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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12220 OF 2022

**CITY INDUSTRIAL DEVELOPMENT
CORPORATION,**
CIDCO Bhavan, CDB Belapur,
Navi Mumbai.

...PETITIONER
(ORIG. GARNISHEE NOTICEE)

~ VERSUS ~

- 1. STATE OF MAHARASHTRA,**
Through the Environment Department,
Room No 217, New Administrative
Building, Mantralaya,
Mumbai 400 032.
Email: mah-env@nic.in
- 2. MAHARASHTRA COASTAL ZONE
MANAGEMENT AUTHORITY,**
Environment Department,
Room No 217, New Administrative
Building, Mantralaya,
Mumbai 400 032.
Email: psec.env@maharashtra.gov.in
- 3. DISTRICT COLLECTOR, RAIGAD,**
Office of the District Collector,
At/PO Alibag, Raigad 402 201.
Email:
collector.raigad@maharashtra.gov.in
- 4. DIVISIONAL COMMISSIONER,**
Konkan Division, having its office opp.

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN
RAMCHANDRA
SANKPAL
Date: 2024.01.29
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Jehangir Art Gallery,
Old Secretariat, Fort,
Mumbai 400 032.
Email: paddlcom@gmail.com

5. **NANDKUMAR WAMAN PAWAR,**
Power House, 3rd Floor, MD Kini
Road, Bhandup Village (East),
Mumbai 400 042.
Email: mangrovewarrior@gmail.com

...RESPONDENTS

WITH

WRIT PETITION NO. 12225 OF 2022

1. **NAVI MUMBAI IIA PVT LTD,**
(Formerly known as **NAVI MUMBAI
SEZ PVT LTD**),
A company incorporated under the
provisions of the Companies Act, 1956,
having its registered office at NMSEZ
House, Sector 10-B, Koper-Nhava
Road, Post Gavhan, Ulve (West),
Taluka Panvel, District Raigad,
Navi Mumbai 410 206.
Email: nmsezpvtltd@gmail.com

2. **NILESH KADU,**
an adult Indian inhabitant having his
office at NMSEZ House, Sector 10-B,
Koper-Nhava Road, Post Gavhan, Ulve
(West), Taluka Panvel, District Raigad,
Navi Mumbai 410 206.

...PETITIONERS

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**

Through the Environment Department,
Room No 217, New Administrative
Building, Mantralaya,
Mumbai 400 032.
Contact No: 022-22029388
Email: mah-env@nic.in

**2. MAHARASHTRA COASTAL ZONE
MANAGEMENT AUTHORITY,**

Environment Department,
Room No 217, New Administrative
Building, Mantralaya,
Mumbai 400 032.
Contact No: 022-22029388
Email: psec.env@maharashtra.gov.in

3. DISTRICT COLLECTOR, RAIGAD,

Office of the District Collector,
At/PO Alibag,
Raigad 402 201.
Contact No: 02141-22118
Email:
collector.raigad@maharashtra.gov.in

4. DIVISIONAL COMMISSIONER,

Konkan Division, having it office at Opp
Jehangir Art Gallery,
Old Secretariat, Fort,
Mumbai 400 032.
Contact No: 022-27571324
Email: paddlcom@gmail.com

**5. CITY INDUSTRIAL
DEVELOPMENT CORPORATION
OF MAHARASHTRA LTD,**

A Government Company, incorporated
under the Companies Act, 1956, having
its registered office at Nirmal, 2nd
Floor, Nariman Point,
Mumbai 400 021

Contact No: 022-6650-0900
Email: md@cidcoindia.com

6. **NANDKUMAR WAMAN PAWAR,**
Power House, 3rd Floor, MD Kini
Road, Bhandup Village (East),
Mumbai 400 042.
Contact No: 9819831638
Email: mangrovewarrior@gmail.com

... **RESPONDENTS**

WITH

WRIT PETITION NO. 13476 OF 2018

1. **NANDKUMAR WAMAN PAWAR,**
Pawer House, 3rd Floor, MD Kini
Road, Bhandup Village (East),
Mumbai 400 042.
2. **HARUMAN KOLIWADA**
MACCHIMAR VIKAS SANSTHA
MARYADIT,
Post – NS Karanja, Taluka-Uran,
District Raigad 400 707.
3. **PARMANAND JAYWANT KOLI,**
Chairman of the Petitioner No 1,
Hanuman Kolivada, Post – NS Karanja,
Taluka-Uran, District Raigad 400 704.

