IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*****

WRIT PETITION No.34458 of 2017

State of Telangana through its Chief Secretary, Khairatabad, Hyderabad, Telangana and another.

... PETITIONER

v.

Md. Hayath Uddin and others.

.. RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 08.11.2017.

SUBMITTED FOR APPROVAL:

THE HON'BLE THE ACTING CHIEF JUSICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMADEVI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? -Yes

2. Whether the copies of judgment may be marked to Law Reports/Journals Yes

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? -

RAMESH RANGANATHAN, ACJ

*** HON'BLE THE ACTING CHIEF JUSTICE SRI RAMESH RANGANATHAN**
AND
THE HON'BLE MS. JUSTICE J. UMADEVI

+ WRIT PETITION No.34458 of 2017

% 08.11.2017

State of Telangana through its Chief Secretary, Khairatabad, Hyderabad, Telangana and another.

.. PETITIONER

v.

$ Md. Hayath Uddin and others.

.. RESPONDENTS

! Counsel for the petitioner : Advocate General, Telangana

^ Counsel for the respondents : Sri Vedula Venkataramana, Learned Senior Counsel, Sri K.K. Mahender Reddy & Sri Peri Prabhakqar, Sri K. Lakshman (Asst. Sol. Genl.), Sri T.V. Ramana Rao, (Standing Counsel for TSPCB), B. Rachana Caveator for R-1.

< Gist:

> Head Note:

? CITATIONS:

1) (2007) 2 SCC 1
2) (2014) 5 CTC 397
3) (1997) 3 SCC 261 = AIR 1997 SC 1125
4) AIR 1973 SC 1461
5) (2003) 2 SCC 412
6) (2002) 4 SCC 275
7) 2016 SCC Online Bombay 5613
8) (Order in W.P. No.5754 of 2015 of Bombay HC)
9) (Order in W.P. No.433 of 2015) (Bombay HC)
10) (Common order in W.P.Nos Common order in W.P. Nos.19727 and 19821 of 2016 dated 01.08.2017)
11) (1998) 8 SCC 1
12) (2012) 8 SCC 326
13) (Order in SLP (Civil) No.27327/2013 dated 10.03.2014)
14) (2016) SCC online 1881 (Madras HC)
15) (Judgment in O.A.No.222 of 2014 dated 07.05.2015)
16) (1991) 1 SCR 326, 1991 CanLII 82 (SCC)
17) (1993) 4 SCC 119
18) (Judgment of A.P. High Court Division Bench in CEA No.301 of 2010 dated 19.01.2011)
19) (1964) 1 SCR 259
20) (2000) 7 SCC 12
21) Common Order in W.P.Nos.1582 and 2119 of 2010 dated 25.11.2010
22) (1990) 4 SCC 594

23) AIR 1967 SC 1606
24) AIR 1966 SC 671
25) (2007) 11 SCC 335
26) (1873) 8 CP 107 = 42 LJCP 98
27) (1989) 2 SCC 163 = AIR 1989 SC 1239
28) (2002) 1 SCC 567
29) (1994) 4 SCC 711
30) 2014 SCC OnLine NGT 6860
31) (Judgment of the NGT, Principal Bench, New Delhi, in M.A.No.573 of 2014 in Appeal No.04 of 2012, dated 16.09.2014)
32) AIR 2005 AP 155

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMADEVI

WRIT PETITION No.34458 of 2017

ORDER: (per Hon'ble the Acting Chief Justice Sri Ramesh Ranganathan)

The State of Telangana has invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, to declare the order passed by the Principal Bench of the National Green Tribunal, New Delhi ("NGT" for short) in O.A. No.372 of 2017 dated 05.10.2017, as illegal, arbitrary, contrary to Section 4 of the National Green Tribunal Act, 2010 (hereinafter called 'the 2010 Act') and Rules 3 and 5 of the National Green Tribunal (Practices and Procedure) Rules, 2011 (hereinafter called 'the 2011 Rules'), and to set aside the same.

The interim order, initially passed by the Principal Bench of the NGT on 05.10.2017, records that the Learned Counsel for the applicant and the contesting respondents were heard regarding the interim relief; however as the Expert member, who was part of the composition of the bench, was demitting office on 08.10.2017, and considering all circumstances and urgency in the matter for the detailed reasons that would follow, they were pronouncing the operative portion of the interim order which reads thus:

> "For the detailed reasons to follow:
>
> By an ad-interim order of injunction the respondent Nos.3 and 4 are restrained from carrying out any construction activities for the Kaleshwaram Lift Irrigation Scheme or any other activity like felling of trees, blasting and tunneling in the forest areas in violation of Forest Conservation Act, until the mandatory statutory clearances including Environment and Forest clearances are granted.
>
> However, we grant liberty to the respondents to seek modification or clarification of this order, upon grant of such clearance."

Questioning the aforesaid interim order dated 05.10.2017, the State of Telangana filed the present Writ Petition on 13.10.2017. In the affidavit, filed in support of the Writ Petition, it is stated that on 09.10.2017 their Counsel had approached the Registry of the NGT, Principal Bench, New Delhi to obtain the reasoned order to the operative portion of the interim order dated 05.10.2017; however, their Counsel was informed that the reasoned order was yet to be made available; and, in these circumstances, they were constrained to file the present Writ Petition challenging the operative portion of the interim order dated 05.10.2017 duly downloading a copy thereof from the website of the NGT, Principal Bench, New Delhi.

Though the Writ Petition was filed on 13.10.2017, it came up for admission on 23.10.2017 on which day we recorded the submission of Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the first respondent (applicant before the NGT in O.A. No.372 of 2017) that the NGT, New Delhi was uploading the reasoned order on the same day i.e., on 23.10.2017, and the Writ Petition be taken up on the next day. On 24.10.2017 the Learned Advocate- General for the State of Telangana made a mention before us at 10.30 A.M. that a copy of the reasoned order of the NGT was still not made available. When the Writ Petition was taken up for admission in the post-lunch session at 2.30 p.m. on 24.10.2017, both the Learned Advocate-General appearing for the petitioners and Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the first respondent-applicant, informed us that a reasoned order of the NGT was uploaded in the forenoon of 24.10.2017. A copy thereof was placed before us for

our perusal. We heard the matter on 24.10.2017 and, on the next day, i.e., 25.10.2017, an additional affidavit was filed by the State of Telangana to which the 1st respondent-applicant filed their counter-affidavit on 26.10.2017. With the consent of both the Learned Advocate General and Sri Vedula Venkataramana, Learned Senior Counsel, the Writ Petition was finally heard at the stage of admission.

Learned Advocate General for the State of Telangana contended before us that, in terms of Rule 23(1) of the 2011 Rules, every order of the NGT should be signed and dated by the Members, constituting the sitting of the Tribunal, which pronounced the order and, under Rule 23(2), the order should be pronounced in open Court; it was, therefore, not open to the NGT to pronounce the operative portion of the order first, and the reasoned order later; as a copy of the order was made available on the website only on 24.10.2017, it is clear that the reasoned order could only have been prepared and finalized after the Expert member demitted office on 08.10.2017; this contention is fortified by the fact that though the petitioner's Counsel before the NGT had requested for a copy to be made available on 09.10.2017, yet a copy thereof was not furnished for nearly ten days after the petitioners had invoked the jurisdiction of this Court on 13.10.2017; this probabalises the reasoned order having been made ready long after the Expert member had demitted office on 08.10.2017; the NGT is obligated, in terms of Rule 23(2) of the 2011 Rules, to pronounce its order only after it is entirely prepared; and while it may suffice if the operative portion of the entire order is alone pronounced in open Court, pronouncement of

merely the operative portion of the order, without the reasoned order made being ready, would fall foul of Rule 23(2) of the 2011 Rules.

If the contention urged on behalf of the State of Telangana, that the reasoned order was prepared and made ready only after the Expert member demitted office on 08.10.2017, is true then the order dated 05.10.2017 would necessitate being set aside, as the Expert member of the NGT, who was obligated to sign the reasoned order passed by a bench of which he was a member, would have become fuctuous officio after he demitted office on 08.10.2017. As this is, undoubtedly, a grave and serious issue which, if true, does not reflect well on the manner in which the Principal Bench of the NGT, New Delhi functions, we asked the Learned Advocate-General whether the petitioner was willing to file a sworn affidavit, that the reasoned order could only have been made ready after the Expert member demitted office on 08.10.2017, to enable us to have an enquiry caused in this regard.

