

Singrauli Super Thermal Power Station Vs Ashwani Kumar Dubey & Ors

Court: Supreme Court Of India

Date of Decision: July 5, 2023

Acts Referred: National Green Tribunal Act, 2010 " Section 14, 15, 19(1), 20

Indian Penal Code, 1860 " Section 34, 302, 307

Evidence Act, 1872 " Section 24

Hon'ble Judges: B.V. Nagarathna, J; Prashant Kumar Mishra, J

Bench: Division Bench

Advocate: Sanjay Jain, Adarsh Tripathi, Ajitesh Garg, Alka Sinha, Anuvrat Sharma, Ashish Prasad, Mukta Dutta, Mahfooz Ahsan Nazki, Pruthvi Dhinoja, Ashwani Kumar Dubey, Tushar Mehta, Shailesh Madiyal, Sudhanshu Prakash, Aishwarya Bhati, Gurmeet Singh Makker, Dr. Arun Kumar Yadav, Deepabali Dutta, Divyansh H. Rathi, Devashish Bharukha, Rukhmini Bobde, Manisha Chava, Poornima Singh, Sthavi Asthana, Swarupama Chaturvedi, Saumya Kapoor

Final Decision: Allowed

Judgement

No. of Thermal Power Stations,191

Capacity (MW),"2,13,030 MW

Coal Consumed,672.130 Million Tonnes

Fly Ash Generation,222.789 Million Tonnes

Fly Ash Utilization,205.098 Million Tonnes

Percentage Utilization,92.06%

Legacy Flyash,1670.602 Million Tonnes

All the matters (including IAs) will stand disposed of accordingly. If any grievance survives, aggrieved parties are free to take remedies as per law.",

A copy of this order be forwarded to the Secretaries, MoEF&CC, Coal and Power, GoI and Chief Secretaries of UP and MP, CPCB, State PCBs,"

SEIAAs, PCCFs (HoFF) UP and MP, District Magistrates, Singrauli and Sonebhadra, Labour Commissioners, UP and MP, State Disaster",

Management Authorities of UP and MP and SSPs by e-mail for compliance. CPCB may also circulate the same by email to all TPPs or other,

concerned to facilitate compliance.,

Adarsh Kumar Goel, CP",

SudhIr Agarwal, JM",

Brijesh Sethi, JM",

Prof. A. Senthil Vel, EM",

Dr. Afroz Ahmad, EM",

January 18, 2022",

3. Being aggrieved by the directions issued by the NGT and the manner in which the original petition has been disposed of, the appellants have filed",

these appeals.,

4. At this stage itself it may be noted that the first respondent, the original applicant before the NGT has been served in all the cases and has not",

appeared in these cases. In the circumstances, the appeals have been heard and decided, by taking into consideration, the submissions of the learned",

counsel appearing for the appellants herein.,

5. Learned Solicitor General appearing for the appellants in C.A. No.3856/2022 at the outset submitted that the proceedings of the NGT are judicial,

proceedings and compliance of principles of natural justice is a hallmark of all judicial proceedings. That in the instant case, while the NGT was well",

within its powers to constitute an expert Committee and to seek a report with regard to the alleged violations complained of by the first respondent,

herein, on receipt of the said report, it was necessary that the alleged violators were given an opportunity to object to the said report and after",

consideration of the objections, the NGT ought to have passed a considered order and issued only those directions which were appropriate having",

regard to the facts of each industry that was made a respondent before the NGT.,

He further submitted that Section 19(1) of the National Green Tribunal Act, 2010 (hereinafter referred to as the "Act" for the sake of",

convenience) categorically states that the Tribunal, though not bound by the procedure laid down by the Code of Civil Procedure, 1908, shall",

nevertheless be guided by the principles of natural justice.,

According to learned Solicitor General in the instant case, there has been gross violation of the principles of national justice on two counts: firstly, the",

report of the Committee constituted by the NGT and the recommendations made by the said Committee could not be objected to by the appellant(s),

herein as there was hardly any time given to the appellants to even peruse the same. In this regard, he drew our attention to the fact that the report",

and the recommendations of the Committee constituted by the NGT were put up on the website of the NGT on 15.01.2022 and three days thereafter,

i.e., on 18.01.2022 the impugned directions have been issued. Secondly, he submitted that the fact that in such a short span of time the matters were",

considered and disposed of by the NGT, in the absence of there being objections filed by the appellants herein nor having heard the appellants herein,"

would also imply that there has been no consideration by the NGT of the pros and cons vis-a-vis the recommendations made by the expert Committee,

and as to whether the directions issued were appropriate to the case of each of the appellant(s) herein or not.,

