

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

APPEAL NO. 6 OF 2020

IN THE MATTER OF:

R.L SRINIVASAN

... Appellant

VERSUS

1. UNION OF INDIA and Anr.

... Respondents

**WRITTEN SUBMISSION FILED ON BEHALF OF THE
2nd RESPONDENT**

Dated at Chennai on this the 16th day of August, 2021.

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

APPEAL NO. 6 OF 2020

IN THE MATTER OF:

R.L SRINIVASAN

31/36, Poorkali Amman Street,
Kattupakkam, Ennore
Chennai – 6000 57.

... Appellant

VERSUS

1. UNION OF INDIA

Rep. by its Secretary to Government,
Ministry of Environment, Forests and Climate Change,
Indira Paryavaran Bhavan, Jor Bagh,
New Delhi – 110003.

2. M/s. TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION (TANGEDCO)

Ennore Thermal Power Station,
Rep. by its Chairman cum Managing Director,
5th Floor, NPKKR Maaligai,
144 Anna Salai,
Chennai – 60002.

... Respondents

**WRITTEN SUBMISSION FILED ON BEHALF OF THE 2nd
RESPONDENT**

The 2nd Respondent begs to submit as follows:

1. It is submitted that the above appeals have been filed by the appellant herein challenging the Environmental Clearance issued to the 2nd Respondent in F.No. J-13012/15/2018-IA-I (T) dated 11.12.2019 by the 1st Respondent for the establishment of a 1x660 MW coal-fired thermal power plant in Ennore and quash the same.

2. It is submitted that the Appellant has further made an incidental challenge to the exemption granted by the Ministry of Environment and Forests (MoEF) to the 2nd Respondent, from public hearing being conducted for the subject expansion project.

3. It is submitted that the Reply Statement and Typed Set of Papers, filed in the above appeals by this Respondent may be treated as part and parcel of this written submission.

4. It is submitted that this respondent may be permitted to bring to notice of this Hon'ble Tribunal that there is acute shortage of electrical energy in the state of Tamil Nadu. More particularly in the city of Chennai as more and more industries, educational institutions, hospitals, residential buildings are coming up in and around Chennai. This apart, at present, with the advent of the Electric Vehicles in India and the constant policies issued in favour of the use of such Electric Vehicles (EV), the demand for electricity is highest now and is likely to grow as more and more citizens adopt to the new EV's. The Tamil Nadu Government has already begun its support towards EV's through its policies such as "The Tamil Nadu Electric Vehicle Policy, 2019" and such others, where it has expressed its interest in providing subsidies and other incentives for the use of electric vehicles in the State. Considering the said scenario, it is only likely that projects such as the subject matter of this present appeal, is allowed to be established and operate, to produce the required amount of electricity to meet out the growing demands of the State with the emergence and use of more Electric Vehicles and industrial development. In view of the above, it has become very essential to produce and distribute electricity/power so as to meet out future demands.

5. It is submitted that in view of the, the 2nd Respondent had proposed to establish 1x660 MW, ETPS Expansion TPP (previously termed as ETPS Annex) in the 84 acres of vacant land available within the existing ETPS Complex (about 237 acres) having 40 year old 5 units of 2x60 MW and 3x110 MW totalling to 450 MW at Ernavur Village of Thiruvottiyur Taluk, Thiruvallur District, during 2008. It is submitted that on **22.10.2008**, public hearing

for the project was held at the project premises, as per the required norms and procedures and thereafter necessary Environmental Clearance (EC) was obtained on **03.06.2009** after complying with all the procedures of the Ministry of Environment, Forest and Climate Change (MoEF & CC). It is submitted that the EC granted was valid for a period of 5 years.

