

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH AT NEW DELHI**

Original Application No. 627 of 2023

In the matter of:

Gopal Chandra Vanwassi

... Applicant

Versus

Department of Industrial Policy & Promotion & Ors. ... Respondents

INDEX

S. NO.	PARTICULARS	PAGE NO
1.	Reply cum objections on behalf of Respondent No.2 to the Report of the Joint Committee constituted pursuant to Order dated 12.10.2023 passed by the National Green Tribunal in O.A. No. 627 of 2023	3-6
2.	Affidavit in support of the Reply cum objections	7-8
3.	Annexure R1: Photographs showing comparison between photographs dated 15.12.2023 and 29.04.2024	9-10
4.	Annexure R2: Copy of the categories of Designated Best Use Water Quality Criteria from the website of CPCB	11

5.	Judgments of this Hon'ble Tribunal relied upon by the Respondent No.2	12-22
5.	Vakalatnama	23-24
6.	Proof of Service	25



**RESPONDENT NO.2
(PROJECT PROPONENT)**

Through



**(ABHIJEET NEGI)(HIMANSHU SUMAN)
(D/2156/2013) (D/3774/2014)
ADVOCATES FOR RESPONDENT NO.2
CHAMBER 53A, PATIALA HOUSE COURT,
NEW DELHI
MOB: 9718383354
Email: advocateabhijeetnegi@gmail.com**

NEW DELHI

DATED: 07.05.2024



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH AT NEW DELHI

Original Application No. 627 of 2023

In the matter of:

Gopal Chandra Vanwassi

... Applicant

Versus

Department of Industrial Policy & Promotion & Ors. ... Respondents

Reply cum Objections on behalf of M/s Ganesh Dutt Nainwal Soap Stone Mine, Respondent No.2 to the Report of the Joint Committee constituted pursuant to the Order dated 12.10.2023 passed by the National Green Tribunal in O.A. No. 627 of 2023

Most Respectfully Showeth:

1. The answering Respondent denies the contents of the Report as being inaccurate, false and misleading.
2. It is the admitted position that at the time of inspection on 05-06 December 2023, no mining operations were taking place at the mine. It is not denied that the retaining wall had collapsed, however, the same was due to the heavy rains which took place and the answering Respondent intends to reconstruct the retaining wall.
3. It is also not denied that in the absence of the retaining wall some muck had fallen outside the mining area to the slope and to the river bank of River Saryu. However, the said muck has not polluted the river as it had fallen around 30 meters away from the bank of river Saryu. This was not intentional and was due to the collapse of the retaining wall. Nor was such overburden a regular feature but had occurred only sometime before the

G. D. Nainwal

time of inspection. Colour Photographs showing comparison between photographs dated 15.12.2023 and 29.04.2024 that demonstrate that the overburden/debris has been cleared by making it plain are attached herewith as **Annexure R-1**.

4. It is to be noted that upon taking water samples it was found by the Committee that water quality fell in Category B as per the Designated Best Use Water Quality Criteria. This category water is suitable for "*Outdoor Bathing (organized)*" and the second best category after Category A which is suitable for "*Drinking Water Source without conventional treatment but after disinfection*". A copy of the categories of Designated Best Use Water Quality Criteria from the website of CPCB at https://cpcb.nic.in/wqm/Designated_Best_Use_Water_Quality_Criteria.pdf is annexed hereto as **Annexure R-2**.
5. Hence, it is submitted that there has been no noticeable water pollution or damage to river water quality due to any alleged lapses on the part of the answering Respondent. Even if this Hon'ble Tribunal considers water quality being in Category B as a harm, the same would be due to the activities taking place further upstream and could not be due to the debris from the mining site which contains only mud and rocks, and not any chemicals which in any case did not even fall in the Saryu river.
6. As regards the possibility of muck falling into River Saryu and impacting water quality, the answering Respondent undertakes to build a retaining wall and to ensure timely disposal of muck on regular basis so as to obviate any possibility of muck falling in the River Saryu and impacting its water quality/ ecology.
7. It is further pertinent to note that the Report does not find any significant obstruction in the free flow of the River Saryu. This further substantiates that no muck has fallen from the mine into the river.
8. Since there is no damage caused either to the water quality/ ecology or free flow of River Saryu, it is submitted that the present matter ought to be closed and the Applicant is not entitled to any reliefs. The answering



Respondent craves leave to rely upon certain judgements of this Hon'ble Court wherein upon finding no damage/ pollution, the matter was dismissed without granting of any reliefs, viz. *Pankaj Sharma v. State of UP & Ors.*, 2020 SCC OnLine NGT 454; *V. Jagadeesh v. Secy., Govt. of Tamil Nadu & Ors.*; 2020 SCC OnLine NGT 2146; *Subhaniya Ismail Osman v. RSPL Ltd. & Ors.*, 2022 SCC OnLine NGT 3149. These judgments are annexed as **Annexure R-3(Colly)**.

