Towers, Patto,
Panaji, Goa- 403 001.
- 4. State of Goa,**
Through : Chief Secretary,
Govt. of Goa, Secretariate,
Porvorim, Goa.
- 5. Principal Chief Conservator of Forest.**

Department of Forest,
Swami Vivekanand Road,
Panaji, Goa – 403 001.

- 6. Union of India,**
Through : Its Secretary,
Ministry of Road Transport and Highways,
Transport Bhavan, 1
Parliament Street,
New Delhi 110 001.
- 7. M/s. Larsen & Toubro,**
Mandovi Bridge Project,
Old Bombay Bus Stand,
Opp. K.T.C. Bus stand,
Panaji, Goa 403 001.
- 8. National Highway Authority of India (NHAI),**
Through : Goa Office,
Near Babasaheb Ambedkar Vocational Centre,
Near Old PHC, MPT, Head land Sada,
Vasco, Goa – 403 804.

...Respondents

Counsel for Original Applicant :

Mrs. Norma Alvares,
Mrs Supriya Dangre,

Counsel for Original Respondent Nos. 1 to 5 :

Mr. A.N.S. Nadkarni, A.S.G. (Adv. General)
Mr. Dattaprasad Lawande, Adv.
Mr. Pradosh Dangui, Adv.

Counsel for Original Respondent No.7 :

Mr. Rajesh Sanjanwala, Sr. Adv.
Mr. Parth Contractor for Singhi & Co.

DATE : April 7th, 2016

J U D G M E N T

- 1.** This Application is filed on 9th August, 2015, seeking prayers to enforce compliance with the requirement of EIA Notification, 2006 and CRZ Notification 2011 with regard to the construction of the 3rd bridge across River Mandovi in

Goa which is alleged being constructed without necessary Environmental Clearance (EC), environmental studies, environmental management plan or other environmental safeguards. Applicant submits that this 3rd bridge being constructed across River Mandovi has construction built up area more than 20,000 (twenty thousand) sq.m and there are four (4) piers in the riverine CRZ area besides large embankment in the CRZ area. Applicant claims that this is a substantial issue related to environment as the construction of the bridge has commenced without mandatory environment clearance under CRZ notification and EIA Notification, 2006. The learned counsel for Applicant fairly states that they are not against the construction of the bridge nor they are willing to stop or demolish the construction of the bridge and their only prayer is to ensure that the environment in terms of intrinsic riverine system, livelihood protection and mangroves is adequately protected.

2. Goa State Infrastructure Development Corporation (GSIDC) is Respondent No.1 and entrusted by State of Goa i.e. Respondent No.4 for execution of this bridge construction. Respondent No.2 and 3 are the statutory authorities constituted under provisions of Environment (Protection) Act, 1986 i.e. Goa State Environment Impact Assessment Authority (Goa-SEIAA) and Goa Coastal Zone

Management Authority (GCZMA). Respondent No.5 is the Principal Chief Conservator of Forest of Goa. The Ministry of Road Transport and Highway (Government of India) and National Highway Authority of India are Respondent Nos.6 and 8 whereas M/s. Larsen and Toubro, the contractors executing the project is Respondent No.7. The Applicant submits that the proposal for the Mandovi (III) bridge was submitted by Respondent No.1 to GCZMA on 6th February, 2014, though the Applicant points out that this proposal consisted only general alignment drawing (GAD) of the proposed alignment of the bridge without any supporting documents indicating environmental baseline setting, environmental concerns and proposed safeguards. Two GCZMA experts visited the site on 14th February 2014, though the site inspection report was signed by only one of them. The report clearly recommends that the rapid EIA for the project needs to be carried out. Further the inspection report also records certain recommendations to consider the hydraulics in order to avoid silting. Applicant submits that GCZMA in its meeting held on 20th February 2014 approved the project subject to certain conditions. Accordingly, GCZMA granted the NOC for the proposed construction of the bridge on 4th March, 2014 with following specific conditions :

1. The project proponent/GSIDC should obtain the information available with NIO regarding impact of river banks, morphologies, bathymetry and sedimentation.
 2. Flow of current to be regularized by keeping the alignment of the column of (III) bridges uniformity parallel to flow in order to prevent silting.
 3. No coffer dams should be constructed in the river.
- 3.** Applicant, therefore, submits that the GCZMA has given such NOC without assessment of impact of the proposed construction on the banks and in the riverine area. Applicant also submits that GCZMA, without having proper construction plan, methodology and also, the potential environmental impacts and safeguard measures, went ahead with grant of such NOC, due to the peer pressure of dealing with the Government project. GCZMA has also not considered the cumulative impact of the existing bridges, remnants of the collapsed bridge, the mangroves in the area and existing ecological status of the river which could have been properly documented, if the EIA report would have been made compulsory as per the recommendations of the GCZMA Experts.
- 4.** Applicant submits that subsequently GSIDC engaged the Respondent-7 as contractors and the work of construction of bridge commenced somewhere in July 2014 and thereafter, Applicant tried to obtain the information and could locate the copy of NOC dated 4th

March, 2014. The Applicant wrote to GCZMA and GSIDC on 17th July 2015 complaining about the construction of the bridge in the CRZ area without mandatory compliance with CRZ/EIA Notification. It was further revealed that the GCZMA granted conditional NOC for cutting of mangroves on 9th February 2015. As per Applicant this fact itself indicates that while granting the NOC dated 4th March 2014, GCZMA was not aware about existence of the mangroves in the said area nor it was aware about the requirement/plan to cut the mangroves in the proposed construction.

