

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Appeal Nos. 26 to 34 2017 (SZ)

In the matter of

Appeal No.26 of 2017

M.J.Kurian
Proprietor, JMN Traders,
34, Kamaraj Salai,
Manjambakkam Village,
Chennai 600060

.. Applicant

Appeal No.28 of 2017

S.S.Aqua Power Products,
Rep. by its Partner D.Saravanan,
No.1/103, Perumal Koil Street,
Kamarajar Salai, Periamathur Village,
Ambattur Taluk,
Tiruvallur District.

.. Applicant

Appeal No.29 of 2017

Dhinagar Babu,
Partner: Evergreen Enterprises,
No.2, Devi Nagar Road,
Kumarappapuram,
Madhavaram Milk Colony,
Chennai

.. Applicant

Appeal No.30 of 2017

Ramadoss,
Proprietor: K.K.Aqua Product,
No.40, Telephone Colony,
Mathur Village,
Chennai 600 068

.. Applicant

Appeal No.31 of 2017

Ramadoss,
Proprietor: K.K.Aqua Product,
No.40, Telephone Colony,
Mathur Village,
Chennai 600 068

.. Applicant

Appeal No.32 of 2016

A.Jagaveerapandian,
Proprietor: Pandia's Aqua Leela
Agro Products,
No.410/4, Aziz Nagar,
Madhavaram, Chennai 600060

.. Applicant

Appeal No.33 of 2016

Mr.S.Vijayagam
Proprietor, Ambiga Enterprises,
428/2, Kamarajar Salai,
Agarson College Road,
Madhavaram, Thiruvallur District

.. Applicant

Appeal No.34 of 2016

Arun Kumar
Proprietor: Sri Venkateswara Enterprises,
No.1, Perumal Koil Street,
Elumalai Thottam, Near AVM Nagar,
Madhavaram Taluk,
Chennai 600060

.. Applicant

Vs.

1. The Secretary to Government,
Environment and Forest Department,
Secretariat, Chennai 600 009
2. The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai, Guindy,
Chennai 600 032
3. The Central Ground Water Board,
Government of India – Ministry of Water
Resources, South Eastern Coastal Region,
Rep. by its Regional Director,
E-1, G- Block, Rajaji Bhavan,
Besant Nagar, Chennai 600 090
4. The Chief Engineer,
Public Works Department
Water Research Organisation,
State Ground & Surface Water
Resources Data Centre,
Taramani, Chennai 600113

5. The Managing Director,
Chennai Metropolitan Water Supply
And Sewerage Board,
Pumping Station Road,
Chindradripet, Chennai 600002
6. The Superintending Engineer,
Chennai EDC/ North TANGEDCO
5A Block, 144, Anna Salai,
Chennai 600002
7. The Assistant Engineer,
TANGEDCO,
Madhavaram Milk Colony,
Chennai 600 051
8. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Ambattur, Chennai
9. The District Collector,
Thiruvallur District.

.. Respondents

Counsel appearing for the applicants:

M/s.M.Kamalanathan &
R.Thomas

Counsel appearing for the respondents

M/s.M.K.Subramanian, E.Manoharan
& P.Velmani for R1 and R4 in Appeal
No.26, 28, 30, 32, 33, 34 of 2016
Mr.Su.Srinivasan for R3 in Appeal
No.26, 28, 30,31, 32, 33, 34 of 2016
Mrs.H.Yasmeen Ali for R2 & R8

ORDER

Present

Hon'ble Shri Justice Dr.P.Jyothimani, Judicial Member

Hon'ble Shri P.S.Rao, Expert Member

25th May, 2017

Whether judgment is allowed to be published on the Internet .. Yes/No

Whether judgment is to be published in the All India NGT Reporter .. Yes/No

We have heard learned counsel appearing for the appellants as well as respondents in these appeals. These appeals are directed against the impugned order passed by Tamil Nadu State Pollution Control Board (Board) on 28.03.2017 by virtue of the powers conferred under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 directing the closure and disconnection of power supply to the appellants' units who are carrying on the business of packaged drinking water in various places at Mathur, Manjambakkam, Madhavaram and Vadaperumbakkam Villages. The reason assigned in the impugned orders of the Board is that these appellant units who have participated in a public hearing, have given an undertaking that they will not continue the operations without obtaining valid consent from the Board. In spite of such undertaking, the appellant units are carrying on the operations of packaged drinking water business without obtaining 'consent'. It is the case of the appellants that in so far as it relates to extraction of groundwater in these areas, the Government has passed certain orders which are the subject matter of dispute in the Hon'ble High Court of Madras and it is stated that the Hon'ble High Court has granted an interim order with the result that the parties are unable to get NOC from PWD.

