BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

Appeal No. 19/2022 (WZ)
I.A. No. 60/2022(WZ)

IN THE MATTER OF:

1. **ZON HOTELS PVT. LTD.**
   office at M-201 Panchasheel Gardens,
   Dhanukarwadi, Mahavir Nagar,
   Kandivali (W), Mumbai,
   Maharashtra- 400067
   Through its Authorized Representative,
   Mr. Vikrant D. Usgaonkar,
   office at Novotel Goa, Pinto Vaddo,
   Bardez, Candolim - Goa 403515.

.....Appellant

Versus

1. **GOA COASTAL ZONE MANAGEMENT AUTHORITY**
   Office at 4th Floor,
   Dempo Towers, Patto Panaji,
   Goa - 403001.

2. **ROSHAN MATRIAS**
   H. No. 280, Bamon Vado,
   Candolim, Bardez - Goa 403 515.

3. **THE GOA FOUNDATION**
   Through its Secretary
   Dr. Claude Alvares,
   Office at Room No.7,
   Above Mapusa Clinic, Mapusa,
   Goa- 403 507.

.....Respondent(s)

Counsel for the Appellant:

Appellant : Mr. Shivan Desai, Advocate

Counsel for the Respondent(s):

Respondent(s) : Mr. Surjendu Sankar Das, Advocate for R-1
Mrs. Norma Alvares, Advocate for R-2 & 3

PRESENT:

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

Reserved on : 14.09.2022

Pronounced on : 14.10.2022

JUDGMENT

1. This Appeal has been preferred under Section 16(g) of the National Green Tribunal Act, 2010 against the order dated 09.05.2022 passed by the Respondent No. 1/Goa Coastal Zone Management Authority (GCZMA) directing the Appellant to pay an amount of Rs. 2,04,19,560/- (Rupees Two Crore Four Lakhs Nineteen Thousand Five Hundred and Sixty Only) as damages caused to the environment with regard to the illegal construction carried out at Survey No. 146/4-E of Village Candolim, Bardez, Goa.

2. In brief facts of the case are that the subsidiary company of the Appellant i.e. Zon Hotels Pvt. Ltd., Goa had purchased the property bearing Survey No. 146/4-E of Village Candolim, Bardez-Goa, admeasuring about 2190 sq. mtrs. with an existing structure situated there-on, which was sold by Mr. John Fernandes by sale deed dated 12.04.2012. The said structure was old which was re-constructed in pursuance of all the necessary permissions/ approvals by Respondent No. 1/GCZMA on 27.11.2013, issued by the Town and Country Planning Department while Construction License dated 07.01.2014 was issued by the Village Panchayat. Subsequently Completion Certificate dated 23.10.2014 was issued by Town and Country Planning Department, and

Occupancy Certificate dated 23.03.2015 was issued by the Village Panchayat of Candolim.

3. Further, it is submitted that the Appellant received a Show Cause Notice cum Stop Work Order dated 22.10.2018 issued by Respondent No. 1/GCZMA in pursuance of a complaint filed by Respondent No. 2/Roshan Mathias and the purported Site Inspection Report dated 04.10.2018. The Appellant contested the said proceedings and the Respondent No. 1 in its meeting dated 22.10.2019 took the decision to order demolition of the pergola, metallic staircase and the internal changes in the authorized structure. In the month of December 2019, the Appellant received a Notice issued in PIL Writ Petition bearing No. STM/3749/2019 from the Hon'ble High Court of Bombay at Goa, which was filed by Respondent No. 2/Roshan Mathias and Respondent No. 3/Goa Foundation and then the Appellant came to know about the copy of demolition order dated 10.12.2019. Vide order dated 18.12.2019, the said PIL Writ Petition was disposed of by the Hon'ble High Court, giving liberty to the complainants to make fresh complaints before Goa Coastal Zone Management Authority (GCZMA) and directed the GCZMA to dispose of the said complaints within a period of 3 months. Being aggrieved by the Demolition Order dated 10.12.2019, the Appellant preferred an Appeal before this Tribunal being Appeal No. 02/2020 (WZ) which was dismissed vide order dated 17.08.2020. Aggrieved by that, the Appellant preferred Review Application No. 05/2020 (WZ) which too was dismissed vide order dated 03.11.2020. Thereafter, the Appellant preferred Civil Appeal

No. 3847/2020 before the Hon'ble Supreme Court of India which too was dismissed vide order dated 08.12.2020. Accordingly, the Appellant filed compliance report dated 22.06.2021 and 24.11.2021 in respect of the demolition order dated 10.12.2019 before the Respondent No. 1.

