

(2016) 8 Supreme Court Cases 299

(BEFORE DR T.S. THAKUR, C.J. AND

F.M. IBRAHIM KALIFULLA AND UDAY U. LALIT, JJ.)

TALAUICAR AND SONS PRIVATE LIMITED .. Appellant;

Versus

UNION OF INDIA AND ANOTHER .. Respondents.

Civil Appeals No. 1247 of 2012[†] with Nos. 6174 of 2016[‡]
and TP (C) No. 1843 of 2013, decided on July 12, 2016

A. Environment Law — Environmental Clearance/Noc/Environmental Impact Assessment — Environmental clearance — Continuance of — Expansion of iron ore mine falling in South Goa — R-1 MoEF passed orders on 25-11-2005 according environmental clearance for two years only stipulating hydrogeological study but by subsequent order dt. 18-10-2007 removed time-limit — Validity of such extension

— Order dt. 18-10-2007 set aside with direction to R-1 MoEF to look into application of appellant afresh after submission of hydrogeological report and after giving an opportunity of hearing to appellant as well as R-2 or such other bodies to whom such hearing is to be offered as per EIA Noti. dt. 14-9-2006, permit them to file required material documents in support of their respective stand and pass a reasoned order in accordance with procedure prescribed under said notification — Order dt. 18-10-2007, and consequently, impugned order set aside — Any order that may be passed pursuant to present judgment will always be subject to decisions in *Goa Foundation*, (2014) 6 SCC 590, *Goa Foundation*, (2014) 6 SCC 738 — Clarified that merits of respective contentions of appellant or respondents not gone into — Environment (Protection) Rules, 1986 — Ss. 3 and 6 — Environment (Protection) Rules, 1986 — R. 5(3) — EIA Noti. dt. 14-9-2006

B. Environment Law — Environmental Clearance/Noc/Environmental Impact Assessment — Environmental clearance — Right of a local resident to participate/object — Compliance with Noti. dt. 27-1-1994, Para 2(III) (c) providing that Impact Assessment Agency shall prepare a set of recommendations based on technical assessment of documents and data, furnished by project authorities, supplemented by data collected during visits to sites, and interaction with affected population and environmental groups — Summary of reports, recommendation and conditions to be made available subject to public interest to parties concerned or environmental groups on request

— Comments of public to be solicited, by Impact Assessment Agency, within thirty days of receipt of proposal, in public hearings after giving thirty days' notice of such hearings in at least two newspapers — Public to be

[†] From the Judgment and Order dated 12-8-2011 of the High Court of Bombay at Goa in PIL WP No. 6 of 2011

[‡] Arising out of SLP (C) No. 17731 of 2016 (CC No. 20925 of 2012)

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provided access to summary of reports/environmental management plans at headquarters of Impact Assessment Agency — Assessment to be completed within ninety days from receipt of requisite documents and data from project authorities and completion of public hearing, and decision conveyed within thirty days thereafter — Environment Law — Notifications — EIA Noti. dt. 27-1-1994, Para 2(III)(c) (Para 10) a

C. Constitution of India — Art. 139-A — Transfer petition — Transfer of OA from NGT to Supreme Court — When warranted b

— Private Respondent *S* approached NGT in OA No. 22 of 2012 against MoEF, State Pollution Control Board and Department of Mines and Geology for order or direction to respondent to close down mines in State of Goa which do not have valid EC following High Court judgment in *Shankar Raghunath Jog*, 2011 SCC OnLine Bom 1121 with immediate effect, compensation under S. 15 of NGT Act, 2010 to Environmental Relief Fund for its failure to take timely action closing violating mines in State of Goa which has led to environmental degradation — Appellant not impleaded as a party in said OA — Held, in the light of present judgment and directions issued, OA No. 22 of 2012 pending on file of NGT will not survive inasmuch as Respondent *S* mainly placed his prayer based on impugned judgment in OA before NGT — After setting aside impugned judgment, whole basis of grievance in OA filed before Tribunal does not survive — Transfer petition allowed directing OA No. 22 of 2012 to be transferred to Supreme Court and OA stands dismissed as becoming infructuous (Paras 15 to 17) c
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Shankar Raghunath Jog v. Talaulicar & Sons (P) Ltd., 2011 SCC OnLine Bom 1121 : (2012) 1 AIR Bom R 467, *reversed*