2. It is in those circumstances the parties have approached the Chennai Metropolitan Water Supply and Sewage Board (CMWS&SB) for the purpose of obtaining NOC for transporting water as per the provisions of Chennai Metropolitan Area Ground Water (Regulation) Act, 1987. It is the case of the appellants that they have applied to the said Authority and the Authority has not taken any decision within the time stipulated and therefore as per the provisions, deemed NOC to have been given in their favour. Therefore, it is the case of the appellants that the Board should have considered the said legal issue and passed orders on the Application for Consent stated to have been filed by these appellants.

3. In this regard, it is relevant to note that in the batch of cases which were taken up *suo motu* in Application No.40 of 2013 relating to packaged drinking water units in Chennai City, the Tribunal has disposed of them in the order dated 29.01.2016 wherein the packaged drinking water units in the State are divided into 3 categories viz.,

1. The categories in whose favour no interim orders were granted and who does not carry on any operation viz., the units which are to be kept closed.
2. The Units permitted to have electricity connection only for the protection of membrane and for the maintenance of the machinery.
3. Units which are permitted to continue their operation on the basis of the conditions imposed by the PWD and to be operated for a limited number of hours per day in view of the need of the public at large and also the employees' of the units whose livelihood depends on it.

4. It was based on the said categorisation, the Tribunal has grouped various applicants into 3 categories and passed orders. It is the case of

the appellants before us that they come under the 3rd category and they are entitled to operate their business for limited number of hours as per the conditions imposed by PWD. We have in our order dated 08.05.2017, while considering the contention of the learned counsel appearing for the appellants that there are nearly 33 similar units under operation in Mathur, Manjambakkam, Madhavaram apart from Puzhal and Vadaperumbakkam running without 'consent', directed the Board to effect closure of those units also. The Tahsildar, Madhavaram who is in the Tribunal, also stated that in the units where the drinking water is being either transported or drawn without the 'consent', he has taken measures for the purpose of closing those water lines.

5. In so far as it relates to the 8 appellants who are before us, it is his case that even though few of them on earlier occasions have illegally drawn water in the same area after the same was closed, in the Writ Petition filed before the Hon'ble High Court, the said parties have given an undertaking that they will not draw the groundwater from the area where they are carrying on the activity. It was by virtue of the said undertaking the said appellants are not drawing water and he also assured that in respect of these appellants he will ensure that they shall not draw water from the ground in the premises where they are carrying on the packaged drinking water business. We make it clear that even in cases where the transportation of water is permitted, the same must be only after obtaining 'consent' from the Board. In that regard, the Board has filed the copy of a letter of District Environmental Engineer, Ambattur dated 24.05.2017 addressed to the Member Secretary, Tamil Nadu Pollution Control Board wherein the particulars relating to all the 8 appellants are annexed which are as follows:

Annexure I

Status of application filed for the consent of the Board through online (OCMMS) by the 8 packaged drinking water units at Mathur, Manjambakkam and Madhavaram Village which have made an application before the Hon'ble National Green Tribunal (Southern Zone), Chennai.

