

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,
&
HON'BLE SHRI JUSTICE VINAY SARAF**

WRIT PETITION No. 5160 of 2024

SOMESH AGRAWAL AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

*Shri Naman Nagrath - Senior Advocate with Shri Anvesh Shrivastava-
Advocate for the petitioners.*

*Shri Prashant Singh – Advocate General with Shri H.S. Ruprah,
Additional Advocate General, Shri Amit Seth, Additional Advocate General,
Shri B.D. Singh, Deputy Advocate General for the respondent/State.*

Shri Sandeep Kumar Shukla - Advocate for respondent No.3.

Shri Vikram Johri - Advocate for the respondent No.6.

Ms. Avani Bansal - Advocate for the respondent intervenor.

Reserved on : 12.09.2024

Pronounced on : 16.12.2024

ORDER

Per: Justice Vinay Saraf:

1. Instant petition is preferred by petitioners under Article 226 of Constitution of India seeking following reliefs :-

(i) *Allow the writ petition and issue a writ in the nature
of certiorari quashing the impugned order dated 06.02.2024*

passed by NGT in OA 20/24 (CZ)(Annexure -P/11), in the interest of justice.

(ii) Further be pleased to issue a writ in the nature of certiorari quashing the impugned order dated 12.02.2024 the Ld. Collector (Annexure -P/12) in the interest of justice.

iii) Further be pleased to issue a writ in the nature of certiorari quashing the impugned order dated 23.02.2024 the Ld. Collector (Annexure -P/ 13) in the interest of justice.

(iv) Issue any other writ, order or direction as this Hon'ble Court deems fit and proper in the interest of justice.

2. Heard Shri Naman Nagrath, Senior Advocate with Shri Anvesh Shrivastava, Advocate for the petitioner. Shri Prashant Singh, Advocate General along with Shri H.S. Ruprah, Additional Advocate General, Shri Amit Seth, Additional Advocate General, Shri B.D. Singh, Deputy Advocate General for the respondent/State. Shri Sandeep Kumar Shukla, Advocate for respondent No.3. Shri Vikram Johri, Advocate for the respondent No.6. Ms. Avani Bansal, Advocate for the intervener.

Facts in short -

3. Short facts sufficient for disposal of present writ petition are :-

3.1 Petitioners are brothers and were running four different factories producing fire crackers under the LE-1 & LE-5 licenses issued in terms of the Explosive Rules, 2008, which were renewed till 31.03.2026 and by order dated 26.09.2022, Collector, Harda suspended the licenses after issuance of show cause notices on the allegation of violation of explosive rules as also license conditions, however, in appeal Commissioner, Narmadapuram on 14.10.2022 stayed the order of collector. ADM and SDM reported due rectification of all the irregularities by petitioners in report dated 18.10.2022, thereafter, fresh show cause notices were issued by Collector on 16.10.2023 and 18.10.2023 on the basis of an inspection report dated 05.09.2023.

3.2. On 06.02.2024 series of explosion occurred in the firecracker factory of the petitioners, which caused huge explosion and blast affecting several persons and houses and an FIR was registered against the petitioners on 06.02.2024 bearing crime no. 42/2004 upon the allegation that there was huge quantity of explosive material kept in the shop, which was not properly managed and there was no safety provision, which laid to the explosion and fire incident.

3.3. National Green Tribunal (NGT), Bhopal took *suo motu* cognizance on news regarding blast in the factory of petitioners and passed interim order directing payment of interim compensation to the victims on the same day i.e. 06.02.2024. NGT observed that more than 60 houses have been damaged due to fire incident and explosion in the fire crackers kept in the industry and more than 100 houses were forced to vacate. It was further observed by NGT in the order that as per reports 13 persons died and more than 50 persons were injured. Accordingly owners of the industry are responsible to immediately pay and deposit amount as interim compensation to the victim. NGT awarded Rs. 15 lakh per death, Rs. 3 lakh per small injury case, Rs. 5 lakh burn injury case and grievous injuries, Rs. 5 lakh per damaged or burnt house and Rs. 2 lakh to each person, who has been forced to vacate his house.

