
Before

THE HONOURABLE HIGH COURT OF MATIL DANU

Under Article 226 of the Constitution of Hindia

GREEN CANVASPETITIONER

v.

STATE OF MAMATIL DANURESPONDENT

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LIST OF ABBREVIATIONS

&	And
¶	Paragraph
AIR	All India Reporter
Anr.	Another
Art.	Article
Co.	Company
Corpn.	Corporation
Ed.	Edition
Govt.	Government
Hon'ble	Honourable
i.e.	That is
Ltd.	Limited
MoEF	Ministry of Economic Affairs
NGT	National Green Tribunal
No.	Number
Pvt.	Private
PWD	Public Works Department
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
SEIAA	State Environment Impact Assessment Agency
U.S.	United States of America
v.	Versus
Viz.	Videlicet
Vol.	Volume
www	World Wide Web

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STATEMENT OF JURISDICTION

THE PETITIONER HAS FILED THE PUBLIC INTEREST LITIGATION BEFORE THE HON'BLE HIGH COURT OF MATIL DANU, IN THE MATTER OF GREEN CANVAS v. STATE OF MATIL DANU, UNDER ARTICLE 226¹ OF THE CONSTITUTION OF HINDIA.

THE PRESENT MEMORANDUM SETS FORTH THE FACTS, CONTENTIONS AND ARGUMENTS.

¹ Power of High Courts to issue certain writs

- (1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibitions*, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose
- (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories
- (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without
 - (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and
 - (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated.
- (4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32.

STATEMENT OF FACTS

For the sake of brevity and convenience of the Hon'ble Court the facts of the present case are summarised as follows:

1. Hindia is a South Asian country, having second largest population in the world. Due to globalisation, there is a rapid development in the Hindia specifically in its southern coastal State of Matil Danu. Due to unchecked increase in sand quarrying mining, The High Court of Matil Danu, directed the State Government to constitute a Committee of Experts to study the river and river beds in the State with particular reference to the damage caused on account of indiscriminate sand quarrying operations. The Government inserted Rule 38A of the Matil Danu Minor Mineral Concession Rules, on basis of recommendation of committee whereby all existing leases for quarrying sand ceased to be effective and right to quarry sand vested only with the Government.
2. In the year 2010, various writ petitions were filed in The High Court of Matil Danu 2010 batch of cases, with regard to indiscriminate sand quarrying operations in the river swachjal. The Division Bench of The High Court of Matil Danu, modifying its earlier order permitted two poclains to be used, during restricted timings. Thereafter, various writ petitions were filed, to forbear the respondent from carrying on sand quarrying operations alongside the stretches of the rivers of Swachjal. The Division Bench The High Court of Matil Danu disposed of the said writ petitions by order stating permission for fresh sand quarrying operations in the river Swachjal could be granted only after getting environmental clearance from the State Environment Impact Assessment Authority [SEIAA] and the Office Memorandum of the Ministry of Environment and Forest [MoEF]. The Bench directed some of the existing quarries to be either stopped forever or to be started after getting environmental clearance.
3. Finding no response from the MoEF, the SEIAA granted environmental clearances on 30.11.2012, on the basis of the guidelines framed by it. These clearances by the SEIAA to the Executive Engineer of the Public Works Department of the Government of Matil Danu were challenged by various Farmers' Associations and Environmentalists by way of various appeals under Section 16 of the National Green Tribunal Act, 2010. The National Green Tribunal disposed of all the appeals holding that in view of the guidelines issued by the MoEF, the guidelines issued by the SEIAA and the environmental clearances

granted on the basis of those guidelines actually lapsed. However, considering the economic and social needs and public interest at large, the National Green Tribunal allowed the State Government to continue quarrying operations for a period of six months on the basis of the environmental clearances granted by the SEIAA. In the meantime, the Public Works Department was directed by the Tribunal to make fresh applications to the MoEF as per the guidelines dated 24.12.2013 and obtain clearances in accordance with law.

4. Aggrieved by the order dated 24.2.2014 of The National Green Tribunal, the group of environmentalist known as 'Green Canvas' filed a petition under Article 226 of the Constitution of India for the issuance of an appropriate writ to call for a record pertaining to impugned order passed by the National Green Tribunal and to quash the same.

ISSUES RAISED

The following questions are presented for adjudication in the instant matter:

1. **WHETHER THE PUBLIC INTEREST LITIGATION FILED BY GREEN CANVAS UNDER ARTICLE 226 OF THE CONSTITUTION OF HINDIA IS MAINTAINABLE.**

2. **WHETHER THE ORDER PASSED BY THE TRIBUNAL IS BEYOND JURISDICTION AND PERPETUATES ILLEGALITY.**

SUMMARY OF ARGUMENTS

1. THE PUBLIC INTEREST LITIGATION FILED BY GREEN CANVAS UNDER ARTICLE 226 OF THE CONSTITUTION OF HINDIA IS MAINTAINABLE.

A group of environmentalist known as 'Green Canvas', filed a petition under Article 226 of the Constitution of Hindia. The petitioners, Green Canvas, have the *locus standi* to file the said petition to protect the environment in public interest, as the tribunal allowed the state government to continue quarrying operations for a period of 6 months on the basis of the environmental clearances granted by the State Environment Impact Assessment Authority (SEIAA). On the ground of jurisdiction and error of law apparent on the face of the record, the superior court can grant *certiorari* notwithstanding the existence of an alternative remedy by way of appeal or the like.

