
(2014) 09 RAJ CK 0078

In the Rajasthan High Court

Case No : Civil (Pil) Writ Petition No. 16334/2013

Sanjay Palintkar

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

National Greens Tribunal Act, 2010 — Section 14, 29, 30, 38(5)

Citation : (2014) 09 RAJ CK 0078

Hon'ble Judges : Sunil Ambwani, Acting C.J.;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : Daya Shanker Sharma, OIC and Naveen Vyas, OIC, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. No one appears on behalf of the petitioner.
2. Shri Daya Shanker Sharma, OIC, SMS Hospital, appears for the respondent No. 1
3. Shri Naveen Vyas, OIC, appears for the respondent No. 6-Rajasthan State Pollution Control Board.
4. An application has been filed by the Rajasthan State Pollution Control Board through its Member Secretary-respondent No. 6, to dismiss the writ petition on the ground of alternative remedy available to approach the National Green Tribunal by filing an appropriate petition under the National Green Tribunal Act, 2010 (for short, "the Act of 2010")
5. It is submitted that keeping in view the provisions and scheme of the Act of 2010, particularly Sections 14, 29, 30 and 38(5), all environmental issues and the matters covered under the Act of 2010, Schedule I, should be instituted and litigated before the National Green Tribunal.
6. In Writ Petition(Civil) No. 50/1998- Bhopal Gas Peedith Mahila Udyog

Sangathan and Others Vs. Union of India (UOI) and Others, , the Supreme Court has given directions, in paragraphs 40 and 41, to all Courts of competent jurisdiction to transfer the cases pending before it, which involve the questions of environmental law and/or relating to any of the seven statutes specified in Schedule I of the Act of 2010, to the National Green Tribunal. In paragraph 41, the Supreme Court observed; The Courts may be well advised to direct transfer of such cases to the National Green Tribunal in its discretion, as it will be in the fitness of administration of justice.

7. The present writ petition was filed on 06.09.2013, after the directions were issued to transfer the pending petitions to the National Green Tribunal and thus, this writ petition seeking relief to restrain implementation of Chief Minister's Free Diagnostic Scheme without authorization under the Bio-Medical Waste (Management and Handling) Rules, 1998 (for short, "the Rules of 1998") to all the health centers involved in the scheme, ought to have been filed in the National Green Tribunal.

8. The petitioner, in this public interest litigation for protection of environment, is a medical doctor by profession. He has filed the writ petition for restraining implementation of the Chief Minister's Free Diagnostic Scheme in Rajasthan through diagnostic centres, unless each diagnostic centre have an authorization and are complying with the provisions of the Rules of 1998, made under the Environment (Protection) Act, 1986.

9. This Court had, vide judgment dated 01.10.2013, directed all the pending writ petitions, claiming reliefs, which would fall under the jurisdiction of the National Green Tribunal, to the Tribunal under the Act of 2010.

10. The National Green Tribunal Act, 2010, does not provide for transfer of the pending petitions, of which the matters can be agitated/litigated in National Green Tribunal. The judgment in Bhopal Gas Peedith Mahila Udyog Sangathan & Ors. Vs. Union of India & Ors. (supra), in order to facilitate the litigants, directed transfer of all pending cases.

11. In a Petition for Special Leave to Appeal (Civil) No. 27327/2013-Adarsh Co-Opt v. Housing Society Ltd. Vs. Union of India & Ors., arising out of an order passed by the High Court of Judicature at Bombay, the Hon"ble Supreme Court has passed an order on 10.03.2014, proposing to reconsider the directions in paragraphs 40 and 41 of the judgment for transfer of pending cases to National Green Tribunal. The Supreme Court has also directed, until final orders are passed on such reconsideration, that the direction for transferring the pending matters before the High Court to the Green Tribunal in paragraphs 40 and 41 will not be given effect to.

12. We are of the view that the cases which have been filed subsequent to the judgment of the Supreme Court in Bhopal Gas Peedith Mahila Udyog Sangathan & Ors. Vs. Union of India & Ors. (supra), need not be transferred as they were filed despite alternative remedy available under the Act of 2010 and for which,

detailed discussion has been made in the said judgment. Such cases after the judgment may be filed directly in National Green Tribunal.

13. In view of the above, the reliefs claimed in the writ petition can be agitated/litigated in the National Green Tribunal, as the reliefs are essentially in the nature of protection of environment by enforcement of the Rules of 1998, to be followed by all diagnostic centres under the scheme.

14. The writ petition is dismissed on the ground of alternative remedy, with liberty to the petitioner to pursue the remedy in the National Green Tribunal. I.A. No. 41830/2013 stands disposed of.