

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
PUBLIC INTEREST LITIGATION WP NO.2 OF 2018

1) Jairaj A. Naik,
major of age, H.No.49,
Rathamal, Kapileshwari, Queula,
Ponda, Goa 403 408,
Phone No.9850452039,
Fax No. Nil. PAN No.AD8PN8375P
National Unique Identity
Number 710051335242, Email:
Annual Income : Rs.80,000/-

2) Shankhanath L. Gaonkar,
major of age, H.No.36,
Rathamal, Kapileshwari, Queula,
Ponda, Goa 403 408,
Phone No.9404755377
Fax No.Nil PAN No.ACHPG 9569K
National Unique Identity Number
797626624872, Email :
Annual Income : Rs.1,70,000/-

3) Ashok D. Naik, major of age,
H.No.123,
Rathamal, Kapileshwari, Queula,
Ponda, Goa 403 408,
Phone No.9623411246, Fax No. Nil
PAN Number : AAXPN7006J
National Unique Identity
Number 723263700781
Email : – Annual Income
Rs.1,80,000/-

4) Miss Juliana Mario Rodrigues,
major of age, H.No.47,

Christianwada,
Kapileshwari, Queula, Ponda,
Goa 403408, Phone No. ..
Fax No. Nil.
PAN Number : SWMPR 6868 R
National Unique Identity
Number 453745601944
Email : -
Annual Income : Nil.

5) Mrs. Shanta K. Naik,
major of age, housewife, H.No.95,
Rathamal, Kapileshwari,
Queula, Ponda, Goa 403408
Phone No. - Fax No. Nil.
PAN Number : ALQPN 5646 Q,
National Unique Identity
Number 400277116437
Email : -
Annual Income : Nil.

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Petitioners.

Versus

1) The Managing Director,
Sewerage & Infrastructural Development
Corporation of Goa Ltd., Ishan Building,
2nd Floor, Opposite C.C.P.,
Panaji, Goa 403 001;

2) The Member Secretary,
Goa State Pollution Control Board,
1st Floor, Dempo Towers,
Patto Plaza, Panaji – 403 001;

3) The Sarpanch/Secretary,
Village Panchayat of Queula,
Queula, Ponda, Goa 403 408;

4) The Chief Town Planner,
TCP Department, 3rd Floor,
Dempo Towers,
Patto Plaza, Panaji 403 001;

5) The Town Planner, Ponda Taluka
Office, TCP Department, 2nd Floor,
Govt. Offices Building,
Opp. Axis Bank, Ponda, Goa 403 401;

6) The Collector (South Goa District),
Collectorate Building, Margao, Goa
403 601;

7) The Dy. Collector & SDO,
Margao & Flying Squad Incharge,
The Collectorate Building,
Margao, Goa 403 601,

8) Khillari Infrastructure Pvt. Ltd.,
101 to 104, Prabhat Centre,
Annex Sector, IACBD Belapur,
Navi Mumbai 400 614,

9) The State of Goa,
through its Chief Secretary,
Secretariat, Porvorim, Goa 403501.

.... Respondents.

Mr. Nigel da Costa Frias with Mr. V. Sawant, Advocate for the
Petitioners.

Mr. A. D. Bhobe, with Ms. K. Govekar, Advocate for Respondent
No.1.

Mr. D. Lawande, with Mr A. Prabhudesai, Advocate for Respondent
No.2.

Mr. R. G. Ramani, with Mr. S. Kakodkar, Advocate for Respondent
No.3.

Mr. D. Pangam, Advocate General with Mr. Deep Shirodkar, Additional Government Advocate for Respondents No.4 to 7 and 9.

***Coram : M.S. Sonak &
C.V. Bhadang, JJ.***

Reserved on : 7th November, 2019.

Pronounced on : 14th November, 2019.

JUDGMENT: (Per M.S. Sonak, J.)

Heard learned Counsel for the parties. Rule. Rule is made returnable forthwith, with the consent of and at the request of the learned Counsel for the parties.

