IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR N. V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE K. V. ARAVIND

WRIT PETITION NO. 26954 OF 2024 (GM-POL)

BETWEEN:

1. THE UNION OF INDIA
REP. BY ITS SECRETARY
MINISTRY OF DEFENCE
136, SOUTH BLOCK
NEW DELHI - 110 001.

2. M/S. MADRAS ENGINEERING GROUP AND CENTRE
REP. BY ADMIN OFFICE
HEADQUARTERS
MADRAS ENGR GP AND CENTRE
PIN CODE - 900 493.

3. M/S. GARRISON ENGINEER (NORTH)
BANGALORE
SHIVANA CHETTY GARDENS
BENGALURU - 560 042.

...PETITIONERS

(BY SRI K. ARAVIND KAMATH, ASGI A/W
SRI B. PRAMOD, CGSC)

AND:

1. GOVERNMENT OF KARNATAKA
REP. BY IT CHIEF SECRETARY
ROOM NO.320, 3RD FLOOR
VIDHANA SOUDHA
BENGALURU - 560 001.

2. THE GOVERNMENT OF KARNATAKA
REP. BY ITS ADDITIONAL SECRETARY
ROOM NO.222, 2ND FLOOR
VIDHANASOUDHA
BENGALURU - 560 001.

3. KARNATAKA STATE POLLUTION
CONTROL BOARD
REP. BY ITS CHIEF ENVIRONMENTAL OFFICER
ZONAL OFFICE, BENGALURU CITY
"NISARGA BHAVANA"
3RD FLOOR, 7TH D MAIN
THIMMALAH ROAD, SHIVANAGAR
BENGALURU - 560 010.

4. CENTRAL POLLUTION
CONTROL BOARD
REP. BY ITS CHAIRMAN
SOUTH ZONE OFFICE
BENGALURU - 560 079.

…RESPONDENTS

(BY SMT. NILOUFER AKBAR, AGA FOR R -1 & 2
MS. KRISHIKA VAISHNAV ADVOCATE FOR
SRI. A. MAHESH CHOWDARY, ADVOCATE FOR R-3 &
SRI. KIRAN B. S. ADVOCATE FOR R-4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 & 227 OF CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OR CERTIORARI ISSUE A WRIT OR ORDER BY WAY OF CERTIORARI QUASHING THE ORDER DATED 23.09.2021, 20.05.2022 (ANNEXURE-A AND A1) PASSED BY THE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE, CHENNAI IN THE MATTER OF SUO MOTU BASED ON THE NEWS ITEM PUBLISHED IN THE HINDU DATED 08.03.2016 TITLE LAKE IN HEART OF BENGALURU CITY TURNS GRAVEYARD FOR FISH IN OA No. 54/2016 (SZ) BY HOLDING IT TO BE ILLEGAL, ARBITRARY AND CONTRARY TO THE PRINCIPLE OF NATURAL JUSTICE & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE N.V. ANJARIA
and
HON'BLE MR JUSTICE K.V. ARAVIND

ORAL ORDER

(PER: HON'BLE THE CHIEF JUSTICE MR. JUSTICE N.V. ANJARIA)

At the outset, learned Additional Solicitor General Mr. K. Arvind Kamath, assisted by learned Central Government Standing Counsel Mr. B. Pramod for the petitioners does not press prayer (ii) in paragraph 32, seeking to delete the same.

2. Accordingly, prayer in paragraph 32(ii) is permitted to be deleted, which was as under,

> "Issue a writ or order or direction, directing the 3rd respondent not to order closure of the 2nd petitioner and not to take any coercive/adverse action pursuant to notice/communication dated 09.07.2024 [Annexure A2] pending disposal of the Appeal before the Hon'ble NGT, Chennai''

2.1 Similarly, in the interim prayer, the following part was not pressed and sought to be deleted, which is permitted to be deleted,

> "…… and notice/communication dated 09.07.2024 [Annexure-A2] passed by the 3rd respondent, and direct the respondents not to take any coercive/adverse action against the petitioners in the

interest of justice and equity and pass such other order/s deemed just and proper in the facts and circumstances of the case.''

