

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.104 OF 2017

ORDER: (Per Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This Writ Petition is filed by the State of Telangana aggrieved by the order passed by the National Green Tribunal, Southern Zone, Chennai, in Application No.273 of 2016 (SZ) dated 13.12.2016. The first respondent herein invoked the jurisdiction of the National Green Tribunal, Southern Zone, Chennai (hereinafter called 'Tribunal') seeking an order of permanent injunction restraining the respondents therein (the petitioners herein) from carrying on any work or activity related to the Palamuru-Rangareddy Lift Irrigation Scheme without mandatory clearances or permissions.

The contentions, urged on behalf of the first respondent (the applicant before the Tribunal), before the Tribunal was that this project was being implemented in violation of the law, and a part of the project area fell within the Reserve Forest of Amrabad Tiger Reserve; no clearance from the Ministry of Environment and Forest, as provided under the Forest (Conservation) Act, 1980, had been obtained; Environmental Clearance, under the Environment Impact Assessment Notification, 2006, was mandatory since the project fell under para - 1 (c) of the Schedule to the notification; and no environmental clearance had been obtained.

In the impugned order, the Tribunal noted the submission, urged on behalf of the first respondent-applicant, that the show-cause notice issued to the Executive Engineer, by proceedings

dated 12.07.2016, showed that the works in progress in the forest area was in clear violation of the Forest (Conservation) Act, 1980 and the Wildlife (Protection) Act, 1972; and it created a lot of disturbance in the wildlife habitat affecting the flora and fauna as this was a part of the core area of Amrabad Tiger Reserve which was rich in wildlife, such as Tigers, Leopards, Bears, Sambars, Deers, Peacocks etc. Thereafter, the Tribunal observed that the construction work being undertaken, in Amrabad Tiger Reserve Area, was without obtaining necessary clearances under EIA Notification 2006, the Forest (Conservation) Act, 1980, and the Wildlife (Protection) Act, 1972; and, hence, immediate action was warranted. The Tribunal restrained the State of Telangana from proceeding with the construction work of the Palamuru Rangareddy Lift Irrigation Scheme in violation of the provisions of the Forest (Conservation) Act, 1980, and without taking the mandatory clearances and permissions, under the EIA Notification, 2006 notified under the Environmental (Protection) Act, 1986, till 17.01.2017. While directing notice to be issued to the respondents in the application (including the petitioners herein) by registered post with acknowledgment due and *dasti*, the Tribunal directed that the matter to be listed before it on 17.01.2017.

Learned Advocate General, appearing on behalf of the State of Telangana, would submit that, in view of Section 19 (4) (i) of the National Green Tribunal Act, 2010 (hereinafter called 'the Act'), no interim order can be passed by the Tribunal without providing the parties concerned an opportunity of being heard; the Tribunal lacked jurisdiction to pass an *ex parte ad interim* order, such as the one impugned in this writ petition; Section 14 (3) of the Act

prohibits an application, for adjudication of disputes under Section 14, being entertained by the Tribunal, unless it is made within a period of six (6) months from the date on which the cause of action, for such dispute, first arose; as the subject project was launched in April, 2016, and the project lands were handed over to the petitioners on 27.05.2016, the application before the Tribunal should have been filed on or before 27.11.2016; the application was filed only on 05.12.2016, and was heard on 13.12.2016, both of which are beyond the period of limitation of six months; in the absence of an application being filed to condone the delay, in invoking the jurisdiction of the Tribunal, the impugned order, passed by the Tribunal, is without jurisdiction; no appeal lies to the Supreme Court under Section 22 of the Act; even otherwise, as the order of the Tribunal is without jurisdiction, the petitioners are not barred from invoking the jurisdiction of this Court under Article 226 of the Constitution of India; and, even in cases where the statutory remedy of an appeal is available, the jurisdiction of this Court, under Article 226 of the Constitution of India, can be invoked if the impugned order is without jurisdiction. Learned Advocate General, on instructions, would submit that no papers were served on Ms. Yasmeen Ali, whose services have been engaged by the State of Telangana to appear in a few cases before the Tribunal.

