BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

Original Application No. 45/2014/EZ &
MA No. 25/2015/EZ

Anil Kumar Singh
Vs
The State of Jharkhand & Ors

CORAM: **Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member**
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

PRESENT: **Applicant :**
Respondent No. 2 to 4 : None

Date & Remarks	**Orders of the Tribunal**
Item No. 4 **18th May, 2015.**	None appears at the first call at the first sitting. Let the matter be passed over till 2.30 PM. ..... Justice Pratap Kumar Ray, JM ..... Prof. (Dr.) P. C. Mishra, EM

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PRESENT: **Applicant** **: In person**

Respondent No. 2 to 19 **: Mr. Binod Kumar Gupta, Advocate**
: Ms. Aishwarya Rajyashree, Advocate

Date & Remarks	**Orders of the Tribunal**
Item No. 4 **18th May, 2015.**	**<u>Per Hon'ble Mr. Justice Pratap Kumar Ray, Member (J) :</u>** The matter is taken up at 2-30 PM as passed over from first sitting. The applicant appears in person. Mr. Binod Kumar Gupta, ld. Adv. leading Ms. Aishwarya Rajyashree, ld. Adv. appears on behalf of the State of Jharkhand and Ors being respondent Nos. 2 to 19. **MA 25/2015/EZ** : In this MA filed by the respondents, the state of Jharkhand, raised the issue on maintainability of the OA mainly on two fold grounds – (1) no breach of environmental law has been asserted in the petition with supporting documents; (2) The applicant being a State Govt. servant is not legally entitled to file this application assailing the environmental issue under the Forest Conservation Act before this National Green Tribunal in its Eastern Zonal Bench. So far as point No.(1) is concerned, it is the subject matter of the OA which is to be dealt with on merit at the time of final hearing. So far as point No. (2) is concerned on maintainability of the Misc. application, it is contended in the MA that rule 3(iii) of Bihar Govt. Servants Conduct Rules, 1976 clearly stipulates that no Govt. servant will do any thing which results unbecoming of a Govt. servant. Therefore, applicant is not entitled to file this application which and it will be viewed as misconduct. Similarly, under rule 10 of the ibid rules, no Govt. servant is entitled to

criticise the Govt. adversely. By challenging the State action through this petition, the applicant has violated rule 10 and hence he is liable for action for misconduct. Copies of the ibid rules 3(iii) and 10 of Bihar Govt. Servants Conduct Rules, 1976 have been annexed at annexure-R1.

It has been asserted further that if all employees are allowed to challenge State Govt. Actions, then it will be impossible for the Govt. to perform its duties. In support of such submission, ld. Adv. has placed reliance on a decision of the Hon'ble High Court of Allahabad, Lucknow Bench in the case : Misc. Bench 2761 of 2014 (**Amitabh Thakur & Anr)** dt. 9.4.2014 .

On a bare reading of the judgement it appears that it was a public interest litigation filed by one serving police officer and the issue was relating to strike by the advocates, a basis for filing such PIL. The Hon'ble High Court observed that that applicant was not a busy body or that any substantial public interests involved in the writ petition. It was also observed that the applicant was inter-meddler as he did not had any concern with the cause espoused in the writ petition. It has been observed further as under :-

> " We have strong doubt about the bona fide of the petitioner No. 1 in filing so many writ petitions in public interest. He appears to be busy to popularise himself and see his name in the newspapers whenever an order is passed by the Court. The tendencies of seeking such popularity by serving police officer should not only be discouraged but should be treated as an act of misconduct on his part. "

It is quite clear that factual parameters and legal issues were different in that judgement as compared to the case in hand. The *ratio decidendai* of a judgement depends upon the legal issues as reflected from factual matrix involved therein. In the instant case the factual parameters is completely different. Here environmental law is involved and the applicant as a citizen of India has every right to agitate the issue because environmental protection is a constitutional duty of every person/citizen under Article 51(A)(g) of the Constitution of India and there is no distinguishing feature or reason to create two classes, viz. Govt. servant and a private individual to discharge that environmental protection liability. Environment policy does not discriminate this.