3. The Union of India along with its two limbs namely M/s. Madras Engineering Group and Centre and M/s. Garrison Engineers (North) Bangalore which are under the Ministry of Defence, have filed the present petition.

3.1 The petitioner No.2-Madras Engineering Group is a category-B Training establishment, having designed capacity to train 2700 Agniveers and 1500 Soldiers. The Centre has authorized 51 Officers, 267 Junior Commissioned Officers and 1093 other Ranks. They along with the soldier-trainees undergo regular training. About 5000 employees and trainees stay within the campus with their family. Petitioner No.3-M/s.Garrison Engineers provide accommodation complexes.

3.2 Invoking the jurisdiction of this Court under Article 226 of the Constitution, the petitioners have challenged order dated 23rd September 2021 and 20th May 2022 passed by the National Green Tribunal, Southern Zone, Chennai passed in Original Application No.54 of 2015 which was a *suo motu* proceedings, based on the

news item published in 'The Hindu' daily dated 8th March 2016 titled as 'Lake in the heart of Bengaluru City turns graveyard for fish'.

3.3 An interim order was passed by the National Green Tribunal (NGT) on 23rd September 2021 in the aforesaid proceedings, whereby the NGT imposed environment compensation to the tune of Rs.2,94,60,000/- on petitioner No.2-Madras Engineering Group on the ground of non-compliance of the discharge standards in 100 KLD STP. Order dated 20th May 2022 thereafter came to be passed, finally disposing of the said proceedings of Original Application No.54 of 2016. In that order, a finding was *inter alia* recorded in paragraph 12 that Madras Engineering Group-petitioner No.2 along with the slaughter house Bangalore Water Supply and Sewerage Board (BWSSB) has contributed to the pollution.

3.4 It was directed that the compensation be assessed and recovered by Karnataka State Pollution Control Board-respondent No.3 herein from the petitioner No.2. The Tribunal provided that the BWSSB may contribute Rs.1,00,00,000/- (Rupees One Crore only) towards the interim compensation. It is to be noticed that the

petitioners herein were not party in the aforesaid proceedings before the NGT.

3.5 The prayer which was deleted as recorded above, was in respect of the notice-cum-order dated 9th July 2024, whereby the competent authority of Karnataka State Pollution Control Board called upon the petitioner to pay the environmental compensation of Rs.2,94,63,000/- as per the order dated 23rd September 2021 of the NGT within seven days, failing which, it was provided that, the closure order would be issued under Section 33(A) of the Water (Prevention and Control of Pollution) Act, 1974.

3.6 With the above background of the order passed by the NGT, the case of the petitioners in the present petition may be noticed. While calling in question the aforementioned order dated 20th May 2022 as well as previous order which was interim order dated 23rd September 2021, it is stated that the petitioners were not party to the said *suo motu* proceedings initiated by the NGT. It is stated that open storm water drain of BWSSB flows through MEG & Centre adjacent to the 100 KLD STP commissioned in 2019 culminating in Ulsoor Lake.

3.6.1 It is stated that it is only when the Joint Committee appointed by the NGT came for inspection, the petitioner knew that *suo motu* proceedings were taken up by the NGT in the year 2016. It appears, it was stated that the Committee in its report dated 10th August 2020 recommended to the NGT that the STP was operated without Consent of Establishment and Consent of Operation and that the treated water did not comply the discharge standards. The Committee recommended imposition of environmental compensation from the date of sample collection.

3.6.2 It was stated that Central Pollution Control Board addressed letter dated 2nd July 2021 to inform the petitioner, to which reply was forwarded. The STP and SWD was re-inspected by the Joint Committee on 28th July 2021 and report was submitted to NGT. It is the case that even during this re-inspection, the petitioners were not given opportunity by the Joint Committee of being heard and put forward their case. The NGT thereafter passed the impugned orders invoking *suo motu* proceedings on the basis of newspaper report, in which also, the petitioners were not party.

