IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P. (C) 420 of 2013

All India Plastic Industries Association,
Through its Secretary General,
Sri Praveen Prakash Tuteja,
S/O Late Shri Girdhar Tuteja, having its
Registered office at 203, Hansa Tower,
25, Central market, Ashok Vihar,
Phase-I, Delhi-110052.

…….…. Petitioner.

- Vs –

1. Government of Tripura,
   Through the Secretary,
   Department of Science, Technology and
   Environment,
   Vigyan, Prajukti O Parivesh Bhawan,
   Tripura - 799006.

2. The Commissioner,
   Department of Science, Technology and
   Environment,
   Vigyan, Prajukti O Parivesh Bhawan,
   P.O. Kunjaban, Agartala,
   Tripura West.

3. Union of India,
   Through the Secretary,
   Ministry of Environment & Forest,
   Paryawaran Bhawan CGO Complex,
   New Delhi – 7000001.

…….…. Respondents.

BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS

For the Petitioner	**:**	Mr. Kundan Mishra, Advocate. Mr. B.N. Majumder, Advocate.
For the respondents	**:**	Mr. B.C. Das, Advocate General. Ms. N. Guha, Advocate.
Date of hearing	**:**	16.01.2014.

Date of Delivery of Judgment & order : **31.01.2014.**

Whether fit for Reporting : YES.

JUDGMENT & ORDER

This writ petition under Article 226 of the Constitution of India is filed by the petitioner-Association seeking following relief(s)***:-***

(i) Issue rule NISI

(ii) Issue rule calling upon the respondents and/or each of them to show cause as to why a writ in the nature of certiorari quashing, cancelling, setting aside the impugned Notification No. 179 dated 03/04.07.2013 and the subsequent notification published in the newspaper dated 02.10.2013 shall not be issued being contrary to the provisions of Environment Protection Act, 1986 and the subsequent Rules framed thereunder.

(iii) Issue rule calling upon the respondents and/or each of them to show cause as to why as writ in the nature of prohibition shall not be issued prohibiting the respondent authorities not to act in furtherance of the impugned Notification No. 179 dated 03./04.07.2013 and the subsequent notification published in the newspaper dated 02.10.2013.

(iv) Issue rule calling upon the respondent No.1 to show cause as to why a writ in the nature of mandamus shall not be issued mandating, directing the respondent authority to ensure enforcement and implementation of Municipal Solid Waste (Management and Handling) Rules 2000, and Plastic Waste (management and Handling) Rules 2011 framed under the Environment Protection Act, 1986 in letter and spirit for efficient management and handling of Municipal Solid Waste.

(v) Issue rule calling upon the respondents and/or each of them to show cause as to why any other writ/writs, order/orders, direction/directions shall not be issued to give complete and full relief to the petitioners.

(vi) Pass an order as to cost and compensation."

2. Impugned Notification(s) challenged herein is annexed as Annexure P-2 to the writ petition. Since the bone of contention of the petitioner-Association is the impugned Notification, for ready reference, and, for fair appreciation, it is reproduced as under:-

GOVERNMENT OF TRIPURA
DEPTT. OF SCIENCE, TECHNOLOGY & ENVIRONMENT
VIGYAN, PRAJUKTI O PARIVESH BHAWAN
GORKHABASTI: AGARTALA
TRIPURA – 799006

No.F.8(30)/DSTE/ENV/Pt-I/3794-3811 Dated 03/07/2013

N O T I F I C A T I O N

Whereas, Article 48-A of the Constitution of India, inter-alia envisages that the State shall endeavour to protect the environment.

AND

Whereas, the Government of Tripura after considering the adverse effects of plastic carry bags on the environment and local ecology felt that plastic carry bags are littered about irresponsibly and have detrimental affect on the environment.

AND

Whereas, it is observed that the plastic carry bags also cause blockage of gutters, sewerage system and drains thereby resulting in unhygienic environmental and public health related problems.

AND

Whereas, it is observed that plastic carry bags are non-biodegradable and after hundreds of years breaks to toxic plastic particles polluting soil; produces toxic gases and ash on it's burning.

