

[2024] 1 S.C.R. 1185 : 2024 INSC 89

Veena Gupta & Anr.
v.
Central Pollution Control Board & Ors.

30 January 2024

(Civil Appeal No(s). 1865-1866 of 2022)

**[Pamidighantam Sri Narasimha* and
Aravind Kumar, JJ.]**

Issue for Consideration

Whether the impugned orders passed by National Green Tribunal – order arising out of an *ex parte* order in suo motu proceedings holding the appellants guilty and directing payment of compensation; and order of dismissal of the review petition filed by appellant No.2 alleging that he had not been given opportunity before adverse order was passed against him, were not sustainable.

Headnotes

Practice and Procedure – Opportunity of hearing to affected party – National Green Tribunal’s recurrent engagement in unilateral decision making, provisioning *ex post facto* review hearing and routinely dismissing it – Deprecated.

Held: On facts, it is evident that the Tribunal itself noted that notices were not issued to the Project Proponents – The Tribunal, in fact, considered it unnecessary to hear the Project Proponent to verify the facts in issue – The persons who were prejudiced by the order of the Tribunal naturally filed Review Petitions before the Tribunal – Appellant No.2 is one amongst them – The National Green Tribunal’s recurrent engagement in unilateral decision making, provisioning *ex post facto* review hearing and routinely dismissing it has regrettably become a prevailing norm – It is imperative for the Tribunal to infuse a renewed sense of procedural integrity, ensuring that its actions resonate with a harmonious balance between justice and due process – It appears that the appellants did not have a full opportunity to contest the matter and place all their defenses before the Tribunal – The matter is remanded back to the Tribunal to issue notice to all the affected parties, hear them and pass appropriate orders. [Paras 1, 3, 4, 5, 6]

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Case Law Cited

Singrauli Super Thermal Power Station v. Ashwani Kumar Dubey & Ors., [\[2023\] 10 SCR 440](#) : (2023) 8 SCC 35 – referred to.

List of Keywords

National Green Tribunal; *ex parte* order; Suo motu proceedings; Review petition; Adverse order; Opportunity of hearing; Affected party; Unilateral decision making; *ex post facto* review hearing; Facts in issue; Prejudice; Prevailing norm; Procedural integrity; Harmonious balance; Justice; Due process; Opportunity to contest the matter; Remand.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.1865-1866 of 2022.

From the Judgment and Order dated 31.08.2021 in OA No.65 of 2021 and dated 26.11.2021 in RA No.37 of 2021 of the National Green Tribunal.

Appearances for Parties

Sanjay Parikh, Sr. Adv., Ashish Aggarwal, Ms. Tanya Aggarwal, Ms. Tatini Basu, Ms. Nitipriya Kar, Subodha Pandey, Advs. for the Appellants.

Avneesh Arputham, Ankit Sharma, Pradeep Misra, Daleep Dhyani, Suraj Singh, Manoj Kumar Sharma, Praveen Swarup, Ameet Singh, Devesh Maurya, Ravi Kumar, Ms. Payal Swarup, Aman, Rajeev Kumar Bansal, Vidya Sagar, Rajesh Sonthalia, Mrs. Amita Agarwal, Shekher Kaushik, Ganesh Barowalia, Mrs. Vandana Gupta, Rahul Gupta, Deepak Goel, Ms. Archana Preeti Gupta, Ms. Harshita Maheshwari, Ms. Alka Goyal, Jitendra Bharti, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. These appeals arise out of two orders passed by the National Green Tribunal ("Tribunal" for short). The main order arises out of an *ex parte* order in suo motu proceedings holding the appellants to be

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guilty and directing payment of compensation. The second order is the dismissal of the review petition filed by the appellant No.2 alleging that he had not been given an opportunity before an adverse order was passed against him. For the reasons to follow, we set aside the orders and remand the matter back to the Tribunal to issue notice to all the affected parties, hear them and pass appropriate orders.