3.7 Notice dated 9th July 2024 came to be issued from the Environmental officer, State Pollution Control Board with reference

to the proceedings and the orders passed by the NGT to call upon the petitioners to pay the imposed environment compensation of Rs.2,94,60,000/-, failing which, it was intimated, action in law would be initiated. The petitioners have filed Appeal No.53 of 2024 before the NGT against the said notice.

3.8 In the proceedings of the aforementioned appeal, the NGT passed the following interim order staying notice dated 9th July 2024 subject to condition that the appellant deposits sum of Rs.1,00,00,000/- with the Karnataka State Pollution Control Board, extracting paragraph 3,

> "3. Without going into the merits of the case, considering the averment made in the appeal that there are more than 5000 employees/trainees residing in that area dependent on the Project Proponent, we grant an order of interim stay of the impugned notice dated 09.07.2024 subject to the condition that the appellant shall deposit a sum of Rs.1,00,00,000/- (Rupees One Crore only) to the Karnataka SPCB within a period of 06 (six) weeks from today, failing which the stay granted will be automatically vacated without further reference to this Tribunal."

4. Learned Additional Solicitor General Mr. Arvind Kamath made following submissions,

(i) The orders passed by the NGT imposing the environment compensation on the petitioner and the finding that the petitioner has created and contributed to pollution, are both without hearing the petitioner. The petitioner was not party to the proceedings. No opportunity was given to the petitioner.

(ii) Even there is no assessment of the amount of environment compensation.

(iii) The orders are unilaterally passed in breach of principles of natural justice.

(iv) Without prejudice to the above contentions,

(a) In the reply to letter dated 2nd July 2021 of the Central Pollution Control Board, it was pointed out that the BWSSB diverted sewage from various civil areas into SWD flowing through MEG & Centre. Complaints were made against BWSSB to stop the flow of sewage which was becoming health hazard to the soldiers and other residents in the Centre.

(b) It is no where the case that the Army establishments/stations in Karnataka need to take prior consent before operationalising the STPs.

(c) The sewage load of the petitioner No.2 is very less and 1200 KLD STP is under planning. The claim about the generation and disposal into drains by the petitioner are exaggerated.

(d) During inspection, the samples were collected from the entry point of the storm water drain to ascertain the pollution. The BWSSB and others are the main polluters and the petitioner cannot be pinned with the fault.

(e) The treatment accorded to the petitioner is discriminatory.

4.1 It was further submitted by learned Additional Solicitor General that all the above aspects of the case and the contention of the petitioners could have been pointed out to the NGT, had the petitioner been the opportunity of hearing. Highlighting that non-giving of opportunity of hearing, caused serious prejudice to the petitioner as it is saddled with huge amount of environment

compensation erroneously and even without any assessment process, by recording ex parte finding.

4.1.1 Learned Additional Solicitor General submitted that the breach of natural justice and the admitted fact that the petitioner was not given opportunity of being heard, are good ground for this Court to exercise its jurisdiction under Article 226 of the Constitution and to set right the injustice done to the petitioner. He submitted that, even as the other side will point out about the availability of alternative remedy under Section 22 of the NGT Act, 2010 which provides for the Appeal to the Supreme Court, in the facts of the case when there is a clear breach of natural justice, this Court may exercise its powers.

4.1.2 In support of the above submission, the decision of the Supreme Court in **Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1]**, was pressed into service, for what it laid down in paragraphs 14 and 15 of the judgment. Another decision in **Harbanslal Sahnia vs. Indian Oil Corporation [(2003) 2 SCC 107],** was also relied on to highlight that the writ jurisdiction is not invariably excluded even when the alternative remedy is available.

