

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

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**Original Application No. 160 (T_{HC}) of 2013
And
Original Application No. 161 (T_{HC}) of 2013
And
Original Application No. 162 (T_{HC}) of 2013**

In the matter of :

Madhya Pradesh Pollution Control Board
Paryavaran Parisar,
E-5, Arera Colony, Bhopal
Through : Mr. P.K. Trivedi, Regional Officer

.....Appellant

Versus

1. Commissioner,
Municipal Corporation, Bhopal
2. Shri Majid Khan,
Chief Engineer,
Municipal Corporation, Bhopal
3. Dr. Habiba Sultan,
Health Officer,
Municipal Corporation, Bhopal
4. Shri Ahsan Ulla Khan
Asst. Health Officer
Municipal Corporation, Bhopal
5. Mr. N.C. Saxena,
Asst. Engineer,
Municipal Corporation, Bhopal.

.....Respondents

Counsel for Applicant :

Mr. Rahul Shrivastava, Advocate.

Counsel for Respondents :

None appeared.

ORDER

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

Hon'ble Mr. Justice S.N. Hussain (Judicial Member)

Hon'ble Dr. P.S. Rao (Expert Member)

Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Dated : 8th August , 2013

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

By this order, we shall dispose of the above three applications preferred by the Madhya Pradesh Pollution Control Board (for short 'the Board').

2. A complaint under Sections 44, 47 and 88 of the Water (Prevention and Control of Pollution) Act, 1974 (for short the 'Water Act') and Sections 15 and 16 of the Environment Protection Act, 1986 (for short the 'Environment Act') was instituted in the Court of the Chief Judicial Magistrate (CJM), Bhopal by the Board. According to the Board, it had been declared as the prescribed authority under the amended Rule 7 (i) of the Municipal Solid Waste (Management and Handling) Rules, 2000 (for short 'the Rules'). The complaint was instituted by an authorized officer of the Board, holding the public office, and who is a public servant under Section 21 of the Indian Penal Code (for short the 'Code').

3. According to the Board, the Central Government had published a notification to enforce the Rules which had come into force with effect from 25th September, 2000. The Rules required that every Municipal Authority would be responsible for collection, segregation, storage, transportation, processing and disposal of municipal waste in any form. The Municipal Corporation, Bhopal,

was required to obtain the authorization under the Rules as well as it was required of the said Authority to improve the existing landfill sites as per the provisions of these Rules by 31st December, 2001, to monitor the performance of the waste processing and disposal facilities, identification of landfill sites for future use and making the sites ready for use by December, 2002 and to set up the waste processing and disposal facility by 31st December, 2003. The Corporation and the persons accused in the complaint had failed to carry out the said steps. On the contrary, the Corporation was disposing of municipal solid waste of Bhopal City at Bhanapura Trenching Ground without any treatment and in an unscientific manner, thereby causing pollution and health hazards to the residents of the nearby areas. The Corporation and other four stated accused were defaulters due to non-compliance of the provisions of the Environment Act and also for their failure to manage and dispose of the municipal solid waste in accordance with the Rules. The Board had given directions vide its letters dated 8th January, 2003, 19th November, 2003 and 1st May, 2004. The accused persons neither replied to the said letters nor carried out the required steps. The Board even served a notice dated 8th December, 2003 on the said accused persons. The Officer of the Board sought permission to institute the complaint, and the same was granted against the accused on 12th August, 2004, leading to the institution of the complaint. Thus, it was prayed in the complaint that the accused should be punished for violating the provisions of the Environment Act and the Rules. The said complaint was filed before the learned Chief Judicial Magistrate

who took cognizance of the same and vide its order dated 10th December, 2004, summoned the accused persons to face trial under Sections 15 and 16 of the Environment Act. The matter thereafter remained pending for quite some time, however, vide order dated 24th June, 2013, passed in Complaint No. 1364/2004, the complaint case was transferred to the National Green Tribunal (for short 'the NGT'). That is how the matter comes up for hearing before this Tribunal.

