

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

D.B. Civil Writ Petition No.10986/2015

Balotra Water Pollution Control & Research Foundation
Trust (BWPCRT)

Versus

State of Rajasthan & Ors.

Date of Order :: 8th October, 2015

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR
HON'BLE MISS JUSTICE JAISHREE THAKUR

Mr. M.S.Singhvi, Senior Advocate, assisted by
Mr. Vinay Kothari, Mr. Deepak Chandak and
Mr. Vineet Dave, for the petitioner.

Dr. P.S.Bhati, Additional Advocate General with
Mr. S.S.Rathore, for respondent-State.

Mr. Digvijay Singh – Respondent in person.
Mr. Sanjeet Purohit] for the respondents.

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BY THE COURT : (PER HON'BLE MATHUR,J.)

REPORTABLE

The Government of Rajasthan constituted a “Jal Pradushan Nivaran Samiti” to construct, operate and maintain Common Effluent Treatment Plant (CETP) in the territorial jurisdiction of Balotra Municipal Board to prevent pollution and to control the effluents, wastes and sewages discharge by Textile Processing Unit situated in the town of Balotra and the surrounding areas. With a view to accelerate the establishment of the CETP and to make provisions for proposed treatment plant, its expansion and carrying out research work relating to pollution control,

it was found expedient to consolidate all activities under one administrative board, thus, the petitioner trust was established by a registered trust-deed dated 28.9.1995 with following objects :-

A. To establish and maintain the CETP for control of water pollution, treatment of industrial waste and discharge etc.

B. Without derogating from the generality of the forgoing objects :-

(i)to establish, take over and maintain any CETP, to close down any such CETP and to do all acts, and things necessary for conducive to the promotion of environmental improvements generally;

(ii)to establish research laboratories, institutions and grant aids to the institutions engaged in the research work of pollution control of any nature;

(iii)assist institutions engaged in pollution control by grants from income of corpus and in any other ways;

(iv)to enter into any agreements or arrangements with Government, Local Authority Institution, Body of individuals as may appear conducive to the objects of the said trust and to carry out exercise and comply with such agreements and arrangements;

(v) to print, publish, distribute or support any publications, periodic or wrote for the furtherance of the objects of the said trust;

(vi) to organise and support conference, seminar and discussions for the promotion of the aforesaid objects or any of them; and

C. To do all such other things either along or in connection with others as are incidental or conducive to the attainment of the above objects or any of them.

The trust-deed was registered on 30.8.2010 and the representatives of Laghu Udhog Mandal, Balotra and President of Hand Process Association, Bithuja became the Managing Trustees of the trust.

worthwhile to notice that the issue relating to pollution caused by Textile Processing Unit in the town of Balotra and nearby areas was brought on surface by one Shri Mahesh Parekh by way of submitting a letter to Hon'ble the Chief Justice of Rajasthan High Court. The letter was treated as a petition for writ in public interest (DB Civil writ Petition No.8481/2002, Mahesh Parekh v. State of Rajasthan & Ors.), and that was disposed of on 2.4.2004, in light of the directions given in DB Civil writ Petition No.759/2002, Mahavir Nagar Vikas Samiti, Pali v. State of Rajasthan & Ors., decided on 9.3.2004. In Mahavir Nagar Vikas Samiti (supra) a Division Bench of this Court issued following directions:-

“1.The Pollution Control Board shall immediately make fresh inspection of the Textile Processing Units at Pali and surrounding areas and in case any of the units are found to be creating pollution and not to the CETPs shall be closed.

2.The units which are creating pollution shall adopt measures to eliminate pollution.

3.RIICO shall set up an industrial area at a suitable place exclusively for textile processing unit. The industrial area must be located at an appropriate distance from residential areas. RIICO shall set up the industrial area within a period of six months and the industry shall be shifted to the industrial area from residential areas immediately thereafter.

