

**Appellants: Goa State Pollution Control Board through its Environmental Engineer Vs.  
Respondent: Balaji Metals represented by Mr. Sanjiv Mathiyan Decided On: 18.08.2009**

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**IN THE HIGH COURT OF BOMBAY AT GOA**

Writ Petition No. 516/2009

Decided On: 18.08.2009

Appellants: **Goa State Pollution Control Board through its Environmental Engineer Vs.**

Respondent: **Balaji Metals represented by Mr. Sanjiv Mathiyan** Decided On: 18.08.2009

**Hon'ble Judges:**

S.B. Deshmukh and U.D. Salvi, JJ.

**Subject: Environment**

**Acts/Rules/Orders:**

Water (Prevention and Control of Pollution) Act, 1974 - Section 4; Indian Partnership Act, 1932; Air (Prevention and Control of Pollution) Act, 1981 - Sections 31(3) and 54; Civil Procedure Code (CPC) - Sections 94 and 151 - Order 39, Rules 1 and 2; Goa Air (Prevention and Control of Pollution) Appeal Rules, 1997 - Rule 4 and 4(2)

**Disposition:**

Petition allowed

**JUDGMENT**

**S.B. Deshmukh, J.**

1. Heard learned Counsel for the respective parties. Rule, returnable forthwith. Mr. Y.V. Nadkarni waives notice for the respondent. The matter is heard finally by consent.

2. By this petition, the petitioner which is a statutory body, constituted by the State Government in pursuance of Section 4 of the Water (Prevention and Control of Pollution) Act, 1974, challenges an order passed by the learned President, Administrative Tribunal, Panaji, Goa dated 13th August, 2009. The respondent is a partnership firm, registered under the provisions of the Indian Partnership Act, 1932. A consent to operate the industry in favour of the respondent-Company, according to the learned Counsel for the respondent, has been renewed by the Goa State Pollution Control Board by its dated 28th May, 2009 under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter, referred to as "the Act 1981" for short). According to the respondent, somewhere on July 31, 2009, inspection of the respondent's unit was conducted by the officials of the Board. The said report allegedly shows gross violations of the conditions contained in the renewed consent order dated 28.5.2009, issued by the Pollution Control Board to the Unit i.e. respondent Company under the Act 1981. It is further contended by the respondent that the Pollution Control Board i.e. the petitioner in this petition, issued directions/order to the respondent to suspend the operations of the unit. The reason assigned by the petitioner Board is the violation of the conditions contained in the consent to operate order dated 28th May, 2009. The respondent was also directed to show cause as to why the consent to operate i.e. order dated May 28, 2009 should not be cancelled/revoked. Thereafter, the respondent, indisputably, filed an appeal against the Order of the Board dated 13th August, 2009 being Pollution Appeal No. 2/09 before the Administrative Tribunal, Panaji Goa. Along with this appeal, an application seeking grant of ex parte stay of the directions/order dated 10th August, 2009 was also filed. The learned Administrative Tribunal, on August 13, 2009, after hearing the Counsel for the respondent Company, passed an order staying the operation of the directions/Order dated August 10, 2009. It is against this order of the learned Tribunal dated 13th August, 2009, the petitioner Board has filed the present petition. It appears that the petition was filed on 17th August, 2009 on account of intervening 2 holidays i.e. 15th August, Independence Day and the Sunday respectively, the matter was mentioned, circulation was granted and that is how today, we are hearing the petition.

3. We are considering the petition, at this stage finally, taking into account the nature and seriousness of the issue involved in this petition. We have considered the order passed by the learned Administrative Tribunal dated 13th August, 2009. After hearing the learned Counsel for the parties and taking into account the factual position that after quashing of the order passed by the learned Administrative Tribunal dated 13.8.2009, the issue would be examined by the petitioner Board, by giving opportunity of being heard, to the respondent Company. We are not entering into merits of the issue and recording any opinion. We are, at this stage, inclined to quash and set aside the order passed by the learned Administrative Tribunal dated 13.8.09, principally, for deciding issue on merits and/or by a reasoned order, by the Petitioner Board, which has called upon the respondent company to show cause. If the matter is simply

remanded to the Administrative Tribunal, in our view, it would not be expedient and in the interest of justice qua the parties and the citizens who, in fact, are not parties to these proceedings, but whose existence and rights we cannot forget. In our view, therefore, the issue needs to be resolved by the competent Authority i.e. the Goa State Pollution Control Board, in view of the issuance of the show cause notice to the respondent.