AND

Whereas, it is observed that the plastic carry bags cause aquatic and terrestrial animals die by its ingest, it's litters arrest the recharging ground water aquifers; harmful chemicals and colours of plastic contaminates soil and water; plastic carry bags chokes the living organisms of the soil etc causes harmful effects on the environment.

AND

Whereas, the plastic carry bags adversely affects on percolation of water to ground levels, hamper the quality of soil layer, effect the growth of roots & plants and creature etc which causes long term bad effect on ecology & environment.

Now, therefore, in exercise of the powers conferred by section 5 of the Environment (Protection) Act, 1986 (29 of 1986), and also the powers conferred to this State vide Notification No. S.O. 479 (E) dated the 25th July, 1991 under Section 23 of the Environment (Protection) Rules, 1986, the Government of Tripura issues this Notification to impose a complete ban on the manufacture, import, storing, transport, sale and use of plastic carry bag(s) in the whole state where the ban shall be given effect after a period of 3 (three) months from the date of publication in the Official gazette. In this context, the Government hereby issues the following directions namely:-

Directions:-

1. ***No person including a shopkeeper, vendor, wholesaler or retailer, trader, hawker or fehriwala (i.e, which shall include all kinds of hand***

pushed/pulled carts which are used to sell various commodities), shall sell or store or use any kind of plastic carry bags for storing or dispensing of any eatable or non-eatable goods or materials.

2. ***No person shall manufacture, import, store, sell or transport any kinds of plastic carry bags (including that of Poly Propylene, Non-woven fabric type carry bags) in the whole of State of Tripura.***

3. ***No person shall use any kind of plastic cover or plastic sheet or plastic flim or plastic tube to pack or cover any book including magazine and invitation card or greeting card.***

<u>Exception</u>:-

The direction issued under this notification shall not affect the use of plastic carry bags as specified under the Bio-Medical Waste (Management and Handling) Rules, 1998, as amended to date.

<u>Explanation:-</u>

For the purpose of this Notification "plastic carry bags" shall have the same meaning as defined in the Plastic Waste (Management and Handling) Rules, 2011, issued by Government of India, Ministry of Environment and Forest, which is reproduced as below:-

'Carry bags' mean bags made from any plastic material, used for the purpose of carrying or dispensing commodities but do not include bags that constitute or form an integral part of the packing in which goods are sealed prior to use.

<u>Authorized Officers:-</u>

The following officers are hereby authorized to implement this Notification in their respective jurisdiction namely:

1. ***Member Secretary. Tripura State Pollution Control Board and Officers at the level of Junior Environmental Engineer/Junior Scientist and above.***
2. ***Director, Department of Science, Technology & Environment, Government of Tripura and Officers at the level of Scientific Officer and above.***
3. ***Chief Executive Officer, Agartala Municipal Council, Agartala and other Officers nominated by him.***
4. ***The Chief Executive Officer of Tripura Tribal Area Autonomous District Council, Tripura and other Officers nominated by him.***

5. ***District Magistrate & Collectors of all respective District in Tripura.***
6. ***Superintend of Police & Officers at the level of Sub-Inspector of Police and above.***
7. ***Director, Food and Civil Supplies Department and Officers at the level of Inspector and above.***
8. ***Director, Industries & Commerce Department and other Officers nominated by him.***
9. ***Director. Health & Family Welfare Department or other Officers nominated by him.***
10. ***Commissioner of Taxes & Excise and Officers at the level of Inspector of Taxes and above.***
11. ***Labour Commissioner, Labour Department and Officers at the level of Inspector and above.***
12. ***Sub-Divisional Magistrate of all respective Sub-Division in Tripura.***
13. ***Block Development Officer of all respective block in Tripura.***
14. ***Controller, Weights & Measure Department and Officers at the level of Inspector and above.***
15. ***Executive Officer of all respective Nagar Panchayet in Tripura.***

Monitoring:-

The Member Secretary, Tripura State Pollution Control Board (TSPCB) shall ensure over all monitoring and implementation of these directions. The Chairman and the Member Secretary, TSPCB and all the Authorized Officers mentioned in foregoing para within their respective area/jurisdiction, are authorized to file complaint under section 19 of the Environment (Protection), 1986.

Enforcement:-

This Notification shall come into force after a period of 3(three) months from the date of publication in the official gazette.

