
(2012) 05 DEL CK 0628

In the Delhi High Court

Case No : Writ Petition (C) No. 8399 of 2009

Jan Chetna

APPELLANT

Vs

Ministry of Environment and Forests and Others

RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226
National Environment Appellate Authority Act, 1997 — Section 18
National Greens Tribunal Act, 2010 — Section 11

Citation : (2012) 4 AD 613 : (2012) 189 DLT 550 : (2012) 129 DRJ 691

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sanjay Parikh, Mr. Rahul Chaudhary and Mr. Pranav Raina, for the Appellant; Rajesh Banati with Mr. D.K. Sharma, Advocate for R-1, Ms Yogmaya Agnihotri, for R2, Mr. Ashok Desai Mr. Ashwani Mata with Ms. Kanika Agnihotri, Akashay Ringe and Mr. Sunil Mittal, Advocates for R-3, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The present petition filed as a public interest litigation, impugns the order dated 31st December, 2008 of the National Environment Appellate Authority (NEAA) dismissing the appeal filed by the petitioner against the letter dated 26th December, 2007 granting environment clearance to respondent No. 3 M/s Monnet Ispat and Energy Ltd for setting up of integrated steel plant at Naharpali, Kharsia, Raigarh, Chhattisgarh. Notice of the petition was issued. Counter affidavit has been filed by respondent No. 3. The proceedings in this petition were adjourned sine die in pursuance of an order dated 29th July, 2009 of the Supreme Court in Transfer Petition (C) No. 677-678/2009 filed by respondent No. 3. On 19th May, 2010, it was informed that the Transfer Petition had been disposed off by the Supreme Court. Accordingly, this petition was listed for hearing. Since respondent No. 3 in its counter affidavit was also contesting the territorial jurisdiction of this Court to entertain this petition, this petition was thereafter taken up for hearing by the Full Bench constituted to test the correctness and soundness of the decision of

an earlier Full Bench of this Court in *New India Assurance Company Limited v. UOI* AIR 2010 Del. 43 (FB). The said Full Bench rendered judgment dated 1st August, 2011, partially overruling and clarifying the decision in *New India Assurance Company Limited* (supra). The said judgment of the latter Full Bench is reported as *M/s Sterling Agro Industries Ltd. v. Union of India & Ors.* AIR 2011 Del. 174. Thereafter, this petition was again listed for hearing. We have heard counsel for the parties. It is the case of the petitioner that the environment clearance dated 26th December, 2007 for the aforesaid project of respondent No. 3 was granted without completing the process of public hearing and on the basis of faulty Environment Impact Study; that the procedure prescribed in the Environment Impact Notification of 2006 was not followed. The petitioner further pleads that respondent No. 3, on 30th May, 2007 applied to the State Pollution Control Board for conducting public hearing; that the notice of the public hearing scheduled on 4th August, 2007 was published on 27th June, 2007; that the petitioner vide its letter dated 1st August, 2007 sought cancellation of the said public hearing for the reason of commencement of construction by respondent No. 3 even prior to Environment Clearance and violation of environment laws by respondent No. 3; that the Chhattisgarh Environment Conservation Board however went ahead with the public hearing in which the petitioner participated and pointed out inadequate, misleading and false data submitted in the Environment Impact Assessment (EIA) Report; that the EIA consultant at the said hearing agreed that the EIA Report was inadequate and asked for 15 days" time to rectify the same and file afresh; that accordingly, the public hearing was postponed by 15 days with assurance to be held again after 15 days; however, without completion of the public hearing, Ministry of Environment and Forest (MOEF) accorded environment clearance dated 26th December, 2007. That appeal (being appeal No. 2/2008) was preferred by the petitioner to the NEAA, was dismissed on 31st December, 2008 on the ground that the petitioner had no locus to prefer the appeal.

2. It is the contention of the petitioner in the writ petition that it has the locus and the appeal ought to have been heard and decided on merits.

3. Respondent No. 3, in its counter affidavit, has pleaded that the challenge, if any to the order of the NEAA, ought to have been made by a writ, which, according to the roster of this Court, would have been heard by a Single Judge of this Court; that the colour of public interest litigation has been given to have the same heard by the Division Bench; that a public interest litigation is not maintainable. It is further the plea of the respondent No. 3 that its proposed plant is in the State of Chhattisgarh; the environment clearance dated 26th December, 2007 even though granted by the MOEF, Government of India, New Delhi is to be challenged before the High Court of Chhattisgarh; that the entire case against the grant of the said environment clearance is based on the complaint of one Raghuvir Pradhan who claim to be associated with an NGO called Ekta Parishad; that the said Ekta Parishad through its member Ramesh Sharma along with Ram Kumar Aggarwal filed a writ petition before the High