9. It is denied that the answering Respondent has not made proper arrangements for disposal of rain water in the mining area. However, assuming without admitting, that sufficient arrangements have not been made, the answering Respondent undertakes to make them in the future at the earliest.
10. It is further submitted that in light of no damage to the water quality/ ecology or free flow of the River Saryu, there is no basis for the Joint Committee to impose a temporary ban on the mining operations of the answering Respondent. It is pertinent to note that the Committee while recommending a temporary ban emphasizes that it is important for the answering Respondent to ensure muck disposal before the onset of monsoons which is half a year away from the date of the Report. In any case, the answering Respondent undertakes to rebuild the retaining wall, to dispose the muck, and to ensure proper system for muck disposal.
11. Further with regard to the rejection of the answering Respondent's conditional consent for operation, the same was due to alleged lack of safety measures for removing and protection of overburden generated from soapstone mining.
12. The Committee in its Report also found that the answering Respondent had dumped the muck from its mining area outside its approved area on private land and Government land, and finding it to be violative of Rule 50(12) of the notification issued vide G.O. No. 977/VII-A-1/2023-24 B/2007 Dehradun dated 16.06.2023 of Industrial Section-1 of Uttarakhand Government

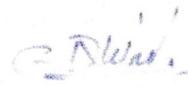


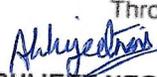
imposed a fine of Rs. 5 lakhs on the answering Respondent. The answering Respondent denies this and shall seek appropriate redress as per law.

PRAYER

In light of the above mentioned facts, circumstances and objections to the Joint committee Report, it is respectfully submitted and prayed that this Hon'ble Court may be pleased to:

- i. Dismiss the present OA filed by the Applicant against the Answering Respondent as being baseless having basis neither in fact or in law.
- ii. Pass any such other orders as it may deem fit and proper in the facts and circumstances of the present case, in the interest of justice.


**RESPONDENT NO.2
(PROJECT PROPONENT)**

Through

**(ABHIJEET NEGI)(HIMANSHU SUMAN)
(D/2156/2013) (D/3774/2014)
ADVOCATES FOR RESPONDENT NO.2
CHAMBER 53A, PATIALA HOUSE COURT,
NEW DELHI
MOB: 9718383354
Email: advocateabhijeetnegi@gmail.com**

NEW DELHI

DATED: 07.05.2024



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL
BENCH AT NEW DELHI

Original Application No. 627 of 2023

In the matter of.

Gopal Chandra Varwassi

... Applicant

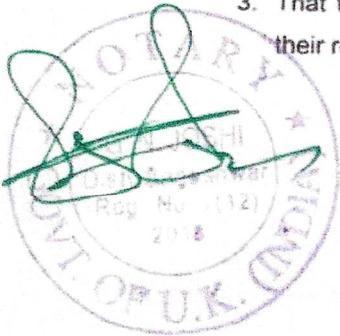
Versus

Department of Industrial Policy & Promotion & Ors. ... Respondents

AFFIDAVIT

I, Ganesh Dutt Nainwal S/o Keshav Dutt Nainwal Aged 43 years R/o Branch Polobe, Pagana, Bageshwar, Chhani, Uttarakhand-263628, do hereby solemnly affirm and state on oath as under:-

1. That I am the Proprietor of Respondent No.2 in the abovementioned matter and being well conversant with the facts and circumstances of the case, I am competent to swear and sign the present Affidavit.
2. That the accompanying Reply has been drafted by my counsel under my instructions and I have read the same and have understood the contents thereof, which are true to my knowledge and based on records maintained by the Respondent in its normal course of work and nothing material has been concealed therefrom.
3. That the Annexures to the accompanying reply are true/certified copies of their respective originals.



G.D. Nainwal
DEPONENT

VERIFICATION:

Verified at Bageshwar, Uttarakhand on this 7th day of May, 2024 that the contents of the above affidavit are true and correct to my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.


DEPONENT



Sworn and Signed
Before me

GHANANAND JOSHI 07/05/2024
NOTARY
Dist.- Bageshwar (U.K.)

