BEFORE THE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE

AT CHENNAI

I.A.No. 119 of 2022

In

Appeal No. 41 of 2022

R.Venkateshwar Rao & Others ... Appellants

Versus

The State of Andhra Pradesh
Rep. by its Secretary
MoEF & others ... Respondents

INDEX

S.NO.	DATE	PARTICULARS	PAGE NOS
1.	Aug 2022	Counter Affidavit filed on behalf of the 5th Respondent in I.A.No. 119 of 2022 in Appeal No. 41 of 2022	1-8
2.	28/09/2021	Order passed in M.A.No. 148 of 2017 in O.A.No.118 of 2017	9-14
3.	11/12/2021	Counter filed by Respondent -5 in W.P.No. 21820 of 2021	15-30
4.	23/02/2022	Order passed by A.P.High Court in W.P.No. 21820 of 2021	31-38
5.	---	(2020) 19 SCC 681	39-65
6.	---	(2021) 2 SCC 317	66-72
7.	14/09/2020	Order in O.A.No.257 of 2017	73-92

DRAWN AND FILED BY

CHENNAI

DATE: 24/08/2022

K.S. VISWANATHAAN 656/88 CHENNAI-17 ADVOCATE

ADVOCATE FOR RESPONDENT NO.5

BEFORE THE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE

AT CHENNAI

I.A.No. 119 of 2022

In

Appeal No. 41 of 2022

R.Venkateshwar Rao & Others :.. Appellants

Versus

The State of Andhra Pradesh

Rep. by its Secretary

MoEF & others ... Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENT NO.5

The Respondent above named respectfully submits as follows:-

1. At the outset it is submitted that the Application for condonation of delay is not maintainable in law and also on facts.

2. It is submitted that the 5th Respondent has been granted Environmental Clearance for establishment of Bio Medical Waste Treatment facility on 15/10/2018 by SEIAA, Andhra Pradesh. A competitor of this Respondent by name M/s. MCV Eco System had earlier approached this Hon'ble Tribunal by filing an application in O.A.No. 110 of 2017 challenging the rejection of consent issued to them. This Hon'ble Tribunal directed the authorities to pass orders on the application for

For GODAVARI BIO MANAGEMENT

Y. Papa Rao

Managing Partner

2

Environmental Clearance stated to have been made by the said M/s. MCV Eco Systems. Thereafter the said M/s. MCV Eco System filed another application in Application No. 257 of 2017 stating that consideration of the application of the 5th Respondent should be declared as illegal. The said application after an elaborate hearing was disposed of by order dated 14/09/2020. This Hon'ble Tribunal held that the Applicant M/s. MCV Eco System is not entitled to get any relief and if at all they were aggrieved, they must only approach the Appellate Authority.

3. Thereafter M/s. MCV Eco System filed another Writ Petition Viz., W.P.No.27717 of 2018 before the Andhra Pradesh High Court challenging the "in principle" permission granted to the 5th Respondent for establishment of the facilities.

4. After Environmental Clearance was granted to the 5th Respondent on 15/10/2018, the aforesaid Writ Petition was permitted to be withdrawn on 13/09/2021. The said M/s. MCV Eco System immediately set up the Petitioners in I.A. in the guise of being farmers challenging the Environmental Clearance granted to the 5th Respondent by filing W.P.No.21820 of 2021 on 15/09/2021 i.e. within two days of withdrawal of their Writ Petition. The 5th Respondent filed a detailed Counter Affidavit and brought the aforesaid facts to the notice of the Hon'ble High Court. It is thereafter the Hon'ble High Court passed an order disposing of the Writ Petition leaving it open to the Petitioners to file a statutory appeal under Section 16 of the NGT Act within 2 weeks from the date of receipt of the order. The High Court also observed that all the contentions which are sought to be raised in the Writ Petition are kept open.

For GODAVARI BIO MANAGEMENT

Y. Rao

Managing Partner

5. The Petitioners have stated that they received a copy of the order on 09/03/2022 and have stated that since they could not file an Appeal before 23/03/2022 and the appeal was actually filed on 16/05/2022 and therefore there is a delay of 54 days in filing the appeal.

6. The above application for condonation of delay is not maintainable for the following reasons:-

i. Any appeal challenging the Environmental Clearance ought to be filed under Section 16 of the NGT Act within a period of 30 days and this Hon'ble Tribunal has the power to condone the delay if it is filed beyond 30 days up to a further period not exceeding 60 days. In the instant case the limitation for filing an appeal as against the Environmental Clearance dated 15/10/2018 granted to the 5th Respondent has already expired on 14/01/2019 including the condonable period of 60 days. The Petitioners did not choose to file any appeal, but on the other hand, filed a Writ Petition belatedly in the year 2021 with a view to by-pass the statutory remedy. The Hon'ble High Court by its order dated 23/02/2022 has permitted the Petitioners to file appeal before the Hon'ble NGT **under Section 16 of the Act which shall be considered by the Hon'ble NGT in accordance with law**. The Hon'ble High Court did not consider the question of limitation that has expired already and therefore left all contentions open for consideration by the Hon'ble NGT. In the instant case, the limitation to challenge the Environmental Clearance having expired 3 years ago the present appeal itself is not maintainable and therefore there

For GODAVARI BIO MANAGEMENT

Y. Papa Rao

Managing Partner

A

may not be any necessity to consider the application for condonation of delay.

ii. The Petitioner cannot seek to place reliance upon the order of the Hon'ble High Court dated 23/02/2022 in order to revive the period of limitation. The Hon'ble High Court granted time to the Petitioners to approach this Hon'ble Tribunal only in order to see that the filing of Writ Petition shall not now suit the Petitioners from moving the Hon'ble NGT. In addition, the Hon'ble High Court has categorically observed that the appeal if any filed by the Petitioners may be dealt with in accordance with law. In the instant case the appeal that can be preferred against Environmental Clearance dated 15/10/2018 issued in favour of the 5th Respondent ought to have been filed on 14/11/2018 and with condonation of delay, the same ought to have been filed on or before 14/01/2019. Therefore, the limitation prescribed by law having expired 3 years ago, the Petitioners cannot seek to revive the period of limitation by approaching the Hon'ble High Court belatedly and seek to use the same for the purpose of filing an appeal beyond the period of limitation.

iii. It has been repeatedly held by the Hon'ble Supreme Court that even the High Court under Article 226 of the Constitution of India cannot pass orders enlarging the period of limitation prescribed by any statute. Therefore it is not open to the Petitioners to argue that the Hon'ble High Court has extended

For GODAVARI BIO MANAGEMENT

Y. Papa Rao

Managing Partner

5

the period of limitation in view of the time granted to the Petitioners to file an appeal.

iv. At any event even assuming without admitting that the Petitioners were entitled to file an appeal belatedly, yet on account of the fact that the Petitioners failed to file an appeal even within two weeks from the date of receipt of the copy of the High Court order which was apparently received by them on 09/03/2022, is certainly beyond the time granted by the Hon'ble High Court. Therefore, on this ground also the application is not maintainable.

v. As stated already the Hon'ble High Court did not extend the period of limitation but only granted two weeks to enable the Petitioners to approach the Hon'ble NGT. Therefore, it is not open to the Petitioners to take 09/03/2022 as the statutory point and seek to apply the proviso to the section 16 of the NGT Act for condonation of delay up to a period of another 60 days. The Petitioners having failed to file an appeal within a statutory period of limitation viz. 14/01/2019, cannot now once again seek to extend the period of limitation from the day the period granted by the Hon'ble High Court expired.

vi. The Hon'ble Supreme Court in the Judgment reported in **(2021) 2 SCC page 317** has categorically held that there is a clear difference between "prescribed period" of limitation and the time within which the delay can be condoned under any statute. Since the period of limitation prescribed by Section 16

For GODAVARI BIO MANAGEMENT

Y. Papa Rao

Managing Partner

6

of the NGT Act having expired, the application for condonation of delay is not maintainable. This is not withstanding the fact that the Hon'ble High Court has granted liberty to the applicants to approach the Tribunal. It is further submitted that it is not open to the applicants to consider the time of two weeks granted by the Hon'ble High Court as the prescribed period of limitation and thereafter seek to extend the same by applying proviso to the Section 16 of the NGT Act.

vii. The Hon'ble Supreme Court in the case of Assistant Commissioner (CT) LTU, Kakinada & Ors. v. M/s Glaxo Smith Kline Consumer Health Care Limited reported in **(2020) 19 SCC 681** has also held that the High court does not have power under Art.226 of the Constitution of India to extend the period of limitation prescribed by a statute. In the instant case, it is also not open to the applicants to contend that the High court has extended the period of limitation in as much as the Hon'ble High Court has not considered and decided the issue of limitation in its order dated 23/02/2022.

7. The 5th Respondent is not presently addressing the issues raised in the Appeal on merits. Suffice it to state that the applicants are abusing the process of law and have been set up by a third party in order to derail the project of the 5th Respondent for which Environmental Clearance has been issued as early as on 15/10/2018. The detailed Counter Affidavit filed in W.P.No.21820 of 2021 by the 5th respondent is made as an Annexure to this Affidavit in this regard.

For GODAVARI BIO MANAGEMENT

Managing Partner

4

8. The 5th Respondent is also filing the orders passed by this Hon'ble Tribunal in O.A.No. 257 of 2017 dated 14/09/2020 as well as the order passed in M.A.No.148 of 2017 in O.A.No.118 of 2017 dated 28/09/2021 by this Hon'ble Tribunal in order to establish the fact that the applicants are none other than strangers who have been set up by persons with vested interest to challenge the Environmental Clearance granted to the Applicant in order to frustrate the project of the 5th Respondent.

9. The 5th respondent has invested huge sums of money in the project and is about to complete establishment of the unit after all clearances. If at this stage, a stale claim by the applicants are entertained, it will cause serious prejudice and hardship to the 5th respondent.

Under these circumstances, this Respondent prays that this Hon'ble Tribunal may be pleased to dismiss the I.A.No. 119 of 2022 in Appeal No. 41 of 2022 and thus render justice.

Dated at Amalapuram on this the 22nd day of August 2022

For GODAVARI BIO MANAGEMENT

Managing Partner

5th RESPONDENT

8

VERIFICATION

I , Y.Papa Rao S/o Ammanna Chowdary aged about 37 years, Managing Partner, M/s Godavari Bio Management, the 5th Respondent herein do hereby verify that what are all stated above are true and correct to the best of my knowledge, information and belief.

Verified at Amalavalli on this the 22nd day of August 2022

For GODAVARI BIO MANAGEMENT

Y. Papa Rao

Managing Partner

5th RESPONDENT

N.V. Prasad Reddy

NALLAMILLI VENKATA PRASAD REDDY
M.B.A.,L.L.B.
ADVOCATE
D.No:13-192, L.N. Puram
G.MAMIMADA-533344
Cell:9490904444

Date: 22/08/22

Place: Amalavalli

Item No.18:

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

M.A. No.148 of 2017 (SZ) in

Original Application No. 118 of 2017 (SZ)

(Through Video Conference)

IN THE MATTER OF:

Sri Kommana Lakshmi Bala Ganeswara Rao
S/o Sri Bhima Raju, aged about 30 years,
Residing at Door No. 4-13, Jagannaikulapalem,
East Godavari District, Andhra Pradesh

... Applicant(s)

Versus

1. The State of Andhra Pradesh,
   Rep by its Chief Secretary, Secretariat,
   Amaravathi, Andhra Pradesh- 522020

2. The Andhra Pradesh State Pollution Control Board,
   Rep by its Member Secretary,
   Paryavaran Bhavan, A-III, Industrial Estate
   Sanathnagar, Hyderabad- 500018

3. The Joint Chief Environmental Engineer,
   Andhra Pradesh State Pollution Control Board,
   Zonal Office, Hyderabad- 500018

4. The Environmental Engineer,
   Andhra Pradesh State Pollution Control Board,
   Regional office, Kakinada, East Godavari District- 533001

5. M/s Godavari Bio Management
   Rep by its Managing Partner, Sri Y. Papa Rao, H. No. 2-31,
   Peddada, Pedapudi, East Godavari District.
   Andhra Pradesh- 533344

...Respondent(s)

Date of hearing: 28.09.2021.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE DR. K. SATYAGOPAL, EXPERT MEMBER

For Applicant(s): Mr. Y. Srinivasa Murthy.

For Respondent(s): Ms. Madhuri Donti Reddy for R1to R4.

Ms. Hemalatha for Mr. Viswanathan for R5

ORDER

1. M.A. NO. 148 of 2017 was filed by the applicant for taking action against the respondent for non-compliance of the orders of this Tribunal passed in O.A. No. 118 of 2017 dated 05.07.2017.

2. O.A. No. 118 of 2017 was filed by the applicant seeking a direction to the Andhra Pradesh Pollution Control Board not to allow application for establishment, operation of bio-medical waste treatment facilities in the State of Andhra Pradesh to collect, transport, treat and safe disposal of bio-medical waste generated from the Hospitals/health care establishments situated in the Districts of Andhra Pradesh and without conducting the full capacity of the existing common bio-medical waste treatment facility in operation and its potential enhancement of the production and the need for establishment of fresh common bio-medical waste treatment facility in the State of Andhra Pradesh granting such permission to any person is illegal, arbitrary, capricious, high handed, violative of all cannons of law and justice and consequentially modify the orders passed by the Andhra Pradesh Pollution Control Board issued in favour of 5th respondent herein and for such other common bio-medical waste treatment facility in the State of Andhra Pradesh.

3. This Tribunal by order dated 05.07.2017 disposed of the case by giving certain directions which reads as follows:

> " In view of the same, we dispose of the application with a direction to the Board to strictly follow its own guidelines and the guidelines framed by the Central Pollution Control Board in accordance with the Bio Medical Waste Management Rules, 2016 in respect of the installation and operation of the Common Bio Medical Waste Treatment Facilities in the State of Andhra Pradesh."

4. According to the applicant directions issued by this Tribunal had been

violated and that prompted the applicant to file an application for initiating prosecution against the respondent for violating the direction of this Tribunal.

5. The 2nd respondent had filed a counter affidavit contending that the application under Section 28 of the National Green Tribunal Act, 2010 is not maintainable and the same is liable to be dismissed. There is no specific direction given to be complied with by the Pollution Control Board and only a general direction has been given in respect of establishment of bio-medical waste treatment facility strictly following the guidelines issued by the Central Pollution Control Board in accordance with the Bio-Medical Waste Management Rules, 2010. They have never violated any of the provisions.

6. In East Godavari District, M/s EVB Technologies Ltd. established a common bio-medical waste treatment facility at Kanavaram village, Rajanagaram Mandal in the year 2004. They were handling bed strength of approximately 11087 numbers covering 616 health care centres as of 23.09.2017. Since, the bed strength had exceeded 10,000, two applications were received by respondent-Board for grant of consent to establish a new Common Bio-Medical Waste Treatment facility in the East Godavari District from M/s M.C.V. Eco system, Kadiyam Village and mandal, East Godavari District and M/s Godavari Bio Medical Management, Marripudi Village, Rangampetta Mandal, East Godavari District.

7. The respondent-Board had rejected the consent to establishment application of M/s M.C.V. Eco Systems on 16.06.2015 since the proposed area was within a distance of about 20 kms from the existing facility and further, the bed strength was only 10,900 at that point of time.

8. M/s M.C.V. Eco Systems approached the Hon'ble High Court of Telangana by filing writ petition as W.P. No. 45825 of 2016 wherein respondent Board

undertook to consider their application in accordance with the revised guidelines of Central Pollution Control Board. As per order dated 07.02.2017, the application was again rejected for want of environment clearance and in view of small water bodies existing at a distance of about 26, 540 and 750 mts in the northern direction of the site.

9. So far as, the application of M/s Godavari Bio Medical Management was concerned, the same was rejected on 17.12.2016. They were directed to obtain the environment clearance and then approach the respondent Board for grant of consent to establish. They approached the Regional office of the respondent Board at Kakinada with a request to conduct public hearing by their letter dated 20.06.2017. Accordingly, conducting of the public hearing was facilitated by the respondent Board and the public hearing was held on 28.07.2017. The Joint Collector and the Additional District Magistrate, East Godavari District supervised the entire public hearing proceedings.

10. In the meanwhile, M/s M.C.V. Eco Systems filed application O.A. No. 257 of 2017 before this Tribunal praying for a declaration and also filed writ petition before the Hon'ble High Court of Telengana as W.P. 5720 of 2018 as regards non-issuance of consent to establish for their unit.

11. On 28.06.2017, they have submitted revised environmental management plan reports along with executive summary of EIA and EMP reports for conducting public hearing. On 28.07.2017 the public hearing was conducted at the proposed site and same was communicated to Member Secretary, SEIAA and Government Officials. Environment clearance was granted to M/s Godavari Bio Management. Thereafter, on 30.10.2018 the application for consent to establish was received from M/s Godavari Bio Management and the same was forwarded to the Board with recommendation and later it was granted.

12. The application of M.C.V. Eco Systems was not considered as in-principle permission has been given to the M/s Godavari Bio Management for environment clearance and the process was in progress. So according to them, there is no merit in the application and they prayed for dismissal of the application.

13. When the matter came up for hearing today, Mr. Y. Srinivasa Murthy, Learned Counsel appearing for the applicant submitted that the application can be disposed of on the basis of the further study to be conducted by Andhra Pradesh Pollution Control Board on the basis of the direction given by the Hon'ble High Court of Andhra Pradesh to conduct 'Gap Analysis Study' and if more facilities are required directing them to take appropriate steps for establishment of further bio-medical waste treatment facility.

14. Learned Counsel appearing for the Pollution Control Board submitted that on the basis of the direction given by the Hon'ble High Court of Andhra Pradesh, they have called for a global tender for conducting such study but necessary tenders were not obtained and now they have entrusted the same to M/s Andhra Pradesh Environment Management Corporation Limited for this purpose and once the study is completed, they will be taking further steps for establishing any further such facilities in Andhra Pradesh, if so suggested in the study. Even as per the direction issued by this Tribunal in O.A. No. 118/2017, there was no specific direction to do certain things by the Pollution Control Board but they have been directed to follow the guidelines provided by the Central Pollution Control Board and the Bio-Medical Waste Management Rules, 2010 which was in existence at that time and there is no necessity to initiate any prosecution as sought for in the application as these are there are other legal remedies available against the order, if any passed by the Board. So under such circumstances, the liberty

sought for by the Learned Counsel for the applicant to participate in the future proceedings to be initiated by the Pollution Control Board is not affected by virtue of the disposal of this application as it can only be treated as a new application if at all any further facility to be established on the basis of study conducted by the Pollution Control Board. So, under such circumstances, leaving open the right of the applicant to apply afresh for any bio-medical waste treatment facility if at all the Government intends to establish in future is left open.