4. It is further submitted that in the interregnum, a second complaint was filed by the Respondent Nos. 2 and 3 alleging that the old structure bearing H. No. 525 as shown on the survey number in question was also illegal. It was contested by the Appellant before the Respondent No. 1 and the matter was reserved for Orders. After hearing in the month of December, 2021, the Respondent Nos. 2 and 3 filed a PIL Writ Petition No. 2530/2021(F) alleging illegal construction of the structures in the subject property and also pointing out that live music event was being promoted by Appellants, which was scheduled to be held from 09/12/2021 to 11/12/2021. The said event was cancelled. The Hon'ble High Court vide Order dated 10/01/2022 directed the Appellant to pay a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs Only), which was duly deposited in the Registry of the Hon'ble High Court of Bombay at Goa.

5. The Respondent No. 1/GCZMA vide order dated 13.04.2022 directed the Appellant to demolish the illegal structures.

6. It is further submitted that the Hon'ble High Court vide Order dated 19.04.2022 directed the Respondent No. 1 to estimate the environmental damage in monetary terms caused by the illegal

constructions. Thereafter, the Appellant was given a liberty to file an Affidavit stating why they should not be required to pay the compensation for damages. The matter was accordingly fixed for hearing on 04.05.2022.

7. It is further submitted through its affidavit dated 04.05.2022 that the illegal structures identified in the Demolition Order dated 13.04.2022 would be removed by the Appellant within a period of 30 days from the date of de-sealing of the property by Respondent No.1 and it was also stated by the Respondent No. 1 that they would file an affidavit on the issue of demolition cost and environmental compensation after the vacation. Accordingly, vide Order dated 04.05.2022, the Hon'ble High Court was pleased to record the statement of the Respondent No. 1 and directed the Respondent No. 1 to de-seal the property with prior notice to the Appellant in order to enable the Appellant to carry out demolition of illegal structures and fixed the matter for hearing on 27.06.2022. In the meantime, on 09.05.2022, the Appellant was shocked to receive the Impugned Order dated 09.05.2022 passed by the Respondent No. 1 directing the Appellant to pay a sum of Rs. 2,04,19,560/- (Rupees Two Crore Four Lakhs Nineteen Thousand Five Hundred and Sixty Only) on or before 27.05.2022 to Respondent No.1 which is perverse unilateral, arbitrary, order passed without jurisdiction and in violation of principles of natural justice.

8. It is further stated that the Respondent No. 1 has arbitrarily arrived at the figure of the said compensation by using the

purported formula viz. 2590 x 3.6 x 2190 (*i.e. Rs. 2590 /- per sq. mt. multiplied by No. of years multiplied by Area in Sq. Mt*s.) which has no scientific basis. The amount of Rs. 2590/- per sq.mts. which is taken as a *multiplier* is without any basis. The number of years taken as 3.6 is also erroneous. The area of 2190 sq. mtrs. is of the entire plot and not of the area where alleged violation took place. Therefore, the impugned order dated 09.05.2020 needs to be quashed.

9. After institution of this Appeal, notices were issued to the Respondents and replies have been filed.

10. The stand of Respondent No. 1/GCZMA is as follows:-

(i). The Respondent No. 1 had carried out a site inspection on 04.10.2018 and issued a Show Cause Notice and Stop Work Order on 22.10.2018 for the illegal construction of the pergola, metallic staircase and other internal changes to the authorized structure at the Subject Property'. On 15.03.2019, answering Respondent had ordered demolition in respect of entire structure in question along-with the compound wall in the subject property. The Appellant approached the Hon'ble High Court of Bombay at Goa by filing Writ Petition bearing Stamp Number 1915 of 2019, where-in the matter was remanded back to Respondent No. 1 for taking a decision afresh in accordance with law after following the principles of natural justice. In compliance with the above Order,