6. It is submitted that initially the tender was called for the 1x600 MW lodged for upgrading the unit to supercritical unit and fresh tender for 1x660 MW super critical unit was called for and the EPC contract was awarded to M/s LANCO infrastructure (P) Ltd., during 2014. After making necessary amendment in 2014, on **18.06.2014**, extension of Environmental Clearance was obtained for 5 more years i.e. till 02.06.2019 and the project work was commenced in 2014. Subsequently, due to insolvency of the EPC Contractor M/s LANCO infrastructure (P) Ltd., the work was stopped abruptly by the contractor in **2017**. The existing ETPS (450 MW) was under operation till 31.03.2017 and decommissioned within the same ETPS complex. It is submitted that on 30.05.2017, another Public Hearing was conducted for ETPS Replacement Thermal Power Plant (1x660MW) i.e., another Power project proposed to replace the existing old ETPS (450 MW) in the same project complex.

7. It is submitted that for the ETPS Replacement Thermal Power Plant, ToR was issued in the year 2016 and necessary Comprehensive EIA study was conducted covering 4 operating power plants viz., (i) NCTPS I (3x210 MW), (ii) NCTPS II (2x600 MW), (iii) Vallur TPP (3x500 MW), (iv) ETPS (450 MW) and 4 proposed Power projects viz., (i) Ennore SEZ TPP (2x800 MW), (ii) NCTPP III (1x800 MW), (iii) ETPS Expansion TPP (1x660 MW) i.e., the subject project and (iv) ETPS Replacement TPP (1x660 MW).

8. It is submitted that on 20.09.2018, this respondent sought for extension of validity of the Environmental Clearance granted to the ETPS Expansion TPP, however the same was rejected by the MoEF & CC, the 1st Respondent herein citing that the EC is valid only for 10 years for the Thermal power projects as per EPA 2006 and it was requested to initiate the process de-novo for grant of fresh TOR as applicable under EIA notification 2006.

9. It is submitted that on 25.10.2018, the Project Proponent requested the 1st Respondent to issue fresh TOR exempting fresh public hearing since for the present project the public hearing was already conducted on 22.02.2008 and Public hearing for another project was also held on 30.05.2017 at the same premises.

10. It is submitted that on **21.01.2019**, the 1st Respondent issued fresh TOR for the ETPS Expansion TPP(1x660 MW) to this Respondent and directed the Project Proponent to conduct fresh EIA study to ascertain the present Environmental scenario of project area.

11. It is submitted that on **14.03.2019**, the Project Proponent requested for amendment of TOR to - exempt fresh Baseline data, exempt the examination of alternate sites and exemption from Public Hearing. It is submitted that the Exemption was sought due to apprehension of delay in obtaining fresh EC thereby increase in the cost of the project incurred from the public exchequer.

12. It is submitted that on **01.05.2019**, exemption was granted by the 1st Respondent with respect to exemption from baseline data and examination of alternate sites to this Respondent.

13. It is submitted that on **09.05.2019**, the project proponent requested the 1st Respondent for amendment of TOR to exempt Public Hearing.

14. It is submitted that on **10.07.2019**, the Public hearing was exempted by the 1st Respondent, taking into consideration that the project was already under construction and has achieved 17% progress with an investment of Rs 703 Crores and since the Land Acquisition to this respondent has already been completed (owned by TANGEDCO around 40 years).

15. It is submitted that on **11.12.2019**, Environmental Clearance which impugned in the present appeal, was granted to the ETPS Expansion TPP, after taking into all considerations including CRZ recommendations, Baseline Environmental Data, Environmental Impact and ecological sensitivity.

16. Considering the facts and circumstances having stood so, on the point of the validity of the EC granted on 11.12.2019, it is submitted that the 1st Respondent in its reply submitted before this Hon'ble Tribunal, in Paras 13, 15 & 16 has summarily observed that the EAC (Thermal Power) in its meeting held on 15.09.2019 deliberated the issues regarding CRZ recommendations, Baseline Environmental Data, Environmental Impact of the project, etc., and has only then recommended for grant of EC. It was also observed by the 1st Respondent that the Ministry had exempted to conduct public hearing considering the progress of the project and expenditure made in the project activities and the fact that land acquisition had already been completed and that the due process of Environmental Impact Assessment has been followed by the Expert Appraisal Committee before recommending for grant of environmental clearance. Hence, it is submitted that the subject project has been sanctioned by the 1st Respondent rightfully, only after following all the due procedures as is required.

