

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6360/2015.

1. Central India AYUSH Drugs Manufacturers Association,
c/o. Shree Baidyanath Ayurved Pvt Ltd., Great Nag Road, Nagpur- 440 009
through Shri Vijay Kumar Sharma
Honorary Secretary.
2. Aroma Herbal & Ayurvedic Industries Pvt. Ltd.,
through Shri Pranay Tidke,
Director, D-19, MIDC
Hingna, Nagpur.
3. Vicco Laboratories,
Proprietors : Vicco Products (Bombay) Pvt. Ltd., through Shri Amit Pendharkar, Director, Office at Plot No.78, Farmland, Ramdaspeth, Nagpur 440 010.
4. Shree Baidyanath Ayurved Bhavan Pvt. Ltd.,
Through Dr. R.R. Thakare,
Chief Factory Manager,
Great Nag Road, Nagpur- 440 009
5. Anil Cottage Industries,
through Shri Arun Shankar Waze,
Proprietor A/31, MIDC Wardha,
Wardha 442 006 (MS)

6. Pathak Ayurvedic Pharmacy
through Mr. Sanjay Laxman Pathak
Proprietor, Plot No.3, Dwarkapuri
Kashinagar, Rameshwari,
Nagpur 440 027.

7. Shivayu Ayurved Limited,
through Shri Vijay Kumar Sharma
Director Marketing,
84/114, Tawakkal Layout,
Off. Katol Road By pass,
Wadi, Nagpur 440023 (MS) India.

.... **PETITIONERS.**

VERSUS

1. State of Maharashtra
through its Secretary,
Department of Revenue and
Forest, Mantralaya, Madam
Cama Road, Mumbai 440 032.

2. Maharashtra State Biodiversity Board,
Kadim Bag, Civil Lines,
Nagpur – 440001, Maharashtra
through its Member Secretary.

3. Union of India,
Ministry of Environment, Forests
and Climate Change, 6, Krushak
Road, New Delhi 110 011.

4. National Biodiversity Authority
having its office at 5th Floor,
TICEL Bio Park, CSIR Road,
Taramani, Chennai 600 113.
through its Secretary.

.... **RESPONDENTS.**

Shri S.V. Manohar, Senior Advocate with Shri Akshay Naik,
Advocate

for the Petitioners.

Shri S.M. Bahirwar, Advocate for Respondent Nos.1 & 2.

Shri Aditya Sondhi, Senior Advocate with

Mrs. Anjali Joshi, Adv. for Respondent Nos.3 & 4.

**CORAM : B.P. DHARMADHIKARI &
A.S. CHANDURKAR, JJ.**

CLOSED ON : 14.09.2016
PRONOUNCED ON : 28.09.2016

JUDGMENT ON PRELIMINARY OBJECTION :

(Per B.P. Dharmadhikari, J)

1. By this writ petition, filed under Article 226 of the Constitution of India, the petitioners seek a declaration that Rule 17 of the Biological Diversity Rules, 2004 does not apply to the Indian entities or body corporates. In the alternate, it is prayed that to the extent the said Rule envisages equitable sharing of benefits by the Indian entities, it should be declared *ultra vires* to the provisions of the Biological Diversity Act, 2002 and, therefore, unconstitutional.

Further declaration sought is, that the Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014 (hereinafter referred to as “**the Regulations**” for short) apply only to transactions involving non-Indian entities and the same do not apply to the Indian entities not trading any biological resources with non-Indian entities.

By amendment, a prayer to declare said regulations *ultra vires* to Sections 23 and 24 of the Biological Diversity Act, 2002 (hereinafter referred to as “**the B.D. Act**” for short) is also sought. The other prayers challenge orders and notices served upon the petitioners in the light of this provision.

2. This Court has, on 2.12.2015 while issuing notices in the matter, restrained the respondents from taking any coercive action.

3. We have heard learned Senior counsel Shri S.V. Manohar with Shri Akshay Naik, learned counsel for the

petitioners, learned counsel Shri S.M. Bahiware for respondent Nos.1 and 2, and learned Senior counsel Shri Aditya Sondhi with Mrs. Anjali Joshi, learned counsel for respondent Nos.3 and 4.