| S. No | Name and address of the Unit | Hon'ble NGT Application No | Date of application for consent | Status of Application |
|-------|--|-------------------------------|---------------------------------|---|
| 1 | M/s. Sri Venkateswara Enterprises, No.1 Perumal Koil Street, Elumalai Thottam, Near AVM Nagar, Madhavaram Village, Madhavaram Taluk, Tiruvallur District | Appeal No. 34 of 2017 (SZ) | 24.05.2017 | Application is under process |
| 2 | M/s. KK Aqua Product, No. 132/1C1, Telephone Colony Mathur, Chennai – 600 068 | Appeal No. 30 of 2017 (SZ) | 23.05.2017 | Application returned for want of additional particulars on 24.05.2017 |
| 3 | M/s. J M N Traders, No. 34 Kamarajar Salai, Manjambakkam, Chennai – 600 060 | Appeal no. 26 of 2017 (SZ) | 14.05.2017 | Application returned on 22.05.2017 (Resubmitted on 24.05.2017 and the application is under process) |
| 4 | M/s. Ambiga Enterprises, No.428/2, Agarson College Road, Om Sakthi, Chelliamman Koil Street, Manjambakkam, Chennai – 600 060 | Appeal No. 33 of 2017 (SZ) | 24.05.2017 | The application is under process |
| 5 | M/s. APD Gomala Enterprises, No. 115/2A1, Pillaiyar Koil Street, Kamarajar Salai, Mathur Village, Chennai – 600 068. | Appeal No. 31 of 2017 (SZ) | 24.05.2017 | Application is under process |
| 6 | M/s. Pandia's Aqua Leela Agro Products, No. 410/4, Aziznagar, Madhavaram Village, Chennai – 600 060 | Appeal No. 32 of 2017 (SZ) | 24.05.2017 | Application is under process |
| 7 | M/s. S.S. Aqua Products, No. 103, Kamaraj Salai, Periyamathur, Chennai – 600 068, Madhavaram Taluk, Tiruvallur District | Appeal No. 28 of 2017 (SZ) | 16.05.2017 | Application is returned for want of additional particulars on 24.05.2017 |
| 8 | M/s. Ever Green Enterprises, No.143/4, Madhavaram Milk Colony Road, Madhavaram Village, Madhavaram Taluk, Tiruvallur District | Appeal No. 29 of 2017 (SZ) | 15.05.2017 | 24.05.2017 (Resubmitted on 24.05.2017 and the application is under process) |

Annexure II

Status of application filed for the consent of the Board through online (OCMMS) by the remaining 27 packaged drinking water units in Mathur, Manjambakkam, Madhavaram, Vadaperumbakkam and Pulhal areas of Madhavaram Taluk, Tiruvallur District.

| S. No | Name and address of the Unit | Status of issue of show cause notice / closure direction | Whether Unit has replied for show cause notice | Status of Consent |
|-------|--|--|--|--|
| 1 | M/s. PAVITHRA AQUA TECH No. 104/131, Kanniamman nagar, Vadaperumbakkam Village, Puzhal block, Madhavaram Tk, Chennai – 600 060. | Show cause notice issued vide Proc. Dated 08.05.2017 | No | Applied for the consent of the Board on 08.10.2014, Application returned on 29.10.2014 |
| 2 | M/s. SHAH AQUA PRODUCTS No. 18/20, Valluvar Street, Kavangarai, Puzhal, Chennai – 66 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Not applied for the consent of the Board |
| 3 | M/s. D G AQUA PRODUCTS (Presently M/s. PRAVEEN RAJ AQUA TECH) No. 247, V. S. Mani Nagar, 1 st Gate, Madhavaram, Chennai 600060 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Not applied for the consent of the Board |
| 4 | M/s. THARAG AQUA PRODUCTS No. 49/44, Nethaji Main Road, Ponnamman medu po, Chennai – 600 110 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Applied for the consent of the Board on 02.01.2014, Application returned on 10.01.2014 |
| 5 | M/s. KARUNYA ENTERPRISES No.420A, Panchayat road, Ellaiyamman koil street, Manjampakkam, Chennai – 600060 | Show cause notice issued vide Proc. Dated 04.08.2016 | Yes | Applied on 14.05.2017 and Application is returned for want of additional particulars on 22.05.2017 |
| 6 | M/s. SRI PADMAVATHY FOODS AND BEVERAGES No.98, GNT road, Puzhal, Chennai – 600066 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Applied on 14.05.2017 and Application is returned for want of additional particulars on 22.05.2017 |
| 7 | M/s. G.D.AQUA FARM No. 1/21, Madhavaram – Red hills road, Vadaperumbakkam, Chennai – 600 060 | --- | --- | Consent to operate issued vide proc dated 10.07.2009 valid upto 31.03.2010 and applied for renewal on 06.05.2017 and application returned on 23.05.2017 |
| 8 | M/s. YOGA AQUA MINERALS No.19/A, Rajiji Salai, 4 th Street, Pukraj nagar, Madhavaram, Chennai – 600060 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Not applied for the consent of the Board |
| 9 | M/s. VARUNA AQUA FARMS Plot No.1 & 2, Gandhi Road, Balaji Nagar, Puzhal, Chennai – 600066 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Not applied for the consent of the Board |
| 10 | M/s. AQUAA FINE No.744, GNT road, Rehills, Chennai – 52 | Show cause notice issued vide Proc. | No | Not applied for the consent of |

