

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 196 OF 2023
IN
PUBLIC INTEREST LITIGATION WP NO. 29 OF 2022

The Goa Foundation, Thr. Its Secretary Dr. ... Applicant
Claude Alvares

V e r s u s

State of Goa, Thr. Its Chief Secretary & 5 Ors. ... Respondents.

Ms. Norma alvares, Advocate with Mr. Om D'Costa, Advocate for the Applicant.

Mrs. Sapna Mordekar, Additional Government Advocate for the Respondent nos. 1 and 2.

Mr. S. Mahambrey, Advocate for the Respondent no. 3.

Mr. Parag Rao, Advocate with Mr. Akhil Parrikar and Ms. Linnette Rodrigues, Advocate for the Respondent nos. 4 and 5.

CORAM: M. S. KARNIK &
B. P. DESHPANDE, JJ.
DATE: 7th July, 2023

ORAL ORDER

1. Heard.

2. This is an application for modification of the order dated 07.10.2022 with a prayer to include a direction in respect of limitation.

3. On 07.10.2022, this court disposed of the Public Interest Litigation by passing the following order :

“P.C.:

Permission to delete respondent No.5. Amendment to be carried out forthwith.

2. After this petition was heard for some time, we are of the opinion that the issues which are canvased in this petition are issues which can be effectively agitated before the National Green Tribunal by the petitioner. We accordingly dispose of the petition with liberty to the petitioner to approach the National Green Tribunal.

3. All contentions of the parties are expressly left open.

4. Disposed of accordingly.

5. No costs.”

4. Learned counsel for the applicant-Goa Foundation, Ms. Norma Alvares, for the reasons stated in the application, urged that as there was no specific observation as regards the limitation in respect of the period spent in prosecuting the petition, there is some difficulty faced by the petitioner before the National Green Tribunal (NGT) on the aspect of delay. Hence the application.

5. The application is vehemently opposed by Shri Rao, learned counsel for the respondent nos. 4 and 5. Placing reliance on the decision of the Supreme Court in the case of **Supertech Limited vs. Emerald Court Owner Resident Welfare Association & Ors.**¹, the learned counsel emphasized on paragraph 12 thereon in support of his submissions. Paragraph 12 reads thus :

“12. The hallmark of a judicial pronouncement is its stability and finality. Judicial verdicts are not like sand dunes which

¹ (2021) 10 SCR 569

are subject to the vagaries of wind and weather. A disturbing trend has emerged in this court of repeated applications, styled as Miscellaneous Applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous Applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly ["Quando aliquid prohibetur ex directo, prohibetur et per obliquum"]."

6. Reliance is also placed by learned counsel on the decision of the Supreme Court in the case of **Bhopal Gas Peedith Mahila Udyog Sangathan & ors. vs. Union of India & Ors.**², more particularly paragraphs 40 and 41 in support of his submission that the petitioners were well aware that the subject matter of the Public Interest Litigation petition pertains to the jurisdiction of the NGT and, therefore, the proceedings prosecuted before this court were not bonafide. It is also submitted by Shri Rao that the petitioners have filed several petitions in this court wherein they have been directed to avail the remedy provided under the NGT Act, hence apart from the fact the present application is not maintainable, it is submitted that this application is

² (2012) 8 SCC 326

not bonafide. A grievance is made by Shri Rao that he has not been sufficiently heard in the present application.

7. We are of the opinion that considering the nature of request made, the application deserves to be allowed in the interest of justice. The petitioner had approached this court by way of Public Interest Litigation. This court while disposing of the Public Interest Litigation, was of the opinion that the issues which are canvassed in this petition are issues which can be effectively agitated before the NGT by the petitioner. In this light of the matter, the petition was disposed of with liberty to the petitioner to approach the NGT. All contentions of the parties were expressly left open.

8. Once this court has observed that the issues raised in the petition can be effectively agitated before the NGT by the petitioner, as a result of which the petitioners were directed to approach the NGT, it goes without saying that the petitioners were pursuing the petition bonafide before this court. We are inclined to observe that the period spent in prosecuting the petition was bonafide and the period spent in bonafide prosecuting the present petition needs to be sympathetically considered by the Tribunal while deciding the issue of limitation.

9. Whether the proceedings before the NGT are bonafide or not, is a contention the petitioner can raise before the NGT which can be

considered on its own merits as this court has already left all contentions of the parties open.

10. In our opinion, the observations which we are inclined to make while disposing of the Misc. Civil Application, do not amount to a modification of a judicial pronouncement.

11. The application is disposed of.

B. P. DESHPANDE, J.

M. S. KARNIK, J.

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