

(2013) 10 RAJ CK 0095

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 8074, 8682, 9612, 10146 of 2010, 3615, 7932, 11533 of 2011, 4050, 8828 of 2012, 2087, 2630, 2631, 2648, 2649, 2650, 2651, 2707, 2709, 2710, 2713, 2730, 2783, 2784, 2785, 2888, 2892, 2896, 2899, 2900, 2901, 2903, 2904, 2905, 2906

M/s. Laxmi Suiting and Others

APPELLANT

Vs

State of Rajasthan and Others etc. etc.

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2013) 10 RAJ CK 0095

Hon'ble Judges : Amitava Roy, C.J.;Pratap Krishna Lohra, J

Bench : Division Bench

Advocate : Sachin Acharya, Mr. V.R. Bishnoi, Mr. R.R. Vyas, Dr. Pushpendra Singh, Mr. Manish Patel, Mr. Hemant Balani, Mr. Sandeep Shah, Mr. Ankur Mathur and Mr. Umesh Shrimali, for the Appellant; Manish Shishodia for the-Rajasthan State Pollution Control Board, Mr. Manoj Bhandari for the JVVNL, Mr. G.R. Punia, Additional Advocate General, Mr. Mukul Singhvi, Sushil Bishnoi, R.S. Saluja, V.K. Bhadu, Mahendra Chhangani, Kuldeep Mathur and Mr. Dinesh Mehta for the Jodhpur Pradushan Niwaran Trust, for the Respondent

Final Decision : Disposed Off

Judgement

Amitava Roy, C.J.—This batch of writ petitions has been laid before us to determine as to whether these ought to be transferred to the National Green Tribunal (for short, hereafter referred to as "the Tribunal") established u/s 3 of the National Green Tribunal Act, 2010 (for short, hereafter referred to as "the Act"). The writ petitions hitherto pending before the learned Single Bench have been listed in terms of the order dated 23.9.2013. We have heard learned counsel for the petitioners and the learned counsel for the respondents.

2. The factual spectrum though involves divergent facts projecting a range of challenges and grievances, however, pertains to environment as defined in Section 2(c) of the Act with varying degree of co-relative proximity having regard to the debate raised and needs to be addressed, it is inessential to dilate on the

rival pleadings. This is more so as in course of the arguments advanced on behalf of the parties, it has not been contended that no environmental issue whatsoever is involved in the instant proceedings. The competing pleadings as a composite whole would thus be required to be noted in the pronounced perspectives of the scheme and the underlying objectives of the Act.

3. The learned counsel for the petitioners apart from contending that the reliefs provided by the Act u/s 15 thereof do not constitute efficacious alternative remedy, have urged that in absence of any provision in the enactment to that effect, it is not mandatory to transfer the cases to the learned Tribunal. It has been argued that the provisions of the Act do not apply to the facts of the instant proceedings. Referring to Sections 14 and 16 of the Act in particular, it has been insisted that no substantial question in civil cases relating to environment exist in the cases in hand and thus, the learned Tribunal is bereft of jurisdiction in settling the disputes founded on the facts averred. Referring to the notice(s) issued by the Rajasthan State Pollution Control Board (for short, hereafter referred to as "the Board") u/s 33A of the Water (Prevention and Control of Pollution) Act, 1974 (for short, hereinafter referred to as "the Act of 1974") in the concerned cases, it has been urged that as the validity thereof has been impeached for the violation of the mandatory provisions with regard thereto, no issue relating to environment is involved and that the alternative remedy contemplated by the Act even if available, the jurisdiction of this Court under Article 226 of the Constitution of India is not ousted thereby. As in some cases issues involving the Combined Effluent Treatment Plant (CETP) and Jodhpur Pradushan Niwaran Trust (for short, hereinafter referred to as "the Trust") are involved, it has been contended that no environmental aspect is associated therewith and thus, those cases do not merit transfer.

