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W.P.No.35002 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.06.2023

DELIVERED ON: 11.08.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE TMT.JUSTICE P.DHANABAL

W.P.No.35002 of 2022
and WMP.No.34559 of 2022

1.M/s.Covesto India Private Limited
Registered Office: Unit No.SB-801, 8th Floor,
Empire Tower, Cloud City Campus, Airoli,
Thane-Belapur Road, Navi Mumbai,
MH 400 708. Having Plant at Address:
Semmankuppam Village,
Cuddalore-607 005.

Represented severally by is authorised person:
Thiru.Anand Srinivasan,
505, 9th Main 3rd Cross, Near Indiranagar Club,
Hall II Stage, VTC Hal II Stage,
Bengaluru, Karnataka 560 008.

2.Thiru DM Senthil Kumar,
No.15, Natesan Nagar, Thirupapuliyur,
Cuddalore- T.N.-607 005. .. Petitioners

Vs.



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1. Tamil Nadu Pollution Control Board,
Rep by its Member Secretary (IC) / Chairman,
No.76, Mount Road, Guindy, Chennai-32.
2. Chairman,
Tamil Nadu Pollution Control Board,
Rep by its Chairperson,
No.76, Mount Road, Guindy, Chennai-32.
3. Director (Labs),
Tamil Nadu Pollution Control Board,
Rep. By its Chairman,
No.76, Mount Road, Guindy, Chennai-32. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to quash the impugned judgment passed by the National Green Tribunal vide judgment dated 15.03.2022 in the matters on record in Original Application No.30 of 2022 (SZ) filed by the petitioner.

For Petitioners : Mr.Rohit R.Kamath

For Respondents : Mr.Gunasekaran, Standing Counsel
for TNPCB

JUDGMENT

D.KRISHNAKUMAR, J.

The petitioner is a Private Limited Company, registered under the Companies Act, 1956 and carrying on the business of manufacture and supply of high-tech polymer materials. The petitioner has taken



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considerable measures to conserve energy and in the year 2019-2020, there has been an overall decrease of 2.12 lakh units (KWH) of electricity at the Cuddalore plant.

2. On 5.7.2017, the first respondent granted consent to operate the company's unit situated at Cuddalore under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, vide content Order No.170828178206. On the same day, consent to operate the company's unit situated Cuddalore was granted under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 vide Consent Order No.170818178206, both of which were valid till 31.3.2027.

3. While the petitioner is in peaceful compliance of the applicable law and the consent orders for operation, the first respondent vide Notification No.TNPCB/Labs/DD(L)/02151/2019 dated 10.06.2020, passed an order under Section 17(1) r/w. Section 31(A) of the Air (Prevention and Control of Pollution) Act, 1981, retrofitting of Emission Control Devices / Equipment in Diesel Generator Sets with capacity of 125 Kva and above in the State of Tamil Nadu, which is extended



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through notification dated 08.10.2020. On 29.04.2021, vide office memo, the respondents recalled the circular memo issued on 10.06.2020 and 08.10.2020.

4. The respondents, vide Notification No.TNPCB/Labs/DD(L)/02151 / 2019 dated 20.10.2021, reinstated the memos recalled earlier and had stated that all the industries and commercial establishments within the jurisdiction of the State of Tamil Nadu except the cities of non-attainment cities of Chennai, Madurai, Trichy and Thoothukudi is further extended till March 31, 2022. According to the petitioner, continuance of the directions issued in the above mentioned notifications by the respondents would cause great economic hardship to them and that the operation of the impugned order and memo will involve extrinsic cost of retrofitting of devices and the petitioner is well within the prescribed limits of emission norms.