Pagana Soapstone Mine

**Fix debris And land levelling On
Saryu River Side**

15 Dec 2023 29.7822549 N , 79.8169187 E

29 April 2024 29.7822549 N , 79.8169187 E

Before

After

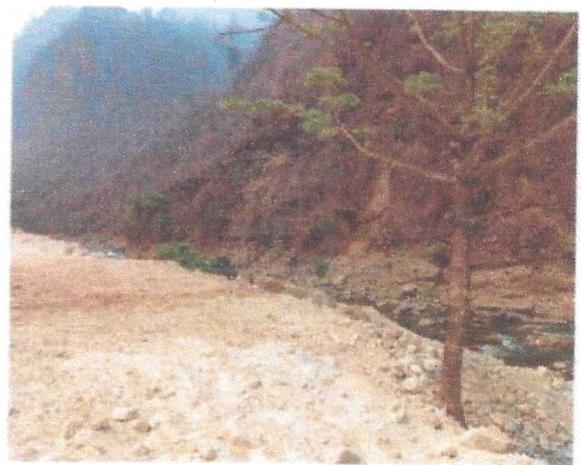


Fig-3

Fig-3.1



Fig-4

Fig-4.1

9

AS
True copy

S. N. Singh

Pagana Soapstone Mine

Debris Removal and Land Levelling On Saryu River Side

15 Dec 2023 29.7822549 N , 79.8169187 E

29 April 2024 29.7822549 N , 79.8169187 E

Before

After



Fig-1

Fig-1.1



Fig-2

10

Fig-2.1

True Copy

Designated Best Use Water Quality Criteria

Designated-Best-Use	Class of water	Criteria
Drinking Water Source without conventional treatment but after disinfection	A	Total Coliforms Organism MPN/100ml shall be 50 or less pH between 6.5 and 8.5 Dissolved Oxygen 6mg/l or more Biochemical Oxygen Demand 5 days 20C 2mg/l or less
Outdoor bathing (Organised)	B	Total Coliforms Organism MPN/100ml shall be 500 or less pH between 6.5 and 8.5 Dissolved Oxygen 5mg/l or more Biochemical Oxygen Demand 5 days 20C 3mg/l or less
Drinking water source after conventional treatment and disinfection	C	Total Coliforms Organism MPN/100ml shall be 5000 or less pH between 6 to 9 Dissolved Oxygen 4mg/l or more Biochemical Oxygen Demand 5 days 20C 3mg/l or less
Propagation of Wild life and Fisheries	D	pH between 6.5 to 8.5 Dissolved Oxygen 4mg/l or more Free Ammonia (as N) 1.2 mg/l or less
Irrigation, Industrial Cooling, Controlled Waste disposal	E	pH betwvn 6.0 to 8.5 Electrical Conductivity at 25C micro mhos/cm Max.2250 Sodium absorption Ratio Max. 26 Boron Max. 2mg/l

11

True Copy

[Signature]

2020 SCC OnLine NGT 454

In the National Green Tribunal[†]

(BEFORE ADARSH KUMAR GOEL, CHAIRPERSON AND S.P. WANGDI, JUDICIAL MEMBER, DR. NAGIN NANDA, EXPERT MEMBER AND SIDDHANTA DAS, EXPERT MEMBER)

Pankaj Sharma ... Applicant(s);
Versus

State of U.P. and Others ... Respondent(s).

Original Application No. 681/2019 (I.A. No. 485/2019) (With report dated 09.01.2020)

Decided on January 23, 2020

Advocates who appeared in this case:

For Respondent(s) : Mr. Pradeep Misra and Mr. Daleep Dhyani, Advocates for UPPCB

ORDER

1. A factual report was sought from the Uttar Pradesh State PCB with reference to the allegation of dumping of hazardous waste at Meerut by Dev Priya Industries, Devpriya Paper Mills Pvt. Ltd., Dev Priya Products and Holy Commercial Pvt. Ltd.

2. The matter was considered on 13.11.2019 in the light of the report dated 05.10.2019 filed by the State PCB acknowledging that one of the units discharged effluents on the land of its sister concern for which environment compensation was imposed. The Tribunal observed:—

"The report is not clear about the extent of damage as it is stated that the soil is to be tested. It is also not clear whether the units have the permission to discharge effluents in the open. On these aspects, learned counsel for the State PCB seeks time to furnish information."

3. Accordingly, further report has been filed on 09.01.2020 to the effect that no damage was found as per soil testing report.

In view of the above, no further order is necessary.

The application is disposed of.

[†] Principal Bench at New Delhi

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.

2022 SCC OnLine NGT 3149

**In the National Green Tribunal[†]
(By Video Conferencing)**

(BEFORE ADARSH KUMAR GOEL, CHAIRPERSON AND SUDHIR AGARWAL, MEMBER
(JUDICIAL), DINESH KUMAR SINGH, MEMBER (JUDICIAL), A. SENTHIL VEL,
MEMBER (EXPERT) AND VIJAY KULKARNI, MEMBER (EXPERT))

Subhaniya Ismail Osman ... Applicant;
Versus

RSPL Ltd. and Others ... Respondent(s).

Original Application No. 73/2017(WZ), I.A. 80/2022

Decided on August 23, 2022

Advocates who appeared in this case:

Applicant(s) : Ms. Shilpa Chohan, Advocate

Respondent(s) : Mr. Maulik Nanavati, Mr Saurabh Soparkar and Mr.
Amit Agashe,

Advocates for R-1 Mr. Rahul Garge, Advocate for R-2

ORDER

1. Grievance in this application is against functioning of green field Soda Ash Plant alongwith captive power plant at village Kuranga, Tehsil Dwarka, District Jamnagar, Gujarat. Case of the applicant is that Respondent No. 1 - M/s RSPL Ltd. has been granted EC and CRZ Clearance for the project subject to the condition not to use heavy machinery but heavy machinery is being used such as Hitachi Costal Builder Berge for excavation work beneath the water. Under water rope blasting has been carried out. Further pipeline has been laid during breeding period of sea turtle which is not permissible. The applicant has thus sought remedial action against such violations.

2. The application was admitted on 15.05.2017 and notice was issued to the PP, MoEF&CC and Government of Gujarat. Reply has been filed by the said respondents. Stand of Respondent No. 1 is that the project has been undertaken at the cost of Rs. 2700 Crores and is complying with the environment norms. There is no violation of the EC conditions as the machinery was used for certain period while laying the pipelines. Work was carried out through authorized agencies without any damage to the environment.

3. Stand of the MoEF&CC is that the application is barred by limitation as CRZ Clearance was granted on 12.11.2015 and period of limitation for filing appeal has expired which cannot be extended. Stand

of the Environment Department, Gujarat is that no relief is claimed against it.