2. This Petition, instituted in purported public interest, challenges the ongoing construction and setting up of a 15 MLD Sewage Treatment Plant at village Queula, Ponda, Goa, by the Sewerage & Infrastructural Development Corporation of Goa Ltd. (Corporation), which is a State controlled Corporation, set up precisely to address the issue of sewage treatment in the State of Goa.

3. Mr. Nigel Costa Frias, learned Counsel for the Petitioners submits that there is no clarity as to whether the Sewage Treatment Plant (STP) is projected to treat only domestic sewage as is repeatedly urged by the Respondents. He submits that the material on record, as well as the material discerned from the files made available to him by the various authorities, suggests that the STP is

projected to treat not only the domestic sewage, but also the industrial sewage from the industrial areas and commercial establishments in the vicinity. On this basis, he submits that such a STP cannot be set up without obtaining Environmental Clearance (EC) from the State Environment Impact Assessment Authority (SEIAA). The setting up of such a STP, which is nothing but a Common Effluent Treatment Plant (CETP), without obtaining the EC from SEIAA, amounts to clear breach of the Environment Impact Assessment Notification, 2006. He submits that setting up of STP, in breach of the Notification, amounts to breach of the provisions of the Environment Protection Act, 1986, as well as right to clean environment, as guaranteed by Article 21 of the Constitution of India.

4. Mr. Costa Frias submits that in any case, there is total non-application of mind on the part of the authorities in permitting setting up of such a STP. He submits that the site is in the vicinity of residential structures. He submits that proper scientific studies are not undertaken while selecting the site and even the precautionary principle is thrown to winds. He submits that the alternate sites proposed by the Petitioners have not even been considered, even though such alternate sites would involve minimum harm to ecology and environment, as compared to the site in question. In short, he submits that several relevant considerations have been

ignored and irrelevant considerations taken into account by the Authorities while permitting setting up of the STP at the present site.

5. Mr. Costa Frias submits that the site chosen is in fact a low lying paddy field. He submits that there is prohibition under the Land Revenue Code, as well as the relevant Town and Country Planning legislations for putting up of any construction in low lying fields. He submits that till date no conversion under the Land Revenue Code is obtained and, therefore, the activity, at the site, is patently illegal and in breach of the provisions of the Land Revenue Code. He submits that even for the purpose of consideration of grant of conversion sanad, the authorities have to advert to several parameters, including health. He submits that all this has been bypassed by proceeding with the construction, without obtaining any conversion. He submits that this is yet another ground to halt any further activity at the site.

6. Finally, Mr. Costa Frias submits that the State is duty bound to provide for siting guidelines before the State or its agencies proceed with setting up of STPs. He refers to such siting guidelines framed by some other States, including Tamilnadu and points out that in absence of such siting guidelines, the project of setting up of STP ought not to be allowed to proceed.

7. For all the aforesaid reasons, the Mr. Nigel Costa Frias submits that the work on the STP may be ordered to be halted and the Respondents be directed to restore the site to its original condition.

8. Mr. D. Pangam, learned Advocate General, along with Mr. Deep Shirodkar, Additional Govt. Advocate appears for Respondents No.4 to 7 and 9, Mr. A. D. Bhobe appears for Respondent No.1-Corporation, Mr. Ramani appears for Respondent No.3, the concerned Village Panchayat, and Mr. D. Lawande, along with Mr. Prabhudessai appears for Respondent No.2-Goa State Pollution Control Board, which has granted the consent to establish the STP and the challenge in the Petition is to the consent to establish, issued by the Goa State Pollution Control Board (GSPCB) and the permissions issued by the concerned Village Panchayat.

