

AGK/SSM

**REPORTABLE**

**IN THE HIGH COURT OF BOMBAY AT GOA**

**PIL WRIT PETITION NO. 22 OF 2017**

**THE GOA FOUNDATION,**  
through its Secretary, Dr. Claude Alvares, G-8, St.  
Brittos' Apartments, Feira Alta, Mapusa, Goa  
403507.

**...Petitioner**

**~ VERSUS ~**

**1. MINISTRY OF ENVIRONMENT,  
FOREST AND CLIMATE CHANGE**  
through its Secretary, Indira Paryavaran  
Bhavan, Jorbagh Road, New Delhi 110003

**2. STATE OF GOA**  
through the Chief Secretary, Government  
Secretariat, Porvorim, Goa

**... Respondents**

**ALONG WITH**

**MISC CIVIL APPLICATION NO. 732 OF 2017**

**IN**

**PIL WRIT PETITION NO. 22 OF 2017**

**THE GOA HIGH COURT BAR ASSOCIATION**  
Through its Secretary, Advocate Joao Abreu Lobo

**... Applicant**

**AND**

**MISC CIVIL APPLICATION NO. 740 OF 2017**

**IN**

**PIL WRIT PETITION NO. 22 OF 2017**

**SERGIO DIAS**

aged 56 years, Indian National, residing at H. No.  
31st January Road, Panaji, Goa.

... Applicant

**AND**

**PIL WRIT PETITION NO. 21 OF 2017**

1. **KASHINATH JAIRAM SHETYE**,  
Son of Jairam Shetye, Major of age, Indian  
national, having permanent residence at A-  
102, Raj Excellency, Patto, Ribandar, Goa.
2. **KETAN GOVEKAR**,  
Major of age, Indian national having  
permanent residence at 3rd floor Wadji  
Building, St Inez, Panjim, Goa 403001.
3. **MUKUNDRAJ MUDRAS**,  
Building 6 C-9, Kenkre Estate, Cabesa, St.  
Cruz, Tiswadi, Goa.
4. **ARTURO CARLOS D'SOUZA**,  
H No 351, Ruzaivaddo, St Cruz, Tiswadi,  
Goa
5. **HARESH KARMALKAR**,  
Major of age, Indian national, permanent  
residence at Wado, Chodan, Goa.
6. **INACIO PEREIRA**,  
H. No. 836, St. Agostniha, Marrod, St.  
Cruz, Tiswadi, Goa.
7. **FR. DOMNIC SEQUEIRA**,  
H No 68, Soccorro Vaddem, Porvorim,  
Bardez, Goa.
8. **COLVA CIVIC & CONSUMER FORUM**  
through its Secretary, Judith A. B. Almeida,  
H No 257/1, Bagdem, 3 ward, Colva,  
Salcette, Goa 403708

9. **CAVELOSSIM VILLAGERS FORUM**  
through its President, Iris Passanha, H. No. 314/L, Patrecantem, Cavelossim, Salcette, Goa 403731.
10. **ALEXIO ARNOLFO PERIERA,**  
H. No. 150, Utorda. P/o Majorda, Salcete, Goa.
11. **GOA RTI FORUM**  
through its Secretary, Ganpat Kurtikar, 22 Pansule Dharbandora, Goa.
12. **RAMCHANDRA MANJREKAR**  
H. No. 452, Tisk Usgao, Goa.
13. **VASUDEV GAUDE**  
H. No. 963, Dhat Wada, Tisk, Usgao, Goa.
14. **CANSAULIM VILLAGERS ACTION COMMITTEE**  
through its President, Antonio D'Silva, H. No. 268/A, Bandar Arrosim P.O. Cansaulim, Mormugao, South Goa.
15. **CANSAULIM-AROSSIM-CUELIM CIVIC & CONSUMER FORUM**  
through its President, Alvaro Da Costa, Elitel, No. 232/A, Cansaulim-Verna, Cansaulim, Goa 403712.
16. **NARENDRA CHODANKAR**  
H. No. 1281, St. Estevam, Tonca, Tiswadi, Goa.

... Petitioners

~ VERSUS ~

1. **UNION OF INDIA,**  
through its Secretary, Ministry of Environment & Forests, CGO Complex, Lodhi Road, New Delhi 110510.

2. **STATE OF GOA**  
through the Chief Secretary, Government of  
Goa, Porvorim, Bardez, Goa 403521.
3. **NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH**  
Faridkot House, near India Gate,  
Copernicus Marg, New Delhi 110001.
4. **NATIONAL GREEN TRIBUNAL  
WESTERN REGION BENCH,**  
Agarakar Nagar, Opposite Council Hall,  
New Administrative Building, Pune 411001      ... Respondents

**AND**

**PIL WRIT PETITION NO. 23 OF 2017**

**ROHAN SHIRODKAR,**  
aged 27 years, son of late Mr. Ravindra Shirodkar,  
R/o Lamgao, Bicholim, Goa.      ...Petitioner

~ VERSUS ~

1. **UNION OF INDIA**  
through the Secretary, Ministry of  
Environment, Forest and Climate Change,  
New Delhi.
2. **STATE OF GOA**  
through the Chief Secretary, having office at  
the Secretariat, Porvorim, Goa.      ...Respondents

**AND**

**PIL WRIT PETITION NO. 778 OF 2017**

1. **BAINA RAMPONKAR AND FISHING  
CANOE OWNERS SOCIETY**  
(Registered under the Societies Registration  
Act, 1860, under Registration No.

143/Goa/2007), Katem Baina, Vasco Da Gama, Goa, through its General Secretary, Mohammad Sajit Shaikh

2. **FEDERATION OF RAINBOW WARRIORS, MARGAO**  
(Registered under the Societies Registration Act, 1860, under Registration No. 190/Goa/2014), CSH-1, Block C-2, Leandra Heritage, Madel, Margao, Goa Through its President, Jeronimo L. Dias Major, r/o

... Petitioner

~ VERSUS ~

**UNION OF INDIA**  
through the Ministry of Environment, Forest & Climate Change, Indira Paryavaran Bhavan, Aliganj, Jor Bagh Road, New Delhi 110003.

... Respondent

**AND**

**SUO MOTU WRIT PETITION NO. 1 OF 2017**

**THE HIGH COURT OF BOMBAY AT GOA ,**  
*on its own motion*

~ VERSUS ~

1. **UNION OF INDIA**  
through its Chief Secretary, Ministry of Environment & Forests, CGO Complex, Lodhi Road, New Delhi.
2. **STATE OF GOA**  
through the Chief Secretary, Government of Goa, Porvorim, Bardez, Goa.

... Respondents

**AND**

**PIL WRIT PETITION NO. 783 OF 2017**

1. **FAKEERSA NAIKODI ALIAS FAKIRSA  
NAIKODI RAMPONKAR**  
Aged 52 years, Indian National, Resident of  
H. No. 81/PL-169, Near PWD Sewage  
Plant, Katem, Baina, Mormugao, Vasco Da  
Gama 403802.
2. **DAULASAB IMAMSAB WALIKAR**  
Aged 37 years, Indian National, Resident of  
near PWD Sewarage Plant, Katem, Baina,  
Mormugao, Vasco Da Gama 403802.
3. **RAZAK CHAPARBAND**  
Aged 56 years, Indian National, Resident of  
Katem, Baina, Near PWD Sewarage Plant,  
Mormugao, Vasco Da Gama 403802.
4. **MEHBOOB SHAIKH**  
Aged 66 years, Indian National, Resident of  
Katim, Baina, Near PWD Sewarage Plant,  
Mormugao, Vasco Da Gama 403802.