4. Vide order dated 04.10.2017, the Tribunal rejected the application for interim injunction, holding that there was no *prima facie case* against which Civil Appeal No. 1890/2017 was dismissed by the Hon'ble Supreme Court on 12.03.2018. It was found that the machinery used was not heavy machinery and there was no violation of EC condition. However, National Institute of Oceanography (NIO) was directed to carry out local investigation and monitor the project site to ensure that there was no damage to the marine environment. As per report of NIO filed in March, 2019 the project was completed in 2018-2019 without adverse impact to the marine environment. I.A. No. 80/2022 has been filed by the PP seeking disposal of the matter as nothing survives for consideration.

5. We have heard learned counsel for the parties. Learned counsel for the applicant submitted that the applicant has died and, thus, the Tribunal may dispose of the matter on merits.

6. We have given due consideration to the issue raised and perused the pleadings of the parties and seen the report of the NIO that no damage was caused to the marine environment and the project has been completed. We thus do not find any violation of the EC/CRZ clearances calling for any further order.

The O.A. is dismissed. Pending I.A. also stands disposed of.

† Special Bench

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.

2020 SCC OnLine NGT 2146**In the National Green Tribunal[±]**

(BEFORE K. RAMAKRISHNAN, MEMBER (JUDICIAL) AND SAIBAL DASGUPTA, MEMBER (EXPERT))

V. Jagadeesh ... Applicant(s);

Versus

Secretary to the Government, Revenue Department, Government
of Tamil Nadu and Others ... Respondent(s).

Original Application No. 233 of 2017 (SZ)

Decided on September 9, 2020

Advocates who appeared in this case :

M/s. B.S. Jothiraman. for the Applicant(s);

M/s. Kamalesh Kannan for R1, R3, R5 & R6. for the Respondent(s);

M/s. ME. Saraswathy for R2.

M/s. C. Kasirajan through M/s. Meena for R4.

M/s. G. Stanley Hebzon Singh for R8, R10.

JUDGMENT

1. The above case has been filed by the applicant seeking the following reliefs:—

- (i) *Directing the respondent 1 to 6 authorities to close down the ponds where ornamental fish is grown in the lands situate in Survey Nos. 135, 136, 146 to 150, 152, 153 and 155 Nalur Kammavarpalayam village, ponneri Taluk, Thiruvallur District measuring about an extent of 23.64 acres.*
- (ii) *For bearing the Respondents 8 to 12 from letting out the sewage from the ponds where ornamental fish is grown in the ands situate in Survey Nos. 135, 136, 146 to 150, 152, 153 and 155 Nalur Nammavarpalayam Village, Ponneri Taluk, Thiruvallur District measuring about an extend of 23.64 acres into Kosasthalaiyar river.*
- (iii) *Directing the Respondents 8 to 12 remove sewage, garbage and wastes caused by ornamental fish growth in the lands situate in Survey Nos. 135, 136, 146 to 150, 152, 153 and 155 Nalur Kammavarpalayam Village, Ponneri Taluk, Thiruvallur District measuring about an extent of 23.64 acres.*
- (iv) *Directing the 7th Respondent to disconnect electricity connection to Service Connection bearing Nos. 10:04:15 and 10:04:1458 and for bear him from providing any other service connection that may be applied for by respondents 8 to 12 for growing ornamental fish in Survey Nos. 135, 136, 146 to 150, 152, 153 and 155 at Nalur Kammavarpalayam Village, Nalur Post, Ponneri Taluk, Tiruvallur District.*
- (v) *Directing the respondents 8 to 12 jointly and severally to pay the applicant compensation of a sum of Rs. 80,000/- per year per acre since October 2014 and*
- (vi) *Pass any other order or orders which this Honourable Tribunal may think fit and proper under the circumstances of the case and thus render justice."*

2. It is alleged in the application that the 8th respondent was having 23.64 Acres of land comprised in Survey Nos. 135, 136, 146 to 150, 152, 153 and 155 at Nalur Kammavarpalayam Village, Nalur Post, Ponneri Taluk, Tiruvallur District and he had obtained service connection bearing Nos. 10:04:15 and 10:04:1458 for agricultural purpose. He had leased out these lands to the 9th respondent under the lease

agreement dated 15.04.2014 for the purpose of Farming/Growing ornamental fish.

3. It is alleged in the application that out of 23.64 acres, 9.89 acres had been allotted to the 9th respondent, 4.21 acres had been given to 10th respondent, 4.85 acres had been given to 11th respondent and 6.33 acres had been given to 12th respondent for the above said purpose.

4. The applicant is having 11.06 acres of lands and his family members are having 6.50 acres of the land adjacent to the lands of the 8th respondent. They are cultivating the same area by cultivating paddy and groundnut and they used to get an average profit of Rs. 20,000/- per acre which amounted to an average profit of Rs. 80,000/- per year from each acre.

5. On account of the illegal activities done by the respondents 8 to 12, the yield from the property of the applicant has been affected. The sewage that has been generated from the farm fish culture done by the above respondents have percolated into their property and affected the soil condition.

6. Further, the sewage collected in the ponds are being discharged into the Kosasthalaiyar river which affects the ground water quality as well as the quality of water in the river. So, according to the applicant, they have suffered severe loss on account of these activities and claimed the above reliefs including compensation from the respondents 8 to 12.

7. Second respondent/SEIAA filed reply affidavit contending that growing of ornamental fish farming is not covered under the EIA Notification 2006 and they have no role in the matter.