... **PETITIONERS**

~ VERSUS ~

1. **CITY INDUSTRIAL**
DEVELOPMENT CORPORATION
OF MAHARASHTRA LTD,
A Government Company, incorporated
under the Companies Act, 1956, having
its registered office at Nirmal, 2nd

Floor, Nariman Point,
Mumbai 400 021.

2. **UNION OF INDIA,**
Through the Ministry, Environment,
Forest & Climate Change, Paryavaran
Bhavan, Jorbagh Road,
New Delhi 110 003.
3. **STATE OF MAHARASHTRA,**
Through the Environment Department,
Room No 217, New Administrative
Building, Mantralaya,
Mumbai 400 032.
4. **MAHARASHTRA COASTAL ZONE
MANAGEMENT AUTHORITY,**
Environment Department,
Room No 217, New Administrative
Building, Mantralaya,
Mumbai 400 032.
5. **MAHARASHTRA POLLUTION
CONTROL BOARD,**
Kalpataru Point, 3rd and 4th Floor,
Sion Circle, Mumbai 400 022.
6. **DISTRICT COLLECTOR,**
Office of the District Collector,
At/PO Alibag,
Raigad 402 201.
7. **TEHSILDAR, URAN,**
Bazaar Peth, Uran,
Raigad 402 702.
8. **FOREST ZONE OFFICER, URAN,**
Revas Karanja Bldg, Second Floor,
Taluka Uran, District Raigad.

9. **CENTRAL POLLUTION CONTROL BOARD,**
Parivesh Bhawan, CBD-cum-Office
Complex, East Arjun Nagar,
Delhi 110 032.
10. **ADDITIONAL PRINCIPAL CHIEF
CONSERVATOR OF FORESTS &
MANGROVE CELL,**
Office of the Addl Principal Chief
Conservator of Forests & Mangrove
Cell, 2nd Floor, A 'Wing', SRA
Building, AK Marg, Bandra (East),
Mumbai 400 051.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER IN WP/12220/2022 & FOR RESPONDENT- CIDCO IN WP/12225/2022 & WP/13476/2018	Mr Ravi Kadam, Senior Advocate, with GS Hegde, Senior Advocate, and Rohan Kadam, i/b PM Bhansali.
FOR THE PETITIONER IN WP/12225/2022	Dr Milind Sathe, Senior Advocate, with Saket Mone, Rubin Vakil, Rishit Badiani, Ketan Dave & Gaurav H Gangal, i/b AS Dayal & Associates.
FOR THE PETITIONER IN WP/13476/2018	Ms Meenaz Kakalia.
FOR RESPONDENT- MCZMA	Ms Jaya Bagwe.
FOR RESPONDENT NO 5 IN WP/13476/2018	Mr Jitendra Jagtap.
FOR RESPONDENT-	Mr PP Kakade, GP, with Mrs MP

STATE IN
WP/12220/2022

Thakur, AGP.

FOR RESPONDENT-
STATE IN
WP/12225/2022 &
WP/13476/2018

Mr YD Patil, AGP.

CORAM : G.S.Patel &
Kamal Khata, JJ.