5. Applicant submits that the proposed construction is more than 20,000 (twenty thousand) sq. mtr. built up area and being Building and Construction activity, this project needs to obtain EC under the EIA Notification, 2006 read with CRZ Notification 2011. Applicant has prayed following :

1. Direct the Respondents to conduct the necessary EIA and other studies required for construction of Mandovi bridge (III) and procure prior environment clearance.
2. Direct the Respondents to consider the impact of bridge (III) taking into consideration the ecological impacts of the earlier two bridges on the river and its health ("cumulative impact").

6. Goa State Infrastructure Development Corporation (GSIDC) is Respondent No.1-Government Company fully owned and controlled by the State

Government of Goa and has been notified as executing agency for the proposed bridge construction project. GSIDC has filed reply on 21st August 2015 and stated that the work order for the bridge construction was issued on 17th July, 2014 after following necessary procedure. The bridge under construction has been proposed in order to reduce the traffic congestion, which is under consideration of the Hon'ble High Court, Bombay at Goa in P.I.L. *suo motu* No.2/2013. The master plan for Panaji including the Mobility Plan was kept for perusal of public from 18th July 2013 which incorporate this bridge. This bridge is not an isolated structure but is a part of National Highway No.17 and as such is an important bridge to clear the bottleneck on this strategically important North-South coastal highway. This bridge has become a necessity in view of the increasing traffic which ultimately will reduce the air pollution arising from the congestion.

7. GSIDC further states that they have taken necessary permissions from the concern authorities including GCZMA and GSPCB. Furthermore, as a responsible corporate, further environmental studies related to EIA, biodiversity etc. have also been carried out for this particular project. The proposed bridge alignment is located in the area in between two existing

bridges and therefore, minimum environmental damage is envisaged. GSIDC submits that they approached GCZMA with General Alignment drawing (GAD) on 6th February 2014 for NOC for the proposed bridge. GCZMA which is the regulatory authority, enforcing CRZ Regulation, after carrying out the necessary site inspection, considered the proposal and granted the NOC on 4th March 2014 with necessary conditions. GSIDC submits that the bridge construction methodology is environmentally sustainable as the bridge is constructed on piles and therefore, it will not disturb the water currents significantly. Further, there will not be constructing coffer-dams for such construction. Moreover, only four piers in the riverine area have been proposed against 12 (twelve) piers each in the existing two bridges, thereby reducing the footprint of such construction in the riverine area which is CRZ zone. GSIDC further submits that though EIA was not specified by the GCZMA, it has already carried out such study and further they are committed to protect the environment by whatever actions that are required.

8. GSIDC has also raised issue of limitation as the construction of the bridge was started on 17th July 2014 and Applicant being environmentally conscious organization, was expected to know the construction of

such project, in view of the prominence of such construction in the local area.

9. GSIDC has filed additional affidavit on 2nd September 2015 and submits that the proposed project admeasures to 2881.87m in length and the total built-up area is 69,188.90sqm and do not attract the provisions of Environment Clearance Regulations 2006. Furthermore, the GCZMA which is the regulatory authority for the CRZ Regulation 2011 has already granted NOC for the project. GSIDC mentions that MoEF vide letter dated 2nd May 2011 addressed to GCZMA in respect of another bridge has categorically stated that no environmental clearance is required for construction of the bridges.

10. Respondent Nos.2, 3, 4 and 5 have not filed separate affidavits on record. Respondent No.6 i.e. Union of India has also not filed any affidavit though properly served. Respondent No.7 has filed an affidavit on 2nd September 2015 essentially raising the same contentions as by the original project proponent i.e. the GSIDC and hence the same are not repeated herein.

11. Considering the records of the Application and Affidavits filed by the contesting parties and after hearing the learned counsel of the parties, we are of the

considered opinion that following issues are requires adjudication in the matter :

1. Whether the Application is barred by Limitation ?
2. Whether the construction of bridge in question requires environmental clearance under EIA Notification 2006 and/or under CRZ notification 2011?
3. Whether necessary procedure has been adopted by the GCZMA while granting the NOC dated 4th March 2014 and whether necessary safeguards have been prescribed to ameliorate the potential environmental degradation?
4. Whether certain directions are required to be issued by the Tribunal subject to adjudication on above issues?

Issue No.1 :

12. Learned Advocate General for State of Goa, appearing for Respondent Nos. 1 to 5 argued that the present Application is hopelessly barred by limitation on the ground that the Application has been filed much after the period of limitation stipulated under Section 14(3) of the National Green Tribunal Act, 2010, as even going by pleadings of the Application i.e. in para No.15, it is admitted that the construction of the project was initiated in June 2014 and the present Application is filed on 1st August 2015 i.e. much after the period of limitation, even after considering the period which can be condoned by the Tribunal. Secondly, there is no substantial question raised in the present Application which relates to the environment. Learned Advocate General argued that the project is costing more than Rs.400 (Rs. four hundred)

crores and its construction including the foundation laying ceremony was well publicized in the local newspaper. In any case, the Applicant being NGO working in the field of environment and also frequenting the area where the construction activity going on, cannot claim that they were unaware of the construction. He further states that this project has been proposed in order to reduce traffic congestion along the National Highway which is connecting north-south banks of the river Mandovi. This project is a part of the national highway and important infrastructure project, proposed by the State Government for the public good. He contended that the significant amount has already been spent on this project and as such, the present Application which is filed belatedly, should be entertained in view of the principle of Sustainable Development.

13. Learned Advocate General also raised technical objections regarding completeness and correctness of the verification form, Resolution of the Society/Trust regarding filing of this Application and also non disclosure of the so called experts who have contributed to the critic on the NIO report as well as EIA report. He fairly submits that though he is not putting emphasis and not pressing dismissal on these grounds, his submission may be taken on record so that, in future

litigations, such deviations can be avoided and if not avoided, can be dealt accordingly

14. Learned counsel Mrs. Norma Alwares, appearing for Applicants fairly stated that she is not against the construction of the bridge but her only concern is that all the necessary environmental safeguards and procedures need to be followed before undertaking such project. She admits that the construction of the bridge and the alignment of the bridge are primarily the policy issues which fall in the domain of the Executive. However, she highlights that it is a settled legal position (Narmada Bachao Andolan judgment of Apex court) that while implementing the policy decision, the Government needs to be fair and should follow all the existing Rules and Regulations. In any case, she argues that the doctrine of Public Trust and precautionary principle will prevail while implementation of such projects. She submits that though the construction would have started in July 2014 but only after finding from the records that no necessary clearances including CRZ clearance and environmental clearance have been obtained for this project, the first cause of action has arose.

