

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 4677 of 2019

M/s Suryoday Wires A Partnership Firm Registered Under The Relevant Provision Of Partnership Act, Through Its Partner Namely Shri Suresh Patel S/o Raoji Bhai Patel, Aged About 42 Years, R/o Indra Timber Market, Bhanpuri, Ward No. 4, Raipur, District Raipur, Chhattisgarh. Having Its Registered Office At Plot No. 79 B And 79 C, Phase-II, Industrial Area Siltara, Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Housing And Environment Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh
2. Secretary Department Of Energy, Government Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh
3. Chhattisgarh Environment Conservation Board Through Its Secretary, Chhattisgarh Environment Conservation Board, Paryawas Bhawan, Sector 19, Naya Raipur, Atal Nagar, Raipur, District Raipur, Chhattisgarh
4. Secretary Chhattisgarh Environment Conservation Board, Paryawas Bhawan, Sector 19, Naya Raipur, Atal Nagar, Raipur, District Raipur, Chhattisgarh
5. Regional Officer Chhattisgarh Environment Conservation Board, Commercial Complex, Chhattisgarh, Housing Board Colony, Kabirnagar, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Manoj Paranjpe, Advocate
For State	:	Mr. Jitendra Pali, Dy. AG
For Respondent/s	:	Mr. Animesh Tiwari, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

17/12/2019

1. The challenge in the present writ petition is to the two orders passed by the respondent No.3 dated 15.11.2019 (Annexure P-1) and dated 14.11.2019 (P-2). Annexure (P-1) and (P-2) both are orders passed under the provision of Section 31(A) & Section 33(A) of the Air (Prevention & Control of Pollution) Act 1981 and Water (Prevention & Control of Pollution) Act 1974.
2. Vide Annexure (P-1) the respondent No.3 has exercising the powers under Section 31(A) & 33(A) of the aforementioned two Acts and also in the light of the directives given by the National Green Tribunal, Principal Bench, (New Delhi) dated 10.07.2019 has directed the petitioner establishment to deposit the sum of Rs. 25 Lakhs as interim compensation to the respondent No.3 Board immediately, failing which the petitioner would be liable for proceedings under Section 37 of the Act of 1981 and Section 41 of the Act of 1974. Likewise, P-2 again is an order whereby the respondent No.3 Board has exercised the powers under Section 31(A) & 33(A) of the aforesaid two acts have directed the petitioner to forthwith close down GI wire plant and have further directed the concerned authorities which supplies electricity to the petitioner's plant to immediately disconnect supply of the electricity and other facilities to the petitioner's plant.
3. Primary contention of the petitioner assailing both the orders is that the two orders have been passed without a determination of the fact as to whether the petitioner establishment is a polluting establishment which would entail the payment of compensation in

terms of order of NGT. According to the petitioners the two orders under challenge clearly reflects that the authorities concerned are yet to decide as regards whether there is any emission of polluted air or for that matter discharge of polluted water from the petitioner's establishment with which it could be ascertained that the petitioners are liable for prosecution under provisions of aforesaid two acts. It was also the contention of the petitioner that there is no final orders passed by the respondent No.3 Board on the basis of which the two orders could have been passed. According to the petitioner the consequence of Annexure P-1 & P-2 reflects that they have already held the petitioner's plant to be a polluting establishment without even affording the liberty of hearing to the petitioner and therefore the impugned action is in total violation of the principles of natural justice. It was also the contention of the petitioner that the action on the part of the respondent is per se illegal for the reason that there has been no sample of air emission collected from the petitioner establishment for getting it tested from an expert analyst. Likewise sample of sewage water or petitioner trade effluent from the petitioner's establishment also was not collected and sent for analysis. For this reason also the impugned orders are bad in law.

4. Having heard the contentions put forth on either side and on perusal of record, it would be relevant at this juncture to take note of the observations made by the Hon'ble Supreme Court in the case of **Bhopal Gas Peedith Mahila Udyog Sangathan and Others, (2012) 8 SCC 326**, wherein the Supreme Court considering the need of the hour on the vast increasing pollution particularly the industrial

pollution issued certain directions. After laying down the directions the Hon'ble Supreme Court in paragraph 40 & 41 has held as under :-

“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 I 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.”

5. It would also be relevant at this juncture to refer to the National Green Tribunal Act, 2010 (in short 'the Act of 2010') at this juncture. Section 16 of the said act of 2010 deals with the appellate jurisdiction of the tribunal clause C & F of the said Section 16 is

relevant for adjudication of the present dispute and which for ready reference is reproduced hereinunder :-

“16. Tribunal to have appellate jurisdiction.- Any person aggrieved by,-

(a).....

(b).....

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33A of the Water(Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(d).....

(e).....

(f)an order or decision made, on or after the commencement of the National Tribunal Act, 2010 by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981) ;

(g).....

6. Section 20 of the said Act of 2010 also lays down certain general principles which shall be taken note of by the Tribunal which again for ready reference is being reproduced hereinunder :-

“20.Tribunal to apply certain principles.- The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.”

7. Pursuant to the enactment of the National Green Tribunal Act 2010 the Central Government amended the provision of Water (Prevention and control of Pollution) Act of 1974 and incorporated the provisions of appeal under Section 33(B) prescribing the appeal to the NGT. The said amendment was incorporated w.e.f. 18.10.2010 which for ready reference reads as under :-

“**33.B Appeal to National Green Tribunal.** —Any person aggrieved by,—
(a) an order or decision of the appellate authority under section 28, made on or after the commencement of the National Green Tribunal Act, 2010; or
(b) an order passed by the State Government under section 29, on or after the commencement of the National Green Tribunal Act, 2010; or
(c) directions issued under section 33A by a Board, on or after the commencement of the National Green Tribunal Act, 2010*,
may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.]”

8. A similar amendment was also incorporated under Air (Prevention & Control) Act of 1981. In the said act the Central Government incorporated Section 31(B) prescribing the appeal to the NGT. The Said provision of law for ready reference is being reproduced hereinunder :-

“**31.B Appeal to National Green Tribunal.** —Any person aggrieved by an order or decision of the Appellate Authority under section 31, made on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.]”

9. This amendment was also incorporated w.e.f. 18.10.2010. Plain reading of the provision of the NGT Act and also the amendment thereafter brought to the Air(Prevention and Control of Pollution) Act 1981, Water (prevention & Control of Pollution) Act 1974 coupled with the directives given by the Supreme Court in the case of **Bhopal Gas Peedith Mahila Udyog Sangathan and Others** (Supra), this Court is of the firm view that the present writ petition would not be maintainable before the High Court in exercise of its power under Article 226. The appropriate recourse available for the petitioner is to question the same before the National Green Tribunal.

10. We should not forget that the Petitioner establishment is situated at Raipur which is one of the most polluted cities in India and which also is the most polluted City in the State of Chhattisgarh.
11. Reserving the right of the petitioner for availing the aforesaid remedy, the present writ petition stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Rohit