... Petitioners

~ VERSUS ~

1. **UNION OF INDIA**  
through Secretary, Ministry of  
Environment, Forest and Climate Change,  
Indira Paryavaran Bhavan, Jor Bagh Road,  
New Delhi 110003.
2. **STATE OF GOA**  
through the Chief Secretary, Secretariat,  
Alto-Porvorim, Bardez, Goa.

... Respondents

**AND**

**PIL WRIT PETITION NO. 787 OF 2017**

**PILERNE CITIZENS FORUM,**  
a registered society, having its office at Pilerne,  
Bardez, Goa, having its office at C/o Prakash

Bandodkar, House No- 393/1, Opposite St.  
Anthony's Chapel, Marra, Pilerne, Bardez, Goa,  
through its Secretary, Mr. Hilariano I. F.  
Lobo, S/O Minguel L. Lobo, r/o House No.  
190, Volvaddo, Pilerne, Bardez, Goa.

...Petitioners

~ VERSUS ~

1. **UNION OF INDIA**  
through the Secretary, Ministry of  
Environment, Forest & Climate Change,  
New Delhi.
2. **STATE OF GOA**  
through the Chief Secretary, Secretariat,  
Porvorim, Bardez, Goa.

**APPEARANCES**

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<b>AMICUS CURIAE</b>	<b>Mr SD Lotlikar, Senior Counsel.</b>
<b>FOR THE PETITIONERS</b>	<b>Mr SS Kantak, Senior Counsel;</b> <b>Ms Norma Alvares;</b> <b>Mr Yogesh Nadkarni;</b> <b>Mr Nigel Costa Frias,</b> <b>Mr Ryan Menezes, with C Ribeiro,</b> <b>Kashinath J Shetye, Petitioner in person.</b>
<b>FOR THE INTERVENORS</b>	<b>Mr MB Da Costa, Senior Counsel (for</b> <i>the High Court Bar Association in</i> <i>W.P. 22 of 2017);</i> <b>Ms S Halankar (in W.P. 22 of 2017)</b> <b>Mr V Rodrigues (in Misc. Civil</b> <i>Application 740 of 2017 in Suo</i> <i>Moto W.P. No. 1 of 2017)</i>
<b>FOR THE UNION OF INDIA</b>	<b>Mr Mahesh Amonkar,</b> <i>Central Government Standing</i> <i>Counsel.</i>

FOR THE STATE OF GOA     **Mr Dattaprasad Lawande, Advocate  
General,**

*with Mr P Dangui, Additional  
Government Advocate; with Mr  
Amogh Prabhudesai, Additional  
Government Advocate; with Ms P  
Bhandari, Additional Government  
Advocate, Mr R Shivolkar,  
Additional Government Advocate,  
Mr P Kalangutkar, Additional  
Government Advocate.*

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**CORAM : GS Patel & Nutan D  
Sardesai, JJ**

**JUDGMENT RESERVED ON : 4th October 2017**

**JUDGMENT PRONOUNCED ON : 11th October 2017**

**JUDGMENT (per G.S. Patel J):**

1. Rule in all writ petitions. By consent, made returnable forthwith and taken up for hearing and final disposal.
2. On 21st August 2017, having seen news reports in several newspapers that morning, all saying that matters before the National Green Tribunal (“NGT”), Western Zone, coming up from Goa had been transferred by a notification of the Ministry of Environment and Forests (“MoEF”) to the NGT’s principal bench in New Delhi, we took up the matter as a suo motu Writ Petition/PIL. That day we also requested Mr SD Lotlikar, Senior Advocate, to assist us as *amicus*. We also noted that on that very day, while we took up the



issue as a suo motu PIL, two other PILs on the same subject matter had already been filed and were being mentioned. In the time since, several other PILs have been filed. All of them challenge this notification of transfer of the jurisdiction.

3. We have now an affidavit in reply from the MoEF filed in the *suo motu* Writ Petition and an affidavit in reply by the State Government in what we decided would be the lead matter, PIL Writ Petition No. 22 of 2017 filed by the Goa Foundation.

4. We have heard learned *amicus*, Mr Lotlikar, Mr Kantak for the Petitioners in one of the matters, Mrs Norma Alvares for the Petitioner in the lead matter, Mr Mario Brut da Costa, Mr Nigel Frias Costa, Mr Nadkarni and Mr Ryan Menezes. We also heard Mr Lawande, learned Advocate-General for Goa and Mr Vivek Rodrigues for one of the intervenors (indeed the only intervenor) supporting the State Government.

5. Shortly stated the issue is this. Some six years after the NGT set up its bench in the Western Zone, on 10th August 2017, the MoEF notified a change to the effect that all matters coming up from Goa, Daman, Diu, Dadra and Nagar Haveli would be taken up by the NGT principal bench in Delhi. Until then, these matters were being heard by the NGT Western Zone Bench in Pune.

6. The affidavit in reply by the MoEF, and to which we will presently turn in somewhat greater detail shortly, says in essence that it first received a proposal for setting up a Circuit Bench in Goa.

This was because of the large volume of filings at the NGT Western Zone Bench from Goa. The MoEF seems to have sought the opinion of the chairperson of the NGT. There seems to have been no response. The MoEF then received another proposal from the State Government of Goa to transfer all matters, including pending matters, to the principal bench in New Delhi. The MoEF acted on this and it did so without any form of public consultation with other 'stake holders', including litigants. The State Government, for its part, says that while an ideal situation would be to have a Circuit Bench in Goa, the places suggested by the Petitioners for accommodating such a Circuit Bench are unsuitable. As the next best option, a Bench could be constituted in Bombay. Failing that, the State Government says the principal seat in Delhi is the least inconvenient and, in any case, is far less inconvenient than the Western Zone Bench in Pune.

7. It seems to be common ground that a Circuit Bench in Panaji is an optimal solution. For whatever reason that has not happened, and we do not believe we can issue a mandamus to command the setting up of a Circuit Bench in Panaji. This would require very many arrangements to be made. Apart from noticing that we are unclear from what is available on record why there was no response from the NGT itself in regard to this first proposal mooted by the Government, we need say nothing further. At best, we may only note that there are indeed NGT Circuit Benches elsewhere in the country, such as Shimla. The concept and provisioning of Circuit Benches for the NGT is, therefore, not unknown.

8. The notification constituting the Western Zone Bench is dated 17th August 2011. We find a copy annexed to the Goa Foundation PIL at page 26. This divides cases for the NGT geographically into the Northern, Western, Central, Southern and Eastern Zones, and for each specifies a place of sitting. For the Western Zone the place of sitting is Pune. This has had territorial jurisdiction over Maharashtra, Gujarat and Goa along with the Union Territories of Daman, Diu and Dadra and Nagar Haveli.

9. The National Green Tribunal is itself constituted under the National Green Tribunal Act (“**the NGT Act**”). It exercises jurisdiction, as specified in Section 14, over all civil cases involving a substantial question relating to the environment, including the enforcement of any legal rights relating to the environment, and where such question arises out of the implementation of any of the statutes specified in the First Schedule to that act. Under Section 14, the Tribunal may provide relief and compensation, restitution for property damage and direct the restitution of the environment in any affected area. The phrase “substantial question relating to environment” is defined in Section 2(m) to include instances where there is a direct violation of a specific statutory environmental obligation by which the community at large, other than an individual or group of individuals, is affected or likely to be affected by environmental consequences, or the gravity of damage to the environment or property is substantial, or the damage to public health is broadly measurable. It also includes instances where environmental consequences relate to a specific activity or a point source of pollution. This definition is not just wide in its ambit, but is inclusive and not exhaustive.

10. The composition of the Tribunal and its establishment are provided for in Chapter II of the NGT Act. Section 4 provides for the composition and sub-clause 3 says the Central Government may, by notification, specify the ordinary place or places of sitting of the Tribunal, and the territorial jurisdiction falling under each such place of sitting.

