

Digvijay Singh Vs. State and ors

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Court : Rajasthan Jodhpur

Decided On : Dec-16-2013

Appellant : Digvijay Singh

Respondent : State and ors

Judgement :

D.B.CIVIL WRIT PETITION No.2844/2011.

Alongwith Contempt Petition No.581/2013 // 1 // IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

ORDER

: D.B.CIVIL WRIT PETITION No.2844/2011.

DIGVIJAY SINGH versus STATE OF RAJASTHAN & ORS.D.B.CIVIL WRIT CONTEMPT PETITION NO.581/2013 DIGVIJAY SINGH versus SHRI BHANU PRAKASH YETURU & ORS.Date of Order :: 16th December 2013 HON'BLE Mr.JUSTICE DINESH MAHESHWARI HON'BLE Mr.JUSTICE V.K.MATHUR Mr.M.C.Bhoot, Senior Advocate with Mr.Arpit Bhoot], for the petitioner.

Mr.Digvijay Singh - petitioner present in person Mr.Anand Purohit, Senior Advocate & AAG with Mr.Pradhyumn Singh, Assistant to the AAG.

Mr.M.S.Singhvi, Senior Advocate with Mr.Manish Shishodia].Mr.Varun Singhvi].Mr.Hemant Dutt].Mr.Vinay Kothari].Mr.Amit Tatia].Mr.Falgun Buch for

Mr.V.K.Mathur].Dr.

Chetan Rajpurohit for Mr.Vikas Balia]., for the respondents.

<><><> BY THE COURT: (Per Dinesh Maheshwari,J.) This writ petition (CWP No.2844/2011).filed on 29.03.2011, has been entertained as a Public Interest Litigation (PIL) and a few orders have also been passed herein with reference to the cause stated by the petitioner.

However, now, the learned counsel for the respondents have made submissions that this matter is required to be transferred to the National Green Tribunal (NGT).and have referred to D.B.CIVIL WRIT PETITION No.2844/2011.

Alongwith Contempt Petition No.581/2013 // 2 // the provisions contained in the National Green Tribunal Act, 2010 (the NGT Act).and have also referred to the decision of the Honble Supreme Court in Bhopal Gas Peedith Mahila Udyog Sangathan & ORS.versus Union of India & Ors.: (2012) 8 SCC326 as also the order passed by a co-ordinate Bench of this Court on 01.10.2013 in a batch of petitions led by DB CWP No.8074/2010: M/s Laxmi Suiting versus State of Rajasthan & ORS.The prayer so made on behalf of the respondents has been resisted by the learned counsel appearing for the petitioner as also by the petitioner appearing in person.

After having heard the petitioner as also the learned counsel for the parties, on the question as to whether the matter is required to be transferred to the NGT established under Section 3 of the NGT Act; and having given anxious consideration to the rival submissions, we are clearly of the view that this matter is required to be transferred to the NGT following the decisions above-referred.

As the matter is proposed to be transferred to the NGT, dilatation on all the factual aspects does not appear necessary.

Only a brief reference to the background aspects, so far relevant, would suffice.

The petitioner has filed this PIL seeking orders of this Court against the alleged continuous discharge of toxic industrial effluent by the Textile (Dyeing/Printing)

industries in Barmer District which, according to the petitioner, has been causing permanent damage to the environment and ecology; and is posing serious health hazards for the inhabitants of D.B.CIVIL WRIT PETITION No.2844/2011.

Alongwith Contempt Petition No.581/2013 // 3 // Bithuja, Balotra and Jasol areas of Barmer District.

According to the petitioner, such effluent, though supposedly treated by the Common Effluent Treatment Plant (CETP).is yet not divested of all the toxic contents and retains its dangerous potential of environmental hazards.

The petitioner has also asserted that discharge of toxic effluent by the textile industries is substantially more than the capacity of a few CETPs installed.

With reference to the cause as stated, the petitioner has prayed for multiple reliefs including a declaration that the present CETPs be declared obsolete and either the textile industries be shut down permanently or be denied permission to function unless they install the necessary technology to deal with the issue of hazardous effluents.

