

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.16780 of 2017

Puducherry Environment Protection Association,
Rep., by its Honorary President,
Mr.R.Kothandaraman

...Petitioner

Vs

1. The Secretary to Government,
Union of India,
Ministry of Environment, Forests,
and Climate Change,
Indira Paryavaran Bhavan,
Jor Bagh, New Delhi.

2. The National Green Tribunal,
Rep., by its Registrar General,
Faridkot House, Copernicus Marg,
New Delhi 110 001.

...Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to forthwith appoint a full time expert member to the 2nd court of the Southern Zone Bench of the Hon'ble National Green Tribunal Chennai.

For Petitioner : Mr.Yogeshwaran

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O R D E R
[Order was delivered by S.MANIKUMAR, J.]

The petitioner has sought for a Mandamus, directing the respondents to forthwith appoint a full time expert member to the 2nd court of the Southern Zone Bench of the Hon'ble National Green Tribunal Chennai.

2. It is the case of the petitioner-association that the National Green Tribunal the National Green Tribunal was constituted under the National Green Tribunal Act, 2010, to ensure the effective and expeditious disposal of cases relating to the 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 4 of the Act specifies the composition of the Tribunal, which states that,

"(1) The Tribunal shall consist of-

(a) a full time Chairperson;

(b) not less than ten but subject to maximum of twenty full time Judicial Members as the Central Government may, from time to time, notify;

(c) not less than ten but subject to maximum of twenty full time Expert Members, as the Central Government may, from time to time, notify.

(2) The Chairperson of the Tribunal may, if considered necessary, invite any one or more person having specialised knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case.

(3) The Central Government may, by notification, specify the ordinary place or places of sitting of the Tribunal, and the territorial jurisdiction falling under each such place of sitting.

(4) The Central Government may, in consultation with the Chairperson of the Tribunal, make rules regulating generally the practices and procedure of the Tribunal including--

(a) the rules as to the persons who shall be entitled to appear before the Tribunal;

(b) the rules as to the procedure for hearing applications and appeals and other matters including the circuit procedure for hearing at a place other than the ordinary place of its sitting falling within the jurisdiction referred to in sub-section (3), pertaining to the applications and appeals;

(c) the minimum number of Members who shall hear the applications and appeals in respect of any class or classes of applications and appeals:

Provided that the number of Expert Members shall, in hearing an application or appeal, be equal to the number of Judicial Members hearing such application or appeal;

(d) rules relating to transfer of cases by the Chairperson from one place of sitting (including the ordinary place of sitting) to other place of sitting.

application or appeal and it states that the Tribunal shall hear an application or appeal, as the case may be, consisting of at least by a Judicial and an Expert Member and where the Chairperson considers it necessary that a particular case or cases be heard and decided by the Tribunal consisting of more than two members, he may by order in writing direct that such case or cases, be heard by such members of the Tribunal as may be specified in that order.

4. It is the further case of the petitioner-Association that the Southern Zone Bench of the National Green Tribunal started sitting on 30th October, 2012 at Chennai. On 23.03.2015, the second Court was constituted. Currently, the Southern Zone Bench has two Judicial Members and one Expert Member, due to which, the 2nd Court has been sitting without a expert member. However, a circular has been issued by the Principal Bench of the National Green Tribunal on 20.01.2017, stating that a judicial member or expert member sitting alone, where the other member is not available, can pass all orders, but would not finally dispose of the cases, which is contrary to the Rules framed under the Act.

5. It is submitted that the 2nd Court of the Southern Zone Bench was originally constituted with Hon'ble Justice S.M.Nambiar as Judicial Member and in the absence of Expert member in the Second court, Shri.P.S.Rao, who was sitting in Court No.1 as the Expert member, rotated to Court No.2 every day, after completion of Court No.1's work in the forenoon and Court No.2 was sitting in the Afternoon and this arrangement would lead to a situation, where both Court No.1 and Court No.2 were constrained only to work for half a day and cases could not be effectively heard by either bench due to time constraints.

6. It is further submitted by the petitioner-Association that the Hon'ble Shri Dr.Nagin Nanda, was thereafter appointed to Court No.2 as the Expert member and had been hearing matters along with Hon'ble Justice M.S. Nambiar from 20.3.2017 till 13.4.2017 and was transferred to the Principal Bench. Thereafter, due to reasons unknown, no Expert Member has been appointed and the Judicial Member has been hearing matters sitting single. Due to lack of quorum, cases are not being heard and valuable judicial time is being wasted. According to the petitioner, many matters, including one case filed by the association, numbered as Application No.81 of 2017, where pleadings have been completed, have been unnecessarily delayed.

7. The petitioner-Association has further submitted that the cases relating to environmental pollution and degradation, require urgent attention and the damage caused to the environment cannot be compensated by imposition mere penalty. The respondents have effectively crippled the Court and caused grave prejudice to litigants approaching Court for redressal.

8. The petitioner-Association has placed reliance on a decision in M.C.Mehta vs. Union of India and Shriram Foods & Fertilizers Case reported in 1986 (2) SCC 176, wherein, the

Hon'ble Supreme Court observed that,

"We would also suggest to the Government of India that since cases involving issues of environmental pollution, ecological destructions and conflicts over national resources are increasingly coming up for adjudication and these cases involve assessment and evolution of scientific and technical data, it might be desirable to set up Environmental Courts on the regional basis with one professional Judge and two experts drawn from the Ecological Sciences Research Group keeping in view the nature of the case and the expertise required for its adjudication. There would of course be a right of appeal to this Court from the decision of the Environment Court."