On merits, the learned Advocate General would submit that the petitioners have not violated any law; it is evident from the proceedings dated 02.09.2016 that no further work is being carried on in the Amrabad Tiger Reserve after 18.07.2016; the memo dated 18.11.2016 shows that the petitioners had shifted their area of

operations beyond the Amrabad Tiger Reserve limits; the Pumping Station of Package No.1 (Palamuru Rangareddy Lift Irrigation Scheme) is now being established at an alternate site in the form of an Underground Pumping Station; while the earlier proceedings dated 02.09.2016 was alone referred to in the application filed by the respondent-applicant before the Tribunal, the subsequent memo dated 18.11.2016 was not; it is evident from the notification dated 14.09.2006, issued by the Ministry of Environment and Forests, that the requirement of prior Environmental Clearance applies only for new projects or activities listed in the Schedule to the notification; the first respondent-applicant had, in their application filed before the Tribunal, alleged violation of Para 1 (c) of the Schedule to the Notification; Para 1 (c) relates to River Valley Projects, that too, projects for hydroelectric power generation and for irrigation of Culturable Command Area; while the project being executed by the petitioners is, no doubt, a composite project, both for providing drinking water to the affected villages in the erstwhile Rangareddy, Mahabubnagar and Nalgonda Districts, and to provide irrigation facilities to the farmers in these areas, the first part of the project, which is expected to be completed within a period of one year, is confined only to provide drinking water to the villagers in the aforesaid three districts; consequently the project under implementation, as on date, is only a drinking water project which falls outside the ambit of Para 1 (c) of the Schedule to the EIA Notification dated 14.09.2006; the interim order, granted by the Tribunal, has caused immense prejudice to the petitioners herein; the entire works have come to a standstill; and the State is

losing a sum in excess of Rs.10.00 crores per day, besides the possibility of future damages.

On the other hand Mrs. B. Rachna Reddy, learned counsel for the first respondent - applicant, would contend that Section 22 of the Act bars invocation of the jurisdiction of this Court; as the petitioners have an effective statutory remedy of an appeal to the Supreme Court, this Court would not exercise its extra-ordinary jurisdiction under Article 226 of the Constitution of India to interfere; the order passed by the Tribunal on 13.12.2016 is alone under challenge in this Writ Petition, and not the jurisdiction of the Tribunal to pass such an order; Section 19 (4) (g) of the Act confers power on the Tribunal to decide an application or an appeal *ex parte*; therefore, the Tribunal has the power to pass an *ex parte ad interim* order; Section 19 (4) (g) of the Act must be read along with Section 20 of the Act which requires the Tribunal, among others, to apply the precautionary principle; if the Tribunal is held not to have the power to pass an *ex parte ad interim* order, Section 20 of the Act would be rendered otiose; the Tribunal would then not be entitled to apply the precautionary principle to pass an *ad interim* order; the delay caused in service of notice on the respondents, in such cases, may well cause irretrievable damage to the environment, and result in large scale degradation of forests; Section 2 (1) (m) of the Act defines a substantial question of law, relating to the environment, to include an instance where there is a direct violation of a specific statutory environmental obligation by a person which affects the environment, and has environmental consequences, besides causing grave and substantial damage to the environment; Rule 15 (6) of the National Green Tribunal