3.4. In compliance of the order passed by NGT, Collector Harda calculated the liabilities against the petitioners to tune of Rs.15.80crore by order dated 12.02.2024 and ordered to deposit the amount with District Environment Compensation Fund and failing which coercive action shall be taken against the petitioners. Further Collector Harda has calculated the liabilities against the petitioners to tune of Rs.2.43Crores by order dated 23.02.2024. Collector, Harda has initiated confiscation of the various

properties of the petitioners worth Rs. 9 crores for generating money by putting them to auction. These orders are under challenge in the instant petition.

Maintainability of writ petition –

4. Shri Prashant Singh learned Advocate General raised the issue of maintainability of the petition and submits -

4.1 Petitioners have challenged the order passed by NGT on 06.02.2024, which is appealable under Section 14 and 22 of the NGT Act and therefore the present petition is not maintainable as alternate efficacious remedy is available to the petitioner.

4.2 Respondent relied on the judgment of Supreme Court in the case of *Municipal Corporation of Greater Mumbai vs. Ankita Sinha & Ors. reported in (2022) 13 SCC 401* and submits that petitioners are having statutory remedy of Appeal as provided under the National Green Tribunal Act and thus present petition is not maintainable and deserves to be dismissed.

4.3 Shri Naman Nagrath, Senior Counsel appearing for petitioners submits that present petition is filed assailing the action of NGT, which is in violation of principles of natural justice and therefore the petition is maintainable and availability of appeal is no bar.

4.4 Petitioners relied on the judgment of Supreme Court delivered in the matter of *Veena Gupta & Ors vs. Central Pollution Control Board & Ors 2024 SCC online SC 103*, wherein Supreme Court condemned the practice of NGT passing ex-parte orders without following principles of natural justice and verifying facts and circumstances of the case. The relevant paras of the judgment are as under :-

“4. The National Green Tribunal's recurrent engagement in unilateral decision making, provisioning ex post facto review hearing and routinely dismissing it has regrettably become a prevailing norm. In its zealous quest for justice, the Tribunal must read carefully to avoid the oversight of propriety. The practice of ex parte orders and the imposition of damages amounting to crores of rupees, have proven to be a counterproductive force in the broader mission of environmental safeguarding.

5. Significantly, these orders have consistently faced stays from this Court, resulting in the unraveling of the commendable efforts put forth by the learned Members, lawyers, and other stakeholders. It is imperative for the Tribunal to infuse a renewed sense of procedural integrity, ensuring that its actions resonate with a harmonious balance between justice and due process. Only then can it reclaim its standing as a beacon of environmental protection, where well-intentioned endeavors are not simply washed away.”

4.5 Similarly Apex Court in the matter of ***Jetpur Dyeing and Printing Association vs. Ramdevbhai Samatbhai Sanjya and Others, 2024 SCC online SC 689*** set aside the order impugned, which was passed without giving an opportunity of being heard and remanded the matters back for reconsideration.

4.6 He further submits that NGT awarded interim compensation in arbitrary and unlawful manner in complete violation of principles of natural justice and the same cannot be justified as necessary information were not available with NGT. Permission to local administration to proceed with recovery of amount by conducting auction of the properties of the petitioners without affording any opportunity of hearing amounts to violation of principles of natural justice and therefore writ petition under Article 226 of the Constitution of India is maintainable despite having alternate remedy of appeal.

4.7 Senior counsel for petitioners further submitted that certain exceptions have been laid down to the general rule of non-entertainment of the writ petition when alternative remedy is available but present is a case which is covered by the exceptions referred to in the judgment of the Apex Court in the case of ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai 1998 (8) SCC 1***. It is submitted that exceptions which have been laid down in the said case are, (i) when the order is without jurisdiction, (ii) when order is passed in violation of principles of natural justice and (iii) when the *vires* of the statute under which the order has been passed itself is under challenge. In the present matter the order was passed in violation of principles of natural justice, therefore writ petition is entertainable.