4.1.3 For the similar principle, decision of the Apex Court in **Radhakishan Industries vs. State of H.P. [(2021) 6 SCC 771]**, which also ruled on the lines of **Whirlpool Corpn. (supra)**, in which it was stated that the power under Article 226 of the Constitution to issue writs can be exercised not only for enforcement of fundamental rights, but for any other purpose including the circumstance arising in the facts of the present case.

4.2 Learned Advocate Mr. Mahesh Choudary for respondent No.3-Karnataka State Pollution Control Board (KSPCB) relied on Section 22 of the National Green Tribunal Act, 2010, to vehemently submit that read with Section 14 of the Act which deals with the settlement of dispute by the Tribunal, since the appeal is provided before the Hon'ble Supreme Court under the said Section, the petition under Article 226 and 227 of the Constitution would not lie, and that the present petition is liable to be thrown away on that ground alone.

4.2.1 Learned Advocate for respondent No.3 vehemently submitted that petition is a belated attempt on the part of the Union of India and its defence establishments to call in question the order of the Tribunal. It was his submission that on the ground of delay,

the Court may not entertain the petition. The proposition was highlighted that delay or latches is one of the factors which would weigh with the High Court while exercising discretionary powers under Article 326 of the Constitution. Decision in **Karnataka Power Corporation vs. K. Thangappan [(2006) 4 SCC 322]** and in **Mrinmoy Maity vs. Chhandakoley [(2024) SCC Online SC 551]**, was relied on to buttress the submission.

4.2.2 Learned Advocate for respondent No.3 proceeded to raise contentions on merits by relying on affidavit-in-reply. He further attempted to submit that it could not be said that the petitioners are not aware about the proceedings before the Tribunal. Therefore, it was submitted that no relief could be granted to the petitioners even on the ground of breach of natural justice.

5. There is no gainsaying that the petitioners were not party before the NGT which took up *suo motu* proceedings and proceeded to pass the interim and thereafter the final order against the petitioners, imposing environment compensation recording a finding to hold that the petitioners are contributory to pollution.

5.1 In the final order dated 20th May 2022, following finding was recorded,

> "Slaughter house, MEG and BWSSB have contributed to the pollution apart from other. Compensation be assessed and recovered from them by the State PCB, following due process. BWSSB may kindly contribute interim compensation of Rs.1 crore.'' (Para 12)

5.1.1 In the interim order dated 23rd September 2022, observations were made by the NGT which were in absence of the petitioners to become the basis for the final order and confirmation therein, extracting the same,

> "3. EC for non-compliance of 100 KLD STP operated by MEG & C:
>
> Based on the water consumption data, the Joint Committee in its report dated 10.08.2020 estimate that 4300 KLD of sewage is generated in Madras Engineering Group and Centre campus. Out of this 100 KLD is treated in the STP installed by Madras Engineering Group and Centre and remaining 4.2 MLD is discharged to UGD system installed by BWSSB. Treated sewage from STP is discharged to the storm water drain. MEG has not applied for Consent for Establishment and Consent for Operation from KSPCB for installation and operation of STP and discharging of treated sewage. The STP is operated without valid consent. During the Joint Committee inspection on 14.05.2020, it was observed that treated sewage was not complying the discharge standards with reference to BOD, COD, Ammonia and fecal coliform. During

the Joint Committee inspection on 28.07.2021, again it was observed that treated sewage was not complying within the discharge standards with reference to COD and Fecal coliform. Thus, the EC is estimated as follows:

Pollution Index of industrial sector (PI)

The Karnataka State Pollution Control Board has categorized of sewage treatment plants of capacity >100 KLD into Large scale and RED category and accordingly the consents are issued. For red category of industries, average pollution index is 80. Thus, PI is considered as 80 in the EC estimation for STP."

5.2 The only plank of contention on behalf of respondent No.3-Pollution Board is Section 20 of the NGT Act, 2010 to submit that the same provides the remedy before the Hon'ble Supreme Court and that the petitioners cannot invoke the jurisdiction and Article 226 of the Constitution of India.

5.2.1 Said Section 22 of the NGT Act reads as under,

"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.''

