

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11726-11727 OF 2018

GOVT OF NCT OF DELHI & ANR.

Appellant(s)

VERSUS

ALL INDIA LOKADHIKAR SANGATHAN & ORS. ETC.

Respondent(s)

WITH

CIVIL APPEAL NO. _____ OF 2018

Diary No. 44887/2018

O R D E R

The present batch of civil appeals arises from a judgment of the National Green Tribunal ("NGT") dated 16 October, 2018 in Execution Application No. 11 of 2017 and Original Application No. 77 of 2016.

The issue before the Tribunal pertained to the environmental hazards caused by industries functioning in Delhi, including the Stainless Steel Pickling ("SSP") industry. Under the Master Plan, 2021, Stainless Steel Pickling is set out at entry 88 in the prohibited/negative list of industries.

However, during the course of the hearing, an effort has been made to contend that on 12 October 2018, the Government of the National Capital Territory of Delhi (GNCTD) took a decision to allow existing SSP industries to continue subject to compliance with environmental legislation. However, it has been stated that this decision was not placed before the Tribunal before the scheduled hearing on 16 October 2018 due to the intervening holidays on 13 and 14 October 2018. Be that as it may, no administrative decision can be taken in violation of

the Master Plan. The note appended to Annexure P-3 which was relied on by Ms. Pinky Anand, learned ASG provides thus;

"Industries manufacturing the following shall be prohibited within National Capital Territory of Delhi. However, Environment Department, GNCTD in consultation with Industries Department, GNCTD shall take a final decision to ascertain a particular activity/industry/factory to fall under the said list as per the parameters/norms set by CPCB and adopted by the DPCC."

Prima facie, the above note only permits a determination of whether a particular industry, factory or activity falls in a specified entry. The negative or prohibited list cannot be amended by an administrative act in violation of the Master Plan.

The Tribunal found that despite a series of directions including the decision of the High Court of Delhi dated 11 November 2013 and of the Tribunal itself, adequate steps have not been taken for the closure of the SSP industry. The Tribunal has found that there is no consent to operate.

By its order which is impugned in these proceedings, the NGT directed the Delhi Government to stop the operation of the industry forthwith and to initiate action for violation of law. The Delhi Government has been directed to pay an amount of Rs. 50 crores within a period of one month to the Central Pollution Control Board, which has been directed to be utilised for the purpose of improvement of the environment.

Apart from the civil appeals which have been filed by the Delhi Government and by the Delhi Pollution Control Committee ("DPCC"), there is another civil appeal by the Welfare Society representing Wazirpur Industrial Estate. Permission to file

the civil appeal is granted.

The grievance of the industry is that it has not been able to place its submissions before the Tribunal. Mr. Maninder Singh, learned senior counsel appearing on behalf of the industrial estate submits that both individually and together, the industry has established ETPs and CETPs as a result of which the damage which is apprehended to the environment is obviated.

We are of the view that it would not be appropriate or proper for this Court to enquire into factual matters which have not been addressed before the Tribunal.

Similarly, whether there has been an amendment of the Master Plan is admittedly not an issue which was addressed before the Tribunal. The appellants before this Court have sought liberty to move the NGT in an appropriate application so that these aspects can be considered in the course of a review.

Ms. Indira Jaising, learned senior counsel appearing on behalf of GNCTD has submitted before the Court that in addition to the above issues, her client would be raising other related issues, including the jurisdiction of the Tribunal. Learned counsel submitted that before an order for compensation can be passed, there has to be a specific determination of the damage and of the heads under which an award of compensation is made under Schedule II of the National Green Tribunal Act, 2010. Moreover, it was urged that it is the polluting industry and not the government which must be liable.

Learned counsel for the appellants have sought a stay on the direction for deposit, pending consideration of the review

petitions by the NGT. While we are inclined to grant liberty to the appellants to move the NGT in terms as sought, a complete stay on the direction to deposit Rs. 50 crores is not warranted. Prima facie, the direction is relatable to the provisions of Section 17 of the National Green Tribunal Act, 2010. Consequently, we direct that in terms of the order passed by the NGT and before the applications for review are entertained, an amount of Rs. 15 crores be deposited within four weeks by GNCTD. The deposit shall abide by the final result of the applications for review. This direction shall not be construed as the expression of a final opinion by this Court.

Ms. Indira Jaising stated that in compliance with the order passed by the NGT, the operation of the industry has been stopped by disconnecting water and electricity connections. This position shall continue until the Tribunal disposes of the review petitions, and thereafter will be subject to the outcome. We grant liberty to the appellants to move this Court afresh, including on the grounds raised in the appeals, if they are aggrieved by the decision in review.

The civil appeals are disposed of. There shall be no order as to costs.

.....J.
(DR. DHANANJAYA Y. CHANDRACHUD)

.....J.
(M.R. SHAH)

NEW DELHI,
December 14, 2018

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No(s). 11726-11727/2018

GOVT OF NCT OF DELHI & ANR.

Appellant(s)

VERSUS

ALL INDIA LOKADHIKAR SANGATHAN & ORS. ETC.

Respondent(s)

(IA No.173878/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.173877/2018-STAY APPLICATION)

WITH

Diary No(s). 44887/2018 (XVII)

(IA No.174907/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.175441/2018-EX-PARTE STAY and IA No.174906/2018-PERMISSION TO FILE APPEAL)

Date : 14-12-2018 These appeals were called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

For Appellant(s) Mr. Maninder Singh, Sr. Adv.
Ms. Kaveeta Wadia, AOR
Mr. Soumya Srijan Dasgupta, Adv.
Mr. Prabhas Bajaj, Adv.
Mr. Shashank Tripathi, Adv.

Ms. Pinky Anand, ASG
Ms. Indira Jaising, Sr. Adv.
Mr. Dinesh Jindal, LO-DPCC
Mr. Hemant Arya, Adv.
Mr. Bibhash Kr. Sharma, Adv.
Ms. Ajita Sharma, Adv.
Mr. Paras Nath Singh, Adv.
Mr. Chirag M. Shroff, AOR
Ms. Neha Sangwan, Adv.
Mr. Chakitan Vikram Shekar P., Adv.

For Respondent(s) Mr. S. K. Bhattacharya, AOR

UPON hearing the counsel the Court made the following
O R D E RPermission to file appeal is granted in Civil Appeal Diary No.
44887/2018.

The civil appeals are disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(MANISH SETHI)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed order is placed on the file)