Respondent No.1 heard both the parties on 22.10.2019 and decided to issue an order of demolition in respect of the pergola, the compound wall, the metallic stair case as well as the internal changes permitted in structure because the same had been constructed/erected without prior approval from it. In the meantime, Respondent Nos.2 and 3 filed a PIL Writ Petition bearing Stamp Number 3749 of 2019 before the Hon'ble High Court of Bombay at Goa where-in the Appellant made an undertaking to demolish the compound wall and the pergola structure within a period of 30 days from the date of the hearing, i.e. 18.12.2019. The Appellant also stated that the part of Respondent No.1's First Demolition Order, which relates to the use of metallic staircase and structure above it, will be appealed before an appropriate appellate authority. Appellant also gave an undertaking that until an appropriate order/approval is not obtained in this regard, the upper deck which forms part of the internal deviation would not be used. The said undertaking was taken on record by the Hon'ble High Court of Bombay at Goa and the Writ Petition was dismissed vide Order dated 18.12.2019. By the same Order, the Hon'ble High Court had granted liberty to Respondent Nos. 2 and 3 to make fresh complaints to Respondent No.1 in respect of other illegalities of the subject property and the Respondent

No.1 was directed to dispose of such complaints within three months.

(ii). Thereafter in January 2020, the Appellant preferred an Appeal bearing Appeal No. 2 of 2020 before this Tribunal against the first demolition order but the same was dismissed by the Tribunal vide order dated 17.08.2020 and imposed cost on the Appellant. The Appellant preferred a Review against the said order bearing Review Application No. 5 of 2020 which too was dismissed vide Order dated 03.11.2020. Thereafter, Civil Appeal Nos. 3847-3849 of 2020 were preferred before the Hon'ble Supreme Court of India which too were dismissed vide Order dated 08.12.2020. The Appellant belatedly filed its Compliance Report dated 22.06.2021 reporting compliance of First Demolition Order passed by Respondent No.1. Pursuant to which the Expert Members of Respondent No.1 visited the Subject Property and found certain discrepancies. In view of that, another Compliance Report dated 24.11.2021 was filed by the Appellant in respect to the First Demolition Order which was in fact given more than a year of the undertaking given by the Appellant before the Hon'ble High Court of Bombay at Goa, which prescribed 30 days' time to remove the illegal structures from the date of order i.e. 18.12.2019.

(iii). Further, it is submitted that in January, 2020, Respondent Nos. 2 and 3 filed another Complaint against the Appellant regarding illegal structures in the subject property and on 02.12.2021, the Respondent Nos. 2 and 3 filed another PIL Writ Petition No. 2530 of 2021 before the Hon'ble High Court of Bombay at Goa, with the following reliefs:

> *" i. For an order directing the Respondent authorities to demolish the illegal construction being carried out on Sy. No. 146/4E of Candolim Village, and to restore the area to its original state;*
>
> *ii. For an order directing GCZMA to take a final decision on the Petitioner's complaint dated 27.01.2020 within 4 weeks;*
>
> *iii. For an order imposing sanctions upon Respondent No. 7 (M/s Shrem Resorts Pvt. Ltd.) for the illegal construction and commercial operation of the 'Toy Beach Club in Sy. No. 146/4E."*

(iv). On 08.12.2021, the Appellant filed an Affidavit-in-Reply in the said PIL Writ Petition, specifically undertaking that no commercial activities were being carried out in the subject property and that a live music event, which was to take place from 09.12.2021 to 11.12.2021 at an open-air venue was different place from subject property. During the hearing, the Petitioner/Respondent Nos. 2 & 3 placed certain photographs on record, where-after, the Hon'ble High Court passed following order:-

> *"8. Accordingly, having regard to the aforesaid, the blatant falsity in the affidavit filed by the respondent no.6, we deem it appropriate to direct the respondent no.6 not to carry out any commercial activity at the Toy Beach Club, Candolim. We direct the GCZMA, to forthwith seal the said premises. It*

is open for the GCZMA to seek police assistance, if so required."

(v). On 10.01.2022, the Hon'ble High Court made following important observations with respect to the blatant mis-conduct of the Appellant in the above PIL proceedings:-

"5. On 23.12.2021, the learned Counsel for respondent no. 1, 3, 4, 5 and 7 submitted that the site inspection was carried out, however, the compliance report could not be submitted. This Court had observed the blatant falsity in the statement made by respondent no. 6. Mr. Desai, learned Counsel appearing for respondent no. 6 had also fairly conceded that there was rather a misstatement made by respondent no. 6, however, he requested that no contempt proceedings be initiated against the respondent no. 6 and instead, respondent no. 6 would pay the penalty. Accordingly, this Court had suggested an amount of 10 lakhs towards penalty and learned Counsel Mr. Desai had agreed to it upon instructions by respondent no. 6."

