

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI
Appeal No. 03 of 2015 (SZ)**

In the matter of:

P.S. Vajiravel

Proprietor, M/s Shivashakthi Dyeing

S.F. No: 273/3B, 277 of Periyasemur Village

No. 14, Cauvery Nagar, Soolai

Veerappanchatram Post

Erode Taluk and District – 638 004

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Appellant

NGT

AND

1. The Chairman

Tamil Nadu Pollution Control Board

No. 76, Mount Road,

Guindy, Chennai- 600 032.

2. The District Environmental Engineer

Tamil Nadu Pollution Control Board

No. 155-A, Nehru Street

D.V. Complex, First Floor

Erode-1

3. The District Collector

Erode District

Erode

4. The Superintending Engineer

Tamil Nadu Electricity Board

Electricity Distribution Circle

(Operation and Maintenance),

Erode Taluk & District.

5. Assistant Engineer

Rural/Veerappan Chatiram

Tamil Nadu Generation and

Distribution Corporation Ltd

Erode Distribution Circle

Erode-638 004

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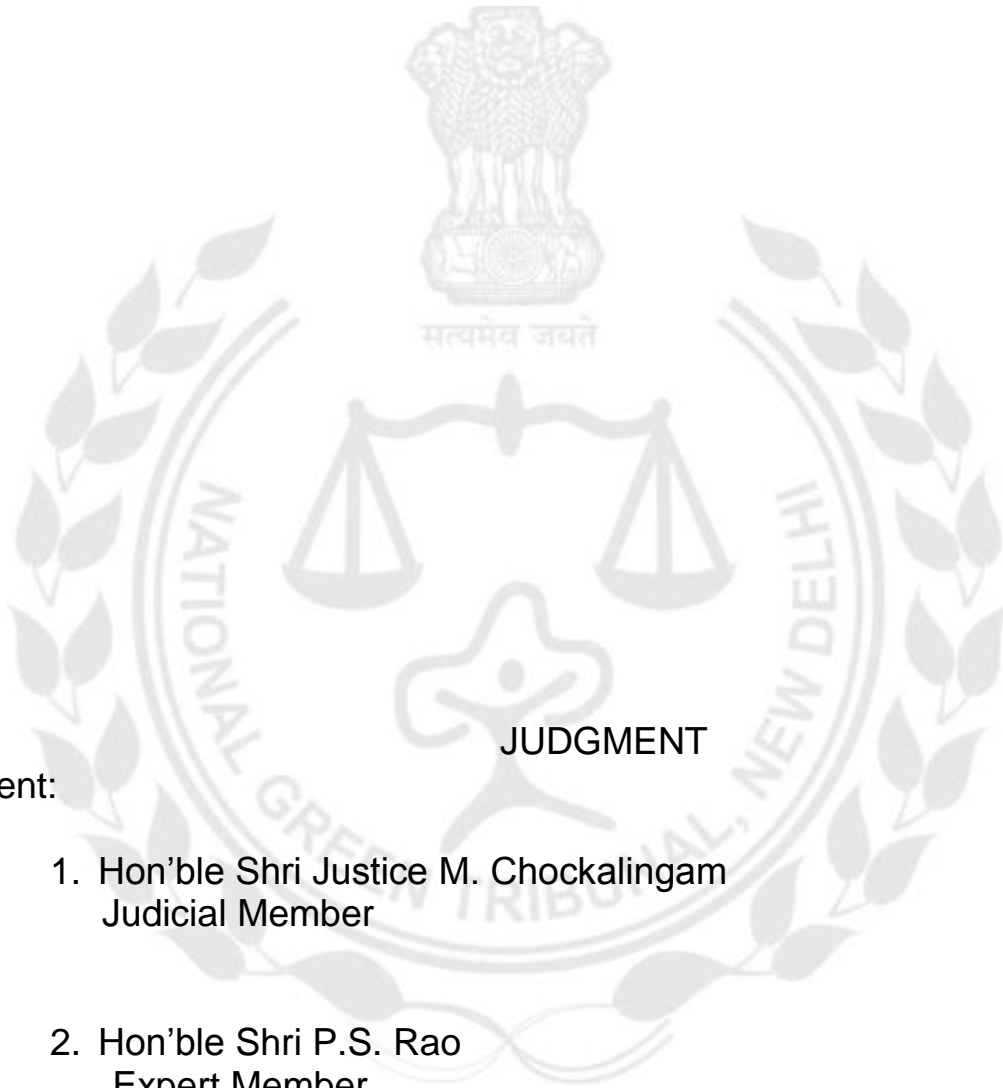
Respondents

Counsel Appearing:

Appellant: M/s. M. Sriram, S. Bhagavan & R. Chandramohan

Respondent: Mrs. Rita Chandrasekar, Advocate for Respondent
Nos. 1 and 2; M/s. M.K.Subramaniam and M.R.
Gokul Krishnan, Advocates for Respondent No. 3;
Shri P. Gnanasekaran, Advocate for Respondent
No. 4 and 5

NGT



JUDGMENT

Present:

1. Hon'ble Shri Justice M. Chockalingam
Judicial Member

2. Hon'ble Shri P.S. Rao
Expert Member

Date: 26th March, 2015

(Judgment delivered by the Bench)

Challenge is made to an order of the respondent, TNPCB whereby
a closure order dated 09.12.2014 in the proceedings No.

