

Kantha Vibhag Yuva Koli Samaj ... vs The State Of Gujarat on 21 January, 2022

Author: D.Y. Chandrachud

Bench: Bela M Trivedi, Dhananjaya Y Chandrachud

CA 1046/2019

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 1046 of 2019

Kantha Vibhag Yuva Koli Samaj Parivartan
Trust and Others

Versus

State of Gujarat and Others

JUDGMENT

Dr Justice Dhananjaya Y Chandrachud, J 1 Admit.

2 This appeal under Section 22 of the National Green Tribunal Act 2010 1 arises from a judgment and order of the Principal Bench of the National Green Tribunal 2 dated 28 September 2018, by which it dismissed OA No 81 of 2014 (WZ). 3 OA No 81 of 2014 (WZ), instituted under Sections 14 and 15 of the NGT Act, was 1 “NGT Act” 2 “NGT” pending before the NGT for nearly four years since July 2014. It had been filed by the appellants, who are environmental organisations and individuals directly affected by the degradation of the environment in the area in question. The OA pertained to the issue of the dumping of unsegregated and untreated Municipal Solid Waste 3 at an open landfill site admeasuring 188 hectares at Survey No 111 /A, Block No 177, Khajod Village, Taluka Choryasi in the district of Surat, which is surrounded by thirty-five villages. The landfill site had been set up by the fourth respondent, Surat Municipal Corporation 4, which had started dumping 850 Metric Tonnes of waste per day on 24 January 2003. The extent of dumping increased to 1600 Metric Tonnes of waste per day by 16 January 2014. It was alleged, inter alia, that the dumping of waste in

the open area without prior treatment was in violation of the Municipal Solid Waste (Handling and Management) Rules 2000 and Bio Medical Waste (Management and Handling) Rules 1998. Further, while SMC had been issued multiple warnings during site visits and inspections, the situation did not improve. It was alleged that the waste disposal led to an irreversible contamination of local water bodies and ground water, caused severe air pollution due to the burning of waste, damaged the ecology of the nearby villages and was affecting the health of the citizens and livestock in the vicinity. The appellants sought directions, inter alia, for: (i) restraining the dumping of MSW at the landfill site; (ii) restoration of the environment in the surrounding areas; (iii) restitution of the landfill site to its original condition; (iv) compensation to all those affected in the nearby villages upon 3 “MSW” 4 “SMC” determination of damages by a committee set up to assess the landfill site; and (v) implementation of the Solid Waste Management Rules 2016 5. 4 The Western Zone Bench of the NGT issued notice on 8 August 2014. A series of orders emanated from the Western Zone Bench of the NGT in connection with the issues raised. It would suffice to note a few of those orders:

(i) On 20 March 2015, the NGT noted that “prima facie there is ring of truth in the averments made by the Applicants, to indicate that MSW plant, is being mismanaged” and that the burning of the untreated MSW was causing severe air pollution affecting the health of the residents of the nearby villages. Interim directions were issued to prevent this from taking place during the pendency of the OA;

(ii) On 22 December 2015, the NGT again reproached SMC for not preparing a proper action plan and audit for the management of MSW in the district of Surat.

However, on the appellant’s issue of their participation in the management of the landfill site, the NGT noted that it would be decided during the final hearing;

(iii) On 7 March 2016, the NGT directed the Commissioner of SMC to be present and to provide a statement on the following issues: (a) extent of waste collected, treated and disposed of in accordance with the mandate of the Municipal Solid Waste (Handling and Management) Rules 2000; (b) the officers who have failed 5 “SWM Rules” to enforce the Rules and have failed to comply with the directions of the NGT; (c) the time schedule within which proper waste management will be done in the area in terms of the Rules; and (d) filing an undertaking that waste management shall be done in letter and spirit;

(iv) On 16 May 2017, the NGT noted that in pursuance of its previous directions, SMC had filed an affidavit indicating, inter alia, the action plan which it proposed to execute for handling the problem of MSW within its jurisdiction. The NGT was informed that the issue pertaining to the closure of the Khajod dumping site was pending before the Standing Committee of SMC. Hence, the NGT directed the Standing Committee to take a decision and issue a work order for commencing the work of the closure of the open dumping site within a month. Moreover, SMC was directed to place on the record the details of the lands where the projects are to be commissioned;

(v) On 19 September 2017, a statement was made on behalf of SMC that it is under an obligation to comply with the SWM Rules and that the site at Khajod is designated for a landfill, an MSW processing plant and a waste-to-energy plant of 100 TPD on a public-private partnership basis;

