

BEFORE THE NATIONAL GREEN TRIBUNAL, NEW DELHI  
(PRINCIPAL BENCH)

Application No. 30 of 2011  
Wednesday, the 14<sup>th</sup> day of December, 2011

QUORUM:

1. Hon'ble Justice Shri C.V. Ramulu  
(Judicial Member)
2. Hon'ble Dr. Devendra Kumar Agrawal  
(Expert Member)

Between:

M/s Athiappa Chemicals (P) Ltd.,  
Through its Authorized Signatory  
Jothis Kumar. K.H. R/o A-52 to A-55,  
PIPDIC Industrial Estate,  
Mettupalayam,  
Puducherry,

...Applicant

and

1. Puducherry Pollution Control Committee,  
Government of Pondicherry,  
Department of Science, Technology and Environment,  
3<sup>rd</sup> Floor, Housing Board Complex,  
Anna Nagar, Puducherry-605 005.
2. Central Pollution Control Board,  
Represented by its Member Secretary  
Parivesh Bhawan,  
CBD-cum-Office Complex,  
East Arjun Nagar  
Delhi 110 032  
Represented by its Member Secretary
3. Government of Pondicherry  
Department of Science, Technology and Environment,  
3<sup>rd</sup> Floor, Housing Board Complex,

Anna Nagar, Puducherry - 605 005

4. Union of India  
Through its Secretary,  
Ministry of Environment & Forest,  
Paryavaran Bhawan,  
CGO Complex, Lodhi Road,  
New Delhi - 110 003

.....Respondents

(Advocates Appeared: Shri A. Venayagam Balan, for the Applicant and  
Counsel for the Respondent 1 and 3 - Shri S Prabhu Ramasubramanian  
and Shri V.G. Pragasam)

## J U D G M E N T

(Judgment Delivered by the Bench)

This is an application filed under Section 14 of the National Green Tribunal Act 2010 challenging the Order dated 16.11.2011 issued by the Puducherry Pollution Control Committee, Pondicherry under Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 directing the Applicant to stop all the manufacturing activities until the three directions mentioned therein are complied with.

At the outset, we may notice that against the order made under Section 31-A of the Air (Prevention and Control of Pollution) Act 1981, an appeal is provided under Section 31 of the said Act which reads as under:

Section 31 -- "Appeals. -- (1) Any person aggrieved by an order made by the State Board under this Act may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute:

*Provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.*

*(2) The Appellate Authority shall consist of a single person or three persons as State Government may think fit to be appointed by the State Government.*

*(3) The form and the manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the Appellate Authority shall be such as may be prescribed.*

*(4) On receipt of an appeal preferred under sub-section (1), the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible."*

Under Section 31 of Air Act, an effective remedy of appeal against the Order made by the Authority under section 31-A of the Air Act is available. When this Tribunal expressed doubt as to the maintainability of the appeal, the Learned Counsel for the Applicant drawn our attention to the provisions of Section 2 (m) and 14 of the NGT Act which reads as under:

*"Section 2(m)-"substantial question relating to environment" shall include an instance where, --*

- (i) there is a direct violation of a specific statutory environmental obligation by a person by which,--*
  - (A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or*
  - (B) the gravity of damage to the environment or property is substantial; or*
  - (C) the damage to public health is broadly measurable."*

*14. Tribunal to settle disputes.--- (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.*

*(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon."*

And submitted that this Tribunal has been conferred with vast powers and the application of this nature is maintainable since a substantial question of law had arisen for the consideration of the Tribunal. According to him, the Appellate Authority is not a regular Tribunal which conducts sittings on day to day basis. The Appellate Authority sits periodically once in a month or once in two months, therefore, the appeal under Section 31 of the Air Act is not an effective remedy. Further, Section 14 of the NGT Act contemplates that this Tribunal can entertain any application and assume jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved. According to the Learned Counsel, the order passed by the authority under Section 31-A, arises under Air Act which is one of the Acts enumerated in Schedule 1 of the NGT Act and the order of the authority under Section 31-A is arbitrary, atrocious and illegal. If the appeal is not entertained within a reasonable time say one or two weeks, the Applicant would suffer irreparable loss and injury. There is no impediment in entertaining this Application under Section 14 of the NGT Act, since, for the protection of the Applicant's interest, there is no remedy available. Therefore, the factual position of non-availability of an effective remedy itself is a substantial question of law apart from other legal grounds raised for assuming jurisdiction by this Tribunal. The Tribunal can at least make some interim arrangement protecting the interest of the Applicant before an appeal is entertained by the Authority under Section 31 of the Air Act. Absolutely, there is no bar for this Tribunal to entertain a Application of this nature. The jurisdiction of this Tribunal is inclusive and not exhaustive when Section 2 (m) is read with Section 14 of the NGT Act. If the impugned order is not stayed, the legal rights of the applicant arising under the Air Act are jeopardized. If the applicant industry is closed for indefinite time, it will not only suffer economic loss but the hundred and odd employees working will be put to hardship.

Further, according to the learned counsel for the applicant, when the matter was earlier considered by the authority and directed for closure of the industry, the applicant had to approach the Hon'ble High Court of Madras by way of filing writ petitions and on both the occasions, the Hon'ble High Court was pleased to allow the writ petition by setting aside the order passed by the authority. This is the third time a similar impugned order is passed. Therefore, the remedy available to the Applicant cannot said to be both efficacious and alternative remedy. Apart from this, the learned counsel also raised certain questions virus of the Act on the ground that the delegation of powers under Section 31-A of the Act, etc.

We are afraid; we may not be able to agree with the submissions made by the learned counsel for the Applicant. The National Green Tribunal is a statutory Tribunal and it cannot examine the virus challenged of any act or provision thereof. It is for the constitutional courts to examine such matters. A statutory Tribunal can interpret the provisions of law with which it is supposed to deal with. Therefore, we cannot go into the questions raised by the Applicant such as:

*"Whether essential powers and functions of the Central Pollution Control Board under the Act can be delegated to the respondent Committee which is constituted under Section 11 of the Air (Prevention and Control of Pollution) Act 1981. Whether the exercise of such powers by the Respondent Committee under Section 31-A amounts to excessive delegation beyond the scope of delegation etc."*

Apart from this, against the impugned order, an appeal is provided under Section 31 of the Air Act, as noticed above. Merely because the appellate authority under Section 31 of the Air Act conducts sittings periodically, this Tribunal cannot assume jurisdiction under Section 14 of the NGT Act. The question of entertaining a Application under Section 14 of the NGT Act, bypassing the effective appeal provided under section 31 of the Air Act does not arise. In fact, against an order passed by the Appellate Authority under

Section 31 of the Air Act, an appeal is provided under Section 16 (f) of the NGT Act which reads as under:

16. Tribunal to have appellate jurisdiction: -- Any person aggrieved by.....

(f) "An order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981)".

Thus, entertaining an application of this nature amounts to allowing the Applicant to jump the statutory appeal which is not permissible under the law. Unless, all the forum available under the Act are exhausted by the Applicant including the appeal under Section 31 of Air Act, it cannot approach this Tribunal directly -- whatever, may be the merits and the questions of Law raised and arise for consideration. This Tribunal being statutory in its nature, cannot entertain the Applicant of this nature much less any substantial question of law has arisen under Section 14 of the NGT Act for consideration. Therefore, we are of the considered opinion that the Application is not maintainable and being devoid of merits and is liable to be dismissed.

Accordingly, the Application stands dismissed at admission stage itself.

(Dr. Devendra Kumar Agrawal)  
Expert Member

(Justice C.V. Ramulu)  
Judicial Member