

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONAL BENCH AT CHENNAI**

I.A NO: 57 OF 2024

IN

ORIGINAL APPLICATION NO. 180 OF 2023

IN THE MATTER OF:-

TRIBUNAL ON ITS OWN MOTION SUO MOTO BASED
ON THE VISUAL MEDIA TITLED CHENNAI RAINS:

மக்களை வதைக்கும் Oil Companies –
Shocking Story- Michaung Ground Report
covered by on VIKATAN TV Chennai dt. 06.12.2023

Versus

THE DISTRICT COLLECTOR
CHENNAI DISTRICT AND ORS.

....RESPONDENTS

ALSO IN THE MATTER OF:

**MEENAVA THANTHAI
K.R SELVARAJ KUMAR MEENAVAR NALA SANGAM**

Represented by its President
M.R Thiyagarajan

....APPLICANT

SUBMISSION ON BEHALF OF THE APPLICANT

MOST RESPECTFULLY SHOWETH:

1. That the above-captioned Original Application was taken up by the Hon'ble Tribunal as a suo motu case against the incident of oil spillage which took place on 4th December, 2023 in the Buckingham Canal leading to substantial damage to

marine life. Further, this Hon'ble Tribunal issued Notice to the Government of Tamil Nadu and the Tamil Nadu Pollution Control Board (TNPCB).

2. That the Applicant has filed an Original Application No. 10 of 2024 before this Hon'ble Tribunal regarding the oil spillage that occurred on 04.12.2023, which spread along the Buckingham Canal, Ennore Creek, Kosasthaliyar River and into the Bay of Bengal. The Applicant herein has raised the following issues in Original Application No. 10 of 2024:
 - a. The toxic spillage has significantly affected the atmospheric conditions of the river and sea and subsequently affected the livelihood of the fisherfolk and populace who reside in the vicinity of the affected regions;
 - b. The spillage of oil violates the provisions of the Water(Prevention and Control of Pollution) Act 1974;
 - c. The spillage of oil into the fragile coastal zones is against the basic scheme of CRZ Notification;
 - d. The impact of the massive oil spillage has resulted in severe environmental and health hazards to the residents, marine and riverine ecosystems of the District of Chennai, Thiruvallur and Chengalpattu State of Andhra Pradesh;
 - e. There is a need for restoration, remediation, and compensation to the victims of pollution and other environmental damage arising out of the oil spillage
3. That the Original Application 10 of 2024 filed before this Hon'ble Tribunal was withdrawn by the Applicant on 19.01.2024 with liberty to get impleaded in pending

Original Application No. 180 of 2023,. The relevant portion of the order dated 19.01.2024 is reproduced below:

"1. The above original application is dismissed as withdrawn with a liberty to the applicant to get impleaded in the pending Original Application No. 180 of 2023 which was registered as suo motu"

4. That as per the directions of this Hon'ble Tribunal, the Applicant herein filed an Impleadment Application No. 57 of 2024 titled *Meenava Thanthai K.R Selvaraj Kumar Meenavar Nala Sangam v. Union of India & 9 others* on 03.04.2024. The Hon'ble Tribunal was pleased to allow this Applicant to file the present submission after perusal of the Reports submitted by the Respondent No.7 i.e Chennai Petroleum Corporation Limited (CPCL) on 23.06.2024 and the report dated 06.09.2024 filed by the TNPCB.
5. That after perusal of the latest reports the Applicant herein makes the following submission
 - a. That the project proponent will be liable for the past violations and damage caused to the Ennore Creek.
 - b. That the project proponent will be absolutely liable under S. 17(3) "No Fault Liability" of the National Green Tribunal Act, 2010.
 - c. That the imposition of environmental compensation has to be as per prescribed formula by CPCB, which was formulated as per the directions in ***Paryavaran Suraksha Samiti v. Union of India, 2019 SCC OnLine NGT 2834.***

THE PROJECT PROPONENT WILL BE LAIBLE FOR THE PAST VIOLATIONS AND DAMAGES CAUSED TO THE LIFE AND MARINE ECOSYSTEM OF THE ENNORE REGION

