

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04-07-2019

PRONOUNCED ON : 12-07-2019

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Petition No. 10369 of 2019
and
WMP Nos. 10909 and 10910 of 2019

The Government of Tamil Nadu
rep. by its Principal Secretary to Government
Public Works Department
Secretariat, Fort St. George
Chennai - 600 009 ... Petitioner

Versus

1. National Green Tribunal
South Zone, Kamarajar Salai
Chennai - 600 005
2. Jawaharlal Shanmugam
'Ramaniyam-Sanjivini'
Block No.1, Flat No.3-A,
72/144, Lattice Bridge Road
Tiruvanmaiur, Chennai - 600 041
3. The Tamil Nadu Pollution Control Board
rep. by its Chairman
No.76, Anna Salai, Guindy
Chennai - 600 032
4. The Managing Director
Chennai Metropolitan Water Supply and Sewerage Board
No.1, Pumping Station Road
Chintadripet, Chennai - 600 002
5. The Chairman
Inland Waterways Authority of India
(Ministry of Shipping)
A-13, Sector - 1, Noida
Uttar Pradesh .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the common order passed by the first respondent, Tribunal in O.A. No. 164 of 2015 (SZ) and quash the same.

For Petitioner : Mr. Vijay Narayanan, Advocate General
assisted by Mr. E. Manoharan
Additional Government Pleader

For Respondents : Mr. Jawaharlal Shanmugam
Party in person/Second Respondent

Mr. G. Karthikeyan for R5

ORDER

R. SUBBIAH, J

This writ petition is filed by the petitioner/Government of Tamil Nadu, through its Secretary, Public Works Department, challenging the order dated 13.02.2019 passed by the National Green Tribunal in O.A. No. 164 of 2015 (SZ) whereby the Tribunal directed the petitioner/Government of Tamil Nadu to pay a sum of Rs.100 crores towards fine inter alia issuing other directions to be implemented within the time specified therein.

2. The second respondent herein has filed the Original Application No. 164 of 2015 (SZ) before the Tribunal contending that he is a social activist and fighting against Corruption. The second respondent claims himself to be a whistle blower and that he had brought to the notice of the various authorities as well as the Courts regarding the violation of statutory rules and law by those who indulged in such acts. He also would contend that he has taken profound interest in environment protection and has even made films for the National Bio-Diversity Authority of India (Incredible India Incredible Biodiversity) and UNDP (Enchanting Jharkhand Enchanting Biodiversity). According to the second respondent, the famous Buckingham Canal cutting across the City of Chennai from North to South has been highly polluted and it poses serious health hazard to the general public residing in the areas close to the banks, including him, who is also residing very close to the canal bank in Tiruvanmaiur area. According to the second respondent, the Buckingham Canal serves as an important water link during the water upsurge, cyclonic storms and tsunami, however, the present condition of the Buckingham Canal is dismal. It is also claimed that the major portion of Chennai Mass Rapid Transit System (MRTS) Railway Line from Chennai Beach to Velacherry rides on top of the Buckingham canal whereby the width of the canal narrowed down considerably, restricting the

free flow of the water in the canal. The second respondent also furnished a tabulated statement before the Tribunal indicating the various sections in the City through which the Buckingham Canal flows. It is the grievance of the second respondent that the Buckingham Canal has been highly polluted with dirty sewer water being let into the canal at many places owing to which it stinks badly and the stagnant water has become a breeding source for many sporadic disease, both water borne and air borne. Therefore, during heavy rains, the Buckingham Canal would witness blockage of rain water which inundates several parts of the City with sewage water. As the sewage water is let into Buckingham Canal, the ground water table has been gravely affected in the City and the water received through the bore wells have been contaminated. The second respondent, highlighting the above aspects, has also submitted a representation dated 17.09.2015 to the third respondent and requested to take appropriate remedial action, however, no action has been taken thereof. In such circumstances, the second respondent has filed the Original Application before the Tribunal seeking for a direction to direct the respondents 1 and 2 therein to remove the debris, plants and water hyacinth immediately so that there will not be any obstruction in the canal; directing the second respondent to dredge the canal for easy passage of water and to remove the blockage at Adyar river side; directing the second respondent to lay proper embankments along with canal in the city; directing the third respondent to plug any sewer water inlets and to direct the fourth respondent to furnish complete details of budget allocation under the National Waterways (NW 4) project and in particular for the Buckingham Canal from North Chennai to South Chennai, details of nature of work undertaken and money spent.

