

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTH ZONE – CHENNAI

R. A. No. 1 of 2021

In

O. A. No. 16 of 2019 (SZ)

The District Environment Engineer
Tamil Nadu Pollution Control Board

... Review Petitioner/ 3rd Respondent

Vs

1. K. Gemini
and others

...Applicant/ Respondents

COUNTER AFFIDAVIT OF 4th RESPONDENT

M/s. Shree Law Services

T.Ravichandran

D.Sairam Kumar &

K.Deva Dakshan

Counsel for 4th Respondent

97899 86612

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTH ZONE - CHENNAI

R. A. No. 1 of 2021

In

O. A. No. 16 of 2019 (SZ)

The District Environment Engineer

Tamil Nadu Pollution Control Board

Siva Tower, Post Box No 457

No.1/276 Meyyanur Main Road

Salem 636 004

Email: deetnpcbslm@gmail.com

Phone No.04257 2448526.

... Review Petitioner/ 3rd Respondent

Vs

1. K. Gemini

Son of Kannupaiyan

Aged about 53 years

5/1-34 Rettaipuliyamaram

Raman Nagar Post

Mettur Dam, Salem District 636 403

...Applicant/ Respondent

2. Union of India represented by

The Secretary to Government

Ministry of Environment, Forests & Climate Change

III Floor, Pritvi Wing

India Paryavaran Bhavan

Jor Bagh, New Delhi 110003

Email: secy-moef@nic.in

Phone No. 011 24695262 & 24695265

3. The State of Tamil Nadu represented

By the Secretary to Government

Environment and Forests Department

Fort St. George, Chennai 600 009

Email forsec@tn.gov.in

Phone No 044 25671511

4. M/s Chemplast Sanmar Limited

Veerakalpudur Village

Raman Nagar Post, Mettur Dam,

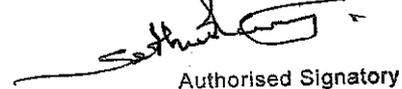
Salem District 636 403

.... Respondents/Respondents

COUNTER AFFIDAVIT OF 4th RESPONDENT

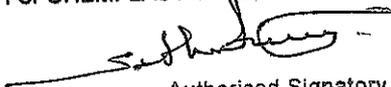
I, K Sethuraman, son of K Kalyanasundaram, aged 55 years, having office at No. 9, Cathedral Road, Chennai 600 086, do hereby solemnly affirm and sincerely state as follows:

For CHEMPLAST/SANMAR LIMITED


Authorised Signatory

1. I submit that I am the Executive Vice President – Legal for Chemplast Sanmar Ltd, the 4th Respondent herein and as such am well aware of the facts of the case.
2. I further submit that this Review Petition is not maintainable and is liable to be dismissed for the following reasons more fully set out hereunder. The well-established principle of law is that review is a discretionary relief which can be entertained by this Hon'ble Tribunal if and only if (a) there is discovery of new and important matter or evidence and (b) there is an apparent error on the face of the record. The highest court of the country in Gopal Bandhu Biswal Vs Krishna Chandra Mohanty & others (1998) 4 SCC 447 held that **"the power of review granted to a Tribunal is similar to the power given to a civil court under Order 47 Rule 1 of the Civil Procedure Code.** Therefore though the Tribunal is vested with the power of review, the discretion to exercise that right has to be as per the principles laid down by the Civil Procedure Code.
3. A perusal of the grounds as well as the affidavit would reveal that no sufficient material new or important is placed before this Hon'ble Tribunal. Further a cursory perusal of the Order dated 6th October 2020 on which review is sought would reveal that it does not determine the rights of the parties. The attention of this Hon'ble Tribunal is invited firstly to paragraph 12 of the Order dated 22nd July 2020 passed in I.A. No. 55 of 2020 (SZ) filed by this Respondent in the O.A. No. 16 of 2019 (SZ) which reads as under:
"However, we are not going to the question of liability of amount at this stage. Further the Pollution Control Board as well the applicant unit are directed to consider the question as to whether this amount can be either appropriated from the environmental compensation deposited and lying with the

For CHEMPLAST SANMAR LIMITED



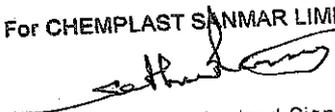
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Pollution Control Board or by the unit invoking their Corporate Social Responsibility of the fourth respondent company as this is required for general study to be conducted to improve the water quality in that area, if it is contaminated and submit the response regarding the same on the next hearing date."

