IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.2086/2019.
Reserved on :25.9.2023.
Date of Decision: 14th December, 2023.

State of Himachal Pradesh & anr. .....Petitioners.

Versus

Ramesh Chand & anr. .....Respondents.

Coram
The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.
The Hon'ble Mr. Justice Bipin Chander Negi, Judge.
Whether approved for reporting?[1]

For the Petitioners: Mr. Anup Rattan, Advocate General with Mr. Ramakant Sharma, Additional Advocate General.

For the Respondents: Mr. Vishwa Bhushan, Advocate.

Bipin Chander Negi, Judge.

The present petition has been filed for grant of following substantive relief:-

> " **That a writ in the nature of Certiorari may kindly be issued setting aside the impugned order dated 29.7.2019 passed by the Hon'ble National Green Tribunal, New Delhi in O.A. No.635 of 2017, titled as "Ramesh Chand versus State of Himachal Pradesh & others (annexed as Annexures P-14 and P-15) alongwith all the orders passed by the learned Tribunal subsequent to the final judgment dated 18.12.2017 being nullity and void-ab-initio."**

2. Brief facts giving rise to the present petition are that an Original Application bearing No.635 of 2017 titled ***Ramesh Chand vs. State of Himachal Pradesh & others,*** was filed before the learned National Green Tribunal (*hereinafter for the purpose of brevity referred to as 'Tribunal'*).

3. A perusal of Original Application, so filed reflects that the allegations of the applicant/respondent No.1 therein were that large number of commercial constructions particularly Hotels have come up

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

or are coming up in Manali area of Himachal Pradesh in violation of the law in force. Such indiscriminate, unregulated, uncontrolled construction activity according to the applicant/respondent No.1 has an immitigable impact. While dealing with the Original Application, the Tribunal has referred to the aforesaid as the general issue.

4. In order to substantiate the aforesaid, applicant/respondent No.1 therein had pointed out infractions made by the private respondents No.7 and 8 in the Original Application while constructing their Hotel i.e. "***Manali Valley Hotel***". In so far as 'Manali Valley Hotel' is concerned, Mr. Thakur appeared during the course of hearing before the National Green Tribunal and made a statement that he would demolish the unauthorized construction as well as restore the Government land occupied and take all anti-pollution measures to the satisfaction of the concerned authority. In view of the statement made by Mr. Thakur which was given effect to no further orders were called for and not passed. The other major default pertained to Hotel Citrus Manali, situated at Manali. The latter has been referred to as the individual issue, in impugned judgment dated 29.7.2019 specifically para-5 thereof. The aforesaid Original Application had been filed, under Section 18 read with Sections 14 & 15 of the National Green Tribunal Act, 2010.

5. During the course of hearing, after taking note of the averments made by the applicant/respondent No.1 before the Tribunal with respect to haphazard, unplanned and unsustainable construction

being raised in the eco-sensitive area of Kullu and Manali, the Tribunal had asked for production of record from the Himachal Pradesh Pollution Control Board and Town and Country Planning Department. On a perusal of the record a pathetic state of affairs prevailing with the functioning of the authorities was noticed by the Tribunal. Further, it was noticed by the Tribunal that there is unsustainable development in the eco-sensitive area of Kullu and Manali.

6. In the aforesaid facts and attending circumstances, it would be appropriate to refer order dated 7.12.2017, passed by the Tribunal, wherein learned counsel appearing for the State had raised an objection that there is no general prayer in the application pending before the Tribunal with respect to the entire area of Kullu and Manali, therefore, the same should be confined to the case of private respondents No.7 and 8 therein. Based on the statistics available with the Tribunal, as provided by the respondent/State, the Tribunal was of the view that the entire development particularly in the field of Hotel, Lodges, Home Stay, is unplanned and in violation of the principle of sustainable development. Therefore, the plea of the respondent/State of limiting the Original Application only to deal with the property of private respondents therein was rejected.

7. The matter with respect to construction being raised by the private respondents and illegalities committed by the private respondents was finally adjudicated, vide order dated 18.12.2017. Conspicuous by absence is a decision qua the general issue in the

order dated 18.12.2017, hence it can safely be presumed that the general issue was kept pending thereafter. The same is also evident from the way and manner in which the proceedings were carried on beyond 18.12.2017 and from the impugned judgment dated 29.7.2019, specifically para-5 thereof.