3. On notice, the respondents in the Original Application, including the second respondent/Petitioner herein, have filed various reports to the Tribunal indicating the maintenance work undertaken by them to mitigate the problems faced by the general public owing to the effects of the pollution caused by the Buckingham Canal and the future course of action which they proposed to take. Notwithstanding the various reports filed by the respondents in the Original Application, the Tribunal passed the order dated 13.02.2019 imposing a fine of Rs.100 Crores upon the State Government. Aggrieved by the same, the present writ petition is filed.

4. When the writ petition was taken up for hearing, this Court passed an order dated 09.04.2019 granting interim stay of operation of the order dated 13.02.2019 passed by the Tribunal for two weeks. However, in the order dated 09.04.2019, it was made clear that the question of maintainability of the writ petition will be gone into by this Court at the time of final disposal of the writ petition.

5. Mr. Vijay Narayan, learned Advocate General would contend that at regular interval, maintenance works are being done by the Petitioner and the same were also brought to the notice of the Tribunal by way of periodical reports. The Tribunal was also appraised of, by way of reports, the meetings conducted between the various departments in an effort to revamp the Buckingham Canal. According to the learned Advocate General, restoration of Coovum River has been at the top of the agenda for the Government of Tamil Nadu and it had prepared a detailed plan for eco-restoration and for its implementation in phases. As per the plan, the restoration of the river is expected to be completed over a period of eight years, out of which, major activities are expected to be completed in three years. It is also contended by the learned Advocate General that the Government have accorded administrative sanction for implement of 60 sub-projects at a cost of Rs.604.77 Crores vide G.O. (Ms) No.9, Municipal Administration and Water supply (MC.1) Department dated 13.01.2015 and this was also informed to the Tribunal by way of reports dated 30.03.2015, 10.04.2015, 27.07.2015 and 18.11.2015. According to the learned Advocate General, during this period, tender was called, application was submitted to the Coastal Regulation Zone Clearance for the projects besides the Public Works Department has commenced de-silting in the upstream stretches where there was no encroachment and boundary demarcation was also initiated. The learned Advocate General also brought to the notice of this Court the reports dated 27.01.2016, 16.03.2016, 23.05.2016, 19.07.2016, 03.10.2016 and 21.12.2016 bringing to the notice of the Tribunal, commencement of the sub-projects and the efforts taken towards restoration of the Buckingham Canal free from any encumbrance or pollution. Even the petitioner has taken several steps to evict the encroachers, who have encroached the banks of the river and the rehabilitation and re-settlement for the encroachers. Similarly, the petitioner has filed reports dated 21.02.2017, 27.04.2017, 25.07.2017, 03.10.2017 and 11.12.2017 before the Tribunal enumerating the progress of the work, including the tender process initiated for various works valuing Rs.74.40 crores. It is specifically contended by the learned Advocate General that out of the sum of Rs.604.77 crores sanctioned by the Government, works worth Rs.165.24 crores have been initiated. Further, Letters of Acceptance have been issued by the line department for works worth Rs.53.64 crores. The tender process for projects worth Rs.146.96 crores has also been initiated. In effect, a total sum of Rs.190.90 crores have been disbursed towards implementation of the projects. Even these developments have been brought to the notice of the Tribunal through the reports dated 05.03.2018, 18.05.2018, 20.07.2018, 26.10.2018 and 12.12.2018. Even as on date, removal of 1648 Metric Tonne of solid waste has been fully completed, fencing work has been completed for a length of 2.66 kilometer