(vi) Pursuant to the order of the NGT dated 19 September 2017, the appellants formulated certain action points for implementation of the SWM Rules. On 26 September 2017, an undertaking was filed on behalf of SMC by the Municipal Commissioner setting out the steps which would be taken for dealing with MSW, transportation, storage, and processing as well as on other related matters. The undertaking stipulated that there shall be no landfilling or dumping of unprocessed and unsegregated MSW after two years subject to “100% working of the Solid Waste Processing Plant” and certain other conditions;

(vii) On 6 November 2017, an order was passed by the NGT setting out that it would be hearing SMC, inter alia, on the qualified nature of the undertaking which was furnished by it, having regard to the SWM Rules and on the proposed use of the Khajod landfill site despite its potential as a landfill site being concluded. The NGT also indicated that it would be hearing submissions on the commissioning of the waste-to-energy plant and the waste-to-compost plant within a given time frame;

(viii) An order was passed by the NGT on 5 December 2017, dealing particularly with the issue of quantification of compensation to the farmers due to the damage caused by the burning of solid waste and ground water pollution;

(ix) On 2 July 2018, the NGT issued directions stating that the submissions which were urged before it by SMC were unacceptable. The NGT declined to accept the contention that the waste-to-energy plant could only be completed by December 2019, and directed that it ought to be completed by March 2018; and

(x) On 17 July 2018, the NGT noted that SMC’s current action plan prima facie did not fulfill the requirements of Clause J of Schedule-I of the SWM Rules in relation to closure and rehabilitation of old dumping sites and legacy waste. Hence, it directed SMC to file an affidavit recording its compliance. 5 A considerable amount of judicial time and attention was entailed during the course of the hearings associated with the above orders. Earlier Benches of the NGT at the Western Zone Bench had been monitoring the status of compliance with the SWM Rules. The NGT was seized with diverse aspects pertaining to the disposal of MSW by SMC, including the modalities which have to be followed while commissioning projects in the future for the conversion of waste to energy.

6 Rather surprisingly, when the proceedings came up on 28 September 2018 before the Principal Bench of the NGT, the OA was disposed of on the ground that in another OA – OA No 606 of 2018 – the NGT had constituted Apex, Regional and State Level Committees to monitor the implementation of the SWM Rules. The OA filed by the appellants was thus closed with liberty to represent the case and ventilate all grievances before the appropriate committee. For convenience of reference, the order passed by the NGT is extracted below:

“As this OA relates to implementation of Solid Waste Management Rules, 2016, we are of the considered opinion that it is covered by the order passed by the larger Bench of the Tribunal dated 20th August, 2018 in OA No 606 of 2018.

The Applicant would be at liberty to represent its case and ventilate all grievance before the Committee which shall look into it and finally decide the same.

Consequently, OA No 81 of 2014 stands disposed of. There shall be no order as to cost.

M.A. No. 1392 of 2018 and 1393 of 2018 These Applications do not survive for consideration as the main Application has been decided and are accordingly dismissed.”

7 At this juncture, it is also important to elaborate on NGT’s judgment and order dated 31 August 2018 in OA No 606 of 2018. Those proceedings arose from writ petitions filed before this Court in relation to the proper implementation of SWM Rules across the country, which were later transferred to the NGT. The NGT noted in its decision that though it had earlier issued directions for the implementation of the SWM Rules, they had not been complied with. Later, in a meeting organised by the Central Pollution Control Board with all the States and Union Territories, it was recommended that the NGT should form Apex, Regional and State Level Committees for the implementation of the SWM Rules and the directions issued by the NGT, and that these Committees should submit quarterly reports to the NGT. Thus, the NGT directed the following:

(i) The Apex Monitoring Committee was set up for one year, till further orders. Its role was to interact with the relevant Ministries and the Regional Monitoring Committees, and it could formulate guidelines/directions which may be useful to the Regional Monitoring Committees and the States/Union Territories. It was to meet preferably every month, and also preferably meet the Regional Monitoring Committees once a month. It shall then submit its report to the NGT every quarter. Further, it was also directed that the Committee set up a website for dissemination of information, so as to enable public participation;

