

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No.54 of 2017**

- M/s Golchha Chemicals Through Proprietor- Prakash Golchha S/o Late Shri Kewal Chand Golchha, Age About- 62 Years, R/o 19/2, West Nehru Nagar, Bhilai, Tahsil & District Durg, Chhattisgarh.

---- **Petitioner****Versus**

- M. P. Pradushan Nivaran Mandal (Now C.G. Environment Conservation Board) Through The Regional Officer, 5/ 32 Bungalow Bhilai, Tahsil & District Durg, Chhattisgarh.

---- **Respondent**

For Petitioner	:	Shri Navin Dani with Shri Jitendra Gupta, Advocates
For Respondent	:	Shri Animesh Tiwari, Advocate

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****07/03/2017**

By this petition, the petitioner has assailed correctness and validity of order dated 27-12-2016, by which, the petitioner's revision against order dated 13-04-2015 passed by the Chief Judicial Magistrate, Durg, has been dismissed.

2. On the allegation of violation of provisions contained in Section 25 & 26 of the Water Pollution (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "the Act of 1974"), a criminal complaint for prosecution under Section 43, 44 & 47 of the Act of 1974 was filed before the Chief Judicial Magistrate, Durg, by the competent authority of the Pollution Board. The petitioner was tried for alleged commission of offence and convicted vide order dated 11-05-2000. The petitioner was also found guilty of commission of offence under Section 44 of the Act of 1974 and sentenced to undergo six months

simple imprisonment with fine of Rs.1,000/-.

The order was assailed in appeal. The appellate Court vide judgment dated 10-04-2001 interfered only with sentence part, upholding conviction. The petitioner, thereafter, filed revision registered as Criminal Revision No.149/2001 before this Court, which was allowed vide order dated 24-08-2012 and the case was remanded back to the Court of Chief Judicial Magistrate, Durg, to provide proper opportunity of hearing to the parties and decide the case afresh.

3. After remand, the case was proceeding before the Chief Judicial Magistrate, the petitioner moved an application raising objection to the jurisdiction of the Magistrate to try the petitioner for the alleged offence by submitting that under the statutory scheme of the National Green Tribunal Act, 2010 (In short "the Act of 2010"), the Magistrate has no jurisdiction to try for alleged commission of offence under the Act of 2010 and the National Green Tribunal has the exclusive jurisdiction to try for such offence. This objection having been rejected, a revision was also filed, which has also been rejected vide impugned order.

4. Submission of learned counsel for the petitioner is that in view of the provision contained in Section 14, 15 & 16 of the Act of 2010, it is the Tribunal alone which has the jurisdiction, when substantial question relating to environment including enforcement of legal right relating to environment is involved and such question is arising out of the implementation of the Enactments which have been specified in Schedule-I. According to him, as the Act of 1974 is also included in Schedule I, all matters including prosecution shall lie only before the National Green Tribunal and not before any other Court. It is further submitted that the Bhopal Bench of National Green Tribunal vide its memo dated 29-05-2013 addressed to the High Court of Chhattisgarh

requested to direct all the Courts within its jurisdiction for necessary action i.e. to transfer of such cases to Bhopal Bench of National Green Tribunal.

Learned counsel for the petitioner referred to the order of the Supreme Court in the case of ***Bhopal Gas Peedith Mahila Udyog Sangathan and others vs. Union of India and others, (2012) 3 SCC 326***, to submit that the Supreme Court has directed all the cases to be transferred to the National Green Tribunal.

5. On the other hand, learned counsel appearing for the respondents submitted that in the earlier round of litigation, when the occasion arose to assail the correctness and validity of the criminal proceedings, judgment of conviction and sentence before the appellate Court and even before this Court in the revision, issue of jurisdiction was not raised by the petitioner to assail correctness and validity of the order of conviction and sentence and therefore, now at this stage, the petitioner cannot be permitted to raise such objection, when there is no order of the High Court in earlier round of proceedings.

Per contra, respondent's submission is that as far as prosecution for alleged commission of offence under the Act of 1974 is concerned, even according to the scheme of the Act of 2010, the complaint is required to be filed before the jurisdictional Magistrate and not before the National Green Tribunal. It is submitted that there is no direction either by the Supreme Court or by the National Green Tribunal that even prosecution cases are to be transferred to the National Green Tribunal.

6. It is apparent that when the petitioner was subjected to prosecution in a criminal complaint filed against him for alleged commission of offence under the Act of 1974, leading to his conviction, neither in the appeal before the Sessions

Judge nor in the criminal revision before this Court in the earlier round of litigation, this ground was ever raised by the petitioner, though available to him. A perusal of the order passed by the learned Appellate Court in Criminal Appeal No.87/2000 decided by the Vth Additional Sessions Judge, Durg on 10-04-2001 does not show that this ground was taken by the petitioner. Even in the revision filed before this Court i.e. Criminal Revision No.149/2001, no such ground was taken. The revision petition was allowed on the findings that the trial Court is required to record clear and unambiguous finding relating to commission of offence and the appellate Court was obliged under the law to record clear finding relating to violation of the provisions of the Act of 1974. With this finding, conviction was quashed and the case was remitted back to the Court of Chief Judicial Magistrate for providing proper opportunity of hearing to the parties and decide the case afresh, especially in the light of the contradictory finding recorded in the order of conviction. It is thus clear that the petitioner never raised this ground earlier and it is only when the case was remitted back, then the petitioner has started raising such objection. Otherwise also, submission that the Magistrate does not have the jurisdiction to try the petitioner for commission of offences under the Act of 1974, is not acceptable in law.

