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RAZA AHMAD

v.

STATE OF CHHATTISGARH & ORS.

(Civil Appeal No 2804 of 2014)

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MARCH 07, 2022

**[DR. DHANANJAYA Y CHANDRACHUD AND
SURYA KANT, JJ.]**

C *National Green Tribunal Act, 2010 – ss.14, 16 and 38 – In*
D *April 2007, the seventh respondent, Steel Authority of India (SAIL)*
E *and Jayprakash Associates entered into a Memorandum of*
F *Association to establish a cement grinding unit of 2.2 MTPA capacity*
G *at Bhilai, Chhattisgarh – Pursuant thereto, they set up the tenth*
H *respondent, Bhilai Jaypee Cement Limited – A parcel of land*
 admeasuring 34.59 acres belonging to SAIL, falling in the villages
 of Hingna and Maroda at Bhilai in District Durg, was leased out to
 the tenth respondent for thirty years, based on a long-term lease –
 The land use of this land was designated as “green belt” in the
 1991 Development Plan of Bhilai – On the tenth respondent’s
 application, an Environmental Clearance was granted to their
 project of the cement grinding unit on 1 May 2008 by the second
 respondent, the then Ministry of Environment and Forests – On 18
 February 2011, State notified modification of the use of land to
 “industrial purpose” from “green belt” – Appellant-writ petitioner
 instituted PIL under Art.226 of the Constitution of India before High
 Court for quashing the EC and notification of the State and sought
 restoration of land as “green belt” – High Court transferred the
 petition to NGT, wherein it was dismissed on the ground of limitation
 and lack of jurisdiction in NGT for entertaining notification of State
 – Hence instant appeal by original writ petitioner – Held: NGT
 came into force on 18 October 2010 – s.38(5) makes a provision
 for transfer of all cases pending before its enactment to the NGT –
 EC was issued prior to enforcement of NGT Act and no steps were
 taken by writ petitioner under the old Act – Hence, there was no
 question of transfer of proceeding under s.38(5) of NGT Act –
 Challenge before High Court was raised three years after the date
 of notifying EC – Therefore, Challenge to EC was barred by limitation

– State notified on 18 February 2011 modification of the use of land to “industrial purpose” from “green belt” whereas petition was instituted on 8 September 2011 – s.14(3) of NGT Act provides six months limitation period to apply for a dispute before NGT and power to condone a delay for a further period not exceeding sixty days – Proceedings remitted to NGT to determine whether the delay can be condoned for sufficient cause within extended period by applying proviso to s.14(3) – NGT left with the liberty to take a decision on all the issues.

Partly allowing the appeal, the Court

HELD: 1. The NGT Act came into force on 18 October 2010, after it was published in the Gazette of India in pursuance of the provisions of Section 1(2). Section 38(1) of the NGT Act stipulates that the National Environment Tribunal Act 1995 and the National Environment Appellate Authority Act 1997 would stand repealed. Section 38(2) protects anything done or any action taken under the repealed enactments. Section 38(3) dissolved the National Environment Appellate Authority established under the above 1997 Act. Section 38(5), however, makes a provision for the transfer of all cases pending before the National Environment Appellate Authority to the NGT. In the present case, the EC was issued on 1 May 2008, prior to the enforcement of the NGT Act. No steps were taken by the appellant to pursue a challenge to the EC under the provisions of the 1997 Act. No challenge was pending on the date of the enforcement of the NGT Act and hence, there was no question of transfer of any proceedings to the NGT. The challenge before the High Court to the EC was raised on 8 September 2011, well beyond three years of the date of the publication of the EC in the newspapers on 8 May 2008. Consequently, the challenge to the EC was barred by limitation. [Paras 9, 13, 14][855-A; 856-A-D]

2. The appellant had also placed in issue the validity of the notification of the State government dated 3 February 2011 (published on 18 February 2011), by which the use of the land was sought to be altered to “industrial purpose”. The writ petition

- A before the High Court was instituted on 8 September 2011. In terms of Section 14 of the NGT Act, any recourse to the original jurisdiction of the NGT has to be taken within a period of six months from the date on which the cause of action of such dispute first arose. The NGT has the power to condone a delay of a further period not exceeding sixty days. Between 8 September 2011, when the writ petition was instituted, and 28 January 2013, when the High Court transferred the proceedings, the appellant was agitating the issue before the High Court. Thus, the proceedings are remitted back to the NGT for determining as to whether the challenge to the proposed modification of the land use to “industrial purpose” through the notification dated 3 February 2011 can be entertained within the extended period as prescribed by the proviso to Section 14(3) of the NGT Act. [Paras 15, 17, 20][856-E; 857-D-F; 858-D-E]

- D CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2804 of 2014.

