The State of Himachal Pradesh and Others v. Yogendera Mohan Sengupta and

Binding nature of law declared by the Supreme Court under Article 141 of the Constitution of India on all Courts, Tribunals, and authorities functioning under a High Court's superintendence — and the requirement of judicial discipline to prevent

Date of Order: January 11, 2024
Case Law No: GIB-SC-2024-16
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CASE DESCRIPTION / SUMMARY

Background:

Para 1–2, 3.1–3.14: The Himachal Pradesh Town & Country Planning Act, 1977 (TCP Act) governs planning for the Shimla Planning Area (SPA). Respondent No.1 filed OA No. 121 of 2014 before NGT seeking protection of "Green Belt"/forest areas from non-forest activity. NGT (16.11.2017 order — "first order of NGT") went beyond the prayers and issued sweeping construction restrictions across the entire SPA (e.g., capping construction at "2 storeys + attic" in core/green areas) and directed the State to finalize the development plan within 3 months incorporating its directions. The State's review was dismissed (16.7.2018), leading to Civil Appeal Nos. 5348-5349 of 2019.

Para 2, 4–4.1: Subsequently the State published a draft development plan (8.2.2022). Respondent No.1 filed a fresh OA (No. 297 of 2022); NGT stayed the draft plan (interim order 12.5.2022). The State challenged this before the Himachal Pradesh High Court (CWP No. 5960 of 2022). Despite the pendency of that writ petition, NGT passed a final order (14.10.2022 — "second order of NGT") declaring the draft plan illegal for conflicting with its first order. The Supreme Court transferred CWP No. 5960 of 2022 to itself (order dated 14.11.2022), renumbered as Transferred Case (C) No. 2 of 2023.

Facts :

Para 12–19: The State argued: (a) NGT's jurisdiction under the NGT Act, 2010 is confined to Schedule I enactments, which do not include town & country planning; (b) finalizing a development plan is a quasi-legislative function, and NGT cannot direct how a legislative body exercises that power; (c) NGT could not have suo motu enlarged the scope of the original OA; (d) NGT could not proceed once the High Court was already seized of the same issue in CWP No. 5960 of 2022.

Para 20–28: Respondents argued the first NGT order was based on a High-Powered Committee report addressing genuine ecological risks (landslides, cloudbursts, fragile Himalayan ecology), that NGT has overriding power under the NGT Act, and relied on *Mantri Techzone Private Limited v. Forward Foundation*, (2019) 18 SCC 494 : 2019 INSC 315, to argue NGT could vary buffer zones/planning norms.

Para 30–61: The Court analyzed Sections 13–20 of the TCP Act (Chapter IV) — preparation of draft development plan (Sec. 18), publication and objections (Sec. 19), and State Government's sanction (Sec. 20) — holding these constitute a complete delegated-legislation scheme with in-built safeguards (public notice, objections, hearings at two stages).

Court Observations :

Para 45: "Chapter-IV of the TCP Act is a complete code, providing for preparation of draft development plan, publication of draft development plan with a publication of its notice, inviting objections and suggestions, giving reasonable opportunity to all persons affected of being heard, making modifications in the draft development plan as may be considered necessary by the Director and thereafter submitting it to the State Government."

Para 51: "...it will be amply clear that the preparation of draft development plan under Section 18 of the TCP Act, finalization of the same under Section 19 of the TCP Act by the Director and grant of approval by the State under Section 20 of the TCP Act are all legislative functions."

Para 61 (citing *Cynamide India Ltd.*, (1987) 2 SCC 720 : 1987 INSC 100; *Tulsipur Sugar Co. Ltd.*, (1980) 2 SCC 295 : 1980 INSC 38; *Sundarjas Kanyalal Bhatija*, (1989) 3 SCC 396 : 1989 INSC 202; *Pune Municipal Corporation*, (2004) 10 SCC 796 : 2004 INSC 348; *Bangalore Development Authority*, (2012) 3 SCC 442; *Rajeev Suri*, (2022) 11 SCC 1 : 2021 INSC 446): "...it is a settled position of law that the exercise of power for the preparation, finalization and approval of development plan is a power exercised by the delegatee for enacting a subordinate piece of legislation."

Para 64 (citing *V.K. Naswa v. Home Secretary, Union of India*, (2012) 2 SCC 542 : 2012 INSC 10): "The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its law-making power in any manner." and "Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner."

Para 69: "...neither the High Courts while exercising powers under Article 226 of the Constitution nor this Court while exercising powers under Article 32 of the Constitution can direct the legislature or its delegate to enact a law or subordinate legislation in a particular manner. If the High Courts and this Court... cannot do so, the answer to the question as to whether a Tribunal constituted under

a statute, having a limited jurisdiction, can do so or not, would be obviously 'No'."

Para 70: "…the first order of NGT is liable to be set aside on the short ground that it has transgressed its limitations and attempted to encroach upon the field reserved for the delegate to enact a piece of delegated legislation."

Para 76: On *Mantri Techzone Private Limited* (relied on by respondents) — "we are… of the considered view that the observations found in para 47 of the Mantri Techzone Private Limited (supra) could not be construed to be a precedent or a ratio decidendi," since the point was conceded by counsel there, not adjudicated.

Para 108 (citing *Priya Gupta and Another v. Additional Secretary, Ministry of Health and Family Welfare and Others*, (2013) 11 SCC 404 : 2012 INSC 601):
"It could thus be seen that this Court in unequivocal terms held that no Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. It held that such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. It has been held that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court expressed a caution that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. This Court further held that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system."

