

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONAL BENCH, BHOPAL**

**Appeal No. 09/2015 (W.P. No. 1024/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 10/2015 (W.P. No. 1023/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 11/2015 (W.P. No. 1025/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 12/2015 (W.P. No. 1026/2009) (THC) (CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 13/2015 (W.P. No. 1027/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 14/2015 (W.P. No. 1028/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 15/2015 (W.P. No. 1029/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee 7& Anr.**

**Appeal No. 16/2015 (W.P. No. 1030/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 17/2015 (W.P. No. 1031/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 18/2015 (W.P. No. 1032/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 19/2015 (W.P. No. 1033/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 20/2015 (W.P. No. 1034/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 21/2015 (W.P. No. 1035/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 22/2015 (W.P. No. 1036/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 23/2015 (W.P. No. 1037/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 24/2015 (W.P. No. 1038/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 25/2015 (W.P. No. 1039/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

**Appeal No. 26/2015 (W.P. No. 1040/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.**

Appeal No. 27/2015 (W.P. No. 1041/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.

Appeal No. 28/2015 (W.P. No. 1042/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.

Appeal No. 29/2015 (W.P. No. 1043/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.

Appeal No. 30/2015 (W.P. No. 1044/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.

Appeal No. 31/2015 (W.P. No. 1045/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.

Appeal No. 32/2015 (W.P. No. 1046/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.

Appeal No. 33/2015 (W.P. No. 1047/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.

Appeal No. 34/2015 (W.P. No. 1048/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.

Appeal No. 35/2015 (W.P. No. 657/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr.

Appeal No. 36/2015 (W.P. No. 10068/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr

Appeal No. 37/2015 (W.P. No. 10042/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr

Appeal No. 38/2015 (W.P. No. 66/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Cess Appellate Committee & Anr

Appeal No. 39/2015 (W.P. No. 10067/2009) (THC)(CZ)
R.R.V.U.N. Ltd. vs. Assessing Authority, R.S.P.C.B., Jaipur & Anr.

CORAM:

Hon'ble Mr. Justice Dalip Singh
(Judicial Member)

Hon'ble Mr. Bikram Singh Sajwan
(Expert Member)

BETWEEN:

Rajasthan Rajya Vidyut Utpadan Nigam Ltd. Jaipur,
Through its Executive Engineer (PE&E),
Suratgarh Thermal Power Station, Suratgarh.

.....Appellant

Versus

1. The Cess Appellate Committee constituted Under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977, 4, Institutional Area, Jhalana Dungri, Jaipur (Rajasthan).
2. Assessing Authority, Through its Member Secretary, Rajasthan State Pollution Control Board, 4, Institutional Area, Jhalana Dungri, Jaipur (Rajasthan).

.....Respondents

Counsel for the Appellant :

**Shri Virendra Lodha, Sr. Advocate
Dr. M.S.Kachhawa, Advocate
Shri Jai , Advocate
Shri Rajpal Meena, Sr. Chemist
Shri Ghanshya Meena, Exe. Eng**

Counsel for Respondent No. 2 :

Shri Sandeep Singh, Advocate

Dated : July, 16th 2015

1. Whether the judgment is allowed to be published on the net? Yes
2. Whether the judgment is allowed to be published in the NGT Reporter? No

JUDGEMENT

1. These appeals raise a common question and hence were heard together on the request of the Learned Counsel for the parties.
2. The Rajasthan Rajya Vidyut Utpadan Nigam Ltd. (hereinafter referred to as 'Appellant) has challenged the order of the Cess Appellate Committee constituted under Section 13 of the Water (Prevention and Control of

Pollution) Cess Act, 1977 referred to as Annexure-1 in Appeal No. 09 of 2015. Initially the Appellant preferred Writ Petitions against the order of the Appellate Committee (Annexure-1) before the Hon'ble High Court of Rajasthan, Bench at Jaipur which after hearing the parties directed issuance of notice vide order dated 02.02.2009. Subsequently, during the pendency of the Writ Petitions, the Hon'ble High Court of Rajasthan vide order dated 24.01.2014 directed these Writ Petitions to be transferred to the National Green Tribunal in the light of the judgement of the Hon'ble Supreme Court in *Bhopal Gas Peedith Mahila Sangathan & Ors. Vs. Union of India WP No. 50/1998*. It is in this backdrop that after the receipt of the record, notices were ordered to be issued to the parties after registration of the Appeals by this Tribunal.