Goa Foundation v. Union of India, (2014) 6 SCC 590; *Goa Foundation v. Union of India*, (2014) 6 SCC 738, *referred to* e

SB-D/57183/C

Advocates who appeared in this case :

Shyam Divan, Senior Advocate (Yashraj Singh Deora, Ms Shreya Agrawal, Ms Priyadarshinee Singh, L. Rodrigues, Ms Swati Singh, B. Krishna Prasad and Shreekant N. Terdal, Advocates) for the Appellant; f
Ms Pinky Anand, Additional Solicitor General, A.N.S. Nadkarni, Advocate General and Colin Gonsalves, Senior Advocate (Pratap Venugopal, Ms Niharika, Santosh Rebello, Ms Purna Bhandari, Anshuman Shrivastav, Ms Taniya Agarwal, Ms Jyoti Mendiratta, N.K. Karhail, Rishabh Jain, Ms Snidha Mehra and S.N. Terdal, Advocates) for the Respondents.

Chronological list of cases cited

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| 1. 2011 SCC OnLine Bom 1121 : (2012) 1 AIR Bom R 467, <i>Shankar Raghunath Jog v. Talaulicar & Sons (P) Ltd. (reversed)</i> | 301a-b, 305e-f, 306a-b | g |
| 2. (2014) 6 SCC 738, <i>Goa Foundation v. Union of India</i> | 305c-d | |
| 3. (2014) 6 SCC 590, <i>Goa Foundation v. Union of India</i> | 305c-d | |

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The Judgment of the Court was delivered by

F.M. IBRAHIM KALIFULLA, J.— Delay condoned. Leave granted in SLP
a (C) No. 17731 of 2016 arising out of CC No. 20925 of 2012.

2. These appeals are directed against a Division Bench judgment
dated 12-8-2011 of the High Court of Bombay at Goa in *Shankar Raghunath
Jog v. Talaulicar & Sons (P) Ltd.*¹ The said writ petition was moved at the
instance of the second respondent herein with a prayer that the appellant
was originally granted environmental clearance for the expansion of Saniem
b Sacorda Iron Ore Mine on 25-11-2005 for two years, that by a subsequent
letter dated 18-10-2007 of the first respondent, the two years' period to
conduct a higher geological study was deleted, that by virtue of the conditions
stipulated in the Notification dated 27-1-1994 read along with the Notification
dated 4-5-1994 such environmental clearance granted in favour of the appellant
c expired on 25-11-2010 and that in spite of such expiry, the appellant
continued to indulge in mining operations. The second respondent, therefore,
contended that such illegal mining activity of the appellant was not controlled
by the first respondent even after the second respondent's communication
dated 30-11-2010. It was on the abovesaid basis, the second respondent prayed
for the issuance of mandamus directing the first respondent to stop the operation
of Saniem Sacorda Iron Ore Mine of the appellant and also direct for payment
d of compensation for having caused environmental damage.

3. The Division Bench of the High Court having made a detailed analysis
of the grievance of the second respondent as a local resident, the relevant
provisions of the statute as well as the Environment Impact Assessment (EIA)
Notification dated 27-1-1994, took the view that the clearance granted in favour
of the appellant in the order dated 25-11-2005 for the expansion of Saniem
e Sacorda Iron Ore Mine was initially for a period of two years as per the
EIA Notification of 1994 and that such clearance can be valid only for a
period of five years as is stipulated in the EIA Notifications and the relevant
rules. The Division Bench ultimately held that the appellant was carrying on
the mining operations without a valid subsisting environmental clearance and
while granting liberty to the appellant to seek an extension/renewal of the
f environmental clearance for a further period, in accordance with law, within a
period of three months also directed that in the event of non-grant of any such
environmental clearance, the appellant should discontinue mining operations
of the mine concerned, till such time environmental clearance is granted.
While holding so, the Division Bench made it clear that the validity of the
environmental clearance granted in favour of the appellant was only for a period
g of five years from the date of commencement of the operation of the mining
projects/expansion of the project carried out by the appellant.

