

(2016) 05 AHC CK 0026

In the Allahabad High Court

Case No : Constitution of India, 1950 - Article 226National Greens Tribunal Act, 2010 - Section 14, Section 18

Anilesh Tewari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 09-05-2016

Acts Referred:

Writ Petition No. 8536 of 2016

Citation : (2017) 7 FLT 23

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : Anilesh Tewari (In Person), for the Petitioner; C.S.C. and A.K. Verma, A.S.G, for the Respondent

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.—;This writ petition has been filed by a public spirited lawyer of this Court raising concerns about the prevention of air pollution in the State of U.P. particularly, in the district of Lucknow and seeks a direction for establishing air quality monitoring stations in order to monitor the critical pollutants of the districts. A further mandamus to the State of U.P. that all Government vehicles issued, should be converted to CNG mode that are running on diesel and to promote the same also in the private sector by enforcing it and by encouraging reduction in tax on CNG fuel. Further relief has been prayed for increasing the number of CNG outlets and also to improve the public transport by introducing the new buses and its frequency so that such measures may come to the aid of citizens of the State particularly, the citizens of the district Lucknow.

2. It is not disputed that the law governing air pollution is subject matter of control under the Air (Prevention and Control of Pollution) Act, 1981. In matters relating to environment and its protection, the Parliament came up with the National Green Tribunals Act, 2010 and for the purpose of regulating, controlling

and taking action in matters of environment pollution conferred a very wide authority on the National Green Tribunal including such matters the laws relating are referred to in the First Schedule of the 2010 Act. It is undisputed that the Air (Prevention and Control of Pollution) Act, 1981 is very much in the said Schedule. This Court after entertaining the petition, had called upon the petitioner to assist the Court as to whether the writ petition in so far as it relates to the issue of air pollution, should be entertained keeping in view the provisions of Section 14 and 18 read with Schedule-1 of the National Green Tribunals Act, 2010 on which the petitioner contended that since the issue relates to the protection of environment, the same would be a subject matter of consideration if the protection under Article 21 is sought from this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India. The jurisdiction of this Court is not ousted when it comes for enforcement of any fundamental right guaranteed under the Constitution. The aforesaid contention of the petitioner on the constitutional plane is correct and this Court can exercise its discretion for the enforcement of fundamental rights as it is the High Courts and Supreme Court that have been given extraordinary jurisdiction under the Constitution to come to aid of its citizens for protection of fundamental rights.

3. However, we are of the opinion that such issues for which expert Tribunals have been set up to deal exclusively with the matters as in the present case, relating to environment, then in our opinion, it would be a sound rule of precaution for us under Article 226 of the constitution to refrain ourselves from entertaining such issues that can be more conveniently and appropriately be redressed under a statutory law framed exclusively for the said purpose in its wisdom by the Parliament.

4. This does not mean to say that there can be an absolute ouster of jurisdiction of this Court under Article 226 of the Constitution but where such rights that are regulated under a statute made by the Legislature, then the High Court should not ordinarily undertake an exercise of the nature as raised in this writ petition in so far it relates to air pollution. We are, therefore, of the opinion that keeping in view the provisions of Sections 14 and 18 of the National Green Tribunal Act, 2010, the matter relating to air pollution as raised in the present writ petition and its control and monitoring, can be more appropriately raised before the National Green Tribunal under the 2010 Act.

5. The petition in person upon his extensive research cited 14 decisions the compilation whereof has been placed before us to urge that such issues have been dealt with by the High Courts and Supreme Court and consequently, the issue of enforcement of fundamental rights cannot be diverted to the National Green Tribunal more so, when the petitioner may not be considered to be an aggrieved person before the Tribunal. For this, the petitioner has brought before us the consideration of this issue in the context of providing compulsory environmental education to the students of the schools and the colleges throughout the country in *M.C. Mehta. v. University Grants Commission and*

others (Original Application NO.12 of 2014), dismissed by the National Green Tribunal on 17.7.2014.

6. We have perused the said order of the National Green Tribunal extensively wherein the applicant therein had raised the issue that his application should be entertained for enforcing the study of environmental education for the students of schools and colleges throughout the country. The applicant urged that such enforcement can be made by the National Green Tribunal and it has jurisdiction to adjudicate and entertain such application as it related to the question of environment.