8. A perusal of the impugned order dated 29.7.2019 reflects that a plea was raised by the learned Advocate General that since the main application had been disposed of on 18.12.2017, therefore, proceedings in the matter could not continue any further. The said plea had been rejected by the Tribunal on the ground that on 18.12.2017 only the individual issue pertaining to the private respondents had been decided and the general issue qua the entire areas of Kullu and Manali had been kept pending. Further, the plea was rejected on account of the fact that the State itself had been furnishing reports acknowledging serious violation of law and degradation of environment, which needs to be remedied.

9. In view of the aforesaid backdrop, learned Advocate General has argued that the Tribunal had no jurisdiction to deal with the general issue of haphazard, unplanned and unsustainable construction being raised in the eco-sensitive area of Kullu, Manali and Mcleodganj. The same according to him was not relatable to any Schedule I enactment. Besides the aforesaid according to him, the Tribunal had no power to initiate *suo-moto* proceedings. He has further argued that once the Original Application had been decided on 18.12.2017, no

further proceedings in the matter could have been continued before the Tribunal. It was further contended by the learned Advocate General that the Tribunal in the case at hand had abdicated its adjudicatory function in accepting the report of the Committee and had further illegally indulged in law making. Yet another contention raised on behalf of learned Advocate General is that the Tribunal should have laid its hand with respect to the general issue in question as according to him, the matter in question was pending before the Hon'ble High Court.

10. Heard the learned counsel for the parties and have gone through the entire record carefully.

11. The issue of jurisdiction of the Tribunal is no longer *res integra* in view of the authoritative pronouncement of Division Bench of three Hon'ble Judges in case titled ***Director General (Road Development) National Highways Authority of India vs. Aam Aadmi Lokmanch and others, (2021) 11 Supreme Court Cases, 566***. Relevant portion of the judgment in this respect is being reproduced herein below:-

> ***"The legal position and jurisdiction of NGT was considered by this court in Mantri Techzone, where it was held that the NGT has "special jurisdiction" for "enforcement of environmental rights." It was held that: (SCC pp.517-18, paras 41-47).***
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> ***"41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should***

arise out of implementation of the enactments specified in Schedule I.

42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishsore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45. Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas

in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions.

46. Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning regulations under these statutes or the RMP."

It is noteworthy that this court clearly held that under Section 15(1)(b) and 15(1)(c), the NGT has the power to make directions and provide for "restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act." Though a direction for compensation under Section 15(1)(a) is relatable to violation of enactments specified under the first schedule, the power under Section 17 appears to be cast in wider terms.

The power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive.

12. From the aforesaid, it is clear that Section 15 of the Act provides powers and jurisdiction independent of Section 14 thereof. It is noteworthy that Section 15 (1) (b) and (c) have not been made relatable to Schedule I enactments of the Act. The existence of the Tribunal without its broad restorative power under Section 15 (1) (c) read with section 20 of the Act, would render it ineffective and toothless and shall betray the legislative intent in setting up a specialized Tribunal to address environmental concerns. Section 15 (1) (c) of the Act has been held to be an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded, have now been embedded as a bedrock of environmental jurisprudence under the National Green Tribunal Act. Therefore, wherever the environment and ecology are being jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of environment.

13. As has already been stated (supra) in the Original Application filed before the Tribunal there existed allegations of commercial constructions having come up or are coming up in Manali area in violation of the laws in force. According to the applicant/respondent No.1, this unregulated and indiscriminate activity has an immitigable impact on environment. In view of such averments, the Tribunal had solicited record from the respondents. Record and statistics revealed unplanned development particularly of Hotels, Lodges, Home Stays

which was in violation of sustainable development. Therefore, exercise of power on the general issue in the Original Application cannot be termed to be *suo-moto.* The genesis of the same lay in the Original Application itself.

14. In view of the aforesaid, we are of the considered view that in expanding their jurisdiction to deal with haphazard, unplanned and unsustainable construction in the area in question, the Tribunal was well within his jurisdiction. In our considered view, a substantial question relating to environment which was not academic had arisen before the Tribunal. Besides the Tribunal had the power to grant relief qua environmental degradation in the case at hand. Further in environmental issue when the State raises a plea of lack of jurisdiction of the Tribunal to adjudicate the *lis* the State must understand its obligation to ensure a clean environment to its citizen.

