

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.173 OF 2018

South West Port Limited
through its Unit Head and Authorised
signatory Anthony Fernandes
son of Leo Fernandes
52 years of age, Indian National,
having its registered Office at
1st Floor, Port Users Complex,
Mormugao Harbour, Goa 403803

.... Petitioner.

Versus

1. State of Goa,
through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Bardez, Goa.
2. Ministry of Environment, Forests &
Climate Change and others,
Indira Paryavaran Bhawan,
New Delhi - 3
3. The Goa Foundation,
through its Secretary,
Dr. Claude Alvares, Room No.7,
above Mapusa Clinic,
Mapusa, Goa 403 507.
4. Old Cross Fishing Canoe
Owners Co-operative Society Ltd.,
under the Co-operative Societies Rules,

Office: H.No.116, Dempo Bhat,
Vasco-Goa, through its President
Custodio D'Souza,
R/o. Katem Baina,
Vasco-da-Gama, Goa 403 802.

..... Respondents.

Mr. S.S. Kantak, Senior Advocate with Mr. D.J. Pangam and Mr. Abhijit Gosavi, Advocates for the Petitioner.

Mr. Amin Jamadar, Additional Govt. Advocate for Respondent No.1.

Mr. Mahesh Amonkar, Central Govt. Standing Counsel for the Respondent No. 2.

Ms. Norma Alvares, with Ms. A. Gode, Advocates for Respondents No.3 and 4.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Reserved on : 20 April 2018

Pronounced on : 24 April 2018.

JUDGMENT : (Per N.M. Jamdar, J.)

1. The Petitioner, South West Port Limited, is a company engaged in the business of import of Coal and other raw materials. Respondent No.1 is the Government of Goa. Respondent No.2 is the Ministry of Environment, Forests & Climate Change, New Delhi.

2. The Petitioner has approached this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India against the 'denial' by Respondent No.2-Ministry of Environment, Forests & Climate Change (MOEF) of the Petitioner's application for terminal capacity enhancement at Berth Nos. 5A and 6A at Mormugao Port Trust, Vasco-da-Gama. In the alternative, the Petitioner is seeking clarification/modification of the order dated 22 November 2017 passed by the National Green Tribunal. The Ministry of Environment, Forests & Climate Change has taken a stand that it cannot consider the application of the Petitioner for terminal capacity enhancement in view of the order passed by the National Green Tribunal on 22 November 2017.

3. The principal grievance of the Petitioner is that nothing stops the Ministry of Environment, Forests & Climate Change from processing the application and a direction to the Ministry of Environment, Forests & Climate Change (MOEF) to decide the application of the Petitioner, be issued. Secondly, the order passed by the National Green Tribunal (The Tribunal) does not apply to it and it should be so clarified or the order be modified.

4. In the normal circumstances, a prayer to direct the authorities to decide a pending application on merits, is innocuous.

But the manner in which the matter has unfolded before us demonstrates that it is not so. That is why we are constrained to write an elaborate Judgment.

5. In the Petition, the Petitioner has stated its business particulars. The Petitioner has annexed the order passed by the National Green Tribunal, letters issued by Goa Coastal Zone Management Authority, proposal for Environmental Clearance dated 24 January 2001, a copy of the proposal for enhancement, Coastal Regulation Zone Notification and Minutes of the Meeting of the Expert Appraisal Committee. The Petitioner has averred in the petition, in short, as follows: Petitioner is granted the Environmental Clearance by the Ministry of Shipping, Government of India on 24 June 2001. Petitioner is operating from Berth Nos.5A and 6A at the Mormugao Port Trust since the year 2004. There is an agreement with the Mormugao Port Trust to construct and operate the Berth Nos. 5A and 6A on Built, Own, Operate and Transfer basis. The Petitioner has all the necessary permissions to operate the Berths, which were duly sanctioned. Petitioner was also granted Consent to Operate by the Goa State Pollution Control Board (Pollution Control Board) on 24 November 2001. Since the year 2004, the Petitioner has applied for and has been granted Consent to Operate under the Provisions of Sections 25 and 26 of the Water

(Prevention and Control of Pollution) Act, 1974 (Water Act), as well as Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) in respect of the activity of handling coal and allied bulk cargo. The Petitioner has incurred a huge capital expenditure and is using best of technology and most environment-friendly techniques at Berth Nos.5A and 6A of Mormugao Port Trust. The Petitioner, with the intention of modernizing and capacity enhancement of Berth Nos.5A and 6A, made an application to the MOEF to sanction the terminal capacity enhancement from the existing capacity of 7.5 MMTPA to the bulk handling of 12 MMTPA and multiple utilized cargo and steel product for about 2 MMTPA at the Mormugao Port Trust. The proposed capacity enhancement and modernization is to install better, modern techniques to avoid environmental degradation. Public hearings are conducted and the Petitioner has been granted the Terms of Reference by letter dated 19 June 2015 in respect of the said terminal capacity enhancement at Berth Nos.5A and 6A. The permission of the Goa Coastal Zone Management Authority dated 18 August 2017 has been granted, yet the MOEF is not processing the application of the petitioner citing the order passed on 22 November 2017 by the Tribunal. The order passed by the Tribunal proceeds on the premise that there is no Coastal Zone Management Plan in place. In fact, the Coastal Zone Management Plan, which was approved by the MOEF,

has been extended from time to time and is valid until 31 July 2018. Based on these assertions, the Petitioner has prayed for a writ of mandamus to the MOEF to process the proposal dated 9 February 2015 since the order dated 22 November 2017 passed by the Tribunal is not applicable to the Petitioner. In the alternative, a prayer is made to clarify/modify the order dated 22 November 2017 passed by the Tribunal.

