

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO.43 OF 2019

1. Mr. Kashinath Jairam Shetye,
Son of Mr. Jairam Shetye,
Major of age, Indian National,
having permanent residence at
A-102, Raj Excellency, Patto,
Ribandar Goa.
Tel. (M) 942068997.
Email: shetyebabu@yahoo.com
PAN Card: ATLPS1247D
2. Dr. Ketan Govekar
major of age,
Indian national,
having permanent residence at
3rd Floor, Wadji Building
St. Inez Panjim Goa.
Pin Code 403 001
Tel (M) 9420819016
Email: ketansgovekar@gmail.com
3. Mukundraj Mudras
major of age, Indian national,
having permanent residence at
Building 6 C-9
Kenkre Estate, Cabesa,
St. Cruz Tiswadi Goa.
4. Desmond Alvares,
major of age, Indian national,
having permanent residence at
H.No.470 Doxxier Assagao
Bardez Goa.

5. Narendra Chodankar
major of age, Indian National,
having permanent residence at
H.No.1281, St. Estevam
Tonca-Tiswadi Goa.
6. Arturo D'Souza
major of age, Indian National,
having permanent residence at
H.No.351, Ruzaiwado,
St. Cruz, Tiswadi Goa.
7. Inacio Domnic Pereira
major of age, Indian National,
having permanent residence at
H.No.836, St. Agostniha,
Marrod, St. Cruz, Tiswadi Goa.
8. Ramchandra Manjrekar
major of age, Indian National,
having permanent residence
H.No.452, Tisk Usgao,
Ponda Goa.

... Petitioners

Versus

1. Union of India,
Through Jt. Secy
Ritesh Kumar Singh
Jt. Secy.
J-615, Jal
Block, Indira Paryavaran Bhawan
JorBagh Road New Delhi
110003.
2. Union of India
Through Secretary,

Ministry of Environment & Forests,
CGO Complex, Lodhi Road,
New Delhi Pin 110510.

...Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioners.
Mr. R. Chodankar, Central Government Standing Counsel for the
Respondents.

**CORAM: SUNIL P. DESHMUKH &
 M. S. SONAK, JJ**

**RESERVED ON: 24th August 2021
PRONOUNCED ON : 27th August 2021**

JUDGMENT (Per M. S. Sonak, J)

1. Heard Mr. Nigel Da Costa Frias, learned counsel for the Petitioners, and Mr. R. Chodankar learned Standing Counsel for the Respondents.
2. Rule. The rule is made returnable forthwith at the request and with the consent of the learned counsel for the parties.
3. This petition, as initially instituted, had challenged the Notification dated 12.07.2019 issued by the Respondents in the exercise of powers conferred by sub-section (1) and clauses (i) to (iv) of sub-section 2 of Section 3 of the Environment (Protection) Act, 1986 (EPA) declaring that to obtain blue flag certification, on 12 beaches, including in particular Miramar (Panaji Goa), certain specified structures/facilities shall be permitted in the Coastal

Regulation Zone (CRZ) area subject to maintaining a minimum distance of 10 meters from High Tide Line (HTL). In issuing this Notification dated 12.07.2019 the Respondents, under sub-rule 4 of Rule 5 of the EPA, in the purported public interest, had dispensed with the requirement of notice under clause (a) of sub-rule 3 of Rule 5 of the Environment (Protection) Rules, 1986 (the said Rules).

4. By order dated 7.10.2019, this Court stayed the operation of the impugned Notification dated 12.07.2019, in so far as it concerned the Miramar (Panaji Goa) beach. The order dated 7.10.2019 would indicate that such stay was granted upon consideration of Petitioners contention that there was no justification to dispense with the public notice as contemplated by clause (a) of sub-rule (3) of Rule 5 (public notice) and if such public notice had indeed been issued, then the Petitioners and other stakeholders would have lodged their objections *inter alia* by pointing out that most of the facilities proposed, already exist at the Miramar beach and therefore, to permit such facilities up to a distance of 10 meters of HTL might result in disproportionate environmental damage.

