

(2016) 10 MP CK 0027
In the Madhya Pradesh High Court
Case No : WP No. 17122 of 2016

HK Kalchuri and Education Trust

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 20-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227
National Greens Tribunal Act, 2010 — Section 22

Citation : (2017) 7 FLT 193

Hon'ble Judges : Rajendra Menon, ACJ. and Smt. Anjuli Palo, J.

Bench : Division Bench

Advocate : Siddharth Gupta, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Rajendra Menon, A.C.J. and Smt. Anjuli Palo, J.—Shri Siddharth Gupta, learned counsel for the petitioner.

2. Shri Amit Seth, learned Government Advocate for the State, on advance notice.

3. Shri Amit Seth, Government Advocate raises a preliminary objection with regard to maintainability of this Writ Petition under Article 226 / 227 of the Constitution, primary on the ground that against the order passed by the National Green Tribunal under the National Green Tribunal Act, 2010 a right to appeal under Section 22 is available and when a right to appeal under Section 22 is available, it is argued that a writ petition directly before this Court is not maintainable.

4. Reply to the said oral preliminary objection have been filed by the counsel for the petitioner and it is pointed out by Shri Siddharth Gupta, learned counsel that in this case an order adverse to the petitioner had been passed by the National Green Tribunal without notice to the petitioner, without hearing them behind their back and the order is passed in violation to the principle of natural justice,

detailed averments are made in the writ petition to say that notice were never served on the petitioner, it is only through News Paper reporting that petitioner were made aware of the order passed and when they filed application of review/recall of the adverse order passed against the petitioner the tribunal rejected the same not on merits but only on the ground that the petitioner have approached the tribunal after more than 1 ½ years. Shri Siddharth Gupta, learned counsel invites our attention to the principle of law laid down by the Division Bench of the Madras High Court in the case of Kollam Aaru Pathukappu Narasangam v. UOI and Others (2014) SCC Online Madras 4928, another judgment of the Madras High Court in the case of Vijayalakshmi Shanugam v. Secretary to GOI and Others (2014) 1 LW 721, Judgment of the Bombay High Court in the case of Windsor Reality Pvt. Ltd. v. MOEF and Others (2016) SCC Online Bom 5613, the law laid down by the Supreme Court in the case of L. Chandrakumar v. Union of India and Others (1997) 3 SCC 261 and another judgment of the Supreme Court in the case of Sujitendra Nath Roy v. State of West Bengal and Others (2015) 12 SCC 514 filed by him as RPO-1 to RPO-6 along with his response to the oral preliminary objection and argues that even if a remedy of appeal under Section 22 is available, the law laid down is that the power of writ jurisdiction available to the High Court under Article 226 of the Constitution is not taken away and in a case where the State Arbitration Tribunal or statutory appeal is found to have exercised jurisdiction which is not available or acted in excess of jurisdiction the High Court can still exercise its extraordinary jurisdiction. It is stated that in this case as the entire action is taken in violation of the principle of natural justice without grant of opportunity of hearing, the alternate remedy available will not come in the way of this Court for exercising extraordinary jurisdiction under article 226 / 227 of the Constitution. He also invited our attention to the proceedings pending before this court under Article 226 of the Constitution as detailed in para 3 of his response to say that this case along with some cases seized to the matter and is exercised jurisdiction.

5. Keeping in view the aforesaid and considering the fact that prima facie contention advanced by Shri Siddhart Gupta, learned counsel for the petitioner seems to be correct we direct for issuance of notice to all concerned on payment of P.F. within one week, returnable in four weeks.

6. At this stage Shri Ashish Shroti, learned counsel present in the court and who normally appears for the M.P. State Pollution Control Board is directed to take notice on behalf of the pollution Control Board.

7. A copy of writ petition along with annexures be given to Shri Shroti.

8. Issue notice to remaining respondents on payment of P.F. within one week, returnable in four weeks.

9. In the meanwhile, further proceeding and coercive steps in consequence to the impugned orders passed by the National Green Tribunal impugned in this writ petition i.e. order dated 20.8.2014, passed in O.A. No.135/2014 and interim

orders passed in O.A. No.135/2014, i.e. compliance proceedings dated 24.11.2014, 27.11.2014, 4.3.2015, 30.3.2015, 6.7.2015 and 5.8.2016 shall remain stayed.

10. Certified copy as per rules.