

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 218 OF 2021

TEJINDER KUMAR JOLLY & ANR.

APPELLANT(S)

VERSUS

THE STATE OF UTTARAKHAND & ORS.

RESPONDENT(S)

J U D G M E N T

Hrishikesh Roy, J.

Heard Mr. V.K. Shukla, learned counsel for the appellants. Also heard Mr. Rahul Verma, the learned Additional Advocate General for the State/respondent No.1, Mr. Mukesh Verma, learned counsel for Respondent No.2 and Mr. Dhruv Mehta, learned senior counsel for respondent Nos. 3 to 5.

2. The challenge here is to the order dated 27th August, 2019 whereby the learned National Green Tribunal (for short the 'NGT') opined that the O.A. No. 449 of 2019 registered Suo Moto by the Tribunal, would not require adjudication in light of the order passed while disposing of the O.A. No. 332 of 2017.

3. The matter pertains to two stone crushers operated by the respondent nos. 4 and 5 in Village Fatta Bangar at Haldwani in Nainital District. The contention of the appellant (based on the report dated 7th April, 2014 of the Halka Patwari) is that the two stone crusher units are operating in violation of the statutory environmental norms, in close vicinity of their village and also at near distance to the nearby schools and colleges.

4. The appellant no. 1 and his father Umrao Singh Bhandari (now deceased) had moved the NGT for relocating the two stone crushers alleging unbearable sufferings due to noise and air pollution emanating from those units. A complaint, in this regard was also filed on 10th November, 2013 by the Principal of the Government Inter College, Moti Nagar alleging that due to the stone crushers operations, teaching is affected and the health of the students and teachers of the college are compromised. A like complaint was made to the District Magistrate, Nainital by the appellants pointing out the suffering of their co-villagers.

5. Following the above complaint, the Deputy Director, Mining addressed a letter on 7th March, 2014 to the Regional Officer, Pollution Control Board, Haldwani for

taking necessary action. Thereafter inspection of the area was made and the letter dated 26th March, 2014 of the Deputy Director (Mining) addressed to the SDM, Haldwani indicated that the stone crushers are located in the vicinity of residential houses and those are causing air and noise pollution in the surrounding areas. The report by the jurisdictional Halka Patwari indicated the precise distance of the residential houses / institutions, from the offending stone crusher units. It was also revealed that both units are in close vicinity of agricultural fields where wheat, sugar, soyabean crops are grown. Another report of the Pollution Control Board sent to the District Magistrate, Nainital suggest that the respondent units do not have valid permission, under the *Water (Prevention and Control of Pollution) Act, 1981 and the Air (Prevention and Control of Pollution) Act, 1974* and their request for permission was pending for consideration. Moreover, the on-site inspection of both Himalaya Stone Industries and the Himalaya Grits reflected that acoustic enclosure on the DG set are not installed and the stone crushers are operating beyond the established norms and parameters.

6. Noticing the inaction of the authorities, despite the above reports, the appellants filed O.A. No. 332 of 2017 seeking closure /re-location of the stone crushers. In the said proceeding, the NGT passed an interim order on 10th August, 2017 restricting the operation of both units during the day time from 7 a.m. to 6 p.m. This interim order was modified on 19th September, 2017 whereby the NGT clarified that loading / unloading operation can be carried out by the respondent units up to 8 p.m.

7. On orders of the Tribunal, a joint inspection was also carried out and the report thereof was placed before the NGT. The appellants filed objection to the said report whereafter, O.A. No. 332 of 2017 was disposed of on 3.4.2018, with the following order :

“Heard the Learned Counsel for the parties.

As the matter involves a short question which is in dispute between the parties, we propose to dispose of this Application at this stage. After perusing the materials on record, including the joint inspection report filed by CPCB along with the policy of the State Government, we pass the following directions:

1. That Respondent No. 4 and 4(A) who are running the stone crushing units within the residential area/colony shall file an undertaking before the Tribunal that as per the policy of the State Government, they

shall shift their stone crushing units to some other place, beyond residential area by 30th November, 2018. The said undertaking shall be filed within a week from today.

2. On filing of the aforesaid undertaking, respondent-State/Pollution Control Board/its authorities shall permit the respondent no. 4 and 4A to continue till 30th November, 2018, subject to their compliance to all the environmental laws.

3. In case the respondent no. 4 and 4A fail to submit the undertaking within the time stipulated, the respondent -State, including Pollution Control Board, shall be free to take steps against respondent no.4 and 4A for removal of their stone crushing units immediately.

