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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10th August, 2015

+ W.P.(C) 2996/2010 & C.M. APPL. No.5976/2010

SAMATA

..... Petitioner

Through: Mr. Raj Panjwani, Sr. Adv. with
Ms. Pallavi Talware, Advocate.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Vikas Mahajan, CGSC with
Mr. S.S. Rai, Advocate for R-1.
Mr. Dhananjay Baijal with Mr.
Nikhil Nayyar, Advocate for
respondent No.2.
Mr. R. Venkataramani, Sr.
Advocate with Mr. G.N. Reddy,
Advocate for respondent No.3.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

VED PRAKASH VAISH, J. (ORAL)

1. By way of the present petition under Article 226 of Constitution of India, the petitioner has impugned the order dated 28.08.2009 passed by the National Environment Appellate Authority, New Delhi in Appeal No.10/2009 whereby the appeal filed under Section 11(1) of the National Environment Appellate Authority Act, 1997 by the petitioner was dismissed.

2. Learned senior counsel for the petitioner submits that the National Environment Appellate Authority (for short "NEAA") failed to appreciate the issues raised by the petitioner. The NEAA did not

apply its mind to the very serious concerns raised by the petitioner herein in its Appeal and instead dismissed the Appeal and upheld the environmental clearance. The NEAA failed to appreciate that the environmental clearance violated the principle of inter-generational equity. The additional TOR was vital addition to the original TOR and as such deserved a detailed scrutiny as provided under the EIA Notification, 2006.

3. Learned Senior Counsel for the petitioner has drawn this Court's attention to the relevant provision of Section 38 of the National Green Tribunal Act, 2010 (for short "the Act"), which reads as under: -

"Section 38. Repeal and savings. –

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(3) The National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997 (22 of 1997), shall, on the establishment of the National Green Tribunal under the National Green Tribunal Act, 2010, stand dissolved.

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(5) All cases pending before the National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997 (22 of 1997) on or before the establishment of the National Green Tribunal under the National Green Tribunal Act, 2010, shall, on such establishment, stand transferred to the said National Green Tribunal and the National Green Tribunal shall dispose of such cases as if they were cases filed under the Act.

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xxx"

4. On a perusal of the relevant provisions of Section 38 of the Act it is clear that on the establishment of the National Green Tribunal the NEAA will stand dissolved and further all cases pending adjudication in the NEAA shall stand transferred to the National Green Tribunal, who shall dispose of such cases in terms of the provisions of the Act.

5. Learned Senior Counsel for the petitioner further submits that the proceedings in the NEAA were conducted without the presence of judicial members and expert members whose presence is mandatory in terms of the provisions of the Act and therefore the present matter may be remanded back to the National Green Tribunal for adjudication in a manner in terms of the Act. He has relied upon judgment in '**Madras Bar Association v. Union of India and Another**', (2014) 10 SCC 1, and '**Bhopal Gas Peedith Mahila Udyog Sangathan and Others v. Union of India and Others**', (2012) 8 SCC 326.

6. In **Madras Bar Association's** case (supra) it was held that the jurisdiction to adjudicate upon questions of law of the High Court under any ordinary law may be transferred to an appropriately constituted tribunal. In **Bhopal Gas Peedith Mahila Udyog Sangathan's** case (supra), the Apex Court observed that in view of the provisions and scheme of the National Green Tribunal Act, 2010 particularly Sections 14, 29, 30 and 38 (5) of the Act, it can safely be concluded that the environmental issues and matters covered under the Act, Schedule-I should be instituted and litigated before the National Green Tribunal. Such approach is necessary to avoid likelihood of conflict of orders between the High Courts and the National Green Tribunal.

7. During the course of the argument, learned senior counsel for respondent No.3 submits that respondent No.3 has no objection if the impugned order is set aside and the matter is remanded to the National Green Tribunal for adjudication.

8. In view of the above discussion and submission made by learned senior counsel for the respondent, the impugned order dated 28.08.2009 passed by National Environment Appellate Authority, New Delhi in Appeal No.10/2009 is set aside and the matter is remanded back to National Green Tribunal for adjudication of the appeal afresh.

9. With the aforesaid observation, the present petition and application stand disposed of.

(VED PRAKASH VAISH)
JUDGE

AUGUST 10, 2015

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