The petitioner has also referred to several of the orders passed by this Court in the past in relation to the issues in question; and has also stated that the cause of action is continuous and recurring and snowballing with every passing moment.

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The petitioner has prayed,- (i) Declare that the Rawal Shri Mallinath J.Cattle Fair is a part of the cultural heritage of the local people, and deserves protection caused due to environmental damage; and (ii) The respondents may be called upon to state whether any precautionary assessment was done before permitting the use of arid lands in Balotra, Bithuja and Jasol for Textile Industry; and if not done, the State may be directed to do so forthwith, and until that time a moratorium be imposed so as to prevent further environmental damage; (iii) After taking stock of the damage caused to the environment, to the extent the contentions in this petition about environmental and ecological damage are confirmed, it may be declared that the respondents have utterly failed in discharge of their duties, and

such reparations, restitution and compensation may be ordered as deemed fit;
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Alongwith Contempt Petition No.581/2013 // 4 // (iv) Only such Industrial activity in the region may be permitted which does not cause environmental harm and is sustainable; any activity which fails the muster of the settled principles may be proscribed forthwith; (v) The state may be directed to immediately start the process of distributing the compensation amount to the affected person for the loss and damage of land and crop as computed and quantified by the National Productivity Council for the last 15 years. A further study may be conducted to assess the loss and damage to the land and crop of additional 15 years as the industry is running for last 3 decades.

Further assessment must be made to the future value of the crop and land and the loss incurred on it, by a body of experts who should be paid by the State, RIICO and Pollution Control Board.

(vi) The State may be directed to immediately take up and assign the study to a body of independent experts who should directly report to this Hon'ble Court for assessing the damage and loss caused to the environment, ecology, under ground water and to the health and life of the resident of the area and also to the region and people of the down stream areas where the water has reached and shown its effect within a stipulated time frame.

(vii) The present CETPs may be declared to be obsolete and redundant and if the industries are not shut down permanently; they ought not to be permitted to function unless they install a technology that can take the load of the effluent discharged and the treated water is free of any contamination, minus any adverse effects and completely safe for the purposes of irrigation wherein there is no danger of biomagnification.

(viii) The industrial units must be ordered to put up medical facility in each of the units and provide medical education to the labourers. Further the state may be directed to pay compensation to the labours who have suffered due to the lack of medical facilities and non-compliance of statutory provisions.

(ix) The State may further be directed to investigate into the kind of diseases or adverse effects that can be contacted by being directly or indirectly exposed to the toxic fumes so as to ascertain the damage inflicted on the people of the region; and cause reparations (x) The State may be further directed to prepare a data base to ascertain the number of people who can be said to have attracted the disease due to effluent in any direct or indirect manner: and accordingly damages may kindly be ascertained and paid to the sufferer.

(xi) That a separate fund may be instituted wherein the State must be made to pay a certain amount to begin with reparations of the damage caused to the environment until a specific figure can be ascertained by a body of experts duly recoverable so as to give effect to the polluter pays principle.

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Alongwith Contempt Petition No.581/2013 // 5 // (xii) That the Animal Fair may be declared to be a Heritage Property of the region which under no circumstance can be altered, manipulated or destroyed by action or omission of any statutory body or through an act of a group of private enterprise.

(xiii) The State may be directed to report to this Hon'ble Court about the safety of the disposal pit proposed for disposal of sludge at Khed, collected after the treatment and whether the method is environmentally friendly.

The state may further be directed to report whether the disposal area has been approved by the designated statutory authority as environmentally friendly.

(xiv) The order of lifting of the ban, imposed and in operation since year 1982 passed by the state government as per the reporting of the newspaper must be quashed and set aside as an interim measure and further until the respondent authorities ensure and guarantee that there will be no pollution / contamination and the treated water will be fit for the purposes of irrigation and harmless to the environment sans which no further industrialization in any area suffering from pollution must be permitted.

(xv) The cost of the writ petition may kindly be awarded in favour of the petitioner.

(xvi) Any other writ, order or direction which your Lordship may deem just and proper in the facts and circumstances stated above, in favour of the petitioner may kindly be allowed.