4. Aggrieved by the said judgment of the Division Bench, the appellant is
before us.

5. It will be worthwhile to note certain observations of the Division Bench
h before passing final orders in these appeals. While considering the question

¹ 2011 SCC OnLine Bom 1121 : (2012) 1 AIR Bom R 467

whether the validity of the environmental clearance granted in favour of the appellant would be limited for a period of five years or more, the Division Bench made a reference to Para 2(III)(c) of the EIA Notification of 1994 wherein it was stipulated that clearance granted would be valid for a period of five years from the commencement of the construction or operation of the projects, that such prescription of the period has got a nexus to the environment protection. In that context, the Division Bench further observed that the purpose and object of the Environment Protection Act and the Rules framed thereunder must be given its full effect, that if there is no check on the environment hazard at the time of carrying out the mining activities, it could lead to degradation of the environment, that carrying out impact assessment within specific period would assist in ascertaining the adverse effect of the project activity which is sought to be pursued by the project proponent, that any activity carried out in respect of specific projects such as mining, requires environmental clearance in order to see that such activities would not result in further degradation of the environment affecting the life of the residents in the locality and therefore, the prescription of limited period had a nexus to the grant of environmental clearance. The Division Bench also rejected the claim of the appellant that once the environmental clearance was granted, the same would be valid for thirty years based on the subsequent notification of 2006 in supersession of the Notification dated 27-1-1994.

6. Having thus noted the above observations of the Division Bench, we heard Mr Shyam Divan, learned Senior Counsel for the appellant, Mr A.N.S. Nadkarni, learned Advocate General for Goa, Mr Colin Gonsalves, learned Senior Counsel for the second respondent and Ms Pinky Anand, learned Additional Solicitor General for the first respondent.

7. We find that the appellant applied for environmental clearance for expansion of Saniem Sacorda Iron Ore Mine falling within Tehsil Sariguem, District South Goa in the Union Territory of Goa, in its application dated 15-3-2005, followed by subsequent letters dated 28-4-2005 and 16-8-2005. The first respondent passed orders on 25-11-2005. In Para 2.0 it was stipulated that the Ministry of Environment and Forests (MoEF, in short) accords environmental clearance for a period of two years only to Saniem Sacorda Iron Ore Mine of the appellant involving a lease area of 50.30 ha for production of iron ore under the provisions of the Environment Impact Assessment Notification, 1994, subject to specific conditions under caption 'A'. In sub-para (ii) of Para 'A', it was specifically noted as under:

“A. (ii) The proponent shall within 2 years conduct a detailed hydrogeological study (quality and quantity) on impact of mining on hydrogeology (pre-monsoon, monsoon and post-monsoon) and furnish a detailed report on the same to the Ministry. Based on the same, a decision regarding continuation of mining beyond 2 years or otherwise will be taken.”

8. After the said order dated 25-11-2005, the first respondent passed its subsequent order dated 18-10-2007, wherein it was stated that in pursuance of

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a its order dated 25-11-2005, the appellant had filed the report of hydrogeological study on impact of mining on hydrogeology of the mine lease area, that on examination of the said report, it was found that radius of influence due to mine-pit dewatering would extend to about 235 m around the mine-pit, that the stage of groundwater development is about 4.53% which according to the first respondent was well within the safe limits as per the Central Groundwater Board norms. It was also noted that the results of chemical quality data of both surface water and groundwater as well as mine-pit water indicated no contamination due to mining operations. In Para 3 of the said order, the first respondent ultimately deleted the prescription of two years' period stipulated in the order dated 25-11-2005.