11. It is evidently in light of these provisions that the 17th August 2011 notification was issued. We may, at this stage, also make a reference to Rule 6 of the National Green Tribunal (Practices and Procedures) Rules 2011. That rule says that if at any time a judicial member of a Tribunal is satisfied that circumstances exist that render it necessary to have the Tribunal's sitting at any place other than the place at which it ordinarily sits, but falling within its territorial jurisdiction, he may with the permission of the chairperson direct that the sitting shall be held at any such appropriate place. We note this not because it means that the setting up of a Circuit Bench is automatic, but just that the seat of any region is not always static; in a given place and in certain circumstances, and subject of course to the prior approval of the chairperson, a zonal Tribunal may also sit elsewhere than at its designated headquarters. The Rules specifically so provide.

12. Mr Lotlikar drew our attention to the affidavit of the MoEF filed in the *suo motu* PIL. The affidavit is filed by one CS Thakur, the Under Secretary in the MoEF. As Mr Lotlikar points out, paragraphs 7 to 15 of this affidavit make for the most interesting reading. It is perhaps best to set these out in full.

“7. It is respectfully submitted that the matter was earlier examined by the Ministry in consultation with the Chairperson of the Hon’ble NGT and it was suggested by the NGT that it could either transfer all the cases pending before the Western Zone Bench at Pune to the Principal Bench at New Delhi and deal in accordance with law or in the alternative a Circuit Bench of the Hon’ble NGT could be established in order to give instant relief to the people of the State of Goa, as this would help in providing environmental justice to the people of Goa at their doorstep, as well as prove quite economical for the State of Goa.

8. It is respectfully submitted that the matter was discussed with the then Hon’ble Minister, MoEF & CC by the Additional Secretary, MoEF & CC on 21.12.2015 and it was suggested that a Circuit Bench at Goa may be a better option. Further, the Chief Secretary, Government of Goa was informed on 21.12.2015 that a Circuit Bench could be set up at Goa subject to the availability of suitable space, accommodation etc. The Chief Secretary, Government of Goa on 24.02.2016 replied that the Govt. of Goa appreciated the consideration of establishing a Circuit Bench of the Hon’ble NGT at Goa. The State of Goa has also requested that specific terms regarding the logistics to be arranged along with the financial implications, if any, be conveyed to the State Government for further examination of the issue. The same was communicated to the Hon’ble NGT vide communication dated 09.03.2016. Thereafter, no further communication was received from either side in this regard.

9. It is respectfully submitted that a fresh request was received from the present Chief Minister for the State of Goa dated 09.06.2017, requesting to bring the State of Goa under the jurisdiction of the Principal Bench of the Hon’ble

NGT at New Delhi, the reason being that having to travel to Pune is logistically inconvenient and a serious financial burden for the people of the State of Goa.

10. It was explained therein that Pune and Goa are inconveniently and insufficiently connected as there are limited flights available i.e. only 2 flights per day in the afternoon, and therefore, litigants, parties and lawyers alike are mandated to travel a day prior to the matter and depart only the day after the matter concludes which seriously impacted time needed and increases the cost involved. The only alternative being is to travel to Mumbai and then travel back to Goa which is an expensive exercise and in fact an unnecessary additional cost being incurred.

11. It was further explained therein that, due to the poor flight connectivity between Pune and Goa many litigants, parties and lawyers would travel by road to Pune. In any case, this is a dangerous mode of travel as this route is particularly dangerous given that it involves traversing across the Western Ghat region, which is especially precarious during the monsoon season for essentially six months of the year.

12. Furthermore, it was emphasized therein that the arrangement was most inconvenient and financially burdensome. The State Government is essentially a party in almost every matter and its officers are required to travel to Pune and return only after 3 days which creates a backlog and inefficiency in the government office/department concerned; or in the alternative, they are compelled to hire a taxi and risk their lives by travelling back by road at night.

13. Conversely, it was explained that New Delhi is far better connected with Goa and therefore, litigants, parties, lawyers and officers of the government can easily travel to

New Delhi attend the matter and return the very same day. In case of a part heard matter spills over to the next day reasonable accommodation at concessional rates is proposed to be provided to litigants, parties, lawyers and officers of the government at Goa Niwas and Goa Sadan in New Delhi. We are informed that this facility is not available in Pune and as such litigants, parties, lawyers and officers of the government are compelled to stay in hotels at a high cost.

14. Moreover, it was emphasized therein that the State Government has an entire panel of lawyers appointed and available to attend to the matters in New Delhi while it has only one appointed lawyer in Pune. Therefore, the State Government is required to periodically send lawyer in addition to officers/representatives of the State Government for urgent and important matters which apart from being inconvenient and expensive has an adverse effect on the proceeding before this Hon'ble Court. Therefore, in consideration of the aforesaid it emphatically explained that Pune as a regular place of hearing in respect of the State of Goa is logistically inconvenient and is a serious financial burden on the State Exchequer and more importantly on the people of Goa.

15. It is respectfully submitted that as per available records, the matter was again discussed between the Hon'ble Minister, MoEF & CC and the Chairperson of the Hon'ble NGT; and keeping in view the fact that the Hon'ble Chief Minister of the State of Goa represents the views and opinion of the public, it has been decided to include the State of Goa in the jurisdiction of the Principal Bench of the Hon'ble NGT at New Delhi with the approval of the Hon'ble Minister of MoEF & CC on 10.08.2017 instead of the Western Zone Bench, at Pune. Accordingly, the said

Notification was issued on 10.08.2017 which was published in the Gazette of India on 11.08.2017"

13. Mr Lotlikar correctly points out that from this it is evident that it is not the case of the State Government that a Circuit Bench in Panaji is inappropriate. In its own affidavit in reply filed in the lead petition by the Goa Foundation, the State Government only says that the places suggested by the Petitioners are not feasible. Mr Lotlikar's submission, one in which he is joined by all other petitioners, is that the so-called "convenience" of the State Government is completely irrelevant.

14. Access to justice is, he submits, a dimension of Article 21. He formulates his case thus. Article 21 of the Constitution of India, the fundamental right to life, has many aspects and facets. The right to a wholesome environment is one of them, and by making this a fundamental right and a part of the right to life, our jurisprudence is perhaps a step further than that of most other nations whose legal systems share the basis of ours. Apart from the question of the right to a clean environment, it is in Mr Lotlikar's submission well-established that "access to justice", whatever be the cause, is also a facet of Article 21. Put together, and read with Sections 14 and 15 of the NGT Act, this means that every person must have affordable access to a reasonably conveniently situated tribunal charged with dispensing environmental justice. Suitable access, in his submission, means that the access must be affordable and it must be within reasonable reaching distance. The consideration here is not the convenience of the Government, for the Government is everywhere and can set up its infrastructure wherever it pleases, but the



convenience and accessibility of the common man and the ordinary litigant.

15. The affidavit of the State Government and, in its reflection, that of the MoEF, speak of connectivity by flight. They wholly elide the question of road travel, and except to say that this is dangerous, the State Government says nothing further. Many litigants travel by overnight bus to Pune and the Western Zone Bench has, in fact, got a disproportionate number of its cases coming from Goa. So much so that it has allocated Thursdays and Fridays only for Goa-related cases.

16. On the question of the convenience or otherwise of the Government and whether this is a consideration, Mr Lotlikar relies on the decision of the Supreme Court in *Madras Bar Association v Union of India*.<sup>1</sup> In paragraphs 123 and 124, the Supreme Court said this:

“123. We shall first examine the validity of Section 5 of the NTT Act. The basis of challenge to the above provision has already been narrated by us while dealing with the submissions advanced on behalf of the Petitioners with reference to the fourth contention. According to the learned counsel for the Petitioners, Section 5(2) of the NTT Act mandates that NTT would ordinarily have its sittings in the National Capital Territory of Delhi. According to the Petitioners, the aforesaid mandate would deprive the litigating assessee the convenience of approaching the jurisdictional High Court in the State to which he belongs.

