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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14423 OF 2018

Bharatesh Construction Company .. Petitioner
Vs.
Maharashtra Pollution Control
Board & ors. .. Respondents

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Mr. Kevic Setalwad, Senior Advocate I/b. Rajeev Talasikar for
the petitioner.
Mr. Jitendra Jagtap for respondent No.1 - Board.
Ms. Nisha Mehra, AGP for State - respondent Nos. 2, 3 and 5

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**CORAM : NARESH H. PATIL, CJ. &
M.S. KARNIK, J.**

DATE : 18th DECEMBER, 2018

P.C. :

The challenge in this Petition is to the impugned order passed by the respondent No.1- Board on 26/11/2018. Learned Senior Counsel appearing for the petitioner submits that the show cause notice dated 16/11/2018 issued by the respondent No.1-Board was received by the petitioner only on 3rd December, 2018. Learned Senior Counsel therefore submits that passing of the impugned order is ex-facie in breach of the

principles of natural justice. According to him, as the show cause notice is received after passing of the impugned order, neither the petitioner got an opportunity of filing reply to the show cause notice nor the petitioner was heard by the respondent No.1-Board as such serious prejudice is caused to the petitioner. On merits the petitioner has raised several issues.

2. Learned Counsel appearing for the respondent No.1 – Board submits that in The Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as “the Air Act” for short), the Appellate authority has been prescribed by the State Government under Section 31 ; whereas there is a statutory Appellate Forum available in The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as “the Water Act” for short). In his submission, the petitioner has an alternate efficacious remedy which the petitioner may avail. Nonetheless, on instructions, he submits that the respondent No.1- Board is willing to grant an opportunity of hearing to the petitioner.

3. We have perused record and the impugned order. There is no disputing the statement of petitioner that they have not been heard as the same is not contradicted by the other side. It is a settled principle of natural justice that the petitioner is required to be heard by the respondent No.1- Board before passing the impugned order. Based on this ground alone, we are of the opinion that the matter needs to be remanded back to the respondent No.1 – Board.

4. As is evident from the impugned order, the Board has exercised powers under Section 33A of the Water Act and Section 31-A of the Air Act. As against the order passed under Section 33A of the Water Act for the alleged violation, the aggrieved person has remedy of filing an Appeal to an Appellate Authority constituted by the State Government. In so far as the remedy prescribed under Section 33B of the Water Act is concerned, the remedy is to file an Appeal to National Green Tribunal. The respondent No.1 – Board thus exercises independent and distinct powers under the Water Act and the Air Act.

5. Needless to mention that the respondent No.1- Board while exercising its powers under the Air Act or the Water Act is expected to refer to the specific violations alleged under the respective Acts separately and independently. The reasoning of the respondent No.1- Board would obviously be with reference to the specific violations under the said Acts. It is clarified that we have not expressed any opinion on merits. All issues and contentions are kept open.

6. In the facts of the case and considering the issue raised, we pass the following order.

ORDER

(a) The impugned order dated 26/11/2018 shall be treated as show cause notice. The directions contained in the impugned order shall stand withdrawn.

(b) The petitioner shall be granted an opportunity to file its reply to the show cause notice.

(c) The respondent No.1 - Board shall grant personal hearing to the petitioner.

(d) After hearing the parties, respondent No.1 - Board would be entitled to pass final order on its own merits.

(e) In case the final order is adverse to the petitioner, the same shall not be implemented for a period of two weeks from the date of receipt of the said order by the petitioner.

7. Writ Petition is disposed of in the above terms.

(M.S. KARNIK, J.)

(CHIEF JUSTICE)