6. The Writ Petition was filed on 31 January 2018. A notice was issued to the Respondents on 6 February 2018 and the matter was adjourned to 12 February 2018. Reply affidavit is filed on behalf of MOEF on 5 March 2018. In the reply, reference is made to the schedule to Environment Impact Assessment (EIA) Notification, 2006 and the particulars thereof. It is also stated that an application was made by the Petitioner for capacity enhancement and the proposal was considered by the Expert Appraisal Committee (Infrastructure -2) in its 26 Meeting held on 14/15 December 2017 and recommended the Environmental Clearance as per EIA Notification 2006, as amended till date. It is stated that the recommendation was subject to the outcome/legal opinion on the order dated 22 November 2017, passed by the Tribunal. The extracts of the Minutes of the 26 Meeting held on 14/15 December 2017 are annexed to the affidavit. It is averred that the Tribunal has wrongly

attributed a statement to the MOEF that the States should not grant Environmental Clearance which might defeat the exercise of preparing the Coastal Zone Management Plans. It is stated that the MOEF had filed a Review Petition before the National Green Tribunal which was withdrawn and, after that, an application for appropriate relief is in the process of being filed. The MOEF has stated that appropriate orders be passed.

7. In the meanwhile, a Misc. Civil Application No.110/2018 was filed by two Non-Governmental Organizations, Goa Foundation and Old Cross Fishing Canoe Owners Co-operative Society Ltd., seeking impleadment in the Petition. According to them, no relief as sought for by the Petitioner be granted through the judicial process and under writ jurisdiction of this Court. The Petitioner opposed the impleadment. After hearing the parties, the Civil Application was allowed by order dated 13 March 2018. The Applicants were added as party Respondents No.3 and 4, and they were permitted to file a reply.

8. Respondent No.3 Goa Foundation filed a reply affidavit on 23 March 2018. A preliminary objection was taken that the Petitioner has an alternate remedy. Respondent No.3 stated that the Petitioner had suppressed the fact that the permissions granted to the

Petitioner are cancelled by the Pollution Control Board. Respondent No.3 placed on record the directions and orders passed by the Goa State Pollution Control Board dated 9 January 2018, the Minutes of Meeting of the Pollution Control Board, the directions issued by the Pollution Control Board on 9 January 2018, cancelling the permissions under the Air and the Water Act, details of criminal case filed against the Petitioner, a chart depicting the coal handling data and the excess quantify handled, a letter written by the Chief Minister, Goa to the Union Minister for Environment, New Delhi, a note prepared and sent by the Pollution Control Board to the MOEF on the public hearing, proceedings of the personal hearing before the Pollution Control Board, and letter written by the Pollution Control Board to the MOEF. It has stated that the NOC of the Goa Coastal Zone Management Authority is conditional and even that NOC shows that the operations should be carried out in a closed shed, which is not yet obeyed by the Mormugao Port Trust. The Mormugao Port Trust has also been pulled up by the Authorities for the illegalities.

9. The Petitioner filed a rejoinder, in which it is stated that the orders passed by the Pollution Control Board cancelling the permissions and halting the Petitioner's operations, have been challenged and the challenge is pending before the Tribunal. It is

stated that the Petitioner had applied for modification of the order passed by the Tribunal, however, in view of the objection raised regarding the maintainability thereof, it was withdrawn and, therefore, the Petition had to be filed. Respondents No.3 and 4 who are not necessary parties, without any locus, are getting into jurisdictional issues. The Environmental Clearance, even though granted to ABG Goa Port Limited, after the acquisition of shareholding, it has changed its name to this present name, i.e., South West Port Ltd. It was reiterated that the order of the Tribunal does not apply to the Petitioner for capacity enhancement as modernization and consequential enhancement of facility does not in any way alter the waterline, nor any construction is taking place. There is a valid and subsisting Coastal Zone Management Plan as per the Coastal Regulation Zone Notification of 2011 and the Petitioner's Berth Nos.5A, and 6A lie inside the Mormugao Port Trust. The Goa Coastal Zone Management Authority has, after due consideration, recommended the project to the MOEF. It is also stated that the Petitioners are seeking a limited clarification and needless issues have been racked up by Respondents No.3 and 4, which have no concern with the reliefs sought. The Petitioner is using best of the techniques and most environment friendly techniques. It is stated that elaborate methodology under the Environment Impact Assessment has been carried out, the detailed

public hearing has been held and the only reason, the MOEF has not considered the application of the Petitioner is because of the order of the Tribunal which is not applicable to the Petitioner. The order passed by the Goa Coastal Zone Management Authority, dated 18 August 2017 and the order passed by the Pollution Control Board on 19 July 2016 was annexed.