15. According to her, the project requires environmental clearance under the CRZ Notification as well as EIA notification which has not been obtained so

far. She contended that in case of environmental litigation, particularly the CRZ or environment clearance violations, the knowledge of project is not relevant but the knowledge of such violation of environmental statutes would be the clinching factor for deciding the limitation. She contends that the Tribunal is required to function on the principles of natural justice, pre-cautionary principle, polluters pay principle and sustainable development. She elaborated the provisions of Section 14 of National Green Tribunal Act, 2010 and submitted that the date on which the cause of action first arose is obviously important but in the context of “such dispute”. According to her, the dispute in the present case is regarding not obtaining the necessary environmental clearance for the project and therefore, she argued that the present Application is well within the limitation.

16. We have carefully reviewed the submissions of learned Advocate General and learned counsel for the Applicants. The present Application has been filed under Section 14 of National Green Tribunal Act and the relevant clause of Limitation is re-produced below :

14(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose.

17. The present dispute seems to be riveted on necessity of obtaining environmental clearance for the

bridge construction project. In the instant case, the project area is covered under the CRZ Notification 2011 and therefore, the requirement of necessary clearance under the CRZ Notification 2011 read with EIA Notification 2006 is the issue under consideration. The learned Advocate General as well as learned Sr. counsel for Applicant have relied on the following judgments:

1. Supreme Court Cases, (2000) 10 S.C.C. 664 in Narmada Bachao Andolan Vrs. Union of India & Ors.
2. NGT in Application No.193/2013 in Thenkeeranur Vivasayigal Nala Sangam Vrs. The Secretary to MoEF & Ors. (Southern Zone, Chennai)
3. NGT in Application No.11/2013 (P.B.46/2013 (THC) in Aradhana Bhargav & Ors. Vrs. MoEF & Ors. (Central Zone) Bhopal,
4. NGT in Application No.28(THC)/2013 George Baretto & Ors. Vrs. State of Goa & Ors.). Western Zone, Pune
5. NGT in Application No.32/2015 in Trupti Shah & Ors. Vrs. The Chairman, Sardar Vallabhbhai Patel Rashtriya Ekta Trust (SVPRET). Western Zone, Pune.

18. Hon'ble Central Zone Bench National Green Tribunal, Bhopal while deciding the Application No.11/2013 has elaborately discussed the provisions of Section 14(3) wherein it is pointed out that the words "first arose" in Section 14(1) are the indicators of unambiguous legislative intent and if the "continuing cause of action" is to be accepted, the words "first arose" in the above provision will loose its importance and significance. At the same time, it is also noted that

such cause of action has to be linked with “such dispute” which may vary from case to case and even within a particular matter, the dispute may vary in terms of nature and timing.

19. In the present case, the GCZMA which is regulatory authority enforcing the CRZ Notification 2011 in the State of Goa, has been constituted by the MoEF order SO-2264(C) dated July 22nd 2013 and has been given a specific mandate as stipulated in clause-II of the said Notification. In the present case, neither the GCZMA nor MoEF has filed any affidavit submitting their stand on the contentions raised by the Applicant on the issue of requirement/necessity of obtaining environmental clearance under the CRZEIA notification for the proposed bridge construction.

20. With the above discussion, it manifests that the scope of the Application is restricted to decide the question “whether the environmental clearance is required for such type of bridge construction ?” and such dispute has arisen only after the knowledge that the project proponent has not obtained the environmental clearance for the project. We are, therefore, of the opinion that as the Applicant has not challenged the construction of the bridge but the challenge is only on the ground that it has not obtained

environmental clearance. And therefore, the period of limitation would trigger from the date of such knowledge of such alleged violation which has given rise to the “dispute” as defined under Section 14(3) of the National Green Tribunal Act. It is also manifest that such massive construction project will undoubtedly have some environmental impacts during construction as well as operation of the project and certain environmental safeguards are required to be taken in planning and execution of the project. Therefore, the decision or adjudication on the question of requirement of environmental clearance will also be linked with the environmental impacts and the safeguards required under the EIA Notification as well as CRZ Notification and therefore, in our considered opinion, the dispute which has been raised, is a substantial question related to environment. We, therefore, hold that the present Application is within the limitation and falls within the scope of Section 14 of NGT act, 2010 and accordingly, the Application will proceed for further adjudication.

Issue No.2 :

21. Now, we will deal with the question of adjudication on the prayer of the Applicant that Respondent shall be directed to procure prior environmental clearance. In the Application, Applicant has relied on the provisions of CRZ Notification 2011 and EIA Notification 2006 to

submit that such a project require prior environmental clearance. Learned Advocate Mrs. Norma Alwares contended that CRZ Notification, though has prohibited various activities, but has enlisted bridges as a permissible activity. She relied on the Clause 3(iv)(a) as well as 8(i)(ii)(b) wherein the bridges are allowed in the CRZ area. However, she highlighted that such a permissible activity is not without adequate precautions which are expressly referred in the various clauses of the CRZ Notification including the regulation of such permissible activities in CRZ area. She relied on Clause 4(i)(a) wherein it is expressly mentioned that “clearance shall be given for any activity within the CRZ, only if, it requires waterfront and foreshore facilities, would be required to obtain the clearance under the CRZ Notification. Further such clearance needs to be obtained by following due procedure referred in Clause 4 and 4.2 of the CRZ Notification.