4. On filing of undertaking by respondent no.4 and 4A, they would continue only upto 30th November, 2018. Thereafter, respondent-State as well as Pollution Control Board shall, proceed against the aforesaid respondents, to ensure that their stone crushing units are immediately stop and shall not be permitted to operate.

Consequently, the Original Application No. 332 of 2017 stands disposed of with the aforesaid directions. There shall be no order as to cost."

8. The above order was challenged by respondent Nos. 3 to 5 in C.A. No. 3664 of 2018 and this Court set aside the order and remitted the matter back to the NGT for passing fresh speaking order, after hearing the parties.

9. The matter was listed thereafter on various dates and in the meantime further pleadings were exchanged on

the report of the Pollution Control Board, filed before the NGT. The reports suggest that the noise level emanating from both units is beyond the permissible parameters. It is relevant to note that the subsequent Notification issued on 09.06.2021 by the Uttarakhand Government specifies *silence zone* upto 100 meters, from educational institutions.

10. The main stand of the respondents before the NGT is that they are old units operating since 1985 and they should not be forced to relocate because of the later developments.

11. In like cases of pre-existing industrial units, the NGT in O.A. NO. 123/2014 (*Himmat Singh Shekhawat Vs. State of Rajasthan & Ors.*) has pertinently declared the following:

“the environmental laws are laws enacted for the benefit of public at large. They are socio-beneficial legislation enacted to protect the environment for the benefit of the public at large. It is in discharge of their constitutional obligation that such laws have been enacted by the parliament or by other authorities in furtherance to the power of delegated legislation vested in them. These legislations and directives are incapable of being compared to the legislation in the field of taxation or criminal jurisprudence. These laws have been enacted to protect the fundamental

rights of the citizens. Thus, the contention that the existing mining mine holders would not be required to comply with the requirements of environmental laws, cannot be accepted. To illustratively examine this aspect, we may take hypothetical situation, not far from reality. An industrial unit which had been established and operationalized prior to 1974, 1981 and/or 1986, was granted permission under the laws in force and the unit owner had made heavy investment in making the unit operational. The Water Act came into force in 1974, Air Act in 1981 and Environment Protection Act in 1986. All these acts deal with existing units as well as units which are to be established in future. These laws granted time to the existing units to take all anti-pollution measures and obtain the consent of the respective pollution control boards to continue its operation. Failure to do so, could invite panel action including, closure of industry under these acts. The said units should not be permitted to contend that since it was an existing unit, it has earned a right to pollute the environment and cause environmental pollution, putting the life of the others at risks, on the ground that it was an existing unit and was operating in accordance with law. Such a contention, if raised, would have to be notice only to be rejected. Similarly, these Notifications or Office Memorandums, having been issued under the environmental laws, would equally apply to the existing industries as well. The directions contained in these notifications and office memorandums which are otherwise valid, would equally operate to the existing mines as well as the newly undertaken mining activities."

12. On 11.12.2018, after the Supreme Court remand, the NGT passed a fresh order disposing of the O.A. No. 332/2017 whereby the onus was shifted to the State Government to assess the functioning of the stone crushers and in the event, they are found violating any of the environmental norms, steps were to be taken for closure of the offending units. The Government was also asked to submit a compliance report to the NGT which was directed to be registered as a fresh O.A. as soon as the same is received.

13. The appellants then endeavored to ensure compliance of the NGT's directions in their O.A. No. 332 of 2017 but when those efforts yielded nothing, they were compelled to file the EP No. 2/2018 in the O.A. No. 332/2017, for executing the NGT's order dated 11.12.2018.

14. The Uttarakhand Government thereafter on 21.2.2019 filed a Report by way of an affidavit together with two Joint Inspection Reports dated 1.1.2019 and 1.2.2019 respectively. In the report dated 1.2.2019, several violations by the respondent units were highlighted but steps were not taken to shut those down as per the NGT's earlier directions.

15. The aforesaid Government Report dated 21.2.2019 was then registered as a fresh O.A. No. 449/2019 in the NGT. As the Report of the State Government led to registration of a fresh OA, the appellants withdrew their Execution Application No. 2/2018 in the earlier O.A. No. 332/2017.

16. Noticing the continued inaction of the State Government, despite the adverse finding in the Report submitted to the NGT on 21.2.2019, the appellants moved this Court by filing the Civil Appeal Diary No. 11823/2019. The said matter was disposed of by this Court on 15.4.2019 with the following Order:

"We do not find any good ground to interfere with the impugned order passed by the National Green Tribunal, the Tribunal having directed the State Government to assess the functioning of respondents private units and in case the said units are found violating the policies dated 19.11.2016 and 20.11.2018, to take appropriate action."

