

Chief Justice's Court

Case :- WRIT - C No. - 21979 of 2023

Petitioner :- M/S Hotel The Grand Tulsi And 15 Others

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Ami Tandon, Sr. Advocate

Counsel for Respondent :- C.S.C., Anand Ji Mishra, Mahima Jaiswal, Sandeep Kumar Srivastava, Suresh Singh, Vimlesh Kumar Rai

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. Heard Shri Anoop Trivedi, learned Senior Advocate assisted by Shri Ami Tandon, learned counsel for the petitioners, Shri Ishan Mehta, learned Standing Counsel for the State-respondents, Shri Sambhu Chopra, learned Senior Advocate assisted by Ms. Mahima Jaiswal, learned counsel for respondent No. 2, Shri Vimlesh Kumar Rai, learned counsel for respondent No. 5 and Shri Sandeep Kumar Srivastava, learned counsel for respondent No. 3.

2. The writ petition has been filed for quashing the order dated 17.10.2022 as corrected on 24.4.2023 passed by the National Green Tribunal (NGT), Principal Bench, New Delhi in Original Application No. 438 of 2018 (Arti versus Central Ground Water Authority & others) in so far as it pertains to the imposition of Environmental Compensation (EC) upon each of the petitioners. A prayer to quash the demand notices dated 31.5.2023 issued to the petitioners No. 1 to 15 and Notice dated 14.6.2023 issued to the petitioner No. 16 by the Regional Officer, U.P. Pollution Control Board (UPPCB), Regional Office, Jhansi has been sought. A writ of mandamus commanding the respondent Nos. 1 to 7 not to levy/realize any Environmental Compensation (EC) from the

petitioners and undertake the impact assessment on ground water as per the Uttar Pradesh Ground Water (Management and Regulation) Act, 2019 due to the conduct of activities/business of the petitioners herein and to determine the Environmental Compensation (EC)/compounding fee if any has also been prayed for.

3. Under the order dated 17.10.2022 corrected on 24.4.2023 passed in Original Application No. 438 of 2018, the NGT has directed the Central Ground Water Authority (CGWA)/respondent No. 4 for determination of Environmental Compensation (EC) in accordance with the 2020 Guidelines as well as drawing criminal proceedings against concerned establishment including the petitioners herein. By the impugned Notices dated 31.5.2023, the petitioners No. 1 to 15 have been called upon to deposit a sum of Rs.10 lacs while by notice dated 14.6.2023 the petitioner No. 16 has been asked to deposit Rs. 25 lacs as interim Environmental Compensation.

4. The impugned order of the NGT and the consequent demand notices are being assailed by the petitioners primarily on the ground that the NGT has passed the order without any notice or opportunity of hearing being provided to the petitioners and as such, the order and the demand notices issued are in complete violation of the principles of natural justice and are liable to be set aside. It is contended on behalf of the petitioners that they were never made party to the proceedings before the NGT. No notice was served upon them either by the applicant of Original Application No. 438 of 2018 or by the NGT or by the District Magistrate, Jhansi. It is also contended that the order of the NGT is liable to be set aside on the ground that it does not consider Para 1.0 of the 2020 Guidelines pertaining to exemptions from seeking No Objection Certificates nor the Notification dated 2.3.2021 issued by the State Government in exercise of powers under Section 51 of the 2019 Act

exempting micro and small enterprises from obtaining NOCs which extract ground water to the extent of 10,000 liters per day or 3,00,000 liters of water per month.

5. Shri Ishan Mehta, learned Standing Counsel appearing for the State-respondents, in opposition to the writ petition, submits that the petitioners are essentially aggrieved by the order of the NGT which is appealable under Section 22 of the NGT Act and as such, the writ petition is not liable to be entertained in the wake of availability of an effective alternative remedy to the petitioners. He submits that the challenge to the order and consequential demand can be better addressed in appeal before the Apex Court.

6. Shri Anoop Trivedi, learned Senior Counsel refuting the submissions of Shri Mehta submits that the power of judicial review under Article 226 of the Constitution of India being part of the basic structure of the constitution is inviolable. He further goes on to submit that though an Appellate Forum is provided against the decision of the NGT under Section 22 of the NGT Act, the power of judicial review of the High Court under Article 226, 227 of the Constitution of India is not ousted and remains intact and unaffected. It has been argued that the High Courts have been entertaining petitions under Article 226 and 227 of the Constitution of India against the orders of the NGT in terms of the ratio of decision of the Apex Court in **L. Chandra Kumar vs. Union of India** reported in **1997 (3) SCC 261**.

