

In the High Court of Judicature at Madras

Dated: 07.07.2015

Coram:

The Honourable Mr. SANJAY KISHAN KAUL, Chief Justice
and
The Honourable Mr. Justice T.S.SIVAGNANAM

Writ Petition Nos. 35098 of 2013, 2528, 3440 and 3441 of 2014
and 2266 of 2015 and WP (MD) No. 2993 of 2014

W.P. No.35098 of 2013:-
P. Sundararajan

.. Petitioner

vs.

The Deputy Registrar
National Green Tribunal
Southern Zone
950/1, Poonamallee High Road
TNPCB Building, Arumbakkam
Chennai 600 106.

.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of a Writ of Prohibition prohibiting the respondent- National Green Tribunal, Southern Zone, Chennai from initiating suo motu proceedings against any one while exercising its Jurisdiction under the provisions of the National Green Tribunal Act , 2010.

For Petitioner : Mr. M. Radhakrishnan
For Respondent : Mr. Srinath Sridevan

W.P. No.2528 of 2014:-

M/s. Raj Hatcheries Madras (P) Ltd.
Rep. by its Managing Director
Kovalam, Kancheepuram District.

.. Petitioner

vs.

1. The Secretary to Government
Ministry of Environment and Forests
Paryavaran Bhavan, CGO Complex
Lodhi Road, New Delhi 110 083.

2. The Secretary to Government
Government of Tamil Nadu
Environment and Forest Department
Fort St. George, Chennai 600 009.
3. The Director of Environment
Panagal Building
Saidapet, Chennai 600 018.
4. The Member Secretary
Tamil Nadu Pollution Control Board
No.76, Mount Road
Guindy, Chennai 600 032.
5. The Tamil Nadu State Coastal Zone
Management Authority
Panagal Building, Saidapet
Chennai 600 015.
6. The District Collector
Kanchipuram District, Kancheepuram.
7. The Deputy Registrar
National Green Tribunal
Southern Zone
950/1, Poonamallee High Road
TNPCB Building, Arumbakkam
Chennai 600 106.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of a Writ of Declaration declaring that the order dated 31.7.2013 in Application No.180 of 2013 (SZ) (suo motu) passed by respondent No.7-Tribunal is null and void.

For Petitioner : Mr. M. Radhakrishnan
For Respondents : Mr. G. Rajagopalan
Addl. Solicitor General
and Mr. Su. Srinivasan
Asst. Solicitor General for R1
Mr. M.K. Subramanian
Spl. Govt. Pleader (F) for R2 & R3
Mrs. Rita Chandrasekaran for R4
Mr. S.T.S. Murthi, Govt. Pleader
assisted by Mr.V.Shanmugasundar
Govt. Advocate for R6
Mr. R. Venkatramani, Sr. Counsel
for Mr.K.Rajasekaran for R7.

W.P. Nos. 3440 and 3441 of 2014:-

Vijayalakshmi Shanmugam

.. Petitioner in both
petitions.

vs.

1. The Secretary to Government of India
Ministry of Environment & Forests
New Delhi.
2. National Green Tribunal (Southern Bench)
formally rep. by its Deputy Registrar .. R1 & R2 in both
Arumbakkam, Chennai. Petitions.
3. Chairman
Tamilnadu Pollution Control Board
Guindy, Chennai. ... R3 in WP.3441/2014

Prayer in W.P. No.3440 of 2014: Petition filed under Article 226 of the Constitution of India praying for issue of an appropriate writ to the second respondent and/or any other person/authority transferring all suo motu cases and PIL-type litigation on the 2nd respondent's file to the respective parental High Courts, and erase all orders passed by the 2nd respondent on the said proceedings.

Prayer in W.P. No.3441 of 2014: Petition filed under Article 226 of the Constitution of India praying for issue of an appropriate writ envisaged by Article 226, erasing all orders of the 2nd respondent in its suo motu Application No.40 of 2013, and direct the 3rd respondent to cause demolition of all packaged drinking water units operating within the territorial jurisdiction of this Honourable Court, running without approvals from the Ground Water Centre, Food Safety Authority, BIS, Local Planning Authority and Pollution Board.

For Petitioner : Mr. Manikandan Vathan Chettiar
For Respondents : Mr. G. Rajagopalan
Addl. Solicitor General
and Mr. Su. Srinivasan
Asst. Solicitor General for R1
Mr. R. Venkatramani, Sr. Counsel
for Mr.K.Rajasekaran for R2
Ms. Yasmeen Ali for R3.

W.P. No.2266 of 2015:-

M. Srinivasan

.. Petitioner

vs.

