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Case Comment on Kantha Vibhag Yuva Koli Samaj Parivartan Appellants Trust and Others vs State of Gujrat and Others

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ABSTRACT

The judgment passed by Supreme Court in 2019 in case of Kantha Vibhag Yuva Koli Samaj Parivartan Appellants Trust and Others vs State of Gujarat and Others addresses the problem which arises when one of the four respondents which are Surat Municipal Corporation set up the landfill site at Khajod Village, Taluka Choryasi in the district of Surat. They started dumping unsegregated and untreated Municipal Solid Waste at that landfill. That District of Surat in which the landfill was set up was surrounded by thirty-five villages. Initially, on 24 January 2003, they started dumping 850 Metric Tonnes of waste per day which got doubled in just 10 years and went up to 1600 Metric tonnes of waste per day by 16 January 2014. Multiple warnings were given to Surat Municipal Corporation (SMC) by doing inspections and visiting the site but the situation did not improve. Dumping of waste also led to irreversible contaminations of local water bodies and groundwater and also caused severe air pollution due to the burning of waste and damaged the ecology of the villages that are situated nearby, moreover, it also affected the health of citizens and dumping waste like this without any prior treatment is violating the Municipal Solid Waste (Handling and Management) Rules 2000 & Bio-Medical Waste (Management and Handling) Rules 1998.

Keyword: Solid Waste Management Rules, 2000, Medical Waste Rules 1998, Waste Dumping

Kantha Vibhag Yuva Koli Samaj Parivartan Appellants Trust and Others - (Appellants)

Versus

State of Gujarat and Others - (Respondents)

(CA 1046/2019)

Corum: Dr Justice Dhananjaya Y Chandrachud, J

The judgment passed by Supreme Court in 2019 in case of Kantha Vibhag Yuva Koli Samaj

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Parivartan Appellants Trust and Others vs State of Gujarat and Others addresses the problem which arises when one of the four respondents which are **Surat Municipal Corporation** set up the landfill site at Khajod Village, Taluka Choryasi in the district of Surat. They started dumping unsegregated and untreated Municipal Solid Waste at that landfill. That District of Surat in which the landfill was set up was surrounded by thirty-five villages. Initially, on 24 January 2003, they started dumping **850 Metric Tonnes** of waste per day which got doubled in just 10 years and went up to **1600 Metric tonnes** of waste per day by 16 January 2014. Multiple warnings were given to Surat Municipal Corporation (SMC) by doing inspections and visiting the site but the situation did not improve. Dumping of waste also led to irreversible contaminations of local water bodies and groundwater and also caused severe air pollution due to the burning of waste and damaged the ecology of the villages that are situated nearby, moreover, it also affected the health of citizens and dumping waste like this without any prior treatment is violating the **Municipal Solid Waste (Handling and Management) Rules 2000 & Bio-Medical Waste (Management and Handling) Rules 1998**.

The appellants requested, among other things, that the following be done:

- Stop MSW from being dumped at the landfill site;
- Restore the environment in the immediate area;
- Restore the landfill site to its original condition;
- Pay compensation to all those impacted in the nearby villages upon assessment of damages by a committee formed to assess the landfill site; and
- Implement the Solid Waste Management Rules 2016 (SWMRs) in their entirety.

The NGT's Western Zone Bench issued several orders concerning the matters brought up:

- On **20 March 2015**, The NGT noted that there is truth in the issues raised by the applicants that the burning of untreated MSW was causing severe air pollution which as result was affecting the health of the residents. NGT issued interim directions to prevent this from taking place during the pendency of the OA.
- On **22 December 2015**, the NGT again reappraised for proper dumping and audit of the management of MSW, and on this appellant's issue of participation in the management of landfills, NGT noted that it would be decided during the final hearing.
- On **7 March 2016**, The commissioner of SMC was directed by the NGT to provide a statement on the issues which were as follows:

- i. Size of the waste stream that was gathered, handled and disposed of in compliance with the 2000 Municipal Solid Waste (Handling and Management) Rules.
 - ii. The officers who failed to uphold the Rules and who disregarded the NGT's instructions.
 - iii. The schedule for when the area will properly manage garbage as per the Rules.
 - iv. Filing a declaration that waste management would be carried out strictly according to the law.
- On **16 May 2017**, The NGT ordered the Standing Committee to make a decision and issue a work order within a month to start the process of closing the open dumping site. SMC was also instructed to record the specifics of the properties where the projects will be launched.
 - On **19 September 2017**, SMC released a statement which stated that it must abide by the SWM Rules and that the site at Khajod is intended for a landfill, an MSW processing facility, and a waste-to-energy plant with a 100 TPD capacity through a public-private partnership.
 - Under the NGT's order of 19 September 2017, the appellants developed a list of action items for putting the SWM Rules into effect. The Municipal Commissioner filed an undertaking on behalf of SMC on **26 September 2017**, outlining the actions that would be taken to handle MSW, transportation, storage, and processing, as well as other connected issues. The agreement stated that after two years, "100% operation of the Solid Waste Processing Plant" and certain other conditions, there shall be no landfilling or dumping of unprocessed and unsegregated MSW.
 - On **17 July 2018**, the NGT remarked that SMC's present action plan appeared to fall short of the requirements of Clause J of Schedule-I of the SWM Rules with regard to legacy trash and the closure and rehabilitation of former dumping sites. To document SMC's compliance, it instructed SMC to prepare an affidavit.

The status of compliance with the SWM Rules had been under the scrutiny of earlier NGT Benches at the Western Zone Bench. The NGT was confronted with a number of issues relating to SMC's disposal of MSW, including the procedures that must be followed when commissioning waste-to-energy projects in the future.

On **August 31, 2018**, the NGT issued an order. The court received writ petitions regarding the

correct application of SWM regulations all across the nation, which led to the current proceedings³. Later, these were given to NGT. The NGT found that the SWM Rules had not been applied despite having previously provided instructions for doing so in its judgment. Later, during a meeting with all of the States organized by the Central Pollution Control Board, it was suggested that the NGT create Apex, Regional, and State Level Committees for implementation of the SWM Rules and the directives issued by the NGT and that these Committees should submit quarterly reports to the NGT.

The NGT directed the following:

- The **Apex Monitoring Committee** was established for a year or until future directives. Its function was to communicate with the pertinent Ministries and the Regional Monitoring Committees and to develop policies and instructions that the Regional Monitoring Committees and the States and Union Territories could find helpful. It was to meet ideally once a month, as well as once a month with the Regional Monitoring Committees. The NGT will subsequently get this report once every three months. In order to encourage public participation, it was also mandated that the Committee establish a website for information distribution.
- For each of the five zones—North, East, West, South, and Central—**Regional Monitoring Committees** were established for a period of one year, or until further orders. They were to ensure that the SWM Rules were effectively implemented, that biomedical waste and MSW were not mixed, and that biomedical waste was handled in compliance with the **2016 Bio-Medical Waste Management Rules**⁴. The Committees were supposed to ideally convene once a week, engage with one another, meet with the Apex Monitoring Committee, and meet with the States as needed. They were required to submit the reports two times a quarter to the Apex Monitoring Committee and a report was to be submitted to the NGT after the first quarter. The Regional Monitoring Committees were also instructed to create websites, much like the Apex Monitoring Committee.
- The **State Level Committees** were also established for each State and Union Territory for a period of one year, or until further orders. They were supposed to ideally meet with the local organizations in two weeks, and the organizations were to give those reports every two weeks. They have to make decisions on technical and policy matters while

³ The National Green Tribunal Act, OA No. 606 of 2018.

⁴ Bio-Medical Waste Management Rules, 2016, Gazette of India, Rule 5

adhering to the SWM Rules and the recommendations of the Apex and Regional Monitoring Committees. Additionally, they were required to make monthly reports to the Regional Monitoring Committee. Additionally, it was ordered that public participation be promoted and that MSW be given public domain Status.

Then the counsels of both parties came into the picture and put their **arguments**. According to **Ms. Shilpa Chohan**, knowledgeable Counsel for the appellants, assigning the appellants to a committee was completely improper in light of the development made by the Western Zone Bench of the NGT in resolving several parts of the case. Furthermore, it is argued that the NGT has the authority to grant restitution and award compensation; hence, it was improper to dispose of the OA by delegating the decision to a committee. And another side, **Mr. Tejas Patel**, knowledgeable Counsel representing SMC, asserts that the appellants have not provided any evidence that might be used to support a claim for compensation. Additionally, it was recommended that they have a way to air their issues before the relevant committee.

The appellant filed OA and the issue raised is falling under the NGT jurisdiction under **Section 14** which is related to implementation of SWM rules and has been notified under the powers of **sections 3,6 and 25 of EPA 1986⁵** and it is the **Entry 5 Schedule 1 of the NGT act⁶**. The appellant's prayers are not of that nature that it cannot be granted by the court, it was in the power in accordance with section **15(1) of the NGT act**. Western Zone Bench of the NGT was continuously hearing the OA since August 2014 and also the interim directions were significantly provided by WZB. The appellant is now to approach one of the committees that were set up by it rather than continue with the proceedings with the OA.

