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### SUPREME COURT UPHOLDS THE VIRES OF PROVISIONS OF THE NGT ACT: REJECTS SETTING UP A BENCH AT JABALPUR

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The Hon'ble Supreme Court in the case of Madhya Pradesh High Court Advocates Bar Association and Anr. v. Union of India, W.P. (C) No. 433 of 2012, upheld the vires of Sections 3, 14 and 22 of the National Green Tribunal Act, 2010 (**NGT Act**). The Supreme Court upheld: (i) the power of the Central Government to set up National Green Tribunals (**NGT**) in the country; (ii) remedy of direct appeal to the Supreme Court from the orders of the NGT; and (iii) constitutional validity of Sections 14 and 22 of the NGT Act that confer jurisdiction to the National Green Tribunal. In doing so, the Supreme Court rejected the plea of the Petitioners for setting up a bench of the NGT at Jabalpur instead of Bhopal.

#### **Background of the Dispute**

The Madhya Pradesh Advocates Bar Association and the District Bar Association, having their registered offices at Jabalpur, approached the Supreme Court by way of a writ petition raising a challenge to the vires of the NGT Act and *inter alia* praying for the following:

- A direction that the proposed setting up of the NGT bench at Bhopal is not constitutionally sustainable and that the NGT bench should be set up at Jabalpur, where the principal seat of the High Court of Madhya Pradesh is located.
- A declaration that Sections 14 and 22 of the NGT Act are unconstitutional to the extent the said provisions oust the writ jurisdiction of the High Courts.

In addition to the above, the Supreme Court while deciding the writ petition also considered the issue as to whether Section 3 of the NGT Act which gives power to the Central Government to set up benches of the NGT, suffers from excessive delegation and should be declared as unconstitutional to that effect.

#### **Analysis and Decision of the Court**

On the issue of whether Sections 14 and 22 of the NGT Act oust the writ jurisdiction of the High Court, the Supreme Court reiterated the settled law that the writ jurisdiction of High Courts under Articles 226 and 227 of the Constitution of India, 1950 forms part of the basic structure of the Constitution. It was observed that there is nothing in the NGT Act that impliedly or explicitly ousts the jurisdiction of the High Courts and the

High Courts have been entertaining challenges against the orders of the NGT under their writ jurisdiction.

As regards the plea of the Petitioner to provide a remedy of appeal to the High Courts challenging the orders of the NGT as against the availability of a direct appeal to the Supreme Court, the Court rejected the same on the ground that the remedy under Articles 226 and 227 of the Constitution remains unextinguished. The Supreme Court observed that subject to the discretionary powers of the Courts, affected litigants can also approach the High Courts by way of a writ as well as the Supreme Court by way of a SLP challenging the decision of the High Court. Further, the Court held that it cannot, in its writ jurisdiction, impinge the prerogative of the legislature, by creating a right to appeal.

As regards the issue of setting up of an NGT bench in every state or where the principal bench of the High Court of the state is situated, the Supreme Court based its findings on the principle of proportionality. The Court noted that fewer number of cases are pending before the NGTs as compared to some other tribunal, like, the Central Administrative Tribunal which are present in every state and where volume of cases is much higher. Basis the low caseload of the NGTs, the Supreme Court negated the issue of setting up benches in all 28 states. The Court also held that since the bench at Madhya Pradesh would cater to environmental issues of Rajasthan, Madhya Pradesh and Chhattisgarh, the location of the bench must be convenient and accessible for all litigants and thus, the NGT bench at Bhopal should not be shifted to Jabalpur. Corollary to the above, the Court also held that the power of the Central Government to set up NGT benches is exercised keeping in mind the demand of environmental litigation, objects of the NGT Act as well as directions of the Supreme Court and therefore, Section 3 of the NGT Act cannot be considered to be a case of excessive delegation.

### Conclusion

In this welcoming judgment, the Supreme Court has cleared the air that the presence of remedy of direct appeal provided in the NGT Act does not amount to an ouster of the writ jurisdiction of the High Courts and/or the discretionary jurisdiction of the Supreme Court under Article 136 of the Constitution. While rejecting the plea of setting up a bench at the principal seat of the High Court of the state, the Court has also clarified that setting up of the NGT *dehors* the principal place of the High Court of the state could not be said to be unconstitutional. The Court has thus, effectively crystallised the role of NGTs in giving access to expeditious and specialized justice for environmental matters in the country.

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