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| | | Dated 15.05.2017 | | the Board |
| 11 | M/s. VARNAM AQUA FARM No.101,13 th Street, K.S. Nagar, Kavangarai, Puzhal, Madhavaram, Chennai – 600052 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Applied on 14.05.2017 and Application is returned for want of additional particulars on 22.05.2017 |
| 12 | M/s. TAMIL AQUA ENTERPRISES, No.4/179, Puzhal Ambattur Road, Puzhal, Chennai – 600066 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Application filed on 24.05.2017 and Application is under process |
| 13 | M/s. HI-FI AQUA, No.5/89, Thirupathi Devasthanam nagar, Vadaperumbakkam, Chennai – 600060 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Not applied for the consent of the Board |
| 14 | M/s. PUSHPAM ENTERPRISES, No.5, Seliamman Nagar, Madhavaram Taluk, Chennai – 600 060 | Show cause notice issued vide Proc. Dated 04.08.2016 and closure direction issued vide proc. Dated 28.03.2017 | -- | Not applied for the consent of the Board |
| 15 | M/s.SWAN AQUA, No.55, Theyampakkam road, Vilankattupakkam, Revathi nagar, Redhills, Chennai – 600052 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Not applied for the consent of the Board |
| 16 | M/s. HYDRO FOOD PRODUCTS No.83 & 84 Yousuf Colony, Vadaperumbakkam, Chennai – 600060 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Not applied for the consent of the Board |
| 17 | M/s. SHREE BALAJI AQUA FARMS, No.27, New Krishna Nagar, Puzhal Village, Madhavaram Taluk, Chennai – 600 066 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Application filed on 24.05.2017 and Application is under process |
| 18 | M/s. MALLIKA WATER PRODUCTS, (Kamall aqua), No.48, Devi Nagar, 200 feet road, Near Retteri Junction, Kolathur, Madhavaram, Chennai – 600099 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Not applied for the consent of the Board |
| 19 | M/s. MOSES ANTHONY AQUA, KAVANGARAI No.6, 1 st cross street, K.S. Nagar, Kavankarai, Chennai – 600066 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Application filed on 24.05.2017 and Application is under process |
| 20 | M/s. WHITE HORSE AQUA FARM No.19A, Ettiyappan Naicker Nagar, Secretariat Colony, Kolathur, Chennai – 600099 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Not applied for the consent of the Board |
| 21 | M/s. VICKY TRADERS No.150, GNT Road, Madhavaram, Chennai – 600110 | Show cause notice issued vide Proc. Dated 08.05.2017 | No | Not applied for the consent of the Board |
| 22 | M/s. HIMALAYAN AQUA FARM No.486-A, GNT road, Thendalkalani, Redhills, Chennai – 600052 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Application filed on 24.05.2017 and Application is under process |
| 23 | M/s. ROYAL AQUA PRODUCTS No.4, Canal road, Kolathur, | Show cause notice issued vide Proc. | Yes | Not applied for the consent of |

| | | | | |
|----|--|--|-----|---|
| | near DRJ hospital, Chennai – 600076 | Dated 08.05.2017 | | the Board |
| 24 | M/s. A5 AQUA, S.No.49/1, Plot No.11, Selvavinayagar Nagar, Ananex-1, Azhniyvakkam Village, Madhavaram, Chennai – 600 052 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Application filed on 16.05.2017 and Application returned for want of additional particulars on 23.05.2017 |
| 25 | M/s. ARVINTH AQUA (APSAR WATER), Old No.220/1B, New No.1/232, Madhavaram high road, Vadaikarai, Redhills, Chennai – 600052 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Consent to Operate Issued vide Proc dated 23.05.2017 |
| 26 | M/s. Sai Aqua Enterprises (BIZLEY) No.1/21, Redhills – Madhavaram High Road, Vadakarai, Chennai – 600 052 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Application filed on 24.05.2017 and Application is under process |
| 27 | M/s. M.J. Foods, No.262 & 345, Santhaprabhu Vegetarian Village, Puzhal, Chennai – 600066 | Show cause notice issued vide Proc. Dated 08.05.2017 | Yes | Not applied for the consent of the Board |