By the order of the Governor

(Santanu Das)
Secretary
Government of Tripura.

GOVERNMENT OF TRIPURA
DEPTT. OF SCIENCE, TECHNOLOGY & ENVIRONMENT
VIGYAN, PRAJUKTI O PARIVESH BHAWAN
GORKHABASTI: P.N. COMPLEX
AGARTALA:TRIPURA

No.F.8(30)/DSTE/ENV/Pt-I/3794-3811 Dated 03/07/2013

N O T I F I C A T I O N

In the public interest and in accordance with the provision of the Environment (Protection) Act, 1986 and

the Plastics Waste (Management and Handling) Rules, 2011, the Governor of Tripura constitutes the State Level Advisory Body (SLAB) with the following members for monitoring the implementation of Plastics Waste (Management and Handling) Rules, 2011 towards protection of Environment in the State.

1. ***Secretary-In-Charge, Deptt. Of Urban Development :Chairman***
2. ***Director, Science, Tech. & Env. Deptt. :Member***
3. ***Director, Industry & Commerce Department : Member***
4. ***Chief Executive Officer, Agartala Municipal Council : Member***
5. ***Principal, Tripura Institute of Technology, Agartala : Member***
6. ***Scientist-C, Tripura State Pollution Control Board : Member***
7. ***Shri P.L. Ghosh, Arkaneer, Shekerkote, Agt. (NGO) : Member***
8. ***Senior Scientific Officer, Science, Tech. & Env. Deptt. : Convener***

The said committee is empowered to monitor the implementation of the Plastics Waste (Management and Handling) Rules, 2011 and other Notifications/Orders/Directions issued from time to time for protection of environment under this Act & Rules.

This is issued with the approval of Authority vide U.O.No.153.Min/SW&SE/OBC/STE/13 dated 02/07/2013.
By the order of the Governor

(Santanu Das)
Secretary
Government of Tripura."

3. At the very outset, when the interlocutory application has been taken up, learned Advocate General assisted by learned counsel, Ms. N. Guha raised point of maintainability of the writ petition in view of the express provisions contained in the National Green Tribunal Act, 2010 (Act No. 19 of 2010). It is contended by learned Advocate General that the Parliament at its wisdom enacted The National Green Tribunal Act, 2010 (for short, 'Act of 2010') and under the provisions of that Act, a Tribunal has been constituted to deal with all matters including any order or direction issued by the State Government under Section 5 of the Environment (Protection) Act, 1986 (for short, 'Act of 1986'). It is submitted that since alternative and efficacious relief is available,

so the High Court is not required to interfere in the matter in exercise of its jurisdiction vested under Article 226 of the Constitution.

It is strenuously argued by learned Advocate General that under the circumstances a self imposed restriction should be imposed by the High Court to prevent abuse of the process of law. In support of his contention, learned Advocate General referred the following case laws:-

(i) ***Assistant Collector Of Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Ltd. And Others*** reported in ***(1985) 1 SCC 260*** (Para 3).

(ii) ***United Bank Of India vs. Satyawati Tondon And Others*** reported in ***(2010) 8 SCC 110*** (Para 43, 44 and 45).

(iii) ***Bhopal Gas Peedith Mahila Udyog Sangathan And Others vs. Union Of India And Others*** reported in ***(2012) 8 SCC 326*** (Para 40 and 41).

4. Countering the submission of learned Advocate General, Mr. B.C. Das, learned counsel, Mr. Kundan Mishra, appearing for the petitioner-Association has submitted that the impugned Notification (Annexure P-2 to the writ petition) is a sheer nullity and it has got no force of law since the State Government issued the Notification giving complete goodbye to the provisions prescribed in Rule 4 and 5 of the Environment

(Protection) Rules, 1986 (for short, Rules of 1986) and therefore, a valuable right of the petitioner-Association under Article 14, 19 and 21 has been curtailed. Hence, the writ Court has jurisdiction to entertain the writ petition.

It is also contended by learned counsel, Mr. Mishra that before issuing the order, no public notice was issued and nobody was heard as per the provisions of the Rules of 1986 and therefore, the petitioner-Association and others, who are interested in the matter of manufacture, sale or use of the plastic bags, their rights have been curtailed and hence, this writ petition is maintainable.