Impact of the Oil Spill on Ennore Creek

6. That the region of Ennore is a coastal area that is rich in marine ecosystems and its abundance of fish is a source of livelihood for the coastal communities. The stream of Ennore leads into the Bay of Bengal and the watercourse ruptures the Ennore from the port of the Ennore. Over the years, the anthropocentric pressures due to the flourishing of various industries have resulted in damaging the seawater and the coastal areas, thereby affecting the livelihood of the traditional fisherman communities.
7. That on 4th December 2023 a massive oil spill started near the South Gate of M/s Chennai Petroleum Corporation Limited (CPCL) (hereinafter "**Project proponent**") plant occurred causing the spill to spread along the Buckingham Canal, Ennore Creek, Kosasthaliyar River and into the Bay of Bengal. The impact of the oil spillage was that thick oil seeped into the sand of the shore, layers of oil were deposited in the bottom of mechanized boats, and thick oil formed a layer on the water body. The massive oil spillage has resulted in a critical health hazard to the residents of Ennore and irreparable damage to the aquatic and mangrove ecosystems. It is submitted that the Applicants herein are fisher folks whose livelihood depended on the fish catch from Ennore Creek and the oil spillage resulted in pool of dead fish floating in the river and sea.

8. That the damages and the impact caused to the Ennore creek due to the oil spill was clearly recorded in various status reports filed by Executive Engineer, PWD, Water Resource Department (WRD) Chepuk, on 08.12.2023 and the Tamil Nadu Pollution Control Board on 11.12.2023. The Applicant herein also took photographs of the incident showing the extent of damage happened in the Buckingham canal which severely affected the aquatic life. Owing to the damage caused by the oil spill, this Hon'ble Tribunal directed the project proponent and TNPCB to undertake necessary remediation measures to which necessary actions started.
9. That the project proponent authorized TERI to undertake Environment Impact Study on the contaminated site. The Environmental Impact Assessment report dated 23.06.2024 titled "*Assessment of environmental quality of oil spill contaminated sites in and around Buckingham Canal to the Ennore Creek aftermath of floods due to cyclone Michaung*" was submitted by the project proponent on 09.09.2024. The findings of the report states *there were no significant oil slick or visible contamination in and around the study area and the oil slick has not had any significant impact on the biodiversity of the water bodies.* The water samples for the report were undertaken on 28.12.2023 to 29.12.2023 i.e. 28 days after necessary clean-up activities were being undertaken. Therefore, the Impact assessment report will not show the actual damage suffered by the Applicant or the ecosystem of the Ennore Creek as a result of the oil spill. It is submitted that the present status of the damage remediated will not absolve the project proponent from his past violations of liability.

10. That this Hon'ble Tribunal in several cases, considered the past violations undertaken by the project proponent and imposed compensation. In ***Indian Council for Enviro-Legal Action v. Jammu and Kashmir State Pollution Control Board, 2018 SCC OnLine NGT 393***, this Hon'ble Tribunal considered the past violation of discharge of industrial waste into the rivers and directed the industries to pay Rs.5 Crore as compensation. the Relevant portion of the order is reproduced below:

- i. *The SIDCO must set up TSDF and CETP within six months, failing which SIDCO will be liable to pay an amount of Rs. 5 Crores every three months by way of deposit with the Central Pollution Control Board for being spent on restoration of environment. For the **past failure in more than one decade**, SIDCO is held liable to pay compensation of Rs. 5 Crores which may be deposited within one month from today with the Central Pollution Control Board for restoration of the environment.*
- ii. *Municipal Council, Samba **is held liable to pay compensation of Rs. 10 Lakh for the past failure in installing STP** and for discharging untreated sewage in the river. Same amount will be payable for failure to install STP after six months, i.e., at the rate of Rs. 10 Lakh per month*

11. That furthermore in ***Re: Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues, O.A No. 666 of 2018*** states in Para 59 that award of compensation has become necessary to remedy the continuing damage to the environment to restore future and past damage.

*59. Award of above compensation has become necessary under section 15 of the NGT Act to remedy the continuing damage to the environment and to comply with directions of the Hon'ble Supreme Court requiring this Tribunal to monitor enforcement of norms for solid and liquid waste management. Moreover, without fixing quantified liability necessary for restoration, mere passing of orders has not shown any **tangible results in the last eight years (for solid waste management) and five years***

(for liquid waste management), even after expiry of statutory/laid down timelines. Continuing damage is required to be prevented in future and past damage is to be restored.

