



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 4599-4601 OF 2014**

Dr. I.S.TOMAR

... APPELLANT

V.

INVERTIS UNIVERSITY & ORS. ETC. ... RESPONDENTS

with

CIVIL APPEAL NO. 5631-5633 OF 2024

J U D G M E N T

ABHAY S. OKA, J.

1. The issue involved in these appeals is very limited. Whether the appellants can be subjected to a penalty by the National Green Tribunal (for short 'the NGT') in exercise of powers under Section 26 of the National Green Tribunal Act, 2010 (for short 'the NGT Act') on account of their failure to comply with the orders passed by it. The appellants are Dr. I.S. Tomar, the then Mayor of the Municipal Corporation, Bareilly (in Civil Appeal Nos. 4599-

4601 of 2014) the Municipal Corporation, Bareilly and its Commissioner (in Civil Appeal Nos. 5631-5633 of 2024).

2. These appeals arise from the judgment dated 24th October 2013, of the NGT, wherein the NGT, inter alia, found that the Mayor and the Commissioner of the Municipal Corporation, Bareilly, had violated the orders dated 28th May 2013 and 18th July 2013. Accordingly, the NGT punished the Mayor and Commissioner of the Municipal Corporation, Bareilly, with civil imprisonment till rising of the Court and a payment of a fine of Rs.5 lakhs each. The NGT also imposed a fine of Rs. 1 lakh per day on the Municipal Corporation, Bareilly, for causing degradation to the environment and injury to public health for the period from 28th May 2013 to 27th July 2013. Paragraph No. 45 of the impugned Judgment reads thus:

“45. Having given our serious consideration to the matters and issues before us and in view of the findings recorded supra, we pass the following orders and directions:

(i) We accept the unconditional apology tendered by the Respondent No.5 for making such undesirable remarks in his Press interview and therefore decline to initiate criminal or other proceedings against him for bringing disrepute to the

Tribunal and committing contempt of the Tribunal. The notice issued and the proceedings against him to that extent are hereby dropped.

(ii) For intentionally violating the orders dated 28th May, 2013 and 18th July, 2013, Dr. I.S. Tomar, Mayor and Sh. Umesh Pratap Singh, Commissioner, Municipal Corporation, Bareilly, are punished with civil imprisonment till rising of the court and payment of Five lakh Rupees each.

(iii) For causing degradation to environment and injury to public health for the period from 28th May, 2013 to 27th July, 2013, the Municipal Corporation of Bareilly shall pay a sum of One lakh Rupees per day.

(iv) We direct that all amounts payable by the respondents under this order would be deposited with the Deputy Commissioner, Bareilly, as Chairperson of the Committee constituted under this order and all these amounts shall be utilised for complying with the directions contained in this order and if any amount still remains unspent, the same shall be used for setting up of an STP at an approved site in accordance with law.

(v) We constitute a Committee consisting of the following:-

- a. Deputy Commissioner, Bareilly-
Chairperson
- b. Member Secretary, U.P. Pollution Control
Board

c. Director (Public Health), Government of U.P.

d. One representative of the Ministry of Environment and Forests (MoEF), being an Expert to be nominated by the Secretary, MoEF.

(vi) Respondents No.4 and 5 shall remove the entire municipal solid waste from the site in question within four weeks from the date of passing of this order and restore the site and environment to its original condition (as it existed prior to the establishment and operation of the MSWM plant).

(vii) We also reiterate our direction that no municipal solid waste shall be dumped at the site in question so as to prevent environmental pollution, contamination of underground water and injury to the public health. The said respondents shall dump the municipal solid waste only at the site which has been so approved and earmarked under the Master Plan of Bareilly, 2021, that too in a most scientific manner, and at no other place.

(viii) The pits that are dug at the newly designated site for dumping of municipal solid waste shall be prepared in accordance with the MSW Rules and with all scientific measures including laying of impermeable membrane lining.”

(emphasis added)

FACTUAL ASPECTS

3. Rayons-Enlighting Humanity, Invertis University, and a group of residents of Village Razau Paraspur, Bareilly, had filed separate Original Applications before the NGT, challenging the establishment and operation of a municipal solid waste management plant, a project of the Municipal Corporation, Bareilly, located at Village Razau Paraspur, Bareilly. The applicants before the NGT contended that the plant was set up in violation of the Environment Impact Assessment Notification, 2006 issued by the Ministry of Environment, Forests and Climate Change (for short 'MoEFCC') and prayed for quashing of the circular dated 15th January 2008 of the MoEFCC which permitted the establishment and operation of the plant.

4. The NGT heard arguments on all three Original Applications. While reserving its judgment on 28th May 2013, the NGT directed that in the meanwhile, no municipal solid waste shall be dumped at the site in question.

5. The NGT, vide its order dated 18th July 2013, allowed the Original Applications. The NGT directed the immediate closure of the solid waste management plant. It restrained the Corporation from dumping any further municipal waste.

It also ordered the removal of all municipal waste within four weeks from the date of the order.

6. Against this order of the NGT dated 18th July 2013, Civil Appeal No. 7215 of 2013 was filed before this Court, and this Court vide order dated 13th September 2013, stayed the directions issued by the NGT.