It is also contended by learned counsel, Mr. Mishra that the respondents issued the impugned Notification banning the use of plastic carry bags. Whereas, the State-respondents utterly failed to comply with the directions contained in the Municipal Solid Wastes (Management and Handling) Rules, 2000 and the Plastic Waste (Management and Handling) Rules, 2011. The State Government suddenly jumped to a conclusion to ban the use of plastic carry bags including its manufacture, trade, use etc. and thereby, the fundamental right of the petitioner-Association and others have been clearly violated and hence, the writ petition should be allowed to proceed according to law.

It is also submitted by learned counsel, Mr. Mishra that the petitioner-Association has a good case and hence, the operation of the impugned direction contained in Annexure P-2 to

the writ petition should be stayed pending final disposal of the writ petition.

In support of his contention, learned counsel, Mr. Mishra referred the following case laws:-

(i) ***Ramchandra Keshav Adke (Dead) By Lrs. And Others vs. Govind Joti Chavare And Others*** reported in ***(1973) 1 SCC 559*** (Para 25).

(ii) ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai And Others*** reported in ***(1998) 8 SCC 1*** (Para 14 and 15).

(iii) ***Columbia Sportswear Company vs. Director Of Income Tax, Bangalore*** reported in ***(2012) 11 SCC 224*** (Para 19).

5. Annexure P-2, the Notification, reproduced above has been issued by the State Government by virtue of the power vested in the State Government under Section 5 of the Act of 1986. Section 5 reads as follows:-

> ***"5. Power to give directions. – Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions."***

6. Section 23 of the Act prescribes that Central Government may by Notification in the official gazette delegate, subject to such conditions and limitations as may be specified in

the Notification, such of its powers and functions under the Act of 1986 except the power to constitute any authority under sub-Section (3) of Section 3 and to make Rules under Section 25.

By Notification dated 25.07.1991, a copy of which is annexed as Annexure P-3 to the writ petition, the Central Government delegated the power vested in it, under Section 5 of the Act, to the State Government of Tripura. The said Notification reads as follows:-

> ***"MINISTRY OF ENVIRONMENT & FORESTS***
> ***(Department of Environment, Forests & Wildlife)***
> ***New Delhi, the 25th July,1991***
>
> ***NOTIFICATION***
>
> ***S.O.479(E)- In exercise of the powers conferred by section 23 of the Environment (Protection) Act,1986 the Central Government hereby delegates the powers vested in it under section 5 of the Act to the State Government of Tripura subject to the condition that the Central Government may revoke such delegation of powers in respect of the State Government or may itself invoke the provisions of section 5 of the Act, if in the opinion of the Central Government such a course of action is necessary in public interest.***
>
> ***[No.1(39)/86-PL]***
> ***MUKUL SANWAL, Secy.***
>
> ***Source- Gazette No.414 dated 25-7-91."***

7. It is therefore, prima facie clear that the State Government has the authority to issue the directions in exercise of the power conferred under Section 5 of the Act of 1986.

8. Let us now go through the relevant provisions contained in the Act of 2010. The object of the Act is embodied at the inception, reads as follows:-

> ***"An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.***
>
> ***AND WHEREAS India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment;***
>
> ***AND WHEREAS decisions were taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, calling upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage;***
>
> ***AND WHEREAS in the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution;***
>
> ***AND WHEREAS it is considered expedient to implement the decisions taken at the aforesaid conferences and to have a National Green Tribunal in view of the involvement of multi-disciplinary issues relating to the environment."***

9. Chapter II of the Act in Sections 3 to 13 deals with the establishment of the Tribunal. Section 3 prescribes that the Central Government shall, by Notification, 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 Act (Act of 2010).

It is not disputed that National Green Tribunal has already been established by the Central Government.

Section 5 of the Act prescribes that a person shall not be qualified for appointment as the Chairperson or Judicial Member of the Tribunal unless he is, or has been, a Judge of the Supreme Court of India or Chief Justice of a High Court:

Provided that a person who is or has been a Judge of the High Court shall also be qualified to be appointed as a judicial member.