and the work in respect of fencing the remaining area at a length of 8.12 kilometer is in progress. Above all, even after the order dated 13.02.2019, which is impugned in this writ petition, has been passed, in compliance with the various directions issued by the Tribunal, the Chief Secretary to the Government of Tamil Nadu had conducted six fortnightly review meetings on 08.03.2019, 19.03.2019, 01.04.2019, 15.04.2019, 06.05.2019 and 20.05.2019. Even the Chief Secretary to the Government of Tamil Nadu appeared before the Tribunal on 23.04.2019 and informed the progress in the on-going works as well as the works proposed to be taken. In such circumstances, the learned Advocate General would contend that the order dated 13.02.2019 is legally not sustainable and prayed for allowing this writ petition.

6. As regards maintainability of this writ petition, the learned Advocate General would contend that the first Division Bench of this Court, in the order dated 07.07.2015 made in WP No. 35098 of 2013, in P. Sundararajan vs. Deputy Registrar, National Green Tribunal, relying upon the order passed by Honourable Supreme Court in Union of India and others vs. Major General Shri Kant Sharma and another reported in 2015 (6) SCC 773, which arises out of an order passed by the Armed Forces Tribunal, held that as against the order passed by the National Green Tribunal, only an appeal will lie before the Supreme Court and the Writ Petition under Article 226 of The Constitution of India is not maintainable. According to the learned Advocate General, the provisions contained in the Armed Forces Tribunal Act, 2007 stands on a different footing from that of the National Green Tribunal Act, 2010. By quoting Section 22 of the National Green Tribunal Act, 2010, the learned Advocate General would contend that "Any person aggrieved by any award, decision or order of the Tribunal, may file an appeal to the Supreme Court, meaning thereby, it is not mandatory to file an appeal against the order passed by the National Green Tribunal before the Honourable Supreme Court and the writ petition under Article 226 of The Constitution of India is maintainable considering the usage of the word "may" in Section 22 of the National Green Tribunal Act, if there is any violation of principles of natural justice. Whereas, under Section 30 of The Armed Forces Tribunal Act, 2007, it is specifically stated that "an appeal shall lie to the Supreme Court against the final decision of the Tribunal." Thus, the learned Advocate General sought to make a distinction between the provisions under The Armed Forces Tribunal Act, 2007 and National Green Tribunal Act, 2010 to impress upon the fact that writ petition filed by the petitioner as against the order dated 13.02.2019 passed by the Tribunal is maintainable.

7. The learned Advocate General also sought to draw a distinction between the National Green Tribunal Act and the Consumer Protection Act, 1986 inasmuch as the appeal provisions under both the Acts are similarly worded. According to him, under Section 23 of The Consumer Protection Act, 1986, it is clearly stated that "may prefer an appeal" against such order to the Supreme Court. The learned Advocate General therefore submitted that in fact, the Honourable Supreme Court, in the case of State of Karnataka vs. Vishwabharathi House Building Cooperative Society and others reported in (2003) 2 Supreme Court Cases 412 held that by reasons of the provisions contained in the Consumer Protection Act, 1986, the power of judicial review of the High Court, which is a basic feature of the Constitution, has not been taken away. By relying on the above decision, the learned Advocate General would vehemently contend that as against the order passed by the National Green Tribunal, this writ petition is maintainable.

