

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Appeal No. 05 of 2019

BETWEEN

Farmers Association,
Represented by its General Secretary
Mr. P. Kandasamy,
Priya Complex, 2nd Floor,
53, 12 Gopalapuram 1st Street,
Coimbatore – 641 018.
Phone: 94435 78224
Email: farmerssangam@gmail.com

...Appellant

AND

1. Tamil Nadu Pollution Control Board,
Represented by its Chairman,
76, Mount Salai, Guindy,
Chennai – 600 032.
Phone: 044 – 22353134 - 139
Email: tnpcb-chn@gov.in
2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Coimbatore South,
Plot No. E-55A, SIDCO Industrial Estate,
Pollachi Main Road,
Kurichi, Coimbatore – 641 021.
Phone: 0422 - 2675608
Email: tnpcbcs@gmail.com
3. The Superintending Engineer
(Coimbatore South),
Tamil Nadu Generation and Distribution Limited (TNEB),
Tatabad, Coimbatore – 641 012.
Phone: 0422 – 2493250
Email: secbes@tnebnet.org
4. M/s. Indo Shell Cast Private Limited Unit II,
Represented by its Managing Director,
S. F. No. 349/4, Malumichampatti Village,
Coimbatore District,
Coimbatore – 641 050.
Phone: 0422 – 4541600; 0422 - 4541670
Email: admin@indoshellcast.com

...Respondents

**OBJECTIONS OF THE 4TH RESPONDENT TO THE REPORT OF THE
JOINT COMMITTEE**

For Indo Shell Cast Private Limited


R. Sivanandhan
Sr. Manager Finance

1. Pursuant to Order of this Honorable Tribunal dated 08.01.2020, a Joint Committee comprising of the Regional Office of the Central Pollution Control Board (CPCB), Chennai, and the Senior Scientist from the Tamil Nadu Pollution Control Board (TNPCB) and also Senior Officer having competence in considering the impact of pollution on agriculture crops from the agriculture department and a Scientist from the Agriculture University, Coimbatore were directed to inspect the 4th Respondent's premises and were to submit a report regarding the continuation of pollution alleged by the Appellant and also whether the pollution control mechanism provided by the 4th Respondent are sufficient to meet the situation, and if any further improvement is required.
2. The Joint Committee had, on 08.06.2020, submitted an Interim Report before this Hon'ble Tribunal. The 4th Respondent had in response to the same, provided its Reply on 15.07.2020 to the said Committee. The Joint Committee has since filed its Final Report before this Honorable Tribunal on 01.09.2020. The 4th Respondent is filing herewith its Objections to the Report of the Joint Committee dated 01.09.2020.
3. At the very outset, the 4th Respondent submits that the Joint Committee has not given any finding that there has been any damage or adverse impact caused to the environment on account of the operation of the Unit. The Joint Committee has also not given any adverse finding that there has been any continuation of Pollution as alleged by the Appellant. Hence at the very threshold, the 4th Respondent has been given a clean chit by the Committee except with regard to TSS from the STP being slightly higher than prescribed norms.
4. Numerous reports of the accredited labs and the continuous inspection reports of the TNPCB including on 20.09.2018, 26.12.2018, 18.06.2019, 20.08.2019 and the present report of the Joint Committee, have all observed that all the parameters specified by the Board with regard to air, water and soil have been complied with and there is no instance of deviation. There is no finding of any adverse impact on the neighboring environment. The following facts therefore stand established (a) No pollution is being caused/ continued to be caused and (b) there is no adverse impact on the environment. The 4th Respondent is not liable for payment of any environmental compensation.