DATED : 24th January 2024

ORAL JUDGMENT (Per GS Patel J):-

WRIT PETITION NO. 12220 OF 2022 AND WRIT
PETITION NO. 12225 OF 2022:

1. The City and Industrial Development Corporation of Maharashtra (“CIDCO”) is a new town development authority constituted under the Maharashtra Regional Town Planning Act, 1966 (“MRTP Act”). Its command area lies across Mumbai’s harbour. Part of that land that was first controlled by CIDCO, but is now under the statutory jurisdiction of the Navi Mumbai Municipal Corporation (“NMMC”). CIDCO continues to hold certain plots of land.

2. Almost the entirety or at least the significant majority of CIDCO’s holding was from inception and continues to be low-lying land. When initially conceived, it was, if not exactly a swamp, at least so significantly marshy as not to allow for extensive real estate

development. It was in the nature of things that while planning for a twin city across the harbour, land had to be readied for development. This meant that the water, which is saline, affected by tides, and therefore brackish, had to be handled in a scientific manner with appropriate civil engineering. The chosen method was what is known as the Dutch or Polders method. This is essentially a combination of holding ponds, sluice or flap gates and appropriately constructed channels or canals. Of course, this method is most evidently visible in the Netherlands, and this is an adaptation of the same civil engineering principles. As the tide comes in, the flap gates which are bi-directional are either opened or allowed to let water into the holding ponds. When the tide goes out the water level in these ponds falls. Because these are, as the name suggests, meant for holding water, this routine prevents water from flooding over the remaining land..

3. Associated with this rhythmic cycle of tidal inflow and outflow comes another phenomenon, and that is the natural one of the growth and resurgence in some cases of mangroves. This is typical mangrove habitat and protection of mangroves is not only now recognised by statute but there is an elaborate judgment of this Court in that regard in a public interest litigation as well.¹ The importance of mangroves generally, the Court held, and this is also reflected in a statute, cannot be understated. Mangroves are well-known to have a significant carbon sequestration potential. They are known to have always softened the impact of the unexpected

¹ *Bombay Environmental Action Group & Anr v State of Maharashtra & Ors*, 2018 SCC OnLine Bom 2680 : (2019) 1 Bom CR 1 : 2018:BHC-OS:14135-DB. Judgment dated 17th September 2018.

flooding (they do not in themselves prevent floods). They are also significant habitats for various forms of natural life, bird life, marine life and so on, and there are certain species of vegetation and animal life that are endemic to mangrove habitats.

4. This means that much of CIDCO's holding is quite literally fertile ground for environmental battles. On the one hand there is the cry from those with environmental concerns that these mangroves, mangroves habitats and everything they represent must be protected even if there was not a controlling statute. The fact that there is a statutory recognition, they say, significantly strengthens their case. It is also argued that it matters not that the holding ponds and flap gates complexes were not intended to 'generate' mangroves nor for their resurgence but were primarily intended for land development. In opposition, CIDCO maintains that the purpose of the Dutch method was to free up land for developing the twin city. Mangroves are but an incidental or perhaps even an accidental consequence. They are not the primary purpose of these systems. As Mr Kadam puts it on behalf of CIDCO, however desirable the protection of mangroves may be, those needs must be balanced against CIDCO's equally legitimate requirements to fulfil its own statutory purpose. He maintains that there are times when CIDCO has sought permission for de-silting the holding ponds even if this comes at the cost of some loss of mangroves; and this very Court has granted those permissions. There are also instances where applications have been made to this Court for the destruction of mangroves citing the overriding public importance of other projects. Such applications have also been allowed.

5. This is only by way of background. We are not required in these two matters to consider any particular application for mangrove removal. The 5th Respondent to the CIDCO Petition, Nandkumar Pawar (“**Pawar**”) is a social and environmental activist. He is also associated in some capacity with a Non-Governmental Organisation (“**NGO**”) called ‘Vanashakti’. We are not questioning his credentials. There is no occasion to do so.

6. The other stake holder is Navi Mumbai SEZ Private Limited, now Navi Mumbai IIA Private Limited (“**NMIIA**”), represented by Dr Sathe. CIDCO has a stake in this entity.

