

State Of Madhya Pradesh vs Centre For Environment Protection ... on 28 August, 2020

Equivalent citations: AIR 2020 SUPREME COURT 4221, AIRONLINE 2020 SC 708

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Bench: Indira Banerjee, Arun Mishra

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.8932-8933 OF 2015

STATE OF MADHYA PRADESH

...Appellant

versus

CENTRE FOR ENVIRONMENT PROTECTION
RESEARCH AND DEVELOPMENT & ORS.

....Respondent (

JUDGMENT

Indira Banerjee, J.

These appeals filed by the State of Madhya Pradesh, are against an order dated 21st April, 2015 passed by the National Green Tribunal, Central Zonal Bench, Bhopal, allowing Original Application No. 1/2013 (CZ) filed by the Respondents and directing that motor vehicles not complying with the requirement of displaying a valid “Pollution Under Control” (PUC) Certificate would suffer the consequence of suspension and/or revocation of the Registration Certificate of the vehicle, and would also not be provided with fuel by any dealer or petrol pump, as well as an order dated 3rd August, 2015 rejecting the application filed by the appellant for review of the said order dated 21st April, 2015, being the Miscellaneous Application No.394 of 2015, but granting the appellant a further period of sixty days for compliance of the order under review on condition of the appellant making a deposit of Rs.25 crores with the Registrar of the Tribunal within a week from the order

dated 3 rd August, 2015, by way of security for compliance with the order, failing which the security deposit would be utilized for environmental needs under the National Green Tribunal Act, 2010. 2 (1). On or about 21st July, 2003, the Respondents filed a Public Interest Litigation (PIL) being Writ Petition No.1341 of 2003 before the Indore Bench of the High Court of Madhya Pradesh, seeking directions on the appellant and other concerned authorities impleaded as respondents, to take immediate steps to stop the plying of motor vehicles which did not conform to pollution control norms, on the roads of Indore, and other consequential orders. (2) By an order dated 3rd January, 2013 the High Court transferred the aforesaid writ petition to the Principal Bench of the National Green Tribunal, Delhi and the same was re-numbered as Original Application No.73 of 2012.

(3) Sometime in March 2013, the Principal Bench, National Green Tribunal, Delhi transferred O.A. No.73 of 2012 to the Central Zonal Bench of the National Green Tribunal at Bhopal and the same was re-numbered as O.A. No.1/2013. The Original Application No.01/2013 was taken up for hearing on 21st April, 2015.

On the same day, that is, 21 st April, 2015. National Green Tribunal, Central Zonal Bench, Bhopal, hereinafter referred to as the learned Tribunal, passed an order noting that the mandatory requirement of Rule 115 read with Rule 116 of the Central Motor Vehicles Rules, 1989 for motor vehicles to display a valid PUC Certificate was not being implemented. The learned Tribunal did not find the reasons given by the Appellant State for its inability to effectively enforce Rule 115 read with Rule 116 of the Central Motor Vehicles Rules satisfactory, including the reason that most of the pollution checking centres were not in working order and more centres authorized to issue PUC Certificates were required to be set up.

(4) The learned Tribunal held that it was the responsibility of the State and its Transport Department to ensure compliance of the Rules and directed that the vehicles not complying with pollution norms and not possessing a valid PUC Certificate would have to suffer the consequence of suspension and/or revocation of the Registration Certificate of the vehicle. The learned Tribunal also held that a vehicle not displaying a valid PUC Certificate could not be provided with fuel by any dealer or petrol pump. The appellant State Government was directed to take necessary steps in this regard by issuing necessary orders, instructions and/or directions within 31st July, 2015 and to give wide publicity to such orders, instructions, and/or directions. The matter was directed to be listed on 3rd August 2015 for reporting compliance.

3. As stated above, an application filed by the Appellant being M.A. No. 394/2015, for review of the said order dated 21.4.2015 has also been rejected by the order dated 3.8.2015, also under appeal before this Court. The appellant had, by the aforesaid order dated 3.8.2015, been granted further 60 days for compliance with the order under review, on condition of deposit, within a week from the date of the said order, an amount of Rs.25 crores by way of security for compliance with the said order, failing which the security deposit would be utilised for environmental needs under the National Green Tribunal Act, 2010.