For Indo Shell Cast Private Limited


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5. The following are the positive findings of the Joint Committee both in its interim and final report dated 08.06.2020 and 01.09.2020 respectively:

5.1. Positive findings of the Joint Committee in the Interim Report dated 08.06.2020:

- a. The ambient air quality is meeting the prescribed standards, before and after operation of the unit.
- b. Sources emission monitoring and analysis of the 9 stacks shows that the parameters are within prescribed norms.
- c. The PM (Particulate Matter) of all stacks are meeting the norms.
- d. Dispersion of pollutant happens.
- e. Even as regards the Appellant's primary allegation that the livelihood of his cattle was severely affected by the contaminated well water and the contamination is due to the foundry and that his coconut plantation was affected severely due to dust particles from the 4th Respondent's Unit the Committee has given a categorical finding not much particle deposit was observed and that water quality of wells in and around the foundry, are well within the prescribed limits of PCB. Further, the Committee Report clearly stated that the coconut plantation is affected by less watering and insects and fungi as well.
- f. Survey report shows, at the farmland, base pollutant level of PM10 which was taken when the 4th Respondent Unit was not in operation/ was shut down, is more than when all the three furnaces of the 4th Respondent were in operation. This also clearly establishes that the 4th Respondent's unit is not the source for pollution.

Location of the Survey Equipment	Acceptable level of pollutant per PCB microgram/mm ³	12.03.2020	16.03.2020	19.03.2020
		12.03.2020	17.03.2020	20.03.2020
		Holiday	3 furnaces in operation	2 furnaces in operation

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On top of the scaffolding in the north east corner of the unit in the coconut farm of MA Ramasamy	PM 10	100	56	42	58
	PM 2.5	60	-	-	-
	SO2	80	6	6	7
	NO2	80	14	14	16
On top of scaffolding in the open belongs to Mr. Vasantha Kumar (karpagam College Land)	PM 10	100	39	53	63
	PM 2.5	60	-	-	-
	SO2	80	6	7	8
	NO2	80	15	15	16
On top of the scaffolding near Nakshatra Ladies Hostel of Hindustan College of Engineering	PM 10	100	43	49	47
	PM 2.5	60	37	38	45
	SO2	80	<4	5	<4
	NO2	80	16	13	14
On top of the scaffolding in the open filed of Mr. Senthil Kumar	PM 10	100	72	93	42
	PM 2.5	60	-	-	-
	SO2	80	6	9	4
	NO2	80	1	17	14

5.2. Positive findings of the Joint Committee in the Final Report dated 01.09.2020:

a. The soil data clearly indicates that the quality of soil has not been affected by the presence and operation of the 4th Respondent.

5.3. Additionally, it is submitted that apart from the Joint Committee Inspection, the 4th Respondent's Unit as also the surrounding areas have been inspected by various Committees either on their own accord or in terms of directions given by this Honorable

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Tribunal on several occasions, and no adverse finding of environmental or ecological damage having caused by the 4th Respondent is given by any of these Committees.

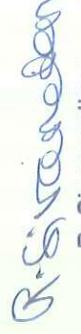
6. While so, the 4th Respondent is aggrieved by the Report of the Joint Committee dated 01.09.2020, which has imposed an environmental compensation of a sum of Rs. 32,65,500 as payable by the 4th Respondent:

6.1. The Joint Committee having given a categorical finding that the stacks are meeting the prescribed norms, ought not to have proceeded further that the '*cumulative of 9 stacks may lead to increase in quantum of pollution*'. Such an assumption and surmise are incorrect and is not based on any scientific validation.

6.2. The finding of the Joint Committee that the dispersion of pollutant is hindered by the presence of coconut trees next to the compound of the 4th Respondent and that this would lead to deposit of particulate matter on the plants is also incorrect. The height of the Coconut trees even on a bare visual inspection is a maximum of 40-50 feet, whereas, the height of the stacks is 100 Feet, which is about 40-50 feet over and above the Coconut Trees. Therefore, the dispersion of particulate matter is at a much higher level and will not cause hinderance to the dispersion. The coconut trees are not affected by the stacks or dispersion of the PM therefrom.

6.3. The Committee ought to have applied its mind to the imperative fact that the AAQ Results on 12/03/20 & 13/03/20, during which period the Plant was directed to stop its operation was in fact, worse than when the 4th Respondent's unit was in operation. The PM10 in Appellant's land was 56 micro gm/m³ when the Plant was not in operation. Whereas the AAQ was 46 and 58 micro gm/m³ when the plant was in operated with all 3 furnaces as per the findings of the Committee. This establishes the fact that the stacks are effective in dispersing pollutants, not only of the 4th Respondent's unit but also that of surrounding/neighborings lands. The high concentration of dust in Ambient Air at the Station located in Farmers land when the 4th Respondent's unit was not in operation, confirms this fact.

