

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

**Misc. Application No.09/2023(WZ)
I.A. No.171/2023(WZ)
In
Original Application No.78/2020 (WZ)
(Disposed of on 06-04-2023)**

Vinod Kashinath Patkar & Ors.

.....Applicant(s)

Versus

Nilesh Suresh Chavan & Ors.

....Respondent(s)

WITH

**I.A. No.166/2023(WZ)
In
Original Application No.102/2023(WZ)
I.A. No.170/2023(WZ)**

Ashish Prafull Bhopatrao

.....Applicant(s)

Versus

The State of Maharashtra & Ors.

....Respondent(s)

WITH

**Original Application No.103/2023(WZ)
I.A. No.169/2023(WZ)**

Monish Nandkumar Ambavane

.....Applicant(s)

Versus

The State of Maharashtra & Ors.

....Respondent(s)

Date of hearing: 10.10.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

M.A. No.09/2023(WZ)

Applicant(s) : Mr. Ashutosh R. Gole, Advocate along-with
Mr. Sandeep S. Patil, Advocate and
Mr. Deepak Kumbhar, Advocate

Respondent(s) : Mr. Darpan h/f Mr. Rakesh Agrawal, Advocate for R-1
Ms. Manisha Patil, Law Officer, for R-6
Mr. D.M. Gupte, Advocate for R-9/Forest Deptt.

O.A. No.102/2023(WZ)

Applicant(s) : Mr. Ashutosh R. Gole, Advocate along-with
Mr. Sandeep S. Patil, Advocate and
Mr. Deepak Kumbhar, Advocate

Respondent(s) : Ms. Manisha Patil, Law Officer, for R-5
Mr. D.M. Gupte, Advocate for R-8/Forest Deptt.

O.A. No.103/2023(WZ)

Applicant(s) : Mr. Ashutosh R. Gole, Advocate along-with
Mr. Sandeep S. Patil, Advocate and
Mr. Deepak Kumbhar, Advocate

Respondent(s) : Mr. D.M. Gupte, Advocate for R-3/Forest Deptt.
Ms. Manisha Patil, Law Officer, for R-5

ORDER

Misc. Application No.09/2023(WZ)

1. This application has been filed with the prayer that order dated 06.04.2023 passed by this Tribunal in Original Application No.78/2020(WZ) be set aside and proceedings of the said Original Application be restored and an opportunity of hearing be given to the applicants.

2. In the body of this application, it is submitted that the applicants are traders of the firecrackers in the Villages of Wada, Desai & Balivali and other surrounding Villages, who were granted licenses to carry out their business in accordance with the provisions of Explosives Act, 1884 and explosives Rules, 2008. They were carrying on their business of storage and sale of firecrackers from small shops and were involved in this business since many years. No incident of hazard has ever been reported in their premises. Their licenses were renewed from time to time. The last renewal was to run up to 31.03.2023. The original applicant (respondent No.1) was pressurising some of the applicants for money and when they did not accede to the demands made by the original applicant,

he initiated the proceedings of Original Application No.78/2020(WZ), in order to obstruct the business of the applicants.

3. It is further mentioned in this application that original applicant had filed a Public Interest Litigation No.61 of 2020 before the Hon'ble Bombay High Court, which was dismissed by order dated 15.10.2020 on the ground of maintainability, a copy of which has not been produced by the original applicant with the above-mentioned original application. On 22.11.2022, one of the applicants was shocked, when he received an order passed by the District Magistrate, revoking the licenses granted under the provisions of articles 5 (a) to (f) of Part I of Schedule IV and article 83 of Part I of Schedule VII of the Explosives Rules, 2008, for storage and sale of the firecrackers. Upon making enquiries, the applicants came to know that Original Application No.78/2020 was filed before this Tribunal, in which an order dated 06.11.2020 was passed, by which this Tribunal had asked the District Magistrate to file an action taken report to prevent any illegal activity, if the allegations of the applicant were found to be factually correct. The matter was thereafter listed on 03.11.2022, on which date, this Tribunal recorded the contentions of the original applicant/respondent No.1 that storage and sale of firecrackers was prohibited by the draft notification dated 10.08.2017 in eco-sensitive zone surrounding Tansa Wildlife Sanctuary. The matter was thereafter listed on few dates and ultimately, it was listed on 06.04.2023, when the Tribunal was informed by the District Magistrate that as per the fresh report of the Dy. Conservator of Forests, two Villages i.e. Wada and Desai were included in the eco-sensitive zone.