4. The main questions involved in this appeal are (a) whether the learned Tribunal could have directed the appellant State Government to issue orders and/or instructions and/or directions to

petrol pumps or retail outlets or dealers not to supply fuel to vehicles not having a valid PUC; (b) whether motor vehicles not complying with the requirement of displaying a valid PUC Certificate can be debarred from being provided with fuel by any dealer/or petrol pump or outlet; and (c) whether a Tribunal constituted under the Green Tribunal Act, 2010 could have passed orders directing the State Government to make a monetary deposit to secure compliance of an order, and that too in an application for review of an order, which did not contain any such direction.

5. Over the last several decades, there has been a growing concern worldwide, over pollution and the consequential decline in air quality. Increase in pollution has led to loss of vegetative cover and ecological/biological diversity, excessive concentration of harmful chemicals in the ambient atmosphere, growing risks of environmental accidents and has posed a threat to life support systems.

6. In the United Nations Conference on Human Environment held at Stockholm in June, 1972 it was resolved to protect environment including the quality of air, and to control air pollution. At the said conference the Indian Government voiced environmental concern and emphasized on the need to take steps to improve the environment.

7. Keeping view the decisions taken at the Stockholm Conference, the Indian Parliament enacted the Air (Prevention and Control of Pollution) Act, 1981, hereinafter referred to as the 1981 Act, to, inter alia, provide for the prevention and abatement of our pollution.

8. Some of the relevant provisions of the 1981 Act are:-

“2. Definitions —In this Act, unless the context otherwise requires,—

(a) “air pollutant” means any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) “air pollution” means the presence in the atmosphere of any air pollutant;

(c)

(d) “approved fuel” means any fuel approved by the State Board for the purposes of this Act;

(e) “automobile” means any vehicle powered either by internal combustion engine or by any method of generating power to drive such vehicle by burning fuel;

(f)

(g)

(h)

(i)

(j) “emission” means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

.....

16. Functions of Central Board.—(1) Subject to the provisions of this Act, and without prejudice to the performance, of its functions under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the main functions of the Central Board shall be to improve the quality of air and to prevent, control or abate air pollution in the country. (2) In particular and without prejudice to the generality of the foregoing functions, the Central Board may—

(a) advise the Central Government on any matter concerning the improvement of the quality of air and the prevention, control or abatement of air pollution;

(b) plan and cause to be executed a nation-wide programme for the prevention, control or abatement of air pollution;

(c) co-ordinate the activities of the State and resolve disputes among them;

(d) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of air pollution and prevention, control or abatement of air pollution;

(dd) perform such of the functions of any State Board as may be specified in and order made under sub-section (2) of section 18;

(e) plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of air pollution on such terms and conditions as the Central Board may specify;

(f) organise through mass media a comprehensive programme regarding the prevention, control or abatement of air pollution;

(g) collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention, control or abatement and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution;

(h) lay down standards for the quality of air;

17. Functions of State Boards.—(1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974), the functions of a State Board shall be—

(e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;

.....

(g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft:

Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;

.....

(i) to Perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;

(j) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

20. Power to give instructions for ensuring standards for emission from automobiles —With a view to ensuring that the standards for emission of air pollutants from automobiles laid down by the State Board under clause (g) of sub-section (1) of section 17 are complied with, the State Government shall, in consultation with the State Board, give such instructions as may be deemed necessary to the concerned authority in charge of registration of motor vehicles under the Motor Vehicles Act, 1939 (4 of 1939), and such authority shall, notwithstanding anything contained in that Act or the rules made thereunder be bound to comply with such instructions.

39. Penalty for contravention of certain provisions of the Act —Whoever contravenes any of the provisions of this Act or any order or direction issued thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of continuing contravention, with an additional fine which may extend to five thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

41. Offences by Government Departments.—(1) Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly

52. Effect of other laws —Save as otherwise provided by or under the Atomic Energy Act, 1962 (33 of 1962), in relation to radioactive air pollution the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act”.