5. During the pendency of this petition, the Respondents, in supersession of the aforesaid Notification dated 12.07.2019, issued Notification dated 09.01.2020 concerning “*such identified beaches....., including islands*”. Though, there is no

specific reference to any identified beaches or islands as was the case with Notification dated 12.07.2019, the learned counsel for the parties submitted that the Notification dated 09.01.2020 will include the Miramar beach at Panaji Goa. Again, even in the Notification dated 09.01.2020, the Respondents, under sub-rule (4) of Rule 5 of the said Rules, in purported public interest dispensed with the requirement of public notice.

6. Therefore, the Petitioners, amended this petition to challenge the Notification dated 09.01.2020 (impugned Notification) to the extent the same concerns the Miramar beach Panaji Goa. By order dated 09.03.2021, the impugned Notification dated 09.01.2020 to the extent it concerned the Miramar beach at Panaji Goa was again stayed by this Court until further orders. The Respondents were granted an opportunity to file their affidavit and to apply for the vacation of interim relief if they choose to.

7. Shri E. Thirunavukkarasu, Scientist 'E' in the Regional Office of the Ministry of Environment, Forests and Climate Change (MOEF and CC) has filed an affidavit dated 05.12.2019 on behalf of the Respondents. This affidavit was in the context of the earlier Notification dated 12.07.2019. The same deponent has then filed yet another affidavit dated 16.07.2021, in the context of impugned Notification dated 09.01.2020.

8. The Petitioners have filed an affidavit dated 14.10.2019 placing on record the facilities that already exist at Miramar beach Panaji Goa. The Petitioners have also filed an affidavit in rejoinder dated 10.08.2021 dealing *inter alia* with the affidavits on behalf of Respondent Nos. 1 and 2.

9. Mr. Nigel Da Costa Frias learned counsel for the Petitioners submitted that the scheme of Rule 5 of the said Rules postulates that the draft Notification is published in the official gazette and such other manner as the Central Government as deem it necessary so that any person interested in filing an objection to such draft Notification, may do so in writing to the Central Government within 60 days from the date of publication of the Notification in the official gazette. He submits that only in exceptional cases and that too if it is in the public interest and in the interest of the environment to do so, the Central Government can dispense with such public notice. He submits that in the present case, there was neither any public interest nor any situation of urgency, based on which such public notice could have been dispensed with by the Central Government. He submits that such dispensation is contrary to the law laid down by the NGT in the matter of *M/s. Lithoferro vs Ministry of Environment and Forests*¹. He submits that such dispensation amounts to a denial of effective opportunity to the stakeholders to express their views and lodge their objections and therefore, such dispensation is in

¹ 2013 SCC OnLine NGT 41

violation of the law laid down by the Hon'ble Supreme Court in *Hanuman Laxman Aroskar vs Union of India*².

10. Mr. Nigel Da Costa Frias submits that in the affidavit filed on behalf of the Respondents there is no explanation as to why the public notice came to be dispensed with or as to the existence of any material warranting dispensation of such public notice. He submits that such dispensation is vitiated by non-application of mind because the stay order granted by this Court to the earlier Notification dated 12.07.2019 was not even considered by the Respondents. For all these reasons, Mr. Costa Frias submits that the impugned Notification dated 09.01.2020 is liable to be set aside.

11. Mr. Chodankar learned Standing Counsel submitted that the dispensation of the public notice was in the public interest. He submitted that there was a due public consultation and inter-ministerial consultation and therefore, it was deemed appropriate to dispense with the requirement of public notice under the said Rules. He submitted that this decision had the backing of the concerned ministers and he referred to the extracts from the minutes of the meeting of the cabinet held on 27.12.2018 (at pages 201 and 202 of the paper book).

² (2019) 15 SCC 401

12. Mr. Chodankar submitted that providing facilities to obtain blue flag certification was in the public interest and therefore, there was no infirmity in the impugned Notification. He submitted that most of the facilities proposed to be provided are permissible under the Coastal Regulation Zone of 2011 (CRZ) in so far as it relates to the State of Goa. He submitted that the impugned Notification, therefore, does not seek to amend the CRZ Notification of 2011. He submits that all these are relevant considerations for dispensing with a public notice. He submitted that providing all such facilities will facilitate overall improvement of the environment and therefore, there is public interest involved both in the issuance of the impugned Notification and in the dispensation of public notice under the said rules. For all these reasons, Mr. Chodankar submits that this petition may be dismissed and the interim relief vacated.