4. After hearing the objections of the parties including the Petitioner herein and the 4th Respondent, this Hon'ble Tribunal was pleased to pass the impugned Order which, on and for the sake of convenience the relevant passage at paragraph 4 of the said Order is reproduced:

"So under these circumstances, since it is a general study to be conducted to assess the water quality in that area for the benefit of the local people, we direct the Pollution Control Board to appropriate this amount from the environmental compensation lying with them and thereafter when they are assessing the environmental compensation from the persons to be recovered in proportion to the level of pollution contributed by the units, including the fourth respondent, if any and recover this portion of the amount also from those persons, as part of the environmental compensation fixed or assessed, so that the necessary study to be conducted for the benefit of the people can be proceeded with"

5. Thus, this Hon'ble Tribunal after hearing the parties had passed the above Orders and the same does not affect the rights of the parties. It further states that in the event of the study pointing out to any violation by any industry, the amount expended shall be recovered from such units. While this being so, it is not understood as to how the Petitioner can be said to be aggrieved by the said Order under review.

For CHEMPLAST SANMAR LIMITED

Authorised Signatory

6. Without prejudice to the above submissions, I crave leave to refer and rely upon the contentions set out by this Respondent in its main application I.A. No. 55/2020 and the Response/Objections to the various Joint Committee Reports filed by it from time to time. On a plain reading and perusal of the Joint Committee Reports, it would be abundantly clear that the ground raised by the Petitioner that this Respondent is a polluter as per the Joint Committee Reports is baseless averment, malafide and misleading statement and without any merits. This Respondent denies the same and puts the Petitioner herein to strict proof of the same.
7. I further submit that in all the above responses, this Respondent has clearly stated as to why the NGRI study by itself is not necessary to be conducted. This Respondent has also further stated that, if at all a necessity to conduct the study is made by this Hon'ble Tribunal, it cannot be at the cost of this Respondent as the said study is a generic study to examine the ground water contamination in and around Mettur. As rightly pointed out by this Hon'ble Tribunal vide its Order under review dated 6th October 2020, if at all any findings is reported against any industry, as per the "Polluter Pay Principle", such industry causing ground water contamination or such environmental damage is liable to compensate the Petitioner/3rd Respondent herein for the study.
8. The fact of the matter is that post the Order of this Tribunal under Review, the Additional Joint Committee has inspected this Respondent's Units at Mettur and submitted a report. To the said report, this Respondent has also filed its Additional Response/Objections providing the status for each of the recommendations. I further submit that the allegations of the Petitioner herein has been duly addressed by the first Joint

11/11/2020 10:00:00 AM

For CHEMPLAST SANMAR LIMITED



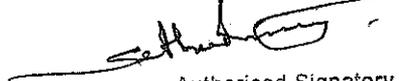
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Committee Report. The Report has recorded the fact that this Respondent's Units at Mettur are in compliance with all the regulations and there is no violation as alleged by the Petitioner/Respondent herein. Therefore, this Hon'ble Tribunal may kindly pass such orders in the interest of justice and dismiss the Review Petition. This Respondent further prays that the issue of complying with the recommendations as per the reports of the Joint Committee including the NGRI study may be de-linked from the main Application and render justice.

