

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO.765 OF 2018***

Devidas Kalangutkar ... Petitioner.

Versus

Goa Coastal Zone Management Authority
and another. Respondents

Mr. S.D.Lotlikar, Senior Advocate with Mr. Shivan Desai, Advocate
for the Petitioner.

Mr. S.S.Kantak Senior Advocate with Mr. Abhijeet Kamat, Advocate
for Respondent no.2.

Mr.D.Lawande, Advocate General with Mr. Arun Talaulikar,
Additional Government Advocate for Respondent-State.

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

Date : 25 September 2018.

P.C.:

By this Petition, the Petitioner has challenged the order dated 23 February 2018 passed by the Goa Coastal Zone Management Authority and has also sought in the alternative a direction to the Authority to consider the Review Application.

2. We have heard the learned counsel for the parties.

3. As far as the order dated 23 February 2018 is concerned,

the Petitioner has a remedy of an Appeal under the statute to the National Green Tribunal.

4, Secondly, as far as a review is concerned, we have been informed that the same has been rejected by the GCZMA. Normally, in view of such rejection of the review, prayer of the Petitioner could not survive. However, when we perused the Resolution rejecting the review, we noticed that it was rejected on the ground that it did not fulfill the parameters of a review on merits. Indicating thereby the GCZMA was of the impression that if the parameters were present, it could review the orders on merits. This view is entirely incorrect. It has no such power of review on merits.

5. 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

¹ (2005) 13 SCC 777

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 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.

6. 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.

7. Since the Petitioner has a remedy of challenging this order before the National Green Tribunal, we do not deem it necessary to entertain the aforesaid Writ Petition, which is disposed of.

8. Since the outcome of a review is placed on record and the

copies furnished to the Petitioner, no separate communication to the Petitioner of the rejection is required.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.