

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

APPLICATION No. 158 OF 2017 (SZ)

In the matter of

V. Ramasubbu
Advocate
Sri Sakthi Nagar
Krishnapuram
Tirunelveli – 627 001



Vs

...Applicant

1. Union of India
Rep. by the Secretary to Government
Ministry of Environment and Forest & Climate Change
New Delhi
2. The State of Tamilnadu
Rep. by Secretary to Government
Department of Environment & Forest
Fort St. George, Chennai – 600 003
3. The Tamilnadu Pollution Control Board
Through the Member Secretary, Chennai
4. The Joint Chief Environmental Engineer
Tamilnadu Pollution Control Board
Kappalur, Madurai
5. The District Environmental Engineer
Tamilnadu Pollution Control Board
Sipcot Industrial Estate, Meelavittan
Tuticorin
6. The District Collector
Tuticorin District
7. The Central Pollution Control Board
Through the Member Secretary
New Delhi
8. V.O. Chidambaranar Port Trust
Through the Secretary, Tuticorin
9. The Commissioner of Customs
Tuticorin
10. Union of India
Rep. by the Secretary to Government
Ministry of Commerce
New Delhi
11. Union of India
Rep. by the Secretary to Government

Ministry of Finance
Department of Revenue, New Delhi

12. M/s. V Sterlite (I) Ltd.,
Sipcot Industrial Complex
Tuticorin

...Respondents

Counsel appearing for the appellant

V. Ramasubbu

Counsel appearing for the respondents

For respondent No. 2 & 6 ... Mr. E. Manoharan

For respondent Nos. 3,4 & 5 ... Mrs. Rita Chandrasekar

For respondent No.7 ... Mr. R. Thirunavukkarasu

For respondent No.8 ... M/s. Abdul Saleem, S. Saravanan

For respondent No.12 ... M/s. Parthasarathy, Rahul Balaji

Madhan Babu, Vishnu Mohan

ORDER

Present

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

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

8th September, 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 the learned counsel appearing for the applicant as well as the respondents.

The prayer in this application is to direct the 12th respondent project proponent viz., M/s. Vedanta Sterlite (I) Ltd., to compensate the environmental damages stated to have been caused by the company by invoking the 'polluter pays' principle and also to direct the said respondent to compensate the environmental damages caused by the said respondent due to unnatural manmade disaster by blocking Upparu stream with copper slag and also praying for other reliefs.

2. It is an admitted fact that the 12th respondent was having 'consent to operate' valid upto 31.3.2017. However, it is stated that in accordance with the Rules and Procedures, before the expiry of the said 'consent' the 12th respondent has applied for renewal of 'consent' in January, 2017. It is stated that the said application was returned in February, 2017 and after compliance it was represented in April, 2017. Ultimately, the Tamil Nadu Pollution Control Board (Board) in the order dated 7.9.2017 renewed the 'consent' to the 12th respondent under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1974 which is valid upto 31st March, 2018.

3. Therefore, in the said circumstances, *prima facie*, the applicant is entitled to raise all the points which he has raised in this application, in the event of challenging the 'consent' granted in favour of the 12th respondent. This is particularly because the points raised in this application are relating to the conduct of the Board which is expected to be satisfied of compliance of requirements before granting 'consent'. It is true that the Board has issued a show-cause notice on 14.3.2017 wherein it is stated that the unit has gone for the excess production than the 'consented quantity' of 875 TPD of Copper Cathode without any 'permission' or 'consent' from the Board. It is further stated that irritation of nose was observed near FGDS area which is due to spreading of SO₂ gas escaping from the scrubber maintained by the 12th respondent. The concern of the applicant is that these issues raised in the show cause notice ought to have been complied with by the project proponent and inspite of the non-compliance, the Board has renewed the 'consent' on 7.9.2017. However, it is for him to raise those issues while challenging the 'consent' order, if he so desires.

