
(2013) 12 KAR CK 0392

In the Karnataka High Court

Case No : Writ Petition No. 41532 of 2012 (GM-RES-PIL)

Environment Support Group

APPELLANT

Vs

National Biodiversity Authority and Others

RESPONDENT

Date of Decision : 02-12-2013

Acts Referred:

Biological Diversity Act, 2002 — Section 40

Constitution of India, 1950 — Article 226, 227, 323A, 323B

Citation : AIR 2014 Kar 20 : (2014) 1 AKR 598 : (2014) 4 EFLT 233 : (2014) 2 KCCR 1607

Hon'ble Judges : D.H. Waghela, C.J.;S.N. Satyanarayana, J

Bench : Division Bench

Advocate : Sunil Dutt Yadav, for P-1 and Sri Leo F. Saldanha and Party in Person for P-2, for the Appellant; Aditya Sondhi, Advocate for R-1 to 3 and 5, Sri Narendar G., A.G.A. for R-4, Sri Ashok Harnahalli, Sri Koshy John, Advocate for R-6, Smt. S. Amrutha Sindhu, Advocate for R-7, Smt. Ruby K. Jose, Advocate for R-8 and Sri Yeshwanth Shenoy, Intervener, for the Respondent

Final Decision : Disposed Off

Judgement

D.H. Waghela, C.J.—The petition is filed under Articles 226 and 227 of the Constitution in the nature of Public Interest Litigation by a Trust in the name of Environment Support Group and one Mr. Leo F. Saldanha, has appeared as party-in-person. The petitioners have, subsequent to filing of the petition, added Respondent Nos. 6, 7 and 8, with the main prayers inter alia to declare Section 40 of the Biological Diversity Act, 2002 (for short "the Act") to be illegal and unconstitutional and to issue a writ in the nature of certiorari to quash the notification dated 26.10.2009 issued by Respondent No. 2 under the provisions of Section 40 of the Act. The petitioners as well as the applicant in I.A. No. II/2013 viz., learned advocate Sri Yeshwant Shenoy, have sought to argue in detail, about serious prejudice likely to be caused to the national interest and biodiversity of certain species of plants and herbs, if the notification in question is not quashed and proper guidelines were not to be issued under the Act by the

National Biodiversity Authority. Learned counsel Sri Aditya Sondhi appearing for Respondent Nos. 1 to 3 & 5, however, pointed out from the recent decision of the Apex Court in Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India (UOI) and Others, , that by virtue of the observations made and directions issued in paragraph-40 of the judgment, the petition practically stands transferred to the National Green Tribunal and this court is required to pass only an appropriate formal order to release the matter to the National Green Tribunal, constituted under the National Green Tribunal Act, 2010.

2. In view of the submission of learned counsel Sri Sunil Dutt Yadav, appearing for petitioner No. 1, that the National Green Tribunal may not have the jurisdiction to examine and decide upon the constitutional validity of the provisions of Section 40 of the Act, this court was required to retain the petition for consideration, learned counsel Sri Sondhi relied upon seven judge Bench decision of the Apex Court in L. Chandra Kumar Vs. Union of India and others, and submitted that it was not open for the litigants to directly approach the High Court even in cases where they question the vires of statutory legislations by overlooking the jurisdiction of the Tribunal concerned. Sri Sondhi also relied upon the Constitution Bench decision of the Apex Court in Union of India (UOI) Vs. R. Gandhi, President, Madras Bar Association, , to submit that, although the National Green Tribunal was not constituted under Articles 323A and 323B of the Constitution, the Parliament had the legislative competence to make a law providing for constitution of Tribunals to deal with disputes and matters not covered by the aforesaid Articles.

3. It is clear and undisputable proposition of law settled by the aforesaid judgment that special tribunals can be constituted for the purpose of administration and implementation of particular laws. There is no dispute about the fact that, in the present case, the Biological Diversity Act, 2002 is expressly covered by Schedule-I and the Tribunal constituted under the National Green Tribunal Act has the jurisdiction to decide all substantial questions relating to enforcement of any legal right arising out of implementation of the Act and settle such disputes and pass orders thereon. Therefore, abiding by the direction of the Apex Court in Bhopal Gas Peedith Mahila Udyog Sangathan Vs. Union of India, (supra), the petition, along with the interim applications made therein, is ordered to be transferred to the appropriate Bench of the National Green Tribunal for further adjudication and orders. The petition as also the interim applications made therein stand disposed as transferred, as far as this court is concerned, without entering into merits, if any, of the other contentions of the parties.