Learned Advocate-General would submit that, since construction of a very important project has been halted by the interim order passed by the Principal Bench of the NGT, any delay in disposal of the Writ Petition would adversely affect the drinking water needs of the people of Telangana, and since the petitioner was of the view that the impugned order necessitated being set aside on other grounds also, they did not wish to harp on this issue any further. While we are disturbed by the distinct possibility of the Principal Bench of the NGT, New Delhi having passed the reasoned order only after one of its members (Expert member) had demitted office we do not, in the light of the

submission of the Learned Advocate-General, wish to dwell on this aspect any further.

Before we take note of the other contentions urged by the Learned Advocate-General for the State of Telangana, and Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the first respondent-applicant, it is necessary to briefly note the facts leading to the filing of the present Writ Petition. The first respondent herein filed O.A.No.372 of 2017 before the NGT, Principal Bench, New Delhi, under Sections 14 and 15 of the 2010 Act, on 26.05.2017 wherein he requested the NGT to direct the State of Telangana to immediately discontinue felling of trees, and other non-forest activities being undertaken in the forest area; to stop, with immediate effect, the illegal constructions on the project site; to restore the area, where there has been construction work, in accordance with Section 15 of the 2010 Act; to impose huge costs as environmental compensation charge for the damages done to the land in question; and to punish the erring officials in accordance with law, including the Environment Protection Act, 1986, the Forest Conservation Act, 1980, and the National Green Tribunal Act, 2010.

By way of an interim prayer, the first respondent-applicant requested the NGT to pass an order of injunction restraining the the petitioner herein from carrying on any construction activities for the Kaleshwaram Lift Irrigation Scheme project until the mandatory statutory clearances, including the environment and forest clearances, were granted; and to prohibit the writ-petitioner from carrying on any non-forest activities including felling of trees, blasting and tunnelling activities etc, in the forest areas in

violation of the Forest Conservation Act. After the petitioner herein entered appearance, and contested the matter, the impugned interim order came to be passed by the Principal Bench of the NGT at New Delhi.

Learned Advocate-General for the State of Telangana would contend that the first respondent-applicant had filed the O.A before the NGT, long after the period of limitation prescribed under Section 14(3) of the 2010 Act, expired; and the Principal Bench of the NGT, New Delhi lacked territorial jurisdiction to entertain the said application, since no part of the cause of action arose within its territorial limits. On the other hand Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the first respondent-applicant, would submit that the Writ Petition, as filed, is not maintainable; and, even if this Court were to hold that the Writ Petition is maintainable, it should refrain from exercising its discretion to entertain the Writ Petition as the petitioner has an effective and efficacious alternative remedy of preferring an appeal to the Supreme Court under Section 22 of the 2010 Act. It is convenient to examine these, and the other, contentions urged by the Learned Senior Counsel on either side under different heads:

I. CAN THE PETITIONER MAINTAIN THIS WRIT PETITION AGAINST THE ORDER PASSED BY THE NGT?

Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the first respondent-applicant, would submit that, in view of Section 22 of the 2010 Act, the Writ Petition as filed before this Court is not maintainable. On the other hand, the Learned Advocate-General for the State of Telangana would

submit that, since Article 226 forms part of the basic structure of the Constitution of India, the power conferred on the High Courts thereby cannot be curtailed or negated by Section 22 of the 2010 Act.

A modern democracy is based on the twin principles of majority rule and the need to protect the fundamental rights of its citizens. According to Lord Styen, it is job of the judiciary to balance the principles ensuring that the Government on the basis of number does not override fundamental rights. In a federal constitution, distribution of legislative powers, between Parliament and the State Legislature, involves limitation on legislative powers and, therefore, requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, but is also necessary to show any transgression by each entity. (**I.R.Coelho (dead) by L.Rs. v. State of Tamilnadu**[1]; **Kollidam Aaru Pathukappu Nala Sangam v. Union of India**[2]). Judicial review is justified by combination of 'the principle of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review' (**Democracy Through Law by Lord Styen, p.131**).

The power of judicial review, vested in the High Courts under Articles 226 of the Constitution, is at the core of the constitutional scheme. (**L. Chandra Kumar v. Union of India**[3]). Judges of the Superior Courts (the Supreme Court and the High Courts) have

---

[1] (2007) 2 SCC 1
[2] (2014) 5 CTC 397
[3] (1997) 3 SCC 261 = AIR 1997 SC 1125

been entrusted the task of upholding the Constitution and, to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained, and the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of the strict standards of legal correctness and judicial independence. (**L. Chandra Kumar**[3]).

Under Article 368(1) of the Constitution of India, notwithstanding anything contained in the Constitution, Parliament may, in the exercise of its Constituent power, amend, by way of addition, variation or repeal, any provision of the Constitution in accordance with the procedure laid down therein. The power to amend the Constitution, under Article 368, does not include the power to completely abrogate the Constitution and replace it by an entirely new Constitution. Amendment of the Constitution, necessarily, contemplates only changes to be made in it. As a result of the amendment, the old Constitution is retained though in the amended form. What is meant by the retention of the old Constitution, is the retention of the basic structure or framework of the old Constitution. It is not permissible to touch the foundation or to alter the basic institutional pattern. (**Kesavananda Bharati v. State of Kerala**[4]).

The minimum of the existing Constitution which should be left intact, in order to hold that the existing Constitution has been retained in an amended form and not done away with, is the basic

---

[4] AIR 1973 SC 1461

structure or framework of the Constitution. If the basic structure is retained, the old Constitution would continue even though other provisions have undergone a change. On the contrary, if the basic structure is changed, mere retention of some Articles of the existing Constitution would not warrant the conclusion that the existing Constitution continues and survives. (**Kesavananda Bharati**[4]).

The power of judicial review over legislative action, and the power to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions, vested in the High Courts under Article 226 of the Constitution, is an integral and essential feature of the Constitution, constituting part of its basic structure. (**L. Chandra Kumar**[3]). The power of judicial review vested in the High Courts cannot, therefore, be ousted or abridged even by a Constitutional amendment. No Act of Parliament can exclude or curtail the powers of Constitutional Courts under Article 226/227 of the Constitution. (**I.R.Coelho**[1]; **Kollidam Aaru Pathukappu Nala Sangam**[2]).

In **L. Chandra Kumar**[3], the Supreme Court held that, the "exclusion of jurisdiction" clauses in all legislations enacted under the aegis of Articles 323-A and 323-B of the Constitution would be unconstitutional; under the existing system, direct appeals were provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution; this situation would also stand modified; no appeal from the decision of a Tribunal would directly lie before the Supreme Court under Article 136 of the Constitution; instead, the aggrieved party would be entitled to move the High Court under Articles 226/227 of the Constitution

and, from the decision of the Division Bench of the High Court, the aggrieved party could move the Supreme Court under Article 136 of the Constitution; and the jurisdiction conferred upon the High Courts, under Articles 226/227 of the Constitution, is a part of the inviolable basic structure of our Constitution and cannot be ousted.

In **State of Karnataka v. Vishwabharathi House Building Cooperative Society**[5], the Supreme Court held that, by reason of the provisions of the Consumer Protection Act, 1986, the power of judicial review of the High Court, which is a basic feature of the Constitution, has not been, nor could it be, taken away. In **Union of India v. Delhi High Court Bar Association**[6], the Supreme Court held that the Recovery of Debts due to Banks and Financial Institutions Act, 1993, provided for a remedy of appeal to an Appellate Tribunal, whose decision was also not final in view of the fact that the same could be subjected to judicial review by the High Court under Articles 226 and 227; and, among the grounds on which the 1993 Act was saved, was that the power of judicial review of the High Court was not taken away by the creation of the Tribunal. (**Kollidam Aaru Pathukappu Nala Sangam**[2]).

In **Windsor Realty Pvt. Ltd. v. Secretary, Ministry of Environment and Forest**[7], a Division Bench of the Bombay High Court held that a Writ Petition, challenging the order of the NGT, is maintainable before the Division Bench. In **Sham Resorts and Hotels Pvt. Ltd. v. Maria Rebillet**[8] another Division Bench of the Bombay High Court had entertained a Writ Petition against the

---

[5] (2003) 2 SCC 412
[6] (2002) 4 SCC 275
[7] 2016 SCC Online Bombay 5613
[8] (Order in W.P. No.5754 of 2015 of Bombay HC)

order of NGT. A similar view was taken by yet another Bench of the Bombay High Court, in **M/s Leading Hotels Ltd v. Mr. Anthony Mendis**[9], and it was held that the High Court had jurisdiction to entertain Writ Petitions challenging the orders passed by NGT. A Division Bench of the Madras High Court, in **Kollidam Aaru Pathukappu Nala Sangam**[2], held that the jurisdiction of the High Court under Article 226, to entertain a Writ Petition against the order of the NGT, is not barred by the provisions of the 2010 Act. A similar view was taken by a Division bench of this Court in **G.J. Multiclave (India) Pvt. Ltd. v. State of Telangana, rep., by its Secretary, Environment, Forest, Science & Technology Dept, Secretariat**[10].