9. Later, the Environment (Protection) Act, 1986 was enacted to provide for protection and improvement of environment and for matters connected therewith, with the view to implement the decision taken at the United Nations Conference on Human Environment at Stockholm in June, 1972, in which India had participated.

10. The Statement of Object and Reasons of the Environment (Protection) Act is set out herein below for convenience:

“1. Concern over the state of environment has grown the world over since the sixties. The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. The world community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972. The Government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the Conference has become increasingly evident.

2. Although there are existing laws dealing directly or indirectly with several environmental matters, it is necessary to have a general legislation for environmental

protection. Existing laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build up of hazardous substances especially new chemicals in the environment, are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing long term requirements of environmental safety and to give direction to, and co-ordinate a system of speedy and adequate response to emergency situations threatening the environment.

3. In view of what has been stated above, there is urgent need for the enactment of a general legislation on environmental protection which inter alia, should enable co-ordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger hu-

man environment, safety and health.

4. The Bill seeks to achieve the above objects.”

11. Section 3 of the Environment Protection Act, 1986 empowers the Central Government to take all such measures as it may deem necessary or expedient for the purpose of protecting and improving the quality of the environment and for preventing and controlling and abating environment pollution. Section 3(2) (iv) specifically empowers the Central Government to lay down standards for emission of environmental pollutants, whatever be the source. This is in addition, inter alia, to the general power of the Central Government to lay down standards for the quality of environment in its various aspects under Section 3(2) (iii) of the Environmental Protection Act. “Environment Pollutant” includes gaseous substances injurious to environment emitted from a motor vehicle.

12. Some of the relevant provisions of the Environmental Protection Act are set out hereinbelow for convenience. “5. Power to give Directions Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

EXPLANATION: For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct -

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) stoppage or regulation of the supply of electricity or water or any other service.

7. Persons Carrying on Industry, Operation, Etc. not to Allow Emission or Discharge of Environmental Pollutants in Excess of the Standards No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.

15. PENALTY FOR CONTRAVENTION OF THE PROVISIONS OF THE ACT AND THE RULES, ORDERS AND DIRECTIONS.- (1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. (2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

17. OFFENCES BY GOVERNMENT DEPARTMENTS.- (1) Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercise all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

18. PROTECTION OF ACTION TAKEN IN GOOD FAITH.- No suit, prosecution or other legal proceeding shall lie against the Government or any officer or other employee of the Government or any authority constituted under this Act or any member, officer or other employee of such authority in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued thereunder.

19. COGNIZANCE OF OFFENCES.- No court shall take cognizance of any offence under this Act except on a complaint made by-- (a) the Central Government or any authority or officer authorised in this behalf by that Government¹, or (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

23. Power to Delegate Without prejudice to the provisions of sub-section (3) of section 3, the Central Government may, by notification in the Official Gazette, delegate, subject to such conditions and

limitations as may be specified in the notification, such of its powers and functions under this Act, [except the power to constitute an authority under sub-section (3) of section 3 and to make rules under section 25] as it may deem necessary or expedient, to any officer, State Government or other authority.

24. Effect of Other Laws (1) Subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.”

13. Section 24 of the Environment Protection Act provides that the provisions of the said Act under Rule or orders made therein shall have effect notwithstanding therein contained in any enactment other than the Environment Protection Act. Where any act or omission constitutes an offence punishable under the Environment Protection Act and also under any other Act, the offender found guilty of such offence is liable to be punished under the other Act.

14. The Central Government is empowered to take all such measures as it deems necessary or expedient for the purpose of protecting and improving environment and for preventing, controlling and abating environmental pollution as observed by this Court in *M. C. Mehta v. Union of India* reported in 1988 SC 1030. The existence of the power to take all necessary measures to control pollution and/or to protect and improve the environment is coupled with the duty to exercise such power, if circumstances so warrant. It is in discharge of such duty and/or obligation, that the Central Government incorporated certain provisions in the Rules framed under the Motor Vehicles Act, 1988, as discussed hereinafter.

