

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).12065/2009

(From the judgement and order dated 11/02/2009 in CM No.15895/2005,WP No.17682/2005 of The HIGH COURT OF DELHI AT N. DELHI)

UNION OF INDIA

Petitioner(s)

VERSUS

VIMAL BHAI & ORS.

Respondent(s)

(With appln(s) for modification of Court's Order and office report)

WITH T.C.(C) NO. 132 of 2011

T.C.(C) NO. 133 of 2011

SLP(C) NO. 36343 of 2011

(With prayer for interim relief and office report)

T.C.(C) NO. 35 of 2012

(With appln.(s) for permission to file additional documents)

Date: 26/09/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s) Mr.R.F.Nariman, SG
Mr.Farrukh Rasheed, Adv.
Ms.Sadhna Sandhu, Adv.
Mr.Nakul Dewan, Adv.
Mr. B. Krishna Prasad, Adv.

Mr.A.S.Chandhiok, ASG
Mrs.V.Mohana, Adv.
Mr.Alok Kumar, Adv.

Mr.P.P.Malhotra, ASG
Mr.Harish Chandra, Sr.Adv.
Ms.Sunita Rani Singh, Adv.

Ms.Chinmayee Chandra, Adv.
Mr.Vikas Mehta, Adv.

Mr.Shreekant N.Terdal, Adv.

Mr.A.D.N.Rao, Adv.
Ms.Neelam Jain, Adv.

For Respondent(s) Mr.Dhruv Mehta, Sr.Adv.
Mr.Mohit Abraham, Adv.
Mr.Arvind Kr.Ray, Adv.
Mr.Paramjit Singh Sandhu, Adv.

Mr.Sanjay Parikh, Adv.
Ms.Mamta Saxena, Adv.
Ms.Bushra Parveen, Adv.

For Intervenor Mr.Raj Panjwani, Sr.Adv.
Mr.Rahul Choudhary, Adv.
Mr.Ritwick D., Adv.
Ms.Aparna Bhat, Adv.

Mr.S.K.Dubey, Sr.Adv.
Mr. B.S. Banthia, Adv.
Mr.Vikas Upadhyay, Adv.
Mr.Yogesh Tiwari, Adv.

Mr. B.Balaji, Adv.
Mr.R.Rakesh Sharma, Adv.

Ms.Anitha Shenoy, Adv.

Mr.Sanjay Kharde, Adv.
Ms.Asha Gopalan Nair, Adv.

UPON hearing counsel the Court made the following
O R D E R

During the pendency of the special leave petition filed by the Union of India against order dated 11.2.2009 passed by the Division Bench of the High Court in CM No.15895 of 2005 in WP(C)No.17682 of 2005, whereby certain directions were given in the matter of payment of salary, allowances, etc., to the Chairperson of the National Environment Appellate Authority, Parliament enacted the National Green Tribunal Act, 2010 (for short, 'the Act'), which was published in the Gazette of India dated 2.6.2010. The aforesaid development was brought to the notice of the Court on 23.7.2010. On 6.12.2010, the Court took cognizance of the statement made by the learned Additional Solicitor General that there were difficulties in the functioning of the National Green Tribunal (for short, 'the Tribunal') and the same can be resolved by the Central Government on ad-hoc basis and observed that it will be open to the Central Government to take appropriate action under Section 37(1) of the Act.

On 14.12.2010, the learned Additional Solicitor General informed the Court that the Central Government is in the process of framing rules for facilitating ad-hoc appointment of at least one member so that the Tribunal becomes functional.

On 16.12.2010, the Court passed detailed order for facilitating effective functioning of the Bench of the Tribunal at Delhi. Thereafter, several orders were passed for establishment of Benches of the Tribunal at Bhopal (Madhya Pradesh), Chennai (Tamil Nadu), Kolkata (West Bengal) and Pune (Maharashtra).

On 3.5.2012, the Court passed the following order:

"With a view to ensure that the National Green Tribunal, which is an important statutory Tribunal, the functions of which are going to impact the country from North to South and East to West, we issue the following directions:

1. The process for appointment of the Chairperson of the Tribunal must be completed in all respects by 15.09.2012 and appointment be made on or before that date.
2. Six Expert Members and four Judicial Members shall also be appointed on or before 15.09.2012.
3. Within seven days from receipt of a copy of this order, the Registrar General of the Delhi High Court shall put up the request sent by the National Green Tribunal for deputing an officer of the Superior Judicial Service to function as Registrar of the Tribunal before the Chief Justice. The High Court is requested to spare the services of a suitable officer, keeping in view the provisions of the National Green Tribunal Rules, for working as Registrar on deputation for a minimum period of one year. It is expected that necessary action in this regard will be taken within 15 days of the receipt of copy of this order.
4. The Acting Chairperson of the National Green Tribunal shall issue directions for initiation of the process for recruitment of staff for filling up the 95 vacant posts. However, the

appointment orders be issued only after the Chairperson takes over.

