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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 364 of 2017**

- Steel Authority Of India Ltd. Bhilai Steel Plant, Represented By The Managing Director (Now The Chief Executive Officer), Bhilai Steel Plant Bhilai, District Durg, (Chhattisgarh)

---- Petitioner**Versus**

1. Union Of India Through The Secretary, Ministry Of Environment, Forest And Climate Change, Indira Paryavaran Bhawan, Jorbagh Road, New Delhi 110003
2. The National Green Tribunal, Through The Registrar, Central Zonal Bench, State Commission Bhawan, Illrd Floor, Arera Hills, Bhopal 462011, Madhya Pradesh
3. Appeal Committee, Constituted Under Section 13 Of The Water (Prevention And Control Of Pollution) Cess Act, 1977 Chhattisgarh, Pollution Control Board, Paryavas Bhawan, North Block Sector 19, Naya Raipur, (Chhattisgarh)
4. Member Secretary, Chhattisgarh Pollution Control Board, Paryavas Bhawan, North Block, Sector 19, Naya Raipur, (Chhattisgarh)
5. Chhattisgarh Pollution Control Board, Paryavas Bhawan, North Block Sector 19, Naya Raipur, (Chhattisgarh)

---- Respondent

For Petitioner	Dr. N.K. Shukla, Senior Advocate with Mr. Mr. Vikram Sharma, Advocate
For Respondent/ UOI	Mr. N.K. Vyas, Assistant Solicitor General

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****16/2/2017**

1. Heard.

2. It is argued by Dr. N.K. Shukla, learned Senior Advocate for the petitioner that the petitioner seeks to challenge the appellate order passed by the National Green Tribunal, Central Zone Bench, Bhopal, dismissing the petitioner's appeal, which was earlier preferred as a writ petition in this High Court, but since after enactment of the National Green Tribunal Act, 2010 (in short "the Act, 2010"), it was transferred to the jurisdictional Bench of the National Green Tribunal.
3. Relying upon the law laid down in the matter of **L. Chandrakumar Vs. Union of India, AIR 1997 SC 1125 : (1997) 3 SCC 261**, Dr. Shukla would submit that the power of judicial review of this Court available to it under Article 226 or 227 of the Constitution of India, cannot be curtailed by any statute, therefore, the writ petition is maintainable. He would also place reliance on a Division Bench Judgment of the High Court of Madras in the matter of **Vajayalakshmi Shanmugam and another Vs. Secretary to Government of India, Ministry of Environment and Forests and others, MANU/TN/0327/2014 : (2014) 2 MLJ 316**.
4. Mr. N.K. Vyas, learned Assistant Solicitor General for Union of India, would submit that while exercising power of judicial review under Article 226 and 227 of the Constitution of India, due regard must be had to the statutory mechanism including the remedy of appeal provided under the Act, 2010.
5. Having heard learned counsel for the parties for sometime, it would appear that when remedy of appeal is provided before

Hon'ble the Supreme Court, the legislative intent shall have to be kept in mind while entertaining any writ petition against the order passed by the National Green Tribunal.

6. Despite pronouncement in **L. Chandrakumar (supra)**, the Supreme Court in the matter of **Union of India and others Vs. Major General Shri Kant Sharma and another, 2015 AIR SCW 2497** has held thus in para 34 :

“34. The aforesaid decisions rendered by this Court can be summarised as follows :-

(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 Tribunal Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India (Refer: L. Chandra (AIR 1997 SC 1125) and S.N. Mukherjee (AIR 1990 SC 1984).

(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)."

7. In view of the legal position summarised by the Supreme Court in **Major General Shri Kant Sharma (supra)**, I am of the considered opinion that despite the power of judicial review of this Court under Article 226 and 227 of the Constitution of India, when an appellate remedy is provided before Hon'ble the Supreme Court, due regard has to be accorded to the legislative intent and the High Court cannot entertain a writ petition in a routine manner unless a grave emergent situation creeps in, which cannot be avoided without resorting to the power under Article 226 of the Constitution of India, as an interim measure, before the concerned party moves to the Supreme Court.

8. Accordingly, the writ petition is dismissed reserving liberty in favour of the petitioner to prefer an appeal in accordance with law.

Sd/-

Judge

(Prashant Kumar Mishra)

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