8. The learned Advocate General for the petitioner also placed reliance on the decision of the Honourable Supreme Court in the case of L. Chandrakumar vs. Union of India and others reported in (1997) 3 Supreme Court Cases 261 and contended that the power of Judicial Review vested with this Court under Article 226 and 227 of The Constitution of India is part of the basic structure of the Constitution of India. He also relied on the decision of this Court in Kollidam Aaru Pathukappu Nala Sangam vs. Union of India and others reported in 2014 (5) CTC 397 wherein the Division Bench of this Court held that there is no specific provision contained under the National Green Tribunal Act, excluding the jurisdiction of this Court under Article 226 of The Constitution of India. In the said case, in para No.32, it was held as under:-

"32. As we have pointed out earlier, the National Green Tribunal exercises both Original jurisdiction (under Section 14) as well as Appellate jurisdiction (under Section 16). Irrespective of whether an Order passed by the National Green Tribunal was in its Original or Appellate jurisdiction, the right of Appeal to the Supreme Court under Section 22 is put to the same tests as that of a Second Appeal under Section 100 of the Civil Procedure Code.

33. As a matter of fact, Section 29 of the National Green Tribunal Act, bars the jurisdiction of the Civil Courts. It can be compared with the language of Section 28 of the Administrative Tribunals Act, 1985 as it stood before the decision of the Supreme Court in L. Chandrakumar...."

9. Above all, it is contended by the learned Advocate General that the National Green Tribunal Act has been enacted pursuant to the decision taken at the United Nations Conference on Environment and Development held at Rio de Janeiro during June 1992 in which India participated. Thereafter the said legislation was brought into effect by invoking the powers conferred under Article 253 of The Constitution of India. As the National Green Tribunal has been constituted by invoking the powers conferred under the Constitution of India, the orders passed by the Tribunal are amenable to the jurisdictions conferred under Article 226 or 227 of The Constitution of India. In this context, reliance was also placed on the decision of the Supreme Court in the case of (Vaamika Island vs. Union of India) reported in (2013) 8 Supreme Court Cases 760. This decision was relied on by the learned Advocate General to contend that the power under Article 226 of The Constitution of India can be invoked, in matters relating to public interest, even if the same falls within the jurisdiction of the Tribunals. Therefore, it is contended by the learned Advocate General that the instant writ petition is maintainable under Article 226 of The Constitution of India.

10. It is further contended by the learned Advocate General that the Tribunal did not afford sufficient and adequate opportunity to the respondents in the Original Application. Before passing the order dated 13.06.2019, the various reports submitted by the respondents in the Original Application have not been taken note of by the Tribunal. When the order dated 13.06.2019 has been passed in violation of principles of natural justice, the writ petition is maintainable before this Honourable Court without resorting to the alternative remedy provided for preferring an appeal as against the order dated 13.06.2019 of the Tribunal.

11. The second respondent, who appears as party in person, would contend that it is incorrect to state that the Tribunal has passed the order dated 13.06.2019 without affording sufficient or adequate opportunity to the petitioner herein. The Tribunal was constrained to pass the order dated 13.06.2019 inasmuch as the petitioner did not comply with many of the directions issued by the Tribunal. The Tribunal has concluded that the repeated failure of the regulatory authorities to perform their public duty has resulted in large scale and continuous damage to the environment and public health and therefore, it was constrained to pass the order dated 13.02.2019. In any event, it cannot be said that the order dated 13.02.2019 has been passed without affording opportunity to the petitioner or there is violation of principles of natural justice warranting this Court to entertain this writ petition filed by the petitioner. When there is a specific provision under Section 22 of The National Green Tribunal Act, 2010 to

file an appeal before the Honourable Supreme Court, the petitioner cannot circumvent the statutory provision and file the present Writ Petition under Article 226 of The Constitution of India. The petitioner in person therefore opposes the writ petition and contends that it is not maintainable under Article 226 of The Constitution of India and prayed for dismissal of the writ petition.

12. We have heard the learned counsel on either side and perused the materials placed on record. At the outset, we examine as to whether the instant writ petition filed by the petitioner as against the order dated 13.06.2019 passed by the Tribunal is maintainable under Article 226 of The Constitution of India.

