

(2026) 02 OHC CK 1700

In the Orissa High Court

Case No : Writ Petition (C) No. 28208 Of 2025

Sumanta Swain And Others

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 05-02-2026

Acts Referred:

Constitution Of India, 1950 — Article 32, 136, 226, 227
National Green Tribunal Act, 2010 — Section 3, 14, 16, 22, 31, 31B
Water (Prevention And Control Of Pollution) Act, 1974 — Section 18
Code Of Civil Procedure, 1908 — Section 100

Citation : (2026) 02 OHC CK 1700

Hon'ble Judges : Harish Tandon, CJ; M.S. Raman, J

Bench : Division Bench

Advocate : Pawan Upadhyay, Suman Pattanayak, Debashis Tripathy, P. K. Parhi

Final Decision : Disposed Of

Judgement

Harish Tandon, CJ

1. The question was raised before the counsel on the first motion as to whether the relief claimed in the instant writ petition can also be claimed before the specialized Tribunal i.e. National Green Tribunal (for short, 'NGT') and, therefore, why the writ Court should not relegate the parties to approach the said Tribunal. In other words, the Bench was of the view that once the specialized Tribunal is constituted to deal with the issues raised in the instant writ petition, whether the litigant can bypass such statutory forum and approach the High Court as a rule of convenience.

2. We are not unmindful of the settled proposition of law that the power to issue writs under Article 226 of the Constitution of India and power of superintendence exercised by the High Court over the subordinate courts and Tribunals are inviolable and cannot be abridged or whittled down through a legislative exercise as the same is a basic structure of the Constitution, yet at times, the writ Court may refuse to exercise such powers not as a matter of compulsion, but of

discretion. There is no absolute bar in entertaining the writ petitions under Article 226 of the Constitution of India despite an alternative remedy available to the litigant, but the writ Court may refuse to entertain such writ petitions and relegate the parties to exhaust the statutory remedy, which is appropriate and effective by using its discretion.

3. The point was raised, at the threshold, in the instant writ petition as to why the litigant should not be directed to exhaust such statutory remedy upon noticing the facts narrated in the writ petition and the reliefs claimed therein. The important issues raised in the instant writ petition pertain to unregulated dumping of fly ash during the construction of the National Highway No.49 (for short, 'NH-49') causing pollution in the environment and also causing an extensive damage to the crops of the people in the vicinity. Apart from the same, such dumping of fly ash in an indiscriminate manner causes a contamination of the ponds and the ground water, which are essential for irrigation and the pisciculture, causing death of fish and affects the water body being the source for irrigation.

4. The concern is shown when the Ministry of Road Transport and Highways ensued the construction of NH-49 and the authorities used fly ash by dumping in open air without taking any safeguard by covering the same with morrum or soil and at times, during the rainy season, it washed away to engulf farmlands and ponds and even the village roads.

5. We have no hesitation not even inkling of doubt that the concern shown in the writ petition is of a significant importance, but the entertainability of the writ petition was raised because of setting up of the specialized forum established under the National Green Tribunal Act, 2010 (for short, 'NGT Act').

6. This Court was reminded of the decision rendered by the apex Court in *Madhya Pradesh High Court Advocates Bar Association v. Union of India*, reported in 2022 SCC OnLine SC 639; 2022 LiveLaw (SC) 495, where the writ petition was filed under Article 32 of the Constitution of India before the apex Court challenging the vires of the NGT Act on multiple grounds including that it suffers from the vice of excessive delegation. The apex Court recapitulated the genesis of the said Act and observed that the precursor to the NGT Act was the 186th Report of the Law Commission of India primarily aimed to establish the specialized environmental courts with qualified judges and technical experts to deal with the environmental issues. In course of the hearing, another issue was raised whether the said Act ousts the jurisdiction of the High Courts under Article 226 or 227 of the Constitution by virtue of Sections 14 and 22 of the said Act. The apex Court reminded itself to the 7-Judge Bench decision rendered in *L. Chandra Kumar v. Union of India*, reported in 1997 (3) SCC 261 where the challenge was made to the establishment of the Administrative Tribunal, which was perceived to have undermined the authority of the writ Courts wherein it was held that the power of judicial review over legislative action vested in the High Courts under Article 226 and the Supreme Court under Article 32 of the