13. The rival contentions now fall for our determination.

14. The Notification dated 12.07.2019 had recited that the MOEF and CC, to conserve, protect and improve the quality of the environment and preventing, controlling, and abating environmental pollution has decided to identify beaches for blue flag certification. Further, to achieve the internationally recognized highest standard for beach management, planning, and execution of projects for infrastructure development, cleanliness, safety, and security services, some beaches including islands have been

identified. This recital makes a specific reference to "*Miramar (Panaji Goa)*".

15. The Notification dated 12.07.2019 then proceeds to recite that the Central Government, under sub-rule (4) of Rule 5 of the EPA, in public interest dispenses with the requirement of notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules (public notice)

16. Thereafter, the operative portion of the Notification dated 12.07.2019 proceeds to state that the Central Government in the exercise of powers conferred by sub-section (1) and clauses (i) to (iv) of sub-section (2) of Section 3 of EPA hereby declares that for the purpose of obtaining blue flag certification in the specified 12 beaches the following structures and facilities shall be permitted in the Coastal Regulation Zone (CRZ) areas subject to maintaining a minimum distance of 10 meters from the High Tide Line (HTL) viz:-

- “(a) Container based toilet blocks, change rooms, shower panels;*
- (b) Mini grey water treatment plant enclosed in temporary structures;*
- (c) Mini solid waste recycling plant enclosed in temporary structures;*
- (d) Off grid solar PV panels;*
- (e) Purified drinking water kiosk;*
- (f) Beach access pathway to bathing zone made of interlinking paver blocks;*
- (g) LED landscape lighting with poles duly grouted;*

- (h) Portable bamboo made seating benches and sit-out umbrellas;*
- (i) Outdoor children play equipment;*
- (j) Container based CCTV control room and First aid station;*
- (k) Watch towers; and*
- (l) Beach Information hoarding boards and beach layout map hoarding boards.”*

17. After the aforesaid Notification dated 12.07.2019 to the extent it applied to Miramar (Panaji Goa), was stayed by this Court, the MOEF and CC issued the impugned Notification dated 09.01.2020.

18. The first recital in the impugned notification once again provides that the MOEF and CC to protect and conserve the environment and control and abate pollution in coastal beaches and sea waters has decided to identify beaches for internationally recognized blue flag certification. This recital, as noted earlier, makes no specific reference to any beaches or islands including Miramar (Panaji Goa).

19. The second recital in the impugned Notification dated 09.01.2020 then provides that stringent ‘*Blue Flag*’ certification standards call for responsible and sustainable amenities and infrastructure development, cleanliness, safety and security services, etc.

20. Third recital in the impugned Notification dated 09.01.2020 then proceeds to state that the Central Government, under sub-rule (4) of Rule 5 of the said Rules in public interest dispenses with the requirement of notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules (public notice).

21. Finally, the operative portion of the impugned Notification proceeds to state that the Central Government in supersession of earlier Notification dated 12.07.2019 and in the exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of EPA hereby declares that for the purpose of blue flag certification in identified beaches, the following activities and facilities shall be permitted in the Coastal Regulation Zone (CRZ), including islands subject to maintaining a minimum distance of 10 meters from HTL:-

- “(a) Portable toilet blocks, change rooms and shower panels;*
- (b) **Grey water treatment plant;***
- (c) **Solid waste management plant;***
- (d) **Solar power plant;***
- (e) Purified drinking water facility;*
- (f) Beach access pathways;*
- (g) Landscaping lighting;*
- (h) Seating benches and sit-out umbrellas;*
- (i) Outdoor play / fitness equipment;*
- (j) CCTV surveillance and control room;*
- (k) First aid station;*
- (l) Cloak room facility;*
- (m) Safety watch towers and beach safety equipments;*
- (n) Beach layout, environment information boards and other signages;*

- (o) *Fencing, preferably vegetative;*
- (p) *Parking facilities;*
- (q) *Entry gate, tourist facilitation centre; and*
- (r) *Other associated facilities or infrastructure, as per requirements of Blue Flag Certification.*

Note: the activities and facilities mentioned above shall be exempt from prior clearance under the provisions of CRZ Notification, Island Protection Zone Notification and Island Coastal Regulation Zone Notifications respectively.”

