

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 179 OF 2023

KASHINATH JAIRAM SHETYE

....Petitioner.

VS

THE GOA COASTAL ZONE MANAGEMENT
AUTHORITY THR. ITS MEMBER
SECRETARY AND 6 ORS.

....Respondents.

Mr. Nigel Costa Frias and Ms. Sonadevi Nishad, Advocate for petitioner.

Ms. Maria Correia, Addl. Govt. Advocate for respondent nos. 1 and 5.

Mr. Shivan Desai and Mr. A. Sardesai, Advocate for the respondent nos. 3 and 4.

Mr. Pravin Faldessai, Deputy Solicitor General of India for respondent no.7.

**CORAM: PRAKASH D NAIK &
BHARAT P. DESHPANDE, JJ.**

DATED: 27th October 2023

ORAL ORDER (Per Prakash D. Naik, J):

1. Petitioner has invoked Writ jurisdiction of this Court under Article 226 of the Constitution of India and seeks to challenge the order dated 10.8.2020 passed by National Green Tribunal, Principal Bench in IA No. 159/2019 in Appeal No. 125/19. Petitioner is seeking direction that the National Green Tribunal Principal Bench be directed to redecide the application in accordance with principles of natural justice by affording hearing to the petitioner.
2. Aggrieved by order dated 28.8.2019 passed by Goa Coastal Zone Management Authority the petitioner preferred Appeal No.

125/2019 before the National Green Tribunal Western Zone at Pune. Since there was a delay in preferring the said appeal, IA no. 159/2019 was preferred for condonation of delay. Vide order dated 10.8.2020 passed by the National Green Tribunal Principal Bench New Delhi, dismissed the application for condonation of delay and consequently appeal was also dismissed. The application was dismissed on the ground that there was complete careless and reckless long delay on the part of applicant which has remained virtually unexplained. There is no reason to exercise judicial discretion exercising judiciously so as to justify the condonation of delay.

3. Learned Advocate Mr. S. Desai, appearing for respondent nos. 3 and 4 raised preliminary objection about maintainability of this petition as the petitioner has alternate efficacious remedy to challenge the impugned order by preferring an appeal in accordance with Section 22 of the National Green Tribunal Act 2010 before Hon'ble Supreme Court. This petition invoking writ jurisdiction of this Court under Article 226 of the Constitution of India may not be entertained.

4. Mr. Desai, has relied upon the decision of this Court in case of ***Directorate of Mines and Geology and others Vs Saidas Khorjuvekar and others dated 25.3.2021*** passed in ***Writ Petition No. 127/2020*** and subsequent decision of this Court in case of ***Goa Foundation vs State of Goa dated 28.9.2021***

passed in ***MCA No. 1690/2021/F.***

5. Learned Advocate Mr. N. Costa Frias appearing for the petitioner submitted that this Court can entertain this petition under Article 226 of the Constitution of India as petitioner has challenged impugned order on the ground that there is violation of principles of natural justice. National Green Tribunal has refused to condone the delay in filing appeal. Petitioner was not afforded hearing. National Green Tribunal Western Zone Bench was not functional for a period of about two years and the matters pertaining to that Bench including those from the State of Goa were being taken up via Video Conference (VC) by Principal Bench at New Delhi. Parties had to either go to National Green Tribunal West Zone Bench to conduct matter via VC or to the Principal Bench at New Delhi. Pune Bench had stopped conducting VC and parties were required to attend VC at their private spaces for which pin or password for virtual meeting would be sent to them. Petitioner was unaware of this and that an office order dated 27.6.2020 has been issued by Registry of the National Green Tribunal, Western Zone Bench, stating that parties whose matter are to be heard/listed via VC should forward their email addresses and phone number to the Registry so that link or password to the virtual meeting or hearing could be sent to them. Assuming that the petitioner has remedy to challenge the impugned order by way of appeal, such alternate remedy would not preclude this Court from

exercising writ jurisdiction under Article 226 of the Constitution of India since the impugned order was passed in violation of principle of natural justice relied upon decision in the case of ***Whirpool Corporation Vs Registrar of Trade Marks, Mumbai and others(1988) 8 SCC 1.***

6. Learned Advocate for respondent disputed the claim of petitioner that there is violation of principle of natural justice. It is submitted that in any case of the petitioner can urge the said ground in appeal.

7. Impugned order dated 10.8.2020 rejecting the application for condonation of delay was passed by National Green Tribunal on merits. The order can be challenged by preferring an appeal under Section 22 of the National Green Tribunal Act 2010 before the Supreme Court.

8. Section 22 of the NGT Act 2010 reads as follows:-

“Appeal to Supreme Court. -Any person aggrieved by any award, decision or order of the tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the Supreme Court may, entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.”

9. In the case of ***Directorate of Mines and Geology and others VS Saidas Khorjuvekar and others***, (supra), petitioner therein had questioned legality of the orders passed by National Green Tribunal Principal Bench New Delhi without resorting to the remedy of appeal under Section 22 of the said Act. By relying upon the decisions of the Supreme Court in ***L. Chandra Kumar vs. Union of India & ors. (1997) 3 SCC 261; State of Karnataka vs. Vishwabharathi House Building Co-op. Society and ors. (2003) 2 SCC 412; Balkrishna Ram vs. Union of India (2020) 2 SCC 442; Rojer Mathew vs. South Indian Bank Limited (2020) 6 SCC 1 and State of Madhya Pradesh Vs. Centre for Environment Protection Research and Development and ors. AIR 2020 SC 4221***, it was 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. Supreme Court in number of decisions carved out exceptions when it would be open to the High Courts to entertain a writ petition despite efficacious alternative remedy available to the party aggrieved, who approaches the High Court and invokes its writ jurisdiction. It was also contended that order passed by the Tribunal was without jurisdiction and hence this Court could entertain the writ petition under Article 226 of the Constitution of India. This Court