(Practices and Procedure) Rules, 2011 (hereinafter called the '2011 Rules') confers power on the Tribunal, if it is satisfied that it is not reasonably practicable to serve a notice of the application upon the respondents, to direct the application to be heard notwithstanding that some of the respondents have not been served with the notice of the application; proviso (i) thereto requires a notice of the application to be served on the State Government, and proviso (iii) enables the Tribunal, if it is satisfied that the interests of the respondents on whom notice of the application has not been served are adequately or sufficiently represented by the respondents on whom notice of the application has been served, to pass an *ad interim* order; a set of papers were served on Ms. Yasmeen Ali, learned counsel appearing for the State of Telangana before the Tribunal; the requirement, of putting the petitioners on notice, has been complied with; despite the interim order passed by the Tribunal, the State of Telangana continues to flout those orders; their construction work continues unabated; their claim that the project is a drinking water project is not tenable; canals, *ayacuts*, bunds and excavation activities are still being undertaken; Rule 21 (1) of the 2011 Rules confers power on the Tribunal to decide an application *ex parte*; the second proviso thereunder confers power on the Tribunal not to set aside an *ex parte* order, passed in an application, merely on the ground that it was not served upon the respondents; no prejudice has been caused to the petitioners herein by the ad-interim order passed by the Tribunal; the interim order is to remain in force only till 17.01.2017, which is just two weeks away; the monetary loss which the State may suffer, for any delay in implementation of the project, would not compensate the

irretrievable loss which may be caused because of degradation of the forests, and damage to the environment; and, since the first respondent received information under the Right to Information Act only on 02.08.2016 based on which he had filed an application before the Tribunal, the stipulated six (6) month period, to file an application before the Tribunal, would expire only on 02.02.2017; and the application, filed before the Tribunal on 05.12.2016, is within limitation. Learned Counsel would rely on **Union of India v. Shri Kant Sharma¹; Industrial Credit and Investment Corporation of India Limited v. GRAPCO Industries Limited²**; the order of the Division Bench of the Bombay High Court in **Oil & Natural Gas Corporation Limited v. Ramdas Kohil³**; and the order of the Division Bench of the Madras High Court in **V. Sundar v. Union of India⁴**.

Before examining the question whether the petitioners are barred from invoking the extra-ordinary jurisdiction of this Court, under Article 226 of the Constitution of India, in view of Section 22 of the Act, it is necessary, in the first instance, to examine the submission of the learned Advocate General for the State of Telangana that the Tribunal lacks jurisdiction to pass an *ex-parte ad interim* order in view of Section 19 (4) (i) of the Act. Section 19 (1) stipulates that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (hereinafter called the 'CPC'), but shall be guided by the principles of natural justice. Section 19 (4) provides that the Tribunal shall have, for the purposes of discharging its functions under the Act,

¹ 2015 LawSuit (SC) 215

² 1999 (4) SCC 710

³ W.P. No.5563 of 2014 dated 17.06.2014

the same powers as are vested in a Civil Court under the CPC while trying a Suit in respect of the matters enumerated in Clauses (a) to (k) thereunder. Section 19 (4) (i) of the Act confers on the Tribunal, similar to those vested in the Civil Court while trying a Suit, the power to pass an interim order (including granting an injunction or stay). This power is, however, circumscribed by the requirement of providing the parties concerned an opportunity of being heard on an application made under the Act. While there is a dispute whether or not a set of papers in the application were served on Ms. Yasmeen Ali, the learned counsel appearing on behalf of the State of Telangana before the Tribunal, the impugned order itself records that notice should be issued to the respondents by Registered Post with Acknowledgement Due and *dasti*. It does appear that the order passed by the Tribunal was an *ex parte* ad-interim order without the petitioners herein either being put on notice or their being given an opportunity of being heard.

The submission of Mrs. B. Rachna Reddy, however, is that the Tribunal has the power to pass an *ex parte ad interim* order. She would draw support, for this submission, from Section 19(4)(g) of the Act and Rules 15 and 21 of the 2011 Rules. Section 19(4)(g) of the Act confers power on the Tribunal to dismiss an application for default or to decide it *ex parte*. If Clause (g) of Section 19(4) of the Act were to be read as applicable to interim orders also, it would be then render Section 19(4)(i) of the Act, which specifically requires an interim order to be passed only after providing the parties concerned an opportunity of being heard, otiose. It is well settled that the provisions of a Statute must be harmoniously

⁴ W.P. No.13852 of 2015 and M.P. Nos.1 and 2 of 2015 dated 30.04.2015

construed, and not in a manner as to be in conflict with each other, or to result in one of the provisions being rendered otiose. Therefore Section 19(4)(g) of the Act can only mean an application being decided if, despite service of notice, the respondents choose not to appear, and are therefore set *ex parte*.

