

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.2218-2219 OF 2020

CHAMBER OF SMALL INDUSTRY ASSOCIATIONS ... Appellant

VERSUS

CENTRAL POLLUTION CONTROL BOARD & ANOTHER ... Respondents

WITH

CIVIL APPEAL NOS.2220-2221/2020

CIVIL APPEAL NO.2434/2020

CIVIL APPEAL NO.2462/2020

CIVIL APPEAL NOS.3319-3321/2020

CIVIL APPEAL NOS.1656-1658 OF 2022
(Arising out of Diary No.8571/2021)

ORDER

1. Permission to file appeal in Civil Appeal Diary No.8571 of 2021 is granted.
Delay in filing Civil Appeal Diary No. 8571 of 2021 is condoned.
2. These appeals under Section 22 of the National Green Tribunal Act, 2010 are directed *inter alia* against the orders dated 10.07.2019, 23.08.2019 and 14.11.2019 passed by the National Green Tribunal, Principal Bench, New Delhi (“the Tribunal” for short) in Original Application No.1038 of 2018.

3. Taking cognizance of news item authored by Mr. Sanjay Kaw titled as “*Comprehensive plan to improve air quality, CPCB to rank industrial units on pollution levels*”, published in the newspaper “The Asian Age”, *Suo Motu* action was initiated by the Tribunal which was registered as Original Application No.1038 of 2018.

4. In its order dated 10.07.2019 in paragraph 11, the Tribunal noted that according to the monitoring done during 2018, there were 100 polluting industrial areas/clusters in the country. Those 100 clusters were individually dealt with in a Tabular Chart and against each one of those clusters, CEPI Score was also indicated. Thereafter, in paragraph 12, question for consideration was posed and certain directions were issued. For facility, we may quote paragraphs 28 and 30 to 34 hereunder:

“28. Accordingly, we direct the CPCB in coordination with all State PCBs/PCCs to take steps in exercise of statutory powers under the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974, Environment (Protection) Act, 1986 or any other law to prohibit operation of polluting activities in the CPAs and SPAs within three months and furnish a compliance report to this Tribunal. The Central Pollution Control Board, in coordination with the State Boards/PCBs may make assessment of compensation to be recovered from the said polluting units for the period of last 5 years, taking into account the cost of restoration and cost of damage to the public health and environment and the deterrence element. The scale of deterrence may be related to the period and the frequency of defaults. Such other factors as may be found relevant may also be taken into account. No further industrial activities or expansion be allowed with regard to ‘red’ and ‘orange’ category units till the said areas are brought within the prescribed parameters or till carrying capacity of area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and environmental norms. Pending assessment of compensation, interim compensation be recovered at the scale adopted by this Tribunal in the case of Vapi Industrial area as mentioned in para 22 above.

... ..

30. We direct the MoEF&CC to take steps for enforcement of action plan for improvement of the situation.
 31. We may also mention that hearing individual industrial unit is not considered necessary for passing the above order as the CPCB /State PCBs must exercise their respective statutory powers by following the procedure prescribed under the statute even without intervention of this Tribunal. The Tribunal is only requiring such statutory bodies to perform their duties to uphold the law without going into an individual case. Direction is with reference to data compiled, or to be compiled, by the said bodies only.
 32. It is made clear that white and green or non-polluting industries which are not causing any pollution will not be affected by this order except that the parameters thereof may be monitored with a view to see that under the garb of label of white/green or otherwise, the polluting activity is not continued.
 33. We direct that the CPCB will be at liberty to have an appropriate panel of Experts to augment its capacity, in case the available man-power is found to be inadequate to execute the above order and for this purpose utilise the environment funds available under the environmental compensation head. In this regard, reference may also be made to order dated 22.01.2019, of this Tribunal in O.A No. 101/2019, Central Pollution Control Board Vs. Assam State Pollution Control Board & Ors. which enables CPCB to utilise the environment fund for the purpose.
 34. Let a compliance report be filed by the CPCB after three months but before the next date by email on [judicial-ngt@gov.in.](mailto:judicial-ngt@gov.in)”
5. Aggrieved by the direction in paragraph 30 of said order, Review Application No.44 of 2019 was filed by the Ministry of Environment, Forest and Climate Change (MoEF&CC). By its order dated 23.08.2019, the Tribunal disposed of said Review Application. It noted the submission advanced on behalf of the Ministry in paragraph 7 of its order as under:
- “7. Case of the MoEF&CC in seeking review is that the MoEF&CC is yet to take a final view in the matter of protocol to be followed by the States/UTs for implementation of the action plan for environmental