The 2010 Act does not expressly exclude the jurisdiction of the High Court under Articles 226/227, though it excludes the jurisdiction of the normal Civil Courts under Section 29. (**Kollidam Aaru Pathukappu Nala Sangam**[2]). While Section 29 of the 2010 Act explicitly bars the jurisdiction of the Civil Courts, the jurisdiction of the High Court under Articles 226 and 227 cannot be excluded even by implication for, even if the 2010 Act itself had contained a specific provision excluding the jurisdiction of the High Court under Articles 226 and 227, it would have been invalid in view of the specific declaration made in **L. Chandrakumar**[3] that Articles 226 and 227 form part of the Constitution's basic structure. If an express exclusion, assuming that it had been provided, cannot be saved, an implied exclusion undoubtedly cannot. (**Kollidam Aaru Pathukappu Nala Sangam**[2]). We see no

---

[9] (Order in W.P. No.433 of 2015) (Bombay HC)
[10] (Common order in W.P.Nos Common order in W.P. Nos.19727 and 19821 of 2016 dated 01.08.2017)

reason, therefore, to refuse to entertain this Writ Petition, filed questioning the interim order passed by the NGT, on the specious plea that the jurisdiction of this High Court is barred by the provisions of the 2010 Act.

II. DOES EXISTENCE OF AN ALTERNATIVE REMEDY OF AN APPEAL BAR EXERCISE OF JURISDICTION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA:

Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the first respondent-applicant, would submit that the question relating to territorial jurisdiction and limitation are both substantial questions of law which ought to have been urged by way of an appeal to the Supreme Court under Section 22 of the 2010 Act; and, since the petitioner has an effective alternative statutory remedy of an appeal to the Supreme Court, this Court should refrain from exercising its discretion to entertain the Writ Petition under Article 226 of the Constitution of India.

On the other hand the Learned Advocate-General for the State of Telangana would submit that mere existence of a statutory remedy of an appeal under Section 22 of the 2010 Act would not disable this Court from entertaining the Writ Petition; and as the questions whether the NGT can entertain the O.A, as it is barred by limitation and is beyond the territorial jurisdiction of the Principal Bench of the NGT at Delhi, are jurisdictional issues, existence of an alternative remedy of appeal to the Supreme Court under Section 22 of the 2010 Act would not bar exercise of jurisdiction under Article 226 of the Constitution of India.

Section 22 of the 2010 Act stipulates that any person, aggrieved by any award, decision or order of the Tribunal, may file

an appeal to the Supreme Court, within 90 days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 CPC. The right of appeal, under Section 22 of the National Green Tribunal Act, 2010, is subject to the restriction that it should pass the same test as is stipulated in Section 100 of the Civil Procedure Code. (**Kollidam Aaru Pathukappu Nala Sangam**[2]).

Section 100(1) CPC provides for an appeal to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. Apart from the fact the jurisdiction under Article 226 of the Constitution of India must be exercised in furtherance of larger public interest, or where substantial injustice would be caused by its non-interference, exercise of judicial review is on grounds not very different from that stipulated under Section 100 CPC. Even if we were to proceed on the premise that an appeal would lie, to the Supreme Court under Section 22 of the 2010 Act, even against the interlocutory order passed by the Principal Bench of the NGT at New Delhi, the question which necessitates examination is whether existence of a statutory remedy of an appeal to the Supreme Court, under Section 22 of the 2010 Act, would require this Court to refrain from exercising its jurisdiction under Article 226 of the Constitution of India.

Article 226 of the Constitution confers discretion on the High Court, having regard to the facts and circumstances of the case, either 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, it would,

normally, not exercise its extra-ordinary jurisdiction. The existence of an alternative remedy does not operate as a bar in at least three contingencies. The extraordinary remedy under Article 226 of the Constitution of India can be invoked, despite the availability of an alternate statutory remedy, in cases where (a) the writ petition is filed for enforcement of any of the fundamental rights, (b) where there has been a violation of the principles of natural justice, and (c) where the order or proceedings are wholly without jurisdiction (**Whirlpool Corporation v. Registrar of Trademarks**[11]). The petitioner contends that the NGT lacks jurisdiction to entertain the O.A, on the ground that the O.A was filed beyond the period prescribed in Section 14(3) of the 2010 Act and its proviso, and the cause of action arose beyond the territorial limits of the NGT Principal bench at New Delhi. Mere existence of an alternate remedy under Section 22 of the 2010 Act would, therefore, not operate as a bar for the Writ Petition to be entertained under Article 226 of the Constitution of India.

In **Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India**[12], a three Judge bench of the Supreme Court held that, keeping in view the provisions and scheme of the 2010 Act, particularly Sections 14, 29, 30 and 38(5), it could be safely concluded that environmental issues, and matters covered under Schedule – I of the 2010 Act, should be instituted and litigated before the NGT; and such approach may be necessary to avoid the likelihood of conflict of orders between the High Courts and the NGT. The Supreme Court directed that all the matters instituted,

---

[11] (1998) 8 SCC 1
[12] (2012) 8 SCC 326

after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act, shall stand transferred and can be instituted only before the NGT as this would help in rendering expeditious and specialised justice in the field of environment to all concerned.

In **Adarsh Co-operative Housing Society Limited v. Union of India**[13], the Supreme Court, by an interim order dated 10.3.2014, stayed the operation of paragraphs 40 and 41 of its earlier decision in **Bhopal Gas Peedith Mahila Udyog Sangathan**[12]. However, the appeal was withdrawn on 11.8.2014. (**Vellore Citizens Welfare Forums v. Union of India**[14]).

It is no doubt true that the Supreme Court, in **Bhopal Gas Peedith Mahila Udyog Sangathan**[12], has held that, in all matters falling with its ambit, it is only the jurisdiction of the NGT which can be invoked; and the petitioners should not be permitted to invoke the jurisdiction of the High Court under Article 226 of the Constitution. The fact, however, remains that the power of judicial review, conferred on the High Court under Articles 226 and 227 of the Constitution of India, is part of the basic structure of the Constitution (**L. Chandra Kumar**[3]), and such a power cannot, therefore, be negated or circumscribed or obliterated even by a constitutional amendment made in exercise of the powers conferred under Article 368 of the Constitution, far less by Legislation – plenary or subordinate.

The judgment in **"Bhopal Gas Peedith Mahila Udyog Sangathan**[12]" can, therefore, only be understood as requiring any

---

[13] (Order in SLP (Civil) No.27327/2013 dated 10.03.2014)
[14] (2016) SCC online 1881 (Madras HC)

person, aggrieved by the order passed by the NGT, ordinarily to invoke the appellate remedy under Section 22 of the 2010 Act and for the High Court, while exercising its extra-ordinary jurisdiction under Article 226 of the Constitution, to bear in mind the existence of such an alternate remedy while deciding whether or not to exercise discretion under Article 226 of the Constitution of India to entertain the Writ Petition. The observations in the aforesaid judgment cannot be understood as the statutory provisions of the 2010 Act barring exercise of jurisdiction under Article 226 of the Constitution of India, as that would fall foul of the seven judge bench judgment of the Supreme Court in **L. Chandra Kumar**[3].

As the seven judge bench judgment in **L. Chandra Kumar**[3] was not noticed by the three judge bench of the Supreme Court in **Bhopal Gas Peedith Mahila Udyog Sangathan**[12], the High Court would be bound by the law declared by the Larger Bench of the Supreme Court in **L. Chandra Kumar**[3]. We must, therefore, express our inability to concur with the submission of Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the first respondent-applicant, that the petitioner should be relegated to avail the alternate statutory remedy under Section 22 of the 2010 Act as the petitioner has questioned the very jurisdiction of the NGT to entertain the O.A filed by the first respondent-applicant.