17. It is submitted that the 1st Respondent in its order dated 10.07.2019, had granted exemption from public hearing while observing the following reasons:

a. Public hearing at the same location has been conducted for another project i.e., Proposed 1x660MW Ennore Replacement Power Project on 30.05.2017.

b. Since Rs 703 crores of public exchequer already been spent, conducting public hearing will substantially delay the construction.

c. Project is following the full procedure under EIA Notification to obtain Environmental Clearance.

18. It is pertinent to note that there were no objections raised as against the EC granted initially on 03.06.2009 to the said project nor was there any objections raised during the public hearing done on 22.10.2008 and 30.05.2017.

19. It is submitted that though the order of exemption of public hearing dated 10.07.2019 issued by the 1st Respondent was challenged before the Hon'ble Madras High Court, the said writ petition was dismissed as withdrawn. Hence, the exemption order has not been set aside and is still valid.

20. It is submitted that there are no changes to the Project Site, Type of Industry or any modernization or expansion, in the said project, since the Public hearing held on 22.10.2008. The Project is the same as it was when the public hearing was initially conducted.

21. It is submitted that for the current project, already around Rs. 800 crores have been invested from the Public Exchequer.

22. It is further submitted that fresh Rapid EIA studies were undertaken during 2019 for the ongoing ETPS Expansion project in 10 KM radius as per fresh TOR for the ETPS Expansion Project.

23. With respect to the argument raised by the Appellant which was not in the pleadings filed by him in the present appeal that as per G.O Ms. 213 dated 30.03.1989, the current project is classified as a highly polluting industry and classified as a 'red category' industry which is banned to establish within 1km from the embankment of Korattalaiyar i.e., Kosasthalaiyar. Further, that the plant ought to have set up only after obtaining sanction from the State Government by the virtue of G.O.213. In this regard, it is submitted that as per G.O Ms. 47 dated 28.08.2008, it has been clarified that the G.O Ms. No. 213 does not cover expansion activities of an industry and as such, the current ETPS Expansion Thermal Power Project is exempted from the operation of the said G.O. **(The exemption Government Order is annexed herewith).**

24. The following ratio decided in the judgment dated 25.08.2020, in Appeal Nos. 78 and 79 of 2018 in Laxmi Chouhan vs Union of India and Ors, decided by the Principal bench of the Hon'ble National Green Tribunal, is relevant to the present issue and the same is expounded hereunder :-

"Page 6, Para 9 - Neither the original EC nor subsequent expansions have been challenged by any of the residents of the area or even by the appellant who has challenged only the impugned expansion in the year 2018.

Page 6, Para 11 - As noted earlier, EC was originally granted on 04.01.2004 and thereafter expansions were granted on 03.06.2009 and 12.02.2013, before the present expansion. Present expansion is from 31 MTPA to 35 MTPA i.e. about 13%. There was no challenge to the earlier three

ECs by any inhabitant of the area. The project proponent duly complied with all the conditions of the EC. The period of the impugned EC is over. Further extensions have been granted which have not been challenged. Further extensions have been granted after considering the fact that all conditions of EC were duly complied with.

Page No.7, Para 11 - *There is no doubt about importance of public hearing in the process. At first sight, it is an impressive argument that EC granted without public hearing is vitiated. However, in the present case, public hearing was done when main EC was granted. For expansions, no public hearing was done. In this regard, it is pointed out that clause (v) of para 7 of the Notification, under the heading III. Stage (3) – Public Consultation, provides that if owing to a local situation it is not possible to conduct public hearing, such facts can be reported to the regulatory authority, on which public consultation may not include public hearing. Though local situation as such may refer to a particular situation, may be like pandemic or law and order etc., it is submitted that there may be situations when it is possible to dispense with such hearing. Such dispensation can be valid, unless shown to be arbitrary. In the present case public hearing having taken place, a conscious decision has been taken by way of OM that such public hearing may be unnecessary for expansion to the extent specified if the unit is compliant. Public hearing was dispensed with earlier for first and second expansions without any objection from any quarter. Same way, there can be no objection to such course now.*

Page No. 8, Para 11 - *Dispensing with the public hearing or public consultation, for expansion to a small extent, where public hearing has already been conducted for the*

entire leased area, in the circumstances, does not vitiate the EC.