15. In the case of *M.C. Mehta (supra)*, this Court entertained a Public Interest Litigation, seeking the directions on the Government to, inter alia, spread information on environmental pollution and the need to protect environment, free of cost through the radio, television and exhibition of films in cinema halls. One of the main goals of the Environment Protection Act 1986 is to ensure sustainable development. This is a concomitant of the right to life under Article 21 of the Constitution of India, as observed in *Dayal V. Union Of India* reported in AIR 2004 SC 867.

16. In exercise of powers conferred by the Motor Vehicles Act and in particular Section 110 thereof of the Central Government has framed the Central Motor Vehicles Rules, 1989, hereinafter referred to as “the 1989 Rules”. The 1989 Rules have also been amended from time to time to incorporate provisions for laying down standards for emission, discharge of environmental pollutants from motor vehicles. The norms for emission from Motor Vehicles have been incorporated in Rules, 115, 115A 115B 115C 115D and 115 E to the 1989 Rules read with the Tables/Annexures appended thereto.

17. Rule 115 of the Central Motor Vehicle Rules, 1989, provides:

“115. Emission of smoke, vapour, etc. from motor vehicles.— [(1) Every motor vehicle other than motor cycles of engine capacity not exceeding 70 cc, manufactured prior to the first day of March 1990, shall be maintained in such condition and shall be so driven so as to comply with the standards prescribed in these rules.]” (2) On and after 1st October, 2004, every motor vehicle operating on -

(i) Petrol/CNG/LPG shall comply with the idling emission standards for Carbon Monoxide (CO) and Hydro carbon (HC) given in the Table below:

.....

(ii) Smoke Density for all diesel driven-vehicles shall be as follows:-

.....

(3) On and from the date of commencement of this Sub-

rule, all petrol driven vehicles shall be so manufactured that they comply with the mass emission standards as specified at Annexure I. The breakdown of the operating cycle used for the test shall be as specified at Annexure II, and the reference fuel for all such tests shall be specified in Annexure III to these rules.

(4) On and from the date of commencement of this Sub- rule, all diesel driven Vehicles shall be so manufactured that they comply with the standards based on exhaust gas opacity as specified at Annexure IV to these rules. (5) On and from the date of commencement of this sub-rule all petrol-driven vehicles shall be so manufactured that they comply with the following levels of emissions when tested as per test cycle specified in Annexure V. Provided the standards for exhaust gas emissions applicable to agricultural tractors shall be notified separately. (6) Each motor vehicle manufactured on and after the dates specified in sub-rule (2), (3), (4) or (5), shall be certified by the manufacturers to be conforming to the standards specified in the said sub-sections, and further certify that the components liable to effect the emission of gaseous pollutants are so designed, constructed and assembled as to enable the vehicle, in normal use, despite the vibration to which it may be subjected, to comply with the provisions of the said sub-rule.

(7) After the expiry of a period of one year from the date on which the motor Vehicle was first registered, every such vehicle shall carry a valid "Pollution under control" certificate issued by an agency authorized for this purpose by the State Government. The validity of the certificate shall be for [six months] and the certificate shall always be carried in the vehicle and produced on demand by the officers referred to in sub-rule (1) of Rule 116.

Provided that the validity of the certificate shall be twelve months for the vehicles manufacture as per Bharat State-IV norms.

(8) The certificate issued under sub-rule (7) shall, while it remains effective, be valid throughout India.

(9) Mass Emission Standard for Diesel Vehicles"

18. The standards and/or norms of emission from Motor Vehicles of pollutant gases such as Carbon Monoxide, Hydro Carbon, etc. are prescribed in the Tables and Annexures appended to Rule 115. Rules 115A, 115B, 115C, 115D and 115E make special provisions with regard, inter alia, to agricultural tractors, construction equipment vehicles, combine harvesters driven by diesel engines, CNG (compressed Natural Gas) driven vehicles, LPG (Liquefied Petroleum Gas) driven vehicles, Retrofitment of hybrid electric system kit to in use vehicles, mass emission standards of Flex Fuel Ethanol (E85) and Ethanol (ED95) vehicles.

