

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 127 OF 2020

Directorate of Mines and
Geology, and others.

..... Petitioners

Versus

Saidas Khorjuvekar and others.

..... Respondents.

Mr. D. J. Pangam, Advocate General Mr. Deep Shirodkar, Addl.
Govt. Advocate for the Petitioners.

***Coram:- DIPANKAR DATTA, CJ &
M. S. SONAK, J***

Date:- 25th March, 2021

P.C. : (Per Dipankar Datta, CJ)

State of Goa, together with other public authorities/officers, has presented this writ petition dated 22/8/2019. They question the legality of orders dated 26/2/2019 and 18/7/2019, passed by the National Green Tribunal, Principal Bench, New Delhi (hereafter “the Tribunal”, for short) in Application No.28/2015 (WZ). Such application was brought before the Tribunal by the respondents 1 to 3.

2. By the order dated 26/2/2019, the Tribunal, after noting that CCTV cameras have not been installed and that there was a failure on the part of the State to comply with the order 18/7/2018 by which it was required to take steps for installing the CCTV

cameras, issued a direction to the Director of Mines and Geology to deposit a Performance Guarantee of ₹ 20.00 lakh with the Central Pollution Control Board (hereafter “the CPCB”, for short), within a period of 10 days. The Directorate of Mines and Geology, respondent no.1 before the Tribunal, having failed to comply with the direction contained in the earlier orders by installing the CCTV cameras within 2 months from 26/2/2019, the Performance Guarantee of ₹ 20 lakh stood forfeited by the subsequent order dated 18/7/2019 of the Tribunal. The Directorate of Mines and Geology was granted further time to complete the entire work within two months, subject to deposit of further Performance Guarantee of ₹20.00 lakh with the CPCB within 10 days. It was also observed that such guarantee could also be forfeited if the timelines indicated in the order were not adhered to.

3. Yesterday, we had put a query to Mr. Devidas Pangam, the learned Advocate General for the State of Goa, as to why the remedy of appeal provided by Section 22 of the National Green Tribunal Act, 2010 (hereafter “the NGT Act”, for short) had not been pursued by the petitioners against the orders dated 26/2/2019 and 18/7/2019. Such query was raised by us having regard to the decisions of the Supreme Court reported in (2012) 8 SCC 326 : **Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India**, and (2012) 8 SCC 524 : **Cicily Kallarackal vs. Vehicle Factory**. It was also pointed out to Mr. Pangam that as recently as on 12/3/2021, the Supreme Court while dismissing SLP (C) No.4127/2021 : **Mehra Bal Chikitsalaya**

Evam Navjat Shishu I.C.U. vs. Manoj Upadhyay and ors., had referred to the decision in **Cicily Kallarackal** (supra) and in view thereof had opined that the High Court ought not to have held the writ petition to be maintainable. Mr. Pangam had sought for time to consider the said decisions and requested the writ petition to be placed on board today.

4. We have heard Mr. Pangam at considerable length, today.

5. Referring to the decisions of the Supreme Court reported in (1997) 3 SCC 261 (**L. Chandra Kumar vs. Union of India & ors.**); (2003) 2 SCC 412 (**State of Karnataka vs. Vishwabharathi House Building Co-op. Society and ors.**); (2020) 2 SCC 442 (**Balkrishna Ram vs. Union of India**) and (2020) 6 SCC 1 (**Roger Mathew vs. South Indian Bank Limited**), Mr. Pangam has contended that availability of an efficacious alternative remedy can never oust the jurisdiction of the High Courts under Article 226 of the Constitution of India, judicial review being a basic feature thereof. It is further contended that the Supreme Court has in a number of decisions carved out exceptions when it would be open to the High Courts to entertain a writ petition despite there being an efficacious alternative remedy available to the party aggrieved, who approaches the High Court and invokes its writ jurisdiction. Want of jurisdiction of the authority passing the order under challenge, being one such exception, and the orders which have been passed by the Tribunal and impugned in this writ petition being without jurisdiction, Mr.

Pangam submits that this is a fit and proper case where this Court ought to entertain the writ petition and decide the same on merits. To buttress the contention that the Tribunal acted without jurisdiction in requiring the respondents before it to furnish Performance Guarantee and to forfeit the same for failure to abide by one of its earlier orders, exercises which are not within the four corners of the NGT Act that has created it (the Tribunal), heavy reliance was placed by him on the decision reported in AIR 2020 SC 4221 (**State of Madhya Pradesh vs. Centre for Environment Protection Research and Development and ors.**) to persuade us hold the impugned orders to be indefensible for want of jurisdiction.