Page No. 12, Para 19 - *No member of public in the area has raised any objection. In fact, the public of the area is benefited by the expansion of the project in the manner already noted. The EAC is fully satisfied about desirability of the expansion on all relevant parameters. The expansion has already been carried out and initial period of EC has already expired without there being any complaint of violation of any EC conditions.*

Page No. 14, Para 22 - *Having regard to totality of circumstances, we do not find any ground to interfere with the grant of EC on the touchstone of the principles laid down in above judgement of the Hon'ble Supreme Court. There was public hearing granted in respect of the project. Thereafter, while granting extensions from time to time, the impact on environment has been duly studied, though public hearing has not been undertaken. There has been no grievance from the inhabitants in the area and benefit of the projects for the inhabitants has been duly considered by the EAC. As against the stand of the appellant, the MoEF&CC has duly produced the EIA study which is exhaustive in respect of all relevant parameters. The said study was before EAC. It cannot be said that EAC did not apply its mind. Thus, it is difficult to say that without public hearing, in the circumstances, expansion of capacity to the extent of 13% is vitiated. A conscious decision has been taken by way of OM to grant such exemptions consistent with the objectives of the Notification dated 14.09.2006, after due evaluation of all relevant factors, including past compliances."*

It is clear from the above findings of the Hon'ble Principal bench that though the facts and circumstances in the above

judgement differ in merits, however the findings and observations laid down clearly applies to the present case also since the subject project is an ongoing project and not a new project. The said judgement clearly lays down the object and purpose of a public hearing and as to the reasons why such public hearing may be exempted for an expansion project. It is also pertinent to note that an appeal made against the above judgement in C.A No. 834 of 2021 and an interim application for stay was also filed in the said Appeal in I.A No. 35831 of 2021, but the Hon'ble Supreme Court refused to grant stay of the order and hence the said order still operates to be valid.

25. It is further submitted that, as per the directions of this Hon'ble Tribunal, the following status report is provided hereunder with respect to the subject project:-

PRESENT STATUS OF THE PROJECT:

- i.** The project is expected to be commissioned in May 2024 as per the revised completion period which will have a time period of 33 months. Apart from this, Flue Gas Desulfurization (FGD) and Selective Catalytic Reduction (SCR) are to be installed which will have another 6 months as per provisions.
- ii.** Civil foundation works have been completed up to 80 percent, only marine piling inside the creek for pipe conveyor is to be completed.
- iii.** If started all balance civil works will be completed, by 18 months in totality.
- iv.** Mechanical erection works for Boiler 4912 MT and Electrostatic Precipitator (ESP) 1672 MT have been completed already.

v. Balance Boiler, Turbine, Generator (BTG) works will be completed within 30 months from the date of start of works.

vi. For all balance of plant works like External Coal Handling system (ECHS), Internal Coal Handling system (ICHS), Cooling Water system (CWS), Natural Draft Cooling Tower (NDCT), Bottom Ash Handling System, Fly Ash Handling System, Sewage Disposal and Effluent Treatment system, Sea Water Intake system, Hydrogen Plant, Mill Reject system, Instrument and Service Air system, Reverse Osmosis Demineralization (RO DM) plant, Fuel Oil system etc., Civil foundation works completed. Only the super structure and machinery erection are to be completed. These all will be completed within 30 months from the start of the works.

vii. For FGD and SCR, new order has to be placed and it will take additional 6 months for completion.

viii. Overall 39 months from the date of start of works is required to complete the project works in all respects.

ix. Hence tentatively the expected date of completion in full shape is Nov 2024.