10. Chapter III of the Act of 2010 prescribes jurisdiction, powers and proceedings of the Tribunal in Sections 14 to 25.

Section 14 reads as follows:-

"14. Tribunal to settle disputes. –

1. The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to 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.

2. The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

3. No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

Section 16 is most important which reads as follows:-

"16. Tribunal to have appellate jurisdiction. –

Any person aggrieved by,-

a. an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974;

b. an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974;

c. directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974;

d. an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977;

e. an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980;

f. an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981;

g. any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986;

h. an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986;

i. an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986;

j. any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002,

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:"

A reading of Section 16(g) makes it clear that any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment

(Protection) Act, 1986, may be appealed to the Tribunal within a period of 30 days from the date on which the order or decision or direction or determination is communicated.

Section 19 prescribes the procedure and powers of the Tribunal which reads as follows:-

"19. Procedure and powers of Tribunal. –

1. The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

2. Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.

3. The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

4. The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-

a. summoning and enforcing the attendance of any person and examining him on oath;

b. requiring the discovery and production of documents;

c. receiving evidence on affidavits;

d. subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

e. issuing commissions for the examination of witnesses or documents;

f. reviewing its decision;

g. dismissing an application for default or deciding it ex parte;

h. setting aside any order of dismissal of any application for default or any order passed by it ex parte;

i. pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;

j. pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;

k. any other matter which may be prescribed.

5. All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973."

Section 22 prescribes the provision of appeal to the Supreme Court against an order passed by the Tribunal, which reads as follows:-

> ***"22. Appeal to Supreme Court. –***
> ***Any person aggrieved by any award, decision or order of the Tribunal, may, file an appeal to the Supreme Court, within ninety 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 of the Code of Civil Procedure, 1908:***
> ***Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal."***

Section 25 prescribes the provision in respect of execution of award or order or decision of the Tribunal.

11. Chapter V of the Act prescribes miscellaneous provisions in Sections 29 to 38.

Section 29 prescribes the bar of jurisdiction, which reads as follows:-

> "***29. Bar of jurisdiction. –***
> ***(1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.***
>
> ***(2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court."***

Section 38 prescribes repeals and savings, which reads as follows:-

"38. Repeal and savings. –

1. ***The National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 are hereby repealed (hereinafter referred to as the repealed Act).***
2. ***Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.***
3. ***The National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997, shall, on the establishment of the National Green Tribunal under the National Green Tribunal Act, 2010, stand dissolved.***
4. ***On the dissolution of the National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997, the persons appointed as the Chairperson, Vice-chairperson and every other person appointed as Member of the said National Environment Appellate Authority and holding office as such immediately before the establishment of the National Green Tribunal under the National Green Tribunal Act, 2010, shall vacate their respective offices and no such Chairperson, Vice-chairperson and every other person appointed as Member shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.***
5. ***All cases pending before the National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997 on or before the establishment of the National Green Tribunal under the National Green Tribunal Act, 2010, shall, on such establishment, stand transferred to the said National Green Tribunal and the National Green Tribunal shall dispose of such cases as if they were cases filed under that Act.***
6. ***The officers or other employees who have been, immediately before the dissolution of the National Environment Appellate Authority appointed on deputation basis to the National Environment Appellate Authority, shall, on such dissolution, stand reverted to their parent cadre, Ministry or Department, as the case may be.***
7. ***On the dissolution of the National Environment Appellate Authority, the officers and other employees appointed on contract basis under the National Environment Appellate Authority and holding office as such immediately before such dissolution, shall vacate their respective offices and such officers and other employees shall be entitled to claim compensation for three months' pay and allowances or pay and allowances for the remaining period of service, whichever is less, for the premature termination of term of their office under their contract of service.***

> ***8. The mention of the particular matters referred to in sub-sections (2) to (7) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.***

Sub-Section (5) of Section 38 makes it abundantly clear that all cases pending before the National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997 on or before the establishment of the National Green Tribunal under the National Green Tribunal Act, 2010, shall, on such establishment, stand transferred to the said National Green Tribunal and the National Green Tribunal shall dispose of such cases as if they were cases filed under that Act.

12. A bare reading of the provisions contained in Act of 2010 shows that it is a self contained Act and the provisions makes it abundantly clear that any person aggrieved by an order/direction issued under Section 5 of the Act of 1986 may approach the National Green Tribunal constituted under that Act.