22. The another contention of learned Advocate Mrs. Norma Alwares is that the bridge is undoubtedly a construction project. Further as held by the Hon’ble Principal Bench of N.G.T. in Application No.137/2014 (Tongad Judgment), the Tribunal has already dealt on the issue elaborately. She pointed out that the definition of the bridge which has been produced in the

said judgment in para 11 wherein the bridge has been identified a building.

First and foremost, the meaning and scope of the word 'bridge' has to be understood.

"A bridge is a building erected across a river, ridge, valley, or other place for common benefit of travelers. It is a structure that spans and provides a passage over a road, railway, river or some other obstacles (Ref : Wharton's Law, Laxicon 15th Edn., 2012, Collins English Dictionary and Thesaurus 1st Edn. 1999)

Law Laxicon, 3rd Edition 2012 describes the word 'bridge' as follows :

"A bridge is a structure of wood, iron, brick, or stone, ordinarily erected over a river, creek, pond or lake, or over a raving, railroad, canal or other obstruction in a highway so as to make a continuous roadway and afford to travelers a convenient passageway from one bank to the other. While a bridge is a part of the highway, which passes over it, no definite rule can be laid down as to where one terminates and the other begins"

23. She argues that in Tongad case, the Tribunal has dealt with the bridge which has the built up area more than 1,50,000 sq.m. and held that said Bridge construction is covered under entry No.8(b) of the schedule to the Regulation 2006. It is her case, therefore, that the present bridge which is having a built up area of about 69,000sqm, being a building and construction project, would be covered under entry No.8(a) of the Schedule of the Regulation of 2006 and it is therefore necessary to obtain the environment clearance for this bridge construction. She, therefore, relying on the precautionary principle, argued that the Regulatory Authorities enforcing CRZ and EIA Notification are mandated to adopt a safer approach while dealing with such projects by giving wider meaning to the expressions used, rather than to frustrate the object and purpose of the Regulation of 2006

causing irreversible ecological and environmental damage. She also relied on the observations of the Hon'ble Supreme Court in Re : "*Construction of park at Noida Near Okhala Bird Sanctuary Vrs. Union of India (UOI) (2011) 1 SCC 744*", the Hon'ble Apex Court held that :

"66. The illustration given by Mr. Bhushan may be correct to an extent. Constructions with built up area in excess of 1,50,000 sq.mtrs. would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. To that limited extent there may be a quantitative correlation between items 8(a) and 8(b). But it must be realized that the converse of the illustration given by Mr. Bhusha may not be true. For example, a project which is by its nature and character an "Area Development project" would not become a "Building and Construction project" simply because it falls short of the threshold mark under item 8(b) but comes within the area specified in item 8(a). The essential difference between items 8(a) and 8(b) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated thereunder.

67. In light of the above discussion it is difficult to see the project in question as a "Building and Construction project". Applying the best of 'Dominant Purpose or Dominant Nature' of the project or the 'Common Parlance' test, i.e. how a common person using it and enjoying its facilities would view it, the project can only be categorized, under item 8(b) of the schedule as a Township and Area Development project". But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 hectares) is less than 50 hectares and its built up area even if the hard landscaped area and the covered areas are put together comes to 1,05,544.49 square meters, i.e. much below the threshold marker of 1,50,000 square meters."

"But the absence of a statute will not preclude this Court from examining the project's effects on the environment with particular reference to the Okhala Bird Sanctuary. For, in the jurisprudence developed by this Court Environment is not merely a statutory issue. Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution."

24. She therefore, argued that the project in question requires environmental clearance and such environmental clearance need to be obtained by following due procedure Law.

25. Countering this argument, learned Advocate General for State of Goa contended that the bridge is a

permissible activity under the CRZ Notification clause 8, regarding norms for regulation of activities permissible under this Notification, wherein it is stipulated that the development and construction activities in different categories of CRZ shall be regulated by the concerned CZMA in accordance with the norms specified. He further submits that the bridges are allowed in as per clause 8(i)I(ii)(b) and the bridges are allowed even in CRZ-I area under the said clause. He therefore, contended that it is a settled legal position that the word “Regulation” has been interpreted as authority to regulate including grant of permission, enforcement of conditions and taking action against violation etc. and therefore, the GCZMA being a regulatory authority under clause 8, has granted NOC to the project after considering all necessary aspects of the project. He submitted that as the project has been considered under clause 8, the question of applicability of clause 4 does not arise separately. In other words, it is his contention that the NOC granted by the GCZMA on 4th March 2014 is in fact a permission and/or clearance under the CRZ Notification.

26. Learned Advocate General dealt further on the applicability of the EC under Regulations of 2006. He also relied on the said “Tongad Judgment” of Hon’ble Principal Bench of NGT and argued that the fact that the

Tribunal has held that the construction of the bridge covering a built area greater than 1,50,000sqm and/or covering an area greater than 50Ha would be covered under entry 8(b) of the Schedule to the Regulation of 2006, would not automatically be interpreted as any bridge project with built up area less than 150000sqm but more than 20,000 sqm requires clearance under entry 8(a) of the Regulation. He elaborated the scheme of EIA Notification and submitted that each entry in the schedule is of unique identity and has separate and distinct meaning attached to it. Though, there is some ambiguity in definition entry 8(a) and (b), it cannot be interpreted in such fashion that if a project is not fitting in one category, it should be tried for some other category. According to him, this will defeat the purpose of Notification and legislative intent of categorising various projects and activities under different entries in the schedule. He relied on para 34 of the judgment wherein it is held that the interpretation of the entries that would frustrates the object and implementation of the relevant clause would not be permissible. The Hon'ble Apex Court has provided distinction between the township project and building and construction project in 'Noida Judgment' and held that the township project was different, both quantitatively and qualitatively from mere

building and construction project. He also relied on the stand taken by MoEF wherein as per the affidavit of the MoEF dated 9th December 2014 in Appeal No.31/2014 wherein another bridge construction of the Respondents has been challenged by the same Applicants, MoEF has categorically stated that the activity of construction of bridge does not require any environmental clearance under EIA Notification 2006. Further, MoEF has also submitted that such proposals need to be regulated by concerned GCZMA under clause 8 of the CRZ Notification 2011.