1. The Registrar
National Green Tribunal
Southern Zone, Chennai.
 2. Union of India
Rep. by its Secretary to Government
Ministry of Environment of Forests
New Delhi.
 3. The Principal Secretary to Government
Department of Environment and Forests
Fort St. George, Chennai-9.
 4. The Chairman
Tamil Nadu Pollution Control Board
100, Anna Salai, Guindy, Chennai-32.
 5. The District Collector
Erode District, Erode.
 6. The District Collector
Coimbatore District, Coimbatore.
 7. The Managing Director
Tamil Nadu Minerals Ltd
Chepauk Chennai-5.
..[R7 deleted as per order dt.21.04.2015].
 8. The Commissioner of Geology
and Mining, Guindy, Chennai-32.
- .. Respondents.

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in Application No.165 of 2013 (SZ) (suo motu) M.A. Nos. 116, 117, 118, 121 to 153 of 2013 (SZ) Order dated 21.1.2015, quash the same and forbear respondents 2 to 8 or their men, agents, representatives or any one claiming through them from interfering with the peaceful quarry operation of the petitioner to an extent of 2 hectares in S.F.No.70/9/South Part in Goundampalayam Village of Gobi Taluk, Erode District.

For Petitioner : Mr. L.G. Sahadevan
For Respondents : Mr. R. Venkatramani, Sr. Counsel
for Mr.K.Rajasekaran for R1
Mr. G. Rajagopalan
Addl. Solicitor General
and Mr. Su. Srinivasan
Asst. Solicitor General for R2
Mr. M.K. Subramanian
Spl. Govt. Pleader (F) for R3
Ms. H. Yasmeen Ali for R4
Mr. S.T.S. Murthi, Govt. Pleader
assisted by Mr.V.Shanmugasundar
Govt. Advocate for R5 to 8.

W.P.(MD) No.2993 of 2014:-

M/s. Green Valley's Minerals
rep. by its Proprietor K. Raja
No.183, Kadupatty Road
Vaithiyanathapuram, Vadakarai
Periyakulam, Theni District. ... Petitioner

vs.

1. The Deputy Registrar
National Green Tribunal
Southern Zone, 950/1, Poonamallee High Road
TNPCB Building, Arumbakkam, Chennai 600 106.
2. The State of Tamil Nadu
rep. by its Secretary to Government
Public Works Department
Secretariat, Chennai.
3. The Central Ground Water Board
rep. by the Chairman
Bhujal Bhawan, N.H. IV, Faridabad
Haryana - 121 001.
4. The Regional Director
Central Ground Water Board
South East Coastal Region
E-Wing, G.-Block, Rajaji Bhavan
C.G.O. Complex, Besant Nagar
Chennai.

5. Tamil Nadu Pollution Control Board
rep. by its Chairman
No.76, Mount Salai, Guindy, Chennai-32.
 6. The Chief Engineer
(State Ground & Water Resources Data Centre)
Tharamani, Chennai - 113.
 7. The Chief Engineer
P.W.D. Water Resources Organization
State Ground and Surface Water Resources
Data Centre, Tharamani
Chennai 600 113.
 8. The Assistant Engineer
Tamil Nadu Pollution Control Board
Boothipuram Road, Theni.
 9. The Commissioner
The Food and Consumer Production
Department, Chennai.
 10. The Designator Officer
The Food and Consumer Production
Department, Collectorate, Theni.
 11. The Junior Engineer
Tamil Nadu Electricity Board
Keelavadakarai, Periakulam
Theni District.
- ... Respondents.

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the fifth respondent in his proceedings in Proc.No.T11/TNPCB/F.18413-NGT-SI.NO.180/PDW/ W/2014 dated 20.01.2014, quash the same and consequentially to direct the respondents to permit the petitioner to run the unit.

For Petitioner : Mr. C. Venkatesh Kumar
For Respondents : Mr. R. Venkatramani, Sr. Counsel
for Mr. K. Rajasekaran for R1
Mr. S.T.S. Murthi, Govt. Pleader
assisted by Mr.V.Shanmugasundar
Govt. Advocate for R2, 9 & 10
Mrs. Rita Chandrasekaran for R5
No Appearance 3, 4,6,7 & 11

COMMON ORDER

(Made by The Hon'ble The Chief Justice)

We had listed these batch of petitions to hear on the important issue of the validity and exercise of suo-moto jurisdiction by the National Green Tribunal under the National Green Tribunal Act, 2010 (hereinafter referred to as 'the Act'). The last date of hearing was 21.04.2015, but on that date, what escaped our attention was the judgment pronounced by the Honourable Supreme Court on 11.03.2015 in 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 (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 the provisions of the Act 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. In the present proceedings, on the aforesaid aspect, the issue sought to be raised is as to whether this judgment is confined in its application to the Armed Forces Tribunal Act, 2007 or it has a wider ambit encompassing matters arising from other Tribunals like under the said Act, keeping in mind the observations made in Major General Shri Kant Sharma's case (supra).