Rule 15(6) of the 2011 Rules stipulates that, if the Tribunal is satisfied that it is not reasonably practicable to serve notice of the application upon all the respondents, it may, for reasons to be recorded in writing, direct that the application be heard notwithstanding that some of the respondents have not been served with the notice of the application. Rule 15(6) would apply only in cases where the Tribunal records its satisfaction that it is not reasonably practicable to serve the notice, of the application, upon all the respondents. The Rule requires the Tribunal not only to be satisfied that it is impracticable to serve notice on some of the respondents, but also obligates it to record reasons for directing that the application shall be heard notwithstanding that some of the respondents have not been served. In the present case, the order passed by the Tribunal is an *ex parte ad interim* order, and none of the respondents have, admittedly, been served with the notice. No reasons are recorded by the Tribunal, in the impugned order, holding that it is not reasonably practicable to serve notice, of the application, on the respondents therein. Proviso (iii) thereunder confers power on the Tribunal to hear the application if it is satisfied that the interests of the respondents, on whom notice of the application has not been served, are adequately and sufficiently represented by the respondents on whom notice of the application has been served.

As noted hereinabove, notice of the application was not served on any of the respondents, and the Tribunal has also not recorded its satisfaction that the interests of the petitioners herein was adequately safeguarded by those representing the other respondents. Rule 15(6) of 2011 Rules has, therefore, no application to the facts and circumstances of the present case.

Rule 21(1) of the 2011 Rules confers discretion on the Tribunal, in cases where, on the date fixed for hearing of the application or on any other date to which such hearing is adjourned, the applicant and the respondents do not appear, to decide such an application *ex parte*. Rule 21(1) relates to an *ex parte* hearing after notice to the respondents, and does not empower the Tribunal to grant an *ex parte ad interim* order. The second proviso thereto, which confers power on the Tribunal not to set aside the *ex parte* order passed in an application merely on the ground that it was not served upon the respondents, has no application to the present case. The *ex parte* order, referred to in the second proviso, is an *ex parte* order which the Tribunal can pass under Rule 21(1) i.e after the parties to the application are put on notice and, despite service of notice, choose not to appear and are, therefore, set *ex parte*. Even otherwise, the statutory rules made under the provisions of the Act must be read harmoniously with the provisions of the Act itself, and cannot be so read as to render Section 19(4)(i) of the Act, which requires the respondents to be heard before an *ad interim* order is passed, redundant.

In K.K. Rocks and Granites India (P) Limited v. Latha⁵

the Kerala High Court, on a conjoint reading of Section 19(4)(i) of the Act and Rule 15(6) of the 2011 Rules, held that the Tribunal has the authority to pass orders against the respondents only if it is satisfied that it is not reasonably practicable to serve notice of the application upon them; if the respondents do not appear on notice on the interlocutory application for stay, the Tribunal can pass orders therein without hearing the respondents, if it is satisfied that it is not reasonably practicable to serve notice of the application on them; the statute imposed a restriction on the Tribunal that it should not pass interim orders, without providing the parties concerned an opportunity to be heard on any application made for the said purposes; and it was not possible to contend that the Tribunal can pass an *ex parte* interim order based on its inherent powers.

While we are satisfied that the Tribunal should, ordinarily, avoid passing *ex parte ad interim* orders, without giving the respondents an opportunity of being heard, we must make it clear that there may well arise exceptional and extra-ordinary situations which may warrant an order being passed by the Tribunal *ex parte* as Section 20 of the Act requires the Tribunal, while passing an order, to apply the precautionary principle also. We are not required to examine whether, in all cases irrespective of the urgency, the Tribunal has/lacks power to pass an *ex parte ad interim* order as, in the present case, the project under construction was commenced more than six months ago in May, 2016. Nearly six (6) months had passed by the time the Tribunal

⁵ 2016 (4) KLT 560

passed the *ex parte* ad- interim order on 13.12.2016. It is not as if the respondents could not have been put on notice, and be given an opportunity of being heard, before such an order was passed by the Tribunal. The present case, in our view, falls within the ambit of Section 19(4)(i) of the Act, and the Tribunal exceeded its jurisdiction in passing an *ex parte ad interim* order.