10. An additional affidavit was filed by Respondent No.3 on 4 April 2018 stating that an Environmental Clearance under the provisions of EIA 1994 is valid only for five years and the Petitioner does not have the Environmental Clearance, as the last one is of the year 2001. The Minutes of 132nd Meeting of the Pollution Control Board dated 27 March 2018 are placed on record.

11. Additional Affidavit in rejoinder by the Petitioner was filed on 9 April 2018 placing on record the orders passed by the Ministry of Shipping dated 24 January 2001 and the Petitioner denied the contentions raised in the Additional Affidavit by Respondent No.3.

12. No reply is filed by the State, nor any documents are placed on record by the State.

13. We have heard Mr. S.S. Kantak, the learned Senior Advocate for the Petitioner, Mr. M. Amonkar, the learned Standing Counsel for Respondent No.2, and Ms. Alvares, the learned Counsel for Respondents No.3 and 4.

14. Mr. Kantak, learned Senior Advocate for the Petitioner submitted that the scope of the Petition is very limited, wherein the Petitioner has only asked for a writ of mandamus to the MOEF to process the Petitioner's proposal, and the Petitioner is not calling upon this Court to opine on merits of the application, which will be considered by the MOEF. Mr. Kantak submitted that the cancellation of permissions have been challenged and the cancellation has nothing to do with the relief sought. Mr. Kantak submitted that the stand of the MOEF that it cannot process the application in view of the order passed by the Tribunal is entirely incorrect, as the order does not apply to the Petitioner. Mr. Kantak submitted that in the alternative, necessary clarification is given that the order of the National Green Tribunal does not apply to the Petitioner. Relying on the decision of the Apex Court in *Competent Automobiles Co. Ltd., vs. Goa Foundation, rep. By Sec. and ors.*¹, he submitted that all the concerns expressed by the Petitioner need not detain to this Court as they are to be looked into by the MOEF. Mr. Kantak submitted that

¹ Spl.Leave to Appeal (C) No.(s) 6229/2007

after the MOEF takes a decision, the Petitioner or the Respondents if they are aggrieved, can take the challenge further. Mr. Kantak submitted that a detailed process under the EIA notification has been undertaken and the stage has now reached up to clause VIII of the methodology. He submitted that the public hearing went on seven days and the due procedure is followed. Mr. Kantak submitted that the Tribunal has proceeded on an erroneous basis that the Coastal Zone Management Plans are not in existence, without noticing that they are extended until 31 July 2018. Mr. Kantak relied upon the decisions of the Division Bench of this Court in *Maharashtra Coastal Zone Management Authority vs. Vanashakti Public Trust and ors.*² and *Reliance Jio Infocomm Limited vs. Union of India & anr.*,³ wherein the Division Bench entertained the Writ Petitions and modified/set aside the orders of the Tribunal, accepting the fact that the Coastal Zone Management Plans are in existence. Mr. Kantak submitted that the Mormugao Port is declared as a 'Major Port' and is governed by the laws of the State. Mr. Kantak submitted that the Port has nothing to do with the Coastal Zone Management Plans. He submitted that the conduct of the Petitioner is irrelevant as the matter is between the Petitioner and the Authorities who will decide the application. Mr. Kantak submitted that since the Petitioner has a

² W.P. No.7393/2016 dt 4 July 2016

³ W.P. No.1768/2016 dt 15 July 2016

fundamental right to carry on business, it also has a right to get its application decided and the application cannot be needlessly kept pending. Mr. Kantak submitted that the Petitioner did approach the Tribunal, but had to withdraw the application in view of the objection to its maintainability. He submitted that the power of this Court power under Article 226 of the Constitution of India is not taken away, even if an alternate remedy is provided. He submitted that under the circumstances the Petitioner is entitled to the relief sought.

15. Mr. Amonkar, learned Standing Counsel appearing for the MOEF reiterated the reply affidavit filed by the MOEF and the reason why the application cannot be considered. He submitted that in the circumstances, appropriate orders be passed.

16. Ms. Alvares, the learned Counsel appearing for Respondents No.3 and 4 submitted that they have joined themselves in the Petition because the Petitioner has suppressed several material facts and the Petitioner's continuous existence harms the health of the residents and also the livelihood of the fishermen of Vasco and surrounding areas. She submitted that people have suffered serious medical conditions due to severe pollution caused by the coal handling by the Petitioner and the enhancement will further

