

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE  
MISC APPLICATION NOS. 32 OF 2014 (WZ)  
MISC APPLICATION NOS. 33 OF 2014 (WZ)  
IN APPLICATION NO.63 OF 2012**

**CORAM:**

**Hon'ble Shri Justice V.R. Kingaonkar  
(Judicial Member)**

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

**B E T W E E N:**

**Ms. BETTY C. ALVARES**

Major, r/o B5/F1, Ribandar Retreat,  
Ribandar, Tiswadi, Goa

.....Applicant

Versus

**1) STATE OF GOA**

Through its chief Secretary;  
Government of Goa, Secretariat,  
Porvorim, Bardez Goa.

**2) GOA COASTAL ZONE MANAGEMENT AUTHORITY  
[G.C.Z.M.A]**

Through its Member Secretary;  
Mr. Michael D'Souza, Saligao, Bardez,  
Goa.

**3) THE SENIOR TOWN PLANNER,**

Town & Country Planning Department,  
Government of Goa, North Goa Dist. Office  
Government Building, Mapusa, Goa.

**4) THE DIRECTOR OF PANCHAYATS,**

Directorate of Panchayats, Junta House,  
3<sup>rd</sup> Floor, Panjai, Goa.

**5) VILLAGE PANCHAYAT, CANDOLIM,**

Through its Sarpanch/Secretary,  
Candolim, Bardez, Goa

**6) MINISTRY OF ENVIRONMENT & FOREST**

Government of India, New Delhi.

**7) THE COLLECTOR (NORTH GOA)**

Collectorate Building, Panjim, Bardez, Goa

**8) Mr. SANTANA JOSE PIRES**

H.No.847A, Camotim Vaddo,  
Candolim, Bardez, Goa.

**9) MR. JOHN FRANCISCO PIRES,**

House No.847, Camotim Vaddo,  
Candolim, Bardez, Goa.

**10) MR. LOUIS C PEREIRA,**

House No.827, Camotim Vaddo,  
Candolim, Bardez, Goa.

**11) Ms. MARGARIDA FERNADES**

House No.827, Camotim Vaddo,  
Candolim, Bardez, Goa.

**12) Mr. DOMNIC SAVIO PEREIRA,**

House No.827, Camotim Vaddo,  
Candolim, Bardez, Goa.

**13) Mr. ANTHONY CARDOZO,**

House No.807, Camotim Vaddo,  
Candolim, Bardez, Goa.

**14) Ms. JESSIE CARDOZO,**

House No.807, Camotim Vaddo,  
Candolim, Bardez, Goa.

**15) Ms. ROSALINA MASCARENHAS**

House No.826A, Camotim Vaddo,  
Candolim, Bardez, Goa.

**16) Ms. PERPETUA FERNANDES,**

House No.826, Camotim Vaddo,  
Candolim, Bardez, Goa.

**17) Mr. MICHAEL FERNANDES (Deleted)**

House No.826, Camotim Vaddo,  
Candolim, Bardez, Goa.

**18) Ms. MILAGRIN D'SOUZA**

House No.830, Camotim Vaddo,  
Candolim, Bardez, Goa.

**19) Ms. ROMANA FERNANDES,**

House No.831, Camotim Vaddo,  
Candolim, Bardez, Goa.

**20) Ms. ROSA MARIA FERNANDES,**

House No.832, Camotim Vaddo,  
Candolim, Bardez, Goa.

**21) Ms. ISABELLA @ PERPETUA CARDOZ**

House No.845, Camotim Vaddo,  
Candolim, Bardez, Goa.

.....Respondents

**Counsel for Applicant**

Mr. Asim Sarode

**Counsel for Respondent(s):**

F.M. Mesquita for Respondent Nos.1 to 4 & 7.

Asha Desai for Respondent Nos. 8 to 12,16,18,19,20 & 21.

Louis C. Pereira for Respondent Nos.10,11.

Joesh Vas for Respondent No.13.

V.Parol for Respondent No.20.

Ms. Isabella @ Perpetua Cardozo for Respondent No.21.

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**Date: 14<sup>th</sup> February, 2014**

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**COMMON ORDER**

**1.** By this common Order, we shall dispose of these Miscellaneous Applications, which raised identical

objections regarding maintainability of the main Application. The objections raised in these Applications are twofold. The first objection is that Applicant – Betty Alvares, has no *locus standi* to file the main Application (Appln. No.53 (THC) of 2012). Secondly, the main Application is barred by limitation and as such, is liable to be dismissed in *limine*. The objections are raised by contesting Respondents Nos.8 and 9 in the Writ Petition No.1 of 2012, Public Interest Litigation (PIL) before the Hon'ble High Court of Bombay Bench at Goa. By order dated October 23, 2012, the Writ Petition came to be transferred to this Tribunal.