As we are satisfied that the order, impugned in this writ petition, is without jurisdiction, should we still relegate the petitioners to the remedy of an appeal under Section 22 of the Act? Before examining this question, let us consider whether the petitioner has a remedy of an appeal, under Section 22 of the Act, against an *ex parte* ad-interim order passed by the Tribunal. Section 22 of the Act relates to appeals to the Supreme Court and, thereunder, any person aggrieved by any award or decision or order of the Tribunal may file an appeal to the Supreme Court, within 90 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 CPC.

Section 100 CPC provides for an appeal to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. Section 100(2) provides for an appeal, from an appellate decree passed *ex parte*. Section 100 relates only to decrees passed by Courts subordinate to the High Court, including an *ex parte* appellate decree, provided it involves a substantial question of law. The order, impugned in this writ petition, is an *ex parte ad interim* order, and is not even an order

finally passed in the interlocutory application, much less a final order passed in the application filed before the Tribunal. On a reading of Section 22 of the Act as a whole, the right of appeal to the Supreme Court appears only to be against orders finally passed by the Tribunal, and not against an interlocutory order, much less one passed *ex parte* without putting the respondents on notice, and without giving them an opportunity of being heard. Even if we were to presume that the orders, against which an appeal would lie to the Supreme Court under Section 22 of the Act, would include orders disposing of the interlocutory application, it would be difficult for us to agree with the submission of Mrs. B. Rachana Reddy, learned counsel for the first respondent, that an appeal would lie to the Supreme Court even against an *ex parte ad interim* order.

It is no doubt true that both the Division Benches of the Bombay and the Madras High Courts, in **Oil & Natural Gas Corporation Limited**³ and **V. Sundar**⁴, had relegated the petitioners therein to the remedy of an appeal under Section 22 of the Act. It is, however, unclear from the brief orders passed, in both the writ petitions, by the Bombay and Madras High Courts, whether the orders impugned therein was a final order or not.

Be that as it may, this Court would be justified, in exercising its discretionary jurisdiction under Article 226 of the Constitution of India, to entertain Writ Petitions for violation of fundamental rights, for violation of principles of natural justice, and where the impugned orders are without jurisdiction (**Whirlpool Corporation**

v. Registrar of Trademarks⁶). The power of judicial review, under Article 226 of the Constitution of India, is a part of the basic structure of the Constitution (**L. Chandra Kumar v. Union of India**⁷), and cannot be curtailed or negated even by an amendment to the Constitution, let alone by a statutory provision - either pre-nary or subordinate. While exercise of jurisdiction under Article 226 of the Constitution of India is no doubt discretionary, and this Court would exercise restraint and, ordinarily, refuse to entertain disputes where the parties have an alternative statutory remedy of an appeal, that does not mean that this Court is barred from entertaining a challenge to an order of a Tribunal, even if it is wholly without jurisdiction. We must, therefore, express our inability to agree with Mrs. B. Rachna Reddy, learned counsel for the first respondent – applicant, that the writ petition should not be entertained in view of the remedy of an appeal under Section 22 of the Act.