9. Mr. Pangam, Mr. Bhobe and Mr. Lawande submit that in the present case, Respondent No.1 is setting up the STP only to treat the domestic sewage. They, therefore, submit that what is being set up is not an Effluent Treatment Plant, or in any case, not a CETP, so as to require the EC under the EIA Notification, 2006. They point out that this position has been clarified by a Full Bench of the National Green Tribunal (NGT) in the case of ***Kehar Singh vs. State of Haryana***, decided on 12th September, 2013. They also refer to the decision of the NGT in the case of ***Undir Paryavaran***

Saurakhyan Manch and anr. vs. Goa Coastal Zone Management Authority and ors. decided on 31st January, 2019, a case from Goa, in which the NGT has taken a similar view. On this basis, they submit that there is no requirement of obtaining an EC for setting up the STP which is to deal only with the domestic sewage. Mr. Lawande points out that even as long as discharge of non-domestic sewage does not exceed 10%, the STP does not qualify to be regarded as a CETP. For this, Mr. Lawande points out to the operational requirements prescribed by the Ministry of Environment and Forests, Government of India, which requirements have been referred to and relied upon by the NGT in *Kehar Singh* (supra).

10. The learned Counsel point out that the experts have considered the proposal of Respondent No.1 and only thereafter, granted the consent to establish. They point out that all relevant considerations have been taken into account and only thereafter, necessary consent to establish came to be granted. They point out that the untreated sewage is presently being discharged into the nullahs and this is a health hazard. They point out that setting up of STP is clearly in public interest and the Petitioners have no reason to oppose the same.

11. On the aspect of conversion, the learned Advocate General pointed out that an application on behalf of Respondent No.1 is pending and, in principle, there is no objection to grant of the same.

He points out that there is some issue as to whether Respondent No.1, which is controlled by the State Government, should be exempted from payment of conversion fees. He points out that even this issue will be surely sorted out. He submits that once the GSPCB has granted consent to establish, no issues relating to environment as projected by the Petitioners survive.

12. Mr. Ramani, learned Counsel for the Panchayat points out that the alternate sites suggested by the Petitioners are not at all suitable on account of the issue of gradient and on account of the fact that there are several residential structures in the sites proposed by the Petitioners. He points out that the present site is in the property of a Devasthan which has specifically granted its no objection in the matter. He points out that setting up of the STP will benefit all the Villagers and now that the GSPCB has issued the consent to establish, the apprehensions on the aspect of pollution no longer survive.

13. Rival contentions now fall for our determination.

14. The first issue which arises for determination is whether the STP which is being established by Respondent No.1 requires the EC in terms of the EIA Notification, 2006. Mr. Costa Frias admitted that if the STP proposes to treat the only domestic sewage, then, in terms of the ruling of the Full Bench of the NGT in *Kehar Singh*

(supra) or the ruling of the Division Bench of the NGT in *Undir Paryavaran Saurakhxan Manch* (supra), the EC may not be necessary. It is, however, submitted that there is no clarity as to whether the STP which is being set up by Respondent No.1 will treat only the domestic sewage. Mr. Costa Frias submits that since there are industrial areas and commercial establishments in the vicinity, there is likelihood that this STP will cater the effluents from such industrial areas as well. He submits that in such an eventuality, the STP which is proposed to be set up will amount to CETP, for which the EC is absolutely imperative.

15. Respondent No.1 has, on an affidavit, stated that it proposes to treat domestic sewage at the STP. This position is affirmed by the GSPCB, as well. From the application made by Respondent No.1 and also from certain case papers shown to us by Mr. Costa Frias from the files of the GSPCB, which were made available to him, we see no reason to disbelieve the assertion of Respondent No.1 that the STP which is proposed to be set up, is to deal with the domestic sewage. This being the position, even, according to the Petitioners themselves, there is really no requirement of obtaining any EC under the EIA Notification, 2006.

16. In *Kehar Singh* (supra), the Full Bench of the NGT has, in fact, referred to the operational requirements of technical EIA clearance of effluent treatment plants, issued by the Ministry of

Environment and Forests, Government of India. These requirements deal with the issue of coverage of CETPs under the purview of the EIA Notification. These requirements state that the combined waste water treatment plants i.e. CETPs accepting sewage also along with industrial effluents for better treatability, are covered under the Notification. However, for the purpose of clarity, any treatment plant having more than 10% of industrial contributions by volume shall be treated as a combined treatment plant. This means that in a STP where the contributions by volume of industrial sewage is less than 10%, the same may not qualify to be treated as a CETP.

