

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO.38 OF 2019

THE GOA FOUNDATION,
THR. ITS SECRETARY,
DR. CLAUDE ALVARES

...PETITIONERS

Versus

GOA STATE POLLUTION CONTROL
BOARD, THR. ITS MEMBER
SECRETARY AND 5 ORS.

...RESPONDENTS

Ms. Norma Alvares, *Advocate for the Petitioners.*

Mr. Pavithran A. V., *Advocate for Respondent No.1.*

Ms. Ankita Kamat, *Additional Government Advocate for Respondent
Nos.2, 3, 4 and 5.*

Mr. Y. Nadkarni, *Advocate for Respondent No.6.*

**CORAM: M. S. SONAK &
M. S. JAWALKAR, JJ**

DATED: 15th September 2021

ORAL ORDER :

1. Heard learned Counsel for the parties.
2. The petitioners, by filing this petition, had sought for the relief of permanent closure of respondent no.6's Sponge Iron Plant, mainly on the ground that respondent no.6 in breach of an

undertaking given in Writ Petition No.85 of 2006 and the orders made thereunder was dumping fly ash at the three abandoned quarries (designated sites). The petitioners had pointed out that even in terms of the consents issued by the Goa State Pollution Control Board (GSPCB), such fly ash was not permitted to be dumped at these designated sites.

3. Respondent no.6 filed an affidavit denying the allegations. Therefore, with the consent of the parties, we appointed the Goa Engineering College to depute a team of experts to inspect the designated sites and determine whether any fly ash was being dumped or disposed of at the designated sites.

4. The Goa Engineering College has submitted a report titled “*Report on sampling and analysis of samples extracted from Survey Nos.29/2, 36/1 and 56/1 as directed by Hon'ble High Court of Bombay at Goa vide PIL Writ Petition No.38 of 2019*” prepared by a team of GEC under the leadership of the head of Civil Engineering Department.

5. The report adverts to several aspects, which, at least we had not required them to advert to. However, the report in clause 4.1 (9) quite clearly states that the results analyzed and the physical appearance of the sample (dark black to dark brownish-black and granular) indicate that the material is not fly ash. This is because fly ash is fine and grey-colored material. Finally, the report opines that the material disposed of or dumped at the designated site is not fly ash.

6. According to us, there is no good reason not to accept the aforesaid conclusion recorded in the report. As regards other observations or recommendations, we are not called upon to say anything because those observations or recommendations have been made by the Committee when, in fact, they were not called upon to do the same.

7. Suffice to record that the report prepared by the GEC now states that respondent no.6 has not disposed of or dumped fly ash at the designated sites. Therefore, there is no reason to further consider the prayer made by the petitioners in this petition.

8. The petitioners, in their affidavit in rejoinder, have proposed certain recommendations. According to us, in this matter, it will be hardly appropriate for us to examine such recommendations. The petitioners, if they so choose, can make a detailed representation to the GSPCB and we are sure that the Board will look into such representation.

9. Mr. Nadkarni, on instructions, has stated that Respondent no.6 has paid the costs for the report and will not insist on reimbursement from the Petitioner. Even according to us, there should be no order for reimbursement because team GEC had to conduct several tests and could then opine that what was being disposed of at the designated sites was not fly ash. The apprehension of the Petitioner may have been ultimately proved incorrect but we cannot say that the apprehension expressed was either reckless or frivolous or malafide.

10. For the aforesaid reasons, we dispose of this petition. There shall be no order as to costs.

M. S. JAWALKAR, J.

M. S. SONAK, J.

NITI K
HALDANKAR

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