13. It may further be mentioned here that under the Act of 2010, the Environment (Protection) Act, 1986 has also been amended and after Section 5, a new Section 5(A) has been added, which reads as follows:-

> ***"5A-Any person aggrieved by any directions issued under section 5, on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act."***

14. By filing this writ petition, the petitioner-Association challenged the Notification (Annexure P-2 to the writ petition), which is issued in exercise of the power under Section 5 of the Act of 1986. Under the Act of 2010, clear provisions have been made that any person aggrieved by an order/direction issued in exercise of power under Section 5, may approach the national Green Tribunal constituted under the Act of 2010. An alternative and efficacious relief is therefore clearly available. So, it is to be considered now as to whether the writ petition should be allowed to be continued or not.

15. Article 226 of the constitution empowers the High Court to issue writs for the enforcement of the fundamental rights as well as for any other purposes. The power of the High Court is not confined to writs only. It can issue suitable directions or orders to any person or authority within its jurisdiction. However, the words "for any other purpose" should not be taken to mean that the High Court can issue writs for any purpose it pleases; these words should be taken to mean that the High Court can issue writs for the enforcement of any of the fundamental rights guaranteed by part 3 of the Constitution and also for the enforcement of any other legal right or legal duty. The remedy provided for in Article 226 is a discretionary remedy and cannot be claimed as a matter of right and the High Court can refuse to issue the writs. However,

the High Court is required to exercise its discretion on recognized and established principles and not arbitrarily. In the case of existence of equal, efficient and adequate alternative remedy, the High Court may refuse to exercise its writ jurisdiction. However, the existence of alternative remedy is a rule of discretion and not a rule of law and, thus, existence of alternative remedy is not an absolute bar and in appropriate cases, the High Court may grant the remedy under Article 226, even if the petitioner has not exercised the alternative remedy in cases, for example, complete want of jurisdiction; infringement of fundamental right; violation of principle of natural justice; action under invalid law or arbitrarily or without sanction of law.

16. Burden lies on the petitioner to make out a case as to why they have chosen to approach the High Court under Article 226 of the Constitution avoiding the remedy prescribed under the statute. There is no averment in the writ petition to that effect. It shows that the writ petitioner has no case to show for avoiding the remedy prescribed under the Act of 2010.

17. Section 5 of the Act of 1986 and the Notification issued by the Central Government (Annexure P-3 to the writ petition) makes it abundantly clear that the State Government has the authority to issue directions as contained in Annexure P-2 to the writ petition. If the State Government had the authority to issue the same, the rest is to show whether that authority has been

properly exercised or not and whether rules and procedure prescribed for issuing such a direction was followed or not. If the State Government had the authority to issue the direction, the writ petitioner, in my considered opinion, is bound to approach the remedy prescribed by the statute and not by filing a writ petition before the High Court under Article 226 of the Constitution.

18. The Constitution Bench of the Supreme Court way back in 1954, in the case of ***K.S. Rashid & Son vs. Income Tax Investigation Commission & Ors.*** reported in ***AIR 1954 SC 207*** has considered the issue of exercise of jurisdiction by the High Court in cases where alternative and efficacious relief is available. In Para 4 of the judgment, the Court has observed thus:-

> ***"(4) So far as the second point is concerned, the High Court relies upon the ordinary rule of construction that where the legislature has passed a new statute giving a new remedy, that remedy is the only one which could be pursued. It is said that the Taxation of Income (Investigation Commission) Act, 1947, itself provides a remedy against any wrong or illegal order of the Investigating Commission and under section 8 (5) of the Act, the aggrieved party can apply to the appropriate Commissioner of Income-tax to refer to the High Court any question of law arising out of such order and thereupon the provisions of sections 66 and 66-A of the Indian Income Tax Act shall apply with this modification that the reference shall be heard by a Bench of not less than three Judges of the High Court.***
>
> ***We think that it is not necessary for us to express any final opinion in this case as to whether section 8 (5) of the Act is to be regarded as providing the only remedy available to the aggrieved party and that it excludes altogether the remedy provided for under article 226 of the Constitution.***
>
> ***For purposes of this case it is enough to state that the remedy provided for in article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that***

the aggrieved party can have an adequate or suitable relief elsewhere. So far as the present case is concerned, it has been brought to our notice that the appellants before us have already availed themselves of the remedy provided for in section 8(5) of the Investigation Commission Act and that a reference has been made to the High Court of Allahabad in terms of that provision which is awaiting decision. In these circumstances, we think that it would not be proper to allow the appellants to invoke the discretionary jurisdiction under article 226 of the Constitution at the present stage, and on this ground alone, we would refuse to interfere with the orders made by the High Court."