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1 (2014) 10 SCC 1.

**An assessee may belong to a distant/remote State, in which eventuality, he would not merely have to suffer the hardship of travelling a long distance, but such travel would also entail uncalled for financial expense. Likewise, a litigant assessee from a far-flung State may find it extremely difficult and inconvenient to identify an Advocate who would represent him before NTT, since the same is mandated to be ordinarily located in the National Capital Territory of Delhi. Even though we have expressed the view, that it is open to Parliament to substitute the appellate jurisdiction vested in the jurisdictional High Courts and constitute courts/tribunals to exercise the said jurisdiction, we are of the view, that while vesting jurisdiction in an alternative court/tribunal, it is imperative for the legislature to ensure that redress should be available with the same convenience and expediency as it was prior to the introduction of the newly created court/tribunal. Thus viewed, the mandate incorporated in Section 5(2) of the NTT Act to the effect that the sittings of NTT would ordinarily be conducted in the National Capital Territory of Delhi, would render the remedy inefficacious, and thus unacceptable in law.** The instant aspect of the matter was considered by this Court with reference to the Administrative Tribunals Act, 1985 in **S.P. Sampath Kumar case** [(1987) 1 SCC 124] and **L. Chandra Kumar case** [(1997) 3 SCC 261], wherein it was held that permanent Benches needed to be established at the seat of every jurisdictional High Court. And if that was not possible, at least a Circuit Bench required to be established at every place where an aggrieved party could avail of his remedy. The position on the above issue is no different in the present controversy. For the above reason, Section 5(2) of the NTT Act is in clear breach of the law declared by this Court.

124. One needs to also examine sub-sections (2), (3), (4) and (5) of Section 5 of the NTT Act, with pointed reference to the role of the Central Government in determining the sitting of the Benches of NTT. The Central Government has been authorised to notify the area in relation to which each Bench would exercise jurisdiction to determine the constitution of the Benches, and finally to exercise the power of transfer of Members of one Bench to another Bench. **One cannot lose sight of the fact that the Central Government will be a stakeholder in each and every appeal/case which would be filed before NTT. It cannot, therefore, be appropriate to allow the Central Government to play any role, with reference to the places where the Benches would be set up, the areas over which the Benches would exercise jurisdiction, the composition and the constitution of the Benches, as also, the transfer of the Members from one Bench to another.** It would be inappropriate for the Central Government to have any administrative dealings with NTT or its Members. In the jurisdictional High Courts, such power is exercised exclusively by the Chief Justice in the best interest of the administration of justice. Allowing the Central Government to participate in the aforesaid administrative functioning of NTT, in our view, would impinge upon the independence and fairness of the Members of NTT. For the NTT Act to be valid, the Chairperson and Members of NTT should be possessed of the same independence and security as the Judges of the jurisdictional High Courts (which NTT is mandated to substitute). Vesting of the power of determining the jurisdiction, and the postings of different Members, with the Central Government, in our considered view, would undermine the independence and fairness of the Chairperson and the Members of NTT, as they would always be worried to preserve their jurisdiction based on

their preferences/inclinations in terms of work, and conveniences in terms of place of posting. An unsuitable/disadvantageous Chairperson or Member could be easily moved to an insignificant jurisdiction or to an inconvenient posting. This could be done to chastise him, to accept a position he would not voluntarily accede to. We are, therefore of the considered view, that Section 5 of the NTT Act is not sustainable in law as it does not ensure that the alternative adjudicatory authority is totally insulated from all forms of interference, pressure or influence from coordinate branches of Government. There is therefore no alternative but to hold that sub-sections (2), (3), (4) and (5) of Section 5 of the NTT Act are unconstitutional."

*(Emphasis added)*

17. Mr Lotlikar also relies on the subsequent decision of the Supreme Court in *Anita Kushwaha v Pushap Sadan*.<sup>2</sup> Several portions of this decision provide a telling and trenchant commentary on the question of access to justice. In paragraphs 9, 10, 16, 29 and 31 the Supreme Court said:

"9. Two distinct questions fall for consideration in the context of what is argued at the Bar. The first involves examination of whether access to justice is indeed a fundamental right and if so, what is the sweep and content of that right, while the second is whether Articles 32 and 142 of the Constitution of India empower this Court to issue suitable directions for transfer of cases to and from the State of Jammu and Kashmir in appropriate situations. Both these aspects, in our view, are well traversed by the judicial pronouncements of this Court as well as those of courts in England in which the courts have had an

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2 (2016) 8 SCC 509.

opportunity to examine the jurisprudential aspect of the Right of Access to Justice and its correlation with the right to life. Availability of Article 142 of the Constitution of India for directing transfer of cases in situations where such power is not stricto sensu available under an ordinary statute or the Constitution has also been judicially explored by this Court on several earlier occasions. We may deal with the said two aspects ad seriatim.

10. The concept of “access to justice” as an invaluable human right, also recognised in most constitutional democracies as a fundamental right, has its origin in common law as much as in the Magna Carta. The Magna Carta lays the foundation for the basic right of access to courts in the following words:

“No freeman shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land.

To no man will we sell, to no one will we deny or delay right to justice.

Moreover, all those aforesaid customs and liberties, the observance of which we have granted in our kingdom as far as pertains to us towards our men, shall be observed by all our kingdom, as well clergy as laymen, as far as pertains to them towards their men.

Wherefore, it is our will, and we firmly enjoin, that the English Church be free, and the men in our kingdom have and hold all the aforesaid liberties, rights and concessions, well as peaceably, freely and quietly, fully and

wholly, for themselves and their heirs, of us and our heirs, in all aspects and in all places for ever, as is aforesaid. An oath, moreover, has been taken, as well on our part as on the part of the barons, that all these conditions aforesaid shall be kept in good faith and without evil intention—Given under our hand—the abovenamed and many others being witnesses—in the meadow which is called Runnymede, between Windsor and Staines, on the fifteenth day of June, in the seventeenth year of our reign.”

16. In *R. v. Secy. of State for Home Deptt., ex p Leech* (No. 2), [1994 QB 198 : (1993) 3 WLR 1125 (CA)] Steyn, L.J. was dealing with a prisoner who complained that correspondence with his solicitor concerning litigation in which he was involved or which he intended to launch, was being censored by the prison authorities under the Prisons Rules, 1964. He challenged the authority of the Secretary of State to create an impediment in the free flow of communication between him and his solicitor about contemplated legal proceedings. The Court held that access to justice was a basic right which could not be denied or diluted by any kind of interference or hindrance. The Court said: (QB p. 210 A-D)

“... It is a principle of our law that every citizen has a right of unimpeded access to a court. In *Raymond v. Honey*<sup>3</sup> Lord Wilberforce described it as a “basic right”. Even in our unwritten Constitution, it must rank as a constitutional right.

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<sup>3</sup> (1983) 1 AC 1 : (1982) 2 WLR 465 (HL)

In Raymond v. Honey,<sup>4</sup> Lord Wilberforce said that there was nothing in the Prison Act, 1952 that conferred power to “interfere” with this right or to “hinder” its exercise. Lord Wilberforce said that rules which did not comply with that principle would be ultra vires. Lord Elwyn-Jones and Lord Russell of Killowen agreed.... It is true that Lord Wilberforce held that the rules, properly construed, were not ultra vires. But that does not affect the importance of his observations. Lord Bridge of Harwich held that the rules in question in that case were ultra vires. ... he went further than Lord Wilberforce and said that a citizen’s right to unimpeded access could only be taken away by express enactment. ... It seems to us that Lord Wilberforce’s observations rank as the ratio decidendi of the case, and we accept that such rights can as a matter of legal principle be taken away by necessary implication.”