4. Learned Senior counsel Shri Aditya Sondhi for respondent Nos.3 and 4 has raised a preliminary objection. According to him, the present grievance in writ petition should be raised before the National Green Tribunal in view of provisions contained in Section 14 of the National Green Tribunal Act, 2010. (hereinafter referred to as “**the N.G.T. Act**” for short) He has invited our attention to provisions of Sections 14, 16, 18, 19, and also to Schedule-I thereto of the N.G.T. Act. He draws support from the judgment of the Hon'ble Apex Court in the case of **Bhopal Gas Peedith Mahila Udyog Sangathan and others .vs.. Union of India and others, [(2012) 8 SCC 326]**, particularly paragraph Nos.40 and 41, to urge that challenges of such nature can be looked into by the National Green Tribunal and, hence, this Court should not entertain the petition. He submits that all civil disputes, in which question of implementation of the enactments specified in Schedule-I arises, are exclusively triable by the

National Green Tribunal. There is no challenge before this Court to any provision contained in the N.G.T. Act or Rules framed thereunder. The challenge is to subordinate legislation framed under the B.D. Act and, hence, Section 14 of the N.G.T. Act has to apply. He has attempted to draw assistance from order dated 2.12.2013, passed by the Division Bench of the Karnataka High Court, in Writ Petition No.41532 of 2012.

5. Learned Senior counsel Shri S.V. Manohar for the petitioners, in reply, relies upon the judgment of the Division Bench of this Court in the case of Indian Oil Corporation Ltd. vrs. Nagpur Municipal Corporation and another [2012 (1) BCR 526] and the judgment of the Hon'ble Apex Court in the case of Committee of Management and another vrs. Vice Chancellor and others [(2009) 2 SCC 630]. According to him, when there is challenge to *vires* of any Act or Rule, such a Tribunal does not possess jurisdiction to look into it. He contends that an appeal to the National Green Tribunal is provided under Section 52A of the B.D. Act and that Section only prescribes a form of appeal. Section 14 of the N.G.T. Act is not a substantive provision

which confers any other jurisdiction upon the National Green Tribunal independent of seven enactments mentioned in Schedule-I. If Schedule-I Enactments provide for a channel of grievance redressal, which enables the party to approach the National Green Tribunal, then only various provisions of the N.G.T. Act are attracted. In this situation, as vires of Rules or Guidelines/Regulations could not have been looked into by any authority functioning under the B.D. Act, same also cannot be looked into by the Tribunal constituted under the National Green Tribunal Act, 2010. Learned senior counsel Shri S.V. Manohar, therefore, prays for dismissal of preliminary objection, and prays to entertain the petition on merits.

6. In brief reply, learned Senior counsel Shri Aditya Sondhi for respondent Nos.3 and 4 invites our attention to the judgment of the Seven Judges Bench of the Hon'ble Apex Court in the case of L. Chandrakumar .vs. Union of India and others (1997) 3 SCC 261]. He presses paragraph Nos.90 and 93 into service to submit that when such Tribunals are constituted, idea is to reduce frivolous litigation in the High Courts. Hence, the

present prayers can also be examined by the National Green Tribunal, as *vires* or subordinate legislations are to be examined in the light of parent enactment i.e. the B.D.Act. He places emphasis on the fact that the National Green Tribunal is not constituted and functioning under the B.D. Act. He submits that, in this situation, the National Green Tribunal is not prohibited from examining the challenge as it arises under B.D. Act and relates to its implementation.

7. It will be appropriate to briefly examine seven enactments which are included in Schedule-I of the National Green Tribunal Act, 2010. The National Green Tribunal Act, 2010 has received assent of the Hon'ble President on 2.6.2010 and has been brought into force from 18.10.2010.

8. Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 provides for an appeal against an order made by the State Board. The appellate authority is to be prescribed and constituted by the State Government. As per Sub-section (2) of Section 28, the appellate authority is to consist of a single person

or three persons. Section 29 confers revisional jurisdiction of the State Government. It can be exercised *suo motu* or on an application made to it by the aggrieved party. Section 33-B has been added by amendment. It provides for an appeal to the National Green Tribunal against the appellate adjudication or revisional adjudication or directions issued under Section 33-A. This section has been added w.e.f. 18.10.2010.

9. Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 prescribes an appeal by any person or local authority against an order of assessment to such authority as may be prescribed by the Rules made under the said Act. Section 13-A has been added w.e.f. 18.10.2010, and it allows further appeal to the National Green Tribunal.

10. The Forest (Conservation) Act, 1980, vide its Section 2-A, provides for an appeal to the National Green Tribunal against an order, or a decision of the State Government or other authority made under Section 2 of that Act. This Section 2-A has been added w.e.f. 18.10.2010.

11. The Air (Prevention and Control of Pollution) Act, 1981, vide its Section 31, provides for an appeal against an order of the State Board to the appellate authority, as the State Government may constitute. Section 31-A enables the Board to issue certain directions. Section 31-B allows further challenge to the adjudication by the appellate authority before the National Green Tribunal. This Section has been added w.e.f. 18.10.2010.

12. The Environment (Protection) Act, 1986, vide its Section 5-A, provides for an appeal to the National Green Tribunal against directions issued under Section 5 of the said act. This Section 5-A has been added w.e.f. 18.10.2010.

13. The Public Liability Insurance Act, 1991, enables Collectors to award relief under Section 7. Section 13, enables the Central Government or the person authorized by it to move an application to the Courts for restraining owner from handling hazardous substances. Section 12, confers powers on the Central Government to issue such directions, in writing, as it may deem fit

for the purposes of the said Act. This enactment does not provide for any remedy before the National Green Tribunal.

14. The B.D. Act with which we are concerned in the present matter, vide its Section 50, provides procedure for settlement of disputes between the State Biodiversity Boards and the National Biodiversity Authority. An appeal can be filed to the Central Government if a dispute is between the State Biodiversity Boards, the Central Government shall refer the same to the National Biodiversity Authority.

Section 52, enables aggrieved persons to challenge determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board by filing an appeal to the High Court. However, this provision subsisted, under Section 52A, on 18.10.2010. Since then, by virtue of Section 52A, an appeal against such determination or an order is to be filed before the National Green Tribunal.

15. The provisions of Sections 14, 16, and 18 of the

N.G.T. Act need to be construed in this background.

16. Section 14 of the N.G.T. Act, empowers the Tribunal to settle disputes. All civil cases specified in sub-section [1] thereof are amenable to its jurisdiction and sub-section [2] specifically provides for all disputes arising from questions referred to in sub-section [1] are to be heard and settled by it. An application for adjudication of such disputes cannot be entertained by the Tribunal, if it is made beyond a period of six months from the date of cause of action. It has been given power to condone delay of period not exceeding 60 days. Section 15 points out relief, compensation and restitution which Tribunal is empowered to grant under Section 15[3]. Application for grant of any compensation or relief or restitution of property or environment under Section 15, cannot be entertained by the Tribunal, if it is not made within a period of 5 years from the date on which cause therefor first arose. Again it has been given power to condone delay for a period not exceeding 60 days. Under Section 16 Appellate jurisdiction of National Green Tribunal has been specified. It can entertain an appeal filed by a person aggrieved

against 10 orders as specified therein, which include enactments mentioned in Schedule-I of the N.G.T. Act. Appeal is required to be filed by the aggrieved person within a period of 30 days, and the Tribunal can condone delay of a period not exceeding 60 days. Under Section 17, if death or injury to any person (other than a workman) or damage to any property or environment has resulted from an accident or adverse impact of any activity or operation or process, under any enactment specified in Schedule-I, the person responsible for it has to give such relief or pay compensation, as specified in Section 17[1]. Section 18 deals with the procedure for filing an application or appeal to the Tribunal.