7. After the pronouncement of the judgment dated 18th July 2013 by the NGT, the applicants before the NGT filed three different miscellaneous applications. These miscellaneous applications were converted into Original Applications by the NGT. The applicants before the NGT alleged that dumping of solid waste had continued at the site in question, despite the clear directions of the NGT. A specific allegation was also made against the Appellant in Civil Appeal Nos. 4599-4601 of 2014 who served as the Mayor of the Municipal Corporation that he was not only instrumental in violation of the orders of the NGT but he has been making undesirable statements against the judgment of the NGT by saying that the interest of common people has been defeated against money power and the judgment is a 'one-sided' judgment. These statements were

made to a press reporter from a newspaper Amar Ujala and were also reported by other newspapers.

8. On these applications, the NGT delivered the impugned Judgment dated 24th October 2013. On the Appellant's remarks in his press interview, the NGT declined to initiate any proceedings against him in view of the unconditional apology tendered. The NGT, *inter alia*, also found that the appellant and the Commissioner of the Municipal Corporation, Bareilly, had intentionally violated the orders of the NGT dated 28th May 2013 and 18th July 2013. Accordingly, the NGT punished the appellant and the Commissioner of the Municipal Corporation, Bareilly, with civil imprisonment till rising of the Court and payment of Rs. 5 Lakhs each. The NGT also imposed a fine of Rs. 1 Lakh per day on the Municipal Corporation, Bareilly, for causing degradation to the environment and injury to public health for the period from 28th May 2013 to 27th July 2013. The NGT also directed the removal of the solid waste. It was also brought to the notice of the NGT that this Court by order dated 13th September 2013 had stayed the directions contained in paragraph 49 of NGT's judgment dated 18th July 2013.

SUBMISSIONS

Civil Appeal Nos. 4599-4601 of 2014

9. Learned counsel appearing for the appellant, at the outset, submitted that the appellant was not a party to the Original Application No. 99 of 2013 on which orders dated 28th May, 2013 and 18th July, 2013 were passed. Learned counsel pointed out that at the relevant time, the appellant was the Mayor of Municipal Corporation, Bareilly. Respondent No. 4 in the Original Application was the Municipal Corporation, Bareilly, through its Commissioner. He submitted that all the executive powers of the Municipal Corporation vest in the Commissioner, and therefore, assuming that orders of the NGT were breached by continuing the dumping of municipal solid waste at the site in question, there is no violation by the appellant. Learned counsel submitted that for certain utterances attributed to the appellant, he has tendered an unconditional apology in writing. He pointed out that in the Miscellaneous Applications filed before the NGT for taking an action under Section 26 of the NGT Act, the appellant was respondent

No. 5. He submitted that the apology tendered by the appellant has been accepted, as can be seen from paragraph 33 of the impugned Judgment. The NGT has not assigned any reasons for holding that the appellant has violated the orders dated 28th May, 2013 and 18th July, 2013. He, therefore, submitted that there was no reason for punishing the appellant with civil imprisonment till rising of the Court and directing payment of Rs. 5 lakhs.

10. Learned counsel appearing for the first respondent submitted that the statements made by the appellant to a press reporter of the daily *Amar Ujala* were highly objectionable. The appellant went to the extent of alleging that everything was pre-decided by the NGT. He submitted that this amounts to scandalizing the NGT. He submitted that the appellant, being the Mayor of the Municipal Corporation, was also responsible for implementing both the orders of the NGT. He submitted that, in fact, NGT has been very lenient with the appellants as the maximum imprisonment which can be granted under Sub-section (1) of Section 26 of the NGT Act is of three years. Even a fine amount is reasonable considering the environmental damage caused by the acts of the Municipal Corporation.

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11. The submission of the learned counsel for the appellants is that no finding has been recorded that there was a willful breach of the orders passed by the NGT. Moreover, the order passed by NGT on 18th July, 2013 remained stayed till 23rd March, 2018 in Civil Appeal preferred by the appellants. Learned counsel appearing for the appellants pointed out that Civil Appeal No.7215 of 2013 was filed against the Order dated 18th July, 2013. The said appeal was withdrawn by the then Commissioner, Nagar Nigam, without any authority. The submission is that the directions issued under the impugned Judgment are too harsh. The response of the first respondent is that the Corporation has made a clear violation as can be seen from the report of the Commissioner.

CONSIDERATION

Civil Appeal Nos. 4599-4601 of 2014

12. After considering the submissions made across the Bar and after perusing the impugned Judgment and other documents, following factual aspects emerge as far as Civil Appeal Nos. 4599-4601 of 2014 are concerned:

- (i)** The appellant was not a party to Application Nos. 86, 99 and 100 of 2013 in which Orders dated 28th May, 2013 and 18th July, 2013 were passed. Only the Municipal Corporation, through its Commissioner, was a party;
- (ii)** Notice of Application Nos. 86, 99 and 100 of 2013 was never served to the appellant;
- (iii)** The order dated 28th May, 2013 was to operate till the Judgment on the Applications was pronounced. The Judgment was pronounced on 18th July, 2013 which was stayed by the Order of this Court dated 13th September, 2013 in Civil Appeal No. 7215 of 2013;
- (iv)** There is no material placed on record to show that the appellant was responsible for dumping municipal solid waste on the site in question; and

- (v) There is no provision of law under which the appellant being Mayor of the Municipal Corporation had power to issue any direction to the Municipal Corporation.