17. Respondent No.1, in the present case, has also filed a detailed affidavit, pointing out that what is proposed to be set up is not a CETP, but only a STP. The affidavit states that the project involves collection of domestic sewage from the individual houses, hotels, shops and other establishments in the project areas, which will be conveyed through the closed underground piped network to the STP site. The sewage will then be treated in the STP based on C-Tech SBR Technology and only treated water will be thereafter released in the nullahs and the water bodies. The technical details have also been set out in the affidavit. The affidavit further sets out that the system is operated in a batch reactor mode and this eliminates all the inefficiencies of the continuous processes. The affidavit explains that a batch reactor is a perfect reactor, which ensures 100 % treatment. The details of the typical cycle involved in

the process, the basic process units at the STP and all such other technical details have been set out in the affidavit filed on behalf of Respondent No.1. Based upon all such material, we do not think that the Petitioners have made out any case to stall the setting up of the STP which, even otherwise, is in advanced stage.

18. From the material placed on record by the Respondents and the assertions made by the Respondents in the affidavit, we are satisfied that the STP which is being set up is meant to deal with the domestic sewage and, therefore, even according to the Petitioners, may not qualify as the CETP, so as to require the EC under the EIA Notification, 2006. According to us, the first challenge in this Petition therefore, fails and is hereby rejected.

19. The GSPCB, in this case, has filed an affidavit, in which it is pointed out that the officials of the GSPC, prior to the issuance of the consent to establish, conducted a site inspection. In the course of the site inspection, the officials adverted to the factors such as proximity to water bodies etc. The affidavit states that the report was, thereafter, submitted to the Technical Advisory Committee of the Board, which comprises experts and it is only after positive recommendations were made by this Committee that the GSPCB issued the consent to establish.

20. The affidavit filed on behalf of the GSPCB further states

that before granting consent to establish, the GSPCB ensured that the proposed technology of the STP has been assessed by carrying out performance evaluation at the existing STP in Panaji and after the results indicated that the technology ensures that parameters are well within the standards prescribed.

21. Taking into consideration the averments in the affidavit, we are really unable to accept the vague contentions about non-application of mind or exclusion of relevant considerations by the expert body, like the GSPCB. Besides, we note that the GSPCB has imposed several conditions upon Respondent No.1, when it comes to setting up of the STP. In the affidavit filed by the GSPCB, it is stated that Respondent No.1 has to comply with all these terms and conditions, strictly. All this is indicative of application of mind and the contentions to the contrary, therefore, deserve no acceptance.

22. In this case, we are unable to agree with the contention raised by the Petitioners that grant of the consent to establish is vitiated by non-application of mind or by failure to take into account the relevant considerations or taking into account irrelevant considerations. Relevant aspects have indeed been taken into consideration by the authorities and based upon vague pleas, it is not possible to stall setting up of the STP which is quite the need of the hour. The learned Advocate General has pointed out that in absence of the STP, untreated sewage finds its way into the nullahs which is

certainly a much greater threat to the environment.

23. According to us, it is in fact the duty of the local authorities or the Corporations like Respondent No.1 to take effective steps to establish STPs, so that the untreated sewage does not find its way into the nullahs or other water bodies. Discharge of untreated sewage into the nullahs or other water bodies, gives rise to health hazards, apart from polluting such water bodies. There are provisions under the Municipalities Act, Panchayat Raj Act, Goa Public Health Act, which require the statutory authorities to take actions in the matter of setting up of STPs, so as to ensure that the untreated sewage does not find its way into the nullahs and other bodies.

24. The affidavits filed by the Respondents deny that the STP is being set up in a low lying field. The affidavit points out that the Petitioners have avoided reference to highway bye-pass and the resultant topography in the area. According to us, several experts in the field have applied their mind and only thereafter, the permissions have been granted. Based upon the apprehensions expressed by the Petitioners or the vague challenges raised by them, it will not be appropriate to interfere with the permissions so granted or to stall the setting up of the STP, particularly when the process has reached at such an advanced stage.