22. Now since the impugned Notification has been issued in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of EPA, reference can usefully be made to the said provisions.

“3. Power of Central Government to take measures to protect and improve the environment.-

(1)

(2)

(i)

(a)

(b)

(ii)

(iii)

(iv)

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi)

(vii)

(viii)

(ix)

(x)

(xi)

(xii)

(xiii)

(xiv)

(3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.”

23. The aforesaid provisions are to be read and construed along with the provisions contained in Rule 5 of the said Rules dealing with the subject of prohibition and restriction on the location of industries and the carrying on processes and operations in different areas.

24. Rule 5 of the said Rules reads as follows:-

“5. Prohibitions and restrictions on the location of industries and the carrying on processes and operations in different areas.-

(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas-

- (i) Standards for quality of the environment in its various aspects laid down for an area.*
- (ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.*
- (iii) The likely emission or discharge of environmental pollutants from industry, process, or operation proposed to be prohibited or restricted.*
- (iv) The topographic and climatic features of an area.*
- (v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.*
- (vi) Environmentally compatible land use.*
- (vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.*
- (viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.*
- (ix) Proximity to human settlements.*
- (x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.*

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

- (3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.*
- (b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify*

the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of process or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d).....

[(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3).”

25. The conjoint reading of the aforesaid two provisions suggests that the Central Government has powers to take measures to protect and improve the environment, *inter alia* by way of restriction in the area in which the industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. This aspect is spelled out in Sections 3(1) and 3(2) of the EPA.

26. Rule 5(1) of the said Rules then provides that the Central Government may have to take into consideration certain specified factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas. Such factors have been set out in sub-clauses (i), to (x).

27. Rule 5(2) of the said Rules provides that while prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down. This means that the Central Government will have to follow the procedure laid down in sub-rule (3) and (4) of Rule 5 of the said Rules.

28. Sub-rule (3) which comprises clauses (a), (b), (c), and (d) provides for the following procedure.

“(a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of process or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d)”.

29. Sub-rule (4) then provides that notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in the public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3) of the said Rules (public notice).

30. Therefore, the scheme of the relevant provisions is that the Central Government, before imposing any prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area, may, by notification in the official gazette and in such other manner as the Central Government may deem it necessary from time to time “*give notice of its intention to do so*”. This notice is referred to as Rule 5(3)(a) notice in the said Rules and this notice is referred to as ‘*public notice*’ in this judgment and order.

31. Such rule 5(3)(a) notice or public notice is required to give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the location of the industries and carrying on of processes or operations in that area.

32. Thereafter, clause (c) of sub-rule (3) of Rule 5 provides that any person interested in filing an objection against the imposition of prohibition or restriction on carrying on of processes or

operations as notified under clause (a) may do so in writing to the Central Government within 60 days from the date of publication of the Notification in the official gazette.

33. Clause (d) of Rule 5(3) of the said Rules is not relevant for considering the issue in this petition because this clause concerns certain north-eastern States and Jammu and Kashmir.

34. Rule 5(4), which opens with a non-obstante clause, however, enables the Central Government, if it is in the public interest to do so, to dispense with the requirement of notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules. This requirement of public notice embodies the principles of natural justice enabling any affected persons or stakeholders to lodge their objections. This casts a corresponding duty on the Central Government to consider such objections before proceeding to issue the final notification. In environmental matters, the importance of such public participation cannot be underscored. The opportunity of lodging objections to the proposed action is quite a valuable one, and the same cannot be lightly dispensed with, in the absence of any genuine public interest justifying such dispensation. There must be some public interest involved in the dispensation of the public notice and the resultant deprivation of opportunity to the public to lodge their objections.

35. In the present case, the Central Government, by invoking Rule 5(4) of the said Rules has dispensed with the public notice. This means that the Central Government has departed from the normal procedure prescribed under Rule 5(3) of the said Rules. Therefore, the Central Government, upon challenge, had to explain, by placing relevant material, the reasons for which and circumstances in which the notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules came to be dispensed with. The mere recital of "*public interest*" in the impugned Notification or an *ipse dixit* in the defense affidavit is not sufficient in such matters. The Central Government, when challenged, has to place on record the relevant material demonstrating such public interest in dispensing with the public notice. Sufficiency or adequacy of such material may not be the concern of a writ Court. But the existence and relevancy of such material is undoubtedly a concern when it comes to judicial review by a writ Court in such matters.