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6.4. The suggestion made by the Committee to explore the possibilities for shifting of the Reclamation plant is also not practical or feasible for the following reasons:

- a. The 4th Respondent for the past 12 years, has reclaimed an average of 1000 tons per month i.e. 12,000 tons per year and 1,20,000 tons of sand for the last 12 years.
 - b. If the reclamation plant had not been installed, then the 4th Respondent would have been forced to consume, on an average, 1,20,000 tons of fresh sand. To this extent, the 4th Respondent as only helped in conservation of natural resources by installing the reclamation plant. Additionally, the emissions caused by mining and transportation for bringing the mined sand into the premises and disposal of the used sand would have only added to the emission levels. In fact, the Commissioning of reclamation plant by the 4th Respondent by investing a huge cost, was well received and appreciated by PCB at the time of installation. The reclamation plant has been in the current location since 2010 and has been inspected periodically by the officials, and no objection has been raised as regards its location.
 - c. The shifting of the reclamation plant to another location will not also serve any purpose, since the emission levels will be the same, irrespective of the location. Therefore, so long as the emission norms are complied and levels are maintained within prescribed limits, there is no tangible benefit that would result out of its re-location.
- 6.5. The shiny particulate matter found on the leaves in the Appellant's premises is not from the 4th Respondent's industrial emissions, since such PM is not shiny. The shiny deposits mentioned in the interim report may be from the crusher unit in the Appellant's premises itself. This has not been examined by the Joint Committee.

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- 6.6. The 4th Respondent submits that it has since put measures in place in the STP, including, installation of additional aerator in the aeration tank and additional circulation pumps, to bring the TSS and BOD within the prescribed norms. Test Report of M/s Enviro Care dated 05.06.2020 is enclosed herewith as **Exhibit R-1**. There has been no adverse impact on the ground water levels on account of the operation of the STP, and this has been confirmed by the Joint Committee.
- 6.7. The fact that the Underground water samples, soil testing samples and AAQ measures confirm that there is no depletion in the quality of air, water and soil, should weigh positively in favour of the 4th Respondent. The purpose of the inspection of the Joint Committee was to go on a fact-finding mission, inspect the Unit and verify if the 4th Respondent's unit is continuing to pollute, has caused any damage to the Environment/ ecology and only if it has, levy compensation on the 4th Respondent in proportion to the damage caused.
- 6.8. However, in spite of absence of pollution being caused or ecological damage, the TNPCB has levied a compensation of a sum of Rs. 32,65,500 which is unfair and not warranted. It is also the observation of various courts of law, that industrial activity in a developing/developed nation is inevitable and is in fact necessary for economic growth. Emissions from an industry is also inevitable. So long as the emissions are within the norms, and no damage to the environment has been proven to have not been caused, the industrial unit should not be penalized.
- 6.9. It is further submitted that imposition of heavy compensation based on a formula, cannot be universally applied even in respect of minor deviations which have not caused environmental damage. Each deviation should be assessed on its own merit.
- 6.10. The calculation adopted is also unjustified since the application of the formula will get attracted in the first place only when the consent limits or prescribed standards are violated. Pollution index in the formula gets attracted only if either water pollution score, air pollution score or HW generation score exceeds prescribed norms. For this, there needs to be present, pollution to begin with. In the

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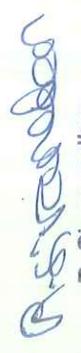


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instant case, such pollution is absent and hence even the invocation of the formula is wrong.