5. Challenging the aforesaid notifications issued by the respondents, the petitioner company had approached the National Green



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Tribunal [in short “NGT”], Southern Zone, Chennai by filing Original Application in O.A.No.30 of 2022 (SZ). NGT, by relying upon the decision of the Hon'ble Supreme Court in **Vellore Citizens Welfare Forum v. Union of India and Others [AIR 1996 SC 2715]**, has dismissed the original application, vide order dated 15.03.2022. Aggrieved by the order of the NGT, the petitioner has filed the instant writ petition.

6. Mr.Rohith R.Kamath, learned counsel for the writ petitioner made the following contentions:

(i) The need for retrofitting of emission control devices does not arise where the DG sets have their emission levels well within the standards notified by the Ministry of Environment, Forests & Climate Change, Government of India.

(ii) The impugned order imposes an unreasonable burden on certain DG set owners, requiring the DG set owners to spend monies equivalent to the price of new DG set, to retrofit the DG sets with emission control devices, despite their DG sets being well within the emission standards.



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(iii) It is a legitimate expectation that such regulations regarding the working and emission of DG sets are imposed on the manufactures and not on the purchaser who have already bought the DG sets as sold by the retailers and seek to operate the same in accordance with applicable laws, environment standards and consent to operate issued by the respondents.

The learned counsel for the petitioner has relied on the following decisions on the issue of maintainability / entertainability of the writ petition under Article 226 of the Constitution of India:

***(i) M/s.Godrej Sara Lee Ltd. v. The Excise and
Taxation Officer cum Assessing Authority & Others
[2023 SCC Online SC 95]***

***(ii) Radha Krishnan Industries v. State of Himachal
Pradesh & Ors. [(2021) 6 SCC 771]***

***(iii) Harbanslal Sahnia and Ors. v. Indian Oil
Corporation Ltd. and Ors. [MANU/SC/1199/2002]***

***(iv) Whirlpool Corporation v. Registrar of Trade Marks
Mumbai and Ors. [MANU/SC/0664/1998]***



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7. The learned Standing Counsel for the respondents / Tamil Nadu Pollution Control Board submits that TNPCB has got power under Section 5 of the Environment Protection Act, 1986 and under Section 17(1) r/. 31(A) of the Air (Prevention and Control of Pollution) Act, 1981, to impose additional conditions as a precautionary measure to protect the environment and the same was done on the basis of the directions issued by the Principal Bench of NGT in O.A.No.681 of 2018 dealing with the issue of controlling pollution of critically polluted cities and directions have been issued to take steps to reduce pollution level by 30% and it is on that basis, such directions have been issued. It is further contended that financial burden is not a criteria when environment issues are arising and that cannot be a ground for not imposing conditions which is necessary for protection of environment. The learned Standing Counsel for the respondents has also questioned the maintainability of the writ petition and he relied on the following judgments in support of his contentions:

(i) Madhya Pradesh High Court Advocates Bar Association and Another v. Union of India and another [2022 SCC online SC



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***(ii) Order of the NGT, Principal Bench, Delhi dated 06.08.2019 in
O.A.No.681 of 2018.***

8. This Court has carefully considered the rival submissions and also perused the materials on record.

9. The fact remains that the respondent Board has initially issued the Notification dated 10.06.2020 in exercise of powers conferred upon them under Section 17(1) J read with Section 31(A) of the Air (Prevention and Control of Pollution Act, 1981 and Section 5 of the Environment (Protection) Act, 1986, informing all the industries and the establishments operating DG sets of capacity of 125 KVA and above, within the jurisdiction of the State of Tamil Nadu to install retrofitting emission control devices in DG sets, applying the precautionary principle. Subsequently, on account of COVID-19 Pandemic, Non availability suppliers of CPCB approved agencies and financial constraints, vide notification dated 19.10.2020 time was granted till 31.03.2021 to comply



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with the aforesaid notification. Thereafter, vide the impugned notification dated 20.10.2021, deadline to comply with the aforesaid conditions for retrofitting of emission control devices in DG sets with capacity of 125 KVA was further extended till 31.03.2022.