(vi). Further, it is submitted that the answering Respondent passed demolition order dated 13.04.2022 directing the Appellant to demolish all the illegal structures identified in the Directorate of Settlement and Land Records ("DSLR") Survey Plan dated 22.12.2021 with respect to the subject property, so that the subject property can be restored to its original condition and it was also observed that the Appellant had not committed fresh violations but had also failed to fully comply with the first demolition order. On 13.04.2022, the Hon'ble High Court of Bombay at Goa observed that the second demolition order sufficiently deals with reliefs(i) and (ii) as prayed for by Respondent Nos.2 and 3 in the PIL Writ Petition No. 2530 of 2021 and with respect to relief no.(iii), following was observed:-

> *"3. In so far as prayer clause (c) is concerned, we direct the GCZMA as well as other authorities who are involved in the demolition of such construction to file an affidavit indicating thecost required for such demolitions. The GCZMA should also make an estimate of the damages that such illegal constructions cause to the environment in monetary terms, though we am conscious that such damage can never be fully compensated only in monetary terms.*
>
> *4. Respondent No. 6 is also granted an opportunity to file affidavit, if they choose to explain why they should not be required to pay damages to the State for the illegal and unauthorized constructions put up by them in an area effected by CRZ notification."*

(vii). Further, it is submitted that the Appellant filed an Additional Affidavit on 04th May, 2022 stating that the illegal structures identified in the Second Demolition Order will be removed within 30 days from the date of de-sealing of the property by Respondent No.1. But, it did not contain any explanation as to why the Appellant should not be required to pay damages to the State for the illegal and unauthorized constructions raised by them which indicates that despite the Appellant having been provided an opportunity by the Hon'ble High Court to make submission on the issue, chose not to do so.

(viii). On 04.05.2022, the Hon'ble High Court directed Respondent No.1 to de- seal the premises within ten days after passing of the Order and that within thirty days of such de-sealing, the Appellant will carry out the demolition and submit a compliance report and on the same day, the Respondent No.1 informed the Court that it

will file its Affidavit on the issue of demolition cost and environmental compensation after vacations.

(ix). Further, it is submitted that in the light of order of Hon'ble High Court of Bombay at Goa, the answering Respondent calculated the environmental compensation which is to be recovered from the Appellant for the illegal constructions using a formula derived through a study titled 'Environmental Compensation for Coastal Damage through Total Ecosystem Service Values'. The said study was carried out by a committee comprising two Expert Members of the answering Respondent and a Scientific Consultant, in view of the directions of this Tribunal in another matter bearing No. *O.A.No.01 of 2019 titled as 'Goa Paryavaran Sanrakshan Sangharsh Samiti v/s GGZMA'*. This study developed a method/formula for assessing environmental compensation for coastal damage recovery, used in all cases involving the calculation of environmental compensation. Relying upon it, the compensation amount has been calculated which is directed to be deposited by the Appellant on or before 27.05.2022.

(x). On 28.06.2022, the Respondent No. 1 apprised the Hon'ble High Court of Bombay at Goa about above-mentioned compensation figure and requested to pass a direction to the Appellant to deposit the said amount.

Respondent No.1 also informed the Hon'ble High Court that the Appellant had failed to demolish the main structure till date. Thereafter, the Hon'ble High Court granted two weeks' time to the Appellant to carry out the demolition.

(xi). On 18.07.2022, the Appellant informed the Hon'ble High Court that it had demolished structure 'A' in the subject property and will clear the debris from the site within ten days, where-on the Hon'ble High Court directed the Appellant as well as the Respondent No.1 to file their respective status/compliance reports. Thereafter on 22.08.2022, the Appellant informed the Hon'ble High Court that it had filed a Compliance Report dated 11th August, 2022 before Respondent No. 1 and that Respondent No.1 will now verify the position at site and submit its response to the Hon'ble High Court by the next date i.e. 21st September, 2022.

(xii). Further, it is submitted that the Appellant not only violated important environmental guidelines/notifications on a number of instances but had also conducted itself in a manner which is in absolute disregard to the process of law. Even in the present appeal before this Tribunal, the Appellant has conveniently chosen to omit important facts.