had referred to decision in the case of ***Bhopal Gas Peedith Mahila Udyog Sangathan Vs. Union of India (2012) 8 SCC 326*** wherein it was observed that keeping in view the scheme of the National Green Tribunal Act, 2010, particularly Sections 14, 29, 30 and 38(15) 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 NGT. Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. It was directed that all the matters instituted after coming into force of the NGT Act and which are covered under the NGT Act and or Scheduled I 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. Referring to observations in the above decision this Court observed that what logically follows is that the scheme of 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. This Court than referred to the decision in ***Cicily Kallarackal Vs Vehicle Factory (2012) 8 SCC 524*** and further expressed that despite exception carved out by judicial pronouncement, the decision in ***Cicily Kallarackal Vs Vehicle Factory(supra)*** and ***Bhopal Gas Peedith Mahila Udyog Sangathan Vs Union of India(supra)***, does not keep any

window open through which an order passed by the National Commissioner under the CP Act or National Green Tribunal under the NGT Act could be subjected to challenge before the High Court. The common thread that runs through both the decisions is that the relevant enactments i.e. the CP Act and the NGT are complete codes providing for the 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. 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 NGT, in such cases 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. 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 Constitutional Bench decision of the Supreme Court in ***Ujjain Bai Vs State of Uttar Pradesh, AIR 1962 SC 1621***. 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 allowed. This Court refused to exercise jurisdiction in favour of the Petitioner.

10. In the case of ***Goa Foundation Vs State of Goa; Misc. Civil Application No. 1690 of 2021/F dated 28.9.2021***, the applicants had urged that the Writ Petitions may be dismissed by relegating the petitioners to avail alternate remedy in terms of the NGT Act 2010. The applicants relied on decision of this Court in ***Pedro Januario Carlos Barreto and another Vs State of Goa and others, Writ petition No. 1513/2021-F decided on 26.7.2021*** and ***Directorate of Mines and Geology and others Vs Saidas Khorjuvekar and others*** (supra). The Advocate for respondent contended that; the aforesaid decisions of the Division Bench of this Court, and the decision in ***Cicily Kallarackal Vs Vehicle Factory***(supra), and ***Mehra Bal Chikitsalaya Evam Navjat Shishu I.C.U Vs Manoj Upadhyay and others in SLP No.4127/2021 decided on 6.11.2020*** are per incuriam. These decisions are not consistent with spirit of what has been laid down by Supreme Court in ***Rojer Mathew Vs South Indian Bank Ltd and others (2020) 6 SCC 1***. The decision in the case of ***Bhopal Gas Peedith Mahila Udyog Sangathan***(supra) is distinguishable. The other decisions of this Court do not consider law laid down in ***Whirpool Corporation Vs Registrar of Trade Marks, Mumbai and***

others (supra). This Court observed that the issue in Pedro Barreto (supra) and decision in **Directorate of Mines** (supra) is similar. The decisions of Hon'ble Supreme Court relied upon in **Directorate of Mines** (supra) or **Pedro Bareto**(supra) are not per incuriam. The principles set out in **Whirlpool Corporation Vs Registrar of Trade Marks, Mumbai and others** (supra) admit of no dispute whatsoever. This Court has assigned reasons as to why in petitions similar to present petitioner, it is only appropriate that the parties are relegated to avail of an alternate remedy under NGT Act.

11. In the case of **Whirlpool Corporation Versus Registrar of Trade Marks, Mumbai and others**(supra), the petitioners contention was that the action initiated by statutory authority is without jurisdiction, it can be challenged under Article 226 of the Constitution of India. The Apex Court observed that power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by High Court not only for issuing writ for the enforcement of any of the fundamental rights contained in part III of the Constitution but also for any other purpose. Under Article 226 of the constitution of India the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The High Court has imposed upon itself certain restrictions one of which is that if an

effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternate remedy is not to operate as a bar in contingencies, where the petition has been filed for enforcement of any Fundamental Rights, or there is violation of principle of natural justice or where proceedings are wholly without jurisdiction or vires of an Act is challenged.

12. It is pertinent to note that impugned order dated 10.8.2020 was passed by National Green Tribunal and remedy of appeal has been provided for challenging the said order before the Supreme Court under Section 22 of the said National Green Tribunal Act. No exception could be made for entertaining this petition. Grounds urged while assailing the impugned order can be urged before the Appellate Authority. NGT Act 2010 has been enacted to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation damages to persons and property and matters connected therewith or incidental thereto. This Court in the case of Directorate of Mines and Geology and others(supra) observed that despite the exceptions carved out by judicial pronouncements, to which reference was made, the decisions in ***Cicily Kallarackal Vs Vehicle Factory***(supra) or in ***Bhopal Gas Peedith Mahila***

Udyog Sangathan (supra) dos not keep any window open through which an order passed by the National Commission under CP Act or NGT could be suspected to challenge before High Court. In the light of the observations of this Court in decisions referred to herein above, we do not find any reason to entertain this petition.

ORDER

- (i) Writ Petition is dismissed on the ground that petitioner has alternate remedy under section 22 of the National Green Tribunal Act 2010.
- (ii) Petitioner is at liberty to prefer an appeal challenging the impugned order in accordance with Section 22 of the National Green Tribunal Act 2010.
- (iii) Petition stands disposed of.

BHARAT P. DESHPANDE, J.

PRAKASH D. NAIK, J.