III. IS O.A. NO.372 OF 2017, FILED BEFORE THE NGT, BEYOND THE PERIOD SPECIFIED IN SECTION 14(3) OF THE 2010 ACT?

Learned Advocate-General for the State of Telangana would submit that the jurisdiction of the NGT, established under Section 3 of the 2010 Act, is circumscribed by the provisions of the said

Act; Section 14(3) prohibits the NGT from entertaining an original application made beyond the period of six months from the date on which the cause of action for such dispute first arose; even under the proviso to Section 14(3), the NGT is empowered to entertain an application only within a further period not exceeding sixty days, that too only after recording its satisfaction that the applicant was prevented by sufficient cause from filing the application within the period of six months; as the NGT is entitled to rule on its jurisdiction to entertain an original application, the petitioner had raised these contentions which the NGT did not even examine; the first respondent-applicant had contended before the NGT that there was a recurring cause of action in the light of the illegal construction; the only date mentioned in the O.A, to contend that it was filed within limitation, is that the pictures of the construction work, occurring as of February, 2017, were being annexed; in their reply to the O.A, the petitioner had specifically pleaded that the O.A was filed more than seven years after the date on which the cause of action first arose; though this contention related to its jurisdiction to hear and decide the O.A, it was not even examined by the NGT; even without examining the petitioner's contention, that the O.A. could not be entertained as it was filed beyond the time limit specified in Section 14(3) of the 2010 Act, the NGT had passed the impugned interim order; the contention that the petitioner had sought to project the earlier Dr. B.R. Ambedkar Pranahita-Chevella Sujala Sravanthi Project as the Kaleshwaram Lift Irrigation Scheme project is not tenable; the first respondent-applicant was, himself, aware, in the year 2016 itself, of the existence of the Kaleshwaram Lift Irrigation Scheme project; it is

evident, from the Writ Petitions filed by him earlier before this Court, that the cause of action first arose several years ago; in any event, the question whether the information furnished by the petitioner is incorrect or not are again matters which the NGT should have examined; and, in the absence of any such finding having been recorded by the NGT, the first respondent-applicant cannot be heard to contend that the averments in the reply-affidavit, filed by the petitioner before the NGT, is incorrect.

On the other hand Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the first respondent-applicant, would submit that, since Section 19(1) and (2) of the 2010 Act excludes application of the provisions of CPC, the strict rules of pleadings prescribed therein would not apply; since the plea of ouster of jurisdiction of the NGT was urged by the petitioner herein, the initial burden was on them to show when the cause of action first arose, and whether that was beyond the period prescribed under Section 14(3) of the NGT Act; the petitioner has not disclosed particulars of when the project was conceived and when its construction had commenced; the contention of the petitioner that the project commenced in 2007-08 is not tenable; the project, which commenced in 2007-08, was not the Kaleshwaram Lift Irrigation Scheme; since the petitioner has not approached the NGT with clean hands, it cannot be heard to contend that the NGT had failed to examine their plea of limitation; this Court should, therefore, refrain from exercising its discretion to entertain this Writ Petition; the first respondent-applicant has dealt with the petitioner's contention, regarding limitation, in the rejoinder filed by them before the NGT; he has stated therein that

various activities were taken up by the State in succession, and it was not possible to identify a particular day as the date on which the cause of action first arose; even otherwise, the NGT has indirectly considered the contention regarding the date of commencement of the project; it has recorded its finding that the Kaleshwaram Lift Irrigation Scheme project has not been fully conceptualized, and the application seeking environmental clearance was filed only in January, 2017; even if January, 2017 is taken to be the date on which the cause of action first arose, O.A.No.372 of 2017 was filed on 26.05.2017 within six months therefrom; and since the NGT has noticed that there is no bar of limitation, interference by this Court would not be justified. Learned Senior Counsel would rely upon the order of the NGT in **The Forward Foundation v. State of Karanataka**[15].

Chapter III of the 2010 Act relates to the Jurisdiction, Powers and Proceedings of the Tribunal (NGT). Section 14(1) stipulates that the NGT shall have jurisdiction over all civil cases where a substantial question relating to the environment, (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I. Among the enactments, referred to in Schedule I to the 2010 Act, include the Forest Conservation Act, 1980 and the Environmental Protection Act, 1986. Section 14(3) of the 2010 Act stipulates that no application, for adjudication of a dispute under Section 14, shall be entertained by the NGT unless it is made within a period of six months from the date on which the cause of action for such dispute first arose.

---

[15] (Judgment in O.A.No.222 of 2014 dated 07.05.2015)

The proviso thereto enables the NGT, if it is satisfied that the applicant was prevented by sufficient cause, from filing the application within the said period, to allow it to be filed within a further period not exceeding sixty days. The expression used in Section 14(3) is ***"six months from the date on which the cause of action for such dispute first arose"***. The prescribed period for filing the application i.e of six months, after which no application can be entertained by the NGT, is required to be computed from the date on which the cause of action for the dispute first arose. The proviso only enables the NGT to allow an application to be filed within a further period of upto sixty days, beyond the period of six months stipulated in Section 14(3), on its recording its satisfaction that the applicant was prevented by sufficient cause from filing the application within the six month period stipulated in Section 14(3). Section 14(3) of the 2010 Act begins with the words ***"no application for adjudication of disputes under Section 14 shall be entertained by the Tribunal***". It is evident therefore that, unless the application was made before it within six months from the date on which the cause of action for such dispute first arose, the NGT is barred even from entertaining the application, much less adjudicating the questions raised therein.

In **Windsor Realty Pvt. Ltd**.[7], a Division bench of the Bombay High Court held that Section 14 of the NGT Act cannot be so interpreted that it would arise from the date of knowledge of the original applicant of the alleged violation taking place, or from the date on which the Environmental Authorities were informed about the violation and the inaction on their part; the concept of continuous cause of action cannot apply to complaints filed before

the NGT because, had it been so, the legislature would not have stated that the limitation would be six months from the date on which the cause of action for such dispute first arose; and if the cause of action is held to arise from the date of the applicant's knowledge about the alleged violation, or from the date on which Environmental Authorities did not take action after the violation was brought to their notice, a complaint can be filed by the aggrieved person at any point of time, claiming that he came to know about the violation after 10 or 20 years.

The question which the NGT was required to examine was whether the application, filed by the first respondent-applicant, was within six months from the date on which the cause of action first arose. In para 21 of the O.A filed by him before the NGT, the first respondent-applicant has referred to the issue of limitation. Para 21 of the application reads as under:

> "This application has been filed with regard to illegal commencement of work on the KLIS. There is recurring cause of action as there is illegal construction ongoing on forest as well as non-forest land. Pictures of construction work occurring as of February, 2017 are annexed as Annexure A/9 above. The Applicant is also praying for restoration of the environment under the provisions of Section 15 of the National Green Tribunal Act, 2010. Thus, the present Application has been filed within the limitation period, in accordance with Sections 14 and 15 of the National Green Tribunal Act, 2010."

All that has been stated by the 1st respondent-applicant, in the afore-extracted paragraph, is that there was a recurring cause of action as there was illegal construction going on in the forests as well as in forest land. While the 1st respondent-applicant stated that he had annexed pictures of the construction work, occurring in February, 2017, the NGT was required to ascertain the date on which the cause of action for filing the O.A first arose, and then consider whether the O.A had been filed within six months thereof,

since its jurisdiction, to entertain an application under Section 14(1) of the 2010 Act, could have been exercised only if the application was filed within the period stipulated in Section 14(3) of the 2010 Act and its proviso.

In their affidavit dated 08.08.2017, filed in reply to the application in O.A. No.372 of 2017, the petitioners herein stated that the first respondent-applicant had filed five Writ Petitions i.e., W.P. No.26716 of 2016 on 08.08.2016, W.P. No.35176 of 2016 on 18.10.2016, W.P. No.35577 of 2016 on 20.10.2016, W.P. No.37536 of 2016 on 01.11.2016, and W.P. No.10897 of 2017 on 23.03.2017; the O.A. was time barred by more than nine years after the project commenced in 2008; the applicant was a resident of Siddipet, a region covered by the project, and was well aware of the project since its inception; he had yet chosen to remain silent for many years; the limitation prescribed, for seeking relief under Section 14 of the 2010 Act, was six months (extendable to a maximum period of eight months on providing sufficient cause); the applicant had neither pleaded nor proved sufficient cause; the period of limitation starts from when the cause of action first arose, i.e when the project was launched in 2008, or when the work commenced in 2008; environment clearance and forest clearance applications were filed on 05.09.2007 and 10.11.2014 respectively; and the applicant had failed to approach the NGT for more than seven years after the NGT was constituted in 2010.

