

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17409 of 2016

Nagrik Adhikar Manch Son of Parsuram Pandit Resident of village -
Gajipur, P.S. - Ufroul, Via - Deshri, District - Vaishali at Hajipur.

... .. Petitioner/s

Versus

1. The State of Bihar and Ors
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Commissioner, Magadh Pramandal.
4. The Collector, Gaya.
5. The Secretary, Bihar State Pollution Control Board, Patna.
6. The Administrator, Gaya Municipal Corporation, Gaya.
7. Sunil Kumar S/o Manik Sao R/o Murli Hill Bairagi, Ward No. 10, near
Tulsi Bhagat Mandir, P.S. Delha.
8. Raj Kumar Sao S/o Ram Ratan Sao R/o Murli Hill Bairagi, Ward No. 10,
near Tulsi Bhagat Mandir, P.S. Delha.
9. Satendra Prasad S/o Late Balchand Prasad R/o M/s Laxmi Metal Works
Murli Hill Bhagat, Ward No. 10 Behind of Khatangi Kothi, P.S. Delha.
10. Rajendra Prasad S/o Ram Kishun Ram R/o Murli Hill Bairagi Janta
Colony, Ward no. 10, P.S. Delha, Dist. Gaya M/s Sanjay Aluminium
Factory.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Dinu Kumar, Advocate Miss Ritika Rani, Advocate Mr. Vijay Kumar Vimal
For the Respondent/s	:	Mr.Sarvesh Kr.Singh, AAG-13 Mr. Rabindra Kumar Priyadarshi, Advocate
For Respondents 8, 10	:	Mr. Binod Kumar Singh, Advocate Ms. Vagisha Pragya, Vacaknavi, Advocate



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 15-01-2019

This writ petition has been filed for a direction to the District Magistrate, Gaya to stop the running of factory units of respondent nos.7 to 10 forthwith which, according to the petitioner, is in violation of the directions of the High Court dated 25th July, 2016. The allegations, in short, were that these units are running without any clearance from the Pollution Control Board and, therefore, their continuance being hazardous to public health, the direction should be issued for closure of these units. The petitioner has described himself to be a member of the Executive Committee of the petitioner Nagrik Adhikar Manch and has framed this writ petition as a P.I.L. arraying respondent nos.7 to 10, who are the private respondents and about whom allegations have been specifically made in the writ petition, to the effect that they are unauthorizedly and unlawfully running units that are emitting pollutants.

We have disposed of the allegations against respondent no.8 through a separate order passed today on I.A. No.5 of 2019



and in respect of Respondent No. 11 in I.A. No. 8860 of 2018 and the said orders shall also form part of the present judgement.

In so far as respondent nos.9 and 10 are concerned, it is alleged that these respondents are running metal works and, therefore, the pollutants emitted by them being hazardous to life and their running being in violation of the relevant environmental laws, they deserve to be shut down. Affidavits were exchanged between the parties and material was brought on record to indicate the action being taken in this regard by the Pollution Control Board as well as by the authorities.

The contention of the learned counsel for the petitioner is that this material should be sufficiently treated to be final for the purpose of issuing a direction to shut down such factories which, according to the petitioner are, admittedly, polluting the environment.

On behalf of the respondent nos.9 and 10, counter affidavits have been filed. Respondent no.9 is M/s Laxmi Metal Works Murli Hill Bhagat through its Proprietor Satendra Prasad whereas respondent no.10 Rajendra Prasad who has been described as the Proprietor of Sanjay Aluminium Factory & Sanjay Aluminium Factory, has, in his counter affidavit, clearly stated that the industry is in the name of Novel Aluminium Industry. Thus,



there is only one unit by the same name of which the Proprietor is Rajendra Prasad. The notices, which have been issued, also correlate to the same industry. In the given circumstances, the Court presumes that the notices were issued to Rajendra Prasad in respect of the unit run by him.

Learned counsel for the respondent nos.9 and 10 submits that the units have been shut down without there being any appropriate orders by the competent authority and, therefore, this fetters the fundamental and legal rights of the answering respondent to carry on his trade and business.

On the other hand, the petitioner contends that it is the fundamental rights of the citizens enshrined in Article 21 of the Constitution of India that requires consideration, keeping in view the nature of the environmental pollution being caused on account of the running of these units.

To our mind, the issue can be resolved provided the Pollution Control Board, after holding an enquiry into the matter, proceeds to consider the said grievance raised by the petitioner and an appropriate order is passed after putting the respondent nos.9 and 10 to notice.

Consequently, instead of keeping this matter pending, we dispose of this petition in relation to respondent nos.9 and 10



directing the respondent no.5, namely, the Secretary, Bihar State Pollution Control Board, Patna to examine the entire issue and, if necessary, after calling for appropriate reports, he may pass an order in relation to the aforesaid grievance of pollution being raised by the petitioner in respect of the units run by the respondent nos.9 and 10 within a period of six weeks from today.