4.The Trust shall make modification in the CETPs so that the omissions therefrom are compatible with the norms prescribed by the Pollution Control Board.

5.The industrial units which are discharging the industrial pollutant on the land or/and river shall be closed forthwith.

6.The State shall employ experts to assess the damage caused to the environment and health of the public by the pollution created by the units. On assessment of the damage, the concerned authority shall file a report in this Court within a period of eight weeks, whereupon the question of payment of compensation by the units on the principle of polluter pays shall be determined.”

As a result of these directions, the Government of Rajasthan conducted a study to assess damage caused to the environment and health of the public on account of

pollution created by the Textile units. The body that conducted the study after noticing huge damage to the soil, underground water, agriculture and health of the public at large, recommended for regulating industrial activities, for establishing CETP for remediation and decontamination of ground water and soil.

The petitioner, a practicing advocate of this Court and permanent resident of Jasol, a small town near Balotra, preferred a petition for writ (DB Civil Writ Petition No.2844/2011) before this Court on 30.3.2011, seeking intervention of this Court against imputed continuous discharge of toxic industrial effluent by the Textile (Dyeing) industries causing permanent damage to the water level, environment, ecology and health of the inhabitants of Bithuja, Balotra and Jasol in District Barmer. It was contended that such effluent though supposedly treated by CETP, is not divested of toxic contents and, thus, retains its potential of posing environmental hazard/danger. It was asserted that the discharge of toxic industrial effluent by the textile industries is much more than the capacity of the CETPs installed, thus, the CETP is not operational adequately and despite directions given in the case of Mahesh Parekh (supra) the area is suffering huge irreparable damage due to the pollution caused. Directions were sought for the State of Rajasthan to restrain the textile industrial units from discharging their waste water on land surface and in river Luni and further to close down such industrial units being causing contamination to underground water. In the writ petition aforesaid the present petitioner was

permitted to join writ proceedings by an order dated 21.12.2011 as respondent No.8. On 17.2.2011 the respondent No.8 (petitioner herein) was restrained from discharging any effluent in river Luni and the order aforesaid came to be confirmed on 24.2.2012.

A miscellaneous application was also filed in the petition for writ aforesaid to restrain industrial activities of the industrial units causing pollution in the area. The application aforesaid was rejected at that stage vide order dated 13.5.2013 with a direction to the State of Rajasthan and the Rajasthan State Pollution Control Board to take necessary steps under the law to ensure that no industrial effluent is discharged in the river Luni.

In view of the objections raised by the respondent No.8 (petitioner herein) and other respondents, the writ petition aforesaid was transferred to the National Green Tribunal created under the National Green Tribunal Act, 2010 (hereinafter referred to as 'the Act of 2010') and was registered as Original Application No.34 (THC) of 2014. Before the Tribunal an objection was raised about maintainability of the original application being barred by limitation. Learned Tribunal while keeping the issue of limitation for time being pending, decided to make efforts to find out solution for the real problem and, therefore, felt it necessary to have comment of the State Pollution Control Board on the concept document about its technical viability and the resources those could be provided to manage the CETP successfully by taking the entire effluents load of the industries at the clusters of Balotra, Bithuja

and Jasol. The State Government and the State Pollution Control Board were also asked to examine their resources to cater the industries need and its sustainability. The Tribunal also observed that the State or the State Pollution Control Board shall not promote any further industrial activity that may add to the existing industrial load, which the concept plan of the CETPs conceives to handle. While adjourning the original application for 14.5.2015 the Central Pollution Control Board and the Rajasthan State Pollution Control Board were directed to constitute an inspection team comprising of their scientists to visit each of the respondent units in the industrial clusters Balotra, Bithuja and Jasol to verify the following :-

“1.Total capacity of each plant/unit in the industrial cluster;

2.Source and consumption level of water;

3.Capacity of CETPs and its functioning level and its adequacy;

4.Quality of the effluent entering the CETPs (Inlet) and coming out of the CETPs (Outlet);

5.Means and modes of disposal of effluent complying out of CETPs;

6.Whether the treated effluent is used for plantation or not and the present status of the concerned land.”