6. A reading of the said annexure-1 shows that in respect of these appellants, the applications are pending before the Board for appropriate orders. Eventhough in respect of some of the appellants where the applications were returned for want of additional particulars it is submitted by the learned counsel for the appellants that the applications are ready with particulars and it is the duty on the part of the Board to pass appropriate orders. It is the fact that the Tahsildar who is under the control of District Collector has ensured that these 8 appellants shall not be permitted to draw ground water from the area where they are carrying on their activity and it is the case of the appellants that they are transporting water from elsewhere. We make it clear that such activity can be permitted after the Board passes appropriate orders on the pending applications which are admittedly being processed by the Board.

7. The learned counsel for the Board submits that in respect of applications where full particulars are available, the Board will pass appropriate orders expeditiously within a period of one week from today. Therefore, we make it clear that as and when the Board passes order granting 'consent' to the appellants, it is for them to carry on the activity in accordance with such consent order.

8. The District Environmental Engineer, Ambattur Mr.Vasudevan who is present in the Tribunal, would submit that the Board while processing the application will take into consideration 3 aspects.

1. Land Use classification
2. Clearance from the Groundwater Authority
3. Approval from the Food Safety and Standards Authority of India (FSSAI)

Needless to state that it is for the Board to consider those aspects and pass orders.

9. However, the learned counsel appearing for the CMWSSB would state that in respect of Appellants, only 3 applications are pending before the Authority. While granting the consent, the Board shall also verify that the water drawal and the water transported places should be from safe area.

10. It is also brought to the notice of this Tribunal that a Writ Petition has been filed before the Hon'ble High Court of Madras in W.P.No.36763 of 2016 and W.M.P.No.31607 of 2016 by one of the appellants herein. In the final order dated 21.10.2016, the Hon'ble High Court has made it abundantly clear that even if NOC is to be given by Metropolitan Area

Ground Water (Division) of CMWS&SB, it is stated that the Board has to make impact assessment before the request of NOC is processed to the Drinking Water packaging units. The relevant para of the order dated 21.10.2016 passed by the Hon'ble High Court of Madras is extracted below:

“In the light of the above, the writ petition is disposed of by directing the 2nd respondent to nominate a Senior Environmental Engineer and to form a team to carry out an assessment of the impact on the environmental- groundwater table in the area in question and the team appointed by TNPCB, shall work in co-ordination with the officials of respondents 4 & 5. The above team shall be constituted by the 2nd respondent viz., the Chairman, Tamil Nadu Pollution Control Board, Chennai, preferably within a period of three weeks from the date of receipt of a copy of this order, which team in turn will involve the officials of Public Works Department, Water Research Organisation, State Ground & Surface Water Resources Data Centre, Chennai, the 4th respondent as well as Chennai Metropolitan Area Ground Water (Division), CMWS&SB, Chennai the 5th respondent and the inspecting team shall endeavour to complete the impact assessment of the area where the petitioner has sought for No Objection Certificate within a period of two months from the date on which the team is constituted and thereafter, based on the report submitted by the team, the 5th respondent/competent authority shall take a decision on the petitioner's request for grant of No Objection Certificate after following due process of law. Till then, the *status quo* shall be maintained. Consequently, the connected miscellaneous petition is closed. No costs”.

11. In the event of the Board passing any order on the consent applications, we make it clear that each of the project proponents shall strictly follow all the conditions and all the units have to maintain records in respect of transport of water and quantity of water utilised which are to be made available to the officials of the Board at any time for inspection. That apart, the Tahsildhar shall always be entitled to visit the units to ensure that water is not illegally drawn in places where the packaged drinking water activities are being carried on.

12. In so far as it relates to the other persons who are categories in Annexure 2 of the letter of the District Environmental Engineer, Ambattur dated 24.05.2017, we make it clear that it is for the affected parties to approach the Hon'ble High Court for obtaining necessary order in the pending application and thereafter any application pending with the Board is for the Board to process merit and in the manner known to law.



Justice Dr.P.Jyothimani
Judicial Member

Shri P.S.Rao
Expert Member

NGT