36. Now the record bears out that the Notification dated 12.07.2019 to the extent it concerned the Miramar (Panaji Goa) was stayed by this Court on 7.10.2019 primarily on the ground that there was no material forthcoming to explain the dispensation of public notice.

37. In the affidavit filed on behalf of Respondent Nos. 1 and 2 on 05.12.2019 all that was stated in paragraph 10 on the issue of the dispensation of public notice was as follows:-

“10. It is most respectfully submitted that the Central Government, under sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, in the public interest had dispensed requirement of notice under clause (a) of sub-clause (3) of rule 5 of the said rules, as the said activities required for obtaining 'Blue Flag' certification are in the public interest and these said facilities will facilitate in overall improvement of the environment.”

38. The alleged circumstance that certain activities are required to be undertaken for obtaining a blue flag certification or that such activities are in the public interest or that such facilities will permit overall improvement of the environment are all circumstances possibly relevant for proposing to permit certain operations or processes on the specified beaches notwithstanding the provisions of CRZ Notification of 2011. However, such circumstances, by themselves cannot be said to be relevant for dispensing with the public notice. The affidavit does not even attempt to answer what was the public interest involved in dispensing with the public notice.

39. The Central Government was required to state the reasons which prompted it to dispense with such public notice and thereby deprive the interested persons of filing objections in the matter. No such reasons are forthcoming either in the Notification dated 12.07.2019 or in the affidavit dated 5.12.2019 filed by and on behalf of Respondent Nos. 1 and 2. The so-called reasons set out in

paragraph 10 of the affidavit are hardly reasons for dispensation of the public notice.

40. The impugned Notification, which supersedes the Notification dated 12.07.2019 was issued on 09.01.2020. This means that impugned Notification was issued almost seven months after the issuance of Notification dated 12.07.2019. The impugned Notification was issued almost three months after this Court had stayed the operation of Notification dated 12.07.2019 in so far as it concerned the Miramar (Panaji Goa) beach. This is significant because the said Rules contemplate granting of only sixty days to the public to lodge their objections.

41. Therefore, in the affidavit filed on 16.07.2021 in defense of the impugned Notification dated 09.01.2020, the Central Government was required to not only state the reason for dispensation of the public notice but also indicate some application of mind to the circumstance that its previous Notification dated 12.07.2019 had already been stayed by this Court. The affidavit had to address the issue as to whether the issuance of the impugned notification after the first notification was stayed by this Court could not brook a delay of even sixty days.

42. In the affidavit filed on 16.07.2021 all that is stated in paragraph 16, in the context of the dispensation of the public notice is as follows :

“16. It is most respectfully submitted that the Central Government, under sub-rule (4) of rule 5 of the Environmental (Protection) Rules, 1986, in Public interest had dispensed requirements of notice under clause (a) of sub-clause (3) rule 5 of the said rules, as the said activities required for obtaining 'Blue Flag' certification are otherwise permissible activities within CRZ area as per CRZ Notification, 2019, which was finalized after due public consultation & Inter-ministerial consultation. It is also respectfully submitted that the said activities are in the public interest and they will facilitate in overall improvement of the Environment.”

43. Again we are afraid that the aforesaid alleged circumstances cannot constitute reasons for dispensing with a public notice. In paragraph 16 there is a reference to "*due public consultation*". However, there is no elaboration whatsoever as to what this expression means. There is no material placed on record about any consultation with the members of the public or stakeholders. There is a reference to "*inter-ministerial consultation*". Such inter-ministerial consultation is hardly a ground to dispense with a public notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules.

44. Mr. Chodankar referred to extract from the minutes of the meeting of the cabinet held on 27.12.2018 (pages 201 and 202 of the paper book) in the context of "*inter-ministerial consultation*". In the first place, the minutes placed on record are in a truncated form. Secondly, the minutes refer to a note dated 10.12.2018 which is nowhere disclosed. Thirdly, the minutes refer to the Coastal

Regulation Zone (CRZ) Notification of 2018. The nexus between such CRZ Notification and the impugned Notification is nowhere discernable or made clear. In any case, inter-ministerial consultation or the truncated extract produced on record hardly constitutes any relevant material in the context of the dispensation of public notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules.