From the Judgment and Order dated 02.08.2013 of the National Green Tribunal, Central Zone at Bhopal in Appeal No.1 of 2013.

- E Dr. Surender Singh Hooda, Aayushman Aeron, Aditya Hooda, Rahul Besoya, Advs. for the Appellant.

- F Sumeer Sodhi, Prannoy Joe Sebastian, Yashraj Singh Deora, Ms. Prakriti Roy, Pawan Upadhyay, Ms. Sharmila Upadhyay, Gaurav Prakash Pathak, K. Krishna Kumar, Shivraj Singh, Akshat Shrivastava, Ms. Yogmaya Agnihotri, Rohit K. Singh, Himanshu Rao, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

- G 1. This appeal under Section 22 of the National Green Tribunal Act 2010¹ arises from a judgment dated 2 August 2013 of the National Green Tribunal², at its Central Zone Bench in Bhopal.

¹ “NGT Act”

H ² “NGT”

2. In April 2007, the seventh respondent, Steel Authority of India³, and Jayprakash Associates entered into a Memorandum of Association to establish a cement grinding unit of 2.2 MTPA capacity at Bhilai, Chhattisgarh. In pursuance of this goal, they set up the tenth respondent, Bhilai Jaypee Cement Limited. A parcel of land admeasuring 34.59 acres belonging to SAIL, falling in the villages of Hingna and Maroda at Bhilai in District Durg, was leased out to the tenth respondent for thirty years, based on a long-term lease dated 16 June 2007. The land use of this parcel of land had been designated as “green belt” in the 1991 Development Plan of Bhilai. On the tenth respondent’s application, an Environmental Clearance⁴ was granted to their project of the cement grinding unit on 1 May 2008⁵ by the second respondent, the then Ministry of Environment and Forests. It was subsequently published in newspapers on 8 May 2008.

3. It is alleged by the appellant that since the EC was incorrectly issued, the tenth respondent’s constructions on the parcel of land were illegal. In this regard, several notices were issued to them by the fifth respondent, Director, Town and Country Planning, Bhilai and the sixth respondent, Commissioner, Municipal Corporation of Bhilai to revert the land to its original condition or face demolition of the structure. The tenth respondent then applied for the modification of the land use of the parcel of land admeasuring 34.59 acres.

4. The first respondent, the State of Chhattisgarh, considered their case under Section 23-A of Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam 1973. On 22 May 2010, the State government made a proposal to change the land use from “green belt” to “industrial purpose” on the basis that the setting up of the cement grinding unit by the tenth respondent constituted an “urgent public purpose”. Between 13 July 2010 and 15 July 2010, the State government published circulars in two evening newspapers highlighting the proposed modification in land use and inviting objections/suggestions from the general public. The appellant allegedly raised objections against the proposed modification. However, relying on the EC granted on 1 May 2008, the State government issued a notification⁶ dated 3 February 2011 modifying the land use of the parcel of land from “green belt” to “industrial purpose”. The notification was published in the Chhattisgarh Gazette on 18 February 2011.

³ “SAIL”

⁴ “EC”

⁵ Letter No J-1101111000112007-IA-II(I)

⁶ Notification No F/7-24/32/2010

A 5. The appellant then instituted a public interest petition⁷ under Article 226 of the Constitution before the High Court of Chhattisgarh on 8 September 2011. The reliefs which were sought by the appellant were:

- (i) Quashing of the notification dated 3 February 2011 of the State government modifying the land use of the parcels of land designated in the 1991 Development Plan of Bhilai as a “green belt” to “industrial purpose”;
- B (ii) Quashing of the EC issued on 1 May 2008 to the tenth respondent for its cement grinding unit (the ground of challenge being that the project had been erroneously categorized in Category B2 instead of Category A, and hence the mandatory procedures of conducting an Environmental Impact Study and public hearing/consultation were not followed); and
- C (iii) The restoration of 34.59 acres of land designated as a “green belt”, which was leased out to the tenth respondent, to its original condition prior to the construction which was carried out on the land.
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6. An objection was raised in regard to the maintainability of the petition before the High Court by the tenth respondent.