10. Challenging the aforesaid notification of the respondent Board dated 20.10.2021, the petitioner Company had approached the NGT (SZ) in O.A.No.30 of 2022 (SZ) and vide order dated 15.03.2022, NGT dismissed the application filed by the petitioner Company. The operative portion of the order reads as under:

"The Tamil Nadu Pollution Control Board is entitled to impose additional conditions when they feel that it is necessary for the purpose of protecting environment especially when indiscriminate use of DG Sets of 125 KVA more capacity is causing pollution. There is no case for anyone that the DG sets will cause pollution. It is one of the sources of noise and air pollution.

15. So, the Tamil Nadu Pollution Control Board is entitled for applying Precautionary Principle to impose additional conditions on the manufacturers to add certain preventive measures to avoid possible pollution that is likely to be caused on account of the use of such DG sets.

16. Under such circumstances, we do not find any merit in the application and the same is liable to be dismissed."

Challenging the aforesaid order of the NGT, the present writ appeal is



11. The learned counsel on either side, de hors the merits of the case, have mainly urged before this Court as to the maintainability of the writ petition and relied upon the decision of the Hon'ble Supreme Court in ***Madhya Pradesh High Court Advocates Bar Association and another v. Union of India and another [2022 SCC OnLine SC 639]***. Therefore, at the first instance, we may deal with the issue of maintainability of the writ petition before this Court.

12. The Hon'ble Apex Court in ***Madhya Pradesh High Court Advocate Bar Association and another v. Union of India and Others [2022 SCC Online SC 639]***, wherein the Hon'ble Supreme Court has relied upon the decision in ***Whirlpool Corpn.v. Registrar of Trade Marks, Mumbai [Manu/SC/0664/1998]*** and observed as follows:

"19. Insofar as the contention of the petitioners that there is ouster of jurisdiction of the High Courts under Article 226 and 227 of the Constitution because of Sections 14 & 22 of the NGT Act, it must be recalled that in *L. Chandra Kumar v. Union of India* [supra], it has been



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categorically declared that the power of judicial review under Articles 226, 227, and 32 are part of the basic structure of our constitution and the same is inviolable. The following pertinent opinion rendered by the 7 Judges' bench of this Court must be remembered on this aspect:—

“78.....We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.”

20. Apart from the clear enunciation on legal position to the effect that the NGT is within the purview of Article 226 and 227 jurisdiction of the High Courts, the learned Attorney General on behalf of the Union of India has also made submissions consistent with *L. Chandra Kumar* [supra] and conceded the legal position.

21. It can further be noted that in terms of the above ratio in *L. Chandra Kumar* [supra], the High Courts have been entertaining petitions under Article 226 and 227 of the Constitution against orders of the NGT. While exercising such jurisdiction, the Courts necessarily exercise due discretion on whether to entertain or to reject the petition, as per the test broadly laid down in *Whirlpool Corpn.v.*



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Registrar of Trade Marks, Mumbai
[Manu/SC/0664/1998];

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.” (emphasis supplied)

22. It is also noteworthy that nothing contained in the NGT Act either impliedly or explicitly, ousts the jurisdiction of the High Courts under Article 226 and 227 and the power of judicial review remains intact and unaffected by the NGT Act. The prerogative of writ jurisdiction of High



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Courts is neither taken away nor it can be ousted, as without any doubt, it is definitely a part of the basic structure of the Constitution. The High Court's exercise their discretion in tandem with the law depending on the facts of each particular case. Since the High Court's jurisdiction remain unaffected, the first question is answered in the negative, against the petitioners.

.....