19. Sub-rule (3) of Rule 115 provides that on or from the date of commencement of the sub-rule, that is, 1 st April, 1991, all petrol vehicles are to be so manufactured, as to comply with the emission standard as specified in the Rules.

20. Sub-rule (4) of Rule 115 provides that on or from the date of commencement of the said sub-rule, which is also 1 st April, 1991, all such diesel driven vehicles shall be so manufactured that they comply, as per their exhaust gas capacity, with the emission standards as specified in the Rules.

21. Sub-rule (6) of Rule 115 provides that each motor Vehicle manufactured on or after the dates specified in the applicable sub- rules of Rule 115 shall be certified to conform to the standard specified in the applicable sub-rules and further certified that the components liable to effect the emission of gaseous pollutants are so designed, constructed and assembled as to enable the vehicles, in normal view, despite the vibration to which it may be subjected, to comply with the provisions of the applicable sub-rule.

22. Rule 115 (7) provides that after the expiry of a period of one year from the date on which the motor vehicle was first registered, every such vehicle shall carry a valid "Pollution under control"

certificate issued by an agency authorized for this purpose by the State Government. The validity of the certificate shall be for [six months] and the certificate shall always be carried in the vehicle and produced on demand by the officers referred to in sub-rule (1) of Rule 116.

23. Rule 116 of the Central Motor Vehicles Rule, 1989 provides:

“116. Test for smoke emission level and carbon monoxide level for motor vehicles.-

(1) Notwithstanding anything contained in sub-rule (7) of rule 115 any officer not below the rank of sub-Inspector of Police or the Inspector of Motor Vehicles who has reason to believe that a motor vehicle is not complying with the provision of sub-rule (2) or sub-rule (7) of rule 115, may, in writing, direct the driver or any person

incharge of the vehicle to submit the vehicle for conducting the test to measure the standards of emission in any one of the authorized testing stations, and produce the certificate to an authority at the address mentioned in the written direction within 7 days from the date of conducting the check.

(2) The driver or any other person in charge of the vehicle shall upon such direction by the officer referred to in sub-

rule (1) submit the vehicle for testing for compliance of the provisions of 16[sub-rule (2) and sub-rule (7) of rule 115], at any authorized testing station.

(3) The measurement for compliance of the provisions of 16[sub-rule (2) and sub-rule (7) of rule 115] shall be done with a meter of the type approved by any agency referred to in rule 126 of the principal rules or by the National Environmental Engineering Research Institute, Nagpur – 440 001:

[Provided that such a testing agency shall follow MoSRTTH/CMVR/TAP-115/116 for approval of measuring metres;] (4) If the result of the tests indicate that the motor vehicle complies with the provisions [sub- rule (2) and sub-rule (7) of rule 115], the driver or any person incharge of the vehicle shall produce the certificate to the authority specified in sub-rule (1) within the stipulated time-limit.

(5) If the test results indicate that the motor vehicle does not comply with the provisions of [sub-rule (2) and sub-rule (7) of rule 115], the driver or any person incharge of the vehicle shall rectify the defects so as to comply with the provisions of the sub-rule (2) of rule 115 within a period of 7 days and submit the vehicle to any authorized testing stations to the authority referred to in sub-rule (1).

(6) If the certificate referred to in sub-rule (1) is not pro-

duced within the stipulated period of seven days or if the vehicle fails to comply with the provisions of 17[sub-rule (2) and sub-rule (7) of rule 115] within a period of seven days, the owner of the vehicle shall be liable for the penalty prescribed under sub-section (2) of section 190 of the Act. (7) If the driver or any person incharge of the vehicle referred to in sub-rule (1) does not produce the said certificate within the said period of 7 days, such vehicle shall be deemed to have contravened the provisions of the sub-rule (2) of rule 115 and the checking officer shall report the matter to the registering authority.