(ii) The Regional Monitoring Committees were set up for one year, till further orders, for each zone – North, East, West, South and Central. They were to ensure effective implementation of the SWM Rules, and that mixing of bio-

medical waste with MSW does not take place and bio-medical waste is processed in accordance with the Bio-Medical Waste Management Rules 2016. The Committees were to preferably meet every week, and meet the Apex Monitoring Committee, have inter se interactions and meet the States when necessary. They were to submit their reports to the Apex Monitoring Committee twice a quarter, and also submit a report to the NGT after the first quarter. Much like the Apex Monitoring Committee, the Regional Monitoring Committees were also directed to set up websites; and

(iii) The State Level Committees were set up for one year, till further orders, for each State and Union Territory. They were to preferably meet with local bodies once every two weeks, and the local bodies were to furnish them reports twice a month. They were to decide on technical and policy issues in accordance with the SWM Rules and consistent with the directions of Apex and Regional Monitoring Committees. Further, they were to send their reports to the Regional Monitoring Committee on a monthly basis. It was also directed that public involvement may be encouraged and status of MSW be placed in the public domain.

The NGT directed that the Committees would be at liberty to issue directions for execution of the orders of the NGT to any authority.

8 Ms Shilpa Chohan, learned Counsel appearing on behalf of the appellants, has submitted that relegating the appellants to a committee was wholly inappropriate having regard to the progress which had been achieved by the Western Zone Bench of the NGT in unravelling various aspects of the case. Moreover, it is urged that the jurisdiction to provide restitution and award compensation is entrusted to the NGT and hence, it was not appropriate or proper to dispose of the OA by relegating the decision to a committee.

9 On the other hand, Mr Tejas Patel, learned Counsel appearing on behalf of SMC, submits that the appellants have produced absolutely no material on the basis of which a claim for compensation can be made. Moreover, it was urged that they have a remedy of ventilating their grievances before the appropriate committee. 10 The OA was filed by the appellants under Sections 14 and 15 of the NGT Act. Section 146 of the NGT Act vests the NGT with jurisdiction over all civil cases where a 6 “14. Tribunal to settle disputes.—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such substantial question relating to the environment is involved, and such question arises out of the implementation of the enactments specified in Schedule I to the statute. Sub- Section (1) of Section 15 is in the following terms:

“15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide,—

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.” 11 In Mantri Techzone (P) Ltd. v. Forward Foundation⁷, a three-Judge Bench of this Court outlined that Section 15(1)(c) of the NGT Act entrusts broad powers to the NGT. Speaking for the Court, Justice S Abdul Nazeer held:

“43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever question arises out of the implementation of the enactments specified in Schedule I. (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”

7 (2019) 18 SCC 494 the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.” 12 The OA filed by the appellants raised issues falling within the jurisdiction of the NGT under Section 14, since it relates to the implementation of the SWM Rules. The SWM Rules have been notified pursuant to the powers conferred by Sections 3, 6 and 25 of the Environment (Protection) Act 1986, which is Entry 5 in Schedule I of the NGT Act. None of the prayers sought by the appellants are of a nature that cannot be granted by the NGT in accordance with its powers under Section 15(1) of the NGT Act. The OA was being continuously heard by the Western Zone Bench of the NGT since August 2014, and it had already issued significant interim directions. 13 Hence, the issue before us is only whether the Principal Bench of the NGT correctly directed the appellants to now approach one of the Committees set up by it, rather than continue with the proceedings in the OA. To understand this, we must first consider the role of such committees which are set up by courts and tribunals alike. 14 It is first important to differentiate expert committees which are set by the courts/tribunals from those set up by the Government in exercise of executive powers or under a particular statute. The latter are set up due to their technical expertise in a given area, and their reports are, subject to judicially observed restraints, open to judicial review before courts when decisions are taken solely based upon them. The precedents of this court unanimously note that courts should be circumspect in rejecting the opinion of these committees, unless they find their decision to be manifestly arbitrary or mala fide⁸. On the other hand, courts/tribunals themselves set up expert committees on occasion. These committees are set up because the fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these expert committees does not substitute the adjudicatory role of the court or tribunal. The role of an expert committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also

open to challenge by all concerned parties. Allowing for objections to be raised and considered makes the process fair and participatory for all stakeholders. 15 Sections 14 and Section 15 entrust adjudicatory functions to the NGT. The NGT is a specialized body comprising of judicial and expert members. Judicial members bring to bear their experience in adjudicating cases. On the other hand, expert members bring into the decision-making process scientific knowledge on issues concerning the environment. In *Hanuman Laxman Aroskar v. Union of India*⁹, a two- Judge Bench of this Court noted that the NGT is an expert adjudicatory body on the 8 *Basavaiah (Dr.) v. Dr. H.L. Ramesh*, (2010) 8 SCC 372 (in relation to appointment in an academic institution); *State of Kerala v. RDS Project Ltd.*, (2020) 9 SCC 108 (in relation to safety of a flyover project) 9 (2019) 15 SCC 401 environment. The Court held:

“133. The NGT Act provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment...