17. Section 18 of the N.G.T. Act specifies that an application under Sections 14 and 15 or an appeal under Section 16 thereof has to be made in such a form or has to contain such particulars and should be accompanied by such document and such fees, as may be prescribed by Rules framed under the said Act. Sub-section [2] of Section 18 provides for an application for grant of relief of compensation or settlement of dispute to be made by a person stipulated therein. As per sub-section [3]. such

application or appeal is to be decided expeditiously by the Tribunal and effort is to be made to adjudicate it finally within 6 months. Section 19 specifies that the Tribunal is not bound by the procedure laid down by Civil Procedure Code, but, is guided by the principles of natural justice. Proceedings before the Tribunal are deemed to be judicial proceedings within the meaning of Section 193, 219 and 228 for the purpose of Section 196 of Indian Penal Code. Tribunal is deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of Criminal Procedure Code, 1973. Section 20 obliges the Tribunal to apply principles of sustainable development, precautionary principle and polluter pays principle, while adjudicating the proceedings before it. Section 21 requires it to take decision by majority. Section 22 provides for an appeal to Supreme Court.

18. Discussion above therefore, shows that appellate jurisdiction is conferred upon National Green Tribunal under various enactments as stipulated in Section 16, read with Schedule-I of the N.G.T. Act, and against certain other orders as stipulated therein. But, then it is apparent that the appellate

jurisdiction is distinct from the jurisdiction under Section 14 and Section 15 thereof. This is also seen in a judgment delivered by the Division Bench of this Court reported at 2015 SCC Online Bom 3699 (Anil Hoble .vrs. Kashinath Jairam Shetye and others) and a judgment delivered by Single Judge of Rajasthan High Court reported at 2014 SCC Online Raj 4699 (M/s. Manglam Warehousing Pvt. Ltd. .vrs. Rajasthan State Pollution Control Board and others).

19. In 1991 Supp (1) SCC 518 (Alpha Chem and another .vrs. State of U.P. and others), the Hon'ble Apex Court has held that the challenge to constitutionality of a statute is maintainable under Article 226 or Article 32 of the Constitution of India and it is not open in proceedings before authorities constituted under a statute itself or even in appeal or revision before the High Court from such proceedings. These observations have been made while considering the challenge to Section 4-A of the U.P. Sales Tax Act.

20. In judgment reported at (2012) 8 SCC 326 (Bhopal Gas Peedith Mahila Udyog Sangathan and others .vrs. Union of

India and others), in paragraph no.14 the provisions of N.G.T. Act have been looked into by the Hon'ble Apex Court and it is laid down that environmental issues and matters covered under N.G.T. Act in Schedule-I should be understood and litigated before the National Green Tribunal only, and not before any High Court. The judgment of Hon'ble 7 Judges in case of L. Chandra Kumar .vrs. Union of India (supra), calls for consideration in this background.

21. Perusal of Section 14 of N.G.T. Act, reveals that civil cases covered under Section 14[1] are referred to as disputes in sub-section [2]. These disputes therefore, must be civil in nature, must arise out of implementation of enactments specified in Schedule-I and therein substantial question relating to environment must be involved. If these three ingredients are satisfied, bar under section 14[1] gets attracted. Thus all civil cases are not cognizable by National Green Tribunal, though they may arise out of implementation of Schedule-I enactments, if substantial question relating to environment does not arise therefrom. In section 14[1] words "including enforcement of any

legal right relating to environment” are inserted after the word “environment”. Thus, issue of enforcement of a legal right relating to environment or a substantial question relating to environment must surface and form subject-matter of a civil case arising out of implementation of Schedule-I enactments. Then only National Green Tribunal will have jurisdiction under Section 14.

22. Section 2[m] of N.G.T. Act defines substantial question relating to environment. The definition is wide and inclusive. It stipulates that if there is direct violation of specific statutory environmental obligation or then environmental consequences relating to a specific activity or a point source of pollution, the same are covered in the sweep of this inclusive definition. Ingredients under sub- clause [i] of this definition is direct violation of specific statutory environmental obligation by a person affecting the community at large other than an individual or group of individuals or the gravity of damage to environment or property substantially, or the damage to public health is broadly measurable. Thus, reading of this definition shows that the cause giving rise to civil case must have some impact on environment so

as to make it a question relating to environment. It is the degree of this impact which may then make it a substantial question.