In **Industrial Credit and Investment Corporation of India Limited**², on which reliance is placed by Mrs. B. Rachna Reddy, learned counsel for the first respondent - applicant, the Supreme Court observed:

“.....An ex parte order is only of a short duration and it is granted to safeguard the interest of the applicant, but, at the same time, such an order cannot be granted as a matter of course. A Court or Tribunal has also to consider the consequences of such an order if ultimately the order is to be revoked after hearing the defendant. In such circumstances, the Tribunal must put the applicant on terms while granting

⁶ (1998) 8 SCC 1

⁷ AIR 1997 SC 1125

an ex parte order and compensate the defendant in case the ex parte order was obtained without any justification and harm has been caused to the defendant. It must be remembered that an ex parte order can also affect the reputation of the person against whom it is issued and sometimes it may be difficult to undo the damage caused by an interim order. A Tribunal while granting an ex parte order of stay or injunction must record reasons, may be brief one, and cannot pass a stereotyped order in terms of the prayer made. Then an ex parte order cannot be allowed to continue indefinitely and the continuance of an interim order has to be decided without undue delay when the defendant puts in his appearance. It is not necessary to hear long-drawn arguments. Principles on which an interim order can be granted are well settled. Sub-section (8) of Section 19 requires that application for recovery of a debt itself is to be disposed of finally within a period of six months from the date of receipt of the application. That also shows the urgency to decide is an interim order of injunction or stay granted ex parte is to be continued or not. In our view, the High Court was not correct in holding that a Tribunal under the Act has no power to grant an ex parte order of injunction or stay....”

The aforesaid judgment is of no assistance to the learned counsel for the first respondent. Section 19(4)(i) of the Act, undoubtedly, confers power on the Tribunal to pass an interim order. The power to do so is, however, circumscribed by the requirement of giving the respondents an opportunity of being heard before such an order is passed. In **Industrial Credit and investment Corporation of India Limited**², the Supreme Court has held that the Tribunal should also consider the consequences

of the interim order, and put the applicant on terms while granting an *ex parte* order to compensate the respondents in case the *ex parte* order is obtained without justification, and harm has been caused to the respondents. No such conditions have been stipulated by the Tribunal in the impugned order.

In **Shri Kant Sharma**¹ the question, which fell for consideration before the Supreme Court, was whether the right of an appeal under Section 30 of the Armed Forces Tribunals Act, 2007, against the order of the Armed Forces Tribunal with the leave of the Tribunal under Section 31 of the Armed Forces Tribunal Act, or leave granted by the Supreme Court under Article 136(2) of the Constitution of India, barred the jurisdiction of the High Court under Article 226 of the Constitution of India regarding matters relating to the Armed Forces. It is in this context that the Supreme Court observed that an anomalous situation may arise if the High Court entertained a petition under Article 226 of the Constitution of India against the order passed by the Armed Forces Tribunal under Section 14 or 15 by-passing the machinery of the statute i.e., under Sections 30 and 31 of the Armed Forces Act, 2007 as, if a writ petition was entertained by a High Court and the aggrieved person preferred an appeal under Article 136 of the Constitution of India, the Supreme Court could not entertain the appeal against the order of the Armed Forces Tribunal in view of the bar of leave to appeal to the Supreme Court under Article 136(2) of the Constitution of India; and, in such circumstances, there was a possibility of an anomalous situation arising therefrom. As noted hereinabove, an appeal does not appear to lie to the Supreme Court, under Section 22 of the Act,

against an *ex parte ad interim* order passed by the Tribunal under the Act. Unlike the aforesaid provisions under the Armed Forces Tribunal Act 2007, the jurisdiction of the Supreme Court under Article 136 of the Constitution of India can always be invoked against the order passed by this Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The aforesaid judgment of the Supreme Court has also no application to the facts and circumstances of the present case, nor does any anomaly arise on this Court entertaining a Writ Petition against the order of the Tribunal.

While we are satisfied that the Tribunal exceeded its jurisdiction in passing an *ex parte ad interim* order, we must also bear in mind that the jurisdiction exercised by this Court, under Article 226 of the Constitution of India, is discretionary and we should not, as a matter of course, exercise our discretion to entertain a writ petition against orders of the Tribunal.

