

ITEM NO.31

COURT NO.10

SECTION XIV

S U P R E M E                      C O U R T   O F       I N D I A  
R E C O R D   O F   P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).12065/2009

(From the judgment and order dated 11/02/2009 in CM No. 15895/2005  
in WP No. 17682/2005 of The HIGH COURT OF DELHI AT N. DELHI)

UNION OF INDIA

Petitioner(s)

VERSUS

VIMAL BHAI & ORS.

Respondent(s)

(With appln(s) for directions, modification                      of       Court's  
Order       and  
prayer for interim relief and office report)

Date: 12/05/2011                      This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s)                      Ms. Indira Jaising, A.S.G.  
   Ms. Sadhana Sandhu, Adv.

For Respondent(s)                      Mr.     Rahul Choudhary, Adv.  
   Mr.     Ritwick Dutta, Adv.  
   Ms.     Soumya Ray, Adv.  
   Ms.     Anitha Shenoy, Adv.  
   Ms.     Rashmi Nandkumar, Adv.

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

This petition is directed against order dated 11.02.2009 passed by the Division Bench of the Delhi High Court in CM No.15895/2005 in W.P.(C)No.17682 of 2005 whereby the petitioner was directed to offer the salary, allowances and other conditions of service to the Chairperson of National Environmental Appellate Authority at par with sitting Judge of the Supreme Court and to make necessary amendment in the National Environmental Appellate Authority Rules.

During the pendency of the special leave petition, the Parliament enacted the National Green Tribunal Act, 2010, which was published in the Gazette of India dated 2.6.2010 (for the sake of convenience, the National Green Tribunal Act, 2010 shall be referred to as 'the 2010 Act').

By notification dated 18.10.2010 issued under Section 1(2) of the New Act, the Government appointed 18<sup>th</sup> day of October, 2010 as the date for enforcement of the New Act. By another notification of the same date, the Central Government, in exercise of its power under sub-sections (1) and (2) of Section 6 and Section 7 of the New Act appointed Hon'ble Shri Justice L.S. Panta, former Judge of the Supreme Court as Chairperson of the National Green Tribunal (for short, 'the Tribunal'). After one month and 8 days, the Central Government, in exercise of the powers conferred upon it by clauses (e), (f) and (g) of Section 35(2) of the new Act made the National Green Tribunal (Manner of appointment of Judicial and Expert Members, Salaries, Allowances and other Terms and Conditions of Service of Chairperson and other Members and Procedure for Inquiry) Rules, 2010.3 When the case was taken up for hearing on 6.12.2010, the learned Additional Solicitor General submitted that difficulties in the functioning of the Tribunal can be resolved by the Central Government on ad-hoc basis by exercising power under Section 37(1) of the new Act. Thereupon, the Court observed that it will be open to the

Central Government to take appropriate action under Section 37(1) of the new Act. On 14.12.2010, the learned Additional Solicitor General informed the Court that the Central Government is in the process of framing rules for facilitating ad-hoc appointment of at least one member so that the Tribunal becomes functional. On 16.12.2010, the learned Additional Solicitor General produced copy of an order issued by the Central Government under section 37(1) of the 2010 Act to facilitate appointment of Expert Member on ad-hoc posts and gave out that Expert Member will be appointed within four weeks so that the Tribunal may become functional. After taking note of the order, the Court issued the following directions: "1. The period of limitation prescribed for filing the appeals under the National Environment Appellate Authority Act, 1997 shall also apply to the applications/appeals which may be filed after the Bench of the Tribunal becomes functional.

2. The period between 18.10.2010 i.e. the date on which National Environment Appellate Authority stood abolished by operation of Section 38(5) of the 2010 Act and the date on which Bench of the National Green Tribunal becomes functional shall be excluded while computing the period of limitation for filing applications/appeals etc.

3. Till the rules are framed by the Central Government for regulating the procedure for filing of applications/appeals, the rules which were applicable for filing such applications/appeals before the National Environmental Appellate Authority shall be treated as operative and applicable and the aggrieved persons shall be entitled to file applications and appeals in the format prescribed under those rules and the Bench of the Tribunal shall entertain and decide such applications/appeals.