8. Others have not filed any reply statement.

9. As per order dated 28.01.2020, this Tribunal had considered the pleadings in this case and passed the following order:—

"8. So, we feel it appropriate to appoint a Joint Committee comprising of District Collector, Thiruvallur District, Tamil Nadu State Pollution Control Board, Assistant Director of Agriculture, Senior Scientist from Tamil Nadu Agricultural University, Coimbatore to inspect the area in question and to ascertain the genuineness of the allegations made in the petition and also conduct the soil test of the property of the petitioner and also in controlled area, where the soil condition is normal and assess the loss of yield, if any, caused to the petitioners and assess the damage caused to environment including loss of yield for the petitioner, if any, and remedial measure required to restore the damage caused to soil and expenditure required for restoring the same and submit a factual and action taken report to this Tribunal within a I period of two months.

9. The District Collector, Thiruvallur will be the nodal Officer for this purpose of coordination and providing necessary logistics for the purpose."

10. The case was posted to 07.04.2020 and thereafter, the matter was adjourned from time to time for getting the report. On 11.06.2020, we have considered the report which was extracted in Para No. 4 of the order which reads as follows:—

"4. We have considered the report which reads as follows

"3. I humbly submit that, the Hon'ble National Green Tribunal Southern Zone, Chennai has given following direction in Original Application No. 233 of 2017 (SZ), Dated: 20.06.2019.

"8. So, we feel it appropriate to appoint a Joint Committee comprising of District Collector, Thiruvallur District, Tamil Nadu State Pollution Control Board, Assistant Director of Agriculture, Senior Scientist from Tamil Nadu Agricultural University, Coimbatore to inspect the area in the question and to ascertain the genuineness of the allegations made in the petition and also conduct the soil test of the property of the petitioner and also in controlled area, where the soil

condition is normal and assess the loss of yield, if any, caused to the petitioners and assess the damage caused to environment including loss of yield for the petitioner, if any, and remedial measures required to restore the damage caused to soil and expenditure required for restoring the same and submit a factual and action taken report to this Tribunal within a period of two months"

4. *I humbly submit that as directed by the Hon'ble Green Tribunal, a Joint Committee have been formed with the District Collector, Tiruvallur - Nodal Officer, District Engineer, TNPCB, Gummidipoondi, Assistant Director of Agriculture, Ponneri & Senior Scientist, Tamil Nadu Agricultural University as members vide Proceedings Rc. No. 3444/2020/B2, Dated: 13.02.2020, and the Joint Committee meeting was held on 17.02.2020 under the Chairmanship of District Collector, Tiruvallur and discussed about the prayer of petitioner.*

5. *I humbly submit that, as per the instructions given by the District Collector, Tiruvallur in the Joint Committee Meeting on 17.02.2020, a joint inspection has been conducted along with officials of Assistant Director of Agriculture, Ponneri, Assistant Director of Fisheries, Ponneri Assistant Professor, Tamil Nadu Agricultural University, Tindivanam Research Institute, The Tahsildar, Ponneri, Assistant Executive Engineer, Minjur, Tamil Nadu Electricity Board on 19.02.2020 in the Agricultural lands of Tr. Jagadeesh S/o. Madhava Naidu in S. Nos. 135/3A, etc. of Nalur Village, Ponneri Taluk, Tiruvallur District.*

6. *I humbly submit that, the Professor and Head Department of Environmental Science (Senior Scientist) Tamil Nadu Agricultural University has constructed the test in the Field Water and Soil samples and submitted her analytical report. It is revealed that no harm/damage was caused to the Agricultural lands of Thiru. Jagadeesh S/o. Madhava Naidu by the Water used for Color (Ornamental) Fish Pond Farming. As per the soil samples report, the Soil organic carbon content is medium to high in range as per fertility rating and Nitrogen content in the soil are also on above average limits. It is further stated that the nitrogen levels are usually high in the waters used for fresh water fish farming since more ammonia are released from the wastes excreted by the fishes. However, only less amount of nitrogen was found in the soil samples taken from the petitioner's agricultural land. This clearly shows that the waters used for fresh water fish farming caused no damage to the petitioner's agricultural land.*

7. *I humbly submit that, the Assistant Director of Agriculture, Ponneri has stated in his report, that the petitioner has cultivated Rice and Pulses crops and also earned good yield and profit compared to his neighbour farmers. This clearly shows that no financial loss was incurred by the petitioner out of his cultivation.*

8. *I humbly submit that, the Tamil Nadu Pollution Control Board has stated in his report that the Central and State Government have been constantly providing financial assistance and various other support to set up Pond based fish farming activities in rural areas, as a part of allied agricultural occupation thereby targeting to improve the life standards of Village Agricultural population. The main purpose of adding limestone to Fish farming ponds is to make the Water alkaline, kill microbes, inhibit the formation of algal layers on water surfaces so that more amount of light will pass deep through the pond water thereby makes the water fertile and enhances cultivation. In addition to this, cow dung, chick dung together with recommended levels of urea, super phosphate and ammonia sulphate fertilizers are also being used. Since laborer's tenements are not found anywhere near the Color (Ornamental) Fish Farm, the question of land damage due to excretion of human wastes also does not arise. The usage of fertilizers and chemicals in Fish Farms is merely to control the pH of water present in those areas and therefore raising doubts whether they damage the nearby agricultural lands is only imaginary and*

lacks scientific proof. However, it can be clearly ascertained based on the results of the analytical report of water and soil samples taken from the agricultural fields.

