

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WP NO. OF 2020
(LD-VC-CW-94-2020)

Goenkar Against Marina (Ahoy) at
Nauxi-Bambolim, Goa through its
Convener Advocate Suresh Palkar. Petitioner.

Versus

State of Goa and others. Respondents.

Mr. Sagar Dhargalkar, Additional Govt. Advocate for the State of
Goa.

Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.

Date : 17th July, 2020.

P.C. :-

1. Issue notice to Advocate Suresh Palkar, resident of H. No.79, Vodlembhat, Bambolim, Tiwadi, Goa (email : *sgpalkar30gmail.com*) whose letter is hereby treated as public interest litigation, returnable on 21st July, 2020.
2. Similarly, issue notices to the Goa State Pollution Control Board, through its Member Secretary, and the State of Goa, through its Chief Secretary, returnable on 21st July, 2020.
3. Also issue notice to M/s. Kargwal Constructions Private Limited, after ascertaining address from the Petitioner or the Goa State Pollution Control Board (GSPCB), again returnable on 21st

July, 2020.

4. The GSPCB is directed to file an affidavit of its Member Secretary to indicate whether, in the light of the prevalent COVID-19 situation, it is feasible to hold the environmental public hearing, now scheduled for 26th July, 2020 in relation to the proposed establishment of a Marina “*AHOY Marina*” to facilitate small Boat/Yatch/Craft parking and maintenance in Mormugao Port Trust Water Spread Area at Village Nauxim, District North Goa, by M/s. Kargwal Constructions Private Limited.

5. The GSPCB, in filing its affidavit, to take into consideration the following observations made by the Hon'ble Supreme Court in *Hanuman Laxman Aroskar vs. Union of India*, (2019) 15 SCC 401 at paragraphs 110, 111, 112 and 113, which read as follows :

“110. The importance of public consultation is underscored by the 2006 Notification. Public consultation, as it states, 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 with a view to take into account all the material concerns in the project or activity design as appropriate”. This 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 which 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.

111. Public consultation involves a process of confidence building by giving an important role to those who have a plausible stake. It also recognises 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 recognising 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.

112. The 2006 Notification postulates:

112.1. A public hearing at or in close proximity to the project site to ascertain the views of “locally affected persons”.

112.2. Obtaining written responses from “other concerned” individuals having a “plausible stake” in the environmental aspects of the project or the activity.

112.3. The duty of SPCB to conduct hearings and to forward the proceedings to the regulatory authority within the stipulated time.

112.4. Placing on the website of the Pollution Control Board a summary of the EIA report in the prescribed format and the making available of the draft EIA report by the regulatory authority on a written request by any person concerned, for inspection.

112.5. The duty of the applicant to address all material

concerns expressed during the process of public consultation.

112.6. The making of appropriate changes in the draft EIA and EMP.

112.7. The submission of the final EIA report by the applicant to the regulatory authority for appraisal.

112.8. Each of these features is crucial to the success of a public consultation process. Public consultation cannot be reduced to a mere incantation or a procedural formality which has to be completed to move on to the next stage. Underlying public consultation is the important constitutional value that decisions which 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.

113. 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. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA. Each of these elements is crucial to the design features of the 2006 Notification. A breach will render the process vulnerable to challenge on the ground that:

(i) significant environmental concerns have not been taken into account;

(ii) there was an absence of a full disclosure when the EIA report was put up for consultation; and

(iii) concerns which have been expressed by persons affected by the project have not been adequately dealt with or analysed.”

6. The GSPCB to endeavour to furnish a copy of its reply to the Petitioner by email at his email id indicated in paragraph (1) of this order.

7. Mr. Dhargalkar, learned Additional Govt. Advocate waives notice on behalf of the State of Goa.

8. Registry to ensure that along with the notices, copy of the letter petition, as also a copy of this order is made available to all the noticees. Registry to also furnish a copy of the letter petition and a copy of this order to Mr. Dhargalkar, the learned Additional Govt. Advocate who has now waived service on behalf of the State of Goa.

9. S.O. to 21st July, 2020.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.