

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

**W.P.(C).No.22051 of 2015 (F)**  
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PETITIONER(S):-  
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C.E.SREEDHARAN, AGED 67 YEARS,  
CHIRACKAL HOUSE, RAJAKKAD P.O.,  
IDUKKI DISTRICT, PIN - 686 566.

BY ADV. SRI.GEORGE POONTHOTTAM.

RESPONDENT(S):  
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1. THE NATIONAL GREEN TRIBUNAL,  
SOUTHERN ZONE, POOMALLE HIGH ROAD, ANNA ANAGAR,  
CHENNAI, TAMIL NADU 600106, REPRESENTED BY ITS REGISTRAR.
2. THE DISTRICT COLLECTOR, IDUKKI, PIN - 685 603.
3. THE ADDITIONAL DISTRICT MAGISTRATE, IDUKKI,  
COLLECTORATE BUILDING, IDUKKI 685 603.
4. THE REVENUE DIVISIONAL OFFICER,  
REVENUE DIVISIONAL OFFICE, COLLECTORATE BUILDING,  
CHERUTHONI, IDUKKI - 685 603.
5. THE BHARAT PETROLEUM CORPORATION LIMITED,  
ERNAKULAM, KERALA 682 011,  
REPRESENTED BY ITS TERRITORY MANAGER.
6. SABU N.J.,  
NEELIYANIKKUNNEL HOUSE, RAJAKKAD, IDUKKI DISTRICT,  
KERALA STATE - 685 566.

R2 TO R4 BY GOVERNMENT PLEADER SMT.C.K.SHERIN.  
R5 BY STANDING COUNSEL SRI.M.GOPIKRISHNAN NAMBIAR.  
R6 BY ADV. SRI.SAJIV.C.K.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

WP(C).No.22051 of 2015 (F)  
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## **APPENDIX**

### **PETITIONER(S)' EXHIBITS** -----

- EXT.P1- TRUE COPY OF HT EPATTA DATED 27.7.2000.
- EXT.P2- TRUE COPY OF THE LETTER OF INTENT DATED 24.9.2012.
- EXT.P2(a)- TRUE COPY OF THE PROCEEDINGS NO.E2-17277/2013/K.DIS  
DATED 14.8.2014.
- EXT.P3- TRUE COPY OF THE JUDGMENT DATED 12.4.2013 IN  
WP(C) NO.19323 OF 2012.
- EXT.P4- TRUE COPY O FHT EJUDGMEN DATED 30.6.2014 IN  
WA.NO.505 OF 2013.
- EXT.P5- TRUE COPY OF THE ORDER DATED 20.8.2014 IN  
R.P.NO.614 OF 2014 IN WA NO.1505/13.
- EXT.P6- TRUE COPY OF THE ORDER DATED 7.11.2014 PASSED  
BY THE TRIBUNAL IN APPLICATION NO.258 OF 2014.
- EXT.P7- TRUE COPY OF THE APPLICATION OBTAINED FROM  
THE TRIBUNAL.

### **RESPONDENT(S)' EXHIBITS:-** -----

NIL.

Vku

[ true copy ]

K. Vinod Chandran, J

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W.P.(C).No.22051 of 2015-F  
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Dated this the 27<sup>th</sup> day of July, 2015

**JUDGMENT**

The writ petition is filed by the petitioner on the ground that the order obtained from the National Green Tribunal [for brevity “NGT”], produced at Exhibit P6, is a fraud played on the Tribunal, since the 6<sup>th</sup> respondent's brother had been consistently before this Court on earlier occasions, alleging that the petitioner did not have the proper licenses. Now, the Tribunal's jurisdiction is sought to be invoked on the ground that the operations carried on by the petitioner is harmful to the environment.

2. The petitioner has filed the above writ petition from the order of the NGT at Exhibit P6. Section 22 of the National Green Tribunal Act, 2010 [for brevity “the Act”] provides an appeal to the Supreme Court, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908. This Court is not inclined to consider the writ petition for reason of there being an alternate remedy available to the petitioner.