4. It was sought to be canvassed by some of the learned counsel for the petitioners that the said judgment has to be restricted to the Armed Forces Tribunal Act alone, as the provisions are different under the said Act. In this context, it has been urged that an appeal to the Honourable Supreme Court under Section 22 of the Act, as per the grounds specified in Section 100 of the Code of Civil Procedure, 1908.

5. It is further submitted that Article 136(2) of the Constitution of India makes an exception in case of any appeal relating to Armed Forces. It is, thus, submitted that the

observations have been made in para 37 on the likelihood of an anomalous situation arising in that context.

6. Learned senior counsel for the respondents, more specifically Mr. Venkatramani, learned senior counsel appearing for the National Green Tribunal, on the other hand, seeks to submit inter alia that what the judgment in Major General Shri Kant Sharma's case (supra) intended is, to make a distinction between exercise of appellate jurisdiction before the quasi judicial forums and judicial forums subordinate to the High Court in a sense and in respect of a remedy of appeal before the Honourable Supreme Court. It is, thus, submitted that if this distinction is kept in mind, the principles would equally apply to all the Tribunals, where such an appeal is provided for directly to the Honourable Supreme Court.

7. We have perused the judgment in Major General Shri Kant Sharma's case (supra) and we find that the discussion from para 15 onwards proceeds on the Constitutional scheme under Articles 32, 33, 136, 226 and 227 of the Constitution of India. It recognizes in para 21 that judicial review under Article 32 / 226 is a basic feature of the Constitution beyond the plea of amendability. Thereafter, various judicial pronouncements have been discussed and the conclusions summarised in para 34, which read as under:

"(i) The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including Armed Forces Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India. (Refer: L. Chandra and S.N. Mukherjee).

(ii) The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act. (Refer: Mafatlal Industries Ltd.).

(iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: Nivedita Sharma).

(iv) The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to

the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: Nivedita Sharma)."

8. On examination of the aforesaid controversy, we do believe that the distinction which the said judgment sought to give was in respect of the two category of the cases, i.e. conferment of appellate power before the judicial and quasi judicial forums and the conferment of appellate power before the Honourable Supreme Court. If this is the position, we have to restrain our hands while exercising jurisdiction under Article 226 of the Constitution of India.

9. Another aspect that arose out of the pleas raised by one of the learned counsel for the petitioners is that the judgment in Major General Shri Kant Sharma's case (supra) is not in conformity with the views of the Larger Bench. However, in our opinion, such an issue cannot be agitated before us and that would be a matter requiring reconsideration of the views expressed by the Honourable Supreme Court. The judicial hierarchy would not permit this Court to embark on the said exercise, especially, as it is not anybody's case that the earlier judgment had not been brought to the notice of the Bench which pronounced the orders in Major General Shri Kant Sharma's case (supra).

10. We may note that in the context of the National Green Tribunal Act itself, we have taken the same view in W.P.No.34199 of 2014 (P.S.Jayachandran and another v. The Member Secretary, Tamil Nadu Pollution Control Board and others) decided on 30.06.2015. Thus, we would follow the same course.

11. We may notice that three of the petitions emanate from the orders passed by the National Green Tribunal and the aggrieved parties are before us and one of the matters, which has been filed is in the nature of public interest litigation, while in two of the matters, there are general grievances made in respect of the functioning of the Tribunal. This would, in our view, make no difference, as we cannot be called upon to do indirectly what we would not do directly and the same result must follow also in these matters.

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

13. We may note that one of the aspects i.e. National Green Tribunal not proceeding with the suo-moto proceedings initiated any further in view of these matters pending before us. Learned senior counsel appearing for the National Green Tribunal fairly states that

to give some hiatus of time for the parties to approach the Honourable Supreme Court, without conceding any of the merits of the controversy sought to be raised by the petitioners, the National Green Tribunal does not propose to take such a suo-moto action for a period of two months' time. The said statement is taken on record.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

ATR

Copies to;

1. The Secretary to Government
Ministry of Environment and Forests
Paryavaran Bhavan, CGO Complex
CGO Complex, Lodhi Road
New Delhi 110 083.
2. The Secretary to Government
Government of Tamil Nadu
Environment and Forest Department
Fort St. George, Chennai 600 009.
3. The Director of Environment
Panagal Building
Saidapet, Chennai 600 018.
4. The Member Secretary
Tamil Nadu Pollution Control Board
No.76, Mount Road
Guindy, Chennai 600 032.
5. The Tamil Nadu State Coastal Zone
Management Authority
Panagal Building, Saidapet
Chennai 600 015.
6. The District Collector
Kanchipuram District, Kancheepuram.
7. The Deputy Registrar
National Green Tribunal
Southern Zone
950/1, Poonamallee High Road
TNPCB Building, Arumbakkam
Chennai 600 106.