7. The land with which NMIIA is concerned is at village Panje. Again, the details of this are unimportant except to note that as regards village Panje there is a Public Interest Litigation No 106 of 2021 filed by Vanashakti which we will be hearing shortly. That PIL seeks that Panje be ordered to be declared as either a sanctuary or a national park or to have some other protective status under the Wild Life (Protection) Act, 1972.

8. In the CIDCO Petition, the issues began with an order of 11th November 2020, when the Environment Department, Government of Maharashtra wrote to the District Collector at Alibaug-Raigad, saying that the inlet to tidal waters at Panje had been blocked resulting in a drying up of the water body and of the mangroves. The letter says that there were allegations of 70 sluice gates being blocked, thus preventing the inflow of tidal water. There is a mention of migratory birds and bird life. The letter goes on to say

that there is a gross violation of Coastal Regulation Zone (“CRZ”) norms. There is a reference to a 3rd March 2020 meeting by the Hon’ble Minister of Environment with officials from the Environment Department and a mention of a letter of 4th March 2020 from the Minister issuing directions to stop mangrove destruction and dumping of debris at village Panje.

9. Paragraph 4 of this communication at page 105 reads as follows:

“4. In order to protect the mangroves & water body at village Panje, you are hereby directed to initiate action with immediate effect as under;

- (a) Restore the free flow of tidal water by opening the sluice gates and removal of the blockages so that free flow of tidal water reaches to mangroves and water body at village Panje.
- (b) Remove the illegal security cabins erected in CRZ area immediately.
- (c) Stop the work of filling of low lying area in the said site.”

10. The letter is challenged in CIDCO’s Petition and in the NMIIA Petition. Mr Kadam on behalf of CIDCO points out that CIDCO made two representations of 21st May 2021 and 5th July 2021. The representation of 21st May 2021 is at page 109 of the CIDCO Petition. The 5th July 2021 representation by CIDCO is at page 163 of the NMIIA Petition. Both are pending with the State Government in the Environment Department..

11. This is an unacceptable state of affairs from the perspective of administrative law and judicial review of administrative action. However well-intentioned the communication of 11th November 2020 may have been, it could not have been issued without minimally giving notice to CIDCO and hearing it. After all, it is CIDCO that is operating the sluice gates and maintaining the holding ponds. That hearing could have been held by the Principal Secretary, Environment Department or by the Collector; it does not much matter to us which authority held the hearing. But we are unable to see how on the allegations that have been made and which are reflected in the communication of 11th November 2020 such a direction could have been passed.

12. Notably, the 11th November 2020 communication refers to previous correspondence but in paragraph 1 also refers to allegations about specific numbers of sluice gates being blocked. Surely, if there was such an allegation it necessarily meant that the sluice gates had been blocked by CIDCO. This in turn necessarily meant that the allegation was against CIDCO. We do not see, therefore, how any principle of sound administration would have permitted such a letter to have been written without hearing the person against whom allegations were made and granting a minimal opportunity of explaining the position.

13. What makes matters worse is that CIDCO's subsequent representations have remained as they are without being addressed.

14. We must strike the appropriate balance. Entirely quashing the 11th November 2020 direction might fall afoul of the doctrine of unintended consequences. That was after all an order meant for the protection of mangroves. There is statutory protection to mangroves. To that extent, the letter is consistent with binding judgment of this Court. But we are equally mindful that CIDCO's representations cannot just be kept pending like this. CIDCO and NMIIA are of course entitled to be heard on CIDCO's representation for a modification, variation or a recall of the 11th November 2020 directive. But it is equally important that Pawar or the NGO with whom he is associated, viz., Vanashakti, should also be heard by the State Government so that there is complete transparency in the process. Vanashakti is not a party to the CIDCO or the NMIIA Petitions and we are not directing its joinder, but we are exercising our discretion and permitting either Vanashakti or Pawar (but not both) to be afforded an opportunity by the State Government while considering CIDCO's two representations of 21st May 2021 and 5th July 2021.