4.8 Issue of maintainability of writ petition under Article 226 of the Constitution of India is no more *res integra* and maintainability of writ petition assailing the order passed by NGT before High Court is settled by Apex Court in the matter of ***Madhya Pradesh High Court Advocates Bar Association Vs. UOI & others, 2022 SCC online SC 639***, wherein it is held that National Green Tribunal under Sections 14 & 22 of the NGT Act does not oust the High Court's jurisdiction under Articles 226 & 227 as the same is a part of the basic structure of the Constitution. In the instant case main grievance of the petitioners are that ex-parte order was passed without affording any opportunity of hearing by which liability of more than Rs. 15 crores have been saddled against the petitioners and the impugned order was passed in violation of principles of natural justice, consequently this court deemed it proper to entertain the writ petition and issued notices. In view of the judgment delivered by Apex Court in the matter of ***Madhya Pradesh High Court Advocates Bar Association (supra), Veena Gupta (supra) and Whirlpool Corporation (supra)*** objection regarding maintainability of writ petition is overruled and writ petition is held maintainable.

Arguments on behalf of the petitioners -

5. Shri Naman Nagrath, Senior Counsel for petitioners submits *inter alia* –

5.1 NGT awarded *ex-parte* interim compensation in highly arbitrary and unlawful manner. At the time of passing the order, no material was available with NGT and the order was passed only on the basis of media reports.

5.2 NGT Act, 2002 was created to provide for 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 for matters connected thereto.

5.3 NGT passed the order in arbitrary manner without assessing the quantum of compensation and several ineligible persons have claimed the compensation. It is in dispute that how many persons were injured and out of them how many sustained grievous injuries. Rs. 3 lakhs awarded to a person who sustained simple injury.

5.4 Collector, Harda passed the orders without affording any opportunity of hearing to the petitioners, who are in jail since incident.

5.5 Collector, Harda has also passed the orders arbitrarily in violation of principles of natural justice and without issuance of any notice to the petitioners and granting any opportunity of hearing and calculated the compensation to tune of Rs.15.80 crores by order dated 12.02.2024 and Rs. 2.43 crores by order dated 23.02.2024. Collector has initiated recovery proceedings attaching property of petitioners and their entire family members worth Rs. 9 crores for recovery of amount of compensation by putting them to auction on the basis of ex-parte orders. He further submits

that NGT- does not have jurisdiction with regard to the Explosives Act and Rules.

5.6 Without Prejudice to the above, he submits that in so far as death cases are concerned, there is no issue, however in respect of injury cases and cases pertaining to damage to houses and displacement of persons from the houses is concerned, the collector has not correctly verified the medical records and other attending circumstances.

5.7 This Court by order dated 26.07.2024 permitted the petitioners to examine and see the records pertaining to the aspect of award of compensation to the victims by Collector and the petitioners after going through the record submits that, there are proper record in so far as cases involving death of 13 persons, however so far as persons with serious/grievous injuries are concerned records show that many of them were discharged after initial treatment without any admission and some of them were referred to higher medical centers for further treatment, but no record is available to show that any further treatment was undertaken by such persons. 64 persons have been awarded compensation of Rs. 5 lakhs each, whereas in respect of most of them there is no record of further medical treatment. It is submitted on behalf of petitioners that as per records compensation of Rs. 5 lakhs awarded to some persons treating them as grievously injured, however the symptoms recorded in MLC were body pain and the nature of injury shown as “simple” and the report further shows a handwritten note showing head-injury and the patient was discharged showing the note as referred to higher center and no further record of subsequent treatment was available.