The Legal provisions relating to this case are:

- **Section 14 of the NGT Act 2010** says that the tribunal will have jurisdiction over all civil cases related to the substantial question relating to the environment and the tribunal will take all these types of cases. The time for filling the application is six months from the action of the period after that no application will be considered, if there is any specific reason for delay then there will be an extra time of sixty days. In *Samir Mehta V. Union of India*⁷ According to three benches of judges, The Maritime Zones Act of 1976, states that India has control over natural resources in both the contiguous zone and the exclusive economic zone. As a result, the Tribunal found that it had jurisdiction to hear the case. The tribunal has the power to consider complaints regarding maritime

⁵ The Environment Protection act, 1986 (Act 29 OF 1986) (s.3, 6, 25).

⁶ The National Green Tribunal act, 2010(Act 19 OF 2010) (Entry 5 Schedule 1).

⁷ MANU/GT/0104/2016

pollution in exclusive economic zones because, in accordance with this Act, the Central Government has the exclusive authority to preserve and safeguard the maritime environment in the aforementioned zones.

- **Section 15 of the NGT Act 2010** says that relief, compensation, and restitution are provided to the victims affected by pollution or other environmental damages and the application should be filled within the 5 years of the cause of action after that no application will be granted, if any sufficient cause, then only the time will increase to 60 days more. The Tribunal may have regard for damage to public health, property, and environment and have to divide compensation to claimants and relief or restitution to damaged property or environment in a manner as they may think fit. A similar judgment was passed in the case of *Mantri Techzone (P) Ltd. v. Forward Foundation*⁸ in which a three-judge panel of this court explained that the NGT is given extensive authority under **Section 15(1)(c) of the NGT Act**. **Justice S. Abdul Nazeer stated that**, “When read in conjunction with Section 20 of the Act, Section 15(1)(c) of the Act is an entire island of authority and jurisdiction.” The **Precautionary Principle, Polluter Pays, and Sustainable Development** principles which this Court advanced via numerous judicial pronouncements are now ingrained as the cornerstone of environmental law under the NGT Act. Therefore, the Tribunal might use Section 20 for adopting remedial actions in the interest of the environment wherever the environment and ecology are being damaged and imperiled.

Precautionary Principle

According to the precautionary principle, inaction is not justified in cases when there is a serious danger of harm to people or the environment and there is no irrefutable, definitive, or firm scientific evidence. In contrast to the conventional reactive wait-and-see approach to environmental preservation, it is a better-safe-than-sorry strategy. The precautionary principle encourages action to foresee and prevent environmental harm when there is uncertainty about how an activity may affect the environment.

The Rio Declaration (or Agenda 21) of 1992, states that: “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental

⁸ AIR 18 SCC 494

degradation.”⁹

Polluter Pays Principle

According to the widely accepted "polluter pays" principle, individuals who cause pollution should be responsible for paying the costs associated with controlling it in order to protect public health and the environment. For instance, a factory is often held accountable for the proper disposal of any potentially toxic waste that is produced as a byproduct of its operations. The larger concepts that govern sustainable development globally include the polluter pays principle (formally known as the 1992 Rio Declaration)¹⁰.

The idea serves as the foundation for the majority of laws governing contamination of the land, water, and air. According to UK law, pollution is the term used to describe when harmful or potentially dangerous substances contaminate the land, water, or air.

Sustainable Development Principle

To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.¹¹

- **Section 6¹² of EPA** tells about 6 rules which regulate environmental pollution:-
 - i. The requirements for various places and uses for the quality of the land, water, and air.
 - ii. The highest concentrations of various environmental contaminants (including noise) are permitted in different places.
 - iii. The protocols and safety measures for handling potentially dangerous substances.
 - iv. The handling of dangerous substances is prohibited and subject to limits in various places.
 - v. The constraints and prohibitions on where industries can operate and where their processes and activities can be carried out.

⁹ Principle 15 of Rio Declaration.

¹⁰ Principle 16 of Rio Declaration.

¹¹ Principle 8 of Rio Declaration.

¹² Environmental Protection Act 1986, (Act 29 OF 1986) (Section 6)

- vi. The protocols and protections for preventing accidents that might lead to environmental pollution and for providing corrective actions in the event of such accidents.