improvement of CPAs after considering the report of the CPCB, as noted in para 10 of the order dated 10.07.2019. Current CEPI framework may need to be reviewed. CEPI score is to be used as a warning tool for formulating an action plan to restore environment quality, MoEF&CC will require six months for policy framework and one year for implementation and till then ban on expansion/setting up new industries may be kept in abeyance.”

While disposing of the Review Application, certain observations were made in paragraph 11 as under:

“11. Coming to the apprehension of the CPCB, it is clear from paras 28 and 32 of the order reproduced above that action has to be taken only against polluting activities. If any unit is compliant with the norms, such unit is not affected. There is no basis for apprehension that compensation may have to be paid twice. The provisions of Air Act, Water Act and EPA Act and the rules or other environment norms are to be enforced not only against the industrial units but also against every polluting activity whether the same has already been set up or is yet to be set up in terms of provisions of the law in question. This being the undisputed legal position, no further clarification remains necessary.”

6. On 31.10.2019, an Office Memorandum was issued by the Ministry of Environment, Forest and Climate Change (MoEF&CC), Government of India, relating to compliance of the order dated 23.08.2019 passed by the Tribunal.

7. The order dated 14.11.2019 passed by the Tribunal noted the Status Report filed by the Central Pollution Control Board (CPCB) on 01.11.2019 and the fact that mechanism circulated by the CPCB by letter dated 24.10.2019 proposed certain measures for environmental management. In paragraph 9, the Tribunal observed as under:

“9. In view of the above, since the data compiled so far shows increasing trend of air, water and soil pollution, meaningful action must result in reversing such trend and the violators of law cannot be allowed to have a free run at the core of environment and public health. Inaction by the statutory authorities is also at the cost of Rule of Law which is the mandate of the Constitution and is necessary for meaningful

enforcement of legitimate constitutional rights of citizens and basic duty of a welfare State under the Constitution.”

In paragraph 11, the Tribunal issued directions as under:

“11. The Tribunal has thus no option except to reiterate that meaningful action has to be taken by the State PCBs/PCCs as already directed and action taken report furnished showing the number of identified polluters in polluted industrial areas mentioned above, the extent of closure of polluting activities, the extent of environmental compensation recovered, the cost of restoration of the damage to the environment of the said areas, otherwise there will be no meaningful environmental governance. This may be failure of rule of law and breach of trust reposed in statutory authorities rendering their existence useless and burden on the society. On default, the Tribunal will have no option except to proceed against the Chairmen and the Member Secretaries of the State PCBs/PCCs by way of coercive action under Section 25 of the National Green Tribunal Act, 2010 read with Section 51 CPC. Such action may include replacement of persons heading such PCBs/PCCs or direction for stopping their salaries till meaningful action for compliance of order of this Tribunal. The Tribunal may also consider deterrent compensation to be recovered from the State PCBs/PCCs. Such action taken reports strictly in terms of law and order of this Tribunal referred to above may be furnished by the State PCBs/PCCS on or before 31.01.2020 to the CPCB. The CPCB may prepare a tabulated analysis of the same and file a consolidated report before this Tribunal before February 15, 2020 by email at judicial-ngt@gov.in. The CPCB may also revise its mechanism for expansion and new activities by red and orange category of industries in critically/ severely polluted areas consistent with the spirit of the earlier orders of this Tribunal and principles of environmental law to bring down the pollution load and ensure that activities do not further add to such load.”

8. Aggrieved by these orders, the present appeals have been preferred by some associations, namely (1) Chamber of Small Industry Associations (Civil Appeal Nos.2218-2219 of 2020); (2) Chamber of Marathwada Industries and Agriculture (Civil Appeal Nos.2220-2221 of 2020); (3) The Talaja Manufactures Association (Civil Appeal No.2434 of 2020); (4) The Talaja Manufacturers Association (Civil Appeal No.2462 of 2020); and (5) Gujarat Chamber of Commerce and Industry (Civil

Appeal Nos.3319-3321 of 2020).