It was submitted that had the appellants herein had an opportunity of filing their objections to the recommendations made by the Committee constituted,

by the NGT and had the appellants been heard in the matter, possibly appropriate directions could have been issued as against the appellant(s) herein.",

In conclusion, learned Solicitor General submitted that the impugned order may be set aside and the matter may be remanded to the NGT for re-",

consideration of the entire case of the first respondent herein in compliance with the principles of natural justice, that is, firstly by giving an opportunity",

to the appellants herein to file their objections, if any, to the recommendations of the Committee constituted by the NGT and secondly, by giving a",

further opportunity of hearing to the appellants herein.,

In this regard, learned Solicitor General relied upon a decision of this Court in Sanghar Zuber Ismail vs. Ministry of Environment, Forest and Climate",

Change and Another reported in (2021) SCC Online SC 669.,

6. Learned senior counsel Mr. Sanjay Jain and Mr. Nazki adopted the submissions of learned Solicitor General and also contended that the manner in,

which the original petition has been disposed of by the NGT in these cases was in gross violation of the principles of natural justice. In this regard,"

reliance is also placed on another decision of this Court in case of Kantha Vibhag Yuva Koli Samaj Parivartan vs. State of Gujarat reported in 2022,

SCC online SC 120.,

7. The other learned counsel who have appeared, brought to our notice that in the instant case, there were two reports filed and therefore, it was all",

the more necessary that the said reports had to be considered in order to examine as to whether there were contradictions in them and were in,

accordance with law.,

8. Learned ASG appearing for the respondent No.2 as well as other learned counsel for private respondents also supported the arguments of learned,

Solicitor General.,

9. We find substance in the submissions made by learned Solicitor General, learned senior counsel and learned counsel for the respective parties.",

As already noted, the first respondent is the contesting respondent herein who has been served and has failed to appear in these cases.",

10. The directions issued by the NGT have been extracted above. The aforesaid directions are in light of the recommendations made by the expert,

Committee vide two reports submitted to the NGT. It is noted that the NGT has extracted the report/s as well as the recommendations at paragraphs,

14-16 of the impugned order and has observed as under:,

“14. Points for determination are remedial action against pollution due to failure to scientifically manage and utilise the flyash, accountability for”,

damage due to breach of Rihand reservoir and due to breach of ash pond, resulting in deaths and injuries and damage to the crops and environment.”,

As already mentioned, legacy fly ash is 1670.602 Million Tonnes as on 31.12.2021 which has potential for serious damage to the environment as”,

shown by incidents of dyke breaches contaminating sources of water and air pollution making industrial areas critically polluted. Air control devices,

are not installed in many TPPs. There are incidents of deaths, injuries and loss of flora and fauna.”,

15. We have considered the data furnished in the reports furnished in pursuance of earlier orders of this Tribunal dated 04.11.2020 in OA No.,

117/2014, 14.07.2020 in OA No. 164/2018 and 29.6.2020 in OA No. 148/2020, including the recommendations for remedial action. The compliance”,

status as projected in the reports of the Joint Committees/Oversight Committees shows huge gap in storing, handling, management and utilization of fly”,

ash and consequential continuing damage to the environment and public health. Such huge gaps are patent from the recommendations part in the,

reports. Deficiencies noted in respect of some individual TPPs appear to be of representative nature and may exist in almost all TPPs, unless shown”,

otherwise on the ground and not in the form of self-serving denial. In the light of the said recommendations, further remedial action needs to be taken”,

to enforce the principle of sustainable development under section 20 of the NGT Act. The recommendations are reproduced below:,