**2.** Before we proceed to deal with these objections, it would be useful to reproduce the transfer order passed by the Hon'ble Bench of the High Court of Bombay at Goa. The order reads as follows:

*P.C:-*

*Parties agree that in view of the judgment of the Supreme Court, in the matter is liable to be transferred to the National Green Tribunal.*

*The writ petition is, accordingly, transferred to The National Green Tribunal.*

*In view thereof, it is not open to us to consider the objections relation to the writ petition. It is further clarified that all applications, including the application for intervention, stand transferred to The National Green Tribunal.*

**3.** We may discern from the above order that the parties had agreed for transfer of the matter to the National Green Tribunal. We also may discern that the Hon'ble Bench of the High Court of Bombay at Goa expressed the view that it was not open to consider the said objection of Locus

relating to maintainability of the Writ Petition. Needless to say, such objections were left open for consideration by the NGT. What appears from the record is that the Respondent Nos.8 and 9, challenged *locus standi* of Betty Alvares to maintain a PIL Writ Petition mainly on the ground that she is not a citizen of India. There was no other reason ascribed to challenge her *locus standi* to file the Writ Petition. The Respondent Nos. 8 and 9, in their affidavit in reply raised such objection, alleging that only a citizen of India can file Writ Petition in the interest of public and that Betty Alvares being not a citizen of India, she is legally incompetent to file the petition in the garb of Article 21, because there is no guarantee of any right in her favour under the Constitution of India.

**4.** As regards the first objection, we may mention here that Article 21 of the Constitution gives guarantee of life to a person. It is not restricted to guarantee of life only to a citizen of India. We cannot take narrow view, so as to restrict applicability of Article 21 only to a citizen of India. Even assuming that Applicant- Betty Alvares, is not the citizen of India. Yes, the Application is maintainable. In fact, the Writ Petition reveals that she had filed other Writ Petitions and Contempt Applications prior to filling of the present Application. The averments in the Application go to show that her complaints were duly inquired and the Authorities had found substance in the complaints, but had

not taken affirmative action and therefore, she approached to Hon'ble High Court, inasmuch as the Respondents were found to have committed blatant violation of the CRZ Regulations. She asserted that the Respondents raised illegal constructions and encroached upon part of sea-beaches, as well as on government properties. She sought demolition of illegal constructions raised by the Respondent Nos. 8 to 21, which allegedly were hood-winked by the first seven (7) Respondents.

**5.** Nobody will deny that right to have pollution free air, good environment and proper enforcement of the CRZ Regulation, for such purpose, is a part of guarantee for maintaining dignified life in the society. Article 21 covers the guarantee to enjoy 'dignified life' and as such, Betty Alvares was entitled to file the Writ Petition before the Hon'ble High Court of Bombay, Bench at Goa and as such is entitled to maintain the Application before the NGT.

**6.** The learned Counsel for contesting Respondents argued that Betty Alvares is not 'an aggrieved person', nor she has sustained any injury due to alleged constructions raised by the Respondents and, therefore, the present Application is untenable for want of *locus standi*. It is contended that she cannot file the Application, because she is not owner of any property to which damage has been caused on account of construction activity carried out by the Respondents. It is further argued that the Application

does not fall within ambit of Section 14 or Section 18 of the National Green Tribunal Act, 2010. We may take note of definition of word ‘person’ as enumerated in Section 2 (j) of the National Green Tribunal Act, 2010. Section 2(j) reads as follows:

“ **2. Definitions-** (1) *In this Act, unless the context otherwise requires,—*

- |         |     |     |     |
|---------|-----|-----|-----|
| (a) xxx | xxx | xxx | xxx |
| (b) xxx | xxx | xxx | xxx |
| © xxx   | xxx | xxx | xxx |
| (d) xxx | xxx | xxx | xxx |
| (e) xxx | xxx | xxx | xxx |
| (f) xxx | xxx | xxx | xxx |
| (g) xxx | xxx | xxx | xxx |
| (h) xxx | xxx | xxx | xxx |
| (i) xxx | xxx | xxx | xxx |

**(j)** *“person” includes—*

- (i) *an individual,*
- (ii) *A Hindu undivided family,*
- (iii) *A company,*
- (iv) *A firm,*
- (v) *An association of persons or a body of individuals, whether incorporated or not,*
- (vi) *Trustee of a trust,*
- (vii) *A local authority, and*
- (viii) *Every artificial juridical person, not falling within any of the preceding sub-clauses.”*

**7.** A plain reading of Section 2(j) will make it manifest that the word ‘person’ has to be construed in broad sense. It includes ‘an individual’, whether a national or a person who is not a citizen of India. We need not, therefore, go into

details of nationality of Betty Alvares. Once it is found that any person can file the proceeding relating to environment dispute, it goes without saying that the Application of Betty Alvares is maintainable, irrespective of the question of her nationality. It is not necessary to see whether she has personally suffered any loss on account of damage caused to environment or violation of CRZ Regulation by the acts of Respondents. It is not necessary to see whether she has suffered any injury. It suffices to see whether there is substantial question relating to environment and such question arises out of implementation of enactments specified in Schedule-I, appended to the National Green Tribunal Act, 2010. In our opinion, therefore, the Application cannot be dismissed for the reason that Betty Alvares has no *locus standi*, inasmuch as she falls within the definition of word 'person' as defined in Section 2(j) of the National Green Tribunal Act, 2010. The first objection is, therefore, overruled.