In his rejoinder dated 28.08.2017, the first respondent-applicant stated that the petitioner had mis-stated facts to the effect that the construction of KLIS had commenced in 2008; the KLIS project was conceived only in 2014; the erstwhile project was

named Dr. B.R. Ambedkar Pranahita Chevella Lift Irrigation Scheme for which a separate EC application, separate forest clearance application, separate budget allocation, separate tenders, and separate DPR was provided; this project is a separate project, independent of KLIS, which constitutes a separate cause of action; the petitioner was seeking to confuse, misdirect and mislead the NGT; the petitioner had failed to furnish information regarding KLIS, and had deliberately submitted information regarding a totally different project, only to mislead the NGT; the cause of action arose only in January, 2017 when illegal construction of KLIS commenced; the application for environmental clearance itself was made on 23.12.2016, and the said Form I was accepted on 06.01.2017 as seen in Annexure A6 to the OA; tenders, seeking EIA consultants, to conduct EIA studies, were floated only on 30.04.2017; and therefore the application, as filed, was within limitation.

In the affidavit filed by the Chief Engineer of the Kaleswaram Project, before the NGT on 01.10.2017, it is stated that the Kaleswaram Project is the successor of the earlier Dr. B.R. Ambedkar Pranahita-Chevella Sujala Sravanthi Project which was conceptualized with seven links; due to inter-state issues, Link – I was realigned besides other changes such as enhancement of storage capacities of the reservoirs as per the advice of the Central Water Commission; the Project was rechristened as the Kaleswaram Project; it has been known to the public from the very beginning ever since its conceptualization in the year 2007, and its implementation by execution of agreements for works; the work commenced, on various parts of the project, between 2007-2009;

the applicant would certainly have knowledge of the project since 2011 when an environmental public hearing was held in his District; he would also have had knowledge of the Project and its nature in 2016, when he filed four Writ Petitions seeking stay on construction of the project; in W.P. No.26717 of 2016 filed by him, the first respondent-applicant himself refers to the project as the Kaleswaram project; and as there is a clear reference to the Kaleswaram project, and to the Dr. B.R. Ambedkar Pranahita Chevella Sujala Sravanthi Project, for the same infrastructure, the applicant is aware of the project.

In its reasoned order the Principal Bench of the NGT has held that the Irrigation and Command Area Department of the State of Telangana had, after filing the application for grant of forest clearance, submitted an application on 14.06.2017 modifying the design of the project where substantial changes had been brought about; this development showed that the project was still not fully finalized; the State of Telangana was examining the feasibility of the project, depending upon the objections raised by the stakeholders; the minutes of the high powered committee meeting, held between the State of Maharashtra and the State of Telangana, highlighted that a large number of villages would face the threat of submergence within the State of Maharashtra; this also showed that the project was not fully finalized; due to change of alignment in barrages 1 to 5 of the project, and the extent of forest land involved on account of objections from the State of Maharashtra, the petitioner had withdrawn the first clearance application, and had submitted a fresh forest clearance application on 13.02.2017 to comprehensively account for the final design of

the Kaleswaram project; this letter dated 13.02.2017 showed that 3221.2974 hectares of forest land was involved; the Forest Advisory Committee, in its meeting held in the month of February-July, 2017, had taken note of these factual aspects; even by the end of February, 2017, the State of Telangana had not finalized the project and had, in fact, withdrawn its application for Forest Clearance; and this would mean that the State of Telangana had to obtain Forest clearance before the project activity was commenced.

While the aforesaid findings of the NGT no doubt show that the project has not been fully finalized, the NGT was required to ascertain the date on which the cause of action for filing the O.A first arose, and then examine whether the O.A had been filed within six months from that date. While this contention, of the O.A having been filed beyond the period prescribed in Section 14(3) and its proviso, was specifically urged by the petitioner herein, in their affidavit filed in reply to the O.A, the NGT has not even noted this contention let alone examine it.

Sri Vedula Venkataramana, Learned Senior Counsel, initially contended that it is only if the Learned Senior Counsel appearing on behalf of the petitioner had put forth this contention during the course of hearing before the NGT, would the NGT be obligated to consider it, and not otherwise. In the affidavit dated 24.10.2017, filed before this Court by the Chief Engineer of the Kaleswaram Project, it is stated that the two preliminary objections that were pleaded in the reply to the O.A. had been argued by their Counsel; with reference to jurisdiction, arguments were advanced on 06.09.2017; and, with reference to limitation, extensive arguments were advanced on 03.10.2017 and 05.10.2017. In the counter

filed thereto before this Court on 26.10.2017, the first respondent-applicant has admitted, in paragraph six thereof, that the petitioner's contention regarding lack of territorial jurisdiction, and the application being barred by limitation, was extensively heard by the NGT. The first respondent-applicant would, however, justify non-consideration of these contentions by the NGT, contending that the O.A. was still pending before the NGT and was listed on 30.10.2017; and these arguments could be agitated before the NGT itself.

A Tribunal, which is a creature of a statute, has only the powers expressly conferred on it, or resulting directly from powers so conferred. Acting otherwise goes to the very existence of the power. This lack of jurisdiction may relate to the subject-matter, the territory or the person. (**Immeubles Port Louis Itee v. Lafontaine (Village)**[16]). Statutory tribunals, set up under an Act of legislature, are creatures of the Statute, (**R.K.Jain v. Union of India**[17]), and should be guided by the conditions stipulated in the statutory provisions while exercising powers expressly conferred or those incidental thereto. (**The Commissioner of Central Excise, Guntur Commisionerate, Guntur v. M/s. Sri Chaitanya Educational Committee, Poranki, Vijayawada, represented by its Managing Director**[18]). Statutory tribunals, created by an Act of Parliament, have limited jurisdiction and must function within the four-corners of the Statute which created them. (**O.P. Gupta v. Rattan Singh**[19]). It is not open to the Tribunal to travel beyond the provisions of the statute. (**D. Ramakrishna Reddy v. Addl.**

---

[16] (1991) 1 SCR 326, 1991 CanLII 82 (SCC)
[17] (1993) 4 SCC 119
[18] (Judgment of A.P. High Court Division Bench in CEA No.301 of 2010 dated 19.01.2011)
[19] (1964) 1 SCR 259

Revenue Divisional Officers[20]). Since these tribunals are required to function in accordance with the provisions of the Act, the restriction placed on the exercise of their jurisdiction, by the provisions of the Act, cannot be said to interfere with their quasi judicial functions under the Act. (**M/s.Tirupati Chemicals, Vijayawada v. Deputy Commercial Tax Officer, Vijayawada**[21]).

The NGT is a creature of a statute, and must exercise its powers and jurisdiction strictly in accordance with the provisions of the 2010 Act under which it was created, and not beyond. It is only if it is entitled to entertain the O.A, could the NGT have considered the application for grant of interim relief. Before passing an interim order, the NGT should have atleast recorded its, *prima facie,* satisfaction of the O.A having been filed within the period specified in Section 14(3) of the 2010 Act, and should have assigned reasons therefor.

It is no doubt true that Section 19(1) of the 2010 Act stipulates that the NGT shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. Section 19(2) provides that, subject to the provisions of the 2010 Act, the NGT shall have the power to regulate its own procedure. Section 19(3) stipulates that the NGT shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872. Section 19(4) provides that, for the purpose of discharging its functions under the 2010 Act, the NGT shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a Suit in respect of

---

[20] (2000) 7 SCC 12
[21] Common Order in W.P.Nos.1582 and 2119 of 2010 dated 25.11.2010

the matters enumerated in clause (a) to (k) thereunder which, primarily, relate to summoning and enforcing the attendance of witnesses, discovery and production of documents, and passing of an interim order etc.

All that Section 19(1) of 2010 Act stipulates is that the NGT would not be fettered by the procedural rules laid down under the Code of Civil Procedure. It does not bar the NGT from following the procedure prescribed, or similar to that laid down, in the Code of Civil Procedure. Section 19(1) of the 2010 Act also requires the NGT to be guided by principles of natural justice. The NGT was obligated therefore, in compliance with the rules of natural justice, to assign reasons for exercising its jurisdiction to entertain the O.A. and to grant interim relief, more so when its jurisdiction to entertain the O.A. has been questioned on grounds that the O.A. was filed beyond the period stipulated in Section 14(3) of the 2010 Act and its proviso, and the entire cause of action arose beyond its territorial limits.