b **9.** It was in the abovestated background that the second respondent moved the High Court as a local resident alleging that having regard to the EIA Notification dated 27-1-1994 as amended by the subsequent Notification dated 4-5-1994, the environmental clearance granted in favour of the appellant was valid only for a period of five years from the date of commencement and consequently, the five years' period having expired on 25-11-2010, further mining operations of the appellant in the aboveresferred to mine by way of expansion was in violation of the provisions of the Environment (Protection) Act, the EIA notifications and the relevant rules.

c **10.** Insofar as the right of a local resident is concerned, when we make a reference to the initial Notification dated 27-1-1994, in Para 2(III)(c) it is specifically provided as under:

d **“2. (III)(c)** The Impact Assessment Agency shall prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities, *supplemented by data collected during visits to sites or factories, if undertaken, and interaction with affected population and environmental groups, if necessary.* Summary of the reports, the recommendation and the conditions, subject to which environmental clearance is given, shall be made available subject to the public interest to the parties concerned or environmental groups on request. *Comments of the public may be solicited, if so decided by the Impact Assessment Agency, within thirty days of receipt of proposal, in public hearings arranged for the purpose after giving thirty days' notice of such hearings in at least two newspapers.* Public shall be provided access, subject to the public interest, to the summary of the reports/environmental management plans at the headquarters of the Impact Assessment Agency.

e The assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the project authorities and completion of public hearing, where required, and decision conveyed within thirty days thereafter.

f The clearance granted shall be valid for a period of five years for commencement of the construction or operation.

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No construction work, preliminary or otherwise, relating to the setting up of the project may be undertaken till the environmental and/or site clearance is obtained.” (emphasis supplied) a

11. Again, when we make reference to the subsequent Notification dated 14-9-2006, there is a specific provision therein also in Para III Stage III Clauses (i) and (ii) which contains as many sub-paras (a) to (f) in Clauses (i), (a) and (b) in Clause (ii) apart from Clauses (iii) to (vii). The specifications contained in the Notification dated 14-9-2006 state that the same came to be issued in supersession of the Notification dated 27-1-1994. It also stipulates the constitution of State-level Environment Impact Assessment Authority, categorisation of projects and activities, Screening, Scoping and Appraisal Committees, different stages for prior environmental clearance (EC—process for new projects), process for expansion or modernisation or change of product mix in existing projects and at the end in Para 8, grant or rejection of prior environmental clearance and in Para 9 validity of environmental clearance and in Para 10 post-environmental clearance monitoring, in Para 11 transferability of environmental clearance is also provided. b

12. Keeping the above relevant factors in mind, we heard the learned Senior Counsel for the appellant, the learned Additional Solicitor General and the learned Advocate General, the learned Senior Counsel for the second respondent. In order to examine the scope, ambit and correctness of the orders dated 25-11-2005 and 18-10-2007, the learned Additional Solicitor General was directed to call upon MoEF to produce the records of the case. Thereafter, it was felt that after grant of the environmental clearance for a period of two years in the order dated 25-11-2005, subject to submission of hydrogeological study of the area, when the subsequent order dated 18-10-2007 was passed, we found that very many requirements of the Environment (Protection) Act, the relevant Rules framed thereunder and the various factors to be taken into account and a detailed public hearing to be effected as stipulated in the last of the Notifications dated 14-9-2006, were not specifically addressed by the first respondent while passing the order dated 18-10-2007. In other words, the order dated 18-10-2007 was a cryptic one without giving due regard to the various salient features concerning the environment protection and the interest of the public at large, while granting such clearance and allowing the clearance granted earlier to be valid beyond the initial period of two years and also without specifying as to the other terms and conditions to be complied with. c
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13. In such circumstances, while on the one hand, appreciating the observations made by the Division Bench in the impugned order which we have highlighted in the earlier part of this order, we feel that the first respondent should be directed to take a fresh look for the continuation or otherwise of the environmental clearance granted by it in the order dated 25-11-2005, after scrupulously following the various relevant factors, such as notifying the State-level authority and other authorities concerned, effective public hearing after due paper publication even while referring to the hydrogeological report submitted by the appellant and then pass final orders. In that perspective g
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a we are convinced that the order dated 18-10-2007 is liable to be set aside with necessary direction to the first respondent to look into the application of the appellant afresh after the submission of the hydrogeological report and after giving an opportunity of hearing to the appellant as well as the second respondent or such other bodies to whom such hearing is to be offered as per the subsequent Notification dated 14-9-2006, permit them to file the required material documents in support of their respective stand and pass a reasoned order in accordance with the procedure prescribed under the said notification.

