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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3745 OF 2018

M/s. Ghule & Bhapkar Stone Crushers ... Petitioner
Versus
The Maharashtra Pollution Control Board and ... Respondents
Ors.

WRIT PETITION NO. 3746 OF 2018

M/s. Mauli Stone Crusher ... Petitioner
Versus
The Maharashtra Pollution Control Board and ... Respondents
Ors.

WRIT PETITION NO. 3747 OF 2018

Chetan D. Sasane Proprietor of M/s. Shree ... Petitioner
Devram Stone Crusher
Versus
The Maharashtra Pollution Control Board and ... Respondents
Ors.

WRIT PETITION NO. 3748 OF 2018

M/s. Shree Gurudatta Stone Crusher ... Petitioner
Versus
The Maharashtra Pollution Control Board and ... Respondents
Ors.

WRIT PETITION NO. 3749 OF 2018

M/s. Motilal Dhoot Sand and Stone Private ... Petitioner
Ltd.
Versus
The Maharashtra Pollution Control Board and ... Respondents
Ors.

WRIT PETITION NO. 3750 OF 2018

Pramod Kanade Proprietor of M/s. Shri Sai ... Petitioner
Stone Crusher

Versus

The Maharashtra Pollution Control Board and ... Respondents
Ors.

WRIT PETITION NO. 3751 OF 2018

M/s. Yashraj Stone Metal ... Petitioner

Versus

The Maharashtra Pollution Control Board and ... Respondents
Ors.

WRIT PETITION NO. 3752 OF 2018

M/s. Shree Balaji Stone Crusher ... Petitioner

Versus

The Maharashtra Pollution Control Board and ... Respondents
Ors.

WRIT PETITION NO. 3753 OF 2018

Vipul Vishnu Thakker the Proprietor of M/s. ... Petitioner
Prisha Stone

Versus

The Maharashtra Pollution Control Board and ... Respondents
Ors.

WRIT PETITION NO. 3754 OF 2018

Deepak K. Vig, the Proprietor of M/s. Shri ... Petitioner
Vigsons Aggregates

Versus

The Maharashtra Pollution Control Board and ... Respondents
Ors.

Dr. Milind Sathe, Senior Advocate, with Mr. Bhushan Deshmukh,
i/b Ms. Kanchan S. Chindarkar, for the Petitioners.
Ms. Rekha Panchal, for the Respondent No.1.
Mrs. R.A. Salunkhe, AGP for the Respondent Nos. 2 and 3.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 27TH APRIL 2018.

PC:-

1. On 27th March, 2018, this Court passed an order directing that these Petitions will be disposed of finally at the stage of admission. Accordingly, today we have taken up these Petitions for final disposal.
2. There is no dispute that the facts of all these Petitions are more or less similar and therefore, we are making a reference only to the facts of the Writ Petition No. 3745 of 2018. The main challenge in this Petition under Article 226 of the Constitution of India is to the order of the Appellate Authority dated 16th December, 2017. The Appellate Authority has been constituted under the provisions of Water (Prevention and Control of Pollution) Act, 1974 (for short “the Water Act”) and Air (Prevention and Control of Pollution) Act, 1981 (for short “the Air Act”).
3. The Petitioner in this Writ Petition preferred an Appeal before Appellate Authority being aggrieved by a notice dated 27th December, 2016 issued by the Respondent No.1, both under the provisions of Water Act and Air Act by which the Petitioner was directed to stop a manufacturing activities forthwith.

4. In the impugned order, in clause (d) of paragraph 9 the Appellate Authority observed thus :

d. "Authority also noted that, the matter is subjudice before the Hon'ble NGT, WZ, Pune. The Appellate Authority therefore, decided not to give restart order till final decision of the Hon'ble NGT, WZ, Pune in Application No. 179 of 2015".

