

A STATE OF UTTAR PRADESH AND OTHERS

v.

ANAND ENGINEERING COLLEGE AND ANOTHER

(Petition For Special Leave to Appeal (Civil) Nos. 10084-85/2022)

B JULY 12, 2022

[M. R. SHAH AND B. V NAGARATHNA, JJ.]

Principle/Doctrines – Principle of Natural justice – Opportunity of hearing before imposing damages u/s. 33 of the Wild Life (Protection) Act, 1972 – College of the respondents is in close vicinity of a Sanctuary – The effluent flowing out of the premise of college is causing serious environmental damage in the Sanctuary area – Forest Department issued several notices from the year 2003 onward to the college to stop discharging the effluent in the sanctuary area but the respondents continued to discharge the effluent, which resulted in serious environmental damage in the area – Forest department by an order dated 30.12.2011 had imposed damages of Rs. 10 crore upon the respondents – The High Court set aside the order of imposing the damages – On appeal, held: The imposing of damages of Rs. 10 crore is in gross violation of principles of natural justice – No opportunity of hearing by the forest department was given to the respondents – Admittedly, no show cause notice was issued to the respondents – Authority cannot impose damages and for that authority has to initiate appropriate proceedings before the appropriate court/forum to determine/ascertain the damages – Authority could not have straightway imposed damages in exercise of powers u/s. 33 of the 1972 Act – Order of High Court was not interfered with – SLPs disposed of – Wild Life (Protection) Act, 1972.

EXTRA-ORDINARY APPELLATE JURISDICTION: Special Leave Petition (C) Nos. 10084-85 of 2022.

G From the Judgment and Order dated 19.12.2019 of the High Court of Judicature at Allahabad in Writ (C) Nos. 8339 of 2012 and Writ (C) Nos. 8340 of 2012.

H V.K. Shukla, Sr. Adv., Rajeev Kumar Dubey, Ashiwan Mishra, Ms. Vaidruti Mishra, Kamendra Mishra, Advs. for petitioners.

The Order of the Court was passed by A

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 19.12.2019 passed by the High Court of Judicature at Allahabad in Writ Petition Nos. 8339/2012 and 8340/2012, by which the High Court has allowed the said writ petitions preferred by the respondents herein and has set aside the order/notice imposing damages of Rs. 10,00,00,000/- (Rupees Ten Crores) for violation of the Environmental Protection Act, 1986, which was imposed in exercise of powers under Section 33 of the Wild Life (Protection) Act, 1972, the State of Uttar Pradesh through its Forest Department has preferred the present special leave petitions. B C

2. That the respondents herein are running an educational institution in the area at Agra-Mathura Road and that too in the close vicinity of the National Chambal Sanctuary Project undertaken by the State Government. That due to the effluent flowing out of the premises of the college that borders the Sanctuary has resulted in serious threat to the ecology of the area as well as causing environmental damage and consequently has endangered the flora and fauna as well as the wild life in the sanctuary. The Forest department issued various notices to the respondents right from the year 2003 onwards regarding threat to the environment on account of effluent flowing in the sanctuary area from the huge multi storied building of the institution. However, the respondents continued to discharge the effluent which, according to the Forest Department, resulted in serious environmental damage in the area and consequently endangered the wild life in the sanctuary. Therefore, by order dated 30.12.2011 the Forest Department of the State imposed damages of Rs.10,00,00,000/- (Rupees Ten Crores) upon the respondents. The said order imposing damages upon the respondents was the subject matter before the High Court in the aforesaid writ petitions. At this stage, it is required to be noted that subsequently notice dated 10.02.2012 was issued to the original writ petitioners to ensure compliance of the provisions of the Water (Control and Removal of Pollution) Act, 1974 and the Air (Control and Removal of Pollution) Act, 1981 and also the Environmental Protection Act, 1986. D E F G

2.1 Before the High Court, it was the case on behalf of the original writ petitioners that the order imposing damages was in gross violation H

A of principles of natural justice as no show cause notice was ever issued to them in respect of the proposed action of imposing damages. It was also the case on behalf of the original writ petitioners that the authority passing the order imposing damages is not vested with any such power under any law for the time being in force. It was also the case on behalf of the original writ petitioners that the amount of damages imposed is too excessive without there being any statistical basis for the same and assessment for loss based on any cogent and convincing material. Before the High Court and even before this Court, the State/Forest Department relied upon Section 33 of the Wild Life (Protection) Act, 1972, which reads as under:

C “33. Control of sanctuaries – The Chief Wild Life Warden shall be the authority who shall control, manage and maintain all sanctuaries and for that purpose, within the limits of any sanctuary,-

(a) may construct such roads, bridges, buildings, fences or barrier gates, and carry out such other works as he may consider necessary for the purposes of such sanctuary:

Provided that no construction of commercial tourist lodges, hotels, zoos and safari parks shall be undertaken inside a sanctuary except with the prior approval of the National Board.

E (b) Shall take such steps as will ensure the security of wild animals in the sanctuary and the preservation of the sanctuary and wild animals therein;

(c) may take such measures, in the interests of wild life, as he may consider necessary for the improvement of any habitat;

F (d) may regulate, control or prohibit, in keeping with the interests of wild life, the grazing or movement of 2 live-stock.”

