

M S Prestige Holiday Resorts Llp vs Goa State Pollution Control Board on 30 September, 2021

Item No.10

(Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
(By Video Conferencing)

I.A. No. 79/2021(WZ)
in
Appeal No. 24/2021 (WZ)
I.A No. 63/2021(WZ)

M/s Prestige Holiday Resort

Appellant

Versus

Goa PCB

Respondent(s)

Date of hearing: 30.09.2021

CORAM: HON'BLE MR. JUSTICE M. SATHYANARAYANAN, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

Appellant : Mr. A. D. Bhole, Advocate

Respondent : Mr. Pavithran A.V., Advocate for R-1

ORDER

I.A. No. 79/2021 (WZ)

1. Heard the submissions of the learned counsel appearing for the Applicant who is also the Appellant as well as learned standing counsel appearing for the sole Respondent, who has brought to the knowledge of the Tribunal, the order of interim direction dated 28.09.2021 passed in Suo Motu Writ Petition No. 02 of 2007 (Petitioner V/s State of Goa through Chief Secretary & Ors.).
2. The learned counsel appearing for the Appellant would submit that the impugned order which is a subject matter of challenge, is perse unsustainable and, in the light of subsistence of the said order, the Appellant is unable to carry on the business activities and prays for early hearing of the matter.
3. The learned standing counsel appearing for the sole Respondent prays for final opportunity to put forth his response in the form of reply affidavit with supporting documents, if any.

4. The learned counsel appearing for the Appellant would submit that the alleged default is only for a period of 10 days and the impugned order, levying the environmental compensation is unsustainable in Law and in the light of the threat to close down the operations, by Respondent No. 1, prays for early hearing of the matter.

5. Per contra, the learned standing counsel appearing for the sole Respondent has drawn the attention of the Tribunal to the order dated 26.08.2021 and would submit that in compliance of the order, further proceedings would follow and prays for final opportunity to file their response before the next date of hearing.

6. The main Appeal is preferred against the directions issued by sole Respondent dated 12.03.2021 under Section 33(A) of the Water (Prevention and Control of Pollution) Act, 1974.

7. The learned counsel appearing for the Applicant in I.A. No. 79/2021 (WZ)/Appellant in Appeal No. 24/2021 and would submit that as on date, the hotel is in operation and they got all required consent etc. and since impugned order is a subject matter of challenge, has not been stayed, 1st Respondent may at any time close operations of the hotel and with great difficulty, the hotel is running after the lifting of lockdown measures put in place, by the Government of Goa and Disaster Management Act.

8. The learned counsel appearing for the Interlocutory Applicant/Appellant has also invited the attention of the Tribunal to the operative portion of the impugned order passed by the sole Respondent and would submit that though environmental compensation has been assessed @ sum of Rs. 10,10,000 /- (Rupees Ten Lakhs Ten Thousand), the details of arriving the said amount has not at all been indicated and hence prays for appropriate orders .

9. Per contra, the learned standing counsel appearing for the sole Respondent has invited the attention of the Tribunal to the order of interim direction dated 28.09.2021 passed in Suo Motu Writ Petition No. 02 of 2007 (Petitioner V/s State of Goa through Chief Secretary & Ors.) and would submit that in the light of the submission made on behalf of the Goa State Pollution Control Board (GSPCB), the Hon'ble High Court of Bombay at Goa Bench had observed that in the absence of any interim orders by NGT, they are surprised to know that all the hotels continued their operation till date and hence, in the light of the said observation/direction, the 1st Respondent proceeding further in accordance with law.

10. The Tribunal paid it's best attention to the the rival submissions and also perused the materials placed on record. There is a formula available for assessment of environmental compensation i.e. "EC= P1 x N x R x S x L-F"

E.C.- Environmental Compensation in Rs. P1 - Population Index of industrial factor
N - Number of days violation took place R - Factor in Rs. for E.C. S - Factor for scale
of operation L - Location factor.

11. A perusal of the impugned order would prima facie disclose that the said formula have not been applied before assessing the environmental compensation of Rs. 10,10,000 /- (Rupees Ten Lakhs Ten Thousand)

12. At this juncture, the learned standing counsel appearing for the sole Respondent also prays for short accommodation to file the response as to how the said calculation, has been done and he is at liberty to do so by filing the reply affidavit.

13. A perusal of the impugned order, it prima facie disclose that the said formula, has not been followed while assessing the environmental compensation.

14. In the light of the above facts and circumstances, the Tribunal is of the considered view a prima facie has been made for grant of interim order; otherwise the hotel which is in operation, is likely to be closed down. The balance of convenience as on date, lies in favour of the Applicant/Appellant.

15. In the result, there shall be an order of ad interim stay of the impugned order of the Respondent dated 12.03.2021, subject to the condition that the Appellant without prejudice to their rights, shall deposit a sum of Rs. 07 lakhs (Rupees Seven Lakhs only) to the credit of the Respondent on or before 08.10.2021, failing which, the interim order would stand automatically without further consideration of the Tribunal.

16. Call on 08.10.2021. Reply affidavit of Respondent No. 1 with supporting documents, if any, be filed before the next date of hearing.

A copy of this order be communicated to the Respondent by e-mail for compliance.

M. Sathyanarayanan, JM Dr.Arun Kumar Verma, EM September 30, 2021 I.A. No. 79/2021(WZ) in Appeal No. 24/2021 [I.A No. 63/2021(WZ)] P.kr