

(2018) 06 KAR CK 0015
In the Karnataka High Court
Case No : Writ Appeal No.2635 of 2017

Mohammad Moinuddin Mansabdar @APPELLANT@Hash Government of India and Ors

Date of Decision : 13-06-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 227
National Green Tribunal Act, 2010 — Section 2, 14, 16

Citation : (2018) 06 KAR CK 0015

Hon'ble Judges : DINESH MAHESHWARI, J;KRISHNA S.DIXIT, J

Bench : Division Bench

Final Decision : Disposed of

Judgement

Learned counsel appearing for the respondent No.2 has contended, at the outset, that the grievance as suggested in this writ petition squarely falls

within the jurisdiction of the National Green Tribunal (â??the Tribunalâ??) by virtue of Section 16 of the National Green Tribunal Act, 2010 (â??the Act of 2010â??), particularly clause (g) thereof.

Shri Shiva Srinivasan, learned counsel for the petitioner has, however, strenuously argued that non-compliance of the requirements of environment

clearance by the respondent No.3 â?" company has larger implications and repercussions on the surrounding areas and the society, including adverse impact on the agricultural land and the water sources.

We are afraid, the submissions, as sought to be made on behalf of the petitioner, entail an enquiry into several of the factual aspects; and when

exclusive jurisdiction is available with the Tribunal to deal with such matters, it goes without saying that all the issues sought to be raised in this petition could be raised before the Tribunal.

We may also indicate that under Section 14 of the Act of 2010, the Tribunal has

the jurisdiction over all civil cases, where a substantial question relating to environment is involved; and such question arises out of the implementation of the enactments specified in Schedule I. Section 14 reads as under:

14. Tribunal to settle disputes.- (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose;

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

Clause (m) of Section 2 of the Act of 2010 makes it clear that the phrase "substantial question relating to environment" is wide enough to

include, inter alia, an instance where there is direct violation of specific statutory environmental obligation by which, the community at large is affected

or is likely to be affected adversely; or there is substantial damage to the environment or property; or there is measurable damage to the public health.

The environmental consequences relating to specific activity or a point source of pollution are also included therein. The said clause (m) of Section 2

of the Act of 2010, reads as under:

(m) "substantial question relating to environment" shall include an instance where,-

(i) there is a direct violation of a specific statutory environmental obligation by a person by which,-

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

(ii) the environmental consequences relate to a specific activity or a point source of pollution;â??

Thus, it is but clear that the issues sought to be raised in this petition would well be raised before the Tribunal. That being the position, the objection

raised on behalf of the respondent No.2 is sustained and the exercise of writ jurisdiction in this matter is declined.

However, we leave it open for the petitioner in taking recourse to other appropriate remedies in accordance with law.

It is also made clear that this Court has not pronounced on the merits of the issues sought to be raised in this petition.

The petition stands disposed of subject to the observations foregoing.