45. Mr. Chodankar then submitted that since the CRZ Notification of 2011 already permits the activities or processes which are now proposed to be undertaken by the impugned Notification dated 09.01.2020 and further, since the CRZ Notification of 2011 was issued by the Central Government after giving notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules, there was no further requirement of such notice whilst issuing the impugned Notification. He referred to ‘CRZ of Goa’ and the clause that permits putting up of purely temporary structures between the months of September to May in support of this contention.

46. The aforesaid contention of Mr. Chodankar finds no reflection in either of the affidavits filed by and on behalf of Respondent Nos. 1 and 2. Be that as it may, Mr. Chodankar's contention is not correct because in terms of ‘CRZ for Goa’ what may be *inter alia* permitted is putting up “*purely temporary and*

seasonal structures customarily put up between the months of September to May”.

47. Mr. Chodankar submits that most of the structures proposed to be put up at the Miramar beach in pursuance of the impugned Notification are purely temporary and seasonal structures. Now the perusal of the impugned Notification dated 09.01.2020 makes it clear that what is proposed, includes *inter alia* grey water treatment plant, solid waste management plant, solar power plant, CCTV surveillance and control room and “*other associated facilities or infrastructure, as per requirement of blue flag certification*”.

48. Now the water treatment plant, solid waste management plant, or even solar power plant can hardly be styled as purely temporary and seasonal structures customarily put up between the months of September to May. The earlier notification dated 12th July 2019 had referred to the facilities of mini grey water treatment plant enclosed in *temporary structures*, mini solid waste recycling plant enclosed in *temporary structures*, but the impugned notification dated 9th January 2021 quite consciously omits reference to *temporary structures* when it comes to water treatment plant or solid waste management plant.

49. Besides, the impugned notification is open-ended when it refers to ‘*other associated facilities or infrastructure, as per requirement of blue flag certification.*’ Therefore, Mr. Chodankar's

contention in support of dispensing with a public notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules cannot be accepted.

50. Mr. Chodankar also contended that the impugned Notification does not amend the CRZ Notification of 2011. This contention is no answer to the challenge of the dispensation of the public notice. In any case, even this contention is not well-founded for brief reasons indicated hereafter.

51. Under the CRZ Notification of 2011, there are several restrictions in the No Development Zone which extends up to 200 meters from HTL. The impugned Notification purports to reduce this distance from 200 meters to 10 meters from HTL at least in respect of the activities specified therein. Besides, the note forming part of the impugned Notification provides that the activities and facilities mentioned in the impugned Notification shall be exempt from prior clearance under the provisions of CRZ Notification, Island Protection Zone Notification, and Island Coastal Regulation Zone Notification respectively. Therefore even this contention of Mr. Chodankar cannot be accepted.

52. In any case, we are presently not concerned with the issue as to whether the activities and the facilities mentioned in the impugned Notification are in the public interest or not or whether such activities are for the improvement of the environment or not.

In this petition, what we are really concerned about is whether the Central Government was legally justified in dispensing with a public notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules. On this aspect, the Central Government has neither given any reasons in the impugned notification or the affidavits nor produced any material to justify such dispensation.

53. Mr. Costa Frias did try to submit that the Petitioners have filed an affidavit backed with some material to demonstrate that most of the facilities already exist at Miramar beach and therefore, there is no warrant to undertake such activities or provide such facilities in an area up to 10 meters from HTL. He submitted that any attempt to provide such facilities in an area up to 10 meters from HTL at Miramar beach will seriously degrade the environment in an eco-sensitive area.

54. Again, in the present petition, we are not going into this issue because the main issue is about the dispensation of a public notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules. As noted earlier, the Central Government, except for reciting *public interest* in the impugned notification, has not placed any material worth the name to demonstrate the existence of any public interest in dispensing with the public notice. Rather, the Central Government has confused between the alleged public interest involved in obtaining blue flag certification and the public interest otherwise necessary for dispensing with the public notice.