15. In the first instance, since the matter has come as far as the High Court, and since the impugned communication is from the Environment Department, , we require the present Principal Secretary, Environment Department, GoM to give notice to all three entities, viz., CIDCO, NMIIA and Pawar.

16. We are not permitting anybody else to be heard. We say this because during the arguments Ms Kakalia attempted a submission that in Writ Petition No 13476 of 2018 there were some fisherfolk

who were affected but that Writ Petition is not filed by third parties alone. That group of Petitioners is led by none other than Pawar himself. Accordingly, it is Pawar who will represent all interests, whether it is for the fisherfolk or for environmental concerns or the environmental NGOs. Under no circumstances will Pawar be afforded multiple voices at one hearing.

17. The Principal Secretary, Environment Department, is required to give notice to all three. Each will be entitled to put in brief notes or submissions. All three are to be heard. None are permitted to seek adjournments from the schedule fixed by the Principal Secretary. We do not permit written submissions to be put in to answer or to counter the written submissions of other parties. The Principal Secretary is required to consider the two representations made by CIDCO and to decide whether the 11th November 2020 direction requires correction, modification, amendment or recall. All contentions are expressly kept open. We are making it clear that we are not presently setting aside the 11th November 2020 order in itself.

18. The Principal Secretary must consider the representations and hear all three parties and pass a reasoned order as early as possible but preferably in no more than 12 weeks from today.

19. But in both the CIDCO and the NMIIA Petition, one further challenge remains. This is to an order of the National Green Tribunal (“NGT”), a copy of which is at page 113 of the CIDCO Petition. It is dated 15th April 2021. There is then an order in

Execution dated 1st July 2021, which is at page 161 of the NMIA Petition. There is finally an order in review by the NGT. This is of 23rd February 2022 and a copy is at page 135 of the CIDCO Petition.

20. The NGT Review order is on the face of it completely contrary to every concept of law and procedure. The Review was, to begin with, heard by a Bench of six members, only two of whom were common to the three-member Bench that heard the order under review. On its own, this makes the review order completely vulnerable. Second, one look at the Review order indicates that in fact, in the guise of a review, the NGT's six-member Bench did precisely that which the Supreme Court has time and again said cannot be done, which is to impermissibly expand the original order on entirely new material and without a single finding as to how this could possibly lie within the frame of review, properly so called. It is settled jurisprudence that there is no inherent power of review. That power must be specifically conferred. It can only be exercised according to well settled principles and in accordance with statutory provisions conferring the power of Review. Under Section 19 of the National Green Tribunal Act, 2010 ("**NGT Act**"), the power of review has to be exercised in consonance with the Code of Civil Procedure, 1908 ("**CPC**"). This then takes us to a consideration of Section 114 and Order 47 of the CPC. It is also settled jurisprudence that before embarking on any review exercise, the Bench before which a Review Petition is brought must first address whether a ground is made out for review or not within the meaning of the governing statute. The order in question of the six-member Bench does not even attempt to address this aspect of the law. There is no

mention of Section 19 of the NGT Act or any portion of the CPC. The six-member Bench has simply proceeded on the footing that a review means an entire or a wholesale rethink. That is not the frame of the law. Indeed, that is precisely what the law forbids because it is settled law that there has to be finality to decision making and to litigation. Judgments of Courts and Tribunals are not works constantly in progress. At some point they must attain finality.

21. The first order of the NGT of 15th April 2021 is vulnerable for another reason. To begin with it was ex parte. Everything that we have said about the 11th November 2020 order of the Government will equally apply to the NGT order.

22. The only person to be heard here was Pawar. Allegations against CIDCO are noted in paragraph 3. No notice was issued to CIDCO. This was clearly therefore an ex parte application without notice to CIDCO. There is no finding that CIDCO was absent though given notice and though served.