In pursuance to the order aforesaid the joint committee of the Rajasthan State Pollution Control Board and the Central Pollution Control Board submitted its

report with certain recommendations. Learned National Green Tribunal in its order dated 15.5.2015 noticed that the things at the CETPs are not in order in as much as the consent under Hazardous Waste Rules have not been obtained and the effluent is being carried to the CETP in tankers and not through closed conduit pipe line fitted with electromagnetic meter. The Tribunal accordingly directed the committee supervising management of CETPs to take active steps in enforcing the recommendations and to submit the action taken report. Till submission of such action taken report the Members, industrial units of the CETPs in question were directed not to carry on their industrial activities. The Tribunal also noticed that the work of installing the reverse osmosis (RO) in the CETP is stalled for the reasons of funds not being released by the State and the Central Government, accordingly, a direction was given to the State Government as well as to the Central Government to release funds for installation of ROs.

The original application then came up before the Tribunal on 9.7.2015. The Tribunal while noticing that effluent generated by the textile processing unit is hazardous waste within the meaning of Rule 3(1) of the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008, held that the textile industrial units should have authorisation under the Rules aforesaid. A direction, thus, was given to all the industrial units which are members of the CETP to approach the Rajasthan State Pollution Control Board for grant of authorisation under the Rules of 2008. Learned Tribunal also noticed that the Rajasthan State Industrial Development and Investment

Corporation was laying conduit pipe line for transporting the effluents to the CETP and the work necessary was to be completed by 31.7.2015. The only question surviving was with regard to installation of the Reverse Osmosis (RO) plant as recommended. Suffice to mention that the process of RO reduces "Total Dissolved Solids" (TDS) level in water and bring it to the permissible limits. Learned Tribunal after examining all aspects of the matter including the details given by the Rajasthan State Pollution Control Board, Central Pollution Control Board and the Rajasthan State Industrial Development and Investment Corporation observed and ordered as under :-

"A fact, however, remains that the CETP has to have reverse osmosis plant of adequate capacity so as to come to the level of zero liquid discharge as expected in the consent to operate dated 11.10.2013. We would have, therefore, to wait till further developments regarding the compliance of the other directions regarding extraction of ground water, registration of the individual units under Hazardous Waste Management Rules and laying of the conduit pipeline including fixation of electro-magnetic flow meters at the points of extraction of ground water and at the points of delivery of the effluents through the pipeline. This will ensure to the great extent the further damage to the environment as well as the quantification of such damage as a result of certain things being not in place. Learned Counsel appearing on behalf of the CETP Respondent No.8 and 9 submitted that they are prepared to commence with the work of installation of R.Os at their cost subject to receiving of sanctions to the grant of financial aid from State and Central Governments. In this

context, statement is made by the Learned Counsel appearing on behalf of the MoEF, Central Government that sanction in principle has been granted to the project at Balotra for financial aid and such sanction to the grant of financial aid in respect of Jasol is under consideration and is likely to be granted within 15 days. Necessary instructions in this regard may be obtained to make a concrete statement.”

The matter then came up before the Principal Bench of learned Tribunal at New Delhi on an application preferred by the present petitioner seeking clarification regarding the order dated 15.5.2015 directing the committing supervising CETP to take active steps in enforcing the recommendations and to submit the action taken report to the Tribunal and further restraining the industrial units from carrying out their industrial activities. Learned Tribunal, after threshing out all necessary facts, granted liberty to the CETP trust to move appropriate application before the Tribunal for granting permission to member units to run their operation as and when the circumstances would permit such industrial activity to be carried out without detriment to the environment.

