

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT PETITION Nos.14415 and 14726 of 2023

COMMON ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Y.Srinivasa Murthy, learned Senior Counsel representing Mr. G.Sundaresan, learned counsel for the petitioners in W.P.No.14415 of 2023; Mr. A.Sanjeev Kumar, learned Special Government Pleader attached to the office of learned Additional Advocate General, for the petitioner in W.P.No.14726 of 2023; Mr. M.Pratheek Reddy, learned counsel for respondents No.1 and 2; and Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India for respondent No.3.

2. In both the writ petitions challenge has been made to the interim order dated 31.05.2023 passed by the National Green Tribunal, Southern Zone, Chennai (Tribunal), in Original Application No.68 of 2023 (SZ).

3. Order dated 31.05.2023 reads as under:

1. This application is filed seeking a declaration of direction to respondents in undertaking sand mining/extraction in the Manair River and Godavari River falling in Jayashankar Bhupalpally District, Telangana in the garb of '*desiltation*' and '*dredging*' as illegal and unsustainable.
2. It is alleged that the entire exercise is done without obtaining the Environmental Clearance (EC) claiming to be an exempted category. It is pointed out by the applicant that it is done for commercial purposes by the 5th respondent viz., Telangana State Mineral Development Corporation. The 5th respondent had floated tenders and awarded contracts to the various contractors, a few of them are arrayed as respondents viz., respondent Nos.8 to 14.
3. To be noted is that earlier also with respect to the same Manair River in the Peddapally District, a similar activity was taken up by the 5th respondent.
4. Any exemption for desilting as contemplated in Appendix - IX of the S.O.141 (E) dated 15.01.2016 should be for the purpose of maintenance, upkeep and disaster management of the dams, reservoirs, weirs, barrages, rivers, and canals. But in this case, the proceeding of

the District Collector dated 11.06.2022 becomes relevant, as the DLSC Committee approved the alleged sand desiltation areas for a quantity of 42,10,695.50 Cu.M., of sand/silt as per Rule 8 of the Telangana State Sand Mining Rules, 2015.

5. In such a view of the matter, we are of the opinion that the 5th respondent and contractors under them can continue with their operation, if they have a valid Environmental Clearance in their favour. In case, there is no Environmental Clearance, they would refrain from carrying on the mining and de-siltation activity until further orders. In other words, there will be a stay of operation for the further proceedings of the District Collector in Proceedings No.160/Sand/2016-1 dated 11.06.2022.
6. We direct the District Collector - Jayashankar Bhupalpally District to ensure that the above order is implemented in strict adherence which will otherwise go without saying that he will be personally held responsible.
7. Let notice be issued to all the respondents through the Tribunal as well as privately.
8. The learned counsel Mrs. Renuka Devi representing Mrs. H. Yasmeen Ali accepts notice on behalf of respondent Nos. 2 to 5 & 7 and Ms. Lavanya representing Mr. T. Sai Krishnan accepts notice on behalf of respondent No.6.

9. Post the matter on 05.07.2023.

4. It is contended on behalf of the petitioners that the aforesaid order whereby the desilting operation pursuant to proceedings dated 11.06.2022 has been stayed *ex parte* is in violation of Section 19(4)(i) of the National Green Tribunal Act, 2010 (briefly, 'the Act' hereinafter). It is also pointed out that the impugned proceedings instituted by respondents No.1 and 2 is beyond the period of six months in terms of Section 14(3) of the Act and thus entire proceedings is without jurisdiction.

5. It is further pointed out that this court vide the order dated 03.01.2017 passed in W.P.No.104 of 2017 (**State of Telangana v. B.Harshavardhan**) has held that Tribunal is not competent to pass an *ex parte ad interim* stay order.

6. Learned Senior Counsel has also drawn the attention of the court to the order dated 18.05.2023 passed by a Division Bench of this court in W.P.No.13459 of 2023 (**Vice-Chairman and Managing Director, Telangana State**

Mineral Development Corporation v. Gadeela Raghuveer Reddy) as well as interim order dated 01.06.2023 passed in W.P.No.13653 of 2023 (**M/s. SN Logistics v. N.Jagadeeswara Rao**) interfering with *ad interim* stay granted by the Tribunal.

7. On the other hand, Mr. M.Pratheek Reddy, learned counsel for respondents No.1 and 2, who are the applicants before the Tribunal, submits that the impugned order dated 31.05.2023 is only an interim order; the matter is fixed on 05.07.2023; and petitioners can very well raise their grievance before the Tribunal when the matter is heard again on 05.07.2023. Therefore, he submits that at this stage the order of the Tribunal should not be interfered with.

8. We have heard learned counsel for the parties and also perused the materials on record.

9. From a perusal of the order dated 31.05.2023 we find that Tribunal had passed the said order staying

proceedings of the District Collector, Jayashankar Bhupalpally, dated 11.06.2022 without putting the affected parties to notice, which appears to be in contravention of the provisions of Section 19(4)(i) of the Act.

10. This position has been clarified in the decision of this court in **B.Harshavardhan** (supra).

11. If that be the position, we need not enter into other aspects of the matter. However, as pointed out by learned counsel for respondents No.1 and 2, since O.A.No.68 of 2023 (SZ) would be heard on 05.07.2023, it would be just and proper if the *ex parte* stay order is set aside and the matter is remanded back to the Tribunal for fresh consideration in accordance with law.

12. Consequently, we set aside the order dated 31.05.2023 leaving the parties to make their respective submissions before the Tribunal on 05.07.2023 or on such other date when O.A.No.68 of 2023 (SZ) is taken up for hearing by the Tribunal.

13. Both the writ petitions are accordingly allowed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

UJJAL BHUYAN, CJ

N. TUKARAMJI, J

13.06.2023
vs