15. In this respect, it would be appropriate to refer to judgment titled ***State of Meghalaya vs. All Dimasa Students Union, Dima-Hasao District Committee and others, alongwith connected matters (2019) 8 Supreme Court Cases 177.*** Relevant portion of the same are reproduced herein below:-

> ***" ..... In cases pertaining to environmental matter the State has to act as facilitator and not as obstructionist. Article 48A of the Constitution provides:***
>
> ***"48A. Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."***

> ***The stand taken on behalf of the State of Meghalaya before this Court that the Tribunal has no jurisdiction cannot be approved. The State Government is under constitutional obligation to ensure clean environment to all its citizens. In cases pertaining to environmental matter, the State has to act as facilitator and not as obstructionist."***

16. In view of the aforesaid, since a Constitutional obligation has been cast on the State Government to ensure a clean environment to all its citizens, the State has to act as a facilitator and not as obstructionist. In the case at hand, State rather than acting as a facilitator is behaving like an obstructionist. Even by virtue of doctrine public trust as expounded in ***M.C. Mehta vs. Kamal Nath and others, (1997) 1 Supreme Court cases 388***, an obligation is cast on the State to protecting and preserving the environment.

17. The contention of the respondent/State that post passing of judgment on 18.12.2017 by the Tribunal, the proceedings in the matter could not have been carried forward is baseless and liable to be rejected for the reasons stated herein below.

18. As has been noticed in the impugned judgment dated 29.7.2019, on 18.12.2017, the Tribunal had only decided the individual issue with respect to infraction of law Committed by the private respondents No.7 and 8. The general issue with respect to haphazard, unplanned and unsustainable construction in the area in question had been kept pending. The State itself had been furnishing reports acknowledging serious violation of law and degradation of environment, which were required to be remedied. Even otherwise, from a perusal of order dated 7.12.2017, passed by the Tribunal, it is

evident that the scope of petition had been expanded by including the general issue of haphazard, unplanned and unsustainable construction in the area in question. The request to not enlarge the scope of the petition pending before the Tribunal raised by the State had been rejected in its order dated 7.12.2017.

19. The petition must also fail on account of the fact that the relief sought is for only quashing the impugned order dated 29.7.2019 and all orders passed by the Tribunal post judgment dated 18.12.2017. Conspicuous by absence is challenge to order dated 7.12.2017 and 29.10.2017, whereby the scope of petition had been enlarged. Since there is no challenge to these orders, petition must fail on this count also.

20. With respect to the submissions made by the learned Advocate General qua the Tribunal having abdicated its adjudicatory function, it would be appropriate to refer to order dated 27.10.2017. Vide order dated 27.10.2017, six directions were issued to the respondent/State by the Tribunal. Direction No.6 is being reproduced herein below:-

> ***"We direct Town and Country Planning Department and the State of Himachal Pradesh to submit whether any study or data have ever been prepared for the Kullu Planning Area with particularly Manali and its surrounding areas as to its carrying capacity, kind of development that should be permitted and keeping in view the fact that this area falls under Seismic Zone 4 and 5."***

Further, directions were issued from time to time by the Tribunal. Vide order dated 19.9.2018, the Tribunal found it necessary to assess the carrying capacity of ecological sensitive and geologically

fragile areas in Himachal Pradesh particularly Manali and Mcleodganj. By virtue of the aforesaid order, Joint Expert Committee was constituted, the said Committee was to assess the carrying capacity of the area in question by taking into account factor specified in the order dated 19.9.2018. It would be pertinent to mention here that till the time of passing of impugned order dated 29.7.2019, the State had not placed on record any assessment got done by the State in order to determine the carrying capacity of the area in question.

21. The Committee so constituted, vide order dated 19.9.2018 including ten members two of whom were Chief Town Planner, Shimla or Senior Architect (Planner) from PWD and the Member Secretary, Himachal Pradesh Pollution Control Board. The later was also the Nodal Officer of the Committee. The aforesaid Committee after conducting field visits finalized its study with respect to carrying capacity. The same were filed on 3.7.2019, with an affidavit of the State Pollution Control Board.