Learned Tribunal also noticed that despite the order dated 15.5.2015 the industrial units were working and, therefore, directed the State of Rajasthan to take note of the facts disclosed in the affidavit dated 19.8.2015 filed by the CETP Trusts and take action against the units through its vigilance committee for sealing the

errant units or for disconnecting their electricity supply as found expedient. The vigilance committee was also directed to verify whether the units have captive power generation plants in each of their units. The CETP Trust (petitioner herein) was also directed to explain as to why it was espousing the cause of each units particularly as regards the consumption of electricity and discharge of the effluents.

Being aggrieved by the orders dated 19.3.2015, 15.5.2015, 9.7.2015 and 1.9.2015, this petition for writ is preferred.

At the threshold learned counsel appearing on behalf of the petitioner submits that the Tribunal exceeded its jurisdiction while passing the orders impugned without deciding the question as to whether the original application itself is maintainable or not being barred by limitation. By relying upon a judgment of Hon'ble Supreme Court in *Foreshore Cooperative Housing Society Limited v. Praveen D. Desai & Ors.*, reported in (2015)6 SCC 412, it is stated that a plea of limitation concerns the jurisdiction of Court which tries the proceedings, since a finding on that may oust jurisdiction of the Court. The Tribunal, thus, committed a jurisdictional error in examining merits of the case without deciding the issue of limitation. By relying upon the same judgment it is further submitted that this court is having ample authority to entertain this petition for writ despite availability of the alternative remedy of appeal before Hon'ble the Supreme Court of India as per Section 22 of the National Green Tribunal Act, 2010.

According to learned counsel availability of alternative remedy is not absolute bar to invoke writ jurisdiction, if the authority has acted wholly without jurisdiction. In the instant case, as per learned counsel, the National Green Tribunal acted beyond the jurisdiction vested with it, hence this Court should not clip its wings just to adhere a rule of policy. It is asserted that learned Tribunal while exceeding its jurisdiction stopped the complete operation of the textile dyeing and processing units and that is against the concept of sustainable development. While referring the judgment of Hon'ble Apex Court in Lafarge Umiam Mining Private Limited v. Union of India & Ors., reported in (2011)7 SCC 338, it is urged that the environmental protection is always a matter of degree, inescapably requiring choices as to the level of environmental protection and the risks which are to be regulated. While taking care of environment and its different facets, it is required to be seen that how much protection is enough, and whether ends served by environmental protection could be pursued more effectively by diverting resources to other uses. A proper decision making is necessary to maintain balance in environmental protection and the sustainable development.

In the instant matter, as per the petitioner, the appropriate course before the Tribunal was to permit the industrial units by taking adequate care to protect the environmental concerns instead of passing an order violating fundamental right of the entrepreneurs to carry on their trade and business.

Though yet not called upon by the Court, the Collector, Barmer has submitted an affidavit stating therein that the industries which have been prohibited to operate are largest producers of textile viz. Poplin in the State of Rajasthan and that has adversely effected life and economic cycle of the entire region. The livelihood of large number of skilled and and semi skilled persons engaged in these units is at stake. It is not only the workers engaged in the industries but the persons employed for transportation, stitching and other ancillary trades too are adversely effected. According to the Collector, Barmer most of the member units of CETP trust have already applied to have consent from the Rajasthan State Pollution Control Board as required under the Hazardous Wastes Management Rules. An effort is also made to impress that discharge of treated effluent of CETPs in river Luni is not going to effect adversely the water quality of ground water and for that purpose reliance is placed upon a report given by Dr. S.K.Singh, Associate Professor, Department of Civil Engineering, MBM Engineering College, Faculty of Engineering, Jai Narain Vyas University, Jodhpur. Pertinent to notice here that the report aforesaid has been obtained by Chairman of the petitioner trust from Dr. S.K.Singh.