5.8 It is argued that 64 persons were shown as grievously injured and have been awarded compensation under the category of grievously injured

with an amount of Rs. 5 lakhs, but many of them were not entitled for compensation under that category. Petitioners submit that the matter requires examination of individual medical records by an independent authority before being compensated. So far as 156+81 total 237 patients being awarded Rs. 3 lakhs each out of which no MLC record of more than 60 persons are not available. In respect of others also, there was no criteria with the authorities under which a sum of Rs. 3 lakhs could be awarded under minor injury category. Petitioners submit that figures are not realistic and unless there are some medical records, and there are genuine injuries, amount of Rs. 3 lakh cannot be awarded and scrutiny of individual case by independent authority is essential.

5.9 So far as cases of damaged houses are concerned, the Collector's affidavit shows different figure and the report shows different numbers. The houses in question were either made under P.M. Aawas Yojana Scheme or were small houses with 2-3 rooms with tin-sheds. Award of Rs.05 lakhs each without any identification of individual nature of house is also not proper. In addition to compensation for damaged house, the Collector's affidavit shows 201 persons have been awarded Rs. 2 lakhs each for having vacated their houses. This figure includes 39 houses also for which a sum of Rs. 5 lakhs per house has already been awarded. Learned senior counsel for the petitioners submits that when compensation for house is stipulated and being distributed, then each individual of the house being compensated separately is not justified. Moreover, there are instances where the names of the family members who were not even living in the house in question and were living elsewhere, even in other cities, their names have also been included so as to take compensation of Rs.02 lakhs each.

5.10 Shri Nagrath further submits that compensation for damage to the house and also to the individual members should not have been awarded. Additionally, Collector has paid compensation under the PM Ex-gratia to the tune of Rs. 2,00,000/- each in addition to Rs. 4,00,000/- per death case as per Revenue Book Circular, a total of Rs. 6,00,000/- paid by Collector. Petitioners pointed out several examples to fortify their contention that the amount of compensation has been awarded without examining the nature of injury/ property and the loss caused to the victims. He prays for setting aside the orders passed by NGT and Collector, Harda.

5.11 It is submitted that no parameters have been laid down by NGT for determining as to which individual would fall in the category of grievously injured or having suffered simple injury so as to be entitled to the amount quantified by NGT. He further submits that examination of the record shows that the authorities have not correctly examined the individuals for the purposes of their classification and entitlement. He further submits that the quantification of amount for damage to property has also not been correctly appreciated by the NGT. He further submits since issue is already pending before NGT, he would be satisfied in case petitioner is permitted to raise before NGT the issue of classification of the injury as well as the quantification of compensation to be paid for loss to property and displacement.

5.12 Shri Nagrath, further without prejudice submits that as the impugned order was an interim order passed by the NGT and the proceedings are still pending before the NGT, the Petitioners would be satisfied if opportunity was granted to the Petitioner to place the objections as noticed hereinabove before the NGT with regard to the injury cases, damage to houses and displacements of individuals from houses. With

regard to the death cases, he submits that the Petitioners have no objection to disbursement of compensation to the legal heirs of the deceased.

Arguments of respondents & interveners -

6. Shri Prashant Singh, learned Advocate General has opposed the petition vehemently by submitting *inter alia*:-

6.1 Perilous and destructive incident took place due to negligence on the part of petitioners in running cracker factories wherein they were dealing with dangerous explosive material and causing damage to public life as well as public property in the vicinity of the incident.

6.2 On 06.02.2024 a blast occurred in a fireworks factory situated in Village Bairagarh, District Harda owned by Petitioners and NGT took *suo motu* cognizance of the matter and by order dated 06.02.2024 directed the Owner of the factory to immediately pay compensation as directed by NGT.

6.3 By order dated 06.02.2024 NGT issued direction for calculation of amount of compensation by District Magistrate, Harda and 10 days' time was granted to the Owners of the factory to deposit the said amount, failing which the State was directed to recover the same by 'coercive methods'.

6.4 In pursuance to the order of NGT District Magistrate gathered the statistics of number of affected persons and it was revealed that total 13 persons were died and over 64 persons are seriously injured. On the basis of the data gathered total amount of Rs. 15.80 crores was adjudged to be deposited by petitioners.