(xiii). The two grounds set up by the Appellant in the present case are (i) the impugned Order has been passed in

violation of the principles of natural justice; and (ii) the computation of environmental compensation is arbitrary and illegal.

(xiv). In respect to the principles of natural justice being violated, it is submitted that the Hon'ble High Court of Bombay at Goa vide Order dated 19.04.2022, specifically directed the Respondent No.1 to make an estimate of the damages that the illegal constructions caused to the environment in monetary terms. In view of this, the Appellant's questioning of the very basis of the imposition of such damages by Respondent No.1 falls flat on its face. The Hon'ble High Court granted an opportunity to the Appellant to file an Affidavit explaining why the Appellant should not be required to pay damages to the State. Pertinently, the Appellant had filed an Additional Affidavit dated 04th May, 2022 before the Hon'ble High Court of Bombay where-in not a single statement was made on the issue of imposition of environmental damages. It was in these circumstances that Respondent No. 1 passed the impugned order directing the Appellant to pay the amount in question.

(xv). As regards the computation of environmental compensation in the present case, it is submitted that the study report cites and relies upon multiple other scientific studies from India and around the world and highlighted

the importance of protecting coastal eco-systems, used a meta-analysis approach that combined the results of multiple scientific studies in order to calculate the Eco-system Service Value (ESV) of an eco-system. The ESV is calculated as the sum of eco-system services in different habitats within the eco-system.

(xvi). As regards error in calculating the number of years of violation, it is submitted that the Appellant has been involved in incessant violations of the CRZ Norms since the last 3.6 years, i.e., since the Show Cause Notice dated 22nd October, 2018 was issued to it. Thereafter, he has been delaying to carry out the demolition by resorting to various forum adopting delaying tactic, therefore, the Appellant has no ground to get this allowed.

11. The stand of Respondent No. 3/The Goa Foundation is as follows:-

(i). The Appellant must be directed to first deposit the amount of Rs. 2,04,19,560/- with the Tribunal before proceeding to consider the appeal on merits. The said amount of compensation has been calculated on the basis of scientific formula involved by an Expert Committee constituted on the directions of this Tribunal in *O.A. No. 01/2019 (Goa Paryavaran Sanrakshan Sangharsh Samiti V/s GCZMA)* which is based on the final report of the NCSCM titled, "assessment of Coastal and Marine Eco-

system Goods and Services- Linking Coastal Zone Management to Eco-system Services in India" produced in the explicit context of environmental services of sand dunes. The NCSCM is the apex body for the management of coastal eco-systems, set up by the Ministry of Environment, Forest & Climate Change (MoEF&CC). In the said calculation, the cost of demolition of the structure is not included and it is only environmental compensation which has been calculated for the damage caused to coastal eco-system. The Appellant had sought approval in the name of original owner for re-construction of residential house on the plot even after the land had already been acquired by him via a sale deed and that once the permissions were obtained on the basis of questionable orders issued by the Deputy Collector, the so-called residential house was completely altered and expanded and converted into a gigantic commercial structure, housing a restaurant, kitchen, rooms, music playing areas etc. with material alteration of the entire plot being 2190 sq. mtrs., although the NOC granted by the GCZMA was for re-construction of 396 sq. mtrs. only. The Respondent No. 2 had made first complaint against the Appellant in the year, 2018 regarding a large scale alterations of the beach and the traditional structure on the said plot, for which a re-construction NOC had been obtained from the GCZMA. But even after the first

complaint, the construction continued illegally till intervention by the Hon'ble High Court brought it to a halt.

(ii). In December, 2021, in lieu of suffering a contempt order of the Hon'ble High Court, the Appellant agreed to pay a fine of Rs. 10 lakhs which was distributed to two NGOs which are doing social work. The GCZMA had fined the Appellant earlier an amount of Rs. 01 lakh for not carrying out the first demolition order and even after that he took a long period to remove the offending structures.