7. Reliance is also placed upon a recent decision of the Apex Court rendered in the case of **Madhya Pradesh High Court Advocates Bar Association and another vs. Union of India & another** reported in **2022 (15) SCR 299** to buttress the point that the Apex Court while dealing with a specific issue raised before it to the effect as to whether the NGT ousts the High Court's jurisdiction under Section 14 and 22 of the NGT Act held that nothing

contained in the NGT Act either impliedly or explicitly ousts the jurisdiction of the High Courts under Article 226 and 227 and the power of judicial review remains intact and unaffected by the NGT Act. The prerogative of writ jurisdiction of the High Court is neither taken away nor it can be ousted as it is the basic structure of the Constitution. The High Courts exercise their discretion in tandem with the law depending on the facts of each particular case. It is thus submitted that the writ petition as framed is maintainable for the reliefs prayed for and the same is liable to be allowed.

8. We have heard the learned counsel for the parties and have perused the record as also the case laws cited at the Bar.

9. Undisputedly, Section 22 of the NGT Act, 2010 provides for an Appeal to the Apex Court against the order passed by the Tribunal. The Apex Court in the case of ***Madhya Pradesh High Court Advocates Bar Association & Another (Supra)*** has clearly laid down that the power of judicial review of the High Courts under Article 226 and 227 of the Constitution of India is not ousted by Section 22 of the NGT Act and remains unaffected. This proposition is in consonance with the ratio laid down by the seven Judges Bench in the Case of ***L. Chandra Kumar (supra)***. It is, however, not out of place to mention here that while a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising the jurisdiction in certain contingencies. The Apex Court in its decision dated 24.09.2021 passed in the case of ***Magadh Sugar and Energy Ltd. Vs. State of Bihar and others*** reported in ***2021 SCC Online SC 801*** after considering various judgments has summarized the principles governing the exercise of writ jurisdiction by the High Courts in the presence of an alternate remedy as under :

"25. While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by this Court in *Whirpool Corporation v. Registrar of Trademarks, Mumbai, (1998) 8 SCC 1* and *Harbanslal Sahni v. Indian Oil Corporation Ltd, (2003) 2 SCC 107*. Recently, in *Radha Krishan Industries v. State of Himachal Pradesh & Ors, (2021) SCC OnLine SC 334*, a two judge Bench of this Court of which one of us was a part of (Justice DY Chandrachud) has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. This Court has observed:

"28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where;

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice;

(c) the order or proceedings are wholly without jurisdiction; or

(d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

(emphasis supplied)"

10. Thus, in our opinion considering the ratio of the decisions of the Apex Court particularly, the ratio laid down in the case of ***Madhya Pradesh High Court Advocates Bar Association and another (supra)*** there can be no second thoughts about the maintainability of the instant writ petition. The writ petition is held maintainable.

11. However, from the order of the NGT, Principal Bench, New Delhi, impugned in the instant writ petition, we find that the NGT has taken into consideration the circumstances in respect to the affected parties who were not issued notices by the Forum as is the case of the writ petitioner before us. The relevant portion of the order of NGT is being quoted here under:-

"32. Though opportunity of hearing was available to all the affected parties as they have been issued notices by PCB/DMs about present proceedings and will also have opportunity to present their respective cases before the Joint Committee, any party aggrieved by the above order; who claims that opportunity of being heard was not given by the Tribunal, is free to avail such opportunity by moving an application in the present matter, apart from statutory remedies against assessment/recovery of compensation."

12. From the perusal of Para 32, it is borne out that the petitioners have been

extended an opportunity to present their respective claims by moving an application before the Joint Committee.

13. In the wake of the above, we are not inclined to entertain the writ petition. The petitioners would be at liberty to file appropriate application for interim relief/protection before the Joint Committee.

14. With the aforesaid observations, the writ petition is ***disposed of***.

Order Date :- 9.8.2023

Ravi Prakash

(Ashutosh Srivastava, J.) (Pritinker Diwaker, CJ.)