4. Mr. Mehta, learned counsel for the Trust in particular has urged with reference to Articles 323A and 323B of the Constitution of India that in absence of any provision in the Act mandating transfer of cases relating to environment, as envisaged u/s 14 thereof, this Court is under no obligation to do so. To reinforce this plea, he has referred to a compilation of the various enactments made under the aforementioned constitutional provisions embodying as well specific legislative prescriptions for such transfer. According to Mr. Mehta, the observations/enjoinments made/recorded in the decision of the Hon'ble Apex Court in Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India (UOI) and Others, have to be essentially interpreted in the textual facts and are not for general application.

5. Mr. Punia, learned Additional Advocate General has submitted that in all the proceedings on board, substantial questions relating to environment are involved and thus, in view of the mandate of Sections 14 and 29 of the Act read with the ruling in Bhopal Gas Peedith Mahila Udyog Sangathan and ors. Vs. Union of India and ors. (supra), these are to be essentially transferred to the learned Tribunal.

6. Mr. Shishodia, learned counsel for the Board while endorsing the stand of the

State-respondents has urged that as would be apparent from the reply filed by his respondent in the related cases, violations of the provisions of the legislations enumerated in Schedule-I of the Act more particularly the Act of 1974 are writ large for which it (Board) has taken necessary actions, which have since been assailed before this Court. While referring to the decisions of the Delhi High Court and the Karnataka High Court rendered in Mahavir Singh Vs. Union of India & ors. (WP(C) No. 7302/2009 decided on 6.2.2013) and H.S. Neelakantappa Vs. State of Karnataka and ors. (WP No. 47599/2011 (GM-RES-PIL) and WP No. 25255/2012 (GM-RES-PIL) decided on 8.7.2013) respectively transferring the cases contemplated u/s 14 of the Act to the learned Tribunal, in similar circumstances, the learned counsel has drawn the attention of this Court as well to the amendments obligated to the legislations catalogued in Schedule-III of the Act and also to the corresponding insertions in the related legislations to contend that having regard to the avowed purpose of the National Green Tribunal Act, 2010, the instant proceedings ought to be transferred to the learned Tribunal equipped with the necessary expertise to settle the disputes involved therein.

7. The arguments advanced have received our due consideration.

8. To reiterate, it has not been pleaded before us that the issues raised in the instant proceedings have no nexus whatsoever with the environmental aspect or the laws relatable thereto. Be that as it may, the Act has its roots as the statement of objects and reasons would reveal, in the United Nations Conferences on environment and development held in 1972 and 1992 in which India participated calling upon the States to take appropriate steps for the protection of the human environment. Therein the necessity of providing effective access to judicial and administrative proceedings, including redress and remedy and of developing national laws regarding liability and compensation for the victims of pollution and other environmental damage, was emphasized. Having regard to the ambit of right to life under Article 21 of the Constitution of India encompassing healthy environment and to actualize the same and also taking into account the large number of environmental cases pending in the higher courts involving multi-disciplinary issues, the Hon'ble Apex Court requested the Law Commission of India to consider the need for constitution of the specialized environmental courts. Consequently, on the necessary recommendation of the Law Commission of India, a specialized Tribunal with original and appellate jurisdictions relating to environmental laws and equipped to handle multi-disciplinary issues involving environmental cases was set up vide the Act with the objective of expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The National Green Tribunal Bill, 2009 followed which provided for establishment of the National Green Tribunal consisting of Chairperson and Judicial and Expert Members as the Central Government would notify. A person either an expert in physical sciences or life sciences or engineering or having administrative experience in dealing with environmental matters, was considered to be qualified

for appointment as Expert Member. The comprehensive jurisdiction of the learned Tribunal commensurate to the task entrusted was outlined as well.