9. The petitioner-Association also placed reliance on a decision of the Hon'ble Supreme Court in Vellore Citizens Welfare Forum's case reported in 1996 (5) SCC 647, where the Hon'ble Justice Kuldip Singh, while criticising the inaction on the part of Government of India in the appointment of an authority under section 3(3) of the Environment(Protection) Act, 1986, observed that the Central Government should constitute an authority under section 3(3).

10. It is further submitted that the issue as to why expert members are required for the adjudication of environmental disputes was discussed in detail by the Law Commission of India in its 186th report. At pages-98 and 99 of the report, the Law Commission has observed :

"It will be noticed that several of the special statutes e.g. Environment (Protection) Act, 1986, Water (P&CP) Act, 1974, Air (P&CP) Act, 1981, delegate power to the State Governments/Union Government to designate appellate authorities. The appeals lie generally, as can be seen from the above paragraphs, to various officers of government or Departments of Government. Except in one or two cases, the appeals do not lie to a judicial body comprising a judicial officer. In no case does the appellate authority have the assistance of experts in the field of environment.

In the light of the discussion in the earlier chapters and experience of establishment of Environmental Courts abroad, the Law Commission is of the opinion that the present system is not satisfactory, so far as disposal of these appeals are concerned. The appeal is practically the first opportunity for a party or even third parties affected by pollution, to seek relief. In the view of the Commission, such appeals must lie to an appellate Court having special jurisdiction and must comprise of persons who have or had judicial qualifications or have considerable experience as lawyers. They must also be assisted experts in environmental science. As stated in the earlier chapters, it is now well recognized in several countries that the appeals must

lie to Court manned by persons with judicial knowledge and experience, assisted by experts in various aspects of environmental science."

11. The petitioner-Association has further submitted that it is of paramount importance that an expert member is appointed forthwith to the 2nd Court of the Southern Zone Bench of the National Green Tribunal at Chennai, on the following grounds,

(a) The Respondents have failed to see that the absence of an Expert Member in Court 2 of the National Green Tribunal Southern Zone Bench at Chennai has crippled the functioning of the Court.

(b) The Respondents have failed to see that according to Rule 5 of the National Green Tribunal (Practice and Procedure) Rules, 2011, a bench of the Tribunal should constitute of at least one Expert and one Judicial Member.

(c) The Respondents have failed to see that cases cannot be heard and disposed of by only the judicial member and the right to access to justice of people under Article 21 has been affected.

(d) The Respondents have failed to see that issues relating to protection of the environment requires swift adjudication.

(e) The Respondents have failed to see that the Office Order of the 2nd respondent dated 20.01.2007 cannot run contrary to the Rules and in any case, even according to the office order, cases cannot be finally disposed.

(f) The Respondents have failed to see that several hundred cases are pending before the 2nd Court and the same can be adjudicated only if an expert member is appointed.

12. In the light of the averments made in the writ petition and taking note of the decisions in M.C.Mehta (cited supra) and Vellore Citizens Welfare Forum (cited supra), we only observe that the 2nd court of the Southern Zone Bench of the National Green Tribunal, Chennai, be made functional.

13. With the above directions, the writ petition is disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

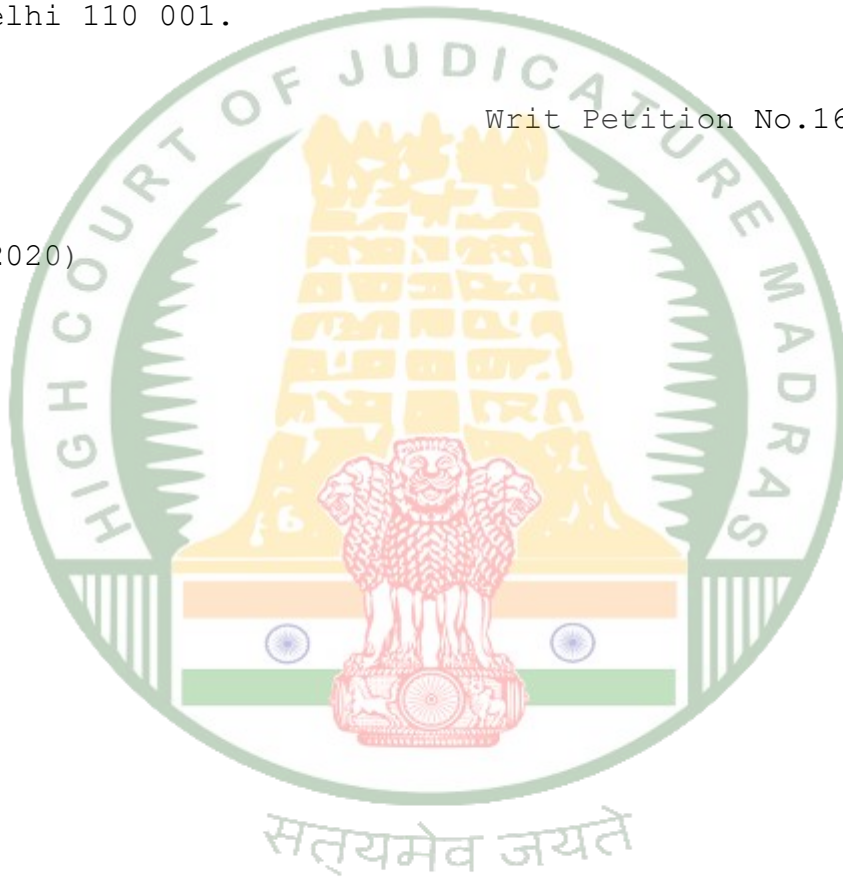
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To

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