**29. To sum up: access to justice is and has been recognised as a part and parcel of right to life in India and in all civilised societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens. The Magna Carta, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, 1966, the ancient Roman jurisprudential *maxim ubi jus ibi remedium*, the development of fundamental principles of common law by judicial pronouncements of the courts over centuries past have all contributed to**

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<sup>4</sup> (1983) 1 AC 1 : (1982) 2 WLR 465 (HL)

**the acceptance of access to justice as a basic and inalienable human right which all civilised societies and systems recognise and enforce.**

31. Given the fact that pronouncements mentioned above have interpreted and understood the word "life" appearing in Article 21 of the Constitution on a broad spectrum of rights considered incidental and/or integral to the right to life, **there is no real reason why access to justice should be considered to be falling outside the class and category of the said rights, which already stands recognised as being a part and parcel of Article 21 of the Constitution of India. If "life" implies not only life in the physical sense but a bundle of rights that makes life worth living, there is no juristic or other basis for holding that denial of "access to justice" will not affect the quality of human life so as to take access to justice out of the purview of right to life guaranteed under Article 21. We have, therefore, no hesitation in holding that access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution. We need only add that access to justice may as well be the facet of the right guaranteed under Article 14 of the Constitution, which guarantees equality before law and equal protection of laws to not only citizens but non-citizens also. We say so because equality before law and equal protection of laws is not limited in its application to the realm of executive action that enforces the law. It is as much available in relation to proceedings before courts and tribunal and adjudicatory fora where law is applied and justice administered.** The citizen's inability to access courts or any other adjudicatory mechanism provided for determination of rights and obligations is bound to result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection



of laws. Absence of any adjudicatory mechanism or the inadequacy of such mechanism, needless to say, is bound to prevent those looking for enforcement of their right to equality before laws and equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well."

*(Emphasis added)*

18. It then went to say in paragraphs 33, 34, 35 and 38:

"33. Four main facets that, in our opinion, constitute the essence of access to justice are:

(i) the State must provide an effective adjudicatory mechanism;

**(ii) the mechanism so provided must be reasonably accessible in terms of distance;**

(iii) the process of adjudication must be speedy; and

**(iv) the litigant's access to the adjudicatory process must be affordable.**

*(i) The need for adjudicatory mechanism*

34. One of the most fundamental requirements for providing to the citizens access to justice is to set up an adjudicatory mechanism whether described as a court, tribunal, commission or authority or called by any other name whatsoever, where a citizen can agitate his grievance and seek adjudication of what he may perceive as a breach of his right by another citizen or by the State or

any one of its instrumentalities. In order that the right of a citizen to access justice is protected, the mechanism so provided must not only be effective but must also be just, fair and objective in its approach. So also the procedure which the court, tribunal or authority may adopt for adjudication, must, in itself be just and fair and in keeping with the well-recognised principles of natural justice.

***(ii) The mechanism must be conveniently accessible in terms of distance***

**35. The forum/mechanism so provided must, having regard to the hierarchy of courts/tribunals, be reasonably accessible in terms of distance for access to justice since so much depends upon the ability of the litigant to place his/her grievance effectively before the court/tribunal/court/competent authority to grant such a relief. (See *D.K. Basu v. State of WB* [(2015) 8 SCC 744; (2015) 3 SCC (Cri) 824])**

***(iv) The process of adjudication must be affordable to the disputants***

**38. Access to justice will again be no more than an illusion if the adjudicatory mechanism provided is so expensive as to deter a disputant from taking resort to the same. Article 39-A of the Constitution promotes a laudable objective of providing legal aid to needy litigants and obliges the State to make access to justice affordable for the less fortunate sections of the society."**

*(Emphasis added)*

**19. Mr Lotlikar's submission is that it is wholly arbitrary and unfair to lump all litigants into one class without making a**

reasonable distinction or allowance for various types and classes of litigants. As he quite brutally puts it, not every litigant takes a flight.

20. With this, we now turn to the affidavit of the State Government filed in the Goa Foundation PIL. Here, the Government says this:

5. I state and submit that Pune as a location is logistically inconvenient particularly because there are only 2 flights that connect Goa to Pune by air. Moreover, both these flights are scheduled approximately 20 minutes apart in the afternoon. Therefore, in order to attend a matter the concerned litigants/parties/govt. Officers/lawyers are required to travel a day earlier than the scheduled date of hearing and stay overnight in Pune.

6. Furthermore, there are only 2 return flights available from Pune to Goa, also similarly scheduled 20 minutes apart in the afternoon, and therefore, it is impossible to effectively attend to the matter(s) before the Hon'ble NGT in Pune and return to Goa on the very same day. Thus in order to effectively attend to the hearing(s) before the Hon'ble NGT in Pune a litigants/parties/govt. Officers/lawyers is required to stay in Pune for a minimum 3 working days before they can return to Goa.

7. I state and submit that, this is a substantial additional expense precisely because the State of Goa neither has an official guest house nor any official accommodations in Pune, and therefore, litigants/parties/govt. Officers/lawyers generally stay at hotels and the like which are expensive, and are in fact, an entirely unnecessary expense.

8. I state and submit that the alternative is to first travel to Mumbai and thereafter, catch a flight back to Goa later that night, if one intends to return that day itself. Considering that the cost of flights to and from Mumbai are generally very expensive, with limited seats available as this is a very busy travel sector, this travel mode cannot be the usual journey. Therefore, most litigants/parties/govt. Officers/lawyers are required to stay for a minimum of 3 working days in Pune which apart from the serious cost involved has far more serious implications in respect of the State Government, an issue that I will avert to in more detail later herein under.

9. I state and submit that in order to avoid the additional cost and expense involved several litigants/parties/govt. officers/lawyers have begun to travel to and from Pune by road. I need not advert to the inherent dangers and risk involved in road travel; and in particular the route from Goa to Pune because, travellers are required to travel across the Western Ghats Region which is naturally perilous, owing to its steep slopes and narrow roads. I state and submit that this route is especially perilous during the monsoon season, which is approximately for 6 months of the year. Therefore, considering the serious risk to life posed by road travel it is not the preferred mode of travel to and from Pune. Moreover, Pune is not suitably connected to Goa via rail and therefore, air travel continues to be the preferred and most availed mode of travel. I state that as far as the State of Gujarat, whose Territorial Jurisdiction has also been vested with Western Zone; it is logistically well connected with Pune. I state that there are almost 4 direct flights scheduled between Ahmedabad and Pune, from Ahmedabad Airport itself. I state that these flights are scheduled at adequate intervals during the day, and thereby, permitting the litigants/parties/govt.

Officers/lawyers from the State of Gujarat to travel to Pune, attend to the hearings scheduled and return on the very same day, if not the day after at the very latest. Thus, providing the litigants/parties/govt. Officers/lawyers a varied possible travel itinerary, unlike that which is available to the litigants/parties/govt. Officers/lawyers from the State of Goa. Moreover, apart from Ahmedabad there are several other airports in the State of Gujarat, which are also logistically well connected with Pune, and therefore, there is no real logistical issue for litigants/parties/govt. Officers/lawyers from the State of Gujarat to submit to the jurisdiction and effectively attend to the hearing scheduled before the Western Zone Bench of the Hon'ble National Green Tribunal, at Pune.

10. In light of the aforesaid, I humbly state and submit that the State Government is the most affected party by the logistical inconvenience of Pune as the ordinary place of hearing of NGT matters. This is precisely because the State is essentially party to almost every action/matter pertaining to the State of Goa. As a natural consequence several Government Officers and representatives are required to continuously and periodically travel to Pune attend hearings before the NGT Pune.