15. With the above directions and observations, this M.A. No. 148 of 2017 is disposed off.

.....J.M.
(Justice K. Ramakrishnan)

.....E.M.
(Shri. Dr. K. Satyagopal)

M.A. No. 148/2017 in
O.A. No.118 /2017 (SZ),
28th September 2021. (AM)

15

IN THE HON'BLE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

W.P. No.21820 of 2021

Between

R. Venkateshwar Rao and 9 others .... Petitioners

And

The State of Andhra Pradesh and 3 others .....Respondents

COUNTER AFFIDAVIT FILED BY THE RESPONDENT No.4

I, Yarlagadda Papa Rao, S/o. Y. Ammanna Chowdary aged 36 years, R/o. 2-31, Peddada, Pedapudi Mandal, East Godavari District having come down to Amaravati temporarily, do hereby solemnly affirm and sincerely state on oath as follows

1. I am the Managing Partner and an authorised representative of the Respondent No. 4 firm and as such I am well acquainted with the facts and circumstances of the case.

2. I have read and perused the contents of the writ petition filed by the Writ Petitioners. At the outset, all the statements, averments, allegations, and submissions made in the writ petition are denied in their entirety except those which are specifically admitted by me herein. It is submitted that no allegation or contention or averment should be deemed to have been admitted by me for want of specific traverse. The Petitioners are hereby put to strict proof of each allegation, statement and contention of the writ petition.

For GODAVARI BIO MANAGEMENT

Y. Papa Rao

Managing

16

3. Before adverting to the para-wise remarks of the writ petition, I would respectfully submit few preliminary submissions in relation to the present case including the issue of maintainability of the writ petition.

Issue of maintainability of the writ petition:

4. I respectfully submit that the only relief sought by the Petitioners in the present writ petition is to cancel the environmental clearance granted to the Respondent No.4 by the competent authorities. Basically, the Petitioners appear to have been aggrieved by the decision of the competent authorities to grant environmental clearance to the Respondent No.4 which was done completely in accordance with law.

5. I respectfully submit that the Parliament of India enacted the National Green Tribunal Act, 2010 with an aim and objective to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. According to Section 16(h) of the National Green Tribunal Act, 2020, any person who is aggrieved by the grant of an environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986, such aggrieved person may appeal to the concerned National Green Tribunal having jurisdiction within the time prescribed under the law.

For GODAVARI BIO MANAGEMENT

Managing Partner

6. I respectfully submit that the National Green Tribunal has jurisdiction to hear any challenge made to the order granting environmental clearance and has powers to set aside such orders if they find that environmental clearance was not granted in accordance with law. Therefore, it is clear and unambiguous that the petitioners have both efficacious and alternative remedy in the form of the National Green Tribunal, Chennai to challenge the subject order of environmental clearance which is impugned in the present writ petition.

7. I respectfully submit that it is a settled position of law that this Hon'ble Court, while exercising its jurisdiction under Article 226 of the Constitution of India, is duty-bound to consider, among others, whether the petitioner has an alternative remedy for the resolution of the dispute. Further, this Hon'ble Court may not assume jurisdiction under Article 226 and trench upon an alternative remedy provided by the statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, the High Court, normally, will leave the party, applying to it, to seek resort to the machinery set up under the statute. Where a liability, not existing in common law, is created by a statute, which at the same time gives a special and particular remedy for enforcing it, the remedy provided by the statute must be followed. In the present case, since there is an efficacious and alternative remedy available to the Petitioners to challenge the environmental clearance granted to the Respondent No.4, this Hon'ble Court may dismiss the present writ petition *in limine* on the ground of maintainability.

For GODAVARI BIO MANAGEMENT

Managing Partner

4

18

Preliminary Submissions:

8. I respectfully submit that the Respondent No.4 is a registered partnership firm bearing Registered Firm No. 232 of 2016 with an object to establish the Common Bio Medical Waste Treatment Facility ("**Facility**") with a capacity of 3 TDP in an area of 1.28 acres located at Sy.No. 258, Marripudi Village, Rangampeta Mandal, East Godavari District. The capital cost of the project is around 2.2 crores and currently more than half of the capital has been invested on the project. The main function of the Facility is to treat the waste generated by various hospitals in the East Godavari District scientifically in accordance with the rules in order to mitigate the damage that is being caused to the environment and public health by leaving the medical waste untreated.

9. I respectfully submit that the Facility is being constructed by the Respondent No.4 firm only after taking all the requisite permissions under the law including the Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974. I respectfully submit that pursuant to the applications dated 11.08.2017, 16.07.2018 and 17.07.2018 submitted by the Respondent No.4 firm, environmental clearance was granted by the State Level Environment Impact Assessment Authority (SEIAA), Andhra Pradesh, Ministry of Environment, Forests & Climate Change, Government India *vide* its Order No. SEIAA//AP/EG/IND/06/2016111 dated 15.10.2018. It is pertinent to submit that while granting the environmental clearance, the authority has taken cognizance of the fact that there are around 17,299 beds available in the East Godavari District including Medical Colleges. Whereas the existing single waste treatment

For GODAVARI BIO MANAGEMENT

Managing Partner

facility covers the waste generated by only 10,476 beds and as such the waste generated by around 6,823 hospital beds is not covered by the existing facility. I further respectfully submit that public hearing was also conducted by the authority on 28.07.2017 before granting the environmental clearance. It is submitted that the validity of the environmental clearance is 7 years.

10. I respectfully submit that after receiving environmental clearance, the Respondent No.4 submitted an application dated 30.10.2018 before the Andhra Pradesh Pollution Control Board seeking consent order for establishment of the Facility. I respectfully submit that the subject site was inspected by the Environmental Engineer, Asst. Environmental Engineer and Analyst Grade – I of Regional Office Kakinada, Andhra Pradesh Pollution Control Board on 02.11.2018. After scrutiny of the application and verification report, the Andhra Pradesh Pollution Control Board issued an Order of Consent for Establishment vide its Order No. APPCB/BMW/Godavari Bio/CBMWTF/KKD/HO/2015 dated 30.11.2018. I respectfully submit that the validity of the consent order was initially restricted only for a period of 9 months. However, the consent order has been renewed thereafter vide its orders dated 11.08.2019, 12.06.2020 and 26.02.2021. Currently, the consent order is subsisting and valid till 31.12.2021. I respectfully submit that both the environmental clearance and consent order for establishment are subject to various conditions which have been imposed in the interest of the environment. The Respondent No. 4 is required to follow all the conditions during the construction and operation of the Facility.

For GODAVARI BIO MANAGEMENT

Y. Papa Rao

Managing Partner

20

11. I respectfully submit that before and after granting environmental clearance to the Respondent No.4, frivolous cases were filed before this Hon'ble High Court and also before the National Green Tribunal. It is submitted that M/s. MCV Eco Systems who happens to be one of the competitors of the Respondent No.4 and also the one who tried unsuccessfully to establish a medical waste treatment facility within the same vicinity, filed a writ petition bearing W.P.No. 27717 of 2018 before the erstwhile Hon'ble High Court of Andhra Pradesh challenging the action of Andhra Pradesh Pollution Control Board in issuing "*in principle permission*" in favour of the Respondent No.4 herein for establishment of common bio medical waste treatment facility at Survey No. 258, Marripudi Village, Rangampet, East Godavari District as arbitrary and illegal and consequently sought a direction to grant "*in principle permission*" in their favour for establishment the common bio medical waste treatment facility at Sankavaram, East Godavari District. The Hon'ble High Court was not pleased to grant any interim direction in the W.P.No. 27717 of 2018. In the meanwhile, the Respondent No.2 granted environmental clearance to the Respondent No.4 legitimately in accordance with the law. However, the W.P.No. 27717 of 2018 was withdrawn by the M/s. MCV Eco Systems and the same was allowed by this Hon'ble Court on 13.09.2021. It is pertinent to submit that immediately after withdrawing the aforementioned writ petition on 13.09.2021, the subject writ petition was filed on 15.09.2021 seeking similar reliefs in relation to the environmental clearance granted to the Respondent No.4. It raises grave suspicion that the present writ petition is a motivated litigation at the behest of M/s. MCV Eco Systems. In any event, the writ petition and the contentions of the Petitioners are frivolous, baseless and without any merit. The Petitioners failed to point out the

For GODAVARI BIO MANAGEMENT

Managing Partner

legal provisions that are allegedly violated by the Respondents in the process of granting environmental clearance to the Respondent No.4.

12. I respectfully submit that the M/s. MCV Eco Systems also approached the Hon'ble National Green Tribunal *vide* Original Application No. 257 of 2017 challenging the actions of the decisions of the government authorities at various stages including the decision of granting environmental clearance to the Respondent No.4. The Hon'ble National Green Tribunal, Chennai disposed of the application filed by M/s. MCV Eco Systems, *inter alia*, with the observation that the applicant therein is not entitled to get any of the reliefs claimed in the application as the order sought to be set aside granted in favour of the Respondent No. 4 herein are independently appealable orders under Section 16 of the National Green Tribunal Act, 2010

13. It is further respectfully submitted that one Mr. Kommana Lakshmi Bala Ganeswara Rao, S/o. Sri Bhima Raju, resident of East Godavari District filed O.A.No. 118 of 2017 before the Hon'ble National Green Tribunal, Chennai seeking a direction to the Andhra Pradesh Pollution Control Board not to allow application for establishment, operation of bio-medical waste treatment facilities in the State of Andhra Pradesh to collect, transport, treat and safe disposal of bio-medical waste generated from the Hospitals/health care establishments situated in the Districts of Andhra Pradesh and without conducting the full capacity of the existing common bio-medical waste treatment facility in operation and its potential enhancement of the production and the need for establishment of fresh common bio-medical waste treatment facility in the State of Andhra Pradesh granting such permission to any person is illegal, arbitrary,

For GODAVARI BIO MANAGEMENT

Managing Partner

capricious, high handed, violative of all cannons of law and justice and consequentially modify the orders passed by the Andhra Pradesh Pollution Control Board issued in favour of Respondent No.4 herein and for such other common bio-medical waste treatment facility in the State of Andhra Pradesh.

14. The Hon'ble Tribunal *vide* its Order dated 05.07.2017 in O.A.No. 118 of 2017 disposed of the matter by giving certain directions which reads as follows:

> *"In view of the same, we dispose of the application with a direction to the Board to strictly follow its own guidelines and the guidelines framed by the Central Pollution Control Board in accordance with the Bio Medical Waste Management Rules, 2016 in respect of the installation and operation of the Common Bio Medical Waste Treatment Facilities in the State of Andhra Pradesh."*

15. Thereafter, Mr. Kommana Lakshmi Bala Ganeswara Rao again filed an application M.A.No. 148 of 2017 in O.A.No. 118 of 2017 for initiating prosecution against the Pollution Control Board for allegedly violating the direction of the National Green Tribunal contained in the Order dated 05.07.2017 in O.A.No. 118 of 2017. The Hon'ble Tribunal was pleased to dispose of the said application *vide* its Order dated 28.09.2021 leaving open the right of the applicant therein to apply afresh for any bio-medical waste treatment facility if at all the Government intends to establish in future. It is pertinent to submit that the National Green Tribunal, did not interfere with the issue of environmental clearance which was granted to the Respondent No.4 because there was no fault in the entire process of granting environmental clearance to the Respondent No.4.

For GODAVARI BIO MANAGEMENT

Y. Papa Rao

Managing Partner

16. It is further pertinent to submit that when the local villagers unnecessarily attempted to interfere with the construction of the Facility, the Respondent No.4 approached the concerned police officials and the other governmental authorities for the purpose of granting police protection. However, when the government officials including the police authorities failed to provide police protection for the purpose of constructing the Facility even after taking all the relevant permissions, the Respondent No.4 filed a W.P.No. 11098 of 2021 before the Hon'ble High Court of Andhra Pradesh challenging the inaction of the police officials in providing police protection. It is pertinent to submit that the Hon'ble Court was pleased to pass an Orde dated 16.06.2021 directing the concerned police officers to provide police protection. Even thereafter, the local villagers along with the Petitioner No.2 started interfering with the construction works of the Project. The Respondent No. 4 approached the police authorities again and filed FIR against the local villagers and the Petitioner No.2 and the police officers registered FIR against the Petitioner No.2 and others. I respectfully submit that all the above actions clearly show that various illegal and frivolous attempts were made earlier to obstruct the operation of the project of the Respondent No.4 and the present writ petition is also a part of such illegal measures to stop the business of the Respondent No.4.

Para – wise submissions

17. The contents of Para No.1 are formal in nature and therefore they are not being traversed in specific.

For GODAVARI BIO MANAGEMENT

Managing Partner

18. The contents of Para No.2 are denied in their entirety. It is specifically denied that the environmental clearance was granted to Respondent No.4 without considering the objections of the petitioners, the local villagers of Marripudi and surrounding villages. It is respectfully submitted that each and every legal and tenable objection of all villagers and the petitioners were considered by the Respondent authorities before granting the environmental clearance to the Respondent No.4.

24

19. The contents of Para No.3 are denied to the extent of stating that the Facility is surrounded by agricultural lands and human habitations. It is respectfully submitted that the location of the Facility is situated at a place which is not immediately surrounded by human habitation. The Facility is situated more than 1.1 km away from the nearby human habitation as such there is absolutely no threat to the people residing in the nearby villages. It is respectfully submitted that as per the guidelines for common bio - medical waste treatment and disposal facilities, that the treatment facility can be located at a place reasonably far away from notified residential and sensitive areas and should havea buffer distance of preferably 500 m so that it shall have minimal impact on these areas. *Firstly*, in the present case, the Facility is located more than 1.1. km away from nearest residential area. *Secondly*, even if the treatment facility is less than 500 metres, there is no absolutely ban imposed by the rules and guidelines. Additional precautions would be required to be taken while establishing a facility less than 500 metres. In any event, the present case is clearly far away from 500 metres and as such the apprehensions of the Petitioners are frivolous, baseless and without any merit.

For GODAVARI BIO MANAGEMENT

Y. Papa Rao

Managing Partner

20. The contents of Paras No.4 and 5 are formal in nature and therefore they are not being traversed in specific.

21. The contents of Paras No.6 and 7 are denied in their entirety. It is specifically denied that in the public hearing, views of only some of the local persons were noted. It is further specifically denied that majority of the local villagers opposed the project as that would allegedly create pollution in the village. It is further specifically denied that the medical plant would create pollution in the village and the same would allegedly affect cattle and water tanks. It is pertinent to submit that treatment of medical wastage scientifically is essential in order to mitigate the pollution that would otherwise cause because of the medical wastage which is left untreated. It is further respectfully submitted that in the present times especially when the entire world is battling with one or other highly contagious infections, establishment of the medical wastage treatment facility is highly essential. It is submitted that the purpose of the present project is only to treat the medical wastage scientifically in order to curb the pollution and other deadly infectious diseases which would generate and spread due to treating the medical wastage unscientifically and casually. In such circumstances, establishing a medical waste treatment facility, after following each and every procedural stipulation shall be highly encouraged in order to save the nearby villages effectively. It is further pertinent to submit that the purpose of public hearing is to gather the objections of the nearby villagers. Further, the veracity and genuineness in the complaints/objections would be considered before granting environmental clearance to the project. In the public hearing which was conducted in accordance with the law, most of the objections of the villagers are in relation to alleged threat of pollution in the village,

For GODAVARI ENVIRONMENTAL MANAGEMENT

Managing Partner

pollution to the ground water, impact on the cattle belonging to the villagers. All these objections were addressed to and answered by the competent persons and came to a categorical conclusion that the present common medical waste treatment facility which is located at least 1.1 km away from the nearby villages would not have any effect on the pollution in general and also to the cattle and water in specific. After considering that there is no merit in the objections, the present environment clearance was granted to the Respondent No.4. Further, the Respondent No.4 is put to lot of conditions and checks while granting the environmental clearance which would be required to be followed in principle without any fail in order to protect the environment in all aspects.

22. The contents of Paras No.8 and 9 are denied in their entirety. It is specifically denied that the competent authorities did not consider the objections of the villagers while granting environmental clearance. It is respectfully submitted that the writ petitioners absolutely failed to list out their valid and tenable objections which are allegedly not considered by the competent authorities while granting the environmental clearance. Even, in the present writ petition they did not exactly mention their apprehensions and objections against the proposed project which is highly essential in that area as opined by the competent authorities and experts. Merely because, there is an allegation of pollution in general, a project of a great importance cannot be stalled for the paper satisfaction of few Petitioners who filed the present writ petition with ulterior and malafide motives at the behest of others who have vested interests in the project.

23. The contents of Para No.10 are denied in their entirety. It is specifically denied that the Petitioners and the local villagers were unaware of the

For GODAVARI BIO MANAGEMENT

Managing Partner

environmental clearance granted to the Respondent No.4. It is specifically submitted that the entire process of granting environmental clearance to the Respondent No.4 is very transparent and every stage of the entire procedure was available to the public in general at the designated web portal. Further, the Respondent No.4 also caused to publish public notices in prominent newspapers in order to inform everyone that environmental clearance was granted to the Respondent No.4. It is respectfully submitted that there is no statutory rule which mandates the Respondent authorities to inform and intimate each and every objection in person about the grant of environmental clearance. In any event, all the objections of the Respondent Authorities were considered by the competent authorities before issuing the environmental clearance. Therefore, at this stage atleast, the writ petitioners out to have listed out their objections which are not allegedly considered by the competent authorities while granting environment clearance. Except stating that pollution in general and impact on the water and cattle, the petitioners did not mention any other specific objections against the Facility. The aforesaid objections were also answered by the Respondent Authorities in multiple awareness campaigns conducted before issuing the environmental clearance. There are many medical waste treatment facilities across the State of Andhra Pradesh and India which are operating in accordance with law. No such instance of grave pollution in general, impact on the cattle and water have been reported so far. The petitioners also did not raise any such instances where the medical waste treatment facilities affected the surrounding villages adversely. In the absence of any such specifics and details, the Hon'ble High Court may be pleased to dismiss the writ petition *in limine* on this ground alone.