55. The expression “*public interest*” appearing in Rule 5(4) of the said Rules came up for consideration before the NGT in *M/s. Lithoferro* (supra). The principal bench led by Justice Swatanter Kumar after considering various precedents has held that public interest in the context of Rule 5(4) of the said Rules has to be read in conjunction with environmental protection. Environmental protection must attain paramount consideration and other private interests including other minor interests must give in. The NGT held that there is a close relationship between public interest on the one hand and sustainable development on the other. It is demonstrably clear from the expression ‘public interest’ used by the legislature in Rule 5(4) that it has to have a direct nexus to environmental protection. The direction which is sought to be issued in exercise of the powers conferred by sub-rule 4 of Rule 5 of the said Rules has to be for the protection of the environment as well as the greater and urgent need to protect the environment for the good of the public at large by dispensing with the principles of natural justice. The principal bench of the NGT has also held that the requirement of notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules is a requirement consistent with the principles of natural justice and therefore, in the absence of genuine public interest, cannot be ordinarily dispensed with.

56. Neither the impugned notification nor the affidavit filed in defense of the impugned Notification reflect any application of mind to the existence of public interest as explained by the

Principal Bench of NGT in the aforesaid matter. There is no explanation as to why the issuance of impugned Notification could not brook the delay of even 60 days, within which objections could have been filed by the members of the public to the proposed Notification.

57. In *Hanuman Aroskar* (supra) the Hon'ble Supreme Court has underscored the importance of public consultation in environmental matters. The grant of opportunity to the members of the public to lodge their objections in such matters is species of public consultation in environmental matters. EIA Notification of 2006 provides that public consultation is the process by which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained to take into account all the material concerns in the project or activity design as appropriate.

58. The Hon'ble Supreme Court has explained that such public consultation postulates two elements. They have both, an intrinsic and an instrumental character. The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity. Public consultation is a process that is designed to hear the voices of those communities which would be affected by the activity. They may be affected in terms of the air which they breathe, the water which they drink or use to irrigate their lands,

the disruption of local habitats, and the denudation of environmental ecosystems which define their existence and sustain their livelihoods. Public consultation involves a process of confidence-building by giving an important role to those who have a plausible stake. It also recognizes that apart from the knowledge which is provided by science and technology, local communities have an innate knowledge of the environment. The knowledge of local communities is transmitted by aural and visual traditions through generations. By recognizing that they are significant stakeholders, the consultation process seeks to preserve participation as an important facet of governance based on the rule of law. Participation protects the intrinsic value of inclusion.

59. The Hon'ble Supreme Court has held that public consultation cannot be reduced to a mere incantation or a procedural formality that has to be completed to move on to the next stage. Underlying public consultation is the important constitutional value that decisions that affect the lives of individuals must, in a system of democratic governance, factor in their concerns which have been expressed after obtaining full knowledge of a project and its potential environmental effects. Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders is to account for all the material concerns in the design of the proposed project or activity.

60. In *Ajay Marathe Vs Union of India and others*³, a Full Bench of our Court has analyzed the Environment (Protection) Rules, 1986 (the said Rules) with which we are concerned in the present petition and held that the provisions of clauses (a), (b) and (c) of sub-rule (3) of Rule 5 of 1986 Rules are mandatory, since, whenever it was intended to impose prohibition or restrictions as contemplated by Rule 5, the Central Government is under a mandate to notify its intention to do so in the official gazette and such other manner as it may deem fit. Only when the Central Government is satisfied that it is in public interest to do so, it may dispense with the requirement of prior publication of notice under clause (a) of sub-rule (3). The Full Bench held that had the prior publication been made, the citizens could have pointed out the ill effect of the proposed amendments to the Noise Pollution Rules and how such amendments violate the rights guaranteed under Article 21 of the Constitution. The Full Bench finally held that in the absence of proper dispensation with public notice, the exercise of powers in issuing the impugned Notification was manifestly unreasonable and arbitrary.

61. In *Electrotherm (India) Limited Vs Patel Vipulkumar Ramjibhai*⁴, the Hon'ble Supreme Court held that public consultation/public hearing is a mandatory requirement of the environmental clearance process. If the decision-making process

³ 2018(4) Mh.LJ 770

⁴ (2016) 9 SCC 300

in doing away with or in granting exemption from public consultation/public hearing is not based on correct principles then the decision arising out of such process would be invalid.