13. Section 26 of the NGT Act reads thus:

“26. Penalty for failure to comply with orders of Tribunal.—(1) Whoever, fails to comply with any order or award or decision of the Tribunal under this Act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention:

Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention

continues after conviction for the first such failure or contravention.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code.”

14. Sub-section (1) of Section 26 is a penal provision. Therefore, it must be strictly construed. The direction of the NGT was to stop the dumping of municipal solid waste. To prove the failure on the part of the appellant to comply with the direction, it must be established that it was the appellant who was responsible for dumping solid wastes at the site after prohibitory orders were passed by the NGT. A person can be said to have failed to comply with the direction issued by the NGT, provided it is shown that the person against whom a direction is issued has the power to prevent the act which was prohibited by the NGT. As it is not shown that the appellant had executive powers to direct the Municipal Corporation to stop dumping on the site, it is impossible to record a finding that there was a failure on the part of the appellant to comply with both orders.

15. Perhaps, the appellant was responsible for creating a peculiar situation against himself. While talking to press reporter of daily *Amar Ujala*, he gave following answers:

“Question:- Why the Tribunal passed the order against you?”

Answer:- The cost of Plant establishment has not been mentioned anywhere in the judgment. The interest of common people has been defeated against the money power in this one-sided judgment. We will approach Supreme Court against this judgment/ order.

Question:- Why the side of Municipal Corporation became weak/remained ineffective?”

Answer:- Our side was never ineffective/weak. Our Advocate put the arguments effectively/strongly on our behalf. But when everything was pre-decided then what could we do.

.....”

16. Firstly, the appellant was holding a responsible post of the first citizen of the city, of which he was the Mayor. Secondly, as a citizen of India, it was his fundamental duty, as per Clause (g) of Article 51A, to protect the environment. Thirdly, as the Mayor of the city, it was his duty to bring to the notice of the Commissioner, the violations of the provisions of Municipal Solid Waste Rules, 2016. Fourthly, making an allegation that the NGT had “pre-decided” the

issue amounts to scandalizing the NGT and fifthly, the appellant ought to have appreciated that the order of the NGT was for protecting the environment.

17. The appellant has tendered an unconditional apology for the utterances to the media. As can be seen from the impugned Judgment, the NGT was rightly disturbed to see huge heaps of municipal solid waste lying at the site. As can be seen from paragraph 33 of the impugned Judgment, with some reluctance, the NGT accepted the appellant's unconditional apology for his utterances.

18. After accepting the apology of the appellant, as there was no failure on the part of the appellant to comply with the orders, penal provisions of Sub-section (1) of Section 26 could not have been invoked against the appellant. The NGT has purported to invoke the provisions of Rule 2A of Order XXXIX of the Code of Civil Procedure, 1908. The appellant was not a party to the proceedings in which prohibitory orders were made. Moreover, it cannot be said that the appellant was claiming through the Municipal Corporation, which was a party before the NGT.

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19. In the applications under Section 26(1) of the NGT Act on 05th August, 2013, an Advocate was appointed as Local Commissioner. He submitted a report dated 13th August, 2013. The Court Commissioner, in his report, observed that solid waste was being dumped at the site. The stand of the Municipal Corporation was that after the Orders dated 28th May, 2013 and 18th July, 2013 were passed, the Corporation took steps to remove the waste. However, not all the waste could be removed. The direction issued under Order dated 18th July, 2013 was against the Municipal Corporation not to dump any waste at the site and to remove all the municipal waste already dumped at the site within four weeks. However, in the affidavit filed on behalf of the Municipal Corporation, it was accepted that the entire municipal waste could not be removed. Thus, admittedly, there was a breach of the very important direction issued under Order dated 18th July, 2013, to remove the waste from the site.

20. By the impugned Order, the Municipal Corporation was directed to pay a sum of Rs. 1 lakh per day. This direction was fully justified. The Commissioner was penalized by sentencing him to civil imprisonment till rising of the Court and payment of Rs. 5 Lakhs. There is no

finding recorded that there was a wilful default on the part of the Commissioner. Therefore, the sentence of imprisonment and penalty cannot be justified.

21. Hence, we pass the following order:

- (i) Civil Appeal Nos. 4599-4601 of 2014 preferred by Dr. I.S. Tomar are allowed, and directions against him in Clause (ii) of paragraph 45 of the impugned Judgment are set aside; and
- (ii) Civil Appeal Nos. 5631-5633 of 2024 are partly allowed by setting aside the directions against Shri Umesh Pratap Singh in Clause (ii) of paragraph 45 of the impugned Judgment. However, no other part of the impugned Judgment is disturbed.

.....J.
(Abhay S. Oka)

.....J.
(Augustine George Masih)

New Delhi;
May 23, 2025.