23. Now the principles regarding ex parte applications are well settled. This law has been perhaps best enunciated by the then Queen's Bench Division in England in *Alexander Tugushev v Vitaly Orlov*.² This was also referred to in a Division Bench judgment delivered by one of us (GS Patel, J) in *Kewal Ashokbai Vasoya v Saurabhakti Goods Pvt Ltd*.³ The relevant portions read:

“17. We believe this to be only a summation of long-

2 [2019] EWHC 2031 (Comm).

3 2022 SCC Online Bom 3335.

settled law. It has been the law in this country and in England, where orders without notice are common. These include freezing orders in Mareva injunctions, frequently granted without notice on affidavit material alone, and Anton Piller search-and-seizure orders, typically without notice. The underlying principles were succinctly set out in a decision of 26th July 2019 by the Hon'ble Mrs. Justice Carr, sitting in the Commercial Court of England and Wales, a Division of High Court in *Alexendar Tugushev v Vitaly Orlov*. She had before her a non-disclosure application, i.e., an application saying that the plaintiff had failed to make the required disclosures. Saying the law was not contentious, Carr J set out the general principles in this way:

7. The law is non-contentious. The following general principles can be distilled from the relevant authorities by way of summary as follows:

- i) The duty of an applicant for a without notice injunction is to make full and accurate disclosure of all material facts and to draw the court's attention to significant factual, legal and procedural aspects of the case;
- ii) It is a high duty and of the first importance to ensure the integrity of the court's process. It is the necessary corollary of the court being prepared to depart from the principle that it will hear both sides before reaching a decision, a basic principle of fairness. Derogation from that principle is an exceptional course adopted in cases of extreme urgency or the need for secrecy. The court must be able to rely on the party who appears alone to present the argument in a

way which is not merely designed to promote its own interests but in a fair and even-handed manner, drawing attention to evidence and arguments which it can reasonably anticipate the absent party would wish to make;

iii) Full disclosure must be linked with fair presentation. The judge must be able to have complete confidence in the thoroughness and objectivity of those presenting the case for the applicant. Thus, for example, it is not sufficient merely to exhibit numerous documents;

iv) An applicant must make proper enquiries before making the application. He must investigate the cause of action asserted and the facts relied on before identifying and addressing any likely defences. The duty to disclose extends to matters of which the applicant would have been aware had reasonable enquiries been made. The urgency of a particular case may make it necessary for evidence to be in a less tidy or complete form than is desirable. But no amount of urgency or practical difficulty can justify a failure to identify the relevant cause of action and principal facts to be relied on;

v) Material facts are those which it is material for the judge to know in dealing with the application as made. The duty requires an applicant to make the court aware of the issues likely to arise and the possible difficulties in the claim, but need not extend to a detailed analysis of every possible point which may arise. It extends to matters of

intention and for example to disclosure of related proceedings in another jurisdiction;

vi) Where facts are material in the broad sense, there will be degrees of relevance and a due sense of proportion must be kept. Sensible limits have to be drawn ...

vii) ...

24. Very broadly, the principle is that hearing the opposite party is the rule and ex parte, i.e., without notice to the other side is the exception. If a matter has to be moved without notice, reasons must be specified as to why giving notice would defeat the purpose of the relief that is sought. In fact, that is the precise frame of Order 39 Rule 3 of the CPC, which reads thus:

“3. Before granting injunction, Court to direct notice to opposite party.—The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant—

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with—

- (i) a copy of the affidavit filed in support of the application;
 - (ii) a copy of the plaint; and
 - (iii) copies of documents on which the applicant, relies, and
- (b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.”

(Emphasis added)

25. There is no reference by the NGT to any such emergency. Second, the NGT was required as a judicial tribunal or a quasi-judicial tribunal to minimally adhere to the requirements or to demand an adherence to the requirements of all filings before it. This meant that when a party seeks to move ex parte, i.e., without notice, it must not only explain why it is doing so but must fairly set out what are likely to be the defences by the opposite party or the affected party so that the Court or the Tribunal can arrive at not a one-sided but at a fair and balanced decision on a consideration of the rival materials that are before it. We find not one of these precepts, well-established in law followed by the NGT.