27

For GODAVARI BIO MANAGEMENT

Y. Papa Rao

Managing Partner

24. In reply to Para No.11 of the writ petition, it is respectfully submitted that the petitioners also admitted that the awareness programme was conducted on 31.08.2020 in relation to the construction of the Facility. It is respectfully submitted that considering the unwanted and unnecessary objections from the local villagers, the Respondent authorities deemed it fit to conduct awareness campaign in order to promote awareness among the villagers regarding the benefits of the medical waste treatment facility at the proposed site and also categorically stated that no pollution would be caused by the medical waste treatment facility as apprehended by the petitioners and local villagers. All these factors are clearly shows that the Respondent authorities granted environmental clearance only after considering all objections and apprehensions of the petitioners and other villagers. In addition to that, the Respondent No.4 has promoted awareness among the local villagers and the petitioners time to time. Many of the villagers have responded positively after being completely educated about the benefits of the medical waste treatment facility. However, the present petitioners at the behest of the competitors of the Respondent No.4 filed the present writ petition only to harass and create unwarranted pressure on the Respondent No.4.

25. The contents of Para No.12 are denied in their entirety. Even in the present paragraph under reply, the petitioner did not state about the exact objections and apprehensions against the medical waste treatment facility. In the absence of such specifics no petition shall be taken cognizance by this Hon'ble Court and the same may be dismissed in limine.

26. The contents of Para No.13 are denied in their entirety. It is specifically denied that the fertile agricultural lands around the project with borewells

For GODAVARI BIO MANAGEMENT

Managing Partner

would be polluted. It is further specifically denied that drinking water project would also be damaged and the air would be polluted around the project. It is specifically denied that there are no hospitals in the vicinity of the project. It is pertinent to submit that the objections of the petitioners are general in nature and also do not have any merit. It is pertinent to submit that there has been no medical waste treatment facility around the present project and as such the project is having a semiral importance to treat the medical wastage that is being generated by the hospitals which are located around the project. The Respondent authorities have also recognized the demand and importance of the present project in view of the drastic increase in the medical waste in the vicinities of the present project. Therefore, it is absolutely unfair on the part of the petitioners to contend that there are no hospitals in the vicinity of the project.

27. The contents of Para No.14 are denied in their entirety. It is specifically denied that the petitioners and the local villagers are not aware of the environmental clearance that was granted to the Respondent No.4. It is further specifically denied that rules have to be interpreted in a manner that decision to grant environmental clearance shall be communicated to each and every objector in person.

28. The contents of Para No.16 are denied in their entirety. It is specifically submitted that all the rules and regulations have been complied by the Respondent No.4 and the environmental clearance was also granted only after ensuring compliance of all rules and regulations. The decision of this Hon'ble Court in W.P. No.11250 of 2018 has no relevance and connection to the present case since the Respondent No.4 has complied with all rules

For GODAVARI BIO MANAGEMENT

Managing Partner

and regulations before obtaining the environmental clearance by the competent authorities.

29. The contents of Para No.18 are denied in their entirety. It is specifically denied that the petitioner has no other remedy except to approach this Hon'ble Court under Article 226 of the Constitution of India. The petitioner has both efficacious and alternative remedy before the National Green Tribunal, Chennai to question and challenge the validity of the environmental clearance that was awarded to the Respondent No.4

In view of the above, it is humbly prayed that this Hon'ble Court may be pleased to dismiss the above writ petition and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For **GODAVARI BIO MANAGEMENT**

Y. Papa Rao

Managing Partner

Solemnly affirmed and signed on
this 11th day of December, 2021 at Amaravati

Deponent

Advocate :: Attested

(K.N.Rao)

VERIFICATION

I, Yarlagadda Papa Rao, S/o. Y. Ammanna Chowdary aged 36 years, R/o. 2-31, Peddada, Pedapudi Mandal, East Godavari District having come down to Amaravati temporarily do hereby agree that the contents of the above paragraphs are true to the best of my knowledge and belief. Hence, verified this on the 11th day of December, 2021 at Amaravati.

For **GODAVARI BIO MANAGEMENT**

Y. Papa Rao

Managing Partner

Counsel for the Respondent No.4

Deponent

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF FEBRUARY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HON'BLE SRI JUSTICE A.V. SESHA SAI
AND
THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

WRIT PETITION NO: 21820 OF 2021

Between:

1. R.Venkateshwar Rao, S/o. Chinna Sattiraju, Aged about 58 years, Occ. Agriculturist R/o. 3-42, Marripudi, Rangampeta Mandal, East Godavari District.
2. Vemu Chiranjeevi, SA) Sri Ramulu, Aged about 36 years, Occ. Agriculturist R/o. 4-114/A, Alluri Sitarama Raju Street, Marripudi, Rangampeta Mandal, East Godavari District.
3. Medidi Chakram, S/o. Somanna, Aged about- 49 years, Occ. Agriculturist R/o. 2-65, Marripudi, RangampetaMandalam, East Godavari District.
4. N.Dharmaraju, S/o. Veeraswamy, Aged about- 51 years, Occ Agriculturist R/o. 1-94, Marripudi, Rangampeta Mandalam, East Godavari District.
5. P.Somanna Choudary, S/o. P.Venkata Raju, Aged about 67 years, Occ. Agriculturist R/o. 70-19-165, Jaya Prakash Nagar, near Durgamma Tadichettu, Godari Gunta Kakinada Engg.College, East Godavari District.
6. K.Veeravenkata Siva, S/o. K.Ramana, Aged about 39 years, Occ. Agriculturist R/o. 1-126, Peddapuram Mandalam, Chinabrahmadevam, East Godavari District.
7. N.Nagendra, S/o. N.V. Venkata Satyanarayana, Aged about 44 years, Occ. Agriculturist R/o. 2-67, Peddapuram Mandalam, Rayabhupalapatnam,
8. K.Chakrarao, S/o. K.Prakasarao, Aged about 41 years, Occ. Agriculturist R/o. 2-107, Water tank Vadda, Peddapuram Mandalam, Kondapalli, East Godavari District.
9. N. Maher Baba, S/o. Venkanna, Aged about 60 years, Occ. Agriculturist R/o. 5-42/1, Nookalammagudiveedhi, Rangapuram Bikkavolu, East Godavari District.
10. G. Thammiraju, S/o. G.Paparao, Aged about 65 years, Occ. Agriculturist R/o. 1-48, G Kotturu, Samarlakota, Vetlapalem, East Godavari District. And

...PETITIONERS

AND

1. The State of Andhra Pradesh, Ministry of Environment, Forests and Climate Change, Rep by its Principal Secretary.
2. The State Level Environment Impact Assessment Authority, (SEIAA). D.No.33-26-14 D2, Challamvari Street, Kasturibaipet, Vijayawada, Rep by its Member Secretary
3. The A.P. Pollution Control Board, D.No.33-26-14 D2, Challamvari Street, KasturiBaipet, Vijayawada, Rep by its Chairman.
4. M/s Godavari Bio Management, Having its Office at D.No. 2-31, PeddadaMandal, East Godavari District, Rep by its Managing Partner

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ of Mandamus declaring the action of Respondent No.2 in issuing EC to Respondent No.4 for establishment of Bio medical waste treatment facility in Sy. No. 258, Marripudi village, RangampetaMandal, East Godavari District vide order No. SEIAA/AP/EG/IND/06/2016/111 dt. 15.10.2018 as illegal and arbitrary and in violation of principles of natural justice r/w Article 21 of constitution of India and consequently set-aside the same.

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to suspend

22

the operation of order No. SEIAAPAP/EGAND/06/2016/111 dt. 15.10.2018 pending disposal of the W.P.

Counsel for the Petitioners: SRI. N. VIJAY

Counsel for the Respondent Nos.1 & 2: SRI S.V. SIVAJI, GP FOR FOREST AND ENVIRONMENT

Counsel for the Respondent No.3: SRI V. SURENDRA REDDY, SC

Counsel for the Respondent No.4: SRI D. SATYA DARSHAN

The Court made the following: ORDER

33

THE HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

WRIT PETITION No.21820 OF 2021

ORDER: *(Per Hon'ble Sri Justice A.V.Sesha Sai)*

Heard Sri N.Vijay, learned counsel for the petitioners, Sri S.V.Sivaji, learned Government Pleader for Forest and Environment for respondent Nos.1 and 2, Sri V.Surendra Reddy, learned Standing Counsel for respondent No.3 and Sri D.Satya Darshan, learned counsel for respondent No.4, apart from perusing the material available on record.

2. Action of respondent No.2 in issuing environmental clearance to respondent No.4 for establishment of Bio Medical Waste Treatment Facility in Sy.No.258, Marripudi village, Rangampeta Mandal, East Godavari District, vide order No.SEIAA/AP/EG/IND/06/2016 dated 15.10.2018, is under challenge in the present Writ Petition.

3. According to the learned counsel for the petitioners, while according environmental clearance in favour of respondent No.4, the respondent-authorities have given a goby to the mandatory requirements of law, including Rule 17 of the Bio Medical Waste Management Rules, 2016, framed by the Union of India and published, vide G.S.R.No.343(E) dated 28.03.2016.

4. The information available before this Court discloses that prior to grant of the impugned clearance certificate, a public

hearing was conducted by the Joint Collector, East Godavari District and the Environmental Engineer, Andhra Pradesh Pollution Control Board, Regional Office, Kakinada. A copy of the proceedings, pertaining to the said public hearing held on 28.07.2017, is filed along with the present Writ Petition as material paper. In the said public hearing, certain residents of the subject villages participated and expressed their views. As stated earlier, the environmental clearance was accorded on 15.10.2018, but pursuant to the orders of this Court in Writ Petition No.11976 of 2020 dated 22.07.2020, once again, second public hearing was conducted. The Revenue Divisional Officer, Peddapuram, also addressed a letter to the District Collector, informing the District Collector about the opinions expressed by the villagers in the said second public hearing. A copy of the said letter of the Revenue Divisional Officer is also filed, which shows that petitioner No.1 herein also participated.

5. When the matter is taken up, a preliminary objection, as to the maintainability of the Writ Petition, is taken by the learned Standing Counsel for the Andhra Pradesh Pollution Control Board, so also the learned counsel representing respondent No.4 by contending that without availing the alternative remedy, as provided under Section 16 of the National Green Tribunal Act, 2010 (for short, 'NGT Act'), the present Writ Petition has been instituted before this Court. Section 16 of the NGT Act, 2010, deals with the

35

appellate jurisdiction of the Tribunal. Clause (h) of Section 16 of the NGT Act reads as follows:

> "**16. Tribunal to have appellate jurisdiction.** —- Any person aggrieved by,--
>
> (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);
>
> may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:
>
> Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days."

6. It is very much clear from a reading of the aforesaid provision of law that any person aggrieved by the order, granting environmental clearance, is entitled to file statutory appeal before the Tribunal constituted under the NGT Act. It is also very much clear from a reading of the said provision of law that such appeal can be filed before the Tribunal within a period of 30 days from the date on which the order or decision or direction or determination is communicated. Proviso to Section 16 of the NGT Act stipulates

that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, appeal can be entertained within a further period of sixty days.

7. According to the petitioners, they are all farmers and they own lands around the subject unit. In the affidavit filed in support of the Writ Petition, it is their categoric case that the local villagers as well as the petitioners herein were not aware of the environmental clearance granted in favour of respondent No.4 in the year 2018. Though it is the case of respondent No.4 herein that the publication was given in two local newspapers, the knowledge as to the issuance of the environmental clearance in favour of respondent No.4 cannot be automatically inferred to the petitioners, having regard to the nature of the controversy and the avocation of the petitioners herein and the petitioners herein should not be rendered remediless also. It is also the submission of the learned counsel for the petitioners that they had no intimation earlier with regard to the issuance of the impugned clearance. Though a number of legal contentions have been urged by the learned counsel for the petitioners, including the effect of Rule 17 of the Bio Medical Waste Management Rules, 2016, this Court, having regard to the availability of alternative remedy to the petitioners herein under Section 16 of the NGT Act, is not inclined to go into the sustainability or otherwise of the same.

87

8. For the aforesaid reasons, this Writ Petition is disposed of, leaving it open for the petitioners herein to file statutory appeal under Section 16 of the National Green Tribunal Act, 2010, against the impugned order, within a period of two weeks from the date of receipt of a copy of this order, for consideration of the same by the National Green Tribunal in accordance with law and for passing appropriate orders. It is also made clear that all the contentions, which are sought to be pressed into service in the present Writ Petition, are kept open. There shall be no order as to costs of the Writ Petition.

As a sequel, interlocutory applications pending, if any, in this Writ Petition shall stand closed.

Sd/- A.VIJAY BABU
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary, Ministry of Environment, Forests and Climate Change, State of Andhra Pradesh, Secretariat, Velagapudi, Amaravati, Guntur District.
2. The Member Secretary, State Level Environment Impact Assessment Authority, (SEIAA). D.No.33-26-14 D2, Challamvari Street, Kasturibaipet, Vijayawada.
3. The Chairman, A.P. Pollution Control Board, D.No.33-26-14 D2, Challamvari Street, KasturiBaipet, Vijayawada.
4. The Managing Partner, M/s Godavari Bio Management, Having its Office at D.No. 2-31, PeddadaMandal, East Godavari District.
5. One CC to SRI. N. VIJAY Advocate [OPUC]
6. Two CCs to the GP FOR FOREST & ENVIRONMENT, High Court of A.P. [OUT]
7. One CC to SRI. V. SURENDRA REDDY, SC FOR PCB [OPUC]
8. One CC to SRI. D. SATYA DARSHAN, Advocate [OPUC]
9. Two CD Copies

Chp
gl

38

HIGH COURT

DATED:23/02/2022

ORDER

WP.No.21820 of 2021

DISPOSING OF THE W.P. WITHOUT COSTS

39

(2020) 19 Supreme Court Cases 681

2J

(BEFORE A.M. KHANWILKAR AND DINESH MAHESHWARI, JJ.)

ASSISTANT COMMISSIONER (CT) LTU, KAKINADA AND OTHERS .. Appellants;

Versus

GLAXO SMITH KLINE CONSUMER HEALTH CARE LIMITED .. Respondent.

Civil Appeal No. 2413 of 2020†, decided on May 6, 2020

A. **Constitution of India — Arts. 226 and 32 — Maintainability of writ petition — Alternative remedy — Interference by High Court in such cases — When permissible — Principles summarised — Held, writ jurisdiction can certainly not be exercised when invoked to undermine or defeat the applicable statutory regime**

— Held, High Court to exercise its powers under Art. 226 with self-imposed restraint — When right or liability is created under statute by creating special mechanism for enforcing it, ordinarily, it is the remedy provided under the statute which must be availed of — High Court will normally not permit petitioner to bypass mechanisms provided under a statute — Though an Act cannot bar jurisdiction of courts under Arts. 32 or 226, constitutional courts would take note of legislative intent and exercise power consistent with provisions of statute

B. **Constitution of India — Arts. 142 and 226 — Exercise of power under Art. 142 — When permissible — Principles summarised — Art. 226 vis-à-vis Art. 142 — Powers available to High Court and Supreme Court, compared**

— Powers of High Court under Art. 226 are wide but are not wider than plenary powers bestowed on Supreme Court under Art. 142 — What the Supreme Court cannot do by exercising power under Art. 142, such thing can never be done by High Courts under Art. 226 — Held, neither jurisdiction under Art. 142 nor writ jurisdiction under Art. 226 can be exercised when invoked to undermine or defeat the applicable statutory regime

C. **Sales Tax and VAT — Andhra Pradesh Value Added Tax Act, 2005 (5 of 2005) — S. 31 — Power of appellate authority to condone delay — Scope of — Held, delay cannot be condoned in any appeal preferred after aggregate period of 60 days — Appellate authority is not empowered to condone delay in filing any appeal preferred after aggregate time period of 60 days**

— **Further held, complete mechanism is provided under the Act for challenging assessment orders — That mechanism alone has to be followed — Writ petition not maintainable so as to defeat statutory scheme — Delay**

† Arising out of SLP (C) No. 12892 of 2019. Arising from the Judgment and Order in *Glaxo Smith Kline Consumer Healthcare Ltd.* v. *CCT*, 2018 SCC OnLine Hyd 1985 (Hyderabad High Court, WP No. 39418 of 2018, dt. 19-11-2018)

beyond aggregate period of 60 days thus held, cannot be condoned by exercising power under Art. 142 or Art. 226 of the Constitution — Nor can such delay be condoned by invoking S. 5 of the Limitation Act, 1963

— Lastly, fact that appellant in question may have an arguable case on merits, held, can have no bearing on the justification for non-filing of the appeal within the statutory period — High Court erroneously took this as a reason to exercise its writ jurisdiction, despite the statutory appeal being time-barred — Constitution of India — Arts. 226 and 32 — When complete appellate mechanism is provided under statute, including maximum period of limitation, held, writ jurisdiction cannot be exercised to undermine the statutory regime — Limitation Act, 1963, Ss. 5 and 29(2)

D. **Sales Tax and VAT — Andhra Pradesh Value Added Tax Act, 2005 (5 of 2005) — S. 31 — Time-barred appeal — Appellate authority declined to condone delay in view of statutory provision — High Court condoning delay in filing appeal in exercising writ jurisdiction under Art. 226 of the Constitution by disregarding legislative intention — Unsustainability of**

— On facts held, High Court did not examine finding of appellate authority regarding unsubstantiated reasons for delay — Nor was there any finding on violation of principles of natural justice or non-compliance with statutory requirements — That respondent assessee was in position to explain discrepancies in assessment orders, held, not a ground for condonation of delay, once the statutory period had expired — Appellate authority justified in holding that respondent assessee failed to substantiate reasons for delay — Andhra Pradesh Value Added Tax Rules, 2005, R. 60

E. **Sales Tax and VAT — Appeal — Appellate authority refusing to condone delay and dismissing appeal on ground of delay — Doctrine of merger — Inapplicability of, when matter not decided on merits**

The question before the Supreme Court was: whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution ought to entertain a challenge to the assessment order on the sole ground that the statutory remedy of appeal against that order stood foreclosed by the law of limitation?