62. In the context of provisions of the Land Acquisition Act, 1894, there are several decisions of the Hon'ble Supreme Court dealing with the invocation of urgency clauses under Section 17 and the dispensation of the right of persons interested to object to compulsory acquisition in the hearing under Section 5A of said Act.

63. In *Laxman Lal and another Vs State of Rajasthan and others*,⁵ the Hon'ble Supreme Court has held that the provisions conferring extraordinary power to dispense with the right of persons to object to the acquisition of their lands can be invoked only when the purpose of acquisition cannot brook a delay of even few weeks or months or where the very purpose of acquisition might be frustrated on account of even minimal delay.

64. In *Prabhawati and others Vs State of Bihar and others*,⁶ the Hon'ble Supreme Court has held that the provision for hearing of objectors under Section 5A embodies a principle of natural justice. Hence, absent real urgency, the State, cannot dispense with the requirement of hearing the landowners or other interested

⁵ (2013) 3 SCC 764

⁶ (2014) 13 SCC 721

persons. Such provisions can be invoked only when the purpose of acquisition cannot brook a delay of even a few weeks or months. A public purpose however laudable does not entitle the State to dispense with the opportunity of hearing, absent any real and pressing urgency.

65. Similarly, in *Devendra Singh and others Vs State of Uttar Pradesh and others*⁷, the Hon'ble Supreme Court has held that merely because the acquisition of land may have been for a public purpose, by itself, will not justify the exercise of the power of eliminating the opportunity of hearing to the affected parties under Section 5A of the Land Acquisition Act, 1894.

66. In *Bharat Sewak Samaj Vs Lieutenant Governor and others*⁸, the Hon'ble Supreme Court held that in the absence of application of mind to the issue of urgency and in the absence of any material to suggest that heritage zone in Delhi had to be developed on an emergency basis or that such public purpose would be defeated if the affected parties were not given an opportunity of filing their objections under Section 5A, there was no justification for invoking the provisions of Section 17(1) and dispensing with hearing under Section 5A. The Hon'ble Supreme Court held that the provision for hearing under Section 5A represents a statutory embodiment of the rule of *Audi alteram*

⁷ (2011) 9 SCC 551

⁸ (2012) 12 SCC 675

partem and unless there are compelling reasons, the State cannot dispense with the opportunity to lodge objections.

67. According to us, similar principles will not be completely alien to the present case because the mandatory requirement for issuance of public notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules is also a statutory embodiment of the rule of *Audi alteram partem* and in the absence of any real public interest involved in the dispensation of such public notice, the Central Government, could not have, in a most casual manner, dispensed with such requirement and deprived the public of an opportunity to object to the activities proposed in an eco-sensitive zone. No doubt Section 17 refers to *urgency* and the said rules refer to the *public interest* and therefore, there may be a wider latitude when it comes to dispensing with the public notice. But the circumstance that public notice could easily have been given without even slightly prejudicing the cause of public interest or the cause of environment protection, is certainly a relevant consideration that ought to inform the decision-making process in such matters.

68. In the present case, the Central Government by dispensing with the public notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules has deprived the stakeholders of valuable opportunity of filing their objections against the imposition of prohibition or restrictions on carrying on of processes or operations. The impugned Notification has the effect of

permitting several activities and facilities up to a distance of 10 meters from HTL. In the absence of the impugned Notification, it is quite doubtful whether several of the activities and facilities referred to in the impugned Notification could have been put up on the Miramar beach or at least in the area up to 200 meters from HTL on the Miramar beach and that too without prior clearance. The impugned Notification also purports to exempt the requirement of prior clearance under CRZ Notification of 2011. Therefore, unless there was genuine public interest or some urgency that did not brook the delay of even 60 days, the Central Government was not justified in dispensing with a public notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules and depriving the stakeholders of opportunity to lodge their objections.

69. For all the aforesaid reasons, we quash the impugned Notification dated 09.01.2020 in so far as it concerns Miramar (Panaji Goa).

70. The rule is made absolute to the aforesaid extent. There shall be no order as to costs.

M. S. SONAK, J

SUNIL P. DESHMUKH, J