E 7. By an order dated 28 January 2013, the High Court transferred the petition to the NGT in view of the decision of this Court in **Bhopal Gas Peedith Mahila Udyog Sangathan v Union of India**⁸. The NGT, by its impugned judgment dated 2 August 2013, dismissed the appeal⁹ on the ground that:

- (i) The appeal is barred by limitation; and
- F (ii) The NGT is constituted by the NGT Act, and does not have jurisdiction to entertain a challenge to the notification dated 3 February 2011 of the State government altering the land use.

G 8. We have heard Dr Surender Singh Hooda, counsel appearing on behalf of the appellant, Mr Yashraj Singh Deora, counsel appearing on behalf of the seventh respondent and Mr Sumeer Sodhi, counsel appearing on behalf of the State of Chhattisgarh.

⁷ Writ Petition (PIL) No 5467 of 2011

⁸ (2012) 8 SCC 326

H ⁹ Appeal No 1 of 2013

9. The NGT Act came into force on 18 October 2010, after it was published in the Gazette of India in pursuance of the provisions of Section 1(2). The NGT has original jurisdiction, conferred by Section 14 and appellate jurisdiction, which is conferred by Section 16. Further, Section 15 empowers the NGT to grant relief to remedy environmental damage, including compensation and restitution.

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10. Section 14 empowers the NGT to exercise jurisdiction over all civil cases where a substantial question relating to the environment (including enforcement of any legal right relating to the environment) is involved and such a question arises out of the implementation of the enactments specified in Schedule I. Sub-Section (3) of Section 14 provides that no application for adjudication of a dispute under the provision shall be entertained unless it is made within a period of six months from the date on which the cause of action for such dispute first arose. Under the proviso, the NGT is empowered to entertain an appeal beyond the prescribed period for sufficient cause, subject to a limit of sixty days.

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11. Section 16, which confers appellate jurisdiction on the NGT, contemplates in Clause (h) that an appeal can lie against an order made, on or after the commencement of the NGT Act, granting an EC. Such an appeal has to be filed within thirty days from the date of the communication of the order, decision, direction or determination. The NGT is entrusted with the power to condone a delay of a period not exceeding sixty days, for sufficient cause.

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12. In the present case, the relevant dates which would have a bearing on the subject matter of the controversy are as follows:

- (i) 1 May 2008 – EC was granted to the tenth respondent’s project (subsequently published in the newspapers on 8 May 2008);
- (ii) 18 February 2011 – publication of the notification dated 3 February 2011 by the State government proposing a modification of land use for 34.59 acres of land from “green belt” to “industrial purpose”;
- (iii) 8 September 2011 – institution of the writ petition before the High Court by the appellant; and
- (iv) 28 January 2013 – transfer of the proceedings to the NGT by the High Court.

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A 13. Section 38(1) of the NGT Act stipulates that the National Environment Tribunal Act 1995 and the National Environment Appellate Authority Act 1997¹⁰ would stand repealed. Section 38(2) protects anything done or any action taken under the repealed enactments. Section 38(3) dissolved the National Environment Appellate Authority established under the above 1997 Act. Section 38(5), however, makes a provision for the transfer of all cases pending before the National Environment Appellate Authority to the NGT.

B 14. In the present case, the EC was issued on 1 May 2008, prior to the enforcement of the NGT Act. No steps were taken by the appellant to pursue a challenge to the EC under the provisions of the 1997 Act. No challenge was pending on the date of the enforcement of the NGT Act and hence, there was no question of transfer of any proceedings to the NGT. The challenge before the High Court to the EC was raised on 8 September 2011, well beyond three years of the date of the publication of the EC in the newspapers on 8 May 2008. Consequently, the challenge to the EC was barred by limitation. As a matter of fact, Dr Surender Singh Hooda has fairly accepted the said position.