5.3 In the context of the above provision of Section 22 of the NGT Act and in view of the contention, the question falls for consideration is whether it would be permissible for the High Court to exercise powers under Article 226 of the Constitution. The position of law is well settled that only reason that an alternative remedy is available, would not be an embargo on the High Court's power to entertain the petition under Article 226 in certain contingencies.

5.4 Surveying the decisions generally laying down the above law, in **Harbanslal Sahnia (supra)**, the Apex Court relying on its own decision in **Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1]** observed that Rule of exclusion of writ jurisdiction because of availability of an alternative remedy is a rule of discretion and not of a compulsion. It was stated that certain contingencies such as where the petitioner seek to enforce the fundamental rights, where there is failure to comply with the principles of natural justice or where the orders of proceedings are without jurisdiction or that the vires of the Act is challenged, the availability of the alternative remedy is not to be pleaded as a bar.

5.4.1 The Supreme Court in **U.P. Power Transmission Corporation Ltd. vs. CG Power and Industrial Solutions Ltd. [(2021) 6 SCC 15]**, stated to reiterate that existence of an alternative remedy will not be always a prohibitory norm for the High Court to refuse to entertain the writ petition,

> "It is well settled that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case. The High Court may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly: (1) where the writ petition seeks enforcement of a fundamental right; (ii) where there is failure of principles of natural justice or (iii) where the impugned orders or proceedings are wholly without jurisdiction or (iv) the vires of an Act is under challenge. Reference may be made to Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] and Pimpri Chinchwad Municipal Corpn. v. Gayatri Construction Co. [(2008) 8 SCC 172], cited on behalf of Respondent 1."
>
> (para 67)

5.4.2 The statement of law that notwithstanding availability of the alternative remedy, the High Court retains the power to exercise its writ jurisdiction, was asserted and elaborated in **Whirlpool Corpn. (supra)**, in following words,

> "The power to issue prerogative writs under Article 226 of the constitution is plenary in nature and is not limited by any other provisions 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". (Para 14)

5.4.2.1 It was held that the availability of alternative remedy is never a bar to the discretion available with the High Court whether to entertain or not the prerogative writs,

> "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 on some old decisions of the evolutionary era of the constitutional law as they still hold the field. (Para 15)

5.4.3 The rule of exhaustion of statutory remedy is rule of discretion and not rule of law, stated the Apex Court in **State of U.P. vs. Mohammed Noor [AIR 1958 SC 86]**,

> "But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies." (Para 17)

5.4.4 In **A.V. Venkateswaran, Collector of Customs vs. Ramchand Sobhraj Wadhwani [AIR 1961 SC 1506]**, it was highlighted that the discretion vested in the High Court to entertain the petition irrespective of the remedy available is customised in the sense that facts of each case have to be applied,

> "…the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and

> that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court." (Para 18)

5.5 Having noticed the proposition of law in general context that non-compliance of principles of natural justice is one of the exceptions to the rule of discretion normally followed that the High Court would desist from exercising jurisdiction under Article 226 of the Constitution, when the alternative remedy is available, it is to be observed that the same statement of law would apply to the specific context of Section 22 of the NGT Act, as well. The issue could be said to be no more *res integra* that the jurisdiction under Article 226 of the Constitution would be exercisable even in the wake of providence of Section 22 in the NGT Act, provided and subject to the exceptions recognised by the Supreme Court discussed above, exist in the given set of facts.

5.6 The question whether there would be an ouster of the jurisdiction of the High Court under Articles 226 and 227 of the Constitution in wake of provisions of Sections 14 and 22 of the NGT Act, 2010, specifically came up for consideration with the Hon'ble Supreme Court in **Madhya Pradesh High Court**

Advocates Bar Association vs. Union of India [(2022) SCC Online 639], wherein one of the issue considered by the Apex Court was whether the NGT ousts High Court's jurisdiction under Sections 14 and 22 of the NGT Act.