In the rejoinder to the MA, the applicant has referred to the Apex Court judgement in contradicting the argument of ld. Adv. for the State of Jharkhand by relying on a Judgement reported in (2014)10 SCC 589 **(Vijay Shankar Pandey – Union of India & Anr).** He has drawn our attention to paras 43, 44, 46,47 and more particularly and emphatically to para 50 which reads thus :-

> " The right to judicial remedies for the redressal of either personal or public grievances is a constitutional right of the subjects (both citizens and non-citizens) of this country. **Employees of the State cannot become members of a different and inferior class to whom such right is not available.** The respondents consider that a complaint to this Court of executive malfeasance causing debilitating economic and security concerns for the country amounts to inappropriate conduct for a civil servant is astounding."

In that case before the Apex Court, the appellant Vijay Shankar Pandey, in the cadre of Indian Administrative Service,

	was charge-sheeted for certain misconduct under rule 8 of All India Services (Conduct) Rules 1968 against which he moved the court. Initiation of departmental proceeding was unsuccessfully challenged in the Allahabad High Court and ultimately it was laid before the Hon'ble Supreme Court as referred to above. Rule 7 of the AIS Conduct Rules is *pari materia* with Rule 10 of Bihar Govt. servants Conduct Rules, 1976 which are being followed by the State of Jharkhand to discipline their employees. This rules speaks about " **Criticism of Government**" The Apex Court in the judgement did not find any ingredients or materials for initiation of disciplinary proceedings on grounds of misconduct. Further, the Apex Court went on to explain the concept of right of a citizen irrespective of his status, whether he is Govt. employee or not by holding that right to judicial remedies for the redressal of either personal or public grievances is a constitutional right on the subjects(both citizens and non-citizens) of this country. Employees of the State cannot become members of a different and inferior class to whom such right is not available.... vide para 50 of the judgement quoted above. Besides such ld. counsel for the State of Jharkhand emphasized the point further that the applicant Shri Anil Kumar Singh being an employee of the State of Jharkhand master and servant relationship exist and as such he is debarred from contending anything against the master viz. the State Government alleging inaction to follow the environmental law and steps for protection of forest in terms of the forest conservation. This argument is not legally sustainable having

	regard to the status of the government employee in a democratic country having existence of rule of law and the protection under written constitution. The concept as advanced by the ld. counsel is an old concept which has been obsolete today. In this point the origin of the said doctrine master and servant relationship and the constitutional protection of the government employee was discussed at length by the Apex Court in detail in the case of **The Manager, Government Branch Press and Anr. Vs. D.B. Belliappa,** reported in AIR 1979 SC 429. The judgment of three judges Bench is profitable to quote for applicability and the logic therein advanced in the instant case though the said case was relating to termination of the government employee without assigning any reason. The paragraph 25 of the said judgment reads as such:- "25. Another facet of Mr. Verrappa's contention is that the respondent had voluntarily entered into a contract of service on the terms of employment offered to him. One of the terms of that contract, embodied in the letter ofhis appointment is that his service was purely temporary and was liable to termination at the will and pleasure of the appointing authority, without reason and without notice. Having willingly accepted the employment on terms offered to him, the respondent cannot complain against the impugned action taken in accordance with those mutually agreed terms. The argument is wholly misconceived. It is borrowed from the archaic common law concept that employment was a matter between the master and servant only. In the first place, this rule in its original absolute form is not applicable to Government servants. Secondly, even with regard to private employment, much of it has passed into the fossils of time. "This rule held the field at the time when the master and servant were taken more literally than they are now and when, as in early Roman Law, the rights of the servant, like the rights of any other member of the household, were not his own but those of his pater familias." The overtones of this ancient doctrine are discernible in the Anglo-American jurisprudence of the 18 century and the first half of the 20th century, which rationalized the employee. "Such a philosophy", as pointed out by K.K. Mathew J. (vide his treatise: "Democracy, Equality and Freedom", page 326)" of the employer's dominion over his employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers." To bring it in tune with vastly changed and changing socio-economic conditions and mores of the day, much of this old, antiquated

