

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 11219/2017

SWAPAN KANTI GHOSH

APPELLANT(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

O R D E R

1. The appellant is engaged in the manufacture of hexachlorobenzene which is an insecticide as defined under Section 3(e) of the Insecticides Act, 1968 (for short, "the 1968 Act") read with its Schedule. A meeting was convened by the West Bengal State Pollution Control Board (for short, "the State PCB"). The meeting was convened pursuant to a direction for appearance to the appellant issued by the State PCB on 1<sup>st</sup> June, 2016. The issue raised was that the manufacture of the product of the appellant has been completely prohibited by a notification dated 27<sup>th</sup> March, 2014, by which the Banning of Hexachlorobenzene Order, 2014 was issued by the Central Government in exercise of the powers under sub-Section (2) of Section 27 and Section 28 of the 1968 Act. Clause '2' of the said order provides that no person, by himself or by any person on his behalf, shall manufacture, formulate, distribute, stock, sell, import, export, transport or use or caused to be used by any worker, hexachlorobenzene in any form. There was a written response sent by the appellant to the State PCB. The reply is of 25<sup>th</sup> July, 2015, in which a specific contention was raised that hexachlorobenzene was manufactured by the appellant for the

purposes covered by clause (b) of sub-Section (1) of Section 38 of the 1968 Act. Therefore, it was specifically pleaded that the product was exempted under clause (b) of sub-Section (1) of Section 38 of the 1968 Act.

2. A direction was issued by the State PCB on 21<sup>st</sup> July, 2016 in exercise of the powers under Section 33A of the Water (Prevention & Control of Pollution) Act, 1974, Section 31A of the Air (Prevention & Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 and the Rules made thereunder, for enjoining the appellant to immediately stop the production of hexachlorobenzene and submit a compliance report.

3. A statutory appeal bearing Appeal No.14/2016/EZ against the aforesaid direction was preferred by the appellant before the National Green Tribunal (for short, "the Tribunal). By the impugned judgment dated 6<sup>th</sup> July, 2017, the said appeal has been dismissed. Hence, this Appeal.

4. As stated earlier, a specific contention was raised in the written reply submitted by the appellant that the exception set out in clause (b) of sub-Section (1) of Section 38 of the 1968 Act was applicable and, therefore, the provisions of the 1968 Act will not apply to the manufacture of hexachlorobenzene by the appellant.

5. A perusal of the impugned direction issued by the State PCB shows that the issue of exemption was not dealt with at all. All that is mentioned by the State PCB in the said direction is that the advice of the Central Government was sought on the aspect of exemption. Unfortunately, even the impugned judgment of the

Tribunal does not deal with the issue specifically raised by the appellant regarding entitlement to exemption clause (b) of sub-Section (1) of Section 38 of the 1968 Act.

6. Sub-Section (1) of Section 38 of the 1968 Act reads thus:

“38. EXEMPTION.—(1) Nothing in this Act shall apply to—

(a) the use of any insecticide by any person for his own household purposes or for kitchen garden or in respect of any land under his cultivation;

(b) any substance specified or included in the Schedule or any preparation containing any one or more such substances, if such substance or preparation is intended for purposes other than preventing, destroying, repelling or mitigating any insects, rodents, fungi, weeds and other forms of plant or animal life not useful to human beings.

(2) \*\*\*.”

7. As a specific case was made out by the appellant that the production of hexachlorobenzene was covered by clause (b) of sub-Section (1) of Section 38 of the 1968 Act, a factual inquiry will be necessary to decide whether the appellant will be entitled to the benefit of clause (b) of sub-Section (1) of Section 38. Therefore, we have no option but to remand the case to the State PCB for making this factual adjudication.

8. Accordingly, we set aside the impugned judgment dated 6<sup>th</sup> July, 2017 passed by the Tribunal and the impugned direction dated 21<sup>st</sup> July, 2016 issued by the State PCB and remand the proceedings to the State PCB. The State PCB will permit the appellant to produce necessary material in support of his plea of exemption. After holding due inquiry and after giving an opportunity of being heard to the appellant, a fresh order shall be passed by the State PCB.

Needless to add that while passing the fresh order, the plea of the appellant regarding entitlement to exemption under clause (b) of sub-Section (1) of Section 38 of the 1968 Act shall be considered by the State PCB by assigning reasons. It will be appropriate if the State PCB decides the issue within a maximum period of four months from today.

9. Accordingly, the Appeal is partly allowed. No order as to costs.

.....J.  
(ABHAY S.OKA)

.....J.  
(UJJAL BHUYAN)

NEW DELHI;  
APRIL 24, 2024.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

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(IA No. 86907/2017 - STAY APPLICATION AND IA No. 127998/2017 -  
PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 24-04-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Appellant(s) Mr. Uday Gupta, Sr. Adv.  
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Mr. Harish Dasan, Adv.  
Mr. Rajiv Ranjan, Adv.  
Ms. Yogamaya M.g., Adv.

For Respondent(s) Mrs. Aishwarya Bhati, A.S.G.  
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Mr. Atulesh Kumar, Adv.  
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Mr. Shantnu Sharma, Adv.  
Mrs. Neelakshi Bhaduria, Adv.  
Mr. Amrish Kumar, AOR

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Mr. Shantnu Sharma, Adv.  
Mr. Raghav Sharma, Adv.  
Mr. Rohan Gupta, Adv.

Ms. Madhumita Bhattacharjee, AOR  
Ms. Srija Choudhury, Adv.

Ms. Osheen Bhat, Adv.  
Ms. Nitipriya Kar, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The Appeal is partly allowed in terms of the signed order.  
Pending applications stand disposed of accordingly.

(ASHISH KONDLE)  
COURT MASTER (SH)

(AVGV RAMU)  
COURT MASTER (NSH)

[THE SIGNED ORDER IS PLACED ON THE FILE]