Therefore, it is humbly submitted that the project proponent will be liable for the past violations undertaken of spillage of oil into the Ennore Creek resulting in severe damage to the residents of Ennore creek and the aquatic life of the region.

THE PROJECT PROPONENT AS WELL AS GOVERNMENT AUTHORITIES ARE ABSOLUTELY AND JOINTLY LIABLE FOR THE DAMAGE CAUSED TO THE LIFE AND MARINE ECOSYSTEM OF ENNORE REGION

12. That it is now a settled principle that in case of an accident which causes damage to the ecology the principle of absolute liability applies and none of the exception in Ryland v. Fletcher will apply. This has been made clear in *M.C. Mehta v. Union of India (Shriram - Oleum Gas), (1987) 1 SCC 395*. It is important to highlight that the principle of absolute liability applies not only to a private entity or public sector but also to all statutory authorities. This has been made clear in In ***Union of India v. Prabhakaran Vijaya Kumar, (2008) 9 SCC 527***:

"39. The decision in M.C. Mehta case [(1987) 1 SCC 395: 1987 SCC (L&S) 37: AIR 1987 SC 1086] related to a concern working for private profit. However, in our opinion the same principle will also apply to statutory authorities (like the Railways), public corporations or local bodies which may be social utility undertakings not working for private profit."

13. It is submitted that the oil spillage could have been prevented if adequate precaution were taken by the Chennai Petroleum Corporation Limited (CPCL) as

well as the statutory authorities that were responsible for ensuring compliance. It is important to highlight that the absolute liability principle applies not only to the entity responsible directly or indirectly for the accident but also to all government agencies which through their inaction has allowed the entity to operate in a manner which increases the risk to the public and the environment. The Hon'ble Supreme Court in the matter titled ***M.C. Mehta (Stubble Burning & Air Quality) v. Union of India, (2020) 7 SCC 573*** in respect of Air pollution held that the every agency is responsible for ensuring compliance with environmental laws and any inaction is clearly tortious and punishable under statutory provisions. The relevant paragraph reads:

"6. Everybody has to be answerable including the top State machinery percolating down the level of grampanchayat. the very purpose of giving administration power up to the panchayat level is that there has to be proper administration and there is no room for such activities. The action is clearly tortious one and is clearly punishable under the statutory provisions, besides the violation of the Court's order. In the circumstances, as widespread stubble burning has taken place, we direct the States of Punjab and Haryana and adjoining State of Uttar Pradesh where there is blatant violation which has taken place, to halt it. We direct the Chief Secretaries of the States of Punjab, Haryana and Uttar Pradesh to be present in this Court on 6-11-2019 including Chief Secretary of the Government of NCT of Delhi".

14. That, further, it is pertinent to note that the Hon'ble Supreme Court in ***Rajkot Municipal Corporation. vs. Manjulben Jayantilal Nakum, (1997) 9 SCC 552*** elaborated on the principle of Duty to Care on Statutory Authorities by relying in previous English decisions [Gorris v. Scott, (1874) LR 9 Exch 125 and Kilgollan

v. William Cooke & Co. Ltd., (1956) 1 WLR 527 : (1956) 2 All ER 294 (CA)]. The Hon'ble Court held:

*24. Generally, a public authority entrusted with no statutory obligation to exercise a power, does not come under common law duty of care to do so but by conduct the public authority may place itself in such a situation that it attracts the duty of care which calls for exercise of the power. Common illustration is provided by an action in which an authority in the exercise of its functions, if it had created a danger, thereby subjecting itself to a duty of care for the safety of others which must be discharged by an exercise of its statutory power or by giving necessary warnings. It is the conduct of the authority in creating the danger that attracts the duty of care as envisaged in Sheppard v. Borough of Glossop [Sheppard v. Borough of Glossop, (1921) 3 KB 132 (CA)]. The statute does not by itself give rise to a civil action but it forms the formulation on which the common law can build a cause of action. ...
xxx...*

39. It can be seen that ordinarily the principle of the law of negligence applies to public authorities also. They are liable to damages because by a negligent act or failure to act when they are under a duty to act or for a failure to consider whether to exercise a power conferred on them with the intention that it would be exercised if and when public interest requires it. Where the public authority has decided to exercise a power and has done it negligently a person who has acted in reliance on what the public authority has done, may have no difficulty in proving that the damages which he has suffered have been caused by the negligence. Where the damage has resulted from a negligent failure to act there may be greater difficulty in proving causation and requires examination in greater detail.