27. At this stage, we would like to refer to the judgment of the Hon'ble High Court, Bombay in Writ Petition No.728 of 2015 wherein it has been held that the environmental clearance as referred in Section 16 of the National Green Tribunal Act would cover all clearances issued under Environment (Protection) Act, including CRZ clearance under CRZ notification, 2011. The relevant para is reproduced below :-

“An environment is defined under Section 2© of N.G.T. Act, as under :

“environment” includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property

The object of enacting N.G.T. Act, 2010 is to provide for the establishment of a Tribunal for the effective and expeditious disposal of the cases relating to the environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith. On perusal of the definition of

‘environment’ as pointed out hereinabove, it clearly provides that any issue concerning the inter-relationship which exist among and between water, air and land and human beings would be included as an environment issue. The fact that the CRZ Notification, 1991/2011 has been issued in exercise of powers under Section 3 of the Environment Protection Act, would itself suggest that such clearance is granted in connection with an issue of environment. On perusal of the environmental clearance issued in favour of the petitioner, we find that such clearance has been issued subject to obtaining the CRZ clearance. Section 16(h) of the N.G.T. Act clearly provides that an appeal would lie against an order made on or after the commencement of the Act, granting environmental clearance in the area in which the Industry, etc. is allowed to operate, subject to certain safeguards in terms of the Environment Protection Act. On reading the said provision, it cannot be said that an environmental clearance, as specified in Section 16(h) of the N.G.T. Act, would be restricted only to environmental clearance granted under the Regulations of 2006. The exercise of grant of clearance under CRZ Notification would entail a matter included in the definition of environment under the N.G.T. Act and as such, any clearance granted with that regard will be subject to an appeal under Section 16(h) of the N.G.T. Act. This can clearly be viewed in the context of the object of enacting the N.G.T. Act for an effective and expeditious disposal of the cases relating to environment. The matters dealing with the measures as stipulated under the CRZ Notification are also essentially environment issues and as such, any clearance granted in terms of such Notification would be amenable to an appeal under Section 16(h) of the N.G.T. Act, is that the environmental clearance, as stipulated in Section 16(h) of the N.G.T. Act would also include all clearances issued under the Environment Protection Act, which would include a CRZ clearance. The fact that while examining the grant of a CRZ clearance would also entail examining an aspect relating to environment cannot be at all be disputed. As such, giving a restrictive meaning to the word ‘environmental clearance’, as pointed out by Shri Shival Dessai, the learned counsel appearing for the petitioner, would in fact defeat the very purpose and object of creating the N.G.T. Act. Apart from that, as rightly pointed out by the learned counsel appearing for the respondent nos.1 to 4, the CRZ clearance itself stipulates that any clearance granted, may be challenged before the learned Tribunal in terms of N.G.T. Act. This itself suggests that the challenge to such CRZ clearance is amenable to an appeal under the N.G.T. Act. Though on perusal of impugned order passed by the learned Tribunal, it appears that the learned Tribunal has proceeded on the assumption that the proceedings initiated by the respondent nos.1 to 4 were in terms of Section 14 of the N.G.T. Act, but however, based on the admitted facts of the case, the proceedings initiated by the respondent Nos.1 to 4 in respect of the CRZ clearance is an appeal under Section 16 of the N.G.T. Act and as such, we cannot accept the contention of Shri Shivam Dessai, the learned counsel appearing for the petitioner that the challenge to CRZ clearance is not amenable to an appeal under Section 16(h) of the N.G.T. Act.”

28. We have perused the documents on record and carefully considered the arguments advanced by the learned counsel. The issue under consideration has two aspects to decide :

1. Whether the project in question requires clearance under CRZ Notification, and
2. Whether the project under question requires environmental clearance under EIA Notification ?

We proposed to deal these two issues separately.

29. The CRZ Notification 2011 prohibits certain activities within CRZ area as stipulated in clause 3 of the Regulations. It is not disputed that the bridges are permissible activities as per the exemption given in the said clause. The clause 8 of the Regulation defines the norms for regulation of activities permissible under this notification, even wherein the construction of the bridge is permissible in CRZ I and III areas. The whole issue of need of taking clearance revolves around the interpretation of those two clauses wherein such permissibility is referred. The relevant provisions are reproduced below for understanding :

Clause 3 : Prohibited activities within CRZ,-

The following are declared as prohibited activities within the CRZ :

- (i) -----
- (ii) -----
- (iii) -----
- (iv) Land reclamation, bunding or disturbing the natural course of seawater 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 such as meant for defence and security purpose and for other facilities that are essential for activities permissible under the Notification;

(b) - - - -

(c) - - - -

(d) - - - -

Clause 8 : Norms for regulation of activities permissible under this Notification.

(i) The development or construction activities in different categories of CRZ shall be regulated by the concerned CZMA to accordance with the following norms, namely;

I. CRZ-I

(i)

(ii) Areas between LTL and HTL, which are not ecologically sensitive, necessary safety measures will be incorporated while permitting the following, namely –

(a) - - - -

(b) construction of dispensaries, schools, public rain shelter, Community toilets, bridges, roads jetties, water supply drainage, sewerage, which are required for traditional inhabitants living within the biosphere reserves after obtaining Approval from, concerned CZMA.

