

(2013) 09 SC CK 0001

In the Supreme Court Of India

Case No : Civil Appeal No. 8288 of 2013 (Arising out of SLP (C) No. 27387 of 2012)

Monnet Ispat and Energy Limited

APPELLANT

Vs

Jan Chetna and Others

RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 226
Delhi High Court Rules and Orders — Rule 1, 4
National Environment Appellate Authority Act, 1997 &m

Citation : (2013) 10 AD 220 : (2013) 139 DRJ 19 : (2013) 3 EFLT 842 : (2014) 1 RCR(Civil) 711 : (2013) 11 SCALE 612 : (2013) 10 SCC 574

Hon'ble Judges : V. Gopala gowda, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : E. C. Agrawala, Anitha Shenoy

Final Decision : Disposed Of

Judgement

G.S. Singhvi, J.—Whether the Division Bench of the Delhi High Court could have entertained and allowed the petition filed by Respondent No. 1 as Public Interest Litigation for setting aside order dated 31.12.2008 passed by National Environment Appellate Authority (for short, 'NEAA') and remanded the case to the competent quasi judicial forum for being decided on merits.

2. The Appellant is a company incorporated under the Companies Act, 1956. Its registered office is at Raipur (Chhattisgarh). On 27.6.2007, the Appellant submitted an application to Chhattisgarh Environment and Conservation Board (Respondent No. 3) for sanctioning the proposed expansion of its existing plant at Naharpali, Kharsia, Raigarh. Respondent No. 3 issued notice dated 4.8.2007 under the Environment Protection Act, 1986 and the Rules framed thereunder for holding public hearing. As many as 700 persons participated in the public hearing. Thereafter, Respondent No. 3 sent report dated 4.10.2007 to the Ministry of Environment and Forests (Respondent No. 2), which granted

environmental clearance for the project of the Appellant.

3. Two days before the date fixed for public hearing, Shri Ramesh Agrawal and two others, namely, Ms. Ranjana Rajput and Mr. Vinod Chhaparlya filed Civil Suit No. 30-A/ 2007 in the Court of District Judge, Raigarh (for short, 'the trial Court') impleading the Appellant as a Defendant and prayed for grant of a declaration that the Appellant had illegally set up industry at Villages Naharpali, Bhupdevpur, Salihabhata and Singhanpur. They further prayed for ordering closure of the industry and for issue of a permanent injunction against the holding of public hearing for expansion of the existing industry and / or establishment of any new industry by the Appellant.

4. Along with the suit, the Plaintiffs filed an application Under Order 39 Rules 1 and 2 CPC for stay of the public hearing. By order dated 4.8.2007, the trial Court dismissed the application for temporary injunction. After six days, Shri Ramesh Agrawal and two others filed another application for injunction but no order appears to have been passed on that application.

5. After 2 months and 20 days of rejection of the injunction application filed by Shri Ramesh Agrawal and two others, Shri Ram Kumar Agarwal and Shri Ramesh Sharma filed Writ Petition No. 5534/2007 before the Chhattisgarh High Court under the name and style of "Ekta Parishad" and prayed that the State Government may be directed to conduct an inquiry into the correctness and genuineness of the Environment Impact Assessment Report prepared by Respondent No. 3. Later on, the writ Petitioners withdrew their cause.

6. The environment clearance granted by Respondent No. 2 was challenged by Respondent No. 1 by filing an appeal under the National Environment Appellate Authority Act, 1997 (for short, 'the 1997 Act'). On notice, Respondent No. 3 filed reply and pleaded that environment clearance was granted to the Appellant in accordance with law. NEAA dismissed the appeal of Respondent No. 1 vide order dated 31.12.2008 by recording the following observations:

10. The Counsel for Appellant submitted the proceedings of the draft constitution of Jan Chetna on 24.11.2008 without supporting affidavit which was required to be filed under the NEAA Rules, 1997 for taking responsibility of the authenticity of the facts stated in the document. The Counsel for the Appellant mentioned that the affidavit is required to be filed only while filing the Memorandum of Appeal under the NEAA Rules and not with the subsequent document. The Authority perused the draft proceedings of the meeting dated 15.2.2005 and observed that only 10 persons have formed the association called "Jan Chetna". Out of 10 members only two members complete address are given in the proceedings. From the addresses so given, it may be inferred that none of the members of "Jan Chetna" belong to Naharpali, Kharsia, Raigarh, the project area. Further the minutes of the meeting dated 15.2.2008 shows that Shri Rajesh Tripathi was given responsibility of preparation of authorization letter in favour of Ramesh Aggarwal and issue the same to oppose the Environmental

Clearance granted to the Respondent No. 3. As per serial number 12 of the proceedings dated 10.5.2005, Shri Rajesh Tripathi's address for communication etc., would be No. 159, Kelo Vihar, Raigarh. But, it is found that the Authorisation letter issued by Shri Rajesh Tripathi bearing the address of Satyam Kunj, Naya Gunj, Raigarh, which was the address of Shri Ramesh Aggarwal and there was no mention of designation of Shri Rajesh Tripathi in this letter. This action of the Appellant creates doubt about the authenticity of the authorization letter so issued. From the above it is clear that neither of the members of the "Association" - Jan Chetna as aggrieved persons as claimed in para 4(iv) above nor it has been authorized by the primary aggrieved persons. The Appellant has not disclosed all material facts for the purpose of adjudication of the Appeal. While considering the legality of secondary public injury complaints by the Hon'ble Supreme Court in S.P. Gupta v. UOI (1981), See SCC 87 held as follow:

... in such cases a member of the public having sufficient interest can certainly maintain an action challenging the legality of such acts or omissions but if the person or specific class or group of persons who are primarily injured by such acts or omissions, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of public who complaints of a secondary public injury cannot maintain the action.

The Appellant has failed to prove that its association is acting on behalf and in the interest of people who are or may be affected by the grant of Environmental Clearance by Respondent No. 1. Having perused all the submissions and the documents filed by the Appellant and the Respondents, the Authority conclude that the Appellant organization - Jan Chetna is not an association of persons likely to be affected by the order of the Environmental Clearance granted to Respondent No. 3 by Respondent No. 1. Therefore, the Appellant organization - Jan Chetna is not qualified to file an Appeal before this Authority u/s 11(2)(c) of the NEAA Act, 1997. Accordingly, the Appeal filed by the Appellant is not maintainable.

7. Respondent No. 1 challenged the aforesaid order in Writ Petition (C) No. 8399 of 2009, which was described as a Public Interest Litigation and prayed that order dated 31.12.2008 passed by NEAA may be set aside and a direction be issued to NEAA to decide the appeal on merits. Respondent No. 1 claimed that it was a representative body of those affected by the environmental clearance granted in favour of the Appellant and, therefore, it had the locus to challenge the decision taken by Respondent No. 2.

8. In the counter affidavit filed by the Appellant, several objections were taken to the maintainability of the petition. It was pleaded that in the garb of filing a Public Interest Litigation, Respondent No. 1 was seeking annulment of the order passed by NEAA and such relief could be claimed only by filing a regular petition Under Article 226 of the Constitution, which is required to be heard and decided by a Single Judge. The Appellant also referred to the pendency of Writ Petition(C) No. 5534/2007 before the Chhattisgarh High Court and pleaded that the writ

petition filed before the Delhi High Court was an abuse of the process of the Court. Another plea taken by the Appellant was that the entire cause of action for filing the petition had accrued in Chhattisgarh and the Delhi High Court did not have the jurisdiction to entertain the petition filed by Respondent No. 1.

9. The Division Bench of the High Court did take cognizance of the objections taken by the Appellant but did not deal with the same except the one relating to territorial jurisdiction of the Delhi High Court and overruled the same. On merits, the Division Bench relied upon judgment dated 14.9.2009 passed by a coordinate Bench in LPA No. 277/2009 Vedanta Alumina Ltd. v. Prafulla Samantra and Ors. wherein it was held that an organisation, which is working in the area and is closely following the issue of setting up of industries and impact thereof on the environment falls in the category of a 'person aggrieved' and concluded that NEAA committed serious error by dismissing the appeal of Respondent No. 1 on the ground of lack of locus.