6.5 Notice dated 12.02.2024 was issued to the petitioners to deposit the said amount in District Environmental Compensation Fund on or before 16.02.2024. By letter dated 23.02.2024 an additional amount of Rs. 2.43 crores was demanded in addition to the earlier amount as 81 more injured

persons were reported. It is informed that in failure to deposit the said amount within stipulated time, State will recover the same by coercive methods.

6.6 On 15.02.2024 District Magistrate suspended the licenses issued to the petitioners. Petitioners are guilty of violating the conditions of license.

6.7 With respect to the objection raised by the Petitioner pertaining to the injury cases, damage to houses and displacement cases, he submits that the cases have been duly verified by the Collector and all documents and reports have been made available to the counsel for the petitioners. He however, submits that it is open to the Petitioners to raise such objections before the NGT and for the NGT to consider them in accordance with Law.

7. We may note that the NGT by its order dated 06.02.2024, issued the following directions –

“8. In the circumstances where more than 60 houses have been damaged due to fire incident due to explosive in the fire crackers industry, more than 100 houses were forced to vacate. There is a report of high number of human death and injuries to more than 50 persons. The minimum relief is required. Accordingly the owner of the industry is responsible to immediately pay and deposit an amount as interim compensation to the victim -

- (i) @ Rs 15 lakhs per death cases and.*
- (ii) @ Rs. 3 lakhs per small injury case.*
- (iii) @ Rs. 5 lakhs burn injury case and grievous injuries.*
- (iv) @Rs. 5 lakhs per damage burnt house.*
- (v) @Rs. 2 lakhs payable to the persons who have been forced to vacate their houses*

9. All these amount should be calculated by the District Magistrate, Harda, M.P. and deposited in the account of “District Environmental Compensation Fund” to be maintained by the District Magistrate, Harda. The amount to be deposited by the owner of the industry. Necessary and immediate relief should be given to

the aggrieved, injured and the needy and affected by this incident immediately, with further assistance by the State Government.”

8. The incident happened on 06.02.2024 and the impugned order was passed by the NGT on that very date. Clearly, at the time of passing of the impugned order, neither the injured had been identified nor the nature of injuries had been determined. Similarly, with regard to the damage to houses and displacement of persons is concerned, there was no identification or determination.

9. Objections have been raised by the Petitioners with regard to identification of the injured, nature of injuries sustained, type of houses damages and the extent and entitlement of persons displaced.

10. An application I.A. no.11554 of 2024 has been filed by the petitioners contending that since the properties are being auctioned at an amount of about Rs.2 crores, which is on the lower side as per the petitioners, they be permitted to deposit the auction amount after securing loans from friends/relatives so that the properties of the petitioner may be released. During the course of hearing petitioners offered to deposit amount of Rs.3 crores for the purpose of release of the auctioned properties.

11. In view of above, the petition is disposed of with the following directions:-

- (i) It would be open to the petitioner to raise the objection with regard to classification, genuineness of claimants/victims in respect of the injuries; and the categorization, classification and quantum to be paid to individual for loss of property and destruction of houses and displacement.

- (ii) In case, such an objection is raised by the petitioner, NGT shall consider the same in accordance with law.
- (iii) In so far as the offer of petitioner for making arrangement of a higher amount towards the auction of the property *vis-a-vis* the bid received, it is open to the petitioner to place such a proposal before the NGT and for the NGT to consider the same, in accordance with law.
- (iv) The interim order dated 23.04.2024 staying disbursal of the amount is modified and vacated to the limited extent pertaining to the death cases. It would be open to the administration to disburse the death compensation as directed by the NGT.
- (v) Further it would be open to the NGT to consider disbursal of the amount in respect of injury cases and cases pertaining to loss to property and displacement of individuals, taking into consideration the objection of the petitioner, if any raised before the NGT.
- (vi) No order as to costs.

(SANJEEV SACHDEVA)
JUDGE

(VINAY SARAF)
JUDGE

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