25. In so far as the alternate sites suggested by the Petitioners

are concerned, we go by the statement made on behalf of the Panchayat concerned, which would be in the best position to offer comments on such matters. The learned Counsel for the Panchayat has pointed out that the alternative sites suggested by the Petitioners are not at all feasible. In any case, as long as there is material to hold that the present site at which the STP is being set up is not suitable, it will not be proper for us to interfere with the permissions granted on the basis that some other sites are more appropriate or more suitable. Based upon such considerations, and that too at such a belated stage, it will not be proper to stall the setting up of the STP.

26. The GSPCB, in its affidavit, has made reference to the directions issued by the Hon'ble Supreme Court in WP(C)/376/2012, in which directions have been issued to all States to ensure that the STPs are installed within a stipulated time frame. It is the case of the GSPCB that establishment of the STP in the present case would be in compliance with the directions issued by the Hon'ble Supreme Court.

27. The record indicates that by the time this Petition was instituted, the work of laying network of pipes, was at a very advanced stage. Such network was put in place in order to connect the households under the main sewage collection pipeline and there is no delay in connecting all this to the STP, once the STP is established and poised to become operational. However, since even

on merits we are not satisfied that any case has been made out to interfere with the permissions, we do not deem it necessary to focus much on the aspect of delay and laches, which clearly arise in the present matter.

28. On the aspect of conversion, however, we agree with Mr. Costa Frias that the conversion sanad was required to be in place. However, the affidavit filed by the Collector, South Goa indicates that an application has already been made, *inter alia*, for exemption and has already been forwarded to the Government for consideration. The affidavit also states that even if the exemption is not granted, there are ample powers under the Land Revenue Code to take necessary action to ensure that the revenue aspect is safeguarded and the conversion fees are recovered. We note the statement made by the learned Advocate General that there will be no issue regarding grant of conversion and the only issue which is pending consideration is whether Respondent No.1 should be exempted from payment of conversion charges. Upon consideration of all aspects, we do not think that public interest will be served by halting the setting up of the STP, particularly, when the project, which is undoubtedly commenced in public interest, is at such an advanced stage. However, we direct the concerned Respondents to sort out the issue of conversion expeditiously and in any case, within a period of three months from today.

29. Taking into consideration the project which is being set up is eminently in public interest and in fact such project is in the discharge of duties cast upon the Respondents, we decline to interfere with the permissions granted. Apart from the public interest involved, we have found that the permissions have not been vitiated on account of any statutory breach or for non-consideration of relevant factors or consideration of any irrelevant factors. The permissions are also not vitiated for any non-application of mind. The apprehensions expressed by the petitioners are vague and on the basis of the same it will not be appropriate to stall the project which has advanced substantially.

30. On the aspect of siting guidelines, Mr. Costa Frias was unable to show us any statute or statutory requirement that the State issues the same. Merely because some States have issued such guidelines, we may not be in a position to issue a writ of mandamus to the State to issue the same. At the highest, we can say that it is for the State to consider whether it is advisable to issue such guidelines, so that the process of setting up the STPs in the State of Goa is expedited and undertaken in an orderly manner. The State may, therefore, consider this requirement and take appropriate decisions in this regard.

31. Before parting with the final order, it is necessary to note that the respondents are not only under an obligation to establish

such projects, which we have found to be eminently in public interest, but also to ensure that the project is effectively implemented and serves the purpose and the object for which it is established. The learned Counsel for the respondent had pointed out different statutory enactments which basically aim at proper management of sewerage system and sanitation services in the State of Goa for instance, The Goa Sewerage System and Sanitation Services Management Act, 2008. The provisions of the Goa, Daman and Diu Public Health Act 1985 were also pointed out in this regard.

32. There are instances where there is resistance or disinclination to connect individual sewerage outlets of the households to the common grid leading to such STPs. It is not necessary to go into the reasons for such disinclination or resistance. Suffice it to say, that the concerned local bodies/authorities/corporation shall insist and ensure that the individual households connect their sewerage disposals to such systems in order to effectuate the purpose and the object of setting up of such STPs. It is necessary to emphasise that insistence on such connection is only in the interest of the public health in general and the individual interest as well. We would like to leave it at that.

33. The Rule in this Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

C.V. Bhadang, J.

M.S. Sonak, J.