Constitution, is an integral and essential feature of the Constitution, constituting a part of its basic structure. It was also held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdiction is also a part of the basic structure of the Constitution. Ultimately, it was held that the High Courts may entertain the writ petitions under Article 226 and 227 of the Constitution against the order of the specialized Tribunal with the caveat that such exercise must be done with due discretion whether to entertain or relegate the parties to the forum. The Bench also took note of the broad test laid down in *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai* reported in (1998) 8 SCC 1. Noticing the aforementioned judgments, the Bench held that the provisions contained under the NGT Act neither impliedly nor explicitly oust the jurisdiction of the High Courts under Articles 226 and 227 of the Constitution, which remained unaffected and, therefore, no absolute ouster can be perceived and the parties may approach the High Court against the order of the NGT as the provision of appeal under Section 22 of the said Act is limited to the grounds akin to Section 100 of the CPC in the following:

"31. The petitioners have also pleaded that instead of appeal to the Supreme Court under Section 22 from the orders passed by the NGT, an appeal mechanism as a matter of right should also be provided before the concerned High Courts. According to them, appeal to the Supreme Court is inadequate and unaffordable and therefore inaccessible. On this aspect it needs to be observed that even when a direct appeal to the Supreme Court is provided by a statute (*Electricity Act, 2003*; *Telecom Regulatory Authority of India Act, 1997*) against the decision of a tribunal (*Armed Forces Tribunal under the Armed Forces Tribunal Act, 2007*), the remedy under Article 226 or 227 before the High Court remains unextinguished. Moreover, the Appeal under Section 22 of the NGT Act, is limited to the grounds under Section 100 of the CPC and the Supreme Court does not function as a regular first appellate Court. However, under Article 226 or 227, remedies on issues of jurisdiction and also under the principles set out in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* ([1948] 1 kb 223), are available for an aggrieved party. Subject to discretion being exercised, the affected litigants can move High Court under Article 226 or 227 and in such cases, a SLP under Article 136 of the Constitution could also be maintained to the Supreme Court from the High Court's verdict."

7. Ultimately, it was held as follows:

"45. In consequence of the above analysis, our conclusions are,

A. The National Green Tribunal under Section 14

& 22 of the NGT Act does not oust the High Court's jurisdiction under Article 226 & 227 as the same is a part of the basic structure of the Constitution.

B. The remedy of direct appeal to the Supreme Court under Section 22 of the NGT Act is intra vires the Constitution of India.

C. Section 3 of the NGT Act is not a case of excessive delegation of power to the Central Government.

D. The seat of the NGT benches can be located as per exigencies and it is not necessary to locate them in every State. The prayer for relocating the Bhopal NGT to Jabalpur is unmerited and is rejected.”

8. The petitioners rely on a judgment of the apex Court in Tamil Nadu Pollution Control Board v. Sterlite Industries (India) Ltd., reported in 2019 (19) SCC 479, in support of the contention that the High Court may entertain the writ petition concerning the issues relating to violation of several provisions contained under the statute relating to ‘air’ and ‘water’. In the said writ petition, the appeal was filed by the Pollution Control Board against the order passed by the National Green Tribunal and a plea of demur was taken whether such appeal is maintainable. It can be reasonably deciphered from the facts narrated in the said case that the respondent therein was operating a copper smelter plant at the industrial complex after receiving a No Objection Certificate from the Pollution Control Board for production of blister copper and sulphuric acid. The environmental clearance to the project was also obtained from the Ministry of Environment, Forest and Climate Change and subsequently the consent was also granted by the Pollution Control Board under Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974. Subsequently, the environmental clearances, which were granted to the said respondent, were challenged before the Madras High Court under Article 226 of the Constitution, which was eventually allowed by quashing the environmental clearances with further direction to close down the plant. Apropos the said, a show-cause notice for closure of the unit was issued, which was challenged before the NGT, who stayed the said order. Ultimately, the NGT set aside the order passed by the Pollution Control Board. The appeal was filed before the Supreme Court and a plea of maintainability thereof was raised. The apex Court was considering the several provisions of the NGT Act including Section 31 and 31B of the NGT Act concerning the exercise of the appellate jurisdiction and in the backdrop of the above, it was held:

“43.