T1/TNPCB/F.41171/ERD/2014-1 was served on the appellant's dyeing unit. The fact of the case of the appellant in short is briefed below:

2. The appellant is the proprietor of the dyeing unit namely, M/s Shivashakthi dyeing, engaged in manufacturing dyed cotton yarn.

The Appellant has obtained Consent to Operate on 21.10.1999 under Air (Prevention and Control of Pollution) Act, 1981 (Air Act) and Water (Prevention and Control of Pollution) Act, 1974 (Water Act) from the 1st and 2nd respondents, Tamil Nadu Pollution Control Board (TNPCB), after satisfactorily complying with all the conditions imposed by the TNPCB. The unit was in operation without any complaint from any corner and Consent to Operate was being renewed periodically and the appellant was diligently complying with all norms and conditions, from time to time, prescribed by the TNPCB and other statutory authorities.

The Appellant's unit comprised of a factory and an Effluent Treatment Plant (ETP). The land on which the ETP constructed was taken on lease, for that purpose, in the year 1999 by the appellant from one, Mr. Shanmugham who has clandestinely sold the said land in the year 2007 to one, Mr. Prabhu, son of Mrs. Mallika Paramasivam, an influential politician and present Mayor of Erode. Immediately after the said sale, even during the subsistence of valid lease, the appellant was asked to

vacate the land in use immediately. Since the appellant has not agreed for the same, he was repeatedly put to various types of harassment at the instance of the said purchasers, to give up his possession of the land which was leased out for a commercial purpose. A Suit in O.S.No: 424/2007 seeking permanent injunction was came to be filed by the appellant as against the erstwhile owner of the land and the said Mr. Prabhu which is still pending before the District Munsiff Court, Erode. The said Mr. Prabhu has also filed a suit in O.S. No: 468/2010 praying for eviction of the appellant from the leased out land. In the interregnum, the said Mr. Prabhu using his political background, had influenced the 1st respondent in the year 2012 to cancel the license of the appellant, and the 1st respondent issued a closure order on 28.10.2012 without any enquiry. The said closure order was issued overlooking all mandatory procedures and in gross violation of the principles of natural justice and the appellant aggrieved by the same, approached this Hon'ble Tribunal in Appeal No. 9/2012(SZ). This Hon'ble Tribunal after considering the entire facts and circumstances of the case and records was pleased to set aside the said order of closure by its order dated 28.02.2013 and directed the respondents to issue renewal letter of consent to operate and give electricity supply.

3. The appellant was able to get renewal of consent to operate, due to intervention of this Hon'ble Tribunal for the period 2013-14 and for 2014-15 which is still valid up to 30.06.2015. The appellant was implementing all the instructions of the TNPCB authorities given from time to time, without any lapse on his part. The appellant unit never exceeded the production limit of 12.5 MT per month and the discharge was only 15 KLD though the permitted limit is 50 KLD per month.

4. An officer in charge of the 2nd respondent office visited the unit without any prior notice on 20.11.2014 at 7.30 pm while there was no Manager or Supervisors present in the unit. The 2nd respondent without asking for any explanation or question made an inspection and thereafter left the unit without furnishing an inspection report. The reason behind the surprise inspection made was not known to the appellant and even thereafter, there was no communication from the 2nd respondent. The appellant later received a closure order dated 09.12.2014 from 1st respondent which was served on him only on 18.12.2014. The said closure order seems to have been passed based on the report given by the 2nd respondent who inspected the unit on 20.11.2014, wherein the 2nd respondent has reported several violations of conditions given in the Water Act. The 1st respondent having received the report of the

2nd respondent alleging violations in the unit has not issued any show cause notice calling for explanation from the appellant, but straightaway issued the closure order dated 09.12.2014 directing immediate closure of the unit. The alleged violations are not at all true and the 1st respondent without giving any opportunity to the appellant to explain, accepted the report and proceeded mechanically as if there is an imminent danger and took the stringent step of immediate closure of the unit by invoking powers under Section 33-A of the Water Act and also directed for the disconnection of power supply.