5.6.1 While noticing the context of creation of the National Green Tribunal, the Apex Court in turn stated that the forum was created to go into the environmental issues with mandate to comply with the principles of natural justice,

> "The precursor to the NGT Act was the 186th Report of the Law Commission of India dated 29.3.2003 which came after the Supreme Court repeatedly urged Parliament through various judgments to establish specialized environmental courts, with qualified judges and technical experts on the bench. The Supreme Court also put forward that there should be direct appeals to the Supreme Court from such environmental courts. The Law Commission then recommended creation of a specialized court to deal with the environmental issues. The Law Commission expressed the view that it is not convenient for the High Courts and the Supreme Court to make local inquiries or to receive evidence. Moreover, the superior Courts will not have access to expert environmental scientists on permanent basis to assist them. The NGT was conceived as a complementary specialized forum to deal with all multidisciplinary environmental issues, both as original as well as an appellate authority. The specialized forum was also made free from the rules of evidence applicable to normal courts and was permitted to lay down its own procedure to entertain oral and

> documentary evidence, consult experts etc., with specific mandate to observe the principles of natural justice." (Para 13)

5.6.2 The issue about the exercise of jurisdiction by the High Court vis-à-vis the said provisions in the NGT Act, was considered and addressed by the Hon'ble Supreme Court by recalling the *ratio* of the decision of seven judges bench in **L. Chandra Kumar vs. Union of India [(1997) 3 SCC 261]** in which it was held in paragraphs 78 and 79 that the power of judicial review over legislative action vested in the High Courts under Article 226 and in the Supreme Court under Article 32 of the Constitution, is an integral and essential feature of the Constitution, constituting part of its basic structure. It was held that, therefore, ordinarily power of High Courts and Supreme Court cannot be excluded. It was further observed that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions, is also part of the basic structure.

5.6.3 The Apex Court in **Madhya Pradesh High Court Advocates Bar Association (supra)**, observed,

"It can further be noted that in terms of the above ratio in *L. Chandra Kumar* [supra], the High Courts have been entertaining petitions under Article 226 and 227 of the Constitution against orders of the NGT. While exercising such jurisdiction, the Courts necessarily exercise due discretion on whether to entertain or to reject the petition, as per the test broadly laid down in *Whirlpool Corpn.* v. *Registrar of Trade Marks, Mumbai*;

> "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 on some old decisions of the evolutionary era of the constitutional law as they still hold the field." (Para 21)

5.6.4 Noticing thus that the power of judicial review can be exercised and prerogative writs can be issued in three circumstances namely enforcement of the fundamental rights, where there is a breach of violation of principles of natural justice or where the order of proceedings is wholly without jurisdiction, the Supreme Court in **Madhya Pradesh High Court Advocates Bar Association (supra)**, held in terms that the jurisdiction of the High Court would remain unaffected,

> "It is also noteworthy that nothing contained in the NGT Act either impliedly or explicitly, ousts the jurisdiction of the High Courts under Article 226 and 227 and the power of judicial review remains intact and unaffected by the NGT Act. The prerogative of writ jurisdiction of High Courts is neither taken away nor it can be ousted, as without any doubt, it is definitely a part of the basic structure of the Constitution. The High Court's exercise their discretion in tandem with the law depending on the facts of each particular case."
> (Para 22)

5.7 An aspect of delay was attempted to be raised in vain by the respondents. It is not possible to come to a conclusion that there

was a culpable omission on the part of the appellants in not challenging the orders immediately. Not only that the appellants were not party to the proceedings before the NGT, they had never an opportunity to put forward their rebuttal or the case in defence to the finding and conclusion by the NGT about their liability to pay the compensation. Even if the appellants could be attributed with the knowledge of the proceedings before the Tribunal, when they were not given opportunity to put forward their case and that they were not heard, their right to challenge the finding and the decision could be said to be remaining alive to be exercised in Court of law. It was legitimate for the appellant to file the petition when the effect of the order was felt. A litigant, in the present case, the Union of India and Defence Units under it, would not while away the time for the sake of whiling away. The aspect of delay has to assessed and applied in the setting of facts and in the context of dispute.