C 15. However, the submission which has been urged on behalf of the appellant is that besides challenging the EC, the appellant had also placed in issue the validity of the notification of the State government dated 3 February 2011 (published on 18 February 2011), by which the use of the land was sought to be altered to “industrial purpose”. The NGT came to the conclusion that this part of the notification was beyond its jurisdiction since the Town and Country Planning Act 1973 of the State of Chhattisgarh is not one of the notified statutes in relation to which it has jurisdiction. To challenge this finding, it has been urged on behalf of the appellant that the appellant, for the purpose of the said relief, does not challenge the EC, but asserts that the conditions of the EC would stand violated by the change of land use. In this context, reliance has been placed on the following conditions of the EC:

F “ix. As proposed, green belt shall be developed in 4.62 ha (33 % out of total 14 ha area to reduce impact of fugitive emissions. Central Pollution Control Board guidelines shall be followed in planning and developing green belt and selection of species etc.

H ¹⁰ “1997 Act”

- x. Other necessary statutory clearances from the concerned Departments including ‘No Objection Certificate’ from the Chhattisgarh Environment Conservation Board (CECB) shall be obtained prior to commencement of construction and/or operation.” A

16. The submission is that the EC has been issued in pursuance of the EIA notification, which in turn traces its source of power to the Environment (Protection) Act 1986¹¹. The 1986 Act is a statute which is listed at Entry 5 of Schedule I of the NGT Act. Thus, it has been submitted that any breach of the EC by a proposed change of land use can be made the foundation for invoking the remedy before the NGT. Moreover, it has been urged that it was open to the appellant to invoke the jurisdiction under Section 14 of the NGT Act for contending that the change of land use notification dated 18 February 2011 would result in a violation of the EC conditions noted above and this could be remedied before the NGT in the exercise of its original jurisdiction under Section 14. It has been urged that Parliament has given overriding force to the NGT Act by Section 33. B C D

17. The notification in question by which the change of land use was proposed was published on 18 February 2011. The writ petition before the High Court was instituted on 8 September 2011. In terms of Section 14 of the NGT Act, any recourse to the original jurisdiction of the NGT has to be taken within a period of six months from the date on which the cause of action of such dispute first arose. The NGT has the power to condone a delay of a further period not exceeding sixty days. Between 8 September 2011, when the writ petition was instituted, and 28 January 2013, when the High Court transferred the proceedings, the appellant was agitating the issue before the High Court. In the event that the NGT considers that the appellant has shown sufficient cause within the meaning of the proviso to sub-Section (3) of Section 14, the institution of the proceedings on 8 September 2011 would fall within the period of limitation as specified in sub-Section (3) of Section 14 read with its proviso. E F

18. Mr Sumeer Sodhi, counsel appearing on behalf of the State of Chhattisgarh, submitted that, in the present case, the appellant had invoked the appellate jurisdiction of the NGT under Section 16, which is why the proceedings were not numbered as an OA, but as an appeal. G

¹¹ “1986 Act”

- A 19. What seems to have transpired is that the appellant had instituted a writ petition in the High Court under Article 226 of the Constitution, which was transferred to the NGT and upon transfer, the proceedings were numbered as an appeal. The reliefs which were claimed, as already noted earlier, involved a challenge to the EC as well as a challenge to the notification dated 3 February 2011, by which the
- B use of the land was proposed to be changed to “industrial purpose”. The challenge to the EC, as we have already noted above, is barred by limitation. However, the challenge to the change of land use, on the ground that such a change would violate a condition of the EC, is something which in the submission of the appellant would fall within the
- C jurisdiction of the NGT provided the NGT decides to exercise its discretion to condone the delay within the meaning of Section 14(3) read with its proviso. Whether the delay should be condoned is entirely a matter for the NGT to decide.

20. We accordingly issue the following directions:

- D (i) The challenge to the EC dated 1 May 2008 is barred by limitation;
- (ii) The proceedings are remitted back to the NGT for determining as to whether the challenge to the proposed modification of the land use to “industrial purpose” through the notification dated 3 February 2011 can be entertained within the extended period as prescribed by the proviso to
- E Section 14(3) of the NGT Act;
- (iii) The NGT, in considering the aspect which is referred to in (ii) above, shall be at liberty to determine whether sufficient cause has been shown by the appellant for condoning the delay; and
- F (iv) We clarify that we have not expressed any opinion on the merits of the rival contentions. Should the delay be condoned, the NGT would be at liberty to take a decision on all the issues and contentions raised by the rival parties.

- G 21. The appeal shall stand partly allowed in the above terms with no orders as to costs.

22. Pending application(s), if any, stand disposed of.