Answering in the negative, the Supreme Court

Held :

Where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute must only be availed of. Though an Act cannot bar and curtail remedy under Article 226 or 32 of the Constitution, the constitutional court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute. (Paras 14 and 15)

41

Baburam Prakash Chandra Maheshwari v. *Antarim Zila Parishad*, AIR 1969 SC 556; *Nivedita Sharma* v. *COAI*, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947; *Thansingh Nathmal* v. *Supt. of Taxes*, AIR 1964 SC 1419; *Titaghur Paper Mills Co. Ltd.* v. *State of Orissa*, (1983) 2 SCC 433 : 1983 SCC (Tax) 131; *Mafatlal Industries Ltd.* v. *Union of India*, (1997) 5 SCC 536, *followed*

Wolverhampton New Waterworks Co. v. *Hawkesford*, (1859) 6 CBNS 336, 356 : 141 ER 486; *Neville* v. *London Express Newspaper Ltd.*, 1919 AC 368 (HL); *Attorney General of Trinidad & Tobago* v. *Gordon Grant & Co. Ltd.*, 1935 AC 532 (PC); *Secy. of State* v. *Mask & Co.*, 1940 SCC OnLine PC 10 : AIR 1940 PC 105, *cited*

It is one thing to say that "prohibitions or limitations in a statute" cannot come in the way of exercise of jurisdiction under Article 142 of the Constitution to do complete justice between the parties in the pending "cause or matter" arising out of that statute, but quite a different thing to say that while exercising jurisdiction under Article 142, the Supreme Court can altogether ignore the substantive provisions of a statute, dealing with the subject and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. The Supreme Court will take note of the express provisions of any substantive statutory law and regulate the exercise of its power and discretion accordingly. (Para 17)

ONGC v. *Gujarat Energy Transmission Corpn. Ltd.*, (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47, *applied*

State v. *Mushtaq Ahmad*, (2016) 1 SCC 315 : (2016) 1 SCC (Cri) 255, *relied on*

A.R. Antulay v. *R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372; *Prem Chand Garg* v. *Excise Commr.*, AIR 1963 SC 996; *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584; *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409, *summarised*

Singh Enterprises v. *CCE*, (2008) 3 SCC 70; *CCE* v. *Hongo (India) (P) Ltd.*, (2009) 5 SCC 791; *Chhattisgarh SEB* v. *CERC*, (2010) 5 SCC 23; *Suryachakra Power Corpn. Ltd.* v. *Electricity Deptt.*, (2016) 16 SCC 152 : (2017) 5 SCC (Civ) 761, *referred to*

Delhi Judicial Service Assn. v. *State of Gujarat*, (1991) 4 SCC 406; *M.P. Steel Corpn.* v. *CCE*, (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510, *cited*

Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on the Supreme Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. Even while exercising that power, the Supreme Court is required to bear in mind the legislative intent and not to render the statutory provision otiose. (Para 16)

What the Supreme Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by the Supreme Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution. (Para 18)

ONGC v. *Gujarat Energy Transmission Corpn. Ltd.*, (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47, *applied*

From the indisputable facts, it is evident that the assessment order dated 21-6-2017 was challenged by the respondent by way of statutory appeal before the Appellate Deputy Commissioner only on 24-9-2018. Section 31 of the Andhra Pradesh Value Added Tax Act, 2005 ("the 2005 Act") provides for the statutory remedy against an assessment order. (Para 8)

In the present case, admittedly, the appeal was filed way beyond the total 60 days' period specified in terms of Section 31 of the 2005 Act. In that, the respondent had filed the appeal accompanied by an application for condonation of delay setting out reasons therefore. (Para 9)

The appellate authority vide order dated 25-10-2018, considered the reasons offered by the respondent for the delay in filing of the appeal and concluded that the same were not substantiated with sufficient cause. It was held that the delay beyond the period of 60 days from the date of service of the assessment order on the respondent assessee cannot be condoned. The appellate authority rejected the explanation that the respondent was not aware of the service of assessment order, as it remained unsubstantiated by the respondent. (Paras 10 and 11)

In *Gujarat Energy*, (2017) 5 SCC 42, it was held that Section 5 of the Limitation Act, 1963 cannot be invoked by the court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act. The principle underlying the dictum in this decision would apply proprio vigore to Section 31 of the 2005 Act including to the powers of the High Court under Article 226 of the Constitution. (Paras 16 and 17)

ONGC v. *Gujarat Energy Transmission Corpn. Ltd.*, (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47, *applied*

The 2005 Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. (Para 15)

Titaghur Paper Mills Co. Ltd. v. *State of Orissa*, (1983) 2 SCC 433 : 1983 SCC (Tax) 131, *followed*

When there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days (as in the case of Section 31 of the 2005 Act), needless to say, it is based on certain underlined, fundamental, general issues of public policy. The policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. (Para 17)

ONGC v. *Gujarat Energy Transmission Corpn. Ltd.*, (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47, *followed*

Some of the High Courts have taken an erroneous approach in reasoning that a provision such as Section 31 of the 2005 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction — by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is

42

available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. The fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose. (Para 19)

ONGC v. *Gujarat Energy Transmission Corpn. Ltd.*, (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47, *applied*

Electronics Corpn. of India Ltd. v. *Union of India*, 2018 SCC OnLine Hyd 21 : (2018) 361 ELT 22; *Panoli Intermediate (India) (P) Ltd.* v. *Union of India*, 2015 SCC OnLine Guj 570 : AIR 2015 Guj 97; *Phoenix Plasts Co.* v. *CCE*, 2013 SCC OnLine Kar 10432 : (2013) 298 ELT 481, *overruled*

The High Court is certainly not free to entertain the writ petition assailing the assessment order even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such. (Para 22)

K.S. Rashid & Son v. *Income Tax Investigation Commission*, AIR 1954 SC 207; *ITC Ltd.* v. *Union of India*, (1998) 8 SCC 610, *distinguished*

Pertinently, no finding has been recorded by the High Court in the impugned judgment that it was a case of violation of principles of natural justice or non-compliance of statutory requirements in any manner. The High Court was more impressed by the fact that the respondent was in a position to offer some explanation about the discrepancies in respect of the volume of turnover and that the respondent had already deposited 12.5% of the additional amount in terms of the previous order passed by it. That reason can have no bearing on the justification for non-filing of the appeal within the statutory period. Since it is absolutely clear in this case that the statutory period specified for filing of appeal had expired long back in August 2017 itself and the appeal came to be filed by the respondent assessee only on 24-9-2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all. (Para 23)

Reverting to the contention that the respondent assessee having failed to assail the order passed by the appellate authority, dated 25-10-2018 rejecting the application for condonation of delay, the assessment order passed by the Assistant Commissioner, dated 21-6-2017 stood merged, need not detain the Court. It is well settled that rejection of delay application by the appellate forum does not entail in merger of the assessment order with that order. (Para 24)

Raja Mechanical Co. (P) Ltd. v. *CCE*, (2012) 12 SCC 613, *followed*

Taking any view of the matter, therefore, the High Court ought not to have entertained the subject writ petition filed by the respondent assessee herein. The same deserved to be rejected at the threshold. Hence, the appeal is allowed. (Para 25)

Glaxo Smith Kline Consumer Healthcare Ltd. v. *CCT*, 2018 SCC OnLine Hyd 1985, *reversed*

Glaxo Smith Kline Consumer Healthcare Ltd. v. *CCT*, 2018 SCC OnLine Hyd 1989, *referred to*

G-D/63938/S

Advocates who appeared in this case :

G.N. Reddy, Hemal Kirit Kr. Sheth, T. Vijaya Bhaskar Reddy, V. Lakshmikumaran, Ms Charanya Lakshmikumaran, Aaditya Bhattacharya, Ms Apeksha Mehta, Ms Mounica Kasturi and Ms Ishita Mathur, Advocates, for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. 2018 SCC OnLine Hyd 1989, *Glaxo Smith Kline Consumer Healthcare Ltd.* v. *CCT* 688*c*, 693*g-h*, 697*c*, 697*c-d*
2. 2018 SCC OnLine Hyd 1985, *Glaxo Smith Kline Consumer Healthcare Ltd.* v. *CCT* **(reversed)** 687*a-b*, 688*e*, 696*d*, 696*f-g*, 696*g*, 707*a*, 707*e-f*
3. 2018 SCC OnLine Hyd 21 : (2018) 361 ELT 22, *Electronics Corpn. of India Ltd.* v. *Union of India* **(overruled)** 694*c-d*, 696*c-d*, 704*d*
4. (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47, *ONGC* v. *Gujarat Energy Transmission Corpn. Ltd.* 700*b-c*, 700*f-g*, 704*g-h*
5. (2016) 16 SCC 152 : (2017) 5 SCC (Civ) 761, *Suryachakra Power Corpn. Ltd.* v. *Electricity Deptt.* 700*d-e*, 703*f*
6. (2016) 1 SCC 315 : (2016) 1 SCC (Cri) 255, *State* v. *Mushtaq Ahmad* 704*b*
7. (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510, *M.P. Steel Corpn.* v. *CCE* 703*f-g*
8. 2015 SCC OnLine Guj 570 : AIR 2015 Guj 97, *Panoli Intermediate (India) (P) Ltd.* v. *Union of India* **(overruled)** 704*d-e*
9. 2013 SCC OnLine Kar 10432 : (2013) 298 ELT 481, *Phoenix Plasts Co.* v. *CCE* **(overruled)** 704*d-e*
10. (2012) 12 SCC 613, *Raja Mechanical Co. (P) Ltd.* v. *CCE* 707*d-e*
11. (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947, *Nivedita Sharma* v. *COAI* 698*a-b*
12. (2010) 5 SCC 23, *Chhattisgarh SEB* v. *CERC* 700*d-e*, 703*c-d*
13. (2009) 5 SCC 791, *CCE* v. *Hongo (India) (P) Ltd.* 700*d-e*
14. (2008) 3 SCC 70, *Singh Enterprises* v. *CCE* 700*d-e*
15. (1998) 8 SCC 610, *ITC Ltd.* v. *Union of India* 705*c-d*
16. (1998) 4 SCC 409, *Supreme Court Bar Assn.* v. *Union of India* 702*f*, 703*b-c*
17. (1997) 5 SCC 536, *Mafatlal Industries Ltd.* v. *Union of India* 699*f-g*
18. (1991) 4 SCC 584, *Union Carbide Corpn.* v. *Union of India* 701*d-e*, 702*f-g*, 703*a-b*, 703*b-c*, 703*c-d*
19. (1991) 4 SCC 406, *Delhi Judicial Service Assn.* v. *State of Gujarat* 702*f-g*
20. (1988) 2 SCC 602 : 1988 SCC (Cri) 372, *A.R. Antulay* v. *R.S. Nayak* 700*f-g*, 701*f-g*, 702*f-g*, 703*b-c*
21. (1983) 2 SCC 433 : 1983 SCC (Tax) 131, *Titaghur Paper Mills Co. Ltd.* v. *State of Orissa* 699*a*
22. AIR 1969 SC 556, *Baburam Prakash Chandra Maheshwari* v. *Antarim Zila Parishad* 698*a-b*
23. AIR 1964 SC 1419, *Thansingh Nathmal* v. *Supt. of Taxes* 698*a-b*, 698*b-c*
24. AIR 1963 SC 996, *Prem Chand Garg* v. *Excise Commr.* 701*a-b*, 701*f-g*, 702*b*, 702*g*, 703*c*
25. AIR 1954 SC 207, *K.S. Rashid & Son* v. *Income Tax Investigation Commission* 705*a-b*
26. 1940 SCC OnLine PC 10 : AIR 1940 PC 105, *Secy. of State* v. *Mask & Co.* 699*f*
27. 1935 AC 532 (PC), *Attorney General of Trinidad & Tobago* v. *Gordon Grant & Co. Ltd.* 699*f*
28. 1919 AC 368 (HL), *Neville* v. *London Express Newspaper Ltd.* 699*e-f*
29. (1859) 6 CBNS 336, 356 : 141 ER 486, *Wolverhampton New Waterworks Co.* v. *Hawkesford* 699*d*

45

The Judgment of the Court was delivered by

A.M. KHANWILKAR, J.— Leave granted. The moot question in this appeal emanating from the judgment and order dated 19-11-2018 in *Glaxo Smith Kline Consumer Healthcare Ltd.* v. *CCT*[1] passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh (for short "the High Court") is: Whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India ought entertain a challenge to the assessment order on the sole ground that the statutory remedy of appeal against that order stood foreclosed by the law of limitation?

2. The respondent is a registered dealer on the rolls of Assistant Commissioner of Commercial Taxes, Large Tax Payer Unit at Kakinada Division (for short "the Assistant Commissioner") under the provisions of the Andhra Pradesh Value Added Tax Act, 2005 (for short "the 2005 Act") and the ~~Central~~ Sales Tax Act, 1956 (for short "the 1956 Act") and is engaged in the business of manufacturing and sale of Horlicks, Boost, Biscuits, Ghee, Ayurvedic Medicines, etc. The Assistant Commissioner had called upon the respondent to produce books of accounts for the assessment year 2013-14 for finalisation of assessment under the 1956 Act. The authorised representative of the respondent produced declaration in Form 'F' in support of its claim that certain transactions are inter-State transfers. The information and declaration furnished by the respondent was duly verified and after giving personal hearing to the respondent, final assessment order came to be passed by the Assistant Commissioner on 21-6-2017, raising demand of Rs 76,73,197 (Rupees seventy-six lakhs seventy-three thousand one hundred ninety-seven only) against turnover of Rs 3,44,15,240 (Rupees three crores forty-four lakhs fifteen thousand two hundred forty only) on the finding that the respondent had failed to submit Form 'F' to the tune of the turnover reported in the Central Sales Tax ("CST") return. This assessment order was duly served on the respondent on 22-6-2017. The respondent did not file appeal against this assessment order within the statutory period. Instead, amount equivalent to 12.5% of the demand was deposited on 12-9-2017.

3. The respondent then filed an application under Rule 60 of the Andhra Pradesh Value Added Tax Rules, 2005 (for short "the 2005 Rules"), highlighting the error made in raising the demand based on incorrect turnover reported by the respondent. This application was filed only on 8-5-2018, which came to be rejected by the Assistant Commissioner vide order dated 11-5-2018. Aggrieved by the decision dated 11-5-2018, the respondent filed an appeal before the Appellate Deputy Commissioner of Commercial Taxes, Vijayawada (for short "the Appellate Deputy Commissioner" or "the appellate authority", "as the case may be") on 28-5-2018, which came to be rejected on 17-8-2018. It is only thereafter, the respondent assessee was advised to file appeal before the Appellate Deputy Commissioner on 24-9-2018 against the assessment order dated 21-6-2017. In the meantime, another assessment order came to be passed

1 2018 SCC OnLine Hyd 1985

on 31-3-2018 in relation to the audit taken up for the tax period from 1-4-2013 to 31-3-2017. We are not concerned with the said order in the present appeal.

4. Reverting to the appeal filed by the respondent against the assessment order dated 21-6-2017, the same was dismissed on 25-10-2018 being barred by limitation and also because no sufficient cause was made out. The respondent was then advised to file writ petition before the High Court being Writ Petition No. 39418 of 2018, solely for quashing and setting aside of assessment order dated 21-6-2017 for tax period — April, 2013 to March, 2014 (CST) being contrary to law, without jurisdiction and in violation of principles of natural justice to the extent of levy on the Branch Transfer turnovers and to direct the Assistant Commissioner (CT) to re-do the assessment and reckon the correct Branch Transfer turnover and grant exemption on the basis of Form 'F'. The respondent did not challenge the order passed by the Appellate Deputy Commissioner, rejecting the statutory appeal preferred by the respondent against the assessment order dated 21-6-2017, for reasons best known to the respondent. The Division Bench of the High Court, on 8-11-2018[2], noted that the respondent had already paid 12.5% of the disputed tax, for the purpose of filing an appeal. It also noted the stand taken by the respondent that the employee who was in charge of the tax matters of the respondent, had defaulted and was subsequently suspended in contemplation of disciplinary proceedings, as a result of which statutory appeal could not be filed within the prescribed time. The Division Bench of the High Court directed the respondent to pay an additional amount equivalent to 12.5% of the disputed tax within one week and posted the matter for 19-11-2018. This was an ex parte order. The respondent, in terms of the stated order, deposited an additional amount equivalent to 12.5% of the disputed tax amount. The writ petition was then taken up for hearing on 19-11-2018, when after hearing the counsel for the parties, the writ petition came to be allowed[1] and the order passed by the Assistant Commissioner, dated 21-6-2017 has been quashed and set aside and the respondent relegated before the Assistant Commissioner for reconsideration of the matter afresh after giving personal hearing to the respondent to explain the discrepancies. This order has also noted that the respondent had paid Rs 9,59,190 (Rupees nine lakhs fifty-nine thousand one hundred ninety only) equivalent to the 12.5% of the taxes in the year 2013-14 (CST) on 13-11-2018.

5. Feeling aggrieved, the appellants have filed the present appeal. It is urged that the respondent having failed to avail of statutory remedy of appeal within the prescribed time and also because the delay in filing appeal had not been satisfactorily explained, the High Court ought not to have entertained the writ petition at the instance of such person and more so, because the respondent had allowed the order passed by the appellate authority rejecting the appeal on the ground of delay to become final. In substance, the argument is that the High Court exceeded its jurisdiction and committed manifest error in setting aside the assessment order dated 21-6-2017 passed by the Assistant Commissioner.

2 *Glaxo Smith Kline Consumer Healthcare Ltd.* v. *CCT*, 2018 SCC OnLine Hyd 1989
1 *Glaxo Smith Kline Consumer Healthcare Ltd.* v. *CCT*, 2018 SCC OnLine Hyd 1985

47

6. The respondent, on the other hand, would urge that the High Court has had ample power under Article 226 of the Constitution of India to grant relief to the respondent considering the peculiar facts of the present case being an exceptional situation which if not remedied, would result in failure of justice.

7. We have heard Mr G.N. Reddy, learned counsel for the appellants and Mr V. Lakshmikumaran, learned counsel for the respondent.