exacerbate the hazard of the coal dust pollution. Ms. Alvares raised a preliminary objection that in the first paragraph of the Petition, the Petitioner itself has stated that the action of the MOEF as "denial" of the permission and, therefore, there is no question of issuance any mandamus, and the Petitioner has a remedy to approach the Tribunal or the Apex Court from the orders passed by the Tribunal. She submitted that the order passed by the Tribunal will have to be modified by the Tribunal. She contended that the Petitioner deserves no indulgence as the Petitioner has suppressed that the Pollution Control Board has withdrawn the permissions granted to the Petitioner, and the Consent to Operate which is identical to the Environmental Clearance, has been withdrawn by the Pollution Control Board. Criminal proceedings have been filed against the Petitioner, in which it is shown that the Petitioner has consistently exceeded the permissions and the Petitioner is a recalcitrant Company which has consistently defied the environmental norms. Ms. Alvares submitted that in the public hearing that went on for seven days, there is an opposition from all quarters to the proposal of the Petitioner, and even the Chief Minister of Goa has written to the Ministry of Environment and Forests against the Petitioner's proposal. She submitted that if this Court directs consideration of the permission, it will send a wrong signal and it will be misconstrued as an imprimatur of this court to the actions of the Petitioner. It will

give rise to various such demands from all, and it will completely nullify the exercise. Ms. Alvares submitted that the last Environmental Clearance granted to the Petitioner on 24 January 2001 has expired. She submitted that the Coastal Zone Management Plan which is proposed is extensive and unless the Plan approves the activity of the Petitioner, there is no question of consideration of the proposal of the Petitioner. It was submitted that since the Petitioner was causing havoc in the City of Vasco its activities are stopped by the Authorities. Ms. Alvares submitted that the petition be dismissed.

17. Since it is the stand of the MOEF that because of the order passed by the National Green Tribunal on 22 November 2017, it cannot process the application of the Petitioner. It is necessary to reproduce the order. The order reads thus :

“ Original Application No. 424 of 2016

(Earlier O.A. No. 169 of 2015)

And

Original Application No. 11 of 2014

Learned counsel appearing for the Ministry of Environment, Forest & Climate Change from instructions from the Officer who is present before the Tribunal submits that the Secretary, Ministry of Environment, Forest & Climate Change had called for the meeting of all the concerned States in relation to the coastal areas on 01st November, 2017. Upon due

deliberations the Secretary had directed that all the States must file their draft of CZMPs by 31st March, 2018, however the State Kerala and State of Gujarat had asked for more time before the Secretary for submission of the CZMP by the month of May and June, 2018 respectively.

Since the matter was not attaining proper progress and the matter was lingering on one pretext or the other and non – cooperation by the State Governments, the Tribunal had directed all the States that States of Andhra Pradesh, Karnataka, Tamil Nadu, Kerala, Gujarat, Goa, West Bengal, Maharashtra, Pondecherry and Andman and Nicobar all counsel are present. They have also filed their Affidavit – cum- undertaking before the Tribunal where these very States have asked for time to file the CZMP of the respective States and UTs even extending the time upto June, 2018. Learned counsel appearing for the Ministry of Environment, Forest & Climate Change submits that they would be able to approve the draft CZMP and the hazard line within three months from the date of receiving the CZMPs drafts from the respective States. In light of the above and while ensuring that no further undue delay should be caused in determination of the hazard line and finalization of the CZMPs for the respective States. As the entire development activity out of prohibited area, regulated area and area permitted to development in accordance with the CZMP would be dependent upon finalization of the above. It is suggested by Ministry of Environment, Forest & Climate Change that the States should not grant Environmental Clearance for development activity which falls within the permissible area/ regulated area as that may result in defeating the

entire exercise. As per the statement of Ministry of Environment, Forest & Climate Change we direct accordingly. It is necessary that strict time line for adherence should be fixed by the Tribunal. We shall issue the following directions:-

1. All the State Governments without default and delay will submit CZMP to Ministry of Environment, Forest & Climate Change by 30th April, 2018. In the event any State Government and UT do not submit the said plan, they shall be liable for exemplary costs of Rs. 5 Lacs which should be recovered from the salary of the defaulting Officer. The noncompliance would invite action for violating the orders of the Tribunal.
2. Within three months thereafter that is by 31st July, 2018 the Ministry of Environment, Forest & Climate Change shall issue approval in regard to the fixation of hazard line and CZMP for the respective State covering the entire coastal area. Now if the Officers and Ministry of Environment, Forest & Climate Change commit default they shall also be liable to be proceeded against in accordance with law.
3. We also grant liberty to Ministry of Environment, Forest & Climate Change to move the Tribunal well in time if there is default on the part of any of the States. But Ministry of Environment, Forest & Climate Change would not be permitted to contend non-cooperation from States as the reason for delay, if any, in compliance of this deadline in this order. We are putting Ministry of Environment, Forest & Climate Change at Notice.

The Applicant would also at liberty to approach the Tribunal if so advised.

The interim order dated 05th February, 2018 shall continue till July, 2018.

With above directions, Original Application Nos. 11/2014 and 424 of 2016 stand disposed of without any order as to costs.”

(emphasis supplied)

18. Given the rival contentions, first, we will decide whether the Petitioner has an alternate efficacious remedy. Secondly, if the Petitioner has such a remedy, whether any special circumstances exist to consider the Petition under Article 226 of the Constitution of India. Thirdly, whether the conduct of the Petitioner disentitles the Petitioner from any equitable relief. Only if these issues are in favor of the Petitioner, we will consider the matter further.