It is hardly a matter of doubt or debate that the writ petition relates to the environmental issues and its subject-matter is covered under the NGT Act.

It is also not a matter of doubt or debate that in the case of Bhopal Gas Peedith Mahila Udyog Sangathan (supra), the Honble Supreme Court has not only pointed out the requirement that such matters should be instituted and litigated before the NGT but has also expounded that even the cases filed and pending prior to coming into force of the NGT Act should also be dealt with by the Tribunal i.e., NGT.

It is also hardly a matter of dispute that the NGT came into force on 18.10.2010 whereas this writ petition was filed on 29.03.2011.

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Alongwith Contempt Petition No.581/2013 // 6 // The Honble Supreme Court in Bhopal Gas Peedith Mahila Udyog Sangathan (supra) has ordained as under:- 40.

Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short the NGT Act.) particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short NGT.). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT.

Thus, in unambiguous terms, we direct that all the matters instituted 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 NGT.

This will help in rendering expeditious and specialized justice in the field of environment to all concerned.

41.

We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is, NGT, created under the provisions of the NGT Act.

The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice.

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In *M/s Laxmi Suiting (supra)*, while dealing with other matters involving environmental issues, a co-ordinate Bench of this Court has referred to the above dictum of the Honble Supreme Court; and has found it rather imperative to transfer such matters involving environmental issues to the NGT.

After having referred to the above-quoted mandate of the Honble Supreme Court, the co-ordinate Bench of this Court has said and ordered,- Not only the text of the above quoted extract would evince a mandate by their Lordships to transfer matters covered by the provisions of the Act to the learned Tribunal whether pending prior to the coming into force of the Act or instituted thereafter, in order to avoid conflict of orders by it and the High Courts, but also in the interest of expeditious and specialized justice in the field of environment to all concerned.

Their Lordships have further observed that the courts may be well advised to direct transfer of such cases to the learned Tribunal in their discretion as it would be in *D.B.CIVIL WRIT PETITION No.2844/2011*.

Alongwith Contempt Petition No.581/2013 // 7 // the fitness of administration of justice.

As in our comprehension, the proceedings on board do involve environmental issues relatable to the legislation (s) as the case may be, and set out in Schedule I of the Act and are best suited to be adjudicated upon by the specialized fora (learned Tribunal) equipped with the essential expertise as visualized by the Act, we construe it appropriate to transfer the same to it forthwith.

Ordered accordingly.

The petitions are disposed of on transfer.

A copy of this order be placed in all the files.

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The learned counsel for the petitioner has, however, contended that the decision above-referred cannot be held laying down the law of binding nature; and this matter does not deserve to be transferred to the NGT.

The learned counsel has particularly referred to the provisions contained in Section 14 of the NGT Act and submitted that there being limitation of six months in entertaining the matter by the NGT from the date of accrual of cause of action; and the cause of action having accrued for the fiRs.time in this case about eight months before filing of the petition, the Tribunal would not be entertaining this petition.

The learned counsel has contended that the provisions of sub-section (3) of Section 14 having not been considered, the decision above-referred ought to be treated per incuriam and cannot be considered having a binding effect.

The learned counsel has referred, inter alia, to the decision of the Honble Supreme Court in State of U.P.& Anr.

versus Synthetics and Chemicals LTD.& Anr.: (1991) 4 SCC139 The learned counsel has also referred to the order passed by the Central Zonal Bench of NGT at Bhopal in D.B.CIVIL WRIT PETITION No.2844/2011.

Alongwith Contempt Petition No.581/2013 // 8 // Appeal No.01/2013 (CZ) (P.B.27/2013 THC) on 02.08.2013 and submitted that therein, the NGT proceeded to dismiss the transferred matter in appeal as being barred by limitation with reference to the provisions of the NGT Act.

According to the learned counsel, the provisions as contained in the NGT Act are not akin to the provisions as contained in other enactments like Administrative Tribunals Act, 1985 where, per Section 29, all the pending cases were required to be transferred to the Tribunal.

It is submitted that in the present case, the propositions for transfer deserve to be rejected and the matter deserves to be dealt with in this Court only.