8. From the indisputable facts, it is evident that the assessment order dated 21-6-2017 was challenged by the respondent by way of statutory appeal before the Appellate Deputy Commissioner only on 24-9-2018. Section 31 of the 2005 Act provides for the statutory remedy against an assessment order. The same, as applicable at the relevant time, reads thus:

> "**31.** ***Appeals and Revisions.***—(1) Any VAT dealer or TOT dealer or any other dealer objecting to any order passed or proceeding recorded by any authority under the provisions of the Act other than an order passed or proceeding recorded by an Additional Commissioner or Joint Commissioner or Deputy Commissioner, may within thirty days from the date on which the order or proceeding was served on him, appeal to such authority as may be prescribed:
>
> Provided that the appellate authority may within a further period of thirty days admit the appeal preferred after a period of thirty days if he is satisfied that the VAT dealer or TOT dealer or any other dealer had sufficient cause for not preferring the appeal within that period:
>
> Provided further that an appeal so preferred shall not be admitted by the appellate authority concerned unless the dealer produces the proof of payment of tax, penalty, interest or any other amount admitted to be due, or of such instalments as have been granted, and the proof of payment of twelve and half per cent of the difference of the tax, penalty, interest or any other amount, assessed by the authority prescribed and the tax, penalty, interest or any other amount admitted by the appellant, for the relevant tax period, in respect of which the appeal is preferred.
>
> (2) The appeal shall be in such form, and verified in such manner, as may be prescribed and shall be accompanied by a fee which shall not be less than Rs 50 (Rupees fifty only) but shall not exceed Rs 1000 (Rupees one thousand only) as may be prescribed.
>
> (3)(*a*) Where an appeal is admitted under sub-section (1), the appellate authority may, on an application filed by the appellant and subject to furnishing of such security or on payment of such part of the disputed tax within such time as may be specified, order stay of collection of balance of the tax under dispute pending disposal of the appeal;
>
> (*b*) Against an order passed by the appellate authority refusing to order stay under clause (*a*), the appellant may prefer a revision petition within thirty days from the date of the order of such refusal to the Additional Commissioner or the Joint Commissioner who may subject to such terms and conditions as he may think fit, order stay of collection of balance of the tax under dispute pending disposal of the appeal by the appellate authority;

(*c*) Notwithstanding anything in clauses (*a*) or (*b*), where a VAT dealer or TOT dealer or any other dealer has preferred an appeal to the Appellate Tribunal under Section 33, the stay, if any, ordered under clause (*b*) shall be operative till the disposal of the appeal by such Tribunal, and, the stay, if any ordered under clause (*a*) shall be operative till the disposal of the appeal by such Tribunal, only in case where the Additional Commissioner or the Joint Commissioner on an application made to him by the dealer in the prescribed manner, makes specific order to that effect.

(4) The appellate authority may, within a period of two years from the date of admission of such appeal, after giving the appellant an opportunity of being heard and subject to such rules as may be prescribed:

(*a*) confirm, reduce, enhance or annul the assessment or the penalty, or both; or

(*b*) set aside the assessment or penalty, or both, and direct the authority prescribed to pass a fresh order after such further enquiry as may be directed; or

(*c*) pass such other orders as it may think fit.

(4-A) Where any proceeding under this section has been deferred on account of any stay orders granted by the High Court or Supreme Court in any case or by reason of the fact that an appeal or other proceeding is pending before the High Court or the Supreme Court involving a question of law having a direct bearing on the order or proceeding in question, the period during which the stay order is in force or the period during which such appeal or proceeding is pending, shall be excluded, while computing the period of two years specified in sub-section (4) for the purpose of passing appeal order under this section.

(5) Before passing orders under sub-section (4), the appellate authority may make such enquiry as it deems fit or remand the case to any subordinate officer or authority for an inquiry and report on any specified point or points.

(6) Every order passed in appeal under this section shall, subject to the provisions of Sections 32, 33, 34 and 35 be final."

Going by the text of this provision, it is evident that the statutory appeal is required to be filed within 30 days from the date on which the order or proceeding was served on the assessee. If the appeal is filed after expiry of prescribed period, the appellate authority is empowered to condone the delay in filing the appeal, only if it is filed within a further period of not exceeding 30 days and sufficient cause for not preferring the appeal within prescribed time is made out. The appellate authority is not empowered to condone delay beyond the aggregate period of 60 days from the date of order or service of proceeding on the assessee, as the case may be.

9. In the present case, admittedly, the appeal was filed way beyond the total 60 days' period specified in terms of Section 31 of the 2005 Act. In that, the respondent had filed the appeal accompanied by an application for condonation of delay setting out reasons in the following words:

49

"2. It is submitted that the impugned Order-in-Original dated 21-6-2017 was received by the applicant on 22-6-2017 and the appeal ought to have been filed by the applicant on 21-7-2017 in terms of Section 31 of the Andhra Pradesh VAT Act, 2005. Thus, there is delay in filing the appeal. The applicants further submits that the delay is not due to any negligence on part of the applicant.

3. It is submitted that the impugned order was received by Mr P. Sriram Murthy, but the receipt of this assessment order was not informed to any other person of the company.

4. Mr P. Sriram Murthy was authorised to handle day-to-day affairs of sales tax (VAT), service tax and excise and he was also authorised to sign and submit documents with the Tax Departments, file periodic tax returns and represent the company before Tax Authorities concerned.

5. However, the company has alleged Mr P. Sriram Murthy with committing certain irregularities for past more than 12 months and initiated disciplinary proceedings against him. He has been suspended from his official duties with effect from 26-7-2018.

6. It is only post his suspension that the applicant came to know about the receipt of impugned order. Also, the appellant has come to know that Mr Murthy paid the 12.5% of the demand amount on 12-9-2017 as if it is a regular tax payment. Further, since he did not file the appeal in time, therefore to protect himself from the disciplinary action, he adopted alternate route and filed rectification application under Rule 60 which is not permissible under law in case demand has been raised on technical grounds.

7. A separate affidavit as to the facts of the case is also attached herewith.

8. It is stated that in view of the facts and circumstances mentioned above and in the attached affidavit, your Honour would appreciate that the delay in filing the appeal is completely unintentional and for the bona fide reasons stated above. The applicant company should not be imposed with tax liabilities due to inaction and mala fide intention on one employee. The applicants further submit that if the delay in filing the above numbered appeal is not condoned, the applicant would be put to great injustice and irreparable injury. On the other hand, no prejudice would be caused if the delay is condoned.

WHEREFORE, it is prayed that the learned Appellate Joint Commissioner (ST) be pleased to allow the application for condonation of delay as prayed for."

As stated in the application for condonation of delay in filing the statutory appeal, the respondent caused to file affidavit of Mr Sreedhar Routh, son of Late Mr R. Seetha Rama Swamy, who was working as Site Director in the respondent company. In this affidavit, in support of the application for condonation of delay, it is averred thus:

"...

That Mr P. Sriram Murthy, Deputy Manager-Finance, was authorised to handle day-to-day affairs of sales tax (VAT), service tax and excise. He was also authorised to sign and submit documents with the Tax Departments, file periodic tax returns and represent the company before Tax Authorities concerned.

That the CST assessment for the period 2013-14 was completed by the Assistant Commissioner (CT), LTU raising demand of Rs 76,73,197 vide assessment order dated 21-6-2017.

That the assessment order was received by Mr P. Sriram Murthy. But, the receipt of this assessment order was not informed to any other person of the company.

That Mr P. Sriram Murthy filed application under Rule 60 of the Andhra Pradesh Act, 2005 without informing the company about such filing.

That Mr P. Sriram Murthy also engaged a Chartered Accountant and filed an appeal against rejection of application filed under Rule 60. The appointment of Chartered Accountant and filing this appeal was also not informed to the company.

That the company has alleged Mr P. Sriram Murthy with committing certain irregularities and initiated disciplinary proceedings against him.

That Mr P. Sriram Murthy has been suspended from his official duties with effect from 26-7-2018. Investigation in this matter is going on.

That it is only post his suspension that we have come to know about the demand of Rs 76,73,197 lakhs raised vide CST assessment order for the year 2013-2014 and therefore could not respond or take any action in respect of this order/demand.

It is prayed that the learned Appellate Joint Commissioner (ST) be pleased to allow the application for condonation of delay as prayed for."

10. The appellate authority vide order dated 25-10-2018, considered the reasons offered by the respondent for the delay in filing of the appeal and concluded that the same were not substantiated with sufficient cause. On that finding including that the delay beyond the period of 60 days from the date of service of the assessment order on the respondent assessee cannot be condoned, the appellate authority observed thus:

"However, to abide by the principles of natural justice, the appellant has been issued notices dated 3-10-2018 and 19-10-2018 to appear for admission hearings to be held on 10-10-2018 and 25-10-2018 respectively, in the office of Appellate Deputy Commissioner (CT), Vijayawada for explaining reasons and his contentions in support of the admission of appeal petition. *The AR appeared for the admission hearing on 25-10-2018 and prayed for admission of appeal petition, but not submitted any*

51

reliable grounds and substantial documentary evidence in support of their submission that they were unaware of the receipt of original assessment order.

It is further pertinent here to record that after receiving the original assessment order, the appellant dealer has filed a request letter before the assessing authority for re-assessment under Rule 60 of the APVAT Rules, 2005. However, the AA has not considered re-assessment request, and issued an endorsement dt. 11-5-2018, rejecting the re-assessment request. The appellant also filed an appeal on such endorsement. That appeal petition based on endorsement has also not been admitted in this office and rejected vide ADC's Order No. 3470, dt. 17-8-2018. Therefore, cannot be assumed under any circumstances, and by no stretch of imagination that the appellant dealer was not aware of the service of original assessment orders. Hence, it is to be affirmed that the causes put forth for delay condonation are not rational and against the facts of the case. It is also relevant here to state that whatever may be circumstances, the delay beyond 60 days could not be condonable in the hands of the appellate authority, therefore, such request prima facie is not in tune with the provisions of the Act, hence, liable to be rejected.

From the aforesaid discussion, it is construed that no favourable grounds can be made to admit the appeal, since the appellant had failed to file appeal petition within the prescribed time under the APVAT Act, 2005. It is also pertinent here to note that the Department has duly served the original assessment order to the appellant without any procedural lapse, and also the appellant has admitted that the original orders were received on 22-6-2017.

In view of the above, since the appellant failed to prefer an appeal on the original assessment order dated 21-6-2017, which was duly served on the appellant, and as such the original assessment order has become final, and the present appeal filed by the appellant on 24-9-2018 with a delay of 1 year 62 days, hence cannot be admitted.

Further the appellants have not submitted any valid reasons/sufficient cause for not preferring the appeal within the prescribed and condonable time of 30+30=60 days of receipt of the original assessment order. Hence the appeal petition is hereby REJECTED as per the provisions of Section 31 of the APVAT Act." (emphasis supplied)

11. The appellate authority was pleased to reject the explanation that the respondent was not aware of the service of assessment order, as it remained unsubstantiated by the respondent. When the matter travelled to the High Court, the Division Bench, after hearing the respondent, proceeded to pass an ex parte order on 8-11-2018[2], which reads thus: (*Glaxo Smith case*[2], SCC OnLine Hyd)

2 *Glaxo Smith Kline Consumer Healthcare Ltd.* v. *CCT*, 2018 SCC OnLine Hyd 1989

"ORDER

It is represented by Mr S. Dwarakanath, learned counsel for the petitioner that the petitioner has already paid 12.5% of the disputed tax, for the purpose of filing an appeal. But, the employee, who was incharge and who was subsequently, suspended in contemplation of disciplinary proceedings, failed to file the appeal. The contention of the learned counsel for the petitioner is that the issue lies in a narrow campus.

Since the petitioner has already paid 12.5% of the disputed tax, the request of the petitioner for granting one more opportunity would be considered favourably, if the petitioner pays an additional amount equivalent to 12.5% of the disputed tax. The petitioner shall make such payment within a period of one week.

Post on 19-11-2018 for orders."

Be it noted that the respondent was advised to file writ petition merely for setting aside of the assessment order dated 21-6-2017, presumably, in light of the decision of the Full Bench of the same High Court in *Electronics Corpn. of India Ltd.* v. *Union of India*[3].

12. We may advert to the assertions made in the writ petition (on the basis of which the High Court was pleased to grant relief to the respondent), to explain the delay in filing of the statutory appeal including the reason why the respondent should be given one opportunity. The same read thus:

"* * *

7. From the above, it can be summarised that the total disputed demand has arisen on account of two reasons. Firstly, the first respondent has considered the total branch transfer turnover as per monthly CST returns and ignored the revised turnover as per VAT 200-B. Even though, the such revised stock transfer value was considered by the first respondent while computing the ITC credit as per Rule 20(8) of the A.P. VAT Act. Secondly, receipt of excess forms on account of inclusion of value of freebies, free samples, etc. by receiving State while issuing the F Forms. The first respondent treated these excess F Forms value as concealment by the petitioner and levied tax even, on this branch transfer value duly covered by F Forms which is [sic] grossly against the principle of law.

8. It is submitted that the order was served on the petitioner on 22-6-2017 against which, the petitioner could have preferred appeal before the second respondent within 30 days from the said date. Unfortunately, no steps were taken to file any appeal within the due date for the reason that the day-to-day affairs of the sales tax, service tax and excise law was being handled by one Mr P. Sri Ram Murthy, who was working as Deputy Manager (Finance) in the Company, who failed to take 'appropriate steps to prefer an appeal within time, by his negligence. Excepting Mr P. Sri Ram Murthy, there was no other person who was well conversant with the facts and the steps to be taken against the assessment order. The other person Mr Siddhant Belgaonker, Senior Manager (Finance) who attended

3 2018 SCC OnLine Hyd 21 : (2018) 361 ELT 22

53

the assessment hearing also left the services of the petitioner on 31-1-2018. Consequently, the assessment order remained uncontested.

9. It is respectfully submitted that apart from this act of negligence, Mr P. Sri Ram Murthy also committed certain other irregularities over a period of one year, which came to the light of the management of the Company in the month of July 2018. Immediately, disciplinary proceedings were initiated against him, by issuing a notice on 26-7-2018 (Ext. P-3) and also suspending him from official duties with immediate effect.

10. It is submitted that the petitioner was not aware of the impugned order since that fact was not brought to the notice by its own employee, due to this negligence.

11. It appears, the said Mr P. Sri Ram Murthy having realised his negligence, made further mistake, by filing an application under Rule 60 of the APVAT Rules read with Rule 14-A(10) of the CST (A.P.) Rules on 9-5-2018 (Ext. P-4) contending, inter alia, that the revised value of stock transfer as per VAT 200-B should have been considered instead of Rs 8,66,25,15,490. In the said representation, it is claimed that it has filed revised returns under the VAT Act, disclosing the correct 'F' form turnover for the purposes of restricting the input tax credit while filing Form 200-B at the end of the year. The ITC credit under VAT was also allowed by the first respondent, considering the stock transfer turnover as Rs 8,63,33,95,259. In the said representation, it was contended that the turnover of Rs 1,85,03,360, could not have been levied with the tax since it is admittedly covered by 'F' forms.

12. The representation of the petitioner under Rule 60 was rejected by the first respondent, by endorsement, dated 11-5-2018 (Ext. P-5) on the ground, that it is not a case for considering it as a mistake rectifiable under Rule 60. It is also submitted that Mr P. Sri Ram Murthy appear to have filed an appeal against the endorsement of the first respondent dated 11-5-2018 to second respondent on 28-5-2018. This was also without knowledge of the petitioner's management.

13. It is submitted that the petitioner was not aware of these developments till the misdeeds of Mr P. Sri Ram Murthy were being enquired into. It is submitted that Mr P. Sri Ram Murthy has in fact, remitted an amount of Rs 9,59,150 being 12.5% of the disputed tax in the assessment order online, on 12-9-2017 (Ext. P-6). The payment was made as if it is towards miscellaneous tax payment for June 2014. When the petitioner was seeking to reconcile as to how this amount was deposited and under what account it came to known it is for the purpose of preferring an appeal against the impugned order. All this verification happened post suspension of Mr P. Sri Ram Murthy.

14. The petitioner faced with this unfortunate situation, filed an appeal under Section 31 of the VAT Act on 24-9-2018 on the bona fide belief that there are good grounds for condonation of the delay since the petitioner cannot suffer for the errors committed by one of its employees.

15. It is submitted that the second respondent, vide order, dated 25-10-2018 (Ext. P-7), rejected the appeal on the ground that he has no power to condone the delay beyond 30 days. It is also observed in the said order that appeal against the endorsement was also dismissed by him on 17-8-2018. However, copy of the order is not yet served on the petitioner. The second respondent observed that the petitioner cannot dispute the service of assessment order on 22-6-2017 and failure to file the appeal within 60 days would mean that the assessment order has attained finality.

16. The petitioner submits that filing of a further appeal to the APVAT Appellate Tribunal at Visakhapatnam is a futile exercise, since as a creature under the Act, the Tribunal cannot find fault with the second respondent for not condoning the delay beyond 30 days.

17. The petitioner has lost the appellate remedy by efflux of time. It does not mean that the petitioner should be left remediless. The petitioner submits that a Full Bench of this Hon'ble Court in *Electronics Corpn. of India Ltd.* v. *Union of India*[3], dated 13-3-2018, dealing with similar situation, under the Central Excise Act, held that even if the appeal time under the Act has expired, it does not prevent the assessee from preferring a writ petition under Article 226 of the Constitution."

13. The High Court finally allowed the writ petition vide the impugned judgment and order[1] on the ground that the statutory remedy had become ineffective for the respondent (writ petitioner) due to expiry of 60 days from the date of service of the assessment order. Inasmuch as, the appellate authority had no jurisdiction to condone the delay after expiry of 60 days, despite the reason mentioned by the respondent of an extraordinary situation due to the act of commission and omission of its employee who was in charge of the tax matters, forcing the management to suspend him and initiate disciplinary proceedings against him. Soon after becoming aware about the assessment order, the respondent had filed the appeal, but that was after expiry of 60 days' period. The High Court was also impressed by the contention pressed into service by the respondent that it ought to be given one opportunity to explain to the authority (Assistant Commissioner) about the discrepancies between the value reported in the CST returns and the amount indicated in Form 'F' relating to the turnover. The additional reason as can be discerned from the impugned order[1] is that the respondent had already deposited an additional amount equivalent to 12.5% of the disputed tax amount in terms of the earlier order. We deem it apposite to reproduce the impugned order[1] of the High Court. The same reads thus: (*Glaxo Smith case*[1], SCC OnLine Hyd paras 3-9)

"*3*. The impugned order of assessment is dated 21-6-2017. As against the said order the petitioner filed an appeal with a delay. Since the delay was beyond the period after which it can be condoned, the same was not entertained. Therefore, the petitioner has come up with the above writ petition.

3 2018 SCC OnLine Hyd 21 : (2018) 361 ELT 22
1 *Glaxo Smith Kline Consumer Healthcare Ltd.* v. *CCT*, 2018 SCC OnLine Hyd 1985

55

4. The reason stated by the petitioner is that one of the employees who was in charge, indulged in malpractices forcing the management to suspend him and initiate disciplinary proceedings. The petitioner claims that they were not aware of these orders. Therefore, the petitioner seeks one opportunity.

5. The reason why the petitioner seeks one opportunity is that 'F' forms submitted by the petitioner were rejected by the assessing officer, on the ground that the value of the goods transferred to branch office have not been disclosed in 'F' forms. But the claim of the petitioner is that the value was wrongly reported in the CST returns and that the amount indicated in the 'F' forms was more than the turnover. Therefore, they seek one opportunity to explain this discrepancy.