4. It is further mentioned in this application that pursuant to the statement of the Addl. District Magistrate that he would take action against those persons possessing the fireworks illegally, the Original

Application No.78/2020 was disposed of with the direction to the Addl. D.M. to submit a report regarding action taken against the shop-keepers illegally possessing fireworks, a copy of the said order is annexed as Exhibit- A. Accordingly, the District Magistrate, by two orders dated 12.04.2023 cancelled about 10 licenses granted to the applicants and others, which are annexed as Exhibit-E. After receiving the order dated 22.12.2022, the applicant No.5 was contemplating filing of an appeal under the provisions of Explosives Act for challenging the said order. Thereafter, a Writ Petition was also prepared for filing before the Hon'ble Bombay High Court and then he again consulted advocates for deciding the correct legal remedy available. After considering all legal aspects of a challenge to the action and remedies available to him, it was decided to approach this Tribunal. The applicants did not have copies of all documents of the matter before this Tribunal. In the meantime, they came to know that the Original Application itself was disposed of on 06.04.2023 and licenses of the other applicants were also similarly cancelled by order dated 12.04.2023. The applicants were never heard by the District Magistrate before passing of the aforesaid orders, cancelling the licenses. The applicants were unaware of the pendency of the proceedings before this Tribunal nor were they heard by this Tribunal before disposing of the Original Application No.78/2020, after accepting the statement of the District Magistrate. The order dated 06.04.2023, which has been passed by this Tribunal, has resulted in cancellation of licenses of the applicants and without there being given an opportunity of being heard.

5. Besides the above, in page nos.25 to 44 of the paper book, merit of this case appears to have been touched by the applicants, which is not being taken into consideration at this stage. We are confining only to the

extent, as to whether the applicants were given opportunity of hearing at the time when the final order dated 06.04.2023 was passed by us, particularly, when they were made as respondents in Original Application No.78/2020(WZ) as it is evident from the pleadings that the applicant Nos.1 to 5 herein are respondents in the said Original Application bearing numbers 12, 13, 14, 16 & 18 respectively. Therefore, it was bounden duty of this Tribunal to pass final order dated 06.04.2023 only after giving opportunity of hearing to the said respondents as well.

6. From perusal of the order sheet dated 06.11.2020 in Original Application No.78/2020(WZ), we find that on the very first day of hearing, following order was passed:-

“According to the applicant, the area in question being an eco-sensitive zone of the Tansa Wildlife Sanctuary, firecrackers cannot be stocked therein. In violation of law, firecrackers are being stocked by respondent nos. 12 to 21 and no action is being taken by the concerned statutory authority. Action is to be taken by the District Magistrate, Palghar. Representative of the District Magistrate, Palghar is present and seeks time to give response. Let such response be filed before the next date along-with report of action taken to prevent any illegal activity, if the allegation of the applicant is found to be factually correct. District Forest Officer (DFO) of the area may also be associated by the District Magistrate in the process. It is made clear that at this stage it is not necessary for any other respondents to enter appearance.”

7. Thereafter, we find that no order was passed by this Tribunal directing the Registry to issue notice to the respondent Nos.12, 13, 14, 16 & 18, who are applicant Nos.1 to 5 in the present matter before us. Therefore, it is apparent from record that before passing the final order dated 06.04.2023, the applicants were not issued notices to file their reply affidavits and the said order dated 06.04.2023 was passed.

8. We had directed the notices to be issued to all the respondents in the present M.A., who have been served but only from the side of respondent No.1 (Original Applicant)/Shri Nilesh Suresh Chavan, learned counsel Mr. Darpan holding brief of learned counsel Mr. Rakesh Agrawal

has appeared; from the side of respondent No.6/The District Magistrate and Collector, District: Palghar, Ms. Manisha Patil, Law Officer has appeared, who has filed an objection dated 20.09.2023; and from the side of respondent No.9/The Deputy Conservator of Forest- Jawhar, learned counsel Mr. D.M. Gupte has appeared, who apprised us that he has no objection to the present application being allowed and that he will put his argument only on the merits, if the matter is restored.