9. This Hon'ble Tribunal which is established to uphold the principle of sustainable development, the precautionary principle and the polluter pay principle is therefore well within its right to call upon the Petitioner/3rd Respondent herein to conduct the NGRI study by utilizing the Environmental Compensation Fund. I further submit that this Respondent reiterates the fact that all the recommendations of the Joint Committee have been addressed and complied with. Even with regard to a few of the recommendations which are not complied with, this Respondent has clearly undertaken to comply with the same suitably and appropriately remarked with regard to the status under the caption "In progress".

10. In response to the Review Petition, I further crave leave to extract the passage from the Response/Objections filed by this Respondent to reiterate that there are sufficient reasons as to why the proposed study by NGRI which as per its proposal would stretch for 18 months with a cost of Rs. 82.50 lakhs plus taxes and other actual expenses said to be borne by this Respondent, is not at all required for the following reasons:

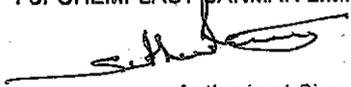
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- a. The scope of study mainly involves the series of water samples in and around the Units, mainly the piezometric wells around the landfill facilities of the units and the near-by wells outside the Units. Apart from this, it requires identification of hydrogeological features/barriers that control groundwater movement around the Units, preparation of groundwater level contour maps along with variation of geochemical changes over a period of time. With respect to the ground water sources, to assess the contamination within the Units is an assessment of Piezometric wells located around the landfills as there is no open /borewell or any other ground water source available in any of the Units. The monitoring of piezometric wells over a period of time is being carried out by the labs approved by Respondents 2 and 3. I further submit that in addition, piezometric well water samples, which were drawn by the Joint Committee during their visit in January 2020, was analysed for contamination. The results obtained from the 4th Respondent's Units establish that there is no ionic contamination and mercury. This would demonstrate that there is no migration of any active ingredients from the landfill to the surrounding land, which also concludes the total integrity of landfill construction.
- b. In order to assess the ground water in the surrounding area as a system for monitoring by the Petitioner/3rd Respondent, the designated open and bore wells were identified by them based on the proximity, direction, depth and various other factors. This is being monitored for over a decade. I submit that there is no significant quality of variation of the ground water except due to the seasonal changes.
- c. I submit that this Respondent has achieved **"Zero Liquid Discharge (ZLD)"** status since 2009. This Respondent has also installed IP camera with night vision capability to capture the ZLD operation on continues basis apart from transmitting the flow meters data to State Pollution Control Board as well as to CPCB. There is no discrepancy notified by both the authorities as of now. In addition to this, the Petitioner/3rd Respondent is taking samples every month at the ETP, equalization tank of ZLD, feed to RO, Permeate as well as the reject and carrying out the analysis at this Respondent's cost. These monitoring systems are being totally complied. Hence the integrity of effective ZLD operation is 100% sustained. As a matter of fact, this

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Respondent has been recognized as "the most environmental friendly company" by FICCI in 2015 and water efficient company as well as innovative company on water conservation by CII in 2010. I further submit that the Committee appointed by this Hon'ble Tribunal in its report dated 18th November 2019 (in page 8) has observed with respect to ZLD operations as under:

"The Unit has provided ZLD (Zero Liquid Discharge system) during the year 2009 and subsequently TNPCB directed to stop discharge of treated effluent into River. Since 2009 the ZLD system is in operation"

"The Unit has removed the HDPE pipes partially just adjacent to the area of the Unit. The Unit has also closed with concrete, the final outlet of the pipe. Some buildings were built on the pipelines laid area. Hence all the HDPE pipe line could not be removed by the Unit from that area. The Joint committee recommends to remove the pipes from the surplus course area of the River Cauvery.

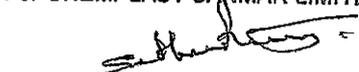
The log book of the ZLD system was verified with available records and found that the ZLD system was in operation. In addition the ZLD system is connected with the Board water quality watch centre through online.