5.8 The principles of natural justice are intended to operate in the areas not chattered by any law even though any legal provisions may not contemplate the observance of natural justice. The consequence of the action and the prejudice which may be caused to the party would necessitate the compliance of natural justice.

The natural justice is a principle which ensures fair and non-prejudicial adjudication whenever a decision making process is going to effect the rights of any person.

5.8.1 Natural justice aims to secure fair play in action. It implies that the Court would not permit one-sider to influence a decision by his own version which may not be known to the other side, going to be effected if the version is to be acted upon *ex parte.*

5.8.2 A person who is subjected to some inquiry or imposition of some decision should not be left in dark as to the risk of confronting with adverse finding without any opportunity to put forward his case, raise defence and adduce evidence or produce material before the decision maker. They may be the material evidence or case which would dissuade decision maker from taking one particular view against the another.

5.8.3 In **State Bank of India vs. D.C. Aggarwal (JT 1992 (6) SC 673)**, the Apex Court held that while taking action against a person on the basis of certain material or evidence without bringing the same to the notice of such person is violative of procedural safeguards and contrary to fair and just inquiry.

5.8.4 The contention that the petitioners are to be attributed with knowledge of the proceedings is of no avail, even if it is to be so presumed. The High Court of Allahabad in **Committee of Management, Vaidik Higher Secondary School and others vs. District Inspector of Schools and others [1993 AWC 1071 Allahabad]** equivalent MANU/UP/0842/1993 noted with reference to an English decision with a reference to decision of the Privy-Council in **Mahon Vs. Ali New Zealand Limited (1984 (3) All E.R. 201)** which held (at page 210) that "more knowledge of enquiry proceedings or presence at the hearing is not enough" for taking away with the observance of natural justice. It was held that even if a person has knowledge of the proceedings or is present, that by itself cannot be a ground not to observe the principals of natural justice, if such person is lightly to be adversely affected.

5.8.5 It is to be observed also that the NGT in imposing the liability of environment compensation on the petitioners-the Union of India and its defence establishment, not only proceeded in breach of natural justice and without affording any opportunity to the petitioners, the amount demanded and made payable, turns out to be the demand without even assessing the liability. A demand

notice is served without undertaking the exercise of assessment. There is no assessment of the liability qua the petitioners, when the petitioners have not been heard and had never the occasion to raise the defence.

5.9 More recent decisions laying down that the NGT is obliged to comply with the principles of natural justice, finally reiterates the position of law. The Apex Court in **Singrauli Super Thermal Power Station vs. Ashwini Kumar Dubey** which was **Civil Appeal No.3856 of 2022** decided on **05.07.2023**, disapproved the order of the National Green Tribunal which was passed without compliance of natural justice. The National Green Tribunal had constituted an expert Committee with regard to the alleged violations, in respect of which there was no opportunity was given to the opponent.

5.9.1 The Hon'ble Supreme Court noticed that 2Section 19(1) of the NGT Act, 2010 reads to provide that the Tribunal shall not be bound by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and proceeded to observe,

> "In other words, the NGT has simply accepted the recommendations as remedial action

> suggested by the Committee but the same is in the absence of there being objections filed by the appellants herein who were the respondents before the NGT and without giving any hearing to them and against whom directions impugned in these cases have been passed by the NGT. We find that the procedure adopted by the NGT is an instance of violation of the principles of natural justice." (Para 11)

5.9.2 A decision of the Supreme Court in **Madhyamam Broadcasting Ltd. vs. Union of India [(2023) SCC Online 366]**, was referred to notice observations therefrom,

> "The facet of audi alteram partem encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness."
> (Para 14)

5.9.3 The Supreme Court in **Singrauli Super Thermal Power Station (supra),** then further observed that observance of principles of natural justice as contemplated in Section 19(1) of the Act is indispensible. It was stated that the material on which the authority acts must be supplied to the party against whom such material/data is to be used in as much as only then, such party

would have an opportunity 'not only to refute it but also supplement, explain or give a different perspective to the facts upon which the authorities relies'. A reasonable opportunity must be accorded to the affected party to present its observations and comments. With such observations, the NGT in that case set aside the order before it and the case was remanded to NGT for reconsideration.