9. From the side of respondent No.1, an e-mail dated 09.10.2023 has been received by us seeking adjournment of the matter on the ground that respondent No.1 has challenged this Tribunal's order dated 21.09.2023 before the Hon'ble High Court of Bombay, by which the delay in filing the present application has been condoned and that this Tribunal should not hear the present matter any further till the said *Writ Petition (L) No.26718 of 2023* is disposed of, in view of the law laid down in the matter of *Kishore Rajput vs. Preeti Rajput reported in [2007 3 BCR 279]*, where-in the Hon'ble Bombay High Court in para no.8 stated that "when this Court seized of the matter, it is expected of the subordinate courts to stay their hands away". We do not find a copy of the said Writ Petition annexed with this application. It is further mentioned that this matter is likely to be taken up on 16.10.2023, therefore, hearing of the present matter should be adjourned.

10. We are not convinced with the prayer made in the said application by the learned Counsel for respondent No.1 because there is no order as on date passed by the Hon'ble High Court staying us from any further hearing in the present matter. We are proceeding to hear the matter only, which requires permission to be granted to the applicants to restore the Original Application No.78/2020(WZ) as against them because they were not given an opportunity of hearing at the time when the order dated

06.04.2023 was passed, by which they have stated to have been adversely impacted as their licenses have been cancelled by the District Collector without being given opportunity of hearing.

11. Irrespective of the matter whether we hold the same opinion still after hearing the applicants, which has been held by us earlier in our order dated 06.04.2023, there appears a clear breach of the principle of natural justice on our part in not issuing notice to the applicants/respondent Nos.12, 13, 14, 16 & 18 in Original Application, who were required to be issued notices before passing the said order.

12. The District Collector has also filed objection, in which most of the averments, which are made, are touching merits of the main matter because it has been stated that even if the order dated 06.04.2023 is recalled, it will serve no purpose because the respondent No.6 has already taken action to cancel the fireworks shop licenses in exercise of powers under Section 118(5) of the Explosives Act, 2008 and submitted the report dated 21.04.2023 to this Tribunal, which was based on the report from the office of Dy. Conservator of Forest, Jawhar. It is further mentioned that the applicants got knowledge of the action taken by the respondent No.6 way back on 22.11.2022, therefore, merely because service was not effectuated upon them, on that basis solely, the impugned order dated 06.04.2023 cannot be interfered with.

13. We are not in agreement with the view point expressed by the respondent No.6 because we are of the opinion that whatever order was passed on merit by us, is a different matter but it is absolutely clear that we did not issue any notice to the applicants prior to passing of the order dated 06.04.2023 finally disposing of the application, which according to the applicants has resulted in having adverse impact on them.

14. Accordingly, we hold that the order dated 06.04.2023 would not be treated to have been passed against the applicants and accordingly, it stands set aside as against them. Accordingly, we allow this application i.e. M.A. No.09/2023(WZ) and direct the Registry to restore the Original Application No.78/2020(WZ).

M.A. No.09/2023(WZ) stands disposed of accordingly.

15. Look to the urgency of the matter, we direct the Registry to place O.A. No.78/2020(WZ) for disposal on merits on 17.10.2023.

16. Reply affidavits, if any, may be filed from the side of respondents in the main matter within a period of two days with the direction that a copy of the same shall be served upon the learned counsel for applicants and other parties/counsels, who may file rejoinder against the same, if any, within two days thereafter.

O.A. No.102/2023(WZ) & O.A. No.103/2023(WZ)

17. The learned counsel for applicants prays that these two matters may be taken up together along-with Original Application No.78/2020(WZ) for hearing on 17.10.2023, we allow his prayer and direct the Registry to list these matters along-with Original Application No.78/2020(WZ) on the next date fixed.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

October 10, 2023
Misc. Application No.09/2023(WZ)
I.A. No.171/2023(WZ) In
Original Application No.78/2020 (WZ)
(Disposed of on 06-04-2023)
with other connected matters
P.Kr