11. I state and submit that apart from the substantial cost involved, it has serious implications on the day to day functioning of the department/authority of the State of Goa. This is due to the fact that the Govt. Officers/representatives are compelled to stay at least 3 days in Pune; lest the matter spills over to the next day as well, in which case another day necessary follows. I state and submit that this causes a backlog in the regular work of the concerned Govt. Officer/representative of the State of Goa. This in turn has cascading adverse effect on the general efficiency and functioning of the Govt.

department/authority concerned. I state and submit that this is not only opposed to the efficient administration of the State of Goa but also prejudicially affects the interest of people of the State of Goa."

**21.** Then comes this remarkable passage in paragraph 12:

"12. Wherefore, in 2015, the Hon'ble Chief Minister of the State of Goa addressed an official communication to the MoEF explicating that Pune as the ordinary place of sitting of the NGT for the territorial jurisdiction of the State of Goa has caused several difficulties, financial hardship, and has seriously prejudiced the State Government, but more particularly to the ordinary citizen and litigant from the State of Goa."

**22.** In paragraphs 15 to 20, the Government says this:

"15. However, the logistical inconvenience and hardship of having Pune as the regular place of hearing for NGT matters in respect of the State of Goa, continued to ensure for litigants/parties/govt. Officers/lawyers from the State of Goa, and therefore, on 9th June 2017 the Hon'ble Chief Minister of the State of Goa was pleased to address another official communication to the MOEF reiterating with emphasis on the serious prejudice and hardship being occasioned to litigants/parties/govt. Officers/lawyers from the State of Goa, and therefore, requested that the territorial jurisdiction in respect of the State of Goa be transferred to either Goa or New Delhi.

16. I state and submit that it was proposed to shift the territorial jurisdiction in respect of the State of Goa to New Delhi primarily because New Delhi is vastly better connected to Goa via air travel, with upward of 17 flights

scheduled daily at varied hours allowing litigants/parties/govt. Officers/lawyers from the State of Goa to travel to New Delhi and back on the very same day, and therefore, it is logistically convenient and preferred for litigants/parties/govt. Officers/lawyers to effectively attend to the scheduled hearings before the Hon'ble NGT.

17. Furthermore, in case of an overnight halt at New Delhi, the State of Goa has two official accommodations in New Delhi i.e. Goa Niwas and Goa Sadan: both of which are available at concessional rates and is proposed to be extended for the benefit of litigants/parties/govt. Officers/lawyers travelling to New Delhi.

18. Moreover, the State of Goa has a panel of lawyers to represent and defend the interest of the State of Goa in New Delhi. Contrastingly, the State of Goa has only one lawyer appointed in Pune, and therefore, periodically lawyers appointed by the State are required to attend hearing at NGT Pune which apart from the financial implication also adversely affects the proceedings of matters, before this Hon'ble Court as well.

19. Similarly, such the change of the place of hearing of the NGT will also positively benefit the litigants and parties from the State of Goa particularly because, the NGT New Delhi has several competent and effective lawyers specifically handling environmental litigation and NGT matters, including an NGT Bar Association. This will be of immense help to the litigants and parties from the State of Goa as they would no longer be forced to engage lawyers from elsewhere, pay for their travel to and from Pune, their accommodation and related expenses in order to have effective representation before the Hon'ble NGT, Pune.

20. I state and submit that even assuming that lawyers will be engaged from elsewhere to represent litigants and

parties from the State of Goa, New Delhi is a preferred place of hearing as it is far better connected with upward of 17 flights scheduled each day from Goa itself. In addition, budget and concessional accommodations are available at the Goa Niwas and Goa Sadan which will be cost efficient and alleviate the financial burden on the litigants and parties from the State of Goa."

23. From this, Mr Lotlikar culls out that the original proposal in 2015 from the State Government was to establish a Circuit Bench in Goa. The MoEF received this favourably. The Chief Secretary responded on 24th February 2016 asking for details as to the logistics involved. This was forwarded to the NGT by the MoEF on 9th March 2016. It is at this point that the Government appears to have hit a road block, because there was simply no answer from NGT and, according to the State Government, the matter came to a quietus. It was only thereafter on 9th June 2017, once again citing prejudice and hardship but saying this was true not only of the Government but of litigants, parties and lawyers, that the present administration requested the MoEF to transfer the territorial jurisdiction either to Goa or to New Delhi. The impugned notification, a copy of which is at page 20 of the Goa Foundation PIL, simply says that with immediate effect and in supersession of the previous resolution of 17th August 2011, the Western Zone Bench in Pune would only have territorial jurisdiction over Maharashtra and Gujarat, but cases from Goa, Daman, Diu and Dadra and Nagar Haveli would be within the jurisdiction of the principal bench in New Delhi.



24. Mrs Norma Alvares appears for the Goa Foundation, the Petitioner in the lead matter. She submits that this decision to transfer the jurisdiction was almost instantaneous. The Government made its request, as we have noted, on 9th June 2017 and the impugned notification followed in just about two months on 10th August 2017. No one else was ever asked or consulted on the correctness or otherwise of the Government's view or even if they shared that view. She points out that the case of inconvenience is entirely unjustified. There are overnight buses from Goa to Pune and many people travel on those buses. The issue for determination while assessing access to justice is about distance and affordability. If one moves a Tribunal to a far-off place, where travel is more expensive, both these issues arise and they operate to make that transfer of jurisdiction entirely arbitrary. In her submission, it is pointless saying that the flights to Pune are cheaper than the flights to Delhi. This is a matter of when one chooses to book a flight, but in any case they are more expensive than an overnight bus journey. A large number of litigants appear themselves as parties in person and they do not always travel by air. There are villagers from Gujarat and from Goa and for them air travel is quite out of the question. The Government's offer of accommodation of Goa Sadan in Delhi is completely irrelevant. It is to the litigants that a judicial administration must look, not to judges or lawyers.

25. We believe there is some substance to this last argument. James Baldwin, the American writer and social critic, said in his remarkable collection *The Price of the Ticket*:

“If one really wishes to know how justice is administered in a country, one does not question the policemen, the lawyers, the judges or the protective members of the middle class. One goes to the unprotected — those, precisely, who need the law’s protection most — and listens to their testimony.”

26. These words resound with us today. If there is one thing that neither the State Government nor the MoEF did at any stage, it was to listen to the voice of those who most need the protection of environmental laws. The State Government seems to have assumed that it is *in loco parentis vis-à-vis* all litigants and has the authority, both moral and legal, to speak for them all. That authority is not just questioned before us today. It is flatly denied.

27. Mr Kantak, learned Senior Advocate, amplifies the argument and re-emphasizes that the situs of a Court is not meant for either the State or for lawyers. It is for citizens and, as the decisions in *Anita Khushwaha* and *Madras Bar Association* make abundantly clear, the State has no role at all to play in the question of where a Court should sit. The Central Government could not have acted solely at the behest of the State Government only because the State Government thought it was convenient. The argument that there is a Bar Association of NGT lawyers in Delhi is wholly irrelevant. He draws our attention to Section 4(3) of the NGT Act, and to which we have referred, and points out that the Affidavit of the MoEF is silent on a vital aspect of the matter, viz., an assessment of any kind at all of the consequences of this transfer of jurisdiction on the individual litigant. He points out that the State Government’s

statement that the Supreme Court is close to the NGT is also a matter of complete irrelevance.