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For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject-matter of any appeal under Section 16 of the NGT Act, cannot be “judicially reviewed” by the NGT. Following the judgment in BSNL [BSNL v. TRAI, (2014) 3 SCC 222] , we are of the view that the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17-7-2014 in Wilfred J. v. Ministry of Environment & Forests [Wilfred J. v. Ministry of Environment & Forests, 2014 SCC OnLine NGT 6860] must also be

rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected.

44. Shri Sundaram then argued that, in any case, this order is an order made by the State Government against the TNPCB, and is therefore, a direction to the TNPCB and not a direction to his client. If this were so, and the order had no effect on his client, there would have been no necessity to file an appeal before the NGT against such order. We have seen, however, that this order has been challenged on merits by the respondent before the NGT. To then say that this order which is challenged would be defended on certain grounds, as a result of which, the NGT then gets vested with the jurisdiction to decide the same, is again to put the cart before the horse. It is clear that no appeal is provided against orders made under Section 18 of the Water Act, and the attempt to bring the NGT in by the backdoor, as it were, would, therefore, have to be rejected. Also, to argue that as against a writ court acting under Article 226 of the Constitution of India, the NGT is an expert body set up only to deal with environmental matters, again does not answer the specific issue before this Court. As we have held earlier, an appeal being a creature of statute, an order passed under Section 18 of the Water Act is either appealable or it is not. If it is not, no general argument as to the NGT being an expert body set up to hear environmental matters can be of any help.

45. Equally, so far as the order dated 8-8-2013 [Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board, 2013 SCC OnLine NGT 68] is concerned, we have seen how the NGT stated that the doctrine of necessity would take over if an appellate authority under the Act is not properly constituted so that no appeal can then be effectively preferred. This, again, is an argument that cannot be countenanced. If an appellate authority is either not yet constituted, or not properly constituted, a leapfrog appeal to the NGT cannot be countenanced. As has been held by us *supra*, the NGT is only conferred appellate jurisdiction from an order passed in exercise of first appeal. Where there is no such order, the NGT has no jurisdiction."

9. It is no longer *res integra* that even if a statutory remedy is provided to the person, the approach to the High Court under Articles 226 and 227 of the Constitution of India is not taken away. The power to issue writs under Article 226 of the Constitution cannot be taken away nor such forum can be ousted in exercise of the legislative powers as it is an integral part of a basic structure even the power of superintendence over the courts and the Tribunals provided under Article 227 of the Constitution of India is imbibed into such basic structure and, therefore, cannot be abridged or taken away through a legislative fiat. There is no absolute inhibition in the writ Courts to exercise such powers but noticing the remedy provided under the statute, it is discretion of the writ Court whether to entertain or to relegate the parties to exhaust such statutory remedy. The broad principles enshrined in the decision rendered by the apex Court in *Whirlpool Corporation* (*supra*) has to be borne in mind.

10. The Courts have imposed self-restraint in entertaining the writ petition if the grievance can be addressed before the specialized fora constituted under the valid enactment. It is, thus, a rule of discretion and not of compulsion. In the instant case, the issue relating to the pollution inflicted in 'air' and 'water' by indiscriminate use of the fly ash in making the road (NH-49), can be conveniently addressed by the National Green Tribunal and, therefore, we feel it prudent that the petitioners should be relegated to such statutory forum. We thus refuse to exercise the discretion in entertaining the instant writ petition and relegate the petitioners to the forum as provided under the NGT Act. It is open to the petitioners to ventilate the grievance so raised in the writ petition and the reliefs claimed herein and if such approach is made, we expect that the NGT will take into account the serious issues raised in the instant writ petition and pass appropriate directions as warranted.

11. The writ petition is, thus, disposed of.