2. The relevant portion of the order impugned¹ is as under:

“7. Even though no notice was issued by the Tribunal to the PP in absence of particulars, the Joint Committee has visited the site. Notice has been issued to the PP under the Employees Compensation Act for death of a person. Remedial measures have been suggested for future. The PP has been found to be operating without statutory consents in non-conforming area without safety precautions, endangering life and health of others. In these circumstances, reserving liberty to the PP to move this Tribunal, we do not consider it necessary to defer the matter and to proceed by notice to the PP in view of established facts, duly verified by the statutory authorities who are themselves competent to take the recommended measures.

8. In view of the above, further action may be taken by the Statutory Authorities, following due process. The compensation assessed may be recovered and if not paid within one month, coercive measures be taken against the concerned persons as well as against the property involved. We request the Member Secretary, Delhi State Legal Services Authority to ensure legal aid to the heirs of the deceased to enable due compensation to be paid to them. If the owners/tenant or other persons against whom action is taken are aggrieved, they are at liberty to take their remedies, including moving this Tribunal. The Authorities may also maintain vigil and take measures to prevent such incidents in future. We have noted the constitution of zone wise STF to check the illegal industrial activities and godowns in residential/non-conforming areas

1 Original Application No. 65/2021, dated 31.08.2021

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and are of the view that the same should be manned by officers of higher rank than the constitution now proposed. The Chief Secretary, Delhi may review the constitution accordingly.”

3. It is evident from the above that the Tribunal itself has noted that notices were not issued to the Project Proponents. The Tribunal, in fact, considers it unnecessary to hear the Project Proponent to verify the facts in issue. The Tribunal thought it appropriate to adopt this method in view of a Joint Inspection Report that had been submitted. The persons who were prejudiced by the order of the Tribunal naturally filed Review Petitions before the Tribunal. Appellant No. 2 is one amongst them. The Review Petition was taken up and dismissed by the Tribunal on 26.11.2021.
4. The National Green Tribunal’s recurrent engagement in unilateral decision making, provisioning ex post facto review hearing and routinely dismissing it has regrettably become a prevailing norm. In its zealous quest for justice, the Tribunal must tread carefully to avoid the oversight of propriety. The practice of ex parte orders and the imposition of damages amounting to crores of rupees, have proven to be a counterproductive force in the broader mission of environmental safeguarding.
5. Significantly, these orders have consistently faced stays from this Court, resulting in the unraveling of the commendable efforts put forth by the learned Members, lawyers, and other stakeholders². It is imperative for the Tribunal to infuse a renewed sense of procedural integrity, ensuring that its actions resonate with a harmonious balance between justice and due process. Only then can it reclaim its standing as a beacon of environmental protection, where well-intentioned endeavors are not simply washed away.
6. It appears that the appellants did not have a full opportunity to contest the matter and place all their defenses before the Tribunal. They filed this appeal and by order dated 04.03.2022, this Court stayed the judgment and order passed by the Tribunal. This was inevitable.

² [*Singrauli Super Thermal Power Station v. Ashwani Kumar Dubey & Ors.*, \[2023\] 10 SCR 440](#) : (2023)8 SCC 35. This Court has already noticed the practice of the Tribunal in not providing an opportunity of hearing to the affected party and consequently set aside its orders and remanded the matter to the Tribunal for reconsideration after following principles of natural justice.

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Two years have passed by and the stay is still operating. We have no other alternative except to set aside the orders dated 31.08.2021 and 26.11.2021 and remand the matter back to the Tribunal. The Tribunal issue notices to all the necessary parties, hear them in detail, and pass appropriate orders. Needless to say that the Tribunal shall hear the case, uninfluenced by the observations and conclusions drawn in the orders dated 31.08.2021 and 26.11.2021.

7. We make it clear that this order does not deal with the merits of the matter and the actions of those guilty of statutory and environmental violation will have to be subject to strict scrutiny and legal consequences.
8. The Civil Appeals are allowed with these directions.
9. Pending applications, if any, shall stand disposed of.

Headnotes prepared by: Bibhuti Bhushan Bose

Result of the case: Appeals
allowed with directions.