3. However, the learned counsel for the petitioner would place reliance on ***Madras Bar Association v. Union of India*** [(2014) 10 SCC 1] and ***S.P.Chengal Varaya Naidu v. Jagannath*** [(1994) 1 SCC 1] to contend that this is a fit case in which the jurisdiction under Article 226 can be invoked for reason of the 6<sup>th</sup> respondent having employed fraud on the Tribunal and “fraud”, as has been reiterated by the Hon'ble Supreme Court, vitiates all judicial actions.

4. The decision in ***S.P.Chengal Varaya Naidu*** (*supra*) is with respect to a suit and an appeal decided by the High Court, which was set aside by the Supreme Court with observations on the manner in which the disposal was made by the High Court and especially deprecating the observation that there is no legal duty cast on the plaintiff to come to Court with a true case and prove it by true evidence.

5. In ***Madras Bar Association*** (*supra*) also, the Hon'ble Supreme Court was considering with an enactment, which sought to substitute the powers conferred under Article 226 and 227 of the Constitution, by constituting a National Tax Tribunal, which was set aside. Apposite herein would be the

decision in ***Union of India & Ors. v. Shri Kant Sharma and Others* [2015 (3) Scale 546]** wherein the decisions in ***Mafatlal Industries Ltd. v. Union of India* [(1997) 5 SCC 536]** and ***Nivedita Sharma v. Cellular Operators Association of India* [(2011) 14 SCC 337]** were referred. In ***Mafatlal Industries Ltd.*** (*supra*) it was held so:

“77. ... So far as the jurisdiction of the High Court under Article 226 - or for that matter, the jurisdiction of this Court under Article 32 - is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment”.

Then again in ***Nivedita Sharma*** (*supra*) it was held thus:

“In the judgments relied upon by Shri Vaidyanathan, which, by and large, reiterate the proposition laid down in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad* [AIR 1969 SC 556], it has been held that an alternative remedy is not a bar to the entertaining of writ petition filed **for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or**

**where the order under challenge is wholly without jurisdiction or the vires of the statute is under challenge”.**

6. In such circumstances, definitely the power of judicial review under Article 226 cannot be avoided; but, however, it can be invoked only in the specific instances as pointed out in the afore-cited declaration; when there is (i) a prayer for enforcement of any of the fundamental rights or where there has been (ii) a violation of principles of natural justice or where the order under challenge is (iii) wholly without jurisdiction or the (iv) vires of the statute is under challenge. The right to an alternate remedy in such circumstances alone is not a bar in exercising the extra-ordinary discretionary remedy conferred on this Court under Article 226. None of the above circumstances exist as of now in the present writ petition.

7. It is argued that the jurisdiction of the Supreme Court would be confined insofar as Section 22 of the the Act having conferred only such powers as specified in Section 100 of the CPC. Fraud, if employed, definitely could be considered by the Tribunal itself when the petitioner appears and contests the

matter or raise it in an appeal under Article 32 of the Constitution. The argument that the Hon'ble Supreme Court would be exercising a confined or circumscribed jurisdiction under Section 22 of the Act, is not worthy of acceptance especially going by the declaration in ***S.P.Chengal Varaya Naidu*** (*supra*).

8. In such circumstance, this Court would not speak on the merits of the matter and would leave the petitioner to the remedies either before the Tribunal itself or before the Hon'ble Supreme Court, while declining the exercise of extra-ordinary jurisdiction. The petitioner would also be entitled to raise a preliminary objection before the Tribunal as to the alleged fraud employed by the 6<sup>th</sup> respondent.

The writ petition would stand dismissed; however, leaving open the remedies of the petitioner.

**Sd/-**

K.Vinod Chandran  
Judge.

vku/-

[ true copy ]