2. THE ORDER PASSED BY THE TRIBUNAL IS BEYOND JURISDICTION AND PERPETUATES ILLEGALITY.

The National Green Tribunal (NGT) went beyond its jurisdiction to allow Public Works Department (PWD) to continue the quarrying operation for a period of 6 months. Also, the order of the tribunal contains a manifest error on the face of the record by allowing PWD to be governed by the guidelines and clearances granted by the SEIAA when the same had been already lapsed, thereby perpetuating illegality.

ARGUMENTS ADVANCED

1. THE PUBLIC INTEREST LITIGATION FILED BY GREEN CANVAS UNDER ARTICLE 226 OF THE CONSTITUTION OF HINDIA IS MAINTAINABLE.

Black's Law Dictionary defines Public Interest as: "*Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national Government.*"² The word 'litigation' means a legal action, including all legal proceedings initiated in a Court of law with the purpose of enforcing a right or seeking a remedy.³

In *People's Union for Democratic Rights & Others v. Union of India & Others*,⁴ the Hon'ble court defined Public Interest Litigation and observed that "Public interest litigation is a cooperative or collaborative effort by the petitioner, the State of public authority and the judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society."

In case of a *certiorari*, a stranger⁵ may be allowed, by the court, at its discretion, to apply for the writ in exceptional circumstances, viz., where the impugned order or decision-

- i) Involves a grave miscarriage of justice;
- ii) Has an adverse impact on public interest.⁶

The proceedings of judicial court or quasi-judicial bodies subordinate to the High Court can be subjected to the writ of *certiorari*.⁷ If the matter to be reviewed is one which affects the public at large,⁸ anyone can apply for a writ of *certiorari*.⁹ It is the duty of the High Court to quash an order which is manifestly illegal or *ultra-vires*.¹⁰ Therefore any member of the public or organisation may bring it for judicial scrutiny.¹¹ Hence, the petitioners, 'Green Canvas' has the *locus standi* to file this PIL under Article 226 of the Constitution.

² Garner B.A., *Black's Law Dictionary*, (9th ed., 2009).

³ www.jurisdictionary.com, (Last visited on 19th October, 2014).

⁴ (1982) 3 SCC 235.

⁵ Satya Narayana Sinha v. S. Lal, AIR 1973 SC 2720.

⁶ Kalyan Singh v. State of UP, AIR 1962 SC 1183.

⁷ Surya Dev Rai v. Ram Chander Rai, AIR 2003 SC 3044.

⁸ Peoples' Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

⁹ Jasbhai Motibhai Desai v. Roshan Kumar, AIR 1976 SC 578.

¹⁰ Fertilizer Corp. Kamgar Union v. Union of India, AIR 1981 SC 344.

¹¹ Bandhua Mukti Morcha v. Union of India, 1984 SC 802.

2. THE ORDER PASSED BY THE TRIBUNAL IS BEYOND JURISDICTION AND PERPETUATES ILLEGALITY.

Certiorari can be issued not only to quash the decision of an inferior court but also to quash the decision of any administrative body or tribunal which comes within the ambit of the technical term ‘quasi-judicial’.¹² *Certiorari* can be issued under Article 226 in the following cases-

1. For correcting errors of jurisdiction as when an inferior court or tribunal acts, without jurisdiction or in excess of it or fails to exercise it.¹³
2. When the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving any opportunity to the parties to be heard or violates the principles of natural justice.¹⁴
3. The court issuing a writ of *certiorari* acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.¹⁵
4. An error in decision and determination itself may also be amenable to writ of *certiorari*, if it a manifest error apparent on the face of the proceedings,¹⁶ e.g. when it is based in clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by *certiorari* but not mere wrong decisions.¹⁷

2.1 *The impugned order of NGT allowing the State Government to continue quarrying operation for 6 months is beyond the power of NGT.*

The tribunal cannot act beyond the limits of the jurisdiction conferred by the statute which created itself or subsequently conferred or modified its jurisdiction.¹⁸ It cannot invent a jurisdiction simply because it would be convenient that it should do so,¹⁹ or because the excess of jurisdiction would be only technical.²⁰ Where a tribunal purports to exercise a power not given to it by the statute which created the jurisdiction,²¹ or exercises a power in disregard the condition laid down by the statute for its exercise or on extraneous

¹² R. v. Electricity Commr., (1924) 1 KB 171 (CA).