Shri Digvijay Singh, the petitioner appearing in person, opposed the writ petition on several counts by detailing huge loss to the nature due to uncontrolled, unregulated generation of pollution by the industrial units. By referring several documents Shri Digvijay Singh emphasised that the pollution existing has spoiled valuable soil of the area and also contaminated underground water to

the extent that same has gone toxic. Being resident of the area in question he also brought in knowledge of the Court the huge loss caused to all living beings in the area because of the effluents discharge by the industrial units. With all seriousness and sensitivity Shri Digvijay Singh made his best efforts to establish that an industry i.e. consuming maximum water is in operation in Thar Desert, which is otherwise facing huge scarcity of water. The industry is also spoiling the water quality which is otherwise required to sustain all living beings including human beings. The writ petition in words of the petitioner is a sharp blow to the right to live, the most valuable fundamental right enshrined under Article 21 of the Constitution just by taking ill-founded shield of the rights protected under Article 19 of the Constitution of India.

While meeting with the averments contained in the affidavit sworn-in by Shri Madhusudan Sharma, Collector, Barmer, it is stated that the same is nothing but an effort made to support the persons who are standing against the public interest. According to the petitioner he failed to understand as to what was the occasion for the Collector, Barmer to come forward to file an affidavit supporting the petitioner, though he has yet not been called upon by this Court to respond the writ petition. With regard to the report given by Dr. S.K.Singh, Shri Digvijay Singh submits that as a matter of fact the report given is running contrary to a study made by experts in relation to health and environmental impact due to pollution from textile units in Pali, Balotra, Jasol and Bithuja. The study

aforesaid was made by a team of experts consisting of Sarva Shri M.J.Parvez, Rajat K. Gupta, K.K.Sinha, Ms. Shukla Pal, Dinesh Runiwal, Amit Kumar Rai and S.K.Jain. This team also utilised expert services of Dr. T.K.Joshi and Environment Information Centre and initiative of Ministry of Environment and Forest. As per the report aforesaid discharge of textile effluent is adversely impacting the ground water quality and as per the sodium absorption ratio values the ground water, if used even for irrigation purposes, then it will have damaging impact on the fields. The consumption of contaminated water results in accumulation of heavy metals like chromium, lead and nickel beyond the permissible limits. The samples drawn by the study team indicate critical parameters in relation to TDS, COD, BOD, Oil & Grease and that is even beyond "D" water quality parameters meant for designated use as propagation of wild life and fisheries. The treated waste water was not found by the team meeting the discharge standards and, therefore, a recommendation was made to prohibit discharge into the river. It is further submitted that the Tribunal while restraining the industrial units to function, granted liberty to the CETP trust to move appropriate application before the Tribunal for granting permission to member units to run their operation as and when circumstances would permit such industrial activity to be carried out without detriment to the environment. The members of the petitioner unit, thus, can very well commence their business by carrying out all the requirements necessary to protect environment of the area concerned.

Beside the objective conditions, Shri Digvijay Singh contested the writ petition on the count of availability of alternative remedy under Section 22 of the Act of 2010. It is submitted that even for the sake of argument it is accepted that some jurisdictional error has been committed by the Tribunal, then too extraordinary jurisdiction should not be invoked in favour of the petitioner who is having no locus to challenge the orders impugned. It is stated that as per the trust deed an enormous burden is on petitioner trust to protect the environment and ecology, but it is coming forward to protect the units which are bent upon to assault the nature grievously. It is further submitted that the legislature under the Act of 2010 provided a regular statutory remedy to an aggrieved person by order of National Green Tribunal and that too before the Apex judicial forum of the country and that indicates importance of the environmental issues and the slow pace of interference by any judicial forum except the Apex Court of the country with the orders passed by a Green Tribunal. Shri Digvijay Singh quite fairly and frankly stated that no water tight compartment can be made in relation to the rule of exhausting alternative remedies before approaching a writ court and it is always open for writ court to entertain a writ petition irrespective of the availability of statutory remedy, if the impugned action is in violation of fundamental rights, contrary to the principles of natural justice or is without jurisdiction, but it does not mean that in such cases the Court must entertain a petition for writ. The prime consideration is that whether the alternative remedy provided by the statute is efficacious or not and further that the loss caused by

the impugned action is such that it may not be adequately repaired by availing the remedy other than a constitutional one.