b **14.** With that view, we set aside the order dated 18-10-2007, and consequently, the impugned order cannot also stand. We, therefore, direct the first respondent MoEF to proceed afresh, issue a notice of hearing to the appellant, the second respondent, as well as, hold the consultative process with the State-level authorities and call for the required reports from the experts concerned of its choice and after due hearing, pass appropriate orders, in accordance with law. Such exercise shall be carried out by the first respondent MoEF expeditiously, preferably, within a period of three months from the date of production of a copy of this order. It is needless to state that any order that may be passed pursuant to this judgment will always be subject to the decisions in *Goa Foundation cases*^{2,3}. We make it clear that we have not gone into the merits of the respective contentions of the appellant or the respondents. The appeals stand disposed of with the above directions. No costs.

c **15.** Transfer Petition (C) No. 1843 of 2013 has been filed by respondent Shankar Raghunath Jog in the above appeals. He has approached the National Green Tribunal in OA No. 22 of 2012 as against the MoEF State Pollution Control Board and the Department of Mines and Geology with the following prayer:

e “1. Order or direction ordering the respondent to close down the mines in the State of Goa which do not have valid EC following the judgment in *Shankar Raghunath Jog v. Talaulicar and Sons (P) Ltd.*¹, with immediate effect.

f 2. Order or direction ordering the respondent to pay compensation under Section 15 of the National Green Tribunal Act, 2010 to the Environmental Relief Fund for its failure to take timely action closing the violating mines in the State of Goa which has lead to environmental degradation.

3. Costs.”

g **16.** In the body of the application, the respondent Shankar Raghunath Jog has made reference to the environmental clearance relating to the mining project of the appellant dated 25-11-2005 and the subsequent order dated 18-10-2007 by which the conditional grant of EC for two years came

h ² *Goa Foundation v. Union of India*, (2014) 6 SCC 590

³ *Goa Foundation v. Union of India*, (2014) 6 SCC 738

¹ 2011 SCC OnLine Bom 1121 : (2012) 1 AIR Bom R 467

to be deleted. He also made reference to the expiry of EC itself and the grant which occurred on 25-11-2010 while praying for the above directions.

17. It is relevant to note that the appellant was not impleaded as a party in the said OA No. 22 of 2012. In the grounds of the said application there was a general allegation against the official respondents including MoEF that in spite of the judgment impugned in *Shankar Raghunath Jog v. Talaulicar & Sons (P) Ltd.*¹ dated 12-8-2011 the official respondents failed to take any steps for closing down the mines which violated the statutory provisions. In the light of the present judgment and the directions which we have issued, we are of the view that OA No. 22 of 2012 pending on the file of the Green Tribunal will not survive inasmuch as respondent Shankar Raghunath Jog mainly placed his prayer based on the impugned judgment when he filed the OA before the Green Tribunal. Since we have set aside the impugned judgment in these appeals, the whole basis of respondent Shankar Raghunath Jog's grievance in the OA filed before the Tribunal does not survive. Therefore, while allowing the transfer petition and directing OA No. 22 of 2012 to be transferred to this Court, the OA shall stand dismissed as having become infructuous.

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1 2011 SCC OnLine Bom 1121 : (2012) 1 AIR Bom R 467