(8)The registering authority shall on receipt of the report referred to in sub-rule (7),for reasons to be recorded in writing suspend the certificate of registration of the vehicle, until such time the certificate is produced before the registering authority to the effect that the vehicle complies with the provisions of ,17a[sub-rule (2) and sub-rule (7) of rule 115]. (9) On such suspension of the certificate of registration of the vehicle, any permit granted in respect of the vehicle under Chapter V or under Chapter VI of the Motor Vehicles Act, 1988(59 of 1988) shall be deemed to have been suspended

until a fresh "Pollution under control" certificate is obtained.]"

24. Rule 116 and in particular sub-Rule (1) read with sub-Rules 2 to 5 thereof empower an officer to direct the driver or any other person in charge of a motor vehicle to submit the vehicle for a test to measure the standards of emission in an authorised testing station and produce a certificate. The driver and/or the person in charge of the vehicle is obliged to comply with such direction and the test is to be done with a meter of the specification approved by the National Environmental Engineering Research Institute (NEERI), Nagpur or approved by any agency specially authorised in the Rules to do so.

25. The consequences of non-compliance of Rules 115(2) and (7) are prescribed in sub-Rules (4) to (9) of Rule 116 of the Central Motor Vehicle Rules.

26. The Green Tribunal Act, 2010 has been enacted to establish a National Green Tribunal for the effective and expeditious disposal of cases relating, inter alia, to environmental protection and matters connected therewith.

27. Section 2(1) (c) of the said Act defines environment to include water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property.

28. Section 2(1) (m) defines "substantial question relating to environment" to include an instance where,--

(i) there is a direct violation of a specific statutory environmental obligation by a person by which,--

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or (B) the gravity of damage to the environment or property is substantial; or (C) the damage to public health is broadly measurable;

(ii) the environmental consequences relate to a specific activity or a point source of pollution;

29. Section 3 of the said Act provides:-

“Establishment of Tribunal: The Central Government shall, by notification, establish, with effect from such date as may be specified therein, a Tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.”

30. The National Green Tribunal derives its jurisdiction to entertain and settle disputes from Section 14 of the said Act set out hereinbelow:-

“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 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”.

31. Section 15 of the National Green Tribunal Act, which clothes the National Green Tribunal with power to pass orders of relief, compensation and restitution provides:-

“(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.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-

section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991). (3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief 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.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority”.

32. Sections 19 and 20 of the said Act reads:-

“19. Procedure and powers of Tribunal.

(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.

(3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872 (1 of 1872).

(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:--

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decision;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;

(j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;

(k) any other matter which may be prescribed.

(5) All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

20. Tribunal to apply certain principles.

The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle”.

33. Section 23 enables the Tribunal to make such order as to costs as it may consider necessary and Section 24 empowers the Tribunal to make an award for monetary compensation or relief on the ground of damage to environment. An award or order or decision of the Tribunal under the National Green Tribunal Act is executable as a decree of the Civil Court, by the Tribunal itself, for which purpose the Tribunal has all the powers of a Civil Court. The Tribunal may also transmit any order or award made by it to a Civil Court for execution.

34. The penalty for failure to comply with an award is prescribed in Chapter IV of the Act containing Sections 26 and 28 relevant to this appeal are set out hereinbelow.

“26. Penalty for failure to comply with orders of Tribunal.

(1) Whoever, fails to comply with any order or award or decision of the Tribunal under this Act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention:

Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) every offence under this Act shall be deemed to be non-cognizable within the

meaning of the said Code.

28. Offences by Government Department.

(1) Where any Department of the Government fails to comply with any order or award or decision of the Tribunal under this Act, the Head of the Department shall be deemed to be guilty of such failure and shall be liable to be proceeded against for having committed an offence under this Act and punished accordingly:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly”.

35. An appeal from a decision of the Tribunal lies to the Court under Section 22 on one or more grounds specified in section 100 of the Code of Civil Procedure and/or in other words on a substantial question of law. This Court does not, therefore, deem it necessary to examine the correctness of any factual findings in the judgments and orders under appeal.

36. The first two questions in this appeal, that is, whether the learned Tribunal could have issued orders on the appellant State Government to direct and/or instruct and/or order dealers, outlets and petrol pumps not to supply fuel to vehicles which did not have a valid PUC Certificate and whether at all a vehicle not complying with the requirement of displaying a valid PUC Certificate could be debarred from being supplied with fuel by any dealer or any outlet or petrol pump, are dealt with together.