9. This Bill having been passed by both the Houses of Parliament and on receiving the assent of the President of India, was integrated in the Statute Book as the National Green Tribunal Act, 2010. The preamble thereof proclaims that it has been enacted to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and for giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. The recital following the preamble amongst others demonstrates that in order to eventuate the resolutions adopted in the aforesaid conferences and to fructify the comprehension of right to healthy environment as an integrant of life envisaged under Article 21 of the Constitution of India, the National Green Tribunal has been set up to settle the disputes involving multi-disciplinary issues relating to environment. Section 2(c) defines "environment" as hereunder:-

2(c) "environment" includes water, air and land and the interrelationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property;

The "substantial question relating to environment" has been defined in Section 2(m), which is extracted hereinbelow for ready reference:-

2(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;

Section 4 of the Act, which deals with the composition of the Tribunal, obligates that it would comprise of not less than ten but subject to maximum of twenty, full time Expert Members, as the Central Government may from time to time notify. Apart therefrom, the Tribunal has to essentially consist of a full time Chairperson and not less than ten but subject not maximum of twenty full time Judicial Members as the Central Government may from time to time notify.

10. Sections 14 and 15 of the Act, which occupy the centre stage of the debate,

also deserve extraction:-

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

15. Relief, compensation and restitution.-(1) The Tribunal may, by an order, provide,-

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).....

Whereas Section 16 confers appellate jurisdiction on the Tribunal against the orders as enumerated therein, Section 29 bars the jurisdiction of the civil court to settle disputes or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged that may be adjudicated upon by the Tribunal. Similar bar is also vis-a-vis any appeal by such civil court on the said issues. Thereby, the civil courts are also prohibited from issuing any injunction in respect of any action taken or to be taken by the Tribunal in such matters. Section 34 reserves to the Central Government the power by notification to amend Schedule-I by including therein any other Act, enacted by Parliament having regard to the objective of environmental protection and conservation of natural resources, or omitting therefrom any Act already specified therein. Schedule-I to the Act catalogues the following enactments traceable to Section 14(1) of the Act the questions arising out of the implementation whereof would be within the purview of the learned Tribunal:

SCHEDULE I

(See sections 14(1), 15(1), 17(1)(a), 17(2), 19(4)(j) and 34(1))

1. The Water (Prevention and Control of Pollution) Act, 1974;

2. The Water (Prevention and Control of Pollution) Cess Act, 1977;

3. The Forest (Conservation) Act, 1980;
4. The Air (Prevention and Control of Pollution) Act, 1981;
5. The Environment (Protection) Act, 1986;
6. The Public Liability Insurance Act, 1991;
7. The Biological Diversity Act, 2002.

A bare perusal of Schedule-III authenticates the amendments introduced in the legislations contained in Schedule I of the Act pursuant to Section 36 thereof. Section 33 of the Act in no uncertain terms assigns an overriding effect thereof over any other Act inconsistent therewith for the time being in force or any instrument having the effect by virtue of any law and inconsistent therewith. A plain reading of Section 14 of the Act would irrefutably justify that thereby the learned Tribunal has been conferred with the jurisdiction over all civil courts where a substantial question relating to environment including enforcement of any legal right relating to environment is involved and where such question arises out of the implementation of the enactments specified in Schedule I, the learned Tribunal is to hear the dispute arising from such question and settle the same and pass order thereon.

11. Considering the ambit and expanse of the definition of the expressions "environment" and "substantial question relating to environment" as engrafted in Section 2(c) and 2(m) respectively, we are unable to persuade ourselves to conclude that any constricted approach to scuttle the otherwise attributed wide jurisdiction of the learned Tribunal is either envisaged by the Parliament or is intended. Not only the environment includes water, air and land as defined and their interrelationship alongwith human beings, other living creatures, plants, micro-organism and property, the substantial question relating to environment includes amongst others the eventualities set out in clauses (i) and (ii) of section 2(m) of the Act. The definition "substantial question relating to environment" as provided in section 2(m) is an inclusive one and by no means can be ascribed a connotation to limit the scope and sphere thereof. Apropos the factual backdrop of the legislation and the salubrious accomplishments thereof as intended, any endeavor to muzzle the legislatively intended contour thereof would be antithetical thereto and cannot receive judicial imprimatur. A purposive interpretation has to be essentially provided to the relevant provisions of the Act so as to facilitate the wholesome implementation of its enjoinders lest the same is rendered otiose. The words contained in Section 14 delineating the jurisdiction of the learned Tribunal therefor have to be assigned the desired flexibility and amplitude to achieve the objectives thereof. Section 16 by no means ousts or regulates or circumscribes the ambit of Section 14.