19. The Article 226 of the Constitution of India, a remedy in public law. The Article confers wide powers on the High Courts to reach injustice, whenever it is found. The remedy is discretionary in nature and the Court may refuse the grant of relief in certain circumstances even though the legal right of the Petitioner has been infringed. The availability of an alternate remedy is one such circumstance. This self-imposed restriction that the high prerogative

writ need not be issued if the party invoking the writ jurisdiction has an alternate efficacious remedy, has been consistently followed. It is a well-settled practice by the High Courts, when an alternate and efficacious remedy is open to a party, to ask the party to pursue that remedy and not to enforce the extraordinary jurisdiction. The Apex Court has stressed that when an alternate remedy exists, it is a sound exercise of discretion by the High Courts to refuse to interfere in a petition under Article 226, unless there are good grounds thereof. Thus, before we proceed to consider the grant of the writ as sought for by the Petitioner, we must ascertain whether the Petitioner has an alternate efficacious remedy available.

20. In the past, the Supreme Court had stressed on the need for setting up specialized environmental Courts. The Law Commission in its 186th report recommended specialized Courts for dealing with environmental cases. Pursuant to it, the National Green Tribunal (NGT) Act, 2010 was enacted. National Green Tribunal was established on 18 October 2010 for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources. Section 4 of the Act of 2010 specifies the composition of the Tribunal. Since many issues in the field of environment protection are technical in nature, provision is made for the appointment of Expert Members, along

with the judicial members. Section 16 confers powers on the Tribunal of appellate jurisdiction. Section 16 reads thus :

“16. Tribunal to have appellate jurisdiction. - Any person aggrieved by,-

(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);

(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);

(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of

Pollution) Act, 1981 (14 of 1981);

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section

within a further period not exceeding sixty days”

Section 18 provides for an application or appeal to the Tribunal, which reads thus :

“18 Application or appeal to Tribunal. -

(1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.

(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by-

(a) the person, who has sustained the injury; or

(b) the owner of the property to which the damage has been caused; or

(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or

(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) any person aggrieved, including any representative body or organisation; or

(f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29 of 1986) or any other law for the time being in force:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application: Provided further that the person, the owner, the legal representative, agent, representative body or organisation shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organisation have preferred an appeal under section 16.

(3) The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.”

Section 19 (4) confers the power of Review on the Tribunal. Section 22 provides for an appeal to the Supreme Court. A self-contained methodology of redressal is thus provided under the Act to be addressed by a specialized tribunal.

21. The first prayer of the Petitioner is to direct MOEF to process the Petitioner's pending proposal. It is the contention of

Mr. Kantak that the Petition should be read as a whole to understand the case of the Petitioner. We have done so. In the first paragraph, the Petitioner states that the Petitioner is approaching this Court against the *denial* by the MOEF of the Petitioner's application. It is the case of the Petitioner that the application made by the Petitioner to the MOEF on 9 February 2015 is not considered by the MOEF in view of the order passed by the National Green Tribunal on 22 November 2017. This has been accepted by the MOEF. It is this action of the MOEF that the Petitioner is aggrieved by. The proposal of the Petitioner for terminal capacity enhancement has not proceeded further. In the reply, the MOEF has stated that the MOEF is in the process of getting the order reviewed or modified. The Petitioner can wait till the MOEF seeks suitable modification. The Petitioner is before us because the Petitioner cannot wait. Thus, as far as the Petitioner is concerned, as on today, the application of the Petitioner is not granted. The Petitioner has also understood this position as a denial to grant the permission. If the Petitioner cannot wait and the MOEF is not deciding the application at present, what else it is but a denial as on today. Against this denial, a remedy is provided to the Petitioner to approach the Tribunal. If it is the stand of the MOEF that it cannot decide the Application in view of the order passed by the Tribunal, the Petitioner can file a review before the Tribunal, being aggrieved by the said decision. The argument that

the order passed by the Tribunal does not apply to the Petitioner can be made by the Petitioner before the Tribunal. That the MOEF is needlessly denying to process the application of the Petitioner based on the order of the Tribunal, can also be made before the Tribunal. The assertion that the Coastal Zone Management Plan is continued by the subsequent extension till 31 July 2018 and the contra assertion that the entirely new Coastal Zone Management Plan is on the anvil and unless such Plan is prepared, grant of development permissions without reference to the same cannot be considered, can be debated before the Tribunal. The stand of the MOEF which has been recorded in the order dated 22 November 2017 is that the State should not grant environmental clearances to the development activities till the Coastal Zone Management Plans are finalized, as it may result in defeating the entire exercise. Therefore the Petitioner has an efficacious and alternate remedies to seek both the reliefs before the Tribunal or to challenge the decision of the Tribunal before the Supreme Court if the Petitioner is aggrieved by the decision of the Tribunal. No serious impediment is pointed out to us by the Petitioner that it cannot approach the Tribunal.