- **Section 25 of EPA1986** talks about Powers to Make Rules

The limits are that, under section 7, environmental contaminants may not be discharged or emitted. The method and safety precautions that must be followed while handling or causing the handling of hazardous chemicals as required by Section 8. the authorities or agencies to whom all assistance is required to be provided under subsection (1) of section 9 and to whom notice of the fact of the discharge of any environmental pollutant in excess of the established standards shall be given how samples of air, water, soil, or another substance must be collected in accordance with subsection (1) of section 11 in order to be used for analysis the format in which the notice of intent to have a sample analysed under clause (a) of sub-section (3) of section 11 shall be given; the duties of environmental laboratories, the process for submitting samples of air, water, soil, and other substances to such laboratories for analysis or test; the format of laboratory reports; the fees payable for such reports; and other matters to enable such laboratories to perform their duties under subsection (2), the method by which the Central Government shall be notified of the offence and the intention to file a complaint pursuant to Section 19's Clause (b); the authority or officer to whom any reports, returns, statistics, accounts, and other information shall be furnished pursuant to Section 20; and any other matter that is required to be, or may be, prescribed.

The judgment that the court passed after hearing both sides, held that none of the petitioners' requests were of a nature that the NGT could not approve in compliance with its authority under **Section 15(1) of the NGT Act** which says relief and compensation to the victims of pollution and other environmental damage arising under the enactment specified in the **Schedule I**¹³. It says the application should be filled within the 5 years of the cause of action after that no application will be granted, if any sufficient cause, then only the time will increase to 60 days more. The Tribunal may have regards of damage to public health, property and environment and have to divide compensation to claimants and relief or restitution to damaged property or environment in a manner as they may think fit. Since August 2014, the first application was under continuous consideration by the Western Zone NGT Benchmark, which had already received significant preliminary guidance. **Section 14 of NGT Act 2010** says that the tribunal will have jurisdiction on all civil cases which

¹³ The National Green Tribunal Act 2010, Schedule 1

are related to substantial questions relating to the environment and the tribunal will take seriously to all these types of cases. The time for filling the application is six months from the action period after that no application will be considered, if there is any specific reason for delay then there will be an extra time of sixty days. From the first situation, the Court distinguished between expert committees appointed by the court and those appointed by the government in the exercise of the administrative authority or according to specific laws. It was noted that the collection of evidence is often so difficult, technical, and sometimes inefficient that courts have set up expert commissions. The NGT, a professional body of law and professionals, is empowered to make decisions under Sections 14 and 15. Judges drew on their case handling experience, while expert members provided technical information on environmental issues to help decide the issues.

The court cited **Hanuman Laxman Aroskar v Union of India**¹⁴, in which the court states that NGT was good at environmental matters and which we can say that NGT did not lack any kind of expertise. The court ruled that NGT waived its jurisdiction and delegated jurisdiction to a panel of experts dedicated to management. A panel of experts was able to assist the NGT in conducting evidence and evidence-finding work, but the final decision was made by the NGT. It was not that which can be delegated, so as a result, the judge says that the order in question cannot be upheld. The court later held that, although it regrets that more than three years have passed, the postponement would have been avoided if the NGT had ruled on the pending matter, and in the light of the facts, it decided that the judgment on appeal is pending because to prevented had the adjudicated on the matter before it.

ANALYSIS

Kantha Vibhag Yuva Koli Samaj Parivartan Trust And Others vs State of Gujarat and Others¹⁵ case held in supreme court of India and supreme court of india on 21/01/2022 held that an administrative expert committee cannot assume the decision-making powers of a quasi-judicial body like the NGT and the goals and justifications for the NGT's establishment in India, along with a purposeful interpretation of the NGT Act's statutory provisions in light of the fundamental principles of environmental justice, are part of a global conversation about environmental issues. The NGT's specific responsibility is to help develop environmental law in India. In this issues are is NGT's principal bench was proper in directing the petitioners to seek one of the NGT's instead of continuing with the Original Application's procedures The

¹⁴ AIR 15 SCC 401

¹⁵ Civil Appeal No 1046 of 2019

court later held that, although it regrets that more than three years have passed, the postponement would have been avoided if the NGT had ruled on the pending matter, and in the light of the facts, it decided that the judgment on appeal is pending because to prevented had the adjudicated on the matter before it. Justice Mr. DY Chandrachud and Justice Bela M Trivedi observed that all these committees were constituted on the basis of their technical knowledge and experience and their conclusions were open to judicial review before the court when decisions were taken solely on the basis of these findings relating to judicially ascertained limitations. Therefore, the court stated that it must be cautious in rejecting the opinions of these committees, except where it finds that their judgment is clearly arbitrary or incorrect.
