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Date: 2024.02.29
10:51:02 +0530**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2834 OF 2024**

Sonvarsha Poultry Farm]
 Address – Gat no.327 Nevari Road,]
 Vita, Tal: Khanapur, Dist. Sangli]
 Through its owner]
 Sachin Abaso Gaikwad.]
 Age:46 Years R/o. Nevari]
 Road, Vita, Tal. Khanapur, Dist. Sangli.]Petitioner.

V/s

1] Sub-Regional Office]
 Maharashtra Pollution Control Board,]
 Sangli.]
]
 2] Regional Office]
 Maharashtra Pollution Control Board,]
 Kolhapur.]
]
 3] State of Maharashtra]
 Through Government Pleader Office,]
 Bombay High Court, Mumbai] Respondents.

Mr. Gaurav Sharma for the Petitioner.

Mr. Jitendra Jagtap for Respondent Nos. 1 and 2-MPCB.

Mr. N.C. Walimbe, Addl. GP a/w Mrs. Priyanka B. Chavan, AGP for the Respondent-State.

**CORAM: A.S. CHANDURKAR &
JITENDRA JAIN, JJ.****DATE: 28TH FEBRUARY, 2024**

ORAL JUDGMENT: (Per A.S. Chandurkar, J.)

1] Rule. Rule made returnable forthwith and heard the learned Counsel for the parties.

2] The Petitioner is aggrieved by the communication dated 22/02/2024 that has been issued by the Regional Officer, Maharashtra Pollution Control Board, Kolhapur. By that communication, the Petitioner has been called upon to stop its manufacturing activity within a period of 72 hours.

3] It is the case of the Petitioner that pursuant to the permission granted by Nagar Parishad, Vita, it has started operating its poultry farm in 2002. On 28/06/2001, consent to establish the said poultry farm was granted by the Maharashtra Pollution Control Board. (for short, MPCB). Pursuant to a complaint received by the MPCB, a joint visit was undertaken on 27/02/2023 and various shortcomings were noticed. A warning notice dated 14/03/2023 was accordingly issued to the Petitioner which was replied to by the Petitioner on 02/04/2023. One of the shortcomings noticed was, failure to obtain prior consent to

operate the poultry farm. According to the Petitioner, on 26/04/2023, it moved an application seeking consent of the MPCB. This application was kept pending and the impugned communication dated 22/02/2024 came to be issued. Being aggrieved, the said communication has been put under challenge. In addition, it is prayed that the Petitioner's application dated 26/04/2023 be directed to be decided.

4] We have heard the learned Counsel for the parties and we have perused the documents on record. Insofar as the communication dated 22/02/2024 issued by MPCB is concerned, the learned Counsel for the MPCB submits that remedy of filing an appeal before the National Green Tribunal (for short, NGT) under Section 33B of the Water (Prevention and Control of Pollution) Act, 1974 read with Section 16 of the National Green Tribunal Act, 2010 is available to the Petitioner. On this ground, he submits that challenge to the order dated 22/02/2024 may not be considered.

We find that the statutory remedy by way of appeal is available to the Petitioner for challenging the said communication dated

22/02/2024. Since the remedy of appeal can be availed of within a period of 30 days, we permit the Petitioner to avail of such remedy within a period of three weeks from today. In case such appeal is filed, the NGT shall decide the same in accordance with law.

5] Insofar as the Petitioner's application seeking consent dated 26/04/2023 is concerned, the learned Counsel for the MPCB submits that the Petitioner has failed to deposit the requisite charges as a result of which the application was not considered. The learned Counsel for the Petitioner submits that the said application would be renewed or a fresh application would be submitted in accordance with the prescribed procedure, seeking consent. The Petitioner is permitted to renew the earlier application dated 26/04/2023 or is free to file a fresh application seeking consent of the MPCB. If such an application is filed, same shall be considered in accordance with the guidelines of the Board.

Since the impugned communication requires the Petitioner to stop the manufacturing activity within a period of 72 hours, we are inclined to protect the Petitioner till such time remedy of appeal is

availed of. Hence, for a period of three weeks from today, the notice dated 22/02/2024 shall not be acted upon. It is clarified that this direction is without going into the merits of the challenge and all contentions of parties are kept open. This direction would be subject to further orders that may be passed by the NGT on the prayers made by the Petitioner.

6] With the aforesaid directions, the writ petition is disposed of. Rule is made absolute accordingly with no order as to costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]