17. Thereafter on 26.08.2019 when the O.A. No. 449/2019 was posted for hearing, the NGT passed the following order under an erroneous impression: -

"The Learned Counsel for the applicant submits that he may be permitted to withdraw this original application, so as to pursue his remedy elsewhere, in accordance to law."

Consequently, original application no. 449/2019 is dismissed, as withdrawn.

Thereafter, the Learned Counsel for respondent Mr. Vivek Gupta appeared and submitted that the original application filed by the applicant was O.A. (332/2017) whereas the present O.A. (449/2019) has been registered by the office after receiving the report. Therefore, the Counsel for the original applicant is not to withdraw the original application (449/2019) as the same has not been filed by the original applicant.

In view of the above, list this case in Court tomorrow i.e. 27th August, 2019."

18. As noted above, since the O.A. No. 449/2019 was not filed by the appellants (who had filed the earlier O.A. No. 332/2017, which was already disposed of by the NGT), it was observed that the withdrawal of the O.A. No. 449/2019 at the instance of the appellants was not proper and accordingly, the said O.A. was directed to be listed on the next date i.e. 27.08.2019. When the matter was listed next on 27.08.2019, the following order came to be passed which is the subject matter of challenge in this proceeding:-

"On account of some factual misunderstanding, an order was passed yesterday. However, after having come to know the fact that original application (449/2019) is not the one filed by the applicant but has been so registered by the

office on receipt of the report by the respondents, in light of the order passed while disposing original application (332/2017), we ordered to list the matter in court again.

We have perused the contents of the original application (449/2019) and in the facts and circumstances of the case, we are of the view that no further adjudication is required.

Consequently, original application (449/2019) stands disposed of, with no order as to cost."

19. The impugned order of the NGT, as extracted above, clearly suggests that the O.A. No. 449/2019, which was registered in pursuance to the adverse Govt. Report against the respondents-stone crushers, was never adjudicated on merit. The issues were never taken to its logical end despite the clear finding in the Government Report that the respondents 4 & 5 are operating in violation of the Government Policy and the Environmental norms and ameliorative steps were needed. The contesting counsel for the parties are in agreement on the aspect that the NGT should have decided the O.A. 449/2019 on merit, instead of closing the proceeding, as a disposed of matter. Decision on merit was particularly expected since the NGT itself on 11.12.2018 (while disposing of

O.A. No. 332/2017), had directed the State Government to assess the functioning of the stone crushers, and to take action for their closure in the event they are found violating any of the policy parameters or environmental norms. To facilitate appropriate action, the fresh O.A. No. 449/2019 was directed to be registered, soon after the Government Report was produced before the NGT.

20. There can be no quarrel with the proposition that public interest would warrant action against polluting units. This is equally applicable to those industrial units which have been functioning since long. Adherence to the environmental and pollution norms cannot be compromised for factual misunderstandings or due to cryptic determination. Orders which have direct repercussions on the right to clean environment must surely be the outcome of careful scrutiny and substantive deliberation, as per the applicable facts. The NGT was required to address the grievance on the adverse health impacts on local populace by the stone crushers. The Tribunal itself had recognized that orders were necessary to resolve the issue. The factual determination had reflected the need to ensure heightened compliance with the environmental norms for the concerned area. On 13.01.2015 in the related O.A. No. 123 of 2014 (*Himmat*

Singh Shekhawat Vs. State of Rajasthan), the Tribunal made it clear that even the pre-existing units must fall in line. As noted before, the subsequent O.A. 449/2019 was ordered to be registered for consideration of the report requisitioned by the NGT itself. It was also clarified that the O.A. 449/2019 was based upon the Report furnished to the Tribunal. In this backdrop, the action needed on the Report, should have been indicated. At the very least, the Tribunal would be expected to ascertain whether substantial compliance of its earlier orders was made by the two stone crushing units of the respondents.

21. We are therefore of the opinion that the view taken in the impugned order to the effect that the O.A. No.449/2019 does not require adjudication, does not appear to be in order and the same is therefore set aside. Consequently, the O.A. No.449/2019 is restored and ordered to be adjudicated on merit. The NGT should however render its decision without being influenced by the observations made in this judgment. It is ordered accordingly. The appeal stands allowed, leaving the parties to bear their own cost.

.....J.
(R. SUBHASH REDDY)

.....J.
(HRISHIKESH ROY)

New Delhi;
November 18, 2021