(Underline supplied)

5. The submission of the learned counsel appearing for the Petitioners is that in fact on merits, the Appellate Authority has accepted most of the contentions of the Petitioners but the Appeal was not decided on merits only in view of the pendency of Application No. 179 of 2015 before National Green Tribunal, West Zonal Bench at Pune (for short "NGT"). He submitted that in fact NGT had clarified that the Appeal could be disposed of on merits. The learned counsel appearing for the Respondent No.1 as well as the learned AGP appearing for the Respondent No.2 supported the impugned order and submitted that no interference is called for.

6. We have carefully perused the impugned order of the Appellate Authority. In paragraph 9 of the order of the Appellate Authority, it is observed that before issuing closure direction, the Respondent No.1 ought to have extended an opportunity of personal hearing to the Petitioner but that was not done.

Thereafter in clauses (a), (b) and (c), certain conclusions have been recorded by the Appellate Authority. Ultimately in clause (d) which is the concluding part of the impugned order, it is merely observed that restart orders cannot be issued till the final disposal of the application No. 179 of 2015 by NGT. We may note here that it is not the finding recorded in the impugned judgment and order that there is any prohibitory order passed by NGT, which prevents the Appellate Authority from passing appropriate order in exercise of its Appellate jurisdiction. Our attention is invited firstly to the order dated 9th February, 2017 passed by NGT, Western Zonal, Pune on applications taken out by the Petitioners in Application No. 179 of 2015. The NGT in the said order has specifically dealt with the apprehension expressed that the appeals will not be considered by the Appellate Authority. The NGT proceeded to clarify that the Appeals preferred by the stone crushers may be considered on merits by the Appellate Authority in each case and in accordance with law. Secondly, by the order dated 15th November, 2017, in earlier Writ Petitions filed by the present Petitioners, the first Court directed the Appellate Authority to decide the Appeals within a period of four weeks from the date of the said order. Therefore, there was no impediment in the way of the Appellate Authority in deciding the Appeals on merits.

7. The aforesaid order dated 15th November, 2017 recorded the statement of the learned senior counsel appearing for the Petitioners that the Petitioners have already closed down their units. The learned senior counsel appearing for the Petitioners states that said statement stands and that Petitioners have closed down their units and are not carrying out any crushing activities. We accept the said statement. Only in the light of the said statement made before the first Court and considering the fact that there is a plantation at the site, a limited protection granted by the first Court regarding the disconnection of water and electricity supply deserves to continue.

8. As we find that the Appellate Authority by the impugned judgment and order has not decided the Appeal on merits only on the ground of pendency of proceedings before NGT, we have no option but to send back the Appeals for rehearing. In our view, the Appeals ought not to have been disposed of without passing order on merits only on the ground of the pendency of the Application before the NGT especially when there is a direction of the first Court to the Appellate Authority to decide the Appeals in accordance with law.

9. Accordingly, we pass the following order:-

- a) The impugned orders of the Appellate Authority which are subject matter of challenge in these Petitions are hereby quashed and set aside and the Appeals preferred by the Petitioners are restored to the file of the Appellate Authority;
- b) We direct the Petitioners and the Respondent No.1 to appear before Appellate Authority on 25th May, 2018 at 11.00 a.m. only for the purposes of fixing the schedule of hearing;
- c) The Appellate Authority shall decide the Appeals as expeditiously as possible and in any event within a period of two months from the date fixed for appearance of the parties;
- d) We accept the statement made by the learned counsel appearing for the Petitioners that Petitioners have closed their business. It is obvious that unless the order of closure is set aside, they shall not re-commence their business;
- e) The ad-interim relief granted by this Court on 27th March, 2018 will continue to operate till the date of communication of the final orders passed by the Appellate Authority to the Petitioners. If the orders of the Appellate Authority are adverse to the Petitioners, the same ad-interim relief will

continue to operate for a period of one month from the date on which the orders of the Appellate Authority are served to the Petitioners;

f) All contentions on merits of the restored appeals are kept open;

g) The Petitions are disposed of in the above terms.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)