26. It is submitted that the appellant with an ill intention to stall the major project of this respondent, has filed the present appeal and the same is an abuse of process of law. Further, he is not entitled to any relief as claimed in the present appeal. In any case, the public interest is more important than the private vested interest of certain individuals.

27. It is further submitted that all reports of the subject project were placed on the domain of the 1st Respondent, if the Appellant was aggrieved by the project, he should have filed an objection before the appropriate authorities when the application was under

examination before the Committees. Even the Tamil Nadu Pollution Control Board in its Letter dated 18.09.2019 that they have not received any comments from the public after uploading of the EIA Report of the subject project, which was also recorded by the EAC Committee in its 33rd meeting held on 25.09.2019 **(Page No. 172 of the Paper Book – II filed by the Appellant herein)**. Though, the present appellant has filed numerous petitions and applications before the courts of law and as such, the present appellant cannot take the stand that the expansion project was not known, since the appellant is well aware of the exact procedure to object to the proposal of expansion, as and when it was announced, which he had failed to do so at the appropriate time and hence, he cannot agitate the issue now at a later time. It is submitted that the present appellant is known to unnecessarily agitate valid and legal issues and indulge in forum shopping and as such, this present Appeal is liable to be dismissed in limine.

28. It is submitted that it has become very essential to produce and distribute electricity/power so as to meet out future demands since there is acute shortage of electrical energy in the State of Tamil Nadu for industrial development and to implement the policy decision of the Central and State Government for the use of Electric Vehicles (EV). In view of the above, it has become very essential to produce and distribute electricity/power so as to meet out future demands.

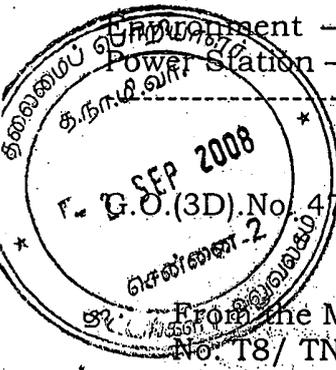
Under such circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to take on record the written submissions filed and dismiss the appeal and pass such further orders as this Hon'ble Tribunal deems fit and proper and thus render justice.



COUNSEL FOR THE 2nd RESPONDENT



Abstract



Industries - Tamil Nadu Electricity Board - Ennore Thermal Power Station - Expansion of existing unit - Orders - Issued.

Environment and Forests (EC.3) Department

002784

Calame

Donny

Dated: 28.08.2008

Read:

From the Member Secretary, Tamil Nadu Pollution Control Board letter No. T8/ TNPCB./ 64944/TLR/08 Dated: 1.7.2008, 25.7.2008

ORDER:-

The Tamil Nadu Electricity Board has stated that it has proposed to expand the existing Ennore Thermal Power Station so as to enable Tamil Nadu Electricity Board to establish the 1 x 500 MW as an extension project (Existing Capacity 480 MW) within the Ennore Power Plant Complex.

2. As the river Kosathaliyar is at a distance of about 575 m from the site, the Electricity Board has requested Government to relax the orders issued in G.O.(Ms).No.213, Dated 30.03.1989.

3. Tamil Nadu Pollution Control Board has reported that due to the following reasons the Tamil Nadu Electricity Board was requested to make a technical presentation:

1. The proposal is for expansion of the existing unit by providing an additional unit of 500 mw capacity. The trade effluent from the ash pond of the existing unit is being discharged into Kosathalaiyar river. The cooling water is discharged into sea. The unit however assures that it will not let out any effluent into river upon expansion. However, discharge into sea will continue.
2. Whenever the recommendation for relaxation of the G.O. for expansion of the existing unit is sent along with that proposal for achieving zero discharge has also to be sent.
3. The existing plant is not consistently meeting the emission standards.
4. Thickly populated residential areas are located just adjacent to the unit. Complaints are also being received regarding air pollution from the public.