37. The Tribunal constituted under the NGT Act has jurisdiction under Section 14 of the said Act to decide all civil cases where any substantial question relating to environment including enforcement of any right relating to environment is involved and such question arises out of the implementation of the enactments specified in Schedule I to the said Act, which includes The Air (Prevention and Control of Pollution) Act, 1981 and the Environment Protection Act, 1986.

38. In view of the definition of “substantial question of environment in Section 2(m) of the NGT Act, the learned Tribunal can examine and decide the question of violation of any specific statutory environmental obligation, which affects or is likely to affect a group of individuals, or the community at large.

39. For exercise of power under Section 14 of the NGT Act, a substantial question of law should be involved including any legal right to environment and such question should arise out of implementation of the specified enactments.

40. Violation of any specific statutory environmental obligation gives rise to a substantial question of law and not just statutory obligations under the enactments specified in Schedule I. However, the question must arise out of implementation of one or more of the enactments specified in Schedule I.

41. The Motor Vehicles Act, 1988 may not be specified in Schedule I to the NGT Act. However, the statutory 1989 Rules framed under the said Act casts statutory environmental obligations on manufacturers, owners and others in control of motor vehicles, as also the State and other statutory authorities under the said Act. The enforcement of the statutory environmental obligations under the 1989 Rules, which is a substantial question relating to environment, arises out of implementation of the 1981 Act and the Environment Protection Act and, in particular, Section 20 of the 1981 Act which casts on the State Government the mandatory duty to give instructions to the authorities in charge of Registration of Motor Vehicles with a view to ensure compliance of the standards of emission of our pollutants and Section 7 of the Environmental Protection Act, which prohibits any person from carrying on any operation, which would include operation of a motor vehicle, from discharging or emitting any environmental pollutants in excess of prescribed standards or permitting such discharge or emission.

42. On a combined reading of Sections 3, 7, 10, 11 and 23 of the Environment Protection Act, with particular reference to Section 3(1), 3(2)(i)(a) and (b), 3(2) (iii, iv) and 3(2)(x) with Section 20 of the 1981 Act and Sections 14, read with 2(c), and 2(m) of the NGT Act and Rules 115 and 116 of the 1989 Rules, the learned Tribunal had the power, authority and/or jurisdiction to direct the appellant State Government to strictly implement the requirement of vehicles to possess and/or display a valid PUC Certificate, and also to direct the appellant State Government and/or the other authorities concerned to take penal action in accordance with law, that is, Rules 115/116 of the 1989 Rules.

43. On a purposive reading of Section 20 with Section 17(1)(g) of the 1981 Act, the standards of emission prescribed by Rules 115 and 116 of the 1989 Rules attract Section 20 of the 1981 Act.

44. Under the 1989 Rules, it is mandatory for every motor vehicle to carry a valid pollution under control certificate issued by authorized agency after the expiry of period of one year from the date on which the Motor Vehicle was first registered.

45. On reading of Rule 115 of the 1989 Rules with Rule 116 the failure to produce a PUC certificate entails the penalty of suspension of the Certificate of Registration.

46. Non production of pollution PUC certificate in contravention of Rule 115(7) (2), as observed above, entails the penalty of suspension of registration.

47. A perusal of Section 116 (9) makes it amply clear it may entail penalty under Rule 190(2) of the Motor Vehicles Act, which provides:

“190(2) Any person who drives or causes or allows to be driven, in any public place a motor vehicle, which violates the standards prescribed in relation to road safety, control of noise and air-pollution, shall be punishable for the first offence with imprisonment for a term which may extend to three months, or with fine which may extend to ten thousand rupees or with both and he shall be disqualified for holding licence for a period of three months and for any second or subsequent offence with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both”.

48. It is amply clear that driving a vehicle without a pollution PUC certificate entails (i) suspension of registration certificate; (ii) imprisonment which may extend to three months; (iii) fine which may extend to Rs.10,000/- or both (iv) disqualification for holding licence for a period of three months (v) imprisonment for a term which may extend to six months or with fine which may extend to Rs.10,000/- or with fine.