4. We have heard learned counsel appearing for the complainant on the question as to how the present complaint is maintainable and can be adjudicated upon by this Tribunal. This complaint had been filed before the Court of the CJM in consonance with the provisions of the Code of Criminal Procedure, 1973 (for short the 'CrPC'), which is applicable to the Environment Act in a limited way, i.e. to the extent of search and seizure, as contemplated under Section 10 of the Environment Act. The complaint has been filed under Section 15 read with Section 16 of the Environment Act, as stated earlier, which requires that wherever there is a failure to comply with or a contravention of any provisions of the Act, Rules, orders or directions, such defaulters shall be liable to be punished in accordance with the provisions of Section 15 of the Environment Act. Under Section 19 of the Environment Act, the jurisdiction to take cognizance of an offence for such default is specifically and only vested in the Court. The Court can take cognizance only when the requirements stated under Section 19(a) and 19(b) are satisfied, i.e., the complaint should be moved by an authorized officer and a notice of not less than 60 days in the prescribed manner, of its

intention to institute such a complaint has been given to the defaulter. The jurisdiction of civil courts to entertain any suit or proceeding in respect of any act done, action taken or order or direction issued by the Central Government or any other authority or officer in pursuance to any power conferred by or in relation to its or his functions under the Environment Act is barred in terms of Section 22 of the same.

5. From the cumulative reading of the above provision, it is clear that it is the court which is entitled to take cognizance of an offence under Sections 15 and 16 of the Environment Act and can punish the accused if found guilty in accordance with law.

6. The jurisdiction of this Tribunal is controlled by Sections 14 and 16 to 18 of the National Green Tribunal Act, 2010 (for short 'the NGT Act'). Section 14 states that the Tribunal shall have jurisdiction over all civil cases (*emphasis supplied*) where a substantial question relating to environment arises and such question arises out of the implementation of the enactments specified in Schedule I.

7. Of course, the Environment Act is one of the Acts stated in Schedule I to the NGT Act but then it is limited by the words 'all civil cases'. Thus, the Tribunal will have the jurisdiction only over the civil cases relating to environment, as stated under Section 14 of the NGT Act. The expression 'civil cases' has intentionally been used by the Legislature in complete contradistinction to criminal cases. Once the Legislature restricts the jurisdiction of the Tribunal only to civil cases, then that jurisdiction is incapable of being expanded to the cases which are patently and substantially

criminal in nature and are controlled or have been instituted under the provisions of the CrPC, like filing of a criminal complaint of an offence, specifically triable by a magistrate in accordance with law. This Tribunal is a creation of a statute and thus, its jurisdiction will have to be construed with reference to the language of its provisions. Being a statutory body, it is bound and controlled by the provisions of the statute itself. Section 15 of the NGT Act gives wide jurisdiction to this Tribunal. Under this provision, the Tribunal can pass an order, give relief and compensation to the victims of pollution and in relation to other environmental damage arising under the enactments specified in Schedule I of the NGT Act. It also gives power to the Tribunal to pass orders for restitution of property and environment, as the Tribunal may deem fit. Further, the Act specifically postulates that orders passed by the Tribunal in exercise of such powers is in addition to the relief paid or payable under the Public Liability Insurance Act, 1991. The appellate jurisdiction is vested in the Tribunal in terms of Section 16 of the NGT Act. Appeals lie to the Tribunal but only against such orders, decisions or directions as specified under Section 16(a) to (j) of the NGT Act. Section 18 of the NGT Act defines and explains as to how the application shall be made to the Tribunal and who can approach the Tribunal for remedies under Sections 14 to 18 of the NGT Act. This Tribunal, thus, has no jurisdiction to deal with criminal cases falling within the purview of the Code. For the offences, that are alleged to have been committed in terms of Sections 15 and 16 of the Environment Act, a complaint would lie before and cognizance can alone be taken by the Court of

competent jurisdiction, i.e. Chief Judicial Magistrate/Magistrate, competent to try such offences. The jurisdiction of the Tribunal further stands excluded as only the cases of civil nature, in contradistinction to cases of criminal nature, can be adjudicated upon and settled by the Tribunal.

8. We are, thus, of the considered view that this Tribunal has no jurisdiction to try, adjudicate and punish the accused persons, even if they are found to be guilty under the provisions of Sections 15 and 16 of the Environment Act, particularly in light of Section 14 of the NGT Act.

9. For the above reasons, we decline to exercise jurisdiction in these cases and would direct the Registry to return the complaint cases to the learned CJM, Bhopal, who may proceed with the case in accordance with law. There shall be no order as to costs.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Justice S.N. Hussain
Judicial Member

P.S. Rao
Expert Member

Ranjan Chatterjee
Expert Member

New Delhi
August 8, 2013