13. The second respondent herein, as party in person, has approached the Tribunal complaining poor maintenance and immense pollution caused to the water body and the failure on the part of the Government of Tamil Nadu to tackle the same. Admittedly, the Original Application has been filed by the second respondent on 01.10.2015 and on notice, the petitioner herein has filed their reply statement on 19.10.2015. Even as admitted by the Petitioner herein, they have filed various status reports on various dates bringing to the notice of the Tribunal the progress made by them in the project commenced for restoration of Buckingham Canal and those reports have been taken on record. While so, it cannot be said that the Tribunal did not afford sufficient or adequate opportunity to the petitioner. Even in the order dated 13.02.2019, the Tribunal has recorded the various status reports filed on behalf of the respondents in the Original Application in para Nos. 8 to 24, date-wise. It is also seen from the records that the order dated 13.02.2019 has been passed by the Tribunal after hearing the counsel for the petitioner through Video-conferencing. When such being the position, the question of violation of principles of natural justice does not arise. We hold that the Tribunal after affording sufficient opportunity to the petitioner has passed the order dated 13.02.2019 and therefore the question of violation of principles of natural justice will not arise.

14. It is vehemently contended by the learned Advocate General appearing for the petitioner that as against the order passed by the Tribunal, the present writ petition is maintainable. By referring to Section 22 of The National Green Tribunal Act, 2010, the learned Advocate General would contend that the word 'may' is used in Section 22 of the Act, which gives an option to the aggrieved person to either approach the Honourable Supreme Court or invoke the inherent jurisdiction conferred under Article 226 of The Constitution of India. In order to buttress this submission, he relied on the decision of the Division Bench of this Court in the case of Kolladam Aaru

Pathukappu Nala Sangam mentioned supra wherein it was held that the Section 22 of The National Green Tribunal Act does not expressly exclude the jurisdiction of the High Court under Article 226 and 227 of The Constitution of India.

15. The National Green Tribunal Act, 2010 was enacted pursuant to a decision taken at the United Nations Conference on the Human Environment held at Stockholm during June 1972, in which India was a signatory and on the basis of a decision taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June 1992. The Act was enacted on 2nd June 2010 to provide effective access to judicial and administrative proceedings, including redress and remedy to victims of pollution and other environmental damage. As per Section 5 of the Act, a person, who served as a Judge of the Supreme Court of India or Chief Justice of a High Court shall be appointed as Chairperson along with a Judicial Member and an Expert Member. The Tribunal was constituted for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources, including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. Section 14 of the Act confers powers on the Tribunal to adjudicate all civil cases where a substantial question relating to environment is involved. The Tribunal is also empowered to entertain appeal, as an appellate authority, against the order or decision made by the appellate authority under Section 28 of the Water (Pollution and Control of Pollution) Act, 1974 and other similar such Acts relating to environmental pollution. Similarly, the order passed by the Tribunal shall be challenged before the Supreme Court, as contemplated under Section 22 of the Act.

16. However, according to the learned Advocate General, the word "may" indicated in Section 22 of the Act would mean and include that an aggrieved person may either approach the Supreme Court of India or this Court under Article 226 or 227 of The Constitution of India. Such submission made by the learned Advocate General cannot be countenanced. Section 22 of the Act clearly stipulate that any person aggrieved by any award, decision or order of the Tribunal may file an appeal to the Supreme Court. The words included in Section 22 of the Act are crystal clear that any order, direction, award or decision of the Tribunal can be subjected to challenge only before the Supreme Court of India and the Supreme Court is the appellate Authority to entertain an appeal against the decision of the Tribunal. Therefore, as per Section 22 of The National Green Tribunal Act, 2010, the jurisdiction of this Court has been impliedly excluded, by inclusion of the words "Supreme Court" and therefore, the writ petition filed before this Court is not

maintainable. When there is an efficacious and statutory remedy of appeal available before the Honourable Supreme Court, this writ petition filed by the petitioner, as against the order dated 13.02.2019 passed by the Tribunal, is not maintainable.