9. I humbly submit that, the Assistant Director, Fisheries has stated in his report, that the Petitioner, Thiru. Jagadeesh S/o. Madhava Naidu has cultivated Paddy this year and done his harvest by 15 to 20 days before. The next crop cultivation is under process. According to the researches of Agricultural and Fisheries Department, it has been found that the water being used for fresh water fish farming, again when used for agricultural purposes, it will enhance the growth of crops and gives High Yield. Since water used for fish farming are rich in natural fertilizers such as Cow & Goat dungs it makes the Water more fertile. Also, nitrogen levels are usually high in the waters used for fresh water fish farming since more ammonia are released from the wastes excreted by the fishes thereby makes the water more fertile. Owing to this, the crops are supplied with abundant nitrogen which is a vital component for all crops. Fresh water sources are only present surrounding the petitioner's agricultural lands. Hence, fresh water fish farming can only be possible in the said lands since salt water fishes will not grow in fresh waters. Fresh water snails are also seen in the huge numbers in the Fish Farming Ponds. They are sensitive species which will grow only in fresh waters. The presence of Fresh water snails in the Fish Farming Ponds clearly shows that only fresh water had been used in the Ponds. There is no Sea/Salt Water sources found anywhere near the Fish Farming site. Moreover, foods used to feed Ornamental Fishes are only natural substances like rice bran, oil cake, maize mixture, live worms, freeze dried worms, etc. and there are no chances of using artificial substances and chemicals. Being a sensitive species by nature, fishes will grow only when necessary parameters such as Water Quality parameters, Water Hardness, pH, dissolved oxygen, BOD, COD, Ammonia are properly maintained in the Water. Hence, when chemicals are applied in water they will not only spoil the growth of fishes but make them die and eventually brings huge losses to the Fish farmers. In fact, Fish farming programmes are generally implemented by Government along with farming of Livestock such as Goat, Cow, etc. under the Integrated aquaculture farming system through the Tamil Nadu Agriculture Department. On account of above facts, it is submitted that Fresh Water Ornamental Fish Farming causes no harm to Agricultural lands and the petitioner has been doing active cultivation and yielding good harvest.

Conclusion:

I humbly submit that as per the Joint Committee, the analysis result clearly revealed that no harm/damage was caused to the Agricultural Lands by the Water used for Color (Ornamental) Fish Pond Farming. As per the soil samples report, the Soil organic carbon content is medium to high in range as per fertility rating and Nitrogen content in the soil are also on above average limits. It is further submitted that the nitrogen levels are usually high in the waters used for fresh water fish farming since more ammonia are released from the wastes excreted by the fishes. However, only less amount of nitrogen was found in the soil samples taken from the Petitioner's Agricultural land. This clearly shows that the waters used for fresh water fish farming caused no damage to the Petitioner's Agricultural land. The usage of fertilizers and chemicals in Fish Farms is merely to control the pH of water present in those areas and therefore raising doubts whether they damage the nearby agricultural lands is only imaginary and lacks scientific proof and Fresh Water Ornamental Fish Farming causes no harm to Agricultural lands and the petitioner has been doing active cultivation and yielding good harvest.

I humbly submit that, there is no merit on the side of the petitioner. Hence, therefore I humbly prayed that this Hon'ble Court may be pleased to pass suitable orders."

11. The case was posted to 31.07.2020 for objections if any, to the report to be filed by the applicant and other respondents and on 31.07.2020, it was adjourned to today by notification.

12. When the matter came up for hearing today through Video Conference, Sri B.S. Jothiraman represented the applicant. Sri Kamalesh Kannan represented respondents 1, 3, 5 & 6, Smt. ME Saraswathi represented 2nd respondent, Sri C. Kasirajan through Meena represented 4th respondent and Sri G. Stanley Hebzon Singh represented respondents 8 & 10.

13. Learned counsel appearing for the applicant submitted that as per the order of this Tribunal in Miscellaneous Application in Original Application No. 82 of 2016, this Tribunal had directed the Tashildar to take action against those persons who are involved in shrimp cultivation without getting any permission and accordingly, the Tashildar has issued certain prohibitory orders directing the respondents 8 to 12 from doing ornamental fish farming in the property.

14. He also contended that the report of the committee is not correct as the sewage generated on account of Ornamental fish farming has deteriorated the soil quality which resulted in great damage and caused loss of agricultural income to the applicant. So, the respondents 8 to 12 are liable to recoup the same from the applicant.

15. According to the applicant, from 2014 to 2018 till the application was filed, they have suffered heavy loss on account of the illegal activities of the respondents 8 to 12.

16. On the other hand, the learned counsel appearing for the respondents 8 & 10 submitted that the report of the committee will go to show that there is no harm caused to the agricultural property on account of their act and at present no ornamental fish farming is being conducted in that property.

17. The point that arise for consideration is "whether the applicant is entitled to get any of the reliefs claimed in the application?".

18. As far as conduct of ornamental fish farming is concerned, that is not being done in the property at present. So, there is no necessity to pass any order against respondents 8 to 12 restraining them from doing any ornamental fish farming in the property at this stage as they have stopped the ornamental fish farming being conducted in the property at present. So that prayer becomes in fructuous.