6. In view of the peculiar circumstances, even while granting an opportunity to the petitioner, we wanted to put them on condition. Therefore, on 8-11-2018[2] we passed an interim order to the following effect: (*Glaxo Smith case*[2], SCC OnLine Hyd)

> 'It is represented by Mr S. Dwarakanath, learned counsel for the petitioner that the petitioner has already paid 12.5% of the disputed tax, for the purpose of filing an appeal. But, the employee, who was incharge and who was subsequently, suspended in contemplation of disciplinary proceedings, failed to file the appeal. The contention of the learned counsel for the petitioner is that the issue lies in a narrow campus.
>
> Since the petitioner has already paid 12.5% of the disputed tax, the request of the petitioner for granting one more opportunity would be considered favourably, if the petitioner pays an additional amount equivalent to 12.5% of the disputed tax. The petitioner shall make such payment within a period of one week.
>
> Post on 19-11-2018 for orders.'

7. Pursuant to the aforesaid order, the petitioner made payment of Rs 9,59,190, representing 12.5% of the taxes for the year 2013-2014 (CST). The amount was paid on 13-11-2018.

8. Therefore, the writ petition is ordered, the impugned order is set aside and the matter is remanded back to the first respondent. The petitioner shall appear before the first respondent on 10-12-2018 and explain the discrepancies. After such personal hearing, the first respondent may pass orders afresh.

9. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No costs."

14. In the backdrop of these facts, the central question is: Whether the High Court ought to have entertained the writ petition filed by the respondent? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under Article 226 of the Constitution of India, the

2 *Glaxo Smith Kline Consumer Healthcare Ltd.* v. *CCT*, 2018 SCC OnLine Hyd 1989

same is no more res integra. Even though the High Court can entertain a writ petition against any order or direction passed/action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law (see *Baburam Prakash Chandra Maheshwari* v. *Antarim Zila Parishad*[4] and also *Nivedita Sharma* v. *COAI*[5]). In *Thansingh Nathmal* v. *Supt. of Taxes*[6], the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self-imposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person. In para 7, the Court observed thus: (*Thansingh Nathmal case*[6], AIR p. 1423)

> "7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the taxing authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. *But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy.* Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. *The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.*" (emphasis supplied)

4 AIR 1969 SC 556
5 (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947
6 AIR 1964 SC 1419

57

15. We may usefully refer to the exposition of this Court in *Titaghur Paper Mills Co. Ltd.* v. *State of Orissa*[7], wherein it is observed that where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute must only be availed of. In para 11, the Court observed thus: (SCC pp. 440-41)

> "*11.* Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. *The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.* This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co.* v. *Hawkesford*[8] in the following passage:
>
> > 'There are three classes of cases in which a liability may be established founded upon statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.'
>
> The rule laid down in this passage was approved by the House of Lords in *Neville* v. *London Express Newspaper Ltd.*[9] and has been reaffirmed by the Privy Council in *Attorney General of Trinidad & Tobago* v. *Gordon Grant & Co. Ltd.*[10] and *Secy. of State* v. *Mask & Co.*[11] It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine." (emphasis supplied)

In the subsequent decision in *Mafatlal Industries Ltd.* v. *Union of India*[12], this Court went on to observe that an Act cannot bar and curtail remedy under Article 226 or 32 of the Constitution. The Court, however, added a word of caution and expounded that the Constitutional Court would certainly take note

7 (1983) 2 SCC 433 : 1983 SCC (Tax) 131
8 (1859) 6 CBNS 336, 356 : 141 ER 486
9 1919 AC 368 (HL)
10 1935 AC 532 (PC)
11 1940 SCC OnLine PC 10 : AIR 1940 PC 105
12 (1997) 5 SCC 536

of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute.

16. Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. Even while exercising that power, this Court is required to bear in mind the legislative intent and not to render the statutory provision otiose. In a recent decision of a three-Judge Bench of this Court in *ONGC* v. *Gujarat Energy Transmission Corpn. Ltd.*[13], the statutory appeal filed before this Court was barred by 71 days and the maximum time-limit for condoning the delay in terms of Section 125 of the Electricity Act, 2003 was only 60 days. In other words, the appeal was presented beyond the condonable period of 60 days. As a result, this Court could not have condoned the delay of 71 days. Notably, while admitting the appeal, the Court had condoned the delay in filing the appeal. However, at the final hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue and while dealing with the said objection, the Court referred to the decisions in *Singh Enterprises* v. *CCE*[14], *CCE* v. *Hongo (India) (P) Ltd.*[15], *Chhattisgarh SEB* v. *CERC*[16] and *Suryachakra Power Corpn. Ltd.* v. *Electricity Deptt.*[17] and concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act.

17. The principle underlying the dictum in this decision would apply proprio vigore to Section 31 of the 2005 Act including to the powers of the High Court under Article 226 of the Constitution. Notably, in this decision, a submission was canvassed by the assessee that in the peculiar facts of that case (as urged in the present case), the Court may exercise its jurisdiction under Article 142 of the Constitution, so that complete justice can be done. This argument has been considered and plainly rejected in the following words: (*ONGC case*[13], SCC pp. 48-51, paras 12-16)

> "*12.* In *A.R. Antulay* v. *R.S. Nayak*[18], while explicating and elaborating the principles under Article 142, Sabyasachi Mukharji, J. (as his Lordship then was) opined thus: (SCC p. 656, para 50)

13 (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47
14 (2008) 3 SCC 70
15 (2009) 5 SCC 791
16 (2010) 5 SCC 23
17 (2016) 16 SCC 152 : (2017) 5 SCC (Civ) 761
18 (1988) 2 SCC 602 : 1988 SCC (Cri) 372

59

'*50.* ... The fact that the rule was discretionary did not alter the position. Though Article 142(1) empowers the Supreme Court to pass any order to do complete justice between the parties, the court cannot make an order inconsistent with the fundamental rights guaranteed by Part III of the Constitution. No question of inconsistency between Article 142(1) and Article 32 arose. Gajendragadkar, J., speaking[19] for the majority of the Judges of this Court said that Article 142(1) did not confer any power on this Court to contravene the provisions of Article 32 of the Constitution. Nor did Article 145 confer power upon this Court to make rules, empowering it to contravene the provisions of the fundamental right. At AIR pp. 1002-03, para 12 : SCR p. 899 of the Reports, Gajendragadkar, J., reiterated that the powers of this Court are no doubt very wide and they are intended and "will always be exercised in the interests of justice". But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. It was emphasised that *an order which this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws*. The court, therefore, held that it was not possible to hold that Article 142(1) conferred upon this Court powers which could contravene the provisions of Article 32.'

13. The said decision has been clarified by a Constitution Bench in *Union Carbide Corpn.* v. *Union of India*[20], wherein M.N. Venkatachaliah, J. (as his Lordship then was) speaking for the majority, ruled that: (SCC pp. 634-35, para 83)

'*83.* It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142(1) of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the Supreme Court under Article 142(1) is unsound and erroneous. In both *Prem Chand Garg* v. *Excise Commr.*[19], as well as *A.R. Antulay* v. *R.S. Nayak*[18], cases the point was one of violation of constitutional provisions and constitutional rights. The observations as to the effect of inconsistency with statutory provisions were really unnecessary in those cases as the decisions in the ultimate analysis turned on the breach of constitutional rights. We agree with Shri Nariman that the power of the Court under Article 142 insofar as quashing of criminal proceedings are concerned is not exhausted by Section 320 or 321 or 482 CrPC or all of them put together. The power under Article 142 is at an entirely different

19 *Prem Chand Garg* v. *Excise Commr.*, AIR 1963 SC 996
20 (1991) 4 SCC 584
18 (1988) 2 SCC 602 : 1988 SCC (Cri) 372

level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers — limited in some appropriate way — is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Shri Sorabjee, learned Attorney General, referring to *Garg case*[19], said that limitation on the powers under Article 142 arising from "inconsistency with express statutory provisions of substantive law" must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the expression "prohibition" is read in place of "provision" that would perhaps convey the appropriate idea. But *we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of "complete justice" of a cause or matter, the Supreme Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly.* The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not "complete justice" of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise.'

14. In this regard, another Constitution Bench in *Supreme Court Bar Assn.* v. *Union of India*[21] opined: (SCC pp. 437-38, para 56)

'*56.* As a matter of fact, *the observations on which emphasis has been placed by us from the Union Carbide case*[20], *A.R. Antulay case*[18] and *Delhi Judicial Service Assn.* v. *State of Gujarat*[22], *go to show that they do not strictly speaking come into any conflict with the observations of the majority made in Prem Chand Garg case*[19]. It is one thing to say that "prohibitions or limitations in a statute" cannot come in the way of exercise of jurisdiction under Article 142 *to do complete justice* between the parties in the pending "cause or matter" arising out of that statute, but quite a different thing to say that while

19 *Prem Chand Garg* v. *Excise Commr.*, AIR 1963 SC 996
21 (1998) 4 SCC 409
20 *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584
18 *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372
22 (1991) 4 SCC 406

61

exercising jurisdiction under Article 142, this Court can altogether *ignore* the substantive provisions *of a statute*, dealing with the subject and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. This Court did not say so in *Union Carbide case*[20] either expressly or by implication and on the contrary it has been held that the Supreme Court *will take note of the express provisions of any* substantive statutory law and regulate the exercise of its power and discretion accordingly. ...'

15. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in *Supreme Court Bar Assn.* v. *Union of India*[21], has ruled that there is no conflict of opinion in *Antulay case*[18] or in *Union Carbide Corpn. case*[20] with the principle set down in *Prem Chand Garg* v. *Excise Commr.*[19] *Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy* as has been held in *Union Carbide Corpn. case*[20]. As the pronouncement in *Chhattisgarh SEB* v. *CERC*[16], lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. *To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution.*

16. We had stated earlier that we will be adverting to the passage in *Suryachakra Power Corpn. Ltd.* v. *Electricity Deptt.*[17] There, the Court had referred to Section 14 of the Limitation Act. It fundamentally relied on *M.P. Steel Corpn.* v. *CCE*[23], wherein the Court after referring to certain authorities, analysed thus: (*M.P. Steel Corpn. case*[23], SCC p. 91, para 43)

'*43.* ... when a certain period is excluded by applying the principles contained in Section 14, there is no delay to be attributed to the

20 *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584
21 (1998) 4 SCC 409
18 *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372
19 AIR 1963 SC 996
16 (2010) 5 SCC 23
17 (2016) 16 SCC 152 : (2017) 5 SCC (Civ) 761
23 (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510

appellant and the limitation period provided by the statute concerned continues to be the stated period and not more than the stated period. We conclude, therefore, that the principle of Section 14 which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case.' "

(emphasis in original and supplied)

Similarly, in *State* v. *Mushtaq Ahmad*[24], this Court opined that where minimum sentence is provided for an offence then no court can impose lesser punishment on ground of mitigating factors.

18. A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution.

19. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in *Electronics Corpn. of India Ltd.*[3], which had adopted the view taken by the Full Bench of the Gujarat High Court in *Panoli Intermediate (India) (P) Ltd.* v. *Union of India*[25] and also of the Karnataka High Court in *Phoenix Plasts Co.* v. *CCE*[26]. The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 2005 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction — by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in *ONGC*[13] In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may

24 (2016) 1 SCC 315 : (2016) 1 SCC (Cri) 255
3 *Electronics Corpn. of India Ltd.* v. *Union of India*, 2018 SCC OnLine Hyd 21 : (2018) 361 ELT 22
25 2015 SCC OnLine Guj 570 : AIR 2015 Guj 97
26 2013 SCC OnLine Kar 10432 : (2013) 298 ELT 481
13 *ONGC* v. *Gujarat Energy Transmission Corpn. Ltd.*, (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47

63

be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.

20. The respondent had relied on the decision of this Court in *K.S. Rashid & Son* v. *Income Tax Investigation Commission*[27]. This decision of the Constitution Bench, no doubt, deals with the extent of power of the High Court under Article 226 of the Constitution and the situation when the High Court can refuse to exercise its discretion, such as when alternative efficacious remedy is available to the aggrieved party. In para 4 (last paragraph) of this decision, however, the Court plainly noted that it was not necessary to express any final opinion on the question as to whether Section 8(5) of the Taxation on Income (Investigation Commission) Act, 1947 (Act 30 of 1947) is to be regarded as providing the only remedy available to the aggrieved party and that it excludes altogether the remedy provided for under Article 226 of the Constitution.

21. Reliance was then placed on a three-Judge Bench decision of this Court in *ITC Ltd.* v. *Union of India*[28]. In that case, the High Court had dismissed the writ petition on the ground that the petitioner therein had an adequate alternative remedy by way of an appeal under Section 35 of the Central Excise Act. Concededly, this Court was pleased to uphold that opinion of the High Court. However, whilst considering the difficulty expressed by the petitioner therein that the statutory remedy of appeal had now become time-barred during the pendency of the proceedings before the High Court and before this Court, the Court permitted the petitioner therein to resort to remedy of statutory appeal and directed the appellate authority to decide the appeal on merits. This obviously was done on the basis of concession given by the counsel appearing for the Revenue as noted in para 2(1) of the order, which reads thus: (SCC pp. 610-11)

> "2. The High Court has dismissed the writ petition filed by the petitioner on the ground that there is an adequate alternative remedy by way of an appeal under Section 35 of the Central Excise Act. The learned counsel for the petitioner submits that the petitioner will face certain difficulties in pursuing this remedy:
>
> (*1*) This remedy may not be any longer available to it because the appeal has to be filed within a period of three months from the date of the assessment order and delay can be condoned only to the extent of three more months by the Collector under Section 35 of the Act. It is pointed out that the petitioner did not file an appeal because the Collector (Appeal) at Madras had taken a view in a similar matter that an appeal was not maintainable. That apart, the petitioner in view of the huge demand involved filed a writ petition and so did not file an appeal. In the circumstances of the case, we are of the opinion that the ends of justice will be met if we permit the petitioner to file a belated appeal within one month from today with an application for condonation of delay, whereon the appeal may be entertained. *The learned counsel for*

27 AIR 1954 SC 207
28 (1998) 8 SCC 610

the Revenue has stated before us that the Revenue will not object to the entertainment of the appeal on the ground that it is barred by time. In view of this direction and concession, the petitioner will have an effective alternative remedy by way of an appeal. (emphasis supplied)

In that case, it appears that the writ petition was filed within statutory period and legal remedy was being pursued in good faith by the assessee (appellant).

22. Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the assessment order even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such.

23. *Arguendo*, reverting to the factual matrix of the present case, it is noticed that the respondent had asserted that it was not aware about the passing of assessment order dated 21-6-2017 although it is admitted that the same was served on the authorised representative of the respondent on 22-6-2017. The date on which the respondent became aware about the order is not expressly stated either in the application for condonation of delay filed before the appellate authority, the affidavit filed in support of the said application or for that matter, in the memo of writ petition. On the other hand, it is seen that the amount equivalent to 12.5% of the tax amount came to be deposited on 12-9-2017 for and on behalf of respondent, without filing an appeal and without any demur — after the expiry of statutory period of maximum 60 days, prescribed under Section 31 of the 2005 Act. Not only that, the respondent filed a formal application under Rule 60 of the 2005 Rules on 8-5-2018 and pursued the same in appeal, which was rejected on 17-8-2018. Furthermore, the appeal in question against the assessment order came to be filed only on 24-9-2018 without disclosing the date on which the respondent in fact became aware about the existence of the assessment order dated 21-6-2017. On the other hand, in the affidavit of Mr Sreedhar Routh, Site Director of the respondent Company (filed in support of the application for condonation of delay before the appellate authority), it is stated that the Company became aware about the irregularities committed by its erring official (Mr P. Sriram Murthy) in the month of July 2018, which presupposes that the respondent must have become aware about the assessment order, at least in July 2018. In the same affidavit, it is asserted that the respondent Company was not aware about the assessment order, as it was not brought to its notice by the employee concerned due to his negligence. The respondent in the writ petition has averred that the appeal was rejected by the appellate authority on the ground that it had no power to condone the delay beyond 30 days, when in fact, the order examines the cause set out by the respondent and concludes that the same was unsubstantiated by the respondent. That finding has not been examined by the

High Court in the impugned judgment and order[1] at all, but the High Court was more impressed by the fact that the respondent was in a position to offer some explanation about the discrepancies in respect of the volume of turnover and that the respondent had already deposited 12.5% of the additional amount in terms of the previous order passed by it. That reason can have no bearing on the justification for non-filing of the appeal within the statutory period. Notably, the respondent had relied on the affidavit of the Site Director and no affidavit of the employee concerned (P. Sriram Murthy, Deputy Manager-Finance) or at least the other employee [Siddhant Belgaonker, Senior Manager (Finance)], who was associated with the erring employee during the relevant period, has been filed in support of the stand taken in the application for condonation of delay. Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non-compliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August 2017 itself and the appeal came to be filed by the respondent only on 24-9-2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all.

24. Reverting to the contention that the respondent having failed to assail the order passed by the appellate authority, dated 25-10-2018 rejecting the application for condonation of delay, the assessment order passed by the Assistant Commissioner, dated 21-6-2017 stood merged, need not detain us in view of the exposition of this Court in *Raja Mechanical Co. (P) Ltd.* v. *CCE*[29]. It is well settled that rejection of delay application by the appellate forum does not entail in merger of the assessment order with that order.

25. Taking any view of the matter, therefore, the High Court ought not to have entertained the subject writ petition filed by the respondent herein. The same deserved to be rejected at the threshold.

26. Accordingly, we allow this appeal and set aside the impugned judgment and order[1] passed by the High Court and dismiss the writ petition. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

---

1 *Glaxo Smith Kline Consumer Healthcare Ltd.* v. *CCT*, 2018 SCC OnLine Hyd 1985
29 (2012) 12 SCC 613

(2021) 2 Supreme Court Cases 317

(BEFORE S.A. BOBDE, C.J. AND A.S. BOPANNA AND V. RAMASUBRAMANIAN, JJ.)

SAGUFA AHMED AND OTHERS .. Appellants;

Versus

UPPER ASSAM POLYWOOD PRODUCTS PRIVATE LIMITED AND OTHERS .. Respondents.

