

Item No.8
13.09.2024
Court. No. 9
*Kaushik/
GB*

W.P.A. 5908 of 2022

Avishek Paul Chowdhury & Ors.
Vs.
The State of West Bengal & Ors.

*Mr. Saktinath Mukherjee, Sr. Advocate
Mr. Saptangshu Basu
Mr. Arup Nath Bhattacharya
Mr. Biswaroop Bhattacharya
Mr. Priyabrata Thakur
Mr. Varun Kothari
Ms. Sayani Das
Ms. Sreetama Biswas
Ms. A. Bhattacharya*

...for the petitioner.

*Mr. Arjun Roy Mukherjee
Mr. Joyjeev Medhi*

...for the WBPCB.

*Mr. T. M. Siddiqui, learned AGP
Mr. Suddhadev Adak*

...for the State.

1. The respondent no. 7, who was the applicant before the National Green Tribunal, is not present before the Court even after service of notice.
2. On the earlier occasion, a learned advocate had appeared before this Court and had informed the Court that her client had taken a 'no objection' and she had retired from the brief. Thus, the Court had directed further service on the respondent no. 7. Such service has been effected. The said respondent is not present before the Court.
3. The inspection report filed by the West Bengal Pollution Control Board (WBPCB) is taken on record. The report reads thus:

“Observation:

The unit is situated on the left Bank of the river Rupnarayan. The area of the Hotel complex is approx. 16 Bigha. The area of the hotel is bounded by brick wall boundary at the road side. There is fencing along with river bank. The main Hotel Building is situated at a distance of approximately 100 m from the Bank of the River. The kitchen and main Banquet Hall is situated at a distance of 30 m from the river bank.

The Hotel has 125 (one hundred twenty-five) rooms and 02 (two) Banquet Halls. During inspection, renovation work of kitchen as well as hotel building was going on and there was no cooking activity. The unit has ETP for treatment of kitchen effluent. As there was no effluent from kitchen, only aeration tank of ETP was in operation. No effluent was being discharged from ETP. It is learnt that treated effluent is used in their garden. Domestic effluent is discharged through septic tank to soak pit. The unit has one composter machine of capacity 150 Kg. for treatment of biodegradable solid waste and composted materials is used as manure in garden. The unit has 02 (two) D.G. sets of capacity 225 KVA & 160 KVA. Greenery has been developed inside the unit and there is open space between bank of the river & hotel building.”

4. Considering the report of WBPCB, this Court finds that the hotel complex, at present, does not offend the environment laws and the rules and regulations framed thereunder.
5. WBPCB shall continue its periodical inspections and it is needless to mention that the hotel/unit, will comply with the requirements of law.
6. Mr. Siddiqui, learned Additional Government Pleader appears on behalf of the respondent nos. 1 to 4 and relies upon the Affidavit-in-Opposition filed on behalf of the respondent no. 5 i.e. the West Bengal State Coastal Zone Management Authority

(hereinafter referred to as ‘the authority’). Learned Advocate submits that in terms of the directions issued by the Ministry of Environment, Forest and Climate Change for an approved Coastal Zone Management Plan of 1996, (CZMP), the Coastal Regulatory Zone Regulations (CRZ) were framed. In case of the river Hooghly the CRZ regulations were applicable upto the southern municipal limit of Diamond Harbour Municipality and not upstream of such limit. In the present case, the location of hotel Sonar Bangla was far upstream from the Diamond Harbour Municipality and 30 kilometres upstream from the coastal regulation zone. The hotel was beyond the purview of the regulations imposed by the West Bengal State Coastal Zone Management Authority as per CRZ’s Notification, 2011.

7. Mr. Siddiqui refers to letter dated April 27, 2022, the Member Secretary, West Bengal State Coastal Zone Management Authority, informed the Senior Law Officer, Department of Environment as follows:

“In respect of the WPA No. 5908/2022 regarding Avishek Paul Choudhury –Vs. – State of West Bengal related to Hotel Sonar Bangla, Kolaghat this is to inform you that as per MoFF&CC approved Coastal Zone Management Plan (CZMP) 2011 on scale 1:25000 for the State of West Bengal, the northern limit of CRZ is applicable up to the southern municipal limit of Diamond Harbour Municipality. Accordingly, the project site of the said hotel lies beyond the Coastal Regulation Zone (CRZ).”