22. Mr. Kantak submitted that the Petitioner did approach the Tribunal, however, since an objection was taken to the maintainability of the Petitioner's application, the same was allowed

to be withdrawn by the Tribunal by order 29 January 2018 and, therefore, the Petitioner cannot approach the Tribunal again. We do not find any merit in this submission. The order of the Tribunal in M.A.No.66 of 2018, dated 29 January 2018 is placed on record. The order reads thus :

“ *Heard. Perused record.*

Learned Counsel appearing on behalf of the Applicant in O.A.No.424/2016 raised the question about maintainability of the present application. Learned Counsel appearing on behalf of the Applicant on instructions submits that permission be granted to withdraw the present application with liberty to initiate appropriate proceedings. Permission to withdraw the application is granted with liberty as solicited. M.A.No.66/2018 stand disposed of accordingly.”

It appears that the original Applicants raised a question about the maintainability of the application. There was no objection raised by the MOEF. It is the Petitioner who sought liberty to withdraw the proceedings. There is no finding by the Tribunal that it does not have jurisdiction. This order is not an impediment for the Petitioner to approach the Tribunal, once we clarify the legal position.

23. Mr. Kantak then submitted that this Court, under Article 226 of the Constitution of India, has jurisdiction to consider the prayers of the Petitioner, inspite of the existence of the alternate

remedy. Mr. Kantak relied upon two orders passed by a Division Bench of this Court (Kanade & Sonak, JJ) in *Maharashtra Coastal Zone Management Authority vs. Vanashakti Public Trust and ors.* and *Reliance Jio Infocomm Limited vs. Union of India & anr.* He also relied upon an order passed by the Apex Court in Special Leave to Appeal (C) No(s) 7935-7936/2017 dated 11 April 2018 from the decision referred in *Maharashtra Coastal Zone Management Authority & ors.* We have gone through these decisions. In the case of *Maharashtra Coastal Zone Management Authority*, the Petitioner Authority was aggrieved by the order passed by the Tribunal. The order was passed by the Tribunal on an application filed by Respondent No.1 therein. In that application, the Tribunal had passed a blanket order not to grant development and construction activities and not to grant any regularisation. When the Authority challenged this order before the High Court, the Division Bench held that the Tribunal overlooked two Official Memorandum dated 1 July 2011 and 8 August 2011 which extended the validity of the Plan and accordingly withdrew the Writ Petition and passed orders in favour of the Petitioner therein. The High Court noted that there is no absolute bar on the High Court to entertain a writ petition against the order passed by the National Green Tribunal. This order was challenged by the Respondents therein before the Apex Court, and the Apex Court disposed of the Petition, after noting that the Coastal

Zone Management Plan has now been submitted. In *Reliance Jio Infocomm Ltd.*, a Petition against an order passed by the National Green Tribunal passed certain orders

24. That the High Court has powers to entertain a writ petition inspite of availability of alternate remedy and challenge to the orders of the Tribunal can be entertained, cannot be disputed, however the exercise of the Equity jurisdiction of the Court to entertain a Petition inspite of availability of the alternate remedy, will ultimately have to be decided in the factual backdrop of each case. As further narration will show, not only there are no special circumstances in favour of the Petitioner to deviate from the self-imposed limitations, the circumstances are to the contrary.

25. When the Petition was presented before us, the Petitioner had made the State of Goa and the MOEF as party Respondents. The Petition was presented in a simplistic format. The petition contains the following averments :

“ ... The Petitioner is granted Environment Clearance by the then Ministry of Shipping, Government of India dated 24 January 2001. The Petitioner states that the Petitioner is operating the said Berth Nos.5A and 6A from 2004.

...The Petitioner has an Agreement with the Mormugao Port Trust to construct and operate Berth

Nos.5A and 6A on a build, own, operate and transfer (BOOT) basis.

...The Petitioner has obtained all the requisite permissions and sanctions as were duly required for the operations of the said berths, inter alia carrying out an Environment Impact Assessment (EIA) including clearances from the Ministry of Environment and Forests (MOEF) and the Ministry of Surface Transport, clearances from the GCZMA (Goa Coastal Zone Management Authority dated 3.4.2000, a No Objection Certificate dated 27th September 2000 from the Department of Science & Technology. The Environmental Clearance dated 24th January 2001 was also accorded for construction of the said multipurpose cargo berths (5A & 6A) by the Ministry of Shipping. The Petitioner was also granted a Consent to Establish dated 24th November, 2004 by the Goa Pollution Control Board.

...On 24 January 2001, the Petitioner was granted Environment Clearance (EC) for the construction of two multipurpose cargo berths in Mormugao Port from the Ministry of Shipping, Government of India under a Notification issued by the Ministry of Environment & Forest.

...Since the year 2004, the Petitioner has applied for and has been granted the Consent to operate inter alia under the provisions of Sections 25 and 26 of the Water Act as well as under Section 21 of the Air Act in respect of the activity of handling coal and allied bulk cargo.

...The Petitioner has been using the best of the

technology and most environment friendly techniques at Berth Nos.5A and 6A of Mormugao Port.

...The proposed capacity enhancement and modernization is to install better, modern techniques and new equipment's which would not only enhance the capacity, but would further reduce any environmental impact.

...The said public hearings were conducted for a period of one week continuously. Upon completion of the said public hearings, a Report was submitted to the Respondent No.2 by the said Committee.