5. The Ministry of Urban Development and Housing, Government of India, shall, within a period of eight weeks from today, furnish a complete list of the houses/flats and other accommodations being kept by political parties, public representatives, Government officers and others after expiry of the tenure of lease or retirement from service, as the case may be.
6. After the Faridkot House is vacated by the National Human Rights Commission, the same shall be allotted and possession thereof be handed over to the National Green Tribunal. The Ministry of Urban Development and Housing shall issue an order to this effect within a period of 15 days from the date of receipt of a copy of this order. The Secretary, Ministry of Environment shall forward a copy of this order to the Ministry of Urban Development and Housing for the purpose of taking necessary action.
7. If any portion of Faridkot House is proposed to be or has been allotted to any other organization, the Ministry of Urban Development and Housing shall withdraw the communication and allot alternative space to the concerned organization, as soon as possible.
8. If suitable accommodation is available for allotment to the members of the National Green Tribunal, then the Ministry of Urban Development and Housing, Government of India shall issue necessary order for allotment of said accommodation.

It is expected that various Ministries of the Government of India will coordinate with each other and ensure that the directions contained in this order are implemented without delay.

For consideration of the issue of residential accommodation for the members of the National Green Tribunal, the case be listed on 11.07.2012.

The Registry is directed to sent copies of this order to the Secretaries, Ministry of Urban Development and Housing and Ministry of Environment, Government of India as also the Registrar General of the Delhi High Court by Fax."

On 13.7.2012, the Court took cognizance of the fact that two Judicial Members of the Tribunal have tendered resignation because of the non-availability of functional facilities and residential accommodation and passed the following order:

"We have perused additional affidavit dated 09.07.2012 filed by respondent No.1 and additional affidavit filed today by Shri Surjit Singh, Joint Secretary, Ministry of Environment and Forests, New Delhi.

We are extremely unhappy to note that two Judicial Members of the National Green Tribunal - Hon'ble Shri Justice C.V.Ramulu and Hon'ble Shri Justice Amit Talukdar have tendered resignation. Shri Sanjay Parikh, learned counsel for respondent No.1 gave out that the Judicial Members resigned because of the non-availability of functional facility and residential accommodation.

Learned Solicitor General and learned Additional Solicitor General assured that they will immediately take up the matter with the concerned authorities of the Government and make a statement on the date to be fixed by the Court on the issue of making available the housing accommodation to the Judicial Members of the National Green Tribunal.

In view of the statement made by the learned Solicitor General and the Additional Solicitor General, we deem it proper to request Hon'ble Shri Justice C.V.Ramulu and Hon'ble Shri Justice Amit Talukdar not to press for acceptance of their resignation for a period of one month. The concerned authority in the Central Government shall not accept their resignation till one week after the next date of hearing, which is fixed as 13.08.2012."

On 19.9.2012, the Court passed further order in the matter of allotment of space for Principal Seat of the Tribunal and residential accommodation to the Members. That order reads as under:

"At the commencement of further arguments, Shri Sanjay Parikh, learned counsel appearing for the respondent read out affidavit of his client which was filed on 21.08.2012 to show that neither the required space has been allotted to the Principal Seat of the National Green Tribunal nor any residential accommodation has been made available to the Judicial and Expert Members.

Learned Solicitor General handed over an additional affidavit of Shri S.S.Badhawan, Director, Policy and Law Division, Ministry of Environment and Forests, New Delhi.

After going through the affidavits, we made certain queries on the issue of appointment of the Chairperson of the National Green Tribunal, allotment of Faridkot House to the National Green Tribunal and ensuring effective functioning of the Tribunal by providing all the facilities and amenities to the Judicial Members, who are former Judges of the High Court at par with the sitting Judges except the element of pension and also to the Expert Members.

Learned Solicitor General and the learned Additional Solicitor General gave out that they would respond to all the queries of the Court within seven days.

Learned Additional Solicitor General also gave out that he had personally visited Faridkot House along with one of the staff member of the National Green Tribunal to Faridkot House to explore the possibility of getting a portion of the accommodation which is presently with the National Human Rights Commission. Learned Additional Solicitor General also assured that he will ask the concerned Department to issue an order for allotment of Faridkot House to the National Green Tribunal in terms of this Court's order dated 03.05.2012.