12. We have gone through the entire record and have heard the arguments of the Learned Counsel for the parties. We are of the opinion that the Learned Counsel for the Appellant's main argument is that he has not been provided an opportunity of hearing by the Respondent No. 1 before passing the impugned order, directing payment of Rs. 2,04,19,560/- (Rupees Two Crore Four Lakhs Nineteen Thousand Five Hundred and Sixty Only) by way of damages caused to the environment. At this, we reminded him of the principle of law that the order passed by the lower authority which is challenged in appeal, will stand finalized only after it's being upheld by the Appellate Authority i.e. this Tribunal and therefore, this appeal would be treated to be a continuation of the impugned order and therefore, the grievance which the Appellant suffers from that he was not given an opportunity of hearing, stands removed on account of our providing him an opportunity of hearing to show as to on

what basis he alleged that the impugned order i.e. levying of environmental compensation to the tune of Rs. 2,04,19,560/-, is illegal. Thereafter, the Learned Counsel for the Appellant addressed us on this issue and questioned the formula which has been applied by the Respondent No. 1 in arriving on the said amount and submitted that the same is arbitrary as it has no scientific basis nor has it been notified, therefore, the same should not have been applied in the present case. In this regard, he has relied upon the Judgment of Hon'ble Apex Court in *Gulf Goans Hotels Company Ltd. and Anr. Vs. Union of India & Ors. (2014) 10 SCC 673 : 2014 SCC Online SC 748* and has drawn attention to the following relevant paragraphs:-

> "**19.** *Article 77 of the Constitution provides the form in which the Executive must make and authenticate its orders and decisions. Clause (1) of Article 77 provides that all executive action of the Government must be expressed to be taken in the name of the President. The celebrated author H.M. Seervai in Constitutional Law of India, 4th Edn., Vol. 2, 1999 describes the consequences of government orders or instructions not being in accordance with clauses (1) or (2) of Article 77 by opining that the same would deprive the orders of the immunity conferred by the aforesaid clauses and they may be open to challenge on the ground that they have not been made by or under the authority of the President in which case the burden would be on the Government to show that they were, in fact, so made. In the present case, the said burden has not been discharged in any manner whatsoever. The decision in Air India Cabin Crew Assn. v. Yeshaswinee Merchant, taking a somewhat different view can, perhaps, be explained by the fact that in the said case the impugned directions contained in the government letter (not expressed in the name of the President) was in exercise of the statutory power under Section 34 of the Air Corporations Act, 1953. In the present case, the impugned guidelines have not been issued under any existing statute.*
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> ***21.*** *In the absence of due authentication and promulgation of the guidelines, the contents thereof cannot be treated as an order of the Government and would really represent an expression of opinion. In law, the said guidelines and their*

binding effect would be no more than what was expressed by this Court in State of Uttaranchal v. Sunil Kumar Vaish in the following paragraph of the report: (SCC p. 678, paras 23-24)

> *"23. It is settled law that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be [Articles 77(1) and 166(1)]. Orders and other instruments made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in the manner specified in the rules made by the President or the Governor, as the case may be [Articles 77(2) and 166(2)]. In other words, unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order on behalf of the Government.*
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> *24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, can such noting be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/ overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review."*

22. *It is also essential that what is claimed to be a law must be notified or made public in order to bind the citizen. In Harla v. State of Rajasthan while dealing with the vires of the Jaipur Opium Act, which was enacted by a resolution passed by the Council of Ministers, though never published in the Gazette, this Court had observed: (AIR p. 468, para 8)*

> *"8. ... Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognizable way so that all men may know what it is, or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to*

which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a resolution without anything more, is abhorrent to civilized man."

23. *The Court in Harla v. State of Rajasthan noticed the decision in Johnson v. Sargant & Sons and particularly the following: (AIR pp. 468-69, para 11)*

"11. The principle underlying this question has been judicially considered in England. For example, on a somewhat lower plane, it was held in Johnson v. Sargant & Sons, that an order of the Food Controller under the Beans, Peas and Pulse (Requisition) Order, 1917, does not become operative until it is made known to the public, and the difference between an Order of that kind and an Act of the British Parliament is stressed. The difference is obvious. Acts of the British Parliament are publicly enacted. The debates are open to the public and the Acts are passed by the accredited representatives of the people who in theory can be trusted to see that their constituents know what has been done. They also receive wide publicity in papers and, now, over the wireless. Not so Royal Proclamations and Orders of a Food Controller and so forth. There m ust therefore be promulgation and publication in their cases. The mode of publication can vary; what is a good method in one country may not necessarily be the best in another. But reasonable publication of some sort there must be."