Heard learned counsels.

As per the Act of 2010 a remedy is available to the petitioner by way of filing an appeal before Hon'ble the Supreme Court of India as per Section 22. The submission of learned counsel is that availability of statutory remedy under the Act of 2010 does not bar writ jurisdiction as the Tribunal exceeded its jurisdictional authority by issuing the interim directions without examining the question pertaining to limitation. On examination of all relevant legal and factual issues, we do not find any merit in the argument advanced.

On enforcement of the Constitution on January 26, 1950, the citizens of our country received a strong shield of fundamental and constitutional rights - the rights personal as well as collective. Part-III of the Constitution, that covers the fundamental rights, ensures right to equality, right to freedom, right against exportation, right to freedom of religion and cultural and educational rights. Some of the rights given are attached to each and every "person" irrespective of their citizenship. The other parts of the Constitution confers several constitutional rights to the citizens of India. All these rights would have been of no meaning, if adequate safeguard would have not been given to enforce and protect such rights. Under Article 32 of the Constitution of India,

remedy to ensure and protect fundamental rights is given as a fundamental right, but a very broad discretion is given to High Courts under Article 226 of the Constitution of India to issue prerogative writs, orders and directions within their territorial jurisdiction to ensure enforcement, extension and protection of the fundamental, constitutional and other legal rights of the subjects. The remedy given under Article 226 being discretionary is subject to several checks. The checks mostly are self-imposed and as a rule of policy with a view that extraordinary remedy should always be exercised in extraordinary circumstances only. The remedy given must not be treated at par or alike other statutory remedies. A prominent self-imposed restriction in exercise the discretion given under Article 226 of the Constitution is the principle of exhausting all other statutory remedies before approaching writ court. It is a rule of convenience and discretion and does not oust the jurisdiction of a writ court, but indicates a caution in exercising extraordinary constitutional authority. The deviation from this principle is permissible if the relief is sought with well founded allegation of violation of fundamental rights, if the right has been or being threatened to be infringed by a law which itself is ultra-vires, if there is a complete lack of jurisdiction in the officer or the authority issuing impugned order or action, if there is flagrant violation of principles of natural justice, if the prevention of public injury and vindication of public justice requires the extraordinary recourse and if the court is satisfied that the remedy available is not efficacious enough to protect the injury caused or may be caused. This principle applies

with more vigour, if a party is seeking a writ in the nature of certiorari to get an order passed by judicial or quasi judicial authority set aside.

Hon'ble Supreme Court while dealing with this aspect of the doctrine of exhausting all other remedies before approaching writ court in the case of State of U.P. v. Mohammad Nooh, reported in AIR 1958 SC 86, held as under:-

“11. On the authorities referred to above it appears to us that there may conceivably be cases-and the instant case is in point-where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it confirmed what ex facie was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of

persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it.”

The law laid down by Hon'ble the Apex Court in State of U.P. v. Mohammad Nooh (supra) still holds the field and in view of the law laid down a writ in the nature of certiorari can be issued even if a remedy of appeal/revision is available on arriving at a conclusion that an inferior court or Tribunal of first instance has committed an error so patent that may not be cured or obliterated by adopting the other statutory remedy. The doctrine of availability of alternative remedy may also be ignored, if the inferior court or Tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings of a writ in the manner that that is contrary to the rules of natural justice.

The petitioner herein seeks a deviation from the doctrine of exhausting all other remedies before approaching writ court with allegation that the tribunal under the orders impugned exceeded jurisdiction vested with it as the original applicant is barred by limitation and further the issue agitated in this regard has yet not been decided.