17. Yet another submission of the learned Advocate General appearing for the petitioner is that the Tribunal did not consider the various status reports and other documentary evidence filed by the petitioner and it amounts to violation of principles of natural justice, therefore, the writ petition is maintainable. We are not inclined to accede to such submission made by the learned Advocate General appearing for the petitioner. Even assuming that the Tribunal did not consider the various records filed on behalf of the petitioner, including the status reports, it will not be a ground for us to entertain this writ petition especially when the records produced before us shows that the Tribunal, before passing the order dated 13.02.2019 has afforded sufficient and adequate opportunity to parties to the Original Application to putforth their submissions. In such view of the matter, we hold that the order dated 13.02.2019 has not been passed in violation of principles of natural justice and accordingly, the argument advanced by the learned Advocate General is rejected.

18. As we have already held that the writ petition filed by the petitioner is not maintainable in view of the alternative remedy of an appeal provided under Section 22 of The National Green Tribunal Act, 2010, we are not inclined to go into the merits or otherwise of the contentions raised in this writ petition on behalf of both sides.

19. In the result, the writ petition fails and it is dismissed as not maintainable. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. National Green Tribunal
South Zone, Kamarajar Salai
Chennai - 600 005

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rep. by its Chairman
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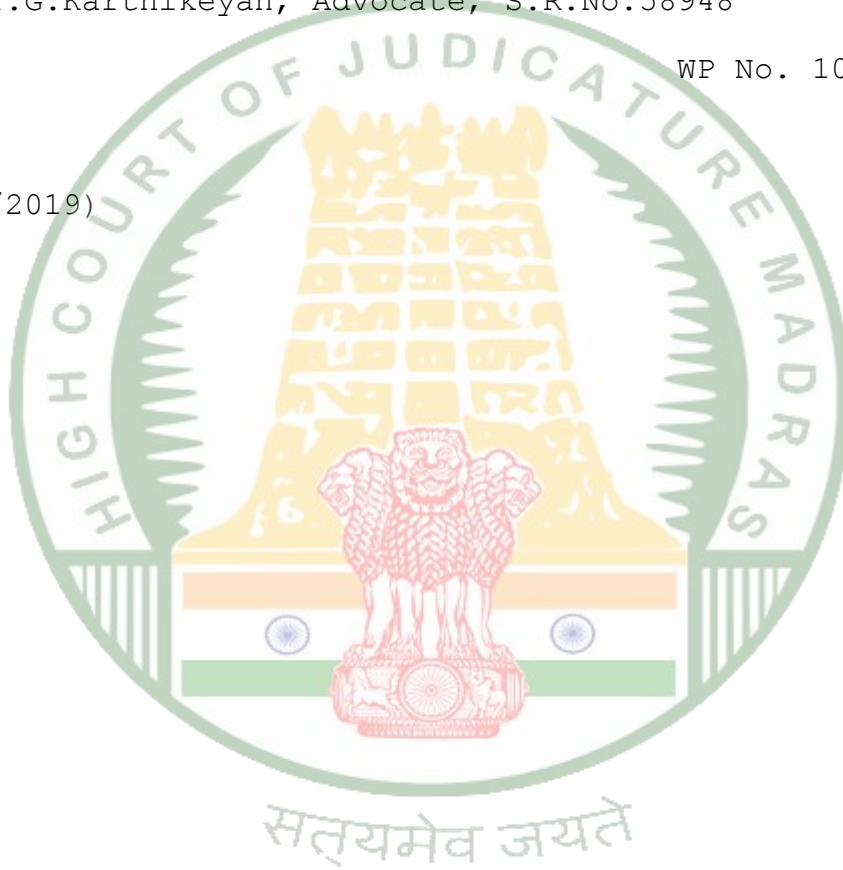
4. The Chairman
Inland Waterways Authority of India
(Ministry of Shipping)
A-13, Sector - 1, Noida
Uttar Pradesh.

+lcc to Mr.G.Karthikeyan, Advocate, S.R.No.58948

WP No. 10369 of 2019

LN (CO)

RRS (21/08/2019)



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