12. The reliefs grantable by the learned Tribunal and enlisted in Section 15 are also couched in compendious terms with adequate discretion to the learned Tribunal to mould the same within the framework thereof. The reliefs contained

in clauses (a), (b) and (c) of Section 15(1) therefore do not admit of literal interpretation to circumvent the otherwise intended wide ambit thereof.

13. Though the Act does not contain any provision in particular mandating transfer of any pending case or proceeding otherwise within the purview of the jurisdiction of the learned Tribunal to it, having regard to the framework thereof and the interplay of the relevant provisions, with the Tribunal as the envisaged fora to settle the disputes involving substantial questions relating to environment, in our view, the non-existence thereof (provision of transfer) is suggestive of impermissibility of such transfer.

14. To reiterate, the Act has been given an over-riding effect. Though the same per se would not oust the jurisdiction of the superior courts contemplated by the Constitution of India, the plea of inadequacy or inefficacy of the remedy provided by the Act does not weigh with us. The reference of Articles 323A and 323B of the Constitution of India and the enactments made thereunder ipso facto also do not, in our estimate, outweigh the otherwise unmistakable edict of the Act and the inbuilt exclusion of the jurisdiction of the civil courts in matters within the purview of the learned Tribunal for its adjudication. The contention that this Court is beyond the concept of civil court and thus, the provisions of the Act do not apply to the proceeding under Article 226 of the Constitution of India is to be recorded only to be rejected. There is no repugnance or conflict between the provisions of the Act and the jurisdiction of the learned Tribunal outlined thereby with that of the superior courts under the Constitution of India. No ouster of the writ jurisdiction of this Court as well is either conceived of or intended. This, however, does not detract from the necessity of transfer of the proceedings also under Article 226 of the Constitution of India to the learned Tribunal in view of the avowed mission of the Act and for the settlement of disputes relating to environment with suitable reliefs as a corollary thereof.

15. It has been contended on behalf of the Board in its pleadings that the facts involved pertain to water pollution due to discharge of sewage and untreated trade effluent by the industries involved. Not only these outrages are due to conscious violations of the Act of 1974 and other environmental laws, remedial actions taken by it (Board) form the subject matter of challenge in the instant writ proceedings as well. Accusation of environmental pollution and ecological damage has been made. Having regard to the definitions of "environment" and "substantial question relating to environment" as adverted to hereinabove, we are thus of the unhesitant opinion that substantial questions relating to environment and arising out of the implementation of the enactments amongst others the Act of 1974 is involved in the proceedings in hand warranting transfer of the cases to the learned Tribunal.

16. The Hon"ble Apex Court in Bhopal Gas Peedith Mahila Udyog Sangathan and ors. Vs. Union of India and ors. (supra) while dilating on the provisions and the scheme of the Act and the essentiality of transfer of proceedings as contemplated therein to the learned Tribunal, has propounded as hereunder:-

40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialized justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion as it will be in the fitness of administration of justice.

17. Not only the text of the above quoted extract would evince a mandate by their Lordships to transfer matters covered by the provisions of the Act to the learned Tribunal whether pending prior to the coming into force of the Act or instituted thereafter, in order to avoid conflict of orders by it and the High Courts, but also in the interest of expeditious and specialized justice in the field of environment to all concerned. Their Lordships have further observed that the courts may be well advised to direct transfer of such cases to the learned Tribunal in their discretion as it would be in the fitness of administration of justice.

18. As in our comprehension, the proceedings on board do involve environmental issues relatable to the legislation(s) as the case may be, and set out in Schedule I of the Act and are best suited to be adjudicated upon by the specialized fora (learned Tribunal) equipped with the essential expertise as visualized by the Act, we construe it appropriate to transfer the same to it forthwith. Ordered accordingly. The petitions are disposed of on transfer. A copy of this order be placed in all the files.