

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 223 OF 2016

MRS. LINET NUNES.

... Petitioner

Versus

STATE OF GOA THROUGH THE CHIEF
SECRETARY AND 2 ORS.,

... Respondents

Mr. Shivan Desai, Advocate for the petitioner.
Mr. A.N.S. Nadkarni, Advocate General with Mr. D. Lawande,
Government Advocate for respondents No. 1 to 3.

Coram:- F. M. REIS &
K. L. WADANE, JJ.

Date:- 23rd February, 2016

P.C.:

Heard Shri Shivan Desai, the learned Advocate appearing for the petitioner and Shri A.N. S. Nadkarni, the learned Advocate General appearing for the respondents.

2. The above petition seeks exception to the directions issued by this Court and Goa State Pollution Control Board under section 33(A) of the Water (Prevention And Control Of Pollution) Act, 1974 and under section 31(A) of the Air (Prevention And Control Of Pollution) Act, 1981 whereby specific directions have been issued to the petitioner for violation of the said provisions. It is not disputed that the impugned order passed can be challenged under the National Green Tribunal Act, 2010. But however, Mr. Shivan Desai, the learned Counsel appearing for the petitioner submits that the

impugned order was passed in breach of the principles of natural justice and as such, prays for interference of this Court under Articles 226 and 227 of the Constitution of India. Shri Shivan Desai further points out that one of the grounds on which the directions have been issued for not obtaining Consent from the concerned authorities, i.e. Goa State Pollution Control Board.

3. Shri A. N. S. Nadkarni, the learned Advocate General however points out that there are serious violations committed by the petitioner in terms of the said Act whereby even the samples taken by the Pollution Control Board have revealed that the water is contaminated and the sewage treatment plant is adjacent to the beach.

The said contentions are seriously disputed by Shri Desai, learned Counsel for the petitioner. The learned Advocate General further submits that the application for consent filed by the petitioner only after the impugned directions were issued would be examined by the Pollution Control Board within fifteen days after completing the formalities.

4. After hearing the learned Counsel appearing for the respective parties, we find that invoking our jurisdiction under Article 226 and 227 of the Constitution of India in the facts of the present case would not be justifiable at all. The allegation that the principles of natural justice has not been followed is also disputed by the respondent. The petitioner has an alternate remedy to challenge the impugned

directions before the National Green Tribunal and all contentions including the contention that such impugned directions were passed in breach of the principles of natural justice, if so advised.

5. Shri Shivan Desai, the learned Counsel appearing for the petitioner further points out that all the other conditions imposed by the Pollution Control Board have been duly complied with by the petitioner which is, however, disputed by the learned Advocate General appearing for the respondents who states that this exercise would have to be examined by the Pollution Control Board, in accordance with law.

6. Considering that the petitioner has an alternate remedy to challenge the impugned directions and as the application for consent filed by the petitioner would be examined by the Pollution Control Board on its own merits within fifteen days, we find that the question of interfering in the impugned directions in the writ petition would not arise.

7. At this stage, Shri Shivan Desai prays that the Pollution Control Board, i.e. respondent No. 2, may give a hearing to the petitioner before deciding the application for consent. The respondent No. 2 shall accordingly afford a hearing to the petitioner before deciding the application for consent and examine the same on its own merits.

8. In view of the above, the petition stands disposed of accordingly. It is made clear that all the contentions of both the parties on merits are left open.

K. L. WADANE, J.

F. M. REIS, J.

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