

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 863 OF 2017

Kashinath Jairam Shetye & Ors ... Petitioners
Versus
Linnet Nunes Curlies Restaurant & Night Club & ... Respondents
Guest House & Ors

Kashinath Jairam Shetye, *Petitioner No 1 present in person.*
Shri Dattaprasad Lawande, *Advocate General with Shri P Dangui,*
Government Advocate for Respondent No 2.
Shri N Sardessai, *Senior Advocate with Shri Shivan Desai, Advocate*
for the Caveator.

CORAM: G.S. PATEL &
NUTAN D. SARDESSAI, JJ
DATED: 26th September 2017

PC:-

1. We are seriously, and more than somewhat, dismayed by the conduct of the 1st Petitioner, Mr Shetye, who appears in person. We do not appreciate his demeanour. When confronted with a question of the inappropriateness of his petition, its tone and its language, he is by turns peevish and downright disrespectful. He tells us he will withdraw all of his several hundred petitions. If this is supposed to be some sort of threat, or meant to intimidate, it is an epic failure; and if these are PILs, it says more about the *bona fides* of those PILs than he imagines. He is also mistaken if he believes that he can withdraw a PIL without our leave. If the cause be genuine, we will

continue that PIL with him or without him. If the attempt is to convey that his filing petition after petition is some sort of favour to the court, the judicial system or society at large, then he is simply wrong. All before us are on exactly the same footing, none more, none less. From all who come to us with their petitions, we expect — no; we *demand* — above all civility in their arguments and their pleadings. We have said this before, and we say it again: law is a discourse, and the discourse of law is the discourse of civility. If the 1st Petitioner is so seasoned a campaigner, he should surely know this. It may be that Mr Shetye has brought to this court, the National Green Tribunal and other courts various petitions over time. The sheer volumes of filings do not impress us. We will look to the cause, not the person who brings it, and we will look to it if it is addressed in a manner appropriate to a court of law. By this we mean not just this court, but every court throughout the land.

2. Even allowing for a *pro se* appearance, we very seriously question the probity and propriety in using inappropriate language, aggressive and entirely disrespectful, when addressing orders of tribunals and Courts. Particularly alarming in this case is the fact that what is assailed is an order of the NGT in its principal bench under the Chairmanship of the Hon'ble Justice Swatanter Kumar, former Chief Justice of this Court and the former judge of the Supreme Court of India. We will not make mistake Mr Shetye has of reproducing in this order what is said in the petition. We note that language used, especially from paragraph 58 onwards, is singularly inappropriate. We reserve our particular condemnation for the wording of paragraph 64 at page 19, a portion that has been emphasized by printing entirely in italics. Statements of this stripe,

and words of this kind, will not be tolerated at any time, and most emphatically not when directed against a tribunal or a court. That the 1st petitioner is in person is wholly immaterial.

3. The immediate cause for the Petitioner's complaint is that, according to him, the NGT's principal bench passed an order in his appeal without hearing him and without notice to him; and that the matter pending before the NGT Western Zone Bench Pune was allegedly transferred to Delhi before the principal bench despite our order in a group of other matters staying a transfer of those files.

4. We are unaware when the application for transfer was made; if indeed it was. It is entirely possible that the matter before the NGT in Delhi was a different one entirely, albeit with the same number. Mr Shetye seems to have two matters before the NGT's Western Zone Bench: Appeal 30 of 2017, filed by him, and Appeal No. 78 of 2017 filed by one Linet Nunes, who was also the 1st Respondent in Mr Shetye's Appeal No. 30 of 2017. Mr Shetye himself was the 2nd Respondent to Ms Nunes' appeal. The impugned orders of the NGT's principal bench, of 20th and 22nd September 2017, at pages 334 and 335, are also said to be in Appeal No. 30 of 2017, but the title is shown as "Mrs Linet Nunes v Goa State Pollution Control Board & Ors." In other words, the appeal before the NGT Delhi had the same *number* as Mr Shetye's appeal before the Western Zone Bench, but *an entirely different title*. It may be mere happenstance that the two matters carry the same registration number, a possibility when there are litigations in different forums. From this alone it is impossible to say for certain that it was Mr Shetye's Appeal No. 30 of 2017 before the Western

Zone Bench that was (allegedly clandestinely) 'transferred' to the NGT in Delhi. The petition proceeds on a presumption that this is what happened. We refuse to follow this path of conjecture.

5. If it was a transfer, we do not know whether it was before our orders for stay. We believe it must have been. For we find it hard to believe that any advocate of this Bar, knowing of the stay order, would have in open defiance, made such an application for transfer and concealed our order from the NGT's principal bench. This has not once been our experience of the conduct and integrity of any advocate of this Bar. We note these various possibilities, because the entire petition in this regard seems to proceed on surmise and conjecture and not fact, though those facts were always within reach. In any case, we have at no time stayed any hearings by the NGT in Delhi of Goa-related matters. We could not have done any such thing. When the transfer application was made and when it was granted are all matters of record. They are not hidden. They could, and should, have been traced and the relevant records shown.

6. On the question of not being heard and no notice being given, here too the Petitioner's chosen remedy is inappropriate. If this is indeed so, and the matter before the NGT was indeed the petitioners' appeal, then the correct course was for the petitioners to approach the NGT for a recall of its order, making good the petitioners' case of not being served or heard. We notice that one order directs issuance of notice. The next order notes some advocates were heard. The 1st petitioner's presence and name does not appear. That could be for many reasons, as we have noted. But if what the petitioners say is correct, and orders were passed in their

own case without notice to or hearing them, their first remedy was surely to move the tribunal that passed the order, the NGT, and to request it to correct course, demonstrating the error alleged. This is by no means unusual. In fact it has centuries-old practice and finds voice in Order 9 Rule 13 of the Civil Procedure Code, 1908 even in a regular civil suit. No one suggests that such a course is unavailable to the petitioners.

7. The 1st Petitioner has chosen not to make such application. Instead, he has rushed to us with such a petition worded in demeaning and disrespectful language. That starts on page 1, at the head of the petition, describing its subject matter and continues throughout. Nowhere do we find a mention that the Petitioners sought a clarification, obtained information, or have ascertained the background facts. Merely on the identity of the numbers of the matters and, possibly, one party to it, Ms Nunes, such a petition is brought alleging against the NGT Delhi and its Chairperson *inter alia mala fides*, breach of the principles of natural justice and more.

8. The 1st petitioner forgets that he is addressing an institution, not a mob, and a court at that. There is no place here for rabble-rousing or park corner soap box grandstanding. This has become a fashion. Every time any tribunal passes an order, and even though there are available recourse and remedies, the instant response is to file Writ Petition under Article 226 of the Constitution of India and in that the petition to jettison all considerations of restraint and dignity.

9. We would remind the 1st Petitioner that when he petitions our jurisdiction under Article 226 of the Constitution of India, he invokes a high prerogative remedy. That is a jurisdiction to be judiciously exercised. It has limitations and constraints. If there is one thing a petition under Article 226 is not meant for it is to pillory tribunals and courts. Nor is it meant for publicity.

10. The petition is dismissed, with no costs. This is the last time we remind the 1st Petitioner of his obligations to a Court as a litigant before us. There will not be another.

NUTAN D. SARDESSAI J.

G. S. PATEL J.