7. The Tribunal came to the conclusion that the issue did not raise any substantial question relating to enforcement and it was only in relation to imparting of education. Further, it found that the directions of the Supreme Court in the Judgment 22.11.1991 if was being violated by not enforcing the Rules of environmental education in institutions, then it would be seeking to take action of contempt for violation of orders passed by the Supreme Court which jurisdiction was not possessed by the Tribunal. The Tribunal, however, went on to explain its authority of having jurisdiction in the subject matter under Section 14, 15 and 16 and further also referred to its own judgment in the case of Goa Foundation v. Union of India: 2013 (1) All India NGT Reporter, New Delhi, 234, where the words, "substantial question relating to environment", "any person aggrieved" and the words, "dispute", were interpreted. The excerpts of the judgment in the case of Goa Foundation (supra) was extracted and it was held that education relating to environment cannot be interpreted to generically mean to be a substantial question relating to environment and enforcement of any legal right in relation thereto. However, it went on to explain that the power is there with the Tribunal to issue directions in relation to implementation of the enactment. Para-17, 18, 20, 21 and 22 are extracted hereinunder:-

"17. A phrase of significant importance appearing in Section 14 of the NGT Act is "arises out of the implementation of enactment specified in Schedule I". Even in this phrase, the word "implementation" is of essence. "Implementation" in common parlance means to take forward a decision or to take steps in furtherance to a decision or a provision of law. It sets into motion, the actions which are contemplated within the provisions of the Act to which reference is made. It is not synonymous to "execution". "Execution" in law, particularly under the Code of Civil Procedure, 1908 is a known and well-defined concept. "Implementation" in contradistinction thereto is a milder expression but again operates within the limitations prescribed by the law or the provision in which such expression appears. Concept of "implementation" cannot travel beyond the framework of law and in that sense it is even similar to "execution" as it must be executed in conformity to the provisions of the Code of Civil Procedure, 1908. There are some basic similarities between "implementation" and "execution" but they differ in scope and enforcement.

18. We may now examine some of the definitions of the word "implementation": -

Oxford Dictionary, 3rd ed., 2010, "implementation"- the process of putting a decision or plan into effect; execution.

Black's Law Dictionary, 9th ed., 2009, "implementation plan" in relation to environmental law means "a detailed outline of steps needed to meet environmental quality standards by an established time."

P. Ramanatha Aiyar's The Law Lexicon, 3rd ed., 2012, "implementation"- giving practical effect to.

Wharton's Law Lexicon, 15th ed., 2012, "implementing agency"- includes any department of the Central Government or a State Government, a Zilla Parishad, Panchayat at intermediate level, Gram Panchayat or any local authority or Government undertaking or nongovernmental organization authorised by the Central Government or the State Government to undertake the implementation of any work taken up under the Scheme.

20. One also finds use of the expression "implement" in the very Preamble of the Environment Protection Act, 1986 where it is stated that "it is considered necessary further to implement the decisions afore-said" (the decision taken at the United Nations Conference on the Human Environment held at Stockholm in June 1972). List I of the Seventh Schedule of the Constitution of India in terms of Article 246 also uses similar expression in Entry 13. Entry 13 reads as follows:

-

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

21. The word "implementing" as used above clearly indicates that it is a direct reference to the decision taken in the international conferences, etc. and which are sought to be implemented by taking further action thereof. Thus, when we have to construe the word "implementation" appearing in Section 14 of the NGT Act, with reference to the Acts stated in Schedule I of the said Act, we must confine it to the "implementation" of the provisions contained under those Acts and that too with reference to a substantial question relating to environment and not beyond that.

22. We have already stated the ingredients which an applicant invoking the jurisdiction of the Tribunal under Section 14 must satisfy. The contention that the expression "implementation" should receive narrower interpretation in terms of Section 14 of the NGT Act, would not be in consonance with the settled principles of interpretation. Hence, it is difficult for us to accept this contention advanced on behalf of the applicant."

8. The nature of the rights as complained by the petitioner and appropriate relief in relation to the air pollution, therefore, can be very well entertained by the National Green Tribunal in view of the interpretation as put forth by the Tribunal in the aforesaid order.

9. The petitioner who appears in person, is a resident of Lucknow and, therefore, he may be said to be an aggrieved person either in his own capacity or even in public interest. Therefore, keeping in view the ratio of the aforesaid decision, which has been brought to our notice by the petitioner himself, we find ample reason for not entertaining this petition as the petitioner can appropriately raise the issue of air pollution before the National Green Tribunal under the 2010 Act.

10. The second part of the relief which is in relation to the increase of public transportation or conversion of diesel vehicles into CNG or reckoning of outlets to promote utilization of CNG or giving any subsidy thereto may concern the Central Government or the State Government which is altogether a separate cause of action for which the petitioner can raise issues conveniently by segregating it from the issue of pollution. Therefore, the said cause of action cannot be mixed up in the light of what has been stated above by us to entertain this petition.

11. The writ petition is, therefore, dismissed without prejudice to the rights of the petitioner to raise the other issues as noted above appropriately in separate proceedings and the dismissal of this writ petition will not be an impediment to the same.

12. The writ petition is dismissed subject to the aforesaid observations.