The decisions of Tribunals are subject to the supervisory powers of the High Court under Article 227 of the Constitution, and the High Court would be placed under a great disadvantage if no reasons are given. (**S.N. Mukherjee v. Union of India**[22]; **Bhagat Raja v. Union of India**[23]). A tribunal, which exercises judicial or quasi-judicial powers, should indicate its mind as to why it acts in a particular way and, when important rights of parties of far-reaching consequence to them are adjudicated upon in a summary fashion, the least that can be expected is that the

---

[22] (1990) 4 SCC 594
[23] AIR 1967 SC 1606

Tribunal should tell the party why the decision is going against him in all cases where the law gives a further right of appeal. (**S.N. Mukherjee**[22]; **Bhagat Raja**[23]).

The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness. It gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal. (**S.N. Mukherjee**[22]; **Madhya Pradesh Industries Ltd. v. Union of India**[24]). Let alone assigning reasons for entertaining the O.A, the NGT has not even dealt with the petitioner's contention that it lacked jurisdiction to entertain the O.A.

The period prescribed for filing an O.A, under Section 14(3) of 2010 Act, is six months from the date on which the cause of action for such dispute first arose. The expression "cause of action" has not been defined either in the Code of Civil Procedure, 1908 or in the 2010 Act. Cause of action gives occasion for, and forms the foundation of, the application. For every action, there has to be a cause of action. If there is no cause of action, the petition has to be dismissed. (**Alchemist Ltd. v. State Bank of Sikkim**[25]). "Cause of action" means every fact which it would be necessary for the applicant to prove, if traversed, in order to support his right to the judgment of the Court/Tribunal. (**Cooke v.**

---

[24] AIR 1966 SC 671
[25] (2007) 11 SCC 335

Gill[26]; **Alchemist Ltd**[25]). In other words, it is a bundle of facts which, taken with the law applicable to them, gives the applicant a right to relief against the respondent. Failure to prove such facts would give the respondent a right to judgment in his favour. It must also include some act done by the respondent since, in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the applicant to prove to enable him to obtain an order. Everything which, if not proved, would give the respondent a right to immediate judgment is a part of the cause of action. But it has no relation to the defence which may be set up by the respondent nor does it depend upon the character of the relief prayed for by the applicant. (**A.B.C. Laminart (P) Ltd. v. A.P. Agencies**[27]; **Alchemist Ltd**[25]).

For the purpose of deciding whether the facts averred by the applicant would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. (**Alchemist Ltd**[25]). The Court/Tribunal must take all the facts pleaded in support of the cause of action into consideration, albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. (**Union of India v. Adani Exports Ltd**[28]; **Oil and Natural Gas Commission v. Utpal Kumar Basu**[29]).

---

[26] (1873) 8 CP 107 = 42 LJCP 98
[27] (1989) 2 SCC 163 = AIR 1989 SC 1239
[28] (2002) 1 SCC 567
[29] (1994) 4 SCC 711

In order to confer jurisdiction on it to entertain an application, the Tribunal must be satisfied, from the entire facts pleaded in support of the cause of action, that those facts do constitute a cause so as to empower it to decide a dispute. Each and every fact pleaded in the application does not ipso-facto lead to the conclusion that those facts give rise to a cause of action unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing on the lis, or the dispute involved in the case, do not give rise to a cause of action. (**Adani Exports Ltd**[28]).

In **The Forward Foundation**[15] the NGT, Principal Bench, New Delhi held that the expression 'cause of action', as normally understood in civil jurisprudence, had to be examined with some distinction, while construing it in relation to the provisions of the NGT Act; such 'cause of action' should essentially have a nexus with the matters relating to environment; it should raise a substantial question relating to the implementation of the statutes specified in Schedule I of the NGT Act; a 'cause of action' might arise during the chain of events, in establishing a project, but would not be construed as a 'cause of action' under the provisions of Section 14 of the 2010 Act unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute; furthermore, the 'cause of action' has to be complete; for a dispute to culminate into a cause of action, actionable under Section 14 of the 2010 Act, it has to be a 'composite cause of action' meaning that it must combine all the ingredients spelt out in Section 14(1) and (2) of the NGT Act, 2010; it must satisfy all the legal requirements; action before the NGT must be taken within the

prescribed period of limitation, triggering from the date when all such ingredients are satisfied along with other legal requirements; and accrual of 'cause of action' should be considered as to when it first arose.

The NGT, Principal Bench, New Delhi further held that the expressions 'when right to sue first arose' or 'cause of action first arose' connote the date when the right to sue first accrued, although the cause of action may have arisen even on the subsequent occasions; where the legislature specifically requires the action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would, by necessary implication, exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far as it relates to the same wrong or breach, and necessarily not a recurring cause of action; recurring cause of action would not stand excluded by the expression 'cause of action first arose'; and, in some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus not inviting the implicit consequences of the expression 'cause of action first arose'.

The NGT was required, in the first instance, to ascertain the cause of action for the dispute, then determine the date on which such cause of action first arose, and thereafter consider whether the said date fell within the period stipulated in Section 14(3) of the 2010 Act and its proviso. As these are all matters which the NGT should have examined in the first instance, it would be wholly inappropriate for us, in proceedings under Article 226 of the Constitution of India, to take upon ourselves the task of examining

whether or not the O.A. was filed within the period stipulated in Section 14(3) of the Act and its proviso.

As it is the first respondent-applicant which had invoked the jurisdiction of the NGT, the initial burden was on them to show when the cause of action for the dispute first arose, and this onus cannot be shifted to the respondent in the O.A. (the petitioner herein) for, failure of the first respondent-applicant to establish that the cause of action for the dispute raised in the O.A. first arose within the period stipulated in Section 14(3) of the 2010 Act and its proviso, would give the respondent in the O.A (the petitioner herein) the right to immediate judgment of dismissal of the O.A.

The other contention that the petitioner had not disclosed details, of when the project was conceived and when construction commenced, and they had approached the NGT with unclean hands, are again matters for the NGT, and not for this Court, to consider. We also see no reason to examine whether the first respondent-applicant's plea, of a recurring cause of action, (without specifying the date on which the cause of action first arose), in para 21 of the O.A, relating to limitation, would suffice as the petitioner's complaint, in this Writ Petition, is mainly regarding the failure of the NGT to examine this question and to record its finding, even *prima facie,* that the O.A filed before the NGT was within the period prescribed in Section 14(3) of the 2010 Act and its proviso. It is only if the O.A. is held to have been filed within the period stipulated in Section 14(3) and its proviso, could it have been entertained by the NGT. Adjudication of this question is a precondition for exercise of jurisdiction by the NGT to grant interim

relief, as it is only if the O.A is held to have been filed within the period specified in Section 14(3) and its proviso would the NGT have jurisdiction, under Section 14(1) of the 2010 Act, to entertain the O.A, and decide the questions relating to the environment raised therein. Failure of the NGT, to examine this question, is fatal, and would suffice to set aside the interim order passed by it on 05.10.2017.

IV. DOES THE PRINCIPAL BENCH OF THE NGT AT NEW DELHI LACK TERRITORIAL JURISDICTION TO ENTERTAIN THE APPLICATION?

Learned Advocate-General for the State of Telangana would submit that the territorial jurisdiction of different Benches of the NGT has been stipulated in the notification issued by the Ministry of Environment and Forests, Government of India dated 17.08.2011; the Kaleshwaram Lift Irrigation Scheme project is an irrigation-cum-drinking water project within the State of Telangana; it is the Southern Bench of the NGT at Chennai which has territorial jurisdiction; even if the fact, that a few villages in the State of Maharashtra would suffer submergence because of the project, is taken into consideration, it would be the Western Bench of the NGT at Pune within whose territorial jurisdiction a part of the cause of action can be said to arise; and since the Southern Bench of the NGT at Chennai is functioning, and is even now hearing cases relating to the petitioner itself, the first respondent-applicant could not have filed the O.A. before the Principal Bench of the NGT at New Delhi as it lacked territorial jurisdiction to entertain the O.A.