24. *It will not be necessary to notice the long line of decisions reiterating the aforesaid view. So far as the mode of publication is concerned, it has been consistently held by this Court that such mode must be as prescribed by the statute. In the event the statute does not contain any prescription and even under the subordinate legislation there is silence in the matter, the legislation will take effect only when it is published through the customarily recognized official channel, namely, the Official Gazette (B.K. Srinivasan v. State of Karnataka). Admittedly, the "guidelines" were not gazetted*

25. *If the guidelines relied upon by the Union of India in the present case fail to satisfy the essential and vital parameters/requirements of law as the trend of the above discussion would go to show, the same cannot be enforced to the prejudice of the appellants as has been done in the present case. For the same reason, the issue raised with regard to the authority of the Union to enforce the guidelines on the coming into force of the provisions of the Environment (Protection) Act so as to bring into effect the impugned*

consequences, adverse to the appellants, will not require any consideration.

26. *An argument had been offered by Shri Parikh, learned counsel appearing for the respondent, Goa Foundation, that while dealing with issues concerning ecology and environment, a strict view of environmental degradation, which Shri Parikh would contend has occurred in the present case, should be adopted having regard to the rights of a large number of citizens to enjoy a pristine and pollution free environment by virtue of Article 21 of the Constitution. We cannot appreciate the above view. Violation of Article 21 on account of alleged environmental violation cannot be subjectively and individually determined when parameters of permissible/impermissible conduct are required to be legislatively or statutorily determined under Sections 3 and 6 of the Environment (Protection) Act, 1986 which has been so done by bringing into force the Coastal Regulation Zone (CRZ) Notification w.e.f. 19-02-1991."*

13. As regards the above ruling, the facts of this case are that the Appellants who were owner of the hotel, beach resort and beach Bungalows in Goa were alleged to have raised constructions in derogation of the environmental guidelines in force, warranting demolition of the same as a step to safeguard the environment of the beaches in Goa which was upheld by the Hon'ble High Court and therefore, the matter came before the Hon'ble Apex Court where the stand was taken by the Appellant that at the relevant point of time when building permissions and sanctions were granted in respect of the constructions undertaken, the prohibition was with regard to construction within 90 mtrs. from HTL and none of the constructions were within the said divide. They further contended that the alleged environmental guidelines were not "law" so as to constitute activities contrary thereto, as acts of infringement of the law and hence illegal. The question arose before the Hon'ble Apex Court as to whether environmental guidelines had the force of law?

It was answered in negative, setting aside the orders of the Hon'ble High Court, saying that law must possess a certain form; contain a clear mandate/explicit command which may be preservative, permissive or penal and the law must also seek to achieve a clear identifiable purpose. The Government policy, if it requires to acquire the force of law, it has to conform to a certain form possessed by other laws in force and encapsulates a mandate and disclosure of specific purpose. Article 77 Sub-clause (2) provides for the authentication of orders and instruments in a manner as may be prescribed by the Rules. In this regard, the S.O. No. 2297 dated 03-11-1958 published in the Gazette of India, the President had issued the Authentication (Orders and Other Instruments) Rules, 1958. The said Rules have been superseded subsequently in 2002. Admittedly, the Provisions of the said Rules of 1958 had not been followed in the present case insofar as the promulgation of the guidelines is concerned, therefore, in absence of due authentication and promulgation of the guidelines, the contents there-of cannot be treated as an order of the Government and would really represent an expression of opinion.

14. The other Judgment which he has relied upon the case *Mohindhr Singh Gill and Another vs. Chief Election Commissioner, New Delhi & Ors. (1978) 1 SSC 405* where-in attention was drawn to para 8 which is quoted here-in below:-

> *"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order*

bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:

> *Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*

15. We do not find this to be relevant here because it deals with an election issue and the facts of this case are totally different from the facts of the present case.