- 6.11. It is further submitted that at no point in time, the 4th Respondent's unit has exceeded the permitted/ consented capacity of production. The 4th Respondent has filed all documents before the TNPCB to confirm this fact. The TNPCB has also not refuted this stand. While so, the observation of the Joint Committee that the 4th Respondent has installed and operated additional emission sources without the valid consent of the Board, which is in violation of the Consent to Operate is incorrect and is denied. Apart from the standby furnace no additional emission sources are installed or operated.
- 6.12. The report has not detailed the nature and extent of damage (if at all) caused on account of the operation of the 4th Respondents unit. Any penalty imposed must be proportional to the damage caused, and since in the instant case, the 4th Respondent has been environmentally compliant as confirmed by the Joint Committee Report, no EC is liable to be paid by the 4th Respondent.
7. The 4th Respondent humbly submits that it has been put through multiple inspections, and scrutiny by multiple committees. Even as per the earlier reports of the PCB including on 20.09.2018, 26.12.2018, 18.06.2019, 20.08.2019, no finding of any environmental damage has been made out. The present inspection by the Joint Committee has also been carried out only at the instance of the Appellant. The Committee's findings are clear and unambiguous that there has been no adverse impact on the environment, nor has the operation of the unit impacted the agricultural activities of the Appellant. The 4th Respondent has even today, maintained all production activity within prescribed limits. Clearly therefore, the 4th Respondent is not liable for payment of any environmental compensation.
8. Pertinently, this Committee had in its midst, experts who have knowledge on assessing the impact of the operation of the 4th Respondent's Unit on agriculture, and such experts have not provided any negative finding on the 4th Respondents operations, nor have they asserted that the operation of the 4th Respondent's Unit is causing

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adverse environmental impact on the agricultural fields nearby. Ignoring the expert opinion and also the test reports, imposition of compensation is against equity, natural justice and is stifling for running of the industry. It is the settled principle that it is the polluter who has to pay and when there is no pollution, the question of compensation does not at all arise.

9. In the present Covid 19 situation the industry is already suffering and is crippled with intermittent or no production activities. The 4th Respondent is struggling to keep its head above water in terms of several compliances, payment of statutory dues etc. Further wringing the arms of the 4th Respondent for no fault is arbitrary and unjust.
10. For no fault of the 4th Respondent, the 4th Respondent has been made to face the instant proceeding before this Honorable Tribunal. Already a sum of Rs.10 lakhs has been furnished as a Bank Guarantee and that is also available with the TNPCB.
11. The 4th Respondent reserves its right to file additional objections or state the same at the time of hearing.
12. In light of the categorical positive findings of the Joint Expert Committee, nothing survives in the Appeal. The Farmers Association have no case to plead. The 4th Respondent in the circumstances, humbly prays that this Honorable Tribunal may be pleased to hold that the 4th Respondent is not liable for payment of compensation, dismiss the instant Appeal and render justice.

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ADVOCATE FOR 4TH RESPONDENT

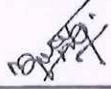
4TH RESPONDENT

TEST REPORT**WATER ANALYSIS**

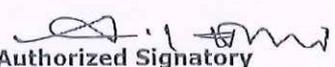
Report No :	ECI-NN-WA-63/06/2020	Report Date :	05.06.2020
Customer Name & Address	M/s. Indo Shell Cast (P) Ltd, Unit-II SF.No:336/4, 349/4, Malumichampatti Coimbatore		
Customer Reference :	IWO Dt: 05/06/2020	Sample Reference No :	ECI-NN-WA-63/06/2020
Sample Drawn By :	Customer	Sample Received On :	01.06.2020
Sample Collected Date :	30.05.2020	Test Commenced On :	01.06.2020
Qty of Sample Received :	2 L	Test Completed On :	05.06.2020
Sample Description :	Water	Sampling Method :	-
Sample Mark:	STP Outlet		

S.No	PARAMETERS	UNITS	RESULTS	TEST METHOD	Max. Permissible Limits of TNPCCB Std for Treated Sewage
1.	Bio chemical oxygen demand (BOD @ 27°C for 3 days)	mg/L	11	IS 3025:Part 44	20
2.	pH Value @ 25°C	-	7.5	IS 3025:Part 11	5.5 - 9
3.	Total Suspended Solids(TSS) @105°C	mg/L	29	IS 3025 Part 17	30

<--- End of Report --->

Verified By : 

Remarks: The above sample meets the requirements of TNPCCB norms with respect to the parameters tested.

For ENVIRO CARE INDIA PRIVATE LIMITED
(Laboratory Division)

 Authorized Signatory

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Note : 1. The results relate only to this item tested.

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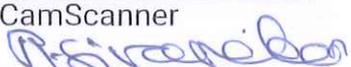
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