28. More to the point, he says that for a 19 crore population of Maharashtra and Gujarat, the NGT Western Zone has 340 cases, a proportion of roughly 1:5.4 lakhs. With a population of only 14 lakhs the NGT in its Western Zone has 146 cases coming up from Goa. There is, therefore, a real cost to the litigant. Pune gives him options of travel by road and rail apart from air. Both of these are eliminated if the jurisdiction is moved to Delhi. The only way in which such a transfer could pass the test of manifest arbitrariness, in his submission, is to see whether the cheapest mode of travel is still available. He also points out that the entire talk of Delhi being convenient because there are more flights is something of a red herring because it does not account for the additional travel time by air and the fact that even arriving in Delhi one still has to travel great distances from the airport to where the NGT has its seat. This inevitably entails having to travel at least a day ahead. The Petitioners in PIL No. 783 of 2017 are all individuals who are below the poverty line. They cannot afford this travel to Delhi, and for them it is most emphatically not “convenient” to go there any more than it is “inconvenient” to go to Pune. The distance to Pune is often covered in a single day reaching there and returning the same night, perhaps only losing a little sleep on the way. With the NGT sitting from 10.00 am to 4.00 pm, according to him, this journey can always be done. This is, in fact, a matter of convenience that is wholly lost when one transfers all cases to the principal seat in Delhi.

29. Mr Mario Brut Da Costa, learned Senior Advocate for the intervening Goa High Court Bar Association, while supporting his colleagues for the Petitioners, emphasizes that litigants go to the nearest available Bench with appropriate jurisdiction. The NGT is, he correctly points out, a Tribunal of ‘first instance’. Now it is placed 2,000 kms away and only Goa is singled out for this preferential treatment. Section 4(3) of the NGT Act has no guidelines. We turn, therefore, to the preamble to the Act and it is this that Mr Da Costa emphasizes when he says that after referring to the Rio Conference in June 1992, the second recital in the Preamble speaks about the decisions at that conference calling upon States to provide:

**“effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage.”**

*(Emphasis added)*

30. It is, in his submission, one that we find impossible to resist, this that is the guiding principle of the entire NGT Act. Of particular importance are the words “*effective access to judicial proceedings*”. That effectiveness is all but lost, he submits, if the Tribunal of first instance is removed by a distance of four times as much and access to it is made unaffordable. What the NGT Act does is to protect a dimension of Article 21. It is the only forum of redress and protection that is available.

31. Mr Nadkarni for the Petitioner, a practising Advocate, in WP No. 23 of 2017 points out that the 2011 notification brought into effect a carefully considered geographical distribution. This was the basis of the classification, one that was rational, and it provided for intelligible differentia. The States in the West were clubbed before the Western Zone, those in the South in the Southern Zone and so on. It is wholly arbitrary and irrational, Mr Nadkarni submits, to cherry-pick Goa (and allied four Union Territories) and move them outside this well-considered basis of geographical distribution to Delhi. In itself this is facially and *ex facie* manifestly arbitrary. There is no discernible nexus between the classification and the object of the statute remaining any longer with the 2017 notification. Paragraph 14 of his Petition lists various tribunals that are in Mumbai. All these deal with cases that come up from Goa. These include the DRT, the Central Administrative Tribunal, the CESTAT, the Central Government Industrial Tribunal, the NCLT and the Armed Forces Tribunal. It is unclear why only the NGT was picked out for being moved to Delhi. It is not his suggestion, he clarifies, that the NGT Bench be shifted to Mumbai. He only points out that there is a rational reason for the establishment of the Western Zone Bench and for conferring on it a territorial jurisdiction that includes Goa.

32. Mr Nigel Costa Frias for the Petitioners in WP No. 778 of 2017 supports his colleagues for the Petitioners and seriously disputes the contention of the Government that flights to Delhi are cheaper.

33. Mr Ryan Menezes for the Petitioners in WP No. 787 of 2017 draws our attention to the statement of objects and reasons of the Supreme Court of India (Establishment of Circuit Benches at Mumbai, Chennai & Kolkata) Bill 2016. While this is not directly related to the NGT Act, he says that the recommendations of the Law Commission of India's 229th Report also noted the 'agonies of a litigant having to come to Delhi from distant places like Chennai, Thiruvananthapuram, Pondicherry, Gujarat, Maharashtra and Goa to attend the cases in the Supreme Court'. If these were the travails of litigants coming to the Supreme Court, then they are no less true of litigants being forced to travel to New Delhi to attend the hearings at the NGT.

34. Mr Lawande for the State Government submits, first of all, that the decision of the Supreme Court in the *Madras Bar Association* was in very peculiar circumstances and cannot be broadened in its ambit. He would have us hold that it is only the MoEF that has plenary jurisdiction to decide where a Bench should sit and over which area it should exercise its territorial jurisdiction. The question is whether the 2017 notification is so facially arbitrary that it demands our intervention. He reiterates and supports the case set out in the affidavit filed by the State Government. According to him, there are three linked questions: of travel, accommodation and access to lawyers. There are but two flights a day from Goa to Pune, he says, and as many as 18 from Goa to Delhi. The State Government is concerned with the expenditure not only on its own officers, which is significant in itself, but also about the expenditure forced on litigants in engaging lawyers in Pune or taking lawyers from Goa to Pune, which is usually the case. In Delhi,

accommodation is not an issue but it is very much so in Pune where the Government is required to put up its officers in hotels. Every trip, he says, costs the Government between Rs. 50,000/- and Rs. 60,000/- and these are after all taxpayers' funds that should not be allowed to be squandered.

35. He also submits that Section 29 of the NGT Act bars the jurisdiction of Civil Courts. It is equally possible to remove that bar and to empower Civil Courts to try all these cases. We do not think this argument holds much substance and we will not spend further time on it.

36. What Mr Lawande seriously disputes is that access to justice, though a component of the NGT Act, is denied by the impugned notification. The access, he submits, is not being denied. On the contrary, given the greater frequency of flights, the ease of accommodation and the availability of lawyers, Delhi is clearly the less inconvenient option than Pune. In fact, Mr Lawande agrees that the optimal solution would be to have a Circuit Bench in Goa. If that is not possible, then a Bench in Mumbai is preferable. If that too is not possible, then Delhi is preferable to the last alternative, Pune, which is the most inconvenient and the least optimal of the four.

37. Pune can hardly be said to be a place of low connectivity. There are the options of travel by road, rail and by air, both from Mumbai and directly to Pune, even if direct air connections from Goa to Pune are less than might be desired. Road and rail travel is out of the question in reaching Delhi. That more or less completely

eliminates the common litigant. It leaves us with consideration of only the affluent, those who can afford air travel and the expensive taxi travel once in Delhi.

38. Pune is also a well-known information technology hub and it is not always necessary that physical files need to be moved from Goa to Pune and back. The Pune Courts and NGT have excellent infrastructure, although they are, clearly, understaffed. As to the question of accommodation, this is also inconsequential while considering the Government, for it had and has before it a variety of options to take suitable premises for its own use. The maximum travel time between Goa and Pune, a distance of about 440 kms, is about eight hours. There are roughly 50 buses a day between Pune and Goa. There are also two direct trains between Pune and Goa. While a Circuit Bench at present does not seem to have received approval from the NGT in New Delhi, for reasons we are unable to speculate, but equally unable to understand, especially given that there are other Circuit Benches elsewhere in the country, it does not seem to us that this alone will justify transferring jurisdiction from Pune to Delhi.

39. Mr Vivek Rodrigues for an intervener in Miscellaneous Civil Application No. 740 of 2017 supports Mr Lawande. His client is a businessman. The Miscellaneous Civil Application seems to indicate in paragraph 3 that the Applicant is aggrieved by what he calls “busybodies” and “self-proclaimed NGOs”. He claims that these persons seek to paralyse the economy with “a totally uncontrolled access to the judiciary”. He then goes on to talk about Pune not having proper hotels, stenographers and advocates. None



of this seems to us to be even remotely persuasive. There are five-star and seven-star deluxe hotels in Pune including many of the major chains, some with more than one establishment. The Applicant obviously has yet another mode of transport and is not driven to public transport of any kind. As to his proclamation of preventing “uncontrolled access to the judiciary”, perhaps the less said the better.

