

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

W.P.No.34199 of 2014

1.P.S.Jayachandran
2.V.Mani

...Petitioners

-vs-

1. The Member Secretary,
Tamil Nadu Pollution Control Board,
Anna Salai,
Chennai-32.
2. The District Environmental Engineer,
Tamil Nadu Pollutin Control Board,
Coimbatore South,
42 - D, S.N.R. College Road,
Peelaimeadu,
Coimbatore-641 012.
3. Superintending Engineer,
TANGEDCO,
Peelamedu, Coimbatore.
4. M/s.Sri Gokulam Blud Metals,
rep. by its Partner,
Alagu Nachiamman Kovil Road,
S.F.No.3, Palathurai village,
Madukarai-Coimbatore-641 105.
5. The National Green Tribunal,
Southern Zone Bench,
rep. by its Registrar,
Arumbakkam, Chennai.

...Respondents

Petition under Article 226 of the Constitution of India
praying for issue of Writ of Certiorarified Mandamus calling for the
records of the 5th respondent relating to the Order dated 12.07.2013
in Appeal No.42 of 2013(S2) and the Order dated 24.09.2014 in Review

Petition No.3 of 2013 in Appeal No.42 of 2013(S2) and quash the same, and direct the 1st and 2nd respondents to order closure of the fourth respondent Unit.

For Petitioners : Mr.AR.L.Sundaresan
Senior Counsel
for
M/s.BFS Legal

For Respondents : M/s.Yasmeen Ali for R1 & R2
Mr.S.K.Raameshwar for R3
Mr.Vijayanarayanan
Senior Counsel
for
Mr.K.Rajasekaran for R4

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

Petitioner seeks to assail the order passed by the National Green Tribunal dated 12.07.2013 and 24.09.2014 respectively. A preliminary objection was raised by the learned counsel for respondent No.4 on the issue of maintainability of the writ petition arising from the recent judgment of the Hon'ble Supreme Court in Civil Appeal No.7400 of 2013, decided on 11.03.2015 (Union of India and others v. Major General Shri Kant Sharma and another), reported in 2015 (3) SCALE 546.

2. We may notice that prior to the aforesaid judgment, this Court was entertaining writ petitions filed under Article 226 of the Constitution of India challenging the orders passed by the National Green Tribunal based on the principle stated inter alia in L.Chandrakumar v. Union of India, (1997) 3 SCC 261. However, in Major General Shri Kant Sharma's case cited supra, though it pertains to the Armed Forces Tribunal Act, 2007, in paragraph 34, it has been observed that the jurisdiction of the High Court under Article 226 of the Constitution of India may not be circumscribed by the provisions of any enactment, but due regard has to be given to the legislative intent evidenced by provisions of the Acts and Courts would exercise their jurisdiction consistent with the provisions of the Act. When a statutory Forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. The Hon'ble Supreme Court, in turn, discussed the likelihood of an anomalous situation arising if such writ petition was entertained under Article 226 bypassing the provisions of Sections 30 and 31 of the Armed Forces Tribunal Act, 2007.

3. The learned Senior Counsel for the petitioners acknowledges that the present case is not one where the earlier judgment of the Larger Bench has gone unnoticed in the subsequent judgment. But after specifically noticing the same, it has still been observed that the appellate remedy alone should be followed. Under the National Green Tribunal Act, 2010, an appeal would be maintainable under Section 22 which reads as under:-

'Any person aggrieved by any award, decision or order of the Tribunal, may file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.'

4. In view of the aforesaid position, we fail to appreciate as to how we would be able to exercise the jurisdiction - a question was posed to us that the judgment in Major General Shri Kant Sharma's case cited supra is not in conformity with the views of the Larger Bench, cannot be agitated before us. It would require reconsideration of the views expressed by the Hon'ble Supreme Court in Major General Shri Kant Sharma's case cited supra and judicial hierarchy would not permit this Court to embark upon the said exercise.

5. We have no option but to dismiss the writ petition, as not maintainable in view of the judgment of the Hon'ble Supreme Court in Major General Shri Kant Sharma's case cited supra. No costs.

Sd/-

Assistant Registrar(CO)

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//True Copy//

Sub Assistant Registrar

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To

1. The Member Secretary,
Tamil Nadu Pollution Control Board,
Anna Salai, Chennai-32.

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Peelamedu, Coimbatore.

4. The Registrar,
National Green Tribunal,
Southern Zone Bench,
Arumbakkam, Chennai.

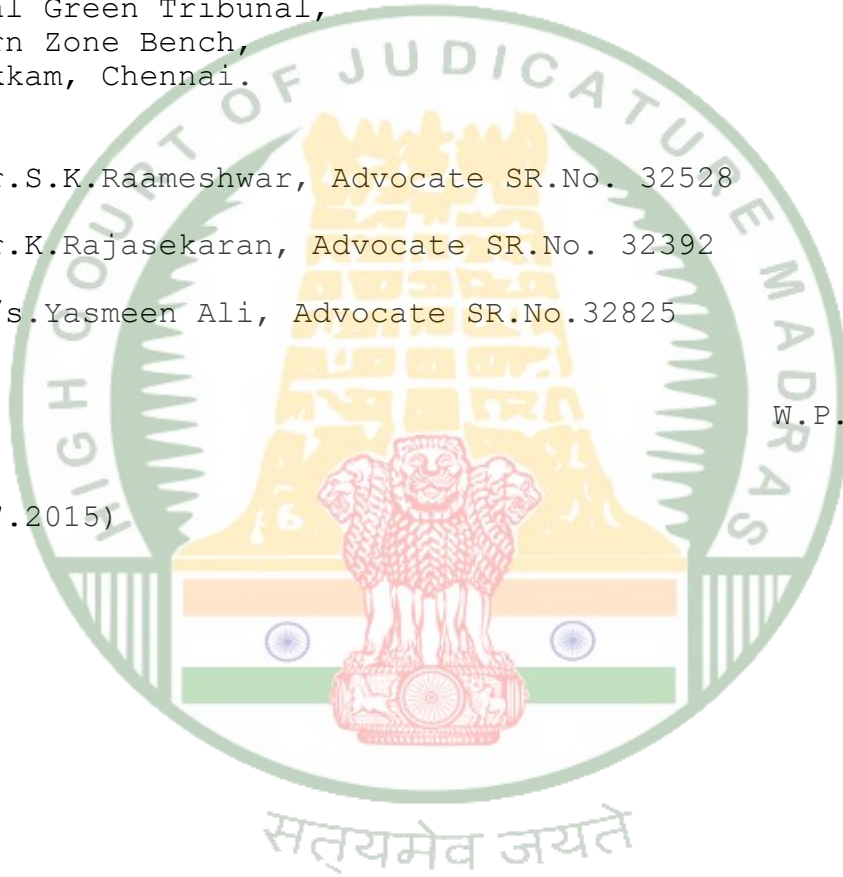
1 CC to Mr.S.K.Raameshwar, Advocate SR.No. 32528

1 CC to Mr.K.Rajasekaran, Advocate SR.No. 32392

1 CC to M/s.Yasmeen Ali, Advocate SR.No.32825

W.P.No.34199 of 2014

RV (CO)
PSI (08.07.2015)



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