(c) - - - - -

(d) - - - - -

(e) - - - - -

(f) - - - - -

(g) - - - - -

II. - - - - -

III. CRZ-III

A. Areas upto 200 mts. From HTL on the landward side in case of seafront and 100 mts. Along tidal influenced Water Bodies or width of the creek, whichever is less to be earmarked as “No Development Zone (NDZ)”—

(i)

(ii)

(iii) However, the following activities may be permitted in NDZ)

(a) - - - -

(b) - - - -

(c) - - - -

(d) - - - -

(e) - - - -

(f) - - - -

(g) - - - -

(h) - - - -

(i) - - - -

(j) construction of dispensaries, schools, public rain shelter, Community, toilets, bridges, roads, provision of facilities for water supply, drainage, sewerage, crematoria, cemeteries and electric sub-station, which are required for the local inhabitants may be permitted on a case to case basis by CZMA;

30. A plain reading of the permissibility clause under 8 would indicate that the constructions referred in these sub-clauses are basically to cater the need of the local inhabitants and traditional inhabitants living within the biosphere reserves. Undoubtedly, the present site has presence of mangroves as admitted by both GSIDC and GCZMA and therefore, some of the area of project falls within CRZ-I zone. Obviously, the permissibility provisions referred in clause 8 in CRZ-I area, related to the bridge, are subject to certain riders which are not being relevant in present case like presence of biospheres reserves. It is neither the case of Respondents that the bridge is meant only for local residents as per exemptions given for CRZ-III area.

31. In contrast, the permissibility under Clause 4 is on much broader footing and can be applicable in the present case. In view of the expressions used in such permissibility clause, particularly for the CRZ-I areas in the clause 8, we are of the considered opinion that the permissibility under clause 8 in CRZ-I area, for construction of bridge, is not applicable in the present case. As per the submissions of the GSIDC, the area of

the project site has mangroves over more than 1000sqm area, classifying the area as CRZ-I as per the clause 7 of the Notification and therefore, we are of the opinion that the proposed bridge is a permissible activity under clause 3(iv) of the CRZ Notification and cannot be construed as a permissible activity under clause 8 in the CRZ area.

32. Having answered such applicability, the next logical question is the need of clearance. We would like to refer clause 4(i)(a) which expressly provides that the clearance shall be given to any activity within CRZ area, only if, it requires waterfront and foreshore facilities. In the instant case it is not disputed that the bridge requires the waterfront and foreshore activities and therefore would necessitate obtaining clearance for such project under CRZ notification.

33. Obviously, with this finding, it is mandatory for the project proponent and the authority to comply with the procedure for clearance as stipulated in clause 4(ii) of the CRZ notification.

34. Now coming to the question of applicability of environmental clearance under Regulations of 2006, we are conscious that this is a delicate issue which needs to be resolved and will also have wider ramification in view of large number of bridges and similar structures being constructed all over the country. Notwithstanding such a

fact, the Tribunal is posed with a question on the applicability of entry 8(a) of EIA regulations for the bridge in question which has a built up area of about 67,000 sq.m. For the better clarity, we would like to reproduce the entry 8 of the EC Regulations 2006 :

List of Projects or Activities requiring Prior Environmental Clearance

Project or Activity		Category with threshold limit		Condition if any
		A	B	
1		Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	(2)	(3)	(4)	(5)
8		Building/Construction projects/Area Development project and Townships		
8(a)	Building and construction projects		> 2000sq. mtrs and < 1,50,000sq. mtrs of built-up area#	⁴⁶ [The built-up area for the purpose of this notification is defined as “the built-up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects]
8(b)	Townships and Area Development projects		Covering an area > 50 Ha and or built up area > 1,50,000 sq. mtrs ⁺⁺	⁺⁺ All projects under Item 8(b) shall be appraised as Category B1

35. It is clear from this table that section 8 has been distinctively grouped in two categories i.e. entry 8(a) relate to building and construction project and entry 8(b) relates to township and area development project. In the present case, the Applicant has argued that entry 8(a) will be applicable necessitating environmental clearance under Environment Clearance Regulation 2006 for the bridge construction. The ‘Tongad judgment’ of the Hon’be Principal Bench has elaborately dealt on the applicability of Environment

Clearance for the bridge which are having more than 1,50,000 sqm built up area and held that such project would be covered under entry 8(b) of the schedule to the Regulations of 2006. We have also considered the orders of the Apex Court in “Okhala Sanctuary matter” wherein it has been held that the absence of statute will not preclude the Court from examining project’s effect on the environment with a particular reference to Okhala Bird Sanctuary case. The Hon’ble Apex Court in para 66 of the said judgment has provided a distinction between township project and construction project and held that a township project is different, both qualitatively and quantitatively from mere building and construction project. Para 66 of the said judgment is already reproduce above.

36. The Hon’ble Principal Bench in the Tongad judgment has also considered the issue and while noting that the entry 8(a) and 8(b) are worded somewhat ambiguously, the Area Development Project is distinct from the building and construction project, which by its very language is specific and distinct. It has also considered absence of Law cannot be a ground for degrading the environment and related para are reproduce below :

“**36.** The above dictum of the Supreme Court clearly laid down a fine distinction between Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 on one hand, while on the other hand held that mere absence of law cannot be a ground for degrading the environment, as environment is one

of the facets of 'Right to Life' as envisaged under Article 21 of the Constitution of India.

37. The Hon'ble Principal Bench while examining the applicability of Environment Clearance in Tongad Judgment in para 37 as categorically mentioned that the signature bridge project cannot fall entry 7(f) of the schedule to the Regulation of 2006 as it is neither a National nor a State highway and not even any part thereof.