...The Petitioner states that Respondent No.2 has already granted to the Petitioner the Terms of Reference (ToR) by their letter dated 19th June 2015 in respect of the said Terminal Capacity Enhancement at Berth 5A-6A of Mormugao Port for handling Coal and Coal Products, Iron Ore and Limestone including Unitised and Steel Products at Mormugao Port Trust, Mormugao, Goa.

..The Petitioner states and submits that they are handling cargos like coal, limestone and steel products at berth 5A & 6A by cranes, ship unloaders and wagon loading system.

...The Petitioner states that their existing activities at Berth 5A and 6A and the proposed capacity enhancement need not wait finalization of the Coastal Zone Management Plan, in view of the fact that the Petitioner proposal for capacity enhancement would not in any manner affect the existing shoreline nor the ground storage area at the berths and is only a

consequential capacity enhancement in view of the use of modernized equipment which would result in faster evacuation with less dwell time in the storage area.”

(emphasis supplied)

The Petitioner has categorically asserted that the Petitioner is operating Berth Nos.5A and 6A from the year 2004 at the Mormugao Port Trust. The Petitioner referred to certain permissions which have been granted to it, made statement that it has been carrying out these functions diligently with due consideration for the environment. It is stated that its terminal handling capacity will bring in modernized machinery and will help to reduce any adverse environmental impact. By plain reading of the Petition, even a casual reader will get an impression that the Petitioner is carrying on its operations from Berth Nos. 5A and 6A diligently, with all permissions and if the application for enhancement is granted, it will be more efficient.

26. However, the official record produced by the Respondents No.3 and 4 show a contrary picture. Pollution Control Board has cancelled the permissions of the Petitioner to operate from Berth Nos. 5A and 6A, and the activities of handling of coal at Berth Nos. 5A and 6A have come to standstill. Its Consent to Operate under the Air Act and Water Act has been revoked. Record show that

before filing of the Petition, the Goa Pollution Control Board has taken action on the ground that in the period of four years, the Petitioner exceeded the quantities permitted for handling coal at the Mormugao Port Trust. It is stated that for the year 2012-13, the Petitioner handled 1.397 MMTA in excess, for the year 2013-14, it was 1.959 MMTA, for the year 2014-15 it was 2.565 MMTA, for the year 2015-16 it was 4.429 MMTA, and for the year 2016-17 it was 4.612 MMTA. A criminal case is filed against the Petitioner under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 by the Goa State Pollution Control Board. A letter is written by the Chief Minister on 14 August 2017 to the Union Minister for Environment in respect of the proposal for increasing the coal handling capacity. The Chief Minister referred to the public hearing and stated that the public has opposed and objected to the proposed increase in handling of coal, as the present handling is causing air pollution in the Vasco City. The Chief Minister referred to Air Quality Monitoring reports of the Pollution Control Board that the particulate matter is exceeding the prescribed.

27. The Pollution Control Board forwarded a note on the public hearing to the MOEF on 12 July 2017, wherein reference is made to coal dust which is inhaled can have adverse health effects, like coal worker's pneumoconiosis, colloquially known as "black

lung." It is also stated that the coal dust can coat almost everything from vegetation, exterior, and interior of houses, food, clothing, etc.. The Board has received some complaints from the residents of Vasco city. It also referred to the various studies carried out and found that various berths in the Mormugao Port Trust were seriously affected by the coal pollution. The report was accordingly submitted by the Pollution Control Board and emphasis was made on the need for further integrated and comprehensive impact study. None of these facts are referred to in the Petition.

28. Even though the Petition is sought to be presented before us for a 'limited purpose', the ultimate aim of the Petitioner, as appears from the Petition, is that it wants to expand its '*existing legitimate activities at the port*'. If the existing activities at the port have been shut down for violation of the norms, well before the affirmation of the Petition, it is a most relevant factor which should have been disclosed. By not doing so, the Petitioner is guilty of suppression.

29. We are not commenting on the merits of the allegations against the Petitioner. But that the actions are taken against the Petitioner is a fact and it is also a fact that the charges are serious. This background ought to have been placed before us, or at least a

reference to this background should have been made before us by the Petitioner. Instead, based on the averments which we have quoted above, an attempt is made to present a picture to us that all the permissions are in place.

30. It was argued by Mr. Kantak, relying on the order passed by the Apex Court in the case of *Competent Automobiles Co. Ltd.*, this Court need not be concerned with the factors which are within the domain of the MOEF to consider and all that this Court needs to look at is whether the application is pending and is wrongly withheld. The order passed in *Competent Automobiles Co. Ltd.* arose from an order passed by a Division Bench of this Court in Misc. Civil Application No.884 of 2006, dated 13 March 2007. Therein an application was filed for construction on an open plot in CRZ-III Zone which could not be considered in view of the directions issued by the Division Bench on 13 October 2006. The Division Bench rejected the application, against which a Special Leave to Appeal was filed to the Supreme Court. The Supreme Court directed that if all formalities were completed and if all clearances required were granted, the Petitioner could apply to the High Court for exemption. The concern expressed by the Respondents therein regarding environmental degradation was left to be considered by the MOEF. A perusal of the orders passed by the High Court and the Apex Court

does not show that the Applicants therein had approached the Court with conduct such as the one exhibited by the Petitioner.

