

ITEM NO.57

COURT NO.11

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 judgement and order dated 11/02/2009 in CM No.
15895/2005 & 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 prayer for interim relief and office report)

Date: 16/12/2010 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 Jai Singh, ASG
 Mr. J.S. Attri, Sr.Adv.
 Ms. Sadhna Sandhu, Adv.
 Mr. Shreekant N. Terdal, Adv.

For Respondent(s) Mr. Mukesh Verma, Adv.
 Mr. Yashpal Dhingra, Adv.

 Mr. Sanjay Parikh, Adv.
 Mr. Rahul Chaudhary, Adv.
 Mr. Anish R.Shah, Adv.
 Ms. Anitha Shenoy, 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 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 New Act').

By notification dated 18.10.2010 issued under Section 1(2) of the New Act, the Government appointed 18th 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.

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.

Today, the learned Additional Solicitor General produced copy of order which, according to her is to be published today in the Gazette of India. That order reads as under:

"S.O. (E) Whereas the National Green Tribunal Act, 2010 (19 of 2010) (hereafter referred to as the NGT Act, 2010) has come into force on the 18th day of October, 2010 vide notification of the Government of India in the Ministry of Environment and Forest No.S.O. 2569(E), dated the 18th October, 2010 which, inter alia, provide for,-

(a) repeal of the National Environment Appellate Authority Act 1997 (22 of 1997) (hereinafter referred to as the repealed Act);

(b) dissolution of the National Environment Appellate Authority established under sub-section (1) of section 3 of the repealed Act;

(c) establishment of the National Green Tribunal under section 3 of the NGT Act, 2010;

(d) transfer of all cases to the National Green Tribunal from the National Environment Appellate

Authority established under the repealed Act;

2. AND WHEREAS sub-section (1) of section 4 of the NGT Act, 2010, provides for the composition of the National Green Tribunal which shall consist of a Chairperson and such number of Judicial and Expert Members, as are specified in the said section;

3. AND WHEREAS the Central government has appointed

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a Chairperson (who is a Judicial Member also) of the National Green Tribunal who has assumed the charge and the Central Government has also initiated measures for filling up the posts of Members in accordance with the provisions of the National Green Tribunal Act, 2010 which is likely to take some time;

4. AND WHEREAS proviso to clause (c) of sub-section 4 of the NGT Act, 2010 provides that the number of Expert Members shall in hearing an application or appeal be equal to the number of Judicial Members hearing such applications or appeals;

5. AND WHEREAS the National Green Tribunal cannot hear applications or appeals unless equal number of Judicial and Expert Members are appointed as required to hear the applications or appeals in view of the provisions mentioned in the preceding paragraph;

6. AND WHEREAS in the absence of an Expert Member, to be appointed in terms of clause (c) sub-section 4 of the NGT Act, 2010, a difficulty has arisen in giving effect to the provisions of the NGT Act, 2010 for hearing the applications and appeals by the National Green Tribunal;

7. AND WHEREAS the Learned Additional Solicitor General, in the Union of India Vs. Vimal Bhai and Others in SLP No.12065/2009, on the 6th December, 2010 has submitted before the Hon'ble Supreme Court that the difficulties in the functioning of the National Green Tribunal can be resolved by the Central Government on an ad hoc basis by exercising power under sub-section (1) of section 37 of the NGT Act, 2010;

8. AND WHEREAS the Hon'ble Supreme Court in its Order dated the 6th day of December, 2010 in the SLP referred to in the preceding paragraph has observed that it will be open to the Central Government to take appropriate action under sub-section (1) of section 37 of the NGT Act, 2010;

9. AND WHEREAS the Central Government has decided to remove the difficulty mentioned in paragraph 6 above making an interim arrangement by way of filling up of

a post of Expert Member on ad hoc basis, in view of the provisions contained in the proviso to clause (c) of sub-section (4) of section 4 of the NGT Act, 2010, till the regular Members are appointed under the said Act;

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NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of section 37 of the National Green Tribunal Act, 2010, (19 of 2010) the Central Government hereby makes the following Order, namely:-

1. Short title and commencement.- (1) This Order may be called the National Green Tribunal (Removal of Difficulties) Order, 2010.

(2) It shall come into force on the _____ date of its publication in the Official Gazette.

2. Appointment of Expert Member of the Tribunal on ad hoc basis. - The Central Government may appoint a person, possessing the qualifications specified in section 5 of the National Green Tribunal Act, 2010 (19 of 2010) to act as Expert Member on an ad hoc basis for a period not exceeding six months to exercise the powers and perform the functions of an Expert Member of the National Green Tribunal or until an Expert Member has been appointed in accordance with the provisions of the National Green Tribunal Act, 2010, whichever is earlier."

The learned Additional Solicitor General then stated that an Expert Member will be appointed on ad-hoc basis within a period of four weeks and with that appointment, the Bench of the Tribunal will become functional.

Shri Sanjay Parikh, learned counsel for the respondents submitted that with appointment of an Expert Member the Bench of the Tribunal will become functional, but those interested in filing applications/appeals will not be able to do so because the rules regulating the procedure of the Tribunal have not been framed. He further submitted that the aggrieved persons may also face the hurdle of limitation despite the fact that they could not file applications/appeals because the Tribunal has not become functional.

We have considered the statement made by the learned Additional Solicitor General and the submissions of Shri Sanjay

Parikh.

Since the Central Government has taken steps for making the Tribunal functional, the grievance made on behalf of the respondents will be treated to have been partly redressed.

However, with a view to ensure that the persons aggrieved by the decisions taken by the competent authorities under various environmental statutes are able to avail remedies by filing application/appeal before the Tribunal without facing the hurdle of limitation and absence of the rules prescribing the forms, etc. for filing applications/appeals, we deem it proper to exercise the powers vested in this Court under Article 142 of the Constitution for doing complete justice between the parties for an effective functioning of the Bench of the Tribunal and issue 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.

For further consideration, the case be listed in the fourth
week of March, 2011.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master