4. Tamil Nadu Electricity Board made a technical presentation on 17.03.2008 at the end of the presentation had assured to submit a revised proposal for zero discharge. Based on the above assurance, the Chairman, Tamil Nadu Electricity Board in his letter dated: 25.03.2008 has informed the following:-

- a) This is an expansion project and not a green field project.
- b) The existing facilities of ETPS (Ennore Thermal Power Station) will be beneficially utilized for this additional unit.
- c) At present there is no drawal of water from Kosathalaiyar river and for expansion project also there will not be any drawal.
- d) Presently decanted water from the clarifier of the ash dyke satisfying Tamilnadu Pollution Control Board norms are discharged into the Kosathalaiyar river. After completion of the expansion project, it is proposed to recycle the decanted water for ash slurry purposes thus zero discharge will be ensured.
- e) Presently the required cooling water is being drawn from Ennore creek. After due study by National Institute of Oceanography, Goa, it is proposed to draw water from deep sea (ie) 600m away from the shoreline for the existing and proposed expansion.
- f) Sea water drawn will be used only for cooling purpose of Condenser and Auxillary coolers and not for any other plant purposes. The coolant water (which does not undergo any Physical or chemical change), drawn from sea, alone will be discharged again into sea after reducing the temperature as per the prescribed limits. The impact study for letting out the water from the proposed additional unit will be undertaken.
- g) The entire treated effluent will be reused/recycled for green belt development and other plant purposes.

5. As per the recommendation of the Sub-Committee, the Tamil Nadu Pollution Control Board resolved to recommend to the Government for the relaxation of the provisions contained in G.O.(Ms).No.213, Environment and Forests Department dated: 30.03.1989 for the establishment of 1x500 MW coal based thermal power plant within the existing complex of M/s.Ennore Thermal Power Station, Ennore subject to certain conditions.

6. In Government letter No: 24703/EC3/2006-3 Dated: 11.10.2006 it has been clarified that even though both G.O.(Ms).No.213, Environment and Forests Department, dated: 30.3.1989 and G.O.(Ms).No127, Environment and Forests Department dated: 8.5.1998 do not cover the expansion activities of the existing industrial units which were set up before the issue of these Government Orders, the Tamil Nadu Pollution Control Board may send necessary proposals to Government after due scrutiny and to impose pollution control measures, like, Reverse Osmosis System

with Reject Management System (RMS) to achieve Zero Discharge to avoid pollution of water resources due to expansion activities of the existing Industries for orders.

7. After careful examination of the proposal, this Department agree to the following the pollution control measures proposed to be imposed by Tamil Nadu Pollution Control Board for granting permission to M/s. Ennore Thermal Power Station, Tiruvallur District for the expansion of the existing facility by the establishment of 1x500 MW coal based Thermal Power Plant within the existing complex of M/s. Ennore Thermal Power Station, Ennore:

- a) The unit shall not draw water from river Kosathalaiyar.
- b) The unit shall not discharge any wastewater into Kosathalaiyar from both the existing and expansion activities.
- c) The unit shall revamp the existing ESPs (Electro Static Precipitators) to meet the emission standards consistently.
- d) The unit shall maximize the fly ash utilization in the existing plant and shall dispose entire fly ash from the expansion plant for beneficial use.
- e) The unit shall maintain proper account for the fly ash generated and its disposal.
- f) Since this proposal attracts Environment Impact Assessment Notification'2006 this unit has to obtain Environment Clearance from Ministry of Environment and Forests, Government of India as this is a "A" category project.

(BY ORDER OF THE GOVERNOR)

N.SUNDARDEVAN
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Chairman, Tamil Nadu Pollution Control Board, Chennai-32
The Senior Personal Assistant to Hon'ble Minister for Environment,
The Chairman, Tamil Nadu Electricity Board,
No: 800, Anna Salai, Chennai-2
SF/SC

//FORWARDED BY ORDER//

P. Balaji
SECTION OFFICER
P. Balaji