

IN THE HIGH COURT OF BOMBAY AT GOA***PUBLIC INTEREST LITIGATION WP NO.1 OF 2018***

Federation of Rainbow Warriors,
A Society Registered under the
Societies Registration Act,
1860, under Registration No.190/Goa/2014),
with its address at CSH-1, Block C-2,
Leandra Heritage,
Madel, Margao Goa.
Through its Treasurer,
Mr. Sidharth Karapurkar
Phone No.9822122705.
Fax No.Nil.
PAN Number AHZPK8944M
National Unique Identity Number: Nil
Email: preservegoa@gmail.com
Annual Income Rs.3 lakhs

.... Petitioner

Versus

1. The Deputy Conservator of Forests
(North Goa Division)
Forest Department, Ponda Goa.
2. The Director,
Directorate of Civil Aviation,
Secretariat, Alto Porvorim, Bardez Goa.
3. The Conservator of Forests (Conservation),
1st Lift, 3rd Floor, Junta House,

Panaji Goa.

4. The State of Goa

Through its Chief Secretary,
Secretariat, Porvorim Goa.

.... Respondents

Mr. Nigel Da Costa Frias and Ms. M. Correia, Advocates for the
Petitioner.

Mr. D. Lawande, Advocate General with Mr. D. Shirodkar, Addl.
Government Advocate for the Respondents.

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

Date : 8 March 2018.

Oral Judgment (Per N.M. Jamdar, J) :

Rule. Rule made returnable forthwith. Respondents waive
service. By consent of the learned Advocate General and the learned
counsel for the Petitioner, the petition is taken up for disposal.

2. The Petitioner has challenged the order passed by
Conservator of Forests, Forest Department, Panaji Goa, the Appellate
Authority, dated 7 March 2018 and has sought to restrain the
Respondent Nos. 2 and 4 from felling any trees at the proposed Mopa

Airport site in terms of the permission granted by the Tree Officer, dated 6 February 2018 to cut 21703 trees.

3. The Petitioner has made necessary averments regarding the locus of the petition to maintain the petition in public interest and as the Petitioner fulfills the criteria for maintaining the Public Interest Litigation, we have entertained the petition.

4. The Petitioner had filed an Appeal No.3/2018 before the Appellate Authority constituted under the Goa, Daman and Diu Preservation of Trees Act, 1984, challenging the permission granted by Respondent No.1-the Tree Officer for felling 21703 trees at Mopa Airport site. The petition was mentioned for circulation yesterday by the learned counsel for the Petitioner that the proceedings have been disposed of but the copy of the order is not available and the tree cutting is going on. We kept the matter on board today. When the matter is taken up today, the copy of the order dated 7 March 2018 passed by the Conservator of Forest, is handed over by the learned Advocate General.

5. We have heard Mr. Nigel Da Costa Frias, learned counsel for the Petitioner and Mr. D. Lawande, learned Advocate General for

the Respondents.

6. The learned counsel for the Petitioner submitted that there is complete non application of mind, by both the Tree Officer while passing the order granting permission and by the Conservator while disposing of the Appeal. The learned counsel submitted that the Petitioner had approached the National Green Tribunal challenging the aspect of Environmental clearance to the Project and the National Green Tribunal had earlier granted an ad-interim order restraining the Respondents from cutting any trees. He submitted that thereafter the order was modified on the statement made by the learned Advocate General that the proceedings can be taken under the Goa, Daman and Diu Preservation of Tree Act, 1984 or the Forest Conservation Act, 1980. Thereafter the Tree Officer granted permission on 6 February 2018, which was challenged by the Petitioner by filing an appeal. The learned counsel submitted that while the Officers have disposed of the proceedings under the Act in most perfunctory manner, large scale cutting of trees is going on and it is causing substantial damage to the ecology of the area. The learned counsel for the Petitioner submitted that this is a fit case where the appeal needs to be remanded for reconsideration. He submitted that pending the appeal, interim protection as sought for be granted or otherwise irretrievable situation

would result.

7. The learned Advocate General submitted that land has been acquired several years ago for the project, and the environmental clearance under the Environment Protection Act has been duly obtained and though it has been challenged before the National Green Tribunal, there is no interim relief staying the project. He submitted that initially the Tribunal had granted an ad-interim order which has been modified/vacated on 22 November 2017. He submitted that there are reasons in the file which would support the conclusion reached by the Tree Officer. He submitted that the Tree Officer is not expected to pass a detailed order. He submitted that even assuming the Petitioners are right in their contention regarding the lack of reasoning in the impugned order, no interim protection as sought for during the pendency of the Appeal be granted. The learned Advocate General submitted that at the most the prayer of interim order during the pendency of the appeal, if the appeal is remanded, can be made to the Appellate Authority.