38. In view of the above legal position, there are at least two broader interpretations which are required to be considered while adjudicating the present case. **First** one is the absence of Law cannot be an excuse for not assessing the environmental impact of a particular project. **Second** one could be the entry 8(a) and 8(b) have different and distinct interpretation and meaning and cannot be intermingled except the large building and construction project which can be or deemed to be an Area Development Project. Based on these two criteria, it would be necessary to examine whether the project in question is liable to be considered in any other entry of the Environmental Clearance Regulation 2006?

39. In the instant case, it is not disputed that the bridge under construction is a part of National Highway. The bridge is being proposed as solution for reducing

the traffic congestion on the existing two bridges available in the area. Undoubtedly, bridge in question is part and parcel of the existing National Highway. Highways have been separately enlisted in the schedule of Environment Clearance Regulations 2006 at entry 7(f) wherein certain criteria for categorizing them in category A and B under the Regulations have been prescribed. As far as National Highways are concerned, new National Highway and expansion of National Highway greater than 30 k.m. involving additional right of way, greater than 20 mtrs., involving land acquisition, are covered under the EIA Notification. It is not disputed that this is a National highway and it is an expansion/modification of the existing National highway less than 30 k.m. length. In the instant case, therefore, the entry No,7(f) cannot be construed as applicable to the project, though the project is very well covered under entry 7(f) being a National Highway.

40. We have noted that the said bridge is a part and parcel of the existing national highway and its expansion. Now the question is raised when the project is not covered under 7(f) whether it can be separately considered under 8(a). In the instant case, we are inclined to accept the argument of learned Adv. General that the entries in the EIA notification are distinct and

separate entities and therefore, when a project does not fall under the original category, it will not be open to try to incorporate or include or cover it under some different category. The regulations has a stage of scoping where Terms of References for such projects are required to be decided prior to conducting EIA studies, based on the specific environmental issues related to such projects. MoEF has also come out with draft TOR for such specific projects as per the entries of the schedule, which covers all environmental issues related to such projects, which needs to be considered while dealing with them. This itself would demonstrate that the entries in the schedule are separate, unique and are expected to have unique environmental impacts and hence they are grouped accordingly. And therefore, as proposed bridge is part of the existing national highway and is presently not covered under category 7(f), we are not inclined to accept the argument of learned counsel of Applicant to include or cover the project under entry 8(a) of the environment clearance Regulations.

41. We are also cautious of the fact that it is not the case that the project will not be evaluated for the environmental impacts. In the instant case, the project is in CRZ area and as already referred above, the project need to obtain clearance under the CRZ notification.

This will ensure that the project in question will be appraised for its environmental concerns, including effect on CRZ areas in the process. In 'Tongad Judgment', Hon'ble Principal Bench also considered lack of environmental appraisal for the large construction of the 'Signature Bridge. The present case is significantly different as environmental appraisal as a part of CRZ clearance would be involved in the process and therefore, in our considered opinion, the project in question does not require environmental clearance under the Environmental Regulation 2006 unless it is demonstrated that it attracts the qualifying norms under entry No.7(f) of the Schedule of the Regulations of 2006.

Issue No.3 :

42. Learned Advocate Mrs. Norma Alwares appearing for Applicant has relied on the chronology of the events which, according to her, indicate that the project in question has got fast track NOC from the GCZMA without necessary appraisal of the project. She submitted that on 6th February 2014, GSIDC approached GCZMA with general arrangement drawing (GAD). GCZMA conducted site inspection on 14th February 2014 wherein Expert Member of GCZMA clearly mentioned that rapid EIA for the above project

needs to be carried out. GCZMA granted NOC on 4th March 2014 with condition to obtain information available with NIO regarding river bank morphology, bathymetry and sedimentation impacts. Some other relevant conditions were regarding regularizing the flow of current by keeping alignment of columns of three (3) bridges uniformly parallel to flow in order to prevent silting and no construction of the coffer dam. It is the contention of Applicant that GCZMA has granted this NOC without following due procedure as per clause 4.2 i.e. without EIA report, CRZ area demarcation, presence of mangroves and even without knowledge about scale of the project and impacts of the project including mangroves, tidal currents, sedimentation etc. According to her, it is a gross dereliction of duty on the part of GCZMA which is a regulatory authority responsible for protection of CRZ area, to grant NOC without having proper information and without any appraisal.

43. Learned counsel also pointed out that the GSIDC have appointed M/s. Larson and Toubro as contractor to execute the project and EIA study has been carried out after initiating the construction work through the Contractor. She took strong objection for such post construction EIA that too being carried out by the Contractor which according to her, would any way be a

biased report and will not give true picture of the environmental impacts. Her grievance is also with EIA report for several technical deficiencies and lacunae and she even points out some instances of cut and paste practice adopted by the consultant. In fact, the Applicant has also filed a Misc. Application for quashing of the EIA report.

44. Learned Adv. General submitted that the GSIDC which is executing agency has filed an Application on 6th February 2014 and accordingly, after the necessary examination of the proposal, GCZMA has granted conditional NOC on 4th March 2014. Learned Adv. General further submits that GSIDC, in compliance with the NOC, has carried out necessary studies which are placed on record and also submitted to GCZMA. Therefore, GSIDC has complied with the conditions stipulated by the statutory authority, i.e. GCZMA. He further states that the State Government and GSIDC are committed to protection of environment and also highlighted that GSIDC have reduced the effect on mangroves by construction of embankments on pillars and therefore, the original plan of destruction of 15,000sqm is now restricted to 1500sqm and only 287 mangroves are likely to be affected. He submits that by reduction of number of pillars in the riverian zone and

also taking the bridge on pillars through the mangroves area has added substantially to the cost of the bridge. He also refers to the letter of Expert Member of GCZMA to state that the State Government has not only conserved the mangroves but the factually mangrove cover in the State has increased over the years. He also fairly submits that all the recommendations of the Applicant have been duly considered by the Government and as far as mangroves are concerned, the Government is open for its implementation, if feasible and practical. He also stated that the preservation of the Trees Act 1984 is not applicable to the said project, being a government project.