4. The grant of an ex parte order by the authority concerned has got its own importance, considering the powers conferred upon the authority concerned and/or Court seizing with and dealing with an issue. Grant of a temporary injunction and/or interlocutory order, in fact, is a matter governed by Order 39, Rules 1 and 2 of the Code of Civil Procedure. Such power also can be traced to Sections 94 and 151 of the Code of Civil Procedure. Triple test contemplated under Order 39, Rules 1 and 2 of the Code of Civil Procedure, bears importance on the issue. Apart from this, while considering the provisions of the Act 1981 and some other such Acts promulgated either by the Central Government i.e. the Union of India or the State Governments, public interest also needs to be kept in mind. It is a balancing act while considering the competitive interest of the litigants before the Court and public. In our view, the Tribunal, while passing the order on 13th August, 2009 could have given an opportunity of being heard to the petitioner Board.

5. At this stage, learned Counsel appearing for the petitioner Board points out to us the Rules framed by the State of Goa, titled as the Air (Prevention and Control of Pollution) Appeal Rules, 1997. Official Gazette, copies of which are made available to us and served 6 to the Counsel appearing for the respondent, is considered by us. In exercise of the powers conferred by Section 54, read with Sub-section (3) of Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 and in consultation with the Goa State Pollution Control Board, the Government of Goa seems to have made the rules called the Goa Air (Prevention and Control of Pollution) Appeal Rules, 1997. Rule 4 lays down the procedure to be followed by the appellate authority in dealing with and disposal of the appeal. Sub-rule (2) is also pointed out to us. There are two provisos to this Sub-rule (2) of Rule 4. Second proviso is material, which provides that the appellate authority shall not stay the execution of the order appealed against, without affording the State Board, a reasonable opportunity of being heard in the matter.

6. Learned Counsel for the respondent, at this stage, submitted that this Court may not enter into this issue, as it may result in citing precedent in such other matters before the learned Administrative Tribunal. In the foregoing paragraphs, we have made it clear that we are not entering into merits of the matter and/or issue which is to be decided by the competent authority of the petitioner Board by a reasoned order. By parting from this part of the order, in our opinion, the Tribunal concerned, while passing the ex parte order ought to have resorted to the procedure laid down under Rule 4 and/or ought to have afforded opportunity of being

heard to the petitioner Board. In our view, the impugned order in this writ petition, passed by the learned Administrative Tribunal dated 13.8.2009, needs to be quashed and set aside. The show cause notice, issued by the petitioner Board, needs to be replied by the respondent Company and the Board and/or competent authority of the Board shall pass a reasoned order, after giving opportunity of being heard to the respondent Company.

7. The order impugned in this petition, we are inclined to quash and set aside. We are further inclined to remand the case to the competent authority of the petitioner Board for disposal of the show cause notice served to the respondent Company, in accordance with law. The Counsel appearing for the respondent Company, on instructions, makes a statement that the representative of the respondent shall remain present before the competent authority of the Board on 20th August, 2009 at 11.00 a.m. The respondent is permitted to file reply before the competent authority of the Board on 20th August, 2009. The competent authority of the Board shall, thereafter, hear the respondent and dispose of the show cause notice by a reasoned order. In case the order passed is adverse to the respondent, we are inclined to grant protection in favour of the respondent company for a period of one week from the date of service of such order to the respondent.

8. Petition allowed and disposed of. Rule is made absolute in the above terms, with no order as to costs. Meanwhile, till disposal of the show cause notice and service of such order to the respondent, as also the protection of one week, the interim decision issued by the Board in respect suspension of the operation of the unit and disconnection of the electric supply to the respondent Company, shall be kept in abeyance. An authenticated copies of this order are permitted to the parties, on demand and as per usual procedure.