31.The petitioners have also pleaded that instead of appeal to the Supreme Court under Section 22 from the orders passed by the NGT, an appeal mechanism as a matter of right should also be provided before the concerned High Courts. According to them, appeal to the Supreme Court is inadequate and unaffordable and therefore inaccessible. On this aspect it needs to be observed that even when a direct appeal to the Supreme Court is provided by a statute against the decision of a tribunal, the remedy under Article 226 or 227 before the High Court remains unextinguished. Moreover, the Appeal under Section 22 of the NGT Act, is limited to the grounds under Section 100 of the CPC and the Supreme Court does not function as a regular first appellate Court. However, under Article 226 or 227, remedies on issues of jurisdiction and also under the principles set out in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, are available for an aggrieved party. Subject to discretion being exercised, the affected litigants can move High Court under Article 226 or 227 and in such cases, a SLP under Article 136 of the Constitution could also be maintained to the Supreme Court from the High Court's verdict.

45. In consequence of the above analysis, our conclusions are,

A. The National Green Tribunal under Section 14 & 22 of the NGT Act does not oust the High Court's



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jurisdiction under Article 226 & 227 as the same is a part of the basic structure of the Constitution..."

13. It could be inferred from the decision of the Hon'ble Supreme Court supra that the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by Courts not to operate as a bar in at least three contingencies, namely, where (1) the writ petition has been filed for enforcement of any of the Fundamental Rights or (2) where there has been a violation of the principles of natural justice or (3) where the order or proceedings are wholly without jurisdiction or (4) the vires of the Act is challenged.

14. In the case on hand, the petitioner in para 24 of the affidavit has raised a ground that the judgment of the National Green Tribunal is capricious, perverse, contrary to law and calls for interference of this Court under Article 226 of the Constitution of India as there has been a violation of the principles of Natural Justice. However, the fact remains that the impugned notification was issued by the respondent Board on



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10.06.2020 to comply with the condition of retrofitting the emission control devices in DG sets and on account of Covid 19 pandemic, the time of compliance was extended by way of subsequent notification dated 19.10.2020, granted time till 31.03.2021. Thereafter, the petitioner has sent a legal notice dated 31.03.2021 to the respondent Board and subsequently by way of final notification, the impugned notification dated 20.10.2021 came to be issued, which was challenged before the NGT.

15. A perusal of the impugned order passed by the NGT would disclose that the same has been passed after detailed analysis of oral and documentary evidence let in by both sides and after careful consideration and relying upon the decision of the Hon'ble Supreme Court in ***Vellore Citizens Welfare Forum v. Union of India and Others [AIR 1996 SC 2715]***, NGT has passed the impugned order rejecting the claim of the petitioner Company. Therefore, it cannot be construed that there is a violation of the principles of natural justice, as alleged by the petitioner. Except making a vague ground in para 24 of the affidavit, the petitioner has not raised any specific ground or produced any substantial material



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before this Court to prove the violation of principles of natural justice. Neither any vires of the act has been challenged nor any enforcement of fundamental right has been claimed in the present writ petition. None of the exceptions to alternative remedy as laid down in the aforecited decision has been substantiated by the petitioner as to the maintainability of the writ petition before this Court. Therefore, this Court is of the view that the petitioner is unable to make out any *prima facie* case to entertain the writ petition. The petitioner is having efficacious alternative remedy before the appropriate forum under Section 22 of the NGT Act and therefore, the writ petition is liable to be dismissed as not maintainable.

16. In the light of the above, the Writ Petition stands dismissed as not maintainable. No costs. Consequently, connected miscellaneous petition is also dismissed.

[D.K.K., J.,] [P.D.B., J.]
11.08.2023

Index:yes/no
Internet:yes
Jvm

To
1. The Member Secretary (I/C) /Chairman
Tamil Nadu Pollution Control Board,
No.76, Mount Road, Guindy, Chennai-32.



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2. Chairperson,
Tamil Nadu Pollution Control Board,
No.76, Mount Road, Guindy, Chennai-32.

3. The Chairman,
Director (Labs),
Tamil Nadu Pollution Control Board,
No.76, Mount Road, Guindy, Chennai-32.



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**D.KRISHNAKUMAR, J.,
&
P.DHANABAL, J.**

Jvm

**Order in
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11.08.2023