

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 216 OF 2018

Eliano Pereira. Petitioner.

Versus

Kashinath Jairam Shetye & Ors. Respondents

Mr. Nitin Sardesai, Senior Advocate with Mr. Vibhav Amonkar,
Advocate for the Petitioner.

Mr. Deep Shirodkar, Additional Govt. Advocate for the Respondents
No.6 to 8.

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

Date : 24 September 2018.

P.C.:

By this Petition, the Petitioner has challenged the order dated 3 July 2017 passed by the National Green Tribunal, dismissing the Review Application and also for a direction to the Tribunal to hear the Review Application again. The Petitioner has also challenged the Order dated 5 July 2017 passed by the National Green Tribunal.

2. The National Green Tribunal on 2 May 2017 had disposed off the Show Cause Notice in Application No.125/2015, directing sanction to prosecute the Petitioner for perjury. The Tribunal noted the facts of the case that there were certain illegal

constructions in the property bearing Survey No.213/23A of Village Anjuna, Bardez, Goa which belonged to the Petitioner. Notices were issued to the Deputy Collector, Mamlatdar of Bardez, and the Technical Officer of the GCZMA to show cause as to why prosecution under Sections 193 and 219 of the Indian Penal Code should not be initiated against them. The Noticees responded to the notices and they were heard.

3. The Tribunal considered the reply filed by the Petitioner and passed the following directions.

“1. Sanction is granted to prosecute Respondent No.2 Eliano Pereira for the commission of offence punishable under Section 193 of the Indian Penal Code, 1860 as aforesaid.

2. Registrar is directed to initiate prosecution against Respondent No.2 Eliano Pereira for having committed an offence punishable under Section 193 of the India Penal Code, 1860, as observed herein above and pursue the same to its logical end.

3. State of Goa is directed to give all legal, ministerial and logistical assistance to the Registrar, (WZB) NGT at Pune as may be felt necessary by him to give effect to this order.

4. Respondent No.2 Eliano Pereira is liable to bear expenses incurred by the State of Goa for giving necessary assistance as directed and State of Goa shall recover the said expenses incurred from Respondent No.2 Eliano Pereira as arrears of land revenue.”

4. The Petitioner thereafter filed an application for review on 31 May 2017. The review application came to be rejected by an order dated 3 July 2017. The order stated that the action was initiated on the complaint and after consideration of the matter, the Tribunal held that there has been neither misconstruction of the contents of the record nor there is a mistake or error apparent on the face of the record. The Tribunal held that in the guise of review, it cannot exercise the appellate jurisdiction. Thereafter, the Petitioner has approached this Court by filing the Petition on 11 August 2017.

5. The Petition first came up on board on 20 February 2018. At that time, time was sought to file an additional affidavit. The additional affidavit was filed stating that though it is mentioned that the name of the Advocate was mentioned in the order disposing of the review, the Advocate was not present and the Petitioner was not heard when the review application was disposed of. In the order dated 24 April 2018, we had recorded that if this is the contention of the Petitioner as above, the Petitioner can always approach the Tribunal. In view of this position, at interim protection was granted. Thereafter, the Petition has appeared on Board on various occasions. According to the Petitioner, various attempts were made by the Petitioner to mention the matter before the Tribunal, however, the Petitioner was not successful and on that ground the ad interim order

has continued.

6. Today, an additional affidavit is tendered by the Petitioner. In the affidavit what has transpired during the hearing of the application on 20 September 2018 has been narrated. It is stated that the Tribunal was of the opinion that the Tribunal can decide the review without hearing the applicant and refuse to grant circulation. The learned Senior Advocate for the Petitioner submitted that therefore, the application of the Petitioner is not decided and that the Petitioner is placed in a predicament as to whether the Petitioner should go ahead with the Petition or wait for the outcome of the application made before the Tribunal.

7. Perusal of the contents of the affidavit indicates that the Tribunal has already expressed its opinion that there was no error in deciding the review application. Therefore, it is clear that the Tribunal has not accepted the application of the Petitioner to review of the order under review.

8. As far as the impugned order dated 2 May 2017 is concerned, the Petitioner was present. After considering the record, the Tribunal has issued certain directions. As regards the grievance of the Petitioner of breach of principles of natural justice in this order, there exists none. As far as this order is concerned, under the

National Green Tribunal Act, an appeal shall lie before the Supreme Court against the order passed by the National Green Tribunal. The grievance of the Petitioner based on breach of principles of natural justice is regarding the order rejecting review. It is contended that if there is breach of principles of natural justice, the Constitutional Court is entitled to exercise the power of judicial review. There is no dispute about this proposition. However, equally settled principle is that the Court will refrain to exercise its writ jurisdiction if efficacious remedy is available unless, the circumstances merit such intervention.

9. In the present case, the Tribunal upon a detailed inquiry has found that certain action needs to be initiated against the Petitioner. The Tribunal has come to the conclusion that sufficient grounds so exist for setting the machinery of criminal law in motion for the offence of perjury. This is a detailed speaking order. Thereafter, the review has been rejected. We have granted innumerable opportunities to the Petitioner to get the relief from the Tribunal and this indulgence cannot be extended any further. Had the original order been in violation of the principles of natural justice, would be a different matter altogether. The Petitioner along with the original order, can also challenge the order passed rejecting the review.

10. Considering the nature of the order passed by the Tribunal and the scope of review jurisdiction and that the remedy is available to the Petitioner to challenge both the orders, we do not think that any case is made out for extending the equity jurisdiction of this Court. Only indulgence that we can grant is to grant some protection to the Petitioner to take the challenge further.

11. The Writ Petition is rejected. Ad interim order granted earlier, is extended for a period of three months from today.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.