19. It is seen from the Joint committee report that the Professor & Head of the Department of Environmental Science (Senior Scientist) Tamil Nadu Agricultural University has conducted the test in the field by taking water and soil samples and submitted the analytical report which says that no harm or damage has been caused to the agricultural land of the applicant by the water used for colour (ornamental) fish farming.

20. As per the soil sample report, the Soil organic carbon content is medium to high in range as per fertility rating and Nitrogen content in the soil is also above average limits.

21. It is further stated in the report that the Nitrogen levels are usually high in the waters used for fresh water fish farming since more ammonia are released from the wastes excreted by the fishes. However, only less amount of Nitrogen was found in the soil samples taken from applicant's agricultural land. This clearly shows that the water used for fresh water fish farming caused no damage to the applicant's land.

22. It is also mentioned in the report that report of the Assistant Director of Agriculture, Ponneri shows that the applicant has cultivated rice and pulses and also earned good yield and profit compared to his neighbour farmers. That also shows that no financial loss has been caused to the applicant on account of this activity.

23. So, they have come to the conclusion that the question of land damage due to the excretion of huge waste also does not arise in this case. The report shows that no damage has been caused to the agricultural property of the applicant.

24. Further, the applicant had filed his objection to the status report of the District Collector denying the allegations. According to him, the activities were done in the year 2014, but the inspection was conducted only in 2018, so what was the then existing condition is not clear from this report.

25. It may be mentioned here that the burden is on the applicant to prove prima-facie, on account of the activities of the respondents 8 to 12, some damage has been caused and he had not made any attempt to conduct soil test himself before filing the application to come to the conclusion that on account of the activities of the respondents 8 to 12 any soil degradation has been caused. So under such circumstances, without any scientific data produced by the applicant to disprove the conclusion arrived at by the committee appointed by this Tribunal which includes a scientist from agricultural university, it is not possible for this Tribunal to come to a different conclusion to eschew the conclusion arrived by the committee.

26. The additional status report filed by the District Collector received on 31.07.2020 reads as follows:—

"5) I humbly submit that, the Professor and Head Department of Environmental Science (Senior Scientist) Tamil Nadu Agricultural University was conducted the test in the field water and soil samples and submitted her analytical report. It is revealed that no harm/damage was caused to the agricultural lands of Thiru. Jagadeesh S/o. Madhava Naidu by the Water used for Color (Ornamental) Fish Pond Farming. As per the soil samples report, the Soil organic carbon content is medium to high in range as per facility rating and nitrogen content in the soil are also on above average limits. It is further stated that the nitrogen levels are usually high in the waters used for fresh water fish farming since more ammonia are released from the wastes excreted by the fishes. However, only less amount of nitrogen was found in the soil samples taken from the petitioner's agricultural land. This clearly shows that the waters used for fresh water fish farming caused no damage to the petitioner's agricultural land.

6) I humbly submit that, the Assistant Director of Agriculture, Ponneri has stated in his report, that the petitioner has cultivated rice and pulses crops and also earned good yield and profit compared to his neighbour farmers. This clearly shows that no financial loss was incurred by the petitioner out of his cultivation.

6) I humbly submit that, the Tamil Nadu Pollution Control Board has stated in his report that the Central and State government have been constantly providing financial assistance and various other support to set up Pond based fish farming activities in rural areas, as a part of allied agricultural occupation thereby targeting to improve the life standards of village agricultural population. The main purpose of adding limestone to fish farming ponds is to make the water alkaline, kill microbes, inhibit the formation of algal layers on water surfaces so that more amount of light will pass deep through the pond water thereby makes the water fertile and enhances cultivation.

7) In addition to this, cow dung, chicken dung, together with recommended levels of urea, super phosphate and ammonia sulphate fertilizers are also being used. Since, labourer's tenements are not found anywhere near the Color (Ornamental) Fish farm, the question of land damage due to excretion of human wastes also does not arise. The usage of fertilizers and chemicals in Fish Farms is merely to control the pH of water present in those areas and therefore raising doubts whether they damage the nearby agricultural lands is only imaginary and lacks scientific proof. However, it can be clearly ascertained based on the results of

the analytical report of water and soil samples taken from the agricultural fields.

9) *I humbly submit that as per the Joint Committee, the analysis result clearly revealed that no harm/damage was caused to the Agricultural Lands by the Water used for Color (Ornamental) Fish Pond Farming as per the soil samples report, the Soil organic carbon content is medium to high in range as per fertility rating and nitrogen content in the soil are also on above average limits. It is further submitted that the nitrogen levels are usually high in the waters used for fresh water fish farming since more ammonial are released from the wastes excreted by the fishes. However, only less amount of nitrogen was found in the soil samples taken from the petitioner's agricultural land. This clearly shows that the waters used for fresh water fish farming caused no damage to the petitioner's agricultural land. The usage of fertilizers and chemicals in Fish Farms is merely to control the pH of water present in those areas and therefore raising doubts whether they damage the nearby agricultural lands is only imaginary and lacks scientific proof and fresh water ornamental fish farming causes no harm to agricultural lands and the petitioner has been doing active cultivation and yielding good harvest.*

10) *I humbly submit that, the case came up for hearing before the Honourable National Green Tribunal on 11.06.2020 and directed to file fresh report answering, whether the said fish pond is conducted with permissions, as required under law.*

Conclusion:

I humbly submit that the above said ornamental fish farm does not require any permission, as the same is practised in agricultural fields, which comes under Agricultural allied farming culture system.