4. The Bench of the Tribunal shall be free to entertain the applications for interim relief and pass appropriate order in accordance with law." Notwithstanding the above, the Tribunal could not become functional because the Division Bench of the Madras High Court stayed the operation of Rules 4, 7(1)(c) and 7(2) of the National Green Tribunal (Manner of appointment of Judicial and Expert Members, Salaries, Allowances and other Terms and Conditions of Services of Chairperson and other Members and Procedure for Inquiry) Rules, 2010. The operation of the order passed by the Division Bench of the Madras High Court was stayed by this Court on 21.4.2011. On 6.5.2011, the Court took cognizance of the three Notifications dated 5.5.2011. By one Notification, the Central Government specified Delhi as the ordinary place of sitting of the National Green Tribunal having jurisdiction all over India. By other two Notifications, the Central Government appointed four Expert Members and three Judicial Members. Today, the learned Additional Solicitor General made over an affidavit of Shri Vivek Wadekar, Director (PL), Ministry of Environment and Forests. In paragraphs 14 to 17, the deponent has made the following averments: "14. That the NGT (Recruitments, Salaries and other Terms and Conditions of Service of Officers and other Employees) Rules, 2011 were drafted and sent to Ministry of Law and Justice on 25.02.2011 and DOP&T on 23.03.2011, for their comments. On 07.04.2011 the comments of DoPT have been received on the draft Rules and have been considered in the Ministry at the level of Competent Authority. The proposal for creation of posts of Registrar & subordinate Staff for NGT has been sent to Ministry of Finance, Deptt. Of Expenditure on 27 April, 2011. On receipt of clearance from Deptt. Of Expenditure, the same shall be sent again to Ministry of Law and Justice for vetting. On notification of the said Recruitment Rules by the Central Government in the Official Gazette, the recruitment of the officers and other employees of the Tribunal shall be made by the Chairperson, NGT, as per Section 12(2) of the NGT Act, 2010.

15. That initially, MOEF was incurring the expenditure directly towards operationalisation of the NGT. Subsequently, a bank Account in the name of NGT was opened on 23rd February, 2011 and the funds as grants-in-aid were released to NGT vide MoEF's sanction letter dated March 2011 for the financial year 2010-11, for expenditure of the Tribunal. No request for further release of funds under grants-in-aid has been received from the NGT for the current financial year 2011-12. Sufficient funds are available during current financial year's budgetary estimates. For incurring all the necessary and essential expenditure the Chairperson of the NGT has been empowered vide NGT (Financial and Administrative) Power Rules, 2011, notified on 04.04.2011. As per rule 4 of these Rules the Chairperson shall have the powers as are conferred on a Head of the Department of the Central Government.

16. That at the time of establishment of NGT on 18.10.2010, 26 cases were pending for disposal in the National Environment Appellate Authority (NEAA).

All the 26 pending cases and relevant records of NEAA have been transferred to NGT for disposal on 5.5.2011. A copy of the list of cases is enclosed hereto and marked as Annexure-VIII. As per rule 3 of NGT (Practice & Procedure) Rules, Chairperson NGT can distribute cases amongst ordinary places of sitting as well as benches.

17. That Bhopal, Pune, Kolkata & Chennai have been decided to be 4 other ordinary places of sitting for NGT apart from Delhi. The issue relating to identification of a suitable accommodation for these four ordinary places of sitting of NGT was taken up by Secretary and JS of MoEF with Chief Secretary, and Secretary (Environment) of the concerned State Governments vide letters dated 11th February, 2011, 18th March, 2011 respectively.

(a) That in pursuance with that the Principle Secretary, Housing, Govt. of Madhya Pradesh responded vide letter dated 23.04.2011 indicating two office premises that can be made available for NGT at Bhopal. Administrative Officer of NGT visited Bhopal on 4 to 6 May, 2011 and has nearly finalized one of the identified places offered by the State Govt. of Madhya Pradesh keeping in mind its suitability for NGT in consultation with Chairperson, NGT. Further processing in the matter is being done by NGT administration.