Similarly, in the case of respondent no.7, after having heard learned counsel for the petitioner and the learned counsel for the 7th respondent, we find that the claim of the respondent no.7 is that he is running an Oil Mill and Flour Mill and according to the said respondent, there are exemptions which can be claimed by the respondent no.7. This question can also be gone into by the Pollution Control Board. Consequently, the same directions are issued as above in relation to respondent no.7 as well.

Thus, in respect of all these three respondents, namely, respondent nos.7, 9 and 10, the aforesaid directions shall be carried out with the passing of an order by respondent no.5 within six weeks with an opportunity of hearing to the said respondents.

Since we have already passed separate orders in relation to the respondent nos.8 and 11 today, they shall form part of this final order and the writ petition stands disposed of accordingly in the said terms.



We may clarify that we had raised an issue with regard to the maintainability of the writ petition keeping in view the order passed by the Apex Court and the directions issued in the case of Bhopal Gas Peedith Mahila Udyog Sangathan and others vs. Union of India and others, (2012) 8 SCC 326. The order passed by us on 19.12.2018 is extracted hereinunder :

“ This Public Interest Litigation has been instituted alleging various sorts of pollution being an outcome of the installation of certain industries and factories as well as commercial establishments.

The allegations are of injury to the habitation at large on account of environmental and hazardous affects.

In the opinion of the Court such issues can also be raised before the appropriate forum that has been statutorily created by the Parliament, namely, the National Green Tribunal under the National Green Tribunal Act No. 19 of 2010. The objects and reasons for which the said Act came into force and the jurisdiction of the National Green Tribunal is spelt out under the 2010 Act with powers and jurisdiction having been prescribed under Chapter-III of the said Act. The procedural rules have also been framed, namely, the National Green Tribunal (Practice and Procedure) Rules, 2011 as well as the other ancillary rules and the notifications issued in this



regard. This Court will, therefore, proceed now to examine as to why such matters be not transmitted to the National Green Tribunal keeping in view of the judgment of the Apex Court on this issue in the case of **Bhopal Gas Peedith Mahila Udyog Sangathan & Ors. Vs. Union of India & Ors. [(2012) 8 SCC 326]**, paragraph Nos. 40 and 41 whereof are quoted hereinbelow:-

“40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short the 'NGT Act') particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule 1 should be instituted and litigated before the National Green Tribunal (for short 'NGT'). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and the NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule 1 to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialized justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT



Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is the NGT, created under the provisions of the NGT Act. The Courts may be well advised to direct transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice.”

Learned counsel for the parties are, therefore, directed to assist the Court on this preliminary issue before proceeding with this matter any further.

The petition shall come up on 15th of January, 2019.”

Learned counsel for the petitioner has handed over the orders passed by the Apex Court in the case of Adarsh Cooperative Housing Society Ltd. vs. Union of India and others (Special Leave to Appeal No.27327 of 2013) on 10.03.2014. The same is extracted hereinunder :

“ In our considered opinion, the directions in paragraphs 40 and 41 of the judgment quoted hereunder and order dated 9th August, 2012 of Writ Petition No. 50 of 1998 titled as Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India & Ors. (2012) 8 SCC 326 that all matters instituted after coming into force of the National



Green Tribunal Act, 2010 and which are covered under the said Act and/or under which the said Act shall stand transferred and can be instituted only before National Green Tribunal **requires reconsideration by this Court**. These directions are quoted hereinbelow:

“40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short the 'NGT Act') particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule 1 should be instituted and litigated before the National Green Tribunal (for short 'NGT'). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and the NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule 1 to the NGT Act shall stand transferred and can be instituted only before the NGT. This will help in rendering expeditious and specialized justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes



specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is the NGT, created under the provisions of the NGT Act. The Courts may be well advised to direct transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice.

Hence hearing on the question of reconsideration of the directions in paragraphs 40 and 41 of the aforesaid judgment and order will take place on 21st April, 2014.

Till we pass final orders on such reconsideration the direction for transferring the pending matters before the High Court to the Green Tribunal in paragraphs 40 and 41 will not be given effect to.

A copy of this order be circulated to all High Courts in the country.”

The Apex Court had under the said order stayed the directions given in the judgement of Bhopal Gas (supra) case extracted hereinabove. However, it appears that the matter was taken up later on on 11th August, 2014 and the following order was passed by the Apex Court :

“ In view of the factual position indicated in paragraphs 5 and 6 of the application, we permit the applicant to withdraw SLP(C) No. 27327 of 2013.



The petitioner shall be at liberty to make a prayer for expeditious disposal of Writ Petition No. 369 of 2011 before the Bombay High Court.

I.A. No.2 of 2014 is allowed in the manner indicated above. The question of law is left open.”

It is, thus, evident that the question of law was left open by the Apex Court to be dealt with in an appropriate case. We, accordingly, leave it open to be considered in an appropriate case.

The petition stands disposed of with the said observations and directions.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Nasimul/K.C.Jha

AFR/NAFR	AFR
CAV DATE	N/A
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Transmission Date	N/A

