

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3352 OF 2018

Mrs. Anjali Dinkar Datar.] ... Petitioner

Versus

The Commissioner, Pune Municipal Corporation & Ors.]
] ... Respondents

Mr. Nikhil Sakhardande a/w Mr. Nikhil Pawar for Petitioner.

Mr. A. I. Patel, Addl. G. P. for State.

Mr. Tejas P. Hartalkar i/b Supriya R. Dangare for Respondent No.2.

Ms. Madhavi T. for Respondent No.4.

**CORAM :- SHANTANU KEMKAR &
SARANG V. KOTWAL, JJ.**

DATE :- AUGUST 20, 2018

P. C. :-

Challenging the order dated 22/12/2017 passed by the Single Member of the National Green Tribunal, Western Zone Bench, Pune, in Miscellaneous Application No.399 of 2017 in Execution Application No.18 of 2017 (WZ) in Application No.1 of 2013, the Petitioner has approached this Court by filing this petition under Article 226 of the Constitution of India.

2. The grievance of the Petitioner is that the impugned order passed by the Tribunal runs contrary to Rule 5 (1) (2) of The National Green Tribunal (Practices and Procedure) Rules, 2011 (for short, 'the Rules'). Rule 5(1)(2) of the Rules reads thus :

“5. Minimum number of members who shall hear application or appeal.--

(1) The Tribunal shall hear an application or appeal, as the case may be, consisting of at least by a Judicial and an Expert Member.

(2) Where the Chairperson considers it necessary that a particular case or cases be heard and decided by the Tribunal consisting of more than two members he may by order in writing direct that such case or cases, be heard by such members of the Tribunal as may be specified in that order.”

3. A bare perusal of the said rule makes it clear that the hearing of an application or appeal by the Tribunal shall be at least by a Judicial and an Expert Member. In the present case, as it is evident from the impugned order, the same is passed by a single Judicial Member only.

4. It is also required to be noted that the Supreme Court, vide order dated 31/01/2018 passed in Writ Petition (Civil) No.1235 of 2017, has issued the following directions to the Tribunal :

“In the meantime, the Chairperson of the National Green Tribunal shall not constitute a Single Member Bench, but a Division Bench consisting of one judicial member and an expert member.”

5. Having regard to the aforesaid, as the impugned order being not passed by a Division Bench consisting of one Judicial Member and an Expert Member but is being passed by only single member, the same cannot be sustained.

6. As a result, we quash the impugned order and remand the matter back to the Tribunal for deciding the said Miscellaneous Application No.399 of 2017 afresh in accordance with the law. With the said directions, the Writ Petition is disposed of.

7. Parties to appear before the Tribunal on 27/08/2018 on which date, we are informed, that the matter has already been listed.

8. Parties to act on the basis of an authenticated copy of this order.

(SARANG V. KOTWAL, J.)

(SHANTANU KEMKAR, J.)