5. *Per Contra*, the appellant unit of M/s. Shivasakthi Dyeing, S.F.No:273/3B, 277 of Periasemur Village, No: 14, Cauvery Nagar, Soolai, Erode Taluk and District is a small scale dyeing unit. The appellant's unit is functioning since May 1995 as per its application for consent. The appellant unit has applied for consent of the Board on 31.08.1999. The unit has been issued with first consent on 21.10.1999 with validity up to 31.03.2000 under the Water (P & CP) Act, 1974 as amended and the Air (P&CP) Act, 1981 as amended for the product of dyed cotton yarn 12.5 T/M and to discharge trade effluent 50 KLD. Subsequently amendment for product change has been issued for bleaching and dyeing of cotton

fabrics of 12.5 T/M and to let out trade effluent 15 KLD as per the Board's amendment proceeding dated 12.07.2010.

6. A closure order and disconnection of power supply was issued by the TNPCB *vide* proceedings No.T2/TNPCB/F.13756/12-1 & 2 dated 28.10.2012, when a civil case is pending before the Civil Court at Erode. The said closure order and disconnection of power supply issued in Board's proceedings dated 28.10.2012 was set aside by the Hon'ble NGT (SZ) Chennai in Appeal No.9 of 2012 (SZ) *vide* order dated 28.02.2013 and directed the TNPCB to issue renewal of the consent. Accordingly, a direction was issued for revocation of closure order and restorations of power supply to the unit *vide* proceedings dated 28.03.2013. The unit has been issued with renewal for the period up to 30.06.2014 and thereafter for the period up to 30.06.2015 with certain conditions for compliance.

7. During an inspection on 20.11.2014 in the night hours, the appellant unit was under operation and many defects were noticed. The unit is under operation, violating the orders dated 04.07.2007 and 09.08.2007 of the Hon'ble High Court of Madras, issued in W.P.Nos.5494/98 and 30153/03 and also violated the conditions attached to the Consent Order issued under the Water Act, 1974 as amended.

8. The Hon'ble Court of Madras in W.P. Nos. 5494 of 1998 & 30153 of 2003 order dated 04.07.2007 has issued inter alia direction as follows:

“Para 18. (viii) The TNPCB should intensify its drive to identify units which are producing more than what is permitted in the order of consent, thereby discharging more than the quantitative limits prescribed in the consent and to take action to effect closures.”

9. In view of the observations made during night inspection on 20.11.2014 and non compliance of the Hon'ble High Court orders dated 04.07.2007 & 09.08.2007, the appellant unit has been issued with closure directions and disconnection of power supply as per the TNPCB's proceedings No. T1/TNPCB/F.41171/ERD/2014 1&2 dated 09.12.2014.

10. The only point that would arise for determination by the Tribunal is whether the impugned order is liable to be set aside on or any of the reasons stated in the appeal grounds. Heard the learned counsels on either side and also looked into all the materials made available. Admittedly, the appellant's dyeing unit came into operation in the year 1999 after obtaining the orders of consent to operate as envisaged under the Water Act, 1974 and Air Act, 1981 from the TNPCB. Though the respondent, TNPCB filed a counter to the effect that the appellant's unit is functioning from 5/1995, it is not disputed that

the appellant's unit obtained the consent of the TNPCB on 31.08.1999 and has been carrying on its operation there from. Originally, the consent had its validity till 31.03.2000 under the provisions of the prescribed enactments and also to discharge 50 KLD trade effluent and subsequently there was an amendment for product from the bleach and dyeing of cotton fabric of 12.5 T/M and to let out 15 KLD of trade effluent as per the TNPCB proceedings dated 21.10.1999.

11. Following an inspection by the authorities of the respondent TNPCB, a number of shortcomings and deficiencies were noticed and an order of closure and disconnection of power supply to the appellant's unit was made by the respondent, TNPCB by a proceedings dated 28.10.2012 which was the subject matter of this appeal before the Tribunal in Appeal No. 9 of 2012. The said order was set aside with a direction to the respondent, TNPCB to issue renewal of consent. Accordingly, a direction was issued for revocation of the closure order and restoration of power supply to the dyeing unit of the appellant by a proceedings dated 28.03.2013. It is also fairly conceded by the respondent, TNPCB that the consent order was renewed for a period up to 31.03.2014 and thereafter renewed up to 30.06.2015 with certain conditions as found therein to be complied with.

12. While the matter stood so, according to the TNPCB, an inspection of the unit was made on 20.11.2014 while the unit was in

operation and the following observations were noticed by the officer who made the inspection:

- “1. The unit was under operation and all the components of ETP and ZLD system were not under operation.
2. The log book for ETP and ZLD system were not maintained from 16.11.2014.
3. No MLSS was noticed in the aeration tank.
4. The Unit has installed following machineries:
 - i. Jumbo Jigger 300 Kgs-1 no.
 - ii. Jumbo Jigger 150 Kg- 1 no.
 - iii. Jigger 80 Kg- 4 nos.