**8.** Coming to the second objection raised by the contesting Respondents, learned Counsel appearing for Respondents contended that Betty Alvares ought to have filed the Application under Section 14 of the National Green Tribunal Act, 2010, within period of six (6) months from the date on which 'cause of action' had first arisen, for the first time, somewhere in 2009. The Application could be filed at least within six (6) months after the NGT Act, is enforced.

The Application is hopelessly time barred, as the Writ Petition was filed in 2012. It is further argued that the Application cannot be considered under Section 18 of the National Green Tribunal Act, 2010, inasmuch as Betty Alvares has not sustained any injury or loss of property and is not entitled to compensation. It is contended that the Application is outside the scope of Section 15 of the National Green Tribunal Act, 2010, because Betty Alvares cannot claim any compensation under sub-clause (a) of Section 15(1), nor restitution under sub-clause (b) of Section 15(1) or restitution under sub-clause (c), when the Application is not filed within period of five (5) years from the date of cause of action. It is contended that Betty Alvares is well-versed in Court work and ought to have known the difficulties about the hurdle of limitation, under the National Green Tribunal Act, 2010, and therefore, played a trick by filing Writ Petition (PIL) No.1 of 2012 in the Hon'ble High Court of Bombay Bench at Goa. It is argued that mere transfer of that Writ Petition to the NGT, will not save limitation period and it cannot be condoned only because the Writ Petition has been transferred.

**9.** We find it rather difficult to entertain the argument advanced by the learned Counsel for contesting Respondents. For, the original Writ Petition was not dismissed by the Hon'ble High Court of Bombay, Bench at Goa, on the ground of limitation. Nor it was dismissed at

the stage of admission for the reason that alternate remedy to approach the NGT was available. Contesting Respondents also did not pin-point that such alternate remedy was available to Applicant- Betty Alvares and, therefore, the Writ Petition was not maintainable. It was only after the Judgment of the Apex Court in “**Bhopal Gas Pideet Mahila Udhog Sanghatna vs Union of India**” (2012) 8, SCC 326 that by agreement of parties the Hon’ble Bench of High Court rendered the transfer order. It is obvious that Betty Alvares did not play any trick to avoid impediment of limitation in filing of the Application under Section 14 of the National Green Tribunal Act, 2010, which was not in contemplation at the relevant time. We cannot overlook that Writ jurisdiction under Article 226 of the Constitution, is available, irrespective of other remedies under the specified enactments. It is discretion of the Hon’ble High Court to consider whether the Writ Petition should be entertained even though any other remedy is available to the Petitioner. The learned Counsel for the Respondents submit that Section 5(A) of the Environment (Protection) Act, 1986, provides for an Appeal against the orders under the CRZ Notification. But in absence of directions under Section 5, Applicant – Betty Alvares cannot file any Appeal or Application. We do not find any substance in this argument, inasmuch as the Application is covered by Section 14, since it involves “substantial question relating to environment.”

**10.** We may mention here that expression ‘substantial question relating to environment’ is well defined in Section 2(m) of the of the National Green Tribunal Act, 2010,. Section 2(m) of the National Green Tribunal Act, 2010, reads as follow:

*“ 2. Definitions- (1) In this Act, unless the context otherwise requires,—*

*(m) “Substantial question relating to environment” shall include an instance where,—*

*(i) there is a direct violation of a specific statutory environmental obligation by a person by which,—*

*(A) the community at large other an individual or group of individuals is affected or likely to be affected by the environmental consequences; or*

*(B) the gravity of damage to the environment or property is substantial; or*

*(c) the damage to public health is broadly measurable;*

*(ii) the environmental consequences relate to a specific activity or a point source of pollution.”*

**11.** In our considered opinion, violation of CRZ Notification, or environment obligation under the statute, including Regulation pertaining to Municipal Laws, or pertaining to parameters of the constructions by which the community at large is affected, would come within ambit of Section 2(m) (i) (A) of the National Green Tribunal Act, 2010. The Applicant has not filed any Application directly in this Tribunal. This being a transferred Application, the objection

regarding limitation is not open for consideration and will have to be rejected. This is particularly so when the main Petition itself could not be objected on the ground of limitation. Consequently we do not find any substance in both the objections raised on behalf of the contesting Respondents.

**12.** In the result, both the Misc. Applications are dismissed. Objections are overruled.

....., **JM**  
**(Justice V. R. Kingaonkar)**

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

**NGT**