

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No. 6707 OF 2023

P. Arun Prasad and another

... Appellants

Versus

Union of India and others

... Respondents

With

Civil Appeal No. 6920 of 2023

ORDER

SANJAY KUMAR, J

1. The National Green Tribunal, Central Zonal Bench, Bhopal (for brevity, 'the NGT'), disposed of Miscellaneous Application No. 04 of 2023 (CZ) in Original Application No. 72 of 2021 (CZ), *vide* order dated 21.08.2023, holding that the officers of the Chhattisgarh Environment Conservation Board (CECB) had failed to comply with its order dated 03.02.2023 and had, thereby, committed an offence under Section 26 of the National Green Tribunal Act, 2010 (NGT Act, 2010). The NGT

accordingly directed the Secretary, Ministry of Environment, Forest and Climate Change, Government of India, to lodge a criminal complaint before the competent Magistrate's Court against Subrat Sahoo, Chairman, CECB, and P. Arun Prasad, Member Secretary, CECB. Aggrieved thereby, both the officers are in appeal. Civil Appeal No. 6707 of 2023 was filed by P. Arun Prasad while Civil Appeal No. 6920 of 2023 was instituted by Subrat Sahoo. The CECB also joined as an appellant in Civil Appeal No. 6707 of 2023.

2. By separate orders dated 09.10.2023 and 16.10.2023, passed in Civil Appeal Nos. 6707 of 2023 and 6920 of 2023 respectively, this Court stayed the direction of the NGT to lodge prosecution against the appellants. They were, however, directed to file affidavits of compliance and were duly cautioned that they may have to suffer penalty/fine on monthly basis in case of delay in such compliance.

3. This litigation owes its origin to the letter dated 05.02.2014 of the Central Pollution Control Board (CPCB), whereby it issued directions under the Water (Prevention & Control of Pollution) Act, 1974, and the Air (Prevention & Control of Pollution) Act, 1981, in the context of 17 categories of highly polluting industries. The CPCB directed installation of Online Continuous Emission Monitoring Systems (OCEMS) for these

categories of industries, apart from Online Effluent Quality Monitoring Systems (OEQMS) at the outlets of their Effluent Treatment Plants. The State Pollution Control Boards were required to ensure installation and regular operation of pollution control facilities, such as continuous effluent and emission monitoring devices in these industries. Thereafter, in ***Paryavaran Suraksha Samiti vs. Union of India & others***¹, decided on 22.02.2017, a 3-Judge Bench of this Court issued various directions with regard to installation of Effluent Treatment Plants, Common Effluent Treatment Plants and Sewage Treatment Plants. The Bench observed that mere directions would be inconsequential without a rigid implementation mechanism and apportioned responsibility between the Pollution Control Board and the Department of Environment in each State/UT. Further, the National Green Tribunal Benches were required to supervise complaints of non-implementation of the said directions. Liberty was granted to private individuals and organizations to approach the jurisdictional National Green Tribunal Bench for appropriate orders, by pointing out deficiencies in implementation of the directions. Lastly, the Bench concluded that it would be in the interest of implementation of the objective sought to be achieved to require a provision being made for online, real time, continuous monitoring systems to display the emission levels in the public domain.

¹ (2017) 5 SCC 326

Noting the fact that three States had already adopted such measures, the other State Governments were also directed to put in place similar measures within six months.

4. Complaining of non-compliance with the mandate of this Court in ***Paryavaran Suraksha Samiti*** (*supra*) and the earlier directions of the CPCB in its letter dated 05.02.2014, one Ramesh Agarwal filed Original Application No. 72 of 2021 (CZ) before the NGT. This application was disposed of by order dated 03.02.2023. Therein, the NGT considered the compliance measures taken in the States of Madhya Pradesh, Rajasthan and Chhattisgarh. Insofar as the State of Chhattisgarh was concerned, the NGT noted that there were 167 industries in the 17 identified categories of highly polluting industries but only 84 such industries could be accessed, using the links of those industries with user-id and password. However, the general public could not directly access the online data and the CECB stated that it was trying to resolve that issue. 13 other industries were stated to have network issues due to which their data was not accessible and the CECB reported that it had directed the said industries to rectify the problem and ensure uninterrupted and regular availability of monitoring data. The NGT also noted that the website of the CECB was active but it was not user friendly and each industry had a separate portal which had to

be logged into with a user-id and password. It was also noted that historic data of most of the industries was not available. The State of Chhattisgarh was accordingly directed, in paragraph 21 of the order, to make the website more user friendly within 60 days.

5. Miscellaneous Application No. 04 of 2023 (CZ) was filed by CECB on 21.06.2023, seeking extension of time to comply with the order dated 03.02.2023. Therein, the CECB detailed the steps already taken by it in relation to the subject issue, even before the passing of the NGT's order on 03.02.2023, and went on to state that, apropos the fresh tender issued for purchase of Internet of Things Devices and their annual maintenance, rate analysis was carried out of the two tenders received and further negotiations were being taken up. The CECB sought 12 months more time to make real time data acquisition and it's handling more efficient and accessible throughout the State.

6. However, this application evoked strong disapproval. In the impugned order dated 21.08.2023, the NGT remarked that the State of Chhattisgarh had failed to comply with its order dated 03.02.2023 and more particularly, the direction contained in paragraph 21 thereof. The NGT opined that the application was thoroughly misconceived and showed a serious functional irregularity in efficiency and competence on the part of

officials of the CECB in complying with its orders, despite pendency of the matter for almost two years. As the learned counsel appearing for the CECB was unable to give a commitment that all necessary steps would be taken for compliance in three months, the NGT concluded that the CECB was taking an adamant attitude though the matter related to environment and its monitoring and had an element of urgency. The NGT accordingly held that no grounds were made out for extending time as prayed for. The NGT went on to consider the provisions of Section 26 of the NGT Act, 2010, and opined that the Chairman and Member Secretary of the CECB had committed the offence of failing to comply with its orders and directed necessary penal action being initiated against them thereunder.

