

**(2015) 06 MAD CK 0558**

**In the Madras High Court**

**Case No : Writ Petition No. 34199 of 2014**

P.S. Jayachandran and Others

APPELLANT

Vs

The Member Secretary, Tamil Nadu Pollution Control Board  
and Others

RESPONDENT

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**Date of Decision : 30-06-2015**

**Acts Referred:**

Armed Forces Tribunals Act, 2007 — Section 22, 30, 31  
Civil Procedure Code, 1908 (CPC) — Section 100  
Constitution of India, 1950 — Article 226

**Citation : (2015) 4 LW 22**

**Hon'ble Judges : Sanjay Kishan Kaul, C.J;T.S. Sivagnanam, J**

**Bench : Division Bench**

**Advocate : AR.L. Sundaresan, Senior Counsel for BFS Legal, for the Appellant;  
Yasmeen Ali, Advocates for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Sanjay Kishan Kaul, C.J—Petitioner seeks to assail the order passed by the National Green Tribunal dated 12.07.2013 and 24.09.2014 respectively. A preliminary objection was raised by the learned counsel for respondent No. 4 on the issue of maintainability of the writ petition arising from the recent judgment of the Hon"ble Supreme Court in Civil Appeal No. 7400 of 2013, decided on 11.03.2015 Union of India (UOI) and Others Vs. Shri Kant Sharma and Others(2015) 3 AD 431 : (2015) LabIC 2184 : (2015) 3 SCALE 546 : (2015) 3 SCJ 689 : (2015) 2 SCT 519 . We may notice that prior to the aforesaid judgment, this Court was entertaining writ petitions filed under Article 226 of the Constitution of India challenging the orders passed by the National Green Tribunal based on the principle stated inter alia in L. Chandra Kumar Vs. Union of India and others, AIR 1997 SC 1125 : (1997) 83 CLT 815 : (1997) 92 ELT 318 : (1997) 228 ITR 725 : (1997) 3 JT 589 : (1997) 3 SCALE 40 : (1997) 3 SCC 261 : (1997) SCC(L&S) 577 : (1997) 2 SCR 1186 : (1997) 105 STC 618 : (1997) AIRSCW 1345 : (1997) 3 Supreme 147 . However, in Major General Shri Kant

Sharma's case cited supra ( 2015-4-L.W. 1), though it pertains to the Armed Forces Tribunal Act, 2007, in paragraph 34, it has been observed that the jurisdiction of the High Court under Article 226 of the Constitution of India may not be circumscribed by the provisions of any enactment, but due regard has to be given to the legislative intent evidenced by provisions of the Acts and Courts would exercise their jurisdiction consistent with the provisions of the Act. When a statutory Forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. The Hon'ble Supreme Court, in turn, discussed the likelihood of an anomalous situation arising if such writ petition was entertained under Article 226 bypassing the provisions of Sections 30 and 31 of the Armed Forces Tribunal Act, 2007.

2. The learned Senior Counsel for the petitioners acknowledges that the present case is not one where the earlier judgment of the Larger Bench has gone unnoticed in the subsequent judgment. But after specifically noticing the same, it has still been observed that the appellate remedy alone should be followed. Under the National Green Tribunal Act, 2010, an appeal would be maintainable under Section 22 which reads as under:--

"Any person aggrieved by any award, decision or order of the Tribunal, may file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal."

3. In view of the aforesaid position, we fail to appreciate as to how we would be able to exercise the jurisdiction - a question was posed to us that the judgment in Major General Shri Kant Sharma's case cited supra (2015-4-L.W. 1) is not in conformity with the views of the Larger Bench, cannot be agitated before us. It would require reconsideration of the views expressed by the Hon'ble Supreme Court in Major General Shri Kant Sharma's case cited supra (2015-4-L.W. 1) and judicial hierarchy would not permit this Court to embark upon the said exercise. We have no option but to dismiss the writ petition, as not maintainable in view of the judgment of the Hon'ble Supreme Court in Major General Shri Kant Sharma's case cited supra (2015-4-L.W. 1). No costs.