8. The West Bengal State Coastal Zone Management Authority was of the firm view that the hotel/project site was beyond the coastal regulatory zone.
9. What emerges from the stand of the WBPCB and the respondent no. 5, is that the project does not violate either the laws relating to pollution or the coastal zone management plan applicable in the State of West Bengal.
10. The order impugned before this Court was passed by the National Green Tribunal, Eastern Zone Bench, Kolkata at the instance of the respondent no. 7, who filed original application no. 62/2017/EZ. The applicant before the learned Tribunal alleged that hotel Sonar Bangla was situated right on the bank of the river Rupnarayan which seriously violated the Coastal Regulation Zone's notification. Further allegation was that the hotel was discharging sewerage directly into the river, without installing a Sewerage Treatment Plant (STP), thereby causing severe pollution to the river.
11. The West Bengal State Coastal Zone Management Authority filed a report in the proceedings and contended that the Management Plan (CZMP) of 1996 was not applicable upstream, upto the river Rupnarayan. The submissions of Mr. Siddiqui are based on similar pleadings which were filed in the proceedings before the Tribunal, by the management authority.

12. The relevant portions of the pleadings are quoted below :-

“4. It is respectfully submitted before this Hon ble Tribunal that as per the approval letter issued by MoEF & CC for the approved CZMP of 1996, the CRZ regulations applicable in case of river Hooghly is upto the southern municipal limit of Diamond Harbour Municipality and not upstream of this limit. In the present case the location of the hotel is located far upstream of the Diamond Harbour Municipality and is about 30 km upstream from the CRZ and hence beyond the purview of regulation to be imposed by WBSCZMA as per the CR2 Notification, 2011.”

13. The Chief Environment Officer and Member Secretary of West Bengal State Coastal Zone Management Authority, had informed the petitioner that the hotel did not fall within the Coastal Regulation Zone. The communication is on record. Relevant portion of the letter is quoted below :-

“In respect to your letter mentioned above, it is being conveyed that that as per the existing Coastal Zone Management Plan the CRZ, area extends upto the confluence of river Rupnarayan meeting river Hooghly. So, your hotel Sonar Bangla, which is situated at Vill & P.O. - Orphooly, P.S. - Bagnan, Howrah - 711 303, opposite to Kolaghat, does not fall within the CRZ.”

14. The order of the tribunal records the submissions of the Coastal Zone Management Authority that the hotel was beyond the purview of the CRZ's notification. The Irrigation and Waterways Directorate Government of West Bengal also filed a report, inter alia, stating that the river Rupnarayan was an artery of the inflow of river Hooghly, having a length of 78 kilometers from its confluence up to Bandar under Paschim Medinipur

and 100 metres away from the highest point which the water reached during floods.

15. The relevant paragraphs of such report are quoted below :-

“3. That in response to the said solemn order dated 24.04.2018, the deponent herein, conveyed he same to the Executive Engineer - II, Lower Damodar Construction Divn., Irrigation and Water Ways Directorate with a request to make a detailed scrutiny and survey of the matter as per the direction of this Hon'ble Tribunal I its true letter and spirit. Accordingly the survey was conducted and after completion of the survey, the Inspection report along with the Mouza Map showing location of Hotel Sonar Bangla vis-a-vis the line drawn 100 maway from the highest point the water reaches, was forwarded to the deponent herein for placing the same on record, before the Hon'ble Tribunal. A true copy of the Mouza map and the Inspection report are filed herewith collectively and marked as Annexure - R4/1 Colly.

4. That it is respectfully submitted that river Rupnaryan is one of the most important western arteries of the inflow of river Hooghly. Gadiara townon its left blank under Howrah district and Geonkhali town on its right bank under Purba Medinipur district. The Sonar Bangla Hotel is situated opposite to Kolaghat town which is about 35 k.m. north from Geonkhali town, located at the confluence of the river Hooghly.”

16. The report of the pollution control board was considered by the tribunal and it was recorded that the Effluent Treatment Plant comprising of both physic-chemical and aerobic treatment for the kitchen effluent, were operational. Treated effluent samples were collected from the final outlet tank. The effluent samples were sent to the Central Laboratory for analysis. It was found that the ETP sludge and putrefiable solid waste were being used as manure for gardening. The sanitary and toilets sullage were sent to the soak pits.