26. Section 19(1) and Section 19(4)(i) read as follows:

“19. Procedure and powers of Tribunal—

(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

(2)

(3)

(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act.”

27. This obviously means that principles of natural justice must be followed. Our system of jurisprudence does not contemplate as a general rule a departure from the *audi alteram partem* principle. Indeed, even in cases involving finance and economics, the Supreme Court itself has invoked this very principle when the consequences are likely to be serious (for example, in regard to wilful defaulters and fraud circulars under applicable Reserve Bank of India guidelines).⁴

4 *State Bank of India & Ors v Rajesh Agarwal & Ors*, (2023) 6 SCC 1.

28. On its own therefore, apart from the next consideration that we will deal with, the first order of the NGT is clearly unsustainable.

29. But the order is vulnerable for another reason as well. A Full Bench of this Court of which one of us (GS Patel, J) was a member and who wrote for the Bench said in *Goa Foundation v National Green Tribunal, Principal Bench*,⁵ that the statute required Western Zone matters to be heard by members of the Western Zonal Bench. The first order of the NGT is not by the Western Zonal Bench at all.

30. We are told that the operative portion in paragraph 56 of our judgment is stayed by the Supreme Court. Paragraph 56 reads thus:

“56. Rule is made absolute in terms of prayer clause (a). All five impugned notices dated 6th September 2021, 4th January 2022, 11th April 2022, 27th April 2022 and 26th August 2022 are quashed and set aside. The constitution of the Special Bench seated at New Delhi is illegal. Only the Members of the Western Zonal Bench can hear matters pertaining to the Western Zonal Bench, including matters arising from Goa and Maharashtra.”

31. But our judgment has not been set aside (as yet). Mr Kadam and Dr Sathe are correct in saying that there is no possibility of a Division Bench of this Court now holding contrary to what the Full Bench had said. The stay of the operative portion of the Full Bench judgment does not make the judgment itself inapplicable. We need to pass no further directions in that regard except to say that on the same principles that are enunciated in that judgment, this is the

5 2022 SCC OnLine Bom 2762.

additional reason why the first NGT order of 15th April 2021, at page 113, cannot be sustained.

32. Incidentally, we may note that while staying the operative portion of the Full Bench decision, the Supreme Court clarified that since one judicial and one expert member were available for the Western Zone Bench, all matters pertaining to the Western Zone Pune, including matters arising from Maharashtra and Goa would only be heard by the Bench sitting at Pune.

33. This is sufficient for a disposal of both the CIDCO Writ Petition and the NMIA Writ Petition.

34. In the CIDCO Petition, Rule is made absolute in terms of prayer clause (a)(i) which reads thus:

“(a) That by issuance of a writ of certiorari or any other appropriate writ or direction or order, this Hon’ble court be pleased to quash and set aside

i. the impugned Orders dated 15.04.2021 (annexed at Ex. G) and 23.02.2022 (annexed at Ex. I) passed by the Ld. NGT and the review application no. 3 of 2021 filed by the Petitioners in Original Application no. 25 of 2021 be allowed.”

35. In the result, Rule is made absolute in these terms quashing, and setting aside the NGT orders of 15th April 2021, the Execution order of 1st July 2021 and the Review order of 23rd February 2022.

WRIT PETITION NO. 13476 OF 2016:

36. As regards the Writ Petition No 13476 of 2018 filed by Pawar allied with fisherfolk, the challenge is to the construction of two holding ponds. Obviously, that will be covered by the 11th November 2020 order and since Pawar is representing all interests funnelled into one before the Principal Secretary, those issues can be taken up at that time as well. We leave those contentions open also and this will dispose of Writ Petition No 13476 of 2018.

(Kamal Khata, J)

(G. S. Patel, J)