In view of the above there is no treated / untreated trade effluent discharge from the Unit into water bodies through the Pipe line."

d. I submit that this Respondent had engaged an environmental expert from NEERI, Dr. Swaminathan in 2003 for carrying out the environment impact assessment study of the existing landfills with respect to sludge disposed and the design suitability for the site along with hydrogeological studies under precautionary principle of environmental management system. As per the guidelines/recommendations of the study, all the secured landfills are constructed. In this study, the suitability of the site for landfill construction is duly verified by the expert and this aspect is also detailed in the Joint Committee Report. Subsequently, this Respondent has engaged Anna University in 2016 for validating the integrity and the waste disposal aspects and the recommendations were implemented.

e. I submit that this Respondent has even gone a step further on the captive secured landfill, viz., it started moving the solid waste

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generated from the plant (Plant-III) to the common disposal facility (TSDF, Virudhunagar). This means, the Unit does not intend to increase any more landfills at Mettur. This Respondent is also in the process of moving the solid wastes generated from its other Units to the common waste disposal facility even though there are no adverse results noticed in the results from the piezometric wells samples taken by Joint Committee.

It is also pertinent to note that all the solid wastes disposed in the captive secured landfill in each Unit is free from organics and the composition of each reveals that all ingredients in the waste are inorganic with respect to all the 34 SLF's vis-a-vis the observation derived from the Joint Committee on Piezometric wells samples analytical results. Hence, the solid wastes cannot contribute to the properties in the nature of Biological Oxygen Demand (BOD) or Chemical Oxygen Demand (COD) at all. It shall be thoroughly understood that Piezometric wells were established only to monitor the migration/leaching of any ingredient(s) from the waste disposed in the landfill, thereby to monitor the integrity of the various components involved in the secured landfill establishment. One of the recommendations of the Joint Committee is that "the NGRI shall carry out a study of all the 34 SLFs with respect to seepage since the high concentration of BOD & COD observed in the 5 Piezometric wells. Such a recommendation merely based on concentration of BOD & COD that too only in 5 Piezometric wells cannot be attributed to the solid wastes contained in these SFL as stated above. Therefore the Hon'ble Tribunal rightly did not impose on this Respondent such a comprehensive study by NGRI involving 18 months' time and costs as stated above.

11. I further submit that all the averments in the Review Petition are therefore denied except that are specifically admitted hereinabove. To summarize, the NGRI study as proposed by the Hon'ble Tribunal is a general study and not with respect to the Units of this Respondent at Mettur. It is surprising that the Review Petitioner/3rd Respondent avers that the Joint Committee does not even mention about any other unit or industry when the inspection and report filed by the Joint Committee relates to the scope as detailed by this Hon'ble Tribunal only to this Respondent's Units. The NGRI study admittedly

For CHEMPLAST SANMAR LIMITED

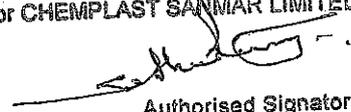

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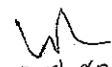
is with respect to the general impact arising out of ground water contamination caused by industries operating out of Mettur and as rightly stated by the Hon'ble Tribunal, the cost to be borne by such industry which is causing the contamination as per the "Polluter Pay Principle" and not otherwise. As the study is yet to be completed, the CSIR guidelines for Technology Transfer and utilization of knowledge base - 2017 shall not apply at the initial instance as alleged. The Review Petitioner/3rd Respondent has not appreciated the fact that the payment of costs by the industries shall arise only as per the "Polluter Pay Principle" subsequently after the Report and at the initial instance it has to be from the Environmental Compensation Fund only as rightly observed by the Hon'ble Tribunal.

In view of the reasons stated as above, it is prayed that the Review Petition filed by the 3rd Respondent lacks merits, barred by Limitation and is liable to be dismissed on facts and on law and justice rendered.

Solemnly affirmed on this 9th }
day of April, 2021 at Chennai }
and signed his name in my }
presence }

For CHEMPLAST SANMAR LIMITED


Authorised Signatory
Before me,


K. G. Srinivasan
Enrl. No. 580/1985
Advocate, Chennai