

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO.702 OF 2018***

Kashinath Jairam Shetye ... Petitioner.

Versus

Goa Coastal Zone Management Authority
and others ... Respondents

Petitioner in person.

Mr. D. Lawande, Advocate General with Mr. Rajesh Shivolkar,
Additional Government Advocate for Respondent nos.1 to 5.

Mr. Shivan Desai, Advocate for Respondent no.7.

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

Date : 25 September 2018.

P.C.:

By this Petition, the Petitioner has sought a direction to the Goa Coastal Zone Management Authority to implement its decision dated 28 February 2017 pursuant to the order passed by the National Green Tribunal on 12 January 2017. The Petitioner has also sought a direction to demolish the structure and restore the land.

2. When this Petition came up on board, we were informed that the private Respondents had moved the Goa Coastal Zone Management Authority for a review of the order. We had noted that

prima facie the Authority would not have a power of review and notices were issued. When the identical matters came up on board, time was sought on behalf of the Authority to take a decision as to the extent of review powers.

3. The learned Advocate General today has placed on record a Resolution passed by the Goa Coastal Zone Management Authority on 28 August 2018. The Resolution states that the Goa Coastal Zone Management Authority does not have a power of review on merit and it has a limited power of procedural review. A reliance is placed on the decision of the Apex Court in *Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. and another*¹. The relevant portion of Extract of Minutes reads thus:

“It noted that review powers are broadly in two forms – review on the merit and procedural review. As far as review on merit is concerned, Hon'ble SC in Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. and another (13 Supreme Court Cases 777) has held that, “where a court or quasi-judicial authority having jurisdiction to adjudicate, proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The power of review is not an

1 (2005) 13 SCC 777

inherent power and must be conferred by law either expressly or by necessary implication. Procedural review, however, belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate, proceeds to do so, but in doing so ascertains whether it has committed a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein.” Authority observed that its constitution order does not have an express provision or necessary implication conferring to it the power to review on merit. At this point the question of when the Authority becomes functus officio was also discussed and it was deemed appropriate that the Authority would become functus officio from the date of passing of the order as far as review on merit is concerned. As is apparent, GCZMA has inherent power for procedural review. Cases where a decision is rendered without notice to the opposite parties or under a mistaken impression that the notice has been served or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases where power to procedural review can be invoked. However, the matters once decided by the authority and remanded back for rehearing and reconsideration by Hon'ble Courts/NGT or MoEF/NCZMA shall obviously be outside the limitation of the power to review on merit”.

Thus, according to Goa Coastal Zone Management Authority, it

only has power of procedural review.

4. We are concerned with a case where initial order was passed against the private party on the ground of violation of the CRZ notification. Therefore, we are not concerned with the case of an order passed rejecting the complaint alleging violation of the CRZ notification. The primary task of the Goa Coastal Zone Management Authority is to ensure that the CRZ notification is implemented in a letter and spirit. Whether in furtherance of that obligation that the Goa Coastal Zone Management Authority is entitled to reopen a case, would be a different matter altogether. Therefore, we are not called upon to consider the extent of a review power in those situations.

5. As per the Resolution, it appears that the Goa Coastal Zone Management Authority has stated that it has a power of a procedural review on the ground of breach of principles of natural justice. Such breach, however, must go to the root of decision making. Such breach of principles of natural justice must arise entirely due to the omission or error on the part of the Goa Coastal Zone Management Authority and without any contribution on the part of the party against whom the order is passed.

6. Reverting back to the present case during the pendency

of this Petition, by order dated 10 July 2018, the review filed by the private Respondents has been rejected. Therefore, there is no impediment for the Authority as on date to proceed with further legal process. This would ordinarily have put an end to the matter, but we have to take note that the review was rejected on the ground that it did not fulfill the parameters of a review on merits. Indicating thereby that the GCZMA was of the impression that if the parameters were present, it could review the order on merits. This view is entirely incorrect. It has no such power of review on merits, which is made clear even as per its own subsequent Resolution.

7. The learned Advocate General states that the orders of demolition have already been issued. In case, the order is not issued, the same should be issued within a period of one week. The learned Advocate General states that the orders of demolition would be implemented within a period of five weeks as an outer limit.

8. Nothing further survives for consideration in the Petition. The Writ Petition is accordingly disposed of.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.