“M/s NTPC Limited Shakti Nagar Sonbhadra:,

Recommendations of the Committee,

xxx,

M/s NTPC Limited Rihand Super Thermal Power (Power Plant),

Recommendations of the Committee xxx,

M/s Anpara Thermal Power Plant (Power Plant),

Recommendations of the Committee,

xxx,

M/s Anpara Lanco Thermal Power Station Recommendations of the Committee,

xxx,

M/s Renusagar Thermal Power Plant,

Recommendations of the Committee,

xxx,

M/s Obra Thermal Power Station (Power Plant),

Recommendations of the Committee,

xxx,

Coal Mines of M/s Northern Coalfields Limited (NCL),

1. NCL Dudhichuwa Project, Sonbhadra Recommendations of the Committee",

xxx,

2. NCL Bina Project, Bina, Sonbhadra Recommendations of the Committee",

xxx,

3. NCL Krishna Shila Project Recommendations of the Committee,

xxx,

4. M/s NCL Kakri Project, Sonbhadra Recommendations of the Committee",

xxx,

5. NCL Khadia Project Sonbhadra Recommendations of the Committee,

xxx,

Aluminum Smelter: M/s HINDALCO Industries Ltd.,",

Renukoot, Sonbhadra",

Recommendations of the Committee,

xxx,

M/s Grasim Industries Limited Chemical Division,",

Renukoot, Sonbhadra",

Recommendations of the Committee,

xxx,

M/s Birla Carbon India Pvt. Ltd., Renukoot,",

Sonbhadra,

Recommendations of the Committee,

xxx,

Stone Crusher,

Recommendations of the Committee,

xxx,

A. Thermal Power Plants (TPPs) and Industries,

B. Coal Mines of M/s Northern Coalfields Limited (NCL),

C. Stone Crushers,

Recommendations.â€œ,

16. From the above, it is seen that there is a long way to go for protecting environment and public health. The failures of the TPPs are alarming. We",

find no reason not to accept all the recommendations and to direct remedial action. Thus, all recommendations are accepted and further remedial",

action is directed to be taken by the statutory regulators which also be overseen by the joint Committees of CPCB, State PCB and the jurisdictional",

District Magistrates, with CPCB and State PCBs being nodal agencies. Quarterly reports may now be filed with the MoEF&CC to be considered by",

the Coordinating Committee being hereby constituted.â€œ,

11. In other words, the NGT has simply accepted the recommendations as remedial action suggested by the Committee but the same is in the absence",

of there being objections filed by the appellants herein who were the respondents before the NGT and without giving any hearing to them and against,

whom directions impugned in these cases have been passed by the NGT. We find that the procedure adopted by the NGT is an instance of violation,

of the principles of natural justice. Section 19(1) of the NGT Act, 2010 reads as under:",

â€œ19.(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the",

principles of natural justice.â€œ,

At this stage, we may also observe that the recommendations made by an expert Committee are not binding on the NGT, they are only by way of",

assistance to enable the NGT to arrive at a correct decision in the matter.,

12. In this regard reliance may be placed on paragraph 7 and 8 of the judgment of this Court in Sanghar Zuber Ismail (supra) wherein it has been,

stated as under:,

â€œ7. 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... 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.

13. Furthermore, in *Kantha Vibhag (supra)*, this Court had criticized the practice of delegation of core adjudication to the joint committee:",

15. It is first important to differentiate expert committees which are set by the courts/tribunals from those set up by the Government in exercise of,

executive powers or under a particular statute. The latter are set up due to their technical expertise in a given area, and their reports are, subject to",

judicially observed restraints, open to judicial review before courts when decisions are taken solely based upon them. The precedents of this court",

unanimously note that courts should be circumspect in rejecting the opinion of these committees, unless they find their decision to be manifestly",

arbitrary or mala fide. On the other hand, courts/tribunals themselves set up expert committees on occasion. These committees are set up because the",

fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits.",

These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these",

committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these",

expert committees does not substitute the adjudicatory role of the court or tribunal. The role of an expert committee appointed by an adjudicatory,

forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by",

all concerned parties. Allowing for objections to be raised and considered makes the process fair and participatory for all stakeholders.,

16. Sections 14 and Section 15 entrust adjudicatory functions to the NGT. The NGT is a specialized body comprising of judicial and expert members.,

Judicial members bring to bear their experience in adjudicating cases. On the other hand, expert members bring into the decision-making process",

scientific knowledge on issues concerning the environment. In *Hanuman Laxman Aroskar v. Union of India*⁹, a two-Judge Bench of this Court noted",

that the NGT is an expert adjudicatory body on the environment. The Court held:

“133. The NGT Act provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical,

members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment,

of science and its interface with the environment...,

134. NGT is an expert adjudicatory body on the environment.

17. The NGT does not have a dearth of expertise when it comes to the issues of environment.,

18. Section 15 empowers the NGT to award compensation to the victims of pollution and for environmental damage, to provide for restitution of",

property which has been damaged and for the restitution of the environment. The NGT cannot abdicate its jurisdiction by entrusting these core,

adjudicatory functions to administrative expert committees. Expert committees may be appointed to assist the NGT in the performance of its task and,

as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to the NGT and cannot be delegated to administrative authorities.,

Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees.,

19. The NGT has in the present case abdicated its jurisdiction and entrusted judicial functions to an administrative expert committee. An expert,

committee may be able to assist the NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by the NGT. This is not a",

delegable function. Thus, the order impugned in the appeal cannot be sustained. The consequence of the impugned order is to efface the meticulous",

exercise which was carried out by the earlier Benches. Valuable time has been lost in the meantime and crucial issues pertaining to the environment in,

the present case have been placed on the back-burner.Ã¢â€

14. In a recent landmark decision, *Madhyamam Broadcasting Limited v. Union of India* (2023) SCC Online 366, the principles of natural justice have",

been crystalized in the words of HonÃ¢â€ble CJI-Dr Dhananjaya Y Chandrachud as under:,

Ã¢â€53. Ã¢â€The facet of audi alterum partem encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are",

available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to",

such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonablenessÃ¢â€.

15. A reading of the above, clearly indicates that the NGT is a judicial body and therefore exercises adjudicatory function. The very nature of an",

adjudicatory function would carry with it the requirement that principles of natural justice are complied with, particularly when there is an adversarial",

system of hearing of the cases before the Tribunal or for that matter before the Courts in India. The NGT though is a special adjudicatory body,

constituted by an Act of Parliament, nevertheless, the discharge of its function must be in accordance with law which would also include compliance",

with the principles of natural justice as envisaged in Section 19(1) of the Act.,

16. In this context, it would be useful to refer to what is known as the Ã¢â€official noticeÃ¢â€ doctrine, which is a device used in administrative",

procedure. Although an authority can rely upon materials familiar to it in its expert capacity without the need formally to introduce them in evidence,"

nevertheless, the parties ought to be informed of materials so noticed and be given an opportunity to explain or rebut them. The data on which an",

authority is acting must be apprised to the party against whom the data is to be used as such a party would then have an opportunity not only to refute,

it but also supplement, explain or give a different perspective to the facts upon which the authority relies. This has been explained by Schwartz in his",

work on Administrative Law. The aforesaid doctrine applies with greater force to a judicial / adjudicatory body.,

Therefore, applying the aforesaid principle to the cases that come up before the NGT, if the NGT intends to rely upon an expert Committee report or",

any other relevant material that comes to its knowledge, it should disclose in advance to the party so as to give an opportunity for discussion and",

rebuttal. Thus, factual information which comes to the knowledge of NGT on the basis of the report of the Committee constituted by it, if to be relied",

upon by the NGT, then, the same must be disclosed to the parties for their response and a reasonable opportunity must be afforded to present their",

observations or comments on such a report to the Tribunal.,

17. It is needless to observe that the experts' opinion is only by way of assistance in arriving at a final conclusion. But we find that in the instant,

case the report of the expert Committee as well as the recommendations have been made the basis of the directions and such an approach is,

improper.,

18. We have perused the impugned order of the NGT and particularly paragraph 16 which has been extracted above. It is apparent that the,

appellant(s) herein who were respondents before the NGT were not given an opportunity to file their objections to the recommendations made by the,

Committee constituted by the NGT which is apparent by the fact that the recommendations were uploaded on 15.01.2022 and the final order of the,

NGT was passed three days later on, i.e. 18.01.2022. Thus, this is a clear case of there being non compliance with the principles of natural justice. On",

the said ground alone the impugned order is set aside, the matter is remanded to the NGT for re-consideration from the stage of the recommendations",

filed by the expert Committee constituted by the NGT. The appellant(s) herein are permitted to file their objections, if they are so advised. The NGT",

shall consider the objections, if any, filed to the recommendations and thereafter dispose of the applications in accordance with law and after giving a",

reasonable opportunity to all parties.,

19. The appeals are allowed and disposed of in the aforesaid terms. Pending application(s), if any, shall stand disposed of.",