5.9.4 In a more recent decision in **Veena Gupta vs. Central Pollution Control Board [(2024) 2 Scale 200]**, the appeal before the Hon'ble Supreme Court arose when an *ex parte* order passed by the NGT in *suo motu* proceedings holding the appellants guilty and directing payment of compensation. It was a ground of challenge that before passing adverse order, opportunity was not given.

5.9.5 Such repetitive orders without affording opportunity of hearing and without compliance of natural justice by the NGT, came under scanner of the Apex Court in the following observations,

> "The National Green Tribunal's recurrent engagement in unilateral decision making,

> provisioning ex post factor review hearing and routinely dismissing it has regrettably become a prevailing norm. In its zealous quest for justice, the Tribunal must tread carefully to avoid the oversight of propriety. The practice of ex parte orders and the imposition of damages amounting to crores of rupees, have proven to be a counterproductive force in the broader mission of environmental safeguarding." (Para 4)

6. For all the aforesaid considerations and the position of law highlighted, this Court is inclined to exercise powers under Article 226 of the Constitution in limited context and in respect of specific area which is non compliance of principles of natural justice, in as much as the order against the petitioners came to be passed by the NGT imposing the liability of payment of environment compensation without affording hearing to the petitioners. The NGT passed interim order and then confirmed the finding against the petitioners to confirm the liability even when the NGT had no version available from the petitioners, which could have been raised in defence.

7. In light of foregoing reasons and discussion, following order is passed,

(i) Order dated 20th May 2022 passed by the National Green Tribunal Special Bench in Original Application No.64 of 2015 is set aside in so far as and to the extent that it records a finding that the M/s. Madras Engineering Group and Centre-the appellant herein has contributed to pollution.

(ii) The aforesaid order dated 20th May 2022 of the National Green Tribunal Special Bench is set aside also in so far as it confirms interim order dated 23rd September 2021, ex parte imposing on the appellant environment compensation of Rs.2,94,60,000/- on the alleged ground of non-compliance of the discharge standards in two MLD-STP operated at Ulsoor Lake, Bangalore Water Supply and Sewerage Board.

(iii) The setting aside of the order and the finding imposing the environment compensation on the appellant are on the sole ground that they are passed without affording of opportunity of hearing to the appellant and thus in breach of principles of natural justice.

(iv) The matter is remitted back to the National Green Tribunal, Southern Zone, Chennai to reconsider and decide afresh the question of imposition or otherwise of the environment compensation on the appellant, and to decide as to whether the appellants are liable to pay such compensation, after extending opportunity of hearing to the appellants.

(v) The NGT shall permit the appellants to produce all the documents and the materials in their defence to put forward their case and the appellant shall also be heard for their case.

(vi) The parties shall co-operate in expeditious completion of above exercise by NGT.

(vii) The appellants, however, shall be obliged to deposit amount of Rs.1,00,00,000/- (Rupees One Crore only) with the Karnataka State Pollution Control Board in

view of order dated 21st August 2024, passed by the National Green Tribunal in Appeal No.53 of 2024. At the same time, the said deposit shall remain subject to outcome of the fresh exercise and order afresh to be passed by the National Green Tribunal as per the above directions.

8. It is clarified that the aforesaid order and directions are passed only on the ground of non compliance of principles of natural justice.

9. This Court has not gone into, nor has expressed any opinion on merits.

10. The present petition is allowed in part as above.

Sd/-
(N.V. ANJARIA)
CHIEF JUSTICE

Sd/-
(K.V. ARAVIND)
JUDGE

AHB
List No.: 1 Sl No.: 8