19. Similar question was considered by the Apex Court in the case of ***S.T. Muthuswami vs. K. Natarajan*** reported in ***AIR 1988 SC 616: (1988) 1 SCC 572***. It was a case in which an election issue was agitated before the High Court under Article 226 of the Constitution. In Para 5 of the judgment, the Court has observed:-

"(5) It is no doubt true that rule (1) of the Rules made for the settlement of election disputes which provides that an election can be questioned only by an election petition cannot have the effect of overriding the powers of the High Court under Article 226 of the Constitution of India. It may, however, be taken into consideration in determining whether it would be appropriate for the High Court to exercise its powers under Article 226 of the Constitution of India in a case of this nature."

In Para 15 and 16 of the judgment, the court has observed as follows:-

"15. The Division Bench of the High Court against whose decision the present appeal by special leave is filed was of the view that the issuing of the Errata Notification by the Returning officer amounted a very serious breach and interference under Article 226 of the Constitution of India was called for. Taking into consideration all the aspects of the present case including the fact that the person who filed the writ petition before the High Court was not one of the candidates nominated by the Indian National Congress (I) and the fact that the President of the Tamil Nadu Congress (I) Committee had written that he had authorised the appellant to contest as the candidate on behalf of his party and he had not given his approval to respondent No 6

contesting as a candidate on behalf of his party, we feel that the exercise of the jurisdiction by the High Court in this case under Article 226 of the Constitution cannot be supported. The parties who are aggrieved by the result of the election can question the validity of election by an election petition which is an effective alternative remedy."

"16. We are of the view that the Division Bench of the High Court committed a serious error in issuing a writ under Article 226 of the Constitution quashing the Errata Notification allotting the symbol 'hand' to the appellant by its judgment under appeal. We, therefore, set aside the judgment of the Division Bench of the High Court and dismiss the writ petition filed in the High Court. The Returning officer shall proceed with the election in accordance with law from the stage at which it was interrupted by the order of the High Court. The appeal is accordingly allowed. No costs."

20. In the case of ***Assistant Collector Of Central Excise, Chandan Nagar*** (supra), the Apex Court unambiguously observed that in a case where the efficacious alternative remedies prescribed the High Court should be slow in entertaining prerogative writs under Article 226 of the Constitution. In Para 3 of the judgment, the Court held thus:-

"3. In Titaghur Paper Mills Co. Ltd. v. State of Orissa A. P. Sen E. S. Venkataramiah and R. B. Misra, JJ. held that where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the Tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it were, the complete statuary machinery. That it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us. Article 226 is not meant to short- circuit of circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are

available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and there after prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

21. In the case of ***United Bank Of India*** (supra), the Apex Court has observed that a self imposed restraint, evolved by the Apex Court, should be followed by all the High courts while exercising power under Article 226 of the constitution. In Para 43, 44 and 45 of the judgment observed thus:-

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

"44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution."

"45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion,

but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

22. In the case of ***Bhopal Gas*** (supra), the Supreme Court clearly issued direction in respect of all proceedings, which are to be filed before the National Green Tribunal as per the Act of 2010. In Para 40 and 41 of the judgment, the Court has observed thus:-

"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 the 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 the 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."