On the other hand Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the first respondent-

applicant, would submit that Section 4(3) of the 2010 Act uses the expression ***"ordinary place or places of sitting of the Tribunal" and "territorial jurisdiction"***; the use of the word "***ordinary***" would not disable other Zonal Benches to entertain an environmental dispute; it cannot be said that there is any jurisdictional defect or that the Principal Bench of the NGT at New Delhi suffered from inherent lack of jurisdiction; the O.A was, in fact, filed and listed before the Principal Bench headed by the Chairman; since the Chairman does not hear matters, where the Learned Senior Counsel appearing on behalf of the petitioner before the NGT appears, the O.A was transferred to another Bench at New Delhi; since the Chairman has the power to transfer the O.A to any Bench of his choice, it is evident that the Principal Bench at New Delhi, which heard the matter, had territorial jurisdiction to entertain the O.A; the NGT has only directed the petitioner to adhere to the law, and not to violate it; any interference with the order of the NGT would only result in enabling the petitioner to violate environmental laws and the forest conservation laws; as the impugned order acts as a restraint on the petitioner violating the law, a Writ Court would not countenance any argument to the contrary; and setting aside such an order would only embolden the petitioner-State Government to violate the law with impunity.

Chapter-II of the 2010 Act relates to establishment of the Tribunal and Section 3 confers power on the Central Government, by notification, to establish, with effect from such date as may be specified therein, a Tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under the 2010 Act. The Central

Government, by notification in S.O.No.2570(E) dated 18.10.2010, established the NGT with effect from 18.10.2010. Section 4(3) of the 2010 Act enables the Central Government, by notification, to specify the ordinary place or places of sitting of the Tribunal, and the territorial jurisdiction falling under each such place of sitting. Section 4(4) enables the Central Government, in consultation with the Chairperson of the Tribunal, to make rules regulating, generally, the practices and procedure of the Tribunal including those enumerated in clauses (a) to (d) thereunder. Section 4(4)(d) enables rules, relating to transfer of cases by the Chairperson from one place of sitting (including the ordinary place of sitting) to the other place of sitting, to be made.

Rule 3(1) of the 2011 Rules enables the Chairperson to constitute a Bench of two or more members consisting of atleast one Judicial Member and one Expert Member. Rule 3(2) confers power on the Chairperson to decide upon the distribution of the business of the Tribunal amongst the members of the Tribunal sitting at different places by order, and to specify matters which may be dealt with by each such bench sitting in accordance with the provisions of clause (d) of Section 4(4) of the Act. Rule 4 enables the Chairperson, by general or special order, to decide the cases or class of cases for which circuit procedure may be adopted by the Tribunal under clause (b) of Section 4(4) of the Act, and to delegate such powers to a Judicial Member as he may deem fit. Rule 6 stipulates that, if at any time the Judicial Member of the Tribunal is satisfied that circumstances exist, which render it necessary to have its sitting at any place other than the place at which it ordinarily sits, falling within his territorial jurisdiction, he

may, with the previous approval of the Chairperson, direct that the sitting shall be held at any such appropriate place. Rule 11 stipulates that an application or appeal, as the case may be, shall ordinarily be filed by an applicant or appellant, as the case may be, with the Registrar of the Tribunal at its ordinary place of sitting falling within the jurisdiction, the cause of action, wholly or in part, has arisen.

As noted hereinabove, Section 4(3) enables the Central Government, by notification, to specify the ordinary place or places of sitting of the Tribunal, and the territorial jurisdiction falling under each such place of sitting. In exercise of its powers under Section 4(3) of the 2010 Act, the Government of India published, the notification, in S.O.No.1908(E) dated 17.08.2011, in the Gazette of India dated 17.08.2011. By the Notification, in S.O.1908(E) dated 17.08.2011, the Central Government specified the following ordinary places of sitting of the National Green Tribunal which shall exercise jurisdiction in the area indicated against each:-

Serial Number	Zone	Place of sitting	Territorial Jurisdiction
1.	Northern	Delhi (Principal place)	Uttar Pradesh, Uttarakhand, Punjab, Haryana, Himachal Pradesh, Jammu and Kashmir, National Capital Territory of Delhi and Union Territory of Chandigarh.
2.	Western	Pune	Maharashtra, Gujarat, Goa with Union Territories of Daman and Diu and Dadra and Nagar Haveli.

3.	Central	Bhopal	Madhya Pradesh, Rajasthan and Chhattisgarh.
4.	Southern	Chennai	Kerala, Tamil Nadu, Andhra Pradesh, Karnataka, Union Territories of Pondicherry and Lakshadweep.
5.	Eastern	Kolkata	West Bengal, Orissa, Bihar, Jharkhand, seven sister States of North-Eastern region, Sikkim, Andaman and Nicobar Islands.

Provided that till the Benches of the National Greens Tribunal become functional at Bhopal, Pune, Kolkata and Chennai, the aggrieved persons may file petitions before the National Green Tribunal at Delhi and till such time the notification No.S.O.1003(E) dated the 5th May, 2011 in the Ministry of Environment and Forests, shall continue to be operative.

As the State of Andhra Pradesh was bifurcated by the A.P. Re-organisation Act, 2014, into the States of Telangana and the residuary State of Andhra Pradesh, it is the Southern Zonal Bench of the NGT at Chennai before which an application could have been filed under Section 14(1) of the 2010 Act r/w. Rule 11 of the 2011 Rules if the cause of action had arisen entirely within the territorial limits of the State of Telangana. The proviso, to the aforesaid Notification, enables an aggrieved person to file an application before the NGT at New Delhi till the NGT Benches become functional, among others, at Pune and Chennai. It is only till the benches of the NGT at Pune and Chennai became functional, could an application have been filed before the NGT at New Delhi.

The submission of the Learned Advocate-General, for the State of Telangana, is that both the Western Zonal bench at Pune, and the Southern Zonal bench at Chennai, are functioning; consequently, the first respondent-applicant could not have filed an application before the NGT at New Delhi; and it only if he had submitted such an application, either at NGT Zonal bench at Chennai, or at Pune where a part of the cause of action arose, could such an application have been entertained by the Registrar of these benches of the NGT.

In **Wilfred J. v. Ministry of Environment & Forests**[30], reliance on which is placed on behalf of the first respondent-applicant, the Principal Bench of the NGT held that the word 'ordinarily' means 'in the large majority of cases' but not invariably; this itself emphasizes that there is an element of discretion vested in the Tribunal in relation to the institution of cases; where the interest of justice may so demand, cases can be permitted to be instituted in either of the ordinary place of sitting of two Benches, in whose jurisdiction the cause of action has partly arisen; in the case on hand, a part of the cause of action had arisen at New Delhi, and within the area that falls under the territorial jurisdiction of the Principal Bench of the NGT; thus, the Principal Bench had territorial jurisdiction to entertain and decide the present cases; on a cumulative reading and true construction of Section 4 (4) of the NGT Act and Rules 3 to 6 and Rule 11 of the 2011 Rules the Chairperson of the NGT had the power and authority to transfer cases from one ordinary place of sitting to another place of sitting or even to places other than that; the

---

[30] 2014 SCC OnLine NGT 6860

Chairperson of NGT had the power to decide the distribution of business of the Tribunal among the members of the Tribunal, including adoption of circuit procedure in accordance with the Rules; an applicant should, ordinarily, file an application or appeal at the ordinary place of sitting of a Bench within whose jurisdiction the cause of action, wholly or in part, has arisen; and Rule 11 has an inbuilt element of an exception.

In **Nirma Limited v. Ministry of Environment and Forest**[31], on which also reliance is placed on behalf of the first respondent-applicant, the Principal Bench of the NGT, following its earlier larger Bench judgment in **Wilfred J**.[30], held that the power to transfer cases to a bench is exclusively vested with the Chairperson; the impugned order was passed to transfer cases under the jurisdiction of Western Zonal Bench of NGT in compliance with other orders; and a case which was directed to be heard by the Principal Bench, by the Chairperson, would continue to be heard by the Principal Bench.

Even if the Chairman of the NGT is presumed to have the power, under Rules 3 and 4 of the 2011 Rules, to transfer cases from one Zonal bench to another, it is doubtful whether that, by itself, would justify the first respondent-applicant filing an application before the Principal Bench of the NGT at New Delhi if no part of cause of action is held to have arisen within its territorial limits. It is only an application, filed at the ordinary place of sitting of the Zonal Bench, which could have been transferred by the Chairperson from one zonal bench to another. It

---

[31] (Judgment of the NGT, Principal Bench, New Delhi, in M.A.No.573 of 2014 in Appeal No.04 of 2012, dated 16.09.2014)

is not in dispute that the application, in O.A.No.372 of 2017, was filed before the Principal Bench at Delhi, and not either at the Southern Zonal Bench at Chennai or the Western Zonal Bench at Pune. It is only if the Principal Bench of the NGT at New Delhi is held to be the ordinary place of sitting for hearing the present O.A, could O.A.No.372 of 2017 have been entertained and heard by the Principal Bench.