Mrs. B. Rachna Reddy, learned counsel for the first respondent - applicant, would submit that what is under challenge in this writ petition is the order passed by the Tribunal on 13.12.2016, and not the jurisdiction of the Tribunal to entertain the application. In paragraph No.4 of the writ affidavit, the petitioners state that the Tribunal had failed to follow the mandatory provisions of the Act, including adhering to the principles of natural justice, while passing the *ex parte ad-interim* order on 13.12.2016. The petitioners have sought a writ of *mandamus* to declare the order passed by the Tribunal on 13.12.2016 as arbitrary, illegal, unconstitutional, without

jurisdiction and contrary to the provisions of the Act. The jurisdiction of the Tribunal to pass the impugned order dated 13.12.2016 has been questioned in this writ petition, amongst others, as being contrary to the provisions of the Act which would include Section 19(4)(i) thereof. As the petitioners only seek to have the order dated 13.12.2016 set aside, and have not questioned the jurisdiction of the Tribunal to entertain the application, we are confining our examination only to the validity of the order dated 13.12.2016, and whether the Tribunal has exceeded its jurisdiction in passing the said order.

With a view to ensure that the petitioners shall not, in any manner, violate the provisions of the Environment (Protection) Act, 1986 and Forest Conservation Act, 1980 or the notifications issued thereunder, till the interlocutory application is decided by the Tribunal, we called upon the learned Advocate General for the State of Telangana to satisfy us that the petitioners shall not contravene the provisions of the Act till then.

As noted hereinabove, the first respondent - applicant has placed reliance on Para (1)(c) of the notification dated 14.09.2006, which relates to River Valley Projects, that too for hydro electric power generation or for irrigation of the culturable command area. The learned Advocate General, on instructions, submits that, for at least one year henceforth, the State of Telangana shall not, without obtaining clearances, if any, required under the Environment (Protection) Act, 1986, the Forest (Conservation) Act, 1980 and the Wildlife (Protection) Act, 1972, and the notifications issued thereunder, encroach upon any part of

a Reserve Forest or implement the subject project for command area development or for irrigation purposes, and the works under execution shall be confined only for the purposes of providing drinking water to the affected villages in the erstwhile Rangareddy, Mahabubnagar and Nalgonda districts of the State of Telangana.

As we are only examining the validity of the *ex-parte* ad-interim order of the Tribunal, and as the application is still pending adjudication and is listed for hearing before the Tribunal on 17.01.2017, we are of the view that the interlocutory application should be heard by the Tribunal at the earliest, and the petitioners herein should be put on terms, in order to ensure that the proceedings before the Tribunal are not delayed needlessly. The learned Advocate General for the State of Telangana, on instructions, undertakes on behalf of the State of Telangana to enter appearance and to file a counter affidavit before the Tribunal by 17.01.2017. In view of the undertaking given to this Court by the learned Advocate General, we consider it appropriate to set aside the order impugned in this writ petition. The Tribunal shall either on 17.01.2017, or soon thereafter, hear the first respondent - applicant and the petitioners herein, and pass an order afresh in accordance with law uninfluenced by any observations made in this order. In case, the State of Telangana fails to enter appearance or to file its counter affidavit by 17.01.2017, it would be open to the Tribunal to proceed and pass an interim order on merits, and in accordance with law.

As the impugned order is being set aside on the short ground that an *ex parte ad interim* order could not have been passed, in

the facts and circumstances of the present case, without giving the petitioners herein an opportunity of being heard, it is unnecessary for us to examine the submission of the learned Advocate General that the application was filed by the first respondent (applicant before the Tribunal) beyond the six (6) months period stipulated in Section 14 (3) of the Act. It is open to the State of Telangana to raise all such contentions, including the application having been filed beyond the time specified in Section 14 (3) of the Act, before the Tribunal.

The writ petition is, accordingly, disposed of. No order as to costs. As a sequel thereto, Miscellaneous Petitions, if any, pending in the writ petition stand disposed of.



RAMESH RANGANATHAN, ACJ

A. SHANKAR NARAYANA, J

January 3, 2017.

NOTE:

Dispatch C.C. of the order by 07.01.2017.

(BO) PV/Mgr