True it is, an objection about filing of the original application within the limitation prescribed is pending consideration before the Tribunal and in light of the law laid down by Hon'ble Supreme Court in *Foreshore Cooperative Housing Society Limited v. Praveen D. Desai & Ors.* (supra), a plea of limitation concerns the jurisdiction of court that tries the proceedings. A writ court, if arrives at the conclusion that the order passed by the subordinate court or tribunal lack jurisdiction, then deviate from the principles to avail alternative remedy, but it is always within the discretion of the court and the court even on arriving at the conclusion that the order is without jurisdiction and is also in breach of fundamental right may insist upon a party to avail alternative remedy, if that is efficacious. The eventualities given to deviate from the principle under discussion does not put any obligatory duty to invoke writ jurisdiction, but a discretion only.

In the case in hand original applicant Shri Digvijay Singh, preferred a petition for writ before a Division Bench of this Court with an allegation of violation of Article 21 of the Constitution of India, but looking to the remedy provided under the Act of 2010 the same was transferred to the tribunal. Chapter-III of the Act of 2010 relates to jurisdiction, powers and proceedings of the Tribunal. As per Section 14 of the Act of 2010, the Tribunal have original jurisdiction to hear all civil cases in which a substantial question relating to environment in respect of the acts mentioned in schedule-I is involved. The Tribunal acts as the first fact finding authority and

exclusively hears all applications raising concerned with respect to substantial question relating to environment. The jurisdiction vested with the Tribunal is very wide and that covers not only damage already caused, but even the matter proposed to prevent any damage i.e. expected to be caused in case certain activities resulting in degradation of environment are not stopped immediately. In view of Section 14 of the Act of 2010 there is no doubt that the cause agitated by the original applicant is within the jurisdiction of the Tribunal. The only question is with regard to filing of the application within the limitation prescribed. The Tribunal possess ample power to condone the delay specially in the circumstance that the case of original applicant is that his cause is of recurring nature. In view of it, it shall be too far fetched to say that the Tribunal lack jurisdiction patently. The Tribunal passed the orders impugned after hearing the parties and, therefore, there is no allegation of violation of principles of natural justice. The Tribunal is headed by the persons having deep knowledge of law and also having expertise in relation to the environmental issues. The allegation of the petitioner while questioning correctness of the orders impugned is based on violation of Article 19 of the Constitution of India, but in our opinion i.e. yet to be adjudicated and that, in the case in hand, is in confrontation with the fundamental right enshrined under Article 21 of the Constitution of India as claimed by the original applicant. The remedy given by the legislature to the Supreme Court as per Section 22 of the Act of 2010 is with a caution that even appeal may be filed on any one or more of the grounds specified in Section 100 of the Code of

Civil Procedure, 1908 and that indicates intention of the legislature for minimal interference with the orders passed by the Tribunal. The remedy given under Section 22 of the Act of 2010 by no stretch of imagination can be termed and treated as not efficacious to meet the injury, if any caused to the petitioner, and if that involves any ground as required to invoke Section 100 of the Code of Civil Procedure.

The most important aspect of the matter is that the remedy provided under the Act of 2010 is before the Hon'ble Supreme Court of this country. The Tribunal as per Section 20 of the Act of 2010 is under statutory obligation to apply the principles of sustainable development, the precautionary principle and the polluter pay principle. Instant one is a case where an admitted polluter is demanding the shield of fundamental right to protect his business which is subject to statutory conditions. It is also relevant to notice that Section 29 of the Act of 2010 puts a bar upon civil courts to entertain any appeal in respect of any matter which the Tribunal is empowered to determine. Though a writ court is not subjected to Section 29 *ibid*, but the underline principle suggests that even the writ court should be extremely slow in entertaining any issue which is under the jurisdiction of the Tribunal, as such, we do not think that the instant one is a case where a deviation from a well settled rule of policy is desirable.

Having considered all these aspects of the matter we are not at all inclined to invoke writ jurisdiction vested with us in the instant matter.

The writ petition is dismissed accordingly.

(JAISHREE THAKUR), J.

(GOVIND MATHUR), J.

kkm/ps.