134. NGT is an expert adjudicatory body on the environment.” The NGT does not have a dearth of ‘expertise’ when it comes to the issues of environment.

16 Section 15 empowers the NGT to award compensation to the victims of pollution and for environmental damage, to provide for restitution of property which has been damaged and for the restitution of the environment. The NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative expert committees. Expert committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to the NGT and cannot be delegated to administrative authorities.

Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees. In *Sanghar Zuber Ismail v. Ministry of Environment, Forests and Climate Change and Another* ¹⁰, a three-Judge Bench of this Court noted that the NGT cannot refuse to hear a challenge to an Environmental Clearance under Section 16(h) of the NGT Act and delegate the process of adjudicating on compliance to ¹⁰ 2021 SCC OnLine SC 669 an expert committee. The Court held:

“8...the NGT has not dealt with the substantive grounds of challenge in the exercise of its appellate jurisdiction. Constitution of an expert committee does not absolve the NGT of its duty to adjudicate. The adjudicatory function of the NGT cannot be assigned to committees, even expert committees. The decision has to be that of the NGT. The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the tribunal.” ¹⁷ The NGT has in the present case abdicated its jurisdiction and entrusted judicial functions to an administrative expert committee. An expert committee may be able to assist the

NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by the NGT. This is not a delegable function. Thus, the order impugned in the appeal cannot be sustained. The consequence of the impugned order is to efface the meticulous exercise which was carried out by the earlier Benches. Valuable time has been lost in the meantime and crucial issues pertaining to the environment in the present case have been placed on the back-burner.

18 Hence, we are of the view that it would be appropriate to set aside the impugned order and to restore OA No 81 of 2014 (WZ) to the file of the NGT. We accordingly allow the appeal and set aside the impugned order dated 28 September 2018. OA No 81 of 2014 (WZ) is restored to the file of the NGT. The NGT shall commence with the hearing of the proceedings from the stage which was arrived at before the impugned order dated 28 September 2018 was passed. Unfortunately, more than three years have passed in the meantime, a delay which could have been avoided had the NGT proceeded to adjudicate upon the issues which were raised before it. 19 This Court has not expressed any opinion on the merits of the issues which are raised before the NGT. The NGT will take an appropriate view and issue appropriate directions in continuation of the directions which hold the field, after hearing the parties. 20 The Court was apprised that the impugned order was passed by the Principal Bench since the Western Zone Bench of the NGT was not functioning at the relevant time. Hence, OA No 81 of 2014 (WZ) may now be heard by the Bench which is assigned with the requisite jurisdiction to hear the subject matter of the OA. 21 The appeal is accordingly allowed in the above terms. 22 Pending applications, if any, stand disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]J.
[Bela M Trivedi] New Delhi;

January 21, 2022
CKB

ITEM NO.18 Court 4 (Video Conferencing) SECTION XVII
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

KANTHA VIBHAG YUVA KOLI SAMAJ PARIVARTAN
TRUST & ORS.

Appellant(s)

VERSUS

THE STATE OF GUJARAT & ORS.

Respondent(s)

Date : 21-01-2022 This appeal was called on for hearing today. CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MS. JUSTICE BELA M. TRIVEDI For Appellant(s) Ms. Shilpa Chohan, Adv.

Mr. Ssawahiq Siddique, Adv.

Dr. Pratyush Nandan, Adv.

Mr. Rajesh Singh, AOR

For Respondent(s) Ms. Aastha Mehta, Adv.
Ms. Deepanwita Priyanka, Adv.

Ms. Ruchi Kohli, AOR

Mr. Avijit Roy, AOR

Mr. Tejas Patel, AOR
Mr. Kaushal Pandya, Adv.

UPON hearing the counsel the Court made the following
O R D E R

- 1 Admit.
- 2 The appeal is allowed in terms of the signed order.
- 3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)

A.R.-cum-P.S.

(Signed Reportable Judgment is placed on the file)

(SAROJ KUMARI GAUR)

COURT MASTER