10. We have heard Dr. A.M. Singhvi, learned senior Counsel for the Appellant and Shri Sanjay Parikh, learned Counsel for Respondent No. 1 and perused the record.

11. Shri Parikh made strenuous efforts to convince the Court that the hypertechnical objection raised by the Appellant should not be entertained and in view of the judgment rendered by the Division Bench of the High Court in Vedanta Alumina Ltd. v. Prafulla Samantra (supra), the SLP should be dismissed.

12. We have considered the submission of the learned Counsel but have not felt impressed.

13. Chapter 3 Part A of the Delhi High Court Rules contains rules relating to the practice of the High Court in the hearing of causes and other matters. Part B contains rules relating to the jurisdiction of a Single Judge and of Benches of the Court. The relevant clauses of Rule 1 of Part B read as under:

Part B JURISDICTION of A SINGLE JUDGE AND of BENCHES of THE COURT

1. Cases ordinarily to be heard by a single Judge-Subject to the provisos hereinafter set forth the following classes of cases shall ordinarily be heard and disposed of by a Judge setting alone:

(i) to (xvii) xxx xxx xxx

(xviii) (a) Application or petition Under Article 226 of the Constitution of India for the issue of any directions, orders or writs in the nature of Mandamus, prohibition, quo-warranto or certiorari for the enforcement of fundamental rights conferred by Part III of the Constitution of India or for any other purpose, except:

(i) Petitions where vires of Acts or statutory rules, Regulations, or bye-laws are challenged.

(ii) Petitions where personal liberty is involved.

(iii) Petitions pertaining to all Revenue/tax matters including entertainment

taxes, except Municipal Tax.

(iv) Petitions arising from the orders of the Board for Industrial and Financial Reconstruction/Appellate Authority for Industrial and Financial Reconstruction or seeking directions to them; and

(v) Petitions pertaining to Public Interest litigation.

(vi) Petitions pertaining to the award to Tenders.

(vii) Petitions relating to Co-operative Societies.

(viii) Petitions being service matters of Armed Forces of the Union.

(ix) Petitions arising out of Land Acquisition.

(x) Petitions concerning orders passed by the High Court on the administrative side.

Provided that as regards pending cases, the learned single Judge may hear the part-heard matters.

Explanation: The preliminary hearing for admission and final disposal of applications and petitions pertaining to matters mentioned in Clause (i) to (x) of Sub-rule (xviii)(a) above shall however be before a Bench of two Judges and before a Single Bench when there is no sitting of Division Bench.

Rule 4, which relates to jurisdiction of a Bench of two Judges, also reads as under:

4. All cases to be disposed of by a Bench of two Judges save as provided by law or by these rules-Save as provided by law or by these rules or by special order of the Chief Justice, all cases shall be heard and disposed of by a Bench of two Judges.

14. A bare reading of the above reproduced provisions makes it clear that the petition filed by Respondent No. 1 for quashing order dated 31.12.2008 could be heard only by Single Bench of the Delhi High Court. However, by disguising the petition as a Public Interest Litigation, Respondent No. 1 succeeded in getting the same listed before the Division Bench of the High Court. Unfortunately, the Division Bench did not deal with the objection raised by the Appellant to the maintainability of the petition filed by Respondent No. 1 and proceeded to decide the matter on merits which, in our considered view, was legally impermissible.

15. We are not suggesting that Respondent No. 1 had indulged in Bench hunting but it needs to be emphasised that every Bench of the High Court should scrupulously follow the relevant rules and should not violate statutory provisions specifying its jurisdiction, else the sanctity of the rules relating to distribution of causes between the Single, the Division Bench and larger Benches will be lost.

16. In the result, the appeal is allowed and the impugned order is set aside. The

writ petition filed by Respondent No. 1 shall now be listed before a Single Judge of the High Court, who shall decide the same without being influenced by the observations contained in the impugned order or this order.

17. While disposing of the appeal in the manner indicated above, we consider it necessary to make it clear that this Court has not expressed any opinion on the merits of the case and the parties shall be free to advance all legally permissible arguments before the learned Single Judge of the High Court.