In view of the submissions made before the Court, the case is adjourned to 26.09.2012.

While adjourning the case, we deem it proper to take cognizance of the statement made by Shri Raj Panjwani, learned senior counsel appearing on behalf of the intervenor (Bar Association of the National Green Tribunal) that functional accommodation made available for Bhopal Bench of the National Green Tribunal is not at all conducive to the functioning of an important judicial body. Shri Panjwani gave out that the accommodation made available by the Government of Madhya Pradesh is in the basement of a building and it is impossible for the Tribunal to function from the basement.

Let notice issue to the Chief Secretary, State of Madhya Pradesh to file his own affidavit as to why sufficient accommodation has not been made available for functioning of Bhopal Bench of the Tribunal.

Shri B.S.Banthia, the standing counsel for the State of Madhya Pradesh is requested to take notice and communicate this order to the

Chief Secretary, State of Madhya Pradesh today itself."

Today, the learned Solicitor General filed statements detailing the facilities provided to the Chairperson and Members of the Tribunal. The statements are taken on record.

We have also gone through affidavit dated 19.9.2012 of Shri S.S.Badhawan, Director, Policy and Law Division, Ministry of Environment and Forests in which reference has been made to communication dated 24.7.2012 vide which the Prime Minister is said to have directed that no proposal be made for allotment of Government accommodation for Chairman/Vice-Chairman or Members of the Commissions/Committees/Tribunals.

The learned Solicitor General also placed before us the files containing notings and correspondence relating to appointment of Chairperson of the Tribunal. He gave out that Justice Lokeshwar Singh Panta (former Judge of the Supreme Court), who was appointed as Chairperson of the Tribunal, had informed the Minister of State (Independent Charge), Environment & Forest vide letter dated 11.11.2011 that he was unable to continue in the office beyond 31.12.2011 and his resignation shall take effect from 1.1.2012. The learned Solicitor General gave out that in response to a request made by the Government on 4.1.2012, the Chief Justice had sent recommendation on 17.2.2012 for appointment of Justice R.V. Raveendran (former Judge of the Supreme Court) as Chairperson. According to him, the file was processed in the Ministries and was placed before the Cabinet Committee on Appointments on 3.4.2012 but vide letter dated 16.4.2012 Justice Raveendran conveyed his unwillingness to take up the assignment of Chairperson. Thereafter, letter dated 30.4.2012 was sent to the Chief Justice of India for sending fresh recommendation for appointment of the Chairperson. A reminder was also sent to the Chief Justice of India on 15.5.2012 but the recommendations were received only vide letter dated 14.8.2012 and the matter is being placed before the Cabinet Committee on Appointments. The learned Solicitor General submitted that there was some delay in the case of Justice Raveendran but, thereafter, there is no delay on the part of Government in complying with the direction contained in the Court's order dated 3.5.2012. He submitted that appointment of the Chairperson is likely to be notified within six weeks from today.

Insofar as the issue for allotment of Faridkot House to the National Green Tribunal is concerned, Shri A.S. Chandhiok, learned Additional Solicitor General gave out that a portion of the Faridkot House has been allotted to the Tribunal. When his attention was drawn to Para 6 of directions contained in order dated 3.5.2012, he submitted that order for allotment of Faridkot House to the Tribunal will be issued within a week.

In the context of residential accommodation, learned Additional Solicitor General produced a list of the persons who are continuing to occupy Government accommodation after ceasing to hold particular office or retirement from service. He assured that a detailed and comprehensive list of such persons will be made available within one week.

For further arguments and consideration of the issue relating to providing of residential accommodation to the Chairperson and Members of the Tribunal, the case is adjourned to 10.10.2012.

(Satish K.Yadav)
Court Master

ITEM NO.30(5)

COURT NO.5

(Phoolan Wati Arora)
Court Master

SECTION XIV/X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION(CIVIL)No.120 OF 2012

RAJIV GARG

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With appln.(s) for directions)

Date: 26/09/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

Amicus Curiae Mr.P.P.Rao, Sr.Adv.

In WP(C)120/12 Mr.G.E.Vahanvati, AG
Mr.Paras Kohad, ASG
Mr.Abhinav Mukherji, Adv.
Mr.Rohit Sharma, Adv.
Mr.Anupam Prasad, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the learned Attorney General and Shri P.P. Rao, learned Amicus.

Learned Attorney General assured the Court that he will personally get in touch with the concerned Ministries for laying down uniform conditions of service including the age of retirement, functional facilities and residential accommodation for Chairperson and Members of different tribunals.

For further arguments, the case is adjourned to 19.11.2012.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master