4. In the application there is an issue raised by the applicant that inspite of the continuous Ambient Air Quality Monitoring Station (CAAQMS) and its operation for the purpose of monitoring the Sulphur Dioxide (SO₂), Nitrogen Oxide (NO_x) and other obnoxious gases, monitoring will be successful only if CAAQMS was not sealed by respondents 3 and 7. It is further stated by the applicant that the Calibrated Measurement Parameter can be changed by the Expert Engineers of the 12th respondent factory very easily to show as if there is no emission of obnoxious gases. In these circumstances, the on-line monitoring system of the Board as well as the Central

Pollution Control Board (CPCB) can never be possibly operated for the purpose of preventing the emission of obnoxious gases.

5. However, this apprehension of the applicant has been answered by the CPCB in its reply in paragraph 6, 7 and 8 which are as follows:

“6. The averment in para 39 that the CAAQMS is not sealed is again not correct. This respondent puts the applicant to proof of the same. The further averments in para 40 on the tampering is again speculative and no proof has been furnished by the applicant.

7. This respondent thus submits that the inspection made on 27-28.12.2016 would go to show that this respondent has taken action and carried out their duty of monitoring the activities of the 12th respondent as well as the TNPCB. This respondent has also addressed a letter dated 21.2.2017 to the 12th respondent calling on them to comply with certain pollution control norms. It is for TNPCB to ensure whether such compliances have been made.

8. This respondent therefore submits that as a regulatory body, 12th respondent have taken appropriate steps to ensure compliances of the pollution control norms with respect to source emissions, as per the inspection conducted dated 27-28.12.2016 under Surveillance of industries based on Online Continuous Emission Monitoring System – SMS alerts.”

6. Be that as it may, it is as if the grievances of the applicant has no redressal and he is left in lurch. The Authority before whom the ‘consent’ order may be challenged, is definitely entitled to enter into these issues to find out as to whether the environmental disaster is being caused because of the activity of the project proponent.

7. The CPCB has raised another issue regarding the ‘authorisation’ to be issued by the Board under the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008. The CPCB has stated in its letter dated 21.2.2017 that the ‘authorisation’ granted to the 12th respondent project proponent has expired on 9.7.2013. However, the 12th respondent in its reply dated 25.4.2017 has clearly stated that it has submitted online authorisation renewal application to the Board as per the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and awaiting for the grant of ‘authorisation’ and ‘consent’ by the State Pollution Control Board. On a reading of the ‘consent’ order of the Board dated 7.9.2017 there is nothing to show that the ‘authorisation’ has been issued by the Board and it is the duty of the Board to inform before this Tribunal as to whether such ‘authorisation’ has been granted or not.

8. Mr. Rahul Balaji, learned counsel appearing for the 12th respondent has submitted that in fact the Board which has received the application for ‘authorisation’

from the project proponent, has issued 'authorisation' under Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 in respect of the Copper ROD Plant of the 12th respondent on 24.8.2017 and a copy of the order has been produced before this Tribunal. In so far as it relates to the Copper Smelter Plant of the 12th respondent, according to the learned counsel, 'consent' has been issued very recently. We make it clear that in the event of absence of any 'authorisation', it is for the applicant to work out his remedy in the manner known to law as and when he approaches the appropriate authority for redressal of his grievances.

9. Learned counsel appearing for the applicant produced the judgment of the Hon'ble Supreme Court in STERLITE INDUSTRIES (INDIA) LTD ETC VS. UNION OF INDIA AND OTHERS (Civil Appeal Nos.2776 – 2783 of 2013 dated 2.4.2013) which relates to the 12th respondent unit being allowed to operate by the Hon'ble Supreme Court. The learned counsel has particularly referred to paragraph 39 of the judgment wherein the Hon'ble Supreme Court considering the magnitude, capacity and prosperity of the appellant company imposed a compensation of Rs.100 Crores under the 'polluter pays' principle for operating the unit without renewal of 'consent'. When once the Hon'ble Supreme Court while dealing with the issue of absence of renewal of 'consent' for the years 1997 to 2012, as correctly pointed out by the learned counsel appearing for the 12th respondent, has given the direction which has been complied with and unless it is brought to the notice of this Tribunal or appropriate authority that the pollution still prevails because of the conduct of the 12th respondent, there is no possibility for this Tribunal to arrive at any other conclusion.