2.2 By the impugned judgment and order, the High Court has allowed the aforesaid two writ petitions and set aside the order/notice imposing damages of Rupees Ten Crores, by holding that under the Wild Life (Protection) Act, 1972, the Forest Department/State has no jurisdiction and/or authority to impose damages. The High Court has also observed that imposing damages of Rupees Ten Crores was in breach of principles of natural justice as before imposing such damages, no opportunity of being heard was given to the original writ petitioners and as such there was no material to impose damages of Rupees Ten Crores.

2.3 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court in setting aside the order imposing damages of Rupees Ten Crores for discharging the effluent flowing out of the premises of the college in the national sanctuary and consequently endangering the environment as well as the wild life in the sanctuary, the State has preferred the present special leave petitions. A
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3. We have heard Shri V.K. Shukla, learned Senior Advocate appearing on behalf of the State. We have gone through the impugned judgment and order passed by the High Court. At the outset, it is required to be noted that the order/notice imposing damages of Rs. 10,00,00,000/- (Rupees Ten Crores) has been found to be in gross violation of the principles of natural justice. Nothing is on record to indicate that before imposing damages of Rs. 10,00,00,000/- (Rupees Ten Crores) any show cause notice was issued upon the original writ petitioners to show cause as to why the damages may not be imposed or for any violation of any of the provisions of the Wild Life (Protection) Act and/or the Environmental Protection Act and/or any other law. Neither the respondent was given any opportunity of hearing by the authorities concerned. There was no material on record to impose damages of Rs. 10,00,00,000/- (Rupees Ten Crores). Imposing damages of Rs. 10,00,00,000/- (Rupees Ten Crores), thus can be said to be without any basis and/or material and the extent of damages caused to the environment and/or wild life sanctuary. Therefore, it cannot be said that the High Court has committed any error in setting aside the imposing of damages of Rs. 10,00,00,000/- (Rupees Ten Crores) which, as observed hereinabove, was found to be in breach of the principles of natural justice. C
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4. On merits and on jurisdiction and/or authority of the Forest Department/Environment Department to impose damages, heavy reliance is placed on Section 33 of the Wild Life (Protection) Act, 1972, which is reproduced hereinabove. It is the case on behalf of the Department that right from the year 2003, all efforts were made by the Department to see that the original writ petitions stop discharging the effluent in the sanctuary area. However, the original writ petitioners have continued to discharge the effluent and have caused the environmental damage and have endangered the environment as well as wild life in the sanctuary. Therefore, it is the case on behalf of the Department that thereafter when the original writ petitioners have continued to act detrimental to the environment and wild life in the sanctuary, the authority was justified F
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- A in imposing the damages while exercising the powers under Section 33 of the Wild Life (Protection) Act, 1972.

5. On a fair reading of Section 33 of the Wild Life (Protection) Act, 1972, reproduced hereinabove, the appropriate authority shall have wide powers to take such steps as well as to ensure the security of wild animals in the sanctuary and the preservation of the sanctuary and wild animals therein. The Chief Wild Life Warden also may take such measures, in the interests of wild life, as he may consider necessary for the improvement of any habitat and may also regulate, control or prohibit, in keeping with the interests of wild life, the grazing or movement of livestock. Therefore, in exercise of powers under Section 33 of the Wild Life (Protection) Act, 1972, the Chief Wild Life Warden/appropriate authority may even pass an order of closure of the institution, if the institution continues to discharge the effluent in the sanctuary which may affect and/or damage the environment as well as wild life in the sanctuary. Mere issuance of notice is not suffice. There can be further steps, may be of closure of an institution in case of repeated breaches and/or the action in discharging the effluent which may damage the environment and wild life in the sanctuary, after following the principles of natural justice and in accordance with law. To that extent, the authority is not helpless.

E However, at the same time, the authority cannot impose damages and for that the authority has to initiate appropriate proceedings before the appropriate court/forum to determine/ascertain the damages. However, straightway in exercise of powers under Section 33 of the Wild Life (Protection) Act, 1972, the authority could not have imposed damages.

F 6. Be that as it may, as observed hereinabove, before imposing damages of Rs. 10,00,00,000/- (Rupees Ten Crores), admittedly, no show cause notice was issued to the original writ petitioners calling upon them to show cause as to why damages may not be imposed for discharging effluent in the sanctuary, which damages/affects the environment and wild life in the sanctuary. Therefore, in the facts and circumstances of the case, setting aside the order of damages does not call for any interference of this Court. However, at the same time, if the authorities are very serious and are the opinion that the original writ petitioners have continued to discharge the effluent in the national sanctuary area which ultimately damages/affects the environment as well as wild life in the sanctuary, it will always be open for the department/authority to take

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steps as provided under Section 33 of the Wild Life (Protection) Act, 1972 and as observed hereinabove including the closure of the institution and even stop discharging the effluent in the national sanctuary, however, of course, after following the principles of natural justice. The authorities may not stop taking any further action and be satisfied by issuing notice only. If the discharge of the effluent is a threat to the environment and/or wild life in the national sanctuary, the authorities have to take further steps to stop such use and/or threat to the environment and wild life in the national sanctuary, in accordance with law. A
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7. With the aforesaid observations, the present special leave petitions stand disposed of. Pending applications, if any, also stand disposed of. C

Ankit Gyan
(Assisted by : Aarsh Choudhary, LCRA)

SLPs disposed of.