7. Chapter 3 of the Act of 2010 provides for power, jurisdiction and proceedings of the National Green Tribunal.

Section 14 of the Act of 2010 empowers the Tribunal to settle disputes. It being relevant is reproduced hereinbelow:-

14 Tribunal to settle disputes.- (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment(including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose: Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

Section 15 of the Act of 2010 further provides for relief, compensation and restitution which may be awarded by the Tribunal, which is also reproduced for ready reference, as below:-

15 Relief, compensation and restitution. -(1) "The Tribunal may, by an order, provide,-

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose: Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.”

The Tribunal is vested with appellate Court jurisdiction in respect of the matters specified in Clause (a) to (j) of Section 16 of the Act of 2010.

The provisions contained in Section 14 of the Act of 2010 clearly show that the Tribunal has been vested with the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I appended to the Act. Schedule I also includes the Water (Prevention and Control of Pollution) Act, 1974. Moreover, the relief that could be granted have already been provided in Section 15 of the Act.

8. Section 26 of the Act of 2010 provides for failure to comply with the order of the Tribunal whereas Section 27 provides for offences by companies and Section 28 provides for offences by Government Department.

9. Under the statutory scheme of the Act of 2010, in so far as cognizance of offence punishable under the Act of 2010 is concerned, special provision has been made under Section 30, which reads thus:-

30. **Cognizance of offences.** -(1) “No court shall take cognizance of any offence under this Act except on a complaint made by,-

(a) the Central Government or any authority or officer authorised in this behalf by that Government; or

(b) any person who has given notice of not less than sixty days in such manner as may be prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid.

(2) No court inferior to that of a Metropolitan Magistrate or, a Judicial

Magistrate of the first class shall try any offence punishable under this Act”.

10. Section 14 of the Act of 2010 referred to above does not talk of prosecution for offences under the Act. There is nothing in the provisions under Section 14 to 16 either expressly or by the necessary implication to hold that the criminal proceedings for commission of offences under the Act of 2010 or any other Act including the Act of 1974 shall lie before the Tribunal.

11. Thus, the statutory scheme of the Act of 2010 clearly reveals that in so far as cognizance of offences under the Act of 2010 are concerned, the cognizance could be taken by the competent Court to try any such offence punishable under the Act of 2010 which would be either the Metropolitan Magistrate or the Magistrate of First Class. Section 14 makes it explicit that all civil cases of nature specified in Section 14 can be tried only by the National Green Tribunal and Section 29 creates a bar of jurisdiction that all Civil Court shall not have the jurisdiction to deal such matters within the jurisdiction of the Tribunal. But, in so far as prosecution are concerned, Section 30(2) provides that a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. In so far as prosecution for commission of offence under the Act of 1974 is concerned, the prosecution shall lie before the competent jurisdictional Magistrate as provided under the Act of 1974. There is specific provision with regard to taking cognizance of offences under the Act of 1974 as contained in Section 49, which is reproduced hereinbelow:-

49. Cognizance of offences.—1[(1) No court shall take cognizance of any offence under this Act except on a complaint made by—

(a) a Board or any officer authorised in this behalf by it; or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Board or officer authorised as aforesaid,

and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.]

2 [2] Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.]

3[(3)] Notwithstanding anything contained in section 4 [29 of the Code of Criminal Procedure, 1973 (2 of 1974)], it shall be lawful for any 4[Judicial Magistrate of the first class or for any Metropolitan Magistrate] to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under this Act.

12. Therefore, in so far as prosecution for alleged commission of offences under the Act of 1974 are concerned, it is the Magistrate competent under the Act of 1974 to try the offence. In so far as commission of offence under the Act of 2010 are concerned, the cognizance could be taken only in accordance with Section 30 of the Act of 2010.

13. Reliance placed on the decision of the Supreme Court in the case of ***Bhopal Gas Peedith Mahila Udyog Sangathan and others*** (supra) is misconceived in law, because the directions of the Supreme Court have been issued keeping in view the provisions of the scheme of the Act of 2010, particularly Section 29, 30 & 38(5). Present is not a case which involves civil cases of the nature specified in Section 14 of the Act of 2010, so as to say that the Tribunal alone shall have the jurisdiction.

14. In the result, the petition has no merit and therefore dismissed.

SD/-
(**Manindra Mohan Shrivastava**)
Judge