

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 13189 of 2018

Huhtamaki PPL Ltd.

... Petitioner

V/s.

The State of Maharashtra

through the Environment Dept. & ors.

... Respondents

Mr.Venkatesh Dhond, Mr. Rahul Dwarkadas, Mr.Joran Diwan for the petitioner.

Mr.P.P.Kakade, AGP for respondents 1 & 3.

Ms. Sharmila Deshmukh for respondent no.2.

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

22nd November, 2018.

P.C.

The petitioner prays for following substantive relief:-

“ (a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction calling for the records pertaining to the Impugned Notice and after considering the legality and validity thereof be pleased to quash and set aside the same.”

2. The petitioner challenges the order dated 20th November, 2018 passed by Maharashtra Pollution Control Board (Exhibit A to the petition). The said order is passed in exercise of powers conferred under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 and 31-A of the Air (Prevention and Control of Pollution) Act, 1981.

3. The Counsel appearing for respondents raised preliminary objection to maintainability of this petition and submits that alternate remedy of statutory appeal against the order is available before the National Green Tribunal. The provisions of Section 33-B of the Water (Prevention and Control of Pollution) Act, 1974 refer to Appeal to National Green Tribunal. Section 14 of the National Green Tribunal Act, 2010 refers to settlement of disputes by Tribunal. We may refer to observations of the Apex Court in the case of ***Cicily Kallarackal vs. Vehicle Factory (2012) 8 SCC 524***. In Paragraph-4 it is observed as under:-

“4. Despite this, we cannot help but state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to the higher court, it cannot be proper exercise of jurisdiction to permit the parties to by pass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of the improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds.”

4. At this stage the learned Senior Counsel appearing for the petitioners submits that around 250 employees are working with the petitioners. In case the manufacturing unit is closed down then it may cause severe hardship to the petitioners and its employees. The Counsel, therefore, prays for breathing time to resort to alternate remedy as permissible in law.

5. Perused the record placed before us and the provisions of the Statute as referred above. Considered the submissions advanced.

6. In the facts we are of the view that the petitioners has alternate statutory remedy before the National Green Tribunal. The petitioners may resort to such a remedy.

7. Till 28th November, 2018, we direct that status-quo as on today in respect of running of the petitioner's manufacturing unit shall be maintained.

8. Keeping all issues on merits open, Writ Petition stands disposed of.

M.S.KARNIK,J

CHIEF JUSTICE

L.S. Panjwani, P.S.