Court of Chhattisgarh challenging the said clearance and which writ petition is still pending; that the present writ petition on behalf of Jan Chetna as also the statutory appeal before the NEAA are filed through one Sh. Ramesh Aggarwal who is related to Ram Kumar Aggarwal of Ekta Parishad; that the petitioner is a middle some interloper; that the PIL jurisdiction of this Court cannot be invoked in respect of an industry situated in the State of Chhattisgarh; that the challenge made in this petition can also be made either by filing a fresh petition in the Chhattisgarh High Court or by adding to the petition already pending in that court; that no written objections were filed by the petitioner or anybody else in response to the public notice; that Shri Ramesh Aggarwal has also filed a representative civil suit in the Court of District Judge, Raigarh against respondent No. 3 and other authorities for injuncting holding of public hearing, declaration and seeking compensation for environmental damage; that in the public hearing held on 4-8-2007, arguments were heard and objections rejected vide speaking order dated 4.08.2007; that thereafter the said Ram Kumar Aggarwal and Ramesh Sharma along with others reached the venue of public hearing and held out threats to the persons holding the hearing; that the Additional Collector, Raigarh present at the hearing, in the circumstances adjourned public hearing for 15 days, but which he was not entitled to do; that the Regional Manager of Chhattisgarh Environment Conservation Board conducting hearing who was the only competent authority under the EIA Notification, had not adjourned the hearing and had rather reported that the public hearing had been completed in all respects and final decision may be taken; that again applications for injunction were filed in the pending suit as well as the writ petition aforesaid. Respondent No. 3 thus pleads that multiple remedies as are being pursued before the civil court, the High Court of Chhattisgarh and this Court, when cannot be permitted. It is further the plea of respondent No. 3 that the petitioner does not qualify to be an association of persons under the NEAA Act 1997 and thus the appeal preferred by it was rightly dismissed.

4. Respondent No. 2, Chhattisgarh Environment Conservation Board, in its reply has pleaded, that the petitioner, by filing a public interest litigation has established that it is not a person or association of persons likely to be affected and who alone can maintain an appeal before the NEAA. It is further pleaded that action has already been taken against respondent No. 3 for violation of environment laws by commencing construction activities prior to environment clearance. It is further clarified that the public hearing was for expansion project and though has supported the case of the petitioner that the public hearing was adjourned, but pleaded that its purpose stood served.

5. The counsel for the petitioner on the aspect of territorial jurisdiction has contended that since the environment clearance was granted at Delhi and the NEAA is also at Delhi and held hearing at Delhi, this Court would have jurisdiction. He has also relied upon the order dated 22.4.2009 vide which notice of this petition was issued indicating that "petition will be heard finally at the admission stage itself", and contends that this Court has in its discretion opted to

entertain this petition in this Court. He further contends that as far as the reason given by the NEAA for rejecting the appeal preferred by the petitioner is concerned, the same is no longer good in view of the judgment dated 14.09.2009 of the Division Bench of this Court in LPA No. 277/2009 titled Vedanta Alumina Ltd v. Prafulla Samantra & Ors. He has taken us through the English translation of the report of the public hearing prepared by the Additional Collector, Raigarh to demonstrate that public hearing was adjourned. It is argued that without holding adjourned hearing, environment clearance was given. He has further invited our attention to the reply filed by the Chhattisgarh Environment Conservation Board before the NEAA where, initiation of legal action against respondent No. 3 for commencing construction prior to receipt of clearance is admitted. On the basis thereof it is argued that since the action against respondent No. 3 was taken on the complaint of the petitioner, NEAA was wrong in holding the appellant to be not an aggrieved person. He further states that the writ petition in Chhattisgarh High Court was filed by another environment group and which has since been withdrawn. Though, it is admitted that the civil suit aforesaid was filed by the petitioner, but it is argued that the same was filed before grant of clearance and in any case, proceedings therein have been stayed by the High Court. It is further argued that the Supreme Court having dismissed the transfer petition preferred by respondent No. 3, it is now not open to respondent No. 3 to urge that this petition is not maintainable before this Court.

6. The senior counsel for respondent No. 3 has though not challenged that this Court would have territorial jurisdiction owing to the environment clearance under challenge having been issued within the jurisdiction of this Court and owing to NEAA whose order is challenged being also situated within the jurisdiction of this Court, has contended that on the application of principle of forum convenience, it is not convenient for this Court to adjudicate the matter. He has, with the assistance of list of dates, shown the proceedings initiated/pending in the courts of the State of Chhattisgarh and argued that the petitioner having opted to go to the Chhattisgarh, ought to file the writ petition also in that High Court only. It is emphasized that the suit has not been given up till now. The petitioner is also accused of suppression of material facts. Reliance is placed on Paragraphs 34 to 36 of K.D. Sharma v. Steel Authority of India Limited and Ors (2008) 12 SCC 481 to contend that the petition is liable to be dismissed on this ground alone.