	and unjust doctrine has been eroded by judicial decisions and legislation, particularly in its application to persons in public employment,, to whom the constitutional protection of Arts. 14, 15, 16 and 311 us available. The argument is therefore overruled." It is settled law now that "access of justice" is a basic fundamental right arising out of Article 21 of the Constitution of India. Reference is made to the judgment passed by the Apex Court in the case of **Tamilnad Mercantile Bank Shareholders Welfare Association (2) Vs. S.C. Sekar and Ors.,** reported in 2009(2) SCC 784. Having regard to the clear verdict of the Hon'ble Apex Court on the issue, the judgement of the Hon'ble Allahabad High Court, Lucknow Bench in **Thakur** case (supra) as relied upon by the ld. Adv. for the State of Jharkhand, in our view, is not applicable to the present case. Besides other points, the factual materials and legal questions involved as raised in this OA before this Tribunal are entirely different than the **Thakur case** (supra) Environmental law and its jurisprudence are completely of different magnitude, dimension and concept. Environment is required to be protected by everyone and under Art. 51A(g) of the Constitution of India, every citizen has a duty and obligation to protect environment. Art. 51 A(g) reads thus :- "It shall be the duty of every citizen of India – a) *** ***** *** g) to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures;..... " Art. 48-A of the Constitution mandates that the State shall endeavour to protect and improve the environment to safeguard

	the forest, lakes, rivers and wildlife of the country. Art. 51-A(g) mandates that it shall be the duty of every citizen of India, inter alia, to protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. These two articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the constitution including Art. 14,19 and 21 of the Constitution and also various laws enacted by the Parliament and the State Legislatures. The responsibility of the State to protect the environments is now a well-accepted notion in all countries. This has now been accepted as the principle of "**State Responsibility**". This responsibility is clearly enunciated in the United Nations Conference on the Human Environment, Stockholm 1972 (Stockholm convention) to which India was a party. It was held that "the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate". Therefore, great responsibility is bestowed upon the Govt. to protect and preserve the environment. The Hon'ble Supreme Court in the case of **Intellectuals Forum –vs- State of AP, (2006) 3 SCC 549** has very elaborately dealt with various issues relating to environment protection

	including the issue of "**Public Trust Doctrine**". In that case the Apex Court referred to earlier views expressed in the case of **M.C.MEHTA –V- Kamal Nath**, (1997) 1 SCC 388, **M.I. Builders (P) Ltd –vs- Radhey Shyam Sahu,** (199) 6 SCC 464 and the judgement of Supreme Court of California in **National Audubon Society Superior Court of Alpine Country** , 33 Cali 419, also known as Mono Lake case. Hence, inaction of State to follow constitutional mandate to protect environment could be raised to any court of law/tribunal for remedial measures by any citizen of India irrespective service status. Having regard to the findings and observations, particularly the view of the Hon'ble Apex Court in **Vijay Shankar Pandey**'s case (supra), we are of the confirmed view that the applicant is entitled to move this OA before this Tribunal for protection of environment and challenging the breach of environment laws and being a Govt. servant his right to seek remedy with regard to environmental protection which cannot be taken away in the name of discipline. As is enshrined in the Constitution and as observed by the Hon'ble Apex Court right to environment is a constitutional right available to all citizens equally be he a private citizen or a Govt. servant. By being a Govt. servant his status cannot be lowered down and no restriction can be imposed upon him to exercise his right to seek remedy before court of law to protect environmental breach. No disciplinary action is called for against him by the Govt. for his such action in accordance with law nor Bihar Govt. Servant Conduct Rules can be invoked for the purpose. In view of the observation, the MA filed by the State of

	Jharkhand stands dismissed being devoid of any merit. No order as to costs. **OA 45/2014/EZ** : In the OA the pleadings are complete. Let the matter be fixed on 20.7.2015 for final disposal. ..... Justice Pratap Kumar Ray, JM ..... Prof. (Dr.) P. C. Mishra, EM