

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(115) CWP-4688-2024
Decided on : 06.03.2024

M/s Qumax Engineering & Consultancy
.....Petitioner(s)
Versus
Haryana State Pollution Control Board and another
.....Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr. Alok Mittal, Advocate for the petitioner(s).
Mr. Deepak Balyan, Additional Advocate General, Haryana.

G.S. Sandhawalia, Acting Chief Justice (Oral)

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India is to the order dated 13.04.2023 (Annexure P-4), wherein environmental compensation to the tune of Rs.44,95,000/- has been calculated by the Haryana State Pollution Control Board, on account of the petitioner-company running a ready mix concrete plant.

2. On 28.02.2024, we asked the State to produce the closure order, since counsel for the petitioner did not have the copy of the same. The closure order dated 01.02.2024 has been produced today, which would go on to show that it is on account of non-compliance of the directions issued under Section 31-A of the Air (Prevention & Control of Pollution) Act, 1981 and under Section 33-A of the Water (Prevention & Control of Pollution) Act, 1974.

3. In similar circumstances, in **CWP-22727-2023 ‘M/s Sahil Enterprises & others Vs. State of Haryana and others’** decided on 08.02.2024, we came to the conclusion that the calculation of environmental compensation is a consequential order and it is in furtherance to the earlier proceedings. The remedy would, thus, lie before the Appellate Tribunal. Relevant portion of the said order reads as under:-

“3. In compliance of the orders passed by the National Green Tribunal on 03.08.2018 in Original Application No.593 of 2017 ‘Paryavaran Suraksha Samiti & another Vs. Union of India, the procedure for examining, assessing and imposing the environmental compensation on industrial units or other authorities, found violating the provisions of the various acts and rules and damage caused to the environment of the State of Haryana was revised. The said procedure is enclosed as Annexure A in the letter dated 22.12.2021 (Annexure P-9), Clause 5 of which reads as under:

“5. The amount finalized by ECAC will be processed by concerned branch in head office and to place before competent authority for final orders of imposition of EC on defaulting units. The competent authority for issuing direction for levy and deposition of EC will be the same as prescribed for issuing direction under section 33-A of Water Act, 1974, Section 31-A of Air Act., 1981 and section 5 of EP Act, 1986.”

4. In **Mantri Techzone Pvt. Ltd. Vs. Forward Foundation and others, (2019) 18 SCC 494** the remedies provided under the Act were duly considered including the provisions of Sections 14, 15, 16 & 33 and the power of the National Green Tribunal. Relevant part of the said judgment reads as under:-

“40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialized judicial body 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. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights. 41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. 42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment. 43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.”

5. Section 16(c) of the National Green Tribunal Act, 2010 (for short, the ‘Act’) provides that the Tribunal would have the appellate jurisdiction regarding the directions issued on or after the commencement of the Act, by a Board under Section 33-A of the Water (Prevention & Control of Pollution) Act, 1974. Resultantly, we are of the view that since it is a consequential order as per the provisions of the Act, an appeal would lie before the Appellate Tribunal. It is settled principle that if there

is an alternate remedy provided, the Writ jurisdiction may not be exercised.

6. Accordingly, we dispose of the present writ petition, relegating the petitioners to avail of their remedy before the Tribunal as per the above-said observations.”

4. In the present case also, as per Section 16 of the National Green Tribunal Act, 2010, the remedy to approach the Appellate Forum is available. Resultantly, we dispose of the present writ petition with liberty to the petitioner-company to avail its alternate remedy in accordance with law, within a period of 4 weeks from today. Keeping in view the fact that the petitioner has approached this Court, the Appellate Forum shall decide the issue on merits.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

06.03.2024
Naveen

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	√ Yes	No
Whether Reportable :	Yes	√ No