¹³ Hari Vishnu Kamath v. Syed Ahmed, AIR 1955 SC 233.

¹⁴ Parry & Co. v. Commercial Employees Assn., AIR 1952 SC 179.

¹⁵ Veerappa Pillai v. Raman & Raman Ltd., AIR 1952 SC 192.

¹⁶ Custodian General of Evacuee Property v. Khan Saheb Abdul Shukoor, AIR 1961 SC 1087.

¹⁷ Ebrahim Aboobakar v. Custodian General of Evacuee Property, AIR 1952 SC 319.

¹⁸ Nagendra v. Commr., AIR 1958 SC 398 (408).

¹⁹ Cf. Cowley v. Cowley, (1901) AC 450.

²⁰ R. v. Minister of Agriculture, (1955) 2 All ER 129 (138) (CA).

²¹ Nagendra Nath Bora v. Commr., Hills Division, AIR 1958 SC 398.

consideration,²² there is an excess jurisdiction. Excess of jurisdiction takes place, where the tribunal, having initial jurisdiction to entertain the matter goes, beyond the limits of the authority or powers²³ conferred by statute in the course of proceeding or in coming to its decision.

The National Green Tribunal (NGT) is a creation of National Green Tribunal Act²⁴ and is bound to function within the ambit of the said parent legislation. It cannot go beyond the parent legislation and any act or decision by the tribunal which goes beyond the enacting legislation is an exercise of excess jurisdiction.²⁵ The NGT Act provides that the NGT may pass an order granting relief, compensation or restitution.²⁶ However, the Act does not empower the tribunal to grant a relief to continue quarrying operation for a period of 6 months. Hence, such a relief granted by the tribunal is an exercise of excessive jurisdiction, which is not conferred by the parent legislation.

2.2 The impugned order of the NGT perpetuates illegality and hence is an error manifest on the face of the record.

When the decision of inferior tribunal is vitiated by an error apparent on the face of the record, it is liable to be quashed by the writ of certiorari.²⁷ An error apparent must be one which does not take prolonged argument to bring it to the surface.²⁸ The error apparent should be based on clear ignorance or disregard of the provision of law.²⁹ In other words, it is a patent error which can be corrected by *certiorari*, but not a mere wrong decision.³⁰ The concept of error of law on the face of record is not capable of precise or exhaustive definition, there is an element of indefiniteness, inherent in its very nature and it has to be determined judiciary on the facts of each case. It was observed that the concept is comprised of many in imponderables; it is not capable of precise definitions as no objective criteria can be laid down, the apparent nature of the error to a large extent being dependent upon the subjective element.³¹ Error in this context means error of law³² and law in this context means and includes a mixed question of fact and law.³³

²² P.J. Irani v. State of Madras, AIR 1961 SC 1731.

²³ R. v. Local Govt. Board, (1886) 10 QBD 309 (329).

²⁴ National Green Tribunal Act, 2010 (No. 19 of 2010).

²⁵ Bharat Bank v. Employees of Bharat Bank, (1950) SCR 459 (518).

²⁶ Section 15, National Green Tribunal Act, 2010.

²⁷ *Supra* note 13.

²⁸ Satyanarayan Lakshaminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137.

²⁹ Basappa T.C. v. T.C. Nagappa, AIR 1954 SC 440.

³⁰ *Supra* note 15.

³¹ K.M. Shanmugham v. SRVS Pvt. Ltd., AIR 1963 SC 1626.

According to the facts of the present case, the NGT allowed the state government to continue quarrying operations for a period of six months on the basis of environmental clearances granted by the SEIAA and on the basis of guidelines framed by them on 27.09.2012. However, the NGT in its order held that in view of guidelines issued by the MoEF the guidelines issued by the SEIAA and the environmental clearances granted on the basis of those guidelines actually lapsed.³⁴ Hence, although the NGT held that the clearances and guidelines issued by SEIAA had been lapsed but the same continued to govern the PWD for additional six months which is an error apparent on the face of record.

³² *Supra* note 20.

³³ *Shafi v. Addl. Dt. & Sessions Judge*, AIR 1977 SC 836.

³⁴ Fact Sheet, Para 10.

PRAYER

Wherefore, in the light of the facts presented, arguments advanced and authorities cited, the Petitioner humbly submit that the Hon'ble High Court of Matil Danu be pleased to adjudge and declare that:

1. *The PIL filed under Article 226 of the Constitution is maintainable.*
2. *The National Green Tribunal exceeded its jurisdiction and went beyond its power in granting 6 months additional time.*
3. *A writ of certiorari be granted and the order of NGT be quashed and set aside with a direction that the Respondents shall not be allowed to commence operations without obtaining clearance's from MoEF.*

And pass any other relief, that this Hon'ble High Court of Matil Danu may deem fit and proper in the interest of justice, equity and good conscience.

For this act of kindness, the Petitioner shall duty bound forever pray.

Sd. /-

(Counsel for the Petitioner)