(This paragraph establishes that Supreme Court orders bind all courts/tribunals under Article 141; that a tribunal under a High Court's supervisory jurisdiction — such as the NGT vis-à-vis the Himachal Pradesh High Court — cannot ignore issues already before that High Court; and that disregarding this discipline undermines judicial credibility and encourages "chance litigation." It directly supports the Court's conclusion in Para 109 that the NGT breached judicial propriety by proceeding despite the High Court being seized of the same matter.)

Para 109–112 (citing *L. Chandra Kumar*, (1997) 3 SCC 261 : 1997 INSC 288; *Raghu Ramakrishna Raju Kanumuru*, (2022) 8 SCC 156 : 2022 INSC 632): "…the continuation of the proceedings by the NGT during the pendency of the writ petitions before the High Court was not in conformity with the principles of judicial propriety." and "…the second order of NGT… is liable to be set aside… [also] on the ground of judicial propriety, the NGT ought not to have continued with the proceedings after the High Court was in seisin of the matter."

Para 124: "…there are sufficient safeguards to balance the need for development while taking care of and addressing the environmental and ecological concerns… the development plan… cannot be

stalled in entirety thereby putting the entire developmental activities to a standstill."

Final Verdict (Para 126):
Appeals and Transferred Case allowed; NGT's orders dated 16.11.2017, 16.7.2018, 12.5.2022 and 14.10.2022 quashed and set aside; State of Himachal Pradesh permitted to implement the development plan published on 20.6.2023, subject to the Court's observations. No order as to costs.

 Thumbs Up — Decision in favour of the State of Himachal Pradesh (Appellant); NGT's orders restraining/directing the development plan were set aside as exceeding jurisdiction.

Key Cases Referred :

- Himachal Pradesh Bus Stand Management and Development Authority v. Central Empowered Committee, (2021) 4 SCC 309 : 2021 INSC 18
- State of Madhya Pradesh v. Centre for Environment Protection Research and Development, (2020) 9 SCC 781 : 2020 INSC 516
- Director General (Road Development), NHAI v. Aam Aadmi Lokmanch, (2021) 11 SCC 566 : 2020 INSC 452
- Tamil Nadu Pollution Control Board v. Sterlite Industries (India) Ltd., (2019) 19 SCC 479 : 2019 INSC 220
- Techi Tagi Tara v. Rajendra Singh Bhandari, (2018) 11 SCC 734 : 2017 INSC 986
- State of Himachal Pradesh v. Satpal Saini, (2017) 11 SCC 42
- Ambesh Kumar (Dr.) v. Principal, L.L.R.M. Medical College, 1986 Supp SCC 543 : 1986 INSC 275
- Bishambhar Dayal Chandra Mohan v. State of Uttar Pradesh, (1982) 1 SCC 39 : 1981 INSC 189
- State of Andhra Pradesh v. Raghu Ramakrishna Raju Kanumuru, (2022) 8 SCC 156 : 2022 INSC 632
- T.N. Godavarman Thirumulkpad v. Union of India, (1997) 2 SCC 267 : 1997 INSC 226; later orders (2023 INSC 430)
- Punjab Termination of Agreement Act, 2004, In Re, (2017) 1 SCC 121 : 2016 INSC 1018
- State of Tamil Nadu v. State of Kerala, (2014) 12 SCC 696 : 2014 INSC 373
- Mantri Techzone Private Limited v. Forward Foundation, (2019) 18 SCC 494 : 2019 INSC 315
- Pragnesh Shah v. Dr. Arun Kumar Sharma, (2022) 11 SCC 493 : 2022 INSC 47
- Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority, (1997) 11 SCC 605
- Resident's Welfare Association v. UT of Chandigarh, (2023) 8 SCC 643 : 2023 INSC 22
- Union of India v. Cynamide India Ltd., (1987) 2 SCC 720 : 1987 INSC 100
- Tulsipur Sugar Co. Ltd. v. Notified Area Committee, Tulsipur, (1980) 2 SCC 295 : 1980 INSC 38
- Sundarjas Kanyalal Bhatija v. Collector, Thane, (1989) 3 SCC 396 : 1989 INSC 202

- Pune Municipal Corporation v. Promoters and Builders Association, (2004) 10 SCC 796 : 2004 INSC 348
- Bangalore Development Authority v. Aircraft Employees' Cooperative Society Ltd., (2012) 3 SCC 442
- Rajeev Suri v. Delhi Development Authority, (2022) 11 SCC 1 : 2021 INSC 446
- V.K. Naswa v. Home Secretary, Union of India, (2012) 2 SCC 542 : 2012 INSC 10
- Manoj Narula v. Union of India, (2014) 9 SCC 1 : 2014 INSC 568
- Union of India v. Dhanwanti Devi, (1996) 6 SCC 44 : 1996 INSC 911
- L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 INSC 288
- Priya Gupta v. Additional Secretary, Ministry of Health, (2013) 11 SCC 404 : 2012 INSC 601
- Indian Council for Enviro-Legal Action v. Union of India, (1996) 5 SCC 281 : 1996 INSC 237
- Essar Oil Limited v. Halar Utkarsh Samiti, (2004) 2 SCC 392 : 2004 INSC 40
- N.D. Jayal v. Union of India, (2004) 9 SCC 362 : 2003 INSC 438
- State of Uttar Pradesh v. Uday Education and Welfare Trust, 2022 SCC OnLine SC 1469 : 2022 INSC 465

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