7. The counsel for the petitioner, in rejoinder, has argued that the NEAA Act has since been repealed by the National Greens Tribunal Act, 2010 which Tribunal is also situated in Delhi and as per which the suit is not even maintainable. It is also contended that vide Section 18 of the said Act, the question of locus has been considerably relaxed. It is also argued that the suit was disclosed before the NEAA and thus, no motives can be attributed to the petitioner in not mentioning the same in this petition. He has also stated that the petitioner is willing to withdraw the suit.

8. We will first take up the plea of territorial jurisdiction. Though the earlier Full Bench of this Court in *New India Assurance Company Limited (supra)*, had held that the principle of forum non-convenience is not applicable to domestic law and once this Court has jurisdiction under Article 226 of the Constitution to entertain the petition, it cannot refuse to exercise the said power on the doctrine of forum non-convenience, however the subsequent Full Bench in *M/s Sterling Agro Industries Ltd.*, has held that the Court, notwithstanding having jurisdiction can refuse to entertain a petition under Article 226 invoking the doctrine of forum non-convenience if it is not convenient territory to entertain the petition or if some other Court is a more convenient Court to entertain the petition.

9. We have recently in judgment dated 17.02.2012 in LPA 960/2011 titled *Vishnu Security Services v. Regional Provident Fund Commissioner*, held that for ousting the jurisdiction of the Court on the doctrine of forum non-convenience, a case of another Court being better equipped and convenient Court for all parties concerned, has to be made out and the Court cannot refuse to exercise jurisdiction by mere lip service to the said doctrine. Applying the said principle, we find that the only ground urged by respondent No. 3, for the Chhattisgarh High Court being a more convenient Court to adjudicate this lis, is the pendency of a writ petition filed by another party in the said High Court and which writ petition also according to the petitioner stands withdrawn. We are, however, of the view that the same cannot be the basis for this Court to refuse to exercise jurisdiction. Admittedly the petitioner is not a party to that writ petition. Moreover, attempt of respondent No. 3 to have both the writ petitions transferred to one Court by moving a Transfer Petition to the Supreme Court has already failed. Even otherwise, mere pendency of a proceeding in other court can form a ground for refusing to exercise jurisdiction on the doctrine of forum non-convenience only upon it being shown that the two proceedings are so intertwined so as to lead to the possibility of conflicting judgments. However, what we have here is that while the petition in the Chhattisgarh High Court, if still pending, was filed prior to the public hearing, the challenge in this petition is predicated only on the ground of rejection of the appeal of the petitioner by the NEAA. The scope of the two proceedings is thus entirely different and there is no likelihood of any conflicting judgments. Considering the nature of the challenge by the petitioner in the present petition, we also find that the issue raised is purely legal and though relating to a project in the State of Chhattisgarh, has no local flavor at all for us to hold that the High Court of Chhattisgarh rather than this Court, is better equipped to deal therewith. We are similarly of the opinion that the suit filed by the petitioner in Chhattisgarh is also infructuous and is not concerned with the challenge made in this petition. We, therefore, reject the challenge by respondent No. 3 to the territorial jurisdiction of this Court.

10. We also do not find any merit in the plea of respondent No. 3 of the petitioner being guilty of suppression so as to invite dismissal of the petition on that ground alone. The facts concerning the proceedings in the Court in the State of Chhattisgarh are not found to be material qua the limited challenge in the

present petition and suppression thereof is not found to be such as designed to obtain any unfair advantage. Coming to the merits of the challenge, the Division Bench of this Court in Vedanta Alumina Ltd (supra) has unequivocally held on an interpretation of Sec. 11 of the NEAA Act, 1997 that the expression "aggrieved person" used therein denotes an elastic and to an extent an elusive concept and has to be given the widest operation as the language will permit. Accordingly, it was held that an organization working in the area in question, closely following issue of setting up of industries and the impact thereof on the environment, would be a "person aggrieved" and entitled to exercise of right to appeal. We have no reason to differ from the said view. No argument also in this regard has been raised though clarifying that the same should not constitute an admission. Once that is the position, it axiomatically follows that the order of the NEAA under challenge in this petition cannot be sustained. The same is accordingly set aside and the appeal remanded to the NEAA and/or its successor for decision on merits.

No order as to costs.