

BEFORE THE NATIONAL GREEN TRIBUNAL**SOUTHERN ZONE, CHENNAI****Appeal No.81 of 2017 (SZ)**

In the matter of

M/s.Sri Srinivasa & Co.
(Formerly M/s.P.Srinivas Stone Crushing
Industries) rep. by its Managing Partner,
Sri P.Subba Rao
S.No.452/1, Puppalaguda Village,
Gandipet Mandal,
Ranga Reddy District
Having office at 16-2-863/3,
Madhava Nagar, Saidabad
Hyderabad 500 059

.. Appellant

Vs.

1. State of Telangana rep. by its
Principal Secretary, Environment, Forest
Science and Technology, Secretariat,
Saifabad, Hyderabad,
Telangana State 500 004
2. The Telangana State Pollution Control Board
Rep. by its Member Secretary,
Pariyavaran Bhavan, A-III, Industrial Estate,
Sanathnagar, Hyderabad 500 018
3. The Joint Chief Environmental Engineer,
Telangana State Pollution Control Board
Zonal Office, 6-3-1219, Block C, Ward No.91,
Near Country Club, Kundanbagh,
Uma Nagar, Begumpet,
Hyderabad 500 016
4. Telangana Southern Power Distribution
Company Limited rep. by its
Superintendent Engineer (Operations)
Near Nanal Nagar, Rethi Bowli,
Mehdipatnam, Ranga Reddy District 500028

.. Respondents

Counsel appearing for the appellant

M/s.P.Venkaiah Naidu & Associates.

Counsel appearing for the Respondent

M/s.T.Sai Krishnan for R2 & R3

ORDER

Present

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

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

17th October, 2017

The appeal is admitted. We have heard the counsel for appellant Mr.Srinivasa Murthy and also Mr.Sai Krishnan, learned counsel appearing for the Telangana State Pollution Control Board who has made representation based on instructions.

The appellant who is running a stone crusher unit in Survey No.452 of Pupplaguda Village of Rajendra Nagar Mandal, (presently in Gandipet Mandal) Ranga Reddy District is stated to have established the unit in the year 1989. It is stated that the Appellant has applied for 'consent to establish' in the year 1998 based on which the unit was operated with original capacity of 50 tons per day.

It is stated that the Hon'ble Supreme Court in W.P.Nos.368-373 of 1999 in the order dated 01.12.2000 has observed that the units which are established within 10 Kms. radius of Osmansagar and Himayatsagar Lakes prior to 01.12.2000, can be permitted to operate subject to compliance of Standards specified under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and 31A of the Air (Prevention and Control of Pollution) Act, 1981.

The State Government has issued G.O. Ms.No.111 (MA &UD) Dept. dated 08.03.1996 based on the direction of the Hon'ble Supreme Court prohibiting setting up of any polluting/potentially polluting industries within

10 kms radius of Osmansagar and Himayatsagar lakes. It was based on the said order, the appellant unit came to be closed by the State Pollution Control Board (Board) on 08.10.2013. It was against the said order the appellant has filed Appeal No.14 of 2015 before the Learned Appellate Authority constituted under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and 31A of the Air (Prevention and Control of Pollution) Act, 1981 and the appeal came to be disposed on 20.04.2017 observing that the appellant represented for shifting the crusher to new location and the distance between the new location site to Puppalguda Village, Delhi Public School etc. is more than 1000 meters. In those circumstances, the appeal was disposed by the learned Appellate Authority with a direction to the appellant to make a representation to the Board and the Board was directed to consider the representation and pass appropriate orders. It is stated that representation was made to the Board on 01.05.2007 and orders were awaited.

Subsequently by the impugned order dated 27.09.2017 by virtue of the powers conferred under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and 31A of the Air (Prevention and Control of Pollution) Act, 1981 the closure order came to be passed by the Board which is the subject matter of challenge in this appeal.

The order passed by the National Green Tribunal quoted at Reference 2nd cited in the impugned order, pertains to Appeal Nos.106 to 112 of 2016 directing closure of units without consent located within 10 km radius of Himayatsagar and Osmansagar lakes. It is not in dispute that the Tribunal had no occasion to consider the matter dealt in batch of cases on the implementation of G.O.Ms.111 which is pending before this Tribunal.

The challenge to the impugned order is based on the understanding that the impugned order has been passed to consider the earlier order of the Learned Appellate Authority referred to wherein there was a direction to the appellant to give a representation to the Board to consider for shifting of the unit and therefore the impugned order suffers from non application of mind. Further, it is the case of the appellant that when the validity or otherwise of implementation of G.O 111 is yet to be decided as the batch of cases is pending before this Tribunal, it is unfair for the Board to invoke the G.O.111 and issue closure order as if this has been ordered by this Tribunal.

It is his further contention that inspite of the fact that in respect of similar units which also started running in the area before the direction of the Hon'ble Supreme Court viz. prior to 01.12.2000, the Board has not taken any action for closure of those units. While so, it is not known as to why the appellant unit alone is singled out. The learned counsel appearing for the appellant submits that the appellant conforms to all the requirements of the environmental laws with regard to pollution aspect. In fact the appellant has filed an affidavit dated 16.10.2017 wherein he has stated that he intends to shift the unit from the present place if 8 weeks time is granted. It is also stated in the form of undertaking that he will comply with all the norms and environmental laws which is reproduced below:

"I submit that the appellant also undertakes to comply with all the standards stipulated under the Water (Prevention & Control of Pollution) Act, 1974, Air (Prevention & Control of Pollution) Act, 1981 and The Environmental (Protection) Act, 1986 and also as stated in the Closure Order No.15-Gen-RR-I/PCB/ZO/HYD/2013-2306 dated 08.10.2013 as impugned in Appeal No.14 of 2015 before the Honourable Appellate Authority under the Water (Prevention & Control of Pollution) Act, 1974, Air (Prevention & Control of Pollution) Act, 1981 which was disposed on 12.04.2017 during its operation in these 8 weeks and continue to do the same in the new premises also and so long as it is in operations.

Mr.Sai Krishnnan, learned counsel appearing for the Board submits that alternate place proposed to be shifted is also within 10 km radius and therefore as per the direction of this Tribunal, it is not possible for the Board to consider the same. However, it is an admitted fact by the factual matrix of the case that in respect of units which are established before 01.12.2000, if they are running conforming to the environmental norms, they are permitted to operate.

In such view of the matter, we are of the considered view that without stating anything about the validity and implementation of G.O.Ms.No.111 and in the light of the factual position that the units established prior to 01.12.2000 have been allowed to function, we direct the Board to consider the representation of the appellant in the light of the circumstances stated above and pass appropriate orders. We make it clear that when such an order is passed, the Board shall specifically stipulate that all the environmental norms prescribed under Air Act, 1981 Water Act, 1974 and Environment (Protection) Act, 1986 and the conditions prescribed by the Board including taking Anti pollution control measures, shall be strictly complied with by the Appellant . After completely satisfied with all such norms, the Board shall pass appropriate orders in the manner known to law.

The unit shall be inspected by the Board on the basis of representation which is made by the appellant and pursuant to the order of this Tribunal in the premises where the Appellant Unit is situated as on date and it is for the Board to insist compliance of various Environmental Laws and norms and on compliance, the Board shall pass appropriate order expeditiously.

This order is not a final result in the batch of cases dealing with the implementation of challenging G.O. Ms.111. The appeal stands disposed in the above terms, There shall be no order as to cost.



सत्यमेव जयते

Justice Dr.P.Jyothimani
Judicial Member

Shri P.S.Rao
Expert Member



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