40. There remains the question of legal representation, and here the submission is that not only the Government but litigants too can obtain ‘better’ representation in Delhi where there is a full-fledged NGT Bar Association. We find it particularly surprising that it took the Government five or six years to awaken to the realization that it did not have lawyers in Pune. That is a city bursting with lawyers. We see no reason why the Government could not have assembled a team of lawyers to represent it even as standing counsel. The statement on affidavit is regrettable. If the imputation is that lawyers from Goa are unable to cope or properly attend to NGT matters in Pune, then that is simply untrue. Mr Mario Brut Da Costa represents a very fine Bar. It is quiet, discrete, good-natured, respectful without being subservient, and unfailingly courteous. Its civility should not be mistaken for weakness. Its quietness should not be misunderstood for inability or incapacity. The level of advocacy and drafting is of an extraordinarily high order, and we speak here not only of the many Senior Counsel at this Bar, renowned in their own right, but of the sterling junior Bar too. We have, too, another indication of the strength of this Bar and its calibre: Ms Alvares, redoubtable in her unswerving commitment to environmental protection over many decades, possibly to her own

very great surprise today finds support even from those who have been her most implacable opponents in the past. That in itself tells us a very great deal about this Bar.

41. What falls for our consideration, therefore, is this: Can the Government ever be heard to say that it finds more convenient for its officers to go to this and that place and, therefore, the Tribunal should be shifted to a place of convenience to the Government? Can the question of convenience of the Government ever be a rational consideration in deciding the territorial jurisdiction of a Tribunal or its place of sitting?

42. The words of the Supreme Court in both *Madras Bar Association* and, more especially, in *Anita Khushwaha* are very clear and emphatic. Our concern, as a Court, is primarily the interest of the litigant. The Government is everywhere in its many manifestations and forms. In any case, it is always open to the Government in a given case to make an application for transfer of one particular case on suitable grounds to the principal bench in Delhi. That can never be objected to and must be decided on its own merits.

43. It is not urged before us that the impugned notification is impervious to our writ jurisdiction. The question is whether the 2017 notification effecting this transfer is not just arbitrary, but manifestly so. For this, we must test the notification to see if it provides a reasonable classification in doing what it does. On the face of it, it does not. It clubs Goa, Daman, Diu, Dadra and Nagar

Haveli, none of them places in the north, with a number of northern territories. There is no explanation, other than the arguments of convenience raised by the Government, and which, as we have said, are of complete irrelevance, why this should have been done. Perhaps the statements in the State Government's affidavit are sincere. But, as John F Kennedy famously said in his legendary Inaugural Address, *sincerity demands proof*. The consequence is inevitable. The notification of 2017 is facially arbitrary and there is no intelligible differentia or rational nexus between the so-called classification and the object sought to be achieved. That object is only one: to provide affordable access to justice. At a time and in an age when Courts are considering branching out so that litigants are put to less inconvenience and less hardship, it strikes us as utterly extraordinary that any government should, in the guise of its own inconvenience or convenience, seek to shift a Tribunal several thousand kilometres away and then claim that this is for the greater public good. Indeed it is not. There is no valid or rational basis for clubbing Goa, situated in the west, and well to the south of Mumbai, with territories in the north, and assigning the jurisdiction over these to the principal seat in New Delhi. None before us have urged *mala fides*, and that is as it should be. The notification itself must disclose, beyond the unacceptable justifications in the State Government affidavit, a basis for this re-classification. The affidavit of the MoEF does not suggest any reason other than the State Government's request. It does not suggest any independent evaluation or even a recommendation from the NGT itself. It does not even hint at a consultation being thought necessary of others who litigate before the NGT's Western Zone bench in Pune, and have done so for years without experiencing the government's

inconvenience. Those who appear before us for the Petitioners all speak with one voice when they say that not one of them shares the State Government's avowal of inconvenience to all. What remains, therefore, is nothing but the State Government's own inconvenience and this, as the Supreme Court tells us, and tells us more than once, is no ground at all. At the cost of repetition, we set out the words of the Supreme Court in *Madras Bar Association*:

**One cannot lose sight of the fact that the Central Government will be a stakeholder in each and every appeal/case which would be filed before NTT. It cannot, therefore, be appropriate to allow the Central Government to play any role, with reference to the places where the Benches would be set up, the areas over which the Benches would exercise jurisdiction ...**

*(Emphasis added)*

44. We make Rule absolute in all the Writ Petitions. We quash and strike down the notification of 10th August 2017 in so far as it transfers the jurisdiction of the Western Zonal Bench from Pune to New Delhi in regard to the State of Goa. We say nothing about the territories of Daman, Diu, Dadra and Nagar Haveli simply because there is no challenge in that regard before us.

45. Rule is thus made absolute in these terms. All the Petitions are disposed of accordingly. In the facts and circumstance of the case, there will be no order as to costs.

46. By our order of 21st August 2017, we directed that no files should be transferred from the Western Region Bench to New

Delhi. In view of our judgment, the Western Region Bench will, therefore, now be entitled to proceed with the hearings of cases filed before it.

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47. Above all, there is one overarching concern. This is an extraordinary state, in more ways than one, a place where, perhaps more than anywhere else, sky, sea and earth meet. From horizon to horizon, it is a land of abundant richness. It is a land of confluences, where diverse strands meet and co-exist; and, in a time of apparently incessant strife and discord, it is still a mostly liberal land. It is a kind and gentle land, of a kind and gentle people. And it is also a land that, given its small size and small population, has had a wholly disproportionate influence on our art, culture, language, music, literature, architecture, history, design and more (even food, for many of what we consider our staples first came from here). Its greatest asset is one: its environment and its ecology — its rivers and riverbanks, its beaches, its lakes and clear streams, its dense forests, its low hills and fertile fields, its boulders and even trees shrouded with moss and vines and lichen in the rains, its ridiculously brilliant sunsets. One needs only to turn off an arterial road to either east or west to see all this first-hand, and all of it within but a few minutes. If the NGT in Pune has so very many cases from Goa, it is not because — or not *just* because — the people of Goa are litigious; if true, that may only speak to their continued faith in the legal system and its processes. It is because they perceive that there is something of value here to protect. Few are frivolous causes; in the past few weeks, we saw none. Many, and

perhaps most, are of very serious concern, raising vital questions of both public law and environmental governance. To be sure, the government has before it a delicate balancing task of safe-guarding the environment and providing for development. What is important, however, is that a cause must be brought for an issue to be addressed. In our experience, one that none can deny, we have seen a very large number of worthy causes. Our duty, and that of every government too, must be to ensure that these attempts to protect the environment can be brought to a forum that is close at hand, where environmental issues can be addressed quickly, without having to travel inordinate distances, and at a cost that the poorest in the land, not just the well-heeled, can afford. These are, after all, struggles for a better tomorrow. This or that particular cause may be lost. But no cause should be allowed to be lost for want of trying. For that, we have those who petition us. Equally certainly, no cause should be allowed to be lost for want of a *court*. That is up to us, and to the government. For this is something none can deny: this is a land truly worth fighting for.

48. We say this because, though we cannot command it, we can most emphatically commend it: that both the State Government and the MOEF must immediately take up with all seriousness the proposal to establish a Circuit Bench in Goa.

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49. Our gratitude and appreciation to counsel and parties in person in this matter, and especially to Mr Lotlikar, for readily

willing to assist as *amicus*, and also to Mr Mario Brut Da Costa, Mr Katak and the other lawyers who appeared in this group of matters. The contribution of even the most junior advocate was invaluable. Finally, we would be utterly remiss if we failed to acknowledge Mr Lawande, the learned Advocate-General for Goa: not only for the concision of his arguments, but for his exemplary fairness, breadth of mind and largeness of heart. If ever any evidence was needed of a 'strong NGT Bar', it was here, before us in this very Court.

**( G.S. PATEL, J.)**

**(N. D. SARDESSAI, J.)**