16. Now, we would like to take up the grievances which the Appellant states that he has suffered by the impugned order i.e. no opportunity of hearing was given to him. That stands redressed in view of this Tribunal having given him an opportunity of hearing. We posed a question to the Appellant as to why he approached this Tribunal when the matter was consistently being heard by the Hon'ble High Court which is apparent from various orders of the Hon'ble High Court which have been annexed and also find mention in the contents of the affidavit of the Appellant as well as that of the Respondent No. 1 mentioned above. To this, it is replied by the Learned Counsel for the Appellant that vide order dated 13.04.2022, the Hon'ble High Court had directed the GCZMA to make an estimate of the damages of such illegal constructions caused to the environment in monetary terms. Pursuant to which they calculated the amount and thereafter amount in question, which has been

directed to be realized from the Appellant vide impugned order, against which an Appeal is maintainable before this Tribunal. The Appellant had brought this fact to the knowledge of the Hon'ble High Court which finds mention in order of Hon'ble High Court dated 28.06.2022 as it is noted there-in, in para 4 "Mr. Shivam Desai, learned Counsel for the applicant submits that the applicant has already instituted proceedings before the National Green Tribunal to question the compensation amount. He, therefore, submits that no orders may be made for deposit of this amount at this stage." Thereafter, several dates have also been fixed by the Hon'ble High Court regarding ensuring the demolition of the disputed structures and the matter is still pending there, but these orders do not contain any direction for the realization of the compensation amount.

17. In view of above arguments, we find that looking to the fact that the Hon'ble High court did not pass any order with respect to the compensation amount being realized from the Appellant despite being seized of the fact that the matter was pending before Tribunal, indicates that the Hon'ble High Court is of the view that realization of the said compensation amount with respect to the damages caused to the environment, is a subject matter falling in the domain of this Tribunal, therefore, we deem it proper to decide this matter on merits despite the fact that the Hon'ble High Court continues to hear the matter with respect to demolition in the present case. Particularly, this impugned order being an appealable order against which the appeal admittedly lies before this Tribunal. It may also be made clear that the Hon'ble High Court had merely directed the

Respondent No. 1 to make an estimate of the damages caused to the environment due to the illegal construction raised by the Appellant but no order beyond that was passed with respect to its realization. It appears that the Respondent No. 1 has complied with the direction of Hon'ble High Court by calculating the amount of damages but further proceeded ahead to realize the same, hence the said order became appealable before us.

18. As we have already observed that the grievance with respect to the violation of principle of natural justice on account of hearing not being given to the Appellant while imposing environmental cost of the above mentioned amount, the same stands addressed because hearing has been given by us in this regard.

19. Now the second objection which has been raised by the Appellant is with regard to the mode of calculation and the formula applied for its calculation being arbitrary as the same has not been notified and therefore, it should not be allowed to be applied in the present matter, in view of the law laid down in *Gulf Goans Hotels Company Ltd. and Anr. Vs. Union of India & Ors. (supra),* we find that the facts of the *Gulf Goans Hotels Company Ltd.* case are altogether different from the facts of the present case. There were some guidelines relating to environment which were found to be not having force of law because they were not notified, but in the present case, the facts are entirely different as the formula which has been applied for calculating the environmental loss, has been approved by this Tribunal initially in *Goa Paryavaran Sanrakshan Sangharsh*

Samiti (supra) case and thereafter, the same has been applied consistently in the number of other cases, therefore, it has force of law in our estimation as so far they have never been challenged by any of the aggrieved party before any constitutional authority. Since the said formula has not been quashed by any constitutional authority till date and the evidence on record shows that the same has been devised by an expert body, therefore, it should not be interfered with lightly.

20. As regards the whole area of the disputed property of Appellant being taken into consideration in-stead of the area on which construction is alleged to be in violation of the norms, is concerned, we are of the view that according to the formula laid down above, there is no such distinction made, if some violation has been made by the Project Proponent, the whole area has to be taken into consideration and therefore, it has been rightly taken into consideration by the Respondent No. 1 while arriving on the amount of environmental compensation.

21. We also note here the conduct of the Appellant which is reflected from the pleadings, that the Appellant has been consistently violating the established norms and procedure of law and was very reluctant to remove illegal construction of the property, so much so that the Hon'ble High Court had to monitor the demolition regularly on various dates. We do not find any infirmity in the impugned order. Accordingly, this Appeal deserves to be rejected and is rejected.

22. The amount of Rs. 2,04,19,560/- (Rupees Two Crore Four Lakhs Nineteen Thousand Five Hundred and Sixty Only) which has been imposed upon to the Appellant by way of environmental compensation shall be deposited within a period of one month from the date of this order. If by that period, it is not deposited, an interest @ 12% per year would be chargeable till the time the same is realised.

23. I.A. No. 60/2022(WZ) also stands disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

October 14, 2022
Appeal No. 19/2022 (WZ)
I.A. No. 60/2022(WZ)
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