8. We have to prefix the discussion on the rival contentions by reminding ourselves of the binding dicta of the Apex Court expounding the approach to be adopted by the courts while dealing

with an ecologically sensitive issue. The Courts have to be mindful of the environmental jurisprudence evolved under the Constitution of India, the statutory frame work and the various treaties and conventions to fight the climate change and the depleting tree cover. During the colonial era, trees were considered primarily as a source of timber. As the concern regarding environmental degradation grew, the pivotal role trees play in maintaining a healthy ecosystem, was recognized and various measures were adopted to protect and safeguard the tree cover by regulating the cutting of trees. The Goa, Daman and Diu Preservation of Trees Act, 1984, enacted by the State of Goa, is one such measure.

9. Section 3 of the Act of 1984 lays down the composition of the Tree Authority. The Authority includes the Officers of the Department of Forest and Revenue, Members of the Legislative Assembly, Local Bodies and non Government Organizations. Section 5 deals with the appointment of a Tree Officer. The duties of the Tree Authority have been specified. Section 8 places restrictions of the felling and removal of trees. Section 9 lays down the procedure for obtaining the permission. It reads thus,

9. Procedure for obtaining permission to fell, cut, remove or dispose of a tree.—

(1) Any person desiring to fell or remove or otherwise dispose of by any means a tree, shall make an application to the concerned Tree Officer for permission and such application shall be accompanied by attested copies of the documents as may be prescribed in support of ownership over the land, the number and kind of trees to be cut, their girth measured at a height of 1.85 meters from ground level and the reasons therefor, survey sketch showing clearly the site and survey numbers of the property.

(2) On receipt of the application, the Tree Officer may, after inspecting the tree and holding such enquiry as he may deem necessary, either grant permission in whole or in part or for reasons to be recorded in writing refuse permission:

Provided that such permission shall not be refused if the tree —

(i) is dead, diseased or wind-fallen; or

(ii) is silviculturally mature provided it does not occur on a steep slope; or

(iii) constitutes a danger to life or property; or

(iv) constitutes obstruction to traffic; or

(v) is substantially damaged or destroyed by fire, lightning, rain or other natural causes; or

(vi) is required in rural areas to be cut with a

view to appropriating the wood or leaves thereof or any part thereof for bonafide use for fuel, fodder, agricultural implements or other domestic use.

(3) The Tree Officer shall give his decision within sixty days from the date of receipt of the application:

Provided that no permission shall be granted to any person from the same area on more than two occasions during the same year subject to a maximum area of one hectare at a time.

(4) If the Tree Officer fails to communicate his permission or refusal within the period specified under sub-section (3), the permission referred to in section 8 shall be deemed to have been granted.

3[(5) Every permission granted under this Act shall be in such form and subject to such conditions, including charging of a tree felling fee and taking of security deposit for ensuring regeneration of the area and replantation of trees or otherwise, as may be prescribed.]

Section 12 deals with preservation of trees. After an order is passed by the Tree Officer under Sections 9, 10, 11, 12 and 12A, an appeal is provided to the Appellate Authority. Section 15 deals with the provision of appeal, which read thus :

15. Appeal.— (1) *An appeal shall lie against the order or direction of the 5[Tree Officer or the Deputy Collector, as the case may be] under sections 9, 10, 11 and [12 and 12 A] to the Appellate Authority within a period of thirty days:*

Provided that an appeal may be admitted after the expiry of the said period of thirty days if the appellant satisfies the Appellate Authority that he had sufficient cause for not preferring the appeal within that period.

(2) *Every appeal under this section shall be made by a petition in writing and shall be accompanied by a copy of the order or direction appealed against and shall be accompanied by [a fee as may be prescribed by the Government from time to time.]*

(3) *In disposing of an appeal, the Appellate Authority shall follow such procedure as may be prescribed:*

Provided that no appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard.”

The conjoint reading of the provisions of the Act indicates that the Tree Officer has to take into consideration various aspects of the matter as to whether the trees are required to be cut in the first place, numbers and kind of trees to be cut and the justification for cutting the required number of trees. He is also required to pass a reasoned

order. A proforma application is placed on record. The application lays down various particulars to be provided. An Appeal is thereafter provided under Section 15 of the Act. Section 15 mandates that for before the appeal is disposed of, the Appellant has to be given a reasonable opportunity of being heard.

10. We have perused the order passed by the Tree Officer dated 6 February 2018. This communication is addressed to the Directorate of Civil Aviation and the Chief Executive Officer, GMR International Airport Limited. The Tree Officer has stated that no objection has been conveyed for felling 21703 trees. On the face of it, the order dated 6 February 2018 is bereft of any reasons. The Tree Officer has to apply his mind and give reasons for granting such permission. More so when the permission is granted to cut around 21703 trees, an entire area of forest. Even assuming trees have to be cut from the area for the public project, it has to be ascertained exactly how many trees are required to cut, whether some can be saved or transplanted, what conditions can be imposed to ensure strict supervision and check any abuse by the contractors. The order dated 6 February 2018 is completely lacking in this exercise. When section 15 contemplates an oral hearing to the appellant, the appellant will not be able to argue effectively if the original order lacks reasons. In the cases

of where grant of permissions of such magnitude are in question, reasons bring transparency in the decision making.

