

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 227 OF 2017

1. M/S. JOLLY METALS
Survey No.155/0, Mullem,
Village, Panchayat of Paroda,
Quepem, Goa - 403 705
Through it's Proprietor Mrs. Seema Dias,
The Petitioner No.2.
2. Mrs. Seema Dias,
Proprietor of M/s Jolly Metals,
Major of age,
Wife of Mr. Clafasio Dias,
Indian National,
Resident of House No.151,
Agramorod, Paroda, Salcete, Goa. ... Petitioners

Versus

1. THE GOA STATE POLLUTION CONTROL
BOARD,
Through its Member Secretary,
1st Floor, EDC Patto Plaza,
Panaji, Goa.
2. Mr. Gabriel Fernandes,
Major of age,
House No.259/2. Mullem, Paroda,
Salcete Goa. ... Respondents

Mr. K. Noorani, Advocate for the Petitioners.

Mr. Dattaprasad Lawande, Advocate General for the respondent
no.1.

Mr. J. Supekar, Advocate for the respondent no.2.

**Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date:- 12th April,2017.

ORAL JUDGMENT: (PER F. M. REIS,J)

Heard Mr. K. Noorani, learned Advocate appearing for the
Petitioners and Mr. Dattaprasad Lawande, learned Advocate General

for the respondent no.1 and Mr. J. Supekar, learned Advocate for the respondent no.2.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents waives service.

3. The challenge in the above petition is to the decision dated 07/02/2017 annexed at "Annexure-A" passed by the respondent no.1 intending to take stringent action against the petitioners with regard to the stone crushing units operated by the petitioners. The petitioners also seek a further relief to quash and set aside the report submitted by the Complaint Committee of the respondent no.1 in connection with the Stone Crushing Unit of the petitioners.

4. Mr. Noorani, learned Advocate for the petitioners points out that the Complaint Committee constituted by the respondent no.1 has no statutory sanction and as such it is not open to the respondent no.1 to take a decision based on such observation against the petitioners. It is further pointed out that before the impugned decision was taken the respondent no.1 had not given any hearing to the petitioners to enable the petitioners to raise an objection with that regard. Mr. Noorani, learned Advocate further points out that the original show cause notice was issued by the respondent no.1 and as such the question of the impugned decision

being taken based on the finding of the Complaint Committee is totally erroneous and in breach of the principles of natural justice. The learned Advocate further points out that the impugned decision passed by the respondent no.1 be quashed and set aside.

5. On the other hand, Mr. Dattaprasad Lawande, learned Advocate General submits that to facilitate the decision by the respondent no.1 the Complaint Committee was asked to look into the grievance and to submit a report. Mr. Lawande, learned Advocate General further points out that such findings were accepted by the respondent no.1 only after giving a hearing to the petitioners to raise an objection to such findings. The learned Advocate General further points out that as such necessary order be passed accordingly.

6. Mr. Supekar, learned Advocate for the respondent no.2 submits that the impugned decision, in so far as ensuring the compliance of the objectives of the Air Act and Water Act is concerned cannot be interfered with. The learned Advocate therefore submits that the entire impugned order cannot be quashed and set aside.

7. We have given appropriate consideration to the rival contentions and also gone through the findings of the Complaint

Committee. The stringent observation therein can be accepted by the respondent no.1 only after giving a hearing to the petitioners and giving them an opportunity to file their objections with that regard.

8. In the present case, without going into the rival contentions, it is an admitted position that no such hearing was given to the petitioners and as such the impugned decision taken by the respondent no.1 is in breach of the principles of natural justice. In such circumstances, we find that the impugned decision dated 07/02/2017 to the extent it intends to take stringent measures against the petitioners deserved to be quashed and set aside and the respondent no.1 is at liberty to give a hearing to the petitioners and take a fresh decision in accordance with law.

9. In the above circumstances, we pass the following

Order

1. The impugned decision dated 07/02/2017 to the extent herein above is quashed and set aside.
2. The Respondent no.1 is at liberty to give a hearing to the petitioners and the concerned parties with regard to the Show Cause Notice dated 18/08/2016 and take a fresh decision in accordance with the law.
3. All the contentions on merits raised in the above petition are

left open.

4. Rule made absolute in the above terms.
5. Petition stands disposed off in the above terms.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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