The learned counsel has also submitted that apart from pointing out the hazards, the petitioner herein has sought enforcement of the order passed by this Court and this matter cannot, on the core issues, be considered to be the one entertainable by the NGT.

Per contra, the learned counsel for the respondents have argued that the issue on its core having been considered, examined and pronounced upon by the Honble Supreme Court and then by a co-ordinate Bench of this Court, merely on the basis of a new line of argument, the petitioner cannot seek re-opening of the concluded issue.

It is submitted that this writ petition itself was filed after coming into force of the NGT Act and as per the averment, is said to be carrying a continuing cause of action.

The learned counsel contended that on the subject and relief, this matter is squarely covered by the provisions of the NGT Act as also the mandate of the decisions above-referred.

The learned counsel further D.B.CIVIL WRIT PETITION No.2844/2011.

Alongwith Contempt Petition No.581/2013 // 9 // submitted that once a decision is rendered, it would be deemed that all the relevant arguments and provisions were

considered; and the submission suggesting the referred decision per incuriam remain baseless.

The decision of the Honble Supreme Court in M/s Kesho Ram and Co.& ORS.versus Union of India & Ors.: (1989) 3 SCC151(para

10) has been referred.

We are afraid, the contentions as urged and suggestions as made on behalf of the petitioner do not make out a case for us to deviate from the view already taken by a co-ordinate Bench of this Court following the mandate of the Honble Supreme Court.

It remains trite in the matters of interpretation as also construction that the plain language and plain words are to be understood plainly and to be given plain meaning.

The operation of provisions of NGT Act on the pending matters does not call for any interpretation anew by us particularly when the Honble Supreme Court has interpreted the same and expressed its mandate in clear terms in the passages reproduced hereinabove.

Moreover, a co-ordinate Bench has already considered all the relevant issues and has held it to be rather imperative that such matters are transferred to the NGT.

It is difficult to find any force in the argument that the referred decision be treated as per incuriam for the suggested reason that the provisions of Section 14(3) were not considered therein.

The principles for treating any decision per incuriam are not of any assistance to the petitioner in the D.B.CIVIL WRIT PETITION No.2844/2011.

Alongwith Contempt Petition No.581/2013 // 10 // present case particularly when the scheme of the enactment i.e., the NGT Act and operation of its provisions on the pending matter has been pronounced by the Honble Supreme Court and then, the same has been considered and applied by a Division Bench of this Court.

Once a particular course of action has been ordained with reference to the provisions of the Act and the dictum of the Honble Supreme Court, it has to be presumed that all the grounds, which could validly be raised, were raised and considered by the Court.

Even otherwise, what the learned counsel for the petitioner has argued is essentially with reference to a so-called view taken by the NGT on a transferred matter on the question of limitation.

As to what consequences shall ensue and what future course shall be taken by this litigation in the NGT is hardly a matter for us to dilate upon or speculate about.

Though we do not propose to pronounce anything on the future course of action before the NGT but for the present purpose, suffice it to say that mere suggestion about any harm or adverse consequence cannot be decisive of interpretation of any statute; particularly when the interpretation has already been made by the Honble Supreme Court and applied by a co-ordinate Bench of this Court.

A mere reference to some consequences, as pronounced by NGT in a particular matter, could hardly be of any bearing on the issue as to whether the proceedings herein are required to be transferred to the NGT.

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Alongwith Contempt Petition No.581/2013 // 11 // Accordingly and in view of the above, while upholding the submissions made on behalf of the respondents, we consider it proper and hence order that this matter (CWP No.2844/2011) shall stand transferred to the NGT.

The petitioner has also filed a contempt petition (CCP No.581/2013) which has remained pending.

In the interest of justice, we consider it proper that the papers relating to the said contempt petition too be dealt with by the NGT in accordance with law and the same too shall stand transferred to the NGT.

Before parting, it appears appropriate and hence is observed that we have, otherwise, not commented on the merits of the case either way and nothing observed herein shall have any bearing on the consideration of matter by the NGT.

(V.K.MATHUR),J.

(DINESH MAHESHWARI),J.

/Mohan/

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