

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
PUBLIC INTEREST LITIGATION WP NO. 22 OF 2017

The Goa Foundation ...Petitioner

Versus

Ministry of Environment, Forest & Climate ...Respondents
Change & Anr

Ms Norma Alvares, Advocate, for the petitioner.

**Mr MB Da Costa, Senior Advocate with Ms K Betquecar, Advocate
for the High Court Bar Association.**

**Mr Mahesh Amonkar, Central Govt. Standing Counsel for the
Respondent No 1.**

Mr P Dangui, Government Advocate for Respondent No 2.

WITH

MISC. CIVIL APPLICATION NO.736 OF 2017

IN

PUBLIC INTEREST LITIGATION WP NO.22 OF 2017

Goa Paryavaran Savrakshan Sangharsh Samitee ...Applicant

Versus

The Goa Foundation ...Respondent

Mr SM Walwaikar, Advocate for the Applicant.

Ms Norma Alvares, Advocate for the Respondent.

WITH

PUBLIC INTEREST LITIGATION WP NO. 21 OF 2017

Kashinath Jairam Shetye and Ors ...Petitioners

Versus

Union of India & Ors ...Respondents

Kashinath J Shetye, *Petitioner No 1 in person.*
Mr Mahesh Amonkar, *Central Govt. Standing Counsel for*
Respondent No 1.
Ms P Sawant, *Additional Government Advocate for Respondent No 2.*

WITH

PUBLIC INTEREST LITIGATION WP NO. 23 OF 2017
Rohan Shirodkar ...Petitioner
Versus
Union of India & Anr ...Respondents

Mr Yogesh Nadkarni & Ms A Kale, *Advocates for the petitioner*
Mr Mahesh Amonkar, *Central Govt. Standing Counsel for*
Respondent No. 1
Mr D Shirodkar, *Additional Government Advocate for Respondent*
No.2

WITH

SUO MOTU WRIT PETITION NO.1 OF 2017
High Court of Goa on its own motion ...Petitioner
Versus
The Union of India & Anr ...Respondents

Mr SD Lotlikar, *Senior Advocate with Mr C Padgaonkar — Amicus*
Curiae
Mr Mahesh Amonkar, *Central Govt. Standing Counsel for*
Respondent No. 1
Mr P Dangui, *Government Advocate for Respondent No.2*

WITH

WRIT PETITION NO.778 OF 2017

Baina Ramponkar and Fishing Canoe Owners
Society & Anr ...Petitioner
Versus
The Union of India & Anr ...Respondents

Mr Nigel Costa Frias, *Advocate for the Petitioners*
Mr Mahesh Amonkar, *Central Govt. Standing Counsel for*
Respondent No. 1
Mr P Dangui, *Government Advocate for Respondent No.2*

WITH

WRIT PETITION NO. 783 OF 2017

Fakeersa Naikodi & Ors ...Petitioner
Versus
Union of India & Anr ...Respondents

Mr SS Kantak, *Senior Advocate with Mr. J Supekar, Advocate for the*
petitioners.
Mr Mahesh Amonkar, *Central Govt. Standing Counsel for*
Respondent No. 1
Mr P Dangui, *Government Advocate for Respondent No.2*

WITH

WRIT PETITION NO. 787 OF 2017

Pilerne Citizens Forum ...Petitioner
Versus
The Union of India & Anr ...Respondents

Mr Ryan Menezes & Ms C Rebeiro, *Advocates for the petitioner*
Mr Mahesh Amonkar, *Central Govt. Standing Counsel for*
Respondent No. 1
Mr P Dangui, *Government Advocate for Respondent No.2*

CORAM: G.S. Patel &
Nutan D. Sardesai, JJ
DATED: 12th September 2017

PC:-

1. We are constrained to note that despite the clear directions in our order of 5th September 2017, we have as yet no affidavit in reply from the State Government. This is unfortunate, but we will yet afford the State Government one final opportunity, and we do so because of the importance of the issue and since so very many persons, organizations and parties have come before us in this group of matters, apart from this Bench itself being sufficiently persuaded to take up the issue as a *suo motu* PIL as well.

2. We allow, first, MCA No 736 of 2017 for intervention (not impleadment) in PILWP No 22 of 2017.

3. Mr Amonkar has tendered a copy of an affidavit dated 11th September 2017 affirmed by C.S. Thakur, Under Secretary in the Ministry of Environment, Forest and Climate Change (“MOEFCC”), of the Union of India. We have carefully considered this affidavit. *Prima facie*, we find that the statements made in paragraphs 6, 7 and 8 furnish a compelling argument for establishing in Panjim, Goa, a Circuit Bench of the NGT Western Zone Bench, one that currently sits at Pune. We are equally unable to fathom the rationale behind what follows in the affidavit, a proposal to shift all Goa-related matters even further away to the principal seat in New Delhi. The MOEFCC’s affidavit reflects the proposals and justifications placed before it by the State Government. These are broadly two: first, inconvenient connectivity between Goa and Pune,

and, second, that the Goa Government does not have adequate legal infrastructure and representation in Pune.