7. This direction, however, stood stayed by the orders passed by this Court in these two appeals, but in compliance with the further direction therein, the appellants filed Compliance Affidavit dated 10.01.2024. Perusal thereof reflects that, out of the 167 industries, direct access link to 128 industries was provided on the CECB's website in November, 2023, itself. The real time and historical data of Continuous Ambient Air Quality Monitoring Systems (CAAQMS)/Continuous Emission Monitoring Systems (CEMS)/Effluent Quality Monitoring Systems(EQMS) for the 32 industries covered under Phase-I was also made available on the website. Notices

were stated to have been sent to the remaining industries which had not implemented a user-friendly system and, in consequence, by December, 2023, direct access link to all 167 industries, covered by Phases I and II, was made available on the CECB's website. Learned senior counsel appearing for the contesting respondent, Ramesh Aggarwal, the original complainant, does not dispute these facts. In effect, the order dated 03.02.2023 of the NGT now stands fully complied with.

8. In the light of the aforestated developments, while we take a serious view of the delay and lapses on the part of CECB in implementing the direction of the NGT in making its website more user friendly and in providing necessary data to all concerned, we are inclined to interfere with the direction given to initiate criminal proceedings under Section 26 of the NGT Act, 2010. Section 26 rightly provides for penal action being taken against anyone who fails to comply with an order, award and decision of the NGT but this power has to be exercised with care and caution. In the case on hand, the delay on the part of the CECB in the given facts does not amount to wilful negligence or an abject dereliction of duty on its part in abiding by such directions. Substantial compliance having been achieved, the CECB only sought some more time to make its website more user friendly. That being said, we hasten to make it abundantly clear that every

State organ and, in particular, the wings of the Government associated with environment protection, such as the CECB, must be all the more diligent in ensuring timely compliance with the directions of the NGT. Needless to state, such directions are aimed at protection and preservation of the ecology and environment and must take highest priority.

9. As the CECB has now achieved full compliance with the directions of the National Green Tribunal, Central Zonal Bench, Bhopal, in its order dated 03.02.2023 in Original Application No. 72 of 2021 (CZ), we deem it appropriate to let the matter rest. The impugned order dated 21.08.2023 is accordingly set aside.

The appeals are allowed in the above terms.

There shall be no order as to costs.

.....,J
(SANJIV KHANNA)

.....,J
(SANJAY KUMAR)

.....,J
(R. MAHADEVAN)

**12th August, 2024;
New Delhi.**

ITEM NO.46

COURT NO.2

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 6707 OF 2023

P. Arun Prasad and another

... Appellants

Versus

Union of India and others

... Respondents

(IA No.203265/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.203264/2023-STAY APPLICATION and IA No.203268/2023-EXEMPTION FROM FILING O.T.)

WITH

C.A. No. 6920/2023 (XVII)

(IA No.209506/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.209505/2023-STAY APPLICATION and IA No.209507/2023-EXEMPTION FROM FILING O.T. and IA No.209515/2023-EXEMPTION FROM FILING AFFIDAVIT)

Date : 12-08-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJAY KUMAR
HON'BLE MR. JUSTICE R. MAHADEVAN

For Appellant(s)

Mr. Amar Dave, Sr. Adv.
Mr. Abhinay, AOR
Ms. Parul Khurana, Adv.
Ms. Deeksha Prakash, Adv.

For Respondent(s)

Ms. Aishwarya Bhati, A.S.G. (N/P)
Ms. Swarupama Chaturvedi, Sr. Adv.
Mr. Gurmeet Singh Makker, AOR
Ms. Ruchi Kohli, Adv.
Mr. Sridhar Potaraju, Adv.
Mr. Sarthak Karol, Adv.
Mr. Rohan Gupta, Adv.

Ms. Anitha Shenoy, Sr. Adv.
Ms. Srishti Agnihotri, AOR

Ms. Ayushma Awasthi, Adv.
Ms. Sanjana Grace Thomas, Adv.
Ms. Sruthi Kupadakath, Adv.
Ms. Tara Elizabeth Kurien, Adv.

Mr. Vikrant Pachnanda, AOR
Mr. Mukul Katyal, Adv.

Mr. Vishal Prasad, AOR

Mr. Avdhesh Kumar Singh, A.A.G.
Mrs. Prerna Dhall, Adv.
Mr. Piyush Yadav, Adv.
Ms. Akanksha Singh, Adv.
Mr. Alok Sahay, Adv.
Mr. Prashant Singh, AOR

Mr. Pashupathi Nath Razdan, AOR
Mr. Mirza Kayesh Begg, Adv.
Ms. Maitreyee Jagat Joshi, Adv.
Mr. Astik Gupta, Adv.
Ms. Akanksha Tomar, Adv.
Mr. Argha Roy, Adv.
Ms. Ojaswini Gupta, Adv.
Ms. Ruby, Adv.
Mr. Zartab Anwar, Adv.

Mr. Raghav Sharma, Adv.
Mr. Jaskirat Pal Singh, Adv.
Mr. Pranjal Pandey, Adv.
Mr. Salvador Santosh Rebello, AOR

Dr. S.K. Verma, AOR
Mr. Mahesh Kasana, Adv.
Ms. Aparna Rohtagi Jain, Adv.

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

The appeals are allowed in terms of the signed order.

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

(DEEPAK GUGLANI)
AR-cum-PS

(R.S. NARAYANAN)
ASSISTANT REGISTRAR
(signed order is placed on the file)