Civil Appeals Nos. 3007-3008 of 2020†, decided on September 18, 2020

A. **Practice and Procedure — Delay/Laches/Limitation — Extension of period of limitation during COVID-19 Pandemic — Judgment dt. 23-3-2020 in *Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10 — Scope of, clarified**

— Held, the said judgment extended only period of limitation — It did not extend period up to which delay can be condoned in exercise of discretion conferred by the statute concerned — This order was intended to benefit vigilant litigants who were prevented due to the pandemic and lockdown, from initiating proceedings within the period of limitation prescribed by general or special law — Limitation — Generally (Paras 16 and 17)

Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343, *explained*

B. **Corporate Laws — Companies Act, 2013 — Ss. 421(3) and 420(3) — Period of limitation — Commencement of — Inter-relationship between Ss. 420(3) and 421(3) and their invocation — Refusal of Tribunal to condone delay filed beyond permissible period — Legality of — On facts held, Tribunal justified in rejection of application for delay of condonation and dismissal of appeal — Further, prayer for condonation of delay by placing reliance on order of Supreme Court in *Cognizance for Extension of Limitation, In re*, declined**

— Held, under S. 421(3) period of limitation starts from day on which certified copy is made available to the aggrieved party — S. 421(3) can be invoked when aggrieved person does not apply for certified copies instead waits for it as per S. 420(3) and R. 50 of the National Company Law Tribunal Rules, 2016 — If aggrieved person applied for certified copies, then S. 421(3) cannot be invoked

— Appellants had preferred a petition before NCLT for winding up of the company — Their petition was dismissed on 25-10-2019 — Certified copy of the order was applied on 21-11-2019 (as per records it is on 22-11-2019) — Certified copy was received by their counsel on 19-12-2019 — They filed appeals before NCLT on 20-7-2020 — The appeals were dismissed on ground of delay as it was not filed within time prescribed under S. 421(3) of the Companies Act, 2013

† Arising from the Judgment and Order in *Saguſa Ahmed* v. *Upper Assam Plywood Products (P) Ltd.*, 2020 SCC OnLine NCLAT 609 [National Company Law Appellate Tribunal, IA No. 1771 of 2020 and Company Appeal (AT) No. 118 of 2020, dt. 4-8-2020]

— On facts held, counsel for the appellants received certified copy on 19-12-2019 — 45 days' period expired on 2-2-2020 — NCLAT can condone delay of further 45 days, which expired on 18-3-2020 — Appellants filed appeal on 20-7-2020 — Lockdown started on 24-3-2020 — They cannot take shelter under judgment dt. 23-3-2020 passed in *Cognizance for Extension of Limitation, In re* — Hence, NCLAT justified in dismissing the appeals of the appellants — Insolvency and Bankruptcy Laws — National Company Law Tribunal Rules, 2016, R. 50 (Paras 9 to 15 and 23)

Sagufa Ahmed v. *Upper Assam Plywood Products (P) Ltd.*, 2020 SCC OnLine NCLAT 609, *affirmed*

Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343, *explained*

Sagufa Ahmed v. *Upper Assam Plywood Products (P) Ltd.*, 2019 SCC OnLine NCLT 749, *referred to*

C. **Limitation — Generally — Law of limitation — Origin of — S. 4 of Limitation Act, 1963 vis-à-vis S. 10(1) of the General Clauses Act, 1897 — Similarities between — Expression "prescribed period" appearing in Limitation Act, 1963 — Meaning of**

— Held, origin of law of limitation can be traced to maxim *vigilantibus et non dormientibus jura subveniunt* — It means law will assist only those who are vigilant about their rights and not those who sleep over them

— Principles forming S. 10(1) of the General Clauses Act, 1897 are found in S. 4 of the Limitation Act, 1963

— Expression "prescribed period" not defined in the Limitation Act, 1963 — It is used to denote and construed to mean period of limitation — Any period beyond prescribed period during which the court/tribunal has discretion to allow a person to institute proceedings, cannot be taken as "prescribed period" — Doctrines and Maxims — Vigilantibus Et Non Dormientibus Jura Subveniunt — Words and Phrases — "Prescribed period" — General Clauses Act, 1897 — S. 10 — Limitation Act, 1963, Ss. 2(j), 3(1), 4, 5 and 6 (Paras 18 to 22)

Assam Urban Water Supply & Sewerage Board v. *Subash Projects & Mktg. Ltd.*, (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831, *affirmed*

Appeals dismissed G-D/65896/CV

Advocates who appeared in this case :

Sajan Poovayya, Senior Advocate [Gunjan Singh, Satya Mitra, Chandrashekhar A. Chakalabbi, Angshuman Sarma, Prathibhanu, Raksha Agarwal, Shiv Kr. Pandey, Awanish Kumar and Anshul Rai (for M/s Dharmaprabhas Law Associates), Advocates], for the appearing parties.

Chronological list of cases cited ***on page(s)***

The Judgment of the Court was delivered by

V. RAMASUBRAMANIAN, J.— Challenging an order[1] passed by the National Company Law Appellate Tribunal (hereinafter referred to as "NCLAT") dismissing an application for condonation of delay as well as an appeal as time-barred, the appellants have come up with the above appeals.

2. We have heard Mr Gunjan Singh, learned counsel for the appellants and Mr Sajan Poovayya, learned Senior Counsel who accepts notice on behalf of the first respondent.

3. The appellants herein together claim to hold 24.89% of the shares of a company by name Upper Assam Plywood Products (P) Ltd., which is the first respondent herein. The appellants moved an application before the Guwahati Bench of the National Company Law Tribunal (hereinafter referred to as "NCLT") for the winding up of the company. The said petition was dismissed by NCLT by an order dated 25-10-2019[2].

4. According to the appellants, they applied for a certified copy of the order of NCLT dated 25-10-2019[2], on 21-11-2019 (though the appellants have claimed in the memo of appeal that they applied for a certified copy on 21-11-2019, the copy application filed as Annexure P-1 bears the date 22-11-2019).

5. According to the appellants, the certified copy of the order dated 25-10-2019[2] passed by NCLT was received by their counsel on 19-12-2019, pursuant to the copy application made on 21-11-2019. Though the appellants admittedly received the certified copy of the order on 19-12-2019, they chose to file the statutory appeal before NCLAT on 20-7-2020. The appeal was filed along with an application for condonation of delay.

6. By an order dated 4-8-2020[1], the Appellate Tribunal dismissed the application for condonation of delay on the ground that the Tribunal has no power to condone the delay beyond a period of 45 days. Consequently the appeal was also dismissed. It is against the dismissal of both the application for condonation of delay as well as the appeal, that the appellants have come up with the present appeals.

7. The contentions raised by the learned counsel for the appellants are twofold, namely, (*i*) that the Appellate Tribunal erred in computing the period of limitation from the date of the order[2] of NCLT, contrary to Section 421(3) of the Companies Act, 2013, and (*ii*) that the Appellate Tribunal failed to take note of the lockdown as well as the order passed by this Court on 23-3-2020 in *Cognizance for Extension of Limitation, In re*[3], extending the period of limitation for filing any proceeding with effect from 15-3-2020 until further orders.

8. Let us now test the correctness of the contentions one by one.

1 *Saguſa Ahmed* v. *Upper Assam Plywood Products (P) Ltd.*, 2020 SCC OnLine NCLAT 609
2 *Saguſa Ahmed* v. *Upper Assam Plywood Products (P) Ltd.*, 2019 SCC OnLine NCLT 749
3 (2020) 19 SCC 10 : 2020 SCC OnLine SC 343

69

Contention I

9. Section 420(3) of the Companies Act, 2013 mandates NCLT to send a copy of every order passed under Section 420(1) to all the parties concerned. Section 420(3) reads as follows:

> "**420.** ***Orders of Tribunal.***—(1)-(2) * * *
>
> (3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned."

10. Rule 50 of the National Company Law Tribunal Rules, 2016 also mandates the Registry of NCLT to send a certified copy of the final order to the parties concerned free of cost. However, Rule 50 also enables the Registry of NCLT to make available the certified copies with cost as per the schedule of fees in all other cases (meaning thereby "to persons who are not parties"). Rule 50 reads as follows:

> "**50.** ***Registry to send certified copy.***—The Registry shall send a certified copy of final order passed to the parties concerned free of cost and the certified copies may be made available with cost as per the schedule of fees, in all other cases."

11. Section 421(1) provides for a remedy of appeal to the Appellate Tribunal as against an order of NCLT. Sub-section (3) of Section 421 prescribes the period of limitation for filing an appeal and the proviso thereunder confers a limited discretion upon the Appellate Tribunal to condone the delay. Sub-section (3) of Section 421 together with the proviso thereunder reads as follows:

> "**421.** ***Appeal from orders of Tribunal.***—(1)-(2) * * *
>
> (3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:
>
> Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period."

12. Therefore, it is true, as contended by the appellants, that the period of limitation of 45 days prescribed in Section 421(3) would start running only from the date on which a copy of the order of the Tribunal is made available to the person aggrieved. It is also true that under Section 420(3) of the Act read with Rule 50, the appellants were entitled to be furnished with a certified copy of the order free of cost.

13. Therefore if the appellants had chosen not to file a copy application, but to await the receipt of a free copy of the order in terms of Section 420(3) read with Rule 50, they would be perfectly justified in falling back on Section 421(3), for fixing the date from which limitation would start running. But the appellants in this case, chose to apply for a certified copy after 27 days of the pronouncement of the order in their presence and they now fall back upon Section 421(3).

70

14. Despite the above factual position, we do not want to hold against the appellants, the fact that they waited from 25-10-2019 (the date of the order[2] of NCLT) up to 21-11-2019, to make a copy application. But at least from 19-12-2019, the date on which a certified copy was admittedly received by the counsel for the appellants, the period of limitation cannot be stopped from running. From 19-12-2019, the date on which the counsel for the appellants received the copy of the order, the appellants had a period of 45 days to file an appeal. This period expired on 2-2-2020.

15. By virtue of the proviso to Section 421(3), the Appellate Tribunal was empowered to condone the delay up to a period of 45 days. This 45 days started running from 2-2-2020 and it expired even according to the appellants on 18-3-2020. The appellants did not file the appeal on or before 18-3-2020, but filed it on 20-7-2020. It is relevant to note that the lockdown was imposed only on 24-3-2020 and there was no impediment for the appellants to file the appeal on or before 18-3-2020. To overcome this difficulty, the appellants rely upon the order of this Court dated 23-3-2020[3]. This takes us to the second contention of the appellants.

Contention 2

16. To get over their failure to file an appeal on or before 18-3-2020, the appellants rely upon the order of this Court dated 23-3-2020 in *Cognizance for Extension of Limitation, In re*[3]. It reads as follows: (SCC paras 1-5)

> "*1.* This Court has taken suo motu cognizance of the situation arising out of the challenge faced by the country on account of COVID-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws (both Central and/or State).
>
> *2.* To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective courts/tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended w.e.f. 15-3-2020 till further order(s) to be passed by this Court in present proceedings.
>
> *3.* We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all courts/tribunals and authorities.
>
> *4.* This order may be brought to the notice of all High Courts for being communicated to all subordinate courts/tribunals within their respective jurisdiction.
>
> *5.* Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

2 *Saguſa Ahmed* v. *Upper Assam Plywood Products (P) Ltd.*, 2019 SCC OnLine NCLT 749
3 *Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343

17. But we do not think that the appellants can take refuge under the above order in *Cognizance for Extension of Limitation, In re*[3]. *What was extended by the above order*[3] *of this Court was only "the period of limitation" and not the period up to which delay can be condoned in exercise of discretion conferred by the statute.* The above order[3] passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is *vigilantibus et non dormientibus jura subveniunt* which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.

18. It may be useful in this regard to make a reference to Section 10 of the General Clauses Act, 1897 which reads as follows:

> "**10.** ***Computation of time.***—(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:
>
> Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.
>
> (2) This section applies also to all Central Acts and, Regulations made on or after the fourteenth day of January, 1887."

19. The principle forming the basis of Section 10(1) of the General Clauses Act, also finds a place in Section 4 of the Limitation Act, 1963 which reads as follows:

> "**4.** ***Expiry of prescribed period when court is closed.***—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.
>
> *Explanation.*—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day."

20. The words "prescribed period" appear in several sections of the Limitation Act, 1963. Though these words "prescribed period" are not defined in Section 2 of the Limitation Act, 1963, the expression is used throughout, only to denote the period of limitation. We may see a few examples:

20.1. Section 3(1) makes every proceeding filed after the *prescribed period*, liable to be dismissed, subject however to the provisions in Sections 4 to 24.

20.2. Section 5 enables the admission of any appeal or application after the *prescribed period.*

3 (2020) 19 SCC 10 : 2020 SCC OnLine SC 343

22

20.3. Section 6 uses the expression *prescribed period* in relation to proceedings to be initiated by persons under legal disability.

21. Therefore, the expression "prescribed period" appearing in Section 4 cannot be construed to mean anything other than the period of limitation. Any period beyond the *prescribed period*, during which the court or tribunal has the discretion to allow a person to institute the proceedings, cannot be taken to be "prescribed period".

22. In *Assam Urban Water Supply & Sewerage Board* v. *Subash Projects & Mktg. Ltd.*[4], this Court dealt with the meaning of the words "prescribed period" in paras 13 and 14 as follows: (SCC pp. 627-28)

> "*13*. The crucial words in Section 4 of the 1963 Act are "prescribed period". What is the meaning of these words?
>
> *14*. Section 2(*j*) of the 1963 Act defines:
>
> > "**2. (*j*) "period of limitation"** which means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act."
>
> Section 2(*j*) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside arbitral award is three months. The period of 30 days mentioned in proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the "period of limitation" and, therefore, not "prescribed period" for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the "period of limitation" or, in other words, "prescribed period", in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case."

23. Therefore, the appellants cannot claim the benefit of the order passed by this Court on 23-3-2020[3], for enlarging, even the period up to which delay can be condoned. The second contention is thus untenable. Hence the appeals are liable to be dismissed. Accordingly, they are dismissed.

---

4 (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831

3 *Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343

73

Item No.8:

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Original Application No. 257 of 2017 (SZ)

(Through Video Conference)

IN THE MATTER OF:

M/s. MCV Eco Systems
Rep. by its Partner,
Mr. Metta Rajagopal Reddy,
S/o. Sri M. Sanath Kumar Reddy,
Aged 35 years, R. Sy. No.527/4,
Kadiyam Village and Mandal,
East Godavari District – 533 126.

... Applicant(s)

Versus

1) State of Andhra Pradesh,
Rep. by its Principal Secretary,
Environment, Forest, Science and Technology,
Secretariat, Amaravathi, Guntur District -522 020.

2) The Andhra Pradesh State Pollution Control Board,
Rep. by its Member Secretary,
Pariyavaran Bhavan, A-III, Industrial Estate,
Sanathnagar, Hyderabad - 500 018.

3) The Joint Chief Environmental Engineer (FAC),
Unit Head IV, Andhra Pradesh Pollution Control Board,
Zonal Office, Vijayawada, Krishna District – 520 008.

4) The Environmental Engineer,
Regional Office,
Andhra Pradesh Pollution Control Board,
Rajahmurthy, East Godavari District – 533 101.

14

5) M/s. Godavari Bio Management
Rep. by its Managing Partner
Sri. Y. Papa Rao, H. No.2-31,
Peddada, Pedapudi, East Godavari District,
Andhra Pradesh – 533 344.

...Respondent(s)

Date of Order/Judgment: 14th September, 2020.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Applicant(s): M/s. Srinivasa Moorthy
For M/s. P. Venkaiah Naidu

For Respondent(s): M/s. Madhuri Donti Reddy for R1 to R4.
M/s. K.S. Viswanathan for R5.

JUDMGNET

1. The grievance in this application is regarding the setting up of Bio Medical Waste Treatment Facility in East Godavari District. According to the applicant, the present facility available is not sufficient to cater to the needs of the disposal of the Bio Medical waste generated including veterinary and other medical waste by the laboratories and also the health care centres.

2. It is mentioned in the application that earlier Writ Petition No.45825 of 2016 was filed before the Hon'ble High Court of Judicature at Hyderabad for State of Telangana and State of Andhra Pradesh and the same was disposed of by the Hon'ble High Court by order dated 28.12.2016 recording the submissions made by the standing counsel for the Board that they would consider the application in accordance with the rules now in force within six weeks from that date.

3. It is on that basis, the 2nd respondent/Andhra Pradesh Pollution Control Board (APPCB) had rejected the application for Consent to Establish by their Proceeding No.APPCB/VSP/KKD/ POL1500013/HO/CBMWTF/2017 dated 07.02.2017 for the following reasons:

   a. As per the notification S.O. 1142 (E) dated 17.04.2015 of MoEF&CC which was issued as an amendment to EIA Notification S.O. 1533 (E) dated 14.09.2016, the CBMWTF shall obtain prior environmental clearance from the SEIAA, A.P.

   b. There are small water bodies (Panchayat Cheruvu – 3 Nos. of each about 3, 3 & 2 acres respectively) are existing at a distance of about 260 Mtrs & 750 Mts in the northern direction of the site.

4. According the applicant, this was not communicated to him. He filed an application before this Tribunal as Original Application No.110 of 2017(SZ) ventilating his grievances and this Tribunal had disposed of the matter by directing the Board to dispose of the said application in accordance with law.

5. It is also mentioned in the application that the applicant had submitted their application for grant of Environmental Clearance and the same was considered in the 108th Meeting of the State Expert Appraisal Committee (SEAC) under the Environment Impact Assessment (EIA) Notification, 2006 and it was recommended that the applicant has to obtain the IN PRINCIPLE Permission from the Andhra Pradesh Pollution Control Board duly following the Bio Medical Waste Management Rules, 2016 and the Central Pollution Control Board Revised Guidelines – 21st December, 2016 for the proposed Common Bio-Medical Waste Treatment Facility (CBMWTF).

6. It is also alleged in the application that another application was filed before this Tribunal as Original Application No.118 of 2017(SZ) and this Tribunal had disposed of the matter directing the respondents therein to follow the law relating to the same and also the revised guidelines of the CPCB including the guidelines if any, of the State Pollution Control Board while

considering the applicant's application for grant of Environmental Clearance (EC) by the SEIAA or Consent for Establishment by the Board.

7. Later, it was revealed that Consent to Establish was granted to the fifth respondent by the Andhra Pradesh Pollution Control Board and the application filed by the applicant was rejected.