I humbly submit that, there is no merit on the side of the petitioner. Hence, therefore I humbly prayed that this Hon'ble Court may be pleased to pass suitable orders."

27. The report shows that the above said ornamental fish farming does not require any permission, as the same is practiced in agricultural fields, which comes under Agriculture allied farming culture system.

28. There is no statutory bar brought to the notice of this Tribunal by the applicant in conducting the ornamental fish farming in the agricultural land and also there is no statutory provisions pointed out by the learned counsel appearing for the applicant to show that this requires any prior permission as well.

29. So under such circumstances and in absence of any statutory bar or any regulations in regulating such activities, it is not possible for this Tribunal to pass any probability order restraining any of the persons from exercising their right to profession which is permitted under law, unless, it is proved by the applicant that on account of such activity any pollution/damage is being caused to his property or person and such evidence is lacking in this case.

30. Further, there is no data or endeavour addressed by the applicant to prove that he had sustained any loss of agricultural income for the period of 2104 to 2018, on account of the activities of the respondents 8 to 12, as claimed by him and as such he is not entitled to any compensation from the respondents 8 to 12 as claimed by him as well.

31. So under such circumstances, there is nothing survives in the matter and the applicant is not entitled to get any of the reliefs claimed in the application and the same is liable to be dismissed.

32. In the result, the application fails and the same is dismissed with the above observation. Considering the circumstances, the parties are directed to bear their respective costs in their application.

† Southern Zone, Chennai

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.

BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Original Application No.627 of 2023

In the matter of:

Gopal Chandra Vanwassi

..... APPLICANT

VERSUS

Department of Industrial Policy and Promotion

.... RESPONDENT

Know All to whom these presents shall come that I/WE, M/s Ganesh Dutt Nainwal Soap Stone Mine through its Proprietor Ganesh Dutt Nainwal, RESPONDENT in the above noted case, do hereby appoint Mr. ABHIJEET NEGI, Advocate (Regn. No. D/2156/2013), Mr. Himanshu Suman ,Advocate (Regn.No.D/3774/2014) having Mob.9718383354,7678640542 and email: advocateabhijeetnegi@gmail.com having Office at Chamber No. 53A, Patiala House Court, New Delhi hereinafter called advocate/s to be my/our Advocates/in the above-noted case for and authorize him/them: -

To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Courts including the Supreme Court.

To sign, file, verify present pleadings, applications, appeals cross-objection, or petitions for execution, revision, restoration, withdrawal, compromise or other petitions, replies, objection or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents. Withdraw, or compromise the said case or submit to arbitration and differences or disputes that may arise touching or in any manner relating to the said case.

To take out execution proceedings.

To deposit, draw and receive moneys cheques and grant receipts therefore and do all other acts and things, which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner authorizing him to exercise the power and authority hereby conferred upon the advocate whenever he may think fit to do and to sign the power of attorney on our behalf.

And I/We the undersigned do hereby agree to ratify and confirm acts, done by the Advocates or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.

And I/We undertake that I/We or my/our duly authorized agent, would appear in Court on all hearings and will inform the Advocate for appearance, when the case is called.

And I/We undersigned do hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequence of the absence from the court when the said is called up for hearing, or for any negligence of the said Advocate of his substitute.

And I/We the undersigned do hereby agree that in the even of the whole or any part of the fee agreed by me/us to paid to the Advocate remaining unpaid he shall be entitled do withdraw from the prosecution of the said case until the same are paid up.

If any costs are allowed for an adjournment, the advocate would be entitled to the same.

In WITNESS WHEREOF I/We do hereunto set my/our hand/s these presents the contents of which have been understood by me/us this day of 01st March 2024.

Accepted subject to the terms of fees

Advocate

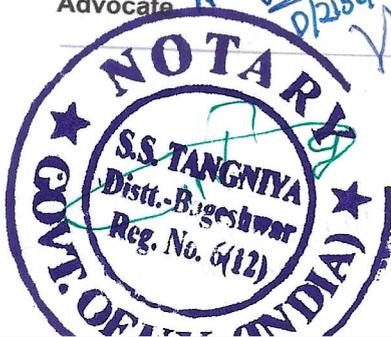
Abhijeet Negi
D/2156/2013
Himanshu Suman
D/3774/2014

Client

G D Nainwal

Client

Shiv Singh Tanwar
SHIV SINGH TANWAR
NOTARY
BAGESHWAR (U.A.C. 110)



NGT: OA 627 of 2023 Gopal Chandra Vanwassi vs Department of Industrial Policy and Promotion & Ors

Abhijeet Negi <advocateabhijeetnegi@gmail.com>
To: Gopal vanwassi <pranashaktiupchar@gmail.com>

Tue, May 7, 2024 at 8:41 PM

Dear Sir,

I write to you on behalf of Ganesh Dutt Nainwal Soap Stone Mine/ Respondent No.2 in the subject matter. Please find attached the reply being filed on behalf of Respondent No. 5 in this regard.

Kindly consider this as advance service of the same.

Regards
Abhijeet Negi
Advocate
Counsel for Respondent No.2



NGT Reply on behalf of Respondent No 2 .pdf