3. In pursuance of the notice issued, the parties have put in their appearance and the matter has been heard today.
4. Since, the Learned Counsel for the Appellant has argued the matter on the limited question that the Appellate Committee as well as the Assessing Authority committed an error in holding that for carrying out the assessment of the Cess liable to be imposed under Section 3(2) A of the Act of 1977, the Assessing Authority was not under an obligation to afford an opportunity of hearing before passing assessment order holding the Appellant liable for payment of the Cess. It was submitted by the Learned Counsel that it is a settled principle of law that before passing any order by any authority which is in the nature of the judicial and quasi-judicial order, an opportunity of showing cause and compliance of natural justice must be afforded to the affected party. Learned Counsel pointed

out that the Appellate Committee also in the impugned order (Annexure-1) dated 12.12.2008 has held in so many terms that “there is no clear provision under Section 3(2)(A) of the Cess Act to suggest that the Assessing Authority has to mandatorily give an opportunity of hearing before assessing the assessee” under the provisions of the Act.

5. Learned Counsel for the Respondent on the other hand supported the view expressed by the Appellate Committee and contended that under the provisions of the Act of 1977 and the Rules framed thereunder, there is no such requirement of affording an opportunity of hearing to the affected party and as such there is no such infirmity in the order particularly in view of the fact that the Appellant has not disputed the other facts that are recorded by way of findings by the Appellate Committee in their order which would make the Appellant liable.
6. We have given our thoughtful consideration to the rival contentions. While, we do not wish to either controvert or accept the findings with regard to the Appellant not having installed the Sewage Treatment Plant or that the emissions were in excess of the prescribed limits and not conforming to the prescribed standards and the effluents were being discharged without their being conforming to the prescribed standards or that the Appellant had started operations without the requisite consents to establish and consent to operate, etc. and further that these are the admitted position even by the Appellant. We are of the opinion that it is settled proposition of law that the principle of natural justice have to be complied with the by the authority assigned to take the decision even in quasi judicial matters and for the aforesaid purpose, an opportunity to

show cause and hearing against not only the alleged violations and shortcomings but also the action proposed to be taken and the assessment order being passed ought to have been affected. This principle has been reiterated time and again right from the basic authority in *A.K.Karaipak V/s Union of India* reported in (1969) 2 SCC 262 wherein the necessity of administrative authorities in discharging their duties and functions in a fair and just manner have been emphasised and for the aforesaid purpose, the requirement of complying with the rules of natural justice by the concerned authority have been emphasised to the recent judgement in *Manohar V/s State of Maharashtra* reported in (2012) 13 SCC 14 where in again the Hon'ble Supreme Court has held that even if the right to hearing has not been provided under a specific statute, the principle of natural justice must be complied with unless excluded which is not the case at hand.

7. In this view of the matter, since the admitted position is that no opportunity of hearing was afforded by the Assessing Authority before passing the order of the assessment which would also in terms include the question regarding entitlement or not of the rebate as contemplated by the Act, we are of the view that the orders passed by the Assessing Authority as well as of the Appellate Committee need to be set aside with the direction to the Assessing Authority to decide the matter afresh after affording an opportunity of showing cause and hearing to the Appellant.
8. We find from the record that the Hon'ble High Court while being seized of the Writ Petitions had passed interim orders staying the recovery

against the Appellant on the condition that if the Appellant deposits the principal amount of Cess, the recovery of the penalty shall remain stayed.

