

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3301 of 2020

JAY MAHAKALI CHEMICALS

Appellant(s)

VERSUS

THE STATE OF GUJARAT & ORS.

Respondent(s)

O R D E R

Heard.

The appellant was granted consent to operate a chemical manufacturing and waste disposal management industry on 21.06.2018. As there were certain violations of the Water (Prevention and Control Of Pollution) Act, 1974 ('the Water Act'), a show cause notice was issued by the Gujarat Pollution Control Board (GPCB) seeking explanation from the appellant regarding the waste water management, solid waste generation and disposal etc. An inspection was carried out on 17.02.2020 and certain discrepancies were found including lack of facility for treatment of concentrated stream and final disposal, absence of maintenance of records of production and lack of facility for disposal of waste water. By an order dated 09.03.2020, GPCB directed closure of M/s. Jay Mahakali Chemicals for violation of Section 23 of the Water Act. Aggrieved by the direction, the appellant

approached the National Green Tribunal ('NGT'). By an Order dated 10.9.2020, the appeal filed by the appellant was dismissed by the NGT.

Learned counsel for the appellant submitted that according to the Water Act, the appeal should be heard by an Appellate Authority which has not been constituted. Therefore, he argued that the NGT did not have jurisdiction to entertain the appeal against the order passed by the GPCB on 09.03.2020. He further submitted that the order passed by the GPCB is unsustainable and the findings recorded during the inspection were also not correct.

Learned counsel for the appellant relied upon the judgment of this Court in *Tamil Nadu Pollution Control Board vs. Sterlite Industries Limited* reported in (2019) 3 SCALE 721, to argue that the NGT did not have jurisdiction to entertain an appeal against an order passed by the GPCB when the Water Act confers the jurisdiction of appeal on another authority. The said judgment is not applicable to the facts of this case as it is the appellant himself who has approached the NGT being fully aware that the Appellate Authority under the Water Act was not constituted. The appellant is deemed to have waived his right of filing an appeal before the Appellate Authority.

After perusing the documents placed on record relating to inspection and the order passed by the Board on 09.03.2020, we are satisfied that there is no error

committed by the GPCB. The appellant is at liberty to approach the GPCB and request for permission to operate after rectifying the defects pointed out by the Order dated 09.03.2020. The GPCB is directed to consider the representation and pass suitable orders.

The appeal is disposed of accordingly. Pending application(s), if any, shall stand disposed of.

.....J.
(L.NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

.....J.
(AJAY RASTOGI)

NEW DELHI;
27th October, 2020.