4. While there is little can be done about connectivity, the second argument is singularly without appeal. In the four years or so since the NGT started in its Western Zone Bench in Pune, the State Government has surely had sufficient time to establish whatever infrastructure it requires in Pune, and to set up a legal team. But even if this argument is accepted, and taken with the one about connectivity, together these provide valid reasons for the first proposal from the State Government, viz., to establish a Circuit Bench in Panaji Goa. This is after all the seat of the government. There can be no question of inadequacy of legal representation for the State Government in Goa itself, and even less in Panjim. If this is to happen, the question of connectivity falls into complete irrelevance.

5. We propose to require the State Government to address itself to precisely this question, i.e., the setting up of a Circuit Bench in Goa. We are informally told that there is sufficient space in the old District Court building in Panaji as also in the temporary building being used at “Spaces” at Patto, Panaji. Both locations have registry facilities. The question would then be of the frequency of the Circuit Bench sittings. In this regard, we are constrained to note that about 40% of the filing before the NGT Western Zone is from this State. So much so, in fact, that the NGT Bench in Pune has a system of taking up Goa-related matters before it on Thursdays and Fridays. Obviously, this means that some plan would have to be properly drawn up for a continuous sitting for several days and perhaps a

week at a stretch at pre-defined and periodic intervals at a suitable location in Goa. The MOEFCC would have to examine the feasibility of making arrangements for the travel of the Bench Members for a Circuit sitting, but this is surely less cumbersome than requiring lawyers, litigants and government officers travel regularly either to Pune, or, worse yet, all the way to New Delhi. We propose to send the copy of this order to the NGT itself in Pune for the comments of the Presiding Member Shri Justice U.D. Salvi on this proposal.

6. In all this, we are mindful of the established law pronounced by the Supreme Court on the question of access to justice. This pronouncement is founded on a Constitutional mandate. We refer to the decision of the Supreme Court in *Anita Kushwaha v Pushap Sudan*.¹ The NGT has not been set up for the benefit or convenience of this or that government. It is established under a law to address environmental issues and before the NGT, as indeed before any Court, all litigants, whoever they be, are equal. Our Courts and Tribunals are personality-agnostic. The Government would, in preparing its affidavit, do well to bear this in mind and also to be mindful of the fact that it has an obligation to citizens and to environmental protection, a duty that cannot be denied.

7. What we suggest is in no way against the interest of the Government. If anything, to the contrary: the suggestion for a Circuit Bench in Goa, one we find reflected in the first part of the MOEFCC's affidavit, and universally endorsed by all the Petitioners before us, is also manifestly in the interest of the Government itself.

¹ 2016 (8) SCC 509.

For, it addresses all three issues: of connectivity, financial burden and adequate legal representation. Surely the Government cannot possibly be heard to dispute this position, and, indeed, we must in fairness note that on the previous occasion the learned Advocate General himself was fair and candid enough to say so himself on behalf of the State Government.

8. Clearly, therefore, the question is one of logistics for the MOEFCC itself has no other independent cause set out in its affidavit justifying a transfer of only Goa-related cases to New Delhi. In this context, we must also note that there is no such proposal in regard to cases filed in Pune from Gujarat. Conceivably the same questions of financial burden and connectivity might also arise there. What makes Goa different and perhaps special is not just the volume of the filings before the NGT, a matter that might be attributed to pronounced local fascination with and penchant for the process of law, but more importantly to the environmental sensitivity of this land. It is a land as intensely fertile as it is fragile. It needs special attention in law and in court, and it needs more often and closer home. For our part, we are quite unable to understand how the concept of access to justice and, in this case, environmental justice is subserved by moving the forum to a site that is the better part of day's travel away, one impossible to reach conveniently by road or rail and only accessible by expensive air travel.

9. We will therefore require the State Government to address the logistical issues and to provide sufficient answers. At the cost of repetition, we emphasize that this is neither combative nor

adversarial. Our only intention is to find a mutually acceptable solution that sub-serves the interests of all concerned; and by this we mean litigants, lawyers and the State Government equally.

10. The Affidavit of the State Government will be filed by 18th September 2017.

11. List the matter on 25th September 2017.

12. In the meantime an authenticated copy of this order will be communicated under a sealed cover by the registry to Shri Justice U.D. Salvi, for his comments, if any, on the logistics and feasibility.

13. We make it clear that although we have not formally issued Rule, we will dispose of these petitions finally on the next date.

14. List the entire group on the supplementary board on 25th September 2017.

15. The previous ad interim order will continue.

16. The affirmed affidavit of MOEFCC will be filed in the registry in the course of the week. Copies are to be given to the Advocates for the Petitioners in all matters.

17. Copies of the State Government's affidavit will be served on Mr Amonkar, Advocate for the MOEFCC, and on the Advocates for the Petitioners and the Petitioners appearing *pro se*.

18. All concerned to act on an authenticated copy of the order.
Authenticated copy be issued urgently.

NUTAN D. SARDESSAI J.

G. S. PATEL J.