The mere fact that matters in which the Learned Senior Counsel, appearing on behalf of the petitioner, appears are not listed before the Principal Bench headed by the Chairperson sitting at Delhi and were, therefore, listed before the other Principal Bench at Delhi, cannot be understood as an exercise of power by the Chairperson, under Rule 3(2) of the 2011 Rules, to transfer cases from one Bench to another. Even otherwise, it is not known whether any orders were passed by the Chairman of the NGT directing the Principal Bench of the NGT at New Delhi to entertain the present O.A.

Rule 6 of the 2011 Rules confers power on the Judicial Member of a bench of the NGT to hold sittings at any other place, provided the matter falls within its territorial jurisdiction. It is only if the cause of action is held to have arisen within the territorial limits of the Northern Zonal Bench of the NGT, could the Judicial Member, of the Principal Bench at New Delhi, have exercised his power under Rule 6 of the 2011 Rules to hold the sitting at a place other than the principal place i.e. New Delhi. As the territorial jurisdiction of the Northern Zonal Bench is confined to the six States in North India, the NCT of Delhi and the Union Territory of Chandigarh, it is only in relation to a dispute arising within the

territorial limits of the aforesaid States and Union Territories could the Judicial Member of the Principal Bench at New Delhi have chosen to hold sittings at a place other than his ordinary place of sitting i.e. New Delhi.

In the affidavit, in reply to the O.A filed by the first respondent-applicant, the petitioner herein specifically contended that the O.A should have been heard by a bench of the Southern Zone or the Western Zone of the NGT as the cause of action, to proceed against the "purported" illegal construction in the State of Telangana or Maharashtra, was beyond the boundaries of the territories over which the Principal Bench at New Delhi exercised jurisdiction. If that be so, the jurisdiction of the Judicial Member of the Northern Zonal Bench would not extend to his entertaining the O.A, if the cause of action had arisen substantially within the territorial limits of the Southern Zonal Bench of the NGT at Chennai, and partly within the territorial limits of the Western Zonal Bench of NGT at Pune. Despite the question of lack of territorial jurisdiction being urged and argued, the NGT failed to consider them. It is only if the NGT had examined these contentions, and had recorded its prima-facie finding that it has territorial jurisdiction to entertain the application, could it have, thereafter, considered the application for grant of interim relief. Since the objection to the jurisdiction of the NGT, to entertain the O.A, was taken at the first instance itself, failure of the NGT to decide this question of territorial jurisdiction, cannot result in denial of relief to the petitioner merely because the NGT has chosen to decide the application, for grant of interim relief, on its merits. If the order is of a Court/Tribunal having no jurisdiction, it

must be set aside. (**Adani Exports Ltd**[28]). Failure of the NGT to decide this preliminary objection, to its lack of territorial jurisdiction to entertain the O.A, would also necessitate the interim order of the NGT dated 05.10.2017 being set aside.

V. NATURE OF RELIEF TO BE GRANTED:

Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the first respondent-applicant, would submit that, even if this Court were to come to the conclusion that the NGT has failed to assign reasons for rejecting the petitioner's contention regarding limitation and lack of territorial jurisdiction, the requirement of assigning reasons forms part of the rules of natural justice; in cases where the order is held to be in violation of the rules of natural justice, this Court would merely remand the matter to the NGT to assign reasons without interfering with the order itself; and, consequently, this Court should permit the order of the NGT to remain, and remand the matter to the NGT directing it to assign reasons, for having entertained the application and in granting interim relief, within a specified time frame.

Learned Advocate-General for the State of Telangana would draw our attention to a sketch containing details of the project, to submit that environmental clearance is required only for irrigation projects, and not for drinking water projects; while the Kaleshwaram Lift Irrigation Scheme project has no doubt been conceived as both an irrigation and a drinking water project, the petitioner has not commenced construction of the distributaries and channels, (which alone would exclusively constitute the irrigation component of the project), awaiting environmental clearance; all the works, relating to the irrigation component of the

project, would be undertaken only after the petitioner obtains environmental clearance; unlike, for an irrigation project, environmental clearance is not required for a drinking water project; the works, presently being undertaken, can, in case environmental clearance for the irrigation project is not received, be used exclusively for a drinking water project; there is no justification for the NGT to restrain the petitioner from utilizing the project as a drinking water project, and to carry on its work in non-forest areas; the petitioner has obtained Stage-I forest clearance from the Union Government; till final forest clearance is obtained, no work would be undertaken in any forest area; and since there is an urgent and immediate need to provide drinking water to several parched districts of the State of Telangana, the interim order passed by the NGT, which restrains the State from discharging its duties in the larger public interest of providing drinking water to its people, should be set aside.

On the nature of relief to be granted, we must record our concern regarding certain incidents, referred to in the order of the NGT, which, if true, are indeed disturbing. In its reasoned order, the NGT has noted that the State of Telangana had admitted involvement of forest land in the project, and has held that, in view of Section 2 of the Forest (Conservation) Act, 1980, the project proponent cannot proceed with the project activity till forest clearance is obtained. The NGT has also noted that the contractor, involved in the project, was alleged to have cleared large extents of forest land, cutting trees indiscriminately, for construction of staff quarters for its employees, in prime forest area; and that reliance was placed by the first respondent-applicant on the letter of the

Forest Officer to substantiate the allegation that the contractor, executing the project, had felled a number of trees. Yet another incident, which the NGT has referred to in its reasoned order, is that the project proponent had blasted rocks and tunnels; during such activity several construction workers had died due to land slide, and collapse of the tunnel supporting structure, etc. The NGT has also noted that, while the State of Telangana had not disputed the incident, it was brushed aside as an accident beyond its control. It is for this among other reasons that the Principal Bench of the NGT, New Delhi had held that construction activity could only be undertaken after the project was properly evaluated, and environmental and forest clearances were obtained.

In **Vedire Venkata Reddy v. Union of India**[32], a Division Bench of this Court held that it is not permissible for the State Government to proceed ahead with the implementation of the project till all clearances are obtained; the action of the State Government in implementation of the project, without obtaining environmental clearance, as envisaged under the provisions of the Environment (Protection) Act, 1986, the rules framed thereunder and the notification, is illegal and arbitrary; and the State Government should not proceed ahead in implementation of the project, and should not undertake any construction work, whether preliminary or otherwise, till environmental clearance is obtained.

While the petitioner contends that environmental clearance is not required for construction of a drinking water project, they do not dispute that such permission is required for an irrigation project. Despite the assurance of the Learned Advocate-General

---

[32] AIR 2005 AP 155

for the State of Telangana that, till final forest clearance is obtained from the Government of India, the petitioner would not fell even a single tree within the limits of the reserve forest, we are of the view that specific directions should be issued to the Government of Telangana in this regard.

Till orders are passed afresh by the Principal Bench, NGT, and till Final forest clearance is obtained from the Government of India, the petitioner shall henceforth neither encroach upon any part of the reserve forest in connection with the project, nor shall even a single tree therein be felled for the purposes of the project, or for any ancillary activity connected therewith. The State of Telangana shall also not commence construction of distributaries and channels, or undertake ancillary works relating to the irrigation component of the project without obtaining environmental clearance from the Union of India. Works if any undertaken by, and on behalf of, the State of Telangana shall be confined strictly to the drinking water component of the project. Violation of the aforesaid directions can be brought both to the notice of this Court, and to the NGT, by the first respondent-applicant. It would be open to the Principal Bench, NGT, even before it rules on its jurisdiction to entertain the O.A, to take necessary action against the petitioner for such violations, if any brought to its notice, including directing them to stop all construction activity even in relation to the drinking water component of the project.

VI. CONCLUSION:

We are satisfied that failure of the Principal Bench, NGT, New Delhi to examine the jurisdictional issues raised by the

petitioner i.e that the O.A. was filed beyond the period prescribed in Section 14(3) of the 2010 Act and its proviso, and it lacked territorial jurisdiction to entertain the present O.A, is fatal, for it is only if the Principal Bench of the NGT, New Delhi has jurisdiction to entertain the O.A, could it have granted the interim relief sought for by the first respondent-applicant.

Subject to the aforesaid observations, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the Principal Bench, NGT, New Delhi, which shall consider the first respondent-applicant's request for grant of interim relief afresh, and in accordance with law. Miscellaneous Petitions, if any pending, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, ACJ

J. UMA DEVI, J.

Date: 08.11.2017.

Note:
L.R. copy to be marked.
B/O
MRKR/CS