23. Section 2[c] defines 'Environment'. Again the definition is deliberately inclusive. It includes water, air and land, and the inter relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property. Thus, natural elements mentioned in said definition and the impact upon it of living creatures or property, therefore, constitute environment. Thus, inter-relationship between these elements and other factors stipulated therein together, jointly and severally constitute environment.

24. When Section 14[c] is read along with and construed with Section 2[c] and [m], it is clear that civil cases which can be considered by the National Green Tribunal must affect environment. If it is not affecting environment, the Tribunal will not have jurisdiction. In present facts, reliefs sought for do not directly or indirectly affect environment.

25. The Division Bench judgment of this Court in case of Indian Oil Corporation Ltd. .vrs. Nagpur Municipal Corporation and another (supra), considers the scope of jurisdiction available to such Tribunal. There question of validity of subordinate legislation i.e. Octroi Rules framed under the City of Nagpur Corporation Act, 1948 arose and Nagpur Corporation contended that it can be looked into by an appellate authority which was hearing appeals under Section 387 of the Corporation Act against the octroi demands/penalties. This Court found that the said Authority could not have considered such issue of validity or vires. Judgment of Hon'ble Supreme Court in case of Alpha Chem and another .vrs. State of U.P. and others (supra), considers this aspect and other judgments of Hon'ble Supreme Court taking similar view have been followed by the Division Bench in this judgment.

26. The observations of Hon'ble Apex Court in case of Bhopal Gas Peedith Mahila Udyog Sangathan and others ..vs.. Union of India and others (supra), needs to be read in the backdrop of the above mentioned statutory provisions of the N.G.T. Act. The Hon'ble 7 Judges in a judgment in case of L.

Chandra Kumar .vs.. Union of India and others, (supra), were considering the scope of jurisdiction of Administrative Tribunals functioning under Administrative Tribunals Act, 1985. The Administrative Tribunal functioning at Center or in States under the Administrative Tribunals Act, 1985 is an independent body not interested with lis which arises between employer State and its employees. Its jurisdiction to decide such lis is absolute ie not limited or eclipsed by any stipulation in said enactment. In the background of its aims and object, the Hon'ble Apex Court has evaluated the constitutional scheme and provisions of the Administrative Tribunals Act, 1985. It has been held in paragraph no.93 of the said judgment that said Tribunal is competent to hear matters where vires of statutory provisions are questioned, however, while discharging these duties, the Tribunal cannot act as a substitute of the High Court and the Supreme Court.

27. Here, considering the jurisdiction given to the National Green Tribunal only to decide civil cases, where substantial question involved is in relation to environment, it is apparent that the NGT cannot be said to be conferred with the absolute

jurisdiction to adjudicate all types of disputes or even all civil disputes. A limited jurisdiction to deal with specific type of civil disputes is only made available to it. Bare reading of Section 28 of the N.G.T. Act prescribing the bar of jurisdiction also substantiates this. Thus, power to pronounce upon the vires of any statutory provision or of any subordinate legislation can not be read into any of the provisions which confer either appellate or original jurisdiction upon National Green Tribunal. The Parliament which has deliberately employed wide or liberal words while laying down the compass or the scheme of N.G.T. Act, has not used such words while phrasing Section 14 of that Act or conferring jurisdiction upon National Green Tribunal. On the contrary, its intention to limit the power to decide certain specified nature of disputes is apparent. We find that the scheme of N.G.T. Act does not permit National Green Tribunal to decide upon the vires of any of the enactments which confer appellate or other jurisdiction upon it and find mention mention in Schedule-I of N.G.T. Act. It also does not empower it to examine validity of any Rules or Regulations made under these enactments.

28. We therefore find that controversy presented to this Court in writ petition does not qualify as a civil case wherein substantial question relating to environment is involved. Similarly, the National Green Tribunal does not possess power to adjudicate upon the vires or validity of any enactment in Schedule-I or of subordinate legislation framed under such enactment.

29. We therefore dismiss the preliminary objection and declare that the petitioners do not have any alternate remedy before the National Green Tribunal to raise its challenge in this writ petition.

JUDGE

JUDGE

Rgd.

CERTIFICATE

I certify that this judgment/order uploaded is a true and correct copy of original signed judgment/order.

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Uploaded on : 28.09.2016

Bombay High Court