11. The matter became worse in the Appellate proceedings. The order dated 7 March 2018 passed by the Conservator, has 16 paragraphs. First 14 paragraphs narrate how the proceedings reached the Conservator. Thereafter, the appeal has been disposed of on the ground that the National Green Tribunal is seized of the matter. A mention is made of a Misc. Application made in the National Green Tribunal and thereafter the appeal is stated as dismissed. The Act not only confers powers to consider the appeal, but a duty on the Appellate Authority to deal with it appropriately of which there is an utter failure.

12. In the order passed by the Conservator, the arguments of the State regarding Section 30 of the Act has been referred to. However it is not made basis of the order. The learned counsel for the Petitioner has rightly drawn our attention to the Circular dated 15 November 1991 issued by the Government of Goa making the Act of 1984 applicable. Apart from this, it is the stand of the State itself before the National Green Tribunal, which is reflected in the arguments of the Advocate General recorded in the order dated 27

November 2017, that the permission will be taken under the provisions of the Act of 1984, clearly indicating that the issue is covered under the Act. Therefore, it cannot be said that the Act of 1984 is not attracted. This being the position, and that there is complete and utter failure on the part of the Conservator of Forest to exercise its powers as an Appellate Authority, the order passed by the Conservator of Forest, the Appellate Authority, will have to be quashed and set aside and the appeal will have to be remanded to the Appellate Authority.

13. The learned Advocate General submitted that if the appeal is being sent back, there should not be any interim relief. We are unable to appreciate this submission coming from the State. If the Appellate Authority under the statute is vested with powers to reconsider the permission granted by the Tree Officer, and the appeal is being heard, how trees can be permitted to be cut in the meanwhile making the appeal infructuous. A tree is not an inanimate object. If it is cut, a life comes to an end.

14. We will be failing in our duty, if we do not take some deterrent steps about the most causal manner the appeal has been decided by the Conservator of forest. Such exercise of power can erode

the faith of people in the Rule of Law. We are of the opinion that to restore this faith, upon remand, the appeal needs to be heard by another Conservator, than the one who passed the order. The learned Advocate General states that the Appellate Authority is designated under the Act and there is no other Conservator of Forest. If that be so, we direct that the appeal be heard by the highest authority, i.e. Principal Chief Conservator of Forest. The learned counsel for the Petitioner says that the Appellant has no objection if the appeal is heard by the Principal Chief Conservator of Forest. The learned Advocate General submitted that the Conservator of Forest has no malafides that he may be replaced. We have not attributed any malafides to the Conservator. In the circumstances narrated above, we are of the opinion that the appeal be heard by the Highest authority in the Department, to which the Appellant has no objection.

15. The learned Advocate General submitted that the observations made by us will reflect on the merits of the case and if after the appeal is remanded, the Appellate Authority will have no option but to allow the appeal. With respect to the learned Advocate General, we do not find any warrant to harbor such apprehension. There is admittedly total failure on the part of both the Tree Officer and the Appellate Authority to give reasons and therefore the appeal is

being remanded back. We have only elaborated the settled position of law, the object and purpose of the Act, which every Officer under the Act is required to follow. We fail to understand as to how by expounding the basic legal position and reminding the officers of their duties and obligation that they have to perform and that they must take their task seriously and with sensitively and by sending the case to a superior officer, we have adjudicated on the facts in the present case. In fact, by giving deference to the fact that project of public utility is in question, we have refrained from sending the matter back to the Tree Officer, but have sent it to the Appellate Authority. We make it clear that the appeal will have to be decided on its own merits

16. In these circumstances, we allow the PIL Writ Petition. The order passed by the Conservator of Forest-Appellate Authority dated 7 March 2018, is quashed and set aside. The Appeal No.3/2018 stands restored to file. The Appeal will be heard by the Principal Chief Conservator of Forest, Goa. The Petitioner will appear before the Principal Chief Conservator of Forest on 12 March 2018 at 11.00 a.m. We request the Principal Chief Conservator of Forest, Goa to make an endeavour to dispose of the appeal within a period of four weeks from 12 March 2018. Pending the appeal and one week after its disposal, the Respondents are restrained from felling any trees at the

proposed Mopa Airport site in terms of the permission dated 6 February 2018 issued by the Respondent No.1-Tree Officer.

17. Rule is made absolute in above terms. No costs. All parties to act on authenticated copy of this order.

Prithviraj K. Chavan , J.

N.M. Jamdar, J.