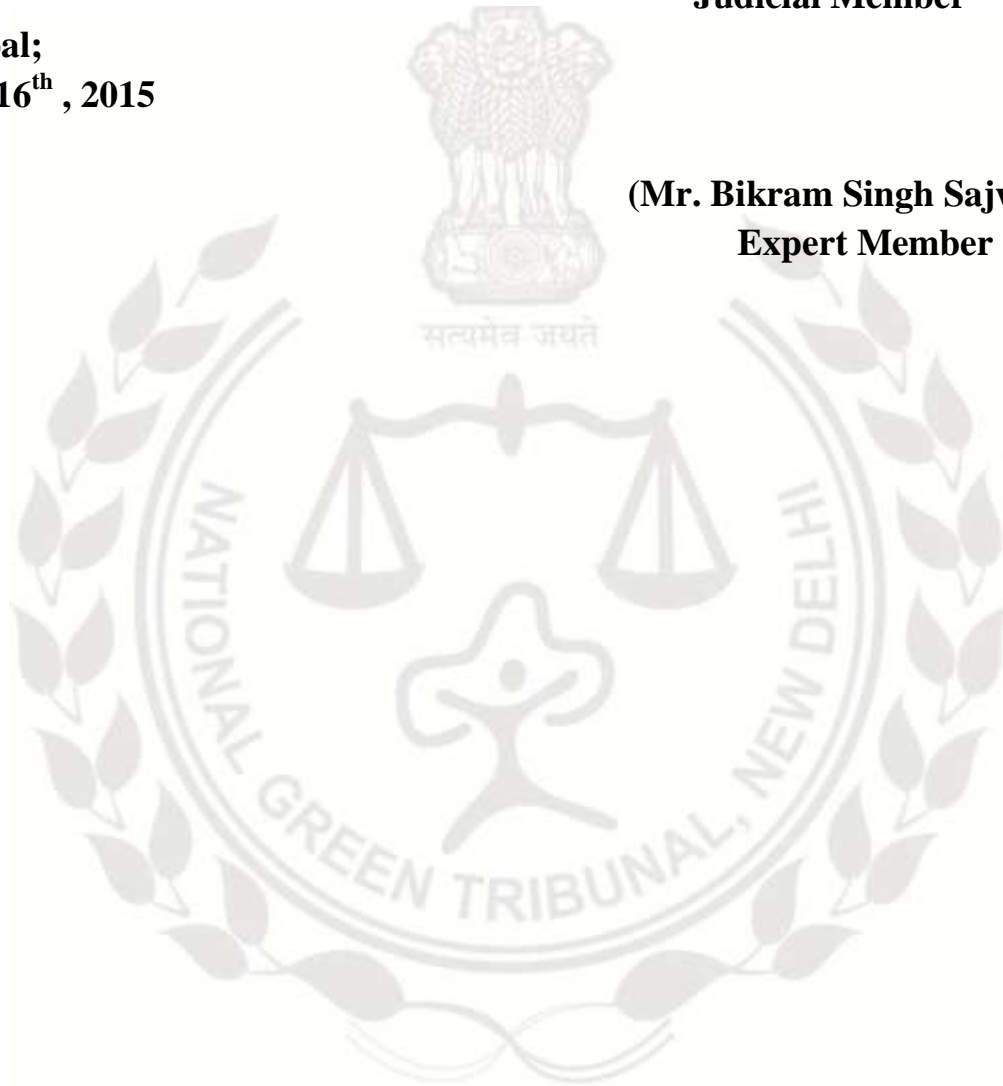
9. Learned Counsel for the parties agreed that in view of the remand of the matter, it may be directed that the arrangement under the interim order be allowed to continue till the matter is finally decided by the Assessing Authority and in view of the fact that the assessment order and the Appellate Committee order have been ordered to be set aside, the Respondents need not be directed to refund to the Appellant the amount so paid and deposited under the interim orders.
10. In the facts and circumstance of the present case, we are of the view that even though the orders of the Assessing Authority as well as the Appellate Committee have been set aside, the arrangement made under the interim orders of the Hon'ble High Court shall remain force till such time as the matter is decided afresh after affording an opportunity of hearing to the Appellant by the Assessing Authority and further recovery and/or refund of the amount shall abide by the final decision in the matters by the Assessing Authority.
11. With the aforesaid observations, the Appeals are allowed to the extent indicated herein above with the direction of remand of the matter to the Assessing Authority for decision afresh after affording an opportunity of hearing to the Appellant and the Respondents. For the aforesaid purpose for showing cause and giving the opportunity of hearing, **the parties are directed to appear before the Assessing Authority on 14.09.2015.** For the aforesaid purpose **no further notice shall be required to be issued by the Assessing Authority.**

12. Accordingly, Appeal Nos. 09/2015 to 39/2015 stands disposed of, as indicated hereinabove. There shall be no order as to costs.

(Mr. Justice Dalip Singh)
Judicial Member

Bhopal;
July 16th, 2015

(Mr. Bikram Singh Sajwan)
Expert Member



NGT