17. The report of the WBPCB mentions that previously, the hotel had failed to meet the standards of the Chemical Oxygen Demand and Biological Oxygen Demand. Hence, a show cause notice was issued on March 21, 2017. The hotel thereafter complied with the necessary formalities.
18. As on date, it is an admitted position that the required standards have been met. In its last inspection, the WBPCB did not detect violation of the pollution control norms.
19. The tribunal proceeded on the basis of an earlier report of the Pollution Control Board and found the following anomalies.

“i) That there is no STP and sewage is discharged directly into the river.

ii) There are two DG sets one is 225 KVA that is silent and the other 75 KVA DG set is black type.

iii) The sample collected from ETP shows that

O&G parameter is beyond permissible limit.

O&G result was 13.60 mg/l and permissible

limit is 10mg/lit.”

20. It appears that two reports were filed by the WBPCB before the Tribunal. In the second report, the board had specifically mentioned how the defects had been rectified. The relevant observations of the board are quoted below.

“The treatment of sewage generated from boarder rooms involved conventional septic tank/soakpit arrangement and water from the wash basins are discharged through premises drain to outside canal leading to R. Rupnarayan. For the effluent arising out of the restaurant an effluent treatment plant (ETP), of capacity - 15 KLD and based on physico-chemical & biological treatment processes,

exits. The ETP comprises of the following unit operations.

Oil/fat trap (03 nos. in series) – Chemical dosing tank (caustic & alum added) – primary settling tank – Aeration tank – Secondary Settling Tank – Multi-Grade Filter – Treated water tank.

The sludge from the chemical dosing tank & primary settling tank is collected in sludge bed from where it is removed from time to time for purpose of land filling. The sludge from the secondary settling tank is mostly returned to the aeration tank for maintaining the MLSS and the rest is used as manure in gardening. The treated water is used in gardening & restaurant-floor wash. The treated water tank has no drain connection and is not discharged outside.

There are five LPG ovens (three single-burners & two double-burners) in the restaurant kitchen. The kitchen is equipped with fume extraction system and a chimney of height about 45 feet from ground level.

Two DG sets (75 KVA & 225 KVA) are possessed by the hotel unit as an arrangement for standby power supply. The 225 KVA DG set is of 'silent' type whereas the 75 KVA DG set is of 'black type'. It was informed that the 'black' DG will be removed shortly from the unit.

A compact compost plant has been installed by the unit to convert the kitchen waste into useful compost which is used in gardening. The compost plant is electrically operated with a total rating of 4 KW and can be process upto 450 kg of compostable waste in 24 hrs. cycle. Minimum mass of waste required for it to operate is 150 kg.

House-keeping of the unit is good.”

21. The other information which were brought before the tribunal by the board were as follows:-

“Other relevant information:

Six water samples, three from the ETP inlet & three from the ETP outlet, were taken at different times of the day of inspection and sent to the Central Laboratory of the State Board for necessary analysis (based on five general parameters viz. pH, TSS, COD, BOD and O&G). Results obtained reveal that out of the three ETP treated samples the unit has failed to meet the discharge standard w.r.t. O&G (value 13.6 mg/l as against the permissible limit of 10 mg/l) in one.

The unit possess five-license valid upto 07/05/2018, current trade license of the local

body and sanctioned building plan for new construction from the local body.

Remarks/Recommendation:

Although the unit uses the ETP treated water for gardening purpose, which is a kind of discharge on land, the permissible limit for O&G parameter is 10 mg/l. Therefore, the unit may be directed to take steps to increase the treatment efficiency of ETP for maintaining the value of O&G in treated water within 10 mg/l.”

22. The final inspection report of the board contained the following remark.

“Remarks/recommendation:

The measures adopted by the unit to comply with the environmental norms are found to be effective as appears from the effluent analysis report.”

23. Upon hearing the learned advocates for the respondents and upon perusal of the observations of the WBPCB in the report filed before this court today. It appears that the anomalies which were recorded by the tribunal were rectified by the petitioners during the pendency of the proceeding. The tribunal also recorded the contentions of the Irrigation And Waterways Directorate. The Irrigation and Waterways Directorate had specified that that the distance from the observed High Flood Level (HFL) during 2017 near Sonar Bangla hotel to the countryside toe of the left embankment, was 100 metres.

