

SANGHAR ZUBER ISMAIL

A

v.

MINISTRY OF ENVIRONMENT, FORESTS AND
CLIMATE CHANGE AND ANOTHER

(Civil Appeal No. 4543 of 2021)

B

AUGUST 31, 2021

**[DR DHANANJAYA Y CHANDRACHUD, M R SHAH
AND HIMA KOHLI, JJ.]**

Environmental law: Marine environment – Environmental clearance granted on 5 January 2021 in favour of the second respondent (project proponent) for expansion of capacity of its refinery situated in the petro-chemical complex at Vadinar, District Devbhumi Dwarka, Gujarat from 20 MMTPA to 46 MMTPA – Appellant challenged before the NGT that the expansion was likely to cause an adverse impact on the marine environment, both in terms of the mangroves and marine biology – Based on the statement of project proponent that all the EC conditions would be duly complied with and due mitigation measures would be taken to ensure the safety of mangroves and marine environment, NGT proceeded to observe that it did not find any ground to interfere with the grant of the EC – It, however, directed the project proponent to ensure that all necessary safeguards are adopted and EC conditions are duly complied with – A three member Committee was constituted in that regard – Held: The NGT merely based its conclusion on the statement which was made by the project proponent and did not conduct an independent appraisal of the grounds of challenge – NGT did not deal with the substantive grounds of challenge in the exercise of its appellate jurisdiction – Constitution of an expert committee did 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 NGT.

C

D

E

F

G

H

A CIVIL APPELLATE JURISDICTION: Civil Appeal No.4543 of 2021.

From the Judgment and Order dated 08.06.2021 of the National Green Tribunal, Principal Bench, New Delhi, in Appeal No.5 of 2021 (WZ).

B Purvish Jitendra Malkan, Ms. Dharita P Malkan, Ms. Deepa Gorasia, Alok Kumar, Ms. Nandini Chhabra, Ms. Bhavna Sarkar, Ms. Khushboo Vinodray Malkan, Advs. for the Appellant.

Dhruv Mehta, Sr. Adv., Somiran Sharma, Advs. for the Respondents.

C The following Order of the Court was passed

O R D E R

DR DHANANJAYA Y CHANDRACHUD, J.

D 1. Admit.

2. This appeal arises from a judgment of the National Green Tribunal dated 8 June 2021 at the Principal Bench, New Delhi.

3. The appeal before the NGT arose from the grant of an environmental clearance on 5 January 2021 in favour of the second respondent for the expansion of the capacity of its refinery situated in the petro-chemical complex at Vadinar, District Devbhumi Dwarka, Gujarat from 20 MMTPA to 46 MMTPA. The main challenge before the NGT, as recorded in paragraph 3 of the decision is that the expansion was likely to cause an adverse impact on the marine environment, both in terms of the mangroves and marine biology. The NGT noted that its attention been drawn to the EIA/EMP study prepared by CSIR-NEERI. Having extracted from the study, the NGT noted the submission of senior counsel for the second respondent that all the EC conditions would be duly complied with and due mitigation measures would be taken to ensure the safety of mangroves and marine environment.

4. Having recorded the statement of the second respondent, the NGT proceeded to observe that it did not find any ground

G

F

H

to interfere with the grant of the EC. It, however, directed the project proponent to ensure that all necessary safeguards are adopted and EC conditions are duly complied with. A three member Committee was constituted in that regard.

5. The NGT was seized with a substantive appeal under the provisions of Section 16 of the National Green Tribunal Act 2010. Section 16(h) reads thus:

“16. Any person aggrieved by –

(a) to (g) xxx xxx xxx

(h) an order made, on or after the commencement of the National Green Tribunal Act 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act 1986.”

6. The specific ground before the NGT was that the expansion of the refinery will cause serious hazards to both the marine biology and to mangroves. The NGT observed that the project was already in existence and there was no continuing grievance against its functioning insofar as environmental norms are concerned. This observation would not conclude the issue as to whether the *expansion* of the project would have a deleterious impact on the environment.

7. Having regard to the nature of its appellate power, the NGT has to apply its mind to the substantive grounds of challenge. The NGT has merely based its conclusion on the statement which has been made by the project proponent and has not conducted an independent appraisal of the grounds of challenge.

8. As a matter of fact, Mr Dhruv Mehta, learned senior counsel, who appears on behalf of the second respondent, states that the appellant had not produced a copy of the correct EIA before the NGT and an application has been filed on behalf of the second respondent for clarifying the

A

B

C

D

E

F

G

H

A position. Be that it may, 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.

B

C 9. We accordingly allow the appeal and set aside the impugned order dated 8 June 2021. Appeal No 5/2021(WZ) is accordingly restored to the file of the NGT for disposal afresh. All the rights and contentions of the parties on the merits are kept open.

D 10. Pending application(s), if any, stand disposed of.

Devika Gujral

Appeal allowed.