15. That the Hon'ble Supreme Court in ***NHAI v. Aam Aadmi Lokmanch, (2021)***

11 SCC 566 has held that the statutory authorities and government agencies are also liable for the failure to perform the statutory duty. The Hon'ble Court held that NHAI is liable for the accident since, they failed to maintain the same properly.

The relevant para reads as follows:

"67. Having regard to the duty imposed on NHAI by virtue of Sections 4 and 5 of the Highways Act, read with Section 16 of the NHAI Act, there can be no manner of doubt that NHAI was responsible for the maintenance of the highway, including the stretch upon which the accident occurred. The report of the Sub- Divisional Officer clearly shows that inspection reports were furnished to NHAI shortly before the incident, highlighting the deficiencies; also, NHAI's correspondence with Rathod, and the local administration, reveal that it was aware of the danger and likelihood of risk to human life, and the foreseeability of the event that actually occurred later. Further, letters addressed by the local administration and NHAI to Rathod similarly show that it was incumbent upon him to take remedial action. The failure of NHAI to ensure remedial action, and likewise the failure by Rathod to take measures to prevent the accident, prima facie, disclose their liability."

THE IMPOSITION OF ENVIRONMENTAL COMPENSATION MUST BE AS PER THE CPCB METHODOLOGY AND SETTLED PRINCIPLES OF LAW

- 16.** That the CPCB has published a formula/ methodology for Assessing Environmental Compensation as per the directions issued by the Hon'ble National Green Tribunal in Parayavaran Suraksha Samiti & Anr v. Union of India & Ors., O.A No. 593 of 2017. The formula derived for the calculation of the Environmental Compensation is as follows:

$$EC = PI * N * R * S * LF$$

Where,

EC is Environmental Compensation

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor

17. That the report of TPCB dated 06.09.2024 have calculated the quantity of oil washed away based on the information provided by the on ground team. This Hon'ble Tribunal in several cases imposed environmental compensation by applying the CPCB methodology. There are other recognised principles of Environmental law such as the *Polluter pays* wherein the polluter is held responsible and made to bear the expenses of carrying out measures to redress the damage caused to the environment. In ***Samir Mehta v. Union of India 2016 SCC OnLine NGT 479*** this Hon'ble Tribunal dealt with oil spillage in territorial waters as a matter of public importance and significance to environmental jurisprudence. The Hon'ble Tribunal observed that there is a serious threat to various aspects of the coastal area and marine environment particularly in India. Further observed that the defaulter must suffer the consequence of their defaults and for causing marine environment pollution. This Hon'ble Tribunal then applied the principle of Strict Liability jointly and severally after establishing the damage caused to the aquatic life but also to sea water and the shore.

18. That Section 15 and 17 read with Section 20 of the National Green Tribunal, will statutorily give power to this Tribunal to take measures in the interest of environmental justice. In ***Harpreet Singh Bedi v. Vijay Singh 2021 SCC Online NGT 1695*** the Hon'ble Tribunal observed that

"2. Article 39E, 47 and 48A of the Constitution of India cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment. It was by reasoned of the lack of effort on the part of the enforcement agencies, notwithstanding

adequate laws being in placed, there are air pollution, water pollution and noise pollution in the city. One of the basic principle underlying environmental law is that of sustainable development. This principle requires such development to take place which is ecologically sustainable and the essential features of sustainable development are:— i. the Precautionary Principle (ii) the Polluter Pays Principle and the authorities are duty bound to take necessary action on the point.

Therefore, while calculating the environmental damage caused due to the oil spill, the Hon'ble Tribunal can apply the CPCB methodology and also the principles of Environmental law.

19. That therefore, it is humbly submitted by the Applicant that the Hon'ble Tribunal may be pleased to impose penalty to the project proponent in the light of the settled principles of law above mentioned for causing severe damage by spilling oil which spread along the Buckingham Canal, Ennore Creek, Kosasthaliyar River and into the Bay of Bengal Ennore creek.

Through



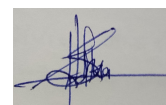
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Dated:- 23.10.2024