10. The other judgment of the Hon'ble Apex Court which is relied upon by the learned counsel appearing for the applicant is that of PARYAVARAN SURAKSHA SAMITI AND ANOTHER VS. UNION OF INDIA & OTHERS (W.P.(C).No.375 of 2012 dated 22.2.2017 wherein the Hon'ble Supreme Court has referred to various industries in the country which are running without functional Effluent Treatment Plants (ETP) and ultimately has given certain directions which include a direction to the Benches of the National Green Tribunal to maintain running and numbered case files based on the jurisdictional area and issue notice to those units which are running without functional

ETPs and pass appropriate orders and continue to maintain the same. The operative portion of the said judgement is as follows:

“13. We are of the view that mere directions are inconsequential, unless a rigid implementation mechanism is laid down. We therefore hereby provide that the directions pertaining to continuation of industrial activity only when there is in place a functional primary effluent treatment plants and the setting up of functional common effluent treatment plants within the time lines, expressed above, shall be of the Member Secretaries of the concerned Pollution Control Boards. The Secretary of the Department of Environment of the concerned State Government (and the concerned Union territory) shall be answerable in case of default. The concerned Secretaries to the Government shall be responsible of monitoring the progress and issuing necessary directions to the concerned Pollution Control Board, as may be required for the implementation of the above directions. They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the date and shall furnish the same to the Bench of the jurisdictional National Green Tribunal.

14. To supervise complaints of non-implementation of the instant directions, the concerned Benches of the National Green tribunal, will maintain running and numbered case files by dividing the jurisdictional area into units. The above mentioned case files will be listed periodically. The concerned Pollution Control Board is also hereby directed to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters.

15. Liberty is granted to private individuals and organizations to approach the concerned Bench of the jurisdictional National Green tribunal for appropriate orders by pointing out deficiencies in implementation of the above directions.”

11. It is relevant to note that this Tribunal has already initiated action in accordance with the direction of the Hon'ble Supreme Court. It is true that no effluent generating unit in this country can be permitted to run without functional Effluent Treatment Plant. If such plant requires 'consent', in the absence of such treatment plant certainly the Tribunal as well as the Board are entitled to impose heavy cost and consequential damages by way of 'polluter pays'.

12. Even though the learned counsel appearing for the 12th respondent would submit that as on date the 12th respondent being a ZLD unit, it is not for this Tribunal to find out the correctness or otherwise of the same in this proceedings. As stated above, it is always open to the parties to raise this issue in appropriate proceedings. We make it clear and make a request that as and when any aggrieved party approaches the Appellate Authority against the 'consent' order, the Appellate Authority may take note of

the issues raised in this application and consider the same on merits and in accordance with law. It is also needless to state that the Appellate Authority may also take note of the contents of the show cause notice issued by the Board dated 14.3.2017 which includes exceeding the permitted capacity of the product manufactured by the 12th respondent.

13. There is one other aspect, as it is seen in the show cause notice dated 14.3.2017 wherein it is stated by the Board that the copper slag was found dumped/stored along the Uppar Odai near the bridge of National Highway on Tirunelveli – Thoothukudi Road in Pudukottai Village. It is stated that about 3.52 Lac Tons of copper slag was supplied to one, A. Paul of Sawyerpuram by the project proponent for levelling the site but dumping of copper slag was found on site during the time of inspection.

14. The learned counsel appearing for the project proponent would submit that at the time of inspection this has been taken note of by the District Collector and fixed responsibility on the 12th respondent who has undertaken to remove the copper slag which has an impact on Uppar Odai and it is stated that the said copper slag has since been removed as per the undertaking given to the District Collector. It is for the Board to inspect and find out as to whether the undertaking given by the 12th respondent is complied with or not. If such copper slag is not removed, it is for the Board to take appropriate action.

15. With the above direction, the application is closed. There shall be no order as to cost. Consequently, pending M.A.No.112 of 2017 stands closed, as no order is necessary.

Justice Dr.P.Jyothimani

Judicial Member

Shri P.S.Rao

Expert Member