This leads to excess production than the consented quantity and thereby generates more quantity of trade effluent than the consented quantity.

5. The hazardous sludge from the ETP has not been collected and stored properly.
6. HDPE geo membrane sheet has not been laid over SEP to prevent seepage of nano reject.
7. The solar evaporation pans are filled with effluent for 2 feet depth with a TDS of 2700ppm which includes the unit is disposing the untreated and thereby there is a possibility of bypassing the effluent in the nearby drain which finally reaches Pitchankaranpallam which confluences River Cauvery.”

Further it is submitted that the Hon'ble High Court of Madras in its order dated 04.07.2007 and 09.08.2007 in W.P. Nos. 5494/98 and 30153/03 *vide* Para 18 (i) has directed as follows:

“The dyeing industries shall install electromagnetic flow meter, operate their effluent treatment plant and RO plants, recover water, properly manage reject and cease discharge to a water body/land and have their records maintained as directed by the Board and should undertake to satisfy the Board.”

Thus the unit is under operation violating the above said order and also violated the consent conditions issued under Water Act”.

Following the same, an order of closure was issued along a direction to disconnect the electric supply for the appellant's unit which is the subject matter of the challenged here.

13. Advancing the arguments on behalf of the appellant, the learned counsel would submit that in the instant case it is conceded by the TNPCB that the inspection was made during night hours on 20.11.2014 and no prior intimation was either issued or the copy of the inspection report was served upon the appellant. Apart from that, no show cause notice was served calling for any reply and by giving an opportunity to the appellant to put forth his case. Instead, the TNPCB has passed the impugned order which is violative of the principles of natural justice and on that ground also the impugned order has to be set aside.

14. Countering the above contention the learned counsel of TNPCB would submit that an inspection of the appellant's unit was made by the officials of the TNPCB on 20.11.2014 while the appellant's unit

was under operation and a number of deficiencies in the prevention and control measures in respect of pollution were noticed as enumerated in the impugned order. The unit was not only found in operation besides not complying with the conditions attached to the Consent Order but also in violation of the order of the Hon'ble High Court of Madras made in W.P.Nos. 5494 of 1998 and 30153 of 2003 and also in violation of the provisions of Water Act, 1974 and Air Act, 1981. Under the circumstances, the TNPCB has no option than to pass the impugned order which was accordingly done and hence the appeal has got to be dismissed.

15. The Tribunal, after considering the submissions made and looking into the materials is of the considered opinion that the impugned order has to be set aside without going into the merits or otherwise of the compliance or non-compliance as stated by the authorities in the impugned order of closure. Aggrieved over the order of closure, the same appellant approached the Tribunal and filed Appeal No. 9 of 2012 and after hearing both sides a judgment came to be passed in 2/2013 whereby the closure order passed then was set aside with a direction to revoke the closure order and also for restoration of power supply which was accordingly done. It is also noticed that the consent was renewed up to 30.06.2014 and thereafter up to 30.06.2015 and thus it is quite evident that on the date of the alleged inspection and also the impugned order,

the appellant unit was enjoying the consent for carrying on the operation of the unit. It is the case of the TNPCB that when the inspection was made on 20.11.2014, a number of deficiencies and defects were found in utter non-compliance of the conditions attached to the Consent Order. A perusal of the impugned order would be indicative of the fact that after the inspection of the unit there is nothing to show that any copy of the inspection report was served upon the appellant or any show cause notice was issued calling for an explanation by giving an opportunity of being heard. Thus, it is a case of glaring violation of the principles of natural justice. When a party is enjoying a consent order, even assuming that violation of the consent order is noticed, a show cause notice should have been served upon the person calling for an explanation by giving him an opportunity and if the authorities of the TNPCB are not satisfied with the explanation offered, there is no impediment in law to pass an order. But, in the facts and circumstances of the instant case, it is not the case that any show cause notice was served upon the appellant by the TNPCB and no reply was called for and thus it is the case where the authorities of the TNPCB took a decision and passed the impugned order without giving an opportunity to the appellant to put forth his case.

16. Therefore, the Tribunal is of the considered opinion that it is sufficient to set aside the impugned order and accordingly it is set aside. While the impugned order is set aside, it is made clear that since it is a

case of alleged violation of the conditions attached to the Consent Order and also the orders of the Hon'ble High Court of Madras, the authorities of the TNPCB can make an inspection afresh by following strictly the procedures and pass suitable orders in accordance with law.

17. In view of the above orders, the 4th and 5th respondents are directed to restore the electric supply to the appellant's unit on or before 31.03.2015.

18. The appeal is allowed accordingly.

No cost.

(Justice M. Chockalingam)
Judicial Member

(P.S. Rao)
Expert Member

Chennai

Dated, 26th March, 2015

NGT