6. No doubt, the contentions advanced by Mr. Pangam are attractive and also have fair degree of merit. We do not for a moment hold the view that availability of an efficacious alternative remedy to the suitor approaching the writ Court would render his writ petition “not maintainable”. It is not the law in this country that a writ petition can be dismissed as not maintainable, because an efficacious alternative remedy is available to such suitor. No such restriction is imposed by Article 226 in express terms or could, by necessary implication, follow. The rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion, a self-imposed restraint on the Court, rather than a rule of law. Once the Court finds that the suitor despite having an efficacious alternative remedy provided by a statute has chosen not to pursue such remedy

but has chosen to approach the writ Court, it has to decide on the question of “entertainability” of the writ petition upon judicious exercise of discretion bearing in mind the facts and circumstances of the case, the nature of the order under challenge, the efficacy of the remedy that is made available to him by law and whether any of the exceptions that have been carved out by judicial pronouncements is satisfied or not. In other words, the question is that of “entertainability” and not “maintainability”. In the ordinary course, we could have admitted the writ petition and proceeded to decide the point of want of jurisdiction raised on behalf of the petitioners by Mr. Pangam, on merits. However, we consider ourselves disabled from so admitting the writ petition and trying the same on merits having regard to the discussion hereunder.

7. Paragraph 40 of the decision in **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra) being extremely relevant here, is quoted hereinbelow:

“40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short “the NGT Act”) particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short “NGT”). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. **Thus, in unambiguous terms, we direct that all the matters** instituted after coming into force of the NGT Act and **which are covered under the provisions of the NGT Act** and/or in Schedule I to the NGT Act shall stand transferred and **can be instituted only before NGT**. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.”

(emphasis supplied)

What logically follows is that the scheme of the NGT Act should not be derailed by taking recourse to proceedings under Article 226 of the Constitution and that judicial prudence demands that the writ Court refrains from exercising its jurisdiction.

8. That apart, we cannot ignore that the Supreme Court despite **L. Chandra Kumar** (supra) reiterating that judicial review is a basic feature of the Constitution, in **Cicily Kallarackal** (supra) [where the Supreme Court, exercising its appellate jurisdiction against an order passed by the Kerala High Court entertaining a writ petition against a judgment and order passed by the National Consumer Disputes Redressal Commission under the Consumer Protection Act, 1986 (hereafter “the CP Act”, for short) held the writ petition to be not maintainable] issued a **direction of caution** (emphasis supplied) that it will not be a proper exercise of jurisdiction by the High Courts to entertain writ petitions against the orders of the National Commission. Not only that, a copy of such order was directed to be forwarded to the Registrars General of all the High Courts for bringing the same to the notice of the Hon'ble Chief Justices and the Hon'ble Judges of the respective High Courts.

9. Despite the exceptions carved out by judicial pronouncements, to which reference has been made by Mr. Pangam, the decision in **Cicily Kallarackal** (supra), or for that matter the decision in **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra), does not keep any window open through which an order passed by

the National Commission under the CP Act or the National Green Tribunal under the NGT Act could be subjected to challenge before a High Court. Apart from the fact that the author of the decisions in **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra) and **Cicily Kallarackal** (supra) is the same, the common thread that runs through both the decisions is that the relevant enactments, i.e., the CP Act and the NGT Act are complete codes providing for rights and liabilities, with expert members constituting the Benches and the jurisdiction of the fora created by such enactments should not be allowed to be by-passed. Also, an adjudicatory body at the National level having been constituted under the relevant enactments providing remedy by way of an appeal before the Supreme Court against the orders passed by the National Commission and the National Green Tribunal, in such cases, the High Courts would be failing in the proper exercise of their jurisdiction if they were to entertain writ petitions against the orders of such adjudicatory bodies.

10. We are conscious that an appeal under Section 22 of the NGT Act is not a matter of right and an appeal can be entertained on one or more of the grounds mentioned in Section 100 of the Code of Civil Procedure. That, to our mind, by itself would not warrant interdiction by a writ Court. In fact, the decision in **Centre for Environment Protection Research and Development** (supra) was rendered on an appeal under the NGT Act, and not on a writ petition. Where a quasi-judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong

conclusion whether it is wrong in law or in fact, is the statement of law found in the Constitution Bench decision of the Supreme Court reported in **AIR 1962 SC 1621 (Ujjam Bai Vs. State of Uttar Pradesh)**. Thus the distinction between an order inherently lacking jurisdiction and an error committed within the jurisdiction conferred would also assume importance and emerge for determination; however, it would indeed be a question of the extent of latitude the concerned Court is prepared to allow.

11. In any event, Mr. Pangam has not been able to demonstrate that the orders in **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra) and **Cicily Kallarackal** (supra) have been overruled, even impliedly by any larger Bench of the Supreme Court. Also, there has been no attempt to distinguish such decisions on any ground.

12. Notwithstanding that we are bound by the ratio of the decisions cited by Mr. Pangam, technically, under Article 141 of the Constitution, we are equally bound by the decisions of the Supreme Court in **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra) and **Cicily Kallarackal** (supra), the first of which deals with the enactment which is under consideration in the present case and the second which deals with an appeal available before the Supreme Court and is directly on the point.

13. For the reasons aforesaid, we are disinclined to exercise

jurisdiction in favour of the petitioners. The writ petition is dismissed. No costs.

14. This order shall not preclude the petitioners to avail the remedy of an appeal before the Supreme Court or review before the Tribunal, provided by the NGT Act, in accordance with law.

M.S. SONAK, J.

CHIEF JUSTICE

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL
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