24. The tribunal placed reliance on the River Centric Urban Planning Guidelines (the guidelines), but the specific contention of the West Bengal State Coastal Zone Management Authority was that the hotel was beyond the purview of the regulations of the West Bengal State Coastal Zone Management Authority.

The guidelines suggested a model River Zone Regulations, which could be adopted by states. A draft notification, was prepared, and prohibited activities zone were provided for. It stated that in case of embankments in the floodplain area, the zone would extend from the river bank to the outermost embankment. A further 100 metre buffer was provided outside the embankment. It appears from the order impugned before this Court that the tribunal repeatedly called for numerous inspection reports and affidavits to probe deeper and deeper, although the authorities clearly indicated that the hotel did not offend any law or notifications framed thereunder. The stand of the respondents before the Tribunal, were available from their respective reports, which did not speak of violation of any rules and regulations.

25. The tribunal confused the guidelines of 2021 with the CRZ. Admittedly, the guidelines have not be applied in this case by the respondents authorities as the river Rupnarayan was not within the CRZ notification. The construction was completed way before the guidelines of 2021.

26. The WBPCB had pointed out certain deficiencies and those deficiencies were removed. Thus, only on the ground that the boundary of the hotel was around 120 to 130 metres from the High Flood plain, the demolition of the structure could not have been directed. There is no boundary wall on the embankment, but a fencing. The report of the WBPCB

filed today, clarifies such position. Moreover, the guidelines of 2021 could not be made applicable in this case as the construction was prior to 2017.

27. The DG sets (black types) and the pollution created by the fumes, had been replaced by the environment friendly 'green type' sets.

28. The Tribunal proceeded on the basis that, as the boundary wall of the hotel within the 100 metres from the high flood level, the same should be demolished. The Tribunal made out a third case, by wrongly relying on a guideline which was inapplicable. According to the reports of the authorities the construction did not offend the environment laws. The District Magistrate, Howrah was directed to take immediate steps for removal of the construction made by the hotel within 100 metres of the high flood level of the river Rupnarayan and the Pollution Control Board was directed to compute the environmental damage and the cost of restoration of the area to its original position.

29. The findings and the direction of the Tribunal are wholly erroneous and based on facts outside the evidence which were on record. The respondent No.5 filed its report, inter alia, stating that the Coastal Regulation Zone Notification, 2011, was not applicable. The hotel did not fall within the purview of the Coastal Regulation Zone's Notification, 2011.

30. Thus, neither the distance of the hotel from the riverbank nor the distance of the banquet hall and the

kitchen from the riverbank were relevant considerations before the learned Tribunal in view of the specific stand of the respondent No.5.

31. Under such circumstances, the jurisdiction of this Court has been rightly invoked. The alternative remedy is not a bar as the learned Tribunal has proceeded on a later guideline of the Ministry of Housing and Urban Affairs, Government of India, by ignoring the provisions of the Coastal Regulation Zone Notification, 2011. The river Rupnarayan does not fall within the regulation and the hotel premises, which is 100 metres away from the river Rupnarayan, does not violate such regulation. Thus, the Tribunal proceeded on an incorrect appreciation of the law and acted in excess of jurisdiction by directing demolition. The order is beyond the scope of the application filed by the respondent No.7 and based on extraneous factors.

32. In the matter of ***Madhya Pradesh High Court Advocates bar Association and Anr. vs Union of India and Anr.*** reported in ***AIR 2022 SC 2713***,

the Hon'ble Apex Court held as follows:-

“12. 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.

13. 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. Vs. Registrar of Trade Marks, Mumbai and Others;

“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”. 14. 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.”

15. 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 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.”

33. Under such circumstances, the order impugned cannot be sustained and is set aside. This order will not prevent the Pollution Control Board and the state authorities to carry out inspections and ensure that the applicable environment laws are complied with by the hotel/project. The unit shall also comply with the

requirements of law and statutory compliances, as applicable.

34. In view of the above findings, the issue with regard to the point of limitation raised by Mr. Mukherjee, learned senior advocate for the petitioner, is not required to be answered.

35. Accordingly, the writ petition is disposed of.

36. However, there will be no order as to costs.

37. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)