(b) That the Chief Secretary, Governments of Maharashtra, the Addl. Secretary, Tamil Nadu & West Bengal (except for MP) have been sent reminders by the Additional Secretary on 9th May, for expediting the identification of suitable premises for NGT. A copy of the reminder dated 9th May, 2011 is enclosed hereto and marked as Annexure-IX." Learned Additional Solicitor General also disclosed that the Department of Expenditure has cleared the proposal for creation of 95 posts for National Green Tribunal, of which 27 will be for the principal seat and Bench of the National Green Tribunal at Delhi and 68 posts will be for other Benches at different places.

In reply to the Court's query, the learned Additional Solicitor General gave out that the National Green Tribunal and one of its Bench are expected to become functional at Van Vigyan Bhawan, R.K. Puram and Bhikaji Cama Place where Environment Appellate Authority was functioning before its abolition and one Bench of the National Green Tribunal can become functional at Bhopal because Chief Secretary, Madhya Pradesh has promised that necessary infrastructure will be made available. Learned Additional Solicitor General also informed the Court that the National Green Tribunal has entertained four new petitions and issued notice to the parties for some date in July, 2011 and that in 26 transfer petitions, notices have been issued to the parties. The learned Additional Solicitor General suggested that the remaining Bench comprising of Judicial Member and Expert Member can start functioning at Pune provided adequate infrastructure and facilities are made available by the Government of Maharashtra.

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Having considered the affidavit of Shri Vivek Wadekar and the statement of the learned Additional Solicitor General and with a view to ensure that National Green Tribunal and its Benches may be able to function effectively without further delay and adequate infrastructure for the establishment of the Tribunal and its Benches and housing facility are made available, we issue the following directions:

1. The Chief Justice Delhi High Court is requested to depute two officers of the rank of Additional District Judge, who may act as registrars (appropriate designation of the officers may be determined by the Chairperson of the National Green Tribunal). The two officers shall remain attached with the Tribunal for a period of six months in the first instance.

2. The Chief Secretaries of Madhya Pradesh and Maharashtra are directed to instruct the concerned officers to make available appropriate and adequate accommodation at Bhopal and Pune respectively for making Benches of the Tribunal functional. They shall also ensure that

appropriate and adequate housing accommodation are made available for the Judicial and Expert Members of the Tribunal as per their status and entitlement. The needful be done within a period of two months from the date of receipt of this order.

3. The Chief Justices of the High Courts of Madhya Pradesh and Bombay are requested to depute one officer of the rank of Additional District Judge, who may function as Registrar of the Benches of the National Green Tribunal at Bhopal and Pune respectively for a period of six months.

4. The Chief Secretaries of West Bengal and Tamil Nadu shall issue necessary instructions for making available appropriate and adequate infrastructure for establishment of the Benches of the National Green Tribunal at Kolkata and Chennai. They shall also issue instructions for making available housing accommodation for the Judicial and Expert Members of the Tribunal for operationalising the Benches of the National Green Tribunal at Kolkata and Chennai respectively. The needful be done within a period of two months from the date of receipt of this order.

5. The Central Government shall notify the rules for recruitment of staff and the National Green Tribunal shall ensure that the recruitment of staff against the sanctioned posts is made within a period of six months.

6. The Central Government shall also initiate the process for filling up the remaining vacancies of Judicial and Expert Members of the National Green Tribunal.

7. Those, who could not file petitions before the National Green Tribunal because it did not become functional, may do so within a period of 60 days from 30.5.2011. The National Green Tribunal shall give wide publicity to this direction so that aggrieved parties can file appropriate petitions etc. within 60 days from 30.5.2011. The petitions which are filed within the aforesaid period shall not be treated as barred by time and be decided on merits. The parties shall also be entitled to file applications for interim relief before the National Green Tribunal

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8. Till the Benches of the National Green Tribunal becomes functional at Bhopal, Pune, Kolkata and Chennai, the aggrieved persons may file petitions before the National Green Tribunal at Delhi. Once the Benches of the Tribunal become functional, the Chairperson of the National Green Tribunal may transfer the cases to the concerned Benches. List on 13.5.2011. To be taken up at 10.30 a.m.

(Kusum Syal)  
Sr.P.A.

(Phoolan Wati Arora)  
Court Master