8. The District Collector
Erode District, Erode.
9. The District Collector
Coimbatore District, Coimbatore.
10. The Commissioner of Geology
and Mining, Guindy, Chennai-32.
- 11 The Assistant Engineer
Tamil Nadu Pollution Control Board
Boothipuram Road, Theni.
- 12.The Commissioner
The Food and Consumer Production
Department, Chennai.
13. The Designator Officer
The Food and Consumer Production
Department, Collectorate, Theni.
14. The Junior Engineer
Tamil Nadu Electricity Board
Keelavadakarai, Periakulam
Theni District.
15. Chairman
Tamilnadu Pollution Control Board
Guindy, Chennai.
- 16.The Registrar
National Green Tribunal
Southern Zone, Chennai.
17. The Principal Secretary to Government
Department of Environment and Forests
Fort St. George, Chennai-9.
18. The Chairman
The Central Ground Water Board
Bhujal Bhawan, N.H. IV, Faridabad
Haryana - 121 001.
19. The Regional Director
Central Ground Water Board
South East Coastal Region
E-Wing, G.-Block, Rajaji Bhavan
C.G.O. Complex, Besant Nagar
Chennai.

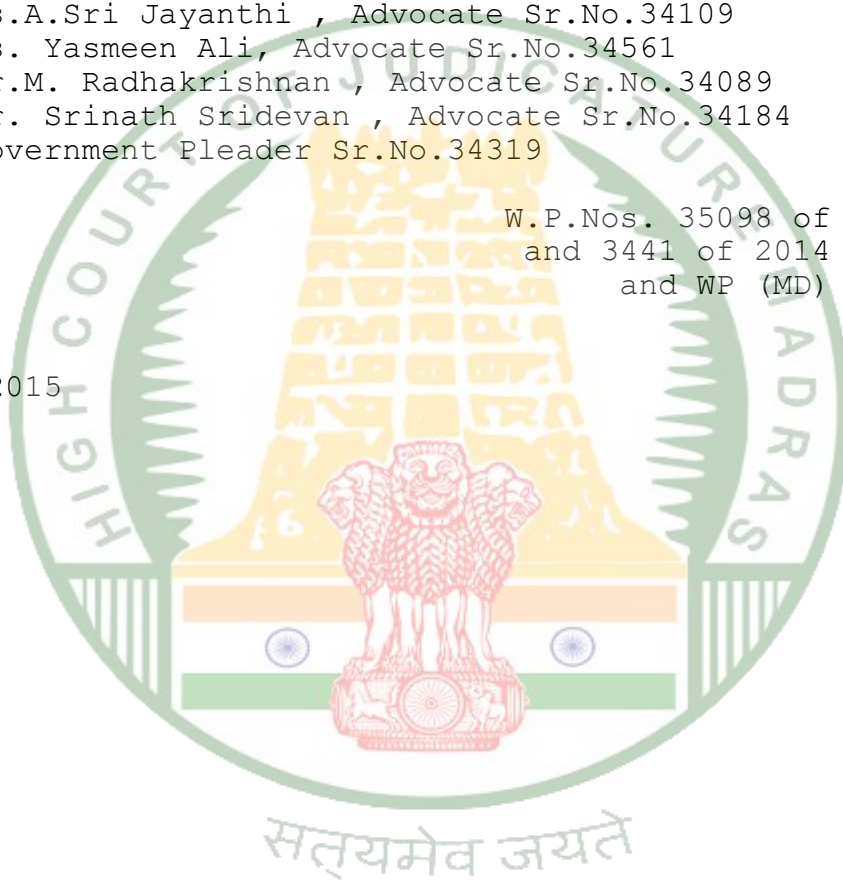
20. The Chief Engineer
(State Ground & Water Resources Data Centre)
Tharamani, Chennai - 113.

21. The Chief Engineer
P.W.D. Water Resources Organization
State Ground and Surface Water Resources
Data Centre, Tharamani
Chennai 600 113.

1 cc to Spl. Government Pleader(Forest).Sr.No.33470
5 cc to Mr.K.Rajasekaran , Advocate Sr.No.34161 to 34165
1 cc to Ms.A.Sri Jayanthi , Advocate Sr.No.34109
1 cc to Ms. Yasmeen Ali, Advocate Sr.No.34561
2 cc to Mr.M. Radhakrishnan , Advocate Sr.No.34089
1 cc to Mr. Srinath Sridevan , Advocate Sr.No.34184
1 cc to Government Pleader Sr.No.34319

W.P.Nos. 35098 of 2013, 2528, 3440
and 3441 of 2014 and 2266 of 2015
and WP (MD) No. 2993 of 2014

rsk(co)
pmk.29.7.2015



WEB COPY