45. We have carefully considered the entire sequence of events in this particular case. Records indicate that GSIDC approached the GCZMA which granted them conditional NOC on 4th March 2014. We are perplexed to understand this particular communication as the NOC directs GSIDC to obtain information available with NIO regarding impact on river bank morphology, bathymetry and sedimentation. We are not aware under what circumstances, without such critical information about impact of the project, how GCZMA thought it prudent and necessary to grant the NOC. We also find that other conditions referred are generic and without

any supportive action plan given by the project proponent. In some other cases of similar nature, this Tribunal has come across the clearances given by the MoEF like in case of Mumbai Trans Harbor Link. MoEF/CZMA had sought elaborate information and has stipulated project specific conditions based on the action plan submitted by the project proponent. We regret to note that the GCZMA approach while considering this project is far away from the role it has been mandated as Regulatory Authority under CRZ Notification. In fact the GCZMA has been mandated with an elaborate role, which is more expressly referred in a notification dated 22nd July 2013 constituting the GCZMA. We are also pointed out to see the visit report of Expert Member which is more of site observation sheet than a report from Expert Member. In some other cases we have come across report of GCZMA Experts using lot of scientific data, Geo-mapping, use of satellite data and photographs. We hope the Expert will take suitable note and upgrade the reports, to fit into the category of Expert's report.

46. We have also referred to the EIA report and after noting that this report has been commissioned by the Contractor and that too after commissioning construction of the bridge project, we are of the opinion

that unless the GSIDC takes ownership of such report, it will not be necessary for the Tribunal to look into the report. Furthermore, GCZMA has not even considered this report and therefore, we are not inclined to deal with the MA filed regarding the EIA report at this juncture.

47. It is not disputed that this project is a public project, being developed to reduce the traffic congestion on the existing national highway. Learned counsel Mrs. Alwares, for Applicant fairly stated that she is not against the construction of project but worried about the non-appraisal of the environmental impacts and absence of Environmental Management Plan for the project.

48. Learned Adv. General also submitted that the State is committed to preservation of the environment and it will adopt all necessary environmental safeguards during construction and execution of the project. At this stage, we do not *primi facie* find much fault with the project proponent i.e. GSIDC for the simple reason that they had approached Regulatory Authority of the GCZMA for necessary permission and GCZMA has given them NOC on 4th March 2013 and only thereafter, they have started the construction. Furthermore, without referring of the completeness or correctness of various

reports including EIA, we have noted that the GSIDC has complied with the conditions of the GCZMA. Therefore, it is manifest that the entire controversy has arose due to the ineffective regulatory role played by the GCZMA. We have also noted though several allegations have been made against GCZMA in the present Application, GCZMA has chosen not to counter them through filing affidavit. It is therefore now just and necessary that GCZMA shall evaluate the project based required information as per provisions of CRZ Notification and issue speaking permissions/clearance, if approved, by stipulating necessary conditions, only after ascertaining itself with the fact position and also the environmental impacts of the project.

48. While parting with the judgment, we are also concerned with the in-house environmental due diligence practices adopted by the major infrastructure agencies like GSIDC and M/s. Larsen and Toubro. It is now a common knowledge that environmental performance is an integral part of any corporate performance. And therefore, any non-compliance on the environmental front which may lead to legal or penal action, can have significant impact on the corporate image, credentials and market value. It is pertinent to note that MoEF has recognized such corporate

environmental responsibility principle in its communication dated 19th May 2011. This communication speaks about necessity of environmental policy for the Corporate standard operating processes and procedure to bring into focus any infringement/ deviation/violation of the environmental norms, setting of an appropriate hierarchical system to deal with environmental issues and reporting of compliance/non-compliance to the Board of Directors. In the present era of sustainable development, there cannot be any dis-agreement on the need and necessity of putting such a system in place in large corporate like GSIDC and M/s. Larsen and Toubro, which will be truly reflective of the precautionary principle embedded in corporate planning, project execution and operation stages. We could not see any such environmental responsibility and reporting system in the Respondent's affidavit which otherwise could have identified and addressed some or many of the issues raised in the Application. We are, therefore, of the opinion that such an integral system independently reporting to the top management is required to safeguard the environmental and social aspects of a project and Corporate. We expect the

Respondents to take suitable steps in this regard in next three (3) months.

49. While disposing the present Application with above findings, we deem it necessary to issue following directions, as per the powers conferred upon the Tribunal in terms of section 19 and 20, based on precautionary principle.

- I) GSIDC shall submit application for the CRZ clearance as per clause 4.2 of CRZ Notification 2011 alongwith the necessary information including updated EIA, CRZ classification etc. with GCZMA, who shall consider and take a decision on application on its own merit, without any prejudice or influence of the findings of this order within one month thereafter. In any case, the entire procedure of submission of Application on decision thereupon shall be complete within four (4) months from date of this order, else the construction work of the bridge shall be kept in abeyance till such CRZ clearance is obtained. A compliance report be submitted by GCZMA after four (4) months.
- II) In the meantime, GCZMA shall immediately carry out inspection of construction activity and ensure that the bridge construction is not adversely affecting the coastal environment.
- III) GCZMA shall deposit cost of Rs.5,00,000/- (Rs. five lakhs) with Collector, North Goa, who shall utilize this amount on environmental activities including awareness, coastal protection,

mangrove re-plantation etc. Besides this GCZMA shall pay cost of Rs.1,00,000/- (Rs. one lakh) to the Applicant as litigation cost. This costs shall be paid in four (4) weeks.

The Application is accordingly disposed of
along with connected M.As.

....., **JM**
(Dr. Justice Jawad Rahim)

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

Date : April 7th, 2016.

ajp



NGT