31. The argument of the Petitioner is that this Court must look into only those facts which are relevant for the limited prayers, the conduct is not material for grant of the prayers sought and we must leave everything to the MOEF. The argument thus is that since the Petitioner wants a limited relief, the Courts should do a limited scrutiny. This argument proceeds on a complete misconception of what a prerogative remedy is. The Writ Court, is not a Court of Appeal. A prerogative remedy is not granted as a matter of course. A Writ is issued for doing substantial justice. The Writ Court intervenes where justice, equity, and good conscience requires its intervention. A party requesting such intervention must give the Court a complete picture for the Court to satisfy its conscience. The party who invokes the extraordinary jurisdiction must disclose all material facts even if they are against him. It cannot select the facts it likes to disclose and to suppress the ones which are inconvenient. After full disclosure even of the facts which are against is made by a party, the Court may grant relief in favour of such party, after evaluating all the facts. It may hold that the facts which are against such a party are not relevant for the grant of relief. Deciding that is, however, the prerogative of the Court, not of the party, who must

make a candid disclosure. The very basis of the writ jurisdiction rests in the disclosure of complete facts. The confidence reposed by the Court in the litigant must not be betrayed, otherwise, the functioning of the Writ Courts would become impossible.

32. This is also not the usual case of the Respondents promptly pointing out the suppression. Unfortunately, the State of Goa did not file a reply, nor informed us of any orders passed, in writing or orally. The MOEF only showed us the order of the Tribunal. It was only after the Intervenors showed us the official record, that we came to know that there is a serious background to the entire case. Perhaps the Petitioner did not expect an intervention. It is of no consequence that after the Intervenors were joined and replies were filed that the Petitioner filed rejoinder and disclosed the adverse facts. Had the Respondents No.3 and 4 not intervened, we would have been led to believe that the Petitioner has all necessary permissions in place and it is currently operating from Berth Nos. 5A and 6A and with the installation of better modern techniques and new equipment, it will further reduce any environmental impact and only an innocuous direction is required. The entire conspectus that is now placed before us cannot be considered as irrelevant for the exercise of writ jurisdiction. These machinations lead us to think that there is more than just the order of the Tribunal which impedes the

processing of the application and perhaps our order was being sought to overcome some other obstacle, which we are not made aware of.

33. The Article 226 of the Constitution of India not only confers a discretion, but a duty to be cautious in the exercise of the writ jurisdiction. The Writ Court has to keep in mind the conduct of the party who invokes the jurisdiction of the Court. There is a compelling need to take a serious view on such matters to ensure that the parties do not treat the writ jurisdiction as a game of chess. The Apex Court took a serious note of such tendencies in the case of *Dalip Singh v. State of U.P.*,⁴. The learned judges observed thus:

1. ... Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of

⁴ (2010) 2 SCC 114

litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

* * *

7. In *Prestige Lights Ltd. v. State Bank of India*, (2007) 8 SCC 449, it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R.V. Kensington Income Tax Commissioners*, (1917) 1 KB 486 (CA), and observed: (*Prestige Lights Ltd. Case*, SCC p. 462, para 35)

* * *

10. In *K.D. Sharma v. Steel Authority of India Limited & ors.* (2008) 12 SCC 481 the Court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure

of relevant and material facts or the Petitioner is guilty of misleading the Court, his Petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in G. Jayashree & ors. v. Bhagwandas S. Patel & ors. (2009) 3 SCC 141

* * *

34. Before concluding, we will refer to a grievance made by the Respondents No.3 and 4. Ms. Alvares submitted that the attempt of the Petitioner is to somehow get an imprimatur of the Superior Court to dissipate the opposition to its expansion plans. Ms. Alvares submitted that even a routine order of this Court in favour of the Petitioner will be twisted as a stamp of approval and will be used to demoralise and break a collective public movement against the Petitioner. We cannot accept this as a standalone ground in law to deny a relief. That the order will be misconstrued is not a ground to deny it. As a general remark however, we do observe that it is not uncommon that Court orders are misrepresented. It is often noted that, even when simple orders directing the authorities to decide applications as per law are passed, some times, by mistake or design, they are projected to public as if the Court has mandated the grant of application. Unfortunately, many do not read the orders of the Court available on the Court websites, and go by the incorrect reports. Though such aberrations individually may seem minor,

cumulatively they affect the perception of people in the existence of the Rule of law and affect the administration of justice in the long run. We however leave it at that.

35. Thus, we hold that the points crystallized by us in para 18 of the Judgment being answered against the Petitioner, we refuse to proceed further in our equity jurisdiction. It is open to the Petitioner to take recourse to the remedies as provided under the law. We make it clear that if the Petitioner approaches and adopts the remedies provided under the relevant statute, those remedies will be decided on their own merits.

36. Writ Petition is dismissed.

Prithviraj K. Chavan, J

N.M. Jamdar, J.