23. Learned counsel, Mr. Mishra while referring the case of ***Ramchandra Keshav Adke*** (supra) has submitted that when a

power is prescribed to do a thing in a certain manner, it should be done in that manner. According to learned counsel, Mr. Mishra since in the present case, the authority vested on the State Government has not been exercised in accordance with the procedure prescribed by law, the writ petition is maintainable. In Para 25 of the judgment of ***Ramchandra Keshav Adke*** (supra), the Court has observed thus:-

> ***"25. A century ago, in Taylor v. Taylor(2), Jassel M. R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in Nazir Ahmed v. Emperor and later by this Court in several cases, to a Magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies "where, indeed, the whole aim and object of the Legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other." The rule will be attracted with full force in the present case because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the Legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non est for the purpose of s. 5 (3) (b)."***

24. There is no quarrel that once a power is vested on an authority, by a statute, that power should be exercised by that authority according to the procedure prescribed by that Act and Rules made thereunder. The petitioner-Association contended that the provisions contained in the Rules of 1986 have not been followed while issuing the directions (Annexure P-2 to the writ petition). Whether the procedure prescribed under the statute has been followed or not is a question to be decided by the appropriate

authority. While the statute has prescribed a particular authority to consider that aspect by making the law (Act of 2010), the petitioner-Association may approach that Tribunal, which is expert body containing expert Members and the Tribunal may go into the details of the matter and arrive at a conclusion. While such alternative remedy is prescribed by statute, I find no justification in the submission advanced by learned counsel, Mr. Mishra to maintain the writ petition under Article 226 of the Constitution.

25. In the case of ***Whirpool Corporation*** (supra), the Supreme Court in Para 14 and 15 has observed thus:-

> ***"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose"."***
>
> ***"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion 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, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely or some old decisions of the evolutionary era of the constitutional law as they still hold the field."***

26. There is no case of the petitioner-Association that any fundamental right has been violated. It is the case of the petitioner that the Rules prescribed under the Rules of 1986 has not been followed while issuing the impugned direction. Prima facie, I find that the Notification was issued giving 3 months time and neither the petitioner-Association nor anybody else raised any objection regarding the impugned direction issued by the State Government. Therefore, there is no case to show that the principles of natural justice violated. There is also no case that the State Government has no jurisdiction to issue the impugned directions. Vires of the Acts of 2010 has also not been challenged. No averment made in the writ petition as to why the remedy prescribed in the Act of 2010 has not been chosen. Under such circumstances, I find nothing to hold that the writ petition is maintainable in the facts and circumstances of the case.

27. In the case of ***Columbia Sportswear Company*** (supra), the Apex Court in Para 19 of the judgment held thus:-

> ***"19. In L. Chandra Kumar v. Union of India, a Constitution Bench of this Court has held:(SCC pp.301-02, pare 79)***
>
> ***"79…….the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is part of the basic structure of the Constitution."***
>
> ***Therefore, to hold that an advance ruling of the authority should not be permitted to be challenged before the High Court under Articles 226 and/or 227 of the Constitution would be to negate a part of the basic structure of the Constitution. Nonetheless, we do understand the apprehension of the Authority that a writ petition may remain pending in the High Court for years, first before a learned Single Judge and thereafter in Letters Patent Appeal before the Division Bench and as a result the object***

> ***of Chapter XIX-B of the Act which is to enable an applicant to get an advance ruling in respect of a transaction expeditiously would be defeated. We are, thus, of the opinion that when an advance ruling of the Authority is challenged before the High Court under Articles 226 and/or 227 of the Constitution, the same should be heard directly by a Division Bench of the High Court and decided as expeditiously as possible."***

In my considered opinion, this decision has no bearing in the facts and circumstances of the present writ petition.

28. Learned counsel, Mr. Mishra also raised certain other issues that the State respondents failed to comply with the Scheme prescribed in the Municipal Solid Waste (Management and Handling) Rules, 2000 and the Plastic Waste (Management and Handling) Rules, 2011. Those issues were raised only to substantiate the challenge made by the petitioner in respect of the direction issued under Annexure P-2. A reading of the Notification shows certain mention in respect of those two Rules. Be that as it may, all those issues are to be raised before the statutory authority i.e. the National Green Tribunal as prescribed under the Act of 2010. The writ Court is not required to enter into all those technicalities in respect of the Management and Handling of Plastic Waste biomedical waste etc. since there is an alternative mechanism prescribed for the same under the statute.

29. In view of the discussions made above, the objection raised by learned Advocate General regarding maintainability of the writ petition is sustained.

30. The writ petition, accordingly, stands dismissed as not maintainable. However, parties are directed to bear their own cost.

JUDGE

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