49. A perusal of Rule 116(8) and (9) makes it amply clear that the suspension of the certificate of registration is temporary. The suspension is until such time as a certificate is produced before the Registering Authority certifying that the vehicle complies with sub Rules (2) and (7) of the Rule 115 of the Central rules. A Certificate of Registration is also to be deemed to have been suspended, until a fresh Pollution Under Control certificate is obtained.

50. It is well settled that when a Statute or a Statutory Rules prescribed a penalty for any act or omission, no other penalty not contemplated in the Statute or a Statutory Rules can be imposed. It is well settled that when Statute requires a thing to be done in a particular manner, it is to be done only in that manner.

51. There can be no doubt that strong measures must be taken to protect the environment and improve the air quality whenever there is contravention of statutory rules causing environmental pollution. Stringent action has to be taken, but in accordance with law.

52. Stoppage of supply of fuel to vehicles not complying with the requirement to have and/or display a valid PUC Certificate is not contemplated either in the 1989 Rules or in the NGT Act. Motor Vehicles not complying with the requirement of possessing and/or displaying a valid PUC Certificate cannot be debarred from being supplied fuel.

53. In passing blanket direction, directing the appellant State Government to ensure that no dealer and/or outlet and/or petrol pump should supply fuel to vehicles without PUC Certificate, de hors the Central Motor Vehicles Rules, the learned Tribunal overlooked the fact that no vehicle can either be repaired to comply with pollution norms, nor tested for compliance with the political norms upon repair, without fuel.

54. This Court is, therefore, constrained to hold that the learned Tribunal had no power and/or authority and/or jurisdiction to pass orders directing the Appellant State Government to issue orders, instructions or directions on dealers, outlets and petrol pumps not to supply fuel to vehicles

without PUC Certificate. The first two questions are answered accordingly.

55. The orders passed by the learned Tribunal are binding on and enforceable against the Appellant State. As observed above, the learned Tribunal had the power, authority and jurisdiction to direct the Appellant State to strictly implement compliance with Rules 115 and 116. An order of the Tribunal under the NGT Act is enforceable in the manner provided in Section 25 of the NGT Act.

56. There is no provision in the NGT Act for deposit of security to secure compliance of an order of the Tribunal. The penalty for failure to comply with an order of the Tribunal entails the penalty prescribed in Sections 26 and 28 of the NGT Act.

57. Section 39 of the 1981 Act and Section 15 of the Environment Protection Act pertain to penalty and/or punishment for contravention of the provisions of the 1981 Act, and/or the Environment Protection Act and the rules, orders and directions issued thereunder and Section 41 of the 1981 Act and Section 17 of the Environment Protection Act governs offences by Government Departments. None of the provisions provide for monetary deposit to secure compliance of an order.

58. The learned Tribunal had no power and/or authority and/or jurisdiction to direct the appellant State to deposit Rs.25 crores to secure compliance with its order. In any case such an order should not have been passed in review when the initial order did not contain any direction for security deposit. The third question is accordingly answered.

59. The appeals are thus allowed. The impugned judgments and orders of the learned Tribunal are set aside to the extent that the learned Tribunal has directed the Appellant State to make a deposit of Rs.25 crores by way of security and also to the extent that the learned Tribunal has directed the appellant State to issue orders and/or instructions and/or directions on all dealers and/or outlets and/or petrol pumps not to supply fuel to vehicles which do not comply with the requirement of producing and/or displaying valid PUC Certificates.

60. The State appellant shall, however, strictly implement compliance of Rules 115 and 116 of the Rules and penalize all those who contravene the said Rules in accordance with the provisions of the 1989 Rules. The Registration Certificate of vehicles which do not possess a valid PUC Certificate shall be forthwith suspended and/or cancelled, and penal measures initiated against the owner and/or the person(s) in possession and/or control of the offending vehicle, in accordance with law.

.....J [ARUN MISHRA]J [INDIRA BANERJEE] AUGUST
28, 2020 NEW DELHI