9. One of the principal submissions urged in said appeals related to the competence of the Tribunal to take *Suo Motu* cognizance. It must be mentioned that the matters in which challenge on similar grounds was raised, were pending in this Court at that point in time. While entertaining these appeals, following interim order was passed by this Court on 18.03.2020: -

“Permission to file appeals is granted.

Delay condoned.

Applications for impleadment are allowed.

Applications seeking exemption from filing certified copy of the impugned order(s) are allowed.

Issue notice.

In the meantime, there shall be stay of operation of the impugned orders dated 10.07.2019 and 14.11.2019 passed by the National Green Tribunal, Principal Bench, New Delhi.”

10. The matters in which challenge to the competence of the Tribunal to take *Suo Motu* cognizance was raised, have since then been disposed of by this Court in ***Municipal Corporation of Greater Mumbai Etc. v. Ankita Sinha & Others Etc***¹. It has been held by this Court that the Tribunal is competent to take *Suo Motu* cognizance in respect of environmental issues.

11. In the circumstances, the basic challenge raised in these appeals must fail, and if at all, there is any individual fact situation which either needs to be projected or impressed upon, it must be left to such individual entity/agency to agitate concerned

¹ 2021 SCC OnLine SC 897

issues before the Tribunal.

12. We cannot, however, lose sight of the fact that for last two years the directions issued by the Tribunal have remained stayed. Each of the appellants had requested for blanket stay of the directions issued by the Tribunal and had not confined their prayer either to the individual appellants or to the respective Members of their associations. Even then, all the concerned must have an opportunity to present their viewpoint before the Tribunal. Consequently, we pass the following directions:-

- a. All the appellants shall be responsible for publishing advertisements in the national newspapers having wide circulation in Capitals of each of the States of the country.
- b. The advertisements must mention that in the pending matter before the Tribunal, any interested entity can, through the State level/appropriate Chamber of Commerce, present a viewpoint before the Tribunal.
- c. Such an advertisement must be issued within Two Weeks from today and within next Four Weeks, the Presentation on behalf of each of the Chambers of Commerce must be filed before the Tribunal.
- d. The Presentation must indicate which Units are compliant with the requirements of law and which of the Units are still lagging behind in compliance.
- e. The Tribunal may consider such Presentations on behalf of each Chambers of Commerce and may pass such orders as it may deem appropriate.
- f. It shall be open to the Tribunal to pass such orders or interim directions calling upon the non-compliant Units to deposit such sums *inter alia* for mitigating the environmental damage, as the Tribunal may deem appropriate.

- g. In order to facilitate the exercise, the interim order of stay granted by this Court on 18.03.2020 shall continue to operate for next Eight Weeks.

All the contentions are left open to be agitated before the Tribunal.

13. Since Civil Appeal arising out of Diary No.8571 of 2021 has been preferred by Western Coalfields Ltd., an individual entity, Presentation can be made by the appellant itself. Rest of the directions in the earlier part of the Order apply to the appellant, *mutatis mutandis*.

14. With these observations, the civil appeals are disposed of, without any order as to costs.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi,
February 25, 2022.

ITEM NO.23

COURT NO.2

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal Nos.2218-2219/2020

CHAMBER OF SMALL INDUSTRY ASSOCIATIONS

Appellant(s)

VERSUS

CENTRAL POLLUTION CONTROL BOARD & ANR.

Respondent(s)

WITH

C.A. Nos.2220-2221/2020 (XVII)

C.A. No.2434/2020 (XVII)

C.A. No.2462/2020 (XVII)

C.A. No.3319-3321/2020 (XVII)

Diary No.8571/2021 (XVII)

Date : 25-02-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

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

Permission to file the petition in Civil Appeal Diary No.8571
of 2021 is granted.

Delay in filing Civil Appeal No.8571 of 2021 is condoned.

The civil appeals are disposed of, in terms of the Signed Order placed on the File.

Pending applications including applications for intervention, if any, also stand disposed of.

(MUKESH NASA)
COURT MASTER

(VIRENDER SINGH)
BRANCH OFFICER