

# **MS. BETTY C. ALVARES V. THE STATE OF GOA ORS.**

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## **FACTS**

- Ms. Betty Alvarez has filed a public interest litigation in the Hon'ble Bench of the High Court of Bombay at Goa against the unlawful constructions and intrude on sea beds and government properties of Candolim, Goa.
- She pursued for demolition of the of these constructions with the respondents but she was ignored.
- The Hon'ble Bench of the High Court of Bombay at Goa undertook the judgment of the Supreme Court and with the agreement of both the parties, the writ petition was transferred to The National Green Tribunal.
- The respondents raised two objections which are first being the nationality of Betty Alvares i.e. being a foreigner she had no locus standi to file the main application and second objection is that the main application is barred by limitation.
- The Hon'ble Bench of the High Court of Bombay at Goa was not open to consider the objection of locus standi hence the case was transferred to National Green Tribunal with the consent of both the parties.

## **ISSUES**

Infront of the National Green tribunal there were 2 issues to be addressed-

- Whether a person who is a foreign national can file an public interest litigation suit in Indian courts and does that person has locus standi to file the main application?
- Whether the case be dismissed on the basis of law of limitation?

## **RULES**

1. National Green Tribunal Act, 2010- Section- 15, Section 15(1) sub-clause (a), Section 15(1) sub-clause (b), Section-18, Section-14, Section-2(j), Section 2(m)
2. Indian Constitution- Article 21 and Article 226,
3. Environment (Protection) Act, 1986 - Section-5 and Section-5(A)

## APPLICATION

Addressing the 1<sup>st</sup> issue where the respondents argued that Ms. Betty Alvares being a foreign national does not receive the benefits under article- 21 of Indian Constitution. Which directly related to the fact that when she is not entitled to right to life she loosed the basis to file a public interest litigation.

The court took to the view that the scope of the Article 21 is not restricted to Indian Citizens and it gives guarantee of life to a **PERSON**. Article -21 of Indian Constitution states that

*21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.*

Article-21 also provides a guarantee of dignified life which means right to good environment, pollution free air to ensure it requires to enforce all the Coastal Regulation Zone rules.

The allegations which she claimed in the application were investigated by the concerned authorities and found the allegations were true and found substance to the complaints. With this she filed a PIL before High Court for the demolition of these illegal constructions which are in violation of CRZ rules.

Also Ms. Betty Alvares has filed other writ petition and Contempt Applications before this case.

Court refused to take a narrow view of the article. Hence Ms. Betty is entitled to a life guaranteed in Article-21 therefore the case file a write petition and maintain the application before the National Green Tribunal.

Further the respondents argued that Ms. Betty has not suffered any personal injury because of these constructions hence she lacks **locus standi** as she is not an “**Aggrieved Person**”. Also argued that she cannot file the case as she is not the owner of the property where the respondents are carrying out their activities. Court responded by stating that it is not necessary to see if anyone has suffered an injury, what matters is the damage which is being caused by the acts of the respondents which are violating the CRZ rules to the environment. It is sufficient to determine if there is a major environmental concern that has arisen as a result of the execution of the enactments listed in Schedule-I, which is annexed to the National Green Tribunal Act, 2010.

In National Green Tribunal Act section-2(j) states-

(j) "person" includes--

- (i) an individual,
- (ii) A Hindu undivided family,
- (iii) A company,
- (iv) A firm,
- (v) An association of persons or a body of individuals, whether incorporated or not,
- (vi) Trustee of a trust,
- (vii) A local authority, and
- (viii) Every artificial juridical person, not falling within any of the preceding sub-clauses."

The above section explains what a person is according to the act and nowhere it states about being a Indian citizen. So the maintainability of application should not be questioned irrespective of the nationality of Ms. Betty.

The court has provided its opinion that the application cannot be dismissed for the lack of locus standi of Ms. Betty as she is regarding well within the section-2(j) of the National Green Tribunal Act, 2010.

Addressing the second issue the respondents argued that according to sec-14 of National Green Tribunal Act 2010 Ms. Betty should have filed the case in 2009 when the cause of action had raised and least after 6 months. Ms. Betty had filed the case in 2012 so the respondents argued that the case was time barred.

The respondents further argued that as Ms. Betty did not sustain injury or any loss to her property due the acts of the respondents, so she was not entitled to any compensation as stated in the sec-18 National Green Tribunal Act 2010.

As Ms. Betty did not file any application within 5 years after the cause of action arose, she is not entitled to any claim of compensation or restitution which have been guaranteed under Section 15, sub-clause (a) of Section 15(1) and sub-clause (b) of Section 15(1) of National Green Tribunal Act, 2010.

The learned council appearing for the respondents also claimed that she played a trick by filing a writ petition before the Hon'ble High Court of Bombay Bench at Goa as she knew she has crossed the time limitation as mentioned in the National Green Tribunal and It was claimed that just transferring the Writ Petition to the NGT would not preserve the limitation period, and that it could not be excused solely because the Writ Petition had been transferred.

The respondents further argued that in Environment (Protection) Act, 1986 under section-5(A) it gives authority to appeal against the orders under the CRZ Notification as there are no such directions under sec-5 Ms. Betty cannot file an application or an appeal.

The court responded by stating that the high court hasn't dismissed the petition on the basis of limitation nor it was dismissed at the admission stage as alternate remedy to approach the NGT was available. Contesting Respondents further failed to demonstrate that such an alternative remedy was accessible to Applicant, and so the Writ Petition was unconstitutional.

The court also mentioned that they cannot leave out the jurisdiction of the writ petition granted under article-226 for the reason that other remedies are available. It depends upon the

The court here referred the case "Bhopal Gas Pideet Mahila Udhyog Sanghatna vs Union of India<sup>1</sup>" as in this case it was held that with the agreement and consent of the parties the case, the court can provide for the transfer of the case. it is at the court's discretion whether or not to entertain the case even when alternate remedies are available.

Court has justified that the application is covered under the sec-14 of National Green Tribunal Act 2010 since it involved "substantial question relating to environment." The expression "substantial question relating to environment " is defined in the sec-2(m) of the National Tribunal Act 2010.

Court held that they do not find any substance in the arguments presented by the respondents.

In the court's opinion under Section 2(m) i (A) of the National Green Tribunal Act, 2010 a violation of the CRZ Notification or an environmental obligation under the statute, including Regulation pertaining to Municipal Laws or pertaining to parameters of the constructions that affect the community at large would all be covered in its ambit.

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<sup>1</sup> (2012) 8, SCC 326

As Applicant has not filed any direct applications with this Tribunal and this is a transferred application, the limitation issue cannot be considered and must be denied. Especially true where the main Petition could not be opposed to on the grounds of restriction.

Also true where the main Petition could not be opposed to on the grounds of restriction. As a result, the court did not find any validity in any of the disputing Respondents' arguments.

## **CONCLUSION**

The court after hearing the objections filed by the learned council of the respondents and careful consideration of the same, the court did not find any substance and validity in the objections. Resulted in dismissing both of the objections filed.

This case has become a land mark judgement as it had held that a foreign national can file an application before the National Green Tribunal and application is maintainable.