22. The Tribunal taking into account unregulated growth in the area under study on account of increased number of Hotels due to advent of tourism, which also resulted in vehicular pollution, high generation of solid waste and further noticing compounding of the problem on account of inadequate infrastructure decided to accept the Expert Committee Report. The large scale of deforestation water crisis and the fact that river *Beas* is one of the most polluted river

were also reasons before the Tribunal to accept the carrying capacity report.

23. As has already been stated, the State in assessing the carrying capacity of the area in question had exhibited complete inaction. In view of the aforesaid backdrop, arguments of learned Advocate General that the Tribunal had abdicated its adjudicatory function is completely misplaced. Reliance on judgment passed in ***Civil Appeal No.4543 of 2021, dated 31.8.2021, titled Sanghar Zuber Ismail vs. Ministry of Environment, Forests and Climate Change and another***, to substantiate the plea of abdication of adjudicatory function is of no help. Therein the National Green Tribunal had failed to apply its mind to the ground of challenge rather to the contrary the Tribunal had merely based its conclusion on the statement made by the project proponent. Herein to the contrary the National Green Tribunal has exercised its jurisdiction appropriately under Section 15 read with section 20 of the National Green Tribunal Act and the State has failed to place any carrying capacity reports qua the areas in question. In this regard, we cannot loose sight of the fact that Mcleodganj comes within the planning area of Dharmshala. A revised Development plan of Dharamshala planning area was brought forth in 2018. Even with respect to Dharamshala planning area no carrying capacity report was placed on record by the State before the Tribunal.

24. It is further argued by learned Advocate General that since Hon'ble High Court was ceased of the same subject matter, therefore, the Tribunal should not have proceeded in the matter. In order to buttress his submissions, learned Advocate General has drawn out attention to the judgment dated 15.5.2019, passed in ***CWPIL No.8/2015 titled Court on its own Motion vs. State of Himachal Pradesh & others.***

25. A perusal of the judgment clearly reflects that the contention of learned Advocate General is absolutely wrong as in the matter before the Hon'ble High Court, the Court had initiated *suo-moto* proceedings in public interest against illegal felling of trees in and around area of Dharamshala. During the course of aforesaid proceedings, the Court had directed the State Government to take a policy decision qua prescribing the maximum limit for the constructed area alongwith permissible deviation.

26. Besides the aforesaid, Hon'ble High Court had directed the respondent/State to suitably de1al with the issue of penalty qua construction raised in violation of approved construction area. Qua the first direction the stand of the State was that in view of the Revised Development Plan of Dharamshala, 2018 construction norms prescribed therein would be strictly adhered to. In so far as, the issue of penalty is concerned, the State had submitted that the process for amendment of Rule 35 of 2014 Rules, would be taken to its logical conclusion within the prescribed time frame. The validity of the

revised Development plan of Dharamshala, 2018 was never an issue before the Hon'ble High Court.

27. From the aforesaid, it is clear that the issue of carrying capacity of which the Tribunal was ceased of, was not an issue before Hon'ble High Court. Reliance placed on ***2022 (8) SCC, 156*** in view of the facts and circumstances of the case at hand is no help to the State. On principles of law stated there in there is no dispute.

28. The contention of learned Advocate General is that in accepting the carrying capacity report, the Tribunal has in fact legislated and, therefore, the Tribunal has transgressed its limit. In this respect, it would be appropriate to state that the National Green Tribunal is a central legislation enacted under entry 13 of list I Schedule VII of the Constitution of India, which will have an overriding effect over State legislations. A perusal of Section 33 of the Act provides that the same shall have an over riding effect over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything in consistent contained in the State Planning Act and the Development plan prepared there under. The corollary being that the Tribunal while dealing with the issue of environment under Section 15 read with section 20 of the Act can examine the question of carrying capacity in the areas in question and in pursuance thereof direct the State to do the needful. In this regard, reference to ***2021 (11) SCC 566***, cited (supra) would be useful. For

the foregoing reasons, there is no merit in the submissions of learned Advocate General that in accepting the carrying capacity report the Tribunal has in fact legislated and, therefore, has transgressed its limit.

29. In view of aforesaid facts, we find no merit in the instant petition and the same is dismissed, so also the pending application(s), if any. No order as to costs.

(Vivek Singh Thakur)
Judge

(Bipin Chander Negi)
Judge

14th December, 2023
(Chaman)