8. That prompted the applicant to file this application seeking the following reliefs:-

> *"For the facts submitted above the applicant prays that Hon'ble Tribunal may be pleased to declare the impugned action of the respondents in considering the application for Consent for Establishment made by the 5th respondent herein is illegal, arbitrary, capricious, high handed, violate all cannons of law and justice and consequently reject the same and pass such other order or further orders as this Hon'ble Tribunal deems fit and proper under the circumstances of the same."*

9. Fourth respondent filed their reply statement which reads as follows:-

> *"2. It is respectfully submitted that the above application has been filed by the applicant, praying to declare the action of the respondent Board in considering the application for Consent for Establishment (CFE) made*

by the fifth respondent as illegal, arbitrary, capricious, high handed, in violation of all canons of law and justice and to reject the same and to pass such further or other orders.

3. It is most respectfully submitted that such a prayer as sought for is not at all maintainable before this Hon'ble Tribunal. No prayers can be sought for as against the consideration of an application by this respondent Board for grant of Consent for Establishment and such a prayer is totally misconceived and hence, the application ought to be dismissed in limini. In the event of consent being granted, there is an appellate remedy available under the provisions of the Water (Prevention & Control of Pollution) Act and the Air (Prevention & Control of Pollution) Act. While that being so, the present application itself is totally premature and filed on the basis of certain assumptions and presumptions and ought not to be entertained.

4. This respondent further states and submits that the 5th respondent i.e. M/s. Godavari Bio Management obtained Environmental Clearance from SEIAA vide order dated 15.10.2018 for setting up a Common Bio Medical Waste Treatment Facility. The 5th respondent also applied for Consent for Establishment of the Board vide application dated 30.10.2018 and the Board vide order dated 30.11.2018 issued CFE to the proposed treatment facility stipulating certain conditions. The copy of the CFE issued to the 5th respondent is filed as Annexure R-1. Thus the prayer in the above application has also become infructuous.

5. As regards the averments contained in Para 1 of the Application are concerned, it is respectfully submitted that as per the information furnished by the MD & HO, the

bed strength in East Godavari District is 17238 covering 877 HCFs as on 31.03.2018. Apart from that, Veterinary Institutions/ Hospitals/ Dispensaries of 160 Nos. have been submitted by Animal Husbandry Department. A tabulation of number of HCEs existing / operating in East Godavari District as on 31.12.2018 is filed as Annexure R2.

6. With respect to the averments contained in Para 2 of the Application are concerned, it is submitted that the Applicant applied for consent for establishment on 25.05.2015 through single desk system for setting up a Common Bio Medical Waste Treatment Facility (CBMWTF) at R. Sy. No.527/4 Kadiyam V & M, East Godavari District in the name of the Applicant.

7. As regards the averments contained in Para 3 are concerned, it is not correct to state that the Applicant intended to have the treatment facility on a zero liquid discharge basis. The proposal submitted by the applicant was to treat the waste water generated consisting of bar screen chamber, collection and neutralization tank, primary clarifier, aeration tank, secondary clarifier, filter feed pump, multi media filter, treated water tank, sludge draining base and proposal to utilize the treatment effluent for the development of the green belt. Therefore, the averments contrary to the same are not correct.

8. As regards the averments contained in Para 4 are concerned, it is submitted that the proponent had submitted proposals to treat the waste water generated as stated in the earlier para.

9. As regards the averments contained in Para 5 are concerned, it is true that this Respondent Board vide order dated 16.06.2015 had rejected the CFE Application for the following reasons:

a) As per the CPCB guidelines regarding coverage area of CBMWTF, only one CBMWTF may be allowed to cater upto 10,000 beds at the approved rate by the prescribed authority. CBMWTF shall not be allowed to cater the health care units situated beyond the radius of 150 Kms. However, in an area where 10,000 beds are not available within the radius of 150 Kms, another CBMWTF may be allowed to cater the health care units situated outside the said 150 Kms.

b) There is one CBMWTF presently operating in East Godavari District at Kanavaram Village, Rajanagaram Mandal, East Godavari District at a distance of about 20 Kms from the proposed CBMWTF. The bed strength of HCEs in the East Godavari District is only about 10900.

10. As regards the averments contained in Para 6 are concerned, it is submitted that the Hon'ble High Court while disposed the writ petition filed by the applicant as against the rejection dated 16.06.2015 recorded the submission of this respondent Board that the applicant's application would be considered in accordance with the rules then in force within a period of 6 weeks from the date of the order, i.e. 28.12.2016.

11. As regards the averments in Para 7 are concerned, it is submitted that, in pursuance of the directions issued by the Hon'ble High Court, this respondent Board examined the CFE Application of the Application to set up a Common Bio Medical Waste Treatment Facility at R. Sy. NO.527/4 Kadiyam Village and Mandal, East Godavari District and after careful examination of the Application, the same was rejected on 07.02.2017 for the following reasons:

a) That the Environmental Clearance was yet to be obtained.

b) That there are small water bodies (Panchayat Cheruvu) 3 Nos. of each about 3, 3 & 2 Acres existing at a distance of about 260 metres, 540 metres & 750 metres in the Northern direction of the site.

12. As regards the averments in Para 8 are concerned, it is not true that the rejection order was not served on the applicant. This respondent Board vide order dated 07.02.2017, issued a rejection order to the applicant which was sent to the applicant through Registered Post (RN280973666IN) with a copy marked to the Environmental Engineer, Regional Office, Kakinada. (A copy of the true extract of the dispatch register of the Board is herewith enclosed as Annexure – R3) The copy of the said order has also been filed by the applicant himself as an Annexure in the above application. While disposing the Application No.110 of 2017, this Hon'ble NGT has observed in its order dated 26.05.2017, that the Applicant had already filed an application seeking for Environmental Clearance before the SEIAA and that is for the SEIAA to pass such appropriate orders, if such application has been received. It was further observed that on obtaining such Environmental Clearance, that it will be open to the Board to consider the Application for Consent to Establish of the applicant and to pass orders on merit and in accordance with law. It is submitted that the Board has not received any request either from SEAC or from SEIA for issue on in-principle permission from the Board for establishment of CBMWTF by MCV Eco systems. Hence the allegation of the applicant that the matter is pending for consideration of the Board is not true.

13. The CFE application filed by M/s. MCV Eco Systems for the proposed site at Sy. No.527/4, Kadiyam (V&M), East Godavari District was rejected twice based on

the relevant reasons only as stated at Para Nos.9 & 11. M/s. MCV Eco System also agreed with the decision of the Board and changed the location. The Board never delayed processing the application of M/s. MCV Eco System. M/s. MCV Eco System again filed a Writ Petition 5720 of 2018 on non-issuance of CFE for establishment of CBMWTF in East Godavari District. The Hon'ble High Court while disposing the W.P. No.5720 of 2018 in its order dated 07.03.2018 pronounced the following:

"Board to examine the petitioner's request for their grant of consent, to establish a unit at the indentified site, in accordance with the guidelines framed either by the Ministry of Environment, Forest and Climate Change or the Central Pollution Control Board, and communicate their opinion to the petitioner within two weeks from the date of receipt of their application. It is made clear that the views expressed by the Board would relate only to the site, where the unit is sought to be located, in terms of 17(2) of the 2016 Rules, and shall not be construed either as grant of, or refusal to grant, consent for establishment of the unit as it is only if, and after, the State Level Impact Assessment Authority gives its approval for prior environmental clearance, would the question of grant of consent for establishment arise."

Subsequently, M/s. MCV Eco System approached the Board on 14.03.2018 with a request to located the unit at a new site at Sy. No.55, 56/1, Srungadhara (V), Sankavaram, East Godavari District. In obedience to the Hon'ble High Court order, the A.P. Pollution Board communicated the compliance status of the site with the guidelines stipulated by CPCB with regard to establishment of CBMWTF, vide letter dated 27.03.2018 is filed as Annexure R4.

14. As regards the averments made in Para 9 are concerned, it is submitted that no requests as referred to were received by this respondent Board from the applicant. The 5th respondent has requested the 4th respondent for issue of preliminary acceptance for establishment of 2nd common bio medical waste treatment facility in R. Sy. No.258, Marripudi Village, Rangampeta Mandal, East Godavari District for obtaining TORs and for the preparation of the EIA report for obtaining Environmental Clearance in their letter dated 20.06.2016. In the said letter, they had informed that they had applied for obtaining the Environmental Clearance on 01.06.2016 for establishing CBMWTF and that they have attended the SEAC meeting on 07.06.2016 at Vizag in fron of the SEIAA, the Committee for obtaining TORs. The Committee discussed and directed to obtain preliminary acceptance of the 2nd CBMWTF from this respondent Board. By letter dated 16.08.2016, this respondent Board issued in-principle permission to the 5th respondent for setting up the 2nd CBMWTF at East Godavari District subject to the industry obtaining all the necessary clearance including the Environmental Clearance from MoEF/SEIAA under the relevant Environmental laws in force. The 5th respondent obtained TORs from SEAC, Andhra Pradesh on 29.10.2016 for setting up the 2nd CBMWTF at East Godavari District. Subsequently, the 5th respondent applied for CFE through single desk system on 14.10.2016 and received by this respondent Board office on 23.11.2016. The said application was rejected on 17.12.2016 for the reason that prior Environmental is yet to be obtained. This respondent further states that on the request of the 5th respondent, this respondent facilitated the conduct of the public hearing on 28.07.2017 duly

following the procedure laid down in the EIA Notification dated 14.09.2006 and its amendments thereof. The District Collector and the Joint Collector, East Godavari District supervised the entire public hearing process and the minutes of the said public hearing was communicated to all the concerned State Government departments and also the Member Secretary, SEIAA, Hyderabad on 07.08.2017. The 5th Respondent i.e. M/s. Godavari Bio Management obtained Environmental Clearance from SEIAA vide order dated 15.10.2018 for setting up a Common Bio Medical Waste Treatment Facility. The 5th respondent also applied for Consent for Establishment of the Board vide application dated 30.10.2018 and the Board vide order dt. 30.11.2018 issued CFE to the proposed treatment facility stipulating certain conditions.

15. As regards the averments made in Para 10 are concerned, it is submitted that this Respondent Board is bound to consider and process the applications received from any person for grant of CFE in accordance with law. This respondent considers the applications in accordance with law and the assumption of the Applicant that this respondent leaves aside the application of the applicant is totally imaginary and does not exists.

16. Further, it is submitted that the application filed by M/s. MCV Eco System for CFE for the site at Sy. No.527/4, Kadiyam (V&M), East Godavari District was rejected with valid reasons as per law only.

17. The averments contained in Para 11 are baseless and have been made just for the purpose of the case.

18. This respondent states and submits that no substantial grounds have been raised in support of the above application and the grounds raised in the application

85

do not merit any consideration by this Hon'ble Tribunal.

19. Therefore, it is most humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the above O.A. No.257 of 2017 and pass such appropriate orders and thus render justice."

10. Respondents 2 & 3 filed a memo stating that they are adopting the contentions of the 4th respondent.

11. The learned counsel appearing for the fifth respondent submitted that they have already filed their reply statement along with the documents and it was e-filed on 14.12.2019 but it was not seen in the records.

12. On the last hearing date, the learned counsel appearing for the applicant submitted that in respect of establishment of more Common Bio Medical Waste Disposal Facility in the State Andhra Pradesh, there was a Writ Petition filed as W.P. No.14181 of 2019 by the Association and the Hon'ble High Court of Andhra Pradesh had disposed of the same and he wanted only direction to be given to the authorities to comply with the directions issued by the Hon'ble High Court of Andhra Pradesh in the above matter.

13. When the matter came up for hearing today through Video

Conference, Sri. Sreenivasa Moorthy represented Sri. P. Venkaiah Naidu, the learned counsel appearing for the applicant. Smt. Madhuri Donti Reddy represented respondents 1 to 4 and Sri. K.S. Viswanathan represented 5th respondent.

14. Learned counsel appearing for the applicant submitted that he had submitted the orders of the Hon'ble High Court of Andhra Pradesh as undertaken by him and necessary orders can be passed.

15. The learned counsel appearing for the fifth respondent submitted that any orders passed by this Tribunal should not affect the right of the fifth respondent in whose favour the Environmental Clearance and Consent to Establish was granted for establishment of Bio Medical Waste Treatment Facility in that area.

16. We have considered the pleadings, submissions of the counsel for applicant and respondents and the Judgment of the Hon'ble High Court Of Andhra Pradesh relied by the counsel appearing for the applicant.

17. Though the applicant had challenged the issuance of Environmental Clearance as well as Consent to Establish granted to the 5th respondent in this application on the ground that those things were done at the time when his application was

pending, we do not think that those reliefs can be granted to the applicant in this proceeding as they are independently appealable orders under Section 16 of National Green Tribunal Act, 2010 and also under Section 33 of the Water (Prevention & Control of Pollution) Act, 1974 and Section 31 of the Air (Prevention & Control of Pollution) Act, 1981 before this tribunal and the Pollution Control Appellate authority respectively. So under such circumstances, the applicant is not entitled to get the relief of setting aside of any clearance granted to the fifth respondent in this proceedings.

18. As regards the submission made by the counsel appearing for the applicant is concerned, we think that, that can be considered and the application can be disposed of by giving certain directions.

19. The learned counsel appearing for the applicant has produced the order copy of the Hon'ble High Court of Andhra Pradesh in W.P. No. 14181 of 2019 (CBMWTF Association of Andhra Pradesh Vs. Union of India & Ors.) dated, 01.10.2019 wherein the Hon'ble High Court of Andhra Pradesh has disposed of the matter as follows:-

> *"1. The present Writ Petition came to be filed, seeking the following relief:*

"For the reason stated in the accompanying affidavit, it is prayed that this Honourable Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of a WRIT OP MANDAMUS declaring the impugned inaction of the respondent Board in considering the representation of the Petitioner for implementation of the Revised Guidelines of the Central Pollution Control Board for Establishment of Bio Medical Waste Management Facilities in India 2016 in consonance with the Bio Medical Waste Management Rules 2016 and the related Environmental Laws in their letter and spirit is arbitrary, illegal, high handed, capricious and violate the fundamental rights guaranteed to the petitioner herein under Articles 14, 19(1)(g) and 21 apart from being in violation of the Statutory Guidelines framed by the 2nd respondent for Common Bio Medical Waste Treatment and Disposal Facility under the Bio Medical Waste Management Rules, 2016 while exercising its power under the Environment (Protection) Act, 1986 and also in violation of principles of natural justice and fair play and consequently direct the respondents to strictly adhere to strictly adhere to the provisions of Revised Guideline framed for Common Bio Medical Waste Treatment and Disposal Facility under the Bio Medical Waste Management Rules, 2016 in exercise its power under the Environment (Protection) Act, 1986 by conduct of gap analysis study and also the adequacy of the existing Common Bio Medical Waste Treatment Facility i.e., of existing facilities

89

and if found necessary for a new facility or for any enhanced capacity to permit the new facility to proceed with its request for establishment and operations of the Bio Medical Waste Treatment Facility in tune the implementation of the Revised Guidelines for the Common Bio Medical Waste Treatment and Disposal Facilities as approved by the Central Pollution Control Board, 2016 in its letter and spirit noticing the adequacy of the existing facility and without effecting the feasibility viability of the existing facility and pass such other order or order as may be deemed fit and proper in the circumstances of the case."

However, the learned counsel for the petitioner restricts his prayer seeking a direction to conduct Gap Analysis Study for establishment and operation of Bio Medical Waste Treatment Facility in consonance with Revised Guidelines for the Common Bio Medical Waste Treatment and Disposal Facilities as approved by the Central Pollution Control Board, 2016.

2. Learned Standing counsel for the Andhra Pradesh State Pollution Control Board, would submit that the Gap Analysis Study, as per the Central Pollution Control Board Guidelines, would be conducted in the entire state provided reasonable time is given.

3. In the light of the submission made by the learned standing counsel appearing on behalf of the A.P. Pollution Control Board that a gap analysis study would be conducted, and as the petitioner restricts his prayer seeking to conduct gap analysis study for implementation of revised Guidelines for the Common Bio Medical Waste Treatment, without expressing any opinion on merits of the

case, this Writ Petition can be disposed of directing the Pollution Control Board to conduct gap analysis in accordance with law.

4. Accordingly, the Writ Petition is disposed of, directing the A.P. State Pollution Control Board to conduct gap analysis study for implementation of Revised Guidelines for the Common Bio Medical Waste Treatment and Disposal Facilities as approved by the Central Pollution Control Board, 2016, in accordance with law, within a period of four (4) months from the date of receipt of a copy of this order. No order as to costs. It is made clear that if any fresh application is made, the same shall be dealt with in accordance with law.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs."

20. It is seen from the order of the Hon'ble High Court of Andhra Pradesh that the Andhra Pradesh Pollution Control Board (APPCB) is directed to conduct a gap analysis study for implementation of the Revised Guidelines for the Common Bio Medical Waste Treatment and Disposal Facilities as approved by the Central Pollution Control Board, 2016, in accordance with law and if any fresh application has been made, the same shall be dealt with in accordance with law.

21. So under such circumstances, we dispose of the application as follows:-

a. The applicant is not entitled to get any of the reliefs

claimed in the application as the order sought to be set aside granted in favour of the fifth respondent are independently appealable orders under Section 16 of the National Green Tribunal Act, 2010 and also under Section 33 of the Water (Prevention & Control of Pollution) Act, 1974 and Section 31 of the Air (Prevention & Control of Pollution) Act, 1981 before the respective appellate forums respectively.

b. Even if any, application filed by the applicant was rejected then, then also his remedy is to file an appeal against that order before the appellate authority as provided under the concerned statute.

c. The Andhra Pradesh Pollution Control Board is directed to comply with the directions issued by the Hon'ble High Court of Andhra Pradesh in W.P. No. 14181 of 2019 (CBMWTF Association of Andhra Pradesh Vs. Union of India & Ors.) dated, 01.10.2019 and on the basis of the gap analysis conducted by them, if they find that more facilities for this purpose can be accommodated then, if any, application has been filed by the applicant or any other person for that purpose, that may be considered by the concerned authorities and pass appropriate orders in accordance

with law.

d. The parties are directed to bear the respective costs in the application.

22. With the above directions and observations, this application is disposed of.

.....J.M.
(Justice K. Ramakrishnan)

.....E.M.
(Shri. Saibal Dasgupta)

O.A. No.257/2017,
14th September, 2020. Mn.

BEFORE THE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE

AT CHENNAI

I.A.No. 119 of 2022

In

Appeal No. 41 of 2022

R.Venkateshwar Rao & Others ... Appellants

Versus

The State of Andhra Pradesh
Rep. by its Secretary
MoEF & others ... Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF THE 5TH RESPONDENT

M/S. K.S. VISWANATHAN & T.HEMALATHA

COUNSEL FOR RESPONDENT NO. 5