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TALLI GRAM PANCHAYAT

v.

UNION OF INDIA AND OTHERS

(Civil Appeal Nos. 383-384 of 2022)

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JULY 11, 2022

**[DR DHANANJAYA Y CHANDRACHUD AND
A. S. BOPANNA, JJ.]**

National Green Tribunal Act, 2010 – s.4(4)(c) – National Green

- C *Tribunal (Practice and Procedure) Rules, 2011 – Amendment in r.3 – By notification, a proviso was inserted in r.3 of the 2011 Rules, which allowed the constitution of a single member Bench in exceptional circumstances – The said notification was challenged – Before the Supreme Court on 11.01.2018, the Attorney General of India assured that the rule which is under challenge shall be rectified in consonance with the 2010 Act – However on 29.01.2018, a single member of the NGT dismissed an application for condonation of delay, which was filed by the appellant – On 31.01.2018, Supreme Court in the petition challenging the validity of the government order directed that the Chairperson of the NGT shall not constitute a single member Bench and each bench shall consist of one judicial member and an expert member – Appellant preferred an application for recall of the order of the single member dated 29.01.2018 and condonation of delay – The Tribunal dismissed both the applications by an order dated 16.07.2021 – On appeal, held: The single member of the NGT who dismissed the application for condonation of delay submitted by the appellant on 29.01.2018 had, in other cases, abstained from passing any judicial order on the ground that there was a stay on the composition of a single member bench – Propriety warranted that a consistent course of action should have been followed by the NGT, once the assurance which was held out before Supreme Court by the Attorney General, was brought to its knowledge – The phraseology of the order that the Supreme Court dated 31.01.2018 intended that there be an interdict on the constitution of single member benches constituted in purported exercise of the power conferred by the rule – The assumption of jurisdiction by a single member Bench clearly stands vitiated – The Single member could not have passed an order in*

view of the proviso to s. 4(4)(c) of the Act – The impugned order dated 16.07.2021 and original order of NGT dated 29.01.2018 set aside.

Allowing the appeals, the Court

HELD: 1. The single member of the NGT who dismissed the application for condonation of delay submitted by the appellant on 29 January 2018 had, in other cases, abstained from passing any judicial order on the ground that there was a stay on the composition of a single member bench. Similar orders were passed on the same day in other cases as well. However, the single member dismissed the application for condonation of delay filed by the appellant though he did not pass any order in the other cases in view of the assurance that was made by the Attorney General before this court. The order of this court on 11 January 2018 notes the assurance of the Attorney General that the rule under challenge would be rectified to bring it in accord with the Act and the judgments of this court. True, the order of this Court does not specifically record a direction for stay. This must however, be understood in the perspective of the fact that the Attorney General had placed a solemn assurance before the Court that the rule would be rectified to bring it in conformity with the parent enactment and the decisions of this Court. Implicit in this is the settled principle that delegated legislation must be in conformity with the enactment of the legislature which authorises its making. A rule cannot rise above the source of power. Propriety warranted that a consistent course of action should have been followed by the NGT, once the assurance which was held out before this court by the Attorney General, was brought to its knowledge. The order of this Court on 31 January 2018 directed that “in the meantime, the Chairperson shall not constitute a Single Member Bench....”. The phrase “in the meantime” elucidates that during the time the executive deliberates on the dissonance of the Rule with the Act and judgments, there shall be a restraint on its implementation. Thus, it is evident from the phraseology of the order that this Court intended that there be an interdict on the constitution of single member benches constituted in purported exercise of the power conferred by the rule. The assumption of jurisdiction by a single member Bench clearly stands vitiated. The Single member

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- A could not have passed an order in view of the proviso to Section 4(4)(c) of the NGT Act 2010 which states that the number of expert members hearing the appeal or application shall be equal to the number of judicial members, mandating that there shall be at least one expert member on the Bench. [Para 12][133-F; 134-A-F]
 - B *Save Mon Region Federation v. Union of India 2013 (1) All India NGT Reporter 1; Goa Foundation, through its Secretary v. Goa Tourism Development Corporation (OA No. 156/2016); Rajabhau Pawar v. The State of Goa through its Chief Secretary (OA No. 97/2016); The Goa Foundation v. Goa State EIAA (OA No. 33/2015) - referred to.*
 - C CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 383-384 of 2022.
 - D From the Judgment and Order dated 16.07.2021 of the National Green Tribunal, Principal Bench in MA No. 03 of 2019 & MA No. 04 of 2019 in MA No. 262 of 2017 in Appeal No. 36 of 2017 (WZ).
Sanjay Parikh, Sr. Adv., Abhimanyu Shrestha, Satwik Parikh, Divyansh Khurana, Shivam Tomar, Advs. for the Appellant.
 - E Ms. Aishwarya Bhati, ASG, Dr. A.M. Singhvi, Sr. Adv., Ms. Ruchi Kohli, Ms. Swarupama Chaturvedi, Digvijay Dam, Ms. Poornima Singh, G.S. Makkar, Ms. Vanita Bhargava, Ajay Bhargava, Ms. Shweta Kabra, Ms. Prerna Singh, M/s. Khaitan & Co., Ms. Archana Pathak Dave, Ms. Aastha Mehta, Ms. Deepanwita Priyanka, Advs. for the Respondents.
 - F The Judgment of the Court was delivered by
DR DHANANJAYA Y CHANDRACHUD, J.
 - G 1. These appeals arise from an order dated 16 July 2021 of the National Green Tribunal¹. The appellant challenged the grant of an environmental clearance to Ultratech Cement Limited² by a letter dated 5 January 2017. The NGT by the impugned judgment dismissed the applications to recall the order of a single member and for condonation of delay.
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- ¹ "NGT"
² "Fourth respondent"

2. By a letter dated 5 January 2017, the Ministry of Environment, Forest and Climate Change³ granted an environment clearance to the fourth respondent for limestone mining with a total production capacity of 0.53 million tonnes per annum at villages Talli and Bambor situated in Taluka Talenja, of the District of Bhavnagar in the State of the Gujarat. The fourth respondent served a copy of the environment clearance upon the Talathi-Cum-Mantri of the Gram Panchayat on 12 January 2017 through a letter dated 9 January 2017. The fourth respondent also issued a public notice on the grant of the environmental clearance on 11 January 2017 in Gujarati in “Saurashtra Samachar” and in English, in “Gujarat Samachar”. The appellant challenged⁴ the environmental clearance which was granted to the fourth respondent under Section 16 of the NGT Act on several grounds including the following:

“a) The area is ecologically sensitive, as the same has been notified as Brujad Gir. The same has been concealed by the Project Proponent.

b) Out of the total area of 193.3269 Ha., 155.3269 a is the private agricultural land. The consent of all the land holders, mandatory under the Mines and Minerals Developments Act has not been obtained by the Project Proponent. Such, land holders have also not been given any opportunity in the process, while the decision affects their land rights protected under Art. 300A of the Constitution.

c) The area falls within the catchment area of four bandharas, proposed to be constructed to provide for water for irrigation and drinking.

d) The mining if permitted would have severe effect of environment and ecology and also the life and livelihood of the villagers.”

3. The appellant obtained leave to file an application for condonation of delay⁵ since the appeal was filed beyond the prescribed period of 30 days. The fourth respondent contended that the notice was published in the newspapers on 11 January 2017 and the letter was served upon the Talathi-cum-Mantri on 12 January 2017 and therefore, the period of limitation must be calculated from these dates. However, the appellant

³ “MoEFCC”

⁴ Appeal No. 36 of 2017

⁵ MA 262 of 2017 in Appeal No. 36 of 2017

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- A contended that the publication was not in conformity with the statutory requirements under Clause 10 of the Environment Impact Assessment Notification as interpreted in **Save Mon Region Federation v. Union of India**⁶. The appellant argued that the environment clearance certificate must be uploaded on the website and has to be accessible and downloadable to the public. The appeal along with the application for condonation of delay was heard on 24 November 2017. In view of the position of law in **Save Mon Region Federation** (supra), the Tribunal sought a clarification on whether the environment clearance which was uploaded on the website was accessible to and could have been downloaded by the public.
- B condonation of delay was heard on 24 November 2017. In view of the position of law in **Save Mon Region Federation** (supra), the Tribunal sought a clarification on whether the environment clearance which was uploaded on the website was accessible to and could have been downloaded by the public.
- C 4. On 1 December 2017, the MoEFCC introduced an amendment to the National Green Tribunal (Practice and Procedure) Rules 2011⁷ by Notification GSR No. 1473(E)⁸. By the Notification, a proviso was inserted in Rule 3 of the 2011 Rules which allowed the constitution of single member Benches in exceptional circumstances. Rule 3 of the 2011 Rules, as amended by the notification reads as follows:

Distribution of business amongst the different ordinary place or places of Sittings of Tribunal.- (1) The Chairperson may constitute a bench of two or more members consisting of at least one Judicial member and one Expert member.

- E [Provided that in exceptional circumstances the Chairperson may constitute a single Member Bench]
- F 5. Subsequently, by an office order dated 5 December 2017, the Chairperson of the National Green Tribunal, in exercise of powers conferred under Rule 3(1) of the 2011 Rules constituted single member Benches at the Regional Benches due to a shortage of members. The office order read as follows:

“In exercise of powers conferred under Rule 3(1) of the National Green Tribunal (Practices and Procedure) Rules 2011 as amended vide Gazette Notification No. G.S.R 1473 (E) dated 01st December, 2017 of the Ministry of Environment, Forest and Climate Change, Government of India and in view of the exceptional circumstances prevailing in the National Green Tribunal on account of the shortage

G 6 2013 (1) All India NGT Reporter 1

H 7 “2011 rules”

I 8 “notification”

of the Members, necessitating constitution of a Single Member Bench at the Regional Branches of the Tribunal. Accordingly, a Single Member Bench is constituted in the Regional Benches at NGT SZB (Chennai), NGT CZB (Bhopal), NGT WZB (Pune) & NGT EZB (Kolkata) to conduct business of the Tribunal which shall be fully empowered to deals with the matters in accordance with law.”

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6. The National Green Tribunal Bar Association (Western Bench) instituted a petition⁹ under Article 32 of the Constitution, for challenging the notification dated 1 December 2017 and the office order issued by the Chairperson of the NGT on 5 December 2017 on the ground that they contravened Section 4(4)(c) of the NGT Act 2010 which requires each Bench to consist of an equal number of judicial and expert members. This Court while hearing the petition on 11 January 2018, issued the following directions:

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“Let a copy of this petition be supplied to Mr. PS Narasimha, learned ASG assisting Mr. K.K. Venugopal, learned Attorney General of India. It is assured by Mr. Venugopal that the rule which is under challenge shall be rectified in consonance with the Act, and also in consonance with the spirit of the judgments of this Court.”

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7. On 29 January 2018, a single member of the NGT dismissed the application for condonation of delay which was filed by the appellant, for non-prosecution. The order of the single member reads as follows:

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“The applicant is absent.

All the Respondents in chorus seek dismissal of this Application pointing out lack of diligence of the Applicant in the prosecution of this case.

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Perused the record. As the Respondents pointed out the applicant has shown no diligence in prosecution of this case. Hence, the Application MA No. 262/2017 stands rejected with no order as to costs.”

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On 31 January 2018, this Court in the petition challenging the validity of the government order directed that the Chairperson of the NGT shall

⁹ WP (C) No. 1235 of 2017

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- A not constitute a single member Bench and each bench shall consist of one judicial member and an expert member. Subsequently, the acting Chairperson of the NGT issued an order that no single member Bench shall be constituted in any zonal benches with immediate effect.
- B 8. The counsel for the appellant preferred an application for recall of the order of the single member dated 29 January 2018¹⁰ along with an application for condonation of delay in moving the application a year after the order sought to be recalled was passed¹¹. The applications were taken up for hearing two years after they were filed. By an order dated 16 July 2021, the Tribunal dismissed both the applications observing that even if the prayer for recall of the order is granted, the application C of condonation of delay in filing the appeal cannot be allowed. The Tribunal observed that the only ground of the appellant in seeking condonation of delay is that they did not have knowledge of the grant of the environment clearance. It held that such a contention cannot be accepted since the environment clearance was duly uploaded and that the period of limitation D must be calculated from when the order was uploaded. It was observed:
- E “Even if we grant the prayer for recall, the fact remains that MA No. 262/2017 (WZ), *Bambor Gram Panchayat & Ors. v. Ministry of Environment & Forest & Ors.*, which is for condonation of delay in filing the appeal, cannot be accepted as ground pleaded is that the appellant did not have knowledge of the grant of EC. EC was duly uploaded and individual knowledge is not the starting point. The EC was granted on 05.01.2017 while the appeal was filed on 19.4.2017 beyond the prescribed period of limitation and also the period of limitation for which this Tribunal can condone.”
- F 9. The appellant instituted these proceedings for challenging the order of the Tribunal on the ground that the order passed by the single member on 29 January 2018 is null and void because the constitution of a bench comprising of a single member is in contravention of Section 4(4)(c) of the NGT Act 2010. The appellant also contended that the lawyer who was previously engaged to represent it returned the file G because he was appointed as a Government Advocate and that he had brought this information to the notice of the Tribunal. The appellant urged that the lawyer subsequently engaged by the appellant was not provided any notice of the hearing in spite of the fact that the appeal was taken

¹⁰ MA No. 3 of 2019

H ¹¹ MA No. 4 of 2019

up after a long gap in time. The appellant thus set up the plea of a violation A
of the principles of natural justice.

10. Opposing these submissions, the fourth respondent contended that:

- (i) The order of environment clearance was communicated on 5 January 2017 and the Tribunal does not have the power to condone a delay beyond 90 days under the proviso to Section 16 of the NGT Act 2010, even if sufficient cause is shown; B
- (ii) The conduct of the appellant has been negligent because he has not appeared before the Tribunal on multiple occasions; and C
- (iii) The single member was not *coram non judice* at the time of the passing of the order on 29 January 2018 since the order of this Court directing that single member benches shall not be constituted was passed two days later, on 31 January 2018. D

11. The issue before this Court is whether a single member of the Tribunal could have dealt with the proceedings and dismissed the applications for restoration and for condonation of delay on 29 January 2018 after the Attorney General of India had assured this Court on 11 January 2018 that the proviso to Rule 3 would be rectified in consonance with the Act and the judgments of this Court. On 31 January 2018 this Court also directed the Chairperson of the NGT not to constitute single member Benches. E

12. The single member of the NGT who dismissed the application for condonation of delay submitted by the appellant on 29 January 2018 had, in other cases, abstained from passing any judicial order on the ground that there was a stay on the composition of a single member bench. In an order dated 23 January 2018,¹² the member noted as follows:

“Learned Counsel for the contesting parties are present. They submit the case be taken up for hearing after sometime in view of stay may be with regard to composition of Single Member Bench of this Tribunal. Request accepted. List for further proceedings on 1st March, 2018.” G

¹² Goa Foundation, through its Secretary v. Goa Tourism Development Corporation (OA No. 156/2016)

- A Similar orders were passed on the same day in other cases as well.¹³ However, the single member dismissed the application for condonation of delay filed by the appellant though he did not pass any order in the other cases in view of the assurance that was made by the Attorney General before this court. The order of this court on 11 January 2018 notes the assurance of the Attorney General that the rule under challenge would be rectified to bring it in accord with the Act and the judgments of this court. True, the order of this Court does not specifically record a direction for stay. This must however, be understood in the perspective of the fact that the Attorney General had placed a solemn assurance before the Court that the rule would be rectified to bring it in conformity with the parent enactment and the decisions of this Court. Implicit in this is the settled principle that delegated legislation must be in conformity with the enactment of the legislature which authorises its making. A rule cannot rise above the source of power. Propriety warranted that a consistent course of action should have been followed by the NGT, once the assurance which was held out before this court by the Attorney General, was brought to its knowledge. The order of this Court on 31 January 2018 directed that “in the meantime, the Chairperson shall not constitute a Single Member Bench....”. The phrase “in the meantime” elucidates that during the time the executive deliberates on the dissonance of the Rule with the Act and judgments, there shall be a restraint on its implementation. Thus, it is evident from the phraseology of the order that this Court intended that there be an interdict on the constitution of single member benches constituted in purported exercise of the power conferred by the rule. The assumption of jurisdiction by a single member Bench clearly stands vitiated. The Single member could not have passed an order in view of the proviso to Section 4(4)(c) of the NGT Act 2010 which states that the number of expert members hearing the appeal or application shall be equal to the number of judicial members, mandating that there shall be at least one expert member on the Bench.
- G 13. We accordingly allow the appeals and set aside the impugned order of the NGT dated 16 July 2021. The original order of the NGT dated 29 January 2018 shall stand set aside. Appeal No 36 of 2017 shall stand restored to the file of the NGT for disposal afresh. All the rights and contentions of the parties including on the issue of limitation are
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¹³ Rajabhau Pawar v. The State of Goa through its Chief Secretary (OA No. 97/2016); the Goa Foundation v. Goa State EIAA (OA No. 33/2015);

kept open. This